

**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

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Submission from

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To

Legislative Council



**Standing Committee on Law and
Justice**

**Inquiry into community based sentencing options for rural
and remote areas and disadvantaged populations**

August 2005

Submission in relation to Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations

Introduction

I was alerted to the committee's Inquiry when I read a copied email that Arthur Chesterfield Evans had sent to your Chair, Christine Robertson. Arthur suggested that I was someone who might have something to contribute given 'my extensive experience in the area of victim/offender processes'. Having read the general terms of reference of this Inquiry, I thought about whether I had something to contribute, and then what this might look like. It is obvious I now believe that I do have something to offer and yes, I am reasonably clear about what this is.

I want to start with an important observation about what your Inquiry is attempting, and then comment on what I believe is the fundamental problem with this approach. Briefly I see your Inquiry as a genuine attempt to look for better community sentencing options in rural locations or for disadvantaged groups. My comment is that your terms of reference make no mention of the effectiveness of the existing criminal justice process, nor any reference to what makes a difference around offending behaviour. Ignore these fundamental issues in any discussion about sentencing options and you will end up with 'more of the same' regardless of the committee's final recommendations.

Unless we ask the right questions there is little prospect of identifying what the real 'problems' are. Let me flag a couple of the questions that come immediately to mind:

- How well does our existing criminal justice processes do at influencing offending behaviour?
- What is the most usual experience of an offender in the criminal justice process?
- What insights do offenders have into their behaviour at the time that community sentencing options are considered?
- How is the effectiveness of existing community sentencing options measured?
- How do the existing sentencing options and programs address the issues that influence [offending] behaviour?
- What and who is likely to have the greatest influence on offending behaviour?

A couple of quick observations in response to the above questions:

- Our criminal justice system does poorly at influencing offending behaviour particularly those with high risk factors.
- The most usual experience for an offender in the criminal justice process is largely one of humiliation, survival, minimisation of responsibility and a successful experience being one that involves a minimum sanction or punishment.
- Offenders generally have a limited insight into the impact of their offending behaviour, often view themselves as 'victims of the system' and view community sentencing processes as something that they have to do.
- The effectiveness measure for existing community sentencing options is measured in terms of compliance and completion, neither of which are a good indicator of behavioural change.

- The existing sentencing options and programs have limited influence on offending behaviour as they largely exclude those who are likely to have the most significant influence on offending behaviour, and therefore are experienced by offenders as something that is done 'to' them.
- Those likely to have the greatest influence on offending behaviour are those who are significant in the lives of offenders.

I intend to now address each of these issues in some detail and propose to do so under the following key headings:

1. Brief personal history
2. Articulating the Problem
3. What influences offending behaviour
4. A different Probation & Parole experience
5. The Game – Practice and Reality
6. Recommendation

1. Brief Personal History

Born into an Irish Catholic family some 54 years ago, I was one of ten children. I left school at 14 years and worked on the [NSW] railway as an apprentice electrician. I joined the NSW Police Service in 1971 and undertook a range of policing roles. In 1990, I was appointed as the Sergeant in charge of Community Beat Policing in Wagga Wagga. In this role, I began to question the effectiveness of our approach to youth crime. It was clear that the criminal justice processes failed most young offenders, and in particular, those with high risk factors.

Given the community's expectations that the court process would challenge offenders in a way that helped them to be more responsible, accountable and bring about behavioural change, I realised that this process was delivering the opposite, particularly for high risk offenders. I concluded that the court process in fact worked against the prospect of any meaningful change. Why? Simply, offenders are not directly involved in the process, as someone is either doing things 'to' or 'for' them, such is the nature of the criminal justice process. It is a process of rationalisation, one that demands offenders to take responsibility, but does not provide any meaningful opportunity or way for this to occur.

Because of its adversarial nature, blame and punishment are its strong suit. This precludes the opportunity for any real understanding for the offenders [and the court] of the collateral impact of offending behaviour on victims, their families and the offenders' families. None of this made sense. I was committed to changing the way we [as police] dealt with youth offenders.

I was hopeful that this might change the experiences for everyone involved in the criminal justice process¹. My initial interest in what this change might look like was prompted by the New Zealand Family Group Conference 1989 legislation. So began the development of what became known nationally and internationally as the Wagga Wagga Police Conference model. Begun in 1991, this model involved bringing victims and offenders [and the families] together to discuss three key questions: What happened? What harm or hurt has resulted?; and, What is needed to make things right? The focus was on harm and its impact on relationships, not on blame or punishment.

¹ There is often a mistaken belief that there is a need to fundamentally change the criminal justice system. I have only ever been interested in changing the experiences people have in this system.

The process was pretty simple. Invite everyone who had been directly impacted by a crime. Provide them with an opportunity to tell their stories and to discuss what was needed to make things right. The process started with the offenders responding to the following questions:

- What happened?
- What were you thinking at the time?
- What have you thought about since?
- Who has been affected by what you did? In what way?
- What do you need to do to make things right?

Victim/s and their supporters were then invited to respond to the following questions:

- What did you think when you realise what had happened?
- What impact has this had on you and others?
- What has been the hardest thing for you?
- What do you think needs to happen to make things right?

The offenders' families were then invited to respond to the same questions. At this point, the offenders were asked if there is anything they want to say [given they now have a sound understanding about how their behaviour had impacted on others including those most significant in their lives]. Finally, the victims were then asked about 'What they were wanting from the conference'. This then triggered discussion on what was needed to make things right.

From the very first conference I facilitated in early 1991, I realised how powerful the process was. The idea of respectfully confronting offenders, the importance of including victims, their families and the offenders' families, provided the ideal forum to talk about harm and ways of making things right. Within four years, the Wagga Wagga model began to influence changes in youth justice throughout Australia, United Kingdom and North America. Its' greatest influence has been in the United Kingdom where the early developments in Thames Valley Police Service has had a significant influence in youth justice reform [in the United Kingdom]. There is now significant evidence over the last decade to show empirically that restorative justice processes consistently provide positive outcomes for offenders, victims and their families, more so when compared with the formal court process.

In 1995, I began talking with the NSW Corrective Services about the use of restorative justice processes with serious offenders. This resulted in me being invited to facilitate a number of restorative conferences for serious crimes including manslaughter, home invasion and sexual assault. One of the more notable restorative conferences I facilitated was the Marslew murder conference that was subject of an ABC Television documentary called "Facing The Demons" in 2000. I also facilitated the John Button conference that was featured in a two-part ABC Australian story "Murder He Wrote" in 2002. My involvement with NSW Corrective Services certainly influenced the establishment of their own Restorative Justice Unit that today continues to provide restorative conferences for serious offences.

I left the NSW Police Service in 2000 after 29 years and presently I am the Australian Director of Real Justice, an international non-profit organization established in 1995 to promote the use of restorative justice processes. Over the last few years, what began as a discrete conference process in Wagga Wagga for dealing with youth crime has now evolved into a broad set of restorative practices that have been adopted in many different disciplines and jurisdictions in many countries. This approach is now being enthusiastically embraced by schools, community agencies and institutions as a very positive way of dealing with harm and building stronger relationships. It is its use in the area of Probation and Parole that I will now turn my attention, as this area is most relevant to your Inquiry.

1.1 Probation and Parole

In 2000 I [Real Justice] was contracted to provide restorative justice training in the Northern Territory to Police, Probation & Parole and a range of community agencies involved in administering various offender programs. This development came out of the national Mandatory Sentencing debate. It was decided that 'court diversion' using restorative justice conferences provided a positive option and this went some way to defusing the criticism directed at the Northern Territory government over their draconic approach to offenders [most of whom were indigenous]. There have been some very positive results over the last four years from the Northern Territory initiative, particularly in terms of reduced numbers of offenders appearing before the courts. However, in my view, its effectiveness is greatly diminished by all the issues I will cover in this submission that relate to involvement of significant others, capacity building and community connections.

In 2004, I presented at the national conference for PACCOA (Probation and Community Corrections Officers Association) in Alice Springs. In my presentation I argued that Restorative Justice Practice had considerable application in probation practice as it provided an effective way of engaging offenders and their families, one that required offenders to think about issues of harm and relationships. Consequently, I was asked to train all the Northern Territory probation & parole officers in a series of two-day trainings in November 2004. I have since run three short workshops for NSW Probation and Parole officers at the invitation of Peter MacDonald [Director, South West Region] who was also at the PACCOA conference.

I will now share a couple of general observations about my experience of training probation officers. These include:

- A limited understanding of their own practice.
- There is a lack of rigor and discussion on what practice works and why.
- Engagement of offenders is often limited to instructing them on reporting conditions and requirements.
- Offender families are rarely involved and then, only on a needs basis.
- Officers generally have excessive caseloads.
- Officers do not share a strong belief that it is possible to make a difference in the lives of many offenders.
- There is little consensus on what will make a difference.
- Effectiveness is measured in terms of compliance and completion.

Notwithstanding these observations, I have found that those probation officers who participated in restorative justice training were very enthusiastic and optimistic about its potential to improve their practice. Whilst the impact of these various probation trainings has not been evaluated, anecdotal evidence suggests that probation officers² have begun using a number of the restorative practice elements, particularly the use of the restorative questions for engaging offenders. I think however that overall, the impact of restorative practice at this early stage in probation has been marginal. For this to change, it will need a strong institutional commitment to training and experimentation, as well as a focus on developing a strong practice culture of discussion and critique.

1.2 The Exception

As it often the case, there is a New South Wales probation and parole officer who is the exception, the standout practitioner who has integrated restorative practice in some exciting ways. His name is Grahame Chaseling and he presently works at Parklea Prison.

I have known Grahame since 1995. We first met when I did a presentation on restorative justice to a victim support group known as Enough is Enough. Grahame has had a long-standing interest in restorative justice having been trained as a facilitator in the early 1990's. He was a NSW corrections officer for approximately 17 years prior to becoming a probation and parole officer in 2002.

On one occasion in 1998, whilst Grahame was working as a Correctional officer at Parklea, he asked if I could talk with his Governor and to explain the potential benefits of restorative justice in correctional settings. I obliged but unsurprisingly, I received a less than enthusiastic reception. The reality was that I was speaking a foreign language, one that was completely out of the Governor's frame of reference. Yet, as with Grahame, I can point to a standout prison governor Tim Newell in the United Kingdom. Tim was in charge of Grendon Prison³ (UK), one that he developed as the first restorative prison (See Annexure 1) To provide you with some sense of Tim Newell's approach I have drawn on an extract to illustrate this point: *As governor, he avoided the stigmatising and punitive practices of a typical community. Instead he created a therapeutic that incorporated the principles of restorative justice practices.*

Wanting to make a more meaningful contribution in offender's lives, Grahame made a successful transition to Probation and Parole in 2002 after persevering for some time. Still very strongly committed to introducing restorative justice practices, Grahame again asked if I would do a presentation to his colleagues at the Windsor Office in 2003. Unlike our Parklea experience, on this occasion Grahame had a very supportive and innovative manager, Webber Roberts and some interested colleagues. Grahame was keen to integrate restorative justice practice into his probation role and when he was given responsibility for the offender programs at Windsor, he had an ideal opportunity to explore ways of doing so.

He developed a concept called The Game that I think is an outstanding innovation, one that involves 'clients' [offenders] participating in a series of tasks and activities that have a strong restorative justice focus. The Game is designed so that offenders invite other 'players' to help them [offenders] discover who has been affected by their behaviour and what the impact has been. This invariably leads offenders to engage those who are significant in their lives and do so in a way that provides some important insights that the offenders rarely get to hear or understand.

² I recently visited the Blacktown Probation & Parole office and noticed the Real Justice restorative questions pinned to the wall at each workstation.

³ Building Restorative Prisons. A speech given by Tim Newell at 2003 IIRP Conference – Annexure 1

I will go into greater details about The Game at a later stage when I attempt to make a case for including restorative justice practice as the critical element needed to strengthen community based sentencing options.

1.3 Current Practice

In more populated areas, Probation and Parole offices exist to provide supervision and guidance for offenders on supervised bonds, and work activities for offenders sentenced to Community Service work. Periodic detention centres, generally located within the precincts of gazetted prisons, and staffed by prison officers, cater for periodic detainees.

The NSW Probation and Parole Service have developed a set of practices over the years to enforce existing Community Based Sentencing Options. These practices mainly include the proverbial 'carrot and stick' approach, augmented by other strategies, such as motivational interviewing techniques, and so on. Ultimately, however, supervision mainly comes down to reporting to the office, drug screen urinalysis, participation in development programs, etc. Non-compliance attracts punitive responses including referral back to court for re-sentencing.

These strategies and sanctions used to enforce compliance with Community Based Sentences are seen as 'the tools of trade' for Probation and Parole officers, because client resistance and avoidance is the norm. Prior to sentencing, offenders are subject to an assessment process to determine their eligibility and suitability for a community based sentence. It is recognised in the existing assessment process that even in areas currently serviced by Probation and Parole, considerations of access may be problematic.

In fact access to services is only one of many considerations that are being assessed. Consideration of an offenders' attitude to supervision is seen as an equally important consideration. The problem is that attitude is of course very subjective. If as a Probation and Parole officer you measure your effectiveness in terms of compliance and completion [as an end in it's self] then you are likely to look for 'compliant' characteristics in clients. Those clients who fail to display these prerequisite characteristics are deemed to have 'attitude problems'. My work over the last decade, particularly in schools, has revealed that attitude is a condition that may have more to do with the 'assessor' than the person being 'assessed'. A teacher once described to attitude as most to do with her feeling. She said, "When a student makes me feel okay, that student has a good attitude." The issue of 'attitude' tells me a lot about practice. Teachers who have an authoritarian or punitive approach are more likely to struggle with students who present with attitude. On the other hand, teachers who have an authoritative or relational approach are those who pay attention to understanding what is behind the 'attitude', and are generally good at building relationships with students.

The Restorative approach is similar to the one adopted by the authoritative teacher because it focuses on the process of engagement as opposed to a coercive approach around instructions and sanctions. It is important to remember that the criminal justice process negatively influences offenders' attitudes and by the time they become Probation 'clients', they have a well-entrenched attitude to most everything authoritarian. How often do you hear a magistrate or judge say 'the offender showed very little remorse'? Really. What do we expect of offenders whose most indicative criminal justice experience is so sanitising that thinking about the impact of their behaviours on others is the last thing from their minds? Remorse is linked to empathy that results from insight, all conditions that generally are rare experiences in formal criminal justice processes, particularly for offenders.

1.4 Assessment Process

I want to now briefly talk about what I understand of the assessment process used by Probation officers. Assessing offenders' suitability is either through a "short" or "court duty" pre-sentence report written by a court duty officer, who is a Probation and Parole officer located at Local and District Courts, or by referral by the Court to a district office of the Probation and Parole Service for a "full" Pre-Sentence Report. An assessment tool known as an LSI-R is used to assess an offender's risk. I want to draw your attention to the last two questions on this form to highlight what I think are the limitations of the present assessment system.

The second last question included on this form asks: "Do you think you will benefit from the supervision of the NSW Probation and Parole Service?" Offenders invariably answer, "yes" to this question, because it obviously increases their chances of getting a community based sentence. I have learnt however, that generally when a probation officer follows this question up with "How, specifically, do you think supervision will assist you?", or "Why do you think you will benefit from supervision?" offenders are unable to answer. I am a little uncertain about what this lack of response tells us. Perhaps it tells us about how offenders view the whole community sentencing processes and the futility as opposed to the utility of probation supervision. Perhaps it helps explain why most offenders resist or resent supervision because they see and experience the process as just another part of their continuing negative criminal justice experience.

Offenders invariably view compliance and completion as the object of community based sentences because this where probation officers place most emphasis. I identified a couple of typical examples to illustrate my point about offenders seeing supervision as onerous, ones that are more likely to occur where probation officers fail to fully engage offenders in the Community Based Sentence process. These include:

- The temptation for disqualified drivers to drive their cars to Community Service work locations or periodic detention centres, so as to comply with their court orders. This behaviour is regularly observed by supervisors and those significant to offenders and brought to the attention of Police, and often results in an escalation of sanctions.
- Even where geography is not an issue, after full compliance with and completion of their order, offenders may at no time have been asked to identify and address the issues underlying their offending behaviour. Areas that appear most problematic include Domestic Violence and Drink Driving.

- These are two areas where offenders commonly re-offend following the successful completion of a community-based sentence.

Whilst it is acknowledged that the same concerns are likely to happen in urban areas, however in the absence of any supervision in remote areas, the risk of re-offending may greatly increase. I suggest that this discussion highlights the importance of doing things 'with' offenders, rather than 'to' or 'for' them. Working 'with' offenders fosters insight, learning and encourages responsible behaviour. This is only possible when probation officers pay attention to how they engage offenders.

2. *Articulating The Problem*

I will now briefly allude to what I see as one of your Committee's main challenges, namely service provision in remote and rural areas. Two related questions arise:

"How can we develop the capacity in rural and remote areas to provide sentencing options, similar to those that are available to offenders in urban areas?"

And;

How can offenders be engaged to participate in sentencing options in a way that the provision of services to rural and remote areas and disadvantaged communities becomes practically and financially viable, and where the benefits in terms of impact on offending behaviour are maximised?

It seems that your Committee's terms of reference would generally acknowledge a couple of key guiding principles:

- The entitlement of rural and isolated communities and disadvantaged populations to services equivalent to those available to urban communities,
- Government recognition that fair process may be denied to rural communities through the unavailability of services, and that
- Government make available the funding needed for the provision of such services to rural and remote communities.

As an exercise, I have identified three possible alternatives to the provision of services in rural and remote areas [comparable with those available to urban communities]. I describe these as options:

2.1 Option 1:

Transporting offenders to urban areas where the services to administer community based sentencing options already exist. This option raises a number of questions and issues:

- How to get them there;
- The isolation from their communities [similar to full time incarceration];
- The inequality of the above two with the experience of urban offenders.

2.2 Option 2:

The establishment of staff and resources in rural and remote areas. This option might prove prohibitively expensive, and it may be impractical, because even a few kilometres may be an insurmountable obstacle to some people gaining access to services.

This appears at present to be an issue in the semi-rural areas such as the Hawkesbury, surrounding Sydney.

The population is so widely dispersed in rural and remote areas that for services to be realistically available to all, the grid of Periodic Detention centres, Community Service work, staff to monitor and administer Home Detention, and supervision facilities would need to be unrealistically closely distributed, and available whether the case load was consistently existent or not.

2.3 Option 3:

Allocating staff and resources to provide mobile service capable of being deployed to where the need exists. I imagine this option would require a travelling representative of the NSW Probation and Parole Service to have a “territory”, to establish and service CSO agencies, and monitor offender compliance.

Whilst no doubt your Committee has thought about these options, I need to draw your attention to what I consider is paramount to the whole discussion on what is likely to make a difference with whatever recommendations your Committee makes. For me the issue relates to **practice** and the crucial element of good practice in probation is **engagement**. The practice I am referring to is practice that is capable of making a difference with offenders; practice that uses engagement processes that challenge offenders in a way that assists them to make sense and meaning of where they are at; to help them identify what is important in their lives; and affirms the choices they need to make to change their life styles. This is only possible where the engagement process is viewed beyond the offenders, one that encompasses their significant others and seeks to expand offenders’ communities of care.

To ignore this issue, is to continue to enslave practitioners to current enforcement practices, only on a scale and at a price that may be beyond our means to sustain. As my first hand experience in the Northern Territory has shown, even with availability of programs and services, if the fundamental problem has to do with [high risk] offenders being disconnected from those most likely to influence their behaviour, namely significant others, and this is not addressed in any meaningful way, than nothing much will change. It is clear I consider that the involvement of significant others has the greatest potential to influence offender behaviour. I should at this point outline some of my thinking and experience to support this contention.

3. What Influences Offending Behaviour?

I will start this discussion with a question that includes the issue of behavioural change and strengthening offender communities:

How might the Courts and Probation and Parole deploy their resources to maximise the impacts on offending behaviour in Rural and Remote areas, in ways that strengthen communities, and that are realistic in terms of cost and available resources?

Implicit in this, are three related questions:

- What are we trying to achieve with offenders?
- Is the current probation practice capable of delivering these outcomes?
- What is going to influence offending behaviour?

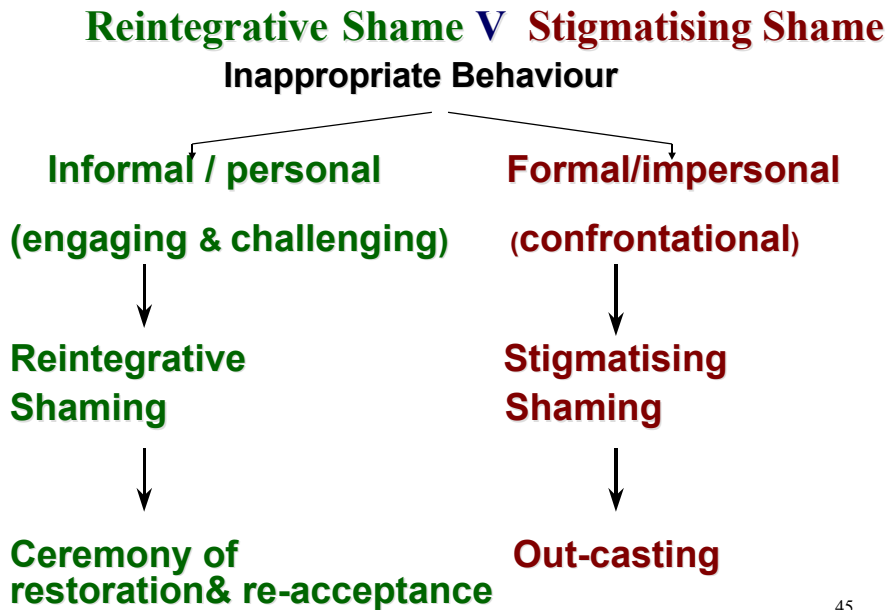
Having consistently asked these questions of probation officers, I generally encounter blank looks and little else. Most can broadly answer the first question, but struggle with the second and third. Most prefer to talk in terms of the things that do not influence behaviour, particularly punitive measures. They also acknowledge that what they are doing makes little difference, certainly with some offenders. Even asking probation officers to think of past clients [of the Service] on whom they had a real and lasting positive impact, reveals that only a few seem able to articulate what made a difference and even then their responses are usually vague.

With a limited understanding or consensus about what influences behaviour, probation officers appear to rely on 'custom and practice' and give little thought to what really makes a difference. Probation practice lacks rigour and therefore becomes a set of routinised practices that become so repetitive [particularly given the excessive workload probation officers in NSW have] that whether this practice make a difference, becomes a secondary consideration. It is therefore easy to understand that when it takes so much effort to get offenders to successfully complete their orders, is it any wonder the measure of success in seen completion terms, rather than positive impacts and lasting change in behaviours.

Ask yourself the question, "what does influence behaviour?" I first became interested in this question in 1991 when I first began bringing offenders and victims together. It was John Braithwaite, Professor of Law at the Australian National University, who certainly challenged me to think about this question but from a very different perspective. John had written a book called *Crime, Shame and Reintegration* in which he argued that effective social control is best influenced by processes that involve 'reintegrative shaming' [one that separates the act from the actor] as opposed to processes that 'humiliate or stigmatise' [one that does not distinguish between the behaviour and the person]. John said that criminologists have for too long been asking the wrong question. He suggests that rather than look for theories that explain why people do the wrong thing, it is better to explore the reasons why people [you and I] do the right thing.

For nearly 15 years now, I constantly ask individuals and groups throughout the world two questions: Why do you do the right thing? Who is likely to have the greatest influence on you? The most usual responses to the first question are: conscience; morals; want to belong; want to be loved; easier; makes sense; consequences; punishment. Regardless of the group, the answers are very similar. When asked to rank the influences from most to least, punitive always receives a low ranking. The responses to the second question are also predictable and include: parents; family; friends; peer and significant others. I remember working with a group of offenders and asking them what was the hardest thing about their experience. A number replied, "Telling my mother."

Braithwaite's basis hypothesis is that ***'if you confront [shame] those who do the wrong thing and do so within a continuum of respect and support, then a process of reintegration can begin.'*** What Braithwaite is advocating is the importance of denouncing the unacceptability of the behaviour whilst at the same time acknowledging the intrinsic worth of the individual. Reintegration involves processes of inclusion and acceptance, whereas processes that humiliate or stigmatise are those that see the wrongdoer as a bad person, someone who should be excluded (see diagram 45 below):

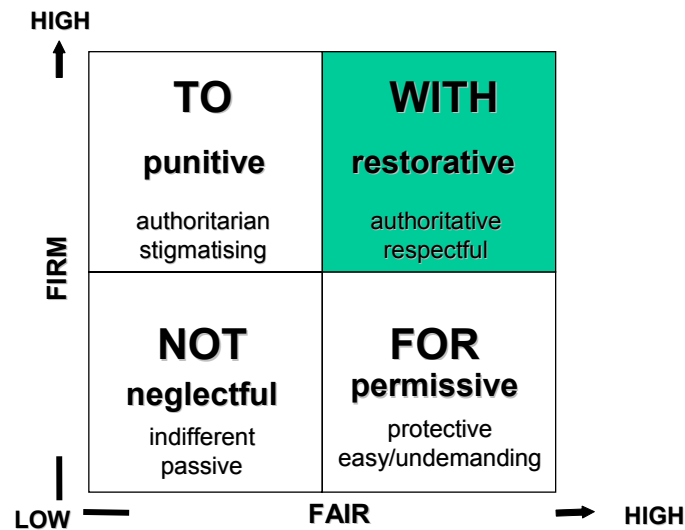


45

The criminal justice system largely involves processes that humiliate, particularly given that offenders are isolated from those who are significant in their lives. This process does not create those conditions needed to ensure that offenders are personally held to account. This will only happen when offenders are able to understand the impact of their behaviour on others. This is a very different accountability to the one that equates to punishment.

Wachtel and McCold suggest that effective responses to wrongdoing require high levels of control and high levels of support. This is simply illustrated in diagram 22 [below]. Described as a 'social discipline' window, it looks at four different styles of discipline. Briefly these are:

- High levels of control and low levels of support – this involves doing things 'to' offenders and is indicative of their most usual criminal justice experience.
- Low levels of control and high levels of support – this involves doing things 'for' individuals and this is experience where others rationalise the offender's behaviour – advocates and family.
- Low levels of control and support – this involves 'not' doing anything and is described as being neglectful.
- High levels of both control and support – this involves working 'with' offenders in a way that promotes responsibility.



Adapted from Social Discipline Window - Paul McCold and Ted Wachtel - 2000

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Inclusive or ‘with’ processes are those most likely to foster insight, learning and personal growth. The previous references I made to working ‘with’ offenders reflect the idea of holding them accountable by establishing clear expectations/limits/controls whilst providing support/encouragement/fairness. We should only do things ‘to’ or ‘for’ offenders when it is essential and then in a way that allows them to feel they have been treated in a dignified and respectful way.

I will briefly summarise the key points on behavioural influence that must be considered when proposing any community sentencing option. Offender accountability is best achieved when they experience processes that:

- Involve reintegration [inclusion] rather than stigmatisation [outcasting].
- Provide high levels of control and support.
- Focus on harm and relationships, rather than blame and punishment.
- Include significant others.

The fact that the word ‘relational’ appears in the ‘with’ box is no coincidence given that healthy relationships are fostered when we agree to share high expectations [control] with one another whilst at the same time, providing high levels of trust and support. Wrongdoing or criminal behaviour harms relationships and it is critical that this is addressed for offenders to be successfully reintegrated into their communities of care. This requires offenders to personally account to those they have hurt or with whom they have broken trust. Understanding the extent of the hurt or the ‘collateral’ harm that results from crime helps us to appreciate the critical role offenders’ families and significant others have to play in any successful reintegration process.

So briefly, the things we know about criminal behaviour. Wrongdoing disintegrates community. It causes harm. It damages relationships. It creates obligations to repair harm. Wrongdoing is also a symptom of something else. Wrongdoing that damage communities causes fear resulting in a type of [social] bankruptcy. Communities generally lack the wherewithal or resilience to influence wrongdoing [experienced as criminal behaviours] without outside assistance, primarily because community has long since divested that responsibility to the state.

The assistance proscribed [by the state] is in the form of criminal justice systems that use processes that generally do poorly at responding to issues of harm and community re-integration.

If we are to make lasting and positive impacts on offending behaviour therefore, we need to be able to answer to the following questions:

- How might we provide community based sentencing options that are capable of community re-integration, repairing harm, restoring relationships and fulfilling obligations?
- How might we assist communities build social capital and the resilience to reduce the potential for further offending [criminal] behaviour?

Let's revisit what I think represents current probation thinking [and practice] as a way of working out what question it is attempting to answer.

Focus on Compliance

The underpinning assumption is that if offenders are not supervised through their community based sentencing options they won't comply with them or complete them. [Why is that? What would need to happen so that offenders take responsibility for addressing their obligations without outside intervention or supervision?]

Monitoring Performance:

If offenders are made do something they're resistant to, expect them to seek ways to avoid compliance throughout their order. [Is it reasonable to expect someone who does not take any ownership to "get on with it" until it's finished without outside intervention?]

Deeming completion:

The probation officer reports to the court on whether the client met his/her obligations. I understand that this involves advising the court by letter that hours are complete, or termination of supervision has been done in compliance with the discretion written into the order.

It is fairly obvious this practice is attempting to answer the question "**how do we ensure compliance with and completion of the court order?**" This appears somewhat consistent with the fact that within probation services generally there appears to be no criteria of success to measure positive impacts on offending behaviour, or benefits to the community.

4. A Positive Probation and Parole Experience

Whatever your Committee's findings or recommendations, the Probation and Parole Service will likely play an important role. I argue therefore that if we can improve the way this Service interacts with offenders and their families then it will logically enhance the overall effectiveness of any recommended Community Sentencing Options.

However, at the risk of being repetitive I need to revisit what I think is happening with offenders in their contact with the Service. By the time offenders are referred to Probation and Parole for supervision, they have had a series of things done to or for them. They've been arrested, charged, convicted and sentenced. In this sense, their subsequent experiences with probation and parole are more of the same.

After the Police and Courts are finished with them, probation officers tend to do more things “to” and “for” them. In the worst-case scenario, probation officers may be neglectful in some way, or where the court hands down an unsupervised bond, offenders may be neglected or experience things “not” happening at all. Very rarely are offenders engaged in a meaningful way where things are done “with” them where they experience a journey of learning or personal development in which they are genuinely active participants.

It is also important to note that offences that result in a person’s appearance before the court are rarely isolated events. More often than not, they are a symptom of something else, mainly to do with dysfunctional relationships which often result in addiction, violence and anti-social or criminal behaviour.

Although a punitive response to acts of wrongdoing is clearly called for, if it fails to respond to the harm, or resolve the issues underlying the offending, questions of relevance and fairness emerge in the minds of victims, offenders and the broader community. Punitive processes in themselves are likely to engender resentment and this invariably is found with offenders who more often than not view themselves as victims, not someone who should be taking responsibility. These concerns lie at the very centre of the resistance probation officers encounter when offenders present themselves for supervision and this seriously impedes the likelihood of offenders gaining any benefit from what they think is an ‘imposed’ outcome.

Therein lies the challenge. For community based sentencing options to be viable in rural and remote areas, and for disadvantaged populations, they need to be seen by offenders and their families as relevant, fair and helpful to them. In this way, experience tells us that they will approach and positively participate in programs, rather than avoid and resent interventions.

For someone to be brought before the Court, something disruptive has happened, and more than likely, someone has suffered harm. Research tells us that the offence is rarely an isolated incident. Often, for example, domestic violence generally occurs in a context where there is a history of physical and/or emotional abuse, often accompanied by some form of intoxication. Difficulties with relationships exist. Drink driving is another offence that is rarely detected on the one and only occasion. Behind every drink driver there’s generally a wife, friend or employee who’s been trying to get them to stop for some time. Again, relationships are impacted upon by this offence.

What results from the offending behaviours are further damaged relationships that often lack the resilience required to absorb the harm, and manage or resolve the behaviour. This situation of course is not helped by the criminal justice experience. Offenders are not brought to account in any meaningful way. They rarely get to understand the impact of their behaviour on others, particularly those who are important in their lives. Given that relationship issues are often at the heart of what is influencing criminal behaviours, it is fairly obvious that unless those involved in any significant relationship with offenders are part of the process, then the prospect of meaningful behavioural change is greatly diminished.

I will now begin to describe what a different Probation and Parole experience might look like [as an integral part of any community based sentencing option]. For this to happen, it is critical that we know what an effective intervention would look like.

I find the most helpful way of thinking about this is to ask questions, something that does not happen enough in our daily lives. Whilst running a workshop for educators in the USA some years ago, a participant commented that I had a very 'Socratic' style, as I tended to ask lots of questions. I have since learnt that the term comes from Socrates who was a famous Greek philosopher and teacher who held no classes, gave no lectures and did not write any books. Socrates simply asked questions. When he got his answer he asked more questions. Socrates offered a type of philosophy that recognised questions often reveal more about us and the world around us than answers; a philosophy in which questions often are the answers. **Socrates asked questions in order to make people think about ideas they took for granted.**

I have underlined this sentence because it encapsulates what I experience when I ask Probation and Parole officers to describe what they do; why they do that; whether it makes a difference; what would a difference look like; and, how would they know. Generally they struggle to respond to these questions because they have never had the need to think about their practice in this way. Hard to believe? Well the good news for probation officers is that their struggle is not unique and it is fairly indicative of what happens to most practitioners when asked the same questions.

Take teachers as a simple example. I have been running professional development seminars for teachers for some years. When you ask teachers to describe the rationale for their practice, what works and why, they also struggle. It does not mean that what they are doing doesn't work it is just that they do not consciously think about their practice nor talk about it with their colleagues in any rigorous way. In other words, their practice is largely 'implicit' [taken for granted, implied, assumed]. Consequently teachers then focus on the things that go wrong, rather than thinking about practice that helps build and foster healthy relationships. Yet teachers know that sound pedagogy [learning and teaching] involves explicit [clear, transparent, fair and honest] practice to ensure that students have the clearest possible opportunity to understand and to learn.

Do you think it is reasonable to expect probation officers to be able to clearly articulate the rationale for their practice and to engage in discussion on what works and why? What would it say about their practice, if they struggled to confidently answer these questions? Probation officers seem to largely rely on custom and practice, but unlike teachers, they appear far from convinced that their practice works particularly given that many offenders continue to re-offend. Why is there such a lack of practice rigour on what seems [to you and I] to be straight forward and something that should be fundamental to how an effective practitioner might think?

There are many reasons for why this is so, the most influential of these in my view, being the nature of the probation institution itself. It shares lots of similarities with policing and both produce operational cultures that do not encourage critique, debate and discussion on what works. There is also the 'great divide' between the management and practitioner cultures where the former is driven by political and organisational imperatives, the latter by the demands and workloads that make time for meaningful professional dialogue also impossible.

Against this backdrop it is easy to understand why compliance and completion become the priority for probation officers, why engaging offenders is largely instructional and prescriptive. It is important to also mention that this is a generalisation and there are of course probation officers who despite the system limitations are very good at working with offenders. What makes them good at this work? I suggest it has to do with the way they engage and work with offenders. It is their ability to develop a rapport with offenders built around mutual respect and trust that makes the difference. As a trained social community social worker, I am reminded of what research says about what makes a difference for clients who are assisted by social workers. It is fairly simple. The conditions in which clients did best were when social workers had developed a strong rapport with their clients.

A positive Probation and Parole experience would therefore need probation officers engaging offenders in a way that builds a solid relationship. This positive experience would help offenders develop a sound understanding on the following key issues:

- The circumstances and influences that lead to their involvement in the offences.
- What they were thinking about at the time of the offence/s, and where this thinking was faulty.
- Some realisation about who has been hurt or harmed because of their behaviour.
- What they need to do to deal with outstanding issues of harm for victims or their own relationships.
- What skills, insights and strategies will help them to avoid further offending.
- What has changed for them that make further offending unlikely.
- Ways that will allow them to be reintegrated back into society in positive and productive ways.

What would building solid relationships look like between an offender and probation officer and significant others, and what would this involve? I want to begin to answer this question by outlining what I think is the best contribution a probation officer could make in offenders' lives. This would involve challenging offenders in a way that helps them to:

- Make sense of how they have arrived at this point in their lives
- Realise who and what is important to them.
- Work out where they want to go, and
- What they need to do to get there.

One of the keys to this happening is the way the probation officer is able to assist offenders build **capacity to take charge of their own lives**. This is only possible through effective engagement that is best achieved through the use of specific questions, or as I alluded to earlier, adopting a Socratic style.

I have identified four stages in this engagement process:

- Initial Contact – welcome and rapport building
- Narrative & Reflection – offenders telling their stories.
- Tasking and Responsibilities – requirements and explicit practice.
- Future Action – identifying the way forward

I will now briefly expand on each stage.

Initial Contact

This involves the probation officer meeting with the offender for the first time. The offender's experience of this meeting is important. The probation officer would ask a series of open-ended questions [after the introductions and welcome]:

- Tell me how you got to be referred to this office?
- What happened in court?
- What do you understand of the court order?
- How do you think I might be able to help you?
- What would you like to take from your experience of working with me?
- What will help make this experience worthwhile?

The probation officer would then explain what the court order requires of the offender and the role the probation officer is required to play. The probation officer would explain (using visual aids) the rationale for his/her practice when working with the offender. This includes:

- Importance of mutual respect and trust
- Need to establish clear expectations and the importance of treating each other in fair and supportive ways.
- Pointing out the need to work 'with' the offender, rather than doing things 'to', 'for' or 'not' to the offender.
- Importance of being explicit at all times by using processes that are open, transparent, fair and honest.

Narrative and Reflection

Story telling is the next important step. Very few offenders in fact get to tell their stories, an experience that is very different from providing information on who they are or about what they did. Typical [restorative] questions a probation officer would ask are:

- What was your court experience like?
- What happened that lead you to being charged?
- What were you thinking at the time?
- What have you thought about since?
- Who has been affected by what you did? In what way?
- What do you need to do to make things right?

The probation officer would provide offenders with a copy of these questions and point out that the questions will be used regularly throughout the supervision period.

Tasking and Responsibilities

This stage involves clearly establishing what offenders are required to do to satisfy the court requirements. This is the point where offenders would be introduced to The Game as the offenders have just been challenged to think about the impact of their behaviour. As mentioned previously, the general principle of The Game is to have offenders undertake a range of activities that result in themselves discovering the impact their behaviour has had on others.

The tasking is simple. Offenders are required to identify anyone who is significant in their lives and to find out how these people have been impacted by their [offenders'] behaviour. Armed with this experience, strengthened connections and new insights offenders gain from 'playing' The Game, I strongly argue that this should at least challenge offenders in a fairly confronting but positive way. Offenders will be given a number of activity sheets sequenced in a various phases.

The initial phase requires offenders to reflect upon and write about the following issues:

- Identifying those who are significant people in their lives.
- How they think these people have been directly impacted by the offending behaviour.
- What these people might like most about the offender and what they feel needs to change.

The second phase involves offenders [with the assistance of the probation officer] contacting those people they have nominated as significant in their lives and inviting them to a meeting where they will be asked to become a 'player' in The Game. The probation officer will facilitate this meeting. The 'rules' for The Game will be explained. All 'players' will be asked at this meeting to identify those things they want the offender to get from The Game.

In the third phase, offenders will then complete activity sheets that require them to interview their significant others. They will then watch a number of victim/offender type documentaries and complete a related questionnaire. In addition, some offenders will be required to attend some specific programs such as drug/alcohol, anger management and so on. Those offenders will be asked to complete activity sheets. It is important to note that the general theme of all activity sheets has a restorative justice focus which means that offenders are continually reflecting on the impact their behaviour has. The probation officer would meet with offenders [on a needs basis] to help offenders reflect on what they have learnt so far and to assist with any difficulties or questions.

The fourth or final phase involves bringing the offender and his/her significant other together for the following purposes:

- Receive feedback on the offender's experience of The Game
- For significant others to talk about their own experience
- To help the offender identify the 'way forward'
- Celebrate the offender's achievements.

Future Action

Offenders have a final meeting with their probation officer. At this meeting the following will be discussed:

- What the offenders learnt from The Game
- Those things that are going to help offenders avoid further offending
- Offenders' future plan and aspirations including how others may help

Offenders will be then presented with a completion certificate and the court advised that offenders have satisfied their conditions.

5. The Game – Practice and Reality (See The Game Folder)

The Game has been mentioned throughout this submission and a brief description given of its purpose and what is involved, in the last section. It would be fair to say that most of this has been conceptual. What is now needed is a case study to show the practical application of The Game, how it was used and what results were achieved. The particular case study I will share was contained in a letter sent to me by Grahame Chaseling in June this year. As I have already mentioned Grahame invented The Game. I found out about The Game when Grahame casually mentioned it to me in a recent conversation. Its' immediate appeal was that it provided a simple way of using restorative principles and practice to not only engage offenders but to help them gain some insights into the impact of their [offending] behaviour on others, and this was achieved through a self-managed range of activities on the offenders' part. For me, what made The Game so exciting was that it's potential to create those conditions that were most likely to reduce re-offending.

It was also clear to me that The Game was the best-kept secret within [NSW] Probation and Parole as Grahame had not really shared it with others. The reason for this was pretty simple. No one was interested. Grahame developed The Game with the full support and encouragement of his manager Weber Roberts. When Weber moved from the Windsor to Parramatta Probation and Parole office, the acting manager decided to move Grahame from Programs and at the same time, encouraged Grahame's replacement to revert to the old offender programs. Unfortunately The Game was to be discarded in its infancy, relegated to the stockpile of 'good ideas'. This experience is a very familiar one in institutions largely because there is a fundamental lack of practice rigour, something that I have alluded to throughout this submission.

I asked Grahame to write about his probation experience of attempting to introduce restorative practice and developing The Game. Whilst he was initially reluctant, he eventually provided me with two documents (Annexure 2 and 3) that I subsequently shared with others [including correctional folk] throughout Australia. The feedback has been pretty impressive. Most commented on Grahame's writing style. Others described his work as 'compelling reading' something I am sure you will agree with.

5.1 Case Study – Geoff's Introduction To The Game

Dear Terry,

I think it was Mark Twain who said "you learn a lot when you grab a tiger by the tail." Sometimes things happen that we don't fully understand, but are so outrageous that we can't ignore them, and it's in our interests to learn the lessons on offer as fast as we can.

Such has been the case for me since I started applying Restorative Justice Principles to my work as a Probation and Parole officer.

As I said, I don't fully understand what's happened, but the results have been appalling. That sounds bad, doesn't it? Actually the appalling bit is I'm wondering what the hell I've been doing up until now. Everything I've done in the past no longer makes sense.

Here's an example. Not a good idea to generalise, but probably one of the things just about all our clients have in common is tenuous relationships. Their relationships generally lack resilience. They're fracturing all over the place. Most of them are barely functional, because they can't discuss things. They either react to what each other do, or try to live with it. We do nothing to assist them with this. The reason they decline to engage with us in their supervision is simply because we've got nothing they want. So what do they do? They continue to live on as they did before we stuck our nose in, and do the minimum amount possible to keep us off their back so we don't disrupt things. For the most part, they're just trying to cope anyway.

If, on the other hand, we can engage them in a way that changes the conversations they have with each other, and they can develop the skills to engage with each other in meaningful ways, we're planting the seeds of resilience. That's fertile ground for real growth.

A case in point; I had this offender under supervision up until recently. Mid 20's, Geoff's an aboriginal man, subject to probation and parole supervision, separated from de-facto partner, drugs, alcohol, kids taken by DOCS, himself in emergency accommodation.

Geoff was directed by the court to do a D&A program and I was the bunny who had to make him do it. I'd recently developed a program called The Game, and Geoff was inducted into it with about a dozen others.

I've picked Geoff to tell you about because he was the biggest mess, and he was the most resistant. Of all the clients that were at the induction, and bear in mind that it was my first induction into the new Restorative program, so I could have done it better, Geoff was the most resistant and argumentative.

What's significant about Geoff, is that just about every government department has had their hand up his back for years, but he was still fighting. Usually we just tell them what to do and they dither about and eventually do it, or don't. Then we get out the carrot and the stick. The stick is to punish them with, and the carrot is to get them close enough to hit them with the stick.

I wonder why it is that we take a punitive approach or a therapeutic approach with offenders. We seem to be willing to try anything, provided we get to do it for them or to them. I suppose if we don't have a practice framework within which we can engage them in meaningful ways, that's all we're left with. The Game seems to provide a way to navigate through this problem, so that they buy in. Suddenly I found myself examining important issues with them, that we don't normally get to approach. Because it became a "with" activity, rather than "to" or "for", they were prepared to take some responsibility. This attitude, and their positive participation in the activities that followed, provided a feast of information for participants, which actually redefined their behaviour in terms of harm to themselves and their loved ones. Talk about motivation to change!

Maybe Geoff was still fighting because he was so used to people doing stuff to or for him, that I caught him off guard with The Game. For a change, someone was asking him what he wanted for his life, and inviting him to have a look at some stuff that might assist him to get himself there; The Game and Restorative Justice principles are about doing stuff with people. This was certainly a new spin on supervision for Geoff.

Anyway, the appalling thing for me was that once he understood what was going on, he snatched at the opportunity, and powered through.

We'd packed Geoff off with a series of activities that equipped him to start conversations with his (although fairly fragmented) various loved ones and significant others. The conversations were about finding out what's happening for them all, how they're being affected, and what they'd like to see happen.

By the time he'd finished playing The Game- he finished first, by the way, and made the biggest effort of any of them- he'd developed habits of punctuality and reliability, phoned me often with questions, and had all his and his kids' various case workers ringing me up to hear about how well he was doing.

Geoff went from being paralysed by hopelessness, to a blur of activity that established a case plan around the contact and residence of his children with DOCS and a parenting plan with his de-facto, both of which he bought into negotiating, and the last I heard, was complying with.

There are several observations about Geoff's experience that are worth mentioning, because they have implications for how we do business.

- Geoff, for the first time in his life, succeeded. By the time he'd finished playing The Game, he had a history of small successes, and was like a Viking in Valhalla. He'd done it, not someone else doing it to or for him. This alone worked wonders for his optimism and gave him great hope.*
- Again for the first time, Geoff bought in. In effect, he said "This is something I can do, and it's something that I want to do. There are benefits in it for me and the kids." Not only did he buy into The Game, but he started buying into his parenting and relationship with his de-facto as well. Geoff found his voice.*
- Geoff was treated with respect. He saw the approach of The Game as being one of decency towards him as a human being. He responded likewise. He went from being a sort of sneering victim at first contact, to a sort of professional associate. I know it's an odd description, but once he bought in, everything about our contact soon became man to man, and in good faith.*

As I said earlier though, Terry, The Game's in its infancy. It's a spin on programs that use Restorative Justice Principles to build a framework to expose participants to a series of experiences with their significant communities. Some of my thinking and the things that seemed to work well include;

- Whereas we'd normally teach them stuff, The Game impacts on how they relate to their loved ones. The Game starts conversations that they've never had before, around how what they do affects each other, and how they might improve things.*

Regards

Grahame Chaseling.

5.2 Why The Game Works

The case study deserves comment as I think it helps explain why The Game works. When you consider Geoff's long history of involvement with the 'system' something happened that was fairly amazing. The Game provided Geoff with a rare opportunity to discover what is really important in his relationships; how he could contribute in ways that began to strengthen these; and what helped him to become more responsible and accountable.

There is little doubt that The Game has the potential to achieve the following:

- Engage offenders in a respectful and dignified way.
- Provide offenders with the responsibility to build meaningful relationships.
- Change the nature of conversations between offenders and significant others.
- Help offenders build capacity and to develop resilience.

5.3 Ways Of Enhancing The Game

In my discussions with Grahame, he described how he engaged offenders and explained The Game to them. When I broadly outlined some suggestions on how this process might be strengthened, Grahame acknowledged that there was considerable room for improvement and identified the areas that needed further work. This is how Grahame described what he thought was needed.

- The induction process needs to be much more explicit. Even a script might be the go, because that way we organise our thoughts and don't forget anything. It's imperative that we model tight boundaries within a supportive supervision relationship. It's different, so we need to make it very clear to them that what we're doing is very different to what they may be used to, and to understand exactly where we're coming from.
- The induction process needs to be much more inclusive of the participants' significant others, because of the central role they play in the process. I think information sessions might work.
- I need to be more mindful to maintain a Socratic approach to all engagements, as it is important to model a restorative approach throughout contact, as that's consistent with what we're asking them to do in their engagement of their significant communities.

In addition, I offered the following suggestions:

- Importance of being explicit with offenders at initial contact – the probation officer explaining his/her practice to offenders as a way of establishing mutual expectations.
- Providing offenders with skills to become the 'main' players including a sound understanding of restorative practice and its relevance to The Game.
- Ensure that 'other' players understand the rationale behind The Game.

5.4 Aboriginal Offenders

I want to briefly make special mention of indigenous offenders. Grahame's case study revealed that Geoff is an aboriginal person something that was not lost on me because the I believe The Game has so much to offer these offenders.

My work in the Northern Territory with indigenous communities has revealed that being 'disconnected' from communities is a significant causal factors in aboriginal offending, and that the criminal justice system did little to help in that regard. The Game addresses both of these issues.

5.5 Final Word

Given my reliance in this submission on Grahame Chaseling's inspirational work in attempting to improve his practice as a probation officer through the use of restorative justice principals and practice, it is only appropriate that I cite Grahame's concluding comments to me recently:

"Rather than us using our skills to supervise them, we assist them to develop their own skills and through them, those of their significant communities. In this way, we're not the catalyst for change in them, they become the catalyst for change in their own life, and in the relationships where they live.

Those are a couple of things that have worked, Terry, but there's a long way to go. When you read the following list of areas where development is needed, you might wonder how it worked at all. I know I do, but it did. I know we can do a lot better, but I think the successes are mainly due to the respectful nature of the process. There was very little resistance to it. I was sick to death of fighting offenders to get them to do programs. With this approach, for the first time I wasn't fighting them. Really the only phone calls I had to make to them while The Game was in progress wasn't to hunt them down and badger them to get on with it like usually happens, but to give them a huge slap on the back.

So there it is, Terry. I've given Restorative Justice Principles a go in programs, and even though my first attempt is full of holes, the outcomes were so outrageously superior to anything else I've seen done that there's no way I'd do it any other way now. I look forward to sitting down with you and seeing how we can do this better, Terry, because the early indications are that Restorative programs are going to be huge."

6. Recommendation

That four Probation and Parole Community Based Sentencing pilots built principally around The Game be established in the following areas:

- Blacktown
- Bourke
- Kempsey
- Wagga Wagga

I look forward to speaking with your Committee on 31st August 2005.

Warm regards,

Terry O'Connell

Annexure 1

Restorative Prisons – Tim Newell
See PDF file attachment

Annexure 2

The Application of Restorative Justice Principles and Processes to the work of Probation and Parole/Community Corrections Officers

Grahame Chaseling

May 2005

The Application of Restorative Justice Principles and Processes to the work of Probation and Parole/ Community Corrections Officers. ©

Grahame Chaseling

May 2005.

Index	Page
Introduction	3
Probation and Parole/ Community Corrections	5
A bit about Crime and Punishment	7
Process and Outcomes	12
A Restorative Approach to Justice	12
Engaging Involuntary Clients	13
Accepting Responsibility	15
The Principles of Restorative Justice	18
Restorative Justice and Fair Process	21
Applying the Principles to Probation and Parole	23
The Initial Interview- Cutting to the Chase	27
What and Why Questions	31
Pre Sentence Reports	34
A Word about Remorse in PSR's	37
Managing Domestic Violence Perpetrators	39
Modeling new ways to relate in D/V relationships	41
Parolees	43
Restorative Justice Principles in Programs	47
Reducing Recidivism	49
Mistake or Misdeed?	50
Addressing the Harm	51
Connectedness	52

Punishment and Reparation	53	
The Pig and the Chicken- Looking after Yourself		55
Looking After Each Other	56	
Conclusion	60	

Introduction

What do you tell people when they ask, “What do you do for a living?” To simply say “I’m a Probation and Parole officer” is never the end of the inquiry. Ours is an unusual profession, a small and relatively obscure cog in the justice machine, compared to, say, Police, Courts and Prisons. I find people invariably follow up with something like “Oh yeah; so what do you do as a Probation and Parole officer?” Here it gets a bit tricky, because when you tell them “I supervise offenders in the community”, it sounds like we spend our day following them about in the streets. And “supervising offenders in the community” is a very inadequate description of what we do, because it doesn’t in any way reflect the complexities or diversity of tasks in which we engage ourselves day after day.

“Supervising offenders in the community” can mean calming the distraught daughter of a middle aged depressed woman who’s been put on a bond for shoplifting g-strings. It can mean sorting through a street directory for schools in the vicinity of a proposed address for a sex offender who was apprehended for drilling through the brick wall of a public toilet with a hammer drill. (he still can’t work out how he got caught).

In reality, we only spend approximately 30 minutes per week actually face to face with even high-risk offenders. My calculator tells me that’s approximately .3 of 1% of their week, spent with us. And even that small amount of time is generally in an interview room and out of the context of where they live, who they interact with, and importantly, out of the context in which their offending occurred.

If that was all we did, it’s easy to see that we’d be wasting our time. So we use strategies including drug screen urinalysis, home visits and contact with significant others to augment our monitoring capacity. The LSI-R assists us to identify risk factors and supervision activities in a comprehensive and structured way, but really, we’re still just monitoring. Using these tools, the best we can hope for is to discourage or detect non-compliance, and react to it.

So what do we do with our 30 minutes in the interview room? We set goals with them. We give them lists of things to do. We talk to them about the great things life could have in store for them if they’d get off drugs. We refer them to someone else. We frighten them with the slow and painful death that awaits them if they continue to abuse alcohol. We remind them that the magistrate who sent them to us awaits their return to court with a newly sharpened pencil. Sometimes we put them through a program. We do our best.

Pre- Sentence reports are another facet of our job, an important task where we gather all sorts of information, analyze it, and serve it up to the courts in a report that is hopefully of some use to the magistrate to inform sentencing.

Often, for us, that’s where it ends. We might never see again, offenders who we’ve come to know quite well during the preparation of a Pre-Sentence Report. The calamity that befell victims and often the families of the offenders, disappear into the in-tray of the clerical officer, written out on a blue form, never to be seen again.

In any case, we normally spend most of our day digging. We dig for information; we dig away at their belief systems. We apply our crow bar to their lifestyles, and try to get some movement. We chip away at their relationships with other offenders, and try to reinforce the positive ones. It sounds like we’re in the earth moving business. Well, set your

hammers, chisels, crow bars and shovels aside for a minute, because I'm about to show you an excavator.

How good would it be, if the process we used to gather information for pre-sentence reports also confronted offenders in a respectful and meaningful way with the harm their offending has caused? What if we could empower them and their families to move on from a past of criminality, and actually repair the harm?

Some time ago I was introduced to the principles of restorative justice. Traditionally these principles were applied to a process variously known as a Family Group Conference, Restorative Justice Conference, etc.

We don't have the time or resources to "conference" every one of our clients. Nor should we. What we can do, however, is use the individual principles of restorative justice to very great effect, and as our normal practice in all sorts of ways.

The following pages outline some of the ways we can apply Restorative Justice Principles to our Probation and Parole or Community Corrections activities, that will save us time, greatly improve our effectiveness, and most importantly, radically alter the ways clients think about their lifestyles and offending.

Whether it's in relation to supervision or the preparation of a Pre-Sentence Report, these very simple tools empower offenders families to engage in the supervision process, and move responsibility for repairing the harm to the offender. These developments enable us to extend our influence way beyond the interview rooms and out into their worlds.

Probation and Parole/ Community Corrections

If a Department responsible for corrections accepted the notion that Restorative Justice is ideal for the effective supervision of offenders, where along the justice time- line might the opportunities be to implement this, and who might provide those opportunities?

Who might apply throughcare, right from first contact, as a progression of meaningful experiences to engage offenders in developing the integrity required to successfully reintegrate into the community upon their departure from contact with the service?

As individual Probation and Parole/ Community Corrections officers, you may have past clients whose memory moved you to exclaim “Yes. I nailed it with that one. If I don’t achieve anything else between now and when they eventually put me in a home for the bewildered, I’ll still be able to look back on this event with lasting pleasure and satisfaction.” Or as you peruse the myriad Thank You cards from your clients, you might find a few who weren’t just sucking up. There might be a couple who you think “What a mess s/he used to be. But look at him/her now. The next time I see him/her in the street, we’ll *both* be pleased to see each other.”

There are three reasons why Probation and Parole/ Community Corrections officers have these experiences, whereas others in corrections generally don’t. The first reason is that we manage offenders in the context of where they live and where their offending occurred. This provides a great opportunity to bring about change. The second reason is that we have access to them and their communities of support, regardless of their levels of intimacy and functioning. In restorative terms, this is another great resource. The third and most important reason we are able to bring about these experiences is because we have the authority and discretion to intelligently choose how, by which process, we engage the offenders under our supervision. We have considerable latitude in this regard.

Whether knowingly or not, the strategies you employed with the above clients were probably restorative in nature. You will have brought them to an understanding of how what they did affected those most significant to them. They will have been brought to account in a meaningful and respectful way. These relationships will have been pivotal to their success in dealing with their behavior, and will have become much stronger and healthier as a result of your intervention.

Very few others in the correctional industry enjoy the opportunities available to Probation and Parole/ Community Corrections officers to achieve these great outcomes.

These agents, almost exclusively, have access to the resources and opportunities to make profound, decisive and lasting impacts upon offending behavior and the safety of the community. What if we could achieve a higher rate of success, more consistently? How satisfying would *that* make our job?

Without a sound framework of consistent practice, these success stories, although no less impressive for it, may be sporadic and unpredictable. Restorative practice throughout the world has proven to deliver highly predictable and consistently positive results, provided sound practice is consistently applied, and backed up by a thorough understanding of the principles upon which that practice is based.

Fortunately, Restorative Justice is not rocket science, and is largely intuitive. It's pretty much a matter of having the right people involved and asking the right questions. I'll revisit the practices and processes in more detail later.

A Bit About Crime and Punishment

“Here I sit in this place of sin,
The big brick place, with prisoners in.....”

That’s how the first two lines go of a poem that used to be scratched on the inside of a tower high up on one of the walls of what used to be known as the Central Industrial Prison in New South Wales.

Sitting is something everyone does a lot of in prison. Officers and prisoners alike, sitting and waiting. Sometimes for years. The theory goes something like this: “They’re not in gaol to be punished; being in gaol is the punishment.” So waiting for sentences to expire is the business of prisons.

I’m sitting at a desk in the reception room of a prison. On the desk in front of me is a diagram of a person, front and back, standing with legs slightly apart and arms out to the side. It’s called a description sheet.

There’s a man standing in front of my desk, naked. I’ve just strip-searched him. “It’s not a budgie, it’s a Griffin”, he insists. He’s describing tattoos to me so I can mark them on the description sheet. A few hours ago he was in a courtroom in a suit, being sentenced. At that stage he didn’t know if he would get a fine, a bond, a CSO or gaol. I imagine now it’s starting to sink in.

At some stage in the future, this man will be back in the reception room, and I or someone else will be comparing his tattoos to the description sheet again, before we decide that it’s him, and it’s his time to go home.

What amazes me is that of all the inmates I’ve processed in reception rooms, they’re invariably compliant. Only a handful have “gone off”. We do stuff to them all the time, and for very good reasons, that can’t possibly make any sense to them. Yet they comply. I didn’t realize it then, but I suspect that a lot of the compliance comes from the fact that they’re starting to get used to things being done to them or for them that they don’t understand and/or haven’t been involved in. It’s been like this from the point of their arrest until now. They’ve just stopped arguing or trying to make sense of it. It’s compliance born of disconnectedness, rather than understanding, consent or engagement.

In any case, unhelpful though it may be, to have things done for or to them doesn’t require them to engage in the process at all. They might not understand it or agree with it, but it doesn’t require anything of them either.

The criminal justice system is a bit like a biscuit factory. They come in one end, they go through various processes, wait a while, and then they're done. Out they go. The thing about working in a biscuit factory is that you know when you've made a biscuit, even a bad one. Either it's a biscuit, or it isn't.

Working in a justice or correctional system, though, is a bit tricky. When we release, or terminate the supervision of an offender, how do we know that they've been corrected? We can't poke them with a skewer like a biscuit, we're not allowed. When someone's sentenced or placed under supervision, the measure of whether or not they're "done", is if they've served their time, or done a program, or whatever. Unfortunately, ours is not a system that allows us to state definitively, based on tangible criteria, that "this one won't re-offend".

In fact, regardless of the sophistication of our justice system, or the range of available interventions within it, there are few who would feel confident of predicting the likelihood of continued offending. I can't think of any individual within our realm of activity, whether they be PPO, counselor, therapist, or facilitator, who can say "I have the accurate and verifiable information that allows me to predict with a high degree of reliability that this person has taken responsibility for their behavior, addressed their issues, and won't re-offend".

Almost everything we do, is done to or for our clients. Ours is largely a one-way dialogue. The information that comes back towards us from our clients confirms compliance or otherwise. It's about "have they done it?" "is it true?" "How do I know" This is often the limit to the information available to us with which we can measure movement in their attitudes, desires, beliefs, and therefore likelihood of reoffending.

This does not need to be the case. Whereas the traditional interventions we might apply often involve a great deal of feeling around for a way into an offenders lifestyle, behavior or issues, the principles of Restorative Justice open a four lane highway of communication which flows in both directions. These principles provide a process of engagement, where risk factors can be approached in a meaningful and respectful way, generating a tumult of useful information by which we can better assess the development of insights required to modify behavior.

If we went shopping for a justice system, and somebody offered us a traditional justice system, would we buy it? I wonder what the sales pitch might be like?

"This is a great justice system"

"How does it work?"

"Well, you stick the offender in here, he's punished by having to stay in there for a long time, not a good time, and he comes out here"

"Yeah, but how do we know he's fixed? I want a justice system that fixes people".

"Oh, it fixes them right up. They come out angry, resentful, bewildered, and it costs a fortune to run. It's a great system".

"Does it come with a guarantee?"

"It sure does. It's guaranteed to produce a recidivism rate of at least 70% consistently, sometimes as high as 80%. We've worked hard to achieve these results, and we're very proud of them."

"I'll think about it".

Where did this system come from? The historical foundations of our justice system are in a library somewhere if you're interested, but basically, doing justice was taken off the people

affected, and given to the state. Traditional cultures weren't buying. They still do their own justice, involving the people affected. They have very low recidivism, and punishment is only a very small part of what they do.

An interesting parallel exists between what happens to justice if you involve only people not affected, and modern justice systems. They're very similar. Consider the following scenario;

A woman is knocked to the ground by a young male offender, who then steals her handbag and runs off. The event is reported on a current affairs program, and the television station decides to canvass its viewers in relation to how justice might be served. What do you think the viewers' responses might be, bearing in mind that the viewers haven't been directly affected, and aren't known to the victim or the offender? I would say that the viewers might insist on a purely retributive response, similar to what our justice system might decide.

If a court outcome was sufficiently severe, the viewers might be satisfied that justice was done. The viewers' sense of outrage might be satisfied with a purely punitive outcome.

In the above process, whose needs are being addressed? The victims? Nobody's asked her what she wants. Does she feel the same way about it as the viewers? Who knows? Nobody asked her. It's only the anger and outrage of the wider community that's been addressed.

The victim, who's been left to try to make sense of what happened on her own, has no say. She might want to tell the offender how she's been affected. She might have questions for him, like "why did you choose me?" (That's a common one) There's no opportunity for her, though, whatever her needs might be. The viewers (or court) have decided.

What about the offenders' parents? What might they want to say to the victim about what their son did? No gurnsey for them. They're like the cocky on the bicky tin- not in it at all.

If justice is left to people who are not affected by an event of wrongdoing, the justice system will begin to look like the one we've got; Mostly punitive, with very little opportunity for learning and reparation of the harm to individuals and relationships. But I digress. Back to the big brick place with the prisoners in.

The physical features of a gaol are designed to leave a prisoner no options. There's razor wire, cameras and officers with guns on the outer perimeter walls. Leaving is discouraged. Cell doors are very secure- no option there. You're either locked in your cell at night or locked out of it during the day. Gates throughout the gaol are either locked or unlocked, depending upon where prisoners are required to be at any one time. If an officer issues a direct order, s/he's got all sorts of means to ensure compliance, none of which require the consent of the prisoner. That's the physical nature of a gaol. And so it should be.

It's interesting to compare the physical nature of a prison with the philosophical nature of the justice system.

The choices a person makes that result in their offence, may be one of the last free will decisions they make for a long time. From the point of their arrest to the point of their release from the criminal justice system, whether it is gaol or supervision, they will not be

asked to make very many decisions. The decisions will be made for them. Things will be done to them, or required of them. In terms of fair process or meaningful engagement, the chances are that very little will be achieved.

Throughout their period of incarceration or supervision, at what point do we engage offenders in a way that brings them to account for their offending in a meaningful way?

By that, I mean moving responsibility off the community, and onto the offender where they can be asked to account for their behavior. To stop doing things to them and for them, and require them to understand and acknowledge the full horror of what they've done, and whom they've done it too, and change their minds about the decisions they've made.

If we were to re-visit the means by which we do justice, to shop around for a different justice system, or decide to improve the one we've got, the sales pitch of a prospective salesman might go a bit like this;

"This is a great system"

"Oh yeah, how's it work?"

"We get the offenders in here, we engage them in processes that makes them want to abandon their offending behavior like it's the pox, and they go out there, fixed."

"How's it work?"

"We drop the emphasis on blame and punishment, and bring them to a full understanding of the harm resulting from the decisions they've made. Then we work out with them how they might repair the relationships they've damaged."

"I think I'm in the wrong shop. I'm looking for a justice system"

"I think you're looking for the blame and punishment shop. We only do justice here."

"Same thing, isn't it? Blame and punishment *is* justice."

"Let's talk about the recidivism rate of your 'blame and punishment system'..."

Process and Outcomes;

Is Justice a process, or an outcome? We speak of justice both ways. We refer to our “Justice process”, or “the wheels of Justice”, like it’s a machine; But we also talk in terms of Justice as an outcome- “Justice has been done”, or people might sometimes ask, “Where’s the justice in that?”

If we think in terms of the process and the outcome being the same thing, we are left to conclude that once “the wheels have turned”, that “Justice has been done”- that the completion of the process constitutes justice.

The benefit of seeing justice this way is that it allows us to quantify a justice outcome as satisfactory, provided the process has run its course.

In reality, this practice has led to widespread dissatisfaction with the “justice system”, because few of the needs of those affected by wrongdoing are being addressed. Victim and Offender’s experiences of the justice system are characterized by confusion, exclusion and in many ways, further victimization. Justice outcomes are largely meaningless to victims, offenders and the community. They only make sense to the authorities that administer justice.

A Restorative approach to Justice

In a similar way to mediation theory (although quite different from mediation practice), Restorative justice principles recognize that process and outcome are two quite separate and different things. Process is the domain of the administering agency, but outcome, as a product of the content of the intervention, is largely in the hands of the stakeholders.

This arrangement enjoys increased acceptance, because while the process is fair and consistent, it places much of the content and outcome in the hands of those affected. Victims, if they wish, may be included in the process. They are given the opportunity to ask their questions and confront the offender with the harm they have experienced. The outcomes are more likely to reflect their needs. Importantly, they are afforded the very empowering experience of being able to forgive offenders, should they be so inclined, thereby largely shedding their victim status. Offenders are engaged in a meaningful and respectful way. The outcome, regardless of the severity, is generally more meaningful to offenders, because they are brought to understand why it is a reasonable outcome.

Engaging Involuntary Clients

Mine never do, but I reckon other people's interviews must go like this:

"How can I help you today?"

"Thanks for fitting me in at such short notice, I know how busy you must be. I've been drink driving a lot lately, and I don't seem to be able to stop. The Police wondered if I'd like to go to see the magistrate about it, because they thought he'd be able to help me. I discussed my issues with him, and he was very sympathetic. We chatted for a while about my drink driving, and he wrote out a referral for me to see you. I do so hope you can help me to resolve this issue. I'm not sure if I've got an alcohol issue, or if it's unresolved anger, but I'll do whatever you say if you think it would help".

The reason I reckon other peoples interviews go like that is because these are the clients I was equipped to handle when I got the job.

They're voluntary clients, and the tools I had in my toolbox were up to the task of engaging these people. I had active listening, reframing, meta-questioning techniques, and other bits and pieces that worked fine for me in the past with voluntary clients.

The trouble with these approaches is that they don't work so well on involuntary clients. Our clients lack the insight, motivation or willingness to seek assistance, without the Court making them. Clients who arrive thanking their lucky stars that they've been sent to us are rare.

So we find ourselves with involuntary clients, and tools that are designed to engage voluntary clients. When I was young I remember trying to cut a hole in a milo tin with my mothers scissors. It didn't work very well, and it got me into trouble. The tool wasn't matched to the task. Scissors readily engage and work well on paper. But tin requires something much more robust- a tool designed for the job.

So it is with engaging involuntary clients. Our traditional counselling skills, regardless of how sharp their edges are honed, or how skillfully they are used, simply don't work very well on involuntary clients. And they can get us into trouble. That's why rehab's and sex offender programs won't take offenders who are in denial. They cause them a great deal of trouble in their programs.

We don't have that luxury. We have to supervise them. So there we are, with a client who doesn't want to be there, and skills that aren't up to breaking through their reluctance.

What do we do to get them fair dinkum? We up the ante: “Let me refer you to your court order, condition four; ‘You are to accept the supervision and guidance of the NSW Probation and Parole Service for such of the period as that Service deems sufficient’. Is that your signature on the bottom of the order? It is? Well, cobber, guess who decides how long ‘sufficient’ is.”

In short, we force them to comply. But forced compliance isn’t the same as voluntary engagement, is it? So what do we get from them? Generally, very superficial participation, and grudging compliance.

How often do we accept the appearance of change in some areas of an offender’s lifestyle and behaviour as good progress? Worse, how often are we encouraged by the appearance that they’re *trying* to change? It’s a bit sad, when you think about it. These unacceptable compromises in our practice expose the weaknesses in the tools we have at our disposal.

Restorative Justice Principles, as with any technology, have become quite advanced, by virtue of developments in the theories underpinning the processes. Whereas Restorative Justice has generally meant a full-blown conference for every matter, new tools have been developed that you can carry into every interview or encounter, whether it be a short PSR interview on the courthouse steps, or sitting around a kitchen table during a home visit. These skills are specifically designed for involuntary clients involved in acts of wrongdoing.

In all sorts of matters, I’ve seen the application of these revolutionary engagement skills make continued offending about as viable as a dropped meat pie. Although we generally begin with involuntary clients, Restorative Justice Principles enable us to engage them in a way that we are able to move them to a position where they are highly motivated to address the behaviors that brought them to us.

By the way, although scissors don’t work very well on tin, sharp tinsnips will also work beautifully on paper. As you will see, these skills are very versatile.

Accepting Responsibility

How do we engage offenders in taking responsibility for their behavior right from the beginning? Where does the integrity come from to make choices that lead to responsible citizenship and reintegration into their support networks? These questions remain largely unanswered by our current practice.

If we were to interview offenders upon their departure from contact with corrections, how might they describe their experience? Might there be any point in their experience of the justice system where what we did caused them to reflect on their behavior in a way that encourages them to take responsibility?

At court, the questions asked are what happened, who's to blame, what rules did they break, and what punishment do they deserve? If our objective is to get offenders to take responsibility for their behavior, is a process centered on blame and punishment going to achieve this?

When a prison receives an inmate, they come with a warrant. The warrant's like a prescription the doctor gives you to take to the chemist. The doctor's worked out what he thinks is the ailment, and the cure. A warrant's got the offence, and the direction to incarcerate the offender for a prescribed period. The medical assumption is that the medicine will treat the disease with a high likelihood of success. The assumption's based on research and a history of success in previous cases. The justice assumption is based on...What? There's marginal history of success, nor has research demonstrated blame and punishment to be effective in correcting future conduct. I suspect we do what we do for two reasons; the first being that blame and punishment address our outrage as a community, which is fair enough, even though it doesn't achieve our goals regarding correcting behavior, and the second is that we're unaware of an acceptable alternative.

If our expectation is for offenders to take responsibility, at some point we need to engage them in a "with" process. It doesn't make sense to propose that punishment alone is the same as them taking responsibility. They're two different things.

If blame and punishment is the answer, the question can't be "how can we move you to take responsibility?" The only question, to which blame and punishment can be the answer, is "You've caused harm, and now we're going to impose an equitable penalty".

Responsibility is something we want people to take, but we don't explain what that means. It's a bit like the emperor's new clothes. We all talk about it, admire it, and want other people to accept it, but none of us knows what it looks like. It's one of those nebulous "motherhood" words.

When we ask offenders to take responsibility, how will we know if they have? How can we measure the level of responsibility an offender has accepted? What does the evidence look like?

Let's have a look at what we're asking offenders to do when we propose that they accept responsibility. Response- Ability. The ability to respond. What do we need, before we can respond appropriately to something? Don't we need a full understanding of that to which we are going to respond? How can we expect any more than a shrug of the shoulders from an offender if they're not aware of what we're asking them to take responsibility for?

Offenders are pretty much blind to the harm they have caused. The Supreme Court has a term, "Deliberate Blindness" to describe what an offender has to ignore to be able to offend. When we ask an offender "What were you thinking about at the time?" they invariably hang their head, shrug their shoulders and say "I dunno". That's deliberate blindness. They didn't think about it. People with sound integrity, those, who don't offend, go around with their eyes unremittingly open to how what they do affects others. With offenders, it's not blindness to the law so much as blindness to the harm their behavior may cause. Harm is something offenders can respond to. Clarity of understanding about the harm that they have caused to individuals, the community and/or relationships, is something offenders can really hang their head to. Shame is a response to an understanding of how what you've done has affected someone else. By providing an opportunity for offenders to come to a full and common understanding of the harm their behavior has caused, we're providing them with the Ability to Respond- the wherewithal to accept responsibility.

The justice process isn't designed to provide offenders with the Ability to Respond. Can you think of any point along the time line of their experience of the justice system, where offenders are brought to a common understanding with all those affected by their offence about the harm they have caused? By time line, I'm referring to the sequence of events following the offence. The Police arrest them, then they get a warrant to appear, bail, remand, whatever. Then they might either go to gaol or be placed under some form of supervision. Later on it may be parole. At what point along this time line do they sit down with those affected, and have to listen, or even be listened to? When do we say to them "Who do you think has been affected by what you've done, and how specifically have they been affected?" and "Having heard how these people have been harmed by what you did, is there anything you'd like to say?"

But that's only half of it. The other half of Response Ability is what can they do about it to repair the harm. It's fine to bring offenders to 100% acuity of vision in relation to the harm they've caused, warts and all, and ask them to take responsibility, but what do we mean? How are we going to give them the Ability to respond to the harm?

Back to our time line of the justice system; Is there a step in the process where we ask offenders; “Do you think you need to do something to repair the harm?” and “What do you think you could do?”

In justice, we do a lot *to* offenders and a lot *for* them. In some areas we’re neglectful by *not* doing what we probably might. But the only thing we don’t do, and the thing we must do if we want them to take responsibility, is to provide a process, where they are engaged to take responsibility for the harm they have caused, and repair the harm.

The Principles of Restorative Justice

Let's forget, for a while, about asking why it is that people sometimes do the wrong thing. We've been around long enough, and heard enough stupid reasons and excuses to know that there are rarely any good reasons why our clients do the wrong thing in some areas of their lives. "Why" isn't a very helpful question to ask anyway, because it gives them the opportunity to explain to us how what they did was entirely reasonable, or wasn't their fault. Asking them "why" is like kicking an own goal.

What about if we were to ask the question "why do most people do the right thing most of the time? This is a question we could even ask our clients, because they rarely if ever do the wrong thing all of the time in every area of their life. Even they draw the line somewhere.

If we were to canvass that question, we would come up with all sorts of answers, mostly about us not being the kind of people who do such things, and that it would cause harm to others. Some people might say things like "if I got caught shoplifting, I'd be so embarrassed", or "I wouldn't be able to live with myself". What is significant about the responses to the question "why do you do the right thing most of the time", is that they rarely include the fear of punishment.

How do we reconcile this with the way the justice system asks questions like "who broke what rules?" and "what punishment do they deserve?" and debating terms like "specific deterrence" and "general deterrence"? The truth is, the offenders are more worried about what their nana's going to think when she finds out. It's true. Have a look at the next client information sheet you get filled out. Have a look who they've put in the box marked "Please indicate any person you do not want contacted by this service".

If they put a name in there, it's *a/ways* somebody significant to them, and usually a close relative or all of their immediate family. If you ask them what that's about, it'll be about shame. Even when they put their employer's name, it's more likely to be about shame than fear of getting the sack.

It is generally in an offenders interest to keep us away from their families or, particularly with young adult offenders, away from their friends. It makes it less likely that we'll find out what they're up to with their friends, and communicate this to their families. They'd rather we think that they're socially isolated. We play into their hands a bit, because the myth is that their families abandon them first, and then they engage in offending as a result. Our expectation is that offenders will often be socially isolated, and we accept that proposition easily. The truth is, not many of them are. Very rarely is it that you don't turn up a war weary network of support after very little digging. In most cases, offenders abandon their families long before their families abandon them, and that generally happens only after years of outrageous behavior on the part of the offender.

If you provide these people with an opportunity to confront their loved offender in a meaningful and respectful way, they'll be in it. They'll dust themselves off and back up for another go every time. Very few parents give up on their kids easily. I digress. Back to shame in significant relationships.

Without putting too fine a point on it, there are two types of shame, and they're both about relationships. One is the sense of shame that stops us doing the wrong thing. That's the "I just don't do that sort of thing" type of shame. We shudder at the thought of what it would mean about us in our own eyes and those of our loved ones if we did such a thing. This type of shame keeps us integrated with our sense of self, and maintains our integration with those significant to us.

The other type of shame is for those who miss out on the first type, and go ahead and offend. When they're caught, and the whole story comes out about what they've done, they may feel shamed. This type of shame can stigmatize and further isolate offenders from their significant community, if not managed properly. Wrongdoing isolates. Shame isolates if not managed. Properly managed, shame is a powerful force towards reintegration.

It might be timely at this juncture to draw out a couple of principles from the discussion so far.

We can see that (principle 1) *wrongdoing damages relationships*. It puts distance between offenders and their significant others, as well as the victims. The actual act of wrongdoing isolates the offender, even as the legal ramifications may further isolate them through gaol, etc. Their sense of embarrassment and fear of having further recriminations make it difficult for them to talk to their family about it. How rarely, for example, do we hear from mothers "yes, I know all about it. We sat down over a cup of tea and he told me exactly what he did"? It doesn't happen very often. They usually clam up and tell their parents it's got nothing to do with them, failing to recognise the devastation their parents are experiencing.

Because of the harm that results from wrongdoing both in terms of damaged relationships and whatever other harm results from the offence, (principle 2) *Wrongdoing creates obligations*. If damage results from something one did, one has an obligation to restore it, to make it like it was before. Doesn't one? One does. *Wrongdoing creates Obligations*.

If we engage offenders effectively in a process that holds to these principles, they can begin to understand their behavior in terms of harm to relationships, and the obligations created by wrongdoing. In effect, what we're doing is assisting them to develop integrity; that which causes people to do the right thing in the absence of someone telling them to do it. We're introducing them to the first type of shame, that which discourages offending.

If we bring offenders to a comprehensive understanding of the harm their behavior has caused, particularly to those most significant to them, we have a moral obligation to do two other things. We need to see that the behavior is condemned respectfully, i.e. within a continuum of support for the person himself or herself, and we have an obligation to provide them with an opportunity to repair the harm.

A sound restorative process repeatedly makes the distinction between the unacceptability of the behavior and the intrinsic worth of the individual. The offender hears over and over from people who matter to them "We reject the behavior, not you" and "We value you, but

the behavior's not on." These kinds of messages are central to the power of Restorative Justice. They are essential messages, because if we apply a process that says "you are your behavior", the only outcome can be toxic shame, stigmatization and further isolation.

Secondly, if we're going to ask him/her to take responsibility for the harm they've caused, we have an obligation to provide an opportunity for them to do something about it. Otherwise, what's the point in terms of asking them to take responsibility and what are they supposed to do with this newfound sense of obligation?

Further, if we fail to bring offenders to an understanding of the harm, or fail to follow through with an obligation for them to respond appropriately to the harm, where is the opportunity for learning? Where is the motivation for them to abandon the behavior?

Providing offenders with the information and opportunity they need to address these obligations is part of the re-integrative phase of the process, whereby the harm is repaired, and damaged relationships restored.

Restorative Justice and Fair Process.

How important is it for us to ensure that the way we deal with our clients, is consistent with what we would consider to be fair process were we the subject of supervision?

How do we know that we are being provided with fair process at work?

There are some very simple elements of fair process in terms of how we are supervised, that directly translate to our engagement of clients. These include;

- Participation in the decision making process,
- The support of our supervisor in achieving the desired outcome
- Access to the information we need to make informed decisions
- Openness and transparency in terms of the application of process.

Given these things, we have little difficulty taking responsibility for our own performance and are equipped to do our best work.

An example might assist here. Have you ever applied for a job, and missed out? If the selection process was transparent and you could see that it was fair, how did you feel about missing out? Probably disappointed, but what the hell? Most of us can live with missing out if we believe that we've been treated fairly. But what about if the process was shrouded in secrecy, or you weren't privy to the selection process? If you miss out because the process appears unfair, you might feel quite differently about it. We've all seen friends and work-mates go through this. They become angry and resentful. They may even become resistant to supervision, and uncooperative. Our organization is replete with examples of staff who have developed nervous disorders or taken stress leave, almost exclusively because they feel they have been denied fair process. It's rarely about anything else.

If we reflect upon how we feel when we are being denied these elements of fair process, we recognize a sense of loss of control, of being manipulated, and that the whole process is characterized by secrecy and mistrust.

Very few of our relationships are democratic in the common definition of the term. Work and family decisions are rarely "majority rules". Nor can they be. But they can be democratic in the sense of it's original meaning, which roughly translated is "the hearing of all voices". Most people can live with any decision, provided they've been treated fairly in a transparent process, and their voice has been heard.

Interestingly, victims of crime share a very common experience with those who are denied fair process. They describe the event as having robbed them of their sense of control over their life, a sense of being able to live their life as an autonomous being, and they lose their sense of safety in terms of understanding things as happening for a reason. These experiences of harm can take years to get over.

The medical profession is sometimes responsible for a similar disrespect towards their patients. Terminally ill patients commonly resent their treatment, and mistrust their treating physician. The reasons for this share a common theme with the previous examples. A terminally ill patient has had their sense of autonomy, meaning and control violated by their illness. Is it surprising that doctors meet with resistance when the treatment they provide excludes the patient from participation in the decision making process, or fails to provide patients with the information they need to make informed decisions regarding their treatment? Sometimes doctors only give patients bits and pieces of the available information, or worse, spare their patients any involvement in the decision making process at all.

These reactions to unfair process are common to all humans. If we're not involved in decisions that affect us, and if we're not given the information we need to make informed decisions, or at least to see the sense in decisions that are imposed upon us, we won't be happy, Jan, and we'll resent and resist.

The point of all this is that if we want our clients to buy into participation in their supervision, programs, etc, and get something out of it, we need to involve them in the process right from the start. We need to be prepared to listen long and hard to what they've got to say.

Otherwise, it won't look like fair process to them, and they won't want to know about it. At best, they'll see supervision as something we do to them, not something for them to participate in and take responsibility for.

Restorative justice principles and processes work on this idea: Nobody's interested in deciding if the offender is a good or a bad person. We're about developing a common understanding between all those affected by an event of wrongdoing about what happened, who's been affected, how they've been affected, and what needs to happen to repair the harm. To do this, offenders have to be involved right from the start, and by having access to all the information regarding the harm they've caused, and the needs of those affected, they'll be able to see sense in the expectations of them in terms of repairing the harm.

Applying the Principles to Probation and Parole

(Horse Trading at Probation and Parole)

Two people in an interview room. One of them has committed an offence, and has been sent for “supervision”, whatever that is. His name’s Daryl. He doesn’t want to be here. He’s got his sentence, a good behavior bond. Now he just wants to get back to his mates and do what he does.

Across from Daryl is Michelle. She’s a probation and parole officer, and she’s got to supervise this bloke. She wants him to have a close look at what got him into strife, and change some things so he doesn’t do it again.

They’re about to play a game where they trade with each other to see who can get the most of what they want from the other person.

Each of them has a small decorative box in front of them containing the currency that they have to bargain with.

In his box, Daryl’s got the right words (the ones he’s fairly sure she wants to hear), the appearance of co-operation, and superficial engagement. Neither of these things is of much value to him, and he’s prepared to offer them up front in exchange for getting out of here ASAP.

He’s got some other stuff in his box that he doesn’t want her to know about, like taking responsibility, changing his behavior, losing his mates, and giving up drugs and alcohol. He knows that she’s got nothing he wants badly enough to have to give her those things. Even sending him back to court would be preferable to giving her those things.

Michelle does a bit of a stocktake. Opening the lid on her little wooden box, she sees that she’s got police facts, depositions, some authority, lots of punishment power, and a copy of Daryl’s bond. Further down she’s got some listening skills, counseling skills and right at the bottom, some unused sympathy. “Won’t be needing that”, she silently tells herself, wondering why it’s even in there.

As an opening gambit, Michelle trots out the bond. Daryl’s not buying. He smiles, trots out some appearance of co-operation and a few of the right words.

Michelle backs up with some counseling skills in an effort to lever some responsibility out of him. But Daryl’s ready with a handful of superficial engagement.

Not getting anywhere, Michelle sorts the client information sheet and packs him off with an instruction to report same time next week when she’ll have another go.

Daryl slinks out taking stock of what the encounter cost him. “Not bad”, he thinks to himself “wasn’t too painful, out of there in 20 minutes. Time to catch up with the boys for a bit of smoko. As far as officers go, I’ve had worse. I’ll have her house trained in no time.”

Stirring a small bucket of coffee, Michelle has a bit of a think. If I’m going to horse trade with Daryl to get him to look seriously at his lifestyle and offending, I’m going to have to

find out what is important to him; So important, that he'll give up drugs, abusing alcohol, and his useless mates. So what's important to him? And how am I going to get some to trade with?

Then Michelle, relying on good old Socrates, develops some very clever questions to ask of herself: 'If I was Daryl, who could change my mind about something I'm doing?' "What does this person have that I want so badly that I'd change my behavior? And then, "how can I get whatever it is so I can use it on Daryl?"

Michelle decided to go outside with her coffee so she could have a smoke. The smokers had been long since tossed out on the street. You couldn't even open the lid on the cigarette box without some anonymous bloody expert telling you that you and your lungs are going to die.

While she was there puffing away, she noticed the small stooped figure of her Nana approaching up the street, with a packed shopping trolley in tow. There was nobody in the whole world she loved and admired as much as her Nana. As quickly and discreetly as she could she ditched the cigarette and went to help her Nana with the heavy load.

"Nana! How lovely to see you! What are you doing dragging this heavy trolley around at your age, you silly thing?"

"Hello dear" chirped Nana happily as she gave Michelle a kiss. "Still smoking, darling?"

"Afraid so, Nan, trying to cut back, though", admitted Michelle, looking down at her shoes. Nan must have smelt it on her. "I don't smoke much, it won't hurt me".

"It's not you I'm worried about, dear- at least not only you. I'm eighty-four years old, and for the last 30 I've had you, and enjoyed every minute of it. You're children are still young, but one day they'll have kids, and eventually, you'll be like me, enjoying them all just like I enjoy you. Smoking now, could destroy all that for you and for them. If I didn't love you so much I wouldn't have even commented, but when you say 'it won't hurt me', I'm sorry, dear, but that's making the cup of tea just a bit too strong".

Before too long Michelle was feeling pretty bad about her selfishness. Nana was right. It's fine for her to smoke, but if she chose to continue to smoke, she had to take responsibility for how it affected the ones she loved.

"Well, must be off, dear, I've got to get this trolley home"

"What have you got in there, Nan? It looks chocka".

"Oh it's full of goodies, dear. This is my bargaining chest. It won't all fit in the little box anymore. There's my relationship with you; There's your understanding of how what you do affects me; Here's the certificate that gives me the entitlement to talk to you about difficult things because you know I love you. And down near the bottom I've got a small safe. In it I keep the most precious item of all. It effects how you feel about yourself, so I'm very careful how I use it."

Nana unlocked the safe and carefully brought out a small mirror like object. When she looked into it, Michelle could see her Nana's beautiful image reflecting back at her instead

of her own. But she couldn't tell what Nana's expression meant until she reflected on her own life, then her Nana's expression took on meaning for her.

It was then that Michelle realized that how she felt about herself, had a lot to do with her understanding about how those most significant to her felt about her. If her behavior was unacceptable to those she loved, and affected the way they felt about her, it directly influenced how she felt about herself. She now understood that the power to influence the behavior of others is the sole domain of those significant to them. Nobody else could do it.

Michelle wondered how that squared with how she engages offenders now. She'd had wins, hadn't she? It had taken a long time, but a couple of her clients had made big changes in their lives, and she had no doubt that her efforts had played a big part. They'd started off resistant, but by hanging in there, her support had become important to the clients, and they'd started to heed her concerns. Then the penny dropped. It wasn't her perseverance per se or counseling skills that had done the trick, it was the development of a sort of relationship. As the clients got to know and trust her, they began to see that what they did affected her. They came to understand that they had become important to her. How she felt about what they did, began to influence the way they thought about themselves. Why else would they become enthusiastic to tell her of their successes, or display what looked like shame when they discussed their setbacks.

There was no doubt now for Michelle that if there's no relationship, there's no inherent entitlement to confront, apart from a power-based entitlement vested by the court. Or worse, like the expert messages on her cigarette box, she could ignore them with impunity.

It was the same with her attempts to confront offenders with the unacceptability of their behavior. Without relationship, the only power she had, was in her authority, or her advise as an expert. Neither of these was of any interest to Daryl. If offenders could get away with ignoring her, they would.

Daryl was right. She had nothing that he wanted. She certainly had no entitlement to engage him, because what she thought of him was irrelevant to Daryl.

If Michelle wanted to get through to Daryl next time he reported, she needed something to trade with that she didn't have. And she certainly wasn't going to become one of his "significant others". Could you imagine? No. What she needed was to find a way to engage those who were already significant to Daryl, and enable them to apply the power of *their* relationships to dealing with his behavior. This would mean that she would move from *being* the intervention, to *facilitating* an intervention process between Daryl and his network of support.

If they weren't available, and it had to be just her engaging Daryl on his own, what then? Were there questions she could put to Daryl that would bring him to an understanding of how they were affected, and what might repair the harm? No problem.

The initial interview- Cutting to the chase.

We all know how important trust and rapport are. To our clients, we're paid strangers, buying into their personal stuff. I don't know about you, but I don't have any voluntary clients. They're all there because they have to be. By trying to develop trust and rapport, what we're actually doing is seeking their tacit approval to enter their world. What follows is often a silent negotiation, which goes something like "I'll engage with you on some things, but as soon as you start on about what's wrong with me, it's game over.

The danger is that we'll end up with a fairly superficial level of engagement, and largely on their terms. Experienced offenders who achieve this refer to their officers as "house-trained". The alternative is to forget the rapport and lay down the law from the start. Fair enough, but their level of engagement under supervision may turn out pretty superficial at best, if not adversarial at worst, and in the end they won't have changed anything.

A restorative approach to the initial interview might start off with the following question, and go like this:

"What happened?"

You have the police facts in the file, and you'll probably see lots of gaps and inconsistencies in their response. Don't worry about it. The gaps and inconsistencies tell you about the bits they're not prepared to take responsibility for. Yet. Ask questions if you like to fill out their story.

"How did you come to be involved?"

This is something they won't have thought about, but you're about to find out all sorts of risk factors. E.g. "We were drinking and we ran out of beer". "My mates talked me into it". Et al.

"What were you thinking about at the time?"

This, measured against their response to the next question, gets them to think about consequences, particularly in terms of the mess they're in.

"What have you thought about since then?"

The response to this one often paints them as the victim. That's OK, we'll get on to the real victims in a minute. Either way, by asking them what they were thinking at the time and what they've thought about since, you're asking them to consider the consequences of actions that they had control over, through their thinking, rather than what their mates were doing. They can't avoid taking some responsibility when you ask these questions.

"Who has been affected by what you did?"

They'll say "me". Ask, "Who else has been affected?" They'll invariably start with the people most significant to them, such as mum, and work their way out. They might, with a bit of prompting, get to the victim. Write a list of the people they name so you can refer to it in the next question. What you're doing is getting them to consider the harm that's resulted from their behavior, rather than having done something that's simply against the law.

“How, specifically, have they been affected?”

Work through the list of people you got from the last question one at a time. Now you’re getting very close to the bone. You’re asking them to identify the specific harms they’ve perpetrated on those who are most significant to them. You can bet the farm that this exercise will be a revelation to them.

These types of questions are very powerful, and are designed to open their eyes to the full ramifications of their behavior. These are the things that, had they considered them in advance, would have prevented them from offending.

You don’t have to have their family there to ask them these questions, but won’t believe the impact if you can get them there.

“Do you think there is something to be done to make things right there?”

You owe them this. Up till now, you’ve opened their eyes to some pretty serious damage resulting from their behavior. The restorative view is that having done this, it would be unfair to leave them with this knowledge without providing an opportunity to identify ways to repair the harm. Bear in mind, though, that they might not know what they can do yet, and they might even think they’re powerless to do anything. So one thing at a time. Ask them if they think something needs to be done.

“What do you reckon you could do?”

Getting specific again by going to your list, see if you can assist them to work out ways to repair the harm.

So that’s it. A restorative approach to the initial interview has provided you with all sorts of useful information, and fully engaged the client. Trust and rapport are better than just intact, because you’ve confronted them with the consequences of their behavior in terms of harm to themselves and those most significant to them. They’ve thought very carefully and in a structured way about repairing the harm to those relationships.

But this is the best part: You've engaged them in a respectful and meaningful dialogue without once criticizing them personally, or given them cause to become defensive.

Although the above interview process is based on the assumption that you're talking to them on their own, it's even more effective if you can get their mum or partner, etc to participate.

If they're there too, you might ask them "What did you think when you found out what had happened?" "How have you been affected", "What's been the most difficult thing for you", "What do you think he/she could do to repair the harm?"

I recently did a court duty report regarding a young single mother who'd ripped off Social Security (Centrelink). She and her mother attended court for sentencing. When I showed her into the small office, I asked them if her mother, who looked quite tense, would like to come in too. The offender declined and asked her mother to wait outside.

During the interview it became apparent that the mother had been a great support to the offender throughout the ordeal, and had cared for the offenders child on many occasions to enable the offender to work. Further, the offender and her child had lived with and had the financial support of her mother to assist the offender to get back on her feet.

Towards the end of the interview, I decided to enquire "I'm wondering why you declined to have your mother in here with you during the interview- she's clearly very supportive?"

She responded with "Mum's got enough problems, and I don't want to worry her. Besides, this is none of her business."

I ventured "How do you think your mother has been affected by this matter?"

"Not at all, really; Probably a bit of an inconvenience, but she doesn't mind".

I couldn't resist. "Actually we're just about finished here. Oh, before you go, I'd just like to ask your mother one quick question. OK?"

"OK, I suppose" she shrugged.

I showed the offenders mother in and sat her down right beside her daughter.

When they were comfortable, I said I just wanted to check a detail with her if that was OK. She was OK with that.

"What has been the hardest thing for you about all this?" I inquired casually.

For a moment or two she just sat there, frozen. She started to go very red, and then the tears came, accompanied by sobbing from all the way down in her boots. She was unable to talk for quite a few minutes, which gave me time to look over to her daughter, the offender, and raise my eyebrows, apparently mystified.

It wasn't long before her daughter was comforting her and crying too. When they calmed down, I fully explored the mother's experience throughout the ordeal. The offender needed to hear this, and it was the first time in all the months the case had been running that she had.

“What did you think when you found out what had happened?” I asked. Heartless, aren’t I?

There are no more powerful ways of engaging offenders and those significant to them than Restorative questions.

The significant persons responses to these questions give them the opportunity to confront the offender with the inappropriateness of their behavior without condemning the person as bad, because a clear distinction is made between the behavior, which is unacceptable, and the intrinsic worth of the individual.

If you involve the offender’s support people in the process of exploration from the beginning, can you see how thoroughly you are equipping them to participate positively in the supervision process?

What and Why questions

If we're of a mind to talk specifically to offenders about their offence, how might we open the conversation? The first question we're tempted to ask is "Why did you do it?" It seems like a reasonable question to ask- a question that focuses on what they had in mind as an outcome of the offence, or what was their rationale for doing as they did. "Why" is a "what" question in disguise, but it will do you all sorts of damage.

The trouble with why questions, is that they don't get us the information we want. Of more importance, why questions don't get offenders to focus on the differences between what they had in mind, and what happened. In fact, by asking a "why" question, we're actually closing opportunities to engage, rather than creating them. The reason for this is connected to the decisions an offender made in choosing to act as they did, and the information they considered, or failed to consider in making that decision. The truth is, they didn't think through what they were about to do very much at all. That's why the answer to "why did you do it?" is at best "I don't know".

There are all sorts of assumptions attached to "why did you do it?" and these assumptions aren't much help to us. The assumptions are firstly, that they had a good reason. The second assumption is that they made an informed decision, based on a consideration of all the implications of what they were going to do- that they thought it through.

Bearing in mind that some time has elapsed between the commission of the offence and us throwing "why did you do it" to them, is it any surprise that they're prepared with lies, minimization, or very good reasons why they did it? Because they're the answers we're going to get. They've had plenty of time to ask themselves the same question, over and over. In the face of having to admit to themselves how stupid what they did was, they'll have half convinced themselves that it was a good idea. Then they'll take "why did you do it?" as an opportunity to convince you too.

When a person commits an offence, they're actually taking a position on something. They're saying, "I'm making a decision to do this". When we ask them the "why" question, what they're hearing is "defend your decision". And even though in truth they didn't give it any thought, we're forcing them to find good reasons. And the further we push them to admit how stupid it was, the more locked into that position they become.

In an incredibly short period of time, generally within seconds, they're no longer defending a stupid, spur of the moment decision. They are defending against a personal attack. Asking "why" becomes to them, "convince me that you're not stupid".

You'll invariably find yourself in an argument. They'll be trotting out all sorts of lies and nonsense to defend their decisions, and you'll be trying to torpedo them one at a time. You'll remember with fondness the time way back when they were simply stonewalling with "I dunno".

The next time you feel like asking an offender why they did it, sit down quietly somewhere with a cup of tea, and wait for the feeling to pass.

Restorative Justice practitioners don't ask "why". They'd rather a poke in the eye with a sharpened pencil.

RJ practitioners tend to ask “What” questions. A very useful place to start is “What happened?” There’s no threat in it. This will be a rare occasion for them to tell their story. “How did you come to be involved?” is another useful way to broaden out their narrative. Much later on you might want to refer back to this when you ask them which bits can they take responsibility for.

Other “what” questions to follow up “what happened are “What were you thinking about at the time?” This question doesn’t attach them to the offence. It’s a detached question, which makes a distinction between them and the behavior. From their perspective it’s just data, or information. It can’t be interpreted as a personal challenge. “Why” is about them, whereas “what” is about something that isn’t them- the thinking, or the behavior.

The answer to “what were you thinking at the time” will probably elicit “nothing”, “not much”, or “I Dunno”. Don’t fret, you’re getting the truth, and it’s a great place to start.

The next question is “what have you thought about since”. This question will get all sorts of information. The answer will give you a mountain of information about what they had to ignore to commit the offence, unexpected consequences for themselves and others, and maybe even the erroneous thinking or rationale behind the offence.

Asking “what” questions navigate you through resistance and defensiveness and cuts straight through to what they had in mind at the time of the offence, and what they’ve learnt since.

Restorative processes occur in a context of engagement and respect. When you ask “what” questions, you are aligning yourself with the person beneath the behavior, to discuss the thinking out of which the offence occurred.

This creates an environment where information can circulate freely and in a collaborative way, rather than an adversarial encounter. If you want to build rapport and model respect, ask them “What happened”, “what were you thinking at the time?” and then, “what have you thought about since?” You’ll be fascinated by the precision of these questions in getting to the heart of their thinking.

Pre- Sentence Reports

When you think about it, a Pre-Sentence report has two types of information in it: Information about the problem, and Information about the solution. The first is about what was going on that culminated in the offence, and the second is about what we might do about it, so it doesn't happen again.

By using restorative types of questions in the interview process with offenders and their significant others, we can be assured that the information we eventually provide in the PSR will be relevant, useful and complete.

Every Restorative question that we ask offenders elicits information relevant to sentencing, because we are directly assessing their level of insight into their offending, the nature and extent of their significant relationships, and what needs to happen for them to develop behaviors hostile to future offending. This information is a critical resource for marshalling our arguments and informing appropriate sentencing options. I have yet to find a better way to glean useful information for PSR's than Restorative questions of offenders and their significant others. A particularly useful exercise is to lead offenders through the police facts, asking them "What were you thinking at this or that time, and what do you think about the decisions you made at this or that point.

Sources of information

Apart from court depositions, police facts and service records, how do we choose who else we'll talk to as sources of information for our report? Offenders generally turn up with a fist-full of references, but these people are often selected by offenders, not because of their familiarity with them, but because of their position in the community.

To identify who's best to talk to, pay particular attention to their response to who has been most affected by the offence. These will generally be the people most significant to the offender, and therefore most able to provide accurate and objective information about their lifestyle and associates.

In relation to referees, you can identify the relevant ones by asking referees; "what did you think when you found out what had happened?" If they talk about how it has affected them, they're probably significant and relevant.

If they start to pontificate about the unacceptability of the behavior and condemn the offender, or seek to excuse the offence, they're probably less significant, and not going to be much help to you.

It's a bit ironic, but those most affected by the offence will generally be the offender's network of support if it comes to supervision. So get to know them. They'll be very helpful at the PSR stage, and essential during supervision in implementing a sound case plan.

Relevant social/ family issues.

With young adult offenders, we generally include lots of information about a person's childhood and upbringing. We don't go into this so much with older offenders, because of

the remoteness of their childhood. Even with older offenders, however, we sometimes tend to link current behavior to unresolved childhood issues, especially if they're drug-related.

One difficulty with this focus on childhood issues is that we can't undo it. If we build our recommendations on it, we might be missing the point of addressing the current behavior, and providing excuses for continued offending into the future.

In any case, if we look thoroughly enough, we can find a dark corner in everyone's youth on which to hang their aberrant behavior. Unfortunately, this approach fails to explain the responsible behavior of law-abiding people who probably also have dark corners. Following this "unresolved childhood issues" approach could lead anywhere, may not necessarily have anything to do with the behavior, and will probably evade resolution anyway.

Low self-esteem's another dodgy explanation for bad behavior for the same reason. In trying to resolve this issue, we invariably end up trying to make offenders feel OK about behavior that they've got no entitlement to feel OK about.

A more useful way to identify relevant social/family issues may be to identify which relationships within the offender's network of support have been damaged by the offence. If we build our case plan around assisting the offender to repair these relationships, they might build a solid network of support, and avoid further offending.

Attitude to the offence

Attitude is a bit of a funny one. Without an objective measuring instrument, an offender's attitude is something we have to guess at, taking into consideration what they tell us, and how we feel about the way they present.

In reality, an offender's "attitude to the offence" is no more and no less than a decision about a behavior regarding whether or not, on balance, it's reasonable, or an acceptable risk.

For this reason, offenders generally have two attitudes relevant to the offence. Their attitude when they're deciding whether or not to do it, and their attitude about the offence after they're caught. They might change their mind about whether or not, on balance, the behavior was reasonable or an acceptable risk.

Neither of these attitudes is much help in preventing future offending, and we'll look more at this later. But for now, let's look at measuring attitude at the time they decided to commit the offence, and subsequently.

A good way to find out what they think about the offence at the time of writing the report is to ask them "What happened?" Their answer to this question will tell you if they're minimizing. You have the police facts and probably other accounts to compare their story with. This exercise gives us some useful preliminary information about their attitude to the offence.

For one person to see something as acceptable or reasonable where another might not, moves us to ask them; "What were you thinking about at the time of the offence?" You'll notice all sorts of gaps in their thinking, and things they've had to have known about and ignored to be able to justify the offence.

Finally, to detect any developments in their thinking, one might ask; "What have you thought about since?" Their response to this question should reveal any insights that they've developed into their behavior since being arrested.

Even when an offender has only been referred to us for a pre-sentence report, there are all sorts of opportunities available to us to jolt their attitude to the offence hard enough to give them whiplash. We tend to view an offender's attitude as a static thing that defines them for us throughout their contact with us.

All of our efforts tend to occur around and in consideration of an offender's attitude. We sometimes make allowances for their performance, accepting that it's probably a reasonable compromise to accept superficial participation, for fear of making their attitude worse by pushing them too hard.

We really need to get past this. Attitude is not static; It's dynamic, and our business is to engage them in a way that brings about movement in their attitude. The reason? Because it's attitude that drives behavior. If we don't get movement in attitude, we don't get movement in behavior. We might as well all go home.

Earlier I mentioned two different attitudes to the same offence; The first being their attitude at the time of the offence, the second being in interview well after the offence. Brace yourself; there's a third, and important attitude to the offence, and this one is the objective of our intervention. It's the attitude towards the offence that prevents them from ever doing this type of thing again.

Attitude is dynamic, and moving it is our business.

A word about Remorse in Pre-Sentence Reports.

Remorse is a reaction to the harm a person themselves have done. Remorse is a bit like shame. (A reaction to the harm someone *else* has done, is usually a different negative

affect, like anger or fear. Interestingly, those who have a significant relationship to the offender will also feel shame keenly, even if the offender doesn't.)

Sometimes, generally depending upon how we feel about the way an offender presents, or what they say, we form the view that they are or aren't remorseful. Sometimes they even say that they're remorseful. But what does this mean, and how can we know that what we observe is actually remorse, and not just regret or self pity at their legal predicament?

Similarly, if an offender, particularly young male offenders, presents as belligerent and/or uncooperative, does this necessarily mean that they aren't remorseful?

Restorative principles enable us to precisely and objectively measure remorse, and provide an informed assessment of it in the PSR in the segment entitled "Attitude to the offence".

To be remorseful, two things must be present; An understanding that harm has occurred, and a reaction to that knowledge in the form of the negative affect, shame.

The offender's responses to the questions "Who has been affected by what you did?" and "How specifically have they been affected" will give you a pretty good idea of the first requirement, i.e. their understanding of the harm that has resulted. If they can't answer this one, they can't feel remorse.

So what about the second requirement, a reaction to this knowledge in the form of shame? As you work through the first two questions, observe the offenders posture. If s/he's able to identify those harmed, and the nature of this harm, there is a fair chance they'll feel remorse, and it's pretty easy to identify physiologically. You'll see it in their face and posture. But just in case they're faking it, ask them "Do you think you need to do something to repair the harm?" If they readily agree to this, even if they don't know what they can do, then they have accepted the obligation that their wrongdoing has created. Interesting business, isn't it?

Whereas to state that "The offender is remorseful" is fairly limited in its usefulness to the Court in terms of describing an offenders attitude to the offence/s. The following might present a more comprehensive assessment.

"In interview, the offender displayed considerable insight in relation to those adversely affected by his/her behavior, and how, specifically, they have been harmed. S/he readily agreed that they have an obligation to repair the harm, and has sought to do this in the following ways..... The offender's family stated that his/her apparent remorse is evidenced by the following changes in lifestyle/behavior....."

Or

"In interview, the offender showed limited insight into the harm his/her behavior has caused, and failed to recognize the impact of the offence on those most significant to him/her. He/she declined to accept any responsibility for the offence in terms of repairing the harm."

A restorative approach to managing DV perpetrators

You can't negotiate with a bully. And why would you? Domestic violence isn't negotiable anyway. The only way to get a bully to negotiate in good faith to take their BATNA off them.

A BATNA is a person's Best Alternative To a Negotiated Agreement. Perpetrators of domestic violence have a BATNA that works for them, i.e., violence. It gets them what they want, and keeps them in control.

That's why the best therapy for a DV offender is to be arrested, taken away and charged. And notwithstanding the limitations of Apprehended Domestic Violence Orders, they are also very useful, because they help stop them getting their BATNA back. The power imbalance that enabled abuse is redistributed. The state is given power over the perpetrator, and even the victim gets a gurnsey.

This is the context in which most of our DV offenders arrive, sitting opposite us in the interview rooms. A criminal record, an ADVO, no power, and no BATNA. They're usually pretty angry, and generally doing their best to paint themselves as the victim. And back out in the waiting room, as often as not, is the protected person. Relationships characterized by domestic violence don't usually end once a conviction occurs, because if they were going to end it would have happened years ago when the violence first began. In any case, any child and family mediator will tell you, the victims of D/V generally don't want the relationship to end- they just want the violence to stop. Ask them. I do, and that's what they say.

We know that to remove violence from an abusive relationship is not an end in itself. Violence and abuse is the language they speak. Dysfunctional though it is, it is still a means of relating. Without a more functional and less harmful replacement for the abusive interactions, these couples can no longer relate. They experience a kind of paralysis. If alcohol is introduced into the DV equation as it often is, all bets are off. In any case, it is into this vacuum that we implement an intervention.

Experience tells us that if we do nothing, the violence will generally re-emerge before much time has elapsed. Without a new currency with which to relate to each other, the old currency of coercion, force and violence must-needs suffice.

So how can we make D/V offenders take responsibility for the violence, and learn to negotiate their needs in a civil manner without constant and ongoing legal scrutiny? More importantly, how can we empower and engage the victims of domestic violence in a process where they can be assured of safety?

Because restorative justice principles and processes are future focussed, they provide one of the only effective interventions in response to this issue.

It may be helpful at this point to make a distinction between Restorative Justice Processes and Mediation. In mediation, participants are asked to negotiate behaviors with each other. Power imbalances are addressed, and parties are viewed as equals. Conflicts and disputes are worked through in terms of issues and needs, and options and agreements are formulated. Mediation, therefore, is not seen as an appropriate forum to deal with D/V.

There are arrangements used by some agencies such as shuttle mediation whereby contact and residence matters, and/or property settlements are negotiated, but strictly speaking, Restorative justice processes have little in common with mediation in these respects. Restorative processes better suit situations, like D/V, where there are victims and offenders. Right and wrong. Offending behaviors are not negotiable.

We are mandated by the courts to engage offenders in a process to address their D/V offence, and we are required to engage victims to determine that the violence has stopped. As statutory reporters, the children of violent relationships are also subject to our scrutiny. With these objectives at the forefront of our priorities, Restorative Justice processes are *made* for D/V.

Remember what we said earlier about cutting to the chase? When you bring everyone affected by a D/V matter together to deal with it through a Restorative process, the opening statement would go something like this: "We're not here to decide whether Mr Whoever is a good or a bad person. We're here to look at what's happened, who has been affected by his violence, how specifically they have been harmed, and what needs to happen to repair the harm and to see that you all move on into the future with the assurance that the violence and abuse has ended.

By the end of this process you will all have a common understanding of the circumstances under which violence has occurred, and strategies to deal with similar circumstances properly in the future." Or something like that.

If the conditions of an ADVO preclude such a meeting by forbidding contact, the perpetrator could be brought together with his parents and/or siblings for a similar process. There are opportunities for learning and the building of support networks in either case. The process requires no dancing around the edge of the issues, and no ambiguity in relation to who is responsible for the violence. We have all had D/V offenders who try to shift responsibility for their behavior onto the victim. In a restorative process, they just can't put legs on the argument.

If they are confronted by the unacceptability of their behavior within a continuum of support and respect, their very own family will not allow them to deflect responsibility. They only do that in process where they think the offender is being attacked, rather than the behavior.

Modeling new ways to relate in D/V relationships

Is it possible for our intervention in an abusive relationship to encourage respectful behavior to the family concerned? Can a couple who have related abusively for probably years, develop the habit of listening to each other, and the skills to articulate their needs in a way that doesn't trigger an escalation to more abuse?

The versatility of Restorative Justice Principles become apparent when we consider how our interventions model the respect and fairness of a healthy relationship. Families who enjoy a high level of intimacy have a free flow of information in all directions. Needs can be articulated freely, they are listened to, and feedback systems confirm clear and accurate understandings. Ambiguity is rare, because of the precision of language used.

Abusive relationships are characterised by low intimacy, even if the individuals within it have a high level of functioning. Demands are made that do not readily reveal the needs of

the individual, so that ambiguity is high. Guesswork is the weapon of choice in interpreting communication, so any attempt at negotiating differences is very difficult.

If couples can be taught to construct assertive statements that reveal their needs, and ask helpful questions to ensure clarity, they are well on the way to developing new styles of communication that avoid escalation into vexatious interactions.

There are various forms of assertive statements that approximate each other in form, and are all very useful. Generally, the elements of an assertive statement represent the flip side of restorative questions.

When we ask “what happened”, “what harm has resulted” and “what needs to happen to repair the harm”, the responses, if strung together, form a quite comprehensive and robust assertive statement that is simple to remember. We get something like “When this happens, I feel thus. What I would like to see happen is.....”.

Restorative questions are very helpful for couples to use to clarify each other’s needs. “What do you think needs to happen to resolve this”, and “what’s the hardest thing about this for you?” are questions that can only help. They provide opportunities for validation, acknowledgement and the dissipation of the negative affects that might otherwise lead to an escalation.

It may be helpful with D/V clients and their partner, and children too, if appropriate, to be particularly transparent about the process through which supervision is going to occur, so that they are aware of what you’re doing and why you’re doing it.

For example, during an interview early in the supervision period, you might explain; “During our time together, you’ll notice patterns in the questions I ask you, and the types of things we discuss. It’s important that you feel respected, and that you’re being treated fairly at all times. If at any time you don’t, please confront me about it.

“I’ll be applying what are known as Restorative Justice Principles throughout our time together. My objective will be to find out how you want your relationship to be, and for us to work out what needs to happen to achieve that.

“By the end of your period of supervision, I want you both to have the skills you will need to never again experience abuse in your relationship. You and your children are entitled to a safe home free of abuse, and it’s up to you to provide it. And they are counting on you to equip them with the skills they’ll need to have healthy and happy relationships themselves.

“You might find the processes I introduce you to helpful in the way you relate to each other, so I intend to constantly explain to you what I’m doing and why I’m doing it.”

I encourage my clients to keep a sort of a journal to record incidents that went well or poorly for them, so that we can discuss them and even roll play more restorative ways of dealing with situations.

Parolees

Imagine that a member of your family, perhaps a brother, or heaven forbid, a son or daughter, committed an horrendous crime, and was almost immediately snatched away and put in prison, remanded in custody, perhaps, and subsequently given a custodial sentence.

As the justice system ground away, sorting through evidence, law, etc, asking “who did what?”, “what laws did they break?” and “what punishment do they deserve?”, you and the other remaining family members try to come to terms with the devastation, the shame.

You try to help the younger family members to make sense of what has happened. You wonder how it is, that someone you love so much, can cause you all so much pain for so long. Then, rather than eventually sorting themselves out as you always optimistically expected they would, they instead crash through a behavior barrier so outrageous that it takes you quite some time before you’ll accept that it even happened.

On weekends you’re allowed to visit the offender, and you look to them to help you make sense of what had happened. All the while the same question keeps coming up. “Why?” you ask; “How could you do such a thing?” There are no answers, only silence, and later anger, because you keep asking a question they can’t answer. You find yourself talking to the top of a bowed head, as the offender stares at his/her shoes in silence. At the end of the visit, you go away without any real relief from the knot in your stomach. You settle into a sort of holding pattern, where you visit, try to stay up beat, smile, make small talk, put money into their gaol account so that they can buy their tobacco. Throughout the interminable months or years you visit religiously, until one day, it all comes to an abrupt end. It’s “Time served, go home”.

So there you all are, sitting around the kitchen table. No one knows what to say, or where to pick up from where you all left off several months or years ago.

These are the people we ask to help us supervise the parolee. Can you believe it? At least we’ve got the benefit of a pre-release report, a home visit, and even some power over them to revoke their order, but what have they got? And these are the people we count on to assist us. But guess what? They’re hoping *we* can help *them*.

Tell me when the offender and the family got the opportunity to ask each other their questions, and come to a common understanding about their needs, concerns and fears for the future?

The family wants to know “Is s/he going to go straight back to their ratbag friends?” “Are we going to have drugs in the house again?” “Can we expect to find him/her missing again for days at a time, only to return looking and smelling like something the cat dragged in?” The younger family members worship him/her- “what are they going to be exposed to, and what are they going to learn from his/her behavior?” These people want to know. Is he/she going to get a job, and do the right thing, or are the rumors true that they come out worse than they went in?

So again, tell me, at what point over the time spanning from the day they were arrested, until the day they arrive back home, was a facilitated process provided for them to discuss these things and understand each others expectations- the “where to from here?”

The fact is, it hasn't happened. At no point is a process formally scheduled to deal with these things. There is no “It's now time to bring everyone affected together to consider how we can all learn from this and move on”. Our system simply isn't up to the job of preparing offenders or their families for the future.

When we take a new parolee on for supervision, we're already on the back foot. They're out there from the word go, we and the family are playing catch-up.

The very least we can do for these families is to provide an opportunity for them to tell the parolee “we went to hell and back because of your nonsense before you went to gaol. You didn't listen then, and we want to know if you're going to listen now. You need to make some decisions about what you're going to do now that you're back with us. You're welcome here because you're our son/daughter, and we love you. But understand this. Your drugs and drug-addict friends are not. The first sign of drugs or your old friends, and you're out. You need to understand that your little brothers and sisters are not going to be exposed to it. We've got a duty to them. So what's it going to be?”

And we mustn't overlook the likelihood that parolees may need an opportunity to say their piece as well. A process needs to accommodate this.

If ever there were a case for a “ceremony of reintegration” such as a restorative justice process, a person's release from custody would be it. Immediately before or after release would be the appropriate juncture for such a process, because the content of the conference would define the context into which the offender is being released, surrounded by those who will be asked to resource their reintegration into the community. They are entitled to the respect of an opportunity to make clear to the offender their expectations and concerns.

The really important thing is that a common understanding is developed between all concerned right at the outset. It is in this context that Parole officers are able to properly support parolees and their families, and families co-operate with, and develop trust in the officer.

While ever parole officers and parolee's families are talking to each other honestly, it's very difficult for parolees to play up without detection. Why would they anyway, if they've been involved in the decision making process, and their needs are being respected?

The only thing more effective than applying restorative principles to engage offenders and their families upon release, it to do it as soon as possible after sentencing. At least that way, offenders serve their sentences with some idea of the harm that has been experienced by their families, so the sentence makes some sense to them.

Knowing what's expected of them by their families upon their release, they might even make some use of their time to address the issues underlying their offending whilst they're in gaol, rather than sitting there thinking that they're the victim.

Applying restorative justice principles to parolees as soon as possible after their release is so helpful to getting a sound case plan on track, that it's almost embarrassing. But for now, let's consider some of the benefits.

The stakeholders in a parolee's success generally include the offender, his family, maybe other significant relationships, and the PPO. Each stakeholder has needs, concerns and/or fears. Some of these may be common to all stakeholders, others may be different. These are the people who should be involved in a restorative process.

The application of restorative justice principles can greatly increase the likelihood of seeing a parolee successfully through his/her parole period, by establishing a very robust and resilient network of support with his/her significant others.

Through a facilitated exchange of information, each can gain a clear understanding of the others' needs, concerns and fears, which can be referred back to if issues arise during supervision that are of concern.

The sequence of events for a restorative process for a new parolee might go something like this:

- The parole officer identifies those affected by the release of the inmate. These would include his/her family, and the victim and his/her family if they are known to the inmate, and if they choose to participate. They'll have needs, concerns and fears too. It's sometimes helpful to include them, or at least offer them the opportunity to participate, because among other reasons, they may torpedo the parolee out of unresolved anger. This can be an opportunity for healing for them too. They're entitled to it.
- Prepare each of the participants so they know what the process is about. What you're suggesting is a pretty big ask, and they may need to be reassured.
- When you bring them all together, an introduction may include something like this, to set the purpose of the meeting: "We're not here to decide whether Fred is a good or a bad person, but to look at who's been affected by what's happened, how they've been affected, and what needs to happen to repair the harm. Fred's out on Parole now, and we all need to come to a common understanding about what we can expect from each other. To do that, we'll all have questions or concerns that we need to deal with."

The nuts and bolts of this type of conference are available elsewhere, so I won't go into it here. The ultimate outcome of a sound restorative process will at the very least see that everyone affected is on the same page in terms of expectations. Those with fears about the parolee should be greatly reassured, as they will have had the opportunity to confront the offender in a safe and structured process.

Restorative Justice Principles in Programs

Not knowing much about cognitive/behavioral or therapeutic approaches, I thought I'd have a go at applying restorative justice principles to programs.

My thinking went something like this:

If I, or a group facilitator tells them something, they can ignore it.

If they're exposed to experiences that contradict or add to their beliefs, it'll be harder for them to ignore it.

If these experiences lead them to see that their offending behavior/lifestyle is hostile to everything and everyone that's important to them, they might even change their behavior.

Soon thereafter, Mr Makesure was created. He's the fictitious umpire in a program called The Game. To successfully complete The Game, "players" are exposed to a series of experiences that are designed to develop insights, and challenge the way they think of themselves and their behavior.

In essence, these insights are about having behavior and lifestyle redefined for offenders by their peers, and those most significant to them.

Central to the experiences players are exposed to, are encounters with people they admire, their closest friends and relatives, and people who similar entrenched issues to themselves, and have developed useful insights along the way.

Participation in The Game exposes players to five levels of confrontation about the harm to others and relationships resulting from their behavior, including an exploration of what needs to happen to repair the harm. These insight-developing exercises are followed up with requirements to actually do something to repair the harm. The levels are as follow;

1. Officer/ Offender; Supervision begins with an assessment interview. The assessing officer subjects the offender to restorative questions, preferably with a significant other present to put in their 2 cents worth.
2. Significant other/ Offender; Offenders are asked to interview four of their significant others. They are provided with questions to ask them, which follow the familiar restorative process. They write in the answers and submit the questionnaires for later discussion. A parallel activity required of them is to identify a new thing that they can do each day for someone significant to them to demonstrate their appreciation of their support.

Apart from gaining useful insights, this process causes offenders to engage their loved ones regarding the harm they've experienced, probably for the first time. Providing the opportunity for families to discuss these things goes a long way towards starting the process of restoring damaged relationships, and rebuilding a sense of connectedness between the offender and their families.

3. Third party offender/ third party significant other; Of a more remote nature though it is, offenders are sent to AA meetings with questions to fill out which address the various types of harm offending causes others, including health, financial, relational, etc. This exercise is designed to have addiction issues redefined for them by their peers, instead of me telling them.
4. Media offender/ Media relationships; Offenders are required to view 5 videos from a list, which address various types of offending. These are mainstream videos including 28 days, Once were Warriors, Falling Down, and lots of others. Although offenders get to select which videos they view, the questionnaires address harm issues, particularly around relationships.
5. Facilitated Offender/Offender group sessions; The game ends with 8 facilitated group sessions where all of the information gleaned from the above experiences is debriefed. The harm experienced by different families as a result of wrongdoing generally bear remarkable similarities. The violation of the home, the violation of trust, fear, anger, shock, outrage are common denominators for families regardless of the diversity of their socio-economic or other circumstances.

In terms of proportion, the pre-group activities consume approximately 30 hours of the offender's time. The groups take up about 20 hours. It may be seen from this distribution of time that the bulk of the time is spent having offenders out in their worlds identifying and addressing the harm. The remaining 20 group hours is an opportunity to share experiences and shore up the new insights they've developed.

Doing ourselves out of a Job- Reducing Recidivism

In the early days when law enforcement agencies commenced applying Restorative Justice Principles to events of wrongdoing, research indicated that they reduced recidivism dramatically.

These principles, whose roots lie in diverse traditional cultures, have been formalized into a set of principles and processes that can be applied in all sorts of organizations or situations with pretty consistent and verifiable results. Over the years, the principles and processes of Restorative Justice have been subjected to the scrutiny of academic rigor with consistently positive results. We're a bit past the "research indicates" stage now. These days the record's in the book.

Putting academic rigor and the rest of it aside for a moment, if you ask a member of a traditional culture why they handle events of wrongdoing this way, they'd probably tell you that it's the only way that makes any sense. For practical reasons, they're generally not in a position to isolate offenders by way of incarceration. In any case, traditional cultures are structured in such a way that the social cost of excising individuals is unthinkable. These are not individuals being dealt justice by anonymous magistrates, prosecutors and solicitors. These are their family. They want the persons behavior fixed, the harm repaired. They're not quite as detached about justice as we are, because what happens to the offender happens to them. They're all connected to each other.

Having considered how restorative justice principles are applicable to our various work roles, it might be helpful if we consider why these principles have such an impact on offenders, and why they generally don't re-offend.

A Mistake, or a Misdeed?

We often here people identify wrongdoing as a “mistake”, as in “he made a mistake”, or “everyone’s entitled to make a mistake”. I assume the desired response for us is to “excuse” the “mistake”, because the term implies that to hold someone responsible for a mistake is somehow unreasonable. An act seems to be deemed a mistake if the perpetrator didn’t know that it was going to cause harm, even if they knew it was wrong. A mistake is “poor judgement”, or “a decision made without the necessary information to make a more wise decision”.

A “misdeed”, on the other hand, is doing the wrong thing, knowing that it’s the wrong thing to do.” For someone to commit a misdeed, they have to do a couple of mind-bending exercises first. They have to decide that either there’s little or no harm going to be done, or that the harm is justified, or that those affected are too remote from them in terms of relationship to be of concern to them.

Apart from being able to give it a name, there’s really no point in us going into the above distinctions with offenders. There is a point, however, in getting *those affected* to go into it with them. Understandably, offenders would rather others see their offending as mistakes than misdeeds, because they then bear less responsibility. Generally, though, they’re perpetrators of misdeeds, having become past masters at the mind-bending exercises required to make offending tenable.

Whether it was a mistake or a misdeed, Restorative Justice processes confront offenders with the harm they have caused, and the consequences in terms of damage to relationships and attendant obligations that they then bear.

Because further offending would be done with a new understanding of the ramifications for themselves and others, how could they defend it? Further offending becomes next to unviable, as it cannot be defended as either a mistake or a misdeed.

Addressing the Harm

When we ask offenders “who has been affected by what you have done”, they generally haven’t thought about it before, or if they have, not a great deal. Some offenders get a bit of an idea once they’re charged, because of the way people react when they find out what has happened. But until we lead them through a full examination of the question, they don’t have much of an idea who’s been affected. Others know a bit about how what they do affects others, but choose to ignore this in the belief that it won’t come out. They don’t plan to get caught, or if they are caught, they don’t expect to be brought to account in terms of affect on others. Their experience of court is mostly about laws and punishment.

After identifying who has been affected, restorative processes then move further into the exploration of the harm by asking the question “How, specifically, has each of these people been harmed?” Again perhaps for the first time, offenders are brought to a common understanding with those affected by their behavior about what it’s cost them. This, ultimately, is a cost that must be borne by the offender in terms of damaged relationships. The only way to repay this debt is to agree with those affected about what needs to happen to repair the harm, and see this through.

Restorative processes relentlessly pursue “real” justice from the point of their application until all parties affected lose their victim or offender status through reparation of harm and restoration of damaged relationships.

Through participation in restorative processes, offenders come to view bad behavior as very expensive for them. They can no longer view their behavior in isolation from the harm they cause, because they are asked to fix it. The natural progression of these new insights for offenders is to decide before they offend, is this behavior acceptable, knowing how it may affect my significant community?

As soon as offenders begin to consider their behavior not as an isolated event, but as part of a process of consequences for themselves and others, we are seeing the emergence of integrity. This is quite a different thing from complying out of the fear of punishment.

Connectedness

Humans exist within a network or web of relationships. These relationships are sometimes stable, sometimes chaotic. They may be transient or robust. As we are all too well aware, other relationships may be abusive, enmeshed, toxic or supportive. Interestingly, some people are able to map out where support is available to them in their network of relationships. Some aren't.

People who we think of as having integrity, generally have a higher level of intimacy. They share information with those significant to them, and have a pretty good idea about where they fit in their network of support. We rarely see these people in our line of work. They have a well-developed sense of connectedness, and they tend not to offend.

Our clients generally have a lower level of intimacy, although they sometimes have a quite high level of functioning. They generally have quite a fragile sense of connectedness. They fail to recognize how what they do affects those around them. When they are asked to map the network of supportive relationships in which they live, they generally have difficulty, even when these supportive relationships are quite clear to others.

The relationships of which we speak are with the people who have tried to reason with our clients long and hard before ever we meet them. These are the parents, aunty's and uncles who sometimes turn up with the offender at court.

When our clients offend, the tenuous relationships that they do have, are further damaged, because they and their supporters distance themselves from each other. Offenders find it difficult to face up to their support people, and their family also experiences a sense of shame.

Restorative processes begin the journey of restoring these damaged relationships, and building a sense of connectedness, which is often previously unknown to them. As they come to appreciate that what they do does affect others, and that they do have people around them who care what happens to them, their sense of connectedness develops. It can be seen that these insights underpin the growth of integrity, so that our clients begin to develop characteristics that emulate those of people who simply don't offend.

An offender's sense of connectedness seems to be inversely proportional to their risk of re-offending. Early engagement of significant others with the offender to bring about some common understandings and repair to relationships is a pretty good place to start if you want to reduce the likelihood of re-offending whilst under supervision.

Punishment and Reparation.

If the Court imposes a purely punitive sentence upon an offender that is not relevant to the offence in terms of actually repairing the harm, how do we know if it's too severe or too lenient?

If you ask those involved in such matters, regardless of the sentence, the victims say it's too lenient because it doesn't repair the harm at all, and the offender's say it's too severe, because it's meaningless to them. Even *they* don't see the relevance. When you're measuring apples against oranges, what yardstick do you use?

That's not to say that punishment isn't a good idea. It's a great idea in lots of ways. To punish someone for a crime is respectful. By punishing someone, we're saying "You are responsible, because you have control". By sending an offender for therapy, though, we're saying "You're not responsible because you couldn't help it. We can't trust you to stop offending. We have to give someone else the power over you to decide when you are well. There's something wrong with you."

Similarly, punishment has a beginning and an end. At some stage, regardless of the severity, it ceases. This is more humane than excluding someone from significant relationships without the facility for reintegration. If we fail to facilitate a process that has at its conclusion a ceremony of reintegration, or release from obligations, offenders remain stigmatized. We might as well tattoo their foreheads. We're certainly tattooing the inside of their heads with a shame they've not been allowed to address.

Punishment goes some way to remedying this, in that a punitive response is metered out, after which an offender is said to have paid their debt to society. If the punishment lacks relevance to the offence, however, stigma may remain, victims may continue to resent, and offenders may continue to harbor victim status themselves, because they don't think they've been treated fairly.

Restorative processes require offenders to take responsibility and repair the harm. When we ask, "What needs to happen to repair the harm?" we are asking those affected, the victims, to identify relevant and proportionate decisions about punishment. Repairing the harm can be costly to offenders, and require a lot of work.

Sometimes repairing the harm exceeds the punishment a court might impose. Regardless of this, offenders cannot assume victim status, because of the relevance of the response to the offence. Interestingly, offenders seem to accept this, as they feel that they've been treated fairly.

It has been argued that the term "an eye for an eye" isn't about making sure punishment is severe enough, but making sure that it doesn't go over the top. The term speaks to the twin issues of severity and relevance. In Old Testament times, if victims didn't see punishment as relevant to the offence, no punishment was severe enough. Victim rage often has at its roots a belief that because punishment doesn't address the harm that has been done to them, it's never severe enough. Every time I see a restorative process, I am amazed at the generosity and support victims provide for offenders, once they see that they're respected, and that the offender is committed to repairing the harm.

The benefit of restorative processes, is that when completed, the offender loses their offender status, and victims, who have been paid the respect of having their say, go a long way towards losing their victim status.

Of course, we don't decide what sentence will be metered out. We are often left to assist offenders and their families to make sense of seemingly capricious court outcomes. Restorative processes assist us to achieve this, as offenders are brought to a common understanding with all those affected of the full extent of the harm that has resulted from their actions. With a full understanding of the seriousness of their offence, offenders are able to reflect on their seemingly disproportionate sentence in a new light.

The Pig and the Chicken- Looking after yourself.

Somebody once asked what's the difference between being involved and being committed. It was explained to them that it's a bit like bacon and eggs- the chicken's involved, but the pig's committed.

Engaging offenders can be exhausting. We want them to take responsibility for something, and they don't want to. We generally use persuasion, reason and if necessary, it's back to court for a little coercion. This approach requires a great deal of commitment and hard work for each and every offender.

Restorative Justice processes relieve us of the requirement for personal commitment, because we, like the chicken, are involved, but by marshalling the power of the offender's significant community, we no longer need to "buy into" the content of addressing the offending behavior or repairing the harm.

When we apply Restorative Justice principles or processes, we are taking a step back. We become facilitators of a process that *enables* those significant to the offender to levy responsibility on the offender, and monitor their compliance, generally 24/7.

In this type of process, our positional power and the need to level it against offenders becomes unnecessary, because responsibility for the problem and the solution have been moved to the offender where they belong. Our role becomes one of regular contact with the offender and his/her significant others, and intervening if it becomes necessary.

Even in the administration of programs, we largely facilitate a series of dialogues between offenders and others through various means, rather than make them do stuff they can't see the sense in anyway.

Looking after Each Other

Earlier we considered the ways in which events of wrongdoing damage relationships, and isolate offenders from their networks of support, and often the wider community.

Victims experience similar isolation as a result of events of wrongdoing, or even other events, which although may not constitute wrongdoing, inflict devastation upon them nonetheless. We're going to be discussing our workmates, so perhaps for this exercise we might refer to them as victims of harmful events.

When people experience harmful events, regardless of their magnitude or nature, their victim status emerges upon the co-incidence of three elements. It may be seen that these elements damage a persons ability to participate in relationships, and may lead to a profound sense of isolation.

Autonomy; Healthy and happy people go about their lives with a sense that they possess the freedom to make choices and stand on their own two feet. When harmful events befall them, their sense of autonomy is shaken. They no longer feel as safe as they once did. This accounts for the way victims of harmful events may tend to become what we sometimes refer to as needy.

Meaning; When harmful things happen to healthy people, they seek to understand why it happened. Victims often ask "why did you select me as your victim", and often blame themselves for what happened. We sometimes set about bombarding victims with "you musn't blame yourself", without ever understanding why it is that they're doing it. Healthy people have a belief that things happen for a reason, and if no reason is apparent, they'll look for one, even if it means blaming themselves.

Control; The reason healthy individuals need things to have meaning, is because they can then control what happens to them and their loved ones. If you can anticipate why things happen, you can exercise control over what happens. Control is about personal safety, and is directly related to a sense of autonomy and meaning.

When things go wrong, victims of harmful events act strange. Their responses might include physical isolation, such as storming out, hiding in the store room, or just saying "I want to be alone". Short term, there's no problem with any of these, although steps will need to be taken to bring closure to isolation.

There is a fair bit of shame attached to being the victim of a harmful event, as victims experience damage to their senses of meaning, autonomy and control. They feel quite fragile, and this is not how we want to appear to others.

There are four typical responses to this sense of shame. Attack self, attack others, avoidance and withdrawal.

We mentioned withdrawal earlier, and that's something we generally accept as a predictable thing to expect. But what if when one of our colleagues has a traumatic experience at work, they become enraged, and start throwing things, or abusing their workmates? Obviously this will feed into the isolation, but can you see the sense in what they're doing in view of the four responses to shame listed above? This is an "attack other" response to shame.

Attack self is a no-brainer. As our friends sit at their desk with their head in their hands conducting an internal dialogue about how stupid they are not to have dealt with it better, or for being so upset, they're silently and right before our eyes, kicking holes in their confidence. This is attack self. They don't need to be scratching at their wrists with their stapler.

Avoidance can look like anything from bravado to a long session with a bottle to self-medicate.

So what do we do with them? There they are, in the midst of their friends, acting very weird. I'll tell you what happens. We take them into the managers office, shut the door, offer to ring the counselling service for them, and send them home. We remove them from the very context which is fully resourced to assist them, and further isolate them.

Now we're not employed for being gormless, and we deal with traumatised people all the time, especially the families of offenders. So I'm wondering why we do this? Why do we remove them from their network of support and trot them off to a counsellor who they've never met before. If you want validation, normalisation, encouragement, acknowledgement or support, who do you look to? A stranger? If you want an opportunity to tell your story, be listened to and helped to make sense of what's happened, who do you want to sit down with? Someone you've never met before and who you'll probably never see again? No wonder people sit at their desks with their heads in their hands talking to themselves.

An intelligent encounter between the affected person and those who have significant relationships to them stands the best chance of putting the event to bed, and is so simple to do, there's no excuse not to. If you can get your head around asking restorative questions, congratulations, you just became qualified.

The following is a sound critical incident stress debriefing procedure built upon the Principles of Restorative Justice that speaks directly to the nature of harm outlined above. As you read through it, ask yourself this question repeatedly, thereby testing the procedure; "If I was the victim of an outrageous event at work, would this help me?"

What to do

When a workmate has experienced a harmful event at work that has left them upset;

- Go to them and ask “what happened?” You don’t need to take them into the office, there’s nothing shameful here. Who cares if others friends come up to support them? You’re a villiage of people, not battery hens.
- Don’t talk, listen. As long as it takes, and until they’re finished, listen.
- When they’ve settled down, suggest you all go and sit in the tea room where you won’t be disturbed, and take a few minutes to talk, because you want to understand what happened, how you’ve been harmed, and what needs to happen to make things OK for you. Insist, if you have to.
- Ask “What did you think when you realised what was happening?” Listen.
- Ask “What impact has this had on you?” Listen.
- Ask “What has been the hardest thing for you?” Listen.
- Ask “What do you think needs to happen to make things right?” and Listen.

While you’re going through this process, protect the persons space. The last thing you need is someone telling them what they might have done differently. They’ll work that out for themselves, and if they can’t, they’ll ask.

If the persons workmates are their friends, it means that they’ve got a relationship, and they’ll have been affected by what’s happened too. The victim is about to get a huge dose of what a therapist would take years to achieve.

Ask the others present;

- “What did you think when you realised what had happened to Julie/ James?”
- “When these types of things happen to you or your friends as it has today, what is the hardest thing for you?”
- “You heard what Julie/ James said before about what needs to happen to make things right. Can you think of anything you could do to support her/him in this?”

Then, by way of closure, go back to the affected person and ask;

- “We’re very sorry this has happened to you, Julie/ James. Is there anything that we’ve missed, or that you’d like to discuss further?”

Then thank everyone and wrap it up. But don’t leave. Find an excuse to have an informal cup of tea and a chat. This is very important. Once the substantive issues are dealt with, it is important to provide an opportunity for reintegration to occur. It’s not healthy to send everyone straight back to their desks to work. Let them drift off when they’re ready.

So what do you think? If you were the affected party, would this be a respectful way to be treated, or would you rather be given the phone number of a stranger?

Just by the way; At the end of such a process, while everyone’s chatting, listen for the laughter. It will always be there. That’s what healing sounds like.

Conclusion

When the Police say “move along sir”, they can measure their success if they look around and the person’s gone. Prison officers can measure their success if when they look around the person’s still there.

Community Corrections officers measure their success by “moving people along” too. But we have to move them from a position of being prepared to offend no matter what, to a position where they won’t offend, even if they weren’t going to get caught. We have to change their minds. It’s a big ask, and normal punitive responses don’t cut it. Regardless of how hard we work on these people, the best we can hope for is rarely adequate to our original objectives.

It’s time to stop burning yourself out. Let’s stop working hard, and start working smart. I used to find it like rubbing sticks together to fire up a bit of engagement with offenders. Restorative Justice Principles are like a box of matches- very little work, safe and very reliable.

The application of Restorative Justice Principles has profoundly influenced my practice as a Probation and Parole officer, because they provide me with the tools to engage offenders and their families in ways that prevail way beyond the interview room.

When we engage offenders in terms of how their offending behavior affects those most significant to them, we cease to become their adversary. We become facilitators in a process that requires them to abandon their offending behavior, and provides them with opportunities to repair the harm and become reconciled with those who are most able to support their reintegration into the community.

How we shortchange our clients, their families and the community, by failing to recognize in events of wrongdoing, the opportunities for growth, learning and reintegration that Restorative Justice Principles provide.

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Annexure 3

Background to The Game

Grahame Chaseling
May 2005

Background to The Game

Preamble

Over the last 19 years I've had the opportunity to work in various roles within the Department of Corrective Services, from custodial officer, industrial overseer, pre-release program officer, and more recently, as a probation and parole officer. In a sense, I've followed inmates through their experiences with corrections. As a custodial officer I was there to finger print them upon their arrival into the system, and provide care, custody and control during their incarceration. In the pre-release program, I sent them back out into the community.

During visits, I met their families. Over the years I got to know many of them quite well. I witnessed their experiences of having a loved one in custody. In many cases I watched the inmates' children grow, in weekly installments, just like the inmates themselves saw it.

Whilst many in the community point their fingers at the parents of criminals to explain the "bad people" that they've become, I watched them come in to visit their children, often accompanied by the inmates siblings who had nothing wrong with their behavior. I found the finger pointing a bit simplistic with this perspective available to me.

After a few years as a custodial officer, I applied for a position as an overseer. In an earlier life I was a fitter and turner. This qualified me to apply for an overseers position. In a sense, I was still a fitter and turner as a custodial officer; Fit prisoner in cell, turn the key. As an overseer, my job included training and supervising inmates in a work environment. The purpose of prison industries is to generate income for the department to offset the cost of incarceration, to create employment opportunities for inmates whilst incarcerated, and to increase their opportunities for employment upon release. The idea was going around that training and jobs would stop people doing the wrong thing. Hmm.

Some years later, after I had returned to general duties as a custodial officer, I got involved with the Pre-Release program. This program was designed to prepare inmates for reintegration into the community in the last stages of their incarceration. Once they were appropriately classified (minimum security) they were eligible to participate in the program. The accommodation units for the program were outside the walls of the gaol proper, and participating inmates were allowed to work and study in the community. More training and employment. Early in the mornings they'd get on their pushbikes, ride up to the train station and head off for work or to colleges, etc. They usually came back in the evening. They sometimes got to go home on day and weekend leave, to spend time with their families.

When, a few years ago, I became a Probation and Parole Officer, my experience of corrections became pretty much complete. The missing bits were put in place; Pre-sentence reports, bail supervision, and parole supervision. These elements fitted in at either end of custody, and represented the extremities of an offenders experiences with the department.

The various stages that offenders go through tend to manage them in isolation from all the others. For example, once an offender is received into prison, the emphasis is almost exclusively upon making them manageable, rather than addressing the issues underlying their offending. The response to wrongdoing whilst in custody is solely punitive. There is no attempt to develop learning from the experience.

Any attempts to prepare inmates for reintegration into the community occur right at the end of their sentence by way of the pre-release program.

In any case, the evidence was in that the way we dealt with crime wasn't cutting it. Recidivism was so high that some rethinking was indicated.

I observed many things as a prison officer, and had plenty of time to think about how we deal with offenders. You do a lot of thinking sitting up a tower.

As early as 1990, I began discussing, reading about and studying justice issues outside the department

Following is a brief account of how those activities and influences lead to the development of The Game.

While I was a prison officer

In around 1990, whilst still a prison officer, I was introduced to the writings of Charles Colson by a friend, John Patterson. John, a minister, suggested that I might find Colsons' position on justice interesting. I found Colsons' arguments in support of engaging victims of wrongdoing quite compelling. They seemed to highlight some of the limitations of a purely punitive justice system, and moved me to further explore the benefits of engaging those affected by wrongdoing in negotiating justice.

One night while I was sitting up a tower, armed to the teeth and bored out of my mind, I heard an interview on the radio of Ken Marslew, founder of the organisation Enough is Enough. Ken and his wife's son, Michael, was murdered during a bungled armed robbery at a Sydney Pizza Hut, and Ken's experience of the justice system in the aftermath moved him to found the organisation. He was outraged to find that victims of crime were roundly excluded from the justice process, and wanted victims to have a say. Ken's not a person who accepts exclusion from processes that affect him, gracefully.

I became involved in Ken's organisation, and thus came to meet some of the most impressive people I've ever known, including victims of some of the states most heinous crimes. I have never ceased to be amazed by their courage. These people taught me a lot about the implications of wrongdoing upon those affected, and the types of interventions that assisted them to recover.

Without going into the details of victimology, Colson's assertions about engaging victims and offenders in a process were confirmed. Victims of crime were clearly owed access to the perpetrators of wrongdoing to facilitate their own recovery. Further, I was astounded by the generosity and strength of character displayed by victims when they're treated fairly and respectfully. This was about process.

The VOM camp referred to a book by Howard Zehr titled *Changing Lenses*. It describes a paradigm shift in doing justice. I read it and it served to provide definition around my experiences so far in relation to dealing with offenders in isolation, and the experiences of victims when shut out of the justice process.

The only available process appeared to be victim-offender mediation. I wrote a brief paper about my findings and submitted it to the governor of the gaol I worked at. I thought he'd be as excited as I was. That's how naive I was. I still thought we were in the business of corrections, because that's what we were called. It soon became obvious that we were in the "control prisoners while they're in gaol. When they leave prison, they're not our problem" business. The governor told me my ideas were very good, but our hands were tied, changes in legislation would be required to get victims involved. Sorry. Go away.

It's embarrassing to admit now, but I then sent my paper off to someone who had access to legislators, to get the nod. The answer came back that it was a local issue.

What can I say? I was new to this. Much later I applied for study leave to do a Grad Dip in mediation. The governor told me conflict resolution was irrelevant to my job as a prison officer. Things hadn't changed.

One day we prison officers were asked if any of us would be prepared to do an AVP workshop. Alternatives to Violence were a Quaker organization who wanted to facilitate workshops for inmates. The management wanted some prison officers to do it first to decide if it was any good. I suspect that the AVP people wanted us to do it first to demolish some staff resistance at the same time. They'd had a lot of experience with gaols. A few prison officers on side can work wonders for making groups work. They'd know the prisoners were going to be there, for one thing, instead of trying to get through a gate somewhere. They might even get in themselves.

I put my hand up, always open to new experiences. Waiting for them to arrive, I had visions of a horse drawn wagon pulling up out the front, bearing ladies in long dresses, bonnets and no makeup. I'd seen Quakers on tv. Big on tradition. My first surprise was that they arrived in a car, and with makeup, the whole modern regalia.

My second surprise was who these people were. There were three women, and they all displayed unusual respect and humility- very temperate. They seemed like everyone's favorite sister or auntie. My initial reaction was that the "crims" were going to eat them alive. How wrong was I? These three and many others in the organisation were to become some of my closest friends. AVP has some of the most serious thinkers I've ever met, and these three turned out to be particular heavyweights.

The workshop was all about violence in all its forms, and ways to have ones needs met in alternative ways. As I tend to do, I got involved in the organisation, and after suitably qualifying, began to co-facilitate workshops in the community with my new friends.

AVP provided a window into a whole new world for me. The literature and experience available through the organization are immense, as is the access to individuals of uncommon wisdom. Through AVP I found myself working with many others who shared my interest in justice and fair process.

Pursuing my interest in Victim Offender Mediation (VOM) in a more formal way, I undertook and completed a Graduate Diploma in Mediation. I'd yet to discover Restorative Justice Conferencing.

I first met Terry O'Connell and his team from the NSW Police Service at an AGM of Enough is Enough,. They made a presentation to the meeting of Restorative Justice Principles and Processes.

This experience was a watershed. Sold though I was on Victim Offender Mediation, there were problems and limitations of the process around who was involved or excluded from the process, and moral imbalances (dealing with wrongdoing, rather than conflict).

Subsequent to the AGM, I began to stalk Terry and his team for opportunities to stick my head in. I attended Restorative Justice Conferences with him, and writing them up. This process demonstrated itself to be astonishingly effective at repairing harm and damaged relationships. At the end of one conference I witnessed an old gentleman who'd been nailing his door shut every night following a home invasion, slap a young male offender on the back and say "better days ahead, young fella", then go over and hug the boys mother and reassure her that everything was going to be OK. Hands up the psychiatrists who've achieved that kind of healing in an hour and a half. Anyone?

There was no doubt in my mind by this time that Restorative Justice answered the important questions left unanswered by VOM, useful though that process was. I subsequently took every opportunity to increase my knowledge of the process. Terry and his team supported this learning through literature, supervision and training. This, even while they themselves were experiencing the implications of a toxic organisational culture, as was I. Restorative Justice is very threatening to a command and control culture.

Terry arranged for me to do the Police training course in Restorative Justice at the Goulburn Police Academy, where, together with about a hundred others, I was given the opportunity to consolidate my learning. I subsequently began to facilitate my own Restorative Justice Processes in schools, workplaces and the community, with supervision support provided by Terry's team. Of particular help was Paul Herring, who traveled all over Sydney in his own time and at his own expense, to critique my conferences so that I could improve my technique and debrief my performance.

During this period, I still had my finger in a number of pies, including AVP (where I was facilitating weekend workshops), and Relationships Australia (formerly known as the Marriage Guidance Counsel), where I was applying a pure mediation model to child and family mediation. I was still a prison officer, on the executive committee of Enough is Enough, and doing my own Restorative Justice conferences in the community.

Because my predominant interest was in Restorative Justice, I began to apply the principles to these other areas whenever the existing processes were left wanting.

For example, in child and family mediation, a motherhood principle that invariably comes up is "we want what's in the best interest of our children". Most couples say this, but it can

be a bit of a throw-away line if it isn't inked in whilst the opportunity's there. This "best interest of the children" statement can be very helpful to a mediator because it's a measure to reality test proposed options against later on, if exploited effectively. A typical mediation response might be "How will you know that your agreements are in the best interest of the children?" This is OK as far as it goes, but there may be more mileage in a restorative approach. "How might what's happening in your relationship affect the children?", "Which of the children might be affected", "how, specifically, might they be harmed?" "What needs to happen, in terms of agreements, to repair this harm, or to prevent further harm?" These restorative questions can nail the "best interests" principle in a way that make it an essential feature of agreements, rather than perhaps only an option. Further, all children of fighting couples are worthy of a close examination of how the parents behavior affects them. If this is done early in a mediation, who gets the dog or the TV are put in perspective for the rest of the session.

When I had my prison officer hat on, I'd often apply RJ principles instead of the usual punitive approach to wrongdoing. "Mate, normally I'd charge you, but I really don't feel like doing the paperwork. You'll end up losing your visits for a month, and that'll only hurt your family. What about if we try to work out who's been affected, how, and what needs to happen to fix it up?" It's not rocket science.

The results of Restorative interventions in diverse circumstances were found to be consistently predictable, effective and positive. The principles provided safety and certainty for individuals where normal strategies may have left them upset, resentful, or further damaged.

My full time job was as a prison officer, and I was keen to apply the principles to offenders and their families, however this remained unrealistic, given the correctional culture. The benefits were obvious to me, but the opportunities were unavailable. If a way could be found to bring inmates together with those affected by their wrongdoing, I felt that the opportunities for them to articulate the harm would be the easy part. Unfortunately, even the idea of getting them together was anathema to the institutional culture. When you think about it, the whole idea of gaol is to isolate offenders from what I wanted to involve them in; Get them out of the community, away from those affected, restrict communication, avoid emotionality, remove choices, take responsibility away from them, and all the rest of it. If Restorative Justice was the answer, the gaol culture was a really stupid way of going about getting to it.

Some years ago I'd done a young offenders staff training course. One of the presenters was Webber Roberts. I remember being put a bit off balance by his "come, let us reason together" style. We don't get a lot of that in uniform. In all honesty I really didn't absorb much of his presentation, because it was so unexpected. He didn't say anything about deploying power or authority, or control strategies, which was what we wanted from the course. All the other presenters were busy convincing us that young offenders were victims, and really couldn't be held responsible. They wanted us to call the "crims", "clients". By the time Webber got to us we really weren't very receptive, but he impressed me as a wise person, and I wanted to find out more of what he was about.

I subsequently visited Webber at the Pendle Hill Attendance Centre, which he managed. He had developed a program over many years which was quite different from anything I had ever seen. My lack of experience in these things at the time precluded me from fully appreciating his developments in this type of intervention. The greatest benefit to me of

this contact was access to someone with a clearly superior intellect, who was bent on doing useful work with offenders in the criminal justice system.

Moving to Probation and Parole

Some years later, and as I became more and more dissatisfied with the correctional environment, I welcomed Webber's invitation to do some volunteer work at the Windsor District Office of the Probation and Parole Service, where he had taken up duty as manager. Because the only skills I had to manage people involved in wrongdoing as clients of the Service were, I began to apply Restorative Justice Principles right from the start. In gathering information for a pre-sentence report, I used restorative questions to engage offenders. Webber assessed the depth and range of information I had gathered through these questions as quite useful. Webber's management style and the access Probation and Parole officers had to engaging clients with those affected by their behavior convinced me that this was where I should be, rather than gaol.

I applied for a position as a probation and parole officer at the earliest opportunity, and succeeded in securing a position on my second attempt. On ceasing duty on my last day as a prison officer, I went home, wrapped my uniform, boots and all, in plastic and drop kicked it under the house. As far as I know, it's still there.

Although I commenced duty at another office, I was moved back to Windsor whilst still a fairly new officer. Webber encouraged innovation to improve the quality of the interventions we provided our clients, and I consistently employed Restorative techniques in my supervision of clients on a one-to-one basis.

After some time, I was asked if I would consider taking over Developmental Programs, where suitable clients were supervised as a job lot, rather than individually. I accepted this opportunity without a second thought. Webber had made it clear that I was free to modify the program as I saw fit, provided I could argue my rationale.

I set about re-writing the program as soon as practicable to become congruent with restorative justice principles. It became apparent that some aspects of a restorative approach to programs were inconsistent with the involuntary nature of our clients, and the requirement for sound facilitation. These issues were eventually addressed with the emergence of The Game, which is discussed elsewhere.

I didn't realize it at the time, but the window of opportunity for applying Restorative Justice Principles to a developmental program framework was to close very shortly after the program was fully developed. I had just enough time to road test the program, with very pleasing results, when Webber was whisked away to other duties. The support, wisdom and courage in leadership that made The Game possible was gone. My reassignment of duties followed right on the heels of Webbers. But that's another story.

Where to from here?

A recent innovation in corrections is Throughcare. This is about making all of an inmates various phases of contact with the department meaningful in relation to the others. If throughcare could become a reality, we would be preparing offenders for their release

back into the community from their first point of contact at the pre-sentence report or bail supervision stage.

A Restorative Justice Process is made up of what happened, who's been affected, how, and what needs to happen to repair the harm. If these questions were asked at pre-sentence report stage, and case plans were built around the answers throughout their contact with corrections, throughcare would be a reality, and we'd be doing our job. We no longer have the excuses to keep doing it the way we have in the past. We're unable to say "What we do works, because it doesn't. Never has. We can't even say "We don't know what else to do", because we do know. The effectiveness of Restorative Justice is in the book. The principles are being applied all over the world, by all sorts of jurisdictions, including corrections.

Irony isn't a strong enough word to describe the advent of Throughcare in a department like ours, whilst we decline to apply the framework to Restorative Justice.

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Building Restorative Prisons

FROM A SPEECH BY TIM NEWELL

Tim Newell worked for the Prison Service in England for 37 years. He recently retired after ten years as the governor of Grendon and Spring Hill prisons. As governor, he avoided the often punitive and stigmatizing practices of typical prisons. Instead, he created a therapeutic community environment that incorporated principles of restorative practices. The following is from his plenary speech at the IIRP's Third International Conference in August 2002. In this speech he discussed his experience building these model prison communities, prison culture and how restorative practitioners can overcome institutional resistance.

My first experience with restorative work was actually as a victim. I was living onsite of a young offender establishment. I had been in the job a couple of years and my bachelor home was burglarized by one of the offenders. We were able to quickly establish who it was. In discussing with Barry why he had done it, he said that he was quite interested in getting into a home setting and was interested particularly in my home. Being a bachelor and being at the start of a job, my home was rather sparse. He was unfortunately not well rewarded by the experience. Most young offender establishments have a culture that puts quite an emphasis on personal cleanliness and tidiness. One of the interesting things in the dialogue with Barry was some fairly strong advice he gave me on how to tidy my place up.

I celebrate the work that is taking place at present within prisons. They are demanding



I'm hoping to make a plea to you all to think about your own practice and how that can be applied within a prison setting. I suppose it is because this is where the need is the greatest.

—Tim Newell

places to work in and are very challenging environments in which to introduce some of the ideas we've been hearing about at this conference. Over the years, one of the questions

I would regularly be asked was, "Why aren't there more Grendons?" It really is a unique environment where the culture is very different from other prisons. The predominance of fear that dominates most prison settings was by-and-large removed over a period of time through the involvement of and the trust that developed between some very heavy offenders. Half of the 250 prisoners are life sentence prisoners, murderers, rapists and serious offenders. How is it that this culture is not spread to other prisons?

Sadly, prisons are often lacking in hope for the future. If I were a prisoner, I would not be too optimistic about my chances, given the reconviction rates we are dealing with. For young offenders in England, we're looking at a return to court at 85 to 90 percent within two years of being released. For adults, we are looking at 55 to 60 percent returning to court and a conviction within two years of release. It's currently something like £35,000 in England to keep someone in for a year. It's extremely expensive. We now have over 72,000 people, which goes up every week and every month.

Given that the values of restorative work are in conflict with the experience of imprisonment, why do we work in prisons? Why am I asking that we try to focus our work much more in that area? I'm hoping to make a plea to you all to think about your own practice and how that can be applied within a prison setting. I suppose it is because this is where the need is and where the need is the greatest.

EFORUM

The picture that is often presented to me is that it is hard working in prisons. There are the restorative champions who have a lot of information and a lot of skills that they are bringing with them. They work hard to try to move people and ideas. There are often many observers just watching to see what will happen and quite often it feels as though there are a lot of people who are obstructing. This

I suppose it's the one advantage of a prison setting. You have people, you are containing them and you can offer them choices and chances. You can do some work with them within a boundary.

resistance is not personal. It is a dynamic. It's a dynamic that comes from within the organization. We'll look at ways in which, perhaps, it is possible to get through some of this obstruction.

I will try to answer a question that was put to me recently. I was at a conference looking at the work of the Thames Valley Police. The assistant chief constable was sitting next to me and handed me a card which read, "Why is it so hard to move the mainstream of the criminal justice system from doing things we know don't work to doing things we know do?" I expect that's a question many of us have been asked over the years. He asked me to email him an answer. I'm still working on it. I started doing something about it.

Let's look at prison culture and values. Obviously, the security role is predominant within most prison cultures. Also, there is a strong subculture of prisoner secrecy and distance from staff. In order to survive, there is secrecy and subculture development. The prison culture is dominated by risk avoidance because sometimes the risks are considered to be far too high. The political pressure is on to try to avoid taking too many risks and avoid making too many mistakes. There is a very hierarchical structure within the prison setting.

In contrast, Grendon had a very clear prime objective. Therapy was its purpose. Men came there to seek to understand themselves and resolve aspects of their past behavior in exploring their current behavior. The treatment ethic was dominant. Everybody was involved in it, including prison officers, people who worked in the administrative departments and myself as governor. I was accountable. I've had several interesting sessions in which I was called down to community meetings to explain decisions that I've made and give an account as to why things happened in a certain way. The considerable social distance between staff and prisoners was very greatly reduced in order to actually carry out this work.

People were seen very much as equals within the setting. All staff and all prisoners were regarded as therapists. In a therapeutic community, that's the role everybody takes on. You don't have experts. You don't have individual work. You work very much as a community. Whenever there was an issue or a problem, the mantra was, "Take it to your group." You don't resolve it in private. You resolve it in public. The ethos of the management was to actually manage risk because the treatment was dependent upon allowing people to make mistakes and establish wider boundaries for their own behavior.

The staff structure was extremely flat. We tried to ensure that as many decisions as possible were made within the communities where the staff was working directly with prisoners. So there were very few decision-making committees within the establishment. One of the key things was that the process was important. Everything that was done was done within an inclusive process so everybody was involved. There was an openness about decisions even when pretty horrible decisions had to be made, such as people being moved on or programs being shut down for lack of finance.

Within that environment, Grendon was able to work. This is in contrast to other prisons. We were able to maintain the work because it was effective. We certainly had the lowest escape rate in England. We had the lowest assault rate of all prisons. Also, we had the highest involvement of prisoners in

programs: 100 percent in Grendon. The staff were committed to the regime and practice, so there were no industrial relations issues at all in that environment. All prisoners looked after each other in terms of suicide prevention, so we were able to survive that as well. There was a long waiting list of prisoners wanting to come to the place. We had twice as many people on our waiting list as places in the prison. The reputation spread amongst prisoners that this was the place where they could actually achieve some understanding of themselves and perhaps some capacity to move on and not cause further damage.

Obviously, victims of those people who are in prison are often those most seriously affected by crime. The offenders have been the most damaging people. From my experience working with some of the most damaging people, they are also the most damaged people. Part of what needs to happen in prison is that personal experience of damage should be explored within that setting. I suppose it's the one advantage of a prison setting. You

When the person first comes in, they are asked to think about the context of their offense, the effects of it on others and to look at what they can do during their sentence to do something about that.

have people, you are containing them and you can offer them choices and chances. You can do some work with them within a boundary. That's one of the real advantages.

The communities of those people who are in prison are often the most relieved that the person is now behind the wall. But they are often the most anxious about what's going to happen when this person returns and how that person is likely to behave. The context in which the offense occurred and the effects of the offense are very rarely considered within the prison setting. Before I retired, I was fortunate to have a short period doing some

work in three other prisons. We worked with a group of staff within those prisons to look at the functions with which you could use restorative processes. In Winchester, Bristol and Norwich prisons we are working with the whole approach towards sentence management and sentence planning. So when the person first comes in, they are asked to think about the context of their offense, the effects of it on others and to look at what they can do during their sentence to do something about that.

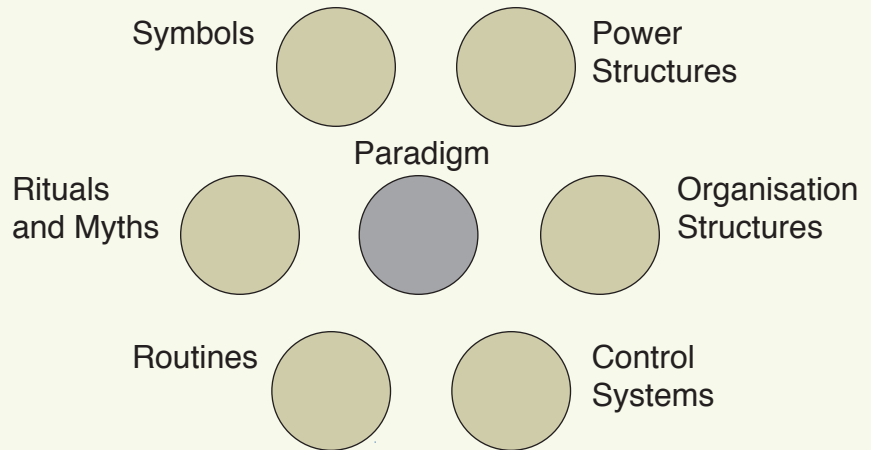
We are working with the anti-bullying policy and the race relations policy. We are working with the adjudications or infractions policy. Instead of going through a formal adjudication process where the warden is the judge and jury and gives the sentence, we suspend all of that and have a circle to determine what should happen as a result of an assault or other anti-social behavior within a prison context. Those are some of the things that are happening within those three prisons now.

There is a major project taking place in England and Wales at present, in the Thames Valley. It is a big research project based in a metropolitan area. It involves about five big prisons, particularly in the Thames Valley, which includes a prison named Bullingdon. There are formal conferences taking place with serious, violent adult offenders. The Home Office has funded it.

There was some concern that the work within Bullingdon prison was taking place without any incentive at all. Prisoners do not get parole or shorter sentences, just offered the opportunity [to participate in a conference]. Out of the 150 or so who fell into this category, about 130 have taken up the offer of doing it. They have now had over 50 conferences in the prison within the last nine months or so, which is really a roller coaster approach, I'm afraid. It's going very fast. There has been a lot of staff trained to do it, including prison guards facilitating conferences. The effect upon the culture at Bullingdon is something we are looking forward to examining.

In a place called Brinsford, a young offender establishment, there is some very imaginative mediation work taking place

The Cultural Web



Excerpted from "Restorative Practice in Prisons: Circles and Conferencing in the Custodial Setting" by Tim Newell (www.restorativepractices.org/Pages/mn02_newell.html).

In considering the application of restorative ideas in prisons, we could use the model of the cultural web. Through this we could audit the way in which changes are already taking place in some prisons and how more could be achieved through this methodical approach towards cultural change. Restorative practitioners are beginning to work more in prisons and this effort could be considered through the model of the cultural web so that the work is effective within the context of the project but also in affecting the wider prison community.

The way that some of this work has been approached has influenced the functional areas of work described below. This work has been achieved by prison staff being dissatisfied with traditional ways of operating and realising that through restorative practice a more satisfactory process could be developed with more just outcomes.

Through audit and developing practice it is possible to see there are opportunities in the following areas of functional activity in prisons:

Induction programmes for prisoners. Establishing norms through staff and peer tuition and example, through setting standards and developing expectations of taking responsibility during the sentence can be very effective at the start of the sentence when prisoners are often at their most sensitive and receptive.

Complaints and requests systems. The requests and complaints of prisoners can be considered through an open process of mediation and direct communication in order to establish what happened, who was affected, in what way and what should be done to put things right. This can be in contrast to some current practice that is often secretive in process and unsatisfactory in outcome for all parties.

Adjudications. Disciplinary hearings form a critical focus of many prison systems. How infractions of the rules are considered by the prison sets the tone of staff attitudes and prisoner compliance in many prisons. To offer an alternative process of a circle is a dramatic way to express the concept of staff and prisoners working together to resolve conflicts rather than reacting to them stereotypically. This process can be seen to gain a win-win setting, rather than the inevitable win-lose one of blame and scapegoating.

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between victims in the community and young offenders within the establishment. This includes face-to-face meetings, but more often includes reports, letters or videotapes that are sent in order to try and help both parties understand what happened.

The other aspect is the application of restorative principles to the whole prison. I suppose a place like Grendon would be seen as a totally different cultural approach where the whole prison is accountable and tries to work to a different set of values. We established a core team of prison officers and other staff, a multidisciplinary team. We did some awareness training for all prison staff. We did an audit of all the processes, which produced an action plan that we then prioritized. We have some allies now on the restorative side who are pushing a bit. The obstructers are getting a bit weaker and the observers are jumping off the fence. Since last year, another prison has opened with the same principles. It is called Dovegate. There are other people doing this sort of work, individually motivated, who have to carve out space, protocols and safety to carry out their practice. They have an uphill struggle every time they seek to make this sort of intervention.

The big challenge that is coming up is how do we seek to use this approach with the Headquarters and how do we try to help politicians and mandarins to work in a restorative way. There are some openings coming up. The Home Office is very concerned and is trying to reduce victim dissatisfaction. There are no strategies yet as to how that is going to be done, but one of the key things already coming out of the research from Bullingdon and the Thames Valley is how strongly victims feel committed to the process and how much they have gained from it.

Why is it so hard? The resistance is not a personal thing. I think it's an organizational thing, it's a dynamic thing and it's a cultural thing. Because of the very unusual nature of the work, prisons have evolved a culture, a paradigm and a mindset that determines the way they do the things they have to do. This is a brief look at a model that is more fully described in my paper "Restorative Practice in Prisons: Circles and Conferencing in the Custodial Setting." (To read this paper go to: www.restorativepractices.org/Pages/mn02_newell.html.)

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Anti-bullying strategy. This work, when informed by restorative justice principles, is based on developing an awareness of behaviour and confronting bullying through conferencing rather than by removing the victim, which is sometimes seen as the solution. To develop a culture in which there is some challenge to the control systems of prisoners' norms of secrecy is not easy but can be achieved through consistent application by staff of processes that make it safe to be honest.

Race relations. Similar handling of equal opportunity issues through open ways of mutual respect can establish for staff and prisoners that such matters are taken seriously. Their concerns will be handled fairly and openly whenever possible, recognising the perceived victim's feelings and willingness for such a process.

Anti-violence strategy. The same considerations apply as for the anti-bullying strategy. The strategy to be developed could well include training for staff and prisoners in conflict-resolution awareness and skills, perhaps through a programme like the AVP (Alternatives to Violence Project). The establishing of peer mediators, as with the 'listeners' programme for suicide prevention and the peer education-tutoring scheme, will play to the strengths of many prisoners in managing difficult settings and in being able to support each other.

Preparation for release. When sentence planning is done in partnership with prisoners many restorative justice possibilities arise for accepting responsibility for the crime, establishing some accountability for the future to victims, primary and secondary, and a commitment to the community to which prisoners will return. The resources of the prison—work, education, leisure, offending behaviour courses and other programmes—can be channeled to this effect. Victim empathy and accountability for criminal behaviour are expressed in these programmes in which prisoners take responsibility for their behaviour. This is the ideal setting for voluntary compliance, honesty and contrition to be expressed.

Resettlement. Preparation for resettlement should start early in the sentence and should engage the agencies that are likely to be affected by the prisoner's release, such as housing, health and employment, as well as the criminal justice agencies of police and probation. On home leave or temporary release from prison, offer the possibility of a conferencing of agencies, including justice ones, with the prison providing some feedback about the course of the sentence and about future expectations. Family and victims could be involved in this process that is focused on the issues of returning to the community.

Circles on release. Once released, the prisoner often experiences difficulties in sustaining the plans and the intentions when in custody. There is sometimes a need to provide some community support and involvement through a formal Circle of Support and Accountability.

Prison Outreach. Staff and prisoners can serve the community by educating groups about the effect of imprisonment through the sharing of information about prisons and about the life stories of offenders.

Staffing processes. In order to integrate restorative justice practices, principles and processes into the prison's life it is important that prison staff feel that they are treated with the same respect and consideration. Thus, dispute and conflict resolution procedures should be developed offering mediation and conferencing for staff with trained facilitators. The personnel management of staff should operate with the same principles of concern for the individual and the respect for their personal development within the professional setting.

What I would suggest is that we look at using the model to think about the six factors that focus on the paradigm in any organization you're working in. I don't think it just relates to prisons. I think every organization has this cultural web and the structure that supports it. Most consultants go for the easy ones—control systems, power structures and organizational structures—because they are more readily accessible. The important thing for us, I think, is to focus on the subconscious areas: the stories, symbols and rituals.

I see this as the most serious arena for our work. It's life and death matters that we are considering within prisons.

Through that, one can assess the nature of the paradigm and look to develop our own stories, of which we have a massive amount. Our stories, our symbols and our rituals can help the organization meet its needs.

Obviously, stories are vitally important in any culture. What we say to each other and others about how we celebrate or denigrate what happens can determine how we feel about the place. The symbols we have, such as name badges, are important. The simple things that we use within prison settings. The symbolic use of names is vitally important. The director general saw that in private prisons in England, staff refers to prisoners as Mr., Miss or Mrs. So-and-so. Whereas in the public sector prisons, they are always referred to purely by their second or surname. He asked us all to think about how we could change that. The resistance to that has been tremendous and so deeply emotional that it obviously represents a serious symbol that will be difficult to shift.

Rituals and routines are vitally important as well within the subconscious of the culture. What rites of passage are there within the organization: rites of celebration, rites of degradation, rites of challenge and rites of counterchallenge? Paradigms are in the middle of this, which is what is being protected.

I hope I've provided some ideas on how we can get through this resistance and how we can work to change the current state of prisons and our dependency upon them. What I would like to close with is to ask that you consider within your own practice the possibility of moving some of that into a prison setting: either to help people towards their release or to involve yourself during their time in the prison. I see this as the most serious arena for our work. It's life and death matters that we are considering within prisons.

I would like to end with some silence. But before the silence I would like to quote something that epitomizes how serious the need for restorative practice is in our society. This is from an English novelist, Ian McEwan, who wrote in *The Guardian* on the 13th of September last year [2001].

"If the hijackers had been able to imagine themselves into the thoughts and feelings of the passengers, they would have been unable to proceed. It is hard to be cruel once you permit yourself to enter the mind of your victim. Imagining what it is like to be someone other than yourself is at the core of our humanity. It is the essence of compassion and it is the beginning of morality." ①