

In 1995 I got my first job – the junior criminal defence lawyer at the North Australian Aboriginal Legal Aid Service (NAALAS). I was earning \$18,157 per annum and loving my work.

There were five other criminal defence lawyers. The mood at the time was buoyant. I felt I had dropped in on a wave of change that was about to roll over the country. Keating's Redfern speech and the Royal Commission into Aboriginal Deaths in Custody were still fresh. The courts were busy, the jail full and Aboriginal people over-represented in the system, but that was soon going to change.

Eighteen years later and NAALAS (now the North Australian Aboriginal Justice Agency) has at least eighteen criminal defence lawyers servicing the same area, each one as busy, if not busier, as I was in 1995. The jails are full to bursting point and a new 'super jail' is being built in Darwin at a cost to the taxpayer of around \$800 million. And Aboriginal people have an even greater over-representation in the criminal law system.

These trends are reflected across the country. There has been change but it has been predominantly negative.

The criminal law system in the last eighteen years has been characterised by; policies focused on getting more people into jail; half baked attempts at 'therapeutic jurisprudence'; a failure to properly fund and support promising grass roots initiatives; and increased spending on jails, courts and police.

There are certain elements of this deplorable situation that, to this point, Governments have demonstrated an inability to comprehend.

These elements are as follows:

- The Aboriginal population is growing, rapidly;
- The unresolved traumas of previous generations are being

- passed on to the next generations in a variety of ways;
- Aboriginal people have different ways of looking at the world than non-Aboriginal people;
  - A one size fits all approach can never work due to the uniqueness of each Aboriginal community;
  - Prison is not a deterrent to anyone but the middle class;
  - Successful crime prevention programs are always designed and implemented at a local level;
  - Prevention always requires harder and smarter work than attempted cures but is always significantly more cost effective in the long run.

## **The Cycle of Trauma**

This cycle will not be broken anytime soon. Australia must accept that in colonizing this country horrendous violence has been inflicted upon Aboriginal people. The memory of this still recent violence is a strong component of the collective Aboriginal psyche and will remain so for many centuries to come.

Aboriginal people are still not valued in Australia unless they have significantly assimilated.

Non-Aboriginal Australians still have a strong colonizing mentality and this is unlikely to change.

A thorough and objective study of the history of interaction between the Yindjibarndi in Western Australia and FMG is all that is required to understand the place of Aboriginal people in Australia in 2013 and how the system is geared against them.

I strongly urge the committee to read Frank Rijavec's PhD Thesis, *Sovereign Voices* (<http://researchrepository.murdoch.edu.au/3427/>) It is essential reading to come close to understanding the Aboriginal perspective.

The outcome of this history and present lowly status is higher levels of substance abuse, suicide, domestic violence, child abuse, low self-esteem, mental illness and crime.

The answer is quite simple. Support programs aimed at healing the trauma and stop perpetuating the trauma.

Perpetuation of trauma can be reduced by creating stronger barriers to unconscionable conduct in remote areas; ensuring an equal playing field by the creation of much stronger independent assessment bodies and most importantly, genuinely supporting those enterprises that actively promote Aboriginal values and generate Aboriginal self esteem (e.g. Juluwarlu).

Easier said than done, but the answer is clear.

## **Healing**

There seems to be an aversion in the Australian psyche to the word 'healing'.

This is not some new age concept. It is a matter of common sense. Every time a child sees violence, has violence inflicted upon them, experiences racism or suspects they or their family are considered inferior, their psyche is severely damaged.

Unless treated, this damaged psyche is at serious risk of influencing harmful behaviors.

It is hardly surprising that most of the prison population have suffered severe and untreated childhood trauma.

It has been my experience that the rare few children that have managed to access appropriate assistance to overcome trauma have not gone on to commit further crime.

It has also been my experience that this assistance must be multifaceted, intensive, and ongoing over a lengthy period and must always be delivered by a closely-knit team combining well-trained and enthusiastic professionals and strong local people that the children trust. Further, the older the person the more intensive the assistance required.

It is not enough to offer training and employment. Those things, whilst important, do little to heal a severely damaged psyche. It is like giving an aspirin to someone with a broken leg.

I strongly urge the committee to examine the Balunu model (<http://www.balunu.org.au/>) and talk to founder David Cole. David has had to run this program predominately without Government support and funding. His is not an isolated story.

It must be acknowledged that a lot of kids are never going to be turned around due to Fetal Alcohol Syndrome, mental illness, brain injury and hearing damage. These problems have reached endemic proportions in remote communities. Once they exist they can only be managed and not reversed. This creates an extra layer on top of a standard Justice Reinvestment approach.

### **Bureaucratic destruction**

What often happens to local programs that show promise is they get quickly absorbed into and taken over by the bureaucratic machine. They get funding approved to them but ironically very little of this funding actually helps advance the program. And the program ends up losing the very essence that made it successful in the first place.

I strongly urge the committee to read *The Little Children are Sacred Report* ([http://www.inquirysaac.nt.gov.au/pdf/bipacsa\\_final\\_report.pdf](http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf))

I declare that I was involved in writing that report. However, it

summarises all of the issues relevant to Justice Reinvestment in Australia and should be essential reading for the Committee.

The report also contains 97 recommendations, which if ever implemented would go a long way to setting up successful Justice Reinvestment.

I urge the Committee to examine the fate of the Warlpiri Law and Justice Committees, which is touched on in the Little Children Are Sacred Report. A glaring example of a potentially very successful locally driven Justice Reinvestment strategy that was destroyed by a bureaucracy that failed to understand it. It is my strong opinion that the recent well-publicized problems in the community of Yuendumu (including the matter allegedly involving Liam Jurrah) would have been averted if the Law and Justice committee had of received continuing and appropriate Government support.

Whenever programs like this are suddenly axed (in this case quite subversively) it heavily impacts on the resolve of the people and their self-esteem. It makes the next attempt to deal with the issues that much harder. It seems there is never space for people to grow successful programs over time.

Many creative and dedicated persons are now turning away from Government funding and support and seeking alternative sources (ironically often royalties from mining ventures). It is a shame that leadership and initiative on nationally important issues is now considered to be in the domain of private enterprise than with those who are elected to lead.

### **Jail is not a deterrent**

For many Aboriginal people Jail is an inevitable part of life. Most Aboriginal people in remote communities at least know a close family member who has been to jail.

Ironically, living conditions are often healthier in Jail for Aboriginal people living in remote areas.

In my experience there is very little fear in Aboriginal communities about going to jail.

Sadly, the uninspired primary response to this state of affairs has been to further entrench Aboriginal people into this dead-end cycle. This is being done by creating more 'Aboriginal friendly super-jails' like the one being constructed in the Kimberly and by politicians like Bess Price stating that prison is 'good for Aborigines'.

The evidence from America is overwhelmingly supportive of the fact that jailing people is more expensive and less effective at preventing crime than serious Justice Reinvestment. No doubt the Committee is aware of the overseas research.

### **A typical response**

In the last eighteen years the typical Government response to crime has been to build bigger jails, build more police stations, pass mandatory sentencing legislation and forcibly intervene in peoples lives.

The focus is always on punishing and jailing perpetrators of crime rather than on trying to reduce crime in the first place.

It is a proven vote winner but is totally lacking in logic, common sense and creativity.

Further, any program that shows any prospect of rehabilitating people has invariably been scrapped – usually with a change of Government – only to be attempted in a different guise at a later time. The wheel is continually being reinvented.

There is no building on success or opportunity to learn and grow

from failure. The new NT Liberal Government recently shut down the latest incarnation, SMART Court and rather than replace it decided to have another crack at mandatory sentencing (despite zero evidence as to its effectiveness last time around and positive signs as to the effectiveness of SMART Court.

I do not write this submission as some rabid proponent of leftist idealism. I regularly oscillate between left and right ideals. I do believe there is a place for jail. I do believe that sentences are not tough enough in many circumstances. Justice Reinvestment is not a panacea for everything. There will always be people that society needs protection from.

However, in my experience, roughly 95% of the thousands of clients I have represented over the years would have benefited greatly from a Justice Reinvestment approach. I believe that most, if not all of those persons, would not have continued to commit crime if they had received intensive assistance to overcome the various issues plaguing them.

A strong Justice Reinvestment program in the NT in the last eighteen years would have:

- Saved millions of taxpayer dollars;
- Created more jobs (Justice Reinvestment requires many more workers than a jail does);
- Reduced crime significantly;
- Reduced recidivism significantly;
- Created more employable people;
- Helped to break the cycle of trauma.

### **Hard and smart work**

Implementing a successful Justice Reinvestment approach in Australia is going to require a mountain of work. The political hurdles are of themselves almost insurmountable.

The level of over-representation of Aboriginal people in the Criminal Law System and the complex issues they face add an extra dimension to what is required for Justice Reinvestment to be successful.

I should note that I believe Justice Reinvestment will benefit everyone regardless of race. My focus is on Aboriginal people in this submission as that is whom I have mostly worked with and whom I believe can benefit enormously as a people from such an approach by Government.

If it is ever to happen it has to be done properly and not half-baked. It will require an enormous initial investment, a huge shift in resources and at least a ten-year commitment to working hard and smart at it.

This submission is rushed, rambling and unedited, as I was struggling for motivation. I do not believe that the political will, practical know-how or the resources necessary on the ground presently exist in Australia to make Justice Reinvestment a reality. However, it is something I strongly believe in and I decided at the last minute to put something on the public record.

I realize that there is nothing in this submission that has not been said before or that the Committee does not already know. I just hope that parts of it may serve as small sticks to add to the rapidly growing international fire that is burning down the idea that jails prevent crime. The evidence is becoming clear that there is a more intelligent, humane, efficient and cost effective way of dealing with crime.

If you require anything clarified or would like further information you may contact me on . I wish the Committee all the best with the Inquiry.

Stewart O'Connell  
15 March 2013