A question of attitude

Marion Janner describes how the organisation 'Payback' is working to provide sentencers and the public with accurate information about sentencing and its impact.

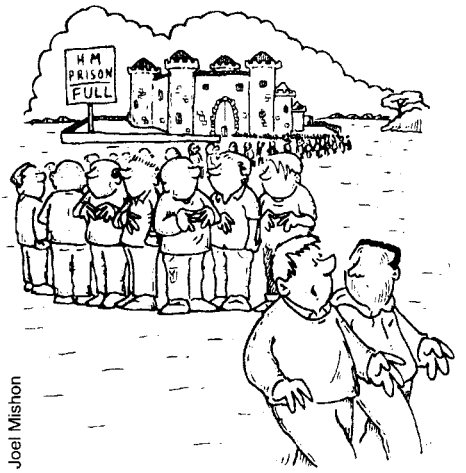
"Yes, my fellow magistrates and I like to send as many criminals as possible to prison. It's our favoured disposal." This is what I'm never told by magistrates. On the contrary, whenever I introduce Payback as an organisation that's campaigning to reduce the prison population, they invariably insist that they use prison as the last resort, and will do all they can to avoid sending anyone to prison. And that this is completely representative of all other magistrates' approach to sentencing.

There are some big misperceptions about sentencing, and these have serious consequences. The huge escalation in the prison population, from about 44,000 in 1993 to about 65,000 now (plus 2,000 on home detention curfew) would be sad but inevitable if there were many more crimes being committed, but this hasn't been the case. Until recently, crime has been falling during this period, and the only credible explanation for the shocking increase in imprisonment is that there is a chain of misperception, starting, and arguably ending, with sentencers incorrectly believing that the public want more punitive (i.e. more prison) sentencing.

Public support for community penalties

It is easy to see how such a view is shaped and promoted by some parts of the media and some politicians. But it's wrong. Michael Hough's research over the years has repeatedly shown that the public have an undeserved reputation for being punitive. The most recently published research on what the public think about sentencing, Attitudes to Punishment, knocked a few myths on the head, while highlighting some others. The demolished myth was that the public can't get enough of prison as a court sentence. When asked to provide a sentence in a specific case of burglary, people favoured sentences that were on balance little different from, and if anything more lenient than, current sentencing practice. And, when people were given a simple 'shopping list' of court penalties, they shifted from the majority preferring prison for non-violent offenders to a majority preference for community penalties.

The misperceptions that are recorded in this research are about the public's knowledge of sentencing and sentencers. Members of the public considerably under-estimated the severity of sentencing patterns, and this is related to their largely negative views of sentencers. The less that a group of people knew about what actually happens in courts, the more likely they were to want harsher sentences.



Joel Mishon

The role of Payback

This is where Payback comes in. Our task is to disrupt the chain of misperceptions about sentencing, so that the public become properly informed about the full range of court orders, and sentencers are aware of the public's support for community rather than custodial sentences for non-violent offenders. The legal position about sentencers taking public opinion into account is inconclusive. Cases such as R. v Broady (1988) suggest that it is reasonable for sentencers to "pass judgment in the way which is generally acceptable amongst right-thinking, well-informed people".

It is inescapable that perceived public opinion will, and does, have an effect.

Sentencers also need to be more consistently aware of sentencing trends. How many know, for example, that in 1992 of the people charged in magistrates' courts with indictable offences, five per cent were given an immediate prison sentence. Yet in 1998 the figure had more than doubled to 11.5 per cent. And prison sentences are getting longer. For example, from 1992-1996, there was an over-inflated rise in average sentence lengths for adults from 21 to 23 months in the Crown Court.

The figures are, of course, but a drop in the statistical ocean. A post-it note in the stationery warehouse of criminal justice facts and figures. The problem with enabling the public and sentencers to be informed is, ironically, the deluge rather than the paucity of available information.

The community sentencing demonstration projects in Teeside and Shropshire (1997-98) were set up to increase sentencers', and the public's, level of knowledge and confidence in community penalties. It was recognised that sentencers needed to have better and more systematic information about the range, quality and outcomes of local probation programmes. Videos, information packs, training sessions, visits and

other communications tools were organised, and sentencers felt that they were better informed as a result.

Those of you rushing through this article in order to return as quickly as possible to cyber-space, will have spotted that the Internet was one resource that wasn't used. There hasn't yet been any research on Internet use by sentencers, but judges are increasingly using computers as an integral work tool. Our new web-site (www.pavback.org.uk) will illustrate that the Internet offers particularly strong ways of conveying complex, dry information in an attractive and memorable way. Affordably.

Information is the key

It is debatable whether it is appropriate to 'persuade' sentencers of the value of community punishments. Certainly, they are - quite correctly - adamant about the importance of their independence, and the need to consider each case on its own merits. But it is self-evident that sentencers need to have the best possible information about all court orders. And, depending on who is providing that information, there is likely to be a greater or lesser degree of emphasis placed on the relative merits of custodial and community sentences.

Sentencers may still regard prison as the court order of last resort, but the threshold has moved. It is their tendency to send more people to prison, for longer periods, that has resulted in the record numbers of prisoners. Payback believes that providing accessible information is the way to disrupt the conjoined myths that sentencers are over-lenient, and the public want more imprisonment. We hope that, in partnership with colleagues in other criminal justice agencies, we can provide convincing information about the range and effectiveness of community penalties, and of the public's support for these. ■

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Restorative justice in Australia and New Zealand

Kathleen Daly describes the range of restorative justice initiatives Down Under.

Australia and New Zealand are the recognised world leaders in experimenting with the principles of restorative justice. Some jurisdictions tie their practices to the theories of 'restorative justice', others to 'reintegrative shaming', and others to a mixture of both and additional elements. Such theories are not given in the legislation, but rather in procedure or practice manuals and research has begun to uncover the range of practices operating under these labels. Although it is possible to highlight what Australian jurisdictions are doing (Bargen 2000), practices may differ from legislative or administrative guidelines. For New Zealand and each of the eight Australian states and territories, there are different histories and political backgrounds preceding conferencing, and this affects how the idea has taken hold and how it will evolve in these jurisdictions.

Family group conferencing

For adults, conferences for diversion and pre-sentencing were introduced in the mid-1990s. However, the main thrust of developments so far has been in the sphere of juvenile justice. In the late 1980s, family group conferencing was legislatively established in New Zealand as a major component in the handling of youth justice cases and child protection matters. The 'New Zealand' model, which has both a police officer and conference coordinator present, is the preferred model in NZ and Australia. Youth justice conferences are meetings attended by an admitted offender, a victim, their supporters, and others, convened by a coordinator and with a police officer present, whose purpose is to discuss the crime and how it should be handled. I give more attention to developments in Australia than in New Zealand.

Developments in Victoria, Tasmania and Northern Territory have so far been limited. In the Australian Capital Territory (ACT) the police have run conferences since 1995 in connection with the Re-Integrative Shaming Experiments (RISE); though these initiatives had no legislative basis. The main legislatively backed developments in the 1990's were in South Australia, Western Australia, Queensland, and New South Wales and in those settings there has been diversity in organisational placement, practices, and theories used.

Australian initiatives

Drawing from legislation, administrative guidelines, and procedure manuals, here are some highlights of what is happening today in Australia.

- Conferencing is mainly used in criminal matters, not in care and protection decision-making, except in South Australia.
- There is great variety in the numbers of (youth justice) conferences held in each jurisdiction annually. These range from about 40 per year in Victoria to up to 1600 per year in South Australia.
- In South Australia, which has the most complete statistical data on juvenile justice outcomes, of the ways police can refer files — for formal caution, conference, and court — over a four-year period, 17 per cent of files have gone to conference for disposition.
- Referral to conference is

typically used as a diversion from court process, but in several jurisdictions conferences can also be used as a pre-sentencing option.
- While conferencing is mainly used in handling cases that come to police attention, it is also used in schools and workplace disputes in Queensland and New South Wales, as part of the 'Transformative Justice Australia' initiative.
- In Queensland victims have veto power over whether a conference can be held, and in Western Australia, Queensland, and New South Wales victims have veto power over the conference agreement or plan if they are present at the conference.

Research

Major research studies have been conducted or are underway. These include studies of conferencing in New Zealand (Maxwell and Morris 1993), in the ACT as part of the Re-Integrative Shaming Experiments (RISE) (Sherman et al 1998; Strang 1999), and in South Australia (Daly et al 1998).

New Zealand

Research in New Zealand shows that:
- Most families and young people (offenders) felt involved in the decision-making process.
- Most families and young people were satisfied with the outcomes reached.
- Almost all conferences resulted in agreed outcomes.
- Most young people carried out agreements made in the conference (that is, performed the community work, made apologies, and the like).
- Compared to young people and their families, victim participation was substantially less (only half of victims attended conferences), and victims' levels of satisfaction with the process were not as high.
- The Children, Young Persons and Their Families Act 1989 "specifically advocates the use of culturally appropriate processes and the provision of culturally appropriate services", especially in respect to the Maori people (Morris, 1999). Though there are doubts about the commitment of the state to provide the necessary resources for this.

Research from RISE, which involved a random assignment of cases to court and conference in the ACT, finds that,
- Offenders report greater procedural justice (defined as being treated fairly and with respect) in conferences than in court proceedings.
- Offenders report higher levels of restorative justice (defined as the opportunity to repair the harm they had caused) in conferences than in court.
- Conferences more than court increased offenders' respect for the police and law.
- Victims' sense of restorative justice is higher for those who went to conferences rather than to court (e.g., recovery from anger and embarrassment).
- Victims in conferences report high levels of procedural justice, but this could not be measured for court victims because they rarely attended.

Australia

From the South Australia Juvenile Justice (SAJJ) Research on Conferencing project, I find that:
- Conferences receive high marks by the four key conference groups (police, coordinators, victims, and offenders) on measures of procedural justice, including being treated with respect and fairness, having a voice in the process, among others. Analyses by participants' social locations such as gender and race/ethnicity show no differences.
- Compared to the very high marks for procedural justice, there are somewhat lower levels of restorative justice (defined as 'movement' between victim and offender toward greater empathy or understanding of the other's situation). This suggests that while it is possible to have a process perceived as fair, it is relatively harder for victims and offenders to resolve their conflict completely or to find common ground — at least at the conference itself.
- Systematic observations of conferences were carried out to determine if power imbalances were present, if victims were re-victimised, and if derogatory comments were made. In the interviews, we asked young people (offenders) and victims whether they felt disadvantaged in the conference because of their sex or race-ethnic identity. Instances of explicit expressions of prejudice and power, or of felt disadvantage, were rare.

Reducing reoffending?

Overall, research studies suggest that very strong majorities of conference participants find the process to be fair and to be better than court. Once studies move away from global notions of 'satisfaction' to consider more specific elements of the conference experience and its aftermath, it appears that there remains a minority of victims and offenders (estimated range of 10 to 25 percent) who see little benefit in the process or outcome. It is too early to say whether conferences can be more effective than court in reducing re-offending.

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The Victim-Offender Conference Service (VOCS) pilot project in Hackney and Lambeth

Penny Fraser describes the results of a victim-offender pilot project

The Victim Offender Conference Service was created initially as a pilot project; it was initiated by the Inner London Chief Officers Group, which is made up of very senior representatives from a range of bodies including the Metropolitan Police, London Association of Directors of Social Services, Inner London Probation Service, Association of London Government, Inner London Youth Courts, Crown Prosecution Service, and NACRO.

Two sites were chosen for the pilot - Lambeth and Hackney. Funding for the project came from both charitable trusts (85 per cent) and statutory bodies (15 per cent). The service was evaluated by NACRO between the last quarter of 1997 and early 1999. The findings are summarised below:

Referrals to the Service

It was decided at an early stage that the following criteria would need to be met before a referral could be accepted:

- The offender should live in either Hackney or Lambeth (although the victim could live elsewhere in greater London);
- The offender should fully admit the offence (as charged and/or convicted) at the point of referral;
- Offenders should fall within the age range 10-17 inclusive (although it was agreed that in some cases the Probation Service could refer offenders up to the age of 21);
- There would need to be an identifiable victim (and the intention here was to rule out cases where there was a corporate victim, or where the offence was deemed to be a 'victimless crime'), and
- The referral was made either after a decision to Caution, or after a decision to prosecute, where a guilty plea had been entered; it was felt that the acceptance of referrals should not interfere with the criminal justice process in any way.

A total of 167 cases were referred during the 15 operational months of the service.

The offence, and case disposal

Domestic and commercial burglary, robbery, assault, theft and handling stolen goods and theft of motor vehicle made up the majority of cases referred to VOCS. The most common disposals were Caution, Supervision Order, Combination Order or sentencing to a Young Offenders' Institution or Secure Training Order.

The type of intervention offered by VOCS

A total of 37 per cent of cases involved work with one party (offender) and a further 12 per cent work with one party (victim). In 15 per cent of cases, indirect (including 'shuttle') mediation between victim and offender was carried out. Other interventions included contact with the offender's parents and, in a very small percentage of cases (four per cent) direct mediation. In 28 per cent of cases no intervention was made as either or both parties decided to discontinue their participation in the service.

The involvement of volunteers in the Service

The involvement of volunteers was felt to address an important aspect of VOCS' objectives, about engaging local communities in restorative activities. The project adopted selection criteria for volunteers which went beyond relevant skills and aptitude (although these were clearly recognised to be of major importance) to include cultural awareness and diversity. Volunteers worked closely with project staff to process referrals and develop interventions.

Outcomes of the Service

In 30 cases a 'restorative' outcome was achieved (via direct or indirect mediation). In 15 of these cases a written apology was made to the victim, and in six cases a verbal apology was made. In seven cases an undertaking was agreed to by the offender and in four cases, professionals agreed to provide additional support for the offender.

Impact of the Service on offenders

- Changes in perceptions of individual victims and their experience;
- The 'humanisation' of victimisation more generally (which is often described in terms of 'putting a human face' on the victims of crime);
- 'Moving on', or similar euphemisms for closure;
- Positive reflections on individual behaviour and future trajectory, and
- Community aspects of offender impact (concerning marginalisation and 're-connection' with the community).

As one respondent expressed it:

"I think it makes them see that its not just about getting £50 or a video or whatever, that it's about what they do to other people and the effect they have on other people. They're supposed to consider what they'd think if it happened to their mother etc, and to make them aware of the full consequences of what they do."

For some offenders, changes in perceptions of their own offending behaviour seem to have been accompanied by some broader, positive emotional impact, as evidenced in the following remarks of one offender:

"All I can say is thanks for helping me out, because they helped me sort a lot of problems that I had, and clearing my brain out. I'm the one that crashed his car so I was really happy to go and say sorry to him, I was."

Impact of the Service on victims

- Participation helped to 'demystify' offenders (and this was an outcome which was not limited only to cases involving direct mediation);
- Reductions in fear, or feelings of insecurity;
- 'Victim satisfaction' (although the research overall suggests that terms of this kind are somewhat difficult to interpret);
- 'Closure' and healing processes (both short and longer term), and
- Positive changes in the future plans/activities of victims who participate (such as victims who claimed to want to move on to become volunteers themselves, for example).

For more information about VOCS in London contact NACRO on 0171 582 6500