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Criminally Offend

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The Problems of Aboriginal Youth Who 'Criminally Offend'

by Margaret Smith

The disproportionately high rate of Aboriginal juvenile incarceration has become a contentious issue right around Australia. But despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody, most state governments have been unable to reverse this trend, and are only now seriously considering alternatives.

'Current national figures indicate that Aboriginal juveniles are massively over-represented in juvenile institutions. In some States, the level of over-representation is greater in juvenile institutions than it is in adult prisons'. 1

The Sydney Morning Herald reported that "NSW locked up Aboriginal children at a rate 25 times greater than non-Aborigines. The NT ratio was 7:1; Victoria 20:1, Queensland 16:1, Western Australia 14:1 and South Australia 10:1.' 2

Gale, Harris and Wundersitz state in their book, "Aboriginal Youth and the Criminal Justice System", "the high level of Aboriginal over-representation at the ultimate stage of the juvenile justice process - detention - proved to be largely the result of a compounding effect of discrimination suffered at earlier steps in the criminal process". 3

More specifically a 1987 study by Cunneen and Robb of the north-western region of New South Wales found, "that although Aborigines represented only 14% of the total population of the surveyed area, they constituted 53.2 % of all arrests, and 52.7% of all court appearances." 4

Public perception of Aboriginal juveniles and why they are arrested and incarcerated has not been enlightened. In W.A. in particular there has been near hysteria on the streets of Perth, and an oversimplification in the public's mind of the issues involved.

2,

Aboriginal youth themselves who have been through the criminal justice system have rarely been questioned about how they see their world and what has happened to them. Their incarceration separates them from their families and communities, and can lead to dislocation and depression.

The courts may have given their verdict, but many Aboriginal children who have participated in this survey financed by the Research Council of the Australian Institute of Criminology, express the view that they have never been treated fairly.

Many experienced racism at school, either from non-Aboriginal children or from teachers, or both. This often led to suspensions or even expulsions, which had lasting negative consequences for the child.

The lack of support systems for Aboriginal children often resulted in trouble with police who were perceived by an overwhelming majority of those interviewed to be rough and intimidating. 70% said they were bashed by police, called racist names and frequently the police arbitrarily used the laws to charge Aboriginal juveniles with offensive language and resist arrest in a manner these youth thought was discriminatory.

The research supported Chris Cunneen's study of "Aboriginal Juveniles and Police Violence" which interviewed 171 Aboriginal teenagers in NSW, Q'LD and Victoria and found that 82% had experienced violent encounters with police, "which was geographically widespread across the three states". 5

The experience of courts and incarceration also contributed to the sense of injustice and many Koori kids perception of being 'treated unfair', or 'not treated the same as white people'.

Consequently the prospect of being released from detention and starting again was not viewed with optimism by many Aboriginal juveniles in detention. Several were despressed and anxious about their release, especially with regard to white authority figures in their towns and their fear of victimisation.

3.

"I'd have a good chance if the cops lay off me", "very very poor", and "none at all" were some of their answers.

Looking at the data in these detailed questionnaires, you would have to seriously ask yourself what chance do these children really have of being treated fairly and with justice in modern Australia?

SURVEY RESULTS

The backgrounds of Aboriginal juveniles who have been incarcerated in New South Wales, reveals extensive problems in their dealings with non-Aboriginal Australians.

Thirty-one of the 50 surveyed revealed that they as children had had negative experiences with white people. Some felt there were "white racists everywhere", that they are "snobby and prejudiced", that they "pick you out a lot, blame you a lot", and others objected to "the way they talk to you", and "the ones that think if you are Aboriginal you are bad".

The attitudes they found most objectionable included, that they think , "all Aborigines are drunks and thieves", being called "black cunts", and that "we can't do our own thing without white people asking things".

A small number had more extreme experiences in the way they were fostered out to white families. One boy recounted, "I was going to primary school and the head master got be back after school. They took me to a foster home. Didn't even tell my mother where they were taking me".

Eight of those surveyed have been homeless, leaving their communities to escape racism and other pressures, and living on the streets of Sydney and other NSW towns. Some of these Koori kids experienced severe deprivation, and a feeling that there was nothing that could turn their lives around.

Twenty-nine of those interviewed had prior contact with police when fathers, brothers, or cousins were harrassed by police and/or arrested and incarcerated. These children grew up in a climate where police knew their families, and where they in turn were often intimidated and harrassed. 72% of those surveyed actually said they were personally harrassed by police.

4.

The School Experience:

The Koori kids surveyed were unhappy with different aspects of school. Thirty or 60% said they were discriminated against by white students and teachers or both. Some felt that "teachers didn't me a chance", "white teachers were aggro", "white kids called me a black prick", and "white kids pick on you".

One boy from Grafton felt he had won some of the battle. He answered, "a lot of whites did discriminate me, but they learnt to respect me in the end".

A surprising high proportion of the fifty interviewed were taught some form of Aboriginal Studies at school. Twenty two answered yes to this question though several expressed dissatisfaction with the way it was taught, "yes but not much", "yes but could have been better".

The tokenistic nature of many Aboriginal Studies courses taught by white teachers seems to have little effect on the Aboriginal children's experience of school and their complaints of racist behaviour.

Some Aboriginal teenagers saw the solution as "more Aboriginal teachers", some wanted separate black and white classes, and 14% of those interviewed believed Aboriginal schools were the only real answer. Four of these youths were from Kempsey, which seems to suggest a serious problem in the schooling there.

Another revealing factor was how the NSW school system deals with Aboriginal children who don't conform and have difficulty fitting into the system.

Forty or 80% of those surveyed were suspended from schools, "because I didn't fit in with the gubbahs", "because when a white kid swears at the teacher he doesn't get anything", and because "when I asked to go to the toilet the aggro teacher said no", and for what Aboriginal children saw as trivial things like "having my girlfriend's name on my arm".

5.

The Aboriginal teenagers own assessment of their suspensions showed a willingness to judge themselves and their actions. Twelve said their suspensions were fair, twenty-three said they were not fair, four admitted there was ambivalence in their response, and two boys were so disillusioned by multiple suspensions their comment was, "I really don't care".

It seems the schooling of Aboriginal juveniles needs much closer scrutiny and the work of the Aboriginal Education Consultative Group could be vastly extended , if racism in schools is to be prevented.

Employment:

The employment experience of those surveyed showed a surprising diverse range of work experience, (cattle station work, McDonalds, cotton chipping, show ground work, labouring, etc.), with fourteen having had some form of employment, two on CDEP and one on Austudy.

There was an overwhelming willingness to work and some of those surveyed said they'd be willing, "to do anything". But others were very pessimistic about finding work on their release saying they had "buckleys", and that they had no hope of finding a job.

Stealing money to survive was an option taken by fourteen of the participants, "because our mothers have to pay bills. buy food, and have no money for us", and because it was the only option they knew . One of the boys expressed a desire to find out how to get unemployment benefits when he got out, and some of them expressed their concern about being released with just one week's dole in their pockets.

Experience of the Criminal Justice System:

The survey participants own assessment of their court cases showed an impartial approach. Twenty thought their trial had been fair, but thirteen thought their trail had not been fair. Several felt the magistrate had been "good", and "fair", whilst others thought their magistrate had been "harsh", "pretty rough", and "he was a hanging judge". Some had repeatedly come before such magistrates since they were as young as eight, nine and ten.

6.

Thirty-five had been represented by the Aboriginal Legal Service and twenty-five of these had been happy with the representation.

Others complained of too little time with their ALS solicitor, "only saw him/her in court" and felt they would have done better if they'd been able to meet the solicitor beforehand.

Amongst the fifteen represented by the duty solicitor, ten were unhappy with the representation. The court process was an enigma to these children who volunteered, "I don't know anything about courts", and "the magistrate talked to the duty solicitor and ignored me".

The overwhelming answer to the question of how you would like to be treated by the criminal justice system was "fair", "with respect", "like everyone else", "good like a white person gets treated", "like any other normal person", "like a human", "with respect for what and who I am".

Police:

The Aboriginal juveniles' experience of police confirmed the findings of the Human Rights and Equal Opportunity Commission's "National Inquiry into Racist Violence".

Thirty-six of the fifty interviewed (or 72%) said they had been harrassed by police. One said he had been "dragged by the hair," another that they "belted me for no reason", and another because "I'm a runner", and others said they were verballed.

Thirty-one said they had been arrested unfairly, and thirty-seven said that the police swore at them, called them "little black cunts", and one said "why don't you hand yourself". Thirty-six or 72% said they were treated roughly by police. One boy from Tamworth said, "I've still got bruises on my neck from last time. He grabbed me, picked me up by the throat".

Thirty-five or 70% said they were bashed by police, and some of them sustained injuries as a result of this. "I went to the Aboriginal Medical Service because I've got bruises but nothing happened. The police told me not to hang around the area, but I live in the area."

7.

Another said, "I got a broken nose. They also made me sit in the police cells for two days in my underpants in the middle of winter. They took all my clothes because there was blood on them ...when I was sleeping they kicked me round the head". Another said, "a copper head-butted me and split his forehead and then they put me up for assault. I was in hospital bleeding from the throat, but the white guy with a broken arm went in first".

"They strip you in the cells, and say so you might hang yourself".

Detention Experience:

"While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality". 6

"Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum". 7

The experience of juvenile detention centres varied according to the centre and the Aboriginal juvenile's needs. Twenty-four volunteered that they had a drug and alcohol problem, but only thirteen of these teenagers had drug and alcohol counselling as part of their detention program, and even more damaging was the fact that of these thirteen children, only eight found this counselling helpful.

Counselling of a more general nature to help the Aboriginal juvenile deal with his/her problems in the larger community was only offered to eight of the fifty surveyed. Three said they had had counselling by Kooris over the telephone and this had been helpful.

Several of those interviewed said they wanted Aboriginal counsellors, and more Aboriginal staff. There was no Aboriginal staff member at Kariong, the new high security unit at Gosford, which resulted in the Koori boys feeling more isolated.

8.

One boy at Kariong said the gaol like conditions there are "making me a little bit worse. People watch us all the time. I'm having counselling on how to calm myself down".

Contact with families as specified in the "UN Rules for the Protection of Juveniles Deprived of Their Liberty" was in many cases only kept to a minimum level with the average being 2 to 3 phonecalls a week, and minimal family visits. Many Koori kids from the north west of the state received no visits at all, and were very despondent about this. One youth said, "only one who visits us is the coppers". Another Kariong resident complained, "Youth workers listen when your Mum comes to visit, don't have any privacy".

The participants assessment of youth workers in detention centres was varied and suggested the uneven nature and skills of those currently employed. Comments included, "not all that good, could be better", "treat us like little kids", "some alright, some aren't", "some fair but most not fair", "some good, some bad, but most of them shouldn't even be working here", "some are good but some are arseholes - they can put you in a cell in isolation - can do what they want".

The changes Aboriginal juveniles would like to see were equally revealing in how these teenagers were trying to prepare themselves for the outside world. One said, "I would like the chance to make things to sell, tables, furniture - to have money for when you get out. Only give you one week's dole".

Many of them envied the Aborigines incarcerated at Mt. Penang where there was a much greater range of programs available. In comparison, "Minda should be smashed down" because it was more like a gaol and was "heaps worse than other places".

Some Koori boys at Kariong couldn't stand the flies there, "because it was built on Mt. Penang's piggery effluent which flows down here". They also said they couldn't sleep well at night, "because of the noise dogs made which the shift workers brought in, and the noise these night workers made, having the TV too loud, playing pool, etc"

9.

Others interviewed wanted "a bit more responsibility", and "I reckon they should teach us responsibility, because when you get out you've got no one to rely on, so you end up getting back into trouble".

There was also requests for more "Aboriginal food", "Aboriginal programs", "Aboriginal staff", and "more outings" and again to be 'treated fair".

Absconding was not condoned by the Kooris surveyed in our juvenile justice centres. Rather it was seen as an act of desperation because of "problems with youth workers", "problems with family and girlfriends", "worried about not receiving phonecalls", "because they don't like being confined", "being locked up", and "freedom".

They thought Aboriginal juveniles who absconded mostly understood the consequences that their act might bring, "but they don't think at the time", "yes but it doesn't stop us going", and the overwhelming feeling that the authorities running the detention centres "don't understand us Kooris".

Also "white kids make us more tense, scared we might fight, Need our own detention centres".

Alternatives to incarceration was not an option offered to these children. Only fifteen of the fifty interviewed had been offered bail by police rather than being locked up in police cells, and as a result of their previous court cases only nineteen had been offered Community Service Orders as an alternative to incarceration, despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody that gaol be used only as a last resort.

The important and devastating point to be made here is as Fay, Harris and Wundersitz state, "Australia's Aborigines (are), if not the most incarcerated people in the world, then at least second to no other". 8

Cunneen and Robb also concur in their finding that Aborigines are more likely to be arrested, whilst non-Aborigines are more likely to be cautioned by police for similar crimes. 9

10.

Also Cunneen and Robb found that "74% of all male Aboriginal youths held in corrective institutions in NSW in July 1982 were there because of various forms of theft". 10

The current survey for the Research Council of the Australian Institute of Criminology also found that over 60% of those incarcerated were sentenced for crimes of theft or petty theft. But with the re-introduction of the Summary Offence Act in NSW, many of these children were also charged by police with offensive language and resist arrest, compounding their crime when they go before the courts.

Getting Out of Detention:

Probably one of the most revealing questions of all was no. 47, and "what chance do you have of being able to leave a detention centre and starting again?"

Twenty-five were optimistic about their release despite their prior experience of racism. They answered with comments like, "I want to go back to see my people", "good because now I'm a Christian", but some were more ambivalent admitting they had to leave their home town to have any real chance.

Ten were completely negative with answers like, "none at all", "none", "very very poor", "think I'll be back inside again", and only "a good chance if the cops lay off the Kooris".

Alternatives and Recommendations:

What has become known as the Echuca model in Victoria is the only example in Australia of an alternative to locking up Aboriginal children. In Echuca the courts have been replaced by an Aboriginal Community Panel which deals with all Aborigines who get into trouble. The result is that no Aborigine or Aboriginal child has been sent away to detention since the panel's inception in 1989.

Robert Saunders, an Aboriginal spokesperson for the Echuca panel said to me recently, "we still have problems with the police, that doesn't change. But we are introducing crime prevention strategies and youth programs, and we are dealing with our own people that come in contact with the police so we keep them out of the white criminal justice system".

11.

The diversionary Childrens Aid Panel in South Australia has not helped Aboriginal children. "Once in the system, almost 3/4 (71.3%) of Aboriginal youth were referred to the Children's Court rather than diverted to the Childrens Aid Panel" 11

The New Zealand model of community based alternatives run by indigenous and other peoples has also gained some acceptance in new agendas for juvenile justice in Australia. However there has been no real alternative policy formulated by any state in Australia.

The Aboriginal Legal Service has been fighting these issues with limited resources ever since their inception. They have also been representing Kooris in courts around Australia in what is often a crisis management operation, when in some country towns over forty Kooris will come before the courts on a list day.

But to incarcerate a child costs the state over \$2,000 a week which makes increased funding of the ALS and community based alternatives a much cheaper option in the long term. It is also a question of sovereignty and who really has the right to carry out law and order agendas over indigenous peoples.

The other factor that must be taken into consideration in any crime prevention strategies aimed at police, schools and Aboriginal juveniles is as Cunneen points out , "the most disturbing point in relation to the juvenile's perception of police violence was that it was something which was to be expected and, indeed, tolerated". 12

The racial vilification law now being proposed by the Human Rights and Equal Opportunity Commission to Federal Parliament is perhaps the only real answer to changing this interaction, so that Kooris have the means to charge law enforcement agencies with their wrong doings.

The NSW Summary Offences Act needs to be abolished, so that children who don't know the law can't be charged with offensive language by police and courts. As it stands now the statistics on Aboriginal youth and crime have to be viewed with a great deal of scepticism because they, "don't prove that Aboriginal youth commit more crimes than white youth, but they do raise the possibility that the law is applied differentially by law-enforcement agencies". 13

12.

The actual implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody rather than the current facade, would also bring massive changes to the lives of Aboriginal people.

But the lives of these young Korries interviewed in this survey, (who can be seen as representative of most Aboriginal juveniles currently held in Australian detention centres), have already been irrevocably changed. Unfortunately this change could be as devastating as it was for earlier generations of Aboriginal children, who were taken away from their families under the guise of the Aboriginal Protection Act earlier this century.

13. Notes for "They Take Them Away"

1. Chris Cunneen "A Study of Aboriginal Juveniles and Police Violence", Human Rights Australia, 1990, page 3.
2. Graham Williams, "Young Blacks Fare Worst Here", SMH, 19/7/89.
3. Gale, Harris and Wundersitz, "Aboriginal Youth and the Criminal Justice System", Cambridge University Press, 1990, page 7
4. Gale, page 11
5. Cunneen page 2
6. & 7. "The UN Standard Minimum Rules for the Administration of Juvenile Justice " pages 8 and 10.
8. Gale p. 12
9. Gale p. 31
10. Gale p.45
11. Gale p.3
12. Cunneen p.45
13. Gale p.6.

SPECIAL TREATMENT

Locking Up Aboriginal Children

A 55 minute documentary for television



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Australia's indigenous children are under threat. Today 25% of all juveniles in New South Wales gaols are Aborigines though they form less than 2% of the population.

Australians have an historic hatred of police and of authority - but for black Australians it is brutal reality. Some Australians call it a "secret war". Others see it as evidence of an ongoing penal mentality.

But despite the attempt at cultural genocide, Aboriginal juveniles remain defiant and resilient, with a clever humour that gets them into even more trouble with police. They have to contend with over-policing and police harrassment, and a criminal justice system which is more likely to sentence them for petty crimes than their white counterparts.

This documentary, made by a crew of Aboriginal and non-Aboriginal Australians, feature prominent Aborigines such as Lyall Munro Jnr., Evelyn Crawford and Shane Phillips, as well as Criminologist Chris Cunneen, who tell of the history of taking Aboriginal children away from their families.

The overwhelming fear of some Aborigines is that repeated incarceration can lead to institutionalisation, deaths in custody, or a pattern of life which can psychologically cripple them in adulthood.

The film visits outback towns including Bourke, Brewarina and Walgett, as well as Moree and Sydney's Redfern, and goes inside Reiby, Minda and Mt Penang juvenile detention centres.

The teenagers make provocative television viewing, as *Special Treatment* finds out what Aboriginal juveniles think about how they are treated. It also attempts to explore past, present and future solutions as Koori kids tell their own stories and comment on the initiatives now being taken.

The soundtrack features some of the exciting bands of contemporary Australian rock music such as Paul Kelly, Archie Roach, and Mixed Relations.

Producer / Director Margaret Anne Smith
Narrator Lydia Miller
Camera Assistant Brendan Read
Editor Tim Litchfield

Assistant Director Tony Murphy
Camera Joel Paterson
Sound Debbie Lee
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