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Letter to the Royal Commission into Institutional Responses to Child Sexual Abuse

Terry O’Connell’s Contributions to Confronting Child Sexual Abuse

Terry O’Connell is one of a tiny number of people in this country who has been not only speaking out publicly about the problem of child sexual abuse for more than two decades but also doing very practical things to help victims and their families at the request of those victims. He has also done this with the objective of transforming the institutions that have allowed sexual abuse to occur. He has been courageous in the particular way he broke that silence during the decade before this one and the decade before that. I have met dozens of victims who he has greatly helped with his restorative justice work.

I am therefore pleased to hear that the Royal Commission will be speaking with Terry O’Connell about how to transform institutions so that abuse ends. And how to support victims during that journey. I believe you will learn richly from the conversation with this great Australian. I say this because of the wisdom and experience Terry brings to bear on such matters, not because I have any knowledge of the particular case of “the Ashram”.

However, I must say I am aware from my research of other cases where systematic child sexual abuse has occurred at Buddhist monasteries, so I am pleased to see your Royal Commission broadening its horizons in this way. I have spoken and written in the past of the importance of the Royal Commission (and other enquiries into sexual abuse currently under way around the world) as engaged in a “long march through the institutions” at this critical juncture in history. Now is the moment where we must see so many different kinds of institutions where power is concentrated – including your own institution (the Australian legal profession) – as both part of the solution and part of the problem of the widespread nature of child sexual abuse. I am observing the work of your Commission only at a distance as my research is on countries experiencing armed conflict. However, one of my students is doing her PhD research on the work of your Royal Commission and another recently appeared before you (as a victim of child sexual abuse), and I am hugely

encouraged by the start you have made and the sensitivity and openness to multiple perspectives you have shown so far.

Terry O'Connell and I have worked together since 1991 on the huge enforcement swamping challenge the justice system confronts with sexual abuse and other forms of violence that are under the carpet. A view I believe we share is that however good a job your Royal Commission does it will remain the case a decade from now that more than 90 per cent of victims of child sexual abuse will not see their perpetrator convicted criminally. We do need more criminal convictions and criminal processes that are less exploitative toward victims. By the way, there are also cases where a criminal process is counterproductive because it is not punitive enough. I have just returned from Congo where I have been working on a case of mass child rape in which victims have been raped again to bully them into recanting their testimony; it is a case, unfortunately, that requires a military rather than a criminal justice response to protect victims. International Criminal Court investigators have done great damage to victims in some parts of DRC. In one case a colleague had to literally drag a thirteen year old girl who was shaking like a leaf from an ICC investigator who insisted on asking her questions after she had clearly said she did not want to provide testimony. This girl had been raped, buried alive, and managed to claw her way out of her grave. The loving restorative arm of my colleague around her quivering body was her need.

While more must be done in terms of punitive enforcement, we also need to do more for that 90 per cent plus of victims for whom the criminal process will continue to offer nothing. And we need to do more to transform the institutions where that 90 per cent still suffer, so that abuse prevention is energized. This is the space where restorative justice has a constructive role. Terry O'Connell is the right person for you to be engaging on this rather than me, though of course I would be happy to talk with you as well, should you wish. I have been involved in decades past in research that has evaluated the great benefits victims have experienced in specific restorative justice conferences Terry O'Connell has run, including in at least one matter of child sexual assault. Terry is very good on what to do when the professionals go home. In June I was at a conference in Belfast, where Terry's work has had an influence. I learnt about a restorative case in the ex-IRA community where a victim had four phone numbers to call if they felt afraid – not a professional who would come around the next morning – but neighbours just around the corner who would arrive immediately 24 hours a day 365 days a year.

For me as a researcher, it is not so important to focus on qualitative research evaluating successes and failures of particular Terry O'Connell cases. This is because Terry is an unusually gifted practitioner of restorative justice, one of the world's most distinguished teachers of restorative justice methods. The important question is how effective are the less gifted, newer practitioners of restorative justice that Terry teaches.

Here the systematic research that we first started with randomized controlled trials in Australia in the early 1990s has now become a major global research effort, where most of the best work is now being done in the Northern hemisphere. Here is a paper I published last month summarizing the current state of play with the evidence: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2514127. Many people thought that

the research would show that restorative justice would be effective with minor criminal cases like shoplifting, but ineffective and dangerous with very serious criminal cases. The evidence currently suggests that the reverse is the case. Many of the petty property offences by young people currently going into fully-fledged restorative justice conferences in Australia probably should not be. It is with more serious criminal cases, and particularly violent offences, that restorative justice proves more effective than traditional criminal processing. Much more research remains to be done, but there is also some suggestion in the most recent published work that a restorative justice conference which reports to a judge may have combined effectiveness benefits that exceed a restorative justice conference alone or a criminal trial alone.

The dilemma of course is that our justice system fails to confront most of the criminal violence that occurs in society with either courtroom justice or a restorative justice conference. The enforcement swamping and system capacity challenge is great and in reality no state will fund both universal court and restorative justice processing for every case of violence that occurs.

What we can do in the face of this challenge is increase practical access of victims to the justice of the courts (by making court cheaper, more supportive, restorative and less painful for them) and increase access of victims to restorative justice conferences. The evidence-based imperative in my view is to increase access to both kinds of justice. No person in Australia has been more tested and tormented by the difficulties of trying to accomplish that than Terry O'Connell. This has been true from the days when I first met him as a police sergeant much loved by his local Wagga Wagga community a quarter of a century ago. I commend you for engaging him in a conversation about what he has learnt from his journey on abuse and restorative justice.

Yours sincerely



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