

PEOPLE WITH COGNITIVE DISABILITY AND THE CRIMINAL JUSTICE SYSTEM: THE PLACE FOR RELATIONSHIP-BASED PRACTICE

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Abstract

People with cognitive disability who become labelled as offenders have often faced significant social, psychological, and economic hardship. If the person is an Indigenous Australian, these issues may be compounded by racism and entrenched disadvantage. The criminal justice system can perpetuate the difficulties in people's lives. The principles of relationship-based practice may be one way to better respond to people with cognitive disability.

Introducing Anakin

Anakin was a man in his early 30s who had been identified as having a mild intellectual disability and cerebral palsy. Anakin had spent most of his childhood in children's residential care and later as an adult lived in hostel accommodation. In one hostel he was sexually and physically assaulted by other residents, but no charges were laid. He also had other experiences of so-called friends stealing his ATM card and money. Anakin was angry and traumatised by these experiences, and when he came to live in a disability supported accommodation service, he fell out with the support workers. He decided to buy a toy gun and point it at the head of the service manager to get his message across. Police arrived and Anakin tried to reach for the police officer's gun to kill himself. He was sentenced to one month's prison. Inside, he had trouble following routine – he couldn't walk fast enough, and the guards strip-searched him daily because they thought Anakin was being used as a "drug mule". Prison, like other experiences in his life, was a place where Anakin felt misunderstood and unsafe.

Common life experiences of people with cognitive disability in the criminal justice system

Anakin, like many other people with cognitive disability in the criminal justice system in Australia, did not fare well in such a system. The term cognitive disability, refers to intellectual impairment (particularly borderline and mild impairment), autism spectrum disorder and acquired brain injury. The causal nature of cognitive difficulties may be unclear, and for many people in contact with the criminal justice system, there may be co-occurring mental illness, which can further complicate diagnosis. These diagnostic labels are not enough to understand the person and their current experience in the criminal justice system, nor do many people readily identify with these labels, yet the diagnosis is what the system seeks to justify a specialised response, if any.

A point in case is with our story of Anakin. He had a label of “mild intellectual disability”, but in reality, there was nothing really “mild” about his experience.

Many offenders with cognitive disability have a history of service rejection, poor life experiences including problems with physical and mental health, experiences of poverty, poor educational and employment opportunities. There can be problems with substance use, for Aboriginal people with cognitive disability there can be experiences of entrenched racism – and violence in some form or another is a common experience for many. All these experiences are layers of disadvantage which contribute to criminalisation and cycling in and out of youth detention or prison. Many people in this situation are in desperate need of supportive relationships in their lives, and therefore formal supports need to attend to the relationships between worker and service user.

An example of relationship-based practice

The Community Living Association (CLA) in Nundah is an agency in Brisbane that embraces relationship-based practice with people with cognitive disabilities. Their capacity-building framework addresses both personal and structural concerns for people by helping the person to achieve power over relationships, resources, information and decision-making. The focus is not just on the relationship a worker has with a person with a disability, but also on aspects of community development – being able to form intentional communities around issues, identifying issues people have in common, moving these issues from the private realm to the public and increasing the capacity of people to use their resources to address these issues. This framework offers a way of understanding people with cognitive disability in the context of their lives, helping the person to gain some power over their life decisions. These elements could be applied in the context of the criminal justice system to ensure better outcomes for people with cognitive disability.

Working with police

Relationship work is needed between people with cognitive disability and the police. Police are the first point of contact with the criminal justice system and the nature of that contact may be frequent for people with cognitive disability once they have a criminal record. People with cognitive disabilities may have difficulties understanding police instruction, legal rights and terminology. When you consider these communication challenges can come at a point in time where the person may be in a heightened state, this can be a recipe for disaster. In addition, people may have a history of poor relations with authority, they may have been told what to do by others around them and may be aching to get some personal power back, regardless of how destructive their strategies might be.

Certainly, a lot could be achieved within police services – including more resources towards training of police on cognitive disability and independent third persons in police interviews. Specialist multijurisdictional police units for working with people with cognitive disability could be established; brief screening tools could be administered to determine impairment; and Key Performance Indicators could be developed that specifically promote procedurally just policing of vulnerable groups. All of this would be extremely helpful, but for changes to occur there needs to be buy-in by the police on the issues.

Building relationships

According to the CLA capacity building model, relationship building involves working with a person and their significant others:

“... so one person might mean one person or it might mean five people or it might mean 20 people”
Worker, CLA

Applying this to police, this would indicate that a worker would take a proactive approach to relationship building. They would develop constructive relationships with the local police office from the outset of providing support to people with disability. The service, and people with disability who are supported by the service, need to be known by police in a positive light, and the worker has a responsibility to educate on matters such as communication and behavioural support needs of a person with cognitive disability.

Building resources

The process of developing relationships between police and people with a disability can be enhanced when each party has something to offer or contribute to each other. Workers can play an active role in encouraging relationships of reciprocal obligation between people with disability and the police.

In the case of Anakin, this could have occurred if Anakin had been supported to set up his own micro-business that involved some kind of interaction with local police – for example, he could have provided a lawn-mowing service to the station, or perhaps provided a coffee delivery service.

These activities would allow regular contact with police at the station, opportunities for cooperation and mutualism and may have prevented or ameliorated the incident that led to Anakin’s imprisonment.

Working with correctional officers

The prison system is also another context that could benefit from relationship-based practice. The prison environment presents many challenges for people with cognitive disability. People can be at heightened risk of victimisation from other prisoners, spend long periods in isolation, be excluded from rehabilitation and work programs, and experience deteriorating mental health. There are many systemic changes that could occur to ensure better outcomes for prisoners with cognitive disability. These could include greater safeguards around solitary confinement (Human Rights Watch 2018); alternative security measures to strip-searching (Human Rights Law Centre 2017); and greater resourcing of rehabilitation programs and mental health services for people with cognitive disabilities. Work with correctional staff could also make a positive difference.

Building knowledge

Ongoing training and education of correctional officers could help staff to move beyond “thin” descriptions of the prisoners they supervise to more meaningful understandings. Correctional staff could be provided *technical knowledge* around appropriate communication and behavioural support strategies. They could also learn from *knowledge from story*, being given examples of the whole life of someone with cognitive disability and having better insight into a person’s core needs. *Experiential knowledge* from people with cognitive disability could be incorporated into staff training. There is also a need for the correctional system to facilitate spaces in which staff can acquire *knowledge from conscious reflection* – perhaps through supervisory processes which allow staff psychological space to process the difficult work they do.

Working with the NDIS

Correctional systems are often the place of last resort for many people with cognitive disability. While it is important to address the many concerns in such environment, we need to turn to local communities and attend to the many issues that lead people to prison in the first place. Relationship-based work is also needed within the context of the National Disability Insurance Scheme (NDIS). The focus on consumer choice and control and the free market of disability services is likely to present significant challenges for people with cognitive disability and complex support needs. In order to prevent a continual cycling in and out of the criminal justice system, many people with cognitive disability need intensive, cross-sectorial case management. To provide such supports, there needs to be further investment in the skill-set of the sector, and better relations between systems such as the NDIA and custodial providers.

Building decision-making

For people with cognitive disability and complex support needs to have a sense of autonomy and self-efficacy under the new system, they require workers:

- Who are truthful to the person's real expressions
- Who listen deeply and take things slowly
- Who are persistent and work through trial and error
- Who take time to understand reasons why a person condones or engages in abuse, exploitation or violence
- Who avoid colluding in harmful decisions with the person
- Who take time to help the person develop a sense of self-control and healthy boundaries

All of these qualities are needed to support people with cognitive disability to engage in NDIS planning processes, to use the resources on offer in the new system and to make positive changes in their lives. In the example above, Anakin was able to survive the criminal justice system and turn things around for the better. A contributing factor was the supportive relationships he had around him.

4 relation-based practice strategies

- Build relationships: develop constructive relationships
- Build resources: contribute to building support resources and opportunities
- Build knowledge: participate in a range of training and education
- Build decision-making: provide support which equips people with an intellectual disability with autonomy of decision making

Anakin's return to the community

Anakin was fortunate to connect to a new service who was willing to support him and keep him safe in his local community. The relationships he developed with workers in the service became very important, because after being in his own home for some time, he nearly got charged again for an altercation in the local shopping complex. Anakin had approached a woman he knew and scared her by saying "boo". A cleaner observed this and challenged him. Anakin got angry and threw his Walkman at the person. Two support workers who saw the incident were able to discuss the matter with police, and the cleaner decided not to press charges.

This was a good outcome for Anakin, and it was largely a result of good relationship-based practice. It is this work that needs to be highlighted under the new service environment of the NDIS and within the criminal justice system. We need to raise the profile of relationship-based practice, start talking more about the nuances and the skill set involved in keeping people with cognitive disability and communities safe.

As Zehr (1990, pp 181-182) attests:

Crime is a violation of people and relationships.... Crime affects our relationships with those around us. Crime also represents a ruptured relationship between the victim and the offender. Even if they had no previous relationship, the crime creates a relationship. And that relationship is usually hostile. Left unresolved, that hostile relationship in turn affects the well-being of victim and offender.... Crime is not first an offense against society, much less against the state. Crime is first an offense against people, and it is here that we should start.

Zehr, H. (1990). Changing Lenses. Waterloo, ON: Herald Press.



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For other references regarding the research underpinning this article, readers are welcome to contact the author Kathy Ellem.

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