

The response provides a detailed description of two relevant cases that demonstrate the tension between community interests and individual rights and freedoms. It could have been improved if this level of detail had been maintained throughout the response. Greater integration of legislation and case law would have demonstrated more extensive knowledge and understanding. A stronger conclusion would have provided a more coherent and sophisticated level of analysis.

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The tensions between the community's interests and individual rights in the criminal justice system is not better illustrated than the constantly challenging desire for "justice" and "retribution" and the rights of the accused. The offender's right to a fair trial is often seen to conflict with the desires of the victim and their family and community.

Plan:
 offender;
 community;
 reform:
 jury
 Dietrich
 - victim
 impact
 statements
 - plea bargain
 victim - article

Two prime examples where the justice system's emphasis on the rights of the offender ~~and~~ have conflicted with community interests are the cases of Dietrich v The Queen and R v Skaf. In these cases ~~the~~ subsequent law reform enhancing the rights of the offender prevailed ~~postponing~~ and delaying the offender's conviction which seemed imminent. The "saying" "justice delayed is justice denied", is undoubtedly the response of the community when two commonly viewed 'menaces to society' were granted better rights and chances to be dismissed.

In the case of Dietrich v The Queen a career criminal, Dietrich appealed his conviction on the grounds of inadequate

legal representation in comparison to the prosecution. As it was concluded that this denied his right to a fair trial a retrial and was issued and the right to adequate legal representation was subsequently granted to all. As seen in the swift conviction in Dietrich's retrial, it can be viewed that the delaying of justice was unnecessary, expensive and expensive, characteristics the community would not wish to exist in the criminal justice system. However as our legal system places greater emphasis on the rights of an individual to a fair trial, community interests are forever going to exist in tension with the offender's rights.

As seen in the case of R v Skaf, an unapologetic gang rapist, ~~was~~ had both a retrial and a lowering of his sentence after an injustice in his ~~entire~~ trial for conviction. Due to jury misconduct a retrial was issued and the jury Amendment Act 2005 prevailed to meet the rights of an offender to a fair trial. Once again the swift conviction of Skaf could render the

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trial unnecessary and expensive, creating yet more tension between the community interests that SKaf be convicted under any means and for a maximum sentence. A maximum sentence of 50 years did originally ensue, however as this was deemed to be excessive (highest sentence for sexual assault in Australia's history) it was lessened to almost half again creating tension within the community. However the judicial system's emphasis on the defendant's right to fair and just rulings can be seen to unfortunately prevail.

In contrast to the right of the offender, ~~can be seen~~ the rights of the victim as an individual can be seen to paradoxically conflict with the interests of community as a result of the SKaf case. As the Crimes Amendment (Criminal Proceedings, Evidence) Act awarded the use of transcript evidence in sexual assault trials, the community's desire for justice can be seen to be somewhat challenged. As the community might view the use of transcript as opposed to physical victim testimony might lessen the impact of

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crimes on the jury act therefore lessen the chances for conviction in a trial. However it can be seen that this might rarely present a problem so therefore the rights of the victim ~~are~~ drastically outweigh the tensions of the community's desire for justice.

Another two controversial issues in the matter of ~~rights~~ individual Rights and Freedoms and the sometimes opposing community values can be seen in the areas of plea bargaining and victim impact statements.

The offender's right and freedom to be awarded a lesser sentence for the plea of guilt and/or cooperation with authorities would undoubtedly conflict with both the individual interests of the victim as well as the supporting community. In the awarding of lesser sentences to cooperative defendants would without doubt inhibit the complete retribution the community is to expect for their crimes. The responsive arguments however that the legal system is made more efficient as a result would ^{cost and time} promote to an extent, community interests

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Legal

Therefore creating tension between the views of the community itself.

lastly the use of victim impact statements can be viewed to conflict with both the rights of the individual defendant and the community. As its use is exclusively in the sentencing process committees would oppose its exclusion from the conviction trial. However it is obvious that this would exhibit the individual's right to a fair trial based on fact, not emotion and therefore this prevails. On the other hand one could argue the conflict of defendant's rights in this process as the degree to which sentencing is swayed by these statements would vary by different degrees in the case of different trials therefore conflict and tension occurs.

As seen the prioritized rights of the defendant will always without fail conflict with the community's desire for "justice and Retribution".

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