

Research Framework for a Review of Community Justice in Yukon
Community Justice – Conferencing

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1. Key Themes (to be explored)

- It is unclear whether support for this alternative is a result of its being a primary alternative supported by the RCMP or because it complements local traditional practices and values.

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2. Research Questions

<p>2.1. Definitions</p> <p>What kinds of conferences are held in the community?</p> <ul style="list-style-type: none"> • Family Group Conferencing • Child welfare conferencing models:¹ <ul style="list-style-type: none"> • social welfare family group conferences (WFGC) • family group decision-making (FGDM) • Community justice conferencing models (CJC):² <ul style="list-style-type: none"> • youth justice conference • police conference • victimless conferences • community conferences <p>For each conference type how many were conducted over the last five years?</p>
<p>2.2. Guidelines</p> <p>Are there guidelines for conferencing? <i>If so, the questions in the questionnaire could be adapted to meet the circumstances of the community?</i></p> <p>Are they used by the community justice project?</p>
<p>2.3. Acceptance into the Conference</p> <p>Who advanced the idea of having a conference? Offender? victim? courtworker? defence counsel? Crown? Other?</p> <p>Did the offender (or with the assistance of a support person) indicate his/her:</p> <ul style="list-style-type: none"> - Offence - Community supporters - Reasons for wishing to participate in the conference - Goals/plans <p>What considerations were taken into account for making the decision to accept the offender into the conference?</p> <ul style="list-style-type: none"> - Offender's Input/Actions: accepts responsibility and enters a guilty plea; genuine commitment to changing his/her life; sincerity of remorse; acknowledge hurt caused to others; demonstrate serious commitment to accounting for their harm to others; commit to healing/self-care; be prepared to compensate victims and community; meet as often as required with the local justice project; develop a plan to take responsibility for the offence, reconcile with and compensate the victim; carry out all the steps required by the support group/justice project; what offender has done rather than said - Connection of Offender to Community: significant support from offender's personal community (friends, family, co-workers etc.); willing to be honest with the community; establish a balanced support group to assist him/her through all steps in the approach; demonstrate appreciation for community assistance and address their rehabilitative needs; identify a sponsor/Elder - Nature/type of the Offence; minor/serious offence - Circumstances of the offender - Experience/Skills of the Community Justice Project - Impact on/Views of the Victim - Views of the Crown - Views/Participation of Elders - Views of the RCMP - Views of the Defence Counsel

¹ http://www.restorativepractices.org/Pages/vt_mccold.html

² http://www.restorativepractices.org/Pages/vt_mccold.html

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<ul style="list-style-type: none"> - Impact on /Community readiness - Potential benefits to the offender, victim and community
Who authorized the conference? Community rep? Community justice project? Court? Other?
<p>In deciding whether to accept the offender application, did the community justice project:</p> <ul style="list-style-type: none"> - Consult with Elders - Meet with the offender, several times in most cases, and with the offender support group - Assess the realistic objective of the offender’s proposed plan - Meet with the victim and his/her support group - Review the criminal record and any previous pre-sentence reports - Contact reference sources about the offender and offence (police, family, friends, employers and anyone else who could provide information) - Review the capabilities and suitability of the proposed support group
<p>Did the community justice project reject the application?</p> <ul style="list-style-type: none"> - If so, did the case continue with the mainstream justice process? What was the reason for non-acceptance? or - If so, did the committee seek additional information or test the ability of the offender support group – adjourning to enable the offender to demonstrate commitment. Was more information obtained? Was the case subsequently accepted or rejected?
<p>Did the community justice project accept the application?</p> <ul style="list-style-type: none"> - If so, were conditions imposed for the offender to follow in preparing for the conference? - If the offender failed to achieve the conditions imposed by the community justice project, was the decision to accept the offender reviewed?
<p>What criteria were used in deciding when to hold the conference?</p> <ul style="list-style-type: none"> - Until the offender completed several conditions, including substance abuse residential treatment, or anger management courses - Immediately because of tensions in the community - Until the victim was ready to participate
<p>What decisions were made regarding who would participate in the conference?</p> <ul style="list-style-type: none"> - Secure attendance of key people - Special efforts to encourage voluntary participation by the victim & supporters/family; offender & supporters/family
How much time was involved in making the decision to accept the offender to the conference?
<p>2.3.1. Nature of the Offence</p> <p>What was the nature of the offence? If the case involved sexual assault/abuse/domestic violence was there prior counseling for the victim, offender, community members – were power issues handled/discussed?</p>
<p>2.3.2. Offender Profile</p> <p>Did the offender have a connection the community – deep roots? relationship with victim, family, others?</p> <ul style="list-style-type: none"> • Gender • Ethnicity • Age • Disabled • Group Home/Mission School • Socio/Economic/Educational/Health status • Faith/Spiritual Roots • Previous criminal records • Pre-victimization factors – previous experience/satisfaction with the justice system • Previous participation in community justice processes

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2.3.3. Victim Profile
Did the victim have a connection the community – deep roots? relationship with offender, family, others?
<ul style="list-style-type: none">- Gender- Ethnicity- Age- Disabled- Group Home/Mission School- Socio/Economic/Educational/Health status- Faith/Spiritual Roots- Pre-victimization factors – previous experience/satisfaction with the justice system- Previous participation/satisfaction with community justice processes
2.3.4. Community/Other Participant Profile
Does the community/other participants have a connection to the offender and the victim?
<ul style="list-style-type: none">- Gender- Ethnicity- Age- Disabled- Socio/Economic/Educational status- Faith/Spiritual Roots- Previous participation/satisfaction with community justice processes- Previous participation/satisfaction with the mainstream criminal justice system

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2.4. Pre-Conference
2.4.1. Offender Preparation
<p>Was the offender provided at the outset with a clear outline of what was expected from him/her and the steps in the conference? E.g. information sheets</p> <p>Did the offender voluntarily agree to be referred to the conference?</p> <p>Was the offender willing to face his/her victims and to do whatever was necessary for the victim to reconcile the negative relationship created between them?</p> <p>Was the offender willing to make whatever legal amends may be necessary?</p> <p>Was the offender willing to face his/her community/other participants and to do whatever was necessary for the community to reconcile the negative relationship created between them?</p> <p>Did the offender identify support people within the community? What was their relationship to the offender?</p> <p>Was the offender willing to participate in traditional ceremonies to initiate the healing process?</p> <p>Did the offender consult an Elder?</p> <p>Was the offender willing to spend time with an Elder AND participate in any preparations the Elder recommends at his/her home reserve or his/her choice?</p> <p>Did the offender meet regularly as required with the justice project/facilitator and his/her support group?</p> <p>Did the offender draft a plan for rehabilitation/restitution/reconciliation? If not, what were the reasons?</p> <p>To what extent did the offender complete the support group plan?</p> <p>Did the offender prepare himself/herself to speak in the conference?</p> <p>Did the offender develop a proposal to give practical expression of her/his appreciation for community support?</p>
2.4.2. Offender Support Group Preparation
<p>Was the offender support group provided at the outset with a clear outline of what was expected from the offender and the steps in the conference? E.g. information sheets</p> <p>Was the offender support willing to face the community/other participants and to support the offender in the conference?</p> <p>Did the offender support group meet regularly as required with the offender and justice project/facilitator?</p> <p>Did the offender support group support the offender in drafting a plan for rehabilitation/restitution/reconciliation? If not, what were the reasons?</p> <p>If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited to train/educate the support group?</p>
2.4.3. Victim Preparation
<p>Was the victim's safety issues addressed?</p> <p>Was the victim provided at the outset with a clear outline of what was expected from him/her and the steps in the conference? E.g. information sheets</p> <p>Did the victim voluntarily agree to be referred to the conference?</p> <p>Was the victim willing to face the offender in the conference?</p> <p>Was the victim willing to face his/her community/other participants in the conference?</p> <p>Did the victim identify support people within the community? What was their relationship to the victim?</p> <p>Did the victim meet regularly as required with the justice project/facilitator and his/her support group?</p> <p>Did the victim draft a plan for the offender's rehabilitation/restitution/reconciliation? If not, what were the reasons?</p> <p>Did the victim prepare himself/herself to speak in the conference?</p> <p>If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited to provide additional support?</p>
2.4.4. Victim Support Group Preparation
<p>Was the victim support group provided at the outset with a clear outline of what was expected from the victim and the steps in the conference? E.g. information sheets</p> <p>Was the victim support group willing to face the community/other participants and to support the victim in the conference?</p> <p>Did the victim support group meet regularly as required with the victim and justice project/facilitator?</p> <p>Did the victim support group support the victim in drafting a plan for the offender's</p>

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<p>rehabilitation/restitution/reconciliation? If not, what were the reasons? If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited to train/educate the support group?</p>
<p style="text-align: center;">2.4.5. Community/Other Participant Preparation</p> <p>Are community members/participants willing to assist in the conference e.g. organizing? providing translation services if necessary? other ways?</p> <p>Was a broad-section of community members/participants willing and able to participate and provide follow-up to the conferences?</p> <p>Are community members/participants willing and able to: mobilize community resources so as to: assist the offender and his/her family process of rehabilitation assist victim and his/her family in the process of recovery if necessary; welcome the participants, if possible provide coffee, milk, Kleenex, lunch and transportation, if needed.</p> <p>Did community members/participants have previous experience/training in the conference process? If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited to train/educate the participants?</p>
<p>How much time was involved in preparing for the conference?</p>
<p style="text-align: center;">2.5. During the Conference</p> <p style="text-align: center;">2.5.1. Logistics</p> <p>Place: Where was the conference held? community facility? Were the offender and/or victim consulted about what place would be comfortable for them?</p> <p>Seating: Was seating pre-arranged? Offender and supporters; Victim and supporters</p> <p>Time: At what time was the conference scheduled to be held? (e.g. Evening after working hours)</p> <p>Safety: Was consideration given to how the victim and offender would be scheduled to arrive/leave at different times, so that offender did not have the opportunity to harass, threaten or coerce the victim? Was consideration given to how escorts could be provided for victims arriving and departing the venue? What safety procedures were followed when both victim and offender were present in the same venue? What steps are taken when safety measures are violated during the conference process?</p> <p>Record: Was a record kept of the discussion in the conference?</p>
<p style="text-align: center;">2.5.2. Participants</p> <p>Was anyone entitled to attend and participate in the conference? Who played a role in determining who would attend the conference? Was there a balance of interested groups? Who was included and present at the conference? Who facilitated the conference? What kind of experience/training did this person have in mediation? Had any of the participants had experience/training in the conference process? If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited?</p>
<p style="text-align: center;">2.5.3. Opening the Conference</p>
<p>Did the conference consist of any ceremonies/prayers by the Elders? Who welcomed the participants? Elder? Keeper? Judge? Facilitator? Other? Was appreciation expressed for those who had come a long way or for those who had to overcome significant difficulties to attend?</p>
<p>Did the participants:</p> <ul style="list-style-type: none"> • introduce themselves – who they are and what they do, • explain their relationship with the offender or victim or others

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<ul style="list-style-type: none"> • express how they feel • their interest in the offence/conference – what they hope to achieve
<p>Who explained</p> <ul style="list-style-type: none"> • the role of the conference • the methods of proceeding in conference • the rule of conduct within the conference <p>Were questions raised – additional guidelines suggested?</p>
<p>What was the duration of the ‘opening of the conference’?</p>
<p style="text-align: center;">2.5.4. Rules of Conduct within the Conference</p> <p>What kind of rules governed the conduct of the conference? What, if any rules apply to perjury or slander?</p> <ul style="list-style-type: none"> • Speaking from the heart – honesty/compassion • Speaking in a ‘good way’ – respect feelings, interests, inputs from others, strive to share openly in a kind, honest way • Respect right of others to speak – to give everyone an equal opportunity to speak; • Respect others when they speak - there are no interruptions while a person is speaking; body language • The laws of the Creator shall govern the person speaking: those laws are honesty, sharing, kindness, and respect; • All participants are equal: there were so special powers or privileges for anyone in the conference; everyone was respected and treated equally. • Confidentiality – what comes up in the conference stayed in the conference • In the conference decisions are made on the basis of consensus;
<p style="text-align: center;">2.5.5. Facts</p> <p>Were the facts of the case presented? By whom? Were the facts discussed and accepted?</p>
<p style="text-align: center;">2.5.6. General Discussion</p> <p>In what order, did participants speak? decided by the facilitator: random; pre-arranged</p>
<p>What was the conference discussion – who said what? The offender? Support group? Family? The victim? Support group? Family? Community members? Community justice project members? Other?</p>
<p>Did the conference discussion cover:</p> <ul style="list-style-type: none"> • the offence; • its impact on the victim, families and the community; Did the offender get the clear message, "What you did was solely your responsibility and it was not okay to do that"? • what needed to be done to the right the wrong – for the victim, families, community and offender? – what options? • what support may be available for the offender and victim?
<p>Was there also a discussion about:</p> <ul style="list-style-type: none"> • extent of similar crimes in the community, • underlying causes of such crime • victims of similar offences describing how they and their families were affected • an analysis of what life was like in the community before the increase in crime • what can be done in community to prevent this type of behaviour

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2.5.7. Offender

Did the offender acknowledge that the facts were true?
Did the offender formally accept responsibility in the conference?
What procedures were in place to ensure that there was an appropriate environment for offender to express his/her feelings about the offence – a chance to tell his/her story?
Was the offender able to express the impact of the offence to the victim and his/her family?
Did everyone present provide assurance that would support her/him during and after the testimony? Eg. Provide words of encouragement
Were participants interested in the offender's story and try not to cut her/him off?
Did participants express the how they valued the offender's acceptance of responsibility and participation in the conference?
Was there an opportunity for the offender to contribute his/her views about what is required to put things right?

2.5.8. Offender Support Group

Did the offender support group support the offender?
Did the offender support group respect the victim and victim support group?

2.5.9. Victim

Was victim asked if s/he felt safe and what (if anything) would make s/he feel safer?
Did the victim acknowledge that the facts were true?
What procedures were in place to ensure that there was an appropriate environment for victim to express their feelings about the offence – a chance to tell his/her story?
Was victim able to express the impact of the offence on him/her to the offender?
Did everyone present provide assurance that they were "on the side" of the victim and would support her/him during and after the testimony? E.g. Provide words of encouragement ("Take your time; focus on someone safe; take deep breaths;" etc.)?
Were participants interested in the victim's story and try not to cut her/him off?
Did participants express the how they valued the victim's input?
Did the participants express gratitude for the victim's participation?
How did victim know that she/he only need tell as much as s/he felt comfortable?
Who intervened immediately if the focus of the conference became uncomfortable for the victim?
Was anyone able (trained) to deal with the emotional reactions that can result from this type of interaction?
Was there an opportunity for the victim to ask questions of the offender?
Was there an opportunity for the victim to contribute his/her views about what is required to put things right?
Did the offender and others validate the victim's testimony? If not, what happened?
Did the victim get the clear message, "What was done to you was wrong; it was not your fault; you are justified in feeling afraid, angry and unforgiving"? (NOTE: In a domestic violence situation, it is important for both the victim and the perpetrator to hear that the responsibility for the violence rests solely with the perpetrator, and not at all with the victim. This must be stated up front; nods and body language are not enough.)

2.5.10. Victim Support Group

Did the victim support group support the victim?
Did the victim support group respect the offender and offender support group?

2.6. Closing the Conference

Did someone (who?) provide a summary of the conference discussion and decisions reached?
What were the terms of the offender's restitution/compensation plan?
Was a support/support group for the offender established? Who were the members?
Was a support/support group for the victim established? Who were the members?
How was the victim's safety issues relating to restitution addressed?
Was date for review set? How long did the discussion take place?
Did the conference take place in one session or several ones?
If the conference took place over a few sessions, was the offender given a set of interim goals?
Were there closing remarks and a closing of the conference?

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2.7. Post –Conference – Follow Up

How was information provided to victim with information about the offender’s reparation/restitution schedule, amounts that will be paid, etc.?

Did the offender meet regularly with his/her support group?

If not, what were the reasons?

Did the offender’s support group report back to the justice project on the offender’s progress?

If the offender had shown no willingness to meet the conditions, was the conference abandoned and the offender returned to the criminal justice system processes?

Was the conference or meeting reconvened later to determine how the offender was progressing?

When? Who attended? What was the outcome?

Did the Support group or offender request additional support at the post-conference review?

If the offender had shown no willingness to meet the conditions, was the conference abandoned and the offender returned to the mainstream system?

Was the victim provided with information about civil remedies in cases where the offender did not fulfill his/her restitution obligation, and provided with assistance in seeking such remedies?

Did community members/participants celebrate or show appreciation of the progress of the offender made?

2.8. Potential Conference Outcomes

2.8.1. Progress of the Offender

To what extent did the offender meet the commitments to which s/he had agreed to in the conference process?

If yes, why?

Were there any breaches? If so, why?

Were the conditions extended or modified?

2.8.2. Recidivism

Subsequent to the conference process, did the offender re-offend?

If so, when?

If so, what type of offence was committed?

2.8.3. Victim Satisfaction Questionnaire

Did you feel safe before/during/after the conference?

Sought/received help for self and family

Sought/received necessary medical treatments

Safety to disclose (confidentiality)

What went well? What suggestion do you have to improve safety measures?

Were you provided with information/explanation that outlined options regarding your involvement in the conference – the possible benefits/cautions – referrals to community resources?

Did you believe you received answers to your questions – were your needs met?

What went well? What suggestion do you have to improve information measures?

Were you informed about the voluntary nature of your participation in the conference?

What went well? What suggestion do you have to improve participation/choices?

Do you think you had an opportunity to express your feelings about the offence and its impact on you to the offender?

Did you believe you had a chance to tell your story?

Do you believe you had a better understanding of why you were victimized?

Do you believe you received proper apologies for the injustice against you?

Did you believe you contributed to decisions about the restitution agreement for the offender?

Did you believe the offender complied with the restitution agreement?

If so, did the victim believe this contributed to his/her ‘healing’?

If so, did the victim believe this contributed to his/her ‘reconciliation’ with the offender?

What went well? What suggestion do you have to improve the testimony/validation?

Do you believe you received adequate support – before, during and after conference?

Do you believe you had been treated fairly?

Did you feel less fearful – regain a sense of security?

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Do you believe you were a full and equal participant in the conference process?
Is there anything else you would like to say about how the conference was handled, or how it could be improved?
Given your experience in the community justice approach – the conference - would you choose the conference process, another community justice approach or the court process?

2.8.4. Offender Satisfaction Questionnaire

Did the offender believe s/he was supported through the conference process?
Was the outcome of the conference process relevant and meaningful for the offender?
What kind of changes occurred in the offender's life due to his/her participation in the conference process?
Were the chances of rehabilitation improved?

2.8.5. Other Participant Satisfaction Questionnaire

This would be completed by any conference participant other than the victim and offender.

What was your overall level of satisfaction with the process of the conference?
What was your overall level of satisfaction with the outcomes of conference?
What was your overall level of satisfaction with your involvement in the conference?
Did you feel free to ask questions? express your opinions?
Were you involved in ongoing supervision? re-integration of the offender into the community? evaluation of the offender's progress on a regular basis?
What was your overall level of satisfaction for the support and involvement of offenders in the conference?
What was your overall level of satisfaction for the support and involvement of victims in the conference?
Do you believe the conference mobilized resources? Improved relationships?

2.9. Potential Cost of Conferences

– see chapter on “Costs”

3. Relevant Documents, Practices and Studies – Yukon

3.1. A Soft Systems Look at the Work of the Dawson Community Group Conferencing Society - 2002³

3.2. Building Community Justice Partnerships - 1997 ⁴

- New Zealand Family Conferences with the necessary adaptations for Canada can offer private and confidential means of resolving youth issues.
 - Family Conferences require legislative changes, training, funding and the dedication and realignment of existing staff positions to be as effective as they are in New Zealand.
 - The Australian model operated by police is less relevant to the north where police transfer every three years.
 - However, it is important to involve the RCMP as much as possible.
 - **Police:** As in the New Zealand Family Group Conferencing process, designating a local police officer to regularly represent police interests immeasurably improves the working relationship between the police and others within a community justice partnership.
 - In this way, the police become an integral part of the community process and not merely an outsider standing to be heard
 - Including the arresting or investigating officer can also reduce potential for internal differences within the police force and include a valuable perspective.
 - **Defence Counsel:** In New Zealand Family Conferences, defence counsel within the Conference speak only to legal issues.⁵
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³ Davidson, Dan, Exploring Community Justice – A Soft Systems Look at the Work of the Dawson Community Group Conferencing Society, 25 February 2002.

⁴ Stuart, Barry. 1997. Building Community Justice Partnerships: Community Peacemaking Circles. Ottawa: Aboriginal Justice Learning Network, Department of Justice.

⁵ Matt Hakiha, presentation at Congress '95, Winnipeg, Canada, 1995.

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4. Relevant Documents, Practices and Studies – Other Northern Territories

4.1. Inuit Women and the Nunavut Justice System-2000⁶

Family Group Conferencing:

- Family group conferencing is a method which the RCMP has strongly supported throughout the north.
- It is unclear whether support for this alternative among some committees is a result of its being a primary alternative supported by the RCMP or because it complements Inuit traditional practices and values.
 - In the GNWT family group conferencing method, the committee is supposed to bring together a circle made up of the victim, the offender, the community and all of their respective support persons for a family group conference.
 - The process is to address such issues as the offender's behaviour and the impact of the offender's behaviour on the victim.
 - A facilitator appointed by the community justice committee helps the parties arrive at an appropriate solution to compensate the victim and ensures that meaningful consequences are established for the offender.
 - If consensus is not reached, the case returns to the RCMP for processing through the courts.
- The NSDC Justice Conference made specific recommendations dealing with family group conferencing.
 - The NSDC report notes that family group conferencing is being practised “with great success” in the Kitikmeot region.
 - The NSDC report endorses this initiative and indicates that it can be provided by community residents and adapted to suit a particular community once training is provided.
 - The report states that “it has the great effect of getting everyone involved and making the offender realize the consequences of his/her actions and recognize that there is community support and concern.”⁷
- The NSDC conference report calls upon government to provide training in family group conferencing in all regions of Nunavut.⁸
 - According to the NSDC report, “family group conferencing training also provides a way for our young people to feel important and involved, to take responsibility for their actions in a meaningful way. ... Family Group Conferencing [sic] gets everyone together who is involved, in an informal setting, when there is agreement to participate.”⁹

⁶ Mary Crnkovich and Lisa Addario with Linda Archibald Division, Department of Justice Canada, Research Report, Research and Statistics, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

⁷ NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 24. cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

⁸ Ibid. pp. 24-28.

⁹ Ibid. pp. 26-27.

5. Relevant Documents, Practices and Studies – Other Canadian

<http://www.usask.ca/nativelaw/jah.html>

5.1. Family Group Conferencing: The Myth of Indigenous Empowerment in New Zealand - ? ¹⁰

Introduction

My writing this piece for *Justice as Healing* was prompted by an article that appeared in a previous issue; namely Gloria Lee's excellent work *The Newest Old Gem: Family Group Conferencing* (Spring, 1997). I share Lee's concern that the imported family group conferencing forum (from New Zealand) is being forced upon Canadian First Nations at the expense of their own, and more appropriate, justice mechanisms. For example, Lee (1997:1) argues that "... First Nation communities are vigorously encouraged to adopt and implement the Maori process and to make alterations to fit the specific community needs, customs and traditions of people who will make use of the new process". Lee's statement of concern is both powerful and correct. Neither Federal nor Provincial governments in Canada should imagine that just because family group conferencing is *supposedly* based on indigenous (i.e., Maori) justice processes, that it is therefore appropriate for indigenes residing in their borders.

In my view Lee correctly describes this imposition of New Zealand's 'Maori inspired' family group conferencing forum onto Canadian First Nations as furthering the 'indigenisation of the Canadian justice system'. What I want to do in the remainder of this paper is to extend Lee's argument and contend that family group conferencing signifies the indigenisation of New Zealand's own youth justice system. I also want to dispel a number of misconceptions associated with the formulation and implementation of family group conferencing in New Zealand, as well as to insert a *critical Maori voice* into the simplistic discourse(s) that surround this so-called 'indigenous empowering' justice forum.

Indigenising Criminal Justice in Neo-Colonial Jurisdictions

Of late, New Zealand's apparently innovative family group conferencing forum has gained immense popularity in many Western jurisdictions, including Canada and Australia. A number of researchers and academics in the field of youth justice in Australasia (see Olsen, Maxwell & Morris, 1995; Maxwell & Morris, 1993; Consedine, 1995; LaPrairie, 1995) have written that family group conferencing either provides a forum that empowers New Zealand's indigenous population (namely Maori), or signals the ability of the imposed criminal justice ordering to *culturally sensitise* itself and effectively *utilise* indigenous justice philosophies and practices.

In this paper I want to argue two points. Firstly, that the family group conferencing forum and its related legislation (*The 1989 Children, Young Persons and Their Families Act*) signifies the indigenisation of New Zealand's criminal justice system rather than the empowerment of Maori. Secondly, rather than signifying the ability of our justice system to culturally sensitise itself, family group conferencing in fact underlines the willingness of the State to disempower Maori by employing their justice processes while denying them a significant measure of jurisdictional autonomy.

In both Canada and New Zealand the largely negative relations between the institutions of criminal justice and First Nations have seen this area evolve as an important issue in indigenous political dialogue and action over the past 20 years (see Jackson, 1988; Jarvenpa, 1985; McNamara, 1995). Initial reaction to indigenous criticisms of imposed justice orderings in jurisdictions such as Canada and the USA were restrictive in terms of the judicial autonomy extended to First Nations and the extent of control the state exerted over indigenous justice programs (Kickingbird, 1976). The predominant thrust of initiatives in Canada, for example, have centered on the *indigenisation* of the existing justice system (Finkler, 1990; Havemann, 1988).

¹⁰ Juan Marcellus Tauri. Mr. Tauri is a lecturer with the Institute of Criminology at the [Victoria University of Wellington](http://www.vuw.ac.nz) in New Zealand. A member of the [Ngati Porou iwi](http://www.ngati-porou-iwi.com) (tribe) of the East Coast of the North Island, Mr. Tauri has been writing and publishing in the area of Indigenous justice issues in New Zealand, the Waitangi Tribunal and State/Maori realtions [Justice as Healing](http://www.usask.ca/nativelaw/jah_tauri.html) http://www.usask.ca/nativelaw/jah_tauri.html

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Indigenisation is generally described as the "involvement of indigenous peoples and organisations in the delivery of existing socio-legal services and programs" (Finkler, 1990:113). Moreover, Havemann (1988:72) summarises the indigenisation process as "... the recruitment of indigenous people to enforce the laws of the colonial power ...". The indigenisation program in Canada included initiatives such as the active recruitment of First Nation members as courtworkers, police officers and prison personnel in federal, provincial and municipal forces and institutions (Griffiths, 1988; Harding, 1991; Havemann, 1988); and increasing attempts to develop community-based sentencing and correctional alternatives for native offenders (i.e., sentencing circles) (McNamara, 1995).

The definition of indigenisation that summarises the Canadian context appears adequate for describing many of the initiatives that have occurred in that particular jurisdiction. However, in order to understand what has occurred in New Zealand of late, we need to broaden existing understandings of judicial indigenisation. This broader understanding is necessary as a result of New Zealand's own era of indigenisation, within which the state sought to culturally sensitise not only its justice system, but also all 'service-delivery' institutions that deal with Maori.

The indigenisation of government policy, legislation and service-delivery in New Zealand began in earnest after 1978 and was, in many ways, directly linked to the radicalisation of Maori land and identity politics during that decade (see Poata-Smith, 1996; Walker, 1989). At that time government institutions had begun to take heed of claims from various individuals and organisations, that their existing practices were viewed negatively by their Maori 'clients'. Partially in response to such criticisms, the State Services Commission, Department of Maori Affairs, and the Public Service Association Working Party presented a working paper in 1979 on the state of race relations within the public sector. The report's main recommendations included the active recruitment of Maori and Pacific Island individuals into public service and provision of better service delivery to these two sections of their clientele (Spoonley, 1993). These recommendations were to be symptomatic of state sector responses to criticisms from Maori over the next two decades. During this period the state sector chose not to make major changes to departmental practices in reaction to Maoris claims of systemic bias, but instead concentrated on *co-opting* Maori, their bicultural ideology and cultural practices within institutional frameworks in order to transform the *face* of state service-delivery. As a result, during the 1980s both the Treaty of Waitangi and certain 'acceptable' Maori cultural values and practices were given increased prominence and importance within the public service (Fleras, 1991).

Throughout the 1980s and early 1990s, many government departments undertook a number of programs in order to signal their commitment to the State's 'Treaty partner'. These programs included such initiatives as the appropriation of a departmental Maori name (for example, our Ministry of Inland Revenue took the Maori name *Te Tari Taaki*, which was affectionately translated by some Maori as 'The Ministry of Take'), the adoption of a departmental waiata (Maori song), Maori motifs added to departmental letterheads and the appointment of a Maori elder as institutional patron. The token nature of the government's sensitisation program is reflected in the fact that organisational accommodation of the State's bicultural experiment to date has largely concentrated on these types of 'cultural sensitivity' exercises. Another popular initiative included the organisation of in-house training sessions held on marae (Maori meeting place) to encourage "cultural and Treaty awareness" amongst departmental employees. As a result "broader issues outside the normal institutional discourse-such as entitlement of the tangata whenua (people of the land), closure of the socio-economic gap, empowerment of tribal authorities and enhancement of Maori language and culture-received little attention" (Fleras & Elliot, 1992:193-94).

New Zealand's indigenisation program is, therefore, not entirely comparable to that which took place in Canada. In the Canadian jurisdiction, indigenisation became concrete policy and was acknowledged as such by the state and its various agencies (Havemann, 1988). In New Zealand, institutional indigenisation was more insidious, including initiatives undertaken in the area of criminal justice policy and practice. What I intend to do in the remainder of this paper is to argue that family group conferencing represents both the indigenisation of our criminal justice sector as well as the continued co-option, by the New Zealand State, of what it considers to be palatable elements of indigenous philosophy and cultural practice (Tauri, 1998).¹

Indigenising Youth Justice through Family Group Conferencing

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The indigenisation of the New Zealand justice process throughout the 1980s included a range of measures similar to those undertaken in Canada and were intended to encourage the greater involvement of Maori within the existing system. This included the active recruitment of Maori as justice employees (i.e., in the police force, probation service and corrections); the establishment of links between probation services, marae committee, iwi (tribal) councils and whanau (family) groups; and the involvement of Maori communities both in the administration of community-based sentences and provision of assistance to prisoners following their release. Also, Pratt (1996) reports that there has been considerable effort since 1989 to inject Maori cultural practices and values into the administration of prison life-through staff 'sensitivity' training and the provision of cultural programs for prisoners. The indigenisation program undertaken within justice, therefore, mirrors the cultural sensitivity exercises prevalent among those state institutions discussed previously.

Olsen, Morris and Maxwell (1995) argue that the family group conferencing legislation was heavily influenced by traditional Maori justice practices.² For example, family group conferences were arguably designed to heal the damage caused by an offender's behaviour, restore harmony between those affected by their behaviour, encourage the participation of those who have a direct interest in either the offender or the offence (Maxwell & Morris, 1993), empower the victim, and positively 'reintegrate' the offender within the community (Stewart, 1996). Furthermore, LaPrairie (1995) writes that the stated aims of the New Zealand conferencing forum include making offenders aware of the consequences of their behaviour, moving resolution of the offence from the state to the extended family and/or local community, and facilitating victim and offender reconciliation.

When we compare the stated aims of the family group conferencing process within the 1989 legislation with empirical research on the conferencing process, we begin to understand that both the family group conferencing forum and the 1989 Act represent the *co-option* of Maori justice practices. We can also establish that New Zealand's revolutionary juvenile justice model, far from providing Maori with a culturally sensitive justice forum, has done little to adequately address criticisms made by some Maori of the justice system itself (see Jackson, 1988; Ministerial Advisory Comm., 1986; Sharples, 1995; Wickliffe, 1995).

Empirical research on the New Zealand family group conferencing process to date establishes that it has failed in those areas that supposedly distinguish it as a *Maori inspired justice forum*. For example, in terms of victim attendance, Maxwell and Morris's 1993 research found that only forty-six percent of victims attended family group conferences (and only forty-nine percent of this group registered satisfaction with the result of the conference they attended). Also, only five percent of Maori family group conference's were held on marae (Maori meeting house), with Department of Social Welfare offices or facilities the most common venue utilised. This is an important area of concern, especially since one of the main aims of the Act is to encourage cultural sensitivity within juvenile justice practice. Concern was expressed for the practice of holding all conferences in the Wagga Wagga (NSW) conferencing experiment of the early 1990s in the local police station (see Sandor, 1994). A dubious justification for this practice given by one commentator (see Moore, 1993) was that the police station "... is a setting that favours neither victim nor offender" (*ibid*: 204). Both Sandor (1994) and Cunneen (1998) dispute the efficacy of this statement given the historical involvement of the police in the subjugation of indigenous populations throughout Australia. Similar issues could be raised in the New Zealand context over the extensive use of Department of Social Welfare facilities for family group conferences involving Maori. This is a justifiable concern given the historical role the Department has played in the control and surveillance of members of New Zealand's lower socioeconomic population, of which Maori make up a substantial number (Poata-Smith, 1997).

The family group conferencing process as practiced presently in New Zealand has also failed to deliver on another of the aims of the 1989 legislation; namely *deprofessionalisation* of juvenile justice. Maxwell and Morris's (1993) research showed that social workers were present at sixty-two percent of all family group conference's evaluated. This occurred despite the fact that the 1989 legislation severely restricts their right to attend (only where the youth is in the care of the Director General of the Department of Social Welfare). This is an important issue, given that one of the main criticisms leveled by Maori (see Jackson, 1988; Morris & Tauri, 1995) at current justice practices is the authority given to those who are defined by European standards as experts and professionals (for example, lawyers, social workers and police). According to Jackson (1990), this has aided in creating and perpetuating a situation where Maori justice practices and philosophies are under-utilised and maligned in comparison to European knowledge and expertise. We might argue therefore, that

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family group conferencing has thus far failed to provide indigenous peoples, in this instance Maori, with the opportunity to be much more than the passive subjects of an imposed criminal justice system.

A Critique of the Indigenisation Process

There are a number of criticisms that can be made of the neo-colonial state's attempt to culturally sensitise its institutional practice. In the Canadian context, criticism has centered on the token nature of judicial indigenisation programs. Havemann (1988:74), for example, is heavily critical of the process, charging that it serves as an inexpensive and convenient option for the government in addressing indigenous justice concerns, without seriously affecting State control of the justice arena. He argues that "indigenisation serves as a cheap substitute for a measure of autonomy, self-government or, indeed, sovereignty. It assimilates indigenous people into the imposed social control apparatus rather than autonomising the social control apparatus for the benefit of indigenous people". Similarly, Finkler (1990) contends that for Canadian First Nations, indigenisation has not provided a substantial measure of judicial autonomy, but rather has led to the involvement of First Nation's and their judicial practices in the delivery of the state's existing justice programs. Therefore, we might conceptualise the government's indigenisation program as both a pacificatory project intended to contain the legitimisation crises potential of radical First Nation politics, and as the attempted recolonisation of First Nation communities through the incorporation of their existing social control practices (Tauri, 1996b).

As shown earlier, the recent history of State/Maori relations in New Zealand has been characterised by a continual (re)evaluation and repackaging of state policy; which was influenced in part, by the radicalisation of Maori politics. This development signified a legitimisation crisis for the New Zealand State. Indigenisation, therefore, represents but one element within its program of institutional response. Considering this point, we might best describe the development of family group conferencing under the 1989 Act as an *incorporation* of Maori justice practices through the *hybridisation* of New Zealand's juvenile justice system. Havemann (1988:90) describes hybridisation as "the mixing of formal with informal justice and social service with order maintenance". The family group conferencing process as practiced in New Zealand can be viewed as a hybridised social control mechanism on the part of the state because it involves the mixing of formal (European) with informal (Maori) justice processes within a forum that severely restricts Maori judicial autonomy.

The fact that the most significant example of the New Zealand government's indigenisation program within criminal justice has so far failed to adequately address Maori demands for a significant measure of jurisdictional autonomy should come as no surprise to other indigenes. It should be remembered that we are relying on a neo-colonial state to dispense *justice*, when a central element of its historical development has been the disempowerment of its indigenous population (Jackson, 1995; Tauri, 1996a). Nor should we be surprised at the willingness of various New Zealand governments to employ philosophies and values to (re)legitimise their institutional practices within the justice arena. For as Kelsey (1996:185-86) argues, the overall aim of much of the government's institutional practice and policy throughout the 1980s was "the co-option of Maori intellectual and cultural property for cosmetic purposes by 'non-Maori' government departments".

Conclusion

In their 1995 paper, Olsen, Morris and Maxwell contend that the family group conferencing process in New Zealand provides evidence for the ability of indigenous justice processes to adapt to modern times and successfully modify Western justice models. Some Maori, however, would view the situation differently. The inability of the system to deliver on many of the promises of the 1989 Act represents for them a continuation of the New Zealand government's historical ambivalence toward their cultural practices, except for when they can be of use to the dominant justice ordering. Some Maori want more than the essence of their processes and philosophies to be 'recognised'. They want them respected which necessitates allowing Maori to employ these processes as they see fit. Instead, what we have at present is a forum that utilises Maori processes while restricting how they may apply them. In some ways this has similarities to the disempowering situation described by Lee (1997) who laments the willingness of the Canadian Federal government to implement an indigenous inspired forum, while continuing to overlook the philosophies and practices of its own First Nations.

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Finally, returning to New Zealand, for some Maori commentators our government's 'solution' to the problem of cultural insensitivity and institutional racism-family group conferencing - is inadequate. Jackson (1995: 34), for one, argues that "... Justice for Maori does not mean the attempted grafting of Maori processes upon a system that retains the authority to determine the extent, applicability, and validity of the processes. No matter how well intentioned and sincere such efforts, it is respectfully suggested that they will merely maintain the co-option and re definition of Maori values and authority which underpins so much of the colonial will to control. A 'cultural justice system' controlled by the Crown is [simply] another colonising artifact".

1. One of the main features of the colonial project in New Zealand throughout the 19th century was the gradual "silencing, of Maori justice (see Pratt, 1991; Ward, 1995). Legislation was introduced that ostensibly recognized elements of Maori social control practice deemed acceptable to the colonisers (*The Native Exemption Ordinance 1844*, for example). The initial mood of European colonist's towards Maori justice was, therefore, one of compromise and accommodation (Russell, 1990). This restricted recognition of Maori jurisdiction continued well into the 20th century where legislation such as The Maori Social and Economic Advancement Act 1945 and its amendment *The Maori Welfare Act 1962* gave Maori District Committees limited capacity to deal with deviant members of their Committees (Tauri, 1996a).
2. Space precludes an in-depth discussion of the philosophies and practices that underpin Maori Justice. See Durie (1995), Considine (1995) and Tauri & Morris (1997) for further discussion of Maori justice.

5.2. Survey of Pre-charge Restorative Justice Programs -? ¹¹

Family group conferencing originated in New Zealand in the mid 1980's, using traditional Maori dispute resolution techniques with young offenders. Family and friends of victims and offenders are brought together with a facilitator (a social worker) to discuss the event, its consequences and reach an agreement on restitution and the reintegration of the offender back into the community. Now legislated throughout New Zealand as part of an overall diversionary approach for young offenders, conferencing has been developed in a number of Australian states. A model which uses police referral and coordination of conferences at the pre-charge stage has been particularly well publicized, and forms the basis of much of the rapid expansion of conferencing techniques now taking place in North America and Europe.

It is argued that the offender, in discussing the emotional, physical, social and financial consequences of an event with those directly affected, experiences *shaming*, an apology almost always results, and the process of *re-integration* of the offender can then begin with the development of an agreed plan which will be over-seen by participants at the conference. The experience is seen as powerful and not a 'soft' option. Conferencing has been used at various stages of the justice process, is targeted at serious offences or those in which informal diversion and cautioning have not worked. Claims for successful completion and participant satisfaction are high (although less so for victims) and considerable cost savings have resulted from the diversion of young offenders away from the courts and institutions. Criticism of conferencing has focused on the role of the police in police-led schemes, the lack of attention to victim needs, possible coercion of offenders and victims, gender and cultural appropriateness, and issues of due process and accountability.

5.3. Restorative/Criminal Justice—Identifying Some Preliminary Questions, Issues & Concerns - 1998¹²

- Family Group Conferencing (FGC) originated in New Zealand and initially was primarily concerned with providing Maori people with culturally appropriate form of dispute resolution.
 - The FGC approach was incorporated into the Children, Young Persons and Their Families Act (NZ 1989) and subsequently has largely replaced Youth Court as a forum for dealing with young offenders.

¹¹ Shaw, Margaret and Frederick Jané, [Department of Sociology & Anthropology, Concordia University](http://qsilver.queensu.ca/rcinet/projects/execsum.htm), Montréal, Québec, Network for Research on Crime and Justice, Survey of Pre-charge Restorative Justice Programs, <http://qsilver.queensu.ca/rcinet/projects/execsum.htm>

¹² Goundry, Sandra A., Legal Consulting and Research Services, Restorative Justice and Criminal Justice, Reform in British Columbia – Identifying Some Preliminary Questions, Issues and Concerns, Prepared for: BC Association of Specialized Victim Assistance & Counseling Programs, 30 April, 1998.

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- The FGC model emphasizes the need to:
 - Bring the offender, the victim and their respective support groups to achieve mutual understanding of the reasons and circumstances of the crime from both perspectives, and
 - Resolve the matter in such a way that it reinforces the position of the young persons as a member of the community.
-

5.4. Planning/Evaluating Community Projects - 1998 ¹³

Family group conferencing is a restorative justice technique that had its origins in New Zealand. It is similar to circle sentencing, but there are restrictions on who can participate. Family group conferencing typically applies to young offenders and normally involves the victim, offender, and as many of their family and friends as possible. Professional or community workers may also participate. A typical family group conference involves about a dozen people. When adult offenders are involved the process is called community group conferencing and is more likely to involve community members rather than families. The goal of the conference is to allow those affected by the crime the opportunity to resolve the case in an environment that is supportive of both victim and offender.

Conferences are facilitated by a trained coordinator who begins by explaining the procedure to the participants and by outlining some of the details of the case. Usually, the offender begins by telling his/her version of what happened followed by the victim who describes the event from his/her perspective, expresses his/her feelings about the event, and asks questions of the offender. At any point in the proceedings, the offender can make an apology to the victim. The victim's friends and family then have the opportunity to speak followed by the offender's family and friends. The coordinator then leads the conference into a discussion of what might be done to repair the harm done to the victim. Victims and their family and friends outline their expectations, and offenders and their family and friends respond. Negotiation continues until a plan is agreed upon and written down. The coordinator then establishes mechanisms for enforcing the plan.

The philosophy behind group conferencing is giving the conflict back to those who are directly affected by the crime (Church Council on Justice and Corrections, 1996). In the formal justice system, bureaucrats are in charge and the focus is on the violation of the law. With conferencing, the victim and offender and their friends and families are responsible for the outcome and the focus is on the harm that has been done. The principles that apply to conferencing are those of social justice rather than legal justice. Offenders are encouraged to face the consequences of their behaviour in a process that is intended to reintegrate the offender into his/her immediate community. The offending behaviour is rejected, not the offender. While the offender is shamed, the process is one of reintegrative shaming. The conferencing process is intended to encourage reintegration into the immediate community of relatives and close friends as well as into the broader community.

Conferencing can be a very comprehensive method of restorative justice. Rather than simply obtaining material restitution for victims, it can also help to repair the symbolic and emotional damage to victims and their families. The family and friends of both the victim and offender are encouraged to offer continuing help to ensure the resolution arrived at during the conference is actually carried out in the community.

The Church Council on Justice and Corrections has suggested several issues that should concern those who are responsible for organizing family group conferences. The most important is that vigilance is needed to keep the interests of the victims at the forefront. Also, the conference participants must be people who are meaningful to victim and offender. This can be difficult for offenders who may be alienated from family and friends.

¹³ Solicitor General Canada, Rick Linden University of Manitoba and Don Clairmont Dalhousie University, Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998 <http://www.sgc.gc.ca/epub/Abocor/e199805b/e199805b.htm>

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Evaluations of conferencing have identified concerns about the enforcement of conference agreements, the possible conflict with the due process rights of the accused, the potential for net-widening through including offenders who might otherwise be dealt with in less formal ways, conflicts over jurisdiction among various professional groups, and the inability to address the conditions that cause crime such as unemployment, poverty, and the breakdown of family support networks. Despite these concerns family group conferencing can be a good way to ensure that those persons who are closest to the offender and to the victim are involved in the restorative justice process. This support can be critical in helping to ensure a positive outcome.

<http://www.usask.ca/nativelaw/jah.html>

5.5. The Newest Old Gem: Family Group Conferencing - 1997 ¹⁴

Family Group Conferencing ¹ is the newest trend in justice development and hopes for renewal of the Canadian justice system. Federal and provincial departments of justice are prospecting for communities who are opening up this new frontier in community justice. Researchers and government representatives rush into communities that are rumored to be breaking "new ground" or to be exploring community involvement with "new" justice initiatives. With interest like that, it's difficult for First Nations communities not to be cautious and a little bit suspicious of justice prospectors coming in from various government departments. The biggest concern of First Nations people is the exploitation of cultural and traditional knowledge by both First Nations and non-First Nations researchers and developers in the journey of community healing and recovery.

Family Group Conferencing (F.G.C.) has emerged out of the Maori tradition in New Zealand. In Canada, government representatives and researchers speak about the F.G.C. process which is brought to us from across the ocean and request that the First Nations people of North America adopt the principles and processes of the Maori Family Group Conferencing. This introduction to F.G.C. and the obvious promotion of the benefits of the process to the Maori of New Zealand is a featured selling point underlined during the government's presentation. The nudging and encouragement of First Nations communities to adopt the F.G.C. process is quickly becoming expectation, with government directives springing from newly formed policy and program funding criteria.

With all due respect to the Maori people who have generously shared their knowledge and teachings with the government of their land in the hopes of benefiting the Maori youth - and with kind thanks to the government of Canada and the justice departments for their thoughtfulness - the First Nations people of North America, since time immemorial, have had and still do have principles and processes in place to deal with disharmony within the community much in the same way the Maori of New Zealand have. I am not sure whom that surprises, but it needs to be pointed out.

Implementing and addressing policy is a major concern for provincial and federal departmental representatives and Family Group Conferencing seems to meet their policy of restorative justice. However, there are a couple of major flaws in the implementation and rationalizations of the government adopted F.G.C. process which is said to have a restorative justice initiative.² First, a key principle of restorative justice is that it must be community driven. Here in Canada, the Maori Family Group Conferencing process is not a community driven process. The federal department of justice and the Royal Canadian Mounted Police have instigated F.G.C. and it has been adopted by Social Services provincially and Corrections Services Canada, federally.

Second, there are some concerns with the developmental process used. That is, First Nations communities are vigorously encouraged to adopt and implement the Maori process and to make alternations to fit the specific community needs, customs and traditions of people who will make use of the new process. In general, there are two ways in which

¹⁴ Gloria Lee, Researcher and Curriculum Developer, Saskatchewan Indian Institute of Technologies, Ms Lee is of Cree ancestry and is from the Pelican Lake area. She has developed the curriculum for the two-year Justice Diploma Program. The following is an excerpt from her current writings on Family Group Conferencing. *Justice as Healing* Vol. 2, No. 2 (Spring 1997) http://www.usask.ca/nativelaw/jah_lee2.html

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First Nations people view this developmental process. First, it is seen as an imposition and intrusion upon First Nations communities and people. This view sees Family Group Conferencing as an indigenization of the Canadian justice system. Paul Havermann helps make this point in his article, *The Indigenization of Social Control in Canada*, when he says,

"despite its appearance as more benign than the model of pure imposition, the integration or indigenized model is one in which the colonizer preserves aspects of the indigenized model is one in which the colonizer preserves aspects of the indigenous social control system, primarily in order to utilize its authority to support the new pattern of domination"³

The second view sees Family Group Conferencing as available to be adopted into the culture of First Nations people of North America. It has been the custom and method of survival for First Nations peoples to acquire knowledge, technologies and tools of other places in order to improve Indigenous life while maintaining traditional values, teaching and spirituality. North American Indigenous people have survived, in fact thrived, because of their syncretist⁴ nature, their ability to adopt what is good, useful and strong from other cultures into their local traditions, customs and culture.

First Nations people will develop community justice processes which are culturally appropriate and respectful, and they will be done at the request of an in response to the needs of First Nations communities. This principle of First Nation community development requires adherence to indigenous ethics that acknowledge and respect cultural distinctiveness. Many First Nations and some non-First Nations people, academics, elders, as well as First Nations governmental representatives, researchers, artists, and others, have attempted through many forms and mediums to teach government representatives of different departments about Indigenous ethics and standards. It can be speculated that among other things, the reason for the shortfalls in success of government and departmental policy implementation is ultimately the lack of understanding and respect for Indigenous ethics which are necessary for doing business with First Nations communities. It is simply not enough to understand the culture and traditions of First Nations people - that will get you a degree. One must be able to adequately apply the ethics and protocol that is derived from a spirit and a people reaching to us from untold but successful history.

The new government approach of utilizing culture to facilitate the administration of justice to Aboriginal people is inherently problematic in terms of cultural ethics in bureaucracy. David Lynes presents this problem effectively when he says:

"We are now in a position to better recognize the problem inherent in such an attempt and indeed, in this very line of enquiry. These policies and procedures understood to be essential to administrative success may never be 'culturally appropriate'. The failure to entertain this possibility seriously risks encouraging not cultural appropriateness, but the appropriation of culture; the appropriation of cultural traditions for administrative ends."⁵

I will advance his postulation by adding that cultural administration is an appropriation of culture which exploits indigenous knowledge and spirituality in order to need government bureaucratic policy and goals. However, I disagree with Lynes when he says,

"culture is damaged or compromised by administration regardless of who is doing the administering."⁶

Culture is damaged, even exploited by some First Nations and non-First Nations people alike given lack of understanding and proper application of Indigenous ethics and protocol. If culture is utilized in an ethical fashion by and for First Nations people, then the culture is not exploited but is respected and elevated by making proper usage of the Creator's gift of culture. Although I remain skeptical of non-First Nations peoples' ability to ethnically and appropriately administer First Nations culture, I am less cynical of First Nations peoples' ability to make good use of our culture with Indigenous Ethics intact.

The manipulation of culture to meet policy objectives in unethical and demonstrates disregard for human rights and dignity. Manipulation in this case is affected by the determinant of funding which is prescribed by imposed training and program criteria. The current encouragement given to First Nations people to utilize and cultivate culture as a framework and model for justice is motivated by concern over the impact of the justice system upon First Nations people. But First Nations have learned to identify and take advantage of an opportunity. In this case, past oppression of culture and ceremony has been alleviated momentarily to allow the development and growth of a cultural process which may in fact benefit all people of Canada.

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1. A method for determining the response to crime by involving the victims, offenders and community representatives.
2. A detailed critical analysis of restorative justice policy development from a First Nation perspective can be found in Gloria Lee, "Restorative Justice: Renaissance of Aboriginal Women Through the Amerindian Wholistic Perspective" (1996) (Unpublished)
3. Havemann, Paul, "The Indigenization of Social Control in Canada" in Silverman, Robert A. & Marianne O. Neilson, *Aboriginal Peoples and Canadian Criminal Justice* (Toronto: Harcourt, Brace & Co., 1992) at 113.
4. Russel Smandych and Gloria Lee, "Women, Colonization and Resistance: Elements of an Amerindian Autohistorical Approach to the Study of Law and Colonization" in *Native Studies Review* 10, no. 1 (1995) at 29 citing Ronald Wright in *Stolen Continents: the "New World" Through Indian Eyes* (Toronto: Penguin, 1992) at 150 who defines syncretism as "the growing together of new beliefs and old...[as] a way of encoding the values of a conquered culture within a dominant culture."
5. David A. Lynes, "Cultural Spirit and the Ethnic of Bureaucracy: the Paradox of Cultural Administration" (Antigonish, Nova Scotia, May 1995) at 17. Unpublished
6. *Ibid.* at 16

It has been said...

"Inuit law and codes of conduct governed the way people lived. Elders were in charge of dealing with conflict, and rather than emphasizing punishment, they tried to find the cause of the unacceptable behavior and persuaded the offender to correct it. Although southern justice has been imposed on Inuit communities, today's elders still know these laws."

Rhoda Innuksuk on behalf of Inuit Circumpolar Conference, "Inuit and Self-Determination : The Role of the Inuit Circumpolar Conference" in W.J. Assies & A.J. Hoekena, eds.n *Indigenous Peoples' Experiences with Self-Government. Proceedings of the seminar on arrangements for self-determination by Indigenous Peoples with national states*, 10-11 February, 1994, Law Faculty, University of Amsterdam. IWGIA Doc. No. 76 (Amsterdam, Copenhagen: IWGIA, 1994) at 196.

Teachings of the Seven Prophets: The Seven Fires

5.6. Edmonton Police Service. Family Group Conference – 1996¹⁵

- Here there is a brief discussion of one particular family group conference involving a school and an Aboriginal youth, conducted by the Edmonton Police Service where all participants were pleased with the process and the results to-date.

5.7. Family Group Decision-Making Project: Implementation Report Summary. - 1996¹⁶

Family Violence or Sexual Abuse Cases

- This report deals with the application of the principles of New Zealand's family conferencing to cases of family violence, including some sexual abuse cases, in Newfoundland.

¹⁵ Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

¹⁶ Burford, Gale and Joan Pennell. Family Group Decision-Making Project: Implementation Report Summary. St. John's Newfoundland: Institute of Social and Economic Research, Memorial University, 1996 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

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- As a pilot project the program was implemented in 1993 at three sites, Nain (the home of some 1200 Inuit), St. John's, and Port au Port Peninsula.
- The report answers numerous questions about the purpose, procedures, and impact of the initiative.
- The authors argue that the model is applicable across cultural boundaries providing there is high involvement of local people in adapting it to their use.
- The report deals with commonly raised questions about objectives and implementation (e.g. typical problems in setting up a family conference, dealing with the possibility of intimidation, costs, family assessments of the experience).
- **Conclusions:** The authors conclude that family group conferencing is an effective way to deal with violence and sexual abuse without discounting the seriousness of these problems.

5.8. Satisfying Justice, Safe Community Options - 1996¹⁷

Sentencing: ¹⁸ The project originated as a non-judicial version of family group conferencing as part of an innovative family violence pilot project.

- There was no direct impact on incarceration in the Family Group Decision-Making Project because those who abused still went to court and possibly jail, depending on their sentence.
- However, there was a judge in the Nain circuit who became interested in the family group decision-making approach and found it relevant for sentencing.

Post-Sentencing: ¹⁹ In some cases, once safety concerns and family wishes were addressed, escorted prisoners attended the family group conference.

- The conferences were able to deal with much of the harm and needs not addressed in a courtroom.
- The project's final report noted:
 - *"It's hard to maintain the denial when confronted with clear evidence about the abuse and when your whole family is sitting in a circle listening to what you did.... During the conferences, most people who had committed abuse did not or could not deny it....With their entire family and closest supports pre-sent, the offenders could not play one group off against another."*

Referral ²⁰ Moreover, it should not be assumed that abusers do not want help; a case in point is one man who not only admitted to the abuse, but the referral to the project was actually initiated by him.

- Any family referred to the project was brought together with their extended family and other significant social supports to work out a plan to stop the abuse or neglect...
- *"The aim of the Family Group Decision-Making Project was to reduce violence by stitching 'old' partners together to determine solutions, but now these 'old' partners - family, kin, friends, community, and protective services - were to assume new roles, new configurations on working together."*
- **Origin:** Family group conferencing has emerged in the aboriginal cultures of New Zealand and Australia, specifically Maori roots, as another credible, reparative process for communities affected by crime. There is a growing interest in implementing this approach in the U.S. and Canada.
- **Process:** In New Zealand, it is by law that every case involving youth, except murder and manslaughter, must be referred for a recommendation from this circle-type gathering they call "conferencing", and it is beginning to be requested for adults because judges find it so much more productive to consult the community in this way, and get its real assistance with the issues and problems.

¹⁷ The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options that attempt to repair harm from crime and reduce the use or length of imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

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- It tends to bring together a more restricted group of community members than do circles, primarily the victim and offender and as many of their family and supporters as possible.
 - It also utilizes the services of relevant professional or community workers.
 - The process they have relied on heavily has led to a new understanding in criminology of the role that the human emotion of “shame” can have in bringing about changes in behaviour, but only on the condition that the offender is not made an outcast.
 - Family group conferences mobilize informal community mechanisms to express both disapproval of the conduct of the offender as well as gestures of re-acceptance into the community of law-abiding citizens.
- **Potential Outcomes:** Conferences offer great potential for satisfying justice because they deal with people’s unanswered questions, painful emotions, the issue of accountability and the question of restitution or reparation.
- It makes eminent sense that reconnecting the offender in a healthy way to family and community is a most effective means to reduce the likelihood of future dangerous behaviour.
 - The amount of diversion from courts appears to be significant in many jurisdictions using them.
 - While conferences in a few countries can recommend a custodial sentence, in fact they seldom do.
 - Their impact on rates of incarceration, modest for now, should be enhanced as they deal with increasingly serious offences.
 - They are not a panacea but, generally speaking, satisfaction on the part of justice system professionals and the public is much higher compared to their experience of the courts.
- **Assumptions:** Family group conferences are grounded in the following assumptions, according to David Moore, an Australian educator and pioneer of that country’s conferencing model.²¹ (Moore, **Facing the Consequences: Conferences and Juvenile Justice**)
- the definition of community is used sparingly, that is, it is confined to people with specific relationships to offenders and victims;
 - the offending behaviour and not the offender is rejected;
 - emotion is part of the process;
 - process allows reintegration into immediate community of interest (such as family) and broader community (such as the geographic community);
 - gives the conflict to those directly affected;
 - basic rules are those of social justice and community decency rather than of legal justice;
 - the conference is the most effective way to identify the causes of failure in the family, when applicable, and of community control, and to begin the complex process of restoring social bonds;
 - traditional justice system informal methods may achieve material restitution for victims but are not designed to repair the most significant symbolic and emotional damage;
 - coordinators act on behalf of the social justice system but will be umpires not players;
 - conference will encourage offenders to face consequences of behaviour;
 - conferences offer victims the opportunity to deal with their resentment and anger;
 - individual rights of offenders will continue to be protected.

Strengths: Family group conferencing builds on common restorative justice principles, offering the potential at least of genuine “satisfying justice”.

²¹ Moore, D. 1992, "Facing the consequences: Conferences and juvenile justice", paper presented at the National Conference on Juvenile Justice, Adelaide, Australian Institute of Criminology, Canberra.

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- family conferences give the conflict back to those most directly affected, enhancing a shared responsibility for repairing that harm, because crime is understood more in the context of harm done to people rather than mere law-breaking,
- many community resources surface that were previously unknown and untapped; experts tend not to dominate the conference as they would in a courtroom.
- Some models of family conferences delve more into the family and community conditions underlying the crime, addressing the complex task of restoring social bonds.
- The goal is reintegration rather than stigmatization and labelling of offenders.
 - Through a trained coordinator, a process is followed with a determined order of speaking that is designed to enhance the reintegration.
 - Participants in a conference will encourage the offender to face the consequences of one's behaviour, attempting to denounce and reject the behaviour instead of the person.
 - The individual rights of an offender are intended to be a primary concern for conference organizers.
- Victims are included as parties in their own right.
 - They have the opportunity to deal with such emotions as resentment or anger.
 - There is the likelihood of some material or symbolic restitution.
- A positive "reintegrative" kind of shaming occurs in conferencing, particularly in the Australian police-based models as Carol LaPrairie explains:
 - *"It gives the community of people most affected an opportunity to seek resolution without making the offender an outcast. This is accomplished by harnessing informal community mechanisms to express both disapproval of the conduct of the offender and gestures of reacceptance into the community of law-abiding citizens. It is the second part of the ceremony, i.e. reacceptance based on John Braithwaite's theory of reintegrative shaming that distinguishes degradation ceremonies (used by the main-stream criminal justice system) from reintegrative ones."*
 - *"The first outburst often comes from the victim" says Judge Michael Brown, describing the dynamic of a family group conference. But after they've had a chance to vent some of their feelings of pain and anger, "it's amazing how generous they can be." "Look, they may say, we don't want him to go to jail. But we do want our motor car back. And that leads to a realistic discussion about reparations."*

Cautions: The early experience of family group conferences has illustrated the challenges facing this newer approach to justice.

Victims: While victim participation and satisfaction is much higher than through the court process, it remains a central issue for vigilance.

- It is an ongoing priority in all these innovative justice processes to hold up the needs and rights of the victim.
- In any move to consensus and agreement in a conference, the healing needs of the victim should be given equal weight to those of the offender.

Participants: It is a challenge to select the most effective participants for a conference, those meaningful to victim and offender.

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- When families are no longer influential in a young person's life, it is incumbent to identify and include someone who is now interested in that youth or once was, perhaps an aunt, favourite teacher or sports coach.

Professionalization: There is the danger down the road that family group conferences could create their own justice industry, just as much rule-bound and professional-dominated as mainstream justice.

- In practical terms, early evaluation has been positive but also has revealed concerns about
 - enforcement of diversionary conference agreements,
 - due process rights,
 - the potential for net-widening,
 - turf wars among police, court and justice professionals and
 - the limitation of conferences to address serious conditions leading to an offending behaviour such as unemployment, poverty and breakdown of family support networks.
- However, in the words of American criminal justice writer Russ Immarigeon, this preliminary evaluation indicates matters that require repair, not rejection.

Conclusion

Family group conferences have spread to several other countries, including a few pilot projects in Canada and considerably more juvenile jurisdictions in the United States.

Remarkably, the approach of family group conferencing is also being used in prison and in the community, in some cases, even after someone did go to jail for a crime.

- It was clear that the jail sentence had ignored so much of the harm cause by the crime whereas these conferences were able to bring healing and closure.
- It is a poignant reminder that such processes make all the more sense at the front end of the justice and corrections systems; in cases where justice has been satisfying, and the offender is judged not to be a danger to the community, it begs the question of why custody at all.

5.9. Conferencing In Aboriginal Communities In Canada - 1995 ^{22 23}

- Here the author reflects on the family conferencing developments in Australia and on how they might emerge in Canada's Aboriginal communities.
- She reviews the origin of family conferencing in New Zealand and Australia and the associated theoretical underpinnings.
- **Process:**
 - The core sequence of conferencing is identified as the giving and acceptance of an apology between offender and victim.
 - The role of the facilitator is especially to see that the key components of reintegrative shaming occur.
 - LaPrairie observes that conferencing presents an opportunity for offenders to make new connections with people.
 - In addressing the implications for Aboriginal communities in Canada she notes that family conferences should:
 - be expeditious,
 - involve the extended families, and

²² LaPrairie, Carol. "Conferencing In Aboriginal Communities In Canada: Finding Middle Ground in Criminal Justice?" *Criminal Law Forum*, vol. 6, no 3, 1995 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, *Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature*, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

²³ University of Saskatchewan, Books, Articles and Cases about Sentencing Circles, http://www.usask.ca/nativelaw/jah_scircle.html

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- feature trained facilitators.
 - She emphasizes the required presence of an authoritative extended family representative, and a trained facilitator to effect both strong community commitment and protection of rights respectively.
- Potential Outcomes:
 - She suggests that such conferencing can bring people together and help develop communitarianism and community institutions.
 - Conferences also may represent safe places where conflicts can be talked out and resolved.
- Evaluation: LaPrairie stresses the need for projects and programs to be independently and dispassionately evaluated. Implementation and impact studies need be done.
 - Community and project personnel have to be involved in negotiating the evaluation framework and key criteria (e.g. what do we mean by success?).
 - She concludes by arguing that projects have to be assessed in relation to community issues, project objectives, and government priorities, and she offers very useful guideline questions for the community and project referents

6. Relevant Documents, Studies and Practices – USA

6.1. National Institute of Justice²⁴

Family group conferencing involves the community of people most affected by the crime -- the victim and the offender; and the family, friends, and key supporters of both -- in deciding the resolution of a criminal incident. These affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired. To participate, the offender must admit to the offense. Participation by all involved is voluntary. The facilitator contacts the victim and offender to explain the process and invites them to the conference; the facilitator also asks them to identify key members of their support systems, who will be invited to participate as well. The conference typically begins with the offender describing the incident, followed by each participant describing the impact of the incident on his or her life. It is preferable to allow the victim to start the discussion, if they wish. Through these narrations, the offender is faced with the human impact of the behavior on the victim, on those close to the victim, and on the offender's own family and friends. The victim has the opportunity to express feelings and ask questions about the incident. After a thorough discussion of the impact of the behavior on those present, the victim is asked to identify desired outcomes from the conference, and thus help to shape the obligations that will be placed on the offender. All participants may contribute to the problem-solving process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement outlining their expectations and commitments.

Family group conferencing was developed from a Maori tradition in New Zealand, where it is currently used for most juvenile offenses. The process was adapted by police in Australia, and then introduced to the United States, where it is currently used by some police agencies, schools, and probation. Family group conferencing is most often used as a diversion from the court process for juveniles, but can be used after adjudication to address unresolved emotional issues or to determine the specific terms of restitution. The process has been used in a few adult cases. A variety of offenses have been resolved through family group conferencing, including theft, arson, minor assaults, drug offenses, and vandalism.

Goals

The goals of family group conferencing include:

Provide an opportunity for the victim to be directly involved in the discussion of the offense and in decisions regarding appropriate sanctions to be placed on the offender. Increase the offender's awareness of the human impact of his or her behavior and provide an opportunity to take full responsibility for it. Engage the collective responsibility of the offender's support system for making amends and shaping the offender's future behavior. Allow both offender and victim to reconnect to key community support systems.

Implementation

The family group conferencing process has been implemented in schools, police departments, probation offices, and neighborhood groups. Either volunteers or paid employees can serve as facilitators after completing a required course of skills training. Besides involving the victim, offender, and their family members, a conference might involve other key people in the victim's and offender's lives such as teachers, other relatives, peers and special adult friends, and the like. Some family group conferencing programs are implemented within a single agency, while others are developed collaboratively among several agencies.

Lessons Learned

To date, two studies have been conducted to assess the impact of family group conferencing with youthful offenders. One study assessed the impact of a new law mandating the widespread use of conferencing in New Zealand. It found that families of offenders are more frequently and actively involved in the justice process when they participate in a family group conference, rather than standard justice processes (Maxwell and Morris, 1993). It also found that the offenders and victims, as well as their families, reported that the conference process had been helpful. Preliminary program evaluations in the United States also indicate high levels of victim satisfaction with the family group conferencing process and high rates of compliance by offenders with the agreements reached during conferences.

²⁴ http://www.ojp.usdoj.gov/nij/rest-just/CH5/5_grpcnf.htm

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Practitioners observe a reduction in fear for many victims. When used as a diversion from court, family group conferencing provides a much speedier resolution of the incident than would otherwise be the case. Family group conferencing also builds community skills in conflict resolution and participatory decisionmaking.

6.2. A Comparison of Four Restorative Conferencing Models - 2001²⁵

Family group conferencing. In New Zealand, preparation is viewed as critical for the success of family group conferences. Preconference face-to-face meetings generally are held with offenders and their families, and victims are contacted by phone (Hakiaha, 1995). The Australian Wagga Wagga model places much less emphasis on preparation, apparently in the belief that spontaneity is important. Some coordinators, for example, argue that hearing victims' and offenders' stories prior to the conference may even diminish the impact and focus of the stories (Umbreit and Stacy, 1996). Recently, however, some proponents of the Wagga Wagga model are placing greater emphasis on the need to ensure accuracy of facts, check with participants, develop plans, and ensure that key participants and their support groups attend conference sessions (McDonald et al., 1995).

Family group conferencing programs generally have often left responsibility for compliance to the offender (Moore and O'Connell, 1994), although the New Zealand model does provide for reconvening conferences in the event of noncompliance (Maxwell and Morris, 1993). Conferencing programs generally do not make monitoring and enforcement responsibilities explicit, although Australia's Wagga Wagga model anticipates that police officers are ultimately responsible for enforcement and that juvenile justice staff may also play a role (Alder and Wundersitz, 1994). In the United States, the enforcement function is evolving and varies from jurisdiction to jurisdiction. Although preferred practice calls for encouraging voluntary compliance and assigning monitoring roles to conference participants, final enforcement authority rests primarily with the police agencies that convene the conferences; however, the extent of actual followup varies.

Family Group Conferencing

Background and Concept

Family group conferencing is based on centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand. In its modern form, the model was adopted into national legislation in New Zealand in 1989, making it the most systemically institutionalized of any of the four models. In South Australia, family conferencing is now widely used in modified form as a police-initiated diversion approach known as the Wagga Wagga model. (Developed by the Wagga Wagga Police Department, this model uses police officers or school officials to set up and facilitate family conferencing meetings.) Conferencing is also being used in U.S. cities in Minnesota, Montana, Pennsylvania, Vermont, and several other States and in parts of Canada. (The Wagga Wagga model is the primary approach that has taken hold in North America.)

A variety of offenses have been resolved through family group conferencing, including theft, arson, minor assaults, drug offenses, vandalism, and, in a number of States, child maltreatment cases. In New Zealand, conferencing is used in the disposition of all but the most violent and serious delinquency cases (Alder and Wundersitz, 1994; Maxwell and Morris, 1993; McElrea, 1993).

Family group conferencing involves the community of people most affected by the crime—the victim, the offender, and the family, friends, and key supporters of both—in deciding the resolution of a criminal or delinquent incident. The affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired.

Procedures and Goals

²⁵ Gordon Bazemore and Mark Umbreit "A Comparison of Four Restorative Conferencing Models" in *Juvenile Justice Bulletin* February 2001 http://www.ncjrs.org/html/ojdp/2001_2_1/contents.html

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The conference facilitator contacts the victim and offender to explain the process and invite them to the conference. The facilitator also asks the victim and offender to identify key members of their support systems, who also will be invited to participate. The conference typically begins with the offender describing the incident. The other participants then describe the impact of the incident on their lives. Some argue that it is preferable to allow the victim to start the discussion, if he or she wishes to do so (Umbreit and Stacy, 1996). Through these narrations, the offender is faced with the impact of his or her behavior on the victim, on those close to the victim, and on the offender's own family and friends, and the victim has the opportunity to express feelings and ask questions about the incident. After a thorough discussion of impacts, the victim is asked to identify desired outcomes from the conference; in this way, the victim can help to shape the obligations that will be placed on the offender. All participants contribute to the problem-solving process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement that outlines their expectations and commitments.

Goals of family group conferencing include the following:

- Providing an opportunity for the victim to be directly involved in the discussion of the offense and in decisions regarding appropriate sanctions to be placed on the offender.
- Increasing the offender's awareness of the human impact of his or her behavior and providing the offender an opportunity to take full responsibility for it.
- Engaging the collective responsibility of the offender's support system for making amends and shaping the offender's future behavior.
- Allowing both offender and victim to reconnect to key community support systems.

An Example of a Family Group Conferencing Session

A family conferencing group convened in a local school to consider a case in which a student had injured a teacher and broken the teacher's glasses in an altercation. Group members included the offender, his mother and grandfather, the victim, the police officer who made the arrest, and about 10 other interested parties (including 2 of the offender's teachers and 2 friends of the victim).

The conferencing process began with comments by the offender, his mother and grandfather, the victim, and the arresting officer. Each spoke about the offense and its impact. The youth justice coordinator next asked for input from the other group members and then asked all participants what they thought the offender should do to pay back the victim and the community for the damage caused by his crime. In the remaining 30 minutes of the hour-long conference, the group suggested that the offender should make restitution to the victim for his medical expenses and the cost of new glasses and that the offender should also perform community service work on the school grounds.

Considerations in Implementation

The family group conferencing process has been implemented in schools, police departments, probation offices, residential programs, community mediation programs, and neighborhood groups. Conferencing is most often used as diversion from the court process for juveniles but can also be used after adjudication and disposition to address unresolved issues or determine specific terms of restitution. Conferencing programs have been implemented within single agencies and developed collaboratively among several agencies. After completing a training course, either volunteers or paid employees can serve as conference facilitators.

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Participation by all involved in conferences is voluntary. In addition to the victim and offender and their family members, a conference might involve teachers, other relatives, peers, special adult friends, and community resource people.

Lessons Learned

To date, two studies have been conducted to assess the impact of family group conferencing with young offenders. One study (Maxwell and Morris, 1993) assessed the impact of New Zealand's law mandating the widespread use of conferencing. It found that families of offenders in conferencing programs are more frequently and actively involved in the justice process than are families of offenders whose cases are handled by standard procedures. It also found that offenders, victims, and their families described the conference process as helpful. Preliminary evaluations of conferencing programs in the United States also indicate high levels of victim satisfaction with the conference process and high rates of offender compliance with agreements reached during conferences (Fercello and Umbreit, 1999; McCold and Wachtel, 1998).

Practitioners involved in family group conferencing programs observe a reduction in fear for many victims. When used as a diversion from court, conferencing can provide a much speedier and more satisfying resolution of incidents than would otherwise be the case. Family group conferencing also builds community skills in conflict resolution and participatory decision-making.

Victim Role – see also chapter on 'Victims'

The dimensions of victim protection and empowerment are more complex in models that move beyond the small group or dyad to the larger community. Family group conferencing is perhaps the strongest of all the models in its potential for educating offenders about the harm their behavior causes to others. Concerns have been expressed, however, about the role of victims in this model. Among these concerns are the following:

- Emphasis on offender education may cause victim needs to be overshadowed or trivialized (Belgrave, 1995; Umbreit and Zehr, 1996), as appears to have been the case when conferences have been held with little or no victim input or involvement (Alder and Wundersitz, 1994; Maxwell and Morris, 1993).
- Standard protocol for family group conferences requires that offenders speak first (McDonald et al., 1995), which may affect victims' participation in the discussion.
- Some interpretations of family group conferencing place primary emphasis on getting offenders to experience shame (Alder and Wundersitz, 1994; Strang, 1995). In such interpretations, victim benefits are limited to an apology and perhaps material restitution.

Either or both of these benefits may meet the main needs of many victims, but other needs may be neglected. Moreover, if forgiveness is a primary goal, the process may be slanted toward eliciting apologies from offenders, victims may feel pressured to offer forgiveness and resentful of the implication that they should do so, and resentment may cause some victims to refuse to participate (Umbreit and Stacy, 1996).

- Other criticisms of victim treatment in the family group conferencing model cite a lack of concern with victim empowerment, lack of protection against abuse or retaliation, and use of victims to serve as "props" or to meet offender needs (Umbreit and Zehr, 1996).

Victim participation and satisfaction were indeed significant problems during the early development of family group conferencing in New Zealand (Maxwell and Morris, 1993), but it is wrong to conclude that most advocates of the conferencing model are not concerned with victims' needs (Moore and O'Connell, 1994; Braithwaite and Mugford, 1994). Recent studies of family group conferencing programs in Minnesota (Fercello and Umbreit, 1999; Umbreit and

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Fercello, 1997), Pennsylvania (McCold and Wachtel, 1998), and South Australia (Daly, 2000) have found higher rates of victim participation and satisfaction than when the model was first introduced in New Zealand (Morris and Maxwell, 2001).

Such criticism of victim treatment in family group conferencing (or in any alternative model) should have as its context the extent to which the current formal system does or does not provide for victim reparation, empowerment, and support (Stuart, 1996). Nevertheless, as family group conferencing models evolve, it will be important to keep in mind that emphasis on offender shaming and reintegration may limit the model's capacity to meet the needs of crime victims.

6.3. Family Group Conferencing: Implications for Crime Victims - 2000²⁶

Introduction

During the past several years, family group conferencing (FGC) models used in New Zealand and Australia have received considerable attention in North America. Representatives from both countries have lectured and provided training workshops throughout the United States and Canada. Audiences have ranged from those in the victim-offender mediation (VOM) and restorative justice movements to many law enforcement officers, school officials, and a growing number of victim advocates.

This attention has resulted in the introduction of a number of pilot projects and new program initiatives that incorporate some form of the FGC approach. One Pennsylvania-based organization, *REAL JUSTICE*, is vigorously promoting a specific police- and school-based model that originated in Wagga Wagga, Australia. *REAL JUSTICE* has trained hundreds of police officers and school staff members and is working to replicate this Australian model in a number of sites. The Minnesota Legislature funded the development of FGC pilot projects using the *REAL JUSTICE* model in nine communities in the First Judicial District.

Rarely has a new criminal justice idea received such extensive exposure to and interest from audiences as widespread as activists, professionals, and the general public in such a short period of time. No other restorative justice approach has so quickly brought such large numbers of law enforcement officials to the table as active stakeholders in the restorative justice movement.

What Is Restorative Justice?

By Mark S. Umbreit, Ph.D., Center for Restorative Justice & Peacemaking
University of Minnesota School of Social Work

Restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime. Restorative justice emphasizes the importance of providing opportunities for more active involvement in the process of offering support and assistance to crime victims; holding offenders directly accountable to the people and communities they have violated; restoring the emotional and material losses of victims (to the degree possible); providing a range of opportunities for dialogue and problem solving to interested crime victims, offenders, families, and other support persons; offering offenders opportunities for competency development and reintegration into productive community life; and strengthening public safety through community building.

Restorative justice policies and programs are developing in more than 45 States, including a growing number of State and county justice systems that are undergoing major systemic changes.

²⁶ Mark S. Umbreit, Ph.D., Director Center for Restorative Justice & Peacemaking (formerly Center for Restorative Justice & Mediation) School of Social Work, University of Minnesota St. Paul, Minnesota Family Group Conferencing: Implications for Crime Victims April 2000
http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/96523-family_group/welcome.html

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Restorative justice is also developing in many other parts of the world, including numerous European countries, Australia, New Zealand, and South Africa. The principles of restorative justice draw upon the wisdom of many cultures throughout the world, most notably American-Indian cultures within the United States and aboriginal cultures within Canada, Australia, and New Zealand.

Specific examples of restorative justice initiatives include crime repair crews, victim intervention programs, family group conferencing, victim-offender mediation and dialogue, peacemaking circles, victim panels that address offenders, sentencing circles, community reparative boards before which offenders appear, offender competency development programs, victim empathy classes for offenders, victim-directed and citizen-involved community service by the offender, community-based support groups for crime victims, and community-based support groups for offenders. As the oldest and most widely developed expression of restorative justice, having been in use more than 25 years and the subject of numerous studies in North America and Europe, victim-offender mediation and dialogue programs currently work with thousands of cases annually through more than 300 programs in the United States and more than 700 in Europe.

Research has found that restorative justice programs provide higher levels of victim and offender satisfaction with the process and outcome and a greater likelihood of successful restitution completion by the offender than traditional justice programs. Research has also shown that restorative justice programs have reduced fear among victims and decreased the frequency and severity of further criminal behavior among offenders.

Family Group Conferencing

FGC involves the community of people most affected by the crime—the victim and the offender and the family, friends, and key supporters of both—in deciding the resolution of a criminal or delinquent act. The facilitator contacts the victim and offender to explain the process and invite them to the conference; the facilitator also asks them to identify key members of their support systems who will be invited to participate as well. Participation by all involved is voluntary. The offender must admit to the offense to participate. The parties affected are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired.

The conference typically begins with the offender describing the incident, followed by each participant describing the impact of the incident on his or her life. Through these narrations, the offender is faced with the human impact of his or her behavior on the victim, on those close to the victim, and on the offender's own family and friends. The victim has the opportunity to express feelings and ask questions about the offense. After a thorough discussion of the impact of the offense on those present, the victim is asked to identify desired outcomes from the conference and thus helps to shape the obligations that will be placed on the offender. All participants may contribute to the process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement outlining their expectations and commitments.

FGC is intuitively appealing to most restorative justice advocates in North America. The mediation process, which involves a wide range of people affected by the crime, appears to expand the rich 20-year history of VOM. FGC primarily works with juvenile offenders and uses police or probation officers or school officials, rather than trained volunteers, as facilitators.

Despite its appeal, a number of unresolved issues and potential dangers remain in adapting the FGC model to North American justice systems with their strong commitment to retributive, offender-driven principles. The purpose of this overview is to encourage a serious discussion of the opportunities and potential pitfalls presented by the FGC process, particularly from the perspective of its impact on crime victims.

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The History of Family Group Conferencing

FGC originated in New Zealand as a way to address the failures of traditional juvenile justice and to incorporate indigenous Maori values that emphasize the role of family and community in addressing wrongdoing. Institutionalized into law in 1989, FGC is now the standard way to process juvenile cases in New Zealand. Australia subsequently adopted the idea and has implemented a number of FGC models in various communities. Like VOM in North America, Australian implementation of FGC has been piecemeal, and the model used varies with the community.

All juvenile cases in New Zealand, with a few exceptions such as homicide, are diverted by courts to FGC. Consequently, judges report drops in caseloads of up to 80 percent. These conferences are then organized and facilitated by a youth justice worker employed not by the criminal justice system but by the welfare/social service sector. The conferences attempt to be inclusive. In addition to involving the offender, a major effort is made to include as many of his or her family members as possible, including extended family members. Victims and their supporters are invited as are any professional caregivers who have been involved with the parties. A lawyer/advocate for the offender is invited, and a representative of the police department, who serves as the prosecutor, is present. Facilitator roles are broadly and loosely defined and include mediation. The entire group, which includes participants usually considered adversaries, is expected to come to a consensus on the outcome for the case, not just on a restitution agreement. Goals of the conference include accountability, prevention of future misconduct, and victim empowerment.

FGC is clearly grounded in the theory of "reintegrative shaming" of offenders, which was developed by Australian criminologist Dr. John Braithwaite (1989), as well as Silvan Tomkins' affect theory (1992). By themselves, these theories were not sufficient in addressing the importance of engaging crime victims in the process. Restorative justice theory did not play a large part in the origin of FGC, but was used later to help fine-tune the approach, resulting, for example, in a greater appreciation of the centrality of victims' roles. Now, New Zealand Judge F.W.M. McElrea calls the approach the first truly restorative system institutionalized within a Western legal system.

FGC was adopted in Australia in a variety of forms, but the model most often promoted in North America was developed in the Wagga Wagga Police Department. It differs from the New Zealand model in that it uses police officers, usually in uniform, or school officials to set up and facilitate meetings. Developments in Australia were considerably influenced by Braithwaite and his work on reintegrative shaming, with its emphasis on changing offender behavior.

Similarities and Differences Between Family Group Conferencing and Victim-Offender Mediation

FGC is strengthened by its similarities with and differences from VOM. FGC seems to be a natural expansion of the dominant model of VOM currently used by most of the more than 300 programs in North America and an even larger number of programs in Europe. Like VOM, FGC provides victims an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to make things right with the victim—to the degree possible—through some form of compensation. FGC primarily works with juvenile offenders who have committed property crimes, but it has also been used with violent juvenile offenders and adult offenders. This is consistent with the experience of VOM in North America over the past 20 years.

Unlike VOM, FGC uses public officials (police officers, probation officers, school officials) rather than trained volunteers as facilitators. Although their roles include mediation, they are more broadly defined, combining mediation with other methods of interaction and allowing for more directed facilitation. The FGC process also casts a much wider circle of participants than VOM. This approach has some potential advantages over current VOM practice:

- FGC contributes to the empowerment and healing of the community as a whole because it involves more community members in the meeting called to discuss the offense, its effects, and how to remedy the harm. By involving a broader range of people affected by the crime, far more citizens become direct stakeholders in the criminal and juvenile justice processes.

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- A wider circle of people is recognized as being victimized by the offense, and FGC explores the effects on these people: the primary victim, people connected to the victim, the offender’s family members, and others connected to the offender. The full impact of victimization is more likely to be addressed in FGC because both primary and secondary victims are invited to participate.
- Citizen volunteers are more likely to offer followup support for both the victim and the offender because a wider range of participants is potentially involved in assisting with the reintegration of the offender into the community and the empowerment of the victim.
- The important role of the family in a juvenile offender’s life is acknowledged and emphasized. Family dynamics play a major role in juvenile delinquency, and far too few programs effectively address these issues. FGC offers a restorative justice intervention with great potential for strengthening accountability that can actively involve both the offender’s family and the victim’s family.

Family Group Conferencing: Comparison of New Zealand and Australia (Wagga Wagga) Models		
	New Zealand Family Group Conferencing	Australia (Wagga Wagga) Family Group Conferencing
Convened by:	New Zealand Children & Young Persons Services—Youth Justice Coordinator.	Law enforcement officers, school personnel.
Participants:	Youth Justice Coordinator, offender, offender’s counsel, offender’s family and support system, victim, victim’s family and support system, social services, police.	FGC Coordinator, offender, offender’s family and support system, victim, victim’s family and support system, investigating officer.
Purpose:	Clarify facts of incident, express a plea (“Yes, I did it.” or “No, I did not.”), reveal effects of incident on all present, determine measures to make amends, make decisions relating to other penalties.	Reveal effects of incident on all present, express emotional impact, determine measures to make amends.
Selection of community members:	Youth Justice Coordinator and family of offender identify key people to be involved; victim identifies his or her support system.	Coordinator identifies key people to be involved; victim identifies his or her support system.
Decision-making:	Consensus.	Consensus.
Victim role:	Chooses participants for support, expresses feelings about the crime, describes impact on self, approves plan to make amends that is submitted by offender’s family.	Chooses participants for support, expresses feelings about the crime, describes impact on self, provides input to plan to make amends.
Time in operation:	Legislatively mandated in 1989.	Since 1991.
Targeted offenders:	All juvenile offenders except murder and manslaughter offenders.	Juvenile offenders with property offenses and assaults.
Size of group in conference:	Typically 12–15; can be 40–50.	Typically 12–15; can be 40–50.
Preparation of participants:	Face-to-face visit with offender and family before meeting, phone contact to explain process to victim and other participants, personal visit to victim if	Phone contacts (as the norm) with all participants to explain the process. Occasional personal visits, if determined to be necessary.

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	needed.	
Gatekeeper/access to program:	Statutes that provide a family group conference as a right for victims of all juvenile offenses other than murder and manslaughter and require offender participation.	Discretionary judgment of law enforcement or school officials.
Conceptual framework:	Clearly based on restorative justice principles with explicit reference to the long experience of victim-offender reconciliation and mediation programs.	Clearly grounded in the theory of reintegrative shaming by John Braithwaite, as well as Silvan Tomkins’ affect theory. Not explicitly grounded in restorative justice principles and not explicitly drawing upon the experience of victim-offender reconciliation and mediation programs.

Potential Dangers of Family Group Conferencing

The FGC model has tremendous potential for enhancing the practice of restorative justice in North America by providing opportunities for crime victims to participate in holding offenders accountable and investing new stakeholders in the process (police personnel, school officials, and probation officers). However, a number of potential dangers could result in unintended consequences. There are at least five potential dangers in the current FGC approach, particularly with the Australian form:

1. Inadequate Preparation

Preparation of the primary parties prior to the joint conference is crucial to the process of building rapport and trust with the involved parties, preparing them for participation in a dialogue in which the facilitator/mediator does not dominate the conversation, assessing their needs/expectations, and understanding the full human context of the crime that occurred. Meeting in person with the parties prior to a joint meeting has long been recognized by most VOM programs as the preferred process. Although the New Zealand FGC model always involves prior meetings with the offender and family, it does not routinely involve prior in-person meetings with the victim and family. The Australia FGC model routinely contacts the parties by phone and only occasionally conducts in-person meetings. Eliminating in-person meetings prior to FGC may significantly limit the impact of FGC, as the parties may not feel safe and prepared to attend and participate freely in a genuine dialogue.

2. Victim Insensitivity and Coercion

The FGC model emphasizes the importance of involving and serving victims. However, several aspects of the model may inadvertently mirror the dominant, offender-driven criminal justice system and its use of victims as “props”: the offender’s group is usually seated first, which limits the choices presented to victims (such as where they would feel the safest or most comfortable in the meeting room or whether they would prefer to begin the conference with their story); the meeting routinely begins with the offender’s story; and separate meetings are not scheduled with the victim prior to facing the offender. If the FGC model is perceived as not being sensitive to the emotional, informational, and participatory needs of victims, it defeats one of its main purposes—to serve victims’ needs—and is likely to trigger needless but understandable resistance from the larger victims’ rights constituency.

3. Young Offenders Feeling Intimidated by Adults

The presence of so many adults, including a police officer in uniform, may be so intimidating to young offenders that they may not feel safe or comfortable enough to express and share their feelings and thoughts. It has long been

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recognized in the VOM movement that the presence of parents in some cases, not to mention additional adults, can interfere with the process of the juvenile offender truly admitting to his or her delinquent behavior and feeling comfortable enough to speak openly. As the FGC model is adapted for use in the United States, it is important to ensure that the process truly creates an environment in which the young person feels safe enough to actively participate, express feelings, and respond to questions posed by the victim. Otherwise, the conference could be dominated by adults talking at or about the offender, with the offender tailoring responses to suit the adults. Coercing offenders to say what adults want to hear is very different from a more genuine expression of their feelings about what happened.

4. Lack of Neutrality—Shaming of Offenders

Police officers, probation officers, and/or school officials play a particularly critical role in the FGC model, especially in the Australian form, as “coordinators” of the actual sessions (a role that is actually quite similar to facilitators or even mediators). Because of this, these public officials must be trained in conflict resolution and mediation skills so that they can put aside their usual authoritarian role as a public official. The inability of public officials (such as police or probation officers) to serve in a neutral (unbiased in the sense of not taking sides, even though the parties are not truly equal) and facilitative role can be a problem and needs to be closely monitored as FGC programs begin developing in more communities throughout the United States, especially given the retributive climate of American criminal justice. If conference coordinators fall into authoritarian leadership and communication patterns, the process could lead to the offender experiencing the conference as a “shaming and blaming” encounter. The process could be one of “breaking down the juvenile offenders and then trying to build them up,” rather than the preferred “reintegrative shaming” in which the criminal behavior is denounced but offenders are treated with respect and feel safe enough in the presence of adults to express themselves.

5. Inflexibility and Assumed Cultural Neutrality of the Process

While the New Zealand model of FGC appears to allow for a great deal of flexibility in the process, the Australia model, which is being widely promoted in the United States, appears to be a very prescriptive, script-driven process. In many training manuals, coordinators are encouraged not to worry about whether the process should be adapted to different cultural needs and preferences within a community. Trainers emphasize that the FGC model (based on the Wagga Wagga experience in Australia) is remarkably resilient and beneficial if the coordinator adheres to the script and if the participants trust the coordinator. Many victim advocates, however, would be concerned about issues of power and control for the victim when the emphasis is primarily on trusting the coordinator. The inflexibility of the Australia model may present a serious obstacle to its being considered a truly restorative process that is victim-sensitive, particularly in diverse and multicultural communities.

Guidelines for Restorative Family Group Conferencing

As FGC begins to develop more extensively throughout North America in the coming years, the following recommendations can serve as initial guiding principles to maximize the likelihood of it truly being a restorative intervention for victims, offenders, families, and communities. The following guiding principles are based on a consensus that emerged from a group of individuals who participated in FGC training, which is offered throughout the country. This group included representatives from education, law enforcement, VOM programs, and communities in Minnesota. It was convened by the Center for Restorative Justice & Peacemaking (formerly Center for Restorative Justice & Mediation) at the University of Minnesota School of Social Work in 1995.

1. The process should be clearly and explicitly grounded in restorative justice values.
2. If public agencies such as police or probation are initiating FGC, the actual sessions should be cofacilitated by a trained community member.

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3. If a local VOM program exists, a new FGC program should be developed as a collaborative effort, including the use of VOM volunteer mediators as co-facilitators.
4. FGC coordinators/facilitators should be trained in mediation and conflict resolution skills and the effects of victimization and needs of crime victims.
5. FGC coordinators/facilitators should be trained in understanding the experiences and needs of offenders.
6. The FGC process should be conducted in the most victim-sensitive manner possible, including providing victims with a choice of when and where to meet and allowing them to present their story first. When asked to consider the process, victims should be informed of both the potential benefits and the potential risks, and they should not be pressured into a conference or told just to trust the coordinator's judgment.
7. In-person preparation of the primary participants in a conference (the victim, the victim's immediate family, the offender, and the offender's immediate family) should occur to connect with the parties, build rapport and trust, provide information, encourage participation, and prepare them for the conference should they choose family group conferencing. This can help them to feel safe enough to participate in an open dialogue with one another, with the coordinators/facilitators being as nondirective as possible.
8. FGC coordinators/facilitators should be trained in cultural and ethical issues that are likely to affect the conference process and participants.

Conclusion

Family group conferences are an exciting development in the field of restorative justice. They open up new opportunities for crime victims to become directly involved in imposing sanctions on the offender. As with all innovations, however, potential pitfalls must be considered. Good ideas and programs may have unintended consequences. Particularly as a new program concept or model is being widely promoted, there is a danger of falling into a "one size fits all" perspective. Victim-offender dialogue, whether through victim-offender mediation or family group conferencing, has the potential for both benefits and risks. The intervention must be adapted to the specific context and needs of the individuals involved. Some cases might warrant family group conferencing rather than involve a much smaller group of people through victim-offender mediation. Other needs expressed by crime victims may suggest that victim-offender mediation is more appropriate. Some more serious cases may even require both: first the smaller mediation session and then, later, the larger conferencing session. It is hoped that those involved in victim advocacy, family group conferencing, and victim-offender mediation will continue the dialogue as new opportunities are sought for restorative justice in our communities and the available options and services for crime victims are expanded.

6.4. Overview of mediation, conferencing, and circles – 2000 ²⁷

Conferencing Models

Conferencing is a process in which a group of individuals connected and affected by some past action, come together to discuss issues that have arisen (Warner-Roberts & Masters 1999). Conferencing is similar to mediation in involving offenders and victims directly, but includes others affected as well.

²⁷ McCold, Paul. (2000). "Overview of mediation, conferencing, and circles." Paper presented at the United Nations Crime Congress, Ancillary Meeting on Implementing Restorative Justice in the International Context. Vienna, Austria, 10-17 April 2000.
<http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/Overview.pdf>

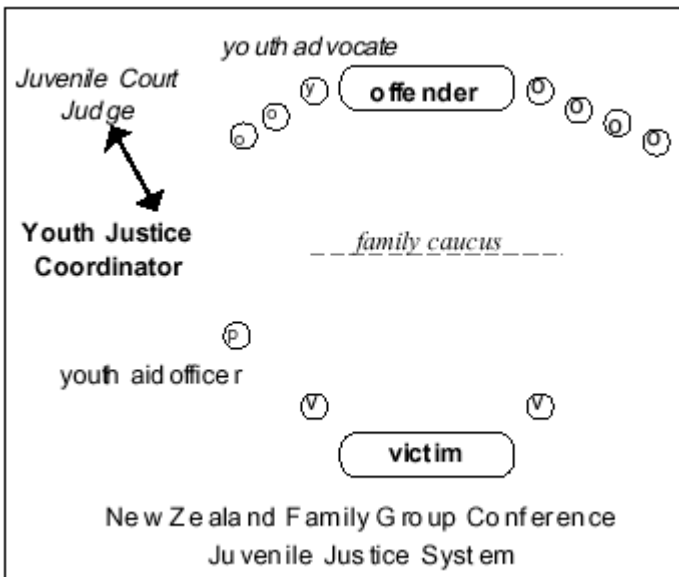
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Because it is a group process, the dynamics of a conference are very different than a mediated dialogue. Restorative justice conferences vary in the involvement of the victim, victim supporters, and offender supporters, but always include family members and significant others on the restorative process.

Zealand youth justice conferencing (JFGC).

JFGCs are facilitated by youth justice coordinators, appointed by Social Welfare. In order to safeguard young offenders' rights, a youth legal advocate is provided in cases where an arrest is involved, and the court retains oversight over conference agreements (McElrea 1996). JFGCs convene at a time and place chosen by the family and are attended by the young offender, the family (including extended family), the victim, victim supporters, a police youth aid officer, the youth advocate, and others whom the family wishes to be present. The youth justice coordinator acts as facilitator and mediator between the families and police, although others may act as facilitator if culturally important.

After introductions and greetings, the youth officer describes the offense and the young person admits or denies involvement. If there is no denial, the conference proceeds with the victim describing the impact of the offense. The group shares views about how to set matters right. The family deliberates privately to develop a proposed plan. When the family finishes, the meeting reconvenes with the professionals and victim, who can agree or object to the family's recommendations and plans (Hudson, et al. 1996; Considine & Bowen 1999). Agreements often include reparative sanctions such as apologies, restitution and community service.



Community justice conferencing (CJC).

Conferencing was substantially revised and pioneered as a community policing technique in Wagga Wagga, New South Wales, Australia, in 1991 (Moore and McDonald, 1995) by Terry O'Connell, based loosely on the idea of New Zealand's JFGCs (O'Connell 1998; O'Connell, Wachtel & Wachtel 1999). These conferences are facilitated by a police officer, and include the offender, the victims, their respective family and emotional supporters, and any others who were affected by the incident.

The conference protocols were basic: have the offenders talk about what happened, what they were thinking and who was affected; followed by the victims and supporters; and finally, the offenders' family and supporters. Discussion then focused on what needed to happen to make things right. Refreshments are provided immediately after the conference to provide an informal opportunity for participants to talk while the facilitator prepared the written agreement (O'Connell 1998:8). Community conferences evolved out of the Wagga model, but are not necessarily police-based.

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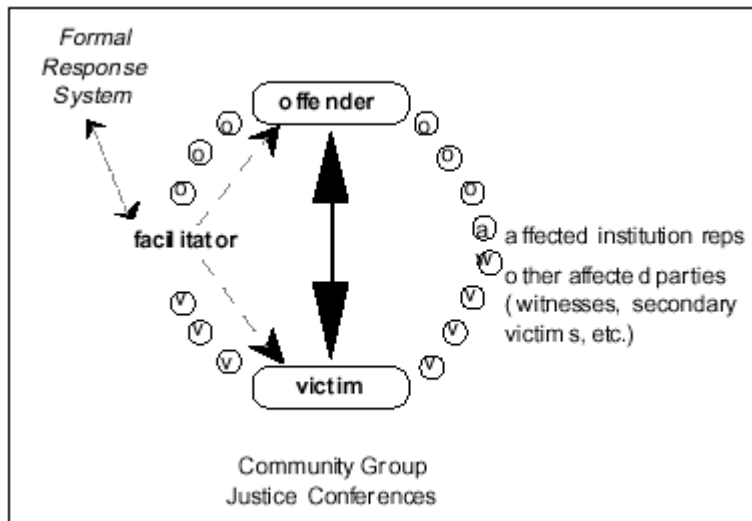
They may be facilitated by any official with the authority to divert the case from formal processing (e.g., police, probation, teachers, workplace supervisor, etc.) or by trained community volunteers receiving referrals from the authority. CJs encourage the participation of families, friends, by-standers, indirectly affected parties, and anyone else with a direct stake in the issue.

Community justice conferences are incident-focused, limited to repairing the damage caused by a specific offense. Like the Wagga model, CJs are ‘scripted’, facilitators follow a simple written script during conference. The conference begins with the facilitator reading a preamble that sets the focus of the conference.

The conference has three parts. First, participants answer a specific series of open-ended questions. The offender must describe how she/he became involved in the incident, who they think was affected and how they think others were affected. Victims are then asked to express their reaction to the incident and describe how they have been affected. Next, the victim supporters and then offender supporters discuss their reactions and are asked what are the main issues involved.

The second part of the conference involves negotiating a reparation agreement. Facilitators ask the victim “What do you want from today’s conference?” which provides an open-ended consideration of possibilities. Every suggestion made during this agreement phase must be agreed to by the both victim and offender, but consensus is usually easily reached.

The third part of the conference, as in the Wagga model, is an informal social period when refreshments are served. This informal “reintegration” period is an important part of the conference and is one distinguishing feature of conferences growing out of O’Connell’s Australian model.



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6.5. Restorative Justice and Mediation Collection -2000 ²⁸

Family Group Conferencing: Implications for Crime Victims Family group conferencing (FGC) provides an opportunity for the community of people most affected by a crime—the victim and the offender and the family, friends, and key supporters of both—to talk about the impact of the crime and decide how the offender should be held accountable for the harm he or she caused to the victim. The facilitator contacts the victim and offender to explain the process and invites them to the conference; the facilitator also asks them to identify key members of their support systems who will be invited to participate as well. Participation by all involved is voluntary. The offender must admit to the offense to participate. The parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired.

Background

FGC originated in New Zealand as a way to address the failures of traditional juvenile justice and incorporate indigenous Maori values that emphasize the roles of family and community in addressing wrongdoing. Institutionalized into law in 1989, FGC is now the standard way to process juvenile cases in New Zealand. Australia subsequently adopted the concept and has implemented a number of FGC models in various communities. Representatives from both countries have lectured and provided training workshops throughout the United States and Canada. Audiences have ranged from VOM and other restorative justice practitioners to law enforcement officers, school officials, and a growing number of victim advocates.

One Pennsylvania-based organization, *REAL JUSTICE*, is vigorously promoting a specific police- and school-based model that originated in Wagga Wagga, Australia. *REAL JUSTICE* has trained hundreds of police officers and school personnel and is working to replicate the Australian model in a number of sites in the country. The Minnesota Legislature funded the development of FGC pilot projects using the *REAL JUSTICE* model in nine communities in Minnesota's First Judicial District.

FGC is clearly grounded in Australian criminologist Dr. John Braithwaite's theory of "reintegrative shaming" of offenders with its emphasis on changing offender behavior (Braithwaite, 1989). It is also influenced by Silvan Tomkins' affect theory (Tomkins, 1992). Practitioners in the field found that by themselves these theories were not sufficient to address the importance of engaging crime victims in the conferencing process. Restorative justice theory did not play a large part in the origin of FGC, but it was later used to help conceptualize and fine-tune the approach, resulting, for example, in a greater appreciation of the centrality of victims' roles. Now, New Zealand Judge F.W.M. McElrea calls the approach the first truly restorative system institutionalized within a Western legal system.

Similarities to and Differences From Victim-Offender Mediation

FGC seems to be a natural expansion of the dominant model of VOM currently used by most of the more than 300 programs in North America and more than 700 programs in Europe. Like VOM, FGC provides victims an opportunity to express the full impact of the crime upon their lives, receive answers to any lingering questions about the incident, and participate in holding offenders accountable for their actions. Offenders can tell their stories of why the crime occurred and how it has affected their lives.

They are given an opportunity to make things right with the victims—to the degree possible—through some form of compensation. FGC primarily works with juvenile offenders who have committed property crimes, but it has also been used with violent juvenile offenders and adult offenders. This is consistent with the development of VOM in North America over the past 20 years.

²⁸ US Department of Justice, Office of Justice Programs, Office for Victims of Crime, The Restorative Justice and Mediation Collection: Executive Summary, July 2000,

http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#family

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Differences between the two programs include who fills the facilitating role and the number of participants. FGC typically uses public officials (police officers, probation officers, school officials) rather than trained volunteers as facilitators. Although these public officials' roles include mediation, they are more broadly defined, combining mediation with other methods of interaction and allowing for more directed facilitation. The FGC process also casts a much wider circle of participants than VOM, although the national survey found that more than 90 percent of VOM programs frequently have parents or other support persons present at the mediation session. *Family Group Conferencing* lists the advantages and disadvantages of the VOM and FGC models and also provides guiding principles to ensure that intervention for victims, offenders, families, and communities truly reflects restorative justice values.

Family group conferencing provides victims and communities with another way to facilitate recovery from crime. Like any good idea or program, however, it may have unintended consequences. FGC may not be appropriate for every situation; in each case it must be adapted to the specific context and needs of the individuals involved. Some cases might warrant family group conferencing instead of the smaller group involved in victim-offender mediation or vice versa. More serious cases may even require both forms of mediation. Most important, though, is that research and development in the field of restorative justice continue to pursue new ways to provide crime victims with options that effectively serve their needs.

6.6. Restorative Justice Practice – The State Of The Field 1999²⁹

²⁹ Paul McCold, Community Service Foundation, Restorative Justice Practice – The State Of The Field 1999, International Institute of Restorative Practices, http://www.restorativepractices.org/Pages/vt_mccold.html

7. Relevant Documents, Practices and Studies - International

7.1. Restorative Justice Programs in Australia -2001³⁰

Adult Conferencing

- In Australia restorative justice programs are usually seen as being most suitable for juvenile rather than adult offenders.
- This is probably due partly to:
 - a desire to try new programs first on less serious offenders,
 - a widespread, though misleading, view that these programs are most appropriate for trivial offences (see Sherman et al 2000) and
 - the influence of the New Zealand experience, where family group conferencing was introduced as a specifically juvenile justice initiative.
- However, three jurisdictions in Australia have been using conferencing programs with adults, even though the great majority of participants remain juvenile offenders. These are Queensland, Western Australia and the ACT.
 - In Queensland, where juveniles are defined as under 17 years, about one quarter of conferences conducted since the program began in 1997 have been adult offenders (though 48 percent of the total adult referrals have been 17 year olds).
 - However, these are no legislative provisions to cover adult conferencing, and hence no privacy and other protections. Courts do not refer adults to conferencing and all cases are dealt with under administrative arrangements between police and Family, Youth and Community Care Queensland.
 - In Western Australia, a pilot project has recently been undertaken at Fremantle Magistrates court involving the conferencing of adult males who had entered a plea of guilty in relation to offences of burglary, stealing, larceny, fraud or assault and who were facing the likelihood of a custodial sentence.
 - It was necessary for both police and the magistrate to agree to a conference before victims were contacted, and they had to be willing to participate for the conference to proceed.
 - The pilot resulted in nine referrals leading to two completed conferences (six offenders refused a conference and in another case the victim refused).
 - A research project involving the same eligibility criteria is now underway at Central Law Courts, Perth and the Fremantle Magistrate Courts and is being evaluated by researchers at Murdoch and Edith Cowan Universities.
 - In the ACT, age has never been a criteria for eligibility to participate in the police-run conferencing program and both adults and juveniles who admit their offence are eligible for the program at the discretion of the apprehending police officer.

Other Settings

- There is currently enthusiastic exploration of the application of conferencing in a variety of settings beyond police and the courts.

Post-Sentence:

- For example, the NSW Department of Corrective Services has established a Restorative Justice Unit which offers victim-offender conferencing post-sentence (i.e. for imprisoned or paroled offenders); so far it has received 46 referrals and conducted six conferences.

³⁰ Criminology Research Council, Heather Strang, Director, Centre for Restorative Justice, Research School of Social Sciences, Australian National University A Report to the Criminology Research Council, Restorative Justice Programs in Australia, March 2001, <http://www.aic.gov.au/crc/oldreports/strang/index.html>

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- Programs are being considered for areas as diverse as youth homelessness, hospital discharge planning, aged care/nursing home care, for the care of the children of women prisoners, and for custody disputes in the Family Court (Swain & Ban 1997).
- Finally, the use of restorative justice programs in resolving workplace disputes is a growing field (McDonald & Moore forthcoming).

School Setting

- Restorative justice in the school setting began in 1994 when conferencing was first used in the Maroochydore area of southern Queensland.
 - This was followed by a series of trials in 75 Queensland schools in 1995-96, where one person at each school underwent training in restorative techniques for dealing with disputes and conflict.
 - As a result, 89 conferences were held in this pilot study dealing with a variety of incidents in the school environment, including assaults, property offences, truancy and drug offences, as well as bullying and harassment.
 - Despite the favourable reception the pilot received, it did not gain the financial support of the Queensland Department of Education.
 - Although some schools continue to use the program, its resource-intensiveness and the need for cultural change in dealing with behavioural management has meant that the program has been limited in its effectiveness.
- However, lessons learned in Queensland have been put to good use in New South Wales, where conferencing was introduced in 1997 into some government schools as part of the NSW Department of Education's Alternative to Suspension project.
 - A pilot of twenty conferences were run, about half of them for incidents of bullying. The Department assessed the program as the most successful technique so far tried in dealing with bullying (internal Departmental report) It has since been used in situations of conflict involving both students, staff and other members of the school community and a trial is underway involving the training so far of 150 school staff State-wide. A major outcome measure for the program is the number of days lost to suspension and exclusion, and to date the numbers have decreased markedly in the trial districts (David Moore, Transformative Justice Australia, personal communication). The training program has now been refined so that, instead of single individuals from schools attending the training, schools have most of their staff attend a one-day course on how to apply restorative justice principles in dealing more constructively with school incidents of conflict. The conferences are usually run by school counsellors who already have skills in this area, but the success of the program appears to depend on staff in general putting principles of restorative justice into practice in their day-to-day behavioural management of students and of workplace disputes.

In addition, Lewisham Primary School in Sydney has been the subject of a special behavioural management program under the auspices of the Department of Education. Every teacher in the school has been given twenty hours of training in restorative justice principles and techniques, followed by periodic 'booster' sessions, which has led to a change in behaviour management culture. This culture change seems to be a vital pre-requisite for restorative techniques to take root in the school setting, and failure to achieve it as was the case in Queensland (Thorsborne & Cameron, 2001) makes program success unlikely to be achieved.

Care and Protection Setting: In the Australian Capital Territory there has been considerable interest in restorative alternatives for behaviour management in schools. In 2000, the ACT Department of Education supported a training session by independent consultants on restorative principles and practices attended by twenty staff from eight schools. The Department recognises bullying and harassment as major problems, but also encourages the use of restorative conferencing in dealing with other conflicts, including conflict between staff in the workplace. An evaluation of the program in the primary, secondary and college sectors of ACT schooling is being undertaken by the Centre for Restorative Justice at the Australian National University.

Restorative justice in care and protection refers to conferencing-type programs based on the principle that families ought to have the main responsibility for making decisions about care arrangements for family members because, given the resources, information and power, families themselves are in the best position to make the right choices. The goal is an

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outcome which takes account of the well-being of the family member, the needs of the whole family for support services and the accountability of all parties for the care decisions made. (Swain and Associates 1993). Although the welfare of children is most often the object of the conference, issues around other family members such as the elderly or those with psychiatric or intellectual disability may also be dealt with this way.

Conferencing in care and protection, sometimes known as family group decision-making, was first trialed in Australia in 1992 when it was introduced in Victoria under the auspices of the Mission of St James and St John, an Anglican child welfare agency. It is based on the New Zealand model whereby the conference is attended by both professional services and family and friendship networks and is led by an independent facilitator. The professionals understand that their role is one of information-provision rather than decision-making. It is a three-stage process: first, the group as a whole identifies the issues which need to be addressed and options are outlined by the professionals; second, the family meets in private to discuss the issues and options and decides on a plan; thirdly, the professionals rejoin the family, the resourcing implications of the decision are discussed and the agreement ratified by all present. If the conference is about the safety of a child, the relevant statutory authority must be satisfied that the plan will not put the child at further risk. An evaluation of 19 conferences conducted in Victoria in 1993 (Swain and Associates 1993) found that over 80 percent of family members felt they had greater control and expressed satisfaction with both the process and the outcome, while the professionals involved also expressed strong support for the principles and practice of the conference model. The program remains on a small scale in Victoria and impediments to wider application relate to resourcing - conferences are seen as slow and time-intensive - and to the reluctance of some professionals to allow what they perceive as dysfunctional families to make decisions for themselves when the safety of family members may be at risk. Since the establishment of the Victorian pilot project there has been interest in the application of restorative justice for care and protection in several other States. The South Australian model is also based on the New Zealand program. The SA Children's Protection Act 1993 states (Division 1) that a 'family care meeting' must be held before a decision can be made regarding any custody or guardianship issue for a child in need of care and protection. The purpose of the meeting is to provide an opportunity for the child's family, together with the professionals involved 'to make informed decisions as to the arrangement for best securing the care and protection of the child' (S 28(a)). The officer in charge of the program (Donnie Martin, Care and Protection Unit, Department of Family and Youth Services) advises that about 400 care and protection conferences a year are currently being held: this is a doubling since 1997 when a new evidence-based safety and risk assessment process was introduced. No formal evaluation has been conducted but over 80 percent of meetings reach a valid plan which is still in place at the time of the twelve month review (personal communication 10 September 2000).

The Australian Capital Territory has just established conferencing for families, following the passing of the Children and Young People Act 1999. It is very much on the three-part model of the other States and of New Zealand: an information sharing stage where the professionals set out their concerns and the support they can offer, a stage for families to consider the options in private and reach a decision about what they want to happen, and a stage for discussion and agreement by all parties to the plan. The program commenced in May 2000.

In New South Wales, the Department of Community Services (DoCS) has taken a slightly different approach. Its new legislation, the Children and Young Persons (Care and Protection) Act (which was passed in 1998 but has not yet been proclaimed) makes provision for the use of alternative dispute resolution (ADR), to be used 'as a strategy to explore the needs of the child or young person in order to plan how those needs might be met, or to resolve disputes between family members' (NSW Department of Community Services, unpublished draft). DoCS suggests that over 8000 cases of substantiated child abuse may be eligible for ADR meetings each year and it is hoped that there will be substantial savings in time by diverting cases from court. The intention is to establish ADR services across the State when the Act is proclaimed. ADR is intended to allow families to have more control over the structure, timing and content of the meetings at which decisions will be made on care and protection. But New South Wales does not go so far as other jurisdictions have done, with DoCS retaining the final say on who attends the meetings and on 'bottom-line' care and protection requirements and the extent of restorative content of ADR is not clear.

DoCS includes under the rubric of ADR the conferencing pilot program used by Burnside, an agency of the Uniting Church, in conjunction with DoCS. This program follows the three-stage model used in New Zealand and other Australian States and is based on the same principles of family empowerment in the decision-making process. An

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evaluation was carried out in 1999 (Burnside unpublished) based on the twenty families who participated in the program between mid-1996 and mid-1998, usually to decide on the placement of children or to support their return home after living elsewhere. About two-thirds of family members felt the conference had helped the children; most professionals thought the risk to the children had been reduced because of the families' greater awareness of the reasons for concern about risk, their access to additional support and resources and the change engendered in family relationships by the process. The evaluation report notes that the new Act ought to facilitate the use of conferencing because the principles sit comfortably with those of the legislation. It recommends that the program be expanded but gradually, so as to ensure that facilitators and departmental professionals alike receive appropriate training for the preparation and conduct of the meetings.

- Although there may be hopes by government of cost savings through the greater empowerment of families and a reduction in intrusiveness in family problems, both the New Zealand and Australian experience show that families need continuing community supports and professional services if conferencing is to be successful.
 - o Hassall and Maxwell in New Zealand warned as far back 1991 that 'the rhetoric of family responsibility can easily lead to the disappearance of the support of the state sector which is essential to the well-being of many families', while Swain & Ban reiterated in 1997 that it was unlikely that properly conducted conferencing in care and protection would reduce costs because of the needs of families for ongoing government-financed resources.
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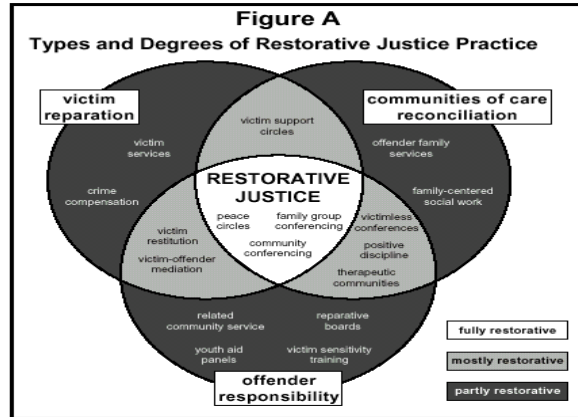
7.2. Research analysis demonstrates power of conferencing -2000³¹
Findings presented at restorative justice conference in Germany

Paul McCold, director of research, and Ted Wachtel, executive director, of the International Institute for Restorative Practices, presented a paper entitled “Restorative Justice Theory Validation” at the Fourth International Conference on Restorative Justice for Juveniles, Tübingen, Germany, October 1-4, 2000.

The paper provides evidence that processes involving all stakeholders—victims, offenders and their family and friends—in responding to an offense, like conferencing, are more restorative than processes involving fewer stakeholders. The executive summary of the paper follows:

Restorative justice is a process involving the direct stakeholders in determining how best to repair the harm of offending behavior. As part of an effort to develop a theory of restorative justice, McCold and Wachtel propose a Restorative Practices Typology based on three direct stakeholder groups: victims, offenders and their communities of care. The degree to which all three are involved in meaningful emotional exchange and decision-making is the degree to which any program can be termed fully restorative. These three sets of direct stakeholders are represented by the three overlapping circles in Figure A. The Restorative Practices Typology asserts that outcomes from partly, mostly and fully restorative practices should be progressively better, on average, in an ascending order, as they become more restorative, and that all restorative practices should produce better outcomes than non-restorative practices.

To test the validity of the typology, data were collected from 13 published program evaluation studies where victims and offenders were surveyed. The restorativeness of programs was measured



by percent of victims and offenders expressing satisfaction and fairness with their case. Results are from 14 conferencing samples (fully restorative programs), 15 mediation programs (mostly restorative) and 17 comparison samples (non-restorative). No participant surveys were available from partly restorative programs.

The overall results of victim and offender sense of satisfaction and fairness are shown in Figure B. Fully restorative programs are rated as more satisfying and fair for both victims and offenders than other categories of practice. Overall, offenders rated non-re-

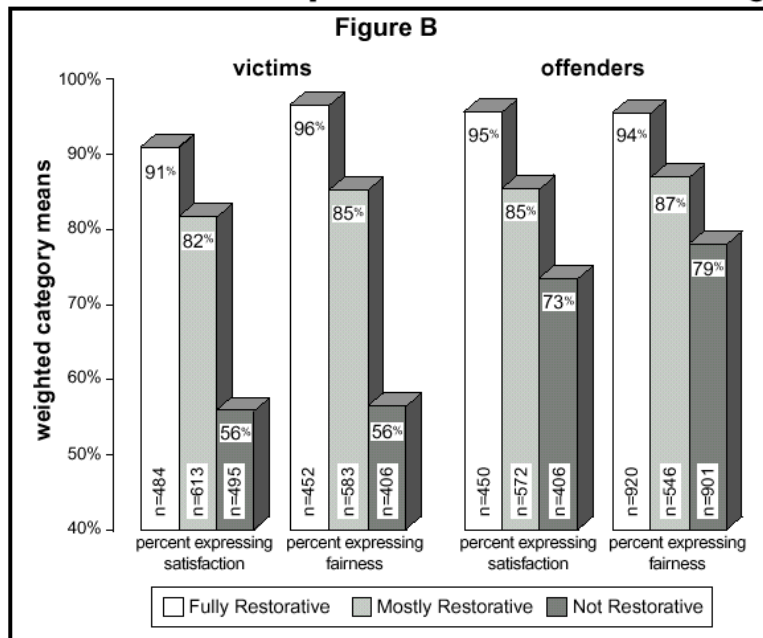
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Research analysis demonstrates power of conferencing

Continued from Page 1

storative programs as more fair and satisfying than did crime victims. Among the non-restorative samples, victims were less likely than offenders to feel satisfied and treated fairly.

These results support the validity of the typology—that victim satisfaction, offender sense of fairness and the parity of outcomes are more restorative, on average, for fully restorative programs (conferences) than for mostly restorative programs (victim-offender mediation) and that both conferencing and victim-offender mediation are better than the non-restorative justice system. One should always try to involve victims, offenders and their communities of care in responses to crime. Those restorative practices which include all direct stakeholders, such as conferences and circles, should constitute the bull’s-eye on the restorative justice target.



³¹ [Real Justice Forum #10](#) Research analysis demonstrates power of conferencing October 1-4, 2000

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7.3. Diversionary Conferences in Australia - 1996³²

- Daly refers to the large literature on informal justice and the lively theoretical debates that have emerged.
 - She traces the origins of the family group conferencing models in New Zealand and Australia.
 - In an appended table she lays out how the three different models of conferencing in that region differ by initial theory or aim, pipeline, police role in conferencing, political authority, and offences handled.

Major Critiques: The major critiques are identified including the critique of:

- family conferencing advanced as an indigenous invention, being a kind of misappropriation of Aboriginal culture or neo-colonial control of same.
- She discusses these critiques in the light of her observations of a number of conferencing cases. Reporting on conferencing cases
 - she observed that the majority of conference participants were offenders and their supporters, a fact which might explain why victims were the least satisfied!
 - She thought that community building can emerge from conferencing, and that conferencing did more good than harm.

7.4. Restorative Justice - 1996 ³³

- In New Zealand, the youth justice system has adopted the family group conference as its central focus for dealing with juvenile offenders.
- Conferencing is used for juveniles in a number of Australian states.
 - For instance, New South Wales has instituted a cautioning programme for juveniles in Wagga Wagga based on the concept of family group conferences.
 - It is administered by the police and aims to maximise the impact of juvenile cautions by helping the offender to better understand the seriousness of his or her offence and to accept responsibility for it, by providing input opportunities for the victim, by bringing in family members and significant others and by encouraging victim restitution or compensation (Fisher, 1994).
 - This particular programme has been extended to eight other communities in New South Wales and has been adopted by the Australian Capital Territory (Connolly, 1994).
- The conference model is used in the New Zealand youth justice system and in programmes for juveniles in a number of Australian states.
- The aim is to both resolve issues concerning the offence and to stop future offending.
 - The victim and their supporters, the offender and their family and all parties affected by the offence or those who may have an interest in the outcome of the conference may attend and contribute.
 - The New Zealand youth justice system and family group conference process were earlier described in paragraph 3.2.

³² Daly K. "Diversionary Conferences in Australia", paper presented at the American Society of Criminology Annual Meeting, November 20-23, 1996 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

³³ New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

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In New Zealand, youth justice family group conferences may proceed without both the victim and the offender. Conferences are held for victimless offences. In cases where there is a direct victim who declines to attend, the conference may still proceed as long as the co-ordinator and the offender's family consider that it will be of value. A similar situation pertains if the offender is unable or unwilling to attend, although conferences without the offender are rare. Community expectations of adults regarding personal responsibility for offending, means it is likely to be even more unacceptable for conferences to proceed without the participation of adult offenders. The role that family members might play may be quite different from that expected in the case of juveniles, since legal and moral responsibilities no longer exist or will have changed. Power relationships will also be different, particularly where offenders are middle-aged or older or alienated from their family.

The conference co-ordinator plays an active part in facilitating an agreement and, in complex matters, a conference might be convened several times.

The consent of all parties, including the co-ordinator, is usually required for an agreement. Fisher (1994: 15) suggests that the process employed in New Zealand family group conferences "is more interventionist than appropriate for mediation and may be closer to conciliation."

In family group conferences, all those participating must consent to agreements. Parties are invited to attend because of their interest in the offence or influence on the offender and the range of interests needs to be recognised through compromises reached in the decision-making process. Conferencing therefore enables the interests of several parties to be considered in the same forum and, potentially, expressed in agreements. This may mean that outcomes may be more acceptable to the sentencing courts. On the other hand, victim interests have to compete with those of the other parties.

Family group conferences are one form of conferencing. McElrea (1994b: 12) has proposed a model of community group conferences which seeks to "tap the relationships of respect and influence that apply to the adult offender".

He suggests that families are still likely to play an important, if different, role for adults and that there might be "other, non-family based, relationships of respect, other communities to which the offender belongs" which might be a substitute for or valuable supplement to family relationships. The conference would bring together several representatives of the community to which an offender relates, so as to provide a negotiated, community response to crime. This group would seek to address the wrong and affirm the offender in remedial steps for the future. The community group conference as envisaged by McElrea (1994b:13) would involve

...the victim (and supporters, if desired), a police representative, family members if appropriate (-perhaps fewer than for an FGC but cultural factors would be relevant here), and persons representing other significant relationships for the offender - say one or two such persons, or more if there is no family involvement. Imagination and perseverance would be necessary skills in assembling a community group. If despite skilled endeavour, no such persons can be found there may be a place for voluntary associations (eg a local church group, cultural association, or service organisation) to step into the gap. Finally an agency offering assistance to address a specific need (illiteracy, alcoholism, budgeting help) might appropriately be included in a CGC...

It was also suggested that conferences could still be held where the victim declines to attend or for victimless crimes.

Research by MRL (1995:74) identified concerns that

...the meeting must be balanced and limited to a set number of people, to avoid the chaos of everyone trying to have their say.

Participants believed it essential that victims and offenders had family and support people attending, but only as observers.

Maori in particular felt that the meeting needed to be limited for reasons of confidentiality. These participants sought to restrict attendance to members of their whanau only. There was a comparatively low level of acceptance of the need for lawyers to attend mediations and conflicting opinions about the desirability of a police presence.

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In comparison with family group conferences provided in the youth jurisdiction, in any application of the conferencing model in the adult jurisdiction it may be desirable to strengthen the focus on victims, place a different emphasis on the role for the family and supporters of the offender and enhance the role for the community.

The rate of victim involvement in family group conferences (Maxwell and Morris, 1993) and the poor rate of achieving direct mediations in reparation enquiries in New Zealand (Jervis, 1995) have already been noted. Programmes in Britain have achieved rates of 47% in getting victims and offenders to mediate in pre-trial programmes and 34% from court referrals (Marshall & Merry, 1990). In the United States, rates of 36% have been recorded (Dignan, 1990; Umbreit, 1994; Umbreit & Coates, 1989).

The degree to which victims perceive a benefit in their involvement and are consequently willing to participate, will effect the efficacy of any community group conference programme.

- The New Zealand Law Society (1994: 2) noted that this country's youth justice system differs from victim-offender schemes in other jurisdictions where "attendance is voluntary on the part of both offender and victim.
- The numbers of cases handled under such schemes tend, partly as a consequence, to be small." It is argued that in any pilot of community group conferences attendance should be compulsory, "at least for the offender". The Children, Young Persons and Their Families Act does not, however, require the attendance of either the victim or offender at the family group conference and section 252 considers instances where it is impracticable for the child or young person to attend. Rather, the Act identifies persons who are entitled to attend the family group conference and the incidence of conferences is more likely a consequence of provisions requiring judges to ensure that an attempt has been made to convene a conference.

7.5. Putting Aboriginal Justice Devolution Into Practice - 1995³⁴

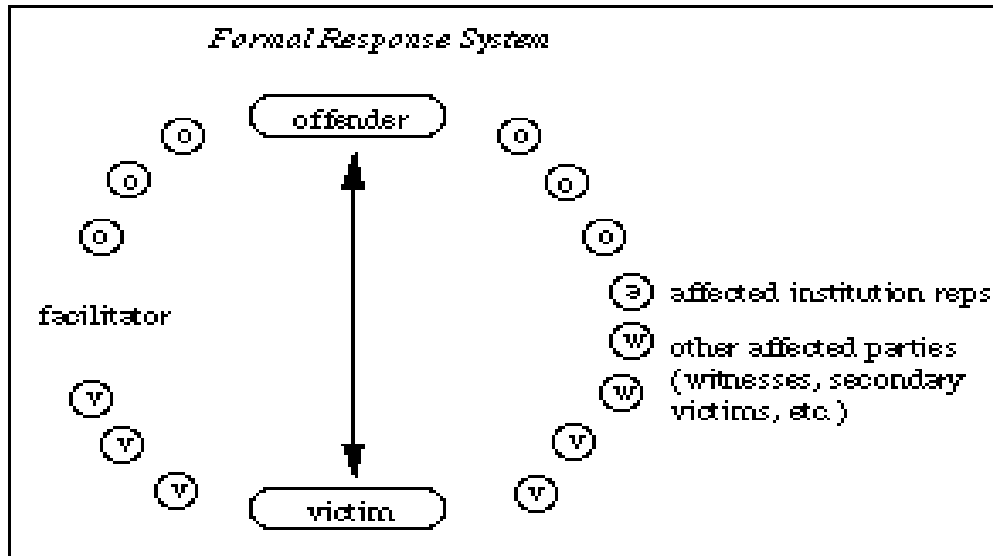
The New Zealand Family Conference Model

- The New Zealand Children, Young Persons and their Families Act 1989 introduced new principles and procedures for dealing with young people who offended against the law.
 - o The philosophies and principles which are being used are inextricably based on the communitarian concept - involvement of families and wider families, and personal obligation to others within a community of concern.
 - o Within the Act there is a clear statutory intention to strengthen families and foster their own means of dealing with their offending youth.
 - o The family group has a status in any proceedings and has the right to make representations.
 - o The Act also provides for the statutory involvement of victims, consistent with the restorative justice aims of the Act and the incorporation of the spiritual concepts of the New Zealand Maori.
 - o A term which has been used to characterize the approach is "responsible reconciliation". While victims are not compelled to participate in the process, they are "sympathetically encouraged".
 - o There is presently a bill before the legislature to permit the attendance of any reasonable number of victim support parties as desired by the victim.
- The centre of the new approach is the Family Group Conference.
 - o The victim's needs are the essential feature of the conference with the recognition that crime and its consequential damages require healing.

³⁴ Michael Brown (New Zealand) cited in The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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- This victim-centered process allows the victim to progress from fury to hurt, to a sense of loss, to understanding, to forgiving. For the offender, it must start with an acknowledgment, then remorse, shame, reparation and expiation.
- The Family Group Conference may be convened through referrals from the department of Social Welfare, or from cases before the Youth Court as a result of arrests.
- The Family Group Conference may result in an agreement which is then implemented by family decision. Alternatively, it may result in a referral (back) to the Youth Court system for formal processing.
- The Family Group Conference model is essentially a compromise.
 - It is neither totally Maori nor totally Western.
 - While re-establishing culturally appropriate justice concepts, such as remorse, it also incorporates concepts alien to Maori culture, such as the judiciary.
 - It is important to note that the Act which authorizes the conferences applies to all New Zealand youths, not only indigenous ones, and that it is operative in urban as well as rural areas.



Real Justice Conferencing Model
Figure 9

7.6. Conditions of Successful Reintegration Ceremonies - 1994³⁵

This paper advances the idea that reintegrative shaming is no small challenge, but that it is possible to effect, and thereby accomplish reduced recidivism, offender reintegration and victim satisfaction. After discussing the family or community conferencing initiatives in Australia and New Zealand, the authors outline fourteen conditions for successful reintegration ceremonies in practice, developing these ideas vis-à-vis the earlier theoretical work of Garfinkle on conditions of successful degradation ceremonies. Several key points here include the significance of getting the victim to participate, the importance of the presence of supporters for both victim and offender, the pivotal importance of the facilitator role in drawing out all parties and maintaining support for all persons, designing a plan of action, and monitoring reintegration agreements. They emphasize story-based training methods that focus on a few core principles

³⁵ Braithwaite, John and S. Mugford. "Conditions of Successful Reintegration Ceremonies", *British Journal of Criminology*, 34 (2), 1994 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, *Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature*, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

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namely empower the victim, respect and support the offender while condemning his act, engage the offender's supporters, and focus on the problem and the community not the offender and his pathologies.