

Table of Contents

1. Key Themes (to be explored)	3
2. Research Questions	4
2.1. Types of Activities/Services/Approaches	4
2.2. Range of Activities/Services/Approaches	4
3. Relevant Documents, Studies and Practices – Yukon	5
3.1. Aboriginal Justice Strategy (AJS) Trends - 2000	5
3.1.1. Program Types	5
3.1.2. Delivery Options:.....	5
4. Relevant Documents, Studies and Practices – Other Northern Territories	7
4.1. Inuit Women and the Nunavut Justice System – 2000	7
4.2. A Framework for Community Justice in the Western Arctic – 1999	7
5. Relevant Documents, Studies and Practices – Other Canadian	10
5.1. Fact Sheet – Restorative Justice	10
5.2. Restorative Justice - A program for Nova Scotia - 2001	10
5.3. The Effectiveness Of Restorative Justice Practices -2001.....	11
5.4. Restorative Justice In Canada - 2001	11
5.5. Restorative Justice -2000	11
5.6. Aboriginal Justice Strategy (AJS) Trends - 2000	12
5.6.1. Program Types	12
5.6.2. Delivery Options Used:.....	13
5.7. Developing a Restorative Justice Programme - 2000.....	14
5.8. Restorative/Criminal Justice–Identifying Some Preliminary Questions, Issues & Concerns - 1998 .	19

6. Relevant Documents, Studies and Practices – USA	20
6.1. A Comparison of Four Restorative Conferencing Models - 2001	20
6.2. Community Justice and a Vision of Collective Efficacy - 2000.....	26
6.3. Community Justice: A Conceptual Framework -2000	35
6.4. Overview of mediation, conferencing, and circles – 2000	39
6.5. Conferences, Circles, Boards, & Mediations - 1997	41
6.6. Taking Down the Walls - 1997	53
6.7. Resolving Disputes Locally: Alternatives for Rural Alaska - 1992.....	54
7. Relevant Documents, Studies and Practices – International	55
7.1. Restorative Justice from Individualism through Reductionism to Holism -2001	55
7.2. An International Review of Restorative Justice -2001	58
7.3. A Role for ADR in the Criminal Justice System? - 1999	59
7.4. Restorative Justice The Public Submissions-1998	59
7.5. Restorative Justice – 1996	62
7.6. Putting Aboriginal Justice Devolution Into Practice-1995	65

1. Key Themes (to be explored)

Activity - An operation or work process internal to an organisation, intended to produce specific outputs (e.g. products or services). Activities are the primary link in the chain through which outcomes are achieved. *What are the key activities that people are engaged in under the policy, program or initiative? That is, what are the key activities intended to contribute to the achievement of the outcomes (as opposed to the administrative activities necessarily undertaken to provide the infrastructure for the policy, program or initiative)*^{1 2}

Output - Direct products or services stemming from the activities of a policy, program or initiative, and delivered to a target group or population. *What are the outputs of the key activities? That is, what demonstrates that the activities have been undertaken? Outputs are the products or services generated by the activities and they provide evidence that the activity did occur.*^{3 4}

While different labels are used for the activities/approaches/services - such as victim/offender mediation, family group conferencing, sentencing circles – even though they have distinct practices – the principles employed remain similar – and basically the community justice project consults with the offender, the victim individuals impacted by the offence and other community members in determining what is needed to “make things right.”

Is there viability, for separate community justice activities/services/approaches to be used for victims (and their support groups) as well as offenders (and their support groups) and then over time for a meeting of the two parties in a community setting? E.g. a victim’s circle, an offender’s circle?

¹ Adapted from Government of Canada, Treasury Board Secretariat, Guide for the Development of Results-based Management and Accountability Frameworks, August 2001, <http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/rmaf-cgrr-06-e.asp>

² Adapted from the Guide to Project Evaluation: A Participatory Approach Population Health Directorate Health Canada August 1996 <http://www.hc-sc.gc.ca/hppb/familyviolence/html/1project.htm>

³ Adapted from Government of Canada, Treasury Board Secretariat, Guide for the Development of Results-based Management and Accountability Frameworks, August 2001, <http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/rmaf-cgrr-06-e.asp>

⁴ Adapted from the Guide to Project Evaluation: A Participatory Approach Population Health Directorate Health Canada August 1996 <http://www.hc-sc.gc.ca/hppb/familyviolence/html/1project.htm>

2. Research Questions

2.1. Types of Activities/Services/Approaches

What activities/services/approaches does the community justice project offer?

Are the activities consistent with the stated objectives of the project? ⁵

What percentage of time is spent on each community justice activity/service/approach?

2.2. Range of Activities/Services/Approaches

Does the project consider a broad range of options?

- to match the needs of the case to an appropriate community based approach
- to match the case to the capacity/capabilities/resources of the community justice project/community

Crime Prevention – see chapter on **“Crime Prevention”**

Pre-Charge (Police) Diversion – see chapter on **“Interventions/Referrals/Diversions”**

Post-charge Diversion– see chapter on **“Interventions/Referrals/Diversions”**

Mediation (including victim/offender mediation)– see chapter on **“Victim Offender Mediation/Reconciliation”**

Talking or Healing Circle – see chapter on **“Circles”**

Conferences – see chapter on **“Conferencing”**

Community Peacemaking Circles – see chapter on **“Circles”**

Community Court Peacemaking Circles – see chapter on **“Circles”**

Court Sentencing Circles – see chapter on **“Circles”**

Sentencing/Community/Elder Panel – see chapter on **“Elder Panels”**

Court Assistance - Does the community justice committee make recommendations to the Court?

- turn the offender over to the court at anytime during case
- use the Court as a back-up for other community justice activities/services/approaches by assuming responsibility where the community feels it cannot cope or when the offender breaks promises to the community

Post-Release Assistance

Wilderness Camps/On-The-Land Programs

What other activities/services/approaches are carried out? E.g. Community education? Meetings? Healing Processes?

⁵ LaPrairie, Carol, Matrix of Evaluation Issues, Questions and Indicators, Aboriginal and Restorative Justice Initiatives: Saskatchewan Justice, November 1996

3. Relevant Documents, Studies and Practices – Yukon

3.1. Aboriginal Justice Strategy (AJS) Trends - 2000⁶

3.1.1. Program Types

Project Name	Program Type
Haines Junction Community Justice Program	Diversion Community Sentencing Mediation
Liard First Nation Dena Keh	Diversion Community Sentencing
Kwanlin Dun Community Social Justice Program	Diversion Community Sentencing
Southern Lake Justice Committee	Diversion Community Sentencing
Tan Sakwathan Diversion Program	Diversion
Teslin Tlingit Council Peacemaker Court	Diversion Community Sentencing

Program Types:

Diversion/Alternative Measures

- These programs are generally established under provisions of the Criminal Code or the Young Offenders Act.
 - o They remove/divert offenders from the mainstream court systems into community processes that set more culturally appropriate remedies or sanctions for the offences.

Community Sentencing

- Community sentencing programs provide for a range of approaches, such as sentencing advice to courts through Elders' advisory panels or circle sentencing initiatives, community circles (with or without the intervention of a court), and other peacemaking processes.
 - o Circle Sentencing: Half of the projects in the Yukon reported using sentencing circles by 1998-99.
 - o Healing Circles: As of 1998-99, healing circles were reported in the Yukon.

Mediation ⁷

- Mediation involves the intervention in disputes of an impartial, neutral third party, who assists the parties in coming to a resolution of the dispute.
 - o This person has no decision making power, but instead facilitates mutual resolution on the part of the parties.
 - o Mediation programs address non-criminal disputes, such as family or civil cases.

3.1.2. Delivery Options:

Family Group Conferencing (FGC)

- FGC is widely used across the country, most often with youth. Jurisdictions that report the use of FGC include British Columbia, Manitoba, the Northwest Territories, Nunavut, Saskatchewan, and the Yukon.

Sentencing Circles

- Half of the projects in the Yukon reported using sentencing circles by 1998-99.

Healing Circles

- As of 1998-99, healing circles were reported in British Columbia, Manitoba, Ontario, Nunavut, Saskatchewan and the Yukon.

⁶ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

⁷ Mediation as one of four program types funded by the AJS is not to be confused with mediation as process used by many of the programs. This process is often operated under diversion/alternative measures program type.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

Court Assistance:

- The projects that use court assistance are projects that operate post-charge or pre and post-charge projects.
 - o As of 1998-99 in the Yukon 50% of its projects reported court assistance as a delivery option.

Post-Release Assistance

- Refers to, but not limited to the use of pre and post release healing circles, letters of support, counseling clients while incarcerated and offering support upon release.
 - o Post-release assistance as a delivery option when addressing the needs of clients was reported in a number of jurisdictions however the number of programs that reported upon it within each jurisdiction was very low (one or two).
 - o The jurisdictions include the Northwest Territories, Nunavut, Nova Scotia, Saskatchewan and the Yukon.

Wilderness Camp/On-the-Land Program

- Many projects articulated the value of a wilderness camp/on-the land project for youth in their community.
 - o The figures increased again in 1998-99 to 20 (3 in British Columbia, 2 in Northwest Territories, 6 in Nunavut, 8 in Saskatchewan and one in the Yukon).

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

4.1. Inuit Women and the Nunavut Justice System – 2000⁸

Committee Methods:

- **Consultation:** In the NSDC report, consultation is identified as a fundamental component of resolving disputes.
 - The consultation method used and participants involved depend upon the nature of the offence.
- As stated in the NSDC justice report, traditionally, where there was a breach of rules, a consultation process would have to take place.
 - Where it was a minor offence, the consultation would be within the family.
 - If the breach resulted in a major offence, the consultation would be within the community.⁹
- Consultation appears to be at the heart of many of the diversion programs commonly used by justice committees in Nunavut today.
 - While the government program uses different labels for the methods such as victim/offender mediation, family group conferencing, basically the committee consults with the offender, individuals impacted by the offence and other community members in determining what is needed to “make things right.”

4.2. A Framework for Community Justice in the Western Arctic – 1999¹⁰

Regardless of the restorative justice approach, the models share common elements including: an alternative to the mainstream adversarial justice paradigm; non-adversarial, community-based sanctioning processes; a less formal justice process brought closer to the community level; increasing community involvement; requiring an admission of guilt from offenders or a finding of guilt; decision-making by consensus.

On the other hand, the variations in the models most often relate to: staffing; eligibility - ranges from minor first offenders to quite serious repeat offenders (i.e., circle sentencing); the point in the system at which referrals are made; the structural relationship to formal court and correctional systems; substantial differences between process and dispositional protocols; cultural differences (*ranging from ancient rituals involving passing of the 'talking stick' or feather in the case of Circle Sentencing to the more deliberate agenda followed in the hearings of community boards*; (Bazemore & Griffiths, 1997, p.3) administrative and process differences; evolution as they continue to be adapted to local circumstances.

Land Survival Skills Program Questionnaire

PROGRAM AND PARTICIPANT BACKGROUND

1. Name of leader (who filled out this form): _____
2. Current date _____/_____/_____
 d m y
3. Name of participant: _____

⁸ 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>.

⁹ NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 14 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>.

¹⁰ Campbell Research Associates, Kelly & Associates, Smith & Associates, prepared for Government of Northwest Territories, Department of Justice, A Framework for Community Justice in the Western Arctic – June 1999

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

4. Age of participant: _____
5. Male Female
6. Reason for referral to program: _____

7. Community: _____
8. Date program started: _____
9. Length of program: _____ days

ASSESSMENT OF PARTICIPANT

1. Please circle the number of the category that best describes the participant for each of the following items:
 - A. His/her willingness to participate in the activities of the group.
 1. very unwilling 2. quite unwilling 3. neither willing nor unwilling
 4. quite willing 5. very willing
 - B. His/her willingness to do required work or chores.
 1. very unwilling 2. quite unwilling 3. neither willing nor unwilling
 4. quite willing 5. very willing
 - C. His/her enthusiasm about learning traditional skills.
 1. very unenthusiastic 2. quite unenthusiastic 3. neither enthusiastic nor unenthusiastic
 4. quite enthusiastic 5. very enthusiastic
 - D. Respect with which he/she listened to teachers or elders.
 1. very disrespectfully 2. quite disrespectfully 3. neither respectfully nor disrespectfully
 4. quite respectfully 5. very respectfully

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

2. List the survival and land skills learned by the participant (please check correct box).

	Yes	No	Not offered
Hunting and fishing skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire arm safety	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Skinning animals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Butchering and preserving meat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental knowledge (weather, tides, currents)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uses of animals and plants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traditional medicines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Camp set-up and equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traditional activities such as lighting the kudlik and traditional fires	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tool making	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traditional sewing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stories about the past	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Inuktitut language terms for natural environment, hunting/gathering	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. What do you think the program participant gained most from the program?

4. In what ways do you feel the participant has changed as a result of the program?

5. What personal, family or other issues does the participant still have to work on?

5. Relevant Documents, Studies and Practices – Other Canadian

5.1. Fact Sheet – Restorative Justice ¹¹

What are some examples of restorative justice programs?

All restorative justice programs have some common elements. They seek healing, forgiveness and active community involvement. The programs can take place at different times after a crime has occurred - sometimes after charges have been laid; sometimes after an accused has been found guilty of an offence.

Some examples of restorative justice programs include:

- victim offender mediation;
- family group conferencing;
- sentencing circles;
- consensus-based decision-making on the sentence; and
- victim offender reconciliation panels.

Good restorative justice programs have well-trained facilitators who are sensitive to the needs of victims and offenders, who know the community in which the crime took place and who understand the dynamics of the criminal justice system.

5.2. Restorative Justice - A program for Nova Scotia - 2001¹²

Service Delivery

- The agencies each offer a range of services geared to both offenders and to victims of crime. Caseworkers on staff prepare youth and victims, their support persons and community representatives for participation in a restorative justice process. The restorative justice processes offered include victim-offender conferences, family group conferences, accountability conferences for victimless offences, and circle processes, including sentencing circles.

Restorative Justice Models ¹³

A restorative option can take one of many forms, depending on the circumstances of the case, and the point in the system in which the restorative option is invoked. In general, the models all focus on offender accountability, victim healing, offender reintegration and repairing the harm caused by the offence. The actual model used may be different for different communities, since community agencies will modify the generic models to meet the unique complexities of the community in which they serve.

Victim-Offender Conference

The victim-offender conference is a forum which provides an opportunity for victims and offenders to meet face-to-face in the presence of a trained facilitator. "The parties have an opportunity to talk about the crime, to express their feelings and concerns, to get answers to their questions, and to negotiate a resolution."²⁰

Family Group Conference

A family group conference is a model similar to a victim-offender conference in that it involves a face-to-face

¹¹ Department of Justice Canada, Policy Centre for Victims' Issues, <http://canada.justice.gc.ca/en/ps/voc/index.html>

¹² Restorative Justice - A program for Nova Scotia, Update 2001, <http://www.gov.ns.ca/just/rj/rj-update.htm>

¹³ <http://www.gov.ns.ca/just/rj/rj-framework.htm>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

meeting between the victim and offender. A family group conference however, engages a larger group of participants which includes the support people for both the victim and the offender, relevant professionals, the facilitator, and the investigating officer.

The family group conferencing model is a clearly restorative justice based intervention with many very similar outcomes as victim-offender mediation, but with the added benefit of having all those affected by the crime present with the potential for greater community support for both the victim and offender. It is based upon the concept of "reintegrative shaming" developed by Australian criminologist John Braithwaite (1989). This concept focuses on the importance of denouncing or shaming the criminal behaviour while affirming, supporting and helping to reintegrate the offender back into the community.²¹

Sentencing Circle

In addition to the models described above, another model is available at the court entry point: the sentencing circle. The circle involves the same participants as a family group conference, as well as the presiding judge, Crown attorney, and defence counsel. As with the other models, each participant is given an equal opportunity to participate, and to work together to arrive at a plan for the offender which will not only repair the harm caused by the offence, but also address the personal reasons which led to the commission of the offence. The circle goes beyond developing a sentence for the offender, and engages the support of all participants to assist the offender in fulfilling the terms of the plan.

5.3. The Effectiveness Of Restorative Justice Practices -2001¹⁴

- Models of restorative justice can be grouped into three categories:
 - o circles,
 - o conferences and
 - o victim-offender mediations (VOM).
 - While somewhat distinct in their practices, the principles employed in each model remain similar.
-

5.4. Restorative Justice In Canada - 2001¹⁵

Models of practice

- Three models of practice are generally used - family group conferencing, victim-offender mediation and sentencing or healing circles.
 - Victim-offender mediation is a two-party process with the assistance of a trained mediator.
 - Family group conferencing is an extension of mediation to include a wider group of participants, including community representatives.
 - The use of circles has evolved from traditional Aboriginal methods of settling disputes, and commonly involves elders of the community.
 - Circles may be used at the sentencing stage or following incarceration to assist an offender's reintegration into the community.
-

5.5. Restorative Justice -2000 ¹⁶

Approaches: The approaches to restorative justice in these programs vary a great deal.

- Some encourage or even require the use of mediation or other restorative processes in labour relations or in civil and family cases, while others focus on criminal matters.
- In some jurisdictions, programs are delivered through community agencies, while in others programs are administered by government departments.

¹⁴ Department of Justice Canada, Research and Statistics Division, Jeff Latimer, Craig Dowden Danielle Muise, "The Effectiveness Of Restorative Justice Practices: A Meta-Analysis", 2001, <http://canada.justice.gc.ca/en/ps/rs/rep/meta-e.pdf>

¹⁵ Justice Canada, Restorative Justice in Canada, 2001-11-19, <http://canada.justice.gc.ca/en/news/conf/rst/rj.html>

¹⁶ Federal-Provincial-Territorial Working Group on Restorative Justice *Restorative Justice in Canada: A Consultation Paper* (May 2000) available from the Department of Justice Canada, <http://canada.justice.gc.ca/en/ps/voc/ripap.html>.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- Finally, some programs are closely tied to Aboriginal or community justice, while others emphasize crime prevention or alternative measures.

- There are a number of core program models for restorative justice programs.
 - o **Victim-Offender Mediation** was pioneered in Kitchener, Ontario, in 1974.
 - Victim-offender mediation or reconciliation brings victims and accused persons together with a mediator to discuss the crime and to develop an agreement that resolves the incident.
 - This process allows victims to express their feelings to the accused and to have offenders explain their actions and express remorse.
 - The process is intended to help victims gain a sense of closure, while offenders learn to take responsibility for their actions.
 - In many Canadian jurisdictions, this method is commonly used in alternative measures programs.
 - This approach has also been incorporated in hundreds of programs throughout the United States, the United Kingdom, and Western Europe.
 - o **Family Group Conferencing**, based upon the Maori and Samoan tradition of involving extended families in resolving conflicts, is the primary way of dealing with young offenders in New Zealand.
 - In Canada, mediators or facilitators help accused persons and their families to meet with victims, their supporters, police, and others to discuss and resolve the incident.
 - The RCMP has been training officers and community members in using this method.
 - Most initiatives have focused on young offenders, but some communities are using this model with adults in a process called community justice forums.
 - o **Sentencing circles, healing circles and community-assisted hearings** are based upon Aboriginal practices of having communities, families, elders, and people in conflict discuss and resolve an issue flowing from an offence.
 - Participants sit in a circle and may pass a "talking stick" or "talking feather" from one speaker to another.
 - Traditional Aboriginal ceremonies such as burning sweet grass, passing a tobacco pipe, or entering sweat lodges are often part of circles.
 - o In **sentencing circles**, the victim, offender, family, and community members meet with a judge, lawyers, police, and others to recommend to the judge what type of sentence an offender should receive.
 - The victim and the community have the opportunity to express themselves to the offender, and may also take part in developing and implementing a plan relating to the offender's sentence.
 - o **Healing circles** are ceremonies intended to bring conflict to a close, allow the participants to express their feelings, and indicate that the offender and victim have undergone personal healing.
 - o **Community-assisted hearings**, which are sometimes called releasing circles, are a type of National Parole Board hearing that is held in an Aboriginal community rather than in a holding institution.
 - These hearings are an opportunity for the justice system, the community, and the offender to be responsible for the successful reintegration of an offender back into the community.

5.6. Aboriginal Justice Strategy (AJS) Trends - 2000¹⁷

5.6.1. Program Types

Program Types	# Programs
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¹⁷ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

	1996-97	1997-98	1998-99
Diversion	16	32	51
Community Sentencing	11	17	23
Mediation	3	4	7
First Nation Courts	0	1	1
Policy /Resource	1	3	3
TOTAL	31	57	85

- This table highlights that there exist some overlap in program types operated.
 - o Each year the total number of program types being operated is higher than the actual number of programs that AJS is funding.
 - o This indicates that many programs operate a combination of the program types.
- This table also indicates that each fiscal year saw increased that corresponded with the increase in programs funded.
 - o It is clear that the most common program type in all of the provinces is **diversion**.
 - o The next most common project type is **community sentencing**.
 - o **Mediation** is next with only 7 projects spread over 4 provinces or territories, followed by **policy/resource**, where all three as of 1998-99 were found in Saskatchewan
- JP courts and mediation were underdeveloped and underutilized.
- Each fiscal year saw increases that corresponded with the increase in projects funded.

Program Activities

5.6.2. Delivery Options Used:

- The community-based Aboriginal Justice projects funded by AJS use a number of delivery options in addressing the needs of the clients they hope to serve.
 - o The term ‘delivery options’ refers to the types of processes engaged by the project committee, council, or board in determining the consequences or sanctions for the offender.
 - o Delivery options often flow from the needs and abilities of the community and offender as well as the type of project they are operating.
- The most commonly used delivery option is family group conferencing followed by victim-offender mediation,¹⁸ sentencing circles, and then healing circles.
 - o Court assistance and post-release assistance are both the least reported as used.

Family Group Conferencing (FGC)

- FGC is widely used across the country, most often with youth. Jurisdictions that report the use of FGC include British Columbia, Manitoba, the Northwest Territories, Nunavut, Saskatchewan, and the Yukon.
 - o As of 1998-99 half of the projects that operate in British Columbia, Nunavut, and Saskatchewan reported using FGC.

Victim-Offender Mediation (VOM)

- By 1998-99 VOM was most often reported as used in Saskatchewan, where more than half of the projects operating in that province reported the use of VOM.
 - o Less than half of the projects operating in the other provinces or territories reported using this form of delivery/process.

Sentencing Circles

- Half of the projects in the Yukon reported using sentencing circles by 1998-99.
 - o In Saskatchewan, by 1998-99 just less than half of the projects reported using them as well.
 - o They also reported on in Manitoba and the Northwest Territories, although by only by one project in each jurisdiction.

Healing Circles

- The use of healing circles is well distributed across the county.

¹⁸ Victim-offender mediation in this context is very different from mediation as a project type by AJS. Many community-based projects (one third by 1998-99) report using mediation as a way to address the conflict. Mediation as a project type is limited to non-civil cases, whereas mediation as a chosen delivery option on the path to resolving conflict often addresses criminal (and non-criminal) disputes.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

- As of 1998-99, healing circles were reported in British Columbia, Manitoba, Ontario, Nunavut, Saskatchewan and the Yukon.
- However, in all jurisdictions less than a third of the projects operating reported their use.

Court Assistance

- The projects that use court assistance are projects that operate post-charge or pre and post-charge projects.
 - As of 1998-99 four jurisdictions have projects that report that they engage in assisting the court with clients from the community.
 - These jurisdictions were British Columbia, Nunavut, Saskatchewan and the Yukon where 50% of the projects reported court assistance as a delivery option.

Post-release assistance

- Refers to, but not limited to the use of pre and post release healing circles, letters of support, counseling clients while incarcerated and offering support upon release.
 - Post-release assistance as a delivery option when addressing the needs of clients was reported in a number of jurisdictions however the number of programs that reported upon it within each jurisdiction was very low (one or two).
 - The jurisdictions include the Northwest Territories, Nunavut, Nova Scotia, Saskatchewan and the Yukon.

Fine-Option Program

- Many projects oversee or are working closely with the Fine-Option Program (FOP) in their community.
 - Most of these projects are northern ones, in the Northwest Territories and Nunavut, where by 1998-99 more than half of the projects in those territories reported involvement with the FOP.

Wilderness Camp/On-the-Land Program

- Many projects articulated the value of a wilderness camp/on-the land project for youth in their community.
 - Many also spoke about the positive impact that the wilderness camp had on the participants.
 - These camps are not restricted only to young offenders or adult offenders.
 - They are often open to youths and adults at risk as well.
 - The use of wilderness camps/on-the-land projects has been growing since 1996.
 - In that year only 4 projects used wilderness camps (2 in British Columbia and 2 in Saskatchewan).
 - In 1997-98, the figure increased to 11 (3 in British Columbia, 3 in Nunavut, and 5 in Saskatchewan).
 - The figures increased again in 1998-99 to 20 (3 in British Columbia, 2 in Northwest Territories, 6 in Nunavut, 8 in Saskatchewan and one in the Yukon).
 - Other projects, if they had not participated in a wilderness camp/on-the-land project, were actively planning one.
 - By 1998-99 the number of projects planning such an initiative was seven (1 in Manitoba, 2 in Northwest Territories, and 4 in Saskatchewan)
 - Of particular note is that all of the projects in Nunavut operate wilderness camps/on-the-land projects for the community members.

5.7. Developing a Restorative Justice Programme - 2000¹⁹

Models

- In British Columbia, the various models of RJ programmes can be grouped broadly into four categories, however, it is important to remember that the methods *within* these broad categories can still reflect the unique approach of each community.
 - The four categories are:
 - 1. Mediation
 - 2. Diversion
 - 3. Participation in sentencing

¹⁹ Michael R. Peterson, Developing a Restorative Justice Programme, Part One, Justice As Healing Newsletter, Vol. 5, No.3 (Fall 2000) <http://www.jahvol5no3.pdf>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- 4. Post-incarceration & reintegration support
- The names of these categories, not surprisingly, reflect their position in the cycle of an offence.
- As well, within each of these categories are practical programmes.
- The Table below sets out common programme descriptions and their ‘place’ within each category:

Category	Stage in the Process	Programme Notes	
Mediation	Prior to police intervention	<ul style="list-style-type: none"> • Most common in civil and family disputes. • The parties agree that a dispute exists, and agree to seek a local solution. • Not common in criminal, but, may be possible in property or other ‘minor’ offences where the victim voluntarily agrees to mediation to resolve the conflict. 	
Diversion	Police response or crown response	<p>There are two stages that Diversion may occur:</p> <ul style="list-style-type: none"> • Police have been called and arrive on scene either during or after the event. • Police and parties confer about whether the violation that has occurred is best resolved through an RJ programme, or through formal charges being laid. <p>If charges are laid, diversion is still possible through the Crown</p> <ul style="list-style-type: none"> • Crown reviews charge recommendation of police. • Crown may confer with the body responsible for RJ programme, victim, police and offender to consider whether to divert the case to the RJ programme. 	
Participatory Sentencing	Trial & finding or guilt	<p>Where offender pleads guilty</p> <ul style="list-style-type: none"> • RJ programme may speak to sentence through a variety of ways, including Circle Sentencing, Multi-party Sentence Recommendations, or Family Group Conferences 	<p>Where offender pleads not guilty</p> <ul style="list-style-type: none"> • If trial finds guilt, and no appeal is filed, RJ may choose to speak to sentence and make recommendations.
		<ul style="list-style-type: none"> • Where programs exist (or even if travel is involved), RJ participation may include requests to have the offender take part in rehabilitative programmes while serving the imposed sentence, either custodial or in the community. 	
Post-release Rehabilitation & Reintegration Support	Custodial sentence imposed	<ol style="list-style-type: none"> 1. An RJ programme may consist of rehabilitative and reintegrative programmes for offenders coming out of their custodial sentences and are returning to the community. 	

- Considering the distinctiveness of the categories and models of RJ, the best way to discuss the requirements, limits and possibilities of these programmes is to discuss them by category.
 - It should be noted at this point that this is not a comprehensive review of restorative justice programmes.
 - What this section discusses are common elements of typical or model programmes in each of the categories.
 - The purpose of this review is
 - to acquaint participants with standard features of methods in each of the categories, and
 - to promote discussion and debate among the workshop participants about how the various methods fit with the traditional ideas of justice held by the community.

Diversion

- “Diversion” is a subset of alternative measures, occurs in criminal matters, and happens at a stage *after* the justice system has already been involved.
 - Diversion takes a person who has accepted responsibility *out of the trial process*, and it has been agreed that the better way to address the transgression is through alternative measures.
 - If accepted, because the offender has admitted responsibility, no court of law has made a finding of ‘guilt,’ therefore the offender will have no criminal record.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- While there are diversion possibilities at the police intervention stage, in British Columbia it is the policy of the government that the Crown attorney is responsible for alternative measures if the police do decide to file a ‘charge report,’ or, charge recommendation.²⁰
- After a person has been accused of committing an offence, the police may make a ‘charge recommendation’ to the Crown attorney.
- The Crown then applies various legal tests to determine if the recommended charge, or some other charge, is to be pursued.²¹
- If a charge passes these tests, only at that point will diversion initiatives will be entertained.
- The Attorney General of BC controls the diversion process, and the ministries of Corrections, and Children and Families (as appropriate) oversee accepted proposals for diversion.
- Later in Part 3, reference will be made again, and in more detail, about how government controls not only the acceptance of diversion proposals, but also the acceptance of RJ programmes into the catalogue of “Accepted Alternative Measures Programs.”²² However, as a final note, this control should not be viewed either too skeptically or without critical evaluation. Support for RJ programmes is a reality in BC from the Crown and the judiciary.²³

Adult Diversion

- The types of offences that will be commonly accepted for entry into diversion programmes range from the most accepted (theft under \$5,000, disturbances, mischief, and the like) to the rarely accepted (serious assaults and sexual assaults, hate offences, breaches of court orders).
- However, with respect to the latter types of offences, the Crown may consider applying for acceptance to an RJ diversion programme when requested by a representative from an accepted Program, and with the approval of AG ministry officials.
- Commonly the supervising ministry would like programme participation complete in 3 months for minor offences, but longer periods are acceptable where more serious offences have been accepted.
- With respect specifically to Aboriginal RJ programmes, the AG has set guidelines in the policy manual for the Crown to consider when an RJ committee has asked for diversion of an offender’s case to their programme.
- In summary, they include:
 - Does the project enjoy substantial support of the community?²⁴
 - Has a plan been developed which has the necessary resources, and sets out goals and objectives to be achieved?
 - Is there a plan to monitor, review and report on the progress of the offender?²⁵
- While a diversion project can take as many forms as there are communities to develop one, nonetheless many take a form very similar to mediation initiatives.
- The process, then, could look like this in general:
 - 1. Someone from the diversion project contacts the Crown to refer a possible case for diversion.
 - 2. The wrongdoer is contacted (after having been advised of his right to counsel) to determine if he or she would be interested in participating in a diversion programme.
 - If not, that ends the process.
 - If yes, the office contacts them at a later stage.
 - Again, voluntariness is critical.
 - 3. The victim is consulted, the process is introduced to them, questions are answered.
 - 4. If the diversion is to go forward, the parties are reminded of some basic rules and principles of mediation
 - a. confidentiality,
 - b. respect for each other and all parties is essential,
 - c. facts about the dispute are agreed upon by the parties,

²⁰ The *Crown Counsel Policy Manual* has numerous chapters setting out the government’s policy regarding alternative measures. See, for example, ALT 1 (Adult offenders), ALT 1.1 (Youth offenders), and NAT 1.1 (Aboriginal restorative justice programmes).

²¹ Those tests include the “charge approval standard,” which in BC is a “substantial likelihood of conviction.” Other tests refer to community safety, *Criminal Code* provisions, and the interests of society generally.

²² This term comes from the *Crown Counsel Policy Manual*, ALT 1.

²³ See *Restorative Justice Needs Assessment*, Law Courts Education Society, November 1999, at pp 23-8.

²⁴ This requirement is discussed again in Part 3, under the discussion of the Aboriginal Justice Strategy Working Group (AJS).

²⁵ *Crown Counsel Policy Manual*, NAT 1.1

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

- d. The victim has been consulted *in advance* if a Victim Offender Reconciliation Programme (VORP) has been proposed, and if the victim would voluntarily participate in that portion of the disposition.
- 5. Through any combination of stages, members of the RJ programme meet with the offender and devise a plan to propose to Crown counsel.
 - The plan sets out what the offender will commit to and undergo as part of the restorative justice initiative.
 - *This is the very essence of restorative justice.*
 - The plan is presented to the Crown for consideration.
- 6. The Crown either accepts (either on her or his own, or through approval from other AG officials) or rejects the plan.
 - Revisions may be possible.
 - If accepted, the appropriate supervising ministry is contacted.
 - The approval of the presiding judge is sought.
- Something that all categories of RJ initiatives share, be it mediation, diversion, or sentencing circles, is *creativity and reference to traditional justice principles.*
 - Alternative measures put into action all the things discussed in Part 1 of the workshop- restoration of harmonies, restitution to the harmed, rehabilitation of the offender, and reintegration to the community.
 - These are not diversions *away* from justice, but the community's way of dealing with transgressions outside an ineffective retributive justice system.
 - Just *how* that is accomplished in a diversion programme is exactly what the community has to research, devise and develop.

Young Offender Diversion

- Section 4 of the *Young Offenders Act*, and the re-introduced incarnation of that act, Bill C-3, the *Youth Criminal Justice Act (ACJ)*, allows for diversion programmes in a similar fashion to s.717 of the *Criminal Code* for adult offenders.
 - Programmes for diverting youth are popular for a number of important reasons, including:
 - youth are a high at-risk group,
 - it is important to establish community and traditional values in children as early as possible, and
 - keeping children out of the detention system is critically important for reducing the danger of recidivism.
 - Youth diversion programmes operate somewhat differently from those of adult diversion.
 - Parents or guardians are included in the process through consultation about participation in a diversion proposal.
 - The *Young Offenders Act (YOA)* contains a larger number of more specific guidelines about what cases are suitable for diversion and which are not.²⁶
 - In addition to statutory requirements, the BC Crown will follow policy guidelines similar to those in adult diversion.
 - The process also has a number of additional steps early on:
 - 1. Once a referral to Crown counsel has been made by the RJ programme representative, the Crown will contact either a Youth Probation Officer, or a representative of some local agency attached to the Ministry of Children and Families.
 - 2. The probation officer or other representative will conduct a Screening Interview, to determine a long list of factors regarding the suitability of the youth to participate in a diversion programme.
 - Again, voluntariness is mandatory.
 - 3. After a plan has been developed and agreed upon by the offender and other participating individuals or groups, and if accepted, the Screening Interviewer must report to the Crown within a specified time.
 - The Crown will make a final decision.

²⁶ Sections 3 and 4 of the YOA.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

- If accepted, the Crown will notify the probation officer or other representative within a specified time.
- Three final references to youth diversion programs:
 - One, the Sparwood Youth Assistance Program²⁷: this program is designed for diversion *prior to an information being laid*.
 - That is, before the Crown has a charge recommendation before it. As stated earlier, diversion at this stage is practiced, and under police charging discretion it is possible, if not encouraged.
 - However, the process in the Sparwood program is similar to those discussed in mediation and diversion.
 - The important stage for the purposes of this workshop is the Resolution Conference, where the youth explains why he acted the way he did, and the victim, offender and affected persons discuss the *effects of that action*, and how restitution can be achieved.
 - Two, the South Vancouver Island Tribal Council set up the Native Alternative Youth Program to deal with youth who are caught in the justice system.
 - Briefly, the Crown will refer a youth (referred to as a “diversion candidate”) to the Council (note the reversal here—it is the *Crown* who has done the referral).
 - Two Tribal Elders and a Diversion Co-ordinator interview the candidate.
 - Anyone who proves an interest in the case is heard at this interview.
 - A report is submitted to the Tribal Court for consideration.
 - If accepted, a “diversion contract” is drafted under terms and conditions which the youth agrees to carry out.
 - The youth becomes responsible to a “sponsoring Elder.”^{28,22}
 - Finally, the Atawapiskat Project in Ontario is a diversion project for youth that shares a similar character with the South Vancouver Island project, in that it is the *court* who refers a candidate youth *to the project co-ordinator*.
 - The crown stays the charges, and if the youth successfully completes the commitments made under the projects plan for healing, the crown goes to court and formally withdraws the charges.
- Again, this is not a comprehensive summary of how youth diversion works; that is not the purpose of this workshop.
 - This review of models is only to give a community exploring the possibility of an RJ programme some ideas of what initiatives are available, and a rough idea of how they work.²⁹
 - Communities are encouraged to always build from their *own* beliefs, then add whatever elements from other systems they feel might work for them, address their needs and accomplish their goals.

Sentence Participation & Recommendations

- Predictably this section will focus on circle sentencing not just because it has become accepted by all the actors in the justice system- crown, defence, and the judiciary, but because its popularity demands it be addressed so other communities not yet involved can get a sense of their basic structure and operation.
 - Due to the enormous wealth of written information available on circle sentencing from judgments, academics and practitioners, this summary of sentence participation will not be in-depth.
 - The focus remains at an introductory level.
 - The community involved in any given workshop session may not even had such practices in their traditional methodology.
- A circle sentence is a process undergone *after* the offender has either plead guilty in a court of law, or is found guilty after trial.³⁰

²⁷ Sparwood has set out the process in a publication. Contact the Sparwood RCMP for a copy.

²⁸ For a summary of this programme, see M. Jackson, *In Search of the Pathways to Justice: Alternative Dispute Resolution in Aboriginal Communities*, (1992) 26 U.B.C. Law Rev. 147 (Special Edition) at p.201-3.

²⁹ Detailed practices of the AG, Ministry of Corrections, Aboriginal Affairs, and, Children and Families as they relate to RJ projects should be researched once the community decides what kind of programmes it will offer under RJ. Additionally, as is discussed in Part 3, the Aboriginal Justice Strategy Working Group (AJS) will be quite specific to the community about the kinds of programmes it will support.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- At this point, after co-operation has already been established and permission for the circle has been granted by the presiding judge, the participants of the circle seek to achieve a just sentence for the offender that will put him or her on the path to healing and toward a reestablishment of harmonies disrupted by his behaviour. Incarceration may still be part of the whole sentence ‘package’, community detention may be suggested, or, no custody at all.
- ‘Sentences’ often include restitution, supervised community service, service to the victim, counseling, therapy or any of a host of options.³¹²⁵
- The proposal is made by all the participants in the circle, but the judge makes a final determination.
- While a judge is not bound by the recommendations of a sentencing circle, it is worth repeating that such recommendations receive very wide respect and support in the judicial community.³²
- Two alternative models have been identified which achieve the same objective as circle sentences.³³
 - One is an Elders Panel, consisting of either Elders, or community leaders, or both, or a mixture of citizens and influential individuals.
 - The panel will interview the offender and the victim, and may hear from any other involved individuals.
 - The panel discusses the transgression and formulates a proposal to the judge about the best way to approach the offender’s sentence.
 - The second model is similar- it is called a Sentence Advisory Panel that hears applicants for sentence recommendations.
 - The panel conducts research into the particular case, decides if the candidate is suitable for sentence recommendations, and then formulates a proposal to the Crown and the judge.³⁴ ³⁵

5.8. Restorative/Criminal Justice—Identifying Some Preliminary Questions, Issues & Concerns - 1998³⁶

- While restorative justice is essentially a way of thinking about crime and criminal justice system it is increasingly becoming equated with particular program models across a number of jurisdictions.
 - Currently there is an every increasing amount of literature that describes the various components of each – complete with examples of success stories and evaluations of participant satisfactions.
 - Despite these testimonies, it needs to be recognized that a comprehensive literature review and analysis of any critical commentary that might be emerging with respect to these restorative initiatives is still required.
 - With this important point in mind, the following are given as examples of programs and models most commonly referred to in the literature as ‘restorative’:
 - Family Group Conferencing – see chapter on **“Conferencing”**
 - Victim/Offender Reconciliation – see chapter on **“Victim/Offender Mediation/Reconciliation”**
 - Community Accountability/Sentencing Panels- see chapter on **“Elder Panels”**
 - Circle Sentencing – see chapter on **“Circles”**

³⁰ Section 717 of the *Code*, and s.4 of the *YOA* require that alternative measures (diversion) only be offered to those who have accepted responsibility for their role in the incident. Understandably, for many reasons, accused who do not take responsibility for their behaviour may *not* be offered restorative justice programme support.

³¹ Section 742 of the *Criminal Code* allows for “conditional sentences,” where offences that carry a term of less than 2 years, and have no mandatory minimum sentence, can be carried out in the community, with some fairly flexible and creative conditions attached to the ‘sentence.’

³² See note 5 regarding the success of circle sentence recommendations in SK. Also, as stated in note 15, crown, defence and the judiciary support circle sentences. See also *R. v. Morin, supra*, note 5- Saskatchewan had had over 100 sentencing circles, with only 2 appeals. Their acceptance is further noted in the research in general. For a comprehensive bibliography, refer to the Native Law Centre at the University of Saskatchewan, *Circle Sentencing Bibliography*, accessible through their webpage.

³³ See R. Green, *Aboriginal Community Sentencing: Within and Without the Circle*, in (1997) 25 *Man. L. J.* 77, at 83, and the RCAP, *Bridging the Cultural Divide*, *supra*, note 6, at 110.

³⁴ Informing the Crown of sentence recommendations is largely a courtesy in the justice system. The judge would likely ask any panel to provide the Crown with a copy of the proposal, so that the judge may hear the crown’s submissions on it.

³⁵ Section 717 of the *Code*, and s.4 of the *YOA* require that alternative measures (diversion) only be offered to those who have accepted responsibility for their role in the incident. Understandably, for many reasons, accused who do not take responsibility for their behaviour may *not* be offered restorative justice programme support.

³⁶ 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

6. Relevant Documents, Studies and Practices – USA

6.1. A Comparison of Four Restorative Conferencing Models - 2001³⁷

- The term “restorative conferencing” is used in this Bulletin to encompass a range of strategies for bringing together victims, offenders, and community members in non-adversarial community-based processes aimed at responding to crime by holding offenders accountable and repairing the harm caused to victims and communities.
 - o Such strategies, now being implemented in North America, Australia, New Zealand, and parts of Europe, are one component of a new movement in the 1990’s concerned with making criminal and juvenile justice processes less formal, bringing the processes into neighborhoods, and involving community members in planning and implementation (Barajas, 1995; Bazemore and Schiff, 1996; Griffiths and Hamilton, 1996; Travis, 1996).
- This Bulletin focuses on four restorative conferencing models: victim-offender mediation, community reparative boards, family group conferencing, and circle sentencing.
 - o Although these four models by no means exhaust the possibilities for community involvement in decisions about how to respond to youth crime, the models do illustrate both the diversity and common themes apparent in what appears to be a new philosophy of citizen participation in sanctioning processes.
- The Bulletin first describes each of the four restorative conferencing models,³⁸ presenting information on background and concept, procedures and goals, considerations in implementation, lessons learned from research, and sources of additional information.
 - o The Bulletin then compares and contrasts the models on the following dimensions: origins and current applications; administrative and procedural aspects (eligibility, point of referral, staffing, setting, process and protocols, and management of dialog); and community involvement and other dimensions (participants, victim role, gatekeepers, relationship to the formal justice system, preparation, enforcement, monitoring, and primary outcomes sought).
 - o Next the Bulletin discusses a number of issues and concerns to be addressed in the development and implementation of restorative conferencing approaches.
 - o The Bulletin also offers guidelines for clearly grounding interventions in restorative justice principles and includes a test for determining whether an intervention strengthens the community response to youth crime and creates new roles for citizens and community groups.
- In an evolving movement in which innovations are emerging rapidly, it is important to identify common principles that can be replicated by local juvenile courts and communities and that can serve to guide decision makers in choosing models best suited to local community needs.
 - o Toward this end, this Bulletin provides a general framework within which the myriad alternative interventions currently being characterized as restorative justice can be categorized and objectively analyzed and evaluated.
 - o Comparative discussions of new approaches at this relatively early stage of development are important because they serve to highlight similarities and differences across emerging models.

³⁷ Gordon Bazemore and Mark Umbreit “A Comparison of Four Restorative Conferencing Models” in *Juvenile Justice Bulletin* February 2001 http://www.ncjrs.org/html/ojjdp/2001_2_1/contents.html

³⁸ Information on the four models is adapted from Regional Symposium Training Manual, U.S. Department of Justice, Office of Justice Programs, 1997.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- In considering the four models discussed in the Bulletin, however, it is important to avoid confusing the vision of prototypes with the realities of implementation and also to remember that the philosophy and practices of any given restorative conferencing program may deviate substantially from the prototypes presented here.

Comparing and Contrasting the Four Models: Administration and Process

- Table 1 describes the origins and current applications of the four restorative conferencing models and summarizes administrative and procedural similarities and differences among them.
 - Although the four models share a non-adversarial, community-based sanctioning focus on cases in which offenders either admit guilt or have been found guilty of crimes or delinquent acts, the models vary along several administrative and procedural dimensions.
 - This discussion highlights selected dimensions in table 1 that vary significantly from model to model.
- The models differ in point of referral and in structural relationship to formal court and correctional systems.
 - The models also differ in eligibility, which ranges from minor first offenders to quite serious repeat offenders (in the case of circle sentencing).
- With the exception of most community reparative boards, decision-making is by consensus.
 - Specific processes and protocols, however, vary substantially, ranging from circle sentencing’s ancient ritual of passing a stick or feather as a “talking piece” (Stuart, 1995) to the more formal deliberation process followed by reparative boards (Dooley, 1995).
- The process of managing dialog varies significantly among the four models.
 - In reparative board hearings, a chairperson guides members through their questioning of the offender and their discussions with hearing participants.
 - In family group conferences, a coordinator manages the discussion by encouraging all participants to speak.
 - In victim-offender mediation sessions, the mediator manages the dialog by encouraging victim and offender to take primary responsibility for expressing their feelings and concerns directly to each other, by ensuring that each participant respects the other’s right to speak, and by occasionally probing to keep the discussion flowing.
 - In circle sentencing, participants rely primarily on the process itself, which requires that only one person speak at a time and only when handed the talking piece.
 - Each circle has a “keeper,” but the keeper’s role is not to manage the dialog but simply to initiate it, ensure the process is followed, and occasionally summarize progress.

Table 1: Restorative Conferencing Models: Administration and Process

Comparing and Contrasting the Four Models: Community Involvement and Other Dimensions

Table 2 summarizes aspects of community involvement for each of the four restorative conferencing models. Table 2 also addresses several other dimensions that provide useful points of comparison among the models, including victim role and preparation/follow-up.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

Table 2: Restorative Conferencing Models: Community Involvement and Other Dimensions
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- The way “community” is defined and involved in restorative conferencing models is a critical factor affecting the nature and extent of citizen participation in and ownership of the conferencing process.
 - o As [table 2](#) suggests, victim-offender mediation, for example, in effect defines the community as the victim-offender dyad³⁹
 - o In circle sentencing, on the other hand, the community is conceptualized much more broadly as all residents of a local neighborhood, village, or aboriginal band; for purposes of implementing the circle process, the community may be defined as anyone with a stake in the resolution of a crime who chooses to participate in the circle.
- The remainder of this section focuses on two particularly important additional dimensions of the restorative conferencing models: victim role and preparation/follow-up.

Victim Role – see also chapter on ‘Circles’, ‘Conferencing’ ‘Victims’, ‘VOM’

- The formal justice system directs its attention primarily toward the offender, first with regard to guilt or innocence and second with regard to appropriate punishment, treatment, or monitoring.
 - o The community is often an abstract and distant concern (Barajas, 1995; Clear, 1996).
 - o Because victims have been so neglected as stakeholders in both formal and community justice approaches, it is important to give special attention to their role in each restorative conferencing process.

Reparative boards. The design of Vermont’s reparative boards was shaped to a large extent by restorative justice concepts (Dooley, 1995; and Dooley, Vermont Department of Corrections, personal communication, 1996), and State officials who developed and now monitor the boards strongly encourage an emphasis on victim participation. Nevertheless, in the early months of operation, victim involvement in most local boards was minimal (Dooley, personal communication). Some boards appear to have increased victim involvement, but it remains to be seen to what extent citizen board members will want to take on the demanding task of contacting crime victims and engaging their participation in the justice process (Karp and Walther, 2001). Some boards have demonstrated a strong commitment to making certain that offenders repay victims; ultimately, this commitment might motivate increased involvement of victims as the value of all forms of victim-offender dialog in improving restitution completion rates becomes clearer (Umbreit and Coates, 1993). State administrators have also encouraged boards to refer victims and offenders to victim-offender mediation or family group conferencing programs, if such programs are available in the community and if victims agree to participate (Dooley, 1996).

Preparation/Follow-up – see also chapter on ‘Circles’, ‘Conferencing’ ‘Victims’, ‘VOM’

The pre session preparation stage of any restorative conferencing process offers perhaps the greatest opportunity to engage citizens in the restorative justice process and ensure their meaningful participation (Stuart, 1995; Umbreit, 1994). Follow-up activities—monitoring and enforcement of sanctioning plans and agreements that result from decision-making sessions—provide critical linkage between court dispositions and correctional intervention. Follow-up has been particularly at issue among some critics of restorative conferencing models (Alder and Wundersitz, 1994). Thus, the extent to which preparation and followup are viewed as vital to success is one of the most interesting and important differences among the four restorative conferencing models.

Reparative boards. In Vermont’s reparative board programs, case preparation usually is limited to brief intake inter-views with offenders to gather information about the offense for the board hearings. Boards can obtain

³⁹ Some feel that the community (volunteer) mediator also is part of the community definition.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

basic information about victim losses from police, court, or probation records. Nevertheless, some board programs increasingly are attempting to contact victims prior to hearings.

Monitoring and enforcement policies and procedures are more formally developed in reparative boards than in other models. Board members themselves have enforcement responsibilities (i.e., recommending revocation or termination of offender contracts as necessary), although they do not make final enforcement decisions. A reparative coordinator, who is a State corrections employee, is responsible for monitoring offender contract compliance (Reparative Probation Program, 1995). If offenders do not meet contract conditions, the coordinator may recommend that they be charged with violation of probation or conditions of the diversion agreement and/or that the court take additional corrective action (Dooley, 1996).

Comparing and Contrasting the Four Models: Summary

In comparing these four models, it must be remembered that, as noted earlier in the Bulletin, the philosophy and practice of any given restorative conferencing program may deviate substantially from the prototypes presented here. Indeed, the evolution of the restorative justice movement is producing significant changes as practitioners think more carefully about the implications of restorative principles for their practice. For example, reparative boards and victim-offender mediation have been influenced by family group conferencing models, and some family group conferencing programs have recently adopted components of circle sentencing.

The most important conclusion to be drawn from this comparison of the four models is that there is no one best approach for every community or for every case within a community. For example, circle sentencing is perhaps the most holistic of the models. Yet circles also demand the greatest time commitment from participants and thus are not wisely used on minor or less complex cases.

Some have suggested that the future may bring a single hybrid model. More practically, however, jurisdictions can consider developing a “menu” of conferencing alternatives to respond to diverse case needs and to make the most efficient use of scarce resources. For example, a brief encounter with a reparative board may be the most appropriate and cost-effective response to a property offender with few prior incidents and no other complications requiring more intensive intervention, whereas circle sentencing may be more appropriate for serious and chronic offenders involved in dysfunctional relationships.

Each of the four models has its strengths and weaknesses in a variety of dimensions in addition to those considered here. Although much remains to be learned and there is much room for improvement, each model has demonstrated its unique value to juvenile justice systems and communities that are trying to develop more meaningful sanctioning responses to youth crime.

Dimensions of Restorative Justice and Decision-making

Efforts to increase community participation in the dispositional decision-making process are nothing new. In the late 1970's, the Law Enforcement Assistance Administration of the U.S. Department of Justice supported neighborhood justice centers (also known as dispute resolution centers) in several cities (Garafalo and Connelly, 1980; McGillis and Mullen, 1977). More recently, a variety of initiatives have placed prosecution and defense services, and even entire courts, in neighborhoods and have adapted services to provide a better fit with the needs of local citizens (National Institute of Justice, 1996b). Federal and State juvenile justice agencies have been especially concerned with promoting a less formal, more accessible neighborhood focus for intervention and in recent years have supported youth courts, juvenile drug courts, and mentoring programs.

These efforts often have been effective in making justice services more geographically accessible to citizens, increasing flexibility of service delivery (e.g., more convenient hours, more diversity), and encouraging informality in the decision-making process by relying whenever possible on dispute resolution, negotiation, and mediation practices rather than legal rules and procedures (Harrington and Merry, 1988; Rottman, 1996). However, when facilities and services are merely placed in neighborhoods without the involvement of local residents, the result is an isolated program or process that may be said to be in, but not of, the community (Byrne, 1989; Clear, 1996). Similarly, increasing flexibility and breaking down formal barriers may increase citizens' willingness to seek and receive assistance but will not necessarily increase their involvement as participants in the justice process or even allow them to determine what services they would like in their

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

neighborhoods.

Unfortunately, emphasis on developing programs and increasing accessibility of services has contributed to a one-dimensional definition of restorative justice. Ultimately, neither new programs nor increased access alone will change the role of neighborhood residents from service recipients to decision-makers with a stake in (and sense of ownership of) the process for determining what services are provided and how they are delivered. By defining new and distinctive roles for citizens, the four conferencing models examined in this Bulletin add an important dimension to earlier and ongoing restorative justice initiatives (McGillis and Mullen, 1977; National Institute of Justice, 1996a).

What is the relevance of these apparently esoteric models to juvenile justice professionals, victim advocates, treatment providers, and other intervention professionals? Notably, an increasing number of State departments of juvenile courts, probation departments, parole agencies, and corrections systems are adopting one or more aspects of restorative justice policy (e.g., Bazemore and Griffiths, 1997; Dooley, 1995; Pennsylvania Juvenile Court Judges Commission, 1997; Pranis, 1995). What appear on the surface to be simply informal alternatives to courts actually have relevance to the objectives of all components of the juvenile justice system.

The larger promise of the evolving approaches is a new avenue for achieving a wider and deeper level of citizen involvement in the rehabilitative, sanctioning, and public safety missions of juvenile justice than has been possible through offender-focused intervention alone. Prospects for increasing community involvement, the nature of the process of engaging citizens, and the roles assigned to the community (including crime victims) are therefore the most crucial dimensions for comparing and contrasting the four conferencing models that are the focus of this Bulletin.

Issues and Concerns

Restorative justice is assuming an ever higher profile, and its new decision-making structures and processes are bound to come under close scrutiny. It is therefore important to address critical issues and concerns related to evaluating the success of new restorative justice approaches, gauging progress in their development, and meeting the challenges of balancing and sharing power.

Field-Initiated Program

In 1996, the Hudson Institute, a public policy research organization located in Indianapolis, IN, began to work with the local police department, sheriff's department, juvenile court, prosecutor's office, and mayor on a project to use Australian-style restorative justice conferences as an alternative response to juvenile offending. The project, which is ongoing, focuses on young (under age 15), first-time offenders in Marion County, IN.

Later that year, the Institute applied for and received a grant from OJJDP through its field-initiated research and evaluation program. These funds were used to conduct an evaluation of the impact of these restorative justice conferences on the recidivism rate of young offenders and other outcomes. To date, more than 400 youth have participated in the experimental design used for this evaluation.

The findings are very encouraging. They indicate that restorative justice conferences can be successfully implemented in an urban setting in the United States. More than 80 percent of youth referred to a conference are attending the conference and successfully completing the terms of the reparation agreement. For Indianapolis, this compares very favorably with other court-related diversion programs. In addition, trained observers report that conferences are being implemented according to restorative justice principles such as inclusion of affected parties, respect, and problem solving. Victims receive apologies, and other mutually agreed-to actions are included in the agreements. These characteristics translate into victims reporting high levels of satisfaction.

In terms of re-offending, the results are also promising. Both for the total sample and for youth who successfully completed their diversion programs, youth who attended conferences were significantly less likely

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

to be rearrested 6 months after the initial incident. Researchers are completing the 12-month follow-up of participants, and final results of the study will be published in a forthcoming OJJDP Bulletin.

Implications and Conclusions

- The perpetual absence of the “community” in “community corrections,” either as a target of intervention or as a participant in the justice process (Byrne, 1989; Clear, 1996), may be due in part to an inability to identify meaningful roles for citizens.
 - This Bulletin has described four non-adversarial, decision-making models and compared and contrasted the ways in which they define and make operational the role of citizens in responding to youth crime.
 - As illustrated by a growing number of restorative justice initiatives (Pranis, 1995), such citizen involvement may have important implications for juvenile justice.
 - The models discussed here offer significant potential for changing the current dynamic in which the community is largely a passive observer of juvenile justice processes.
 - When juvenile justice professionals identify citizens willing to participate in a community sanctioning process, they may also have identified a small support group willing to assist with offender reintegration and victim support.
- This Bulletin has also attempted to provide a general framework for describing the dimensions of restorative conferencing processes.
 - One purpose has been to avoid indiscriminate, arbitrary, and all-inclusive groupings of programs and practices under ill-defined terms such as community justice or restorative justice.
 - As noted at the beginning of this Bulletin, comparative discussions of new approaches at this relatively early stage of development are important because they serve to highlight similarities and differences across emerging models.
 - Such discussions may prevent, or at least minimize, what some have referred to as the “community-policing syndrome”: the widespread application (and misapplication) of a generic term to a broad range of initiatives without a clear understanding of the differences between interventions or benchmark criteria that can be used to assess consistency with fundamental principles and objectives (Mastrofsky and Ritti, 1995).
 - Unless proponents of restorative justice distinguish what should and should not be included under that umbrella and unless they refine definitions of success for interventions, they will miss a unique and valuable opportunity to develop more effective methods for enhancing citizen involvement in the response to youth crime and misconduct.
 - A useful context for refining definitions is to view restorative justice as a way of thinking about and responding to crime that emphasizes one basic fact: crime damages people, communities, and relationships. If crime is about harm, a justice process should therefore emphasize repairing the harm.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- Systemic reform toward restorative justice must not begin and end with new programs and staff positions.
 - It must encompass new values that articulate new roles for victims, offenders, and communities as key stakeholders in the justice process.
 - Accordingly, such reform should create and perpetuate new decision-making models that meet stakeholder needs for meaningful involvement.
 - The capacity of these models to influence, and even transform, juvenile justice decision-making and intervention seems to lie in the potential power of these new stakeholders.
 - If victims, offenders, and other citizens are to be fully engaged in meaningful decision-making processes, however, a dramatic change must also occur in the role of juvenile justice professionals.
 - That role must shift from sole decision maker to facilitator of community involvement and resource to the community (Bazemore and Schiff, 1996).
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6.2. Community Justice and a Vision of Collective Efficacy - 2000⁴⁰

⁴⁰ Bazemore, Gordon “Community Justice and a Vision of Collective Efficacy: The Case of Restorative Conferencing” in Policies, Processes and Decisions of the Criminal Justice System, Volume 3, p.225-297, 2000
http://www.ncjrs.org/criminal_justice2000/vol_3/03f.pdf

Community Justice and a Vision of Collective Efficacy: The Case of Restorative Conferencing

by Gordon Bazemore

One of the most visible manifestations of recent efforts to develop a more active and empowered role for both community groups and citizens in the justice process can be seen in the recent emergence of a variety of informal community decisionmaking models now being implemented with some frequency throughout North America and the world. This paper examines restorative conferencing as a case study in the involvement of crime victims, offenders, and other citizens as active participants in a nonadversarial sanctioning response to youth crime, generally focused on repairing harm. The purpose of this paper is to link conferencing both to a broader vision of the citizen and community role in a more effective response to juvenile crime and to a larger effort to build community "collective efficacy." After describing the origins of restorative conferencing and its potential application to a range of crimes, offenders, victims, and communities, I outline a general theory of conferencing and then contrast emerging "theories-in-use" associated with various conferencing models. Finally, challenges to implementing these decisionmaking approaches, especially in the current juvenile justice context, are presented along with a general strategy for moving forward within a vision that explicitly links these microconflict resolution models to broader efforts to build community capacity and to expand the role of citizens in the justice process.

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VOLUME 3

In cities and towns across the United States and Canada—as well as in Australia, New Zealand, and parts of Europe—family members and other citizens acquainted with a young offender or victim of a juvenile crime gather to determine what should be done in response to the offense. Often held in schools, churches, or other facilities, these family group conferences are facilitated by a community justice coordinator or police officer. They aim to ensure that offenders face up to community disapproval of their behavior, that an agreement is developed for repairing damage to the victim and community, and that community members recognize the need to reintegrate the offender after he or she makes amends. Based on the centuries-old sanctioning and dispute resolution traditions of New Zealand’s Maori aboriginals, the modern family group conference was adopted into national juvenile justice legislation in New Zealand in 1989. This approach is now widely used in various modified forms in Australia; parts of Europe; communities in Minnesota, Pennsylvania, and Montana; other American States; and parts of Canada.

In Canadian cities, towns, and villages, as well as in several communities and neighborhoods in the United States, community members sit in a circle listening to offenders, victims, their advocates, and others speak about the impact of crime. When a “talking piece” is passed to an individual, and it is his or her turn to speak without being interrupted, he or she may comment favorably on rehabilitative efforts already begun by the offender. Speakers in these *circle sentencing (CS) sessions* also express concern for the victim or the continuing threat posed by the offender. At the end of the session, participants attempt to come to consensus about both a rehabilitative plan for the offender and an approach to healing victim and the community. Circles are a recently updated version of ancient sanctioning and settlement practices adapted from the traditions of Canadian aboriginals (Stuart 1996)—as well as those of indigenous people in the Southwestern United States (Melton 1995).

Throughout North America, as well as in many cities in Europe and other parts of the world, crime victims and offenders meet with trained mediators to allow the victim to tell his or her story to the offender, express his or her feelings about the victimization, make the offender aware of the harm caused by the crime, and obtain information about the offender and the offense. At the conclusion of most *victim-offender mediation* or *victim-offender dialogue* sessions, the victim and offender work with the mediator to develop a reparative plan that ensures that the offender will provide appropriate restoration to the victim and/or the community.

In hundreds of neighborhoods in Arizona, California, Colorado, Pennsylvania, and other States, local volunteers on community panels—also known by other names such as neighborhood accountability boards, reparative boards, and

youth diversion panels—are charged with designing informal sanctions that often require young offenders to make restitution to their victims, complete community service projects, provide service to the victim, or, in some cases, meet with or apologize to the victim. Although these panels and boards have existed in many communities for decades as diversion programs that attempted to address the needs of young offenders, a number are now adopting a restorative justice focus by recommending informal sanctions, and some are experimenting with more participatory decisionmaking processes. In Denver, for example, citizen members of neighborhood accountability boards, developed as part of a community prosecution initiative, receive both preservice and ongoing refresher training in restorative justice principles and decisionmaking approaches.

In Bend, Oregon, businessmen participating in a merchant accountability board at a local shopping mall hear cases involving shoplifting and vandalism committed by juveniles. Subsequently, these businessmen make decisions on appropriate sanctions for the offenders, which often include apologies, restitution, and community service projects either related to the offense or designed to beautify the Bend downtown environment.

Throughout the city of Edmonton, Alberta (Canada), community volunteers, sponsored and initially trained by community-oriented police officers, conduct “community conferences” in response to a wide range of offenses, as well as local disputes.

There is something different going on in many communities across North America and around the world in the response to youth crime. Offenders, crime victims, their families and friends, and others are engaged in informal meetings to try to address issues that crime has raised for all who have felt a stake in an offense(s). The goal of these encounters is not always clear to observers; the process and objectives will, in some cases, be understood differently by participants.

As suggested by the previously described variations, the process and immediate outcomes sought may be modified in various ways in different models and in different locales. This variation in what will be referred to generically in this paper as *restorative conferencing* seems in part to be a function of different meanings associated with familiar and not-so-familiar terms and phrases, such as “making things right,” “healing,” “repairing harm,” “empowering stakeholders,” “holding offenders accountable,” “giving victims a voice,” and “reintegrating offenders.” Influenced in use of these terms by larger *restorative justice* and *community justice* movements, participants in these encounters seem concerned about acknowledging personal responsibility for crime and about ensuring that young offenders receive appropriate sanctions that allow them to make amends

to those harmed by the offense. More generally, the process may involve elements of problem solving, conflict resolution, dialogue, norm affirmation, reintegration, and denunciation of unacceptable behavior.

In some cases the specific session observed may seem to simply replicate court protocols, albeit in the absence of formal guidelines. However, those who continue to participate will generally experience a more open and inclusive process, and those who listen to discussions of what organizers of these services are trying to accomplish will take note of a different form of discourse. Consistent with dialogue about community responsibility for youth socialization, as captured in phrases such as “it takes a village,” this discourse is also about a more “ambitious vision of justice” in which courts move beyond consideration of rights and proportionality to “do the work of restructuring relationships that have come apart . . . to construct a whole set of social relationships that ought to be guided and shaped by justice and mutual responsibility” (Moore 1997). However, this vision is often less about expanding the responsibility of courts and other justice agencies and more about building better community-driven responses to crime that activate and empower local social control and support processes. Indeed, after years of focus on the need for more programs and services—and recently on the need for more punitive juvenile justice responses—there is a noticeable shift toward a focus on the role of family, schools, neighbors, churches, and other nonprofessional groups. And after decades of placing responsibility for the socialization and social control of young people in the hands of expanding expert systems of service and surveillance, proponents of these new visions seem to recognize the limits of individualized, case-focused, professional responses that are unconnected to efficacious communities.

Although system-driven service, surveillance, and punitive responses continue to dominate, there are ongoing signs of a growing desire to recreate a collective informal response to youth deviance and crime. Though government cannot, as Mark Moore (1997, 27) suggests, “create love, or tolerance, obligation, or duty,” it can “create the occasions” in which these might be discovered. Especially in response to youth crime and trouble, there is some cause for optimism that “creating these occasions” may begin to empower a community-centered response.

Although restorative conferencing is not only about a new approach to juvenile justice decisionmaking, there is a special hope that, as part of this larger shift in focus, conferencing may become just one important part of a holistic effort to engage communities in a more effective response to youth crime. Indeed, because young people are generally viewed as at least somewhat less blameworthy than adults, and therefore more malleable, and because accountability for youth crime is more likely than adult crime to be viewed as spread among

other entities such as family, youth development and service organizations, and socializing institutions (especially schools and faith communities), many citizens may be willing to support approaches that might be viewed as less relevant responses to adult crime, such as family group conferencing. It is perhaps not surprising then that, with a few notable exceptions, the greatest number of restorative conferencing experiments have been implemented as youth justice alternatives. From another perspective, the fact that one primary impetus for experimentation with restorative conferencing has been a wider international crisis in juvenile justice systems (McElrae 1993; Feld 1999; Bazemore and Walgrave 1999) may also create cause for concern. This state of affairs leads many to regard youth crime and justice as something of a test case for experimentation with restorative justice alternatives. Both optimistic and pessimistic scenarios for the future of conferencing are possible, based on the alternative hypothesis that conferencing represents either more or less than meets the eye.

The previously noted case illustrations, as well as many similar examples, are indeed an indication that something promising and different is emerging in response to youth crime. However, in these same jurisdictions, and in most other U.S. communities, other very different processes are also at work. A pessimistic scenario, in which the potential of conferencing is not fulfilled, is grounded in a realistic assessment of the growing national and international crisis in juvenile justice systems that have both expanded their reach and increased the overall punitiveness of their general response. This hypothesis that conferencing will amount to less than meets the eye suggests a vision of these new responses as a trivialized diversion program that is simply appended to current mainstream system responses and thereby part of an expansionist agenda.⁹ The pessimistic scenario will be considered at various points throughout this paper, and it will be addressed systematically when examining various implementation options for restorative conferencing. In part, however, the ability of conferencing to avoid these two fates will depend on mobilizing support for a broader vision of a third future: a sustainable community-building role for conferencing. Linking conferencing to broader concerns, both practically and conceptually, is central to the alternative, optimistic scenario for the future of conferencing.

The Optimistic Scenario: Conferencing as *More Than Meets the Eye*

Although justice policymakers have long recommended community-based approaches to corrections and policing and have at times promoted informal, neighborhood dispute resolution as an alternative to courts (e.g., Garofalo and Connelly 1980), several characteristics of the new restorative conferencing

models suggest broader concerns than a change in the location and user-friendliness of existing criminal justice intervention (U.S. Department of Justice [DOJ], National Institute of Justice [NIJ] 1996; Bazemore 1998a). Indeed, to the extent that conferencing approaches operationalize core principles of restorative and community justice, these restorative conferencing interventions share a common normative emphasis on involving those most affected by crimes in a response focused on objectives distinct from those that receive priority in formal sentencing and dispositional processes.

The term *community justice* has been used generally to describe a preference for neighborhood-based, more accessible, and less formal justice services that, to the greatest extent possible, shift the locus of justice intervention to those most affected by crime (Barajas 1995; Clear and Karp 1998).⁸ According to one definition, community justice includes “all variants of crime prevention and justice activities that explicitly include the community in their processes. Community justice is rooted in the actions that citizens, community organizations, and the criminal justice system can take to control crime and social disorder” (Karp 1997, 3).

Restorative justice is a new way of thinking about crime that emphasizes one fundamental fact: Crime is a violation of individuals, communities, and relationships. Crime, therefore, “creates obligations to make things right” (Zehr 1990, 181). If crime is about harm, “justice” must amount to more than punishing or treating those found guilty of lawbreaking. Restorative justice therefore includes all responses to crime aimed at doing justice by repairing the harm or “healing the wounds” crime causes (Van Ness and Strong 1997).

Conferencing models are being widely discussed by proponents of restorative justice as techniques for providing victims and offenders with a more just and a more satisfying resolution in the aftermath of crime.⁹ Supporters of conferencing claim a number of advantages, including providing victims with information, a voice in the justice process, and opportunities for redress; offering offenders the opportunity to make amends and to be held accountable while making them more aware of the harm they caused; respecting the family unit and providing opportunities for parents and extended family to act responsibly toward their children while receiving support; and increasing the likelihood that offenders will meet reparative obligations and be reintegrated into their communities (Hudson et al. 1996a; Umbreit 1994, 1999; Braithwaite and Mugford 1994). Any one of these assertions makes conferencing an important topic for theory, policy, and research discussion. Indeed, the practical importance of variation in models should exist primarily in their relative ability to accomplish one or more of these goals.

A premise of this paper, however, is that a focus on the individual benefits conferencing may offer to the offender, victim, and family alone may diminish the importance of a role for conferencing that is potentially far more significant. Yet, although all conferencing approaches to some degree share a commitment to deprofessionalizing the response to crime, there have been few attempts to strategically link the conferencing process to a broader vision of the citizen and community role in responding to crime and conflict. Equally problematic for those wishing to understand and evaluate restorative conferencing as an intervention within a social science, empirical research agenda is the failure to link these interventions to larger theories of crime and community (e.g., Sampson and Groves 1989; Skogan 1990). This lack of connection with broader etiological theory is in no way unique to conferencing (Gaes 1998), and it is indeed difficult to identify diversion or treatment programs that go beyond the individual or family level of intervention centered around individual and group counseling techniques.⁹ It is unfortunate, however, precisely because certain theories-in-use in restorative conferencing are highly consistent with recent statements of social disorganization theory (Bursik and Grasmick 1993; Sampson 1995; Rose and Clear 1998) and with research that suggests that neighborhood “collective efficacy” in response to youth crime and disorder is a major predictor of lower offense rates (Sampson, Raudenbush, and Earls 1997). If conferencing practice is to direct itself toward community-building goals, these linkages need to be specified and elaborated.

Though such linkages are difficult, they are not impossible. To make a connection between these microlevel efforts to involve citizens and community groups in justice decisionmaking and more macrolevel efforts to strengthen community, it will be necessary to examine conferencing as an intervention approach that is more than an isolated program implemented as a diversion option or delinquency treatment alternative. Through a different lens, it is possible to focus on what conferencing might become, given a broader vision.

Based on the hypothesis that there is more to conferencing than meets the eye, it is possible to examine restorative conferencing as a general case study in citizen and community decisionmaking in the response to youth crime. I will therefore outline what Braithwaite (1998) has referred to as an “immodest theory” of what could be accomplished through an expansion of restorative conferencing. Such an optimistic vision has several components that include many of the previously mentioned conferencing objectives for individual offenders and victims. But this vision is also consistent with community justice’s concern with collective outcomes. As Canadian Judge Barry Stuart (1995, 6), a primary proponent of circle sentencing, states:

By engaging citizens and community groups in decision-making about sanctions, conferencing may thereby expand participation in rehabilitative and public safety functions.

[C]ommunities should not measure the success of any [community-based initiative] based upon what happens to *offenders*. The impact of community based initiatives upon victims, upon the self-esteem of others working [in the community justice process], on strengthening family, building connections within the community, on enforcing community values, on mobilizing community action to reduce factors causing crime—and ultimately on making the community safer—while not readily visible, these impacts are, in the long run, significantly more important than the immediate impact on an offender's habits. (emphasis added)

This vision/theory has three related parts. First, at a micro level, conferencing seeks primarily to mobilize social support (e.g., Cullen 1994) around individual victims and offenders (Braithwaite 1998) by engaging citizens and community groups in a more meaningful, effective, and sustainable response to crime. Here, within a restorative justice framework, practitioners already are beginning to move away from a sole concern with individualized objectives; indeed, the concept of “repair,” and certainly the focus on rebuilding and/or strengthening relationships in restorative interventions (e.g., Van Ness and Strong 1997), presumes a focus on collective outcomes.

Second, at a middle-range level, sustained citizen involvement has been the missing link in current community justice initiatives (Rosenbaum 1988; U.S. DOJ, NIJ 1996; Boland 1998). In those efforts, the primary objective is to activate community social control and support mechanisms. Within a larger restorative community justice agenda (Young 1995, Clear and Karp 1999; Dunlap 1998; Van Ness and Strong 1997), conferencing has the potential to provide viable and empowered roles for community groups and citizens in decisionmaking about the response to crime. Moreover, though clearly intended as a response to crime, the conferencing process tends to blur the distinction between intervention and prevention. In doing so, conferencing may provide a kind of bridge for connecting sanctioning, public safety, and rehabilitative functions now compartmentalized in criminal justice bureaucracies. By engaging citizens and community groups in decisionmaking about sanctions, conferencing may thereby expand participation in rehabilitative and public safety functions (Bazemore and Griffiths 1997; Stuart 1996). It is also at this mid-range level that restorative conferencing may contribute directly or indirectly to community building and collective efficacy through, for example, “initiatives to foster community organization in schools, neighborhoods, ethnic communities,

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

and churches, and through professions and other nongovernmental organizations that can deploy restorative justice in their self-regulatory practices” (Braithwaite 1998, 331). Included at this level are any other activities that mobilize informal social controls as well as social support mechanisms (Rose and Clear 1998) and that serve also as educational tools through which community learning can occur (Stuart 1996; Hudson et al. 1996b).

Finally, at the macro level, some advocates of restorative conferencing have argued that there is ultimately a need to

design institutions of deliberative democracy so that concern about issues like unemployment and the effectiveness of labor market programs have a channel through which they can flow from discussions about local injustices up into national economic policy-making debates. (Braithwaite 1998, 331)

Here, some have postulated that conferencing may contribute to a “democratization of social control,” whereby a kind of “bubbling up” becomes possible as social justice issues are increasingly aired in community justice forums linked intentionally to what Braithwaite has described as vibrant social movement politics (Braithwaite 1994; Braithwaite and Parker 1999). As Pranis (1998, 3) suggests in her discussion of the possibilities inherent in circle sentencing and other conferencing approaches for addressing such issues:

The problem of crime is generating opportunities to understand and practice democracy in the community in new ways. It has become clear that creating safe communities requires active citizen involvement. This calls for a reengagement of all citizens in the process of determining shared norms, holding one another accountable to those norms and determining how best to resolve breaches of the norms in a way that does not increase risk in the community.

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6.3. Community Justice: A Conceptual Framework -2000⁴¹

BOUNDARY CHANGES IN CRIMINAL JUSTICE ORGANIZATIONS

Community Justice: A Conceptual Framework

by David R. Karp and Todd R. Clear

Community justice broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community quality of life as a goal. Recent initiatives include community crime prevention, community policing, community defense, community prosecution, community courts, and restorative justice sanctioning systems. These approaches share a common core in that they address community-level outcomes by focusing on short- and long-term problem solving, restoring victims and communities, strengthening normative standards, and effectively reintegrating offenders. In this chapter, we begin with a discussion of the broadest purpose of the model, the “community justice ideal,” and describe recent innovations in policing, adjudication, and corrections. We then describe five core elements of community justice that distinguish it from traditional criminal justice practices. In “Principles of Community Justice,” we outline the philosophy of community justice by describing seven basic principles and how they are illustrated in some recent initiatives. In “An Integrity Model of Community Justice,” we define the specific processes and outcomes that characterize the community justice model. We describe this as an “integrity model” because it provides a yardstick by which particular initiatives can be evaluated. In the final section, we outline some current challenges to the implementation of community justice initiatives. These include questions about individual rights and due process, the limits of community control, community mobilization and representation, and funding for new practices.

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VOLUME 2

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323

⁴¹ Karp, David and Todd Clear, “Community Justice: A Conceptual Framework” in *Boundary Changes in Criminal Justice Organizations*, Volume 2, p.323-368,2000 http://www.ncjrs.org/criminal_justice2000/vol_2/02i2.pdf

Emerging Community Justice

Among justice professionals, there is growing interest in a new concept of justice often referred to as “community justice.” The term denotes a vision of justice practices with particular concern for the way crime and justice affect community life. This concern has led to a community justice movement that embraces a number of criminal justice approaches, including community crime prevention (Bennett 1998), community policing (Goldstein 1990), community defense (Stone 1996), community prosecution (Boland 1998), community courts (Rottman 1996), and restorative justice sanctioning systems (Bazemore 1998). It is easy to think, then, that community justice is composed of loosely related, innovative projects and programs such as these, all of which operate at the community level.

Yet these disparate approaches share a common core, in that they address community-level outcomes by focusing on short- and long-term problem solving, restoring victims and communities, strengthening normative standards, and effectively reintegrating offenders. Together, these diverse initiatives can be seen at a new and emerging view of justice at the community level. The

Community justice broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community quality of life as a goal.

concept of community justice can be seen as a challenge to traditional criminal justice practices and concepts that draw distinct boundaries between the role of the State and the role of communities in the justice process. In a community justice model, priority is given to the community, enhancing its responsibility for social control while building its capacity to achieve this and other outcomes relevant to the quality of community life.

Community justice broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community quality of life as a goal. Community justice is rooted in the actions that citizens, community organizations, and the criminal justice system can take to control crime and social disorder. Its central focus is community-level outcomes,

shifting the emphasis from individual incidents to systemic patterns, from individual conscience to social mores, and from individual goods to the common good. Typically, community justice is perceived as a partnership between the formal criminal justice system and the community, but communities often autonomously engage in activities that directly or indirectly address crime,

Community justice shares with restorative justice a concern for victims, and it prioritizes the types of offender sanctioning that require restitution to victims and reparations to the community. Like restorative justice, community justice models reject punishment as a sanctioning philosophy. Restorative requirements are viewed not as punishment but as obligations assumed through membership in a community. Community justice, however, is more broadly conceived of than restorative justice, attending to crime prevention as well as offender sanctioning. In addition, community justice focuses explicitly on the location of justice activities at the local level and concentrates on community outcomes.

Our purpose in this chapter is to articulate the assumptions, aims, and difficulties of community justice. In the spirit of a new century, we seek to articulate the concept of community justice as an ideal type, although we recognize the limitations of current practices. We ask fundamental questions about the mission and purposes of criminal justice and how a community justice model can be distinguished from the traditional business of law enforcement and criminal punishment.

In this chapter, we begin with a discussion of the broadest purpose of the model, “the community justice ideal,” and describe recent innovations in policing, adjudication, and corrections. We then describe five core elements of community justice that distinguish it from traditional criminal justice practices. In “Principles of Community Justice,” we outline the philosophy of community justice by describing seven basic principles and how they are illustrated in some recent initiatives. In “An Integrity Model of Community Justice,” we define the specific processes and outcomes that characterize the community justice model. We describe this as an “integrity model” because it provides a yardstick by which particular initiatives can be evaluated. In the final section, we outline some current challenges to the implementation of community justice initiatives. These include questions about individual rights and due process, the limits of community control, community mobilization and representation, and funding for new practices.

The community justice ideal

One of the attractions of community justice is that it moves away from the tired debate between conservatives and liberals about whether “getting tough” makes sense. Community justice focuses on promoting public safety and the quality of community life, and this is something to which adherents of both liberal and conservative views can subscribe. The community justice ideal is for the agents of criminal justice to tailor their work so that its main purpose is to enhance community living, especially by reducing the inequalities of ghetto life, the indignities of disorder, the agony of criminal victimization, and the paralysis .

of fear. This ethic has begun to take hold in each of the three main components of criminal justice: police, courts, and corrections.

Policing

In a very short time, policing has shifted from a detached professional model to an involved community model. Although community policing has been adopted by a majority of police departments across the country (Peak and Glensor 1996, 68), there has been much variation in both the definition and the practice of community policing. Underlying the various approaches are the dual strategies of problem solving and community involvement (Goldstein 1990; Skolnick and Bayley 1988; Bayley 1994; Skogan 1997), a change that represents a shift toward the identification and resolution of the causes of criminal incidents from the on quick reaction to a particular incident. The concern for community involvement has led to an increased emphasis on addressing social disorder, such as public drinking, panhandling, graffiti, prostitution, and so on, because of widespread community concern over these problems (Skogan 1990; Kelling and Coles 1996). More profoundly, community involvement means sharing the responsibility for social control with community members.

These community strategies are redefining police work. Line officers are seen less as bureaucrats caught in autocratic organizations and more as innovators whose knowledge of the world at the line level gives them a special expertise in problem solving. Arrest rates and 911 calls are decreasingly used as indicators of success; they are being replaced by citizen satisfaction with police services, direct solutions to citizen-articulated problems, and, of course, reductions in criminal victimizations. Police are learning to divest themselves of the “we-they” syndrome that dominates the “thin blue line” tradition; instead, police see residents as potential partners in making localities better places to live.

Adjudicating

The court system has demonstrated a number of recent innovations in defense services (Stone 1996), prosecution (Boland 1998), and reorganization of courts into various community models (Rottman 1996). For example, community prosecution attempts to integrate the legal services of a prosecutor’s office into neighborhoods troubled by crime. Neighborhood-based prosecutors find that residents are not solely concerned about serious crimes; they also care deeply about disorder, petty disturbance, and overall quality of neighborhood life. The role of neighborhood district attorneys shifts from the automatic invocation of the adversarial system of prosecution to the systematic resolution of crime and disorder problems. Community courts represent another approach to the adjudication process. Variations of the community court model, such as teen courts,

drug courts, and family violence courts, specialize in particular issues in order to develop more comprehensive solutions. The underlying assumption of community courts is that communities are deeply affected by the sentencing process yet are rarely consulted and involved in judicial outcomes.

Correcting

Community justice has been slowest to arrive in the correctional field. Perhaps this is because the existing term, "community corrections," gives the impression of community justice. Under traditional approaches to this field, corrections enters the community, but the community never makes it into corrections. Nevertheless, several new projects have emerged that seek correctional results that restore victims and offenders (Van Ness and Strong 1997; Galaway and Hudson 1996), while also involving citizens in setting sanctions and evaluating correctional priorities. A recent publication by the American Probation and Parole Association (1996) highlights nearly 20 examples of community/citizen partnerships with correctional agencies. For example, in Vermont, citizen volunteers serve on local boards that work with victims and offenders to negotiate reparative agreements (Karp 1999; Perry and Gorczyk 1997).

The aforementioned illustrates the localized, dynamic, variable strategies that are replacing the centralized, standardized, expert model that has been the object of most professional development in recent years. However, it is important to emphasize that these changes are a spontaneous adaptation of the system to its lack of credibility and effectiveness, and they are undertaken by some elements of the justice system, often in isolation of others. It is not yet a coherent practice, a systematic theory, or grounded in a particular tradition of cumulative empirical research. Our aim is to describe what we see as the community justice ideal, which represents a compilation of the best elements of the community justice movement.

6.4. Overview of mediation, conferencing, and circles – 2000 ⁴²

- McCold begins his overview of certain restorative justice processes by presenting a typology of restorative justice practices – a typology oriented around the inclusion of the victim, the offender, and their "communities of care."
 - This leads to an explanation of a core model of the restorative justice process from his perspective.
 - McCold then surveys various forms of mediation, conferencing, and circles to highlight how they fit into his typology and how they enable the core restorative process.

Typology of Restorative Justice Practices

- Restorative justice practices are those which directly engage the victim and offender of crimes.
 - Some programs have historically focused on the needs of crime victims for reparation of the damage caused by the crime (victim support services, victim compensation/indemnification programs, and a variety of victim services).
 - Other programs have historically focused on the needs of offenders for development of responsibility by helping offenders understand the harmful consequences of their behavior (victim sensitivity training), or seek to have offenders make reparation for their behavior (e.g., related community service sentences, youth aid panels).

⁴² 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>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

- Ideally, restorative practices bring victims and offenders together to address responsibility and reparation concerns simultaneously.
 - o Victim-offender mediation is perhaps the archetypal restorative justice program, by holding offenders accountable to their victims meets both victim and offenders needs restoration.
 - o Other programs simultaneously addressing need for victim reparation and offender responsibility include victim restitution, truth and reconciliation commissions, and victim offender panels.
- Restorative justice theory always included a concern for victims, offenders, and community, and the needs crime creates for all three.
 - o Victim and offender both need to be reconciled into their communities of care (Zehr 1990). Prior to the 1990's, the role of 'community' in restorative justice practices was either very limited or overlooked.
 - o If we include these needs for reconciliation of the communities-of-care of victims and offenders, a more complete typology of restorative justice practices becomes evident (see figure).



- This tripartite typology reveals the logical possibility of restorative practices which engage the offender's communities of care to address the needs for accountability, for example therapeutic communities, informal restorative practices, victim-less conferences, and aspects of positive discipline programs. Restorative justice practices which engage the victim's communities of care to address the needs for reparation, for example, victim healing circles (Bushie 1999).
- Among the myriad of programs now operating which claim to be models of restorative justice, only three models of practice simultaneously meet the needs of victims, offenders, and their communities of support.
 - o Only family group conferencing, community justice conferencing, and peacemaking circles meet the criteria as holistic restorative justice models.
 - o We now turn to a consideration of these programs in more detail.

Core Model of Restorative Justice

In an ideal society where people behave with integrity and mutual respect, when wrongdoing occurs, the injured person confronts the wrongdoer about the offensive behavior. The offending person listens respectfully to gain a clear understanding of the nature of the wrong and its consequences so he/she can accept responsibility for the behavior, apologize and make amends, including a plan to prevent a reoccurrence. The offender is then forgiven, trust is restored and the relationship is repaired.

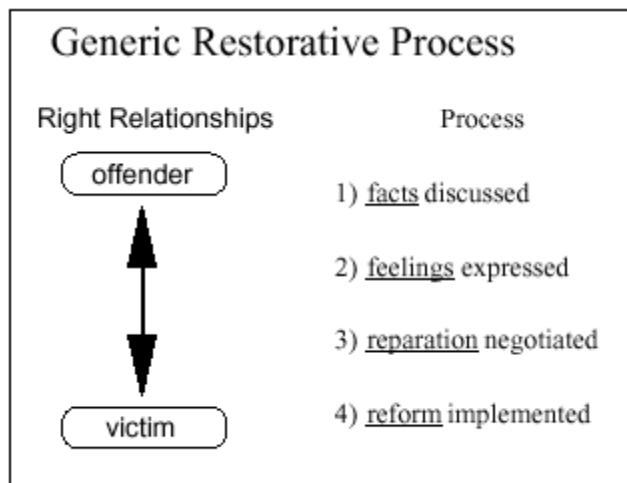
Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

This ideal interaction illustrates the core restorative justice process, where only victim and offender are involved. No third-party intervention is necessary since both parties want to be responsible and maintain right relationship with the other. The core restorative process of right relationships has four sequential steps:

1. Acknowledgment of the wrong (facts discussed)
2. Sharing and understanding of the harmful effects (feelings expressed)
3. Agreement on terms of reparation (reparation agreed)
4. Reaching an understanding about future behavior (reform implemented).

Traditional Navajo custom to resolve conflict involves the idea of Hozhooji. If one person believes they've been wronged by another they first make a demand for the perpetrator to put things right. The term for it is nalyeeh, which is a demand for compensation. It is also a demand to readjust the relationship so that the proper thing is done. If this is unsuccessful, the wronged person may turn to a respected community leader to facilitate and organize a peacemaking process. The process is not confrontational but involves family and clan members of victims and perpetrators talking through matters to arrive at a solution.

All pure restorative justice processes seek to have the victim and offender move through these four steps. The models differ in the structure each use to enable the process who facilitates, how participation is encouraged, who is involved in the process, and the scope of the issues to be addressed.



6.5. Conferences, Circles, Boards, & Mediations - 1997⁴³

Abstract

- Although interest in "restorative justice," "community justice," and other alternatives to adversarial, retributive justice paradigms have recently captured the imagination of a number of criminal justice professionals and community members, thus far, most attention has been given to sanctioning programs, such as restitution and community service and to community courts, prosecution units, and related initiatives such as community policing.
- This paper describes and compares four approaches to citizen involvement in the sanctioning process now being used with some frequency in the U.S. and Canada.
- In doing so, we explore several questions about

⁴³ Bazemore Gordon and Curt Taylor Griffiths Conferences, Circles, Boards, & Mediations: Scouting the "New Wave" of Community Justice Decision-making Approaches 1997, <http://www.nelson.com/nelson/harcourt/criminology/primer/article.htm>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

- how each model defines the role of the community in justice decisionmaking and
- specifically examine how sanctions are enforced, and
- how crime victims are involved in the various processes.
- Implications for community corrections are considered.

Case 1 -- After approximately two hours of at times heated and emotional dialogue, the mediator felt that the offender and victim had heard each other's story and had learned something important about the impact of the crime and about each other. They had agreed that the offender, a fourteen year old, would pay \$200 in restitution to cover the cost of damages to the victim's home resulting from a break-in. In addition, he would be required to reimburse the victims for the cost of a VCR he had stolen estimated at \$150. A payment schedule would be worked out in the remaining time allowed for the meeting. The offender had also made several apologies to the victim and agreed to complete community service hours working in a food bank sponsored by the victim's church. The victim, a middle aged neighbor of the offender, said that she felt less angry and fearful after learning more about the offender and the details of the crime and thanked the mediator for allowing the mediation to be held in her church basement.

Case 2 -- After the offender, his mother and grandfather, the victim and the local police officer who had made the arrest had spoken about the offense and its impact, the Youth Justice Coordinator asked for any additional input from other members of the group of about ten citizens assembled in the local school (the group included two of the offender's teachers, two friends of the victim, and a few others). The Coordinator then asked for input into what should be done by the offender to pay back the victim, a teacher who had been injured and had a set of glasses broken in an altercation with the offender, and pay back the community for the damage caused by his crime. In the remaining half hour of the approximately hour long conference, the group suggested that restitution to the victim was in order to cover medical expenses and the costs of a new pair of glasses and that community service work on the school grounds would be appropriate.

Case 3 -- The victim, the wife of the offender who had admitted to physically abusing her during two recent drunken episodes, spoke about the pain and embarrassment her husband had caused to her and her family. After she had finished, the ceremonial feather (used to signify who would be allowed to speak next) was passed to the next person in the circle, a young man who spoke about the contributions the offender had made to the community, the kindness he had shown toward the elders by sharing fish and game with them and his willingness to help others with home repairs. An elder then took the feather and spoke about the shame the offender's behavior had caused to his clan--noting that in the old days, he would have been required to pay the woman's family a substantial compensation as a result. Having heard all this, the judge confirmed that the victim still felt that she wanted to try to work it out with her estranged husband and that she was receiving help from her own support group (including a victim's advocate). Summarizing the case by again stressing the seriousness of the offense and repeating the Crown Counsel's opening remarks that a jail sentence was required, he then proposed to delay sentencing for six weeks until the time of the next circuit court hearing. If during that time the offender had: met the requirements presented earlier by a friend of the offender who had agreed to lead a support group and had met with the community justice committee to work out an alcohol and anger management treatment plan; fulfilled the expectations of the victim and her support group; and completed 40 hours of service to be supervised by the group, he would forgo the jail sentence. After a prayer in which the entire group held hands, the circle disbanded and everyone retreated to the kitchen area of the community center for refreshments.

Case 4 -- The young offender, a 19 year old caught driving with an open can of beer in his pick-up truck, sat nervously awaiting the conclusion of a deliberation of the Reparative Board. He had been sentenced by a judge to Reparative Probation and did not know whether to expect something tougher or much easier than regular probation. About a half hour earlier prior to retreating for their deliberation, the citizen members of the Board had asked the offender several simple and straightforward questions. At 3 p.m. the chairperson explained the four conditions of the offender's contract: 1) begin work to pay off his traffic tickets; 2) complete a state police defensive driving course; 3) undergo an alcohol assessment; and 4) write a three page paper on how alcohol has negatively affected his life. After the offender had signed the contract, the chairperson adjourned the meeting.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

INTRODUCTION

- What do these cases have in common?
 - Each of the above scenarios illustrates a successful conclusion of one variety of a non-adversarial, community-based sanctioning process now being carried out with some regularity in North America, Australia, New Zealand and parts of Europe.
 - As decision-making models, these processes represent one component of what appears to be a new community justice movement in the 1990s concerned with bringing less formal justice processes closer to neighborhoods and increasing the involvement of citizens in the justice process (e.g., Travis, 1996; Barajas, 1995; Bazemore and Schiff, 1996; Griffiths and Hamilton, 1996).
 - Referred to by such terms as *restorative justice* (e.g., Zehr, 1990; Hudson and Galaway, 1996; Bazemore and Umbreit, 1995), *community justice* (Griffiths and Hamilton, 1996; Stuart, 1995a; Barajas, 1995), and *restorative community justice* (Young, 1995; Bazemore and Schiff, 1996), these initiatives are becoming a topic of high level national and cross-national discussion and debate in the U.S. and Canada (NIJ, 1996a and 1996b; Depew, 1994) and have already had significant state/provincial, territorial, regional and even national policy impact.¹
 - While they by no means exhaust the range of approaches to citizen involvement in the sanctioning process, together the four case examples illustrate some of the diversity, as well as common themes, apparent in what appears to be an emerging "new wave" of approaches to community justice decision-making.
- The first case is drawn from the files of one of approximately 500 *victim-offender mediation* (VOM) programs in the U.S. and Canada.
 - Offenders and victims who have agreed to participate meet in these sessions with a third party mediator to arrive at a reparative agreement and allow victims to tell their story and get information about the offense (Umbreit, 1994).
 - Though still unfamiliar to some mainstream criminal justice audiences and marginal to the court process in many jurisdictions where they do operate, VOM programs -- originally, and still frequently referred to as Victim Offender Reconciliation Programs (VORPs) -- now have a long and respectable 25-year track record in Europe, Canada and the U.S.
- The second example describes a typical conclusion of a *family group conference* (FGC).
 - This new model in its modern form was adopted into national legislation in 1989 making it (at least in New Zealand) the most systemically institutionalized of any of the four approaches.
 - By most accounts, it would appear that dispositional decisions in all but the most violent and serious delinquency cases in New Zealand are made in a family group conference (Maxwell and Morris, 1993; Alder and Wundersitz, 1994; McElra, 1993).
 - Based on the centuries old sanctioning and dispute resolution traditions of the New Zealand Maori and now widely used in modified form as a police initiated diversion approach in South Australia, FGCs are now also being implemented in cities in Minnesota, Pennsylvania, Montana and parts of Canada.
- The third scenario describes a *Circle Sentencing* (CS) conference, an updated version of the traditional sanctioning and healing practices of Canadian Aboriginal peoples and indigenous peoples in the Southwestern United States (Stuart, 1995a; Melton, 1995).

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

- Circle Sentencing was resurrected in 1991 by supportive judges and Community Justice committees in the Yukon Territory, Canada and other northern Canadian communities.
 - The strategy is designed not only to address the criminal behavior of offenders, but also to consider the needs of crime victims, families, and communities within a holistic, reintegrative context.
 - Within the "circle," crime victims, offenders, justice and social service personnel, as well as community residents are allowed to express their feelings about the crime and the offender as well as to offer their suggestions as to how the offence and the needs of the victim and the community can best be addressed.
 - The significance of the circle is more than symbolic: all persons in the circle, police officers, lawyers, the judge, victim, offender, and community residents-participate in the case deliberations.
 - Through this community-system partnership, a determination is made as to the most appropriate action to be taken and in addressing the needs of the victim and the offender.
- Finally, the fourth case is taken from the files of the *Reparative Probation Program*, a Vermont innovation in which nonviolent offenders are sentenced by the court to a hearing before a community Reparative Board (RB) composed of local citizens.
- These boards, which became operational early in 1995 as part of a newly mandated separation of probation into Community Corrections Service Units (designed to provide supervision to more serious cases) and Court and Reparative Service Units (who coordinate and provide administrative support to the Boards).
 - Composed of five local citizens, the Boards now make dispositional decisions for eligible probation cases referred by the courts, and if the target goals of state correctional administrators are met, may soon be hearing an estimated 60 percent of these eligible cases (Dooley, 1995; 1996).
- The purpose of this paper is to describe the four new decisionmaking models and examine how each involves citizens and community groups in several critical components of the sanctioning process.
- In doing so, we compare and contrast these models on a number of key operational dimensions with the objective of providing a general framework within which the myriad of alternative justice practices currently being described by at times ill-defined and vague terms such as "community justice" and/or "restorative justice" can be categorized and objectively analyzed.

COMMUNITY JUSTICE DECISIONMAKING IN CONTEXT: BACKGROUND AND LITERATURE REVIEW

Table I describes the origins and current application of the four decision-making models and summarizes several differences and similarities between them in administration and process. While the models share a non-adversarial, community-based sanctioning focus on cases in which offenders either admit guilt or have been found guilty of crimes or delinquent acts, they vary along several of these dimensions of staffing, eligibility, and point in the system at which referrals are made. Notably, eligibility ranges from minor first offenders to quite serious repeat offenders (in the case of Circle Sentencing), and the models differ in point of referral and structural relationship to formal court and correctional systems. With the exception of the Vermont reparative boards, decision-making is by consensus, but the process and dispositional protocol vary substantially -- ranging from ancient rituals involving passing of the "talking stick" or feather in the case of Circle Sentencing (Stuart, 1995a), to the more deliberative agenda followed in the hearings of community boards (Dooley, 1995).

Community Justice, Restorative Justice and Community Decisionmaking: What's New & What's Important?

Although the impact of these administrative and process differences should not be underestimated, except for victim-offender mediation, the other models are relatively new--at least to the modern Western world (Melton, 1995; McElrae, 1993) -- and may be thus expected to continue to evolve as they are adapted to local circumstances. Currently then, more important than these distinctions are *common elements* that distinguish these "new wave" decision-making models from both current and past attempts to "devolve" justice process to local neighborhoods. These elements grow out of the shared association with the principals and practice of restorative and community justice.

Focused on changing the primary goal of justice intervention from punishment or treatment to reparation of harm and altering the justice process to include and meet the needs of victims, communities and offenders (Zehr, 1990; Van Ness, 1993; Bazemore & Umbreit, 1995), restorative justice has been generally associated with practices and processes such as restitution, community service, victim offender mediation, victim services and a variety of conflict resolution processes. The term "community justice" is being used by some officials in both Canada and the U.S. as a broader umbrella concept which also encompasses community policing, neighborhood courts and justice centers, community development and "community-building" interventions, "beat probation" and a variety of delinquency prevention programs (NIJ, 1996a; Barajas, 1995).

Depending upon who is describing it, the group of interventions currently being labeled as "community justice" or "restorative community justice" may therefore refer to a wide array of programs, practices and "community-based initiatives" including community policing, "weed and seed" programs, neighborhood revitalization, and drug courts, as well as the sanctioning and victim reparation programs and processes now commonly associated with restorative justice (Young, 1995; Travis, 1996; Robinson, 1996; Barajas, 1995; Klein, 1995; Bazemore and Schiff, 1996; NIJ, 1996b).² Such programmatic approaches to implementing community justice have often been useful in demonstrating innovative intervention strategies not easily initiated in existing bureaucracies and bringing policing, delinquency prevention, courts, and corrections services closer to neighborhoods. However, defining community justice as a "program" may limit the vision and practical application of a distinctive, more holistic response to crime to a specialized unit or individual assigned a specific function (e.g., Goldstein, 1987). The programmatic emphasis may also increase both jurisdictional and professional insularity and ultimately result in little or no systemic impact on justice agencies and their relationship to neighborhoods and citizen groups. Given the diversity of programs and initiatives being discussed under the banner of community justice, it is first important to place the new decision-making models in the somewhat more limited category of efforts to promote citizen involvement in sanctioning and dispute resolution.

Dimensions of Community Justice and Community Decision-making

Efforts to increase community participation in sanctioning and dispositional decision-making process are nothing new, even in recent criminal justice history. In the late 1970's, the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice supported "neighborhood justice centers," also referred to as "dispute resolution centers," in several U.S. cities (McGillis and Mullen, 1977; Garafalo and Connelly, 1980). The four new wave models should also be viewed in the context of a more recent effort to bring courts, prosecution units and defense teams to local neighborhoods. A recent publication of the National Institute of Justice (NIJ, 1996b), for example, describes a variety of initiatives to locate prosecution and defense services -- as well as entire courts -- in neighborhoods and adapt their service to provide a better fit with the needs of local citizens (NIJ, 1996b).

Both the older dispute resolution approaches and the new community court and court units have often been effective in increasing accessibility of justice services to citizens by changing the *location* of programs or services so that they are geographically available to neighborhoods, increasing *flexibility* of service delivery (e.g., better hours, more diversity), and encouraging *informality* in the decision-making process -- relying whenever possible on dispute resolution, negotiation and mediative practices rather than legal rules and procedures (Harrington and Merry, 1988, Rottman, 1996). As the experience with community corrections clearly illustrates, however, when facilities or service centers are merely located in a neighborhood without the involvement of local residents, the result is an isolated program or process that may be said to be *in*, but not *of*, the community (Byrne, 1989; Clear, 1996). Similarly, increasing flexibility and breaking down formal barriers may increase citizens' willingness to seek and receive assistance, but it does not necessarily increase their involvement as

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

participants in the justice process, or even necessarily allow them to determine what services they would like in their neighborhoods.

Unfortunately, the emphasis on programs and accessibility of services has contributed to a one-dimensional definition of community justice. Ultimately, neither developing programs and increasing access will alone change the role of neighborhood residents from service recipients to decision-makers with a stake in, or feeling of ownership, in what services are provided and how they are delivered. Hence, what appears to be most *new* and significant about the four new models is that in defining distinctive roles for citizens in determining what the criminal sanction will be, as well as how it may be carried out, they add an important dimension to both earlier and ongoing community justice initiatives (e.g., McGillis & Mullen, 1977; NIJ, 1996a).

What is the relevance of these apparently esoteric sanctioning and decision-making models to probation and parole, victim advocates, treatment providers and other intervention professionals? Notably, an increasing number of state departments of corrections, probation and parole services, and juvenile corrections systems and probations services are adopting one or more aspects of community and restorative justice policy (e.g., Dooley, 1995; Pranis, 1995). What appear on the surface to be simply informal alternatives to court are therefore being viewed by some administrators as having greater significance to the objectives of probation and parole. This is because they may offer a new avenue for achieving a wide and deeper level of citizen involvement in the rehabilitative, sanctioning, and surveillance missions of community corrections that has been difficult to attain through a focus on offender supervision alone. The prospects for increasing community involvement, the *nature* of the process of engaging citizens, and the role(s) assigned to the community are therefore the most crucial dimensions for contrasting approaches to community decisionmaking.

CONTRASTING THE MODELS: ENGAGING COMMUNITIES IN COMMUNITY JUSTICE

Community is an amorphous concept that is unfortunately often used in such a way as to obfuscate, rather than clarify, issues of citizen involvement in government sponsored processes. As Gardner (1990) points out, however, it is not difficult to be more specific in breaking down "the community" into component parts for purposes of discussion about citizen involvement and participation. Community may be defined for example as a neighborhood, church, a school, a labor union, a civic or fraternal organization, an extended family, an Aboriginal band or tribe, a support group, or other entity.

As Table II suggests, the way community is defined in justice decision-making models is a critical factor effecting the nature and extent of citizen involvement and ownership. In the case of victim offender mediation (VOM), for example, the community is defined for all intents and purposes as the victim-offender dyad. In Circle Sentencing (CS) on the other hand, the community is defined as all residents of a local neighborhood, village or Aboriginal band. In addition, the list of characteristics in Table II address several general questions about community justice decision-making which provide useful points of comparison between each model. We examine two of these issues in detail in the remainder of this section.

First, what is the role and function of crime victims, relative to offenders and the community, in the process? In the formal justice system, the bulk of attention is directed toward the offender, first with regard to his/her guilt or innocence, and second with regard to appropriate punishment, treatment or monitoring. The community is an increasingly important, albeit distant concern (e.g., Barajas, 1995; Clear, 1996). Because they have been so neglected as a client of both formal and community justice approaches, it is important to examine the role of crime victims, *vis-à-vis* the role of community and offender, in each community justice process.

Second, one of the most interesting and important differences between the community decisionmaking models is the extent to which preparation prior to the process and follow-up is viewed as vital to success. Put differently, community decision-making models may vary a great deal in the view of the decisionmaking ceremony itself as primary (and thus spontaneous) or merely one step in an ongoing process that will hopefully result in a complete response to crime. Clearly, the preparation stage of community decisionmaking offers perhaps the greatest opportunity to engage citizens in the process and to ensure their meaningful participation (Stuart, 1995a; Umbreit, 1994). In addition, even more at issue among some critics of these models (Alder and Wundersitz, 1994) is the enforcement and follow-up approach for sanctioning plans and agreements that result from each process (see Table 2). Moreover, the focus on sanctioning, monitoring, and enforcement in these decision-making processes provides the most critical linkage with, and has the greatest implications for, community corrections.

Victim-Offender Mediation

Role of the Victim and Other Co-participants

Increasingly, modern VOM programs seek to give first priority to meeting the needs of crime victims (Umbreit, 1994). Specifically, victims are given maximum input into the sanction, referred for needed help and assistance, allowed to tell the offender how the crime has affected them, and request information about the crime, and, to the greatest extent possible, are repaid for their losses. As shown earlier in Table 1, to ensure that the victim feels empowered, or at a minimum is not more abused or overwhelmed by the process, victims speak first in mediation sessions. While both victim and offender needs receive priority over the needs of other potential players in the community justice process (parents, relatives, other citizens), in an important sense, the victim is also the primary client. The victim must, after all, consent to the process, while the offender is often a less than willing participant (Belgrave, 1995). Hence, in contrast to other models, most research studies report that victim satisfaction with VOM has been uniformly high (e.g., Umbreit and Coates, 1993; Belgrave, 1995).

Monitoring, Enforcement, and Preparation

In VOM, there is apparently some degree of variation between programs in monitoring and enforcement. In many programs, it is common for the mediator to assist offender and victim in devising a schedule for reparation, and he/she may even ask that the participants agree to a follow-up meeting to review progress (Umbreit, 1994). In other programs, probation or diversion staff may follow-up depending on the offender's court status; other mediation programs may have paid staff who are charged with monitoring functions, or VOM may be one part of a larger restitution program responsible for development and enforcement of the reparative agreement (Schneider, 1985; Belgrave, 1995). On the front-end, VOM practitioners are perhaps the most adamant of any community justice advocates about the importance of extensive victim and offender preparation prior to the mediation session. The most widely accepted model encourages extensive pre-mediation discussion with both offender and victim involving at least one face-to-face contact (Umbreit, 1994). In fact, many practitioners argue that up-front preparation is often more important than the session itself in bringing about a successful result (Umbreit & Stacy, 1995).

Reparative Boards

Role of the Victim and Other Coparticipants

In the early months of operation, victim involvement in most Vermont RBs has been minimal (Dooley, 1996). While their participation has been strongly encouraged by state officials who developed and now monitor the programs, it remains to be seen to what extent citizen board members will want to take on the at times demanding task of contacting and engaging crime victims in the justice process. RBs have been informed to a large extent by a restorative justice model (Dooley, 1995;1996). Moreover, the strong commitment on the part of some local Boards to seeing that victims are repaid by offenders may ultimately provide greater motivation for increasing involvement when it becomes more clear what value mediation, or other forms of victim-offender dialogue, may have in improving completion rates (Umbreit and Coates, 1993). Boards have also been encouraged by administrators to refer offenders and victims to victim-offender mediation programs in communities, where they are available and when victims agree to participate.

Monitoring, Enforcement, & Preparation

As Table II suggests, enforcement responsibilities in the form of recommending revocation or termination of the 90 day offender contract, are assigned to the Board members themselves, although the final decision is apparently made by a probation administrator who may recommend violation to the court if conditions are not met or require additional corrective actions. The Reparative Coordinator, a probation employee, is responsible for monitoring contract compliance (Reparative Board Program Description, 1995). While monitoring procedures and policy are perhaps the most formally developed in RBs, case preparation is apparently limited to a brief intake interview with the offender to gather information about the offense for the Board. Victims may or may not be contacted, though presumably loss information is required for the hearings and may be provided from police records via court or probation.

Family Group Conferences

Role of the Victim and Other Coparticipants

The complexity of the challenge of victim protection and empowerment when one moves beyond the small group or dyad to the larger community is even more apparent in FGCs. FGCs are perhaps the strongest of all the models in their potential for educating offenders about the harm their behavior causes to victims. From a restorative perspective, however, the concern is that the priority given to offender education will -- as appears

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

to be the case when conferences are held with little or no victim input or involvement (Maxwell and Morris, 1993; Alder and Wundersitz, 1994) -- overshadow or trivialize the concern with meeting victim needs (Belgrave, 1995; Umbreit and Zehr, 1996). In direct contrast to both VOM and CS, the standard protocol for FGCs requires that offenders speak first. This is believed to increase the chance that young offenders will speak *at all* in the presence of family and other adults. In addition, speaking first is said by FGC supporters to help offenders "own" their behavior early in the session, to let their support group know what happened, to give the victim a different perspective on the crime and on the offender, and even put the victim at ease. (McDonald, et al. 1995).⁴

The centrality of concern in FGCs with shaming and reintegrating offenders, however, may lead to some interesting twists in terms of how positive victim outcomes are conceptualized and thought to be best achieved. As one recent Australian attempt to evaluate victim outcomes illustrates, even objective observers may become vulnerable to giving primary focus to offender outcomes:

Conferencing engenders in the *offenders* and their supporters a sense of shame, through providing the victims with a forum to explain directly to all experienced in the process. [Such an explanation] is sufficient for the expression of a sincere apology for the harm flowing from the offence. In a successful conference, the shame [experienced by] offenders --- in turn, gives rise to the *expression of forgiveness by victims*, while the outcome can provide for material restitution (Strang, 1995, p. 3) [emphasis added].

As suggested in this explanation, the essential "business" of the conference appears to be on getting offenders to experience shame (cf. Alder & Wunderstiz, 1994). The "benefit" to the victim is an apology and perhaps material restitution. While either or both may meet the primary needs of many victims, other concerns may be neglected or not even considered. Moreover, if the ultimate motive is forgiveness for the offender, the process may be slanted in the direction of eliciting an apology from the offender, and victims may feel pressured to forgive the offender, or become so resentful at the implication that they *should*, that they refuse to participate (Umbreit & Stacy, 1995). Others have expressed concern in FGCs about the lack of concern with victim empowerment, protection against abuse or retaliation, and use of victims as "props" or to meet offender needs (Umbreit & Zehr, 1995). While victim participation and victim satisfaction has been an ongoing problem in FGCs (Morris & Maxwell, 1993), it is unfair to conclude that most FGC advocates are not concerned with victims needs (see Moore & O'Connell, 1994; Braithwaite & Mugford, 1994). Moreover, like all such criticisms of alternative community models, the critique of FGC from the victim's perspective should be made first with reference to the extent of reparation, empowerment and support available within the *current*, formal system (Stuart, 1995b). However, as FGC models evolve, it will be important to examine the extent to which the priority commitment to offender shaming and reintegration may diminish the capacity of FGCs to involve and attend to the needs of crime victims.

Monitoring, Enforcement, and Preparation

FGCs also are responsible for preconference preparation and play a major role in enforcement. In New Zealand, preparation is viewed as critical, and face-to-face meetings are now generally held with the offender and family, with phone contacts made to the victim (Hakiaha, 1995). In the Australian model, by contrast, practitioners rely primarily on phone contacts to explain the process to both offenders and victims and apparently place much less emphasis on pre-conference preparation. This lack of preparation appears to be based on the belief that spontaneity is best. Some coordinators, for example, argue that hearing the victim and offender's stories prior to the conference may even diminish the impact and focus of these stories (Umbreit and Stacy, 1995). Recently, however, some proponents of the Australian model appear to be placing greater emphasis on the need for ensuring accuracy of facts, checking with participants, developing a plan, and ensuring that key participants and their support groups, are present at conferences (McDonald, et al 1995). As is the case in courts that lack programmatic approaches to restitution and community service, compliance with reparative obligations appears to be generally left to the offender (Moore & O'Connell, 1994), although in the New Zealand model, conferences can be reconvened for failure to comply (Maxwell & Morris, 1993). Monitoring and enforcement responsibilities are not made explicit, although the Australian model appears to anticipate that police officers are ultimately responsible for enforcement (Alder & Wundersitz, 1994).

Circle Sentencing

Role of Victim and Other Coparticipants

Like VOM, proponents of the Circle Sentencing process are concerned with protecting the victim, providing support, and hearing the victim's story. In sentencing circles, after the prosecutor has presented the case against the offender, victims and/or their advocates generally speak first. In the Circle this is done to avoid an "imbalanced focus on the offender's issues" which may cause the victim to withdraw or react by challenging offenders (Stuart, 1995b, p. 7). The telling of the victim's story is viewed as important, not only for the victim, the offender, and their supporters, but also for the community as a whole. CS advocates may encourage a friend or relative to speak on behalf of the victim when he or she is not willing, but they emphasize the value of residents hearing the victim's story first-hand whenever possible (Stuart, 1995b).

Because the process is so open and community-driven, however, a potential concern is that the importance given to the victim's needs and his/her point of view in circle sentencing may vary widely. As appears to also occur in some FGCs, the seriousness of offender needs may slant the focus of the group to execution of the rehabilitative and offender service/support plan rather than toward meeting the reparative and other needs of the victim (Maxwell & Morris, 1993; Umbreit & Stacey, 1996). In addition, the extent of effort required on the part of the offender prior to event itself (discussed in the following section), may result in circles stacked with offender supporters who have little relationship to victims. Achieving appropriate balance between victim, offender and community needs and representation in the circle, is a task left to the Community Justice Committee. In this regard, an innovation of CS not apparent in any of the other processes is the victim support group (Stuart, 1995b). This group is formed by the Community Justice Committee, generally at the time the offender petitions for admission to the circle, but may develop or be enhanced at any time, including during the circle ceremony itself.

Monitoring, Enforcement & Preparation

Perhaps because its community empowerment and healing goals are most ambitious, the Circle Sentencing model appears to demand the most extensive pre-process preparation. The admission process generally requires, as a condition of admission to a Circle, that an offender petition the Community Justice Committee, visit an elder or other respected community member for a conference begin work on a reparative plan which may involve some restitution to the victim and community service, and identify a community support group (Stuart, 1995b). While Circles may be convened in some cases without these requirements being met (with the special approval of the justice committee), the pre-conference process is generally viewed as a screening device and a key indicator to circle participants that the offender is serious about personal change. Hence, it is not uncommon that conferences are canceled or postponed when these steps have not been taken (Stuart, 1995b; Couch, 1996). When the preliminary screening process works well and offenders meet the pre-conference obligations, however, a Circle Sentencing session can actually seem less like a hearing about dispositional requirements than a celebration of the offender's progress, as well as an opportunity for victims and offenders to tell their stories.

This preparation and support on the front-end appears to also extend to follow-up on the back-end. In this regard, monitoring and enforcement of the conditions of the circle sentence, which often include an extensive list of reparative responsibilities, treatment requirements, and (in Aboriginal communities) traditional healing and community building rituals, is assigned to the circle participants. Offender and victim support groups formed through the Community Justice committees also monitor offenders and advocate for victims to ensure that agreements made within the circle are carried out. In the case of Sentencing Circles, agreements are subject to review by a Judge who will ask for routine reports from the justice committee and the support groups. Judges may strengthen the enforcement process at the conclusion of the circle by assigning or reaffirming the assignment of community monitoring responsibilities and may withhold a final decision about jail terms or other sanctions pending completion of obligations to be verified at the follow-up hearing.

DISCUSSION

"So we make mistakes -- can you say -- you (the current system) don't make mistakes. . . if you don't think you do, walk through our community, every family will have something to teach you. . . By getting involved, by all of us taking responsibility, it is not that we won't make mistakes. . . But we would be doing it together, as a community instead of having it done to us. We need to find peace within our lives. . . in our communities. We need to make *real differences* in the way people act and the way we treat others. . . Only if we empower them and

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

support them can they break out of this trap." (Rose Couch, Community Justice Coordinator, Kwanlin Dun First Nations, Yukon, Canada, cited in Stuart, 1995b).

The perpetual absence of "the community in community corrections," either as a target of intervention or as a coparticipant in the justice process (e.g. Byrne, 1989; Clear, 1996) may be due in part to the inability to identify meaningful roles for citizens in sanctioning crime. This paper has described four alternative community decision-making models and contrasted the way each defines and operationalizes the role of citizens and community groups in the response to crime. As illustrated by the examples of the Vermont Reparative Boards, and a growing number of community justice initiatives being initiated and led by corrections departments in states such as Minnesota and Maine indicate (Pranis, 1995; Maine Council of Churches, 1996), such citizen involvement in community sanctioning processes may have significant implications for community corrections. In the processes discussed here, there appears to be significant potential for changing the current dynamic in which the community is viewed by justice agencies as passive participant. When probation and parole professionals can identify citizens willing to participate in a community sanctioning process, they may, have also identified a small support group willing to assist with offender reintegration as well as victim support.

"Riding the Wave": Critical Issues in Community Justice Decision Making

As restorative and community justice decision making assumes an ever higher profile at senior governmental policy levels, there are a number of critical issues which must be addressed. Because these new decisionmaking structures and processes, like all criminal justice innovations, are likely to come under close scrutiny, the failure to address several concerns could prove fatal.

The need to evaluate community justice decision making initiatives

Despite the proliferation of restorative and community justice programs, there is a paucity of evaluation research which would provide an empirical basis for determining whether these initiatives are successful in achieving their stated objectives. Critics of circle sentencing (c.f. LaPrairie, 1996), for example, point out that there have been no empirical analyses of the extent to which sentencing circles prevent and/or reduce crime and disorder in communities or whether sentencing circles function to reduce recidivism rates among offenders processed through the circles. In an extensive critique of circle sentencing LaPrairie (1994: 2-83) state:

"It has been claimed that sentencing circles have the following benefits: (a) they reduce recidivism; (b) prevent crime; (c) reduce costs; (d) advance the interests of victims, and (e) promote solidarity among community members. These are all measurable and should be put to the empirical test."

Many restorative and community justice initiatives have objectives that are far more holistic than traditional crime control responses which have typically utilized recidivism rates as a primary outcome measure. An evaluative framework for these approaches would, therefore, have to include measurable criteria to assess outcomes of "community empowerment and solidarity," "victim interests" and "crime prevention." The relative importance assigned to such outcomes as community and victim involvement, offender shaming, reparation to victims, dispute resolution and healing will also determine how one gauges the effectiveness of any model. However, as new, more appropriate standards emerge for evaluating the impact of community justice, the most important concern, as suggested by the quote from one of the key practitioners of community justice at the beginning of this section, is that the basis for comparison be the reality of the current system rather than an idealized version of its performance.

Discretionary Decision Making: Ensuring Accountability in Community Justice

The community justice decision making models discussed in this paper are often proposed as alternatives to the legal-procedural approach to dispositions and sanctioning assumed by the formal justice process. However, unlike the formal criminal justice system, the capacity to determine guilt or innocence has not been developed within these models. Further, concerns have been raised as to the mechanisms of accountability in community justice decision making. Griffiths and Hamilton (1996, p. 187-8), in considering the development of justice programs in Aboriginal communities have therefore cautioned:

"Care must be taken to ensure that family and kinship networks and the community power hierarchy do not compromise the administration of justice. As in any community, there is a danger of a tyranny of community in which certain individuals and groups of residents, particularly those who are members of vulnerable groups, find themselves at the mercy of those in positions of power and influence."

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

The often dramatic and dysfunctional power differentials within communities may make true participatory justice difficult to achieve, and may instead produce harmful side effects in some settings (Griffiths, et al., 1996). Ironically, those communities most in need of holistic, restorative-based justice programs which encourage community residents to become involved in the disposition and sanctioning process are often precisely those communities which are the most dysfunctional, and may have only limited interest in and/or capacity for such involvement. Specific attention must be given to the development of strategies for empowering communities and recruiting and retaining the participation of community residents.

Protecting the Rights and Needs of Crime Victims

Ensuring that the rights of victims are protected is a critical, but potentially divisive, issue in any community justice process. While victim alienation and exclusion from the formal justice system has been a primary catalyst in the search for alternative forums for responding to crime and disorder (e.g., Young, 1996; Umbreit, 1994), concern has been expressed by many observers that community justice decision making models may not give adequate attention to the rights and needs of vulnerable groups, particularly women and female adolescents.

In Canada, Aboriginal women have voiced concerns about the high rates of sexual and physical abuse in communities and have questioned whether local justice initiatives can provide adequate present and future protection for victims (Griffiths and Hamilton, 1996). Additional concerns as to whether the sanctions imposed on offenders by community justice structures were appropriate have also been voiced. In a study of violence against women in the Canadian Northwest Territories, Peterson (1992:75) found that Aboriginal and Inuit women were concerned about the attitudes toward violence held by community residents and how this would impact the operation of community justice initiatives: "...there can be differences that develop along generational lines.... older people may evidence a tolerance of violence against women that is no longer acceptable to young women..." Unfortunately, the failure to address these critical points has led to situations in which community justice initiatives undertaken by Aboriginal bands have been first criticized by Aboriginal women, and then discredited in their entirety.

The Formal Justice System: Collaboration or Cooptation?

A critical issue surrounding the development and implementation of community justice decision making models is "Who Controls the Agenda?" Traditionally, the formal justice system has maintained a tight rein on initiatives which have been designed as "alternatives" to the criminal justice process. This is evident in the origins and evolution of youth and adult diversion programs, which appear to have become another appendage to the formal justice process. The inability or unwillingness of decision makers in the formal criminal justice system to share power with communities is likely to result in net-widening, rather than the development of more effective alternative decision making processes (Blomberg, 1983; Polk, 1994).

If the new decision-making models follow the pattern of development of earlier neighborhood dispute resolution -- and to a lesser extent the pattern of VOM as the oldest of the new models -- however, one would anticipate a significant addition to the richness and diversity possible in alternative sanctioning, but little impact on the formal system. Both VOM and FGCs (with the exceptions of those in New Zealand) are ultimately dependent on system decision-makers for referrals and the potential for power sharing is minimal. If these models are to avoid these now traditional fates for such programs, community advocates will need to begin to work with sympathetic justice professionals who are also committed to community-driven systemic reform in what have become intransigent, top-down, rule-driven criminal justice bureaucracies.

But while a primary objective of proponents of community justice decision-making is to have such initiatives institutionalized as part of the justice process, the danger is that system control will lead to the top-down development of generic models of community decision making. Hence, the degree of institutionalization that some of these approaches have been able to achieve in a relatively short time and the rather dramatic results in terms of system/community collaboration (especially in CS) that appear to be possible is both promising, and risky. While the high profile given to community justice initiatives may result in grant funding for research and programs, such system support is no guarantee of long-term impact of the type envisioned in the community and restorative justice literature. Moreover, in the absence of substantive community input at the design and implementation phases of specific initiatives, this administrative focus may even result in cooptation or watering down of these approaches in ways that ultimately function to undermine the philosophy and objectives of community justice initiatives (Van Ness, 1993). From a community justice perspective, perhaps the biggest challenge to reparative boards, for example, is the fact that they have been implemented in the

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

system itself. On the one hand, RBs may have the greatest potential for significant impact on the response of the formal system to nonviolent crimes. Moreover, the commitment of administrators to local control may also result in the community assuming and demanding a broader mandate. On the other hand, as a creation of the corrections bureaucracy, RBs may expect to be at the center on an ongoing struggle between efforts to give greater power and autonomy to citizens and the needs of the system to maintain control, or ensure system accountability. Ultimately, Board members may also be challenged to decide the extent to which their primary client is the community or probation and the court system.

In this regard, of the four models, Circle Sentencing appears most advanced in an implicit continuum of the importance given to the decision-making role of communities. As such, this model provides the most complete example of power sharing in its placement of neighborhood residents in the gatekeeper role (See Table 2). Acting through the Community Justice Committee, the community is clearly the "driver" in determining which offenders will be admitted to the circle. Eligibility in circles is apparently limited only by the ability of the offender to demonstrate to the community justice committee her/his sincerity and willingness to change. Surprisingly, the most promising lesson of circle sentencing has been that when given decision-making power, neighborhood residents often choose to include the *most*, rather than the *least*, serious offenders in community justice processes (Stuart, 1995b; Griffiths, et al., 1996). As a result, however, courts and other agencies in Canadian communities experimenting with circle sentencing have experienced ongoing tension over the extent to which power sharing with the community should be limited and whether statutes are being violated.

Implications and Conclusions

Systemic reform toward community justice must not begin and end with new programs or staff positions, but with new values which articulate new roles for victims, offenders and communities as both clients and co-participants in the justice process, and accordingly, create and perpetuate new decision making models which meet their needs for meaningful involvement. As is fundamental to the principals and values of restorative justice, the capacity of these models to impact and even transform formal justice decision-making, and ultimately correctional practices, seems to lie in the potential power of these co-participants, if fully engaged in meaningful decision making processes. For this to occur, however, a rather dramatic change must also occur in the role of professionals from one of sole decision-maker, to one of facilitator of community involvement, and resource to the community (Bazemore & Schiff, 1996).

One limitation of this paper has been that in describing these four processes as independent models, we have perhaps exaggerated distinctions between processes that are in fact borrowing insights from each other as they are adapted to meet local needs. Hence, it is important not to impose restrictive definitions on what is clearly a dynamic and evolving movement. However, a primary purpose of this paper has been to provide a general framework for describing the dimensions of community justice decision-making in order to avoid indiscriminate and arbitrary, all inclusive, groupings of programs and practices under what are, for the most part, ill-defined terms such as "community justice." The importance of such comparative discussions at this relatively early stage of the development of the various programs and strategies is to highlight similarities and differences across the four emerging models and to prevent, or at least minimize, the "community-policing syndrome": the widespread application (and misapplication) of a generic term to a broad range of initiatives without a clear understanding of the differences among interventions or benchmark criteria that can be utilized to assess consistency with fundamental principles (e.g., Mastroky & Ritti, 1995). In the absence of an effort to distinguish what should and should *not* be included under the umbrella of community and restorative justice, and to further define success in these interventions, a unique and valuable opportunity to develop more effective methods for enhancing citizen involvement in the response to crime and disorder will have been missed.

ENDNOTES

1. The most concrete impact in the U.S. can be seen in Vermont itself where Reparative Boards based on the restorative justice perspective are now state policy. Other states that have adopted restorative justice as the mission for their corrections departments include Minnesota and Maine. State juvenile justice systems in Pennsylvania, Florida, New Mexico, and Montana, among others, have adopted restorative justice principles in policy or statute. In the U.S., a series of high level work group meetings have recently been held within the Office of Justice Programs at the request of the Attorney General which have in turn sparked several national and cross-national forums on community and restorative justice (NIJ, 1996a; Robinson, 1996).

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

2. For the remainder of this paper, we use, for convenience, the generic term, community justice to describe this overall movement and set of philosophies. However, this does not reflect a preference for this term, and in fact, as the discussion here suggests, community justice may well be too broad to reflect the more specific influence of restorative justice on decision-making models. While restorative justice, or community restorative justice, may thus more accurately characterize the interventions of interest here, the issue of terminology is somewhat political and often less relevant than the nature of the interventions being described. Community justice is also frequently associated in Canada with a political transfer of justice decision-making power to local communities or indigenous groups (Depew, 1994; Griffiths & Hamilton, 1996).
3. The original group of neighborhood dispute resolution centers differed from the new models in that they generally dealt with a more narrow range of cases, focusing primarily on domestic and neighborhood disputes rather than crimes per se and also appear to have been motivated primarily by an attempt to relieve overcrowded court dockets (Garafalo & Connelly, 1980).
4. Critics of this approach suggest that it is symbolically important that the victim speak first, and one compromise that has been proposed gives the victim a choice of whether s/he precedes or follows the offender (Umbreit & Stacy, 1995). FGC advocates argue that the facilitator can avoid situations in which an offender speaking first might anger a victim by a less than repentant, or less than accurate, portrayal of the incident by coaching the offender and possibly challenging aspects of his/her story in advance. Facilitators are also encouraged to prepare the victim for what she/he may feel is an unfair account of the incident by the offender (O'Connell, et al., 1995).

6.6. Taking Down the Walls - 1997 ⁴⁴

Promising Practices

Some of the newest applications of Justice in the community are truly connecting the justice system and the public in unique ways. These practices are serving as bridges, gates, and pathways to integrate system and community objectives to such a point that they are being blended into one indistinguishable outcome: justice.

Circle Sentencing: Circles are composed of offenders and their supporters, victims and their supporters, interested members of the general community, and criminal/juvenile justice system representatives. They focus on peacemaking or healing. Circles are facilitated by community "keepers." The participants use a consensus building process. The needs of the victim and the community, as well as the needs and responsibilities of the offender are addressed through the circle process that results in the development of a plan. If the offender fails to fulfill his/her responsibility, the case is returned to the formal court process. Circles can also be used for family, civil, and other conflicts.

Crime Boards: Also known as reparative probation, Crime Boards are designed for offenders convicted of misdemeanors and non-violent felonies. The program involves face-to-face meetings between the offender and volunteer Community Reparative Board members. These members are citizens who are trained to intervene on cases referred by the court process. The purpose is to work out an agreement on how the offender is to make reparation to the victim and the community. Offenders are sentenced to the program by a judge following adjudication of guilt. The Board may meet with the offender after the initial meetings in order to monitor progress on conditions.

Family Group Conferencing: Conferencing is a process of intervention whereby community members affected by the crime come together to meet with the victim and the offender. The meeting is facilitated by a trained volunteer or police officer. The purpose is to talk about how the crime has affected each others' lives, and decide as a group how the harm is to be repaired. Conferences may be held before or after the adjudication process, or as an alternative to the formal justice system.

⁴⁴ Mark Carey, Director, Dakota County Community Corrections, originally published in Community Corrections Report, 1997, reprinted with permission, Taking Down the Walls: Measures to Integrate the Objectives of the Justice System with the Community's, <http://www.ojp.usdoj.gov/nij/rest-just/ch6/takingdown.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

Community Policing: Community policing involves the assignment of law enforcement officers to a specific geographic area and may include the opening of "mini-stations" in neighborhoods. The officers develop trust through routine communication with community leaders, citizens, and business owners. Officers take on a problem solving approach rather than waiting to respond to a call after a crime had already occurred. The officers may also organize block clubs, support local merchant associations, and conduct other crime prevention efforts.

Neighborhood Probation: Also known as beat probation, neighborhood probation is similar to community policing whereby probation officers are assigned to geographic areas instead of having dispersed caseloads. They view the community as their client and establish community partnerships. They will often join the area neighborhoods in working with offenders to prevent recidivism, deal with community "hot spots," gang intimidation, drug houses, and other quality of life concerns. Efforts are also made to collaborate with other service agencies such as social services, public health, churches, etc.

School Based Probation: Similar to neighborhood probation, school based probation involves placing juvenile probation officers in schools. They are assigned the same geographic area as the school's and provide problem solving assistance to school for those students on probation. The objective is to monitor probationers while seeking ways to increase the likelihood of school success through improvement of grades, reduction in truancy and expulsions, and increase in high school graduation.

Community Courts: Community courts respond to the need to be closer to community needs by decentralizing court facilities. Also known as court devolution, the courts permit access at many remote locations whereby citizens can file forms, pay fines, and participate in the court process more conveniently. It requires collaboration between the court and one or more community groups in order to forge a more broadly based connection between the court and community. It includes three components including: resolving disputes directly and with the help of those affected, treating parties of a dispute as individuals rather than abstract legal entities, and using community resources in the resolution of disputes.

Community Prosecution: Community prosecution helps communities resolve immediate, specific crime related problems identified by the residents. Prosecutors may be assigned to specific neighborhoods and assist communities by explaining legal constraints that prevent law enforcement from acting, and devising alternative tools citizens and police can use when conventional ones fail.

Community Defense: Community defense seeks to provide legal services for the purpose of solving problems that foster crime and injustice before crime occurs. It seeks to address structural problems that are in existence in many communities. Rather than just representing individuals accused of crime, community defense attorneys are based in the community, are accessible to the public, and represent clients in an effort to avoid problems. The highest priorities are given to cases before an arrest is made. Assistance is offered to families and community members who are experiencing difficulties that can be addressed, in part, with legal assistance.

6.7. Resolving Disputes Locally: Alternatives for Rural Alaska - 1992⁴⁵

- **Importance of Dispute Resolution Style.** Participants in each organization believed strongly that the opportunity to resolve disputes in a certain way (e.g., with equal participation, in a conciliatory manner, or in "the traditional Athabascan way") was one of the most important reasons for, and benefits of, an alternative dispute resolution process.

⁴⁵ Alaska Judicial Council, Resolving Disputes Locally: Alternatives for Rural Alaska, August 1992, <http://www.ajc.state.ak.us/Reports/rjrepframe.htm>

7. Relevant Documents, Studies and Practices – International

7.1. Restorative Justice from Individualism through Reductionism to Holism -2001⁴⁶

"We should not be too precious about our individual models of restorative justice, nor should we ignore the fact that better alternatives often exist. As individual approaches we should acknowledge their limitations, accept the fact that they are not always appropriate, that despite our best efforts they will always remain exclusive services and therefore that they alone are not wholly restorative. Fitting all the ingredients of different conflicts into the only available model can never be truly restorative. Restorative justice has moved on from its initial modern revival and it is now time to embrace true restorative practice in accordance with all the principles. The menu driven approach is no longer acceptable within a philosophy that professes to be needs led."

Taking account of this statement, that to some might appear to be provocative, provides a platform from which restorative justice can be further developed to inspire the future within and alongside a statutory framework. Nothing in this article is intended to detract from, or otherwise diminish, all the outstanding work that has gone before, in pioneering many different restorative approaches to meet specific needs. Indeed much of what is proposed should be taken as supporting and reinforcing the development over the years of identifiably different models that offer restorative justice solutions in a variety of arenas.

Unfortunately the more recent explosion of restorative justice practices has apparently attracted some less constructive elements of development. Expressions such as 'jumping on the band wagon' and 're-inventing the wheel' spring to mind when one looks at the profusion of restorative models that have arisen and continue to spawn around the world. It is not surprising that confusion reigns when one contemplates the introduction of restorative justice practice for the first time. Nor is it surprising that the most commercially astute and loudest speaking providers are best prepared to step in quickly and offer their particular services as the best solution. The general lack of understanding and awareness amongst potential customers, particularly in the statutory arena, is therefore exploited, whether for financial gain or otherwise.

The political will in the United Kingdom to incorporate restorative justice practice wherever possible within the youth justice system has exposed this confusion very well, particularly amongst the statutory criminal justice agencies upon which the responsibility falls. Despite this current confusion there is, quite rightly in my opinion, a clear political desire to extend this philosophy into the adult criminal justice arena within the near future. Whilst the Government timetable allows insufficient time for all agencies to fully embrace such a fundamental and cultural change there are those who will be in a position to implement such new extensions to their already developed restorative justice practices. The confusion that still exists amongst statutory agencies in the majority of geographical areas has understandably led to some resistance against the introduction of restorative justice locally.

When examined in relation to the wider responsibilities of the different criminal justice agencies their anxieties and confusion appear to be justified:

- With in excess of fifty different names restorative justice comes in many different forms, with no clear and unambiguous information about what works best in different situations.
- It is undoubtedly resource intensive both in terms of human and financial resources and aspires to being a quality service that is truly inclusive and sufficiently flexible to meet the individual circumstances of each case.
- The monitoring and maintaining of standards requires a high level of knowledge and is again resource intensive.

⁴⁶ Ian Carter, *Essex Police Restorative Justice from Individualism through Reductionism to Holism Restorative and Community Justice: Inspiring the Future* An International Conference March 28 – 31, 2001 Winchester, England <http://www.lan.soton.ac.uk/bsln/rj/rjsuncar.htm>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

- There are, although the situation is changing gradually, very few independent advisers with sufficient knowledge about all the different applications and models of restorative justice to allow for fully informed decision-making.
- Though again the situation is improving with time, there remains a lack of significant and robust evaluation evidence across the different models of restorative justice that measures outcomes against the different agency objectives.

Taking all these concerns into account many statutory agencies are perhaps understandably reluctant to commit large sums of public money and already over stretched human resources to restorative justice approaches. There is no obvious incentive to prioritise effort in this area in favour of other portfolios and areas of performance measurement. This situation is further exacerbated by the many competing demands upon the public purse in a climate of continual efficiency savings and the need to prove compliance with such initiatives as Best Value and What Works, etc.

To the better informed there are clear qualitative benefits for most victims, offenders and communities when good quality restorative justice is compared with formal criminal justice responses. There is also growing evidence to support restorative justice principles as an effective tool to resolve conflict in a range of non-criminal situations. Though we can all speculate about the reasons, there is insufficient comparative evidence to show why one project produces significantly different outcomes to another, even where essentially the same restorative practice occurs.

In 1998 ACPO (The Association of Chief Police Officers for England, Wales and Northern Ireland) decided to investigate what was known about restorative justice and to position chief police officers for the anticipated increase in mainstream restorative justice activity. To this end the ACPO Restorative Justice Working Group was formed, under the Chairmanship of Charles Clark, deputy Chief Constable of Essex Police, with representatives of the police forces most involved in restorative justice activity. Following two years of mainly literary based research the publication *Restorative Justice Investigated* was produced. This document represents the ACPO position on restorative justice and gives one simple route through the confusion for statutory agencies. It offers a basic introduction to restorative justice, a flavour of the evaluation evidence available at the time, considerations for setting up a service and, perhaps most importantly and helpfully, grouping of the different restorative justice models and a sense of how they might fit with and compliment the existing criminal justice system.

Using the theory of reductionism ACPO have simplified the confusion of so many different models of practice into five individually identifiable generic groups. These can be described as the principal models:

- Victim/Offender Mediation
- Family Group Conferencing
- Community Conferencing
- Healing Circles
- Sentencing Circles

Taking this one stage further and using the same reductionist theory, other significant issues can be equally grouped. Though this might be viewed as an over-simplification it is nonetheless a helpful exercise in terms of grasping the issues. None are intended to be exhaustive lists, merely indicative of what might be included. These groups include the stage at which restorative justice is considered (point of entry), the arena from which the problem arises (origination) and the result of any restorative justice intervention (outcomes):

Point of Entry	Origination	Outcomes
Pre-Criminality	Criminal Justice	Apology
Pre-Court Criminality	Family Conflict	Reparation

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

Court Remand	Workplace Conflict	Mentoring
Court Sentencing	School Conflict	Therapy
Post-Custodial Rehabilitation	Community Conflict	Failure

Having completed this exercise much of the confusion is clarified and agencies contemplating the problem are more enlightened about the purpose, positioning and practical application of restorative justice.

Following two years of research, analysing all the available evaluation evidence, it is abundantly clear, though very rarely alluded to, that operating single models of restorative justice is too restrictive. In many cases where restorative justice has failed to occur or succeed it can be attributed to the wrong model being applied, or the model offered being unsuitable to participants needs or the circumstance of the case. Much of the evaluation evidence available is questionable in any event, but it is striking that none have identified inappropriate processes as the reason for failure. Why some models appear to achieve more successful outcomes than others in certain situations has not been clearly established. It seems obvious to assume for example, that where welfare issues are significant the Family Group Conference approach is broadly more successful in terms of outcomes than any other restorative model. The comparison of different models with a focus on suitability for different circumstances and situations must now be a priority to move forward the restorative justice philosophy. I would urge the research community and financial stakeholders to seriously consider these issues for future evaluation.

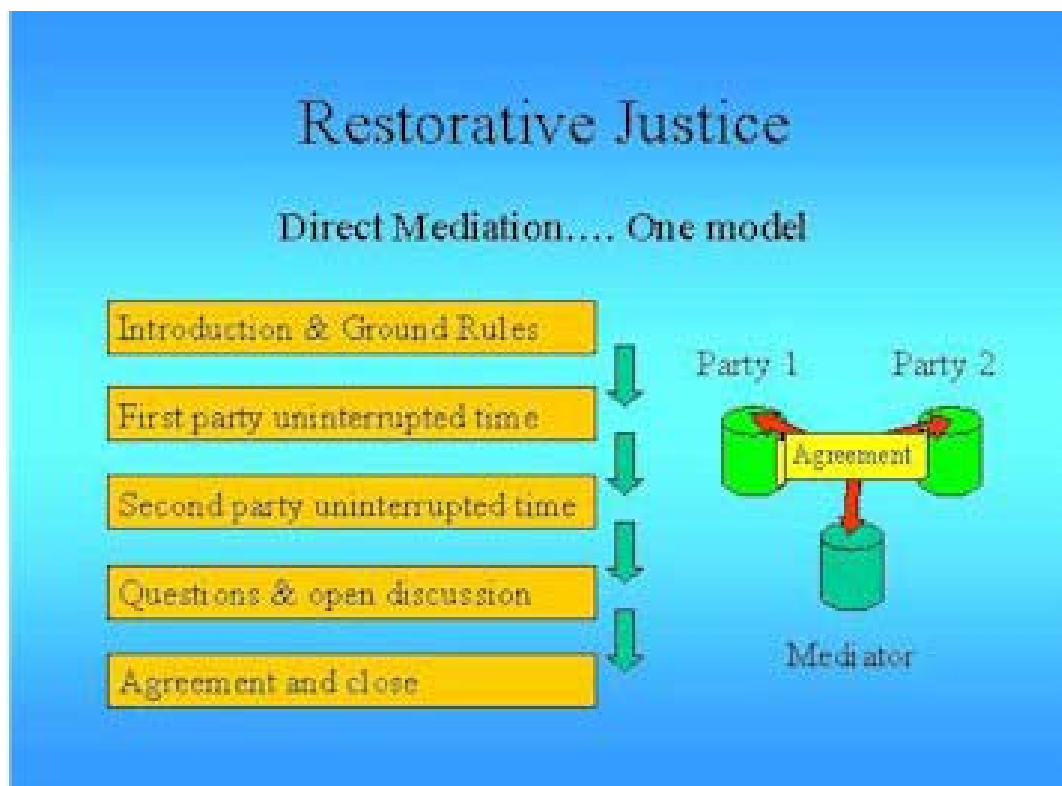
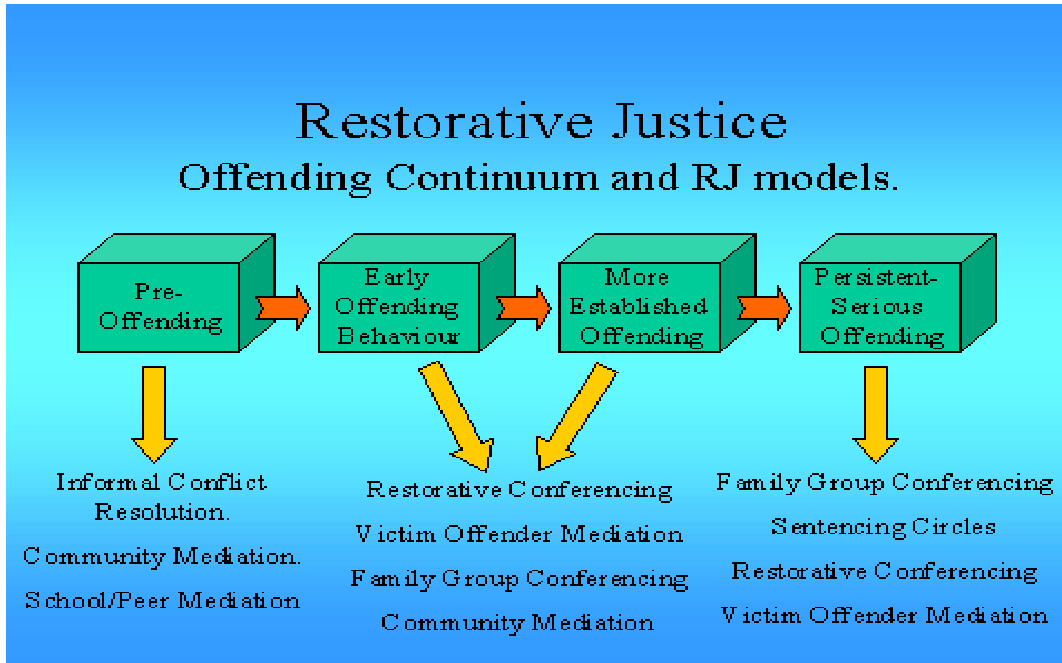
Taking this unstated message from the research, together with the reductionist exercise I have already described, makes the next stage of restorative justice development obvious. By combining the five principal models together, in one seamless service, the restorative justice approach becomes one holistic model.

This does not threaten the unique identity of the different models but it does offer the most restorative response to more, if not all, potential participants, through creating an opportunity to fit restorative justice practice to the individual circumstances of each case. The holistic model maintains the integrity of individual approaches but does not automatically exclude participants when one individual model is deemed inappropriate, or worse still, force participants to choose between an individual approach or nothing. When all the aspects of the reductionist exercise are joined together in a single seamless service it also offers the opportunity for creativity in mixing and matching the strengths of different individual models to respond to the various needs of different participants in a range of circumstances.

To take such a giant leap forward without maximising the potential for success would be futile and damaging to the excellent reputation that has been carefully nurtured and developed over many years. It is for this purpose that holistic approaches should seek to incorporate all possible aspects of a service aspiring to holism. This includes its availability across the widest possible spectrum and its ability to meet all identified needs and outcomes. Properly managed and resourced this approach represents total flexibility in meeting the demands of a needs led service. Operating with a robust assessment process referrals can be received from any source and assessed not only for suitability to a restorative justice response but also the most appropriate restorative justice response. Tight control of the referral process will ensure that practice and performance standards are monitored and maintained and that full evaluation is enabled and supported. Services to support and facilitate any restorative justice outcomes can be directly engaged with or contracted to such an approach to provide a total package from referral to completion.

Whilst respecting and reinforcing all of the restorative justice principles the holistic model makes restorative justice available to all victims and offenders, from all conflict situations and at any stage within and outside the criminal justice process. The added ability to facilitate and support any outcomes from the restorative process maximises the potential for a wholly inclusive service that is truly restorative to all. Clearly this represents a significant new development in restorative justice terms but restructuring in this way, openly recognises and takes forward the outstanding achievements of many restorative justice pioneers. It also strengthens the position of the restorative justice philosophy to meet the difficult and increasing challenge of mainstream criminal justice responsibility.

<http://www.law.soton.ac.uk/bsln/rj/rjsumcar.htm>



7.2. An International Review of Restorative Justice -2001⁴⁷

⁴⁷ Miers, David. 2001. "An International Review of Restorative Justice." Crime Reduction Research Series Paper 10. London: Home Office. <http://www.homeoffice.gov.uk/rds/prgpdfs/crrs10.pdf>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

	Unilateral	Authoritarian	Democratic
Locus of decision Outcomes benefit	System V or O but not both	System Primarily O, secondarily V	Parties Both equally

7.3. A Role for ADR in the Criminal Justice System?⁴⁸ - 1999

- **Different Types Of Restorative Justice In The Criminal Justice System** A number of programs have become associated with restorative justice because of the processes they use to respond to and repair the harm caused by crime:
 - o **victim-offender reconciliation/mediation programs** use trained mediators to bring victims and their offenders together in order to discuss the crime, its aftermath, and the steps needed to make things right;
 - o **family group conferencing programs** are similar to victim-offender reconciliation/mediation, but differ in that they involve not only the offender and victim, but also their family members and community representatives⁴⁹ ;
 - o **victim-offender panels** bring together groups of unrelated victims and offenders, linked by a common kind of crime but not by the particular crimes that have involved the others⁵⁰;
 - o **victim assistance programs** provide services to crime victims as they recover from the crime and proceed through the criminal justice process⁵¹ ;
 - o **prisoner assistance programs** provide services to offenders while they are in prison and on their release;
 - o **community crime prevention programs** reduce crime by addressing its underlying causes⁵² .
 - o **sentencing circles**⁵³;
 - o **use of volunteers in Plea Bargaining**⁵⁴.

7.4. Restorative Justice The Public Submissions-1998⁵⁵

⁴⁸ Laurence M. Newell, Adviser to the Chief Justice of Papua New Guinea, A Role For ADR In The Criminal Justice System?, A paper prepared for the PNG National Legal Convention 25-27 th July 1999 Papua New Guinea

⁴⁹ In this paper I suggest that this is the type of ADR in the Criminal Justice System that should now be actively pursued and brought into operation in Papua New Guinea.

⁵⁰ I mention later the work of the North American based MADD (Mothers Against Drunken Driving) program as a good example of this. A program that perhaps could be adapted for use in Papua New Guinea.

⁵¹ It is clear that this is one area that must be given far greater prominence, though I suggest that it should go beyond just assistance to victims, but also to witnesses as well. The victim(s) and the witness(es) are amongst the major losers under our system of Justice at present. Research work in the UK, that is mentioned in this paper suggests that many victims and witnesses feel that Courts (and Lawyers) are not providing enough information to them about case process and the length of time it will take for a matter to be heard. It appears that at least in the UK, many victims and witnesses want to get the trauma from Crime over quickly, and do not want to be waiting for months or years for matters to be resolved.

⁵² I have used the structure of Restorative Justice in the Prison Fellowship Restorative Justice pages [Online] Available at: <http://www.restorativejustice.org/rj1overview.html>. to define the different types of Restorative Justice in the Criminal Justice System overseas.

⁵³ This is derived from an article in (1996) 39 CLQ 69.

⁵⁴ I mention later the work done in Queensland in using an experienced retired barrister (who was involved in Criminal Trials) to assist with plea bargaining as a neutral facilitator.

⁵⁵ Ministry of Justice – New Zealand - Restorative Justice The Public Submissions First published in June 1998, © Crown Copyright http://www.justice.govt.nz/pubs/reports/1998/restorative_justice/ex_summary.html

Type of Approach (Conferencing and Victim/Offender Mediation)

Conferencing

Twenty-seven submissions either made the assumption or directly expressed the view that conferencing was the most appropriate restorative practice. Five of these supported the concept of conferences in a general sense, four preferred the use of family group conferences, while the remaining 18 favoured community group conferences. These choices were not always substantiated.

Those who gave reasons for their support for the use of family group conferences did so because the model was seen as appropriate for the extension of the youth justice system, or because it was considered suited to offenders with a low mental age.

Where the choice was community group conferences and reasons were given, they commonly focused on the value of providing for diverse involvement and responsibility for addressing adult offending. There was also recognition that the family was often not the primary unit of association for adult offenders. Additional advantages were seen in the fact that secondary victims could be included, that victims could have others represent their view or support their position, and that conferences could proceed where there was no victim or where the victim did not wish to be directly involved.

Submissions commonly envisaged that conferences would be attended by the victim and offender and their support people (community of interest) but few addressed who else might participate beyond this group. Three submissions suggested that the Police would be involved, while a small number saw a role for lawyers or legal advocates and service providers. Conversely: ...we see it as paramount that no criteria for participation (excluding the victim, offender and facilitator) exist.

Therefore, we do not see the presence of police or lawyers as necessary to the process. Indeed we feel that the presence of "professionals" may constrain the restorative process. (Carbonatto, Thorburn & Pratt, 62)

The notion of involving the wider community outside the community of interest in family violence matters was opposed in one submission. Others expressed concern with issues of privacy and confidentiality, and sought to limit decision-making to the community of interest even though input might be provided by community and service groups.

Victim-offender mediation

Only one submission chose victim-offender mediation alone as the preferred type of approach asking at an earlier point:

Who would have the time for voluntary involvement of communities? (Women's Division Federated Farmers, North Auckland, 82)

Four submissions questioned the utility of mediation, either generally or in particular contexts. Mediation was not seen as an appropriate model in family violence cases because it was suggested mediators were intended to be neutral players effecting a negotiated compromise and violence could never be negotiable. Furthermore, it was stated that the notion of mediation presupposed some degree of power equality between parties, which was not present where violence and abuse existed in an intimate relationship.

Another submission suggested that mediation and restorative justice were two separate forms of dispute resolution with different theoretical underpinnings. Mediation was an individualised process, which involved reaching a mediated agreement between two immediate parties. Restorative justice on the other hand emphasized consensus involving a community, rather than a single representative (judge/mediator) making or facilitating a decision. Following a similar line, one submission strongly opposed any suggestion of mediation:

Mediation, by definition, involves give and take by the parties in finding a solution which is acceptable to both.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

We do not believe that it is appropriate for victims to be required to bargain with the offender. The process of restorative justice is aimed at restoring the victim. (Wellington Community Law Centre, 94)

Combination of approaches

Twenty-six submissions favoured a combination of approaches. Some chose victim-offender mediation as their first preference but thought that conferencing should also be provided for cases where there was no victim, or the victim was unwilling to participate. Others believed that the most appropriate approach needed to be determined on an individual case basis:

The type of practice should be flexible and depend upon the wishes of the participants, the circumstances of the offending and the social/cultural environment of the restorative process. Therefore there should be no fixed restorative justice process and diversity should be seen as its strength. (NZ Prisoners' Aid & Rehabilitation Society, 68)

Status of Mediated Agreements

Involvement of the court

Seventeen submissions supported the option that elements of the mediated agreement should be undertaken at the direction of the court, so that the agreement would have the status of a court order. Others saw agreements being registered or enforced through the court, or the court system as the fall-back position when agreements failed. Another submission referred to agreements being completed "in the shadow of the law".

One submission suggested:

A private agreement between the victim and offender lacks accountability to the direct parties and their communities. We prefer a system similar to youth family group conferences where the "sentence" or "outcome" of the conference would be endorsed by Judges specially licensed to preside over restorative justice outcomes. These judicial officers would need to be specially trained and aware of underlying intent and principles of restorative justice processes. They would need to provide clear reasons if any or all elements of case conference agreements could not be endorsed. (Carbonatto, Thorburn & Pratt, 62)

Contract between victim and offender

Two submissions proposed that elements of any mediated agreement should be in the form of a contract between the victim and offender. The contents of this agreement could be reported to the court or the case could be referred back to the court if the agreement was not honoured.

Hybrid approach

Some support was expressed for the hybrid approach - seven submissions considered that elements of any agreement which were sentences under the Criminal Justice Act 1985 should be undertaken at the direction of the court with other elements as a private agreement between the victim and offender.

Monitoring of Mediated Agreements

Public officials

Twelve submissions believed that public officials should be responsible for monitoring and enforcing mediated agreements. Probation officers, court officials and the police were commonly envisaged as undertaking this responsibility. One submission envisaged the involvement of a new government service.

Some comments included:

Monitoring and follow-up should be done by the co-ordinating state agency. This is necessary to ensure sentences/reparations are in fact completed, without over-burdening already under-resourced community groups. (Auckland Unemployed Workers Rights Centre, 33)

We suggest that a probation officer or qualified person from the Justice Department be responsible for convening the community group conference, and for following the case through to ensure that decisions are acted upon. Professional supervision of the process is needed, rather than leaving it to voluntary persons and groups. (St Luke's Union Parish, 38)

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

Agreements may involve the payment of money or performance of work and the Committee regards formal sanction and follow up as essential to ensure public confidence in the system. Further, follow up is seen as an integral part of the State's duty to prosecute criminal behaviour and protect the public. It should not therefore be left to either the victim or private (voluntary) agencies. (NZ Law Society, 67)

Combination of state and other parties

Six submissions supported the monitoring and enforcement of agreements being shared between the state and other parties, or subject to some form of optional arrangement. In most cases, the other party was the agency which had mediated the agreement. However, one submission envisaged the involvement of "approved and accredited mentor type people from the community".

Community

Eight submissions envisaged that the agency which had facilitated the agreement would be responsible for its monitoring and enforcement. In the majority of cases these submissions had earlier suggested that such services should be delivered by community organisations or individuals.

Two submissions referred to specially appointed district committees or community boards undertaking this role, while a further two saw this as the responsibility of the victim and offender and their families and friends.

7.5. Restorative Justice – 1996⁵⁶

There is a **range of restorative programmes** operating internationally and these are now described.

Victim-offender reconciliation programmes [United States and Canada]:

The Victim-Offender Reconciliation Program (VORP) concept originated in Kitchener, Ontario in 1974 as a joint project of the Waterloo Region Probation Department's volunteer programme and the Mennonite Central Committee, Ontario. By 1990, of the 100 programmes in the United States involving victim-offender mediation about 60 could be traced directly to the VORP tradition. Since 1989, programmes formed under this model have tended to call themselves victim-offender mediation programmes. VORP are community-initiated programmes, they seek to mediate between the victim and the offender and are often church-based. Although they may employ co-ordinators, most of the mediation is done by trained volunteers.

Referrals come mainly from the courts and probation services. Co-ordinators record and screen a referred case for appropriateness then pass it to a volunteer. The volunteer contacts and meets with the offender and victim separately and, assuming that both agree to proceed, makes arrangements for the VORP meeting. About 50-60% of referred cases move to a victim-offender meeting. Meetings are held in neutral places such as the VORP office, a church or school. Meetings seek to review the facts, provide for the expression of feelings and discuss an agreement. Care is taken to give all parties a chance to tell their story. Following the mediation a report is prepared advising whether agreement was reached, the details of any agreement and any other matters the mediator considers relevant (Stutzman Amstutz & Zehr 1990; Zehr, 1990b).

Victim-offender mediation programmes [England and Australia]: Programmes of this nature tend to be referred to as reparation schemes and there are two general types.

In the first, victim-offender mediation is used in cases where the offender has been cautioned instead of prosecuted or where that course of action is being considered. Use is often restricted to juveniles and schemes are generally agency-based or administered, and involve collaboration between police, probation and social service departments. Most referrals are made by the police. In the English schemes about three hours is spent per case negotiating reparation agreements and most of this is spent with the offender. Meetings between victim and offender are offered in about 70% of cases. Where they occur, they typically take less than an hour,

⁵⁶ New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Activities/Services/Approaches

and involve single victims and offenders, although occasionally the parent of an offender or a relative of the victim may also be involved.

The second type of scheme uses victim-offender mediation for cases proceeding through the court process. This process occurs between conviction and sentence although a small number of defendants are involved prior to conviction, but after an admission of guilt. Many of the schemes are either probation service initiatives or are administered by probation with an advisory group of court users and voluntary organisation representatives. Some schemes are run by voluntary groups and a number, including the government agency schemes, use volunteers to conduct the mediations. Referrals are from a range of sources, including defence solicitors, probation officers and magistrates. In the English schemes between three to seven hours per case is spent in negotiating with the parties prior to any meeting, a direct meeting is offered in about 85% of the cases and actually occurs in 34% of cases referred.

Parties other than the victim and the offender are seldom present at a mediation meeting which usually lasts between 30 minutes and an hour (Marshall & Merry, 1990).

Western Australia additionally operates a protective mediation service through which violent offenders can negotiate with the victim while still in custody, or on their release. The programme is administered by the Department of Corrective Services and negotiations are normally carried out through shuttle mediation (the mediator acting as an intermediary passing messages between parties who do not communicate directly) or through telephone conferencing.

In New Zealand, the administration of the sentence of reparation, which can be ordered by the court (see paragraph 3.3.3), provides in theory for the victim and offender to meet in the presence of a probation officer (Department of Justice: 1987). This option is not utilised much for a variety of reasons - a recent report indicated that face-to-face meetings occurred in only 4% of cases referred for reparation reports (Jervis, 1995).

Family/Community Group Conferencing: In New Zealand, the youth justice system has adopted the family group conference as its central focus for dealing with juvenile offenders. This is described more fully in paragraph 3.2.

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).

Reintegrative Shaming: John Braithwaite (1989; 1993; Braithwaite & Mugford, 1994) has proposed a theory of reintegrative shaming to describe how conferencing models may contribute to reducing offending.

Reintegrative shaming requires that an offender is involved in a group process with those interested in or affected by the offence, and persons likely to have an emotional influence on that offender. A conference might include the offender, supporters and family of the offender, the victim(s) and their supporters, community representatives, the police, and a co-ordinator.

The relationship of respect and affection between the offender and his or her family and friends is said to promote a sense of shame in the offender for his or her actions, but the supporters also provide affirmation of the non-criminal aspects of the offender so that the experience is reintegrative rather than degrading.

Victims are also encouraged to seek resolution of their own interests during the process. The presence of the victim, however, also plays an important role in confronting the offender with their crime in order to precipitate shame. Although an offender may be able to insulate themselves from the statements of a victim who is a stranger, they are less likely to be able to cut themselves off emotionally from the impact of this on their parents or friends. According to Braithwaite (cited in Findlay, 1994: 36) :

Research Framework for a Review of Community Justice in Yukon

Community Justice - Activities/Services/Approaches

Shame is more deterring when administered by persons who continue to be of importance to us; when we become outcasts we can reject our rejecters and the shame no longer matters to us.

Leibrich (1995) observes that the experience of some forms of shame may challenge an offender's personal morality, and consequently affect their attitude to similar future offending.

Braithwaite's model (Braithwaite & Mugford, 1994: 142) proposes that :

..reintegration ceremonies are about the sequence disapproval - nondegradation - inclusion. In a reintegration ceremony, disapproval of a bad act is communicated while sustaining the identity of the actor as good. Shame is transmitted through a continuum of respect for the wrongdoer. Repair work is directed at ensuring that a deviant identity (one of the actor's multiple identities) does not become a master status trait that overwhelms other identities.

The offender's positive attributes, such as family member, student or promising sportsperson, are emphasised to avoid permanent and damaging labels such as delinquent or offender which might isolate the person. Reintegrative shaming aims to have the offender appreciate the effect of their actions and take responsibility for them, while strengthening the social controls and relationships likely to promote good citizenship.

Range of restorative initiatives: Marshall (1995) identifies a range of initiatives that also contribute to the restorative justice movement. These include:

- Reparation schemes;
- The use of mediation between offenders and their own families or communities to improve social integration and support, or to heal serious rifts;
- General community mediation and dispute resolution services;
- Conflict resolution training;
- Providing mediation to respond to or resolve public order and other major social conflicts;
- Training in handling violence constructively (both one's own and other's violence); and
- Prejudice reduction workshops.

Type of Approach

- What type of restorative practice involving mediated agreements is most suited for use with New Zealand adult offenders:
 - Victim-offender mediation ?
 - Family group conferences ?
 - Community group conferences ?
 - Some other type ? (please provide details)
- **Mediation**, for which there is an extensive and tested body of practice, is a core technique of restorative justice.
 - However, the choice of a particular mediation or practice model for application to victims and offenders influences both the appropriateness of the process and the potential of agreements.
 - There appear to be two general types of restorative practice involving mediated agreements:

- victim-offender mediation; (see chapter on Victim Offender Mediation -VOM)
 - conferencing. (see chapter on Conferencing)
-

7.6. Putting Aboriginal Justice Devolution Into Practice-1995 ⁵⁷

Alternative Models of Justice

- The Workshop covered case studies in six countries (Canada, the United States, Papua New Guinea, New Zealand, Australia and Denmark).
- Some case studies were project-specific while others referred to national or territorial/province-wide initiatives.
- The topics ranged from a description of local involvement in legal policy and justice delivery in the whole territory of Greenland, to the consultation process in Aboriginal communities in the province of Quebec, to descriptions of community-based projects in relatively self-contained communities of less than 1500 people.
- Some focused on one type of offending syndrome (e.g. sexual abuse or family violence); others referred to the full administration of criminal justice.
- Some of the initiatives are applicable only to Aboriginal peoples or Aboriginal communities, while others, such as the New Zealand Children, Young Persons and Families Act, are for general application.
- The presentation on Papua New Guinea provided an example from a developing country; the New Zealand presentation gave an example that worked in urban and rural areas alike.
- The case studies provided many examples of communities taking steps towards healing and harmony. ⁵⁸
- A perusal of the examples across the six countries cannot fail to note the commonality in the values on which the devolution initiatives are base and the futility of a strictly punitive approach.

⁵⁷ 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>

⁵⁸ *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>