

RESTORATIVE JUSTICE FOR POLICE Foundations for Change

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WHY SHOULD POLICE PAY ATTENTION TO RESTORATIVE JUSTICE?

Principles of restorative justice provide a foundation for change

There seems to be a lot known about what doesn't work with young offenders. Regrettably, not a lot has been written about what does. *Why?* Probably because there are very few examples of good models of practice to suggest that there is anything new on the horizon. The increasing interest in restorative justice might change this. Or is this yet another false dawn? And there is no shortage of critics who believe this to be so. Cunneen & White¹ For example, view family conferencing as the current fad, identifying cultural differences [between New Zealand Maori communities and others] as too significant to allow this experience to be effectively replicated. Bargen² On the other hand, is highly critical of the Wagga Wagga [Australian police] model as it places young people in a less than satisfactory relationship with police. Most debate has had a limited focus, and [it] fails to examine the fundamental premises on which restorative justice philosophy and processes are being practised.

Since 1974, when the first [designated restorative justice] victim/offender intervention was used in Kitchener (Ontario), there has been a range of similar programs attempted in North America and United Kingdom. Dignan³ described the 1980s as a decade of diversion for young offenders. This period also saw increasing involvement of victims in a variety of juvenile and adult schemes. However, Davis⁴ found that victims did not fare all that well. Up until 1989, and the introduction of *The [New Zealand] Children, Young Persons and their Families Act*, most attempts at restorative justice victim/offender programs were not incorporated within formal Criminal Justice systems. With very few exceptions many programs have been discontinued or those still operating, do so for low level offences and in themselves are not likely to influence change in criminal justice systems.

What can be made of this? Why is it so difficult to bring about some change?

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Making Sense of Restorative Justice

Restorative Justice has been described in many different ways, but some consensus appears on two fundamental ideas: It is harm-focused; and it promotes the engagement of an enlarged set of stakeholders⁵.

Restorative justice views crime as harm done to people and communities. It has a strong emphasis on offenders being made to be accountable and accepting responsibility [to those who have been harmed]. This is perhaps better understood when contrasted with our present criminal justice system where crime is seen as an offence against the state, and accountability [and responsibility] is largely about punishments and sanctions.

The idea of involving those directly affected [harmed] gives meaning to the first principle [of being harm-focused]. This is clearly articulated by Zehr⁶ who sees the need for engagement *in order to identify obligations, to meet needs and to promote healing in contrast with retributive justice where the aim is to establish blame (guilt) and administer pain (punishment).*

Rationale for Change

Presently, justice systems throughout most countries of the world are viewed as totally unsatisfactory (or even dangerous) to those they attempt to assist or serve. Retributive justice is inefficient and its bureaucracies are becoming increasingly expensive to maintain. The need to change is without question. How to make changes that are meaningful which can make a difference in the lives of people who are involved becomes a difficult challenge. It is however one that must be faced. There are a number of countries (from my perspective) better placed than other countries to begin this process.

AN INTEGRATED APPROACH

Does It Happen Now?

The present system of justice in most western legal justice systems, developed over time. The present structure has not changed from its original form with police, courts and corrections. It has largely been modeled on the early English systems of common law and parliamentary processes. Custom, practice and precedent underpin its guiding principles. Changes have related to the provision of support and other administrative services to improve the overall efficiency of the system. Does this constitute an integrated system or merely a sequential and procedural process? I suspect the latter.

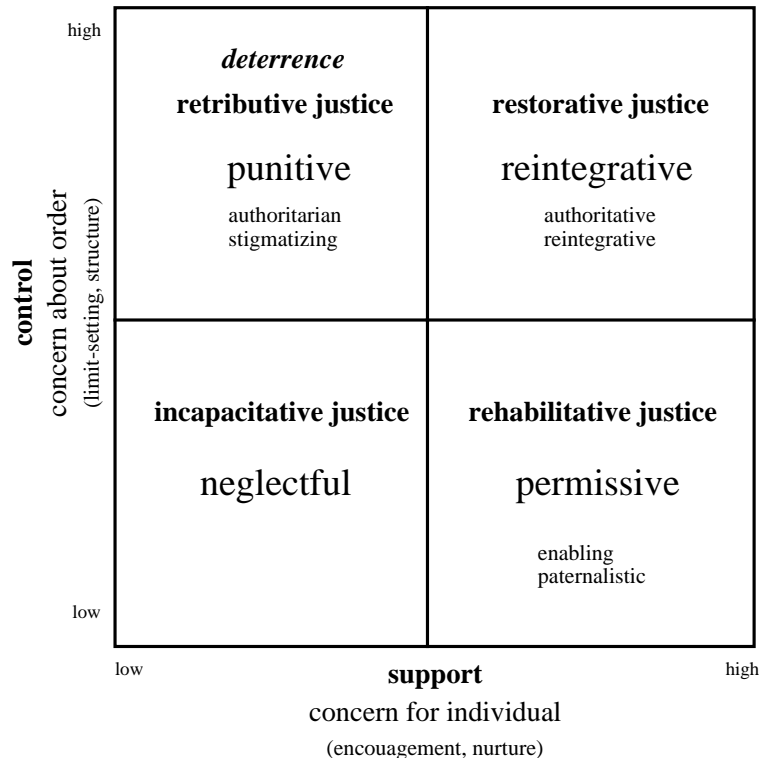
The social welfare/missive approach (lower right of Figure 2) is comprised of low control and high support a scarcity of limit-setting and an abundance of nurturing and services. Opposite missive (upper left of Figure 2) is the punitive (or retributive) approach, high on control and low on support. Our policies toward offending young people have increasingly embraced the punitive approach, suspending and expelling more students and imprisoning more citizens than ever before. The third approach, when there is an absence of both limit-setting and nurturing, is neglectful (lower left of Figure 2). Failure to provide EITHER meaningful consequences or relevant social service intervention is probably the most common state of justice delivery in most countries of the world.

The fourth possibility is restorative (upper right of Figure 2), the approach to social control that brings us all together at this conference. Employing both high control and high support, the restorative approach confronts and disapproves of wrongdoing while supporting and valuing the intrinsic worth of the wrongdoer.

A few key words NOT , FOR, TO and WITH helps to clarify these approaches. If we were neglectful toward offenders, we would NOT do anything in response to their inappropriate behavior. If missive, we would do everything FOR them and ask little in return. If punitive, we would respond by doing things TO them. But responding in a restorative manner, we do things WITH them and involve them directly in the process. A critical element of the restorative approach is that, whenever possible, WITH also includes victims, family, friends and community those who been affected by the offender s behavior.

If the overriding rationale for the justice system is to provide justice for all, with a particular emphasis on stopping reoffending by changing behaviour, it is not being achieved, and will never be achieved whilst we continue to operate within our present systems of justice. To make a difference, a common phi-

(Figure 2: Social Control Window)



losophy must firstly be understood, and then reflected in our practice at all points of our criminal justice system. Even where individual agencies promote new initiatives, the difference they can make will always be marginal as most agencies operate in isolation, or in a way that has little potential to influence or promote the significant change that is needed.

What is needed?

I am not convinced that either the prevailing justice or welfare philosophies contribute towards the ideal of just outcomes for those who are involved in the justice system. In asking the question, what is it we want to achieve?, most respond satisfaction for everyone affected . What does this look like? Sadly a far cry where were we are now.

In detailing what I think are ideal outcomes from any justice system, the following points would come to mind:

- ¥ a justice system which has an integrity that our society has confidence in - this means a system which has just outcomes and adds to societies sense of safety.
- ¥ a justice system that provides opportunities for offenders to atone for their actions or behaviour - this means a system that ensure that offenders fully understand the harm and damage they have caused, and ensures that they maintain a sense of connectedness with their communities.
- ¥ a justice system that allow the offenders families and communities to participate in a constructive and positive way that allow real opportunities for dealing with their issues and accountabilitys.
- ¥ a justice system that ensures that victims (families and significant others) are given an opportunity to be recognised and an input in what is needed to repair the harm.
- a justice system that attempts to deal with difficulties as close as possible to the affected communities, where the emphasis in upon restoring the balance and maintaining cohesion.

BRIEF HISTORY OF THE AUSTRALIAN MODEL

Developed in 1991 in Wagga Wagga (NSW) by police, the model drew initially upon the practice of the New Zealand family group conference. However, within two years, its practice was underpinned by John Braithwaites sociological theory of reintegrative shaming⁷ and Don Nathanson psychological theory of affects⁸ .

In the first two years of piloting conferencing in Wagga Wagga, there were some very encouraging results achieved: 50% reduction in the number of offender before the court compared with the previous two years; a notional reduction of around 40% in recidivism compared with the previous two years⁹; victims participated in every conference; victim satisfaction was extremely high; compliance with conference agreements by offenders (under 18 years) was 93%; police and community satisfaction was extremely high.

Since then there has been national and international interest which has resulted in the following developments:

POLICE JURISDICTIONS

Australia

Australian Capital Territory (ACT); Queensland; Tasmania; New South Wales; and Northern Territory.

With the exception of the ACT, the model is used for juvenile offenders under 18 years. The ACT model is being used for most offence categories for juvenile and adult offenders - presently there are 100 police trained as conference coordinators and this approach is a major policing strategy. The largest criminological study ever undertaken in Australia (cost \$2.4 million over 4 years) is evaluating the effectiveness of conferencing in two categories: drink and drive offences; and juvenile crime. This research is being conducted by the Australian National University (ANU) and the main researchers are Professor Larry Sherman from Maryland University (USA) and Professor John Braithwaite from ANU (Australia).

Conferencing has been adopted by the Australian Police Commissioners and Police Ministers as a major policing strategy in 1994, and recently, it was affirmed at the 1995 Australian Crime Conference as a significant intervention for victims of crime.

United States

The model was first introduced into North America in Anoka County Police in Minneapolis (Minnesota) in July 1994. Since then approximately 200 police from a number of state, county and sheriff jurisdictions were trained in 1995 (March and October) have introduced the model in varying degrees. Even within the limited timeframe, two significant developments have taken place:

¥Anoka County Police have received 3 prestigious awards for innovation in policing (introduction of the Wagga Wagga model)

- Webber Seavey Award - quality in law enforcement October 1995
- State of Minnesota, Lieutenant Governor Award
- Minnesota Association of Metropolitan Municipalities Peacemaker Award.

¥ Bethlehem Police in Pennsylvania State recently had 20 police trained as conference coordinators and were awarded a National Institute of Justice (NIJ) research grant (\$250,000) to evaluate the introduction of diversionary conferences.

Other Countries

Interest in our conference model has come from:

- England - Thames Valley, London Metropolitan and Kent Police Services.
- Canada - Ottawa Police and Toronto Metropolitan Police.

EDUCATIONAL INSTITUTIONS

Australia

The model was formally adapted for use in schools (called Community Accountability Conferences -CAC s) in March 1994 in Maroochydore High School (Queensland State) as part of the whole school approach to behaviour management . A formal trial commenced in that education region in June 1995 to evaluate conferencing for use in drug and violence related incidents. The following states have introduced CAC s:

- ¥ Queensland
- ¥ New South Wales
- ¥ Victoria
- ¥ Tasmania
- ¥ Australian Capital Territory

United States

Approximately 300 teachers, psychologists, school counselors and administrators have been trained during 1995. A number of school areas in Pennsylvania and Minnesota have begun to use the model for serious school based incidents - mainly drugs and violence.

Canada

Approximately 10 school based personnel have been trained in 1995 but there has been limited feedback on whether the model is being used.

COURT AND PROBATION SERVICES

Australia

The South Australian courts began using conferencing in 1992 following the introduction of special legislation for dealing with young offenders. This is the only court jurisdiction in Australia using conferencing. The model was based on the Wagga Wagga approach, and coordinator training was given by Senior Sergeant Terry O Connell and John McDonald (NSW).

Other Countries

There are no other countries presently using the Wagga Wagga model in court jurisdictions. There are however a number of agencies/services which are closely aligned to the courts that have begun to use conferencing for young offenders in post-court situations. Approximately 30 personnel have been trained in the USA but the only jurisdiction we are aware of using conferencing in a formal sense is Bucks County (Pennsylvania) Juvenile Court, where probation officers use conferencing as a pre and postcourt option.

PROPOSING AN INTEGRATED MODEL

The ideal model needs a common philosophy which is reflected in every practice, in all jurisdictions. Restorative justice provides a philosophical framework that fully satisfies what an ideal justice system seeks to achieve. Family group conferencing provides the ideal model of practice to achieve these outcomes. And the Wagga Wagga (Australian) model of family conferencing has the flexibility and adaptability which will satisfy diversity of applications needed for all jurisdictions.¹⁰

Need for domestic legislation?

Unlike the New Zealand family group conference model, the Wagga Wagga model has not required legislation¹¹. This is the strength of the model although there are often a number of concerns raised about the lack of protection. The areas of policing and courts draw most discussion with issues ranging from concern about rights for the offenders to need for safeguards for the coordinators. Our experience with many of these concerns is that they are able to be satisfied. Since 1991 with in excess of 2000 conferences being conducted, to our knowledge there has not been a problem that resulted from a lack of a legislative framework.

The New Zealand experience has shown that where legislation is introduced, without the benefit of a properly conducted pilot, there are likely to be problems. Although many of the conference experiences there are positive, there are equally many negative victim experiences. Some of the more serious difficulties involve re-offenders, as well as the bureaucratic procedures which make administration of the legislation somewhat cumbersome. In addition, the New Zealand legislation does not enjoy wide support from police. It should be noted that the New Zealand model is used exclusively for young offenders under 17 years.

As previously mentioned, the strength of the Wagga Wagga model is its universality, flexibility and the fact that it can be introduced without legislation. Introduction of legislation should be resisted strongly, and then only after an exhaustive trial. Sufficient discretion and flexibility exists in every jurisdiction to accommodate a generic conference model with limited changes. As such, implementation of the model in various jurisdictions can begin as soon as the appropriate infrastructure is in place, without being constrained by the uncertainty and restrictions of the legislative processes.

Is conferencing the same as mediation?

No it is not, although, mediation shares some of the common conference elements. The significant difference is that conference practices are informed by a sociological and psychological theory. Mediation is largely guided by principles, and many of which conflict with effective conference practices - order of debriefing participants; the didactic nature of mediation which limits the number of participants; reliance on ground rules in mediation; mediation language refers to conflict, compromise and often, no blame.

Conferencing on the other hand, seeks to address the collateral harm by involving everyone who is affected by an incident; it seeks to maximise the emotionality of participants; it is premised on a need to repair the harm and requires participants to accept responsibility and acknowledge harm; and it seeks to strengthen communities through involvement in the resolution.

The model has been rigorously tested by mediators, academics and professionals within Australia, North America and the United Kingdom. It is pleasing to note that the model has been universally acclaimed. The only criticism relates to what are described as jurisdictional or turf issues, i.e. should police or others coordinate conferences. This criticism seems to be raised mainly in Australia and England.

Facilitator Training

The strength of the Wagga Wagga model is its adaptability for use in any jurisdiction. The training implication of the model is that a generic approach can be taken with training, with the various jurisdictional requirements only constituting a small part of training program.

Training in the Wagga Wagga model has at this stage, been provided by the four Australians mentioned earlier. Evaluations of this training in all jurisdictions (and countries) has been accorded the highest possible rating. It is common place to hear participants refer to the training as the best they have ever undertaken - bearing in mind that the majority of participants are experienced professionals¹².

A basic coordinator training program takes a minimum of 3 days. Each participant should have achieved a sound understanding of the theory and practice of conferencing from this training, as well as witnessing a role-play and participating in selecting/preparing matters suitable for conferencing (in their own jurisdiction). A comprehensive training manual (just published in the USA by Real Justice) is provided to course participants, and this will provide a sound explanation of what is required to become a good conference coordinator. Ideally, a further follow-up takes place for those trained coordinators after they have experienced coordinating a number of conferences. This follow-up should take place within 6 months of the initial training.

Accreditation normally involves a coordinating ten conferences and being supervised during one of the last three conferences, by an experienced trainer. Unlike many other programs where a person who is trained can then become a trainer (with appropriate tuition), conference trainers need to have coordinated or observed many conferences to become competent trainers. It is not possible to be an accredited trainer until you have an extensive experience of actually running conferences, and for a range of different incidents.

POLICE

The initial introduction of Wagga Wagga model was managed within the Police Commissioner's Instruction for cautioning young offenders. An important part of the police officer's role is constabulary discretion. Police use this discretion when deciding whether to proceed formally against offenders. Informal proceedings involve a warning or no action. Formal proceedings often involve formal cau-

tions or more generally, use of courts. The Wagga Wagga model was introduced under the auspices of an enhanced formal caution with the inclusion of the offenders families, the victim and the victims families. However, a number of issues have arisen which have resulted in variations in procedures in some jurisdictions.

These briefly fall into the following categories:

- ¥ enforceability of conference agreement.
- ¥ confidentiality and privacy.
- ¥ failure to obtain a conference agreement.
- ¥ rights and legal safeguards for offenders.

Enforceability of conference agreements

Although compliance with conference agreements was approximately 93% in the first two years of the Wagga Wagga pilot, there was still criticism that there was no means of enforcing the agreement. It is argued that the context in which agreements are constructed within the conference makes the need for legislation redundant, as court based compliance for juvenile crime is generally below 50% in most jurisdictions. Unless the issue is specially addressed within the conference preamble, enforceability is limited even though it has been argued that police use of discretion can be made conditional. A summary of the main issues which relate to concerns are:

- ¥ victims are able to take civil action regardless of the conference or conference outcomes.
- ¥ use of police discretion deals is addresses the issue of disposition and outcomes.
- ¥ use of police discretion is not negated because victims refuse to participate or demand that offenders be charged.
- ¥ a decision to refer a matter to court because of non-compliance, can be seen as a double jeopardy situation where police used their discretion to refer the mater to a family conference.
- ¥ where the conference preamble includes a clause which specifically address non-compliance, enforceability remains questionable.

Confidentiality and Privacy

These two issues raise many concerns. The main legal objection to conferencing is the possibility that information obtained in a conference could be used against offenders in other jurisdictions. Whilst this has not happened to date, there are a number of fundamental issues which in our view precludes such an action:

¥ the context in which the information is obtained.

¥ the conference process requires open and frank participation, and as such, it is highly unlikely that any information would be admissible in other jurisdictions.

¥ disclosures of incriminating information would be admissible unless the proper legal procedures of caution and rights, is fully complied with.

¥ most jurisdictions have mediation legislation which specifically excludes the use of information, and conferences therefore could arguably be covered by this general exemption.

On the privacy issue, it is not possible to enforce without legislation. Nor is it desirable to require complete compliance by conference participants as the strong feature of the conference experience is that participants are likely to gain a deal of personal satisfaction, and will want to share this with others. It is not often that good news follows a crime, but this is more the norm than the exception when matters are dealt with by a conference. Participants are asked to respect the more personal details discussed in a conference, but are encouraged to talk within their communities about the positive experience of being involved in a conference.

Failure to reach a conference agreement

Very few conferences fail to reach some agreement. In the event that this happens, the matter can be referred to the court or alternatively, no further action taken. The court would normally be the preferred option.

Rights and Legal Safeguards for Offenders

The issue of offender rights in conferences is important. Offender participation in a conference is subject to a clear admission by the offender to an offence. This is obtained prior to a decision being made about the formal disposition of the matter. This requires police to undertake correct legal processes when the offender's statement of admission is made in the presence of legal representatives, parents or other nominated persons. To overcome the concern about police inducing an admission by offering an offender a conference in lieu of court, decisions about disposition of matters should be made within 7 days after the investigation is completed (this is covered in greater detail in the section, Police Procedures).

A further safeguard is built into all conferences where in the conference introduction, the conference coordinator will recognise the offender's rights. Briefly, the coordinator will formally address this issue in the following terms :

I am obliged to inform you that notwithstanding the fact that you have admitted to your involvement in this matter, you may at any stage leave this conference if you wish. However, if you chose to do so, the matter is likely to be referred to court for determination. Do you understand that?

The offender's legal advocate is allowed to attend the conference, but only in a monitoring and non-participatory capacity. Other concerns about legal processes, such as the offender admitting to the correct offence category and so on, are best resolved by the fact that where police are involved conferences tend to be diversionary and this does not involve offenders being formally charged. In the event that the offender was invited to a conference for an incorrect offence category, it could not be argued that the offender is disadvantaged in any way as the conference process deals with the truth of what has happened, and is not overly concerned about legal technicalities.

Further, the conference process is highly accountable, as it put police investigation and response to the incident under scrutiny. Any suggestion of police impropriety is more likely to be disclosed in a conference, than in any other intervention such as a formal caution or referral to a court.

COURTS

Most courts have a level of discretion that would allow conferences, without the need to change the law. Pre-court conferences could result from a court referring the matter back to police to deal with (by way of conference) or alternatively, to trained conference coordinators from the courts, justice departments or communities. Alternatively, the court could refer the matter to a conference as part of its formal process, and simply ratify any conference agreement.

IMPLIMENTING AN INTEGRATED MODEL

Selecting a Good Conference Pilot Area

When looking at a what constitutes a good conference pilot area, it is important to describe the features which are essential. Bearing in mind, our discussion is aimed at piloting an integrated approach to the criminal justice system, which requires every part of this system to adopt a common philosophy and practices. This is an ambition pilot on any measure, and one that has not been previously attempted across so many different jurisdictions. Essential therefore is:

- ☒ the area suggested is of sufficient size to ensure that all jurisdictions have a real involvement.
- ☒ the community in the area would be fully supportive of any pilot.
- ☒ the community leaders are fully supportive and demonstrate such support in a public manner
- ☒ the community is prepared to be involved in the pilot, at every level.
- ☒ the senior administrators of the various jurisdictions are personally committed to supporting the pilot.
- ☒ each jurisdiction is committed to support the pilot at a planning, administrative and operational level.
- ☒ provincial and federal governments are committed to support the pilot in a similar way
- ☒ the pilot must be administered by officials who have sufficient standing and autonomy to ensure its integrity.

This is manageable given that the various phases are thought through. Sequentially, they might look like this:

- ☒ planing
- ☒ development
- ☒ education
- ☒ training
- ☒ implementation
- ☒ monitoring
- ☒ evaluation

Planning

How do you take a concept, develop it into an idea and then make it happen? The key must be to attract capable and component individuals, who are attracted to the concept of family conferencing, and what it has to offer communities. The planing phase needs to be broken down into its constituent parts:

- ☒ identify a senior government minister who is prepared to become the sponsor for the pilot.
- ☒ full brief the minister and his/her staff - invite ideas and suggests on who might assist the pilot.
- ☒ identify people who have the inspiration, enthusiasm, intellectual and organisational capacity to be the impetus for the pilot.
- ☒ contact each personally (with a supporting letter from the government minister) and share with them broadly the vision for conferencing - they should be provided with background information and idea of the pilot.
- ☒ invite these individuals to a forum (preferably over two days) where a full and frank discussion can take place.
- ☒ form a steering committee and allocate various responsibilities to those who want to be involved.

Planing for this meeting must be thorough as you will need to produce:

- ☒ a blue print for the pilot.
- ☒ clearly identify all the main agencies and groups.
- ☒ provide background information on each.
- ☒ provide a proposed timeframe.
- ☒ produce discussion or position papers on each phase, such as: public education, how to involve agencies, training, implementation, monitoring, evaluation, administration and so on.

All of this is designed to provide a clear and practical framework for the pilot to happen, and it should not be seen as pre-empting any decision making.

Development

Having established the steering committee , its tasks should be obvious and immediate, provide a strategic plan for the pilot to happen. This will include:

- ☒ contacting all agencies involved.
- ☒ conduct an information session with all the senior administrators or department heads.
- ☒ conduct information workshops for every agency to cover the more details aspects of the pilot.
- ☒ request each agency establish a steering committee and nominate liaison people.
- ☒ request each agency begin to develop their own strategic plan.

Education

This will need to take place at a number of levels, and in a number of different forms. Broadly, education/information needs to be provided at:

- ☒ agency or bureaucratic level.
- ☒ community level.

Without going into great details, the educational tasks will include providing information seminars, workshops, background material, videos and brochures specific to each agency and so on.

Training

As previously mentioned, standard training can be given to most agencies because of the generic nature of the model. It is imperative that anyone who intends participating in the pilot as a conference coordinator, must receive appropriate training. The following suggestions may assist:

- ☒ ideal group size for training is 20 to 30 for a minimum of 3 -5 days.
- ☒ combine training to include a number of agencies - this is important in cultivating a better working relationship, and importantly, provides a model for maximising the outcomes through cooperation.
- ☒ need to involve administrators in the initial stages of every training session.
- ☒ standard training material can be used for all training.
- ☒ it provides a pool of coordinators from a number of jurisdictions which can assist maintain the integrity of the models, as well as providing a source of potential trainers.
- ☒ will provide a new perspective (rationale) to question the effectiveness of many the historical or customary practices used within every jurisdiction.

Implementation

This question can be left with individual jurisdiction. Once coordinators are trained, given that the jurisdiction's strategic plan has been finalised, conferencing can begin immediately without the need for a common commencement date. It will be important to have a general lead time to allow experimentation to sort out any difficulties prior to the official pilot period.

Monitoring

This should take place at two levels. Firstly, at the jurisdictional level, a steering committee should be tasked to meet periodically to monitor the progress of conferencing. This group should receive status reports on the number, type and outcomes of conferences convened. It should identify any difficulties. Secondly, each jurisdiction should provide periodic progress reports to the pilot management group, via the liaison officers. This group would in turn, provide pilot progress reports to the senior government minister who is sponsoring the pilot.

In addition, there should be an advisory group who has a number of functions/role:

- ☒ provide external expert support and advice for each jurisdiction in all phases of the pilot.
- ☒ provide immediate assistance/advice to coordinators with any aspect of conferencing.
- ☒ maintain a capacity to observe and provide feedback to coordinators on a needs basis.
- ☒ provide an audit function for quality assurance for conferences.
- ☒ have the responsibility for oversight of research and evaluation of the pilot.

Evaluation

The important question with any pilot is, did it make a difference? Measuring outcomes with so many jurisdictions involved will always be difficult, but it is possible to measure outcomes at an individual jurisdictional level, and across the system. There are a number of steps needed in the evaluation process, and the choice of measurement instruments are important if we are to make sense of what if anything has been achieved.

Step 1

Each jurisdiction must examine its activities for at least two years prior to the pilot commencing. This examination will :

- ¥ identify the statistics relating to their client group - number of cases; type; treatment; outcomes; success/failure rates.
- ¥ attempt to quantify the average time/cost of each intervention.
- ¥ attempt to measure outcomes such as satisfaction levels, recidivism, involvement of families or communities, practitioner satisfaction and so on.
- ¥ no of referrals to the next jurisdiction.

Step 2

Each jurisdiction should provide a comprehensive report on Step 1 to the management group, who should combine all of these reports to establish some clear benchmark to measure the pilot outcomes against. This will also provide a single document which allow all jurisdictions an opportunity to access their performance against one another throughout the period of the pilot. Importantly it allows for difficulties to be detected as these will be most noticeable from looking at trends and developments. The use of graphs for recording a number of individual measures together with modern statistical techniques will allow individual jurisdiction to gauge their own performance in a meaningful way.

Step 3

A number of different evaluation techniques can be also employed simultaneously to scientifically validate the effectiveness of conferencing. This research could utilise control methods or random allocation principles to provide a sound methodology for measuring outcomes.

ADAPTING AN INTEGRATED CONFERENCE MODEL FOR EACH JURISDICTION.

What Jurisdictions/Agencies Should Be Involved?

Those that come immediately to mind are:

- ☒ Schools
- ☒ Police
- ☒ Crown/prosecutions
- ☒ Courts
- ☒ Corrections

Agencies closely aligned to the above:

- ☒ juvenile/youth
- ☒ parole/probation
- ☒ community justice groups
- ☒ aboriginal interest groups

School conference model

It should come as no surprise to find a high correlation between young people whose experiences in the school setting are punctuated with poor attendance, low academic achievement, frequent suspensions and those young people who penetrate the formal justice system. They are generally the same group. Their profiles reveal difficult family and communities environments, where violence and substance abuse is common place, where education is not valued and surviving becomes often the main considerations.

Many of these young people have difficulties complying with school rules and are likely to be identified mostly for their anti-social behaviour. Yet, school is an important dimension in their lives as it provides the only constant stable environment. It provides positive social networks and experiences missing in their lives. This group however are the ones most likely to be excluded from schools, are likely to become part of a sub-cultural group, and will constitute the majority of our future criminal population.

Today the attitude towards discipline in schools is influenced significantly by the law and order agenda, which is the major issue in all western industrial countries. The need to get tough is evidenced by the move towards zero tolerance within schools. Greater emphasis is placed on tougher

sanctions such as automatic exclusions. The group most likely to be affected by this is the one I have just alluded to. Most of the sanctions for serious matters in schools are punitive, and often do not involve the families of the offenders. When families are involved, the nature of the intervention is such that it engenders inappropriate responses, as it is often seen as conflict between the school (administrator) and the family. The offenders often view this as affirming their inappropriate behaviour and learn very little from this experience.

Schools are therefore an ideal environment to begin the process of dealing more appropriately with young offenders and their families. Conferencing offers an ideal way of dealing with the collateral harm which results from unacceptable behaviour, whilst ensuring that excluding at risk young people from the school setting, becomes the last option.

Schools in the pilot should have a number of personnel trained as conference coordinators. Some of the basic ground rules which apply to conferencing in schools are:

- ✘ principals or senior administrators should not coordinate conferences.
- ✘ guidance officers or counselors should only conduct conferences where they have had no previous professional relationship with the offender/s.
- ✘ conferences should involve offenders, their families and significant others, as well as victims, victim families and various representatives of the school community (where appropriate).
- ✘ conferences should be held at the affected school if possible.
- ✘ schools should work closely with police to ensure that incidences which relate to the school, are dealt with within the school where appropriate.
- ✘ police should be encouraged to convene conferences in the school setting, for serious matters for which they (police) have responsibility.

Conferencing has the potential to impact in a number of areas that can be measured as part of the evaluation:

- ✘ reoffending
- ✘ compliance with conference agreements
- ✘ satisfaction for all participants
- ✘ empathy levels of offenders
- ✘ suspension and exclusion rates
- ✘ school climate - sense of safety

Conferences offer an effective way of dealing with most serious school based incidents. The benefits are:

- ☒ an effective response to violence in schools.
- ☒ a useful response to drug related issues.
- ☒ a time/cost effective way of dealing with multiple offenders and victims.
- ☒ shifts the focus from the school (administrators) to the harm that has resulted from inappropriate behaviour.
- ☒ increases the opportunities for retaining offenders within schools.
- ☒ provides outcomes that are more satisfying for everyone involved.

Police conference model

The key to the police model is to build in procedures which ensure (where possible) that most matters suitable for conferences, are actually referred there. To understand the significance of this, it is useful to understand how police make decisions about dispositions of matters now. Firstly, the investigating police officer has the overriding discretion on how the matter should be proceeded with, once the facts of the matter have been established. Secondly, the decision to proceed formally takes into account a number of considerations: the seriousness of the offence, the type of offence, the offender's history, victims, compensation and so on. The offender's prior offending history is a significant factor, and to that end, once an offender has a formal record (formal caution or charge) it is likely that the matter will be sent to the courts.

Secondly, because the investigating officer is vested with the decision about what should happen, it is not always possible for that officer to maintain objectivity, and therefore the potential for discriminatory practices is real. Police are often subject to criticism that in part, over representation of some minority groups in the criminal justice system, is a direct result of this discrimination. Thirdly, police view any alternative to courts as being equivalent to doing nothing and therefore are generally not supported. It is important to overcome some of these biases (realities) if a conference model is to be given a good chance of success. Otherwise the only offenders who would be referred to conferences would be first time offenders, of which 80% will not reoffend, regardless of the intervention.

The suggested procedures need to achieve two outcomes: provide an effective screening mechanism, and secondly, establish a new criteria what matter should be referred to conferences or court.

Screening mechanism

The most effective way of properly screening offenders is to take the final decision making on disposition away from the investigating officer, and give it to a group of police and community representatives. This group could form the review committee whose main function is to screen all referrals to decide how they should be proceeded with. Essentially what would happen is that once a matter has been investigated and the investigating officer decides that formal proceeding are needed, then the matter will be referred to the review committee . The three exceptions to this procedures are where the offender has committed a serious indictable offence, or in circumstances where the offender is likely to be keep in custody or will be subjected to onerous bail conditions - again this would apply only with serious matters, or the offender denies the charge.

There are a number of advantages to this approach:

- ∞ is greatly reduces the potential criticism that the offender has been coerced to admit guilt by being offered a conference as an alternate to court (the offender is told that no decision will be made on disposition until the matter has been referred to the review committee, generally within 7 days).
- ∞ it reduces the criticism that discriminatory practices have influenced the decision about disposition.
- ∞ it allows an opportunity of proper consideration as it is removed from the immediacy and context of the initial intervention.
- ∞ involves police in a more meaningful and constructive decision making role.
- ∞ it allows a problem solving approach in decision making as the involvement of police provides an good opportunity to share knowledge and insight on those community people affected.
- ∞ if provides an excellent quality control measure by identifying good and poor policing practices.
- ∞ has the potential to reduce the number of minor matters being formally dealt with as police realise every matter which be subjected to a review as part of the screening process - this reduces the risk of netwidening .
- ∞ has the potential to reduce the number of offenders referred to court.
- ∞ provides community representatives with input on disposition of matters.
- ∞ makes policing more open and accountable.
- ∞ if is likely to be a more satisfying experience for police.

Establishing a new criteria

As the conference model is not offender centred, we need to change the narrow criteria which has historically applied when making decisions about disposition of matters. Victim and community interests must be reflected in what needs to happen. There needs to be clear statement of intent in this decision making - How can we get the best possible outcome in this matter? In other words, does sending this matter to court provide the best result for everyone? This immediately challenges the longstanding practice that courts are the only option for second and subsequent offenders. We need to keep in mind that multiple offenders have one thing in common - courts don't work for them! One of the difficulties for police (and others) is the belief is that community interests are best served by putting someone who has an attitude problem or is a repeat offender before the court. We can be certain that an individual's attitude will not improve as a result, but likely, will be worse. The suggested criteria should include:

- ✕ nature and type of offence
- ✕ seriousness of offence
- ✕ whether there has been any admission
- ✕ the offender's history and background
- ✕ the offender's family and community circumstances
- ✕ the victim's circumstances
- ✕ restitution or compensation issues
- ✕ recommendation of the investigating officer
- ✕ any other relevant considerations

The screening process ensures that every possible option must be explored prior to sending a matter to court. The benefits of building in a process of checks and balances can in itself, significantly reduce the number of offenders placed before the court. The implications of this are a reduction in the work loads of courts and all those agencies which are part of the criminal justice system. The involvement of community in this process can be an important way of consolidating the notion of community policing.

WHY SHOULD RJ PAY ATTENTION TO POLICING?

Police occupy a critical role in the criminal justice system, often described as the gate keeping role. In fact, police have a greater degree of discretion, flexibility and potential to influence out-

comes in the criminal justice system, than any other group. Simply, as you move into the formal justice system, the potential to make a difference is diminished as the discretionary processes of crown, courts and corrections is somewhat more limited. Getting police to exercise their discretion today is increasing problematic and this issue is one that will be explored in some greater detail as it explains the pivotal role police will have in any pilot.

Police enjoy a unique relationship with their communities, one that is not enjoyed by other professions or groups. Regardless of the perception that individuals or groups hold about individual police officers or groups of police, it seems to not interfere with the overall perception that police by virtue of their office (function and role) command a respect and standing within communities that is constant. To that end, police are a good barometer of what communities are sensing on most issues, specifically, law and order.

Over the past decade with the enormous social change experienced by all western industrial societies, there has been significant changes in families, work and social pattern. There has been an increasing reliance by governments of every persuasion, on the law and order agenda for political ends. At the same time, policing has been placed under considerable public scrutiny and to a large extent, the political imperatives have effectively inculcated into the broader political spectrum, blurring the once clear separation of power between the executive government and the policing mandate. Policing is being redefined as a result of this intrusion towards a more reactive or law enforcement model, as the very time when the philosophy (rhetoric) of community policing is trying to take policing in the opposite direction.

In day to day policing, there is a considerable legacy associated with this redefinition and that is the increasing reluctance of police officers to take any risks, that is, use their discretion. Preferring a failsafe approach, police are increasing looking to courts, at a time when courts are demonstrably unable to cope or product outcomes that satisfy anyone. How then can we expect police to embrace (against such a backdrop) an alternative to the court process, which historically has always been available. The answer lies in providing police with a framework to make sense of why all offenders should not be sent to court. The conference model satisfies all the requirements and is one take police readily accept once they understand and experience the conference process.

Police as conference coordinators

There are significant benefits in having police trained to coordinate conferences. Again because of the unique standing police have in their communities, their (police) role in conferencing is more readily accepted than any other group¹³. Police bring the following to conferences:

☒ a sense of formality - particularly as police wear uniforms when coordinating conferences.

☒ a respect from the offender and victim communities.

☒ have a presence which symbolically is important for conference participants.

☒ a sense of safety for victims¹⁴.

☒ are well skilled at managing difficult situations, particularly where conferences involve large numbers of participants.

☒ are able to deal with conferences in an efficient and expeditious way.

☒ are more likely to maintain a clear conference focus.

The UK Case Study

Thames Valley Police Service

One of the more remarkable restorative justice developments has taken place in the United Kingdom. It is an example of how my Canadian blueprint for an integrated restorative justice approach, has in part begun to be realised. Whilst it was never envisaged that in 1994 when I first shared my experience of sharing the Wagga Wagga model with Chief Constable of Thames Valley (England) Charles Pollard, that this would ultimately influence the direction of juvenile justice in the UK in 2000, although I believed it was always possible. As a longstanding critic of criminal justice processes, Charles Pollard has consistently argued for change (unlike his peers who wanted more police powers and heavier sanctions). Convinced that police initiated restorative justice conferences were a significant and important step towards policing and criminal justice reform, in 1997 Thames Valley Police Service adopted restorative justice as a major policing strategy. Following the success of their Alysbury initiative in 1995, Thames Valley committed considerable resources to restorative justice training, experimentation and evaluation. All its staff (both police and civilian) have had some exposure to restorative justice training. Restorative practices were soon broadened to community problem solving (such as Bretch Hill¹⁵ initiative) to its use for internal grievances and workplace tensions.

The recent (March, 2000) introduction of restorative practices into the formal police complaints and discipline system by Thames Valley is the final and most significant development. Collaborating in this ambitious project is the PCA (Police Complaints Authority) and the Police Federation of England and Wales.

It aims to cascade restorative justice principles and practices to every level of its police organisation with a particular emphasis on strengthening the informal processes. This represents an unique opportunity for Thames Valley Police Service to begin modeling behaviours (internally and externally) which are genuinely consistent with its statement of values and codes of conduct. This alignment has the potential to challenge and change organisational and policing culture in a deliberate and unique¹⁶ way.

What is however, significant, is the broader influence of the Thames Valley experience. I will now briefly discuss this. Armed with early success, Chief Constable Charles Pollard began sharing this experience at a national level (with other police services and government departments). This also attracted the interest of the Home Secretary Jack Straw who visited Thames Valley to personally view police facilitated conferences. I have no doubt that this development and the inclusion of Charles Pollard on the National Youth Advisory Board, has influenced the shape of the Crime and Disorder Act 1998 which is due to be fully implemented in June 2000. This has involved a fundamental shift in philosophy from punishment and exclusion towards restorative justice principles and practices:

One of the key themes of the Crime and Disorder Act is the involvement of victims and restorative justice elements whereby offenders are required to make good, so far as it is possible, the hurt and damage caused by their crime¹⁷

In partnership with Surrey and Nottinghamshire Police Services, Thames Valley is now providing restorative justice training for YOTs (Youth Offending Teams), other government departments such as probation and parole, corrections and school education as well as other police services. For the first time, there is a shared philosophy and practices. A common currency (like the Euro dollar) has been developed. Partnership and agency collaboration has taken on a new meaning. Importantly, a young person entering the criminal justice system, will consistently experience processes which connect behaviour with consequences. To that end, the use of restorative justice practices is likely to have greater impact than the former youth justice practices because they do better at providing consistent and fairer processes¹⁸.

The significance of the role police this needs to be clearly understood. Firstly, Thames Valley police have taken a significant leadership role, advocating the use of restorative justice practices. Secondly, it is the Thames Valley Police restorative justice model which is being implemented nationally within the YOTs (Youth Offending Teams). Thirdly, the development of restorative practices by police within a broader communitarian policing philosophy provides police with a practical community policing framework, the vehicle to engage community without reliance on formal justice processes.

CONCLUSIONS

RESTORATIVE JUSTICE AS A GUIDING PHILOSOPHY

In now returning to my earlier focus on the social control window, I argue that it is the principles of restorative justice which will provide a foundation for change.

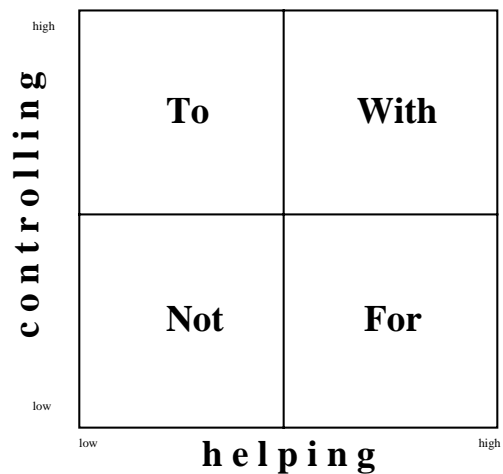
In a world racked by tensions and conflicts in which greater reliance is being placed on harsher law and order strategies, the role of police has trended strongly towards law enforcement. Perhaps this is best evidenced by the fact that my presentation is the only one at this UN Crime Congress, looking to community for the answers.

If we are to build more civil societies, the role of the state in governance (policing) must be increasingly devolved to communities. Restorative policing offers the way forward by placing criminal justice at the margins, rather than the centre of formal (state) policing. Its communitarian style focuses on building relationships and stronger communities because it regards decency and fair process as fundamental to the promotion of human dignity.

I urge you all to resist the idea that I have just undertaken a recycling exercise on community policing with the throw away line “that’s what we are already doing”. No, I am advocating policing by community in which restorative policing will need to be a prominent influence. I also urge police to take a greater community leadership role in resisting political solutions by creating opportunities for communities to solve their own problems.

Principles of restorative justice provide a foundation for change

(Figure 3: Social Control Window)



ENDNOTES

- ¹C.Cunneen & R.White (1995) *Juvenile Justice: an Australian Perspective*. Oxford University Press, Melbourne.
- ²J.Bargen (1995) 'A critical view of conferencing' in *The Australian and New Zealand Journal of Criminology*, Special Supplementary Issue.
- ³J. Dignan (1992) 'Repairing the damage: Can reparation be made to work in the service of diversion?' in *British Journal of Criminology* Volume 32 No 4.
- ⁴Davis, G., Boucherat, J., and Watson, D (1988) 'Reparation in the service of diversion: the subordination of a good idea', *Howard Journal of Penal Reform*, 29:82-100.
- ⁵Howard Zehr, *Restorative Justice: the concept*, in *Corrections Today* December 1997
- ⁶ditto
- ⁷J. Braithwaite (1989) *Crime, Shame & Reintegration*. Cambridge Press. London.
- ⁸D. Nathanson (1992) *Shame & Pride*. Norton Press
- ⁹Recidivism was not scientifically measured using control methods or random allocation, but comparing the rates of the previous two years.
- ¹⁰The New Zealand model of family conferencing is used only for young offenders under 17 years, and is largely articulated in terms of Maroi culture. This model operates within the 1989 legislation, *Children Young Persons and Their Families Act*.
- ¹¹South Australia is the only location where legislation has been used with the Wagga Wagga model.
- ¹²A recent joint presentation given to ACER (The Australian Council for Educational Research Council) at the Behaviour Problems Conference 1995, Margaret Thorsborne and Terry O'Connell received an outstanding rating from conference participants.
- ¹³Criticism of having police coordinate conferences comes mainly from professionals involved with welfare/youth agencies. The research undertaken in Wagga Wagga and Canberra indicates that this is not an issue for offenders or their families. Anecdotally, it would appear that the opposite view exists, i.e. police would be preferred over any other agency or group.
- ¹⁴Victim participation in police coordinated conferences in the first two years of the Wagga Wagga trial was 100%. In the New Zealand context, victim participation was around 40%.
- ¹⁵The Bretch Hill Initiative was evaluated by Nicola Preston in August 1999 and found impressive reductions in crime figures.
- ¹⁶For the past two years, I have managed a small unit within the New South Wales Police Service which has implemented behavioural change programs into two operational policing areas (Waratah and Shoalhaven). Its result have been very impressive with significant crime reduction, improved morale, reduction in police complaints and increased community satisfaction.
- ¹⁷Nacro Briefing Paper (1999) **YOTS and Reparation:Pointers to Good Practice**, Nacro Youth Crime Section, December
- ¹⁸Various research including RISE, Bethlehem and so on.