

Part **4**

Community Policing,

COMMUNITY JUSTICE, AND RESTORATIVE JUSTICE

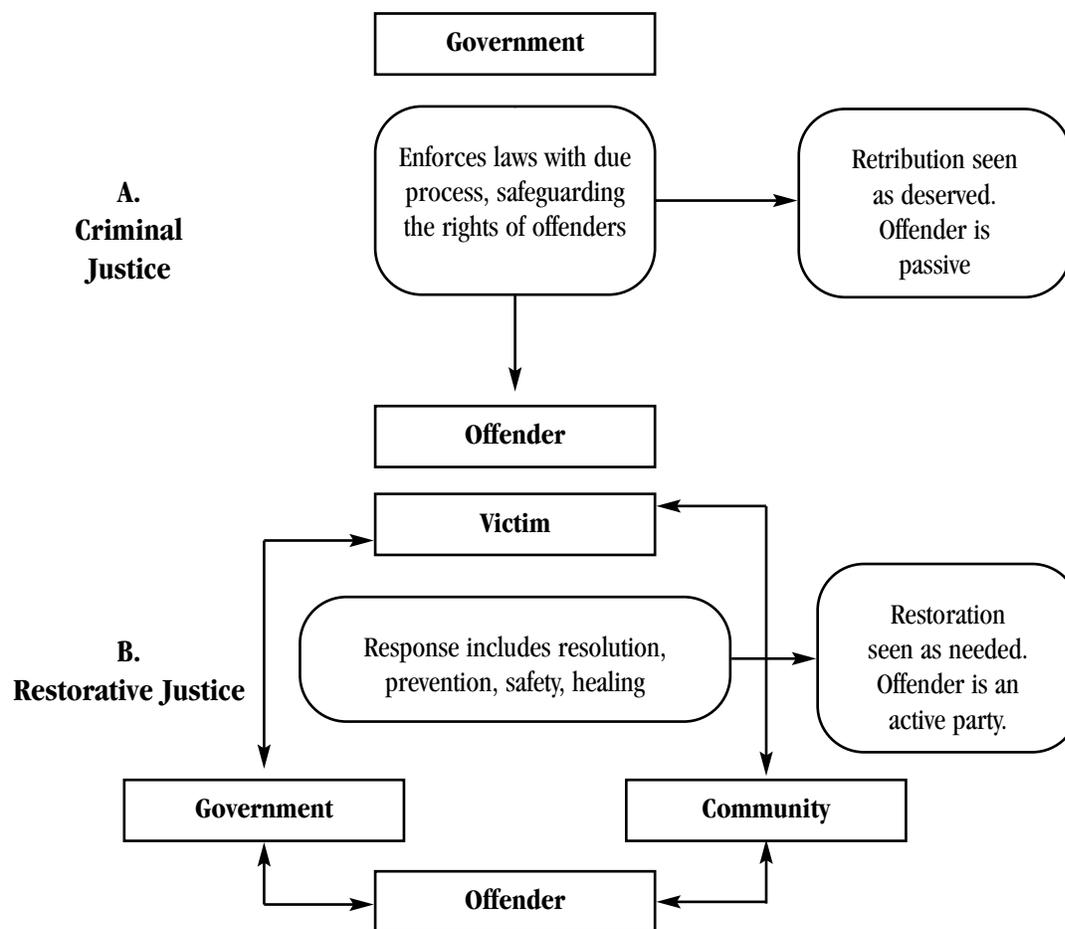
Part 4. Models and Processes Emerging
Under Restorative Justice

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Emerging Under Restorative Justice

Restorative justice values are being translated into practical applications that, to varying degrees, embody the essence of the new paradigm: focusing on repairing the harm caused by crime (or restoring those harmed) through involving those affected, including victims, communities, and offenders. The state has a role in most of the processes, either to convene the process or to oversee procedural fairness and effectiveness. Restorative justice seeks to bring balance into the spread of rights and responsibilities among these four players: victims, communities, offenders, and the state. As Van Ness and Strong have illustrated (see Figure 14), the shift is from a criminal justice focus on the offender's relationship with the government to embracing the view that there are other parties affected by crime.

Figure 14. Comparison of Criminal Justice and Restorative Justice Participants and Processes



SOURCE: Adapted from Van Ness, D., and Strong, K.H., *Restoring Justice*, Cincinnati, OH: Anderson, 1997.

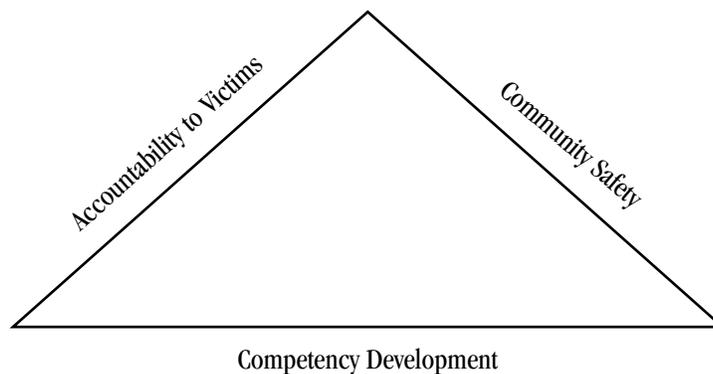
The Balanced Approach

In restorative justice, attention is paid to the obligations that the offender has towards the victim(s), community, and government and how those obligations are fulfilled through a dynamic process involving the following:

- Restoring the victim and community
- Developing offender competency and reintegration
- Promoting community safety

Since 1992 the *balanced approach*, depicted in Figure 15, has underpinned the balanced and restorative justice (BARJ) model sponsored by the Office of Juvenile Justice and Delinquency Prevention in relation to juvenile justice.

Figure 15. The Balanced Approach in Restorative Justice



Source: Adapted from Maloney, D., Ronig, D., and Armstrong, T., "Juvenile Probation: The Balanced Approach," *Juvenile and Family Court Journal*, 1988;39(3):1–63.

Practices and models under the rubric of restorative justice should address these three goals in equal measure. Some models are more restorative than others in terms of striking the right balance, but each offers lessons for understanding the significance of the various elements of the restorative justice theory. None is a blueprint to be taken off the shelf and applied universally, without adaptation to local or individual circumstances. As Kay Pranis writes, "Each community must struggle with basic questions of values and the community's future; communities can learn more from one another but cannot answer those questions for another."⁶⁹

The next sections examine three key restorative justice models that provide insights into how the values of restorative justice are being explored by different communities.



Victim-Offender Mediation

A related concept in mediation theory is that ongoing interpersonal relationships make mediation more successful than standard court procedures because of the parties' desire to preserve these relationships and/or their ability to influence each other.⁷⁰

Since the 1970s, as dissatisfaction with the traditional justice system mounted regarding its handling of crime, mediation has emerged as a viable process for addressing the impact of crime on both victims and offenders. Notwithstanding the advent of victim sciences, more information for crime victims, victim impact statements, compensation, reparation, and restitution orders, victims' needs are too often compromised by a system that has focused elsewhere.

When victims are required to attend court, they may feel that they are there only as *evidence* for the case against the defendant(s). Victims routinely experience a situation in which they are given no information, are deprived of compensation, and face courts that are not victim friendly. Meanwhile, offenders are placed in a passive role while the professionals conduct the adversarial system concerned with due process, procedural fairness, adhering to rules of evidence and the objectives of establishing guilt (or innocence), and deciding on sanctions.

Mediation recognizes that the impact of crime is more complex than is reflected by law and legal procedure. Consistent with the notion that crime demands a social response, mediation allows the offender an opportunity to understand what he or she has done by directly (or sometimes indirectly) hearing the victim's story. This process can be painful, for it involves stripping away excuses and defenses so the offender actually feels the pain that he or she created. The process is a catalyst for changing behavior. Mediation allows for "the airing of (victim's) grievances... more complete than in court, as the range of relevance is extremely broad."⁷¹ In other words, mediation releases the stranglehold on the emotions aroused by crime to enable victims and offenders to achieve consensus as to the true consequences of the crime and to reach agreement on the nature of the participants' future relationship. Far from being a contest between the state and the offender, mediation is widely described as a procedure that is conciliatory and therapeutic. The participatory process is helpful to both the offender and the victim and can work in the spirit of restorative justice values.

Different Models of Mediation

Not all mediation processes, however, have as their objective to provide a service to victims and offenders to explore the ramifications of a crime and the relevant needs and obligations. One of the first mediation programs took place in Ohio, where a prosecutor realized that the backlog of cases in court demanded an alternative, diversionary scheme. A mediation center was set up in New York City in the mid-1970s



aimed at handling cases that involved people who already knew each other. The process worked to develop agreement between parties—who might otherwise have had their dispute dealt with in court—so as to encourage them to carry on some kind of relationship; court appearances were seen as likely to completely sever communication between the parties.

Neighborhood justice centers developed in the late 1970s, primarily seeking to promote an agreement between parties on either civil or criminal matters. Criticism of these initiatives centered on the mediation serving the interests of one party more than the other, and benefiting the justice system more than either of the parties (the first complaint is still a dominant criticism of mediation in cases of domestic abuse). The neighborhood justice centers generally are also more settlement driven than dialogue driven, focusing on attaining an outcome acceptable to the system rather than on accommodating a process of engagement that in itself is of value to the parties.

For this reason, many mediation programs are not necessarily consistent with the values of restorative justice. It was in 1976 that the first known case of mediation took place (in Ontario) in which the therapeutic value of victims and offenders meeting face-to-face after a crime was the main driving force. A Mennonite probation officer and a community volunteer trained in mediation organized meetings between 2 offenders and around 20 victims in a case of car vandalism. The agreement was victims' compensation, payable by the offenders within 3 months. The primary aim was reconciliation, rather than mere reparation. Here the restitution followed the dialogue between the offenders and the victims, which helped the boys understand what they had done beyond wrecking the vehicles. In turn, the victims recognized the boys' willingness to make good the harm, beyond admitting responsibility. The resolution of any conflict requires more than symbolic gestures of declaring blame and punishment: it requires negotiation in which both parties' needs are taken into equal consideration.

With this beginning, the Victim Offender Reconciliation Program (VORP) was set up, and the idea soon spread to Elkhart, Indiana—another Mennonite community. The Canadian initiative, followed by Elkhart's adaptation of the process to place the VORP under a community-based organization, began the development of mediation under a new paradigm. "The old paradigm's focus is on blame-fixing for the past; the new one, while encouraging responsibility for past behavior, looks to the future, problem-solving the obligations created by the offense."⁷¹

The Elkhart VORP was, therefore, probably the first time the concepts of mediation and restorative justice were brought together. Victim-offender mediation (or *victim-centered offender dialogue*, as it has come to be known in some circles) builds on Christie's argument that human conflict should be "made visible" and "nurtured"—and belongs to the participants. It is they who should determine what is relevant, explore the impact and the implications of the conflict, and come to learn what it means. As Mark Umbreit writes, "Conflict is an unavoidable part of life. Instead of denial, conflict can be embraced as a necessary step in the journey of the individual (or organizational) growth and development."⁷²

Victim-offender mediation is a problem-solving intervention in which the parties are brought together by a facilitator (coordinator or mediator) and encouraged to work out how the conflict can be resolved. It is the parties that make the decisions, *not* the facilitator (as in arbitration), thereby ensuring empowerment and self-determination. Mediation in the context of victim-offender mediation is a voluntary, informed process—there is no coercion⁷³—that usually follows a structure that paves the way for a smooth progression toward reaching agreement.

Case Study: Dialogue Brings Empathy

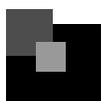
“The father of a murdered daughter doggedly pursued his understanding of justice for her killer. For ten years he hounded the parole board in protest of any consideration of the offender’s parole. His obsession for justice was well-known in any office related to the criminal justice system where he would frequently and freely express his feelings ranging from intense anger to absolute frustration and despair. When he was finally able to sit across the table and face the man who had brought so much pain into his life, they talked and listened to each other non-stop for over two hours. Before they took a break to resume the dialogue later on, the father spontaneously reached out and grasped the hands of the offender—the hands which had taken the life of his daughter—and said, ‘Thank you. You can’t imagine how helpful this has been.’ At the end of the day both told how so much of the ‘weight’ of all those years had been lifted. What the encounter provided was the uncovering of a deep reservoir of emotional strength and resiliency for both the father and the offender. The experience seemed to evoke an extraordinary capacity for empathy and understanding that they would never have imagined they possessed. That did not mean the father practiced blind acceptance or naive pity of the offender. In fact, the face-to-face encounter was most characterized by blunt, brutally honest exchanges.”

SOURCE: *The Victim’s Informer*, newsletter by the Texas Department of Criminal Justice Services, Crime Victim Clearinghouse, Austin, TX, 1997.

How Can Victim-Offender Mediation Work with Crime?

The idea of a victim of crime meeting face-to-face with the offender(s) is difficult to grasp for many people. Victims who have chosen to participate in a victim-offender mediation process often attract adverse comments from family or friends: “Why would you want to do that?” For many victims, as well, the idea seems odd—if not intimidating. Yet the victim-offender mediation movement has developed rapidly since the Elkhart experiment more than 20 years ago. What are the incentives for victims?

One woman who used to work as a prosecutor and now works in a community-based VORP scheme in Alaska, sums up much of the rationale for victims’ participation: “I didn’t want to encourage the denial in offenders any longer.” She meant, of course, the unintended consequences of a criminal justice system that upholds the ideals of the presumption of innocence and the right to silence, both of which can discourage



offenders from taking responsibility for their behavior. Instead, they wait to see if the prosecution can prove the case against them, or they receive legal advice that discourages their cooperation with the justice process. Offenders' rights are important in maintaining a fair system of justice; in practice, however, these ideals have the effect of encouraging guilty criminals to deny guilt and responsibility. Their attorneys encourage them not to say anything that might incriminate them. The burden of proof rests with the prosecution, which necessitates a focus on the legal definition of a crime—rather than on the social impact of the criminal behavior and on subsequent obligations the offender has incurred by his or her actions.

For victims, victim-offender mediation offers an opportunity to express how they have been affected by the offender's behavior. It is important to understand the trauma that crime victims can experience in order to appreciate their strong desire to tell someone how they feel and how they have been harmed. Also, victims need information: why the crime happened to them, what the offender intended, could they have done something to stop the crime—these can be overwhelming questions, and often only the offender can answer them. The offender may also be the one person that the victim particularly wants made aware of what he or she is suffering. Victims feel that the offender rarely understands what he or she has done; the criminal justice system's interpretation of the victim's testimony as "evidence" tends to remove the human dimension. Victim-offender mediation allows victims to express their feelings, get answers to questions, and be engaged personally in the negotiation of an acceptable plan that addresses both their needs and the obligations of the offenders.

Umbreit and others have conducted evaluations of a number of victim-offender mediation processes to identify to what extent crime victims feel satisfied with their participation and with the agreements reached following negotiations with the offender. Victim satisfaction is consistently high, with 91 percent believing that the offender was adequately held accountable, compared with only 33 percent of the victims who did not go through a victim-offender mediation process.⁷⁴ Table 5 compares victim-offender mediation characteristics that have the least restorative impact with characteristics that have the most restorative impact.

Victims' responses to Umbreit's survey suggest that the predominant reasons for their choosing to participate in victim-offender mediation is to receive answers to questions that they have of the offender(s) (82 percent), to have the offender(s) get counseling (82 percent), and to tell the offender(s) how the crime affected them (78 percent). Victims also were motivated by the possibility of having the offender(s) apologize to them (82 percent). Victims who have gone through victim-offender mediation have, without exception, said that victim-offender mediation should be offered to crime victims as a matter of course following a crime. This compares with 72 percent of victims asked the question who had not gone through a mediation process. See "Process of a Typical Victim-Offender Mediation" (in box) for an overview of such mediation.

Table 5. Victim-Offender Mediation: Comparison of Characteristics with the Least and Most Restorative Impact

Least Restorative Impact (Agreement-Driven: Offender Focus)	Most Restorative Impact (Dialogue-Driven: Victim-Sensitive)
Entire focus is on determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime on the victim and the community, as well as on the offender	Primary focus is on providing an opportunity for victims and offenders to talk directly to each other, to allow victims to express the full impact of the crime upon their life and to receive answers to important questions that they have, and to allow offenders to learn the real human impact of their behavior and take direct responsibility for making things right
No separate preparation meetings with the victim and offender prior to bringing the parties together	Restitution is important, but secondary to the talking about the impact of the crime
Victims not given choice of where they would feel the most comfortable and safe to meet, or who they would like to be present	Victims are continually given choices throughout the process: where to meet, who they would like to be present, etc.
Victims are given only written notice to appear for mediation session at pre-set time, with no preparation	Separate preparation meetings with the victim and offender prior to bringing them together, with emphasis upon listening to how the crime has affected them, identifying their needs, and preparing them for the mediation or conference session
Mediator or facilitator describes the offense and then offender speaks, with the victim simply asking a few questions or simply responding to questions of the mediator	Non-directive style of mediation or facilitation with mediator not talking most of the time, high tolerance of silence, and use of a humanistic or transformative mediation model
Low tolerance of moments of silence or expression of feelings	High tolerance for expression of feelings and full impact of crime
Voluntary for victim but required of offender, whether or not he or she has ever taken responsibility	Voluntary for victim and offender
Highly directive style of mediation or facilitation	Trained community volunteers serve as mediators or co-mediators along with agency staff
Settlement driven and very brief (10–15 minutes)	Dialogue driven and typically about an hour in length (or longer)

SOURCE: Umbreit, Mark S. Course Materials on Victim-Offender Mediation. Available from the Center for Restorative Justice & Mediation, University of Minnesota.

Process of a Typical Victim-Offender Mediation

- Preparation of parties before meeting. Offender admits responsibility. Choice to participate.
- Introductory opening statements by mediator to establish ground rules, to explain what the process should focus on, and to remind the parties that their involvement is voluntary and that they may leave at any time.
- “Truth telling” by victim and offender.
- Clarification of facts, sharing of emotions and feelings.
- Review of victim’s losses and options for resolving these.
- Development of an agreed plan.
- Closing statement by mediator.

Why would the offenders choose victim-offender mediation? It is generally assumed that there is an imbalance of power between the victim and the offender: after all, the victim was made vulnerable by virtue of the fact that the crime was committed against him or her. However, many offenders are juvenile, inarticulate, or frightened by the prospect of meeting the victim face-to-face.

I think if I would have had to actually face the people whose homes I burglarized, when I was a kid... I think it might have changed my life. Maybe I would have figured things out sooner—maybe I wouldn’t be an ex-convict now.⁷⁵

Victim-offender mediation demands sensitivity and respect, not only to the victim, but also to the offender. Victim-offender mediation also rejects the notion that the process is less demanding on the offender than is the court process. The process of mediation is not suitable for all offenders, but victim-offender mediation offers offenders an opportunity to assume responsibility for their crime, to become more aware of the effect of their crime on the victim (and community), to use this knowledge to take stock of the future, and to apologize or to offer to repair the harm, or both.

The use of the word *opportunity* stems from feedback received over and over again; offenders (and their guardians) frequently comment on their appreciation of having gone through a victim-offender mediation process. As one parent who participated in a police-run scheme said, “I never did understand why the police could work on chasing people like my son without thinking about the consequences of their activities on people’s lives. This time I see the arrest as having provided a wonderful chance for my son to work with the police to sort himself out. I can’t thank them enough.”⁷⁶

In some ways, offenders are in need of reconciliation—they often understand that their behavior is not only wrong, but also has created obligations. The key lies in creating a safe environment in which they can admit responsibility and work out how they can take action to meet those obligations. The absence of such an opportunity can contribute to the offender’s own rationalization of his or her behavior, e.g., “I was

Case Study:
Reconciliation Allows Offender Chance To Repair Harms

In one meeting between a grieving mother and her son's killer, receiving answers to some of the questions the victim had of the offender helped her to cry aloud and sleep for the first time since the murder happened many months before. While some harms are irreparable (for example, the loss of a child through acts of violence), there are other harms suffered by the family and friends left behind. Some harms can manifest themselves for years, causing serious mental and emotional trauma. For someone who has outstanding questions for an offender—questions often not resolved even after a conviction at court—the offender's willingness to truthfully respond may help the victim to slowly recover some semblance of order in their lives. In this case, the offender's display of compassion helped achieve a reconciliation that was critical for the mother, as she had begun to lose the support of her immediate family, who could not deal with her pain. Such meetings must be conducted only after considerable preparation with both parties and with the support of professional counseling.

drunk at the time"; "They can afford it—they won't miss the money"; "They deserve it"; "I didn't mean to do any harm, I just got angry, that's all." Hearing the victim relate how the offender's behavior has harmed him or her tends to reduce the power of self-rationalization and denial. Learning from others who share their feelings lays the foundation for an offender to recognize the links between behavior and consequences.

Why Does Victim-Offender Mediation Work?

Part of the essence of victim-offender mediation (and other restorative justice models) is that the parties are able to speak about themselves for themselves—and without legal constraints. For this reason, victim-offender mediation processes are highly charged emotionally; it is not uncommon for the mediator (including criminal justice professionals long used to the damaging impact of crime) to be moved by what is shared during the process. There is an intensity to the dialogue that is sometimes uncomfortable and yet critical to the development of a common understanding of what happened, why it happened, and what should be done to address the current situation and future needs for both the victim and the offender. The victim-offender mediation process allows a sharing of information and feelings that is not usually present in traditional processes of justice; and, while the learning may be powerful, it can be transformative for anyone present. The punishment of an offender becomes less important than providing opportunities for the victim to gain a sense of closure and for the offender to gain an understanding of the human impact of the crime.

Allowing the victim and offender to be directly involved in talking about the crime encourages problem solving to become part of the process: there is a dialogue about past events, but this soon becomes focused on a more forward-looking agenda—what needs to be done to avoid future harm.



**Case Study:
Mediation Can Bring Powerful Emotions That Promote
Shared Understanding**

Sue Molhan had wanted to meet her son's killer for 9 years before she finally encountered Alfred Lemerick, who had shot her son after a failed robbery. "I wanted him to see my face, my pain. I wanted him to know that when he murdered my son, part of me died, too." Lemerick had pleaded no contest and been sentenced to 27 years in prison. Lemerick wrote to Molhan signaling his remorse. Molhan agreed to meet Lemerick. Molhan shared with him a photo of Stephen and the jewelry that Lemerick had stolen. Lemerick, who had taken a combination of Valium, alcohol, and cocaine before the murder, said, "It is hard to believe it was me there. I can never forgive myself for what I have done." Molhan was sure that Lemerick understood the pain he had caused and has said that she thinks he is rehabilitated. She wrote to the parole board: "If I can do anything to make him feel better about himself—help his daughters—if that keeps him from hurting another individual, then that is what I will do."

SOURCE: "Beyond Disputes," *Boston Globe*, November 20, 1996.

In Langley, British Columbia, victim-offender mediation serves offenders and victims of serious violent and sexual crimes, primarily to promote healing for both parties. Though still in their infancy, programs like the Langley one are being operated in Genesee County, New York; Austin, Texas (by David Doerfler); University of Minnesota (by Mark Umbreit); and Central Michigan University (by Harry Mika). These programs are attracting considerable interest.⁷⁷

These cases can take months to prepare before the parties are convened to a victim-offender mediation meeting. Several meetings may be necessary before the objectives are met. The Langley program uses the following criteria to measure satisfaction:

- Secure the *safety* of both parties.
- *Regain autonomy* and a sense of control for both parties: "For victims, they remain controlled by the offender as a known or unknown figure who dramatically and negatively altered the course of their life. Offenders can also feel the loss of their own moral control which feels (symbolically) to have been given up to the victim whom they have violated."⁷⁸
- Achieve *relatedness*: victim and offender acknowledge the existence of a relationship between them, however hostile or negative, and are able to determine what form of future relationship is possible or desirable.

The Langley project, as with the other victim-offender mediation processes, does not set out to excuse criminal behavior. The key is to acknowledge that the crime happened, to seek ways of coming to terms with what happened, to personalize and to humanize a dialogue—which tends to change unhelpful stereotypes of victims and offenders—and to empower the parties to negotiate an agreed plan. The participants,

not the mediator, are in the driver's seat. They volunteer to participate, can stop the process at any time, and can choose whether or not to carry out any agreement.

Forms of Restitution

Agreements on plans at the end of a victim-offender mediation process vary: they can include financial compensation to victims for material losses or emotional trauma, work by the offender for the victim or the victim's choice of community service, volunteering for treatment, undertaking education, an apology, or a combination of these—whatever the parties themselves agree upon. The contract between the victim and the offender represents holding the offender accountable to the parties. Consideration should be given to how to monitor fulfillment of the agreement, for the sake of both parties as well as the broader community—which might find the victim-offender mediation process incomprehensible. One way of overcoming the tension between accountability that is acceptable to those who have participated in the process (and therefore have some understanding of why the agreement makes sense) and those who have not, is to publish the agreed plans and the results of future monitoring. *At the time of writing, the results of existing evaluations suggest that offenders fulfill their obligations as specified in agreed plans in almost 90 percent of all cases (Umbreit). This should be reassuring to anyone not present at the agreement.*

To recap, the key ideas of victim-offender mediation are voluntary participation, engagement in problem identification (identifying consequences of harm), and problem resolution (coming to consensus about an agreed plan). Victim-offender mediation is a process that mobilizes the participation of lay community members in the handling, resolution, and prevention of crime. Victim-offender mediation breaks down stereotypical images of victims as well as those of offenders, reduces fear, and promotes understanding of why crime happens and its full impact. Reconciliation is seen to occur when the offender recognizes the human consequences of his or her actions and when the victim sees the offender as another human being rather than as a monster. The key to achieving this reconciliation is a dialogue that involves the expression of personal feelings and of the truth, without the constraints of rules of evidence and due process of law.

Victims can derive enormous benefits from being listened to, being treated with respect and sensitivity, knowing what is happening (and understanding why), being taken seriously, and having questions answered. They also derive satisfaction from having influence on the decisions about how the offender should be held accountable and from knowing that there is less likelihood of the offense being repeated.

Although victim-offender mediation may be viewed by some as a “soft” option, for offenders it can be more demanding than punishment. Offenders are able to speak more openly (and honestly, perhaps) than they would in court, and they have the opportunity to be seen as a human being—with strengths and weaknesses—and to learn from their behavior. Another feature is that the process is likely to promote



action by the offender (and his or her family) to stay away from crime. Victim-offender mediation avoids labeling, stigmatizing, and banishing offenders and promotes rehabilitation and prevention. The more connected an offender feels to the community to which he belongs, the less likely he is to commit crime.

Victim-offender mediation also helps both victims and offenders to feel that they are part of a community and connected to people who care about them. Victim-offender mediation strengthens community relationships and makes communities more resilient to crime. If citizens and communities learn how to deal with offenders, they will also learn what contribution they can make toward building a sense of community in which people recognize that their actions can make a difference in the lives of others—positively or negatively. Restorative justice processes foster citizenship and mutual trust.

In this way, victim-offender mediation has clear benefits over and above many community justice sanctions. Counseling treatment, supervision, life skills training, curfews, and other interventions may be distinctly more helpful than punishment; but processes like victim-offender mediation emphasize relating to other humans and to the community. This emphasis promotes strong relationships that have a greater chance of building offender competency—a key element of the *balanced approach*.

Victim-Offender Mediation Mirrors Elements of Community Policing

Victim-offender mediation provides a framework for understanding and responding to crime that is similar to the framework that operates when police work collaboratively with other agencies and the community. Police-community partnerships operate along nonadversarial lines with the overriding objective of sharing the information, perspectives, and understanding that shed the most light on an issue or problem. Partnerships involve consensus building, shared respect, and identifying common ground with a view to achieving something mutually beneficial. Victim-offender mediation is remarkably similar, even though the catalyst for the meeting(s) is of a different kind.

In collaborative efforts, the partnership activity pivots on identified tensions, opportunities, problems, and aspirations from the viewpoint that no one person alone can resolve problems or achieve social goals. The partnership is formed because there is a sense that no one person or organization is omniscient. In victim-offender mediation, neither party will necessarily see in the other a partner; they are more likely to see an adversary (this is true even in some cases where partnership is seen as desirable, usually because it is jointly perceived that a crisis needs resolving through negotiation or collaboration). Not until the victim-offender mediation process begins (and this is why the skills of the mediator are of paramount importance) may either party see in the other an ally to work with in a spirit of cooperation. A common experience in victim-offender mediation processes is that people begin the meeting believing that they are at opposite ends of a spectrum in terms of agreement and values. Not until the dialogue starts can understanding—and even empathy—become manifest.

Case Study: Fairness Experienced by Parties Promotes Healing

Three girls were arrested for painting graffiti on a church hall in a village, which used the hall for many social activities. They were among several youths who had daubed green paint on the brick walls and windows. Other youths had broken into the hall and destroyed artwork that had been completed by a club for deaf people. At the victim-offender mediation between the girls, the local counselor (responsible for funding the activities in the hall) and a cleaner (who had spent more than a week making good the damage), the offenders were defensive. The victims were bewildered why anyone would do such a thing. For about half an hour, after both offenders and victims had expressed how they felt, there was still no sign of remorse. Not even the weeping of one of the girls' fathers (who had spent many hours in a voluntary capacity at the village hall) changed the atmosphere. Then the local counselor—one of the victims—said, "I know why the girls aren't saying anything. They feel it's unfair that they are having to go through this when others got off because they haven't been caught." Suddenly one of the girls responded and offered information that they did feel that they were being picked on unfairly, but, nonetheless, they owed the victims and the village an apology. The agreed plan was for the girls to help the hall cleaner for several weeks and to distribute flyers to all the local residents informing them that the hall was open for use again. The victims agreed to ensure that more of the hall's activities would focus on the teenagers in the village. Two years later the hall is alive with activity, and there is talk of building an extension to allow for more activities to take place. There has been no crime in the village since the meeting took place.

In this respect the dynamics of victim-offender mediation are strikingly similar to the dynamics of collaboration: both involve opening a dialogue, breaking down myths and stereotype impressions, gaining understanding or insights, and negotiating a plan that is agreeable to everyone present. In such cases there can be disagreement, taking a particular position, acknowledging differences, looking at options, and making concessions. The atmosphere need not be pleasant so much as purposeful, although the importance of participants feeling safe is critical. In both cases, communication (especially listening), respect, attitude, and motivation are pivotal to a successful meeting. And most people gain from participating in collaboration—everyone wants to be involved in decisions that are likely to affect them. Consensual partnerships and victim-offender mediation are vehicles for helping people make decisions together.

Why victim-offender mediation has not been adopted more readily by police raises interesting questions, particularly in view of the significant progress by the police in partnership activities.

Edelman suggests one possible explanation: society teaches us how to deal with conflict in an adversarial fashion.

If you're angry, show it and get even! If you're upset with somebody, hit them! If you're really annoyed with someone, you pick up a gun and shoot them. If you want to be nice about it, you beat them up—both physically and emotionally. If you want to be truly civilized, you berate them and make them look like fools. And if you want to be super nice, you just sue them.⁷⁹

Conflict, in other words, can be appealing because of the sense of power attained by those involved. Giving up this power can be difficult.

This power issue was brought home after speaking to officers about firearms incidents that prompt operational tactics to identify a gunman, contain him, and then arrest him. Police have the power to close streets, evacuate shopping malls and even whole sections of public land to home in on a suspect carrying a gun. The power can be used sensibly or recklessly (similar to police car chases). It is considered by some to be losing face if the police back down from implementing the full force of the law and their powers. For others, a balance needs to be struck between enforcement and public safety. Conflict resolution by peaceful means takes away the excitement of a chase, getting the bad guy, pinning someone down who deserves it, etc. Some people prefer finger pointing, blame fixing, and *nailing and jailing*—all widely accepted reactions to wrongdoing.

Decisionmaking processes aimed at resolving conflict and tackling crime should shift toward problem diagnosis rather than merely reacting to problems. Diagnosis requires keeping an open mind, to be prepared to learn new things, discover that images are not the same as reality, and realize that although people are different, their needs are reconcilable. Fire-fighting tactics, conversely, will detract from building the sense of trust that enables this diagnosis to happen. For these reasons, victim-offender mediation has a considerable contribution to make in advancing police methods of operation from pure enforcement to enforcement supported by partnership problem solving. The law must be enforced, but the nature of the enforcement can change from focusing on blame to a focus on establishing the real causes and consequences of the conflict or crime. Focusing on the meaning requires the involvement of the perpetrator(s) and efforts to encourage people to speak openly and honestly and to acknowledge their actions.

This plan sounds completely realistic to those who have experienced the power of victim-offender mediation processes. In this context, storytelling has great importance: it can vividly convey real-life situations in which people managed to work out agreed solutions in a way that is the antithesis of the *lens* to which we have grown accustomed—that conflict deserves war and fighting. The alternative is to create a safe environment in which problem solving can take place pursuant to a peaceful negotiation of agreed outcomes. Skepticism will diminish only with experience. For example, an Ontario case in 1976 attracted the criticism that the face-to-face meetings between car vandals and their victims “compromised the integrity of justice.” Today, by contrast, there are more than 200 victim-offender mediation programs in the United States, 30 across Canada, and around 700 in Europe. Victim-offender mediation is being conducted in Israel, South Africa (the Truth and Reconciliation Commission is just one example), and the Far East. See “Mainstream Endorsement for Victim-Offender Mediation” (in box) for another indication of its progress.

Mainstream Endorsement for Victim-Offender Mediation

To illustrate how widely accepted victim-offender mediation has become in the United States, the American Bar Association endorsed victim-offender mediation in a resolution in 1996. The resolution “urges federal, state, territorial, and local governments to incorporate ... victim-offender mediation programs in their criminal justice processes” and encourages support for research on victim-offender mediation and for the dissemination of those research results.

Adopting the values of restorative justice, however, can change attitudes about wrongdoing, including crime, from hostility to a reaction that embraces the conflict as an opportunity for asking some important questions. These questions include: Why is this happening? What is underlying the behavior or activity (e.g., anger, greed, cruelty, upset, fear, etc.)? What would help to change what has happened? What can we learn from this? Why did we not anticipate this? Could we have prevented it? Restorative justice practice is revealing, over and over again, that lay and professional people alike are discovering new dimensions of the crime problem, prompting Navajo Judge Yazzi to say:

We often don't know what we don't know.⁸⁰

Civilized society requires some kind of accountability for wrongdoing, but this need not necessarily entail punishment. Accountability also need not involve a game of asserting rights over and above the constructive conflict management that promotes strong relationships, social justice, and learning. Victim-offender mediation is one model that is proving apt at humanizing the justice process and is providing new insights on the peacemaking role of policing and law enforcement.

Family Group Conferencing

I would never have believed we could resolve this problem so easily—I would have bet it all would have blown up. I was even afraid there would be bloodshed. I'm delighted, but I still can hardly believe it.

—Mother of a student involved in a conference following a racial incident in Washington County, Minnesota

Family group conferencing has become a key model under the umbrella of restorative justice, which recognizes that crime harms people and is more than a violation of criminal laws. Family group conferencing also has all the elements of community policing: community involvement, shared ownership and responsibility, collaborative problem solving, identifying ongoing issues of concern, and looking long term.



**Case Study:
Conferencing Enables People To See Crime as More Than a
Violation of the Law**

Two 15-year-old youths were out one evening, armed with a screwdriver and a kitchen knife, stealing mirrors and logos from parked cars—not a crime that would usually receive much attention. They were caught, however, and one victim was invited to attend a conference. He was the owner of a BMW and had inherited the car from an elderly gentleman whom the victim used to drive to hospital appointments before his death. The old man had left him the car in his will. The victim was very upset by the theft of the badges and damage to his car, largely for sentimental reasons, and felt bad that he had not protected the gift he had been given. He agreed to meet the youths at a conference that included him, the offenders, and their respective mothers. The police-run conference went very well; at the conclusion, the victim was asked what he felt would be an appropriate way of making good the damage. He did not want financial redress, as the loss was more symbolic than financial. He just wanted the boys to learn from the incident. During the conference, he had mentioned he was a volunteer helper for a charity. Both boys offered to spend a day working with the same charity during their holidays, in their words, “to show we are sorry and do something for people less fortunate than ourselves.” The victim was delighted.

The basic elements of family group conferencing are simple. In the wake of an offense for which guilt is admitted, victims, offenders, their supporters (friends and family), and members of the community are given an opportunity to meet in the presence of a coordinator or facilitator. Conference participants are encouraged to discuss the direct or indirect effects of the incident on them. This identification of the harm is followed by negotiating a plan, agreed upon by all attendees, for repairing the damage and controlling the offender's behavior.

These conferences take place either as a pre-adjudication diversionary technique or pre-sentence after a finding of guilt. Conferencing is not an easy way out for an offender. Taking responsibility for one's behavior, being confronted by a victim, and taking steps to make amends pave the way for individual growth and change. There are two prerequisites to a conference. The offender(s) must admit guilt; and all participation is voluntary. Conferencing is based on the philosophy that justice is best determined by those directly affected by crime. It recognizes that people are more likely to be satisfied with the outcome when they are involved in decisionmaking.

A successful conference ends with a re-acceptance of the offenders into the community of conference participants. The process condemns the behavior but does so in the context of separating the behavior from the person. The facilitator focuses the discussion on condemning the act without condemning the character of the offender. Restorative justice does not preclude the punishment of offenders, but it does not focus on punishment. It is concerned with needs and responsibilities and represents an inclusive approach to crime control distinct from traditional adversarial and exclusionary methods of handling offenders. Making amends to crime victims, a primary focus of family group conferences, also helps to shift the balance from offender punishment to victim restoration. This shift encourages offenders to take active responsibility by making reparations, sharing remorse, apologizing, and seeking to resolve broader difficulties at home and at school.

Origin of Conferencing

Family group conferencing began in New Zealand following sweeping reform of the juvenile justice system sparked by the 1989 legislation *The Children, Young Persons and Their Families Act*.⁸¹ Years of frustration with a criminal justice system that had failed to curb repeat offending and that was seen to encourage dependency on welfare, provoked discussions for a period of more than 15 years. The process of conferencing was introduced after the criminal justice system came under specific pressure from the indigenous Maori people, who resented a system that had been removing their at-risk children and young offenders from their traditional communities. A fundamental Maori value is that “we are all part of one another and the main purpose of justice is healing for all.”⁸² The Maoris wanted the New Zealand justice system to adopt their way of handling conflict. For the Maoris, the main purpose of justice is that everyone is healed.

Since 1989, all young offenders, except in the case of rape or homicide, have been dealt with by conference.

Case Study:*

Conferencing Has Wide Appeal to Anyone Who Has Participated

Five male graduates from the local high school, three aged 17 years and two aged 18, were detected copying \$20 bills in a color copy machine at a local library. They successfully passed them at four different convenience stores. The U.S. Secret Service decided not to charge these boys with various Federal charges, as its policies lean toward pursuing more serious offenders. The Secret Service agreed, however, to take part in a family group conference so that these young men could understand that they were being held accountable for their actions. The conference was a very emotional one. All five boys, as well as their parents, were in tears. Several hours of community service, as well as reimbursement to the stores involved, was then agreed upon as restoration for the harm caused. The Special Agent in charge of the Secret Service in this area, as well as the investigating agent, the parents, and the victims, were all very pleased with the process and its outcome. All the boys were remorseful and the police department has not had an incident with any of them since.

*Anoka Police Department, Minnesota.

No one would have called the early conferencing process *restorative justice*. The implementation of conferencing was essentially driven by child welfare considerations and was seeking to mobilize the support of local communities and family and social networks to support children in trouble. The early model, therefore, was not victim-centered; it became so after low satisfaction levels among victims of crime who were not invited, or did not want to attend a conference, became problematic and resulted in amendments to the original legislation in 1994.⁸³ However, various adaptations of the early child welfare model have come to reflect the balanced approach inherent in the restorative justice paradigm—that of involving victims, offenders, and communities.

There are now several conferencing models around the world, often distinguished by the agency that coordinates them. In 1991, the New South Wales Police in Australia adapted the process in the city of Wagga Wagga and placed more emphasis on the victims. As Police Sergeant Terry O'Connell says, "Make the victim feel important and they will come." In New Zealand youth workers were trained to deal with adult offenders referred by judges who had been impressed with the early efforts of conferencing with children. "Community accountability conferences" were introduced in New South Wales schools to deal with bullying and other misbehavior.

The potential of conferencing is increasingly being recognized across the United States (Vermont, Oregon, Maine, Minnesota, Pennsylvania, Georgia, California, and Indiana have conferencing programs), in Canada, across Europe, including the United Kingdom, in South Africa, and in Israel. Family group conference legislation has been passed in Canada, where the process was introduced in 1996 through schools in Ontario and where the Royal Canadian Mounted Police are developing conferencing as a complement to community policing. In the United Kingdom the police introduced conferencing specifically for juvenile crime in 1994, and social workers replicated the New Zealand welfare model for children at risk. Family group conferences are being used to deal with family violence in Minnesota, Newfoundland, Labrador, and Nova Scotia—and are still spreading rapidly. Police departments in Australia, the United Kingdom, and Canada are introducing conferencing for informal resolution of internal discipline and conflict between staff; and conferencing has also been applied in corporate settings following allegations of corruption, sexual harassment, industrial disputes, and negligence. *Community conferencing* is also being used by resident associations and community groups to deal with neighborhood problems.

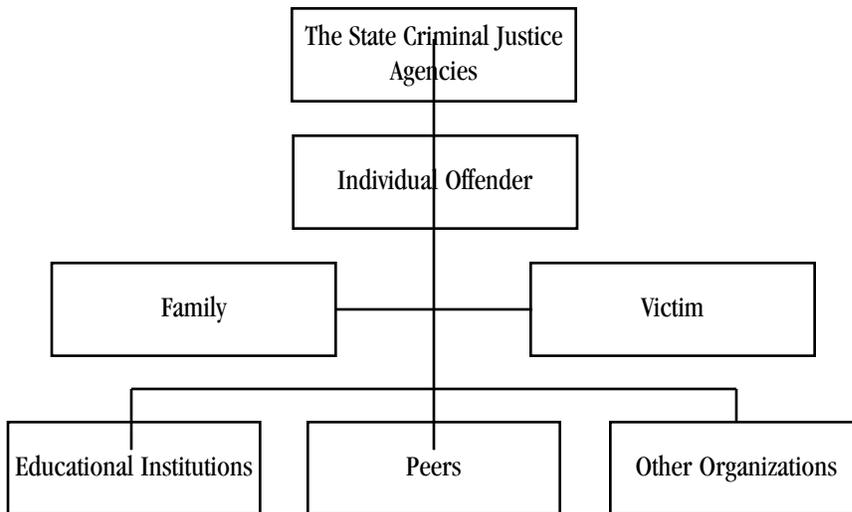
So, what has led to this rapid spread of an idea that has its roots in New Zealand?

Key Elements of Conferencing

There are a number of key characteristics of conferencing to be understood. First, the process is not hierarchical, but distinctly egalitarian—participants have an equal role to play. Conferencing is not state centered. The coordinator is not a judge or arbiter, rather a facilitator of others. Figures 16 and 17 illustrate the differences between the traditional process and the conferencing approach. In the latter, everyone is seen as having an important role and a contribution to make.

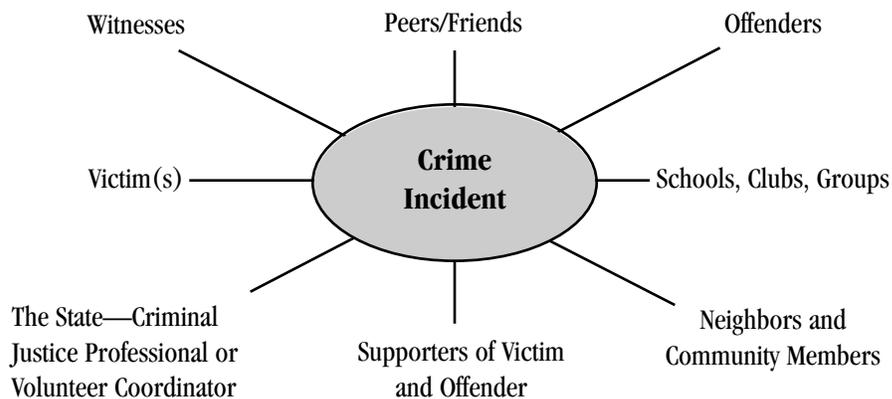
In a conference, a trained conference coordinator/facilitator guides the participants through general discussion of how the crime occurred, how it has affected their lives, and how the crime's harm can be repaired. The facilitator asks the offender or offenders to explain what happened, how they feel about the crime, and what they think should be done. The victim and others are then asked to describe the physical, financial, and emotional consequences of the crime.⁸⁴ All participants are given the opportunity to speak and to express their feelings. They can ask questions of each other. In the conference, the offender is faced with the full impact of his or her behavior on the victim, the victim's relatives, and on the offender's own family and friends.

Figure 16. The Position of Offenders in Traditional Criminal Justice Processes



Note: In the traditional system, the offender is pitted against the state. The victim(s), family, and wider community have no particular role to play.

Figure 17. Parties Involved in Conferencing



Note: The victim, offender, family members, and wider community share the decisionmaking role with the state—each is a key player.

The entire group works out an agreement about how the offender may best repair the harm caused. A plan of action is developed, written up, and signed by key participants. The plan may include material restitution to the victim or symbolic reparation in the form of an apology, community work by the offender, help for the offender in finding employment, assistance with drug or alcohol problems—or any preventive approach on which the participants agree. It is the responsibility of the conference participants to determine the outcomes that are most appropriate for this particular



victim and this particular offender. Conferencing is fully participatory and empowering. The discussions, issues, and outcomes are relevant to the participants. They feel ownership of what occurs at the conference and subsequently when the outcomes are implemented.

The conference normally ends with a ceremony that marks acceptance of the offender back into the community, which agrees to oversee his fulfillment of the plan in a supportive, rather than punitive, way. Agreements are monitored by a combination of community surveillance and checking with the offender to ensure that he is able to meet his obligations. Communities have been known to recommend changes in the agreement plan if they see that the offender is having problems that are not of his making. This should be done only in consultation with the victim(s).

Ceremonies can be an incredibly powerful catalyst for reconciliation between the parties. Victims, feeling relieved after the open dialogue, have frequently gone to hold or hug their offenders. Many facilitators deliberately leave the room to allow the parties space or privacy after an offender has shown remorse. For this reason, these ceremonies have come to be seen as *rites of peacemaking*.

The Power of Family Group Conferencing

“There is nothing magical about a family group conference, but it has the potential to be a powerful learning experience,” wrote Bruce Taylor and Glenn Kummery after their involvement in a conference after an entire school had to be evacuated following the spraying of pepper mace throughout the building.⁸⁵ Conferencing requires offenders to confront the consequences of their crime in a far more intensive way than traditional court processes, which tend to be anonymous, impersonal, and emotionally detached. Each stage of the conference is characterized by strong emotions. It is this aspect that makes conferencing complex, notwithstanding its simple sequence of allowing those impacted by crime to explore how they have been affected and of engaging in finding specific ways to heal the harm. One victim made this comment about how he felt at the start of a conference—and subsequently:

I had this enormous amount of anger that I wanted to shout out, but I felt very defensive... I was so angry that I was literally shaking. Then as the conference got under way I was able to say all the things I'd been thinking about for those weeks and explain how angry I was... to put him in the picture of how it affected me made me feel so much better... I felt a great sense of relief of getting it off my chest.

It is evident from many conferences that victims consider the emotional reconciliation to be far more important than material reparation.

Providing people the opportunity to express their feelings and concerns, and to collaborate on how the crime can be resolved in ways that are meaningful to them, underscores the philosophy of conferencing. Judge F. W. M. McElrea, Youth Liaison

Judge for Auckland, New Zealand, suggests that there are three radical changes involved in this new process. They are *the transfer of power from the state to the community*, the use of the family group conference to produce a *negotiated community response*, and the *involvement of victims*, which make healing possible for victim, offender, and the community.

The emerging international interest in family group conferencing reflects a growing discontent with established forms of justice and the increasingly widespread conviction that our “time is out of joint,” that “something in the present is not going well, it is not going as it ought to go.”⁸⁶ These concerns are finding expression in a search for new forms of democracy that are more participatory and direct. “The deployment, appropriation, and extension of the Maori practice of bringing families together to respond to wrongs is one of the many terrains that exist today on which this struggle for a more active conception of citizenship” is taking place.⁸⁶

At the heart of conferencing is the belief that the community is best equipped to deal with crime and offending behavior. The community includes those who committed the crime and those who have been victimized by the crime. Both victims and offenders, together with the wider community (including family, neighbors, friends, teachers, shopkeepers, etc.), are needed to understand the meaning and consequences of criminal behavior. Justice is best determined by those directly affected. In the traditional system, the key players are the judge, the prosecutor, and the defense lawyer. With conferencing the key players are the parties, their families, and the community. *The professionals, including the police, are present in a supportive role.*

Family group conferencing seeks a just response to a harmful breach of social and legal norms; the trigger for conducting a conference may be a violation against the criminal law, but the impact on social relationships and community standards is as critical as the legal violation. As Judge Michael Brown of Auckland, New Zealand, explains:

In the old model of justice the judge is in control, representing the state and exercising authority given by the state either to impose punishment or to direct intervention in peoples' lives for 'welfare' reasons. By contrast, in the new model the principal task of the judge is to facilitate and to encourage the implementation of solutions devised by the participants, and to act as a backup if these solutions are not implemented.⁸²

What sets conferencing apart from victim-offender mediation and reconciliation programs is its emphasis on responding collectively to crime and to social problems (see Table 6).



Table 6. Comparison of Family Group Conferencing and Victim-Offender Mediation

Variable	Family Group Conferencing	Victim-Offender Mediation
Goals	<ul style="list-style-type: none"> • Offender involvement and accountability • Victim involvement and healing • Restoration of victim losses • Active participation by community, support people, and families • Condemnation of the criminal behavior, not the individual • Reintegration of victim and offender in community 	<ul style="list-style-type: none"> • Offender accountability • Victim involvement and healing • Restoration of victim losses • Mediator in a nondirective role • Conflict resolution between the parties
Contact with parties before joint session	The FGC coordinator contacts all participants by phone (and may meet with each side separately) to explain the process, to find out from the victim and offender who else should participate in the process, and to secure their willingness to participate in the process.	The mediator contacts the parties (victim and offender) by phone and usually meets separately with each party to explain the process; to hear the person's account of the offense, feelings, and repercussions; to build rapport and trust; and to secure their willingness to participate in the process.
Typical place for joint session	A meeting room in a police department, social welfare office, school, or community building.	A neutral setting such as a meeting room in a library, community center, or church. Occasionally in the victim's home, if requested and approved by parties.
Primary role of coordinator or mediator	To encourage and recruit participants; to set up the conference meeting; to maintain a meeting atmosphere that tolerates silence, pauses, and powerful displays of emotion; to facilitate the participants' condemnation of the offense and affirmation of the victim(s) and offender(s); and to record the parties' agreement.	To educate the parties so they can make a voluntary, informed decision about participating; to help prepare the parties for their participation in the joint meeting; to provide a safe and respectful atmosphere in the mediation session that tolerates silence and pauses; and to facilitate a dialogue in which emotions can be expressed, information shared, and a restitution agreement negotiated.
Typical agenda for joint session	Coordinator introduces participants, explains ground rules and process; offender tells his or her story and others respond to it; parties discuss event and express concerns; parties discuss restitution.	Mediator introduces participants, explains ground rules and process; the victim and offender tell their story, often with victim going first; parties discuss event and express concerns; parties discuss restitution.
Typical length of joint session	1–2 hours	45–75 minutes

SOURCE: Adapted from Umbreit and Stacey, 1996.⁸⁹

The family group conference also has the following advantages over victim-offender mediation:

- Involves more people in the community, who are called to discuss the offense, its effects, and how to remedy the harm, thus contributing to the empowerment and healing of the overall community.
- Acknowledges a wider range of people as being victimized by the offense and explores the effects on those people: the primary victim, people connected to the victim, the offender's family members, and others connected to the offender.
- Gets a wider range of participants to express their feelings about the impact of the crime, and potentially involves them in assisting the reintegration of the offender into the community and the healing of the victim.
- Acknowledges the important role of the family and community in an offender's life.

For these reasons conferencing is emerging rapidly and engendering considerable enthusiasm in many parts of the world—and is likely to spread even further.

A Shift Away From Punishment

This bold experiment seeks to develop an approach that moves beyond established conceptions of justice as vengeance.⁸⁷

The conference process represents a fundamental transfer of power from the state to the community, the family, and victims. It allows for a negotiated response to crime and is a result of tension between the retributive model and prevention goal of juvenile justice. Across the Western world there are questions about juvenile crime and pressures to move toward hearing youth cases in adult court settings. There are also voices calling for prevention of youth crime. This tension manifests itself in the way family group conferences are implemented. The public is showing that it is not as punitive as is generally assumed. Agreements arising from community participation in conferencing focus on repair, restoration, rehabilitation, victim recovery, and public safety through prevention. Punishment becomes less significant as people know more about the facts and about the offender.

How is this shift from a punitive to a problem-solving, negotiated response achieved? The key lies in the way the process of conferencing is run. With the state removed from the center of the justice system, people are brought together and are invited to care about the impact that the crime has had all around. *A fleshing-out of the incident—how it has affected the victim, offender, and community members present at the conference—promotes deeper understanding of what was going on for the offender as well as of how his or her behavior touched others.* The transformation is the result of people's direct involvement in the determination of harm and how those harmed should be *restored*. The myths that all offenders require a punitive sanction and that only punishment will work are frequently exploded during the course of a conference. Even those who attend a conference intent on seeing *just deserts* imposed, undergo a significant change in perspective—the result of both their empowerment



to shape the outcome and the insights gained from the dialogue. Conferencing allows information to come out that could not be admissible in a court of law. In this way, conferencing affords a broader and deeper impression of what happened.

With the shift away from an emphasis on punishment, the focus is on taking responsibility, reconnecting, changing behavior, and restoring the victim through a series of activities that promote satisfactory outcomes for all concerned. As shown in Figure 18, victims attending a conference rather than court are much more likely to receive an apology from the offender (74 percent compared with 14 percent) and are less likely to fear revictimization (6 percent compared with 19 percent).⁸⁵ Participation in a conference can also reduce victim fear, anger, and distress. There are even signs that victims often feel sympathy for an offender after having seen the offender with his or her family and having listened to the offender's life circumstances. Victims often mention the relief they experience at seeing the offender and learning who that person really is.

This dynamic is also complemented by the collective experience of the community participants, who then understand more about the crime and the offender, as well as about the impact and consequences for the victims and the community. Part of the power of conferencing lies in the learning that participants experience when they meet one another and exchange facts as well as feelings. This exchange is a catalyst for changing the way people regard the offender as well as for understanding the needs of the victim. Emotions can effuse from person to person, making it difficult for anyone to shrug off the gravity of the crime's effect on other human beings. Putting a human face on the crime begins the process of empathy and healing. Openly acknowledging feelings and issues promotes a sense of mutual responsibility for building a caring community. This is crucial for addressing the needs of victims and offenders. It is also crucial for building stronger families and communities. Processing conflict in a safe environment is a powerful tool for addressing problems that, left to fester, would create criminogenic conditions.

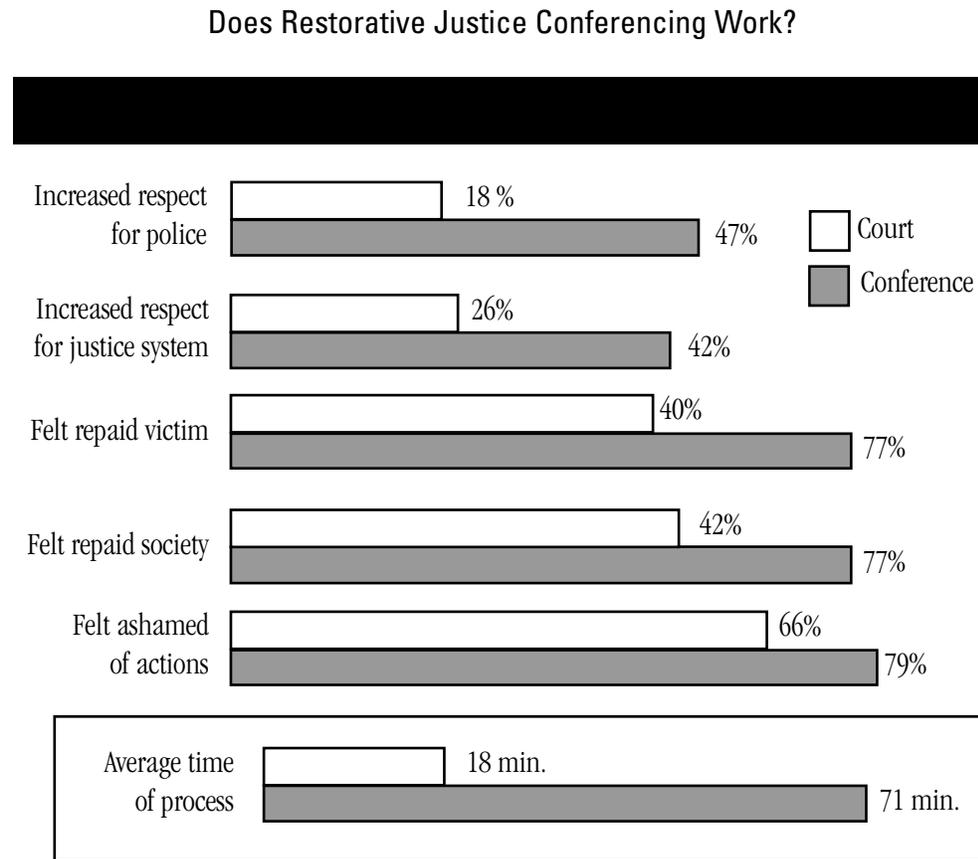
Mobilizing Social Controls

Evidence gathered from conferences reveals a great deal about the interaction in groups and about the power of social networks:

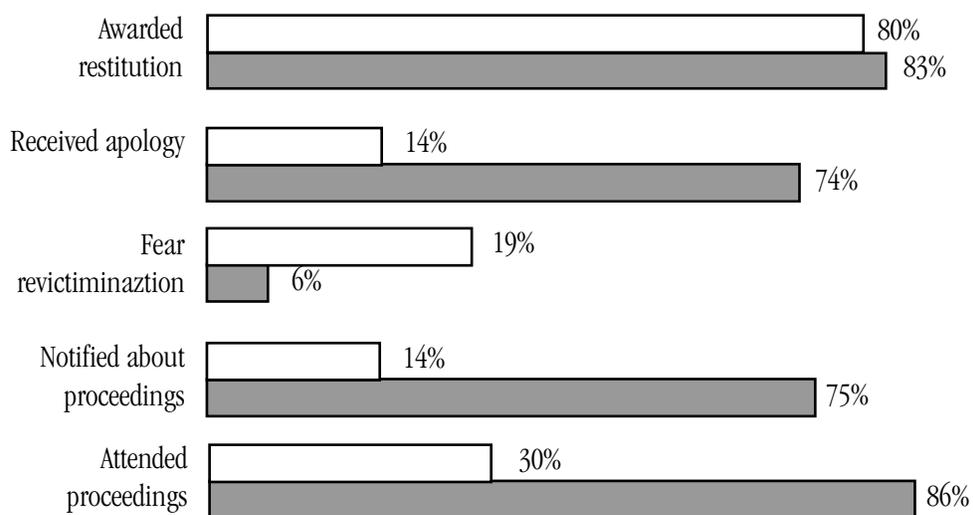
It appears to be a measure of the intrinsic integrity of the conference process that it regularly delivers outcomes satisfactory to all conference participants. This apparent integrity of the process itself would seem to derive both from the nature of the interaction between conference participants and from the ability of the conference process to mobilize and even rebuild social capital.⁸⁶

As a result, conferencing shows what the public can do—instead of promoting the myth that only criminal justice professionals can deal with conflict, thereby eroding opportunities for communities and families to learn their civic responsibility.

Figure 18. Comparison of Views of Conferencing and Court-Case Participants



Victims



SOURCE: RISE Project, Canberra, Australia, 1997.⁸⁸



Case Study:

The Community Can Provide Supervision of Offenders, Thereby Promoting Public Safety Through Informal Controls

The local Fire Department asked the police to arrange a conference with an 11-year-old boy who had started a fire with paper towels at his home. Jeremy attended the conference with his parents. His school's principal, guidance counselor, and teacher also attended, as well as a fire captain and his fire educator. Jeremy was quite surprised to hear how his actions affected his parents—but even more surprised to hear from the school officials how his actions disappointed them, because of how much they thought of him. Jeremy wrote letters expressing his sorrow to the fire department, school officials, and his parents. He was required to meet with the fire fighters 5 months later at the fire station to check in with them, to give a status report on how his summer went, and to be reminded of the dangers of fire setting.

In the traditional system, the law and due process are complex matters requiring legal experts, diminishing the status of the non-expert community. The public is forced to be a mere spectator to a process run by the state that regards the public as having little to offer. The system often sees the community only as dysfunctional. Conferencing offers a radical departure from the traditional focus on the weaknesses of community and offenders. Sharing power with families and communities that surround the parties enables their strengths to be mobilized; and it diminishes or eliminates the prejudices of many professionals toward so-called dysfunctional families and communities. By enlisting these groups in the decisionmaking process, professionals of criminal justice agencies learn about the power of informal social controls and about the capacity of lay people for self-regulation.

A Sociological Explanation—and Warning

There are parallels with the process of conferencing and the social disapproval of behavior by people with whom there is a connection. In both instances, the feeling of shame is an important catalyst for the informal enforcement of standards and rules. Conferencing provides a structure to reap the benefits of informal social controls while reducing the chances of discrimination, prejudice, and intolerance. Even conferencing is threatened, however, when community values are out of joint with those of restorative justice.

Braithwaite's theory of *reintegrative shaming* describes as a key element of conferencing the distinction made between the offender and the offender's behavior—and the avoidance of stigmatizing shame that excludes people. He argues against a preoccupation with finding theories for why people commit crime.⁹⁰ He suggests, instead, asking the question: Why do most of us not commit crime and comply with rules and procedures? Braithwaite's idea is that most people are deterred from committing crime on two levels: internally, through their sense of right and wrong; and externally, by the threat of disgrace or condemnation by people with whom they have a significant relationship. *Any condemnation, in order to maintain an offender's existing social bonds, should be in the context of care and respect.*

Case Study:**Conferencing Is an Educative Process, in Different Ways, for All Participants**

A 16-year-old girl phoned in two bomb threats to the local high school. This was not the first time that the school had received bomb threats, and the principal decided not to evacuate. When caught, the youth stated that she had been bored and had wanted to get out of classes. She was suspended from the school. The girl attended a conference accompanied by both parents and a brother. Also in attendance was the school principal, the superintendent of schools, the chairperson of the school discipline committee, the school's guidance counselor, the two secretaries who had answered the phone calls, and the investigating police officer. The girl admitted she had not considered that her behavior would have such serious consequences and on so many people. The two secretaries talked about the effect that the threats had on them and their families. Both had been experiencing added stress and nightmares. The principal talked about the emotional pain of being put in a position where he had been forced to make the difficult decision whether to evacuate the school or not. He explained that in a previous evacuation some of the special needs children had been injured, and that he himself had an infant son attending the school's daycare center. The girl expressed shame and remorse for the harm she had done, and forgiveness was expressed by the victims. To make reparation the girl agreed to write letters of apology to the families of the principal and the secretaries. She agreed to work 1 hour a day with handicapped children in the school's special needs classroom until the end of the school year (7 months). The girl was reinstated into school and successfully completed the terms of the agreement. She has since decided to make special education her life's work.

What would have happened under the formal system?

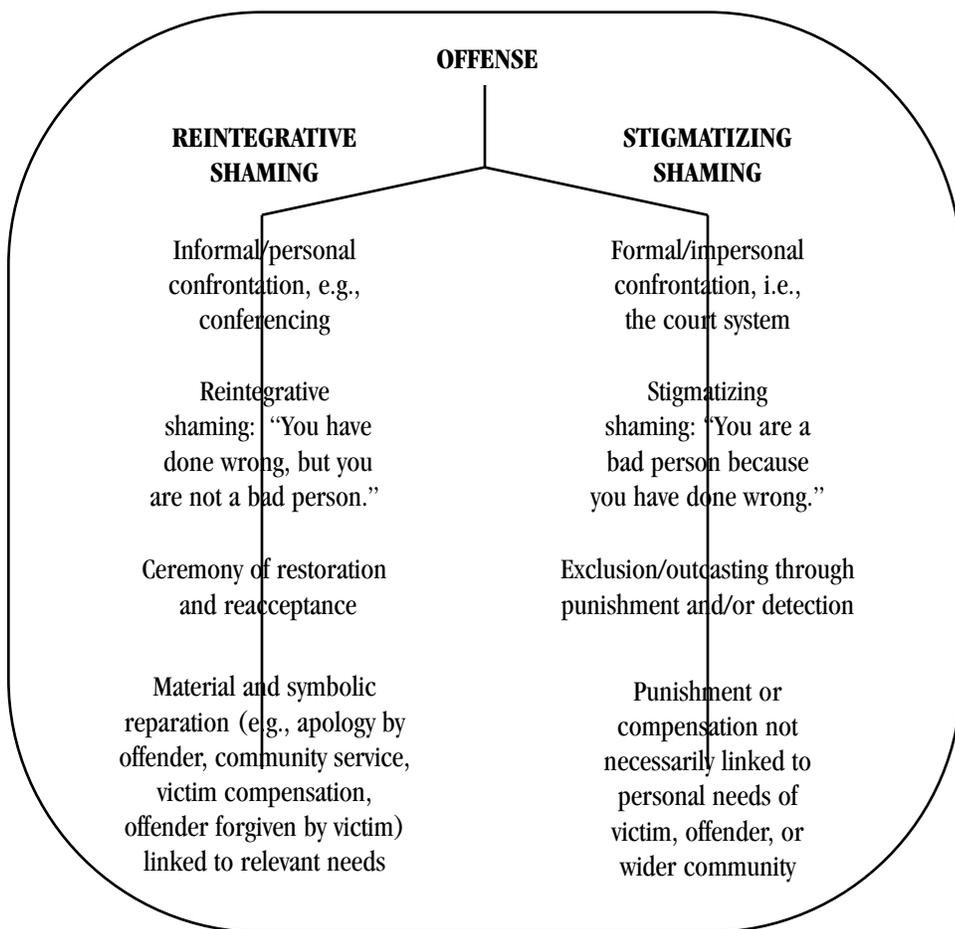
Essentially the philosophy of family group conferencing is that of “participatory democracy in which people are owed respect, valued for any contribution they might have to make, assumed to be capable of making a contribution and encouraged to do so.”⁹¹ This applies to all the participants, including the offender.

Drawing from the Japanese response to crime, where the shaming dimension of their culture plays a significant role (Japan has the lowest crime rates of any industrial nation), Braithwaite argues that when wrongdoers are confronted within a context of supporting relationships, a process of *reintegration* can begin. The confrontation by people who are significant to the wrongdoer creates a shaming experience that differentiates between unacceptable behavior and the person himself. This involves denouncing the unacceptable behavior but includes reacceptance of the individual.

In other words, this *includes* (reintegrates) rather than *excludes* (stigmatizes) the wrongdoer (see Figure 19). This is more likely to effect a change in behavior than are those processes that seek to punish. Care must be taken to avoid *stigmatizing shame*, which can be humiliating and provoke resentment. The threat of social disapproval within a caring, loving, and respectful forum can affirmatively promote changes in behavior.



Figure 19. *Reintegrative Versus Stigmatizing Shaming*



Shame can be a powerful emotion, as illustrated by this story from Victim Services in the Texas Department of Criminal Justice:

An offender had agreed initially to meet with his victim, but as we worked through more and more of the layers of his pain of shame and guilt, he became afraid and decided not to follow through with the dialogue preparation. He told me, "What this process is asking me to do is too hard. I'm to reach down deep inside and face all that I have done and all the pain I have caused... I just don't think my arms are long enough..."⁹²

Don Nathanson describes shame as one of nine innate affects or emotions.⁹³ In his psychological *affect theory*, Nathanson says that shame is the "central social regula-

tor” that governs our social interactions. Our need to feel good about ourselves—our need to belong—is fundamental to our very existence. Those who experience a sense of shame also experience a sense of “social isolation.” Shame that humiliates or stigmatizes tends to be associated with degrading and exclusionary ceremonies, which, Nathanson suggests, evoke four possible negative responses: attack others, attack self, avoid, or withdraw.

As Becker described in the early 1960s, “Deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an ‘offender.’” The deviant is one to whom the label has successfully been applied; deviant behavior is behavior that people so label. According to this theory, the act of labeling a person as deviant proves a self-fulfilling prophecy: once labeled, a person tends to behave accordingly. Contact with the justice system is said to burden people with just such a label. The evidence for this claim is mixed, but it is now accepted that contact with the justice system labels a person, producing a stigma that in turn lowers self-esteem and thus prompts antisocial behavior.

Braithwaite talks about the role that “significant others” play in this process. They, too, experience a sense of shame (a collective shame) about the offender’s actions. Betrayal, loss of trust, surprise, anger, humiliation, and disgust are the emotions and feelings that the offender’s significant others most likely will experience. As the someone who has transgressed, the offender experiences a sense of momentary isolation. How this sense of isolation is dealt with is critical.

Case Study

Shame Can Be a Powerful Catalyst for Changing Behavior in the Context of Caring Relationships

A 17-year-old youth had been caught stealing beer and breaking a shop window. The shop was owned by an Indian family who had persistently suffered racial attacks and was thinking about selling the business. The victim agreed to meet the offender, who attended a conference with his grandfather. The youth showed little remorse, although he admitted the theft and vandalism. Even the victim’s story about the impact on him and his family seemed not to move him. His grandfather, however, told of his shame at hearing about the grandson’s behavior. He related how he and his wife had brought up the offender after his mother abandoned him, and had tried to do the best by him. The grandfather started weeping as he shared the fact that his wife had not been shopping since the boy was arrested; “she is too ashamed to walk in any shop in case people think she will steal like her grandson.” The youth suddenly looked at his grandfather and also started to cry. “I didn’t realize,” he said. “I am sorry, sorry for what I have done, and I will do anything to make up for it.” The youth agreed to a plan of restitution for the victim, to talk to his friends about the impact of racial attacks on the Indian family, and “to do something that will make my grandmother feel proud of me again.” The youth is currently studying business—a shift from his previous intention to work for McDonald’s with the rest of his friends.

Care must be taken to ensure the shaming process is not forced. A Texas judge has incorporated shaming into his sentencing decisions. In one case an offender was required to wear a T-shirt with the words, “I am a sex offender... for life.” In another case, an offender was made to apologize to his victim of domestic abuse on the steps of city hall (notwithstanding the fact that the victim did not want to be there). In Rehoboth, Delaware, local police are putting the photos and name of offenders who commit public nuisances in the local newspaper, hoping to shame them. Forced shaming is seldom helpful in getting offenders to recognize the consequences of their actions in a way that promotes empathy and genuine remorse. Public humiliation may be appealing to hold offenders accountable to the community but this is a dangerous tactic which, while promoting intolerance of crime, only fosters resentment and entrenched attitudes. One offender who was captured for urinating in the street and was advised his name would appear in the local news responded, “It’s no big deal. It don’t bother me a bit. My friends just joke with me. I’m not waiting with 15 guys in a line (for a restroom).”

Offenders use a variety of techniques to protect themselves from the shame of their actions. The collective encounter with the harm done by way of conferencing is often a good chance for breaking down the barriers that young offenders have erected. The sense of meeting eyeball to eyeball with the victim means that the offender cannot stand aloof or detached and allows something of the pain of the victim to penetrate his or her tough exterior. Because conferencing can be highly emotional, offenders actually perceive how their behavior has impacted others. The highly charged atmosphere can produce tears. Any offender unmoved by the victim might be moved by the reaction of his or her own supporters, such as a mother or a sibling. At this point, healing can begin—by the offender taking responsibility for his actions and by making good the harm.

Case Study

Reintegrative Shame Promotes Behavior Change

The offender had been charged with burglary, unlawful mischief, and trespass. Ben was intoxicated when he broke into a vacation home, gaining entry by smashing a door. He proceeded to smash things in the interior of the home. Damages exceeded \$300. The owner of the home agreed to travel 3 hours to attend a conference along with the caretaker of the home. The offender was accompanied by his mother, stepfather, and younger brother. Two other neighbors whose homes the offender attempted to break into also attended. The officer conducting the conference reported that several things made the conference a success: first, Ben hearing from his younger brother how stupid his actions were made Ben feel ashamed; second, concern about their mother having to pay for the damage done by Ben also induced a sense of shame. Also contributing to the success of the conference were the actions of the victim, who relinquished restitution in exchange for Ben’s promise that he get himself turned around.

When the dynamics of conferencing result in the offender taking responsibility and trying to repair the harm done, conferencing can be a vehicle for attaining the ultimate resolution to conflict—a reconciliation between the parties. This reconciliation is construed as true accountability for offending behavior as distinct from the abstract accountability imposed by punishment under the criminal justice system. The essential difference is that conferencing enables offenders to *understand* the need to take responsibility for their actions. For this reason the majority of agreed plans arising from conferences are fulfilled.

Critical, however, to why conferencing is proving effective in bringing about satisfactory outcomes for everyone involved is that conferencing not only encourages offenders to take responsibility, but that responsibility is supported by empowering families and communities to work together to overcome problems identified during the course of the conference. The confrontation allows insights into the life circumstances of the offender, which can promote negotiated plans that focus less on punishment and more on supporting the offender to live a crime-free life. The insights stimulate a willingness to tackle problems in a nonadversarial atmosphere with remarkable results. As Braithwaite has said:

Sometimes moving gestures of healing come from the victim. They waive their right to compensation from an unemployed youth, or invite an offender to their home for dinner after the conference. They may help to find an unemployed young offender a job, a homeless person a home. In one amazing case, a female victim who had been robbed at gunpoint had the offender live in her home as part of the plan.⁹⁰

Case Study Conferencing Is a Preventive Crime Control Measure

In 1994, first-time offenders in Milton Keynes, United Kingdom, even those under the age of criminal responsibility, were encouraged to take part in conferences. This was part of a police strategy to use an arrest as an opportunity for interventions that involved problem identification and for solutions that engaged youth services, schools, the police, parents, and victims. The conferences revealed considerable information about why offenders were committing crime. Some were under pressure from their peers, others suffering abuse, bereavement, or bullying. The conferences showed that crime happens for many reasons and often because offenders are struggling with troubles in their lives that are irresolvable. One police officer who had participated in several conferences said, "What this is saying to us is that every time we send someone to court we are ignoring a problem. Court cases are nothing more than our failure to find the solution to the problems." What if this view were translated to inmates inside prison? Are not punitive sanctions often the result of unattended problems? Perhaps, in the future, the effectiveness of the criminal justice system will be judged not by how many sentences are given but by how many problems are successfully addressed.

Conferencing not only responds to crime that has already happened. It looks forward and involves elements of crime prevention. Family group conferencing can make juvenile offenders face head-on the consequences of their behavior on other people and also involve these people in designing a plan of action to promote a change in behavior. Family group conferences can satisfy the “get tough on crime” criterion as well as the restorative values of strengthening community. Family group conferences also allow for early intervention when a child comes to the notice of the authorities—without having first to secure a criminal conviction. This early intervention can be pivotal to preventing persistent offending.⁹⁴

Evaluation of Conferencing

Restorative justice has as its overall aim the increase in public safety and the strengthening of community ties through peaceful conflict resolution. In many conferences, the participants engage in effective problem solving to deal with the causes that may have contributed to the behavior of the offender as well as tackling the conditions that may promote further harm or crime.⁹⁵ The results may not readily be evaluated following the completion of a conference and the fulfillment of an agreed plan. Victim recovery is another goal, the achievement of which cannot be assumed overnight. Evaluation of family group conferences proves difficult with regard to issues like recovery, prevention, and recidivism—all of which require longitudinal study.

Nevertheless, factors such as victim and offender satisfaction, their sense of fairness, the level of completion of agreed plans, and the reduction in cases dealt with by the formal system can be measured relatively easily. Evaluation of conferencing has shown that parties who have gone through a conferencing process express a high level of satisfaction and experience conferencing as fair, and that reparation agreements are fulfilled in the vast majority of cases.

Since the introduction of conferencing in New Zealand, youth workers have seen their work loads drop by 80 percent, and the number of youths in custody has dropped significantly (66 percent between 1987 and 1992).⁹⁶ An Australian evaluation of the Wagga Wagga model (in New South Wales) reports close to a 50 percent drop in recidivism among young offenders who went through conferences compared with those who went to court, and victim satisfaction has been reported as high as 96 percent.⁹⁷ Evaluation of the Bethlehem pilot project showed that 86 percent of participants rated family group conferences as “good” and 4 percent as “bad.”⁹⁷

In Canberra an extended pilot of family group conferences that began in 1994 is being evaluated by the U.S. criminologist Larry Sherman. The design of the Reintegrative Shaming Experiment (RISE) involves the random assignment of eligible cases.⁸⁸ The study included 1,400 cases and around 6,400 interviews in three offense categories: drunk driving, juvenile property offenses, and youth violence.

Researchers observed the disposition of every case included in the study and subsequently interviewed all offenders, victims, and supporters involved in the cases. The key criteria for comparing court processing to conferencing are these:

- Prevalence and frequency of repeat offending
- Victim satisfaction with the process
- Offender changes in drinking or drug use behavior
- Equity in sentencing in conferences versus court sanctions
- Estimated cost savings
- Procedural justice and protection of rights
- Police satisfaction and increased effectiveness through less time spent in related activity

The importance of evaluating conferences is heightened by virtue of conferencing being a new model of restorative justice. While victim-offender mediation can draw on at least two decades of experience, conferencing is being explored without precedents and is very much about learning while doing. The design and planning for implementation of conferencing are crucial to ensure that the known benefits of conferencing can be maintained. Useful tips for such planning are provided in the companion document to this report, *Toolbox for Implementing Restorative Justice and Advancing Community Policing*.

Problems and Concerns

The implementation of conferencing can be problematic:

Mainstream criminal justice systems continue to focus on the offender, continue to assume that retribution has some inherent value, and continue to operate on the assumption that state officials must impose retributive penalties. Accordingly, where referrals are made to some restorative process from within the mainstream criminal justice system, those administering the restorative process have to choose between two positions. A compromise between these two positions has meant that restorative justice programs have, in practice, been both somewhat corroded and somewhat marginalized during the last two decades. Programs have tended to operate on a small scale, and have frequently failed to escape the traditional paradigm according to which official wisdom focuses on some form of punishment for the individual offender.⁹¹

Moore's warning is to be heeded because of the popular spread of conferencing among criminal justice agencies, which may see restorative justice as a useful means for holding offenders to account without observing the balanced approach and other key values of restorative justice.



The key concerns about family group conferences are as follows:

1. ***Victim participation.*** The participation of victims must be a major aim of the family group conference. Early evaluations found that family group conferences often went ahead without victims' involvement and even without informing them or offering them a chance to participate. When victims were present they were often critical of the fact that their participation seemed peripheral and that their voice failed to be heard. Programs can quickly be seen as a means of working with offenders rather than as a means of serving victims' needs. Practice in many areas has since been corrected in response to the criticisms.

If family group conferences are to contribute to restorative justice, then reparation to the victim and consideration of the victim's needs have to play a full part. This can only be achieved completely if the victim is present as an equal player. Indeed, victims will agree to participate only if the meetings are clearly seen to be dedicated as much to their interests as to any other party's. For a proposed plan to be acceptable, victims must be happy with it. Victims should be encouraged to bring friends and other supporters to offset the danger that the conference might focus only on the welfare of the offender.

Usually victims are interested mostly in rectifying the wrong, in reparation, in an apology, in having the young person come and work for them, or in signs that the offender will change his or her behavior. Sometimes this conflicts with the view of others present at a conference, including criminal justice practitioners. The victim should have a power of veto if the planned outcome is not satisfactory. This represents a significant departure from traditional approaches.

2. ***Considerable interest in family group conferences is widespread, but they can quickly be seen as a powerful means for shaming offenders without addressing the importance of reintegration and reconciliation.*** Family group conferences can mirror the offender and punitive focus of the criminal justice system, particularly when facilitated by criminal justice professionals or when cases are referred by the mainstream court system. Restorative justice can be corroded or co-opted by the punitive bent of the traditional approach to justice.

For example, the Anoka Police Department in Minnesota also was attracted by the shame theory, but soon recognized its potential for controversy: "Shame is something far different than legal guilt. Used properly and with the process of re-integration, most offenders experience true remorse, [and] given the opportunity to amend their actions, do so."⁹⁸ Anoka is responding to concerns that its original focus was too much on sanctions. The reintegrative process can be compromised by an inappropriate emphasis on offender shaming. If conferencing operates within a retributive culture, the restorative justice values will be sidestepped. "You cannot punish and reconcile at the same time. This is not a problem of opinion or ideology. It is simply a question of logic."⁸²

3. ***Skills are different from those traditionally required.*** The skills and neutrality of the facilitator/coordinator are critical to the success of a restorative conference. The

highly charged atmosphere that is normally present in a conference requires of a facilitator good listening skills, strong observation capacity, and sensitivity.

Tony Marshall highlights the dangers of a criminal justice professional assuming the role; such a professional can find it difficult to act in a neutral manner:

The facilitation of family group conferences requires not only specific skills, but also an appropriate orientation. The facilitator's job is to provide a safe and controlled environment for parties that, initially at least, have reason to be rather afraid of each other, to encourage and to enable each party to have their say and to register their views and needs, and to encourage collaboration in problem solving. It is a job of enabling and empowering people who are not used to "having a voice." A representative of any criminal justice agency at the meeting is better suited to participate as one of the parties (having their own ends and agenda) than as an impartial coordinator.⁶²

While Marshall and others⁹⁹ have sounded this alarm, experience is showing that some criminal justice officials can acquire the skills required of a neutral facilitator. In any case, good training and supervision are essential.

4. ***Conferencing demands preparation and time.*** Identifying suitable cases, preparing the parties for participating, and giving adequate time and information for parties to choose to attend a conference allows the facilitator to develop sensitivity about the needs and expectations of each person. Coercing people into a conference because it seems an appropriate way of responding to a crime runs counter to restorative principles, yet it is a temptation many practitioners fall into. Part of the problem is that preparing the ground for a conference to take place with the right participation takes time and resources. Planning can take an average of 10 hours, with the actual conference taking between 2 and 5 hours. This can seem a costly use of resources by a system already under pressure.
5. ***Marketing conferences is sometimes difficult.*** Concerns faced by anyone operating conferencing include being seen as running a *soft* option and being expected to prove that levels of recidivism will drop. This can put some pressure on facilitators to dictate the proceedings to ensure that outcomes appear tough on the offender, or to use the conferencing process in only minor crimes.
6. ***"Letting go" by the professionals is a requirement of conferencing, yet some control is needed.*** Allowing participants to decide for themselves how the harm should be restored is critical. Equally important is that offender rights and safeguards are not compromised by conferencing. An admission of guilt may leave the offender without legal representation. The offender may fear that the full range of a community will bear down on him unless the ground rules of the conferencing process are explained and followed. These include the need for mutual respect, the prohibition of any threat toward anyone participating in a conference, and the assurance that agreed plans are fair and realistic for the offender.

7. *Widening the net.* There is a suggestion that family group conferences could overextend justice responses to crime, beyond a formal warning or caution, in cases that otherwise would be seen as minor violations of the law. Widening the net of social control is only desirable if it is fair. There are dangers that the most vulnerable offenders will be singled out. This danger is to be balanced, however, with the view that early interviews, like conferencing, can be powerful preventive tools following the first signs of offending behavior. (See the case study “Conferencing Is a Preventive Crime Control Measure” in the section “A Sociological Explanation—and Warning.”)
8. *Selecting cases for conferencing can be on the wrong criteria.* It also could be argued that selecting cases on the basis of the traditional categorization of crime (felony/misdemeanor) erodes the roles of the victim, offender, and the community. Too great a focus on the offender also can occur in the selection of cases. The Woodbury Police Department, for example, evaluates cases for conferencing according to three criteria: the seriousness of the crime, the offender’s past involvement in the juvenile justice system, and the attitude of the offender. Other considerations include whether or not the offender admitted to committing the act, the fit between the individual case circumstances and the program goals and objectives, and whether the case will be diverted if it is sent to the courts.

These criteria, however, do not necessarily take into account the needs of the victim and community. Choosing whether or not a victim or offender or member of the community should be afforded the opportunity to participate in a family group conference should also be based on criteria related to restorative justice values: whether the parties want to participate, whether they are prepared for their participation, and the extent to which public safety is likely to be advanced by conferencing.

9. *Capacity of family and communities.* Marshall has pinpointed another concern:

One of the greatest innovations of the family group conference is its involvement of the family in sharing the offender’s predicament, and lending support to an individual who is relatively powerless to resist social pressures that lead to misbehavior. But not all families are able to be such a reliable resource. Many are weighed down by their own problems, material as well as relational. There is a danger that families will sign up to more than they can deliver. The family group conference needs to have regard for this fact, which is why looking for resources to support the family may be even more important than those to support the offender.⁶²

It is part of the skill involved in facilitating conferences that participants are identified among extended family and community members, e.g., teachers, peers, counselors, an aunt from another city, or others. Offenders might, however, feel intimidated by the presence of so many adults. It is important that the environment feels safe enough to encourage participation by both the victim and the offender. However, assessing the capacity of those present to support the parties is a factor to be considered.

Family group conferences, therefore, are not without implementation problems. Yet they offer vast potential for promoting understanding about crime and how it can be prevented. They also are a natural progression from much that is being accomplished under the rubric of community policing.

Family Group Conferencing and Community Policing

Restorative justice experiments have been emerging as part of a rapidly growing social movement for criminal justice reform during the 1990s, similar to the policing changes of the previous decade. As with problem solving (which gave community policing added momentum after two decades of haphazard experiment), family group conferencing— following the introduction of victim-offender reconciliation and mediation programs—has added momentum to the spread of restorative justice.

Part of the excitement about conferencing is its potential acceptability to both liberals and conservatives: its focus on a nonpunitive approach appeals to the former; the latter appreciate its strong emphasis on victim involvement and family/community empowerment and on the inclusion of families as part of the solution to crime. Both find appeal in the fiscal savings that are likely to be realized with reduced dependence on incarceration. It is perhaps this broad bipartisan support that creates a climate for police involvement in conferences.

Other benefits also stem from police-based conferencing. Evidence is emerging that conferencing, when discovered by the police, attracts strong support among officers for its pragmatic approach to criminal behavior. While often initially skeptical about restorative justice, police officers exposed to conferencing become some of the most vocal supporters of changing the traditional response to crime. In New Zealand, Australia, Britain, Canada, and the United States, police officers, sometimes operating at relatively junior levels in their respective organizations, have been incredibly active in obtaining training in conferencing skills and in starting programs to deal with predominantly nonviolent crime committed by juveniles who have admitted responsibility. As an indication of the perceived effectiveness of conferencing among police agencies with a few months' experience experimenting with these cases, there has been a growing tendency for such agencies to apply the process to violent crime as well. Officers have also demonstrated remarkable willingness to use conferencing in other conflict situations, for example, internal tensions, missing persons inquiries, truancy cases, and conflict situations between young persons and others. Why is conferencing grabbing the attention of the police?

The police act as gatekeepers to the justice system and have considerable discretion—more so than is often acknowledged—about whether to mount a full criminal investigation in cases that fall into certain categories of reported crime, or to use the cautioning and diversionary court processes at the disposal of most police departments. Conferencing is especially appealing to those who believe in meaningful intervention at the first signs of trouble by a young person. Many police officers recognize that the first time a person comes to their notice for a criminal act is not necessarily the first time they have broken the law. Moreover, for those who support the view that crime acts are an indication of a deeper problem (abuse, bullying, substance abuse,



neglect, etc.), any intervention that encourages problem identification seems a wise course of action. Conferencing provides a means of resolving crime that has already happened and offers police departments a perfect way of reconciling the tension among post facto investigation, crime detection, and crime prevention. Using the same resources to achieve a resolution of a crime that has already happened, while mobilizing families and communities to support long-term problem solving, is particularly desirable in these days of resource constraints.

Conferencing undoubtedly provides a valuable tool for police officers to engage in dialogue with communities and to promote partnership activity across a range of issues that affect safety and quality of life. In other words, police-run conferencing is a good example of problem-oriented community policing and provides an important alternative model to resorting to criminal justice through the courts. Police officers, in determining with the parties involved in conflict who should attend a conference, are also helping to define *the community* as an entity that can help coproduce policing and public safety. Conferencing helps to activate communities that otherwise might be passive or unaware of their potential contribution to the management of crime and disorder problems.

The relationship between the police and the community, especially, can be strengthened through conferencing. Participants who are invited by the police to attend a conference are inclined to think more positively and favorably toward the police simply because of the willingness by the police to listen and allow their views to shape decisionmaking. Most people appreciate the obvious peacekeeping role of the police officer who works in the capacity of a conference facilitator. People also feel better about being involved in a process that inspires community building, and promotes healthy community relationships, than they do about attending an adversarial trial that tends to leave people feeling sour.

One of the more exciting aspects of conferencing is its potential to radically challenge traditional retributive, crime-fighting attitudes among police and lay communities alike, in favor of constructing the crime problem as a community and individual health issue. Police departments that have already operated conferencing bear witness to the revolution that it can provoke in attitudes toward crime and “criminals.” The deep-seated notion that police are the thin blue line fighting an enemy without adequate public support, and without the back-up of an effective justice system, is quickly weakened by police participation in conferencing.

Police Sergeant Terry O’Connell in Wagga Wagga, New South Wales, for example, surveyed his colleagues prior to introducing conferencing and found that around 50 percent were dissatisfied with the juvenile justice system. The two principal reasons for their dissatisfaction were that officers felt that young offenders were not being made to take responsibility for their behavior, and that the decisions of the courts too often neglected (or ignored completely) the needs of victims. Some officers added their view that the families of young offenders often showed no interest in their child(ren) and that many young offenders held the police and the court system in contempt. Notwithstanding these views, the idea of running conferences did not find favor,

although most agreed that the police were key players in influencing an offender's behavior. Any effort to increase that influence was supported; and so police-based conferencing began in 1991.

The first case in Wagga Wagga concerned a motorcycle theft and criminal damage. The victim, angry with the young offenders, nonetheless agreed to participate in a conference. At the conclusion of the police-facilitated dialogue, the offender agreed to arrange the repair of the bike; and he eventually became friends with the victim, after they shared their mutual interest in bikes.

The Wagga Wagga model was based on a number of goals:⁹¹

- Ensure that the young offender understands the seriousness of his or her offense.
- Minimize the opportunity of the young person reoffending.
- Provide the young offender with an opportunity to accept responsibility for his or her offense.
- Ensure that family and significant others are made accountable.
- Provide the victim(s) with some input into the cautioning process.
- Improve the opportunity for victim restitution or compensation.
- Provide police with an opportunity to contribute in a significant and satisfying way to the processing of young offenders.

Wagga Wagga's experience was a valuable lesson for police departments taking up the process subsequently in Milton Keynes, United Kingdom, where an early experiment with victim-offender mediation in retail theft cases evolved to include the victims' and offenders' supporters and conferencing among the wider community. In 1993, officers were troubled by any suggestion of being seen to decriminalize crime by opting out of the criminal justice system. Within months, however, officers were eager to spread the application of *restorative cautioning* to burglary, assault, motor vehicle crime, and criminal damage. This flip-flop in attitudes was shadowed by the dramatic turnaround of shop staff, who initially balked at the idea of not prosecuting shop theft offenders. Within a year, their National Retail Consortium was lobbying the British Home Secretary to make the scheme national. Five years later, the British government is introducing legislation on youth crime and justice in which conferencing is a key element. Conferencing is also spreading to other forces, including London's Metropolitan Police—in conjunction with other criminal justice agencies and including victim services.

Progress from a single program in Milton Keynes to a nationwide effort to introduce conferencing within 5 years can probably be attributed, in large part, to the police working as part of a multiagency partnership. The partnership helped to gather sup-



port for the rationale for restorative conferencing and to attract participation from social workers, probation staff, teachers, and victim services—people who were influential in the lives of either the offender or the victim. Some officers, however, were clearly more offender-focused than desirable—even to the point of inadvertently using the victim’s story to help them shame the offender, less with an eye on reintegration than on allowing the victim’s experience of harm to speak for itself. Police often overinfluenced the agreed plan, a principal outcome of a conference. These problems were also identified with the Wagga Wagga model; but, with experience, they are being addressed by revisiting the values of restorative justice.

Police can forget, however, how much they are accustomed to seizing control of a situation and exerting authority. Marshall has observed the difficulty police officers experience in maintaining neutrality as conference coordinators, and how police steeped in the adversarial, offender focus of the criminal justice system can tip the balance against the restorative principles of community and victim empowerment. His warning has been heeded, and attention has been given to training and monitoring officers (and volunteers working for the police).

There is every reason to contemplate seriously the involvement of police in running conferences. This role provides a crucial example of police working as a peacemaker in a community, affords opportunities for problem solving in partnership with community and other agencies, and allows police to involve crime victims in decision-making. These benefits challenge the traditional emphasis on professional law enforcement through the courts and promote decentralized, community-based, participatory decisionmaking.

The tension between acknowledging the statutory duty of the police to maintain law and order, on the one hand, and encouraging community and family decisionmaking, on the other, can be hard to deal with. Officers are used to public expectations that their role is one of enforcement and supporting criminal prosecutions; conferencing represents a departure from the popular image of what policing is about, and marketing the concept of conferencing requires sensitive dialogue with those inside and outside the formal justice system.

There are also concerns that the police could be seen as becoming too powerful if left to investigate, to *prosecute* by way of conferencing, and to be involved in determining the outcome of a case. The separation of powers could quickly become compromised unless the police role is balanced with strong influences from community and other professional agencies. For this reason, it is imperative that officers are well trained in *the balanced approach* and the social theory inherent in conferencing. At the same time, conference participation affords an important opportunity to break down stereotypes and myths about crime and offenders, which helps to promote knowledge and understanding for effective problem solving.

In lieu of maintaining protracted criminal investigations to sustain a prosecution, which involves evidence gathering, witness and alibi checks, forensic examinations, etc., conferencing requires only a simpler investigation to establish who was involved and who was impacted by the crime. It is possible (although this has yet to be sub-

stantiated through any evaluation) that more of the guilty offenders would admit guilt in conferences than is currently the case within the adversarial justice system. This possibility has implications for resource distribution to detective units and could support strengthening manpower for community policing. Ideally, detectives would not be excluded from a conferencing role, as their participation could be valuable to changing their overemphasis on enforcement.

Case Study:

Conferencing Is a Useful Vehicle for Resolving Crime Without Long Investigations

When local high school students caused several thousand dollars worth of damage to a car-wash business during the end-of-school celebrations in October, matters looked complicated because so many offenders were involved. Following initial investigations and straightforward admissions of guilt, two meetings were convened. The first occurred at the high school and led to the election of a group to represent all of the students involved in the incident. The second meeting was held at the car-wash and was attended by students, families, teachers, the owner of the business, and employees. Agreements for compensation—partly monetary, partly involving unpaid work—were easily reached.

It is easy to get absorbed in the details of how to run family or community conferences without looking at the key characteristics that promote the ethos of problem-oriented policing and community policing. Restorative justice and conferencing are hardly known to most American police departments yet would be a powerful catalyst for significant progress in improving police-public relationships, promoting effective problem solving, and encouraging communities to apply social capital toward public safety. Restorative justice would help to break down internal tensions between uniform and specialist units as conferencing proves its effectiveness vis-à-vis crime reduction. It also promotes broad understanding of the countereffects of overprofessionalization and the importance (and validity) of citizen engagement in crime control.

The conferencing model, without doubt, provides an entirely new vehicle for promoting police-public collaboration beyond problem identification. While the police may be initially responsible for receiving the crime report, identifying both victims and offenders, and proactively seeking the attendance of community members at the conference, there is then a shift from the professional monopoly to a shared partnership effort to respond to crime. This is entirely in sync with the prevailing view that the police usually face two distinct challenges: reacting to an event immediately and working to promote long-term community safety.

The conferencing model thereby expands policing beyond fire-brigade work in relation to crime to a broader approach involving consultation and enlisting the participation of others to resolve crime. As a byproduct, the police remove themselves from working along adversarial, *them-versus-us* lines to adopt a strong harmonious relationship with anyone who might be able to help in addressing the crime. The strengthening of relationships extends to the conference participants, who are likely to devel-



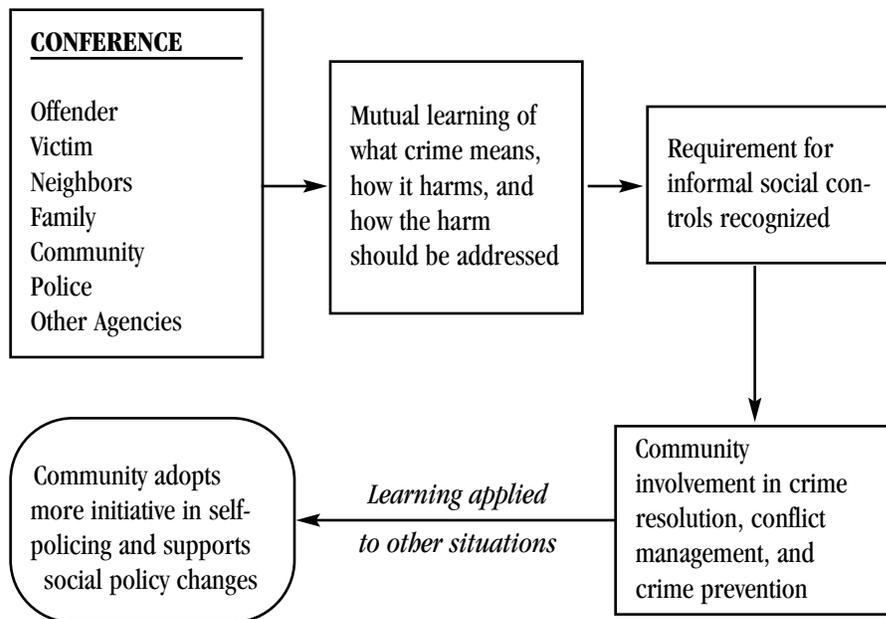
op a spirit of cooperation in which mutual trust, respect, care, and understanding can take place. This even extends to those identified as offenders. Police departments that have run conferencing programs for some months are seeing a general willingness among the police and communities alike to work jointly; and this joint work can be novel simply because the level of mutual trust is heightened.

The conferencing process is not one that should be too alien to the police. The stages involved in running a conference in many ways reflect problem-solving processes adopted under problem-oriented policing. The police, with the help of the victim and offender (and others) will scan the community relevant to the parties to identify who could be a useful supporter and could help the process reach an agreed plan. As with problem solving, no one person or agency representative is seen as possessing all the information required. The understanding of who has been harmed by the crime, and how, requires input from a variety of sources. No one, except possibly the primary victim, has all the knowledge needed to identify the best route to resolving the crime.

In addition, the conferencing process shifts the focus away from looking at crime simply in terms of broken laws. It entails a holistic analysis of the wrongdoing by the offender(s): not only are the facts leading up to, and after, the crime shared; in addition, sharing concerns, fears, hopes, and aspirations breathes life into a vivid picture of the damage that needs to be addressed. In this way, conferencing mirrors the problem analysis that goes on under problem-oriented policing—but perhaps even more powerfully. The dynamics in a conference can be emotionally powerful because participants are engaged in something personal to them; the educative value of sharing information, knowledge, and individual perceptions is hugely significant in building confidence to tackle problems that otherwise might seem intractable.

Conferencing often demolishes myths and stereotypes about victims and offenders, allowing for a broader grasp of the meaning of crime, how it can happen, and how it can be prevented. Although problem-oriented policing has in part been successful in shifting the focus from strict attention to the laws that have been broken to broader economic and social issues, conferencing is an immense stimulant for getting people to view crime in multifaceted terms. Conference participants, including police officers, are inevitably exposed to social justice issues such as weak parenting, skills shortages, substance dependence, and victim empowerment needs, as well as the role and responsibilities of the community in preventing crime. *Conferencing promotes a sense of shared relationship and responsibility toward one another; for this reason, the process is just as vital as the outcome of an agreed plan of action.* This process allows for mutual understanding of everyone's interdependence and contribution. Conferencing promotes tolerance, learning, capacity building, and a feeling of connectedness. The result is less reliance on formal crime control measures and more leaning toward informal social controls that support the vision of coproducing public safety through a combination of professional and lay activities (see Figure 20). In this way the police can begin to relinquish their monopoly on crime fighting.

Figure 20. Conferencing Promotes Self-Policing by the Community and Social Justice



Indeed, where conferencing has taken place, over time the community has been known to initiate for themselves a conference to tackle identified problems affecting the safety and quality of life. Thus the conferencing model produces far more than a commitment to agreed outcomes to address an individual incidence of crime. It breathes life into the concept of community policing in its broadest context, for *it supports a learning process for everybody to recognize that the community can self-police with or without the support of professional police*. If one accepts that the police can no longer be the omniscient force for crime control and public safety, conferencing is an ideal problem-solving tool that the police themselves should welcome.

Furthermore, conferencing promotes a commitment to social justice among lay participants and professionals alike. The exposure to the stories related by the victim, by the offender, and by others will inevitably change people's views on what is required to promote safer communities—beyond what the criminal justice system and punishment can accomplish. Over time this is likely to lead to fewer calls for more expenditures for criminal justice and to greater support for expenditures and investment in social policies that will mitigate the factors currently contributing to crime. The involvement of the police in this shift will fulfill their role of contributing to a safer society and to creating more functional communities dedicated to sustained reduction in crime, fear, and disorder. Additional tools available for achieving such a shift include restorative justice circles.

Sentencing and Healing Circles

Another model that is beginning to attract wide attention in the restorative justice field is the circle. A *circle* (described either as a sentencing, healing, peacemaking, or community circle) is essentially a community-directed process, in partnership with the criminal justice system, to develop consensus on social and personal problems surrounding crime. The circle uses negotiation, mediation, consensus building, and conflict resolution processes that are designed to ensure the following:

- A voice for everyone and an opportunity to be listened to
- Direct sharing of experiences
- An atmosphere in which problem identification and problem solving can be conducted in a respectful manner
- A focus on improving relationships and addressing the problem in ways that promote harmony
- A better understanding of the circumstances of others and tolerance for diversity
- A shared commitment to implement successfully the agreed plan/sentence

The circle process, drawing extensively on the values of restorative justice, contrasts directly with the adversarial process of the court trial; the goal of the circle process is to find the common ground on which to build agreement on needs, hopes, and the means for their fulfillment. Participation is voluntary, and everyone who attends has an equal voice. The emphasis is on interdependence and connectedness between people, and on promoting healthy connections that improve the well-being of those involved.

The circle sentencing model appears to demand the most extensive preprocess preparation. The admission process generally requires, as a condition of admission to the circle, that an offender petition the Community Justice Committee; visit an elder or other respected community member before a conference can begin; work on a reparative plan, which may involve some restitution to the victim and community service; and identify a community support group. While circles may be convened in some cases without these requirements being met (with the special approval of the Community Justice Committee), the preconference process is generally viewed as a screening device and a key indicator to circle participants that the offender is serious about personal change.

The experience of circles in different parts of the world is showing that while community members are unfamiliar with the judicial process, they seem to have no problem with engaging in a process that encourages them to speak openly and honestly and to accept that everyone is equal and should be respected, and that acknowledges

that their decisions can make a difference to their own lives, as well as to others. Some circles are conducted by criminal justice judges who sit in the circle without a bench, desk, or table and guide the process along in an informal manner. How free-flowing the dialogue becomes is greatly dependent upon how far participants can let go of their individual status and speak from the heart. Judge Barry Stuart was the first judge to use circles in his circuit in the Yukon of Northern Canada:

Community circle processes... enable community values, not just justice values, to dominate and shape exchanges and outcomes. These principles make the difference between a community justice process that primarily serves the community needs and one that primarily serves the needs of a formal justice system.⁴³

Case Study:

Circles Provide a Vehicle for Open Dialogue About Community Problems That Otherwise Could Fester for Years

In the Manitoba Community of Hollow Water in Canada, a *healing circle* identified no less than 48 offenders (out of a population of 600) who had committed sexual abuse. All 48 offenders were brought to justice through a series of community circles in which abused victims and ex-offenders met other victims and offenders simply to share their stories and to end the denial that had been rife for years. To appreciate how this happened, it is necessary to change perspective from the focus on establishing guilt and on punishment to the focus of circles—learning from people who speak from the heart. Hollow Water may sound like an incredible story, but it is one that is being experienced by an increasing number of criminal justice professionals working closely with victims, offenders, and communities.

Stuart suggests that circles build or rebuild communities and rekindle pride in belonging to a community—enhancing self-esteem in members and advancing the overall well-being of the community. Circles, in short, rely on informal social controls within communities by responding to, as well as preventing, crime.

How different are circles from conferences? Both engage citizens, victims, and offenders in processes that seek to address the harm that has been caused by crime; but it is probably an accurate assessment of circles that the primary outcome sought is strengthening community relationships in order to resolve problems. In conferencing, community capacity building is often a byproduct, not a specific goal, with the emphasis more on providing community support to victims' recovery and offenders' reintegration. Table 7 compares circle sentencing, family group conferencing, and victim-offender mediation.



Both the circle and the conference models are consistent with the balanced-approach model. In addition, circles have attracted considerable attention for their community development and empowerment qualities. In conferencing, offenders can often be surprised at the care shown to them by community members. In circles, this care extends often to the affirmation of what is important to the community in terms of shared values. Kay Pranis calls this the building up of “authentic communities” in which members are “consciously raising awareness of their connections with one another, of their shared fate, and of their joint humanity.”¹⁰² This extends the process beyond dealing with the justice issues provoked by a crime to tap into the resources, wisdom, and strength of a community; tapping these resources is vital for gaining a sense of power over what happens to the community, and for how the community handles adversity as well as opportunity. The process is the antithesis of the technical due process of the court system because it introduces soul-searching at the deepest level about why crime happens and how it can be stopped. Table 8 depicts the stages in the circle process.

Case Study:

Circles Can Be Used for a Variety of Criminal Conduct That Disturbs Communities

Circles have operated since the late 1980s, and several models have developed. In Minnesota, Judge Steven Ruble began circles in Ojibwe on the Mille Lacs Reservation with a case involving a gang member who had killed his sister's cat. The outcome of the circle was an agreement for the offender to build bird houses and to work as a volunteer with the Department of Natural Resources. In 1994 in British Columbia, a manslaughter trial was delayed pending a community sentencing circle to determine the locals' views after a local teacher had been killed by a drunken youth by gunshot. The circle was open to the public and was attended by 46 people, including the offender and the victim's family. Consensus was reached on the sentence, a period of incarceration; but both the victim's family and the family of the offender spent time with the offender before he was taken away. All 46 sat down to eat a meal at the same table, including the estranged families. “Many prayers were spoken, much anguish expressed, many tears were shed, many confessions were made, and much love and compassion was shown.”¹⁰⁰

Table 7. Community Decisionmaking Models:
Administration and Process

Model Variable	Circle Sentencing	Family Group Conferencing	Victim-Offender Mediation
When operation began	Approximately 1992	New Zealand, 1989; Australia, 1991	Mid-1970s
Where used	Primarily the Yukon, sporadically in other parts of Canada. increasing interest in Minnesota and elsewhere in the United States	Australia, New Zealand, United Kingdom, Europe, United states (Montana, Minneapolis, and Pennsylvania)	Throughout North America and Europe
Point in system when used	Various stages; may be diversion or alternative to formal court hearings and correctional process for indictable offenders	New Zealand: throughout juvenile justice system; Australia Wagga Wagga model: police diversion; Thames Valley Police, United Kingdom: police diversion	Mostly diversion and probation option, but some use in residential facilities for more serious cases
Eligibility and target group	Offenders who admit guilt and express willingness to change; entire range of offenses and offenders eligible; chronic and violent offenders targeted by some communities	New Zealand model: all juvenile offenders eligible except murder and manslaughter charges; Wagga Wagga model: determined by police discretion or diversion criteria; United Kingdom: mainly property crime, adults and juvenile	Varies, but primarily diversion cases and property offenders; in some locations, used with serious and violent offenders (at victim's or offender's request)
Staffing	Community Justice Coordinator/Facilitator	Community Justice Coordinator/Facilitator	Mediator; other positions vary
Setting	Community center, school, or public building	Social welfare office, school, community building, and (occasionally) police facility	Neutral setting such as meeting room in library, church, or community center; occasionally in victim's home if approved by other parties
Nature and order of processes	After judge, justice of the peace, or "keeper" opens session, each participant allowed to speak when feather or <i>talking stick</i> is passed to him or her; victim(s) generally speak first; consensus decision making	Coordinator follows script in which offender speaks first, followed by victim and other participants; consensus decision making	Victim speaks first; mediator facilitates and encourages victim and offender to speak; does not adhere to script or force consensus

(continued)

Model Variable	Circle Sentencing	Family Group Conferencing	Victim-Offender Mediation
Who participates?	Judge, prosecutor, defense counsel participate in serious cases; victim(s), offender(s), service providers, support group present; open to entire community	Coordinator identifies key people; close kin to victim and offender targeted, as well as police, social services	Mediator, victim, offender are standard participants (family and others allowed on rare occasions)
Victim role	Participants in circle and decisionmaking give input into eligibility of offender, choose support group	Victim expresses feelings about crime, gives input into reparative plan	Major role in deciding offender obligation and content of reparative plan; expresses feelings about crime and impact
Gatekeepers	Community Justice Committee	New Zealand: court and Criminal Justice Coordinator; Australia, UK, and US: law enforcement and school officials	Victim has ultimate right of refusal; consent is essential
Role and relationship to system	Judge, prosecution, court officials share power with community on selection, sanctioning, follow-up; presently, minimal impact on court caseloads	New Zealand: primary process of hearing juvenile cases; required ceding of dispositional power; major impact on court caseloads.	Varies on continuum from core process in diversion to marginal programs with minimal impact on court caseloads
		Australia: police driven; variable impact on caseloads; concerns about net-widening	
Preparation	Extensive work with offender and victim before circle; explain processes and rules of circle	Phone contact with all parties to encourage participation and explain process; New Zealand model requires offender and family to have face-to-face visits	Typically face-to-face with victim and offender to explain process; some programs use phone contact
Enforcement and monitoring	Community Justice Committee; judge may hold jail sentence as incentive for offender to comply with plan	Unclear; police in Australian Wagga Wagga model; coordinator in New Zealand model; in United Kingdom, independent evaluation by Home Office	Varies; mediator may follow up; probation or other program staff may be responsible
Primary outcome sought	Increase community strength and capacity to resolve disputes and to prevent crime; develop reparative and rehabilitative plan; address victim's concerns and public safety issues; assign responsibilities to victim and offender support groups and identify resources	Clarify facts of case; shame offender or denounce crime while affirming and supporting offender; restore victim loss; encourage offender reintegration; focus on "deed, not need"	Allow victim to relay impact of crime to offender; express feelings and needs; victim satisfied with process; offender increases awareness of harm; gain empathy; agreement on reparative plan

SOURCE: Adapted from Bazemore, G., and Griffiths, C., "Conferences, Circles, Boards, and Mediations."¹⁰¹



Table 8. Stages in a Circle

Stage	Activity
Preparation	Identify who will come and remove surprises
Opening	Welcome, ground rules, introductions, creating comfortable atmosphere
Legal stage	Facts, history, probation report
Clarifying facts	Anyone can add information, share feelings and concerns
Seeking common ground	Identify the issues that underlie the crime, alcohol problem, broken family relationship, exclusion from school, gang membership
Exploring options	Examine what must be done to support the victim, what must be done by the offender, what must be done by the community
Developing concerns	Ensure everyone has been heard and all options understood; probe what options are realistic and will gain shared commitment
Closing	Summarize, even if consensus not reached; allow people to leave feeling good

The main lesson to be drawn from circles is that lay members of the community (geographically defined or otherwise) are capable of sharing responsibility for crime control, of problem solving with an eye on the future, and of working in partnership with the formal justice system. The common outcomes of circles not only meet the needs of criminal justice in terms of holding an offender accountable; they also serve the victim, the wider community, and the family or friends of the offender. Plans may involve the following:

- Meeting or working with the victim or his/her family to understand the impact of crime and to support the victim
- An apology to the victim
- Attending counseling, treatment, school, or life-skills courses
- Short prison sentences—combined with other actions
- Voluntary work with people who need help, e.g., neighbors looking after children, shopping for the elderly, teaching reading or writing skills, work with the disabled

- Offenders talking to other offenders¹⁰³
- Help in paying off debts

The result is that attention is paid to those issues that can help the recovery of victims, can improve the capacity of the offender to become law abiding and to make a contribution to society, and can enhance community safety and well-being. While many of these plans coincide with many community-based sanctions of the criminal justice system, the major difference is that they are determined following input from all significant parties—who have experienced a journey of understanding about what happened to whom and have explored how various needs should be met. These needs may focus on material, emotional, physical, and sometimes spiritual needs of the community. Thus, the plans are unique and more meaningful than anything the court system can provide. Another reason why circles are likely to grow is that the process is culture sensitive, which is important for many minorities.

The recidivism of offenders who have gone through a circle is much lower than for those who have not, according to Canadian research. Repeat offending generally involves less serious crimes and less frequent unlawful activity. Circles often lead to close ties in the community, which in turn leads to meetings being organized independent of the authorities to resolve issues that crop up. Circles promote partnership and harmony.

Types of Circles

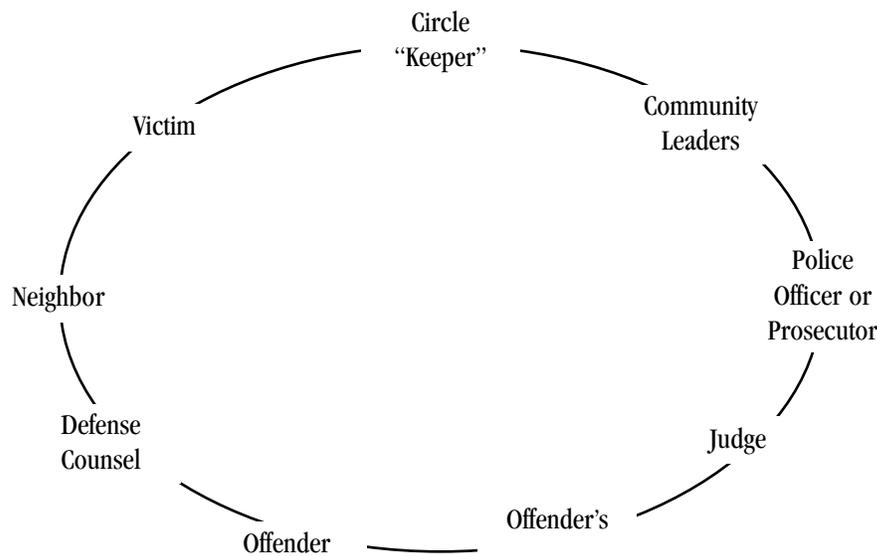
Every participant in the circle is encouraged to draw on his/her life experience to add to the understanding of the problem and to generate possible solutions. Every life story has relevance to finding a resolution which facilitates healing for all those affected by the crime. Circle discussions about individual crimes often become discussions about larger problems in the community. Circles provide a forum for problem-solving to prevent crimes in the future—a forum which operates on core principles of democracy, inclusion, equality, and respect.¹⁰⁴

—Kay Pranis

The two main types of circles are healing circles and sentencing circles. Figure 21 shows the participants in a circle. Healing circles are held for either the victim (including in cases where no offender has been caught) or for the offender and are conducted privately with those selected to share decisions about what needs to be done. When the circle is for the victim, the focus is on his or her pain and loss and on understanding what would help the victim reach closure and healing. The group may also decide what input they wish to provide to any subsequent plan to deal with the offender. When the offender is the focus, healing circles help to explore the underlying problems associated with the criminal behavior and to support the offender to make changes.



Figure 21. The Makeup of a Circle



A sentencing circle, as conducted in Canada, involves several steps:

1. An application by an offender to the people who decide whether a circle is appropriate
2. Creation of a support community for the offender and for the victim
3. Holding healing circles for both parties separately
4. Holding a sentencing circle in which decisions are made about how the identified problems and harms should be addressed and about what will prevent future occurrences

The circle process is based on Aboriginal concepts of justice, which stress the importance of the spiritual connectedness of people. It rests on the belief that offenders are created, not born, and that healing is possible if problems are aired in a caring and respectful manner.

Communities are operating circles in conjunction with professionals for the criminal justice system; the circles allow for the participation of people who otherwise would have little or no say in the decisionmaking process. The process involves the assumption that everyone has something important to say and that everyone is equal. The combined experiences and wisdom of the group are seen as necessary to ensure that the most appropriate plan is drawn up, thus promoting change in the offender and drawing the whole community closer together.



Case Study:

Circles Reveal Linkages Not Often Recognized in Other Processes

A woman was arrested for drug possession offenses and referred to a healing circle. During the course of the circle, she listened to those who had family members addicted to drugs and how much they felt her activities must be creating many problems for her family. The woman had not considered the harm she might be doing to others by continuing her drug habit until she recognized her addiction was similar to that of alcoholism. Several years earlier, her husband's addiction to drink had become unbearable and had caused the breakup of her marriage. The circle represented a turning point in the woman's life.

Circles and Community Policing

To date, no single police agency has operated circles, although limited participation by the police is taking place. Circles are likely to have an increasing impact upon the police, as much as on the rest of the criminal justice system. Interest in circles is growing rapidly—the result of their focus on community development, victim frustration with the formal justice procedures, and the popularity of conflict resolution through nonadversarial processes. In particular, circles offer a participatory forum that lay citizens find is a natural and comfortable means for dealing with difficult and sensitive issues. Rather than being associated with fighting, circles attribute a different meaning to crime control and conflict solving: genuinely addressing people's problems, needs, and interests in ways that engender social and individual responsibility, rather than focusing on punishment and blame.

Police involvement in circles may wisely be deferred until such time as the police themselves understand that their role should be at least as much about promoting self-policing by responsible communities as about the enforcement of the law. The circle process demands the eradication of any hierarchy among the participants; this is difficult for many officers to imagine, since their traditional role has supported an air of authoritarianism, notwithstanding the principle of policing by public consent.

A stepping stone toward handling crime by conducting (or rather, convening) circles is to use the circle process in partnership efforts; the process affords a means for exploring feelings that might otherwise fester under the surface of a factual exchange of information. Partnering is often difficult because participants have different goals, interests, and problems—and operate in different organizational cultures. A process like circles provides the vehicle for engendering openness and respect, thus allowing differences to be identified that might otherwise act as real obstacles.

Circles are also underpinned by the fundamental principle that no one individual and no one organization is to be viewed in isolation. Instead of supporting the continuance of traditional lines of demarcation and responsibility, circles view responsibility, power, resources, and structures as interrelated.

Then I was standing on the highest mountain of them all, and around about beneath me was the whole heap of the world. And while I stood there, I saw more than I can tell and I understood

more than I saw; for I was seeing in a sacred manner the shapes of all things in the spirit and the shape of all shapes as they must live together like one being...¹⁰⁵

Conclusion to Part 4: Models and Processes Emerging Under Restorative Justice

Victim-offender mediation, conferencing, and circles are the current stock of mainstream restorative justice, but by no means the only procedures for implementing restorative justice. *Restorative justice values can be injected into almost anything that involves interactions between people.* Shifting the focus from blaming and shaming only to listening and understanding will smooth many of the tensions created when we focus on *us versus them* rather than on what can be done together. Our tendency to find labels for anyone different from ourselves masks how much we have in common. Restorative justice values and processes allow us to relearn this truism.

An example of the often small distance between victim and offender can be found in the public defender's office in Washington, D.C. The office keeps records of all offenders charged with criminal offenses. It also keeps records of the names of crime victims. The overlap between the two is significant, making the dichotomy between victim and offender somewhat artificial. Many offenders have themselves been victimized and some victims of crime commit offenses. Anyone who commits a crime should be held accountable, but accountability can be accomplished without a climate of vindictiveness in which us-versus-them attitudes dominate.

The benefits of the restorative justice processes apply to crime as well as other kinds of conflict. For the police, each of these processes offers an invaluable tool for promoting problem solving in collaboration with other agencies and the public. They also offer the police an alternative approach for dealing with internal grievances and tensions, and such internal use is helpful in promoting organizational and cultural change.

As Jennifer Lynch, who ran the alternative dispute resolution program for the Royal Canadian Mounted Police, says, "Traditionally police forces created their power-based discipline and grievance systems by simply borrowing from the criminal justice system. Officers in trouble with their superiors would be charged, tried, convicted, and sentenced. But this is no way to deal with conflict with persons who intend to have a continuing relationship after the conflict is dealt with."¹⁰⁶

Perhaps the most critical point is that these processes offer the police a new framework for developing shared responsibility for policing, between themselves and the public, making policing everybody's business. They provide the tools for moving the emphasis away from the traditional model of professional policing (supported by the community)—to the community actively policing through informal social controls (supported by the professional police). In short, restorative justice processes can support the transition to be made from stage 1 to stage 5 as outlined in Table 9.



Table 9. Changing the Police-Community Relationship in Community Policing

Stage	Police-Community Relationship
1	Police operate separately from community
2	Police provide information to community
3	Police ask community for information
4	Police recognize need for help from community
5	Policing is conducted by the community, supported by the police

How far the various models advance the transition depends on how much they reflect the balanced approach and the values of restorative justice. In turn, this depends greatly on the objectives set for any program as well as the implementation of the processes (including preparatory and overview stages). While each model described so far has elements of community strengthening (as well as crime prevention and victim support), they tend to have their own particular emphasis. For example, modern victim-offender mediation processes focus on serving the interests of victims, in light of the criticism that some previous attempts had focused too much on changing the behavior of the offender. Family group conferences have had as a central concern the *reintegrative shaming* of offenders, which can compromise the satisfaction of victim needs. Victim participation and degree of satisfaction in earlier versions of family group conferences have suggested that victims were used more as props to hold offenders accountable. However, evaluations of these earlier models, particularly in New Zealand and Australia, have helped to promote adjustments to a more balanced approach. Circles and conferences are both concerned with community empowerment and with promoting informal social controls; they may offer the most powerful tools for reducing public dependence on the formal justice system.

If these models are to continue developing along restorative justice lines, however, care must be taken to ensure that the dangers of co-optation by the police and the rest of the criminal justice system are avoided. Co-optation can easily happen, since many professionals are so accustomed to the adversarial approach. Mark Umbreit also warns of the “McDonaldization” of restorative justice should the restorative justice models become institutionalized.



Revisiting the values and humanistic assumptions of restorative justice is important and will help to avoid “fast-food” versions of the theory. Community policing has taught this lesson already. The experiments over the last three decades have shown how quickly the focus can stray as departments burden themselves with introducing tactics that are perceived to be suited to the needs of the day. The importance of revisiting the original focus of policing (by the people, for the people) cannot be overstated. Policing, by its very nature, requires both short-term activity and a long-term vision. Restorative justice processes are powerful when human feelings can emerge that promote forward-looking thinking in spite of the need for structures to address the reality of today.

Policing was intended to be about peacemaking when it was begun 150 years ago, but somehow that paramount objective was overtaken. Any disillusionment about the capacity of community, the power of problem solving, and the effectiveness and realism of conciliatory partnership efforts should be eroding, given what has already been achieved in promoting harmony in jointly addressing crime. Restorative justice fosters even more understanding of, and confidence in, the relevance of peacemaking in contemporary society. It builds on previous peacemaking efforts and takes things much further. As McCold and Wachtel describe, “The collaborative processes developed from restorative justice practices are a natural tool for police interested in engaging communities for crime control and prevention and might be called restorative policing.”¹⁰⁷ Indeed, engagement by the police *and citizens* in restorative justice will help revitalize the original meaning and purpose of policing: “Policing by the people for the people.”¹⁰⁸

In the companion document to this monograph—Toolbox for Implementing Restorative Justice and Advancing Community Policing—some of the risks and dangers inherent in the implementation of restorative justice are outlined, as well as the issues that require attention to avoid undermining the values of restorative justice.



Community Policing,

COMMUNITY JUSTICE, AND RESTORATIVE JUSTICE

Final Comments

Final Comments

The first thing to understand is that the public peace... is not kept primarily by the police, as necessary as the police are. It is kept primarily by an intricate, almost unconscious network of voluntary controls... No amount of police can enforce civilization where the normal casual enforcement of it has been broken down.¹⁰⁹

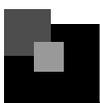
Jacobs' quotation is well-known and the importance of informal controls is widely acknowledged. Left to chance and in the absence of strategy, the disproportionate reliance on government controls will continue to have unintended consequences.

The central proposition of this report is that democracy will suffer if policing and justice continue to treat the problem of crime as one requiring more, rather than less, use of a professionally run criminal justice system. The recognized need to invigorate communities and citizens to promote informal social controls will continue to be undermined by the focus on enforcement through legal due process—unless there is a real commitment to social justice. Moreover, as long as social exclusion for those who commit crime is accepted as a solution, and as an inevitable byproduct of maintaining law and order, our understanding of crime will be limited; the result will be more public dependence on the criminal justice system.

Overprofessionalizing the fight against crime and marginalizing offenders are not efficient ways of dealing with threats to public safety because, ultimately, they are unsustainable—at least in a free society. The purpose of policing and justice is to promote universal well-being, by serving as instruments of democracy “by and through which the pressing concerns of all can be heard, their safety guaranteed, their crises addressed, their conflicts interrupted and resolved.”⁷⁷

Attention to democratic values and peacekeeping is too often sidelined, however, in the delivery of public safety. The current focus on the crime problem—usually defined in quantitative terms instead of by its full impact on victims, communities, and society (e.g., gated communities, incarceration, and self-interested individualism)—is counterproductive without a recognition of the crucial role of informal social controls and of joint police-public problem solving. Achieving the goals of participatory crime resolution and prevention requires a national strategy.

The developments in community policing and community justice raise hope that the commitment to citizen and community participation may no longer be seen as a “hopelessly romantic notion.”³⁰ But hope alone leaves too much to chance. Participatory democracy is critical for promoting responsibility, education, mutual learning, tolerance, and care. These are the necessary preconditions to healthy informal controls and the development of social justice policies to address many of the criminogenic structural weaknesses inherent in current social and economic arrangements.



In short, policing and justice should have as their central aim the strengthening of democracy. Strengthening democracy (and public order and safety) requires that collaboration, building trust, social inclusion, and the concept of modern citizenship are respected for their essential contribution to a well-functioning and healthy nation.

The active participation of citizens and communities in crime control and justice delivery is currently too marginal to provide the safety net required to keep traditional crime fighting from becoming a self-defeating war. Participation has had to compete with the forces arguing for pouring resources into the traditional aspects of professionalism and strengthening the powers of formal systems of control. While the rhetoric has clearly supported community and citizen engagement (at least by way of partnership activity), the energy has primarily been locked into expanding the capacity of the criminal justice system, including the police.

The reasons are understandable. First, skepticism exists of the ability of citizens to be organized to become a *realistic* buffer against high levels of violent crime and disorder, which have bred fear and discouraged community participation. Second, the expansion of the role of citizens and communities is seen to require inordinate attention to all that is involved in coalition building—from identifying willing partners to work together, to developing a distribution of tasks to meeting a common goal. These demands are viewed in the context of insufficient time to address the challenges that most people want resolved today.

The exponential growth of policing and criminal justice budgets has been the result of calls for a seemingly pragmatic response to crime, fear, and disorder. The wisdom of the recommendations of the Presidential Commission more than 30 years ago remain uncontested, but its implementation is compromised by the logic that justifies strengthening the traditional system to fulfill the state's obligation to provide security. So, an increased emphasis on professional police alone (and, as a result, weaker communities) prevails, as does fear of crime, public dependence, and calls for still tougher measures to control crime and the conditions that reap more crime.

Failure to break this vicious circle is already having serious consequences; the lack of participation equals denial, impatience, and intolerance: *denial* that there is a problem (maintaining the myth that government can deliver safety on its own), *impatience* with crime, and *intolerance* of those who are deemed blameworthy.

Several years ago in Spain, a city was gripped by a series of asthma attacks, which resulted in dozens of people needing hospital treatment. The problem persisted for years. Some patients died following an acute attack. The hospital authorities were perplexed as to the cause of these attacks. They sought weather records to determine if an unusual pattern existed in the local climate; new drugs were tried; they arranged for doctors to maintain comprehensive records of all asthma patients; they organized pollution tests and tried to pin down geographic asthma hot spots. All to no avail. Not

until a large consortium was formed of organizations from schools, the business community, health, water authorities, meteorologists, and ecologists, did a clue to the problem emerge: when cargo ships delivered grain to a local river port under particular climatic conditions, polluted water spread to certain sections of the city, spurring the attacks.

The lesson is that we cannot identify and resolve problems by looking only at the obvious, nor by working in a vacuum. Like Callaway's analogy about the interdependency of plant life, we are often unaware of the connections between cause and effect, actions and result, linkages and ramifications.

Crime is no different. It has causes as well as consequences; often these are hidden until we search for the why? how? what? and where? This kind of awareness should influence the operation of policing and justice more than the focus on crime statistics and convictions. Vehicles are needed that expand our tunnel vision and enlighten us about the inter-relationship between humans, their environment, their activities, their interests, and the response that we give to these. The existing tunnel vision necessitates a safety net until enlightenment is more widely shared.

The safety net for a healthy, open democracy will not come from local efforts alone. The *laissez-faire* experiments with community policing and community justice (and even restorative justice) need to correspond to some coherent vision that anticipates future challenges while dealing with today's reality. Although crime reduction is always a desirable goal, the means of achieving it require a framework that makes possible timely and effective action that promotes participation, problem solving, social cohesion, and adherence to values that support, not weaken, an open society.

Such a framework will not force everyone to do the same thing. It needs, instead, to be an overarching infrastructure grounded in agreement about priorities. The priorities must stimulate local initiative and link local experiments so that they pull in the same direction and result in a significant impact. Community policing might have provided this infrastructure but for the emphasis on crime fighting in a punitive climate.

With the new experiments in restorative justice, a framework is now within our grasp that not only tackles crime effectively, but also addresses the conditions that promote crime, fear, and disorder. It does so based on a set of values and processes that are oriented toward resolving problems through collaboration, power sharing, harm reduction, and crime prevention—all achieved by engaging lay citizens who have, until now, been encouraged to slumber. Professional policing—already pushing the envelope toward sharing responsibility with communities for problem solving—has much to offer in terms of encouraging restorative justice's entry into mainstream practice. Its key position as gatekeeper to the justice system, and its contacts with the public beyond the scope of law enforcement, provide opportunities for professional policing to bridge the gap between the existing system of primarily formal controls—and a potentially more healthy balance between formal and informal social (and crime) controls.



Policing is tough, stressful, complex, and problematic, but it is essential to the survival of any democracy. It is confronted with the crises of “here and now” as well as with the challenges that can be anticipated in the future. It is tempting to limit the purpose and role of policing to something that is quantifiable and readily identifiable. But that is not a realistic or productive response to the need. The police should be seen as part of a community, not as a separate entity. It should be policing with the community so that knowledge, experience, expertise, and lack thereof, can be identified; the resulting increase in understanding and awareness can, in the context of democratic values, break down myths and assumptions that too often preclude effective problem resolution.

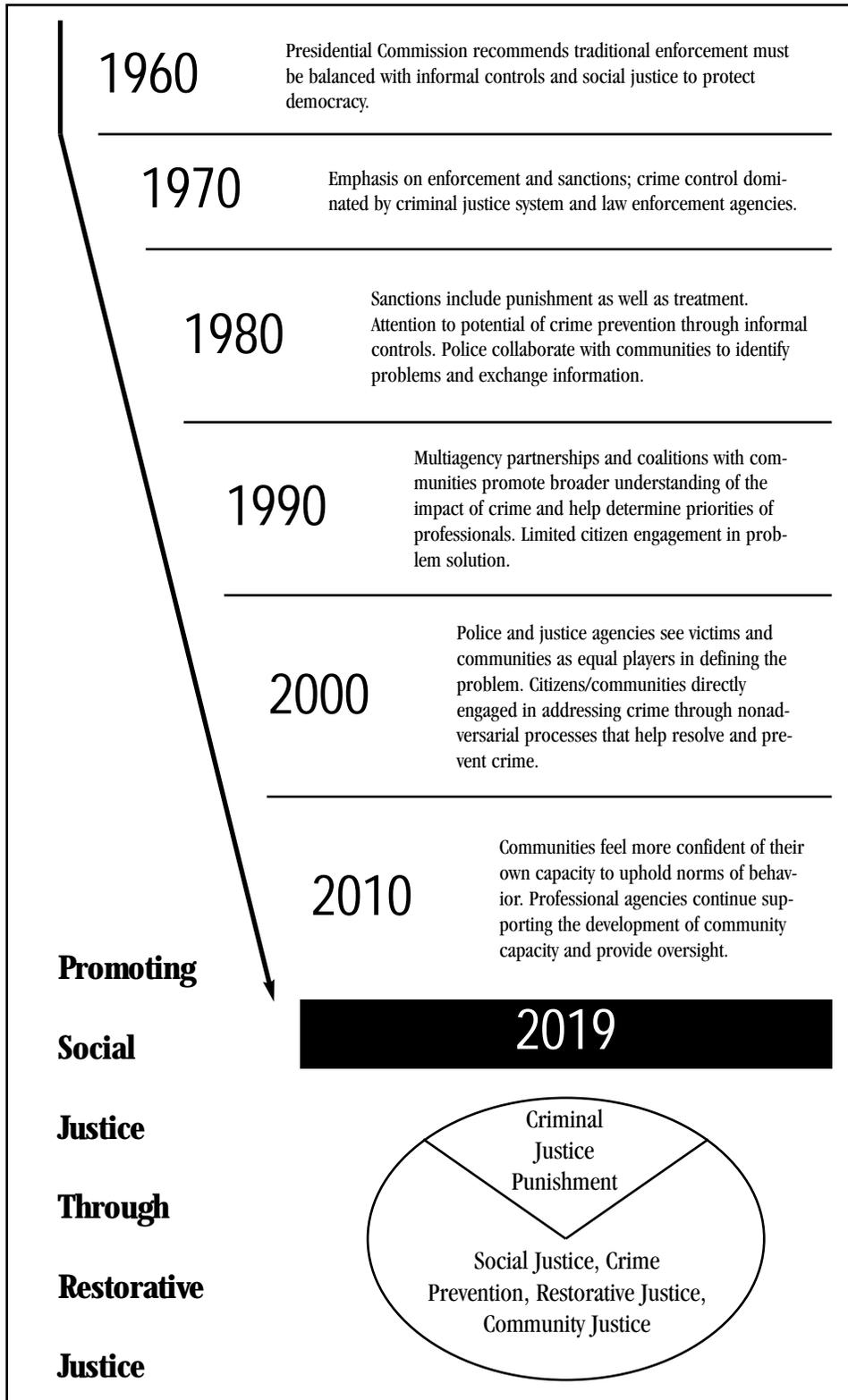
The police have the advantage of seeing more of the problem than most people. The police have also been constrained by their marriage to a justice system that has, so far, offered the antithesis of community-oriented, problem-solving policing by its exclusion of those who can help identify and resolve problems.

Policing would be wise to deal with the risks and uncertainties confronting contemporary society by tapping into the strengths and support inherent in democratic inclusion and involvement, particularly in light of what the future holds if exclusionary, ultimately antidemocratic measures are retained. This report suggests that the police should be exercising the potentially powerful option—an option that represents a natural progression of developments to date—to begin the application of restorative justice.

It will take time, and not a small amount of suspended skepticism, before local restorative justice experiments become the basis of a framework for an enlightened crime policy at the national level. The key lies in making community-oriented, problem-solving policing not so much about crime fighting as about resilience and guarding against a failure to protect democracy. This is not as lofty an idea as it seems; we are already on that path and will progress, provided we continue to enlighten ourselves through the steps shown in Figure 22. This would be truly a pragmatic response to crime.

Police are leading the way to a community based justice system. It has to be the police to get the rest of us to think about this.¹¹⁰

Figure 22. Steps in Dealing Effectively With Crime While Strengthening Democracy and Social Justice



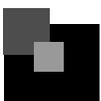
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References and Notes

References and Notes

1. I have distinguished these last two throughout the report because of the way the term *community justice* is being applied and discussed. My view is that most applications of community justice retain much of the core elements of *criminal justice* without the change of values prescribed under *restorative justice*. Restorative justice represents more fundamental changes in the approach to crime, thus requiring special attention among the host of new developments. The distinction goes to the heart of the central mission of promoting public safety in a democracy.
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Community Policing,

COMMUNITY JUSTICE, AND RESTORATIVE JUSTICE

Epilogue: Putting This into Practice

Epilogue: Putting This into Practice

Accompanying this monograph is a handbook for police departments that want to help build stronger communities through restorative justice: *Toolbox for Implementing Restorative Justice and Advancing Community Policing*. The *Toolbox* does not offer universal answers or even a blanket program. What it offers are several components that should be taken into consideration when designing a program.

Each program will have to cater to local needs; running throughout all programs that practice restorative justice, however, are its *values*. These form the essence of the new paradigm, and attempts at implementing restorative justice must begin with an exploration of their meaning and application.

Restorative justice's perspective on crime includes a focus on the harms it does. Implementing restorative justice, therefore, requires redefining crime to include figuring out what the consequences of crime really are. Thus, the *victim* plays a central role in ascribing meaning to the event, with the *offender* and the *community* helping to repair the harm and ward off further harms.

Restorative justice seeks not only *law and order* but *social justice* as well. The social justice goal involves addressing problems that might be contributing to crime and promotes the engagement of citizens in applying informal social controls.

The locus for all restorative justice work is the community—but not all communities have high levels of activity or face the same problems. A restorative justice program needs to devise a way for the state to help activate and support communities, so that their local efforts can complement the broad goals of policing: peacekeeping in the context of a free society.

Program development requires thought about all of these factors. Furthermore, any program that wishes to remain healthy will have to test itself against certain *benchmarks*; and these benchmarks, like the program itself, will vary according to the needs of your community.

Restorative justice is still in an experimental stage. Communities have yet to explore and discover the fullness of its benefits. A host of unresolved issues face every practitioner, who therefore will be creating the future of crime control and social justice—and will be building the kind of communities that enrich a participatory democracy.



Appendix. Restorative Justice Resources

Police Departments Implementing Restorative Justice Processes		
Anoka, MN (U.S.)	Andrew Revering	(612) 421-6632
Carver County, MN (U.S.)	Paul Schnell	(612) 361-1251
Vermont (U.S.)	Wanda Daniels	(802) 295-9425
Wardburg, MN (U.S.)	David Hines	(612) 739-4141
Bethlehem, PA (U.S.)	John Stahr	(610) 865-7162
Genesee County, NY (U.S.)	Dennis Whitman	(716) 344-2550
Milton Keynes (UK)	Ken Webster	011441-908-686664

Copies of “Building Community Partnerships” by Judge Barry Stuart are available by contacting the Aboriginal Justice Directorate, Department of Justice, Canada; telephone: (613) 941-2974.

Campaign for Equity—Restorative Justice
111 High Street
Brattleboro, VT 05301
E-mail: jwlmrdng@sover.net

Center for Peacemaking and Conflict Studies
Fresno Pacific University
1717 S. Chestnut Avenue
Fresno, CA 93702
Telephone: (209) 453-5840
*For classes in Victim-Offender
Reconciliation:*
1-800-909-VORP

Center for Restorative Justice & Mediation
Mark S. Umbreit, Ph.D.
University of Minnesota
School of Social Work
1985 Buford Avenue
386 McNeal Hall
St. Paul, MN 55108-6144
Telephone: (612) 624-4923
Fax: (612) 625-4288
E-mail: ctr4rjm@che2.che.umn.edu

Community Justice Institute
Florida Atlantic University
College of Urban and Public Affairs
Gordon Bazemore, Ph.D.
220 S.E. 2nd Avenue, Room 612C
Fort Lauderdale, FL 33301
Telephone: (954) 762-5668
Fax: (954) 762-5693

Community Justice Project
Carolyn McLeod
Washington County, MN
Telephone: (612) 430-6948

Conflict Transformation Program
Eastern Mennonite University
Howard Zehr, Ph.D.
Harrisonburg, VA 22801
Telephone: (504) 432-4490



Genesee Justice Program
Genesee County Sheriff's Department
County Building 1
Batavia, NY 14020
Telephone: (716) 344-2550

Murdered Victims Families for
Reconciliation
P.O. Box 208
Atlantic, VA 23303
Telephone: (804) 824-0946

REAL JUSTICE
P.O. Box 229
Bethlehem, PA 18016
Telephone: (610) 807-9221
E-mail: <realjust@aol.com>

Restorative Justice Institute
P.O. Box 16301
Washington, DC 20041-6301
Telephone: (703) 404-1246
Fax: (703) 404-4213
E-mail: <bprestonjd@aol.com>
Newsletter: *Full Circle*

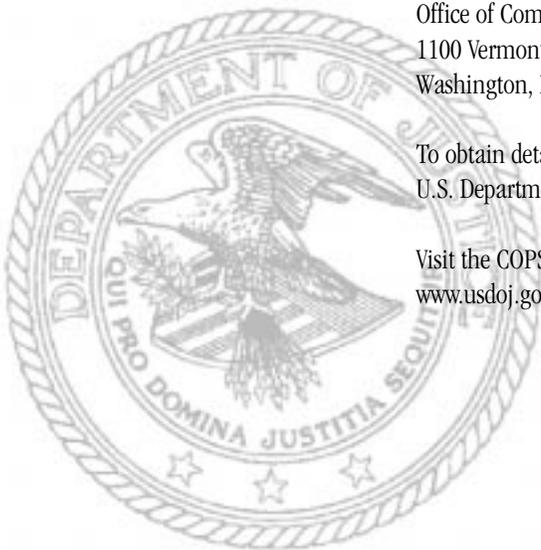
Victim Offender Mediation Association
(VOMA)
c/o Restorative Justice Institute
P.O. Box 16301
Washington, DC 20041-6301
Telephone: (703) 404-1246
Fax: (703) 404-4213
E-mail: <voma@voma.org>
Newsletter: *Victim-Offender Mediator*

FOR MORE INFORMATION:

U.S. Department of Justice
Office of Community Oriented Policing Services
1100 Vermont Avenue, NW
Washington, D.C. 20530

To obtain details on COPS programs, call the
U.S. Department of Justice Response Center at 1.800.421.6770.

Visit the COPS internet web site:
www.usdoj.gov/cops



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