

Restorative Justice and Conferencing¹

Kathleen Daly and Hennessey Hayes

Introduction

During the past decade Australia and New Zealand have become world leaders in one form of restorative justice:² diversionary conferencing. These jurisdictions have embraced this new justice form and have promulgated legislation to establish it. While the use of conferencing steadily expanded throughout Australia and continued throughout New Zealand during the 1990s, increased reliance on it has been guided more by political and community pressure than by systematic research into what occurs in the conference process, its effectiveness in reducing crime, and its salutary effects on crime victims.

In this chapter we review research on diversionary conferencing from New Zealand and around Australia. We first compare how New Zealand and Australian states and territories have developed and implemented this justice innovation. Second, we review research that examines how conferencing is viewed by offenders and their victims. Third, we examine whether conferencing can play a role in reducing re-offending by reviewing research from New Zealand, the Re-Integrative Shaming Experiments (RISE) in the ACT, and the South Australia Juvenile Justice (SAJJ) Research on Conferencing Project.

Conferencing in Australia and New Zealand: Similarities and Differences

Conferencing in Australia and New Zealand differs from other world jurisdictions, in that with the exception of an Australian territory and state (the ACT and Victoria), all have statutory-based schemes, with conferences being one component in a hierarchy of responses to youth crime. The overarching goal in legislative frameworks is to keep juveniles out of the formal system as much as possible. In addition to statutory-based schemes for juvenile offenders, conferencing is used in a variety of other contexts,

¹ Forthcoming in Adam Graycar and Peter Grabosky (eds.) *Handbook of Australian Criminology*. Cambridge University Press.

² It has become nearly impossible to define restorative justice with any precision, except to say that it is an "alternative" to the traditional forms of courthouse justice. In general, "it emphasises the repair of harms and of ruptured social bonds resulting from crime; it focuses on the relationships between crime victims, offenders, and society; its practices will necessitate changes in how state officials work, both what they do and how they do it" (Daly and Immarigeon 1998: 22). See *Contemporary Justice Review* (2000) for debates on definition.

including school and workplace disputes, family and child welfare (or care and protection matters), and as pre-sentencing advice to magistrates and judges.

The typical candidate for youth justice conferencing is an offender under the age of 17 or 18 (depending on the jurisdiction),³ although there is increasing interest in both countries to use conferencing as a diversion from court for adults.⁴ Despite critical analyses suggesting that conferencing has been imposed on indigenous people (see Blagg 1997; Cunneen 1997), at a Canberra conference for researchers and practitioners in July 2000, Australian indigenous conference convenors were generally optimistic about the benefits of youth justice conferencing. However, in addition to conferencing, there are other justice forms in Australia that may prove to be as consequential (if not more so) in changing indigenous-white justice practices. Among them are consultation by magistrates and judges with indigenous justice groups on the disposition of particular cases, and special sentencing days convened by individual magistrates for indigenous cases. The point to underscore is that conferencing is one of several innovations on the justice landscape.

Other countries such as Canada and England and Wales have introduced legislation that attempts to make restorative justice and conferencing an explicit feature of juvenile and criminal justice systems (see, e.g., LaPrairie 1999; Dignan 1999); and other countries such as the United States, Canada, and several European countries have been experimenting with forms of restorative justice, such as victim-offender mediation, sentencing circles, and other types of circles (see contributors to Morris and Maxwell's [2001] edited collection). However, there has been an extraordinary degree of sustained, legislated activity in Australia and New Zealand that is not seen in any other jurisdiction.

³ The minimum age of criminal responsibility is 10 years in Australia and New Zealand. However, there can be differences in the minimum age a person can be prosecuted in court: in South Australia, the age is 10, but in New Zealand, it is 14 (except if the offence is murder or manslaughter).

⁴ In New Zealand, conferences have been used to provide pre-sentencing advice to magistrates or judges in sentencing adults since 1995. In 1996, in New Zealand, three pilot schemes of "Community Panel Diversion" for adults were put in operation (Maxwell, Morris, and Anderson 1999). In the ACT, diversionary conferences have been used in adult cases (besides drink driving), but the number of cases is unknown. There is discussion in other jurisdictions about using conferences in adult cases, but no legislation has yet been passed or proclaimed.

Emergence of conferencing

In 1989 the *Children, Young Persons and Their Families Act (1989)* was passed in New Zealand, which introduced family group conferencing. Not only was New Zealand the first country to provide a statutory basis for conferencing, it had (and still has) the most systemic model. Although reliable statistics are not available, about 20 to 30 percent of New Zealand juvenile cases that are not disposed of by the police go to a conference at some stage. Conferencing in New Zealand is used not only as a diversion from court, but also as pre-sentencing advice to the Youth Court for the most serious cases.⁵

Unaware of the developments leading up to the New Zealand legislation, John Braithwaite wrote *Crime, Shame and Reintegration* (1989). He argued for the development of criminal justice processes that increased the likelihood of reintegrative shaming, rather than stigmatic shaming of offenders. The link between Braithwaite's concept of reintegrative shaming and New Zealand conferencing was initially made in 1990 by John MacDonald, who was then adviser to the New South Wales Police Service. MacDonald proposed that New South Wales adopt features of the New Zealand conference model, but that it be located within the Police Service. A pilot scheme of police-run conferencing was introduced in Wagga Wagga in 1991 to provide an "effective cautioning scheme" for juvenile offenders (Moore and O'Connell 1994: 46).

Intense debate arose in Australia in the early 1990s about the merits of police-run ("Wagga model") and non-police run ("New Zealand model") conferencing. In addition to New South Wales, other states trialed police-run conferencing, including Tasmania, the Northern Territory, and Queensland. Also during this period, parliamentary inquiries were established in Western Australia, Queensland, New South Wales, and South Australia to address the perceived problem of increased juvenile offending and to consider more effective approaches to juvenile justice (Alder and Wundersitz 1994: 1). Legislated approaches, which incorporated conferencing as one component in a hierarchy of responses to youth crime, emerged first in South Australia with legislation passed in 1993. Since then, all other Australian jurisdictions, except the ACT and Victoria, have introduced legislation, with all the statutory-based schemes rejecting the Wagga model in

⁵ Of the 20 to 30 percent of conferences, approximately 10-12 percent are used for pre-sentencing advice, and the remainder as diversion from court (Gabrielle Maxwell, personal communication).

favour of non-police run conference models.⁶ In other parts of the world where conferencing has been introduced (e.g., the United States, Canada, England and Wales), an opposite trend seems to be occurring: these jurisdictions use the "Wagga model", and depending on the jurisdiction, conferences are used in place of a formal caution (i.e., as a "caution plus") or as a diversion from court.⁷ The Wagga model differs from the New Zealand model in two ways: it is facilitated by a police officer, and it draws heavily on the theory of reintegrative shaming.⁸ Practitioners in jurisdictions with the New Zealand model are more likely to say that reintegrative shaming is one of several theories structuring their practice, or that restorative justice, not reintegrative shaming, is the theory structuring their practice.

The histories of the emergence of conferencing in Australia and New Zealand are quite different. In New Zealand, the conference idea emerged from a political process that involved both "top down" and "bottom up" activism: top down from state officials and professional workers (who were subsequently supported by members of the judiciary) and "bottom up" by Maori groups (Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare 1988). Also, in New Zealand, the 1989 *Act* arose from concerns with how decisions were made in child and family welfare cases, not just in youth justice cases. In Australia, by comparison, the idea of conferencing moved into the policy and legislative process almost entirely via mid-level administrators and professionals (including the police), exhibiting comparatively less of the constructive race politics evident in New Zealand.⁹ Also in Australia, conferencing has been applied

⁶ An exception is the Northern Territory, which has two statutory-based schemes that provide for non-police run conferences (enacted in 1999) and police-run conferences (enacted in 2000).

⁷ An exception is recent legislation in England and Wales, the *Youth Justice and Criminal Evidence Act 1999*, which provides for automatic court referral of selected cases to "youth offender panels", which are to have reparative elements.

⁸ Conferencing practices in New Zealand can differ from those in Australia in several ways. For example, in New Zealand, there is typically a break in the conference for the "family group" to have a private discussion of the outcome. There is also a more explicit concern with making conferences culturally appropriate.

⁹ We are not suggesting that racial engagement was absent in Australia; rather, we are saying that the country-wide discussion that took place in New Zealand during the 1980s, centring on the Treaty of Waitangi, had the effect of framing juvenile justice (and welfare) reform within the terms of racial (indigenous) social justice.

mainly to youth justice, not to child and family welfare decisions.¹⁰ In this chapter we will focus on conferencing in youth justice cases.

The conference process

Despite differences in the ways in which conferencing is organised and administered, the look and feel of conferencing is similar in New Zealand and all Australian states and territories. Conferences take the following form when used as a diversion from court prosecution. A young offender (who has admitted to the offence), his or her supporters (often, a parent or guardian), the victim, his or her supporters, a police officer, and conference convenor (or coordinator) come together to discuss the offence and its impact. Ideally, the discussion takes place in a context of compassion and understanding, as opposed to the more adversarial and stigmatising environment associated with the youth court. Young people are given the opportunity to talk about the circumstances associated with the offence and why they became involved in it. The young person's parents or supporters discuss how the offence has affected them, as does the victim, who may want to ask the offender "why me?" and who may seek reassurances that the behaviour will not happen again. The police officer may provide details of the offence and discuss the consequences of future offending. After a discussion of the offence and its impact, the conference moves to a discussion of the outcome (or agreement or undertaking) that the young offender will complete.

Organisational and practice variation

In Australia and New Zealand, there is considerable variation in where conferences are located on a flow chart of discretionary decision-making, where they are housed organisationally, and what kinds of offences are conferenced. Each jurisdiction has a different history and politics of what preceded conferencing and this affects how the idea has taken hold and evolved. Three sources of variability are apparent in Australia. First, jurisdictions vary in the length of time to complete an outcome: this ranges from 6 weeks in Western Australia (in practice, although not stipulated in the legislation), to 6 months in New South Wales (which can be extended), and 12 months in South Australia. The

¹⁰ As reported in Strang (2000: 28-31), conferencing was introduced in child and family welfare (or child protection) cases in Victoria in 1992 on a limited basis; it has statutory authority in South Australia (*Children's Protection Act 1993*), in the ACT (*Children and Young People Act 1999*), and to a limited degree, in New South Wales (*Children and Young Persons Care and Protection Act 1998*, not proclaimed as of October 2000).

sanctions or reparations that are part of agreements include verbal and written apologies, paying some form of money compensation, working for the victim or doing other community work, attending counselling sessions, among others.

Second, while all jurisdictions prefer that the outcome be reached by consensus, they differ on which people, at a minimum, must agree to it. For example, in South Australia, the young person and the police officer must, at a minimum, agree to the undertaking. In New South Wales (a jurisdiction where a police officer need not be present), the young person and victim (if present) must agree to the outcome plan. And, in Queensland, the young person, victim, and police officer must approve the outcome. In all jurisdictions, the outcome is a legally binding document.

Third, jurisdictions vary in the kinds of offences that can be conferenced, in the upper limits on outcomes, and in the volume of cases handled. At one end of a continuum is Western Australia, which has a list of offence types that may not be conferenced ("scheduled offences"); it tends to conference a high volume of less serious cases (including traffic offences). At the other end is South Australia, which has no specifically prohibited offences (although the *Act* states that conference offences are those that "can be dealt with as a minor offence" because of the "limited extent of the harm", among other reasons). South Australia conferences a high volume of cases, uses conferences in serious offences (including sexual assault), and has the highest maximum of community service hours (300) in Australia. Compared to conferencing in Australian jurisdictions, New Zealand handles the highest number of cases (estimated 4000-5000 youth justice cases per year, although accurate statistics are not available), there are no prohibited offences (except murder or manslaughter which are dealt with in the High Court), and conferences are routinely used in cases of "medium seriousness" (Maxwell and Morris 1993: 63). Jurisdictions are compared along these and other dimensions in Table 1.¹¹ Information contained in Table 1 and this article is current as of March 2001. Because legislation and policy initiatives are evolving and continue to change, readers are advised to check with the relevant ministries or departments for the most current information.

¹¹ This table adapts from Daly and Hayes (2001), where information was checked by key people, whom we would like to acknowledge here: Jenny Barga (New South Wales), John Jones (Western Australia), Gabrielle Maxwell (New Zealand), Gail Pollard and Jason Kidd (Queensland), Jeremy Prichard (Tasmania), Declan Roche (the ACT), Grant Thomas (South Australia), Graham Waite (Northern Territory), and Glenys Wilkinson (Victoria), plus referees used by the Australian Institute of Criminology.

Some people may desire greater uniformity across jurisdictions, but there may be strengths to experimenting with a variety of practices during this early phase of development. For example, New South Wales has introduced an innovative method for providing legal advice to young people: a free telephone hotline. In light of the critiques of conferencing for promoting coerced admissions, coupled with concerns by the defence bar (especially in Queensland) for the disclosure of pleas to some offences in any future court sentencing, the hotline is an effective means of legal access. In Queensland, which up until April 2001, convened conferences only in the State's southeast and in Cairns and handled no more than about 180 conferences a year, more resources were put into preparation for each conference, including pre-conference face-to-face interviews with the victim and young offender.¹² And, in the ACT, contrary to the usual focus on youth offending, adults were conferenced for drink driving offences during 1995-97 as part of the Re-Integrative Shaming Experiments.

Conferencing legislation

The story behind the emergence of conferencing, both its politics and the legislation preceding it, is unique to each jurisdiction. However, several broad characterisations can be made. First, some jurisdictions (New South Wales, Queensland, and Tasmania) began by experimenting with police-run conferences, and then moved to statutory-based schemes. Others (South Australia and Western Australia) never used police-run conferences; instead, they moved more rapidly into drafting legislation. Second, in all the legislated schemes, there is a central role for police formal cautions (or police diversion) for first- or second-time offenders. Conferences are generally viewed as appropriate for relatively more serious offences or for young people who have been in trouble before. Third, the objectives contained in the Australian and New Zealand schemes appear to combine both "welfare" and "justice" concerns, that is, to see the conference process as assisting young people *and* holding them accountable for crime. There are differences between the New Zealand and Australian legislation because the "welfare" and "justice"

¹² Beginning April 2001, the organisation of conferencing in Queensland changed. The State will use the New South Wales model of a permanent staff of conference administrators, who utilise the services of a large pool of trained convenors. This model will permit the introduction of conferencing State wide.

responses in New Zealand are brought together in legislation that simultaneously addresses child welfare and youth justice. In Australia, the legislative focus is on youth justice. However, the point that Maxwell and Morris (1993: 188-90) make for the New Zealand legislation applies with equal force to that in Australia: without an "explicit or implicit ordering of the objectives of the *Act*", there remain "inherent contradictions" in what justice system decisions ought to be focused upon. Specifically, should decisions centre on assisting young people (welfare) or holding them accountable (justice) for their offending?

The introduction of conferencing in South Australia follows a century-long tradition of being a "social laboratory" and "trend setter" in legal reform (South Australian Parliamentary Select Report 1992: 7). It was among the first jurisdictions in the world (arguably the first) to establish a separate court for children and youth (*State Children's Act 1895*), the first Australian jurisdiction to introduce children's aid panels (*Juvenile Courts Act 1971*), and then the first Australian jurisdiction to emphasise elements of a "justice model" in juvenile justice decision-making with the *Children's Protection and Young Offenders Act 1979*. It was the first jurisdiction off the block in establishing a statutory-based conferencing scheme (*Young Offenders Act 1993*) with its legislation and principles largely based on the New Zealand model. However, its legislation is less detailed than that subsequently put forth in Queensland and, especially, in New South Wales. For example, whereas the South Australian legislation devotes three pages to rules and principles governing conferencing, that for New South Wales (*Young Offenders Act 1997*) is four times longer.

Compared to South Australia and Western Australia, New South Wales took longer to introduce a statutory-based conferencing scheme, despite the proliferation of a variety of conferencing approaches in the first half of the 1990s. Drawing on Jenny Barga's detailed summary (1996: 10-19), police-run conferencing was in place in Wagga Wagga from 1991 to 1994, when it was replaced by a pilot of Community Youth Conferencing (CYC), under the aegis of the Attorney-General's Department and run by local justice centres. Since 1987 and prior to the introduction of a "more effective cautioning scheme" in Wagga Wagga, Community Aid Panels (CAPs) had been operating for adults and youths as a kind of pre-sentence mitigation. CAPs were phased out by the mid 1990s, and a pilot CYC scheme was introduced in a small number of New South Wales districts.

The CYC's had some elements in common with South Australian conferencing; however, Barga (1996) says that there were few legal protections for young people and, without a legislative framework, police discretion was not sufficiently regulated, especially when giving a formal caution. When evaluating the CYCs in 1995, the New South Wales government established a Working Party to consider the recommendations that came from it, to write a discussion paper, and to draft legislation. In June 1997, the *Young Offenders Act* was passed in the New South Wales Parliament, and it was proclaimed in April 1998. Unlike legislation in other Australian jurisdictions, the New South Wales *Act* explicitly draws on the United Nations Convention of the Rights of the Child (CROC), which was ratified by Australia in December 1990 (for text, see Alston and Brennan 1991; for background, see Dolgopol 1993). With over 50 articles and sub-sections, the CROC lists a variety of children's rights, including the right "to be heard, to be protected from abuse, to participate in all decisions concerning their lives, ... to have equitable access to justice through the legal system and be able to choose an advocate to assist them ... " (Barga 1996: 16).

The New South Wales *Act*, which also drew a good deal from New Zealand's *Children, Young Persons and Their Families Act 1989*, is a model for legislation concerned with offenders and their rights in the criminal process. However, it is less adequate in contemplating the role and "rights" of victims. Indeed, in all legislation to date, the place of victims in the conferencing process is generally secondary to offenders. In light of the history of criminal law jurisprudence and safeguards of the accused against abuses of state power, it may be difficult to know where victims should belong in criminal law and procedure. It is worth emphasising, however, that the role and place of victims in the conference process is far less regulated and more uncertain than is the case for offenders.

Knowing how conferences vary across jurisdictions is crucial to comparing research findings from different jurisdictions. For example, we might expect some jurisdictions to be higher in victim satisfaction than others because of the kinds of cases handled, how much time conference facilitators put into preparing for each case, and the decision-making power of victims in the process. This turns out to be the case when we compare New Zealand with Queensland. New Zealand uses conferences in more serious cases, but it is a high-volume jurisdiction, where less attention is given to victims (at least in the early years). Queensland uses conferences in relatively less serious cases (although some

serious cases are conferenced); up until April 2001, it was a low-volume jurisdiction, where much time could be spent on case preparation; and victims had greater decision-making power.¹³

Research on Conferencing

There has been an impressive amount of sustained research activity on conferencing in New Zealand and Australia over the last decade. Some of this work falls into the “contract-for-services” category of government-funded research. Other work is directed by university scholars, is more independent, and examines conferencing more in depth. Examples of the latter are research projects in New Zealand, the ACT, and South Australia. Reviewed here are participant experiences with the process and the impact of conferencing in reducing re-offending.

Summary findings: participants' views

Conferencing was first researched in New Zealand (Maxwell and Morris 1993, 1996; Morris and Maxwell 1993). Interviews with 157 young offenders and 176 of their parents attending family group conferences between August 1990 and May 1991 show that 84 and 85 percent, respectively, were satisfied with the outcome of the Family Group Conference (satisfaction decreased to 70 percent for young offenders receiving the most severe penalties) (Maxwell and Morris 1993: 115). By comparison, just half of victims reported being satisfied with the outcome (the level of satisfaction was even lower for pre-sentencing advice to courts) (Maxwell and Morris 1993: 120).¹⁴ When examining the sources of dissatisfaction in the open-ended portions of the interview data (1993: 121), one sees that victims were critical of too lenient outcomes. Moreover, some were "simply never informed about the outcome" (Maxwell and Morris 1996: 100). A quarter of victims said "they felt worse as a result of attending" the conference. While many

¹³ While Queensland's conferencing practices are undergoing administrative re-organisation as of 1 April 2001, our understanding is that the *Juvenile Justice Act 1992*, as amended in 1996, continues to operate as the statutory authority. In Queensland, a victim's consent is required for the police to refer a case to conference, and victims can veto the conference outcome. This victim power in the referral decision will likely be removed with the introduction of legislative changes, currently under review as of September 2001.

¹⁴ It is, of course, not clear what it means to be "satisfied" with the conference process and outcome. Maxwell and Morris (1993: 116) note that "researchers have uniformly failed to identify what it actually means when parents and young people say they are 'satisfied' ... This [may] mean nothing more than relief that 'nothing worse' happened". "Satisfaction" with an outcome is partly a function of what people expect

reasons were given for this, Maxwell and Morris suggest that the most frequent was the victim's sense that the young person and his/her family did not feel "truly sorry" (1996: 100). The early body of work from New Zealand offered a rich and detailed picture of conferencing, using quantitative and qualitative evidence, and it showed how the police and other government agencies were interpreting key elements of the 1989 *Act*.

Studies of conferences in Queensland, New South Wales and Western Australia, which conform more to the "contract for services" model, focused mainly on participants' perceptions of fairness of the process and on their satisfaction with the process and outcome¹⁵. Collectively these studies show that conferences receive high marks on the fairness and satisfaction variables. In Queensland, Palk, Hayes, and Prenzler (1998) analysed survey data collected by the Department of Justice over a 13-month period. Of the 351 offenders, parents (or carers), and victims interviewed, 98 to 100 percent said the process was fair, and 97 to 99 percent said they were satisfied with the agreement made in the conference (1998: 145). To statements such as "I was treated with respect", "I got to have my say", and "The conference was just what I needed to sort things out", 96 to 99 percent of participants agreed (p. 146).

In New South Wales, Trimboli (2000) gathered data from 969 victims, offenders, and offenders' supporters across all state regions during 1999. Overall, 92 to 98 percent of the groups said that the conference was "somewhat" or "very fair" to victims and to offenders, with more detailed procedural justice variables (such as "You were treated with respect" and the "Conference respected your rights") showing similar results (pp. 36-40). Across the three groups, 80 to 97 percent agreed that they were "satisfied with the conference outcome plan" (p. 45). This study goes beyond the fairness and satisfaction variables in asking questions about the degree of information participants had about the conference and what they expected would happen, and what they viewed as the best and worst features of the conference process and outcome.

and partly a function of the outcome itself. Likewise, the meaning of being dissatisfied is varied and has multiple sources.

¹⁵ These studies provide some evidence of participants' views on the conference process, but they are constrained by government demands on researchers for a quick evaluation of conferencing and insufficient resources to conduct more in-depth research.

In Western Australia, following passage of the *Young Offenders Act 1994*, Cant and Downie (1998) conducted an evaluation of family meetings and the *Act*. In the Perth portion of the study, they interviewed 265 offenders, their parents, and victims who had participated in family meetings during 1996-97. For fairness of the process, 90 to 95 percent felt that they (or their child) were treated fairly (pp. 45, 51, 58). For the global satisfaction item on "how the Juvenile Justice Team dealt with" the case, 90 to 92 percent of offenders and their parents were satisfied (pp. 47, 52), but fewer victims (83 percent) were (p. 58).

In Tasmania and the Northern Territory, conferencing has only just begun under statutory-based schemes. Tasmanian police have been running conferences since 1994, but there is no research on those conferences. With the proclamation of the *Youth Justice Act 1997* in 2000, a research study of conferencing is now underway. Except for a study of Wagga model conferencing in Alice Springs (Fry 1997), there is no research on conferencing in the Northern Territory. The Territory's 1999 legislation includes conferencing as one of several court-ordered diversion programs from a 28-day minimum period of detention; unlike other statutory schemes, what is termed "post court" conferencing in the Territory is used as a diversion from incarceration, not court. However, since September 2000 and owing to pressure caused by the mandatory detention of juveniles for a second property offence conviction,¹⁶ the Territory has shifted to a policy of diverting cases from court with a variety of mechanisms, including police diversionary conferences for 10 to 17 year olds. The Territory is the first jurisdiction to have introduced a legislative basis for police-run conferencing, with changes made to the *Police Administration Act* (Part VII Police Powers, Division 2b, assented on 14 November 2000). Thus, in the Territory today, both the New Zealand and Wagga models are operating.

During a small pilot project in 1995-97, Victoria used court-referred conferencing. The project (which is still running) targets young people who have appeared in court previously, but who are deemed eligible for an alternative to probation. Markiewicz (1997: vii) reports that "victims found the process helpful and healing" and "young people

¹⁶ With the election of a Labour government in the Northern Territory in September 2001, the new Chief Minister has moved to abolish mandatory sentencing legislation.

[said] that the conference had a beneficial impact on them" and that it was "preferable to probation".

RISE and SAJJ

In Australia, more sustained and sophisticated studies of conferencing have been carried out in the ACT and South Australia. The Re-Integrative Shaming Experiments (RISE) Project (Canberra, ACT) is important for its research design of randomly assigning RISE-eligible cases to court or conference. Assuming there are an adequate number of cases, random assignment ensures that the two groups are equivalent on both known and unknown variables. When using this design, post-treatment differences between the court and conference groups can be attributed to the "treatment" rather than to general characteristics of the individuals making up each group. There is no other project with a randomised design in the region, and only two others in the world with published results comparing conference and court processes (McCold and Wachtel 1998) or conference and court diversion programs (McGarrell 2001).

RISE began in 1995 and set out to measure the impact of "restorative policing" on offenders' and victims' perceptions of procedural justice and on offenders' post-conference offending. Researchers also plan to compare the monetary costs associated with court and conference. The RISE project will test Braithwaite's (1989) theory of reintegrative shaming which, in a nutshell, argues that (1) individuals will be most effectively "shamed" for their behaviour by those close to them and (2) the *act* not the actor should be the target of shame. Reintegrative shaming also presumes elements of Tyler's (1990) theory of procedural justice, which emphasises decision-makers' neutrality, and justice participants being treated fairly, with respect, and having a say.

RISE gathered data on these offences: drink driving, juvenile property (personal and organisational victims) and juvenile violent crime (including adult offenders up to 29 years old). Highlights include the following (Strang, Barnes, Braithwaite, and Sherman 1999; Strang 1999: 194-95):

- Offenders report greater procedural justice (defined as being treated fairly and with respect) in conferences than in court.

- Offenders report higher levels of restorative justice (defined as the opportunity to repair the harm they had caused) in conferences than in court.
- Conferences more than court increased offenders' respect for the police and law.
- Victims' sense of restorative justice is higher for those who went to conferences rather than to court (defined as, for example, recovery from anger and embarrassment).

The results from RISE suggest that compared to court, conferences deliver what is perceived by victims and offenders to be a "more fair" and "restorative" kind of justice. There remains a mass of data to be analysed and reported, including similarities and differences in court and conference experiences, offence-based variation in procedural and restorative justice, the comparative effects of court and conference on re-offending (see below), and the costs associated with handling cases by court and conference.

The South Australia Juvenile Justice (SAJJ) Research on Conferencing project asks whether elements of procedural and restorative justice are present in conferences, whether judgments of their presence vary by participant group, and how conferences affect participants in the future (see methodology for Year 1 in Daly, Venables, Mumford, McKenna, and Christie-Johnston 1998; for Year 2 in Daly 2001b). SAJJ researchers gathered observational and interview data during 1998-99 on 89 conferences and 172 offenders and victims. Only violent and more serious property offences were studied. Police officers and coordinators completed surveys for each conference; victims and offenders were interviewed in 1998 and again in 1999. SAJJ differs from RISE in that it analyses conferences run on the New Zealand, not Wagga model and does not compare court with conference.

Highlights include the following (Daly 2001a, 2001c, 2002):

- Conferences receive high marks by members of the four conference groups (police, coordinators, victims, and offenders) on measures of procedural justice, including being treated fairly and with respect, having a voice in the process, among others.
- Compared to the high marks for procedural justice, there is *relatively* less evidence of restorativeness (defined as movement between the victim and offender or recognition of the other in the conference).

- Although it is possible to have a process perceived as fair, there appear to be limits on offenders' interests to repair the harm and on victims' capacities to see offenders in a positive light.
- Conferences reduce victims' anger and fear toward offenders.
- For victims who attended conferences, there is an increasing positive orientation toward the offenders over time.
- Similar proportions of victims felt negative as positive toward offenders a year after the conference; however, most victims said that the conference was worthwhile, that they were satisfied with how their case was handled, and that they had fully recovered from the incident.

Summary findings: re-offending

Research on conferencing and re-offending is now available from three jurisdictions: New Zealand, the ACT, and South Australia.

New Zealand

Maxwell and Morris (2000) interviewed a group of 108 young people who had been in their conference sample during their 1990-91 research. They were interested to determine what the longer-term impacts of family group conferences were (if any) on re-offending. Recidivism was treated operationally as *conviction* for a further offence following family conference. The respondents were interviewed approximately 6-1/2 years after the conference (from August 1996 to December 1997) on their pre- and post-conference offending, perceptions of the family conference, and life experiences. At the time of the interview, they were 20-24 years of age.

The authors found that 29 percent of the sample had not been convicted of an offence in the follow-up period. However, 28 percent were "persistently reconvicted", that is, they had been in court on criminal matters five or more times, among other indicators (Maxwell and Morris 2000: 96). The remaining 43 percent were in between: they had been convicted just once, only occasionally, or their record had improved in the last year. The authors find that both early life experiences and events after the family group conference had a significant relationship to re-offending (especially being "persistently reconvicted"). They also found that certain elements in the conference could predict

those who were "persistently convicted": when the young person did not agree to the conference outcome, did not feel involved in the decision-making, did not feel remorseful, and was made to feel a bad person. Maxwell and Morris conclude that "prevention of offending by successful early intervention is likely to be the most effective strategy" and it would be "unrealistic to expect the youth justice system to be able to prevent all re-offending" (p. 101). However, despite these caveats, they suggest that "what happens at the family group conference can be critical" (p. 101).

A note of caution needs to be sounded in interpreting these findings because the study defined re-offending as one or more *court convictions*. If criminal justice system flows in New Zealand are anything like those in Australia, then we should expect that a portion of the offenders in the sample who were "not convicted" would have been apprehended or arrested on new offences. In Queensland, for example, we know that of those offenders who are arrested for crime, a smaller portion are convicted (Queensland Office of Economic and Statistics Research 2001). In fact, in New Zealand in 1997, only 64 percent of all prosecutions resulted in a conviction (New Zealand Ministry of Justice 2001). Therefore, it is likely that during the 6-1/2 year follow-up period, an even higher proportion of the sample had been in some trouble with the police, even if they were not convicted.

The New Zealand study needs to be considered in yet another light. From it, we find that at least 70 percent (or more) of the sample had been convicted one or more times during the 6-1/2 year follow-up period. Based on other research on re-offending, this rate seems high. What needs to be remembered is that New Zealand diversionary conferences include the "more serious" cases, those offenders with previous histories of offending. Thus, any sample of conferenced offenders in New Zealand is likely to be at significantly greater risk for re-offending than any sample of conferenced offenders in Australia.

The ACT (RISE)

Preliminary results from the Reintegrative Shaming Experiments (RISE) indicate that police-run conferences in the ACT have an impact on re-offending for some offences. The project focused on four types of offences and offenders (drink drivers of all ages, violent offenders up to age 29, juvenile property offenders and shoplifters), with a random assignment of cases meeting the project criteria to court or conference. The

results show that for violent offenders who went to conference, there was a significant reduction in the average offending rate in the post-referral period, compared to offenders who went to court. However, there were no court and conference differences in rates of offending for the juvenile property and shoplifting offenders, and very small increases for the drink drivers who went to conference (Sherman, Strang, and Woods 2000).

Re-offending was measured by incidence, that is, the average (mean) number of offences per offender, and reported as a rate per 100 offenders. The authors report that the re-offending data were drawn from the official criminal history data supplied to them by the Australian Federal Police, but they do not say precisely what was counted in their incidence measure. (There are many difficulties extracting and coding data to analyse re-offending; for example, some incidents may have several counts or some offences may have been withdrawn.) The study examined two offending periods: the 12 months before and 12 months after the case was *referred* to the RISE project. According to the authors, the decision to use the *referral date* as the point at which to measure re-offending was made for several reasons. First, referral is argued to have a “placebo” effect on future offending, “...with anticipation of a treatment [or court intervention] having effects even when treatment is not delivered” (Sherman et al. 2000: 9). Second, it is noted that if the project used the actual “intervention” date of the conference or court event itself, this would create disparate measurement windows between the conference and court groups and thus make comparisons difficult. The authors suggest that “[t]he ‘intention to treat’ is actually an indication of a policy of treating people this way [that is, by conference or court], and in that sense [is] a better test of what would happen with such a policy -- of trying to implement treatment -- than only examining cases of successfully completed treatments” (p. 9).

We appreciate the problems that can arise when analysing data gathered in experimental research designs, especially when one wishes to compare the effects of quite different legal interventions (that is, court or conference) on re-offending and when, for 5 to 30 percent of offenders, the assigned treatment was not the delivered treatment (see Sherman et al. 2000: 9, footnote 1). However, we question the appropriateness of using the date when the offender was placed into the RISE experiment (the referral date) as the start point for measuring post-RISE offending. It is possible that referral to a conference will inhibit some offenders from committing crimes; however, there will be others for whom

such anticipated treatments will be ineffective. For example, approximately 8 percent of youth referred to a conference in the SAJJ Project committed a further offence following the referral but preceding the conference.

The RISE project finds (as does the SAJJ project) that the time between apprehension (or arrest) and "treatment" (that is, attending the conference or final court appearance) can be substantial: it ranges from about 2 to 4 months, depending on the type of offence and site of disposition (Sherman et al. 2000: 10, footnote 2). What this means for the RISE recidivism analysis, then, is that the window of time of 2 to 4 months is theorised to be relevant in analysing re-offending, even though the offender has not yet gone to court or a conference. Therefore, the Sherman et al. (2000) analysis does not test the effects of a conference or court on re-offending; rather, it tests the effects of being assigned to a conference or court. We think that a theoretically stronger case can be made for testing the effects of going to a conference on re-offending *after*, not before, the offender has attended it. Sherman et al. make a case for analysing offenders in terms of their "assigned treatment", rather than their "actual treatment" (p. 9), suggesting that this method will produce less bias. However, we wonder what the results would be if the *actual legal intervention* were analysed and if the window of time to analyse offending started *after* the conference or court intervention.

South Australia (SAJJ)

We devote somewhat more time to the SAJJ project because the first author is project director, and we have been collaborating on an analysis of re-offending using the SAJJ datasets. Unlike RISE, SAJJ does not use a randomised experimental design and thus it cannot compare the effects of court and conference on offenders and victims. Instead, like the New Zealand research, the focus is on the effect of conferences on individuals and variability among conferences. Both the SAJJ and New Zealand research projects analyse New Zealand model conferences (that is, run by a coordinator with a police officer present) whereas the RISE project analyses Wagga model conferences (that is, run by a police officer).

SAJJ had two waves of data collection in 1998 and 1999. In 1998, SAJJ researchers observed a total of 89 conferences that were held during a 12-week period in the metropolitan Adelaide area and in two large-sized country towns (Port Augusta and

Whyalla). SAJJ-eligible offences included all personal crimes of violence and property offences that involved personal or community victims (eg., schools, churches or housing trusts). Excluded were all shoplifting cases, public order offences, and drug offences. Here are some features of the SAJJ conference sample:¹⁷

- Forty-four percent of conferences dealt with personal crimes of violence (serious and simple assault, robbery and sexual assault), and 56 percent with property offences (breaking and entering a residence, school, or community building; property damage, including arson; illegal use or theft of a motor vehicle; and embezzlement).
- In 68 percent, the victim was a personal victim of crime; 20 percent were organisational victims, and the remainder were a combination of the two (either personal-occupational or personal-organisational victims).
- In 28 percent of conferences, the victims were under 18 years of age.
- Of the victims of violent crimes, close to half required medical attention and 35 percent needed to see a doctor.
- Of the victims of property crimes, the total amount of out-of-pocket expenses (that is, after insurance) ranged from \$0 to \$6,000; the mean was over \$900 and the median was \$400.
- In 74 percent, the victim was present at the conference and, in an additional 6 percent, a victim representative was present.
- In 15 percent of the conferences there was more than one offender in the conference.
- The number of conference participants (*excluding* the coordinator and the police officer) ranged from 1 to 12, with a median of 5 participants.
- Excluding the coordinator and the police officer, 53 percent of the participants were male and 66 percent were adult (18 years and over).
- Twelve percent of conferences had Aboriginal offenders and 7 percent had offenders of other racial or ethnic minority groups.
- Seventy-nine percent of all conference offenders (N=107) were male and 51 percent of primary conference victims (N=89) were male.

¹⁷ There are two distinctive ways of presenting data on conferences. One is *conference-based*, and the other, *offender-based*. With the exception noted, this list of features of the conference sample gives the percent of *conferences* (not offenders), and where relevant, percents of the 89 primary victims associated with the 89 conferences.

- About half of the conferences (48 percent) involved offences between people who had not met nor seen each other before the offence ("strangers").

For each conference, the police officer and the coordinator completed a self-administered survey, and a SAJJ researcher completed a detailed observational instrument. The project aimed to interview all the young offenders (N=107) and the primary victim associated with each conference (N=89) in 1998 and a year later, in 1999.¹⁸ Preliminary findings from the project are available in Daly (2001a, 2001c, 2002). Here we discuss the effect of conferences on reducing re-offending.¹⁹

SAJJ research on re-offending

We defined re-offending as any illegalities detected by the South Australian police, which were dealt with by formal cautions, conferences and court appearances. We did not include undetected criminal behaviour or behaviour receiving an informal caution by the police (for which no paperwork is required); rather, we included only detected behaviour that produced an official reaction by the police. The official criminal histories of all the young offenders conferenced in 1998 were obtained from the South Australian Police Service. These data included all the formal cautions, conferences and court appearances occurring up to 21 March 1999, along with the dates for the offences, which led to these interventions. In this first study of re-offending, the post-conference follow-up period is 8 to 12 months. Another "pass" of the criminal histories was made in April 2001, which will permit subsequent study of re-offending with a follow-up period of 32 to 36 months.

We extracted these variables from the official records: the number of offences (whole incidents, not just counts of charges), which led to official cautions, conferences, or court dispositions, and which occurred before the offence that led to the SAJJ conference. The same data were extracted for offences following the SAJJ conference. Other data taken from the records include the date of first post-SAJJ offence, the date of first post-SAJJ justice system intervention,²⁰ and the offender's residential address history.²¹ This last

¹⁸ Out of a total of 196 offenders and victims, SAJJ researchers interviewed 88 percent in Year 1; of that group, 94 percent were again interviewed in Year 2. All the interviews were conducted face to face, except those with victims who did not attend the conference, which were conducted by phone.

¹⁹ This summary distils from the full study (Hayes and Daly 2001).

measure of the number of distinct addresses taps the degree of mobility and marginality in the young person's life. In the analysis reported here, we present the *prevalence* of re-offending for the 89 offenders, who were designated the "primary offenders" in the SAJJ conferences. When there was more than one offender present in the conference, as was the case in 15 percent of the SAJJ conference sample, a "primary offender" was identified for whom detailed observational data were gathered by the SAJJ researcher, as well as by the police officer and coordinator at the conference.

Turning to the results, we found that 57 percent of the 89 primary offenders had been in some kind of "official trouble" prior to the incident that led to the SAJJ conference. Put another way, for 43 percent of the offenders, the SAJJ incident was their first officially detected offence (excluding informal cautions, which the police do not document). During the post-conference period, about 40 percent of the young people registered one or more offences. Comparing pre- and post-SAJJ conference periods, we identified these four groups:

Table 2. Types of offenders in the SAJJ sample

Group	Offended pre-SAJJ conference	Offended post-SAJJ conference	Percentage (N=89)
Saints	no	no	33%
Desisters	yes	no	26
Drifters	no	yes	9
Persisters	yes	yes	32

The Saints, who are 33 percent of the sample, committed no other officially detected and documented offence but the SAJJ offence, and they stayed out of trouble 8 to 12 months after the conference. The Desisters, about one-quarter of the sample, had been in official trouble before the SAJJ offence; but after the conference, they stayed out of trouble. A small proportion of the sample (9 percent) had largely stayed out of trouble before the conference, but offended after it; we call them the Drifters. Finally, there are the Persisters, one-third of the sample, who offended both before and after the conference.

²⁰ We make the distinction between offence and intervention because invariably a substantial amount of time elapses from the time an offence is committed (or, more accurately, when it is detected by the police) and the time of the legal intervention, that is, formal caution, conference or court. For example, the mean time from the SAJJ offence to the SAJJ conference was 103 days, and the median was 81 days.

²¹ There were many decision rules about how to count and classify these data that we do not summarise here (see Hayes and Daly 2001).

Our measure of pre- and post-conference offending is dichotomous, that is, it simply codes whether the young person offended (or not) post-SAJJ conference. We first ran a series of cross-tabulations to determine if particular offender characteristics (such as sex, race-ethnicity, mobility and marginality, pre-conference offending) and actions or behaviours that can occur in conferences (such as the offender's expression of remorse) were associated with post-conference offending. From the recidivism literature, it is widely known that negative life experiences and prior offending patterns are good predictors of future offending (Gendreau, Little, and Goggin 1996; Baumer 1997). Comparatively little is known about the relationships between conferencing and re-offending, but there are a set of theoretically expected linkages, such as the degree to which offenders take responsibility for their offence in the conference, how sorry they feel for what they've done, among others. Our analysis of bivariate relationships confirmed many of the theoretically expected linkages that have been proposed in the restorative justice literature. Statistically significant bivariate relationships were found between post-conference offending and observational measures of the young person's behaviour in the conference. Specifically, young people who were observed to not accept responsibility for their wrongdoing, who did not take an active role in conference discussions, who expressed some degree of defiance, and who failed to show remorse were more likely to re-offend. Furthermore, when a conference outcome was not decided by genuine consensus, the offender was more likely to re-offend. Other variables, which have been theorised to affect re-offending from the restorative justice literature, did not evince statistically significant associations. These included victim presence at the conference, offenders apologising spontaneously to victims, and observed evidence of positive movement between offenders and victims in the conference.

Compared to observational variables tapping "restorativeness", those for procedural justice showed no association with re-offending, except for the measure of "consensus" in deciding the outcome, noted above. The main reason for this result is that very high proportions of conferences were judged to be procedurally fair, that is, the process of deciding the outcome was judged by the SAJJ observer to be fair, the police treated the young person (offender) with respect, the coordinator was impartial, and many other such variables. Therefore, with little variation in measures of procedural justice, these variables cannot be used to explain variation in post-conference offending.

In moving from the bivariate to multivariate (logistical regression) analyses,²² we asked ourselves this question: do things that occur in conferences have an "effect" over and above the things we already know to be predictive of and conducive to lawbreaking (and its detection): past offending and marginality?

From the research literature and bivariate analyses, we identified four variables as key controls in the analysis: the young person's race-ethnicity (Aboriginal or non-Aboriginal), sex, whether the young person offended prior to the offence that led to the SAJJ conference, and the young person's degree of mobility and marginality (as measured by the number of residential addresses). In addition to these variables, we identified two conference variables that had strong bivariate effects on re-offending: the degree to which the young person was remorseful in the conference and whether the conference outcome was achieved by genuine consensus or not. With these six variables in the equation, we found that over and above the traditional criminal justice "control variables" of a young person's sex, race-ethnicity, pre-conference offending, and degree of mobility and marginality, *there were things that occurred in conferences that were predictive of re-offending*. When young people were remorseful and when outcomes were achieved by genuine consensus, they were less likely to re-offend. In addition, we found that male offenders, those who evinced greater mobility and marginality, and those with a prior history of offending were more likely to offend post-conference.

These results are strikingly similar to those of Maxwell and Morris (2000), who also found that conference-related variables of a young person not showing remorse and not agreeing with the outcome were predictive of re-offending. Unlike the RISE research, we found no differences in re-offending by major type of offence (that is, violence or property offence).

The SAJJ results suggest that conferences can play a role in reducing re-offending. We need to be careful, however, in how these effects are interpreted in two respects. First, it is uncertain whether conferences induce or "call forth" remorse in some YPs or whether some were already prepared to be remorseful. Moreover, *how* the outcome was arrived at

²² We thank our colleagues Lorraine Mazerolle and Paul Mazerolle for advice in carrying out these analyses.

("genuine consensus" or not) may reflect the behaviour of some YPs who were already prepared to be compliant with legal authority. Second, we note that the predictive strength of the traditional criminal justice variables (i.e., the offender's sex, race-ethnicity, pre-conference offending, and degree of mobility and marginality) was greater than that of the conference variables.

These results are the first in a series of planned analyses on conferencing and re-offending from the SAJJ project data. Additional research will focus on a longer window of post-conference offending time (32 to 36 months); and drawing from the interview material, we shall analyse how the young person viewed their "getting into trouble" and "staying out of trouble", and what impact (if any) the conference had on their lives. While we expect that further analyses will confirm the results reported here and show that conferences may influence future offending for some young people, we suspect that *what young people bring to a conference is highly predictive of what they will take away from it.*

Conclusion

As one form of restorative justice, conferences have become a major fixture in New Zealand and in most Australian jurisdictions in the response to youth crime. The degree of variation in how conferences are organised is substantial, and this creates research opportunities to explore the strengths and limits of various models. With the exception of the first wave of New Zealand research (Maxwell and Morris 1993), we know very little about what happens in conferences and how they affect people. The RISE and SAJJ projects promise to fill many gaps in our knowledge of the conference process, how it compares with court processes, how it affects future offending behaviour, and how it assists victims in recovering from the effects of crime. Other research projects in the region are planned or underway, including studies in New South Wales and Tasmania, and a second major study of conferencing in New Zealand.²³

²³ The New South Wales research is evaluating the implementation and impact of the *Young Offenders Act 1997*, including the uses of police discretion and conferencing; it is a collaborative project between the University of New South Wales, the New South Wales Department of Juvenile Justice, and the Aboriginal Justice Advisory Council (Janet Chan, personal communication). The Tasmania research is evaluating police-run and non-police-run conferences, which are currently working along side each other in Tasmania, as well as the influence of the judiciary in establishing a restorative system; the project is based at the University of Tasmania (Jeremy Prichard, personal communication). The New Zealand research aims to identify factors associated with achieving effective outcomes in youth justice using an evidence-based approach (Gabrielle Maxwell and Allison Morris, personal communication).

Australian and New Zealand experiences are of great interest to overseas researchers and policy-makers, who want to learn about how conferences work and of the variety of ways they are organised and legislated. The most consistent finding across all the research studies to date is that conferences are perceived as fair and participants are satisfied with the process and outcomes. From RISE, we learn that, on balance, conferences deliver a more procedurally fair and "restorative" justice experience than does court. From SAJJ, we learn that compared to the very high marks for procedural justice, there is *relatively* less evidence of restorativeness in conferences. This suggests that there may be limits on offenders' interests to repair the harm and on victims' capacities to see offenders in a positive light. From SAJJ and New Zealand research, we learn that while traditional criminal justice variables are predictive of post-conference offending, there are things that occur in conferences that are predictive, as well.

At present, there exist many more questions than answers about this emergent form of justice. Are the rights of young people protected? Is the process responsive to cultural differences? Are victims used as props in a largely offender-centred process? Do outcomes meet standards of consistency and proportionality? Are some conference models better than others? Do conferences produce major changes in people? Does diversion have system effects on reducing rates of incarceration? Two core assumptions are evident in the literature: offenders and victims are interested in repairing the harm, and when they are brought together in a restorative process, they will know how to act and what to say. To the contrary, we see little in popular culture or day-to-day understandings of justice processes that prepares victims, offenders, and their supporters for restorative ways of thinking and acting. The most fundamental challenge to restorative justice, then, lies in awakening new cultural sensibilities about the meanings of "getting justice" and of "just" responses to crime.

REFERENCES

Alder, C. and J. Wundersitz (eds.) (1994). *Family Conferencing and Juvenile Justice*. Canberra: Australian Institute of Criminology.

Alston, P. and G. Brennan (eds.) (1991). *The UN Children's Convention and Australia*. Canberra: Human Rights and Equal Opportunity Commission, Australian National University Centre for International and Public Law, and Australian Council of Social Service.

Bargen, J. (1996). Kids, cops, courts, conferencing and children's rights: a note on perspectives. *Australian Journal of Human Rights* 2(2): 209-28.

Baumer, E. (1997). Levels and predictors of recidivism: the Malta experience. *Criminology* 35(4): 601-28.

Blagg, H. (1997). A just measure of shame? Aboriginal youth and conferencing in Australia. *British Journal of Criminology* 37(4): 481-501.

Braithwaite, J. (1989). *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.

Cant, R. and R. Downie (1998). *Evaluation of the Young Offenders Act (1994) and the Juvenile Justice Teams*. Perth: Social Systems & Evaluation.

Contemporary Justice Review (2000). Vol 3(4), section on defining restorative justice.

Cunneen, C. (1997). Community conferencing and the fiction of indigenous control. *The Australian and New Zealand Journal of Criminology* 30: 292-311.

Daly, K. (2001a). Conferencing in Australia and New Zealand: variations, research findings, and prospects. Pp. 59-84 in A. Morris and G. Maxwell (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing. <<http://www.gu.edu.au/school/ccj/kdaly.html>>

Daly, K. (2001b). *SAJJ Technical Report No. 2: Research Instruments in Year 2 (1999) and Background Notes*. Brisbane: School of Criminology and Criminal Justice, Griffith University. <<http://www.aic.gov.au/rjustice/sajj/index.html>>

Daly, K. (2001c). Mind the gap: restorative justice in theory and practice. Paper presented to Cambridge Seminar on Restorative Justice, Toronto, May. <<http://www.aic.gov.au/rjustice/sajj/index.html>>

Daly, K. (2002). Restorative justice: the real story. *Punishment & Society* 4(1) (in press). <<http://www.aic.gov.au/rjustice/sajj/index.html>>

Daly, K. and H. Hayes (2001). Restorative justice and conferencing in Australia. *Trends & Issues in Crime and Criminal Justice No. 186*. Canberra: Australian Institute of Criminology. <<http://www.aic.gov.au/publications/tandi/tandi186.html>>

Daly, K. and R. Immarigeon (1998). The past, present, and future of restorative justice: some critical reflections. *Contemporary Justice Review* 1(1): 31-45.

Daly, K., M. Venables, M. McKenna, L. Mumford and J. Christie-Johnston (1998). *South Australian Juvenile Justice (SAJJ) Research on Conferencing, Technical Report No. 1: Project Overview and Research Instruments*. Brisbane: School of Criminology and Criminal Justice, Griffith University.
<<http://www.aic.gov.au/rjustice/sajj/index.html>>

Dignan, J. (1999). The Crime and Disorder Act and the prospects for restorative justice. *Criminal Law Review*: 48-60.

Dolgopol, U. (1993). The Convention of the Rights of the Child as part of the international system for the protection of human rights. Pp. 67-80 in J. Harvey, U. Dolgopol and S. Castell-McGregor (eds.) *Implementing the UN Convention on the Rights of the Child in Australia*. Adelaide: South Australian Children's Interests Bureau.

Fry, D. (1997). *A Report on Community Justice Program, 'Diversionary Conferencing'*. Alice Springs: Northern Territory Police.

Gendreau, P., T. Little, and C. Goggin (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology* 34(4): 575-607.

Hayes, H. and K. Daly (2001). Family conferencing in South Australia and re-offending: preliminary results from the SAJJ project. Paper presented to The Australian and New Zealand Society of Criminology, Melbourne, February.
<<http://www.aic.gov.au/rjustice/sajj/index.html>>

LaPrairie, C. (1999). Some reflections on new criminal justice policies in Canada: restorative justice, alternative measures and conditional sentences. *The Australian and New Zealand Journal of Criminology* 32(2): 139-52.

Markiewicz, A. (1997). *Juvenile Justice Group Conferencing in Victoria: An Evaluation of a Pilot Program, Phase 2 Report*. Moorabin, Victoria: Anglicare Southbridge Youth Services.

Maxwell, G. and A. Morris (1993). *Family, Victims and Culture: Youth Justice in New Zealand*. Wellington: Social Policy Agency and the Institute of Criminology, Victoria University of Wellington.

Maxwell, G. and A. Morris (1996). Research on family group conferences with young offenders. Pp. 88-110 in J. Hudson, A. Morris, G. Maxwell, and B. Galaway (eds.) *Family Group Conferences: Perspectives on Policy and Practice*. Annandale, New South Wales: Federation Press.

Maxwell, G. and A. Morris (2000). Restorative justice and re-offending. Pp. 93-103 in Heather Strang and John Braithwaite (eds.) *Restorative Justice: Philosophy to Practice*. Aldershot, England: Ashgate/Dartmouth.

- Maxwell, G., A. Morris, and T. Anderson (1999). *Community Panel Adult Pre-Trial Diversion: Supplementary Evaluation*. Wellington: Crime Prevention Unit, Department of Prime Minister and Cabinet, and the Institute of Criminology, Victoria University of Wellington.
- Morris, A. and G. Maxwell (1993). Juvenile justice in New Zealand: a new paradigm. *The Australian and New Zealand Journal of Criminology* 26: 72-90.
- Morris, A. and G. Maxwell (eds.) (2001). *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing.
- McCold, P. and B. Wachtel (1998). *Restorative Policing Experiment: The Bethlehem, Pennsylvania Police Family Conferencing Project*. <<http://www.realjustice.org>>
- McGarrell, Edmund 2001. Restorative justice conferences as an early response to young offenders. *Juvenile Justice Bulletin* (August 2001). Washington, DC: Office of Juvenile Justice and Delinquency Prevention, US Department of Justice.
- Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (1988). *Puao-Te-Ata-Tu (Day break): The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*. Wellington: Department of Social Welfare.
- Moore, D. and T. O'Connell (1994). Family conferencing in Wagga Wagga: a communitarian model of justice. Pp. 45-86 in C. Alder and J. Wundersitz (eds.) *Family Conferencing and Juvenile Justice*. Canberra: Australian Institute of Criminology.
- New Zealand Ministry Of Justice (2001). Conviction and sentencing of offenders in New Zealand: 1988 to 1997. <http://www.justice.govt.nz/pubs/reports/1998/convict_sentence/index.html>
- Palk, G., H. Hayes, and T. Prenzler (1998). Restorative justice and community conferencing: summary of findings from a pilot study. *Current Issues in Criminal Justice* 10(2): 138-55.
- Queensland Office of Economic and Statistics Research (1999). Crime and justice statistics Queensland, 1998-99. <http://www.oesr.qld.gov.au/data/publications/crime_pub/cjsq99/cjsq.html>
- Sherman, L. W., H. Strang, and D. J. Woods (2000). Recidivism patterns in the Canberra Reintegrative Shaming Experiments (RISE). Centre for Restorative Justice, Research School of Social Sciences, Australian National University. <<http://www.aic.gov.au/rjustice/rise/recidivism/index.html>>
- Strang, H. (1999). Recent research on conferencing: the Canberra experiments. Pp. 192-95 in A. Morris and G. Maxwell (eds.) *Youth Justice in Focus: Proceedings of an Australasian Conference held 27-30 October 1998 at the Michael Fowler Centre, Wellington*. Wellington: Institute of Criminology, Victoria University of Wellington.

Strang, H. (2000). *Restorative Justice Programs in Australia: A Report to the Criminology Research Council*. Canberra: Centre for Restorative Justice, Research School of Social Sciences, Australian National University.

Strang, H., G. Barnes, J. Braithwaite, and L. Sherman (1999). *Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments (RISE)*. Canberra: Australian Federal Police and Australian National University.
<<http://www.aic.gov.au/rjustice/rise/progress/1999.html>>

South Australia Parliamentary Select Committee on the Juvenile Justice System (1992). *Interim Report*. Adelaide: South Australia Government Printing Office.

Trimboli, L. (2000). *An Evaluation of the NSW Youth Justice Conferencing Scheme*. Sydney: New South Wales Bureau of Crime Statistics and Research.

Tyler, T. (1990). *Why People Obey the Law*. New Haven: Yale University Press.

Table 1. Conferencing in Australia and New Zealand (current as of March 2001)

Jurisdiction & area covered	Statutory basis	Date introduced & who runs	Organisational placement	Referring body, conference purpose & numbers	Jurisdiction features
New Zealand (country-wide)	<i>Children, Young Persons & Their Families Act 1989</i>	1989, youth justice coordinators	Dept of Social Welfare	Police referral as diversion from court or court referral for sentencing; reliable stats not available, but est. 4000-5000 distinct cases conferenced per year	Country-wide and systemic; first world jurisdiction to legislate conferences as component of juvenile justice system; conferences also used in family welfare cases.
Australian Capital Territory (Canberra)	none	1995, police officers	Australian Federal Police units, 1995-present	Police referral as diversion from court; 200-250 conferences per year	Refers adults to conference; sole jurisdiction using Wagga model exclusively; during portion of RISE project (1995-97), conferenced drink driving cases
New South Wales (state-wide after introduction of the Act)	1991-97, non statutory; <i>Young Offenders Act 1997</i>	1991-94, police trials; 1994-97, mediators; 1998, conference convenors	Police Service, 1991-94; network of Community Justice Centre mediators, 1994-97, under aegis of Attorney-General; after proclamation of Act, Dept of Juvenile Justice	Police & court referral as diversion from court or as sentencing option; 1,500-1,700 conferences per year	Has legal advice hotline; actively checks police referrals; has permanent staff of 17 administrators & large pool of 500 trained convenors
Northern Territory (state-wide)	<i>Juvenile Justice Act 1997</i> , as amended in 1999 & 2000; <i>Police Administration Act</i> , Part VII, Division 2b, as amended in 2000	1999, conference facilitators; 2000, police officers (uses police & non-police personnel)	Two sites: Community Corrections within the Dept of Correctional Services ("post court" conference) & NT Police (diversionary conference)	Court referral upon conviction of juvenile repeat property offender subject to mandatory sentence (15 -17 yrs old); 8 "post court" conferences in 1999-2000. Police referral to diversionary conference (10-17 yrs old).	Has both statutory based scheme of "post court" conferences as one of several programs in lieu of mandatory 28-day detention sentence & Wagga model conferences as diversion from court
Queensland (Brisbane metro area, Southeast Qld, Cairns after introduction of the Act). Note: as of 1 April 2001, major administrative changes have been introduced.	1995-96, non statutory; <i>Juvenile Justice Act 1992</i> , as amended in 1996	1995-96, planned police trials; 1997, conference convenors	Shifted from Dept of Justice (1997) to Families, Youth & Community Care Qld (1998)	Police & court referral as diversion from court; court referral for pre-sentence; 180 conferences per year	Has no scheduled offences; uses two convenors; conducts pre-conference interviews with victim & offender; permits victim veto of conference referral
South Australia (state-wide)	<i>Young Offenders Act 1993</i>	1994, youth justice coordinators	Courts Administration Authority	Police & court referral as diversion from court; 1,500-1,700 conferences per year	Has no scheduled offences; longest running, high-volume, statutory-based scheme in Australia
Tasmania (plan to be state-wide)	1994-99, non statutory; <i>Youth Justice Act 1997</i> (proclaimed in 2000)	1994-99, police trials; 2000, conference facilitators	Police service; after proclamation of the Act, Dept of Health & Human Services	Police referral as diversion from court; court referral for sentence; too early to make estimate of number of conferences per year	In transitional arrangement, with both police conferences (as caution plus) & facilitator conferences, based on police assessment of need for "more serious format" or not
Victoria (Children's Court, Melbourne & metropolitan areas)	none	1995+ (pilot project continuing); conference convenors	Anglicare Victoria, Victoria Police, Dept of Human Services, Dept of Justice & Victoria Legal Aid	Court referral only as alternative to a Supervised Order; about 40 conferences per year	Uses conferences for offenders with prior court appearances (not minor offences)
Western Australia (state-wide after introduction of the Act)	1993, non statutory; <i>Young Offenders Act 1994</i>	1993, pilot of juvenile justice teams; 1995, conference coordinators	Ministry of Justice	Police & court referral as diversion from court; reliable statistics not available, but estimated 1,400 conferences per year	Uses Juvenile Justice Teams composed of coordinators & police officers in 7 areas of Perth; has part-time Aboriginal supporter workers for conferences requiring support; handles large number of traffic offences