

Conferencing: A New Approach for Juvenile Justice in Honolulu

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ABSTRACT

The Honolulu Police Department conducted an experimental diversion project for first time juvenile offenders in the City and County of Honolulu. Juveniles were diverted to restorative justice conferences instead of traditional diversion programs. Conferences are based on the assumption that crime damages relationships between people. Conferencing is a group reconciliation process that is best used when someone who has caused harm admits wrongdoing. Offenders and those most hurt by the wrongdoing, gather in a circle at conferences to discuss how they have been affected, and collectively decide how to repair the harm. This study analyzed the effects of conferencing on participant satisfaction, offender agreement

compliance, and recidivism. Results show that victims were highly satisfied with the process and conferenced juveniles arrested for non-violent offenses did not escalate to arrests for violent crimes, while juveniles who participated in traditional programs had a significantly higher arrest rate for subsequent violent crimes.

INTRODUCTION

The man was seated in a circle with seven other people. He bent down to the eye level of a 10-year-old boy sitting across from him and said, "I want you to know that my son will never touch you again." The tense looking boy sighed, "o.k." The boy's mother and father, who were seated along side him, nodded their heads in agreement and relaxed their faces. The man's words to the boy were reassurance that his 16-year-old son would not hurt him again. A month before, the 16-year-old held the 10-year-old upside down against his wishes. Because the older boy would not admit that he touched the boy, this conference turned out to be the least successful compared to 84 others held for first time juvenile offenders in Honolulu. Yet, even with its shortcomings, the conference provided the 10-year-old and his parents assurance that the offender would not touch him again.

Meeting the needs of victims, and providing them with the opportunity to be assured that they will not be hurt again by offenders, is not something traditional

criminal justice systems provide. Conferencing attempts to meet victims' needs, which in the end benefits not only the victims, but also offenders, and the community affected by crime. This study evaluates how effective conferencing was in meeting victims' needs and its effects on recidivism in a recent Honolulu juvenile diversion program.

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HISTORICAL DEVELOPMENT OF THE CONFERENCING PROCESS

Conferencing is a generic term for a group reconciliation process. Conference groups are facilitated by a neutral third party, and reach decisions by consensus. Western governments are using conferencing in criminal and child protective services cases (Hudson, Morris, Maxwell & Galaway, 1996). Conference models include family group conferencing (Maxwell & Morris, 1993), community

conferencing (Cameron & Thorsborne, 1999), family group decision-making (Graber, Keys & White, 1996), and Real Justice conferences (O'Connell, Wachtel & Wachtel, 1999).

Conferences incorporate the conflict resolution practices of many indigenous people, including the Maoris of New Zealand, Hawaiians, North American Indians, and Africans (Shook, 1985; Schiff, 1998; Some, 1999; Zion, 1998; Walker, 2001). In 1989, New Zealand enacted legislation that required diversion of all juvenile offenders to family group conferences rather than traditional criminal justice processes (Maxwell & Morris, 1993). The New Zealand family group conference model is based on the Maori conflict resolution practice called whanau. Although the conference model that New Zealand developed was not meant to replicate the Maori process, "it seeks to incorporate many of the features apparent in whanau decision-making processes" (Maxwell & Morris, 1993).

Daly (2001) argues that conferences do not "reflect [and are not] based on indigenous justice practices"; however, New Zealand's legislative history clearly shows that the Maori practice influenced that country's mandated conferencing process. In 1986 New Zealand had rejected legislation and conferencing that was "monocultural" because it failed to include the "cultural identity of the tangata whenua (the people indigenous to or belonging in an area)" and did not "involve parents, family groups, whanau, hapu and iwi in developing solutions to the problem situations" (Hassall, 1996). After these two issues were addressed and included in the 1989 legislation, New Zealand enacted the law requiring that juveniles be diverted to family group conferences.

While conferencing did not develop in the West as a restorative justice process, but as a multi-disciplinary team approach in social work, it is a restorative process (Hassall, 1996; McCold, 1999). Restorative justice is an "alternative approach to criminal justice" which began in response to what its proponents viewed as the in-

effectiveness of our current system (Pranis, 1996). Western justice is based primarily on retributive values where: "Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules" (Zehr, 1990, p. 181). In contrast, restorative justice is based on values that hold "Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victims, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance" (Zehr, 1990, p. 181).

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Emphasis on reconciliation should be an important part of our criminal justice system where in the United States most convictions come from guilty pleas. "More than 90 percent of all felony cases are disposed of by guilty pleas." (Hall, 1996). The percent of juveniles who plead guilty or admit to offenses before court intervention is unknown, but it is assumed to be higher than the number of adults. During the six years that this author defended juveniles for law violations, all of them admitted responsibility for an offense.

Conferencing is a reconciliation process that addresses the needs of those most affected by crimes to a greater extent than traditional adversarial and autocratic processes can. The father of the 16-year-old offender addressed the need of the 10-year-old victim and his parents that the youngster be safe from the older boy in the future. While the offender's father could

not guarantee that his son would not harm the victim again, the father's assurance was more than that offered by the criminal justice system. Even though the offender did not fully admit his wrongdoing, the conference benefited the victim. This could not be accomplished with our current justice processes, which do not provide the opportunity for victims and their loved ones to openly communicate with offenders. Without victim participation and the presence of the offender's father at the conference, the victim's needs could not be addressed.

THE REAL JUSTICE CONFERENCING MODEL

This pilot project used the Real Justice conferencing model. In Real Justice conferences, participants sit in a circle without a table between them. Participants include victims, offenders, and representatives of the community most affected by crime. The community includes supporters of the victims and offenders (family and/or friends), and others who have been affected. For example, if a crime occurred on a school campus, school staff may be a part of the affected community and participate in a conference.

In some cases, victims do not want to meet with offenders. In these cases, victims may send a representative. Of the 102 juveniles who had conferences, 30 were for assaults and of those, 21 victims participated in conferences. In the remaining nine cases, representatives were from the victims' families or the schools where many of the assaults occurred.

Conferences are facilitated by a neutral third party who does not participate in decision making. Real Justice facilitators attend a two-day training program. Thirty facilitators from Honolulu were trained, 12 of whom facilitated most of the conferences. Their backgrounds included housewife, sales clerk, college student, retired social worker, and contractor. They were paid \$150.00 for each conference. Facilitators also convened and found a conference location convenient for the parties. The main scheduling priority was the victim's convenience.

Real Justice conference facilitators follow a script developed by Terry O'Connell, a former Australian police officer. In 1990, O'Connell developed protocols from what he learned about New Zealand's process. These protocols are followed in the Real Justice script (O'Connell, 1998). The script maintains a specific speaking order for conference participants. The facilitator begins a conference by reading a preamble, which creates an atmosphere of respect, and subtly establishes the ground rules. The offender speaks next, before the other participants, allowing him or her to take responsibility for the bad behavior immediately. Having the offender take responsibility at the beginning of the conference gives the victims some emotional relief by knowing denial is not an issue. The offender answers a round of questions that cause him or her to consider the consequences of the bad behavior.

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Although some find the use of a script distasteful or stilted, conferences conducted with them have been thoroughly researched and evaluated. These studies have consistently found high rates of participant satisfaction, perceptions of fairness, and offender compliance with agreements (McCold & Wachtel, 1998; Moore & Forsythe, 1995; Umbriet & Fercello, 1998, 1999; O'Connell, Wachtel, Wachtel, 1999). Perhaps the most beneficial reason for using the script is it ensures that the participants will maintain control of the conference outcome, not the facilitator. Participant control during group process has been found to generate more cooperative relationships than autocratic group process (Lewin, 1997). The Real Justice script can

prevent facilitators from becoming autocratic and defeating this consensus-based process.

REAL JUSTICE CONFERENCE PARTS

There are four phases to a Real Justice conference. First, offenders admit what they did. They explain what they were thinking when they committed the offense, what they have thought about since then, and whom they think has been affected by their actions. Second, the other individuals in the group discuss how they have been affected by the offender's behavior. Third, the group discusses and decides what can be done to repair the harm to make things right. Finally, a written agreement is decided upon by the group, which all participants sign. The conference ends with the participants eating together—a ceremonial breaking of bread—which allows for further reintegration, closure, and healing.

THE STUDY

In 1999 the Honolulu Police Department (HPD) received a federal grant through the Hawai'i State Office of Youth Services to divert first-time juvenile offenders to restorative conferences rather than traditional police diversion programs. The project was designed by the Hawai'i Friends of Civic and Law Related Education (Hawai'i Friends), a non-profit educational organization.

Subjects

Between March and September 2000, 102 first-time juvenile offenders participated in conferences instead of traditional police diversion programs in the City and County of Honolulu. Eighty-five conferences were held for the 102 offenders (co-defendants participated together in single conferences).

Selection of Cases for Conferencing

The juveniles who participated in the 85 conferences were initially selected randomly, but after several weeks, shoplifting and runaway cases were selected out. Theft cases were avoided when a major retailer in Honolulu, frequently a juvenile shoplifting victim, refused to participate in conferences. Without the retailer's participation, conferencing its theft cases could not be meaningful.

Runaway cases were also avoided after the program began because they often concern complicated family issues and not the resolution of a specific wrongdoing. Some juveniles run away because of abuse or neglect. The Real Justice conference model does not address these complex problems and is more effective for clear cases of wrongdoing.

A total of 160 juveniles were selected for conferences. Of those originally selected, 102 juveniles participated in a conference. Fifty-eight of the 160 juveniles originally selected for conferences did not participate. Twenty-five of those denied that they were responsible for the crime. Most of them were charged with violent offenses. The conferencing process is only used when the offender admits wrongdoing.

The next most common reason for not participating in a conference was that the juveniles' families either never returned phone calls about the program or did not have telephones. In a few of the cases where there was no telephone, facilitators went to the homes and arranged a conference. The remaining 16 juveniles selected for conferences did not participate for a variety of reasons.

Nature of Conference Agreements

The majority of agreements, 73 percent or 61 out of 83 cases sought purely symbolic (i.e., apology) or a combination of

Table 1
Nature of Conference Agreements

Symbolic	Service	Symbolic & Service	\$	Symbolic & Service & \$
38	14	23	8	1

symbolic and service reparations (i.e., apology with service including counseling for the offender), See Table 1. Fourteen cases, 17 percent, sought purely service reparations where juveniles agreed to repair damage or provide other community service. One juvenile agreed to service, symbolic, and monetary reparation. Only 7 percent of the offenders (8 juveniles out of the 100 whose agreements were reviewed) were required to pay monetary restitution. This study confirms what many believe: most victims want to know offenders are remorseful (Tutu, 1999).

Result: Participant Satisfaction

A total of 405 participants in 831 conferences were surveyed immediately following conferences for their satisfaction with the process. Although there may be concern that immediate surveys may have a "bubble effect," where individuals are more inclined to report satisfaction than they would over time (McCold, 1998), one study shows that this does not apply to conferencing satisfaction survey results (Palk, Hayes & Prenzler, 1998).

Recent research of 35 fully-restorative, mostly-restorative and non-restorative conflict resolution programs throughout the world found a significantly higher satisfaction level with conferencing which is a fully-restorative process (McCold & Wachtel, 2000). The fully-restorative programs (conferencing and circles) had a 91.3 percent level of satisfaction while the mostly-restorative programs (victim offender mediation) had an 81.6 percent level of satisfaction. The non-restorative programs (boot camp and scared programs) had only a 55.6 percent level of participant satisfaction. The differences in the satisfaction levels reflect the differences in participation of stakeholders whose needs are addressed during the process. For example, in conferencing all the key stakeholders (i.e., victims, offenders and their communities of care) participate in the process that addresses their needs. In the mostly-restorative processes, victim offender mediation, usually only the victim and offender participate, their com-

Table 2
Participant Satisfaction that Conferencing Process Served Justice

	Percent		Number of Responses			
	Positive	Very Positive (5)	Positive (4)	Mixed (3)	Negative (2)	Very Negative (1)
<u>Honolulu</u>						
Victims (V)	87%	35	40	10	1	0
Offenders (O)	88%	49	36	10	2	0
V Supporters	83%	19	51	12	2	0
O Supporters	87%	65	54	15	2	0
<u>Bethlehem</u>						
Victims	97%	25	38		0	2
Offenders	96%	50	27		3	
<u>Virginia 4-site</u>						
Victims	100%	8				
Offenders	100%	15				
<u>Indianapolis</u>						
Victims	93%					
Offenders	95%					
<u>Australia</u>						
Victims	72%	66				

munities of care are not included in decision making nor are their needs addressed. Finally, in the non-restorative processes, the boot camp and scared straight programs, offenders reluctantly participate, and the victims and communities of care are excluded. McCold & Wachtel found that the more key stakeholders participating in the process, the higher the level of satisfaction with the process. Conferencing includes the main stakeholders, who are all encouraged to meaningfully participate, which the other programs lack.

Participant satisfaction with the conferencing process here was extremely high. Only seven of the 405 participants who completed surveys at the 83 conferences indicated that they did not believe the process served justice. Three of these participants were from the single conference that was incorrectly conducted after the 16-year-old denied full responsibility. The other four participants who did not believe the conference served justice were two offenders and two offenders' supporters. The only victim who did not believe

the process served justice was the 10-year-old whose case was incorrectly conferenced.

Conference participants' satisfaction in Honolulu was compared with satisfaction levels of juvenile conferencing programs in Bethlehem, Pennsylvania during 1995 - 1997; four sites in Virginia during 1998 - 1999; Indianapolis, Indiana during 1997 - 2000; and Canberra, Australia during 1997 - 1999. Analysis of these programs shows Honolulu participants had a similar level of satisfaction with the conferencing process as the other projects (McCold, 1998; McCold, 1999; McGarrell, Olivares, Crawford, & Kroovand, 2000; Sherman, Strange, Barnes, Braithwaite, Inkpen, and The M.M., 1998 & 1999). Table 2 shows conference participant satisfaction rates.

Result: Offender Compliance with Agreements

All of the 85 conferences resulted in agreements. Approximately six months after the conferences, a telephone survey was conducted to determine whether offend-

Table 3
Offender Compliance with Agreements Reached at Conferences

Complied	Did Not Comply	Compliance Unknown
90	6	6

Table 4
Honolulu Recidivism Differences

	Number of Offenders	Recidivism Rate		
		Overall	Violent	Non-violent
Conferencing	102	28.4%	5.9%	22.5%
Non-violent	59	30.5%	1.7%	28.8%
Violent	43	25.6%	11.6%	14.0%
Traditional Processes	82	29.3%	8.5%	20.7%
Non-violent	75	29.3%	8.0%	21.3%
Violent	7	28.6%	14.3%	14.3%

ers fulfilled the agreements. Victims were contacted in 47 of the cases (representing 61 juveniles). When the victim was not available, the victim's supporters were contacted. Victim supporters were contacted in 14 of the cases (representing 15 juveniles) and when they were unavailable, the offender's supporters were contacted. Offender's supporters were used to determine whether the agreements were fulfilled in 15 cases (representing 17 juveniles), and as a last resort, in three cases offenders were relied on. One of these offenders said that he did not fulfill the agreement while the other two said they had.

The telephone survey showed that there was a high rate of offender compliance with the agreements. Out of the 102 juvenile offenders, at least 90 of them complied with the terms of the agreements as shown in Table 3. Even the 16-year old whose case was incorrectly conferenced complied with his agreement to "stay away from [the victim's] home," although the victim's mother said the offender was seen near the victim's street. Six juveniles did not fulfill their agreements. In six other cases, the outcome is unknown because no one was contacted.

Out of the 102 juvenile offenders, only eight were required to provide monetary restitution. Seven of these juveniles fulfilled the agreements. Only one offender did not pay the money back to the victim as agreed. In this case, he agreed to repay \$250.00 damage to a candle display in a store. The store representative had no authority to lower the restitution amount, which its head out-of-state office had established without any negotiation possibility. Even with this juvenile's failure to pay the restitution, the overall 87 percent restitution payment rate is significantly higher the current system's.

First, there is no requirement of other Honolulu Police Department diversion

programs that offenders pay any restitution. While courts order restitution, there is no data on the percent of collected court-ordered restitution in Honolulu's juvenile cases. A long-time juvenile probation officer of the court believes, however, that less than 10 percent of all restitution orders for juveniles are completely paid.

Result: Recidivism Rates

Recidivism in this study looked at re-arrest rates six months after the conference. As shown in Table 4, the overall recidivism rate for the juveniles who had conferences was 28 percent six months following the last conference. The recidivism rate was only 11 percent in September 2000 when the last conference was held. This increase from 11 percent to 28 percent six months later confirms the likelihood of repeat offenses over time.

As shown in Table 5, a statistically significant recidivism difference was found for juveniles arrested for non-violent violations, i.e. theft, status offenses, and drugs. A matched group for time of offense, type of offense (non-violent) and gender was used to compare the difference between diversion programs. Although the overall recidivism rates between the two groups was not different, the juveniles who had conferences for non-violent offenses were less likely to escalate to violent crimes, compared to juveniles without conferences. In the group of 102 conferenced juveniles, 59 were arrested for non-violent offenses. Of those, only one was re-arrested within the following six months

Table 5
Non-violent to Violent Recidivism

	Conferencing	Control
Mean	0.0169	0.081
Variance	0.0169	0.07451
Observations	59	75
df	111	
t Stat	-1.761	
P (T<1) one-tail	0.040	
t Critical one-tail	1.658	

for a violent crime. In the matched group of 82 juveniles, 75 of them were arrested for non-violent offenses. Of those, six were arrested for violent crimes within the following six months.

Keeping juveniles from escalating to violent crimes is important for reducing recidivism. The latest national study analyzing recidivism differences found that juveniles charged with assault are 44 percent more likely to repeat future offenses, while juveniles charged with theft are only 34 percent more likely to repeat offenses (Snyder, 1988).

The re-arrest rate for all youth in Honolulu was not significantly different from the conferenced juveniles. During the project, a total 3376 youth, excluding the 102 in this project, were arrested in Honolulu. After six months, 863 juveniles or 25 percent were rearrested. It is unknown what crimes the juveniles were arrested for.

CONCLUSION

Conferencing is a welcome juvenile justice process in Honolulu. As one assault victim's parent said: "We were able to share our feelings and felt that the children understood how their actions affect others. I felt a healing when my thoughts and feelings were heard. I also felt good to show the children that we support them and care about their well being. We are very glad we could solve this problem in this manner." The mother of the 10-year victim in the incorrectly conferenced case said, "Talking with the [offender's] dad was very helpful." She also added that the "conference would have been better if [the offender] would have admitted assaulting my son. He cannot get better until he can face that he assaulted my son. Until he admits it nothing can be repaired." This statement illustrates why conferencing criminal cases should only be used when offenders accept full responsibility for their behavior. When offenders take responsibility, conferencing offers a process where healing can occur compared to traditional processes that focus primarily on retribution.

Second, while the Real Justice confer-

ence model relies on the offender admitting guilt, and may fail to address the often-complex problems that are relevant for status offenses, it is an effective intervention for many non-violent offenses. Conferenced non-violent offenders are less likely to escalate to more serious crimes six months later. A conferencing model needs to be developed to address relevant social issues for status offenders.

Finally, this research confirms what South Africa's Archbishop Desmond Tutu says: "justice, restorative justice, is being served when efforts are being made to work for healing, for forgiving, and for reconciliation." Most victims of juvenile crime in Honolulu agree with Archbishop Tutu because most that attended conferences wanted an apology. As one victim said a "verbal apology was all I needed." And, as the 10-year-old victim's father from the incorrectly held conference said, "Until the [offender] can be remorseful and admit what happened nothing can be accomplished!" When those most affected by crime participate in a process focused on addressing their needs, healing can begin, and restorative justice happens.

ENDNOTES

1. The case of the 16-year-old boy who held the 10-year-old upside down should not have been conferenced. Although the conference had value because the offender's father assured the victim he would not be touched again, the case did not meet the criterion of the offender taking responsibility for his actions.

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