

Conferencing and Community Empowerment : Rediscovering the Human Face of Justice

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ABSTRACT

I.

Family group conferencing is now identified as a legitimate part of Restorative Justice. In fact some might argue, that it was the introduction in New Zealand of family group conferencing in 1989, that provided the first significant justice model that fully reflected restorative justice principles. The development of the Australian Wagga Wagga Police conference model since 1991, is also viewed as a yet another similar addition to the restorative justice lexicon. However, the Australian developments are in fact significantly different to the New Zealand experience, both in terms of articulation and application.

This paper will briefly explore these differences. Apart from describing the theoretical framework of the Wagga Wagga model (upon which practices are modeled), it will examine how this model has been adapted for use in many different jurisdictions and community settings. This will clearly demonstrate that conferencing has added a new dimension to the integration of restorative justice principles, and can assist communities more effectively to manage difficulties and disruptions which threaten their social cohesion.

In exploring Braithwaite's¹ communitarian notion of social control, this paper will argue that conferencing can make a significant contribution towards community peace and tranquillity in a way very few other interventions or processes can. Conferencing is about re-creating community, one that is critical to assist us make sense of a world that has experienced significant social change over the past 40 years. Three powerful case studies will be examined to illustrate how all those involved at some stage experience some "disconnection" from community. Discussion will then focus upon how the conference process allowed those communities to be strengthened and for many individuals to re-connect with those who are significant in their lives. These experiences raise questions about our increasing reliance on professionals such as counselors and psychologists (working in relative isolation) to assist communities re-establish themselves in the aftermath of any disruption that threatens social cohesion.

Finally, it will be argued that conferencing has the potential to contribute significantly towards minimizing the harm experienced in our formal criminal justice systems from schools, police, courts and corrections, in a way that allows communities to become empowered and play a significant role in "rediscovering the human face of justice".

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

II. BRIEF HISTORY OF CONFERENCING

A formal conference process began in New Zealand with the introduction of family group conferences in 1989. *The Children, Young Persons and their Families Act*, which was largely influenced by the Maori community and culture, required that all offenders under 17 years and their families participate in a family group conference to deal with the consequences of crime. This formal process provided an opportunity for victim participation and empowerment of the offenders and their families. It represented the first significant shift from a retributive philosophy driving the formal criminal justice system, towards a restorative approach which promoted individual and community accountability, with an emphasis on repairing the harm which results from crime. It promoted healing, inclusiveness and closure for those directly affected by crime.

In 1991, the Australian Police Wagga Wagga conference model began as an informal process to enhance police cautions and to divert young offenders from the courts. Whilst this model drew initially from the main elements of the New Zealand family group conference approach, by 1993 its practices were heavily influenced by Braithwaite's sociological theory of reintegrative shaming, and Silvan Tomkins² psychological theory of affects. The need for the model to have a theoretical underpinning was a direct result of observing many conferences. An explanatory framework³ has allowed the model to be articulated and refined, particularly since its adaptation for use in other jurisdictions (outside of the criminal justice area).

III. UNDERSTANDING THE DIFFERENCES

Comparing the New Zealand family group conference approach to the Wagga Wagga model suggests generally both are so similar as to not require any debate. However, there are differences, some significant. The first that comes to mind, is that the New Zealand approach is explained in terms of Maori culture. The Wagga Wagga relies upon Braithwaite's theory which claims that reintegrative shaming processes are important for social control. The second difference is that the Wagga Wagga places importance on understanding the complexities of emotionality⁴, and seeks to explain this within the context of Tomkin's affect theory.

2. D.L. Nathanson, *Shame and Pride : Affect, Sex, and the Birth of the Self* (New York : Norton, 1992).

3. On this issue the work of Moore made an important contribution. Outcomes from conferences were so significant that most of the existing psychological material failed to adequately explain what was observed. D. Moore, "A New Approach to Juvenile Justice : An evaluation of Family" (Paper presented to the Wagga Wagga Conference, Criminology Research Council, 1995) [unpublished].

4. A useful contribution in the area of conference emotionality has been made by S. Retzinger & T. Scheff, "Strategy for Community Conferences : Emotions and Social Bonds" in B. Galaway & J. Hudson, eds., *Restorative Justice : International Perspectives* (New York : Criminal Justice Press) at 315-336.

Both differences become important in understanding that the conference dynamics⁵ are not unique to a particular culture, but present as an experience which is likely to impact upon or affect every human, regardless of culture, gender or other consideration.

The third difference relates to the use of the Wagga Wagga model. As mentioned earlier, the New Zealand model limits its use to young offenders within the criminal justice system (including care and protection issues). The Wagga Wagga model has been adapted for much wider use and application. This includes models in :

1. Adult diversion;
2. School education as part of behavior management;
3. Workplace disruptions, conflicts and other difficulties;
4. Probation/parole and juvenile probation;
5. Correctional institutions;
6. Community settings;
7. Family difficulties;
8. Community policing and problem solving;⁶
9. Police discipline and complaints.⁷

IV. HOW EFFECTIVE HAS CONFERENCING BEEN?

It is generally too early to say — with a couple of exceptions. The New Zealand model was initially evaluated by Maxwell and Morris.⁸ Evaluation of Wagga Wagga model during the period 1991-1993 was undertaken by Moore. Both evaluations showed encouraging results with participant satisfaction, recidivism and compliance with agreement by offenders. The only notable difference was with victim participation, where 98% of victims participated in Wagga Wagga compared with approximately 40% in New

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5. The conference observations by Mugford and Braithwaite have been helpful in identifying conditions for good processes. J. Braithwaite & S. Mugford, "Conditions of Successful Reintegration Ceremonies" (1994) 34:2 British Journal of Criminology.
 6. This issue was explored in a paper given on how conferencing provides an excellent framework for police and community problem solving. T. O'Connell, "Community Accountability Conferences" (Paper presented to the A.C.P.O. Summer Conference in Manchester, England, 1996) [unpublished].
 7. Within the New South Wales Police Service, Assistant Commissioner Christine Nixon has introduced conferencing as part of a move towards a restorative justice approach to police discipline. This is a result of an inquiry into Police corruption. "Royal Commission into Corruption in the New South Wales Police Service" (Interim Report, 1996).
 8. G. Maxwell & A. Morris, "Family Victims and Culture : Youth Justice in New Zealand : Institute of Criminology" (Wellington : Victoria University).

Zealand. An evaluation conducted by Hyndman, Thorsborne and Wood⁹ of a school-based model also showed similar results.¹⁰

The most comprehensive research on conferencing commenced in Canberra¹¹ (Australia) in 1995, where the Australia Federal Police use conferencing for diverting both adult and juvenile offenders (away from courts). This research uses a "random allocation" methodology to measure recidivism, comparing conferences with court. No results are available at this stage.

V. WHAT THE CRITICS HAVE TO SAY

The absence of any worthwhile data on conferencing is viewed as a problem, one that the critics have been quick to seize upon. However, the critics have raised concerns about many aspects of conferencing. Bragg¹² identified Braithwaite's use of shame as inappropriate for indigenous people. The lack of legislative framework in the police-managed conference models constantly raises concerns.¹³ Umbreit and Zehr¹⁴ (mistakenly) suggest that :

Whilst conferencing has potential advantages over the current VOM (Victim Offender Mediation) practice, it seems to be a natural expansion of the dominant model of victim-offender mediation currently being used by most of the over 175 programs in North America and an even larger number of programs in Europe.

The two main concerns (at least in Australia) are the issue of shame and the jurisdictional argument — which is mostly concerned with police¹⁵ involvement with conferences. Whilst not wanting to ignore these criticisms, it is difficult in even attempting to deal with individual concerns, when the Wagga Wagga conference model itself provides a completely different perspective on our understanding and response to complex

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9. M. Hyndman, M. Thorsborne & S. Wood, "Community Accountability Conferencing" *Trial Report* (Queensland : Department of Education, 1996).
 10. The research methodology used in all three evaluations was limited as there was a lack of scientific rigor.
 11. L. Sherman & H. Strang, *Reintegrative Shaming Experience*, in conjunction with the Australian National University, 1995.
 12. H. Bragg, "A Just Measure of Shame?", *Aboriginal Youth and Conferencing in Australia* (University of Western Australia : Crime Research Centre, 1996) [unpublished].
 13. D. Sandor, "The Thickening Blue Wedge in Juvenile Justice" in C. Alder & J. Wundersitz, eds., *Family Group Conferencing and Juvenile Justice : The Way Forward or Misplaced Optimism?* (Canberra : Australian Institute of Criminology, 1994).
 14. M. Umbreit & H. Zehr, "Family Group Conferences : A Challenge to Victim Offender Mediation?" forthcoming in *V.O.M.A. quarterly*, 1996.
 15. In Australia, the debate has centered on who should run conferences, rather than their potential. The development of the Wagga Wagga model by police has become almost a preoccupation for most critics.

human needs. Central to conferencing is the creation of forums which allows the creation of those psychological and emotional dynamics needed to allow individuals to be understood and experience a sense of inclusion. It is impossible to replicate the intricacies and complexities needed to accommodate the human condition in any other way. The idea of trying to replicate a complete human brain with technology is considered impossible. In the same way, trying to respond to the human condition by artificial means (such as counselors, psychological and others) is equally problematic. Conferencing as a communitarian approach provides communities the opportunity to discover the social "glue" needed to strengthen relationships and to minimize harm and disruption. Why community?

VI. COMMUNITARIANISM AND CONFERENCING

Concern for community, according to Australian Hugh MacKay,¹⁶ has been a recurring theme throughout his career as a social researcher. In supporting the proposal¹⁷ to Year 2000 to become "International Year of Community Development" MacKay said :
[...] it is a widespread view that our sense of being a community is in decline, and that, as a result, the moral health of our society is being adversely affected. Such a view, of course, taps into ancient wisdom : the moral sense is a social sense, after all. The essence of morality lies in our sense of mutual obligation and that, in turn, grows out of our experience of forging personal relationships with other people in the context of a functioning community.

Braithwaite¹⁸ says a similar thing but in a slightly different way :
Communitarianism is the societal characteristic most critical not only for fostering shaming, but also shaming which is reintegrative.

The Wagga Wagga model is described as a communitarian model, one that defines community as "those who have been affected by an incident" — the impact being such that it has reduced an individual's or communities' freedom to enjoy life as we choose.¹⁹ The conference process is about re-creating "a sense of community", to allow those affected to become empowered — which includes everyone from victims to offenders. Any incident in a community which threatens its social cohesion, automatically involves disempowerment as it involves disconnection.

16. H. McKay, *Reinventing Australia* (Sydney : Collins Angus & Roberston, 1993).

17. Letter to the United Nations Association of Australia (N.S.W. Branch) in support of their proposal to have 2000 designated as the International Year of Community.

18. Braithwaite, *supra* note 1.

19. This largely reflects the republican theory of criminal justice as expressed by J. Braithwaite & P. Pettit, *Not Just Desserts : A Republican Theory of Criminal Justice* (Oxford : Oxford University Press, 1990).

Nathanson²⁰ in responding to the question, when and why, does one recommend the Family Group Conference System over the traditional criminal justice says :

[...] the analogy here is to the way we professionals decide whether to use individual or family therapy in a given case. We opt for individual therapy when the target patient [the one with the symptoms] is either able to live outside the family or is, in the course of normal age-related development, heading for independence from the family. We use family therapy when the simple reality is that the child must remain within the family and something must be done to change the family within which s/he lives. It is true that arrest, trial, and imprisonment of the perpetrator serves to place limits on the behaviour of that individual, and as such is an analogue of individual therapy. Nevertheless, just as many of us who are skilled in the treatment of the desperately ill patients who need hospitalisation have noted in addition to the protection offered by the hospital, it becomes a place where people learn new ways of being ill. Prison, too, is often a place where inmates learn new ways of becoming criminals.

Trying to explain what conferencing has to offer is both complex and difficult. As a Canadian Police Officer wrote following a visit to Australia :

While all the lectures were extremely interesting and knowledgeable, I cannot help but think that the actual attendance at the two conferences in Canberra were the absolute highlight. There does not seem to be a substitute for the real thing when it comes to understanding the process.

This is the most usual response by participants and observers who have experienced a conference — one that is fundamentally different from any other process such as mediation. Trying to explain the subtleties of the informal processes, is difficult unless understood within the full context of the conference process. It is for that reason that I will rely upon three case studies to begin to develop an understanding for why conferencing is very different. The use of participant reflections (in these case studies) provides a far greater insight into the conference process than could be achieved by explanation.

VII. CASE STUDIES

The three case studies were selected because they were complicated matters which involved serious criminality. All matters had experienced the formal justice system, and in two of the three matters, the offenders were brought from prison to participate in a conference. Each case provides an excellent insight into the degree of harm and dislocation that all those affected, were experiencing. It is therefore insightful to see how the conference process allowed this to be dealt with.

A. Case Study One — Cathy's Story

20. D.L. Nathanson, M.D., Executive Director, The Silvan S. Tomkins Institute; Clinical Professor of Psychiatry, Jefferson Medical College, PA. (Personal Communication, 1997) [unpublished].

Cathy was 12 years old when David (35 years) befriended her. David worked in a shop below Cathy's home. As both Cathy's parents were working, she was required to look after her younger brothers and sister. Cathy was soon attracted by David's friendship which led to physical and sexual involvement. This lasted nearly twenty years. It was through David's manipulation and deceit that he maintained almost total control and influence over Cathy. As Cathy began to understand what had happened to her she attempted to confront David and his wife. She finally disclosed to the police and David was charged. He pleaded guilty and was sentenced to 3 years imprisonment.

But Cathy felt devastated and isolated. The courts had failed to provide her with an opportunity to be heard. She was being given constant psychological counseling but was still completely dissatisfied. Cathy wanted justice and eventually was referred to the Police Conflict Assistance Group. Cathy desperately wanted to participate in a conference although she was very fearful.

The conference was arranged and 29 participants attended. Cathy came with her parents, sister, cousins and other support people including her counselor and psychologist friend. David was accompanied by prison officials. David's wife and three sons (22, 24 and 25) as well as neighbours and long-standing friends also attended. The conference lasted 5 hours. David did not at any stage accept responsibility for his behaviour and felt he was the victim. No other participant shared this view.

1. Cathy's Reflection

After the conference Cathy completed an evaluation feedback form and provided the following reflection :

When asked what benefits did she gain from participating in the conference, she wrote :

I am free. I am aware now how the deceit and the physical, emotional and spiritual corruption of my life had moulded my perceptions, my decision-making and my behaviour. The deceit and corruption officially and metaphorically ended that night. I am now free to perceive, decide and behave in a way appropriate to myself and not to the perpetrator of my life.

When asked about her expectation from the conference, Cathy wrote :
A chance to be validated. It forced others to face an ugly truth which my life represented but was hidden for so long. On the other hand, through validation, it also offered hope for the future.

Cathy responded when asked what was the most difficult thing in making the decision to attend :

Coming to terms with my reality; overcoming years of secrecy and ignorance; facing people who I had protected; facing my parents with all the truth. The latter was the most difficult aspect in attending the conference.

When asked about what benefits others may have got from the conference, Cathy wrote :

My father in particular released his disgust and outrage at the source (offender) and not myself. My mother at least was given a chance to experience my pain, my development and my life. As parents, they had a chance to reflect. Since then, behaviour has changed in a positive way not just to myself but to the other children. My sister is no longer on the darkness and her own decisions will now be understood by herself. For David's sons, they are now released from his bondage. His wife has had a chance to validate her position and an opportunity to express.

Cathy wrote in response to the question about the most significant issue that she felt came from the conference (for her) :

I faced my perpetrator not as a child but as an adult. I gave myself a chance to allow the child from within to have a voice against the man who destroyed her. I gave others a chance to briefly experience that child. For that child, in someway, it was like a memorial service and an opportunity for grief and later towards the end of the night, joy.

The conference gave the child within a hearing and its dignity. I wanted an opportunity to build bridges with my parents and sister. I understood how hard it was for my parents to come to Australia for a better life, a safer life, and have it violated by a trusted friend. I addressed everyone and said that we all have a responsibility to look after children. Everyone should be aware of signs and not ignore them just because they're too hard. There were signs in my case and everyone ignored them and on top of that, condemned me for things they didn't like.

I needed the conference as I was seeking a chance to express my anger and voice towards the perpetrator within the framework of the legal system. Why? I felt the system had literally "dumped" me following the sentencing and I needed a safe environment. The offer of a conference took some convincing because of the other participants. It was frightening to have it so public. My conscience led me to do the conference because I believe offenders must be held accountable in every way. The court certainly did not do that.

2. Insights on Cathy's Conference

Cathy's story is largely about disconnection which resulted from an insidious crime. Whilst the circumstances of this case study are in themselves extraordinary, Cathy's main need was to receive validation from those who were important in her life. The conference process unfolded in three separate stages :

- The main conference involving all participants within which two smaller community conferences (spontaneously) occurred with David, his family and supporters, then followed by Cathy, her family and supporters.

As the conference facilitator, my role was limited to the main conference. It is important however to overview the conference by contrasting the participants' (emotional and psychological) status prior to, and then following the conference.

3. Cathy's Family and Support Group

When Cathy disclosed to police, she was further isolated from her family. Her Greek parents and brothers could not understand how Cathy could have maintained the relationship with David, even though David had admitted to what he had done. The collateral harm experienced by Cathy, her family and extended family was profound. There was little communication, and within the group, a collective sense of shame. No one knew how to respond towards Cathy. Her parents spoke about their own feelings of guilt when encouraged to participate in the conference. Relationships were fragile and for Cathy, ongoing victimization.

After 5 hours of a highly emotional conference process, for Cathy's family, things had changed. As Cathy's father said the following morning, "It seems as if a tremendous weight has been lifted off my shoulders". There was a sense of great relief, and relationships began to undergo significant positive transformation — Cathy's reflections are testimony to this. Cathy's psychologist and counselor did not know what to think, for making sense of what happened was difficult for them. As one said the following day, "I did not sleep last night. I keep thinking about the conference process and thought I knew a lot about dealing with people in crisis. I think I will have to go back to the drawing board. I could not have achieved half of what this conference has, even if I worked for the next 10 years".

4. David's Family and Support Group

David was brought out of prison to attend the conference. David was experiencing almost total isolation and rejection by his family, although he still maintained weekly contact. His imprisonment provided a sense of great relief for his family, particularly by his sons, who viewed David as a manipulative and controlling father, one that they lived in fear of. David's wife had received great support from her friends, but had experienced a deep sense of shame about what had happened — for Cathy as well as her own role as David's wife. A number of David's friends who participated in the conference also talked about their sense of shame and hurt. During the conference,

David's group confronted him about the fact that he was still attempting to rationalise his behaviour, and was not accepting responsibility, nor did he appear remorseful. Each of David's sons then confronted him about the hurt and deceit they had experienced.

With the exception of David,²¹ his group had experienced a very similar journey to Cathy's²² (group). All their relationships began to undergo transformation. For David's sons the conference was for them a daunting yet wonderful experience — since the conference, their mother reports she hardly recognizes that they are the same sons!

The neighbours and the support group have moved to a very different understanding about David. In spite of David's failure to own his behaviour, his support group has not given up on him. One wrote following the conference :

For the victims it gave a secure and safe place to confront the perpetrator and say what was on their minds. This by itself brings great healing — this was evident in quite a number of people by the end of the meeting. As well as this — here was something difficult the prisoner had to do. Face up to the results of what he had done and how it had affected so many people. Perhaps a stronger deterrent than a long sentence. In this instance we did not see a strong change in the prisoner — however there was much he had to think over and would shorten the hours of counseling we expect he will receive. Many seeds were sown that could bear fruit in future. At best this procedure could change a prisoner's whole attitude to his crime.

5. Beyond the Conference

Cathy's life has changed. The conference process has allowed her to bring a sense of closure to all the hurt, and "reconnection" with her family and significant others. As she describes in writing to the New South Wales Police Commissioner :

As for myself, I am released from the prison I was forced to live in due to the acts perpetrated against me. The perpetrator pleading guilty in October, 1995. I found, in time, that it was insufficient and did not bring the healing from the crime. It was this process which has healed me to the extent I can live for the first time in my life. The perpetrator was also made further accountable for his actions. Where else could he have been made accountable and have had to face his victim, his family and friends and the victim's community of care? In the equation of crime, the perpetrator being sentenced to gaol is an incomplete equation. The conference sought to redress the incomplete equation.

21. A conference observer commented about David, "it was less about him telling lies, and more about him living one".

22. It was a wonderful experience and honour being involved with Cathy — a woman of incredible strength and courage. Whilst the conference may have given Cathy the opportunity she deserved, the privilege of working with her has allowed us all to learn so much about the human face of justice.

David remains in prison but the conference experience has become the "beginning point" in re-establishing relationships with his wife, family and friends. Shortly after the conference, David rang expressing his disgust towards his wife about having to attend the conference. David's eldest son overheard this and immediately flew to the prison where he confronted his father about the need to be honest and accept responsibility for his actions. He managed to engage his father for the first time.

B. Case Study Two — David's Story

David was 16 years and lived in a large rural town. He had lived with his retired parents, both of whom were very supportive. He had two sisters, both had left home. One sister, Peta, had worked as a police officer in the same town. Up until 15 years David was considered a regular young lad, but then began committing (with others) some minor crimes. Having experienced the normal police cautions and court appearances, nothing seemed to make a difference. David became involved in more serious crime including motor vehicle theft and house burglary. His final series of offences included theft of the complete contents of a house, including the motor vehicle. This was the second occasion David had broken into this house. He was remanded in custody, then released for assessment prior to being sentenced to 6 months detention in a juvenile remand centre.

David was also receiving professional assistance during this two-year period. His father became so desperate that he took David, at great expense and time, to a psychiatrist for regular treatment. Meanwhile, a number of victims became concerned about the lack of decisive action on the court's part, and (one) wrote a letter to the magistrate expressing disgust. David's sister Peta negotiated to have a conference conducted just prior to the court (sentence) hearing. The conference was not proposed nor intended, to have any bearing on the court outcomes.

1. David's Reflection

Unlike Cathy's matter, there was no formal feedback on this matter. However David was interviewed on national radio about the conference process. When asked what the conference was like, David said :

It was the most scary experience of my life. Up until I got into the conference, I had no idea how much damage I had caused. When I look back, I guess I just didn't think. I had to sit there and listen to the victims talk about how much their lives had been affected. To hear about how much trouble and inconvenience I caused was really hard. I really became emotional but I didn't want to show it. With my family then talking about how I had hurt them, and my sister Peta reading a fax from my sister in Hong Kong was so hard. Nothing had made a difference for me until I had the conference.

When the interviewer asked David about whether he would commit crime again, David replied :

I would not even think of spitting on the footpath. I have learnt so much and now I have got a job, I feel that I will never get into trouble again.

When asked, what was the most important thing to come from the conference, David said :

Just understanding how my behaviour affected so many. I don't think I could have coped with being locked up for six months if I hadn't been in the conference. It is a great process, but a very hard one.

2. David's Family

Life has been difficult with David continually getting into trouble. Nothing made a difference and his family was frustrated, not knowing what to do. For Peta, being a police officer had its own special problems. It seemed that she was not able to influence David. The conference was at least worth a try.

After three hours of strong emotional engagements, David and his family felt a great sense of relief. Finally, it appeared that something had worked. David began to understand that his family, apart from being badly hurt, did actually care for him. David's radio interview, which took place approximately 12 months after the conference, allowed David to reflect on where he had come from — quite some distance.

3. David's Many Victims

The sense of loss and violation on the victim's part was all too real. The family who was broken into twice by David, had since experienced a separation and divorce. For that victim's family, there were so many unresolved emotional issues that it was not surprising to hear the mother (from that family) say which such feeling :

If I had a piece of "four-by-two" (timber) I would smash your head in.

All the victims spoke about their sense of loss and grief, and their feelings of "not-being-safe" were very painfully expressed. Towards the end of the conference, the conference dynamics had changed from anger and disgust to interest and hope. Each victim began to describe David as "not a bad young bloke (person)". Some were prepared to help David beyond the conference, offering themselves as contact people if David needed someone to talk with.

4. Beyond David's Conference

David spent 6 months in juvenile detention and then began living with his sister Peta. He now is employed in the area of his choosing. The conference was a significant event in David's life. His family has an increased confidence that David will not re-offend. Relationships have generally improved in David's family, and for the victims, the conference gave them an opportunity to be heard and validated. The conference did bring a sense of closure for many who had experienced isolation and disconnection.

C. Case Study Three — Firebombing Incident

This incident took place in a rural county on the east coast of United States. In the early hours of 1:00 Saturday morning, Paul and William (both 17 years) firebombed a residential home trapping the victims (Luke, Tim and their parents, Paul and Mary Richards) on the second floor. It was necessary for the victims to jump, which resulted in Mary sustaining a serious back injury. The house was totally destroyed. The Richards family had lost everything.

Paul and William claimed their actions were a result of racial slurs made towards them by Tim and Luke who went to the same high school. Paul's parents were Asian, and owned a local restaurant. William's mother was also Asian. His father was an elderly Caucasian. The incident caused considerable community outrage as the Richards were well-respected community members. Attempts were made to have the matter dealt within the adult jurisdiction (of the criminal court) because it would automatically attract a heavier sentence. Paul and William were given an open-ended sentence in juvenile detention until age 21.

1. Background Behind the Conference

The circumstances leading to the convening of this conference were unusual. I was to run a series of conference facilitator training in the U.S. One was scheduled for the location where this incident took place. I had been contacted by a psychologist who had listened to a presentation I gave approximately 12 months earlier. I agreed to convene the conference as it was an ideal opportunity to demonstrate the power of the process. My challenge was to contact all the participants and manage the conference within two weeks of my arrival. Because of my training commitments, meeting with the various participants was restricted to evenings.

2. Meeting the Victims

Having "navigated" all the usual bureaucratic and formal barriers, I met the Richards family (with a victim support person). This was a difficult experience because the family continued to experience tremendous grief and trauma. Each talked about the tremendous sense of loss. Life was no longer the same. The family said they had lost all sense of joy and hope. Mrs. Richards was bitter about the court experience, particularly the rationalisation used to explain why Paul and William committed this crime. Mrs. Richards²³ said :

When I heard the psychologist²⁴ say — William feels set apart because of his mixed background. He needs gradual planning and reassurance to deal with his

23. I had been constantly told that Mrs. Richards had "lost it" such was the trauma she experienced. I, however, found her to be the opposite, at all times being very clear about what she wanted to see happen.

24. The psychologist gave evidence in the court as well as providing a written assessment on the offenders.

anger — I really got angry. There is nothing wrong with William and Paul. I think they are smart arses who took a wrong option. I need both of them to understand how they have hurt my family, and making excuses for them isn't going to help them.

The victim support person attempted to dissuade the Richards from participating in the conference as she felt there was insufficient time for the Richards to have recovered from the original incident. Tim was an important influence in the family attending as he wanted to confront Paul and William about the harm they had caused his family.

3. Meeting With the Offenders

Paul and William were in a local juvenile remand centre waiting placement. Both their families participated in the meeting, and were concerned about participating in the conference. The incident had impacted heavily upon both families. When Paul was asked about what he would think about whilst in prison, Paul replied : "I will work on my anger".²⁵ William's elderly father was concerned about having to participate in the conference and following the meeting wrote to his attorney explaining what he thought was happening in the following terms :

[...] to attend a meeting for the purpose of reviewing a plan to resolve the uncertainty in the minds of the Richards family about whether or not the defendants in this case are truly repentant and can be rehabilitated by treatment [...].

4. The Conference

There were 30 participants in the conference. During the 3 and excess hours, there were consistently high levels of emotion, particularly from the Richards family. Tim had difficulty engaging (in the conference) and sat with his back turned towards Paul and William for nearly 3 hours. Each of the Richards, following by their extended family and then their neighbours, talked about their tremendous grief and loss. Paul and William's families also talked in similar terms. The issue of racial slurs was raised by the facilitator early in the conference but this issue was not seen as important to any of the participants.

At the 3- hour interval, Luke stood up and began describing how important the conference process had been by using an analogy of a football match. He said :

[...] it's like playing in a losing football team where nothing is going right. The coach decides to make a change and brings a reserve onto the field who is not a great footballer, but will give 100% effort. This guy throws himself into the game and it's the spark that has provided the inspiration. Gee, I want to be

25. Having seen the newspaper reports and (having) spoken with the Richards, I viewed this response as a learned or conditioned one that came from Paul's interaction with his psychologist.

known not as the victim of the firebombing, but as a really good footballer or basketball player.

At this point, Tim became engaged and smiled for the first time since the firebombing.

The conference concluded with Luke agreeing to write an article with William's friend (support person) for publication in the school newsletter explaining the impact of the firebombing, and how the conference allowed all affected an opportunity to share their experience.

5. Beyond the Conference

A psychologist who had been assisting the Richards observed the conference process. Following the conference, he shared (with others) some reflections on what had taken place within the conference. He stated :

[...] having just observed such a powerful process, convinces me that so much has been achieved to reduce the impact of post traumatic stress on the Richards family [...] just amazing.

Life for the Richards started to regain some sense of normality. Luke and Tim returned to their favourite sport, basketball. Their dad returned to work as a school teacher. For Mrs. Richards the conference allowed Tim to feel safe again, something that she feared would never happen. The conference had achieved more than everyone had imagined.

D. Discussion — Making Sense of the Three Case Studies

All three case studies had great endings. Cathy's story was about two communities in complete disarray, with no prospect at all of ever being able to come to grip with the magnitude of the harm being experienced. The overwhelming need for Cathy to be validated not by the offender, but by her parents and sister. This is, for some, a difficult concept to understand. In fact the offender (David) did the opposite by communicating to everyone at the conference that he was the victim. Yet, Cathy's reflection made no reference to that at all.

David's story is not all that different from those told about young offenders who re-offend and nothing seems to make a difference. It was not until he had experienced a conference, that David was able to, for the first time, make some connection with those who cared about him. Similarly, the firebombing story is so typical of an almost daily experience we would expect to find in any large city, anywhere in the world. Communities torn apart with little prospect of anything worthwhile happening that could make a difference, let alone repair the hurt. Yet a conference, which had been arranged over three evenings and then convened for around 3 hours, provided that something which did make a difference.

1. Understanding Emotionality

Cathy spoke about validation. Whilst Scheff and Retziner²⁶ describe this as the victim wanting "symbolic reparation" — recognition that what the victim had experienced was not his/her fault; did not deserve; had caused them harm; and that there was some express of remorse. Nathanson²⁷ would view this conference as having provided a forum for intense affect, by allowing Cathy and others to feel intensely under the umbrella of safety (the conference provides). The conference according to Nathanson, represented a good community process as it had the following characteristics :

1. It consisted of a group of people who agreed to mutualize and maximize positive affects through an appropriate public ceremony;
2. The group was willing to mutualize and minimize negative affects by coming together to talk about the tremendous harm that had been experienced;
3. This allowed those present to express their emotions, in acknowledgment of the fact that it is important to understand what people are going through;
4. Finally, to share those processes which do more of the above.

Nathanson suggests that anything that interferes with this process disrupts communities. His explanation applies equally to the other case studies.

In all case studies, serious crime has caused considerable disruption to each respective community. This caused disconnection and in the absence of a forum such as a conference, it was impossible to achieve an outcome where Cathy felt she was free, where David understood for the first time that he had hurt the victims and his family, and where the Richards family were understood. No effort had been spared to assist Cathy, David and the Richards family with professional assistance. And of course the offender group in each case study had almost the same needs as the victims, to no longer feel isolated and disconnected.

Conferences, according to Nathanson,²⁸ respond appropriately to emotionality which results from crime or disruption by contributing towards :

[...] the realisation that a healthy community manages public interpersonal relationships that follow guidelines very much like those for individual happiness and successful marriage.

The Wagga Wagga model provides a safe forum for communities to achieve these outcomes. The model recognizes that, as humans, we all share the same innate affects and emotions. Conference participants are connected at a common level of humanity because emotionality is a shared universal human experience.

26. *Supra* note 4.

27. *Supra* note 2.

28. D. Nathanson, *Bulletin of The Tomkins Institute* (Philadelphia : 1966) vol. 2.

The details of the case studies and the degree of harm may have been very different. However, at a fundamental level, each achieved the same outcomes for all the participants. Beyond each conference, the validation of the participants has allowed them to experience life with a sense of normality, and without external professional assistance. Victims and their families have become empowered and strengthened. But are these case studies exceptional or can the conference process be replicated for almost any matter involving serious victimization? I have no doubt about this, based (anecdotally) on my conference experience. However, research is required to confirm this claim.

2. Limitations of Other Interventions

Another way of understanding why I claim conferencing to be fundamentally different to other processes, is to think through how other processes such as mediation²⁹ might have been used to deal with the case studies. Cathy's case study is one of tremendous complexity, and when viewed from a mediator's perspective, would have been approached very differently, if at all.

Mark Umbriet's³⁰ wonderful mediation work for serious victimization, for example, is largely limited to the offender and victim, takes extended periods to organize (12 months to 2 years) and generally has considerable professional involvement. With Cathy's case, mediation would have failed, as the offender (David) refused to acknowledge Cathy's status as the victim. But it is important to remember that what Cathy wanted most of all was validation from her family, and this was only possible within the context of a conference, which involved a large number of participants from both the victim and offender's communities. Mediation does not deal with collateral harm.

Mediation would also have considered specific elements of Cathy's case such as : gender, power imbalance, ethnicity,³¹ race,³² cultural sensitivity and social status. Because Cathy's conference focused on the tremendous harm that the offender (David) had caused, it connected people at a common emotional level. This in itself, transcended all those special issues (just identified) as the participants communicated a shared understanding of their hurt.

Preparation for Cathy's conference happened over a short-time frame, and did not have any professional involvement.³³ Nor was there a requirement for any further

29. Sentencing circles which are used by the Canadian indigenous people, is the process closest to conferencing.

30. M. Umbreit, *Victim Meets Offender : The Impact of Restorative Justice and Mediation* (Monsey, N.Y. : Criminal Justice Press, 1994).

31. Conference participants came from four different ethnic groups.

32. The firebombing case study had a strong element of racism, one that had been constantly referenced as a real barrier to a successful conference. It did not rate a mention, notwithstanding the fact that it was the first issue raised by myself as the conference facilitator.

33. Cathy's counselor spoke to me, concerned that a conference might cause further harm to Cathy. It also did not make much sense from her (counselor's) perspective.

professional assistance beyond the conference. Being a trained community social worker myself, I realize that such an arrangement would raise concerns from other professionals, such as counselors and psychologists. They do have an important role in assisting those who suffer psychological and emotional trauma, but there must be realistic expectations about what they can contribute and how much they can achieve working in relative isolation. The firebombing conference which involved high levels of stress and trauma, was organised and finalized within a week, involving a total of 11 hours. My role as the conference facilitator was to develop a credibility with all the participants so they felt safe enough to attend the conference. That is not to say they were not frightened. My task was to have them participate, not prepare them or coach them on how to manage emotionality. About this Nathanson³⁴ says :

The Wagga Wagga conference model allows real change in the complex multi-personal field formed by the emotions of a community as it responds to a crime committed by one of its members. Conferencing says that the crime being discussed is not a matter of history but (because of the emotions it has triggered) a matter of constant, urgent, and ongoing importance. It works so well because it takes for granted that exile from the community acts only as a force for the disavowal, the ignoring of the emotional needs of that community. Exile (or its intra-societal analogue, imprisonment) shames the perpetrator in such a way that the individual is removed from the community until the shame has passed and there is no need to handle it by working within or reintegrating with the community. The conference model works first to reunite the perpetrator with the community, and then to produce shame within an umbrella of unexpected love and safety to which the perpetrator now wants deeply to return. It is important to understand the role of the conference facilitator in producing this result. Imagine what would happen were the Family Group Conference to take place when no member of the conference had been prepared by conversation with the facilitator. It is the facilitator who expresses belief in the importance of emotional disclosure, and who guarantees that such disclosure will be held within safe bounds by his/her authority. Here, then, is power of a type long missing in our society. It is the power to accept intense emotionality without prejudice, to guarantee that everyone will be heard, and to assert with authority that healing will come from the simple fact that emotions have been heard.

Conference participants have an innate sense of how to do that, although this is a point of considerable contention with professionals. Why? In part because we have become so reliant on professionals to assist us deal with our psychological and emotional responses, that it is almost impossible to imagine people being able to manage these human dimensions themselves. The other influence is that very few professionals view intense emotions as a desirable thing. Nathanson³⁵ suggests that :

[...] mental health professionals in general are afraid of emotional intensity.

Being able to cope with powerful emotions through conference, gives you a great advantage over the psychologist types. As a culture, we're in a lot of

34. *Supra* note 20.

35. *Ibid.*

trouble when the only places we can group to share affect are rock concerts. Conferences like yours are extremely important because people are able to feel intensity under the umbrella of safety you provide — that safety is missing in most places in our culture.

The Wagga Wagga model, which seeks to maximize emotionality at all times, is the antithesis of intervention models where the need to control emotionality is paramount. Most mediation models for example use ground rules and other constructs to ensure that "things do not get out of hand".

3. Social Change

Trying to balance competing interests within an often tenuously defined societal framework is almost impossible. Glendon³⁶ cited the work of French demographer Louis Roussel when highlighting the unprecedented rate of social change over the past two decades :

We have seen between 1965 and the present, among the billion or so people who inhabit the industrialised nations [...] a general upheaval across the whole set of demographic indicators, a phenomenon rare in the history of populations.

Rapid social change has resulted in the breakdown in traditional ways of handling distress. Greater reliance is placed upon the state. Today, well-being of the human condition is increasingly becoming the responsible domain of professionals, rather than of families and communities. Glendon³⁷ raised this issue by citing Lasch's thesis on this :
Much of modern life [...] rests on the assumption that all realms of activity should come under intense scrutiny, that science and rationality can best lead to an understanding of human experience, and that only trained experts can direct the conduct of daily existence. The reordering of life according to such principles of rationalisation resulted from the tendency of corporate capitalism and the modern liberal state to expand their power, which they accomplished by means of a bureaucratic structure and paternalistic ethos. The service professions, acting on behalf of the state, intruded into the private domain, helping to replace habit and custom with esoteric techniques for addressing everyday problems, causing a situation of dependence on elites that is antithetical to democracy.

Glendon summarizes this by suggesting :

[...] there, in a nutshell, is the line of thinking that made Lasch such a blister to many liberals and conservatives : his condemnation of corporate and

36. M.A. Glendon, *Rights Talk : The Impoverishment of Political Discourse* (Toronto : Maxwell MacMillan Canada, 1991).

37. Cited from an article in *News Weekly* (Melbourne : Freedom Publishing Company Pty. Ltd., 1997) which reproduced a book review by M.A. Glendon for the American magazine, *First Things*, on C. Lasch's book, *Women and the Common Life : Love, Marriage and Feminism*.

governmental power grabs, his attachment to a robust vision of democratic citizenship, and his conviction that the social work establishment, educators, therapists,³⁸ and other semi-skilled technocrats had undermined the competence of the middle class, while subjecting the poor to "new controls" sincerely disguised as benevolence.

The focus on professionals is not about arguing for their extinction. In the absence of worthwhile alternatives such as conferencing,³⁹ they will always play an important role. Nathanson⁴⁰ takes this point up by suggesting :

Counseling for the individual perpetrator allows him/her to deal with the historical (usually family and society) factors thought responsible for that individual's estrangement from self and society, but allows no integration with or response from those historical others. The Family Group Conference system takes for granted that an adult lives within a community and is an integral part of that community no matter how estranged s/he may feel.

38. Nathanson suggests there is a lot of balderdash written about the utility of "professional" help. He says of this "[...] it is as if couples never learned to copulate until sexual therapy was invented".

39. Beyond conferencing, professionals can still provide an effective support or facilitation role within a community, but within the context of the conference experience.

40. *Supra* note 20.

4. Why Community?

MacKay⁴¹ says that to address the issue of "community" is to address such crucial issues as personal identity (as well as national and regional identity), social responsibility and ethical sensitivity. He says :

[...] the illusion of the "global village" and of mega-communities linked via computer technology may seduce us into thinking that human contact is alive and well but, of course, this is a hoax. The life of the village demands personal interaction (and the skills to manage such interaction) : shared data on electronic screens is no substitute for the shared life of a true community.

Martin Kryier⁴² develops the same theme as he describes :

[...] in civil societies, routine social relations can occur among non-intimates, which neither depend upon love or deep connection nor — as is common in uncivil conditions — are fractured by their absence, and replaced with suspicion, hostility, hatred, or simple fear.

Dealing with the aftermath of crime and social disruption demands a new thinking. When individuals become disconnected from their communities, fear (of crime) and suspicion greatly increases. This serves only to further compound the threat to (community) social cohesion.

Conferencing seeks to re-establish connections, to develop "communities of care around victims and offenders", to bring a sense of closure for those directly affected by the hurt and disruption, and to strengthen relationships. Communities are established or redefined as a result, through the validation and empowerment of individuals. The collateral harm experienced in the aftermath of crime can be appreciated for the dislocation it causes. Those responsible⁴³ can gain considerably through participation, and importantly, by acknowledgment of the harm suffered — particularly by people who care most about them.

Nathanson⁴⁴ in viewing conferencing as the process most likely to make a difference says :

[...] it is urgently important for the community of criminal justice professionals to understand Braithwaite's message at the deepest level. Shame is isolating and a force against community repair unless it has been produced in an atmosphere of community integration. It does little good to shame a perpetrator into

41. Letter to U.N. group, 1997.

42. M. Krygier, "Second Richard Krygier Lecture", *Quadrant* (Melbourne : La Trobe University, October, 1996).

43. Conferences allow offenders to deal with the emotional and psychological issues which cannot be provided for through other medians such as professional interventions, but are nonetheless, critical if they (offenders) are to move forward. David's case study is a good example.

44. *Supra* note 20.

penitence unless that powerful emotion is evoked when the perpetrator knows that s/he can come home. The Family Group Conference system turns a community of frightened and angry citizens with little respect for the law into a nest to which a previously excluded individual may return time and again for safety and healing.

5. Where to From Here?

The application and use of the Wagga Wagga model in so many different jurisdictional has been most encouraging to date. Its full potential has not been realized nor fully explored. Yet, as you and I look around, we witness events on an almost daily basis which cause tremendous disruption to individuals and their communities. When you consider just one serious criminal event, with all the collateral harm which results, and then examine the outcomes following the finalization of any criminal justice intervention, you will find many individuals still experiencing tremendous harm and disruption, with little prospect of change, outside of the often proclaimed view⁴⁵ that "time and distance will heal". The need for processes which deal with the collateral harm experienced by so many, is overwhelming. Knowing where to start appears beyond us all. However, with some common understanding of what needs to be achieved, regardless of jurisdictional or other complicating issues, our challenge of making a difference can begin. Adopting the restorative justice framework and sharing in these ideals is a great starting point. This does not imply that the present retributive system of criminal justice needs to be completely abandoned. Braithwaite⁴⁶ in addressing this issue suggests :

Restorative justice does not mean abolishing the key elements of the state criminal justice system that has globalized so totally this century; it means shifting power from them to civil society, keeping key elements of the statist revolution but shifting power away from central institutions and checking power that remains by the deliberative democracy from below that restorative justice enables.

Our families, workplaces and communities are those places which matter most. Our schools, police, courts and corrections represent the major institutions where community dysfunction is most obvious. Conferencing has a worthwhile contribution to make in all those areas. And we can begin almost immediately, given we understand what will make a difference, and for whom. Many of you will suggest, "There must be lots of legislative change before we can even think about beginning"! I suggest that nothing needs to change except our understanding of what needs to happen, as opposed to what does happen. Schools for example, have adapted the Wagga Wagga model as an important part

45. Having facilitated many conferences where the collective wisdom suggested that there was not enough time between the incident and the conference reminds me that there is a lot to learn about victimization.

46. J. Braithwaite, "Restorative Justice and a Better Future", *D.J. Killam Memorial Lecture* (Dalhousie University, October, 1996).

of its school behaviour management approach. Police⁴⁷ are using their discretion to divert offenders for most offence categories using conferencing, without the need for legislation. Courts can introduce conferences as part of the pre- and post-court options, and corrections can use conferences at various intervention points, again without the need for any formal changes.

The challenge for all of us working within the formal criminal justice system is to begin ask the right questions, as opposed to those questions we think are right. What do we want from any intervention? Is this the same as the need to obtain the best possible outcomes? Who has been affected, and in what way? What must happen to begin to repair some of the harm, or at a very minimum, reduce the potential for further harm and re-victimization? What can I do that will contribute towards making a difference?

It is the last question, that can become the catalyst for beginning to think through some of the critical issues and questions. When we attempt to envisage an ideal world where our interventions can provide outcomes that deal with every possible issue, we tend to be overwhelmed by the enormity of what needs to happen, within our political systems, our institutions and so on. This is often sufficient to allow us to revert back to the "status quo" because the alternative is beyond comprehension. The Wagga Wagga experience is one where police⁴⁸ felt things could change and persisted to the point, against tremendous opposition, to develop a model that has a lot to offer all of us, regardless of the jurisdiction.

It is not good enough asking what others are going to do, unless we have firstly answered the same question about ourselves. That is not to say that introducing conferencing is easy. It is not. However, something that is worthwhile and can make a difference to the quality of life of individuals and communities, must surely be worth fighting for. As the title of this paper suggests, conferencing can lead to community empowerment by rediscovering the human face of justice.

47. Police in Canberra, Australia are using "diversionary conferences" as one of their main policing strategies for both adult and juvenile offenders. Drink/drive offences and juvenile crime are the two categories which are presently being researched in RISE (Reintegrative shaming experiment). It is not unusual for police to divert drink/drive offenders who have history of reoffending. Police simply argue that courts have not worked, so conferences are at least worth a try!

48. In the words of the Wagga Wagga police chief, Chief Inspector Kevin Wales, "I don't give a stuff who doesn't like what we are doing, the only people that matter to me are my community people, those most affected by crime". This is true accountability, not to be confused with accountability which implies compliance with organizational rules.