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UNAFEI

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Kunihiko Sakai
Director

Asia and Far East Institute
for the Prevention of Crime and
the Treatment of Offenders
(UNAFEI)

1-26 Harumi-cho, Fuchu, Tokyo 183-0057, Japan

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No.63.

This volume contains the Annual Report for 2003 and the work produced in the 123rd International Senior Seminar that was conducted from 14 January to 13 February 2003. The main theme of this Seminar was, "The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches".

The need for the criminal justice system to protect victims of crime was specifically recognized by the United Nations by the adoption of the "Principles of Justice for Victims of Crime and Abuse of Power" at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985. This focused the international community on the domestic situation of member states in relation to the role, support and protection of victims of crime.

The development of victim support and protection heavily influenced and added impetus to the restorative justice approaches that had been growing. Countries are starting to create fresh approaches to justice as well as looking to the history of their own societies where restorative justice was once often practiced. In 2000 "The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century" was adopted by the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders. This declaration provided for the introduction of action plans to create mechanisms for restorative justice and the encouragement of restorative justice policies. Based on this Declaration, the working group on the Commission on Crime Prevention and Criminal Justice drafted "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters", as a United Nations standard for restorative justice which was formally adopted by the U.N. Economic and Social Council in July 2002.

Although the United Nations has laid an important foundation and great progress has been made in some countries, major parts of Asian, African and central and southern African countries do not have adequate systems for the protection of victim's rights and the active participation of victims in the criminal justice process. In this Seminar the participants held seven general discussion sessions in which they identified and clarified problems and found practical solutions and more effective ways to protect victims and involve them in the criminal justice process, particularly in regard to restorative justice. The essence of these discussions was then crystallized in the recommendations of their General Discussion Paper.

In this issue, papers contributed by visiting experts, selected individual presentation papers from among the Seminar participants, and the General Discussion Paper are published. I regret that not all the papers submitted by the Seminar participants could be published. Also, I must

request the understanding of the selected authors for not having sufficient time to refer the manuscripts back to them before publication.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Minister of Justice and the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular, the editor of Resource Material Series No.63, Mr. Simon Cornell (Linguistic Adviser).

July 2004

Kunihiko Sakai
Director of UNAFEI

PART ONE

ANNUAL REPORT
FOR 2003

- ***Main Activities of UNAFEI***
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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2003 - 31 December 2003)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g., transnational organized crime, corruption, economic and computer crime and the re-integration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of criminal justice discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding, with the help of lectures and advice by the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (eight weeks duration) and one international seminar (five weeks duration). Approximately 90 government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA; an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in criminal justice fields.

During its 42 years of existence, UNAFEI has conducted a total of 125 international training courses and seminars, in which approximately 3048 criminal justice personnel have participated, representing 104 different countries. UNAFEI has also conducted a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved in. In their respective countries, UNAFEI alumni have been playing leading roles and holding important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 123rd International Seminar

1. Introduction

From 14 January to 13 February 2003, 22 participants from 15 countries attended the 123rd International Seminar to examine the main theme of “The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches”.

2. Methodology

Firstly, the Seminar participants respectively introduced the current position regarding the role and function of criminal justice agencies in their country in regard to the main theme. Secondly General Discussion Sessions in the conference hall examined the subtopics of the main theme. In sum, the participants comprehensively examined the measures that were available to protect victims of crime, problems encountered and ways to improve that protection. They also carefully considered restorative

justice approaches and arrived at a number of important recommendations. To conduct each session efficiently, the UNAFEI faculty provided the following seven topics for participant discussion:

Topic 1: The strengthening of immediate and direct support for the victim and the establishment of a system of monetary support for the victim;
Topic 2: Current situation, problems and solutions in relation to measures to protect victims of crime;
Topic 3: Particular issues in utilizing restorative justice approaches such as the Victim Offender Reconciliation Programme (VORP), Victim Offender MediationProgramme (VOM), Victim Offender Dialogue Programme, family group conferencing and others;
Topic 4: The argument on the theoretical basis of restorative justice, relationship between restorative justice and criminal justice, including the aims and goals of restorative justice in comparison with criminal justice;
Topic 5: Major obstacles for introducing restorative justice approaches and effective utilization of restorative justice approaches in the criminal justice system;
Topic 6: System/measures in relation to the active participation of victims in the criminal justice process; and
Topic 7: Measures to provide information for victims of crime in the criminal justice system.

A chairperson, co-chairperson, rapporteur and co-rapporteur were elected for each topic and organized the discussions in relation to the above themes. In the conference hall, the participants and UNAFEI faculty seriously studied the designated subtopics and exchanged views. The General Discussion Paper summarized the vital points of the seven general discussion sessions. This paper will be printed in UNAFEI Resource Material Series No. 63.

3. Outcome Summary

The role of victims in the criminal justice process has traditionally been limited to that of witnesses; it has only been recently that the needs of victims have been given recognition. An impetus for change has been the adoption, in 1985, of the "Principles of Justice for Victims of Crime and Abuse of Power" at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

The participants produced a general discussion paper which separately addressed the issues of: support and protection of victims; and restorative justice approaches and made comprehensive recommendations for both.

It was proposed that in order to fully implement support and protection for victims of crime the "Principles of Justice for Victims of Crime and Abuse of Power" be respected by both individuals and nations. The following recommendations were made:

(i) Taking into account each country's needs pilot projects should first be set up for victim support and assistance.
(ii) Development of victim support and assistance requires a better understanding of victims; therefore there is need to plan and conduct systematic training of facilitators. Experts from countries with advanced victim support systems, e.g., the U.K., the U.S., etc. should be invited to help.
(iii) Traditional wisdom and customs should not be disregarded or disqualified since community development and mobilization may provide more appropriate services for victims of crime than institutionalized systems.
(iv) Basic information about criminal proceedings (such as arrest of the offender, prosecution, schedule of trial, release on bail, etc.) should be provided to victims by the competent authorities.
(v) In order to positively reflect victims' rights at trial, "private accessory prosecutions" should be introduced if necessary, where the victims can participate in the criminal trial as private prosecutors in addition to public prosecutors.
(vi) Every country with a private prosecution system must ensure that the victim is not placed in a disadvantageous situation because of poverty and/or lack of legal expertise. In countries where private prosecutions are not available, there should be some appropriate measures to complain or appeal against the decision of non-prosecution by public prosecutors.
(vii) The police and other criminal justice related authorities should provide protective measures to victims/witnesses in danger, such as escort services etc.

(viii) Separate waiting rooms between offenders and victims/witnesses, and partitions in courtrooms should be introduced. A video link should be available if the financial circumstances of the respective countries enable this.
(ix) Due to the burden on resources of establishing comprehensive victim support services it was recommended that only areas with the most pressing needs initially establish such services. As awareness of the issues grows and resources become available it could gradually be expanded.

The restorative justice approach is one which considers the loss caused by crime through the active participation of the victim, offender and the community. The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century was adopted by the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders in Vienna in April 2000. This encourages the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.

Although restorative justice has been defined in numerous ways, the participants reached a common understanding about restorative justice as follows: "Restorative justice provides a process with opportunities for victims, offenders and the community affected by a specific offense and is a means to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible".

Based upon the aims and goals of restorative justice the following recommendations for introducing and utilizing restorative justice approaches were made:

(i) When each country initiates restorative justice approaches, pilot programmes which correspond with problem-oriented approaches should be started, considering the feasibility and efficacy of such approaches.
(ii) The state should: try to solve general problems such as ignorance and constraints of resources; ensure a fair process and outcome for the parties concerned; take effective measures to ensure parties have equal bargaining power; and protect the human rights of offenders under the due process of law.
(iii) Research has proved that restorative justice approaches are useful in prevention of re-offending, and provide satisfactory results for the parties concerned, however there is still a need for more research widening the scope, particularly in the field of domestic violence.
(iv) Adequate information about restorative justice should be provided to the general public and persons working for the criminal justice system.
(v) When the restorative justice process is implemented, guidelines should be observed, such as voluntary participation; trained facilitators and mediators should guide the process; and appropriate follow-up should be carried out to confirm the implementation of the agreement.

B. The 124th International Training Course

1. Introduction

UNAFEI conducted the 124th International Training Course from 21 April to 12 June 2003 with the main theme, "The Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process". This Course consisted of 26 participants from 13 countries. The purpose of this International Training Course was to offer participants an opportunity to share information of the current situation of drug abuse; punishments; prevention and treatment for drug abuse; and the challenges faced by each country. At the same time the course offered participants the opportunity to explore more effective measures and strategies for preventing drug abuse and treating drug abusers to promote their reintegration into society.

2. Methodology

The participants identified the current situation of and problems experienced in preventing drug abuse and treating drug abusers within the criminal justice system. It was acknowledged that there might be a causal link between the increase in drug abusers and the lack of treatment afforded convicted drug abusers. The participants explored the types of treatment programmes that are and which could be offered at both the pre and post sentencing stage.

The objectives of the Course were primarily realized through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future

prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into the following two groups under the guidance of faculty advisers:

Group 1: Effective prevention of drug abuse and the enhancement of treatment for drug abusers at the pre-sentencing stage; and
Group 2: Effective prevention of drug abuse and enhancement of treatment for drug abusers at the post sentencing stage.

The two groups elected a chairperson, co-chairperson, rapporteur and co-rapporteur to organize the discussions. The group members seriously studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Sessions were allocated for Group Discussion. During the course, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meetings in the seventh week, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The full texts of the reports will be published in the UNAFEI Resource Material Series No. 64.

3. Outcome Summary

Drug abuse has a huge impact on all fields of the criminal justice administration. In view of the seriousness of drug related problems, many countries have taken specific measures to combat it. In addition international instruments such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) to promote international cooperation in drug control have been implemented. Meanwhile in order to effectively cope with drug abuse problems, drug demand reduction policies also need to be incorporated in a comprehensive strategy against drug abuse. The General Assembly of the United Nations at the 20th Special Session in 1998 recognized the need for such a strategy. It emphasized the need for early detection and prevention of drug abuse and appropriate rehabilitative services.

Worldwide drug abuse is on the increase. Several reasons might be adduced for this including the fact that the majority of countries' drug abusers are convicted without much consideration for their treatment. Research indicates that pre-sentencing treatment is very successful in reducing recidivism and rehabilitating the abuser. However the legal position in some participating countries is that drug abusers are criminals and should only receive punishment.

Most of the participating countries do not have treatment programmes for drug abusers at the pre-sentencing stage. Also, there are considerable differences regarding the ways in handling drug abuse problems, i.e. whether drug abuse be criminalized or decriminalized, therefore, there are many difficulties and problems concerning the introduction of such programmes without contradicting the current legal framework of the respective countries. The recommendations that follow are in respect of programmes at the pre-sentencing stage for the purpose of rehabilitation and reintegration of drug abusers, creating a safer community and reducing the caseload of criminal justice agencies.

(i) It is necessary to introduce pre-sentencing treatment in dealing with the drug abusers in the interests of criminal justice and society.
(ii) The implementation of a pre-sentencing treatment programme should be in accordance with each country's legal framework, social background and so on.
(iii) In the introduction of any pre-sentencing treatment, the following factors should be considered: presumption of innocence; the target of the treatment: persons who commit drug abuse (however, countries may wish to consider the possibility of enlarging the scope of the programme by encompassing drug abusers who commit other offences under the influence of drugs or for the purpose of obtaining drugs); necessity of consent – a voluntary scheme could be implemented in countries that criminalize drug use and a compulsory scheme would be a better option in countries that do not criminalize drug use; since most criminal justice agencies lack necessary manpower, skill and knowledge in administering effective treatment it is indispensable to establish and maintain coordination among treatment agencies and criminal justice agencies; successful completion of

treatment should result in non-prosecution or dismissal of charges, or be taken as a mitigating factor if a charge is for drug abuse only.

(iv) Comprehensive community drug education programmes are necessary.

As regards the prevention of drug abuse and the enhancement of treatment at the post-sentencing stage, the following recommendations were made:

(i) Through Care is an essential continuous process of supervision and support from institutional and community-based treatment to aftercare. Major agencies and organizations should formulate multi disciplinary teams to plan and manage the entire Through Care process. A continuous circle of research, monitoring, assessment and planning during the Through Care process is of vital importance.

(ii) Early family participation in treatment is very desirable as most of the drug abusers have a background of family disruption. Thus, family therapy and counseling from the beginning is important.

(iii) Drug relapse is a common phenomenon in the process of recovery. Starting the relapse prevention programme at the aftercare stage will be too late for the drug abusers to learn and develop skills for overcoming the triggers which drag them back to the re-using road. Relapse prevention should receive attention throughout rehabilitation.

(iv) The ideal Through Care can be achieved by emphasizing collaboration and co-ordination of agencies and departments.

(v) The establishment of a common database management system, which can be utilized by all of the stakeholders for programme implementation, monitoring and evaluation, is essential. Dissemination of the analyzed information should be used by policy makers in formulating an effective and efficient strategy and policy.

(vi) Effective strategies should be put in place to intercept negative practices such as drug smuggling in prison and other practices which lead to a vicious cycle.

C. The 125th International Training Course

1. Introduction

From 8 September to 30 October 2003, UNAFEI conducted the 125th International Training Course with the main theme, "Effective Countermeasures against Illicit Drug Trafficking and Money Laundering". This Course consisted of 24 participants from 13 countries. The purpose of this International Training Course was to offer participants an opportunity to share information on the current situation of Illicit drug trafficking and money laundering, and the challenges faced by each country. At the same time the course offered participants the opportunity to explore more effective measures and strategies to meet these challenges.

2. Methodology

The 125th Course endeavored to explore the best means to effectively combat illicit drug trafficking and money laundering. The participants comprehensively examined measures to prevent drug trafficking and studied ways in which money laundering could be detected and prevented. This was accomplished primarily through a comparative analysis of the current situation and the problems encountered in tackling these issues. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussions, the participants were divided into the following three groups:

Group 1: Effective criminal investigation;
Group 2: Countermeasures against organized crime; and
Group 3: Effectively tracing the proceeds of crime, focusing on countermeasures against money laundering.

Each group elected a chairperson, co-chairperson(s), rapporteur(s) and co-rapporteur(s) to organize the discussions. The group members seriously studied the designated subtopics and exchanged their views

based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

In weeks six and seven Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The reports will be published in full in the UNAFEI Resource Material Series No. 65.

3. Outcome Summary

Drug trafficking is of great concern to the international community because it affects not only individuals but the whole of society itself. Many organized criminal groups rely heavily on it as a source of income which is used in turn to fund their growth. In order to make an impact on drug offences it is necessary to not only prevent them from committing these offences but also to deprive these groups of this income. Criminals however go to great lengths to conceal their proceeds of crime and therefore it is essential that serious measures are taken in order to prevent this money laundering.

The collection of information is paramount in the successful investigation of drug trafficking. There is, however, a need to improve conventional investigation methods in order that the criminals will be arrested and successfully prosecuted. They can be categorized as: intra-agency measures; inter-agency measures; and international forum.

(i) Intra-Agency

Expert investigators with experience in the field of investigation should conduct on-the-job training for less experienced investigators. It is also necessary that police investigators maintain a checklist so they can easily refer to the standard operating procedures that must be followed. Analysis of failed operations will help them determine the cause and reason why such operations were not successful.

(ii) Inter-Agency (Domestic)

In order to share information, liaison committee meetings among investigation agencies involved in drug offenses should be held. By conducting such meetings regularly they can also become acquainted with other personnel and thus create a closer working relationship. Feedback between prosecutors and investigators should be maintained in order to have a constant and regular follow-up on the status of a case to ensure that all the necessary witnesses and evidence are properly presented.

(iii) International Forum

It is desirable to have a working level meeting among involved nations. At this meeting, information exchange regarding specific cases and procedures for international investigation should be discussed. Secondly, placing personnel at embassies etc., as liaison officers from the investigation agency, is very effective because the liaison officers can smooth the administrative process during a mutual assistance case. Thirdly, it is important to actively participate in various international training courses and forum held by international organizations. Through this participation, global trends regarding drug trafficking and money laundering and the latest information regarding international measures can be acquired. Lastly, database sharing or creating mutual link measures will be effective among countries that closely cooperate.

The introduction of new investigation techniques is necessary to combat organized crime organizations involved in drug trafficking. Controlled delivery for example is encouraged by the TOC Convention; it is vitally important however that proper procedures are followed to ensure the admissibility of such evidence. The effectiveness of this technique can be improved when it is combined with other techniques such as electronic surveillance which is a very efficient method of collecting critical data but has the disadvantage of requiring a large financial investment. Many countries have experienced a significant expansion in the use of undercover operations which has helped secure the convictions of drug traffickers and dealers. It is of course vital to ensure that key prosecution witnesses are not intimidated and so to secure the cooperation and safety of key witnesses a witness protection programme is very desirable.

In order to effectively combat money laundering it is essential that countries that have not yet criminalized it do so and also set up Financial Intelligence units (FIU's). In this regard the following recommendations were made:

(i) Existing laws should be amended in the following ways: the scope of predicate offences should be expanded; STR's should be clearly defined; leakage of information by bank officials should be criminalized; a legal framework should be provided for cooperation between agencies; legislation should enable new investigative techniques; supervisory systems should be established for non-banking financial institutions; and fair and effective measures for investigative authorities to obtain bank records should be provided.
(ii) It is important to launch an active awareness raising campaign to promote the common understanding that anti-money laundering measures are necessary.
(iii) Law enforcement officials and staff of FIU's should receive adequate training to provide them with skills and knowledge regarding the investigation of money laundering.
(iv) A regime for greater cooperation between law enforcement officials and other relevant agencies should be established.
(v) States should ratify and enact laws to implement UN Conventions such as: the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requiring State Parties to take necessary measures to trace, freeze and forfeit the proceeds in relation to drug offences; and the UN Convention against Transnational Organized Crime.
(vi) International cooperation should be promoted.

D. Special Seminars and Courses

1. Eighth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Eighth Special Seminar for Senior Officials of Criminal Justice in the People's Republic of China, entitled "International Cooperation in Crime Prevention and Criminal Justice – to Focus on the Implementation of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 and the UN Convention against Transnational Organized Crime", was held from 24 February to 14 March 2003. Twelve senior criminal justice officials and the UNAFEI faculty comparatively discussed contemporary problems faced by China and Japan in relation to the above theme.

2. Fourth Training Course for Kenya on Juvenile Delinquent Treatment Systems

UNAFEI conducted the Fourth Training Course for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Course, entitled "Juvenile Delinquent Treatment Systems", was held from 4 November to 28 November 2003. The Course exposed Kenyan officials to the workings of the Japanese juvenile justice and treatment system through lectures and observation visits to relevant agencies. As a result of this comparative study, the officials successfully developed action plans for the implementation and development of institutional and community-based treatment systems for juvenile delinquents in Kenya. They also developed a plan for the establishment of a network between the police, the courts and the Children's department.

3. Sixth Special Training Course on Corruption Control in Criminal Justice

UNAFEI conducted the Sixth Special Training Course entitled "Corruption Control in Criminal Justice" from 4 November to 28 November 2003. In this course, seventeen foreign and three Japanese officials engaged in corruption control comparatively analyzed the current situation of corruption, methods of corruption prevention, and measures to enhance international cooperation in this regard. Among the participants four were from the National Counter Corruption Commission of Thailand; the organization that UNAFEI is preparing a new programme for in 2004, based on the Technical Cooperation Project "Support for Anti-Corruption Management".

4. Second Seminar on the Judicial System for Tajikistan

The Second Special Seminar for officials involved in criminal justice from Tajikistan was held from 4 March to 21 March 2003 at UNAFEI. The Seminar was entitled "Transnational Organized Crime and International Cooperation – to Focus on the Implementation of the UN Convention against Transnational Organized Crime". Ten criminal justice officials and the UNAFEI faculty comparatively discussed contemporary problems faced by Tajikistan and Japan in relation to the above theme.

5. J-Net Seminars and an Ad Hoc Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines

The first "J-Net Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines" was held in March 2003, and the Second Seminar was held in November 2003. They were conducted in

Manila, Philippines and Tokyo, Japan, through the Japan International Cooperation Agency-Net. An Ad Hoc Seminar was held in March 2003 at UNAFEI for five Parole and Probation officers as a follow up to the first J-Net Seminar.

6. Special Course for Indonesia

A special course for Indonesia on "Comparative Study on Legal and Judicial System for their Reform" was held from 2 June to 5 July 2003 by the International Cooperation Department, Research and Training Institute, Ministry of Justice of Japan in collaboration with UNAFEI.

7. Special Seminar on the Japanese Justice System for the Office of the Public Prosecutor General of the Macau Special Administrative Region

The "Special Seminar on the Japanese Justice System for the Office of the Public Prosecutor General of the Macau Special Administrative Region" was held at UNAFEI from 24 to 29 August 2003. There were 29 participants from Macau, which included the Prosecutor General, 7 public prosecutors and 21 officers from the public prosecutors office.

III. TECHNICAL COOPERATION

A. Regional Training Programmes

Costa Rica

In July 2003, the Director and a professor from UNAFEI visited Costa Rica to attend the Fifth International Training Course on the "Improvement of Prison Conditions and Correctional Programmes", organized and hosted by the Government of Costa Rica through the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD).

B. Seminar on Counter-Terrorism Conventions

During the 125th International Training Course, UNAFEI arranged for the participants to attend a two-day seminar entitled "Counter-Terrorism Conventions for the Purposes of Encouraging the Accession to the Convention by Countries in Southeast Asia", held by the Ministry of Foreign Affairs of Japan.

C. Others

In July and August 2003, the Deputy Director and two UNAFEI professors were dispatched to Kenya to assist the Children's Department of the Ministry of Home Affairs and National Heritage in a project to develop and implement national standards and regulations for the Children's department for the treatment of juvenile offenders and to establish a network between the police, the courts and the Children's department.

IV. COMPARATIVE RESEARCH PROJECT

Reflecting its emphasis on the systematic relevance of training activities and priority themes identified by the UN Commission, the research activities of the Institute are designed to meet practical needs, including those for training materials for criminal justice personnel. In June of 2003 UNAFEI sent questionnaires on the treatment of drug abusers to 8 Asian countries, by the end of the year 6 countries had replied. UNAFEI will analyze the results, conduct a comparative study and make a report in 2004.

V. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

VI. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2003, the 60th and 61st edition of the Resource Material Series were published. In September 2003 the results of the Indonesia-UNAFEI-JICA Joint Seminar on "Criminal Justice Reform" (held in Jakarta, Indonesia in December 2002) were published.

Additionally, issues 110 to 112 of the UNAFEI Newsletter were published, including a brief report on each course and seminar (from the 123rd to the 125th respectively) and providing other timely information. These publications are also available on UNAFEI's web site http://www.unafei.or.jp/english.

VII. OTHER ACTIVITIES

A. Public Lecture Programme

On 31 January 2003, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 123rd International Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. This year, Professor John Braithwaite (Chair, Regulatory Institutions Network Research School of Social Science, the Australian National University) and Ms. Sylvia Frey (Executive Assistant, Section on Criminal Procedure, Federal Ministry of Justice, Germany) were invited as speakers to the Programme. They presented papers on, "Restorative Justice: Justice of the Future" and "Victim's Rights in Germany – Information and Participation in Criminal Procedure, Reparation and Practical Assistance" respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions

Mr. Yuichiro Tachi (Professor) attended the International Prosecutors Association Asia Pacific regional Meeting, held in Thailand from 16 to 19 February 2003.

Mr. Kei Someda (Professor) visited Thailand from 3 to 8 March 2003 where he delivered two lectures at the National Seminar on the Treatment of Offenders in the New Century, jointly organized by the Department of Probation and the Thailand Research Fund.

Mr. Kunihiko Sakai (Director) and Keisuke Senta (Professor) attended the 12th Session of the United Nations Commission on Crime Prevention and Criminal Justice held in Vienna, Austria from 12 to 24 May 2003.

Mr. Kunihiko Sakai (Director) and Mr. Yasuhiro Tanabe (Professor) attended the Global Forum 3 on Fighting Corruption and Safeguarding Integrity held in Seoul, Korea from 28 May to 1 June 2003.

Ms. Sue Takasu (Professor) visited Malaysia as an Independent Assessment Expert for the World Bank and IMF to assess the effectiveness of the law enforcement concerning anti-money laundering and combating financing terrorism from 13 to 24 July 2003.

Mr. Kunihiko Sakai (Director) and Mr.Hiroyuki Shinkai (Professor) attended the "Fifth International Training Course on Effective Treatment Measures to Facilitate the Reinsertion and the Rehabilitation of Inmates into the Society", held in Costa-Rica from 13 to 26 July 2003.

Ms. Tamaki Yokochi (Professor) visited the Philippines to take part in the 2nd J-Net Seminar on the Revitalization of Volunteer Probation Aid for the Philippines between 14 and 18 July 2003.

Ms. Tomoko Akane (Deputy Director), Mr. Kenji Teramura (Professor) and Mr. Kei Someda (Professor) visited Kenya as short-term experts, as part of a JICA international assistance scheme providing special support to the Children's Department of Kenya from 22 July to 13 August 2003.

Mr. Kunihiko Sakai (Director) and Keisuke Senta (Professor) visited Bangkok, Thailand to do preparatory research for the cooperative project for the NCC between Thailand and UNAFEI from 17 to 23 August 2003.

Ms. Tomoko Akane (Deputy Director), Mr. Toru Miura (Professor) and Mr. Kiyoshi Ezura (Chief of Secretariat) visited the People's Republic of China for the purpose of fostering international exchange between the respective criminal justice administrations from 31 August to 6 September 2003.

Mr. Keisuke Senta (Professor) attended the APG for money laundering in Macau from 14 to 20 September 2003.

Mr. Toru Miura (Professor) and Ms. Tamaki Yokochi (Professor) visited Uzbekistan, Kyrgyz and Tajikistan to consider the necessity of establishing a training course for the Central Asian countries from 14 to 29 October 2003.

Mr. Yasuhiro Tanabe (Professor) visited Hong-Kong from 4 to 7 November 2003 to give a presentation at the 2nd Asian Cyber Crime Summit at the Hong-Kong University.

Ms. Tomoko Akane (Deputy Director) visited Courmayeur, Italy from 26 November to 2 December 2003 to attend: the 18th coordinating meeting of the UN Programme Network Institutes; the 10th ISPAC Plenary Meeting; and the ISPAC International conference on Crime and Technology: New Frontiers for Regulation, Law enforcement and Research.

Ms. Sue Takasu (Professor) visited Bangkok, Thailand from 27 November to 2 December 2003 to attend the ACPF Working Group Meeting on the Plans of Action in Asia for the Implementation of the Vienna Declaration on Crime and Justice as a speaker of one of the sessions on the theme of "Economic and Financial Crimes: Challenges to Sustainable Development".

Mr. Kenji Teramura (Professor) visited Hong Kong from 1 to 6 December 2003 and Thailand between 6 to 14 December to conduct a survey concerning the effective prevention of drug abuse and treatment of drug abusers among Asian countries.

Mr. Kei Someda (Professor) visited Singapore from 1 to 6 December 2003 and Thailand between 6 to 14 December to conduct a survey concerning the effective prevention of drug abuse and treatment of drug abusers among Asian countries.

Mr. Hiroyuki Shinkai (Professor) and Mr. Wataru Inoue (Staff) visited Hong-Kong from 6 to 13 December 2003 to participate in the 23rd Asian and Pacific Conference of Correctional Administrators.

D. Assisting ACPF Activities

UNAFEI cooperates and corroborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of ACPF's membership consists of UNAFEI alumni, the relationship between the two is very strong. An example of this cooperation can be seen in the UNAFEI Seminar for the Office of the Public Prosecutor General of the Macau SAR, which was organized by the ACPF and held by UNAFEI from 25 August to 29 August 2003.

VIII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and eight professors are selected from among public prosecutors, the judiciary, corrections and probation. UNAFEI also has approximately 20 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty Changes

Mr.Yuichiro Tachi, formerly Professor of UNAFEI, was transferred to the Osaka District Public Prosecutors office on 1 April 2003.

Mr. Ryuji Kuwayama, formerly Professor of UNAFEI, was transferred to the Research Department of the Research and Training Institute of the Ministry of Justice on 1 April 2003.

Ms. Mikiko Kakihara, formerly Professor of UNAFEI, was transferred to the Yokohama Probation office on 1 April 2003.

Mr. Keisuke Senta, formerly Deputy Chief Prosecutor at Oita District Prosecutors office, joined UNAFEI as a Professor on 1 April 2003.

Ms. Tamaki Yokochi, formerly a Probation Officer at the Tokyo Probation Office, joined UNAFEI as a Professor on 1 April 2003.

Mr. Hiroyuki Shinkai, formerly Senior Chief Programme Supervisor at Osaka Prison, joined UNAFEI as a professor on 1 April 2003.

Mr. Sean Brian Eratt, formerly Linguistic Advisor to UNAFEI resigned on 28 February 2003.

Mr. Simon Cornell, a Solicitor from England, joined UNAFEI as Linguistic Advisor on 1 March 2003.

IX. FINANCES

The Ministry of Justice primarily provides the Institute's budget. The total amount of the UNAFEI budget is approximately ¥314 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

UNAFEI WORK PROGRAMME FOR 2004

I. TRAINING

A. 126th International Seminar

The 126th International Senior Seminar, "Economic Crime in a Globalizing Society ~ Its Impact on the Sound Development of the State" is to be held from 13 January to 12 February 2004. The 126th International Senior Seminar will examine the current situation and problems of economic crime. The participants will focus their attention on effective countermeasures to combat economic crime including: preventative measures; the establishment of an effective legal system and the effective investigation and trial of these offences.

B. 127th International Training Course

The 127th International Training Course, "Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice" is scheduled to be held from 17 May to 25 June 2004. This Course intends to study the current situation of the treatment of adult offenders both in institutions and in society and will explore their improvement. The Course will also explore measures for the effective use and application of United Nations Standards and Norms by sharing and discussing lessons and successful examples.

C. 128th International Training Course

The 128th International Training Course, "Measures to Combat Economic Crime, including Money-Laundering", is scheduled to be held from 30 August to 8 October 2004. The 128th International Training Course will examine the current trends and issues relating to economic crime with a particular focus on money laundering. The course will emphasize the transnational nature of economic crime and explore ways in which it can be combated by the implementation of existing conventions and greater cooperation between States.

D. Ninth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Ninth Special Seminar for Senior Criminal Justice Officials in the People's Republic of China, "Effective Criminal Justice Administration in Accordance with UN Standards and Norms: The Proper Way for the Protection of Rights and Punishment of Crimes", is scheduled to be held at UNAFEI from 23 February to 11 March 2004. Thirteen senior criminal justice officials and members of the UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

E. Third Special Seminar on the Judicial System for Tajikistan

UNAFEI will hold the Third Special Seminar for officials involved in criminal justice from Tajikistan. The Seminar, entitled "The Juvenile Justice System and the Treatment of Juvenile Offenders", will be held from 1 March until 19 March 2004. Fifteen criminal justice officials involved with juveniles and members of the UNAFEI faculty will discuss contemporary problems faced by Tajikistan and Japan in relation to the above theme.

F. Fifth Training Course on Juvenile Delinquent Treatment Systems for Kenya

UNAFEI will hold the Fifth Training Course for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Course, entitled "Juvenile Delinquent Treatment Systems for Kenya", will be held in October 2004. The Course will expose Kenyan officials to the workings of the Japanese juvenile justice and treatment systems through lectures and observation visits to relevant agencies.

G. Seventh Special Training Course on Corruption Control in Criminal Justice

UNAFEI will conduct the Seventh Special Training Course entitled "Corruption Control in Criminal Justice" in October 2004. In this course, foreign and Japanese officials engaged in corruption control will comparatively analyze the current situation of corruption, methods of corruption prevention, and measures to enhance international cooperation in this regard.

H. Ad Hoc Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines

This seminar will expose the Parole and Probation Officers from the Philippines to the administration of

the Japanese Volunteer Probation officer System, to help them improve their own volunteer programme. This seminar will be conducted from March 22 to 29, 2004 at UNAFEI for six Parole and Probation officers as a follow up to a video teleconference that took part in November of 2003. A further video teleconference is also scheduled for later in the year on a date not yet determined.

I. Special Course for Indonesia

A special course for Indonesia on "Comparative Study on Legal and Judicial Systems for their Reform" will be held from May to July 2004 by the International Cooperation Department, Research and Training Institute, Ministry of Justice of Japan in collaboration with UNAFEI.

II. TECHNICAL COOPERATION

A. Thailand

1. Technical Cooperation Project with the National Counter Corruption Commission (NCCC) of Thailand

Based on an agreement to be reached shortly between the Governments of Japan and Thailand, UNAFEI will embark on a three year cooperation project with the National Counter Corruption Commission (NCCC) of Thailand in cooperation with Japan International Cooperation Agency (JICA) from the financial year 2004. Under this project UNAFEI will hold two special training courses each year for the NCCC staff members, one in Japan and the other in Thailand. The training courses under this project aim to enhance the capacity and efficiency of the staff members of the office of the NCCC, which is the constitutional organ responsible for the investigation of corruption cases, the inspection of assets and liabilities of persons holding political positions and state officials, and the prevention of corruption. The first course in Japan is scheduled to start in June this year, and in November we plan to have the first course in Thailand.

2. Joint Seminar

Prior to the training course described above for the office of the National Counter Corruption Commission to be held in Thailand, UNAFEI plans to hold a Joint Seminar with the related agencies of Thailand, focusing on the theme of how to suppress and prevent corruption.

B. Costa Rica

In 2004, UNAFEI will be represented by up to 2 professors at a new training programme entitled "Reform of the Criminal Justice System in Latin American Countries", in San Jose, Costa Rica. The participants of the training programme will be judges, prosecutors and attorneys (public and private, engaged in defence).

C. Others

In 2004, UNAFEI may embark on research for the assistance of the prosecution system of Pakistan.

APPENDIX

MAIN STAFF OF UNAFEI

Mr. Kunihiko Sakai	Director
Ms. Tomoko Akane	Deputy Director

Faculty

Mr. Toru Miura	Chief of Training Division, Professor
Mr. Kenji Teramura	Chief of Research Division, Professor
Mr. Kei Someda	Chief of Information & Library Service Division, Professor
Mr. Keisuke Senta	Professor
Mr. Yasuhiro Tanabe	Professor
Ms. Sue Takasu	Professor
Mr. Hiroyuki Shinkai	Professor
Ms. Tamaki Yokochi	Professor
Mr. Simon Cornell	Linguistic Adviser

Secretariat

Mr. Kiyoshi Ezura	Chief of Secretariat
Mr. Yoshiyuki Fukushima	Deputy Chief of Secretariat
Mr. Yoshihiro Miyake	Chief of General and Financial Affairs Section
Mr. Makoto Nakayama	Chief of Training and Hostel Management Affairs Section
Mr. Ryousei Tada	Chief of International Research Affairs Section

AS OF DECEMBER 2003

2003 VISITING EXPERTS

THE 123RD INTERNATIONAL SEMINAR

Professor John Braithwaite	Chair, Regulatory Institutions Network, Research School of Social Science, The Australian National University
Ms. Sylvia Frey	Executive Assistant, Section on Criminal Procedure, Federal Ministry of Justice, Germany
Dr. Kittipong Kittayarak	Director General, Department of Probation, Ministry of Justice, Thailand
Mr. Peter Dunn	Head of Research and Development, Victim Support National Office, United Kingdom
Ms. Kay Pranis	Restorative Justice Planner, Minnesota Department of Corrections, United States of America

THE 124TH INTERNATIONAL TRAINING COURSE

Ms. Shereen Sadiq	Criminal Justice Policy Lead, Criminal Justice Intervention Programme (Drug Unit), Home Office, United Kingdom
Dr. Juana Tomás-Rosselló, M. D.	Drug Abuse Treatment Adviser, Demand Reduction Section, UNODC
Dr. Brian Grant	Director, Addictions Research Center, Correctional Service, Canada
Dr. Decha Sungkawan	Dean of the Graduate School, The Faculty of Social Administration, Thammasart University, Thailand

THE 125TH INTERNATIONAL TRAINING COURSE

Mr. Hans G Nilsson	Chief of Division, International Cooperation, Council of the European Union, Brussels
Mr. Tony Kwok Man-Wai	Former Deputy Commissioner And Head of Operations, Operations Department, Independent Commission Against Corruption, Hong Kong Special Administrative Region, People's Republic of China
Pol. Maj.Gen. Peeraphan Prempooti	Secretary-General, International Affairs, Anti-Money Laundering Office, Thailand
Ms. Linda Samuel	Deputy Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department Justice, U.S.A.
Mr. Jean-Paul Laborde	Chief, Terrorism Prevention Branch, United Nations Office on Drugs and Crime, Vienna

2003 AD HOC LECTURERS

THE 123RD INTERNATIONAL SEMINAR

Professor Takayuki Shiibashi	Faculty of Law, Chuo University, Japan
Professor Akira Yamagami	Department of Criminal Psychiatry, Division of Social Medicine and Dental University, Japan
Mr. Koichi Tachikawa	Office for Crime Victims, National Police Agency, Japan
Ms. Yukiko Yamada	Vice-President, Victim-Offender Dialogue Programme Management Center, Japan

THE 124TH INTERNATIONAL TRAINING COURSE

Mr. Toshiaki Nagatsuka	Deputy Director, Drug Control Division National Police Agency, Japan
Mr. Junji Yamamoto	Deputy Director, Compliance and Narcotics Division, Pharmaceutical and Food Bureau, Ministry of Health, Labour and Welfare, Japan
Mr. Eiichi Senoo, M.D., Ph.D	Head of the Department of Addictive Behaviors, Tokyo Institute of Psychiatry, Japan
Mr. Makoto Oda	Secretary General, Asia-Pacific Addiction Research Institute, Japan

THE 125TH INTERNATIONAL TRAINING COURSE

Mr. Motoo Noguchi	Counsel, Office of the General Counsel, Asian Development Bank
Mr. Junichi Sudo	Deputy Director, Drug Control Division, National Police Agency, Japan

Mr. Noriaki Watanabe	Deputy Director, Public Security Department, Tokyo Public Prosecutors Office, Japan
Mr. Tatsuya Kanai	Director, Japan Financial Intelligence Office (JAFIO), Financial Services Agency, Japan
Mr. Hakan Oberg	Director, Economic Crimes Bureau, Division for International Affairs, Sweden

2003 UNAFEI PARTICIPANTS

THE 123RD INTERNATIONAL SEMINAR

Overseas Participants

Mr. A. K. M. Mahfuzul Haque	Deputy Commissioner of Police, Detective Branch, Dhaka Metropolitan Police, Bangladesh
Mr. Tshering Penjore	Superintendent of Police, Royal Bhutan Police Division II, Punakha, Bhutan
Mr. José Castro	Chief Prefect, International Airport Control Dept., Director of Immigration and International Police Department, Chile
Mr. Ayman Amin Abdel Azeem Shash	Chief Judge, Esmallia Court, Cairo, Egypt
Mr. Fritz Gerard Dennery Martinez	Police Chief, Investigation Division for the West Region of El Salvador, El Salvador
Mr. Pagar Butar Butar	Personal Staff of Director General of Corrections, Ministry of Justice and Human Rights, Jakarta, Indonesia
Mr. Sida Laukaphone	Director, Law Research Centre, Ministry of Justice, Vientiane, Laos
Mr. Joseph Bernard Dalinting	Legal Officer/Prosecutor, Head of Legal Division, Forestry Department, Malaysia
Mr. Kesab Prasad Bastola	Under Secretary (Law), His Majesty's Government, Cabinet Secretariat, Kathmandu, Nepal
Mr. Abdul Latif Khan	Deputy Inspector General of Police, Mardan, Pakistan

Mr. Malik Naveed Khan	Director, Federal Investigation Agency, Peshawar Zone, Interior Division, Ministry of Interior, Pakistan
Mr. Sarei Noel	Rehabilitation Officer, Correctional Service of Papua New Guinea, New Guinea
Mr. Globert Jabat Justalero	Prosecutor, Office of the Provincial Prosecutor, Iloilo City, Philippines
Ms. Angkana Boonsit	Senior Probation Officer, Research and System Development, Department of Probation, Ministry of Justice, Bangkok, Thailand
Ms. Somsri Rhujittawiwat	Judge, The Court of Appeal Region 1, Bangkok, Thailand
Mr. Nabil Mokded Daassi	Superintendent Officer, Social Prevention Department, Judiciary Police Direction, Tunis, Tunisia

Japanese Participants

Ms. Hitomi Akiyama	Prosecutor/Professor, The First Training Department, Research and Training Institute, Ministry of Justice, Tokyo, Japan
Mr. Yasuo Kataoka	Public Prosecutor, Tokyo District Public Prosecutors Office, Tokyo, Japan
Mr. Hiroyuki Nabana	Technical Official, Facilities Division, Minister's Secretariat, Ministry of Justice, Tokyo, Japan
Mr. Masaharu Ozawa	Professor, Training Institute for Correctional Personnel, Fuchu, Japan
Mr. Ikuro Toishi	Judge/Professor, Legal Training and Research Institute, Tokyo, Japan

Mr. Motoshige Yoshida	Chief of General Affairs Section, General Secretariat, Hokkaido Regional Parole Board, Japan

THE 124TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Mohammad Ashraf Ali Khalifa	Senior Assistant Secretary, Ministry of Home Affairs, Bangladesh
Mr. Nagphey	Officer in Charge, Royal Bhutan Police, Bhutan
Mr. Francisco Stanley Martell Sibrian	Law Clerk, Criminal Chamber, Supreme Court, El Salvador
Mr. Alphonse Mark Adu-Amankwah	Superintendent of Police / Manager, National Crime Scene Management Team Analyst at Forensic Laboratory, Criminal Investigation Department, Ghana Police Service, Ghana
Mr. Muchlis Effendy, Ph.D.	Chief of Unit Drug Division, Indonesia National Police, Indonesia
Mr. Robert Parlindungan Sitinjak	Public Prosecutor / Head of Sub-Division on Management Planning Bureau, The Attorney General's Office, Indonesia
Mr. Vong Poh Fah	Deputy Public Prosecutor, Attorney General's Chambers, Malaysia
Mr. Wan Mohamad Nazarie Bin Wan Mahmood	Director of Prisons Prison Headquarters, Malaysia Prisons Department, Malaysia
Ms. Mamdhooha Shujau	Assistant Undersecretary, Narcotics Control Board, Maldives
Ms. Felicidad Cuizon Auxtero	Social Welfare Officer, Department of Social Welfare and Development, Philippines
Ms. Elma Nel	Occupational Therapist, Ekuseni Youth Development Center, South Africa

Mr. Hidda Marakkala Nishan Chandrajith Dhanasinghe	Superintendent of Prisons Department of Prisons, Sri Lanka
Ms. Duangta Graipaspong	Assistant Director, Galyarajanagarindra Institute, Thailand
Ms. Oiytip Ratanagosoom	Human Resource Developer, Department of Corrections, Ministry of Justice, Thailand
Mr. Jae-Woo Choi	Assistant Correctional Supervisor, General Affairs Division, Dae-Gu Regional Correction Headquarters, Korea

Japanese Participants

Mr. Hiroyuki Fukumoto	Chief Specialist in Charge of Psychological Assessment, Matsuyama Juvenile Classification Home, Japan
Mr. Yuki Goto	Assistant Judge, Tokyo District Court, Tokyo, Japan
Mr. Masatoshi Kamiya	Probation Officer, Chubu Regional Parole Board, Japan
Mr. Kazufumi Kikuchi	Public Prosecutor, Tokyo District Public Prosecutors Office, Tokyo, Japan
Ms. Manami Kojima	Chief Specialist in Charge of Classification and Rehabilitation, Shimei Juvenile Training School for Girls, Japan
Mr. Hideo Nakamura	Probation Officer, Fukuoka Probation Office, Japan
Mr. Mamoru Nomura	Dep. Director / Police Senior Superintendent, 2nd Organized Crime Control Division, Organized Crime Control Department, Criminal Investigation Bureau, National Police Agency, Japan

Mr. Hiroki Sakai	Narcotics Control Officer, Narcotics Control Department, Kyushu Regional Bureau of Health and Welfare, Ministry of Health, Labor and Welfare, Japan
Mr. Kunio Tomihari	Assistant Judge, Tokyo District Court, Tokyo, Japan
Mr. Eiji Yamada	Family Court Probation Officer, Tokyo Family Court, Tokyo, Japan
Mr. Hiroyuki Yamashita	Public Prosecutor, Osaka District Public Prosecutors Office, Osaka, Japan

THE 125TH INTERNATIONAL TRAINING COURSE

Overseas Participants

Mr. Phub Dorji	Officer In-Charge, City Police Station, Thimphu, Bhutan
Mr. Mohamed Gamal El Miggbbir	Operations Officer, Operations Section, Criminal Investigation Police Dept., Egypt
Mr. Aro Siinmaa	Prosecutor, Tartu Prosecutor's Office, Estonia
Mr. Shankar Jiwal	Zonal Director, Narcotics Control Bureau, India
Mr. Asra	Judge, District Court /Assistant Judge, Supreme Court of Indonesia, Indonesia
Ms. Diah Ayu Hartati	Public Prosecutor, Head of Sub Section on Investigation of Special Crimes, Semarang District Public Prosecution Office, Indonesia
Mr. Sibounzom Bounlom	Investigator, Criminal Department, Office of Public Prosecutor General, Laos

Mr. Vilavath Thephithuck	Director, Protocol and Foreign Relations Division, Ministry of Justice, Laos
Mr. Jalalludin Bin Abu	Superintendent of Customs, Royal Customs Department, Malaysia
Mr. Hussain Rasheed Yoosuf	Judge, Ministry of Justice, Maldives
Mr. Syed Nayyar Abbas Kazmi	Inspector, Special Investigation Cell, Anti Narcotics Force, Narcotics Control Division, Pakistan
Mr. Antonio Bartolome	Chief, Manhunt Branch, Police Anti-Crime Emergency Response, Philippines
Mr. Esaka Deus Ndege Mugasa	Head Anti-Drugs Unit, Criminal Investigation Department, Headquarters, Tanzania
Mr. Krirkkiat Budhasathi	Secretary of the Criminal Court, The Criminal Court, Thailand

Japanese Participants

Mr. Hikoichiro Fujisawa	Probation Officer, Tokyo Probation Office, Hachioji Branch Office, Japan
Mr. Takashi Furusaki	Public Prosecutor, Kyoto District Public Prosecutors Office, Japan
Mr. Shozo Hirata	Chief Programme Supervisor, Osaka Prison, Japan
Mr. Hiroaki Kanosue	Maritime Traffic Department, 10th Regional Coast Guard, Headquarters, Japan Coast Guard, Japan

Mr. Takashi Kume	Narcotics Agent / Narcotics Control Officer, Narcotics Control Department, Kinki Regional Bureau of Health and Welfare, Ministry of Health, Labor and Welfare, Japan
Ms. Kyoko Muto	Public Prosecutor, Tokyo District Public Prosecutors Office, Hachioji Branch Office, Japan
Mr. Masato Nakauchi	Narcotics Agent / Narcotics Control Officer, Narcotics Control Department, Kanto-Shinetsu Regional Bureau of Health and Welfare, Ministry of Health, Labor and Welfare, Japan
Mr. Tadayuki Sawada	Assistant Judge, Saitama Family Court, Japan
Mr. Toshihiro Suzuki	Public Prosecutor, Tokyo District Public Prosecutors Office, Tokyo, Japan
Mr. Ichiro Watanabe	Assistant Judge, Osaka District Court, Tokyo, Japan

EIGHTH SPECIAL SEMINAR FOR SENIOR CRIMINAL JUSTICE OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA

Mr. Guo Jian-An	Director, Institute for Crime Prevention, Ministry of Justice
Mr. Wang Shang-Xin	Deputy Director General, Criminal Legislation Department, Legislative Affairs Commission, Standing Committee of National People's Congress
Mr. Xu Xin-Jun	Vice-Governmental Department Head and Director, The Prison Administrative Department of Hebai Province
Mr. Li Zai-Shun	Deputy Division Chief, Criminal Legislation Department, Legislative Affairs Commission, Standing Committee of National People's Congress
Mr. Zhu Wei-De	Senior Judge, First Criminal Division, Supreme People's Court
Ms. Chen Jian-Hua	Assistant Prosecutor, The Supreme People's Prosecurate
Mr. Ge Feng	Deputy Director, General Office, Ministry of Public Security
Mr. Zeng Bin	Deputy Director, Legal Affairs Department, Ministry of Public Security
Mr. Bai Jie	Deputy Division Director, Personnel Department, Ministry of Justice
Ms. Yang Wei-Li	Deputy Director, Department of Legal Publicity, Ministry of Justice
Mr. Xue Jian-Xiang	Deputy Chief Judge, First Criminal Division, High People's Court of Jiangsu Province
Mr. Ma Han-Quan	Director, Supervision Department for Detection, The Prosecurate of Shanxi Province

FOURTH SPECIAL SEMINAR FOR KENYAN OFFICIALS ON JUVENILE DELINQUENT TREATMENT SYSTEMS

Mr. Ahmed Hussein Ahmed	Deputy Director, Children's Department, Ministry of Home Affairs
Ms. Jacinta Chemweno Murgor	Chief Children's Officer, Children's Department, Ministry of Home Affairs
Ms. Carren Morangi Ogoti	Manager, Kirigiti Girls Rehabilitation School, Ministry of Home Affairs
Ms. Judy Tuda Oduor	District Children's Officer, Busia Kenya District Children's Office, Ministry of Home Affairs
Mr. Eliab Musembi Mulili	District Children's Officer, Laikipia District Children's Office, Ministry of Home Affairs
Mr. Ibrahim George Milimu	Manager, Wamumu Rehabilitation School, Ministry of Home Affairs
Mr. Tobias Onyango Odera	Manager, Dagoretti Rehabilitation School, Ministry of Home Affairs
Ms. Sophia Barongo	School Manager, Ngando Preparatory School / Volunteer Children's Officer, Dagoretti Division Nairobi
Ms. Asenath Nyaboke Ongeri	Senior Resident Magistrate, The Judiciary
Mr. Alfred Omweri Ondieki	Police Inspector, Kisumu Police Station

SECOND SPECIAL SEMINAR FOR TAJIKISTAN OFFICIALS ON CRIMINAL JUSTICE SYSTEMS

Ms. Goulzorova Muhabbat	Head of Division, The Sector of Legal Department, President's Office
Mr. Boboev Hasan Nizomovich	Deputy Chief, Department of Investigation of Special Cases, General Prosecutory
Mr. Radjabov Ruslan	Deputy Prosecutor, Prosecutory of Jeleznodorojniy Rayon of Dushanbe City
Mr. Sharipov Sharifjon Begovich	Deputy Prosecutor, Istaravshan City Prosecutory
Mr. Turaev Bekmurod Dustovich	Deputy Chief, Department of Investigation, General Prosecutory
Ms. Mamadova Manzura Latifovna	Chairman, Khojand City Court
Mr. Musoev Odinakhon Nusratulloevich	Judge, Supreme Court
Mr. Tavurov Abdurakhmon Gafurovich	Deputy Chief, Department of Investigation, Ministry of Internal Affairs
Mr. Balosov Azamjon Bobomyrodivich	Deputy Chief, Department of Struggle against Drugs and Organized Crime, Ministry of Internal Affairs
Mr. Gadoev Aziz Davlatovich	Deputy Chief, Legal Division, Department of Public Service, President's Office

SIXTH SPECIAL TRAINING COURSE ON CORRUPTION CONTROL

Overseas Participants

Mr. Mohammad Mohiuddin	Assistant Secretary, Legislative Drafting Wing, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh
Ms. Yara Patricia Esquivel Soto	Prosecutor, Supreme Court of Justice, Costa Rica
Mr. George Svanidze	Head of Division for Expertize of Contracts, Ministry of Justice, Georgia
Mr. Ramji Lal Koli	Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law and Justice, India
Mr. Purbatua Hutabarat	Chief of Unit III, Derectorat Pidana Korupsi / White Collar Crime, Indonesia
Mr. Zulqarnain Bin Hassan	Deputy Public Prosecutor, Anti Corruption Agency, Prime Minister's Department, Malaysia
Mr. Kedar Prasad Chalise	District Judge (Additional), Kathmandu District Court, Nepal
Mr. Daniel Isaac Centeno Espinoza	Legal Adviser, National Assembly of Nicaragua, Nicaragua
Mr. Roberto Javier Moreno Obando	General Secretary, Republic's Auxiliary, Attorney's Office, Public Ministry, Panama
Mr. Jim Wala Tamate	Senior State Prosecutor, Public Prosecutors Office, Department of Attorney General, Papua New Guinea
Ms. Deana Penaflorida Perez	Public / State Prosecutor, National Prosecution Service, Department of Justice, Philippines

Ms. Chadarat Anakkaorn	Senior Investigator, The Office of the National Counter Corruption Commission, Thailand
Ms. Wassa Chaimanee	State Attorney (Public Prosecutor), Office of Chonburi Provincial State Attorney, Office of the Attorney General, Thailand
Mr. Piset Nakhaphan	Senior Investigator, The Office of the National Counter Corruption Commission, Thailand
Mr. Salem Oustas	Senior Investigator, Bureau of Legal Affairs, The Office of the National Counter Corruption Commission, Thailand
Ms. Sirirat Vasuvat	Senior Investigator and Director of Investigations 1, The Office of the National Counter Corruption Commission, Thailand
Mr. Mwape Dancewell Bowa	Senior Prosecutions Officer, Anti Corruption Commission, Zambia
Ms. Lalaina Rakotoarisoa	Judge, Senior Manager in Charge of External Relations and Monitoring- Evaluation, Superior Council of the Fight against Corruption, Madagascar

Japanese Participants

Mr. Shin Hashimoto	Public Prosecutor, Osaka District Public Prosecutor's Office, Osaka, Japan
Mr. Yosuke Kodama	Public Prosecutor, Tokyo District Public Prosecutor's Office, Tokyo, Japan
Ms. Mihoko Tanabe	Judge, Nagoya District Court, Aichi, Japan

DISTRIBUTION OF PARTICIPANTS BY PROFESSIONAL BACKGROUNDS AND COUNTRIES

(1st International Training Course/Seminar - 125th International Training Course/Seminar)

Professional Background / Country	Judicial and Other Admin-istration	Judges	Public Prosecu-tors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Afghanistan	7	8	5	3									23
Bangladesh	21	11		12	5		4			5		2	60
Bhutan				6									6
Brunei	4				2								6
Myanmar	3			2									5
China	13	3	5	10							7		38
Hong Kong	14			11	24	3	9		1	3	1		66
India	14	10		51	7	1	1			2	6	4	96
Indonesia	21	22	23	23	14		3			6		1	113
Iran	5	11	8	8	6						2	1	41
Iraq	5	3	3	5	5	5					2		28
Jordan				4									4
Cambodia	1	2	1	5	1								10
Oman				3									3
Korea	12	3	53	6	21	4					3		102
Kyrgyz	1			1									2
Laos	7	5	6	10									28
Malaysia	20	2	6	42	32	8	3		1	5	3	1	123
Maldives	1	1	1	1									4
Mongolia	1			1									2
Nepal	28	13	9	31								3	84
Pakistan	18	10	2	33	8	1	2				2	1	77
Palestine	1			1			1			1			4
Philippines	17	9	22	34	8	3	11	3	1	7	3	6	124
Saudi Arabia	4			6	3						1	1	15
Singapore	10	18	5	12	10	3	10			3	1	1	73
Sri Lanka	21	20	12	20	19	1	11		1	2		1	108
Taiwan	12	4	2	2	1								21
Thailand	22	33	37	16	16	8	11	1		8	5	1	158
Turkey	2	1	1	2							1		7
United Arab Emirates	1												1
Uzbekistan												1	1
Viet nam	10	5	2	7	1					4	1		30
A S I A	296	194	203	368	183	37	66	4	4	46	38	24	1,463
Algeria		3	2										5
Botswana	1			2									3
Cameroon	3												3
Cote d'Ivoire		2		1									3
Egypt	1	1		2							3	1	8
Ethiopia	3			1									4
Gambia				2									2
Ghana	1			4	1								6
Guinea			1	2									3
Kenya	6	4	1	12	7		6				2		38
Lesotho				1			2						3
Liberia											1		1
Madagascar				1									1
Mauritius		1											1
Morocco			1	4									5
Mozambique	1			1	1								3
Nigeria	1			5	5							1	12
South Africa				2	3					1	1		7
Seychelles				3			1						4

Professional Background / Country	Judicial and Other Admin-istration	Judges	Public Prosecu-tors	Police Officials	Correc-tional Officials (Adult)	Correc-tional Officials (Juvenile)	Probation Parole Officers	Family Court Investiga-tion Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
Sudan	2		1	13	1						2		19
Swaziland				2									2
Tanzania	4	3	4	6	1								18
Tunisia				1									1
Zambia		1		6									7
Uganda			1	5								1	7
Zimbabwe	1			2									3
A F R I C A	24	15	11	78	19	0	9	0	0	1	9	3	169
Australia			1				1			1			3
Vanuatu				1									1
Fiji	6	1	9	20	14					1			51
Kiribati	1												1
Marshall Island	1			3									4
Micronesia							1						1
Nauru				1									1
New Zealand	1			1									2
Papua New Guinea	10	1	4	12	10		3			1		2	43
Solomon Islands	3			2									5
Tonga	2	1		6	3						1		13
Western Samoa	1			1			1					1	4
THE PACIFIC	25	3	14	47	27	0	6	0	0	3	1	3	129
Argentina	2	2		2									6
Barbados				1			1						2
Belize	1			1									2
Bolivia		1										1	2
Brazil	2		3	15					1	1			22
Chile	1			4	2								7
Colombia	3	1	2	3					1			1	11
Costa Rica	3	4	4								1	2	14
Ecuador			1	4		1							6
El Salvador	1	1		2									4
Grenada				1									1
Guatemala					1								1
Haiti				1									1
Honduras			1	3									4
Jamaica	3				1								4
Mexico	1												1
Nicaragua		1											1
Panama			1	2								1	4
Paraguay				9		1							10
Peru	4	10	4	2	1						1	2	24
Saint Christopher and Nevis			1										1
Saint Lucia	1				1								2
Saint Vincent				2									2
Trinidad and Tobago	1				1								2
Venezuela	1		1	9							1		12
U.S.A.(Hawaii)								1					1
NORTH & SOUTH AMERICA	24	20	18	61	7	2	1	1	2	1	3	7	147
Bulgaria				1									1
Estonia			1										1
Hungary	1												1
Macedonia	1												1
Poland				1									1
Lithuania				1									1
E U R O P E	2	0	1	3	0	0	0	0	0	0	0	0	6
J A P A N	109	148	239	90	84	75	177	59	38	2	48	65	1,134
T O T A L	480	380	486	647	320	114	259	64	44	53	99	102	3,048

PART TWO

RESOURCE MATERIAL SERIES
No. 63

Work Product of the 123rd International Senior Seminar

"THE PROTECTION OF VICTIMS OF CRIME AND THE ACTIVE PARTICIPATION OF VICTIMS IN THE CRIMINAL JUSTICE PROCESS SPECIFICALLY CONSIDERING RESTORATIVE JUSTICE APPROACHES"

UNAFEI

VISITING EXPERTS' PAPERS

THE EVOLUTION OF RESTORATIVE JUSTICE

*John Braithwaite**

I. IMAGINING TWO ROBBERS

A teenager is arrested in Tokyo for a robbery. The police send him to court where he is sentenced to six months incarceration. As a victim of child abuse, he is both angry with the world and alienated from it. During his period of confinement he acquires a heroin habit and suffers more violence. He comes out more desperate and alientated than when he went in, sustains his drug habit for the next 20 years by stealing cars, burgles hundreds of houses and pushes drugs to others until he dies in a gutter, a death no one mourns. Probably someone rather like that was arrested in Tokyo today, perhaps more than one.

Tomorrow another teenager, Hiroshi, is arrested in Tokyo for a robbery. I have seen a number of cases like the story I will tell about Hiroshi. In fact he is a composite of several Hiroshis I have seen. The police officer refers Hiroshi to a facilitator who convenes a restorative justice conference. When the facilitator asks about his parents, Hiroshi says he is homeless. His parents abused him and he hates them. Hiroshi refuses to cooperate with a conference if they attend. After talking with the parents, the facilitator agrees that perhaps it is best not to involve the parents. What about grandparents? No they are dead. Brothers and sisters? No he hates his brothers too. Hiroshi's older sister, who was always kind to him, has long since left home and he has no contact with her. Aunts and uncles? Not keen on them either, because they would always put him down as the black sheep of the family and stand by his parents. Uncle Yamada was the only one he ever had any time for, but he has not seen him for years. Teachers from school? Hates them all. Hiroshi has dropped out. They always treated him like dirt. The facilitator does not give up: "No one ever treated you okay at school?" Well, the hockey coach is the only one Hiroshi can ever think of being fair to him. So the hockey coach, Uncle Yamada and older sister are tracked down by the facilitator and invited to the conference along with the robbery victim and her daughter, who comes along to support the victim through the ordeal.

These six participants sit on chairs in a circle. The facilitator starts by introducing everyone and reminding Hiroshi that while he has admitted to the robbery, he can change his plea at any time during the conference and have the matter heard by a court. Hiroshi is asked to explain what happened in his own words. He mumbles that he needed money to survive, saw the lady, knocked her over and ran off with her purse. Uncle Yamada is asked what he thinks of this. He says that Hiroshi used to be a good kid. But Hiroshi had gone off the rails. He had let his parents down so badly that they would not even come today. "And now you have done this to this poor lady. I never thought you would stoop to violence", continues Uncle Yamada, building into an angry tirade against the boy. The hockey coach also says he is surprised that Hiroshi could do something as terrible as this. Hiroshi was always a troublemaker at school. But he could see a kindly side in Hiroshi that left him shocked about the violence. The sister is invited to speak, but the facilitator moves on to the victim when Hiroshi's sister seems too emotional to speak.

The victim explains how much trouble she had to cancel the credit cards in the purse, how she had no money for the shopping she needed to do that day. Her daughter explains that the most important consequence of the crime was that her mother was now afraid to go out on her own. In particular, she is afraid that Hiroshi is stalking her, waiting to rob her again. Hiroshi sneers at this and is unmoved, callous throughout. His sister starts to sob. Concerned about how distressed she is, the facilitator calls a brief adjournment so she can comfort her, with help from Uncle Yamada. During the break, the sister reveals that

* Chair Regulatory Institutions Network Research,
School of Social Science,
Australian National University,
Australia

she understands what Hiroshi has been through. She says she was abused by their parents as well. Uncle Yamada has never heard of this, is shocked, and not sure that he believes it.

When the conference reconvenes, Hiroshi's sister speaks to him with love and strength. Looking straight into his eyes, the first gaze he could not avoid in the conference, she says that she knows exactly what he has been through with their parents. No details are spoken. But the victim seems to understand what kind of thing is spoken to by the knowing communication between sister and brother. Tears rush down her cheeks and over a trembling mouth.

It is his sister's love that penetrates Hiroshi's callous exterior. From then on he is emotionally engaged with the conference. He says he is sorry about what the victim has lost. He would like to pay it back, but has no money or job. He assures the victim he is not stalking her. She readily accepts this now and when questioned by the facilitator says now she thinks she will feel safe walking out alone. She wants her money back but says it will help her if they can talk about what to do to help Hiroshi find a home and a job. Hiroshi's sister says he can come and live in her house for a while. The hockey coach says he has some casual work that needs to be done, enough to pay Hiroshi's debt to the victim and a bit more. If Hiroshi does a good job, he will write him a reference for applications for permanent jobs. When the conference breaks up, the victim hugs Hiroshi and tearfully wishes him good luck. He apologises again. Uncle Yamada quietly slips a hundred dollars to Hiroshi's sister to defray the extra cost of having Hiroshi in the house, says he will be there for both of them if they need him.

Hiroshi has a rocky life punctuated by several periods of unemployment, but he finds work when he can, stays out of trouble and lives to mourn at the funerals of Uncle Yamada and his sister. A year later he has to go through another conference after he steals a bicycle. The victim gets her money back and enjoys taking long walks alone. Both she and her daughter say that as a result of the conference they feel enriched, have a little more grace in their lives.

Hiroshi's conference is an example of restorative justice. A new Western wave of restorative justice began with victim-offender mediation programmes in Canada and the United States in the 1970s. Then at the end of the 1980s family group conferences more like the one used in the story of Hiroshi were first developed in New Zealand. Since then there has been a proliferation of new and varied models of restorative justice. My contention is that the defining thing they have in common is that they are a process where all the stakeholders affected by a crime can come together to discuss the consequences of the crime and what can be done to right the wrong.

II. INSTITUTIONAL COLLAPSE

Few sets of institutional arrangements created in the West since the industrial revolution have been as large a failure as the criminal justice system. In theory it administers just, proportionate corrections that deter. In practice, it fails to correct or deter, just as often making things worse as better. It is a criminal *injustice* system that systematically turns a blind eye to crimes of the powerful, while imprisonment remains the best-funded labour market programme for the unemployed and indigenous peoples. It pretends to be equitable, when we know full well that one offender may be sentenced to a year in a prison where he will be beaten on reception and then systematically bashed thereafter, raped, even infected with AIDS, while others serve 12 months in comparatively decent premises, especially if they are white-collar criminals.

While I do believe that many criminal justice systems are more decent than ours in Australia, most criminal justice systems are brutal, institutionally vengeful, and dishonest to their stated intentions. The interesting question is why are they such failures. Given that prisons are vicious and degrading places, you would expect that fear of ending up in them would deter crime.

There are many reasons for the failures of the criminal justice system to prevent crime. I will give you just one, articulated in the terms of my theory in *Crime, Shame and Reintegration*.[1] The claim of this theory is that the societies that have the lowest crime rates are the societies that shame criminal conduct most

[1] John Braithwaite, Crime, Shame and Reintegration. Cambridge: Cambridge University Press, 1989.

effectively. There is an important difference between reintegrative shaming and stigmatization. While reintegrative shaming prevents crime, stigmatization is a kind of shaming that makes crime problems worse. Stigmatization is the kind of shaming that creates outcasts; it is disrespectful, humiliating. Stigmatization means treating criminals as evil people who have done evil acts. Reintegrative shaming means disapproving of the evil of the deed while treating the person as essentially good. Reintegrative shaming means strong disapproval of the act but doing so in a way that is respecting of the person. Once we understand this distinction, we can understand why putting more police on the street can actually increase crime. More police can increase crime if the police are systematically stigmatizing in the way they deal with citizens. More police can reduce crime if the police are systematically reintegrative in the way they deal with citizens.

We can also understand why building more prisons could make the crime problem worse. Having more people in prison does deter some and incapacitates others from committing certain crimes, like bank robberies, because there are no banks inside the prison for them to rob, though there certainly are plenty of vulnerable people to rape and pillage. While there are these crime-preventive effects of imprisonment, because prisons stigmatize, they also make things worse for those who have criminal identities affirmed by imprisonment, those whose stigmatization leads them to find solace in the society of the similarly outcast, those who are attracted into criminal subcultures, those who treat the prison as an educational institution for learning new skills for the illegitimate labour market. On this account, whether building more prisons reduces or increases the crime rate depends on whether the stigmatizing nature of a particular prison system does more to increase crime than its deterrent and incapacitative effects reduce it.

A lack of theoretical imagination among criminologists has been a reason for the failure of the criminal justice system. Without theorizing why it fails, the debate has collapsed to a contest between those who want more of the same to make it work and those who advance the implausible position that it makes sense to stigmatize people first and then help them or subject them to rehabilitation programmes in prisons or juvenile institutions. With juvenile justice in particular, the debate throughout the century has see-sawed between the justice model and the welfare model assuming the ascendancy. See-sawing between retribution and rehabilitation has got us nowhere. If we are serious about a better future, we need to hop off this see-saw and strike out in search of a third model.

For me, that third model is restorative justice. During the past decade a number of different labels - reconciliation (Dignan, 1992; Marshall, 1985; Umbreit, 1985), peacemaking (Pepinsky and Quinney, 1991), redress (de Haan, 1990) - have described broadly similar intellectual currents. Philip Pettit and I have sought to argue for republican criminal justice (Braithwaite and Pettit, 1990). Yet the label that has secured by far the widest consent during the past few years has been that employed by Zehr (1990), Galaway and Hudson (1990) and Cragg (1992), Walgrave, Bazemore and Ubreit[2] and Consedine[3] - restorative justice. It has become the slogan of a global social movement. For those of us who see constructive engagement with social movement politics as crucial for major change, labels that carry meaning for activists matter.

III. WHAT IS RESTORATIVE JUSTICE?

Restorative justice means restoring victims, a more victim-centred criminal justice system, as well as restoring offenders and restoring community. First, what does restoring victims mean? It means restoring the property lost or the personal injury, repairing the broken window or the broken teeth (see Table 1). It means restoring a sense of security. Even victims of property crimes such as burglary often suffer a loss of security when the private space of their home is violated. When the criminal justice system fails to leave women secure about walking alone at night, half the population is left unfree in a rather fundamental sense. Victims suffer a loss of dignity when someone violates their bodies or shows them the disrespect of taking things which are precious to them. Sometimes this disrespectful treatment engenders victim shame. "He abused me rather than some other woman because I am trash." "She stole my dad's car because I was irresponsible to park it in such a risky place." Victim shame often triggers a shame-rage spiral wherein victims reciprocate indignity with indignity through vengeance or by their own criminal acts. By seeking to

[2] Gordon Bazemore and Mark S. Umbreit, Balanced and Restorative Justice. Office of Juvenile Justice and Delinquency Prevention. Washington, DC, 1994.

[3] Jim Consedine, Restorative Justice: Healing the Effects of Crime. Lyttleton, New Zealand: Ploughshares Publications.

hold the offender dialogueically responsible for her crime, restorative justice seeks to absolve victims of feelings of responsibility which threaten their dignity.

Table 1: What Does Restoring Victims Mean?

Restore property loss

Restore injury

Restore sense of security

Restore dignity

Restore sense of empowerment

Restore deliberative democracy

Restore harmony based on a feeling that justice has been done

Restore social support

Disempowerment is part of the indignity of being a victim of crime. The lawyers, in the words of Nils Christie "steal our conflict"[4]. According to Pettit and Braithwaite's republican theory of criminal justice[5], a wrong should not be defined as a crime unless it involves some domination of us that reduces our freedom to enjoy life as we choose. It follows that it is important to restore any lost sense of empowerment as a result of crime. This is particularly important where the victim suffers structurally systematic domination. For example, some of the most important restorative justice initiatives we have seen in Australia have involved some thousands of Aboriginal victims of consumer fraud by major insurance companies[6]. In these cases, victims from remote Aboriginal communities relished the power of being able to demand restoration and corporate reform from "white men in white shirts".

The western criminal justice system has, on balance, been corrosive of deliberative democracy, though the jury is one institution that has preserved a modicum of it. Restorative justice is deliberative justice; it is about people deliberating over the consequences of a crime, how to deal with them and prevent their recurrence. Deliberative means "based on discussion" or "based on conversation". So deliberative justice is conversational justice. Deliberative democracy is opposed to just deciding what to do by taking a vote (representative democracy). Representative democracy can be think democracy because it can be based on little discussion of the issues. This contrasts with the professional justice of lawyers deciding which rules apply to a case and then constraining their deliberation within a technical discourse about that rule-application.

Restorative justice aims to restore harmony based on a feeling that justice has been done. Restoring harmony alone, while leaving an underlying injustice to fester unaddressed, is not enough. "Restoring balance" is only acceptable as a restorative justice ideal if the "balance" between offender and victim that prevailed before the crime was a morally decent balance. There is no virtue in restoring the balance by having a woman pay for a bag of rice she has stolen from a rich man to feed her children. Restoring harmony between victim and offender is only likely to be possible in such a context on the basis of a discussion of why the children are hungry and what should be done about the underlying injustice of their hunger.

Restorative justice cannot resolve the deep structural injustices that cause problems like hunger. But we must demand two things of restorative justice here. First, it must not make structural injustice worse (in the way, for example, that the Australian criminal justice system does by being an important cause of the

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[4] Nils Christie, "Conflicts as Property", British Journal of Criminology 17: 1-15, 1978.

[5] Philip Pettit and John Braithwaite, Not Just Deserts: A Republican Theory of Criminal Justice.

[6] See Brent Fisse and John Braithwaite, Corporations, Crime and Accountability. Cambridge: Cambridge University Press, 1993, pp. 218-23.

unemployability and oppression of Aboriginal people). Indeed, we should hope from restorative justice for micro-measures to ameliorate macro-injustice where this is possible. Second, restorative justice should restore harmony with a remedy grounded in dialogueue which takes account of underlying injustices. Restorative justice does not resolve the age-old questions of what should count as injust outcomes. It is a more modest philosophy than that. It settles for the procedural requirement that the parties talk until they feel that harmony has been restored on the basis of a discussion of all the injustices they see as relevant to the case.

Finally, restorative justice aims to restore social support. Victims of crime need support from their loved ones during the process of requesting restoration. They sometimes need encouragement and support to engage with deliberation toward restoring harmony. Friends sometimes do blame the victim, or more commonly are frightened off by a victim going through an emotional trauma. Restorative justice aims to institutionalise the gathering around of friends during a time of crisis.

A. Restoring Offenders, Restoring Community

In most cases, a more limited range of types of restoration is relevant to offenders. Offenders have generally not suffered property loss or injury as a result of their own crime, though sometimes they are a cause of the crime. Dignity, however, is generally in need of repair after the shame associated with arrest. When there is a victim who has been hurt, there is no dignity in denying that there is something to be ashamed about. Dignity is generally best restored by confronting the shame, accepting responsibility for the bad consequences suffered by the victim and apologising with sincerity[7]. A task of restorative justice is to institutionalize such restoration of dignity for offenders. When restorative justice works best, you get this core sequence of remorse-apology-forgiveness.

The sense of insecurity and disempowerment of offenders is often an issue in their offending and in discussion about what is to be done to prevent further offending. Violence by young men from racial minorities is sometimes connected to their feelings of being victims of racism. For offenders, restoring a sense of security and empowerment is often bound up with employment, the feeling of having a future, achieving some educational success, sporting success, indeed any kind of success. Many patches are needed to sew the quilt of deliberative democracy. Criminal justice deliberation is not as important a patch as deliberation in parliament, in trade unions, even in universities. But to the extent that restorative justice deliberation does lead ordinary citizens into serious democratic discussion about racism, unemployment, masculinist cultures in local schools and police accountability, it is not an unimportant element of a deliberatively rich democracy.

The mediation literature shows that satisfaction with the justice of the mediation of those who are complained against is more important to achieving mutually beneficial outcomes than the satisfaction of complainants[8]. Criminal subcultures are memory files that collect injustices[9]. Crime problems will continue to become deeply culturally embedded in western societies until we reinvent criminal justice as a process that restores a sense of procedural justice to offenders[10]

Finally, Frank Cullen[11] has suggested that there could be no better organizing concept for criminology than social support, given the large volume of evidence about the importance of social support for preventing crime. The New Zealand Maori people see our justice system as barbaric because of the way it requires the defendant to stand alone in the dock without social support. In Maori thinking, civilized justice requires the offender's loved ones to stand beside him during justice rituals, sharing the shame for what has happened. Hence the shame the offender feels is more the shame of letting his loved ones down than a western sense of individual guilt that can eat away at a person. The shame of letting loved ones down can be readily transcended by simple acts of forgiveness from those loved ones.

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[7] On this issue, I find the work of Tom Scheff and Suzanne Retzinger on by-passed shame illuminating. Tom Scheff and Suzanne Retzinger, Emotions and Violence: Shame and Rage in Destructive Conflicts. Lexington Books, 1991.

[8] Pruitt

[9] David Matza, Delinquency and Drift, New York: Wiley, 1964, p. 102.

[10] Tom Tyler, Why People Obey the Law, New Haven: Yale University Press, 1990.

[11] Francis T. Cullen, Social Support as an Organizing Concept for Criminology, Justice Quarterly

Restoring community is advanced by iterated restorative justice rituals in which social support around specific victims and offenders is restored. At this micro level, restorative justice is an utterly bottom-up approach to restoring community. At a meso level, important elements of a restorative justice package are initiatives to foster community organization in schools, neighbourhoods, ethnic communities, churches, through professions and other NGOs who can deploy restorative justice in their self-regulatory practices. At a macro level, we must better design institutions of deliberative democracy so that concern about issues like unemployment and the effectiveness of labour market programmes have a channel through which they can flow from discussions about local injustices up into national economic policy-making debate.

B. The Universality of Restorative Traditions

I have yet to discover a culture which does not have some deep-seated restorative traditions. Nor is there a culture without retributive traditions. Retributive traditions once had survival value. Cultures which were timid in fighting back were often wiped out by more determinedly violent cultures. In the contemporary world, as opposed to the world of our biological creation, retributive emotions have less survival value. Because risk management is institutionalized in this modern world, retributive emotions are more likely to get us into trouble than out of it, as individuals, groups and nations.

The message we might communicate to all cultures is that in the world of the twenty-first century, you will find your restorative traditions a more valuable resource than your retributive traditions. Yet sadly, the hegemonic cultural forces in the contemporary world communicate just the opposite message. Hollywood hammers the message that the way to deal with bad guys is through violence. Political leaders frequently hammer the same message. Yet many of our spiritual leaders are helping us to retrieve our restorative traditions - the Dalai Lama, for example or Archbishop Desmond Tutu of South Africa.

All of the restorative values in Table 1 are cultural universals. All cultures value repair of damage to our persons and property, security, dignity, empowerment, deliberative democracy, harmony based on a sense of justice and social support. They are universals because they are all vital to our emotional survival as human beings and vital to the possibility of surviving without constant fear of violence. The world's great religions recognise that the desire to pursue these restorative justice values is universal, which is why our spiritual leaders are a hope against those political leaders who wish to rule through fear and by crushing deliberative democracy. Ultimately, those political leaders will find that they will have to reach an accommodation with the growing social movement for restorative justice, just as they must with the great religious movements they confront. Why? Because the evidence is now strong that ordinary citizens like restorative justice[12].

The virtues restorative justice is about restoring are viewed in admittedly different ways in different cultures and opinion about the culturally appropriate ways of realising the vitures differ greatly. Hence, restorative justice must be a culturally diverse social movement that accommodates a rich plurality of strategies in pursuit of the truths it holds to be universal. It is about different cultures joining hands as they discover the profound commonalities of their experience of the human condition; it is about cultures learning from each other on the basis of that shared experience; it is about realising the value of diversity, of preserving restorative traditions that work because they are embedded in a cultural past. Scientific crimninology will never discover any universally best way of doing restorative justice. The best path is the path of cultural plurality in pursuit of the culturally shared restorative values in Table 1.

C. A Path to Culturally Plural Justice

A restorative justice research agenda to pursue this path has two elements:

1. Culturally specific investigation of how to save and revive the restorative justice practices that remain in all societies.

2. Culturally specific investigation of how to transform state criminal justice both by making it more restorative and by rendering its abuses of power more vulnerable to restorative justice.

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[12] See, for example, Alison Morris and Gabrielle Maxwell, "Juvenile Justice in New Zealand: A New Paradigm", Australian and New Zealand Journal of Criminology 26: 72-90, 1992; Donald Clairmont, "Alternative Justice Issues for Aboriginal Justice", Atlantic Institute of Criminology, November, 1994.

On the first point, I doubt that neighborhoods in our cities are replete with restorative justice practices that can be retrieved, though there are some. Yet in the more micro context of the nuclear family, the evidence is overwhelming from the metropolitan US that restorative justice is alive and well and that families who are more restorative are likely to have less delinquent children than families who are punitive and stigmatizing[13].

Because families so often slip into stigmatization and brutalization of their difficult members, we need restorative justice institutionalized in a wider context that can engage and restore such families. In most societies, the wider contexts where the ethos and rituals of restorative justice are alive and ready to be piped into the wider streams of the society are schools, churches and remote indigenous communities. If it is hard to find restorative justice in the disputing practices of our urban neighbourhoods, the experience of recent years has been that they are relatively easy to locate in urban schools[14]. This is because of the ethos of care and integration which is part of the educational ideal (which, at its best, involves a total rejection of stigmatization) and because the interaction among the members of a school community tends to be more intense than the interaction among urban neighbours. Schools, like families, have actually become more restorative and less retributive than the brutal institutions of the nineteenth century. This is why we have seen very successful restorative conferencing programmes in contemporary schools[15] We have also seen anti-bullying programmes with what I would call a restorative ethos which have managed in some cases to halve bullying in schools.

More of the momentum for the restorative justice movement has come from the world's churches than from any other quarter. Even in a nation like Indonesia where the state has such coercive power, the political imperative to allow some separation of church and state has left religious communities as enclaves where restorative traditions could survive, just as they are also sites where fundamentalist retributivism can flourish. Religions like Islam and Christianity have strong retributive traditions as well as restorative ones.

When I spoke at a conference on restorative justice in Indonesia in the late 1990s, I was struck in a conversation with three Indonesians - one Muslim, one Hindu and one Christian - that in ways I could not understand as an agnostic, each was drawing on a spirituality grounded in their religious experience to make sense of restorative justice. Similarly, I was moved by the spirituality of Cree approaches to restorative justice when a number of native Canadians visited Canberra. I know there is something important I need to learn about native American spirituality and how it enriches restorative justice. It seems clear to me that it does enrich it, but I do not understand how. I suppose unless there are things that one can see are important without understanding them, one is not really an intellectual.

Asian communities are a cultural resource for the whole world. Because they have not been totally swamped by the justice codes of the West, they are a cultural resource, just as the biodiversity of the Australian continent supplies the entire world a genetic resource. The very people who have succumbed least to the Western justice model, who have been insulated from Hollywood a little more and for a little longer, are precisely those with the richest cultural resources from which the restorative justice movement can learn.

Point 2 of the agenda is to explore how to transform state criminal justice. In our multicultural cities I have said that we cannot rely on spontaneous ordering of justice in our neighbourhoods. There we must be more reliant on state reformers as catalysts of a new urban restorative justice. In our cities, where neighbourhood social support is least, where the loss from the statist takeover of disputing is most damaging, the gains that can be secured from restorative justice reform are greatest. When a police officer with a restorative justice ethos arrests a youth in a tightly knit rural community who lives in a loving family, who enjoys social support from a caring school and church, that police officer is not likely to do much better or worse by the child than a police officer who does not have a restorative justice ethos. Whatever the police do, the child's support network will probably sort the problem out so that serious reoffending does not

[13] See the discussion of the evidence on this in Braithwaite, Crime, Shame and Reintegration, pp. 54-83.

[14] Thorsburn.

[15] Ibid.

occur. But when a police officer with a restorative justice ethos arrests a homeless child in the metropolis like Hiroshi, who hates parents who abused him, who has dropped out of school and is seemingly alone in the world, it is there that the restorative police officer can make a difference that will render him more effective in preventing crime than the retributive police officer. At least that is my hypothesis, one we can test empirically and are testing empirically.

In the alientated urban context where community is not spontaneously emergent in a satisfactory way, what the criminal justice system can do is construct a community of care around a specific offender or a specific victim who is in trouble. We need an individual-centred communitarianism that can practically be accomplished in the modern metropolis. That is what the story of Hiroshi is about. With the restorative justice conferences being convened in multicultural metropolises like Auckland, Adelaide, Sydney, Singapore, London, Toronto and Minneapolis the selection principle as to who is invited to the conference is the opposite to that with a criminal trial. We invite to a criminal trial those who can inflict most damage on the other side. With a conference we invite those who might offer most support to their own side - Hiroshi's sister, uncle and hockey coach, the victim's daughter on the other side.

In terms of the theory of reintegrative shaming, the rationale for who is invited to the conference is that the presence of those on the victim's side structures shame into the conference, the presence of supporters on the offender's side structures reintegration into the ritual. Conferences can be run in many different ways from the story of Hiroshi's conference. Maori people in New Zealand tend to want to open and close their conferences with a prayer. The institutions of restorative justice we need to build in the city must be culturally plural, quite different from one community to another depending on the culture of the people involved. It is the empowerment principle of restorative justice that makes this possible - empowerment with process control.

From a restorative perspective, the important thing is that we have institutions in civil society which confront serious problems like violence rather than sweep them under the carpet, yet which do so in a way that is neither retributive nor stigmatizing. Violence will not be effectively controlled by communities unless the shamefulness of violence is communicated. This does not mean that we need criminal justice institutions that set out to maximise shame. On the contrary, if we set out to do that we risk the creation of stigmatizing institutions[16] All we need do is nurture micro-institutions of deliberative democracy that allow citizens to discuss the consequences of criminal acts, who is responsible, who should put them right and how. Such deliberative processes naturally enable those responsible to confront and deal with the shame arising from what has happened. And if we get the invitation list right by inviting along people who enjoy maximum respect and trust on both the offender and victim side, then we maximize the chances that shame will be dealt with in a reintegrative way.

D. Decline and Revival in Restorative Traditions

The traditions of restorative justice that can be found in all the world's great cultures have been under attack during the past two centuries. Everywhere in the world, restorative ideals have suffered serious setbacks because of the globalization of the idea of a centralized state that takes central control of justice and rationalizes it into a punitive regime. Control of punishment strengthened the power and legitimacy of rulers[17]. So did control of mercy, the power of royal or presidential pardon. What rulers really wanted was the political power of controlling the police, the prisons and the courts. However, abuse of that power proved at times such a threat to their legitimacy that they were forced by political opponents to institutionalize certain principles of fairness and consistency into the state system. Of course, the new democratic rulers were no more enthusiastic about returning justice to the people than were the tyrants they succeeded; the secret police continued to be important to combating organized threats to the state monopoly of violence, the regular police to disorganized threats. The pretence that the state punished crime in a consistent, politically even-handed way, was part of the legitimation for democratically centralized justice. Citizens continue to see this as a pretense. They realise that whatever the law says, the reality is one law for the rich, another for the poor; one set of rules for the politically connected, another for the powerless.

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[16] Tom Scheff and Suzanne Retzinger.

[17] See, for example, Michel Foucault, Discipline and Punish: The Birth of the Prison. London: Allen Lane, 1977.

While it is a myth that centralized state law enabled greater consistency and lesser partiality than community-based restorative justice, it is true that abuse of power always was and still is common in community justice. And it is true that state oversight of restorative justice in the community can be a check on abuse of rights in local programmes, local political dominations and those types of unequal treatment in local programmes that are flagrantly unacceptable in the wider demos[18]. Equally it is true that restorative justice can be a check on abuse of rights by the central state. We see it in restorative justice conferences in Canberra when a mother asks during the conference that something be done about the police officers who continue to use excessive force in their dealings with her son, who continue to victimize her son for things done by others. The restorative justice ideal could not and should not be the romantic notion of shifting back to a world where state justice is replaced by local justice. Rather, it might be to use the existence of state traditions of rights, proportionality and rule of law as resources to check abuse of power in local justice and to use the revival of restorative traditions to check abuse of state power. In other words, restorative justice constitutionalized by the state can be the stuff of a republic with a richer separation of powers[19], with less abuse of power, than could be obtained either under dispute resolution totally controlled by local politics or disputing totally dominated by the state.

The key elements of North Atlantic criminal justice that have globalized almost totally during the past two centuries are:

1. Central state control of criminal justice.

2. The idea of crime itself and that criminal law should be codified.

3. The idea that crimes are committed against the state (rather than the older ideas that they were committed against victims or god).

4. The idea of having a professionalized police who are granted a monopoly over the use of force in domestic conflicts.

5. The idea of moving away from compensation as the dominant way of dealing with crime by building a state prisons system to systematically segregate the good from the bad and a complementary system of asylums to segregate the mad from both the bad and the good.

6. The idea that fundamental human rights should be protected during the criminal process.

Like abolitionists, restorative justice theorists see most of these elements of the central state takeover of criminal justice as retrograde. However, unlike the most radical versions of abolitionism, restorative justice sees promise in preserving a state role as a watchdog of rights and concedes that for a tiny fraction of the people in our prisons it may actually be necessary to protect the community from them by incarceration. While restorative justice means treating many things we presently treat as crime simply as problems of living, restorative justice does not mean abolishing the concept of crime. In restorative justice rituals, being able to call wrongdoing a crime can be a powerful resource in persuading citizens to take responsibility, to pay compensation, to apologise, especially with corporate criminals who are not used to thinking of their exploitative conduct in that way[20] 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

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[18] Jeremy Webber makes this point in the Canadian context: "the challenge is to reinvent aboriginal institutions so that they draw upon indigenous traditions and insights in a manner appropriate to the new situation. This may mean inventing checks to prevent abuse that were unnecessary two hundred years ago or which existed in a very different form". Jeremy Webber, "Individuality, Equality and Difference: Justification for a Parallel System of Aboriginal Justice in Robert Silverman and Marianne Nielsen (eds.) Aboriginal Peoples and Canadian Criminal Justice. Toronto: Butterworths, 1992, p. 147.

[19] John Braithwaite, On Speaking Softly and Carrying Sticks: Neglected Dimensions of a Republican Separation of Powers, unpublished paper, 1996.

[20] See John Braithwaite, "Corporate Crime and Republican Criminological Praxis", in F. Pearce and L. Snider (eds.), Corporate Crime: Ethics, Law and State. University of Toronto press, 1995.

institutions and checking the power that remains by the deliberative democracy from below that restorative justice enables.

So you see I have an analysis that is unfashionably universal. I believe that restorative justice will come to be a profoundly influential social movement throughout the world during the next century firstly because it appeals to values that are shared universally by humanity, secondly because it responds to the defects of a centralized state criminal justice model that itself has totally globalized and utterly failed in every country where it gained the ascendency. Everywhere it has failed, there are criminologists or lawyers within the state itself who are convinced of that failure. And given the global imperatives for states to be competitive by being fiscally frugal, large state expenditures that do not deliver on their objectives are vulnerable to social movements who claim they have an approach which will be cheaper, work better and be more popular with the people in the long run.

IV. BEYOND COMMUNITARIANISM VERSUS INDIVIDUALISM

Some criminologists in the West are critical of countries like Singapore, Indonesia and Japan where crime in the streets is not the problem it is in the West because they think individualism in these societies is crushed by communitarianism or collective obligation. Their prescription is that Asian societies need to shift the balance away from communitarianism and allow greater individualism. I don't find that a very attractive analysis.

Some Asian criminologists are critical of countries like the US and Australia because they think these societies are excessively individualistic, suffering much crime and incivility as a result. According to this analysis, the West needs to shift the balance away from individualism in favour of communitarianism, shift the balance away from rights and toward collective responsibilities. I don't find that a very attractive analysis either.

Both sides of this debate can do a better job of learning from each other. We can aspire to a society that is strong on rights and strong on responsibilities, that nurtures strong communities and strong individuals. Indeed, in the good society strong communities constitute strong individuals and vice versa. Our objective can be to keep the benefits of the statist revolution. Community justice is often oppressive of rights, often subjects the vulnerable to the domination of local elites, subordinates women, it can be proceduarlly unfair and tends to neglect structural solutions. Mindful of this, we might reframe the two challenges posed earlier in the lecture:

1. Helping indigenous community justice to learn from the virtues of liberal statism - procedural fairness, rights, protecting the vulnerable from domination.

2. Helping liberal state justice to learn from indigenous community justice - learning the restorative community alternatives to individualism.

This reframed agenda resonates with the ideas of Marianne Nielsen, when she writes that Canadian native communities "will have the opportunity of taking the best of the old, the best of the new and learning from others' mistakes so that they can design a system that may well turn into a flagship of social change"[21]. Together these two questions ask how we save and revive traditional restorative justice practices in a way that helps them become procedurally fairer, in a way that respects fundamental human rights, that secures protection against domination? The liberal state can be a check on oppressive collectivism, just as bottom-up communitarianism can be a check on oppressive individualism. A healing circle can be a corrective to a justice system that can leave offenders and victims suicidally alone; a Charter of Rights and Freedoms a check on a tribal elder who imposes a violent tyranny on young people. The bringing together of these ideals is an old prescription - not just liberty, not just community, but liberte, egalite, fraternite. Competitive individualism has badly fractured this republican amalgam. The social movement for restorative justice does practical work to weld an amalgam that is relevant to the creation of contemporary urban multicultural republics. Day to day it is not sustained by romantic ideals in which I happen to believe

[21] Neilsen, Marianne, "Criminal Justice and Native Self-Government", in Robert Silverman and Marianne Nielsen (eds.) Aboriginal Peoples and Canadian Criminal Justice. Toronto: Butterworths, 1992, p. 255.

like deliberative democracy. They want to do it for Hiroshi and for an old woman who Hiroshi pushed over one day. That is what enlists them to the social movement for restorative justice; in the process they are, I submit, enlisted into something of wider political significance.

RESTORATIVE JUSTICE: THEORIES AND WORRIES

*John Braithwaite**

I. THEORIES OF WHY RESTORATIVE JUSTICE MIGHT RESTORE

In this paper I consider a set of theories that increasingly seem to have strong relationships with one another – theories of reintegrative shaming, procedural justice, unacknowledged shame and defiance – that offer an explanation of why restorative justice processes might be effective in reducing crime and accomplishing other kinds of restoration. Some of these theoretical claims are sure to be proved untrue by the kind of R & D advocated here. Equally, where these theoretical claims turn out to be true, we will find that the potential of this truth has not been sufficiently built into the design of restorative justice programmes.

A. Reintegrative Shaming Theory

Crime, Shame and Reintegration (Braithwaite 1989) gives an account of why restorative justice processes ought to prevent crime more effectively than retributive practices. The core claims are: (1) tolerance of crime makes things worse; (2) stigmatization, or disrespectful, outcasting shaming of crime makes crime worse still; while (3) reintegrative shaming, disapproval of the act within a continuum of respect for the offender, disapproval terminated by rituals of forgiveness, prevents crime.

In developing the theory of reintegrative shaming, I was much influenced by the restorative nature of various Asian policing and educational practices, by what I saw as the effectiveness of restorative regulatory processes for dealing with corporate crime both in Asia and the West, and by the restorative nature of socialization in Western families that succeed in raising law abiding children. Essentially, what that child development literature shows is that both permissive parenting that fails to confront and disapprove of childrens' misconduct and punitively authoritarian parenting both produce a lot of delinquents; delinquency is less likely when parents confront wrongdoing with moral reasoning (Braithwaite 1989). One implication for restorative justice advocates of this substantial body of empirical evidence is that the justice system will do better when it facilitates moral reasoning by families over what to do about a crime as an alternative to punishment by the state.

Restorative justice conferences work by inviting victims and supporters (usually family supporters) of the victim to meet with the offender and the people who care most about the offender and most enjoy the offender's respect (usually including both the nuclear and extended family, but not limited to them). This group discusses the consequences of the crime, drawing out the feelings of those who have been harmed. Then they discuss how that harm might be repaired and any steps that should be taken to prevent reoffending.

In terms of reintegrative shaming theory, the discussion of the consequences of the crime for victims (or consequences for the offender's family) structures shame into the conference; the support of those who enjoy the strongest relationships of love or respect with the offender structures reintegration into the ritual. It is not the shame of police or judges or newspapers that is most able to get through to us; it is shame in the eyes of those we respect and trust.

Evidence from the first 548 adult and juvenile cases randomly assigned to court versus conference in Canberra, Australia, is that offenders both report and are observed to encounter more reintegrative shaming in conferences than in court, that conference offenders experience more remorse and more forgiveness than court offenders, and are more likely to report that they have learnt from the process that there are people who care about them (Sherman and Strang 1997a). Data such as these call into doubt what was a common

* Chair Regulatory Institutions Network Research,
School of Social Science,
Australian National University,
Australia

early reaction to *Crime, Shame and Reintegration*. This was that contemporary urban societies are not places with the interdependence and community to allow the experience of shame and reintegration to be a reality in such societies (see Braithwaite 1993b).

B. Procedural Justice Theory

The idea of reintegrative shaming is that disapproval is communicated within a continuum of respect for the offender. A key way to show respect is to be fair, to listen, to empower others with process control, to refrain from bias on the grounds of age, sex or race. More broadly, procedural justice communicates respect (Lind and Tyler 1988; Tyler 1990). Conferences do not have all the procedural safeguards of court cases, yet there are theoretical grounds for predicting that offenders and victims will find them fairer. Why? Conferences are structurally fairer because of who participates and who controls the discourse. Criminal trials invite along those who can inflict maximum damage on the other side; conferences invite those who can offer maximum support to their own side, be it the victim side or the offender side. In other words those present are expected to be fair and therefore tend to want to be fair. They tend not to see their job as doing better at blackening the character of the other than the other does at blackening theirs.

Citizens are empowered with process control, rather than placed under the control of lawyers. There is now quite a bit of evidence that procedural fairness predicts subsequent compliance with the law. For example, in the Milwaukee domestic violence experiment (Bridgeforth 1990, p. 76), "arrestees who said (in lockup) that police had not taken the time to listen to their side of the story were 36% more likely to be reported for assaulting the same victim over the next 6 months than those who said the police had listened to them" (Sherman 1993, p. 463; see also Paternoster et al. 1997). More broadly, in *Why People Obey the Law*, Tyler (1990) found that citizens were more likely to comply with the law when they saw themselves as treated fairly by the criminal justice system. Sherman (1993) reviewed subsequent supportive evidence on this question as did Tyler and Huo (2001).

The key questions are whether citizens feel they are treated more fairly in restorative justice processes than in courts and whether they are more likely to understand what is going on. The answer seems to be yes. Early results from the Canberra conferencing experiment show that offenders are more likely to understand what is going on in conferences than in court cases, felt more empowered to express their views, had more time to do so, were more likely to feel that their rights were respected, to feel that they could correct errors of fact, to feel that they were treated with respect and were less likely to feel in conferences that they were disadvantaged due to "age, income, sex, race or some other reason" (Barnes 1999; Sherman and Barnes 1997; Sherman et al. 1998). The NSW Youth Conferencing Scheme seems to be even more successful than the Canberra programme on these dimensions (Trimboli 2000). Without the randomized comparison with court, a number of other studies have shown absolutely high levels of citizen satisfaction with the fairness of restorative justice processes, with such perceptions being higher the more restorative the programmes are.

Given that there is now strong evidence that restorative justice processes are perceived to be fairer by those involved and strong evidence that perceived procedural justice improves compliance with the law, it follows as a prediction that restorative justice processes will improve compliance with the law.

C. The Theory of Unacknowledged Shame

Scholars working in the affect theory tradition of Sylvan Tomkins (1962) have a theoretical perspective on why restorative justice should reduce crime based more on the nature of shame as an affect than on shaming, reintegration and stigmatization as practices. According to this perspective shame can be a destructive emotion because it can lead one to attack others, attack self, avoid or withdraw (Nathanson's (1992) compass of shame). All of these are responses which can promote crime. A profound deficiency of Braithwaite's (1989) theory is that it is just a theory of shaming, with the emotion of shame left undertheorised.

From this perspective, therefore, a process is needed that enables offenders to deal with the shame that almost inevitably arises at some level when a serious criminal offence has occurred. Denial, for example being "ashamed to be ashamed", in Scheff's words, is not an adaptive response. Shame is a normal emotion that healthy humans must experience; it is as vital to motivating us to preserve social bonds essential to our flourishing as is fear to motivating us to flee danger. Indeed Scheff (1990, 1994), Retzinger (1991) and Scheff

and Retzinger (1991) finger by-passed shame as the culprit in the shame-rage spirals that characterize our worst violence domestically and internationally.

The evidence these authors offer for the promotion of anger through by-passed shame is voluminous but of a quite different sort from the more quantitative evidence adduced under the other propositions in this and the last chapter. It consists primarily of collections of clinical case notes (preeminently Lewis's 1971 research) and micro-analyses of conversations (preeminently Retzinger' s 1991 marital quarrels). Yet the thrust of this work is also supported by Tangney's (1995) review of quantitative studies on the relationship between shame and psychopathology: guilt about specific behaviors, "uncomplicated by feelings of shame about the self", is healthy. The problem is "chronic self-blame and an excessive rumination over some objectionable behavior" (Tangney 1995, p. 1141). Scheff and Retzinger take this further, suggesting that shame is more likely to be uncomplicated when consequences that are shameful are confronted and emotional repair work is done for those damaged. Shame will become complicated, chronic, more likely to descend into rage if it is not fully confronted. If there is nagging shame under the surface, it is no permanent solution to lash out at others with anger that blames them. Then the shame and rage will feed on each another in a shame-rage spiral. Consistent with this analysis, Ahmed (2001) has shown in a study of bullying among 1200 Canberra school children, which has now been replicated in Bangladesh, that bullies deal with shame through transforming it (into anger, for example), victims acknowledge and internalise shame so that they suffer persistent shame, while children who avoid both bullying and being victimized by bullies have the ability to acknowledge and discharge shame so that shame does not become a threat to the self. Ahmed concludes that restorative processes may reduce crime because they create spaces where there is the time and the tolerance for shame to be acknowledged, something that is not normally facilitated in the formal courtroom context

According to Retzinger and Scheff's work, if we want a world with less violence and less dominating abuse of others, we need to take seriously rituals that encourage approval of caring behavior so that citizens will acquire pride in being caring and non-dominating. With dominating behavior, we need rituals of disapproval and acknowledged shame of the dominating behavior, rituals that avert disapproval-unacknowledged shame sequences. Retzinger and Scheff (1996) see restorative justice conferences as having the potential (a potential far from always realised) to institutionalize pride and acknowledged shame that heals damaged social bonds. Conferences in this formulation are ceremonies of constructive conflict. When hurt is communicated, shame acknowledged by the person(s) who caused it, respect shown for the victim's reasons for communicating the hurt and respect reciprocated by the victim, constructive conflict has occurred between victim and offender. It may be that in the "abused spouse syndrome", for example, shame is by-passed and destructive, as a relationship iterates through a cycle of abuse, manipulative contrition, peace, perceived provocation and renewed abuse (see Retzinger 1991). Crime wounds, justice heals; but only if justice is relational (Burnside and Baker 1994).

Moore with Forsythe (1995, p. 265) emphasise that restorative justice should *not*, in the words of Gipsy Rose Lee, accentuate the positive and eliminate the negative; rather it should accentuate the positive and confront the negative. Sylvan Tomkins (1962) adduces four principles for constructive management of affect: "(1) That positive affect should be maximised. (2) That negative affect should be minimised. (3) That affect inhibition should be minimised. (4) That power to maximise positive affect, to minimise negative affect, and to minimise affect inhibition should be maximised." (Moore with Forsythe 1995, p. 264). Nathanson (1998, p. 86) links this model to an hypothesized capacity of restorative justice processes to build community, where community is conceived as people linked by scripts for systems of affect modulation. Community is built by: "1) Mutualization of and group action to enhance or maximize positive affect; 2) Mutualization of and group action to diminish or minimize negative affect; 3) Communities thrive best when all affect is expressed so these first two goals may be accomplished; 4) Mechanisms that increase the power to accomplish these goals favor the maintenance of community, whereas mechanisms that decrease the power to express and modulate affect threaten the community."

In the most constructive conflicts, shame will be acknowledged by apology (reciprocated by forgiveness) (Tavuchis 1991). Maxwell and Morris (1996) found in New Zealand family group conferences that the minority of offenders who failed to apologise during conferences were three times more likely to reoffend than those who had apologised. Interpreting any direction of causality here is admittedly difficult.

Moore (1994, p. 6) observes that in courtroom justice shame is not acknowledged because it is "hidden behind impersonal rhetoric about technical culpability." Both Moore with Forsythe (1995) and Retzinger and Scheff (1996) have applied their methods to the observation of restorative justice conferences, observing the above mechanisms to be in play and to be crucial to shaping whether conferences succeed or fail in dealing with conflicts in ways that they predict will prevent crime. For Retzinger and Scheff (1996) conferences have the ostensible purpose of material reparation; but underlying the verbal and visible process of reaching agreement about material reparation is a more non-verbal, less visible process of symbolic reparation. It is the latter that really matters according to their theoretical framework, so the emphasis in the early restorative justice literature on how much material reparation is actually paid becomes quite misguided.

The evidence now seems strong that unacknowledged shame contributes to violence; Sherman and Barnes's (1997), Sherman et al's (1998, pp. 127-9) and Harris's (2001) admittedly preliminary evidence suggests that in conferences offenders may accept and discharge shame more than when they go through court cases. If both propositions are correct, conferences might do more to reduce crime than court cases.

D. Defiance Theory

"Disrespect begets disrespect", claims Howard Zehr (1995), and few things communicate disrespect as effectively as the criminal exploitation of another human being. Lawrence Sherman (1993) has woven propositions from the foregoing sections about procedural justice, reintegrative shaming and unacknowledged shame into an integrated theory of defiance. It has three propositions:

1. Sanctions provoke future *defiance* of the law (persistence, more frequent or more serious violations) to the extent that offenders experience sanctioning conduct as illegitimate, that offenders have weak bonds to the sanctioning agent and community, and that offenders deny their shame and become proud of their isolation from the sanctioning community.

2. Sanctions produce future *deterrence* of law-breaking (desistance, less frequent or less serious violations) to the extent that offenders experience sanctioning conduct as legitimate, that offenders have strong bonds to the sanctioning agent and community, and that offenders accept their shame and remain proud of solidarity with the community.

3. Sanctions become *irrelevant* to future law breaking (no effect) to the extent that the factors encouraging defiance or deterrence are fairly evenly counterbalanced. (Sherman 1993, pp. 448-9).

Sherman hypothesises that restorative justice processes are more likely to meet the conditions of proposition 2 than traditional punitive processes. The evidence to date supports this. We have already seen that restorative processes are accorded high legitimacy by citizens, that they are better designed to empower those with strong bonds with the offender and that they outperform court in inducing the acknowledgement and discharging of shame for wrongdoing .

While Sherman (1993) reviews some suggestive evidence that law breaking might vary under the conditions that are hypothesized to vary defiance, a systematic test of defiance theory remains to be undertaken. Results from the RISE experiment are still very preliminary here, only laying the foundations for the test of this theory. One published early result encouraging to defiance theory, however, was that while 26% of drink drivers randomly assigned to court felt bitter and angry after court, only 7% of offenders felt bitter and angry after a conference (Sherman and Strang 1997b).

Hagan and McCarthy (1997, pp. 191-7) have tested Sherman's defiance theory against the prediction that children who have been humiliated, treated unfairly and had bonds severed by virtue of being victims of sexual abuse or physical violence (with bruising or bleeding) will have their criminal behaviour amplified by traditional criminal justice processing more than offenders who have not been abused. Their data, collected among homeless children in Toronto and Vancouver, supported the defiance theory prediction.

Sherman's defiance theory is not an armchair theory, but one grounded in the preliminary R & D on conferencing in Australia. It is therefore important to illustrate the kind of case that motivated the prediction that restorative justice will prevent crime by reducing defiance. Rage and Restorative Incapacitation (Box 1) is a recent case from the RISE experiment in Canberra.

Box 1: Rage and Restorative Incapacitation

One man assaulted another very seriously; the victim was left lying in a litre and a half of his own blood and required $3000 in dental work. The outcome of the conference was simply an agreement for the offender never to go within an agreed distance of the victim. On the face of it, this seems a totally inadequate remedy for a life-threatening assault; a court would likely have imposed prison time for it. But the participants in the conference would have seen such a court outcome as less just.

The victim asked for compensation for his dental bills from the offender. The offender had no money and no job, so he felt he could not agree to this. He had just come out of prison for another offence and he was about to go back to prison for a third matter. A court, given his record, would likely have extended this sentence for such a serious assault. During his last prison term, the offender cultivated a spiral of rage against the victim of the assault. He believed the victim had raped his fiance. The fiance did not want to lay charges, partly because all involved were part of a heroin subculture in which one simply didn't press charges against others. Secondly, the circumstances of the alleged rape were that the rape victim had been making love to another friend of her fiance, which her alleged rapist took to be a signal that it was okay for him to do the same. It seemed plausible to our observer and to the police that this rape had occurred, especially when the assault victim said during the conference; "I didn't go out of my way to rape her." However, others at the conference did not believe that the rape had occurred.

It seemed to be the case that the victim and offender were thrown into regular contact because they purchased heroin from the same place, though this was never explicitly said. The victim was terrified that the offender would get angry again back in prison, come out and kill him this time. If the offender got an extra few months in jail for the assault, this would make such rage even more likely. So the victim and his supporters were well pleased with an outcome that guaranteed him a secure distance from the offender. The offender never rationally planned to do such damage to the victim. He had "lost it", knew he was strong enough to kill the victim if he did the same again. He and his supporters wanted to secure him against a shame-rage spiral that would put him back in prison for a third term. While the conference failed to restore harmony, it did restore peace in a way that both sides saw as just in the circumstances. My hypothesis is that the participants are right; this was better justice than the court would have delivered, and a justice that may have prevented a murder by defusing defiance and putting in place a permanent voluntary segregation regime that was more effective incapacitation than the temporary compulsory segregation of a prison. In the four years since the conference, neither the victim nor the offender have been arrested for anything.

II. WORRIES ABOUT RESTORATIVE JUSTICE

A. Restorative Justice Practices can Increase Victim Fears of Re-Victimization

The research of Heather Strang and Kathy Daly in Australia shows that some victims of crime are actually worse off as a result of going into a restorative justice process, particularly in terms of fear of being re-victimized. However, these studies also establish that reduction of victim's fears of re-victimization appear to be about twice as common. While victims are mostly surprised to learn how shy, ashamed and inadequate offenders are, some offenders are formidable and scary. Such cases can destabilize restorative justice programmes in the media. Our worst case in Canberra involved an offender who threatened a woman with a syringe filled with blood. The conference was not well run and feelings between offender and victim deteriorated. Subsequently, the victim found a syringe left on the dashboard of her car, which she took to be a threat from the offender (though this allegation was never proved). The case was covered by a local television station. Out of two thousand Canberra conferences (some with no victims, some with 20) this is the only case of escalated victim fear that hit the media. But one can be enough! Restorative justice programmes need to offer much more comprehensive support to the victims who face such traumas.

A related worry is that restorative justice programmes can treat victims as no more than props for efforts to rehabilitate victims. This concern became acute with a number of British mediation programmes

during the 1980s where it was common for the offender and victim not to meet face to face, but rather for the mediator to be a go-between. Where no meeting occurs, Retzinger and Scheff's (1996) symbolic reparation, which we have seen is more important to most victims than material reparation, is more difficult. In these circumstances we can expect the dissatisfaction of victims to focus on the limits of the material reparation they get: "projects which claim to provide reparation for victims actually operating to maximise the potential for diversion of children from prosecution" (Haines 1998, p. 6).

Victims are often enticed into restorative justice before they are ready. Pressure to achieve "speedy trial" objectives for offenders can be quite contrary to the interests of victims. Indeed, even in terms of the interests of offenders, rushing into a restorative justice meeting can be counterproductive with a victim who with a bit more time would be ready to forgive rather than to hate. Best practice is probably to offer victims of serious crime a healing circle with victims only before proceeding to a victim-offender circle. The key judgement for the victim support circle is whether the victim is ready (if ever) to meet the offender.

B. Restorative Justice can be a "Shaming Machine" that Worsens the Stigmatization of Offenders

The "shaming machine" concern has been well articulated in Retzinger and Scheff's (1996) essay, "Strategy for Community Conferences: Emotions and Social Bonds", written after their observation of a number of Australian conferences, from which they came away concerned about the damaging effects of sarcasm, moral superiority and moral lecturing in particular:

The point about moral indignation that is crucial for conferences is that when it is repetitive and out of control, it is a defensive movement in two steps: denial of one's own shame, followed by projection of blame onto the offender... For the participants to identify with the offender, they must see themselves as like her rather than unlike her (There but for the grace of God go I). Moral indignation interferes with the identification between participants that is necessary if the conference is to generate symbolic reparation. In our judgement, uncontrolled repetitive moral indignation is the most important impediment to symbolic reparation and reintegration. But on the other hand, to the extent that it is rechannelled, it can be instrumental in triggering the core sequence of reparation...Intentional shaming in the form of sustained moral indignation or in any other guise brings a gratuitous element into the conference, the piling of shame on top of the automatic shaming that is built into the format. This format is an automatic shaming machine...in a format that is already heavy with shame, even small amounts of overt shaming are very likely to push the offender into a defensive stance, to the point that she will be unable to even feel, much less express, genuine shame and remorse.

Restorative justice processes are "already heavy with shame" as a result of the simple process of victims and their supporters talking about the consequences of the crime. In effect, that is all one needs. Umbreit (1994, p. 4) makes a similar point on victim defensiveness: "For individual victims, use of such terms as 'forgiveness' and 'reconciliation' are highly judgmental and preachy, suggesting a devaluing of the legitimate anger and rage the victims may be feeling at that point." The ideal in terms of avoiding labels is beautifully articulated from the Canadian First Nations experience by Ross (1996, p. 170):

How would you react if a victim kept piling judgmental labels on you, one after the other, calling you "vicious, perverted, deranged, vile, sickening" and so forth? Are they the kinds of conclusions you'd want to accept about your "whole" self? Or are they conclusions you'd want to fight about? Or if you didn't feel like fighting, would you simply stop listening to them, let them wash over you, never really let them penetrate?...On the other hand, what if you were an offender who sat in a circle with others and listened to someone simply relive their own reactions: their sense of violation and vulnerability, their fear of strangers, their inability to sleep, their sudden eruptions into tears and shaking at work, their sense of isolation from family and friends, their feelings of dirtiness, their gnawing suspicion that there was something so wrong with them that they deserved to be hurt and hated. What if you then heard all the relatives and friends of your victim speak in the same way, from their hearts, painting pictures of their own confusions, their powerlessness to help, their fear for the future of their daughter, sister, aunt or mother? Would you be able to shut that out as easily, to just stop listening? It is the experience of Hollow Water that careful heart speaking, with its nonjudgmental disclosure of feelings, no matter how intense, is ultimately irresistible to the vast majority of offenders.

Braithwaite and Mugford (1994) think that the best protection against the vices of moral lecturing and sarcasm is to do a good job of inviting a large number of caring supporters for both the victim and the

offender, a point also discussed by Retzinger and Scheff (1996). If these invitees really do care about the offender, they will counter moral lecturing with tributes to the sense of responsibility and other virtues of the offender. Then, even if the sort of connection with the moral lecturer that would allow productively reparative communication is severed, the bond with the other participant who comes to her defence is strengthened in the same sequence.

C. Restorative Justice is Prone to Capture by the Dominant Group in the Restorative Process

Indigenous justice can empower elders to tyrannize the young of their tribe. Critics have alleged this in a most alarming way in Canada through allegations by women from a reserve that project leaders of a programme of Indigenous justice administered by a panel of elders: "manipulated the justice system to protect family members who had committed violent rapes, had intimidated victims and witnesses into withdrawing charges, had perjured themselves during the trial of the project leader's son (for rape), had slashed tyres of community members who tried to speak out and sent the alleged 'rape gangs' to their homes, and generally had used the project to further their strangle-hold on the community and the justice system." [1]

In New Zealand, I saw one tragic conference where the state funded the travel of an offender to another community because his *whanau* (extended family) wanted to separate him from a liaison with a girlfriend it did not want. In pushing for this the Youth Justice Advocate was not an advocate for the youth, who was heartbroken by this outcome, but was captive of the *whanau* which was the repeat player in the use of his legal services.

Observational work on juvenile justice conferences quite regularly reports lower levels of offender involvement than involvement by their family members. Maxwell and Morris's (1993, p. 110-12) interviews found fully 45% of young offenders, compared to 20% of family members saying they were not involved in making the conference decision. In Canberra and South Australia, Daly (1996) reported 33% of offenders not to be engaged with the process. The Maxwell and Morris (1993) data showed family members of the offender having by far the largest influence on the decision, followed by professionals who were present, the young offender and the victim (not surprising since the victim was absent from a majority of the conferences in this study). Haines (1997) critique of conferences as a "room full of adults" who dominate a child is therefore often correct. All such failures are relative, however: the RISE experiment in Canberra shows that young offenders are considerably more likely to believe that they could express their views when they went to a conference than when they went to court (Sherman and Barnes 1997; Sherman et al. 1998, pp. 121-2). McGarrell, Olivares, Crawford and Kroovand (2000, p. 44) found that 84% of young offenders "felt involved" in their conference compared to 47% of the control group who felt involved in their alternative diversion. 86% of conferenced youth felt that they had been given a chance to express their views compared to 55% of controls. The least negative results on this question are from the Queensland conferencing programme, where Hayes, Prenzler with Wortley (1998, p. 20) report 97% of young offenders as "not pushed into being at the conference" and "NOT pushed into things in the conference" and 99% saying both that "I got to have my say at the conference" and that "People seemed to understand my side of things".

The best remedy to this problem is systematic attention in the restorative justice preparatory process to empowerment of the most vulnerable parties - individual victims and offenders - and systematic disempowerment of the most dominant parties - the police, school authorities, state welfare authorities and sometimes large business corporations. How is this accomplished? The most critical thing is to give the individual offender and the individual victim the one-on-one power in a meeting in advance of the conference to decide who they do and do not want to be there to support them. Unfortunately, the practice is often to empower the parents of young offenders to decide who should be there. They can certainly have a legitimate say; but on the offender side it is only the offender who should make the final decision about who will make her most comfortable, who she most trusts. To the extent that one is concerned here with

[1] This is a quote that I treat as anonymous with respect to person and place. I was able to confirm the same broad story from two other sources.

imbalances of power between children and adults, men and women, major corporations and consumers, dyadic victim-offender mediation cements an imbalance. Imbalances are muddied, though hardly removed, by conferences between two communities of care, both of which contain adults and children, men and women, organized interests and disorganized individuals.

D. Restorative Justice Practices can Trample Rights Because of Impoverished Articulation of Procedural Safeguards

Robust critiques of the limitations of restorative justice processes in terms of protection of rights have been provided by Warner (1994), Stubbs (1995), Bargen (1996) and Van Ness (1998). There can be little doubt that courts provide superior formal guarantees of procedural fairness than conferences.

At the *investigatory stage*, Warner (1994, p. 142) is concerned:

Will police malpractice be less visible in a system which uses FGCs [family group conferences]? One of the ways in which police investigatory powers are scrutinised is by oversight by the courts. If the police act unlawfully or unfairly in the investigation of a case, the judge or magistrate hearing the case may refuse to admit the evidence so obtained or may criticise the police officer concerned. Allegations of failure to require parental attendance during questioning, of refusal to grant access to a lawyer, of unauthorized searches and excessive force could become hidden in cases dealt with by FGCs.

These are good arguments for courts over restorative justice processes in cases where guilt is in dispute. But the main game is how to process that overwhelming majority of cases where there is an open and shut admission of guilt. Here no such advantage of court over conference applies, quite the reverse. As Warner herself points out, a guilty plea "immediately suspends the interests of the court in the treatment of the defendant prior to the court appearance" (Hogg and Brown 1985). In the production line for guilty pleas in the lower courts there is not time for any of that. In restorative justice conferences there is. Mothers in particular do sometimes speak up with critical voices about the way their child has been singled out, has been subject to excessive police force, and the like. Police accountability to the community is enhanced by the conference process. And such deterrence of abuse of police power that comes from the court does not disappear since the police know that if relations break down in the conference, the case may go to court as well.

Police therefore have reason to be more rather than less procedurally just with cases on the conference track than with cases on the court track. The preliminary RISE data from Canberra suggest they are. In about 90% of cases randomly assigned to a conference, offenders thought the police had been fair to them ("leading up to the conference" and "during"); but they only thought this in 48-78% (depending on the comparison) of the cases randomly assigned to court (Sherman et al. 1998). Offenders were also more likely to say they trusted the police after going through a conference with them than after going through a court case with them.

At the *adjudicatory stage*, Warner (1994) is concerned that restorative justice will be used as an inducement to admit guilt. In this restorative justice is in no different a position than any disposition short of the prospect of execution or life imprisonment. Proffering it can induce admissions. Systemically though, one would have thought that a shift from a punitive to a restorative justice system would weaken the allure of such inducements. In the preliminary data from the four RISE experiments in Canberra, there is a slight tendency for court offenders to be more likely than conference offenders to agree that "The police made you confess to something which you did not do in this case". But in the preliminary results this difference was only statistically significant in the Juvenile Personal Property experiment (Sherman et al. 1998, pp. 123-4).

Warner (1994) is right, however, to point out that guilt is not always black and white. Defendants might not understand self-defence, intoxication and other defences that might be available to them. Even so, it remains the case that such matters are more likely to be actually discussed in a conference lasting about 80 minutes (Canberra data) than in a court case averaging about 10 minutes (Canberra data). This may be a simple reason why Canberra offenders who go through a conference are more likely to believe that the proceedings "respected your rights" than offenders who went through court (Sherman and Barnes 1997; Sherman et al. 1998).

At the *dispositional or sentencing stage*, Warner (1994) makes some good points about the care needed to ensure that sentences reflect only offences the evidence in this case has shown to have been committed and

only damage the evidence shows to have been done. We have had conferences in Canberra where victims have made exaggerated claims of the damage they have suffered, in one case many thousands of dollars in excess of what more thorough subsequent investigation proved to be the truth. Warner (1994) and Van Ness (1998) are both concerned about double jeopardy when consensus cannot be reached at a conference and the matter therefore goes to court, though Warner (1994) concedes it is not "true double jeopardy". Indeed it is not. The justice model analogue would seem to be to retrial after a hung jury or appeal of a sentence decision (which no one would call double jeopardy) rather than retrial after acquittal. Moreover, it is critical that defendants have a right to appeal in court an unconscionable conference agreement they have signed, to have lawyers with them at all stages of restorative justice processes if that is their wish and that they be proactively advised of these rights.

Most restorative justice programmes around the world do not legally guarantee the American Bar Association's (1994) guideline that "statements made by victims and offenders and documents and other materials produced during the mediation/dialogueue process[should be] inadmissible in criminal or civil court proceedings". This is a problem that can and should be remedied by appropriate law reform.

Van Ness (1998) has systematically reviewed the performance of restorative justice programmes for juveniles against the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Restorative justice programmes are certainly found wanting in the review though he concludes that they often tend to outperform traditional court processes on rules such as the right to a speedy trial. For example, the New South Wales Young Offenders Act 1997 has the following requirement: "43. Time Limit Holding Conferences: A conference must, if practical, be held not later than 21 days after the referral for the conference is received." While Van Ness's work certainly affirms our hypothesis that restorative justice processes can trample on rights, whether rights will be better or worse protected after the introduction of a restorative justice programme is a contextual matter. For example, when in South Africa prior to the Mandela Presidency thirty thousand juveniles a year were being sentenced by courts to flogging, who could doubt that the institutionalization of restorative justice conferences might increase respect for childrens' rights, as Sonnekus and Frank (1997, p. 7) argue:

[Under Apartheid] the most common sentence given was corporal punishment and children often preferred a whipping instead of residential care in a reformatory or school of industry. The time children spent in prison while awaiting trial and placement was not applied towards their sentence, thus a child may have served double and even triple sentences.

Nevertheless, rights can be trampled because of the inferior articulation of procedural safeguards in restorative justice processes compared to courts. The conclusion will seek to grapple with how justice might be enhanced in the face of this critique by a creative interplay between restorative fora and traditional western courts.

CONCLUSION

We have seen that there are theoretical grounds for believing that restorative justice can be effective, but also grounds for worry that restorative justice can trample the rights of offenders and victims, can dominate them, lack procedural protections and can give police, families or welfare professionals too much unaccountable power. Braithwaite and Parker (1999) suggest three civic republican remedies to these problems:

(1) Contestability under the rule of law; a legal formalism that enables informalism while checking the excesses of informalism;

(2) De-individualising restorative justice, muddying imbalances of individual power by preferring community conferences over individual-on-individual mediation;

(3) Vibrant social movement politics that percolates into the deliberation of conferences, defends minorities against tyrannies of the majority, and connects private concerns to campaigns for public transformation.

Lawyers who work for advocacy groups - for Indigenous peoples, children, women, victims of nursing home abuse - have a special role in the integration of these three strategies. Lawyers are a strategic set of eyes and ears for advocacy groups that use specific legal cases to sound alarms about wider patterns of domination. When appropriate public funding is available for legal advocacy, advocates can monitor lists of conference outcomes and use other means to find cases where they should tap offenders or victims on the shoulder to advise them to appeal the conference agreement because they could get a better outcome in the courts. They thus become a key conduit between rule of law and rule of community deliberation. It is a mistake to see their role as simply one of helping principles of natural justice and respect of rights to filter down into restorative justice. It is also to assist movement in the other direction - to help citizens to percolate up into the justice system their concerns about what should be restored and how. A rich deliberative democracy is one where the rule of law shapes the rule of the people and the concerns of the people reshape the rule of law. Top-down legalism unreconstructed by restorative justice from below is a formula for a justice captured by the professional interests of the legal profession (the tyranny of lawyers). Bottom-up community justice unconstrained by judicial oversight is a formula for the tyranny of the majority. When law and community check and balance each other, according to Braithwaite and Parker (1999), prospects are best for a rich and plural democracy that maximizes freedom as non-domination.

Communitarianism without rights is dangerous. Rights without community are vacuous. Rights will only have meaning as claims the rich can occasionally assert in courts of law unless community disapproval can be mobilized against those who trample the rights of others. Restorative justice can enliven rights as active cultural accomplishments when rights talk cascades down from the law into community justice.

None of the problems I have discussed in this paper have been satisfactorily solved. Decades of R & D on restorative justice processes will be needed to explore all these worries properly. For the moment, we can certainly say that the research does demonstrate both the promise and the perils of restorative justice. It is, however, an immature literature, short on theoretical sophistication, on rigorous or nuanced empirical research, far too dominated by self-serving comparisons of “our kind” of restorative justice programme with “your kind” without collecting data (or even having observed “your kind” in action!). That disappoints when the panorama of restorative justice programmes around the globe is now so dazzling, when we have so much to learn from one another’s contextual mistakes and triumphs.

VICTIM PROTECTION IN CRIMINAL PROCEEDINGS THE VICTIM'S RIGHTS TO INFORMATION, PARTICIPATION AND PROTECTION IN CRIMINAL PROCEEDINGS

*Sylvia Frey**

I. INTRODUCTION

"In criminal proceedings it's all just about the offender!" Statements like this - and similar remarks – have been made by the victims of criminal offences over and over again.

Of course criminal proceedings are necessarily oriented towards offenders. Whether a criminal offence has been committed and whether the perpetrator is guilty has to be established in accordance with Rule of Law criteria and provisions. These are core Rule of Law requirements that nobody wants to weaken. However, they are just one aspect of the matter.

It is particularly the case that a social state based on the Rule of Law cannot just confine itself to calling the offender to account – however important that may be. A social state based on the Rule of Law also has the duty of showing concern for the victims of a criminal offence. The victims are not only burdened with the offence; they also face the burden of a criminal trial. Here the victim is once again confronted with the offence. If the victim has to give testimony against the offender in court, he or she will have to face the offender th*ere again. The anxiety and feelings experienced here particularly by the victims of sexual offences or of serious offences involving violence cause great stress. Repressed feelings come to the surface again through being confronted by the offender.

Giving greater weight in criminal proceedings to the victim's interests and developing their rights has, for a long time now, been the focus of various legislative projects in relation to the German Criminal Procedure Code. This has not, however, always been the case. For a long time it was actually the offender, his rights and his protection that took up the foreground. It has only been since the 1980s with the scientific advancement of victimology – the academic discipline concerned with the victims of crime – that a lively discussion was set in motion regarding victim protection in criminal proceedings. A first important milestone in the course of this discussion was the passage of victim protection legislation in 1986. The discussion that had started continued, and further important legislative projects followed with regard to victim protection.

Today, in the German Criminal Procedure Code, we have a comprehensive set of provisions guaranteeing the rights and the protection of victims in criminal proceedings. Nevertheless, there is a lot that still has to be done. At the moment, a reform of the German Criminal Procedure Code is under way in Germany, and here once again one of the main areas of attention is victim protection.

I would like to outline the measures in German criminal procedure law that relate to the protection of victims and witnesses. I have divided my paper into two parts.

In the first part I will be describing the victim's legal position. I shall be going into the information and procedural rights of victims during criminal proceedings. Do victims get information on the outcome of the investigation proceedings? Are they informed about the stage proceedings have reached and about the further course of proceedings? Do victims hear anything about the outcome of the court proceedings? Are victims

*Executive Assistant,
Section on Criminal Procedure (Court Proceedings),
Federal Ministry of Justice,
Germany

allowed to inspect the files? Are victims informed about the offender's custody or release from custody? Are they allowed to be present during the court hearing? Are victims allowed to participate in the proceedings in certain cases?

I would like to answer these questions for you and show what the improvements are that we are aiming at in the framework of our reform of criminal proceedings, especially as regards rights to information.

In the second part I am going to look at the victim's situation as a witness in the proceedings. Are any persons who may be rendering assistance allowed to be present during the examination of the victim? Are victims required to give their personal particulars at the examination? Can a victim be examined by video link? Does the victim have to give testimony in the defendant's presence or in front of the general public? Does the victim have to wait for his or her examination in the corridor outside the courtroom, where he may be exposed to meeting the defendant? You will be hearing the answers to these questions in the second part of my paper.

II. PART 1: INFORMATION AND PARTICIPATION RIGHTS OF THE VICTIM IN CRIMINAL PROCEEDINGS

A. Information Rights

Victims of criminal offences who have laid a criminal information and who want the offender to be called to account obviously want to hear what has happened to their criminal information. In the German Criminal Procedure Code their rights to information are dealt with in various places.

1. Information During the Investigation Proceedings

It is provided by statute that the victim of a criminal offence who has also laid a criminal information will automatically be notified by the public prosecution office when the investigation proceedings are terminated (section 171 German Criminal Procedure Code, Number 89 of the Guidelines for Criminal Proceedings and for Regulatory Fining Proceedings). These Guidelines apply uniformly throughout the Federation. They take the form of directives for action on the part of public prosecutors in normal cases.

2. Information During the Court Proceedings (Intermediate and Main Proceedings)

In regard to the question of what information the victim receives during court proceedings one has to bear in mind that the proceedings are not party proceedings. The victim is not a plaintiff or a party to the proceedings. As a rule, victims are witnesses in the proceedings. If, however, they are not needed in the criminal proceedings as witnesses, the main proceedings not infrequently take place without the participation of the victim of the offence. This may, for instance, be the case where the offender has made a confession.

Notification of the date set down for the main (court) hearing

For the reason just stated victims are not automatically notified about when the court hearing against the defendant will be taking place. If a victim has not been summoned as a witness, there is basically no obligation to inform him of the date set down for the court hearing. Here the victim is merely able to make a request for relevant information from the court or the public prosecution office. In practice, the court or the public prosecution office will certainly give the victim the information he seeks. But there is no statutory obligation for them to do so.

Information on the stage reached in the proceedings

There is also no express obligation for the court or the public prosecution office to provide the victim with information on the stage proceedings have reached or on the course of proceedings. However, the victim is free to address the relevant question to the court or to the public prosecution office at any time. The court or the public prosecution office will decide – exercising their duty-bound discretion – on the extent to which information will be given.

Information on the outcome of the court proceedings

The victim will not automatically be informed of the outcome of the court proceedings. If the victim wants to know anything about the outcome, he will have to make the relevant application to the court. In that case the court will, however, be obliged to give the victim the information (section 406d German Criminal Procedure Code).

3. Inspection of Files and Information and Copies from the Files

In principle, the victim is not able to inspect the files himself. The provisions of German Criminal Procedure Code are designed in such a way as to make inspection always take place via a *Rechtsanwalt* – in other words, via a lawyer practising as an attorney.

The reason for these provisions is mainly due to aspects arising under the law of data protection. In a case file one finds a large amount of information concerning not only the victim but also the offender and other people. It is expected of a *Rechtsanwalt*, i.e. a practising attorney, that he or she will deal with caution and in a conscientious manner with the information in the files – by virtue of his being bound by professional ethics. Victims may, however, be given information or copies from the files (section 406e paragraph 5 German Criminal Procedure Code). They will, however, have to address the relevant application to the public prosecution office or the court. The public prosecution office or the court will then decide on this application in the exercise of their duty-bound discretion. A refusal to give information or copies can be contested in court (section 406e paragraph 4 and 5 German Criminal Procedure Code).

Let me give you an example here:

An accident victim wants to have a copy of the sketch made of the accident so as to be able to submit it to the insurance company. The public prosecution office, however, refuses to hand over a copy of the sketch. The victim can now turn to the court and obtain a review of this refusal.

4. Information about Release from Custody

Particularly for the victims of sexual offences and of offences involving violence it is important for their ow2n sense of personal wellbeing that they should know whether the offender is at liberty or not. According to law as it presently stands, the victim of a criminal offence can only request the penal institution – in the form of a written application – to state whether the offender is in custody and when his release can foreseeably be reckoned with. This is dealt with in section 180 paragraph 5 of the Prison Act.

The prison authority is, however, not obliged to provide information. In making its decision, it must weigh up the legitimate interest of the victim in obtaining this information against such interests of the prison inmate as are worthy of protection.

The victim can also ask the public prosecution office or the court. They are not obliged to give information. They will decide in the exercise of their duty-bound discretion.

5. Reform of the German Criminal Procedure Code

As we see, the rights of the victim of a criminal offence to notification and information have been dealt with only in respect of certain points. But practice shows that the need for information felt by victims of criminal offences is much more substantial. For this reason, the wish for further development of information rights has repeatedly been expressed.

At present, a bill is being drafted to reform the German Criminal Procedure Code. One of the focal points of this envisaged legislation is victim protection. Particular attention is being devoted both to eliminating the deficit with regard to information rights and to taking greater account of the interests of victims. Criminal proceedings are also about victims. They are the ones who suffer. Violation by the offender of their legal positions is what forms the subject-matter of the proceedings. The victims' desire not to be excluded from these proceedings because of lack of information is certainly understandable. That the victims of offences involving violence and of sexual offences want to know whether or not they face the possibility of bumping into the offender in the street is equally understandable.

On this ground it is envisaged that in future victims will be able to obtain the following information upon application:

- Information on the course of proceedings and on the stage they have reached.
- Information about the decision on whether to open the main proceedings.
- Notification of the date set down for the main (court) hearing.

- Information on custody, committal or release, or on relaxation of the conditions under which the offender concerned is being held in prison.

B. Proceedings to Compel Public Charges

Ladies and Gentlemen – as I said just now, the victims of a criminal offence receive notification from the public prosecution office when the proceedings have provisionally been terminated. But what can a victim do if he or she is not satisfied with such termination? Is there any chance of the victim being able to take action against this termination?

The answer to this question will depend on what the reasons are for the public prosecution office's terminating the proceedings.

1. Termination for Lack of Suspicion of Commission of a Criminal Offence (Section 170 German Criminal Procedure Code)

If the public prosecution office terminates the proceedings because – in the light of the investigations pursued - there is not sufficient suspicion that the accused committed the criminal offence, the victim can take action against such termination (section 172 German Criminal Procedure Code).

The victim must start by filing a complaint with the public prosecution office. The public prosecution office will then have the opportunity of reviewing the termination once again. If the public prosecution office sticks to the termination, the case will be reviewed by the regional public prosecution office. If the regional public prosecution office also refuses to prefer public charges, the victim can then bring an action before the Higher Regional Court for a judicial review.

2. Termination on Other Grounds

In all other cases of termination by the public prosecution office, for example, termination on the ground of negligibility pursuant to section 153 or to section 153 a CCP, there is no provision for a proceeding to compel public charges (section 172 paragraph 2 German Criminal Procedure Code).

This is connected with the intention behind the proceeding to compel public charges. The latter chiefly serves the purpose of securing the principle of mandatory prosecution. The public prosecution office is obliged to prosecute criminal offences and, provided the prerequisites are fulfilled, to prefer public charges. To secure this obligation, provision was made for the possibility of pursuing a proceeding to compel preferment of public charges.

When the public prosecution office terminates proceedings, for example on the ground of negligibility, it regularly proceeds on the basis of the accused's guilt. On the basis of an evaluation of the facts it dispenses, however, with further prosecution of the matter on discretionary grounds.

Example:

A was accused of giving the victim B a slap on the face. The background to this was a dispute between neighbours. A had been until then a respectable person. The public prosecution office terminates the proceedings on condition of payment by A of a sum of money to an association for victim protection.

If in such a case the victim thinks that meeting the condition of payment of a sum of money is too lenient, it is true that he cannot get a court review – as in the case of a proceeding to compel preferment of public charges –but he can indeed file an ordinary complaint with the public prosecution office. If he does so, the public prosecutor will review his own decision. If the latter adheres to his original decision, the regional public prosecution office will review this decision once again. If the regional public prosecution office also does not remedy the complaint, then the proceedings are over. No further court review will take place.

C. Rights of Presence During the Main (Court) Hearing

The question as to what extent a victim is allowed be present during the entire main hearing depends on whether the victim is needed as a witness or not.

If the main hearing is held in public and the victim has not been summoned as a witness, the victim will – like everybody else – have the right to be present during the entire main hearing.

If the victim is needed as a witness in the case, the general provisions shall apply as for all witnesses. This means that the victim is not allowed to follow the proceedings in the courtroom until he or she is examined. Only after his examination will he be allowed to remain in the courtroom if the hearing is being held in public. What lies behind this provision is the fact that a witness should give his testimony uninfluenced by the course the proceedings have taken until he is called as a witness. The sole fact of a victim's status as such does not confer on the victim the right to continuous presence during the hearing.

D. Private Accessory Prosecution

With regard to a number of offences Parliament has, however, strengthened the legal position of victims. In a private accessory prosecution (sections 395 to 402 German Criminal Procedure Code) a so-called private accessory prosecutor – being a private individual enjoying his own procedural rights – joins the proceedings commenced by the public prosecution office. Private accessory prosecution allows persons who are particularly aggrieved by a criminal offence to participate in the proceedings – for their own satisfaction and also for the purpose of safeguarding their own rights. To make this quite clear, I would like to stress once again that a private accessory prosecutor has an autonomous right of participation, independently of the public prosecution office. Hence he is not a co-prosecutor assigned to the public prosecutor. The private accessory prosecutor can exercise his rights completely independently. But the prior requirement is always that public charges must have been preferred by the public prosecution office since the private accessory prosecutor cannot prefer such charges independently.

1. Who can Join the Proceedings as a Private Accessory Prosecutor?

The question whether a person can be a private accessory prosecutor or not is determined, as a rule, by the criminal offence committed. In particular, it is the victims of a criminal offence

against sexual self-determination (for example, rape, sexual abuse, trafficking in human beings for the purpose of prostitution),

against personal honour (for example insult, defamation),

against physical integrity (for example bodily harm),

against personal freedom (for example hostage-taking or serious cases of deprivation of liberty),

or of an attempted murder or manslaughter

that are entitled to bring a private accessory prosecution.

In cases of completed murder or manslaughter close relatives also have the right to join the proceedings as private accessory prosecutors.

A private accessory prosecution can be conducted by the person entitled to join the proceedings in this function, although he also has the right to be represented by an attorney.

2. What Rights does a Private Accessory Prosecutor have?

As already stated, the private accessory prosecutor is equipped with special rights as a participant in the proceedings:

Right of presence (section 397 paragraph 1, first sentence, German Criminal Procedure Code)

Unlike the other witnesses, the private accessory prosecutor has the right to be present during the entire court hearing – from the beginning to the end. For this reason, private accessory prosecutors are also summoned automatically to attend on the dates set down for the main hearing.

Right to make applications

The private accessory prosecutor is able to make his own applications for evidence to be taken at the main hearing. He also has the right to make general applications, for instance an application for exclusion of the

general public and/or for removal of the defendant during the examination of the private accessory prosecutor himself.

Right to pose questions

The private accessory prosecutor can address his own questions during the main hearing to the defendant, the witnesses and the experts. When he is being examined himself, he is able to get the court to reject questions posed by the public prosecution office and by the defence.

The private accessory prosecutor also has the right to challenge a judge or an expert, or to object to orders made by the presiding judge.

Right to submit declarations and to make his own a closing speech.

One of the core rights of the private accessory prosecutor is the possibility of making declarations during the hearing and of making his own closing speech at the end of the main hearing. In this closing speech the victim is able to present his own view of the case and to make submissions on the points that are important for him.

The private accessory prosecutor also gets a copy of the judgment and of the reasons given therefor.

Private accessory prosecutor's right to seek appellate remedies:

If the private accessory prosecutor does not agree with a judgment he can file an appellate remedy. The private accessory prosecutor's right is, however, limited in comparison with that of the convicted person and of the public prosecution office. Hence the filing of an appellate remedy is not possible with the objective of getting a different legal consequence or a conviction for a criminal offence that does not entitle the person concerned to join the proceedings a private accessory prosecutor (section 400 German Criminal Procedure Code). What does this mean in precise terms? Ladies and Gentlemen, I would now like to give you a few examples to illustrate this point:

Example 1:
The defendant A seriously injured the victim B by stabbing him with a knife and was convicted of causing serious bodily harm and sentenced to a term of 2 years' imprisonment, suspended on probation. B joined the proceedings as a private accessory prosecutor and he does not agree with the level of the sentence imposed. His aim is to have another legal consequence imposed, in other words a higher sentence. He is barred from achieving this objective because of his limited right of application under section 400 German Criminal Procedure Code. Here he will have no chance of taking action against the judgment.

Example 2:
The defendant A is accused of having seriously injured the victim B by stabbing him with a knife. The defendant A denies the charge contained in the relevant count in the indictment, and, since the court was not convinced of his guilt, it acquitted the defendant A. The victim B, who joined the criminal proceedings as a private accessory prosecutor, continues, however, to be convinced that A was the offender. In this case B can file an appellate remedy.

Example 3:
The defendant A is accused of having seriously injured the victim B by stabbing him with a knife. The court convicts the defendant A of causing serious bodily harm and sentences him to a term of 3 years' imprisonment. The victim B, who joined the criminal proceedings as a private accessory prosecutor, is, however, convinced that A not only wanted to injure him but rather wanted to kill him out of greed, so that this is a case of attempted murder. Here the victim B is not opposed to the legal consequence but to the verdict of guilty of causing serious bodily harm. For this reason, he will have the right to contest the conviction.

Example 4:
The defendant A is accused of having seriously injured the victim B on 12 January 2002 by stabbing him with a knife and then, at a later stage on 20 January 2002, of having entered the victim's apartment and of

having stolen valuable items there. The defendant A is convicted of causing serious bodily harm but is, however, acquitted of the theft because it could not be proved that he had committed the offence. The victim B, who joined the proceedings as a private accessory prosecutor, is convinced that A also committed the theft and he wants to file an appellate remedy in this respect. It will not, however, be possible for him to do this. Theft is not an offence that entitles a person to join the proceedings as a private accessory prosecutor. Here, too, section 400 German Criminal Procedure Code limits the right to file an appellate remedy.

3. Does a Private Accessory Prosecutor get an Attorney?

Private accessory prosecutors are given an important position under procedural law. Important procedural rights are conferred on them. Only very rarely, however, are private accessory prosecutors trained lawyers, and for that reason they want to avail themselves of the services of an attorney. This desire is entirely understandable. But having an attorney costs money. On the other hand, victims who do not have sufficient financial means must also have the chance to get legal representation by an attorney. German criminal procedure law makes the following provision for private accessory prosecution:

- Legal aid (section 397a paragraph 2 German Criminal Procedure Code)

Victims who are entitled to bring a private accessory prosecution can make an application to be granted legal aid. Legal aid will be granted if:

- the factual and legal situation is complex,
- the victim cannot sufficiently safeguard his or her own interests, or if this cannot reasonably be expected of him, and
- the victim cannot, in the light of his personal and financial circumstances, pay the costs, or can only do so in part, or only in instalments.

Legal aid means that the state pays an advance in respect of the costs for the attorney and for the proceedings. But if the victim cannot – because of his financial situation – pay the attorney, he will not have to pay back the costs arising by virtue of his representation by the attorney as long as there is no change in his circumstances. If the defendant is convicted during the criminal proceeding, the court will then demand payment of these costs from the convicted person.

- Attorney for the victim at state expense (section 397a paragraph 1 German Criminal Procedure Code)

Under certain conditions, the victim can, upon application being made, be assigned an attorney at state expense. Assignment of an attorney for the victim is independent of the victim's income, and the costs never have to be repaid by the victim. Only in cases of grave criminal offences will it be possible to assign an attorney for the victim. This will, for instance, be the case where sexual offences have been committed or where there has been an attempt to commit a homicide offence.

In this connection, it has repeatedly been stressed that also the close relatives of a victim killed through a criminal offence are particularly worthy of protection, and that it is justified here, too, for an attorney to be assigned to the victim. In the course of the reform of the German Criminal Procedure Code, it is precisely this problem that is to be addressed and the victim's surviving relatives are in future to be assigned an attorney.

Legal aid is granted, or an attorney for the victim is assigned not only to private accessory prosecutors who actually join the proceedings. Even before joinder as a private accessory prosecutor, it may be important, already during the investigation, for persons entitled to join the criminal proceedings to take advice from an attorney and then to decide whether they actually also want to join the proceedings. For this reason, on the conditions stated, those entitled to join the proceedings will also get legal aid or an attorney for the victim at state expense irrespective of whether they join the proceedings or not.

III. PART 2: THE VICTIM'S POSITION AS A WITNESS

The victims of a criminal offence are already under great mental stress because of what happened. During the criminal proceedings they are usually, however, urgently needed as witnesses and, in many cases, they have to go over what they experienced again and again. Even if this is a difficult time for the victim, a state based on the Rule of Law cannot, and must not, dispense with the testimony of witnesses. In a large number of cases it is the testimony of victims that is one of the most important sources of evidence for procuring the offender's conviction.

On the other hand, it is important that victim stress and anxiety be taken seriously in the context of criminal proceedings and for an effort to be made to keep the stress experienced down to a level that is as low as possible.

A victim witness cannot avoid fulfilling his duty to testify. If he is not entitled to refuse to testify he will have to describe what happened to the public prosecution office and to the court again.

In recent years in Germany, and particularly following the Victim Protection Act of 1998, new provisions have been created to protect victims, taking account of the victim's concerns especially in this difficult situation.

A. Persons Rendering Assistance

It is often the case that victims will feel the need to take a person whom they trust to their examination. This gives them greater confidence and makes them feel less left on their own. Assistance from a person whom the victim trusts can reduce the victim's nervousness and anxiety during his or her examination.

In section 406f paragraph 3 German Criminal Procedure Code it is therefore provided that the victim of a criminal offence may, if so desired, take a person whom he trusts to his or her examination. This applies to all examinations, irrespective of whether they are conducted by the police, the public prosecution office or the court.

The decision on whether to permit the person the victim trusts to be present at the examination is made by the person conducting the examination. The presence of the person the victim trusts may be excluded if it is feared that the purpose of the investigation will be jeopardised as a result thereof. The decision is not contestable. It was decided to dispense with giving the victim an unlimited entitlement to the presence of the person he trusts. Cases may indeed occur where the presence of such a person can have a detrimental effect on the examination. Such cases may, for instance, arise where a child or a juvenile has been abused by a parent and the former brings this parent to the examination. In such a case it must be possible for the parent concerned to be refused permission to be present at the examination.

The victim may also bring an attorney to examinations conducted by the public prosecution office or the court. The attorney may not only be an emotional support for the victim. He can also exercise certain interests on the victim's behalf. So, for instance, he has the right to object to questions. In addition to this, he can make an application during the court hearing for the general public to be excluded.

Under certain circumstances a attorney can, pursuant to section 68b German Criminal Procedure Code, be assigned at state expense to assist the witness for the duration of his examination by the public prosecution office or the court. Such assignment is geared to protect the witness during his examination and is therefore also limited to this examination. It presupposes that the witness is unable to exercise his rights himself and that interests of his that are worthy of protection cannot be taken into account in another way.

When can cases like this occur?

To illustrate this, I would like to give you an example:

A young woman is repeatedly beaten and abused by her husband. She is frightened because of what happened and under great mental stress. It is feared that she will not be able to exercise her rights, for instance, her right to refuse to testify or her right to object to questions, or it is feared that because of her mental situation she will not, for example, be able to give expression to her wish that the general public be

excluded during the court hearing. Here it may be sensible to assign an attorney to the young woman only in respect of the examination she has to undergo; the attorney can then support and advise her regarding her rights.

B. Personal Data on Examination

Many victims are afraid of giving their personal data at their examination. Especially victims of serious offences involving violence often fear that the offender might find out their address and take revenge.

In principle, at the examination the victim is, however, obliged as a witness to state his first name and family name, age, occupation and place of residence (section 68 paragraph 1 German Criminal Procedure Code). The provision has the object of avoiding cases of mistaken identity, and it is also designed to create a reliable basis for evaluating credibility and enabling the participants to collect information.

There are, however, exceptions to this principle (section 68 paragraph 2 and 3 German Criminal Procedure Code). Where there is reason to fear that the victim or, for example, a relative of the victim might be endangered by the victim stating his or her place of residence, the latter can be kept secret. The legislation makes provision for the option of stating an address where the victim can reliably be reached that is different from the victim's home address. This can, for instance, be a victim's office address or the address of the attorney`s office.

In extremely exceptional cases where the witness's life or, for example, the life of his relatives is endangered by disclosure of the witness's personal data, he may also be permitted not to give personal particulars.

C. Use of Video Technology

With the Victim Protection Act of 1998 the use of video technology was regulated for the first time in criminal proceedings. Both the recording of a witness examination on an audio-visual medium and the option of examining a witness by video link were made possible. The object of this legislation was to spare the witness repeated examination or being confronted by the offender.

1. Recording the Examination on an Audio-Visual Medium

Section 58a German Criminal Procedure Code regulates the recording of witness examinations on an audio-visual medium and their use in criminal proceedings. On principle, any examination of a witness can be recorded at any stage of the proceedings. It is the person conducting the examination who decides on this in the exercise of his duty-bound discretion.

The examination shall, on principle, be recorded where

- a victim witness is under 16 years of age,

- or there is a fear that the witness cannot be examined during the main hearing and the recording is required in order to establish the truth.

Only under certain conditions can such recording, however, be shown at the main court hearing instead of direct examination of the witness concerned (section 255a German Criminal Procedure Code).

In Germany one of the most important procedural principles is the principle that both the hearing itself and the taking of evidence must take place before the adjudicating court, and that the proceedings have to be conducted orally. This means that in principle witnesses have to be examined personally before the court. Only in exceptional cases can the examination of a witness be dispensed with and the written record of an earlier examination be read out or the audio-visual recording made of such examination be shown. This will, for instance, be the case where the witness has died in the meantime or is ill for a long or indefinite period of time. Also, when all participants (public prosecutor, defence counsel and defendant) agree, such reading out or showing is permitted.

In relation to victims who are in need of special protection it is possible for the video recording to be shown at the main hearing under less strict conditions. In cases of sexual criminal offences or of homicide

attempts on victims under 16 years of age the video recording made of their judicial examination can also be shown if the defendant and defence counsel had the chance of taking part at this examination.

2. Examination by Video Link

Furthermore, ever since the Witness Protection Act it has been possible to conduct a so-called examination by video link:

In the investigation proceedings the judge can, pursuant to section 168e German Criminal Procedure Code, conduct the examination of a witness separately from the other participants in the proceedings if there is an imminent risk to the well-being of the witness, which cannot be averted in some other way. There is supposed to be simultaneous audio-visual transmission of the examination to the other participants. The judge remains in contact by telephone or radio so that the defence in particular can intervene in the examination by interposing questions.

As regards the main proceedings, it is section 247a German Criminal Procedure Code that regulates the possibility of examination by video link. In the cases covered here the witness remains in another place during the examination. The court, including the presiding judge and the other participants in the proceedings, remain in the courtroom. They are connected to the witness through a video link. The witness's testimony is transmitted simultaneously to the courtroom. Conducting an examination by video link is, inter alia, permissible where there is an imminent risk – that cannot be averted in some other way - of serious detriment to the well-being of the witness in the event of his being examined in front of those present at the main hearing.

That there should be two different models for the investigation proceedings and for the main hearing was a matter of deliberate choice. This is due to the different stages a case goes through. In relation to the main hearing, having a "split" in the main hearing was dispensed with. Here the court will remain together with the other participants in the proceedings in the courtroom, and the witness is either alone or together with a person rendering assistance in another room. Any other provision would have raised complex questions under criminal procedure law. The principle applying to the main hearing, requiring the uninterrupted presence in one place of those persons who are charged with reaching judgment in the case concerned.

The question whether the judge is to remain with the other participants in the proceedings or in the room where the witness is was indeed the subject of heavy controversy during the discussions on the Witness Protection Act in Germany. Both alternatives certainly have their merits. In the end, however, Germany also followed Great Britain. There the model where the presiding judge does not leave the courtroom and examines the witness by means of an audio-visual transmission has proved its worth over quite a long period of time.

Ladies and Gentlemen, you will certainly be wondering how far video technology has now been implemented in the German courts. I would be happy to be able to give you detailed information but unfortunately this is not possible. At present, there is no statistical material available to me on how often and how successfully video technology has been used in criminal proceedings. One should not forget that the legislation has only been in place for a few years and that courts and public prosecution offices first needed a start-up phase in order to get the necessary technical equipment for their agencies. There has often been criticism to the effect that the application of video technology is still minimal. This criticism is definitely connected with difficulties in adjustment in this area and also with the fact that judges also have to get used to this new technology.

One should not, however, underestimate the effect that a recorded examination of a victim can have on the offender. I believe that particularly with regard to serious offences involving violence and sexual offences, showing the victim's testimony as a witness can have a positive effect on the offender. In this way the offender is already confronted with the victim. This will not be the case with written testimony. Such confrontation may already induce the offender to make a full confession at an early stage and spare the victim further appearance before the court. This has also been confirmed by those involved in the practical application of the law.

D. Exclusion of the General Public

During the main hearing in court it is possible for the general public to be excluded (sections 171b and 172 of the Courts Constitution Act). Seeing that the presence of the general public in the courtroom is an important procedural principle, their exclusion can be effected only in closely defined exceptional cases. The statutory provision made for these exceptions is conclusive. This may apply when particularly burdensome details of the victim's personal life have to be brought up or where a victim's health, sexual sphere or intimate details of his or her family life are concerned. Exclusion is also possible when there is a threat to a witness's life, limb or personal liberty. It is the court that makes the decision on whether to exclude the general public.

E. Testimony in the Defendant's Absence

The defendant has a right to a fair trial, guaranteed under the Rule of Law. This also means that he will be present in the courtroom during the entire main hearing and that he will be able to follow the proceedings. However, where there is the risk of a particularly grave threat to, or strain on, a witness, it will be possible to conduct his examination – by way of exception – in the defendant's absence (section 247 German Criminal Procedure Code). Here it will not be sufficient just for the witness not to want to be confronted by the defendant. The court is required to strike a fair balance between the witness's interests and the defendant's rights. In doing so, the court must always bear in mind that the defendant's right to be present is one of his most important procedural rights. But a witness's interests will take precedence in any case where there is the imminent risk of substantial detriment to his health, for instance because of too much emotional strain. Where the witness is under 16 years of age, it will suffice if there is the risk of considerable detriment to his or her well-being.

F. Separate Waiting Rooms in Court

Victim protection associations have said over and over again that the victim of a grave criminal offence cannot reasonably be expected to face the offender. There were often situations where the victim had to wait for his examination as a witness in the corridor outside the courtroom, when the offender suddenly appeared. This may lead to the situation where victims who are to appear as witnesses will become anxious even before their examination has begun, where they feel uneasy and are worried about having to testify as witnesses. For this reason, a large number of courts have already arranged to have special waiting rooms, for instance Leipzig Regional Court has a nice room specially for children who have been the victims of an offence involving violence. There are toys and books for children there so as to enable small children to relax before their examination and to help them overcome their fear.

Provision is already made pursuant to No. 135 of the Guidelines for Criminal Proceedings and Regulatory Fining Proceedings to the effect that such special waiting rooms should be used. But it is not only the use, it is also the creation of such rooms which is important. For this reason, as part of the reform of the Code of Criminal Procedure, there will be a statutory stipulation for provision of such rooms.

IV. CONCLUDING REMARKS

I have now reached the end of my paper, and I hope I have been able to give you a broad view of the situation of victims under German criminal procedure law. As you will have seen, German criminal procedural law is still not perfect but we are also constantly working on further improvements in the victim's situation.

VICTIM PROTECTION IN CRIMINAL PROCEEDINGS REPARATION FOR DAMAGES

*Sylvia Frey**

I. INTRODUCTION

In my first paper I described the victim's legal position in German criminal proceedings, explaining how victims of crime are involved in criminal proceedings by being given information and a participatory role and how it is ensured that the level of stress experienced is kept to a minimum.

But this is just one side of things. In many cases, victims of crime are not only confronted with having to deal with what they have been through and endure criminal proceedings. They have often also suffered physical injury or financial loss. If for example the victim of a murder is a man who is husband and father, the stability of the family can be affected in every aspect.

It is therefore not only important for the victims or the surviving relatives that the perpetrator is brought to justice. In some cases, the issue of reparation is extremely important, if not sometimes a question of maintaining one's subsistence.

In this paper I would therefore like to outline the possibilities for reparation to be made for damage caused. I have divided up my paper into two parts.

In the first part I would like to illustrate how victims can obtain reparation from offenders in criminal proceedings, whereby I will not be looking at the possibility of obtaining compensation from the perpetrator in civil proceedings, which does, of course also exist.

In the second part of my paper I would like to give you an outline of the possibilities for obtaining compensation provided by the State. It is often the case that the perpetrator does not have the financial means to pay compensation. Yet a society which embraces values of social justice cannot leave victims of violent crime defenceless when their health, capacity to work and vitality has been impaired or even destroyed. Financial support from the State is important in such cases.

II. PART 1: REPARATION BY THE OFFENDER IN CRIMINAL PROCEEDINGS

A. Termination of Proceedings Subject to the Condition of Reparation Being Made for Damage

Both in investigation proceedings and in court proceedings there is in principle the possibility of terminating proceedings subject to the condition of reparation being made (section 153a subsection 1, no 1, German Criminal Procedure Code).

Reparation can be made in the form of payment to compensate for the loss incurred, but can also take the form of payment of damages for pain and suffering.

The amount of pecuniary or non-pecuniary damages to be paid is set by the court or the public prosecution office after a thorough assessment of the case, whereby both the extent of the loss and the financial circumstances of the defendant play a role.

If the defendant is not able to make payment immediately or can only pay in instalments, it is possible for deferment of payment or payment by instalments to be granted. However, it is important to note that it is the court or public prosecution office, and not the victim, who can decide to take this approach. Thus, the

* Executive Assistant,
Section on Criminal Procedure (Court Proceedings),
Federal Ministry of Justice,
Germany

defendant cannot exert pressure on the victim and demand that he agree to payment by instalments or even waive payment completely.

If the defendant makes payment before expiry of the time-period laid down by the court or public prosecution office, the proceedings, which had only been provisionally suspended until that point, are finally terminated. If, however, the defendant refuses to make reparation, proceedings are resumed.

If the proceedings were provisionally suspended by the public prosecution office, it will now prefer charges. If the proceedings were provisionally suspended by the court, the main hearing is continued and the defendant must reckon on being sentenced.

Termination of proceedings on condition that reparation is made only comes into consideration for petty crime and crime of a medium degree of seriousness. If, for example, the person concerned is accused of having raped the victim, termination of proceedings on condition that reparation is made is not possible under any circumstances.

Termination of proceedings on condition that compensation payments are made does not constitute a conviction. Nonetheless, it is possible for the victim's interests to be sufficiently taken account of with this approach. It is important in this context to note that the victim still has the option to assert further claims for compensation at any time in civil proceedings. Whilst it is true that termination of criminal proceedings in return for payment of compensation to the victim does mean that criminal proceedings are concluded, this in no way prevents the possibility of further civil proceedings.

B. Restitution as a Condition of Probation

If a defendant is sentenced to prison for less than two years his sentence can be suspended on probation. The court can link the suspension on probation to certain conditions. One of these conditions can be that the damage caused by the offence be made good (section 56b subsection 2, no. 1, German Criminal Procedure Code). The court then examines whether the convicted person has complied with this obligation.

If the payment of compensation or damages for pain and suffering is ordered so as to make good the damage caused by the offence, any deferment of payment or payment in instalments can only be granted by the court. Thus the authority to decide on this claim to damages lies with the court and not with the victim. Thus the victim cannot be placed under pressure by the convicted person in this situation, either.

If the convicted person fails to comply with his obligation to pay compensation, the court can revoke probation, with the consequence that he must then serve the prison sentence.

C. Victim-Offender Mediation

German law of criminal procedure allows the possibility of mediation between victim and perpetrator, which is referred to in Germany as "victim-offender mediation". Victim-offender mediation can be conducted by either the public prosecution office or the court. But victim-offender mediation also offers victims and perpetrators the opportunity to attain a satisfactory conflict resolution outside the courtroom, with the involvement of an impartial third party.

For the criminal justice system, victim-offender mediation is a new approach to dealing with crime, since the parties themselves are responsible for conducting the victim-offender mediation. In the usual case, the conduct of criminal proceedings is an official procedure over which the parties do not, as a rule, have any scope for control.

1. When can Victim-Offender Mediation take Place?

Firstly it must be borne in mind as the most important point that extra-judicial dispute resolution does not come into consideration in serious cases: it goes without saying that victim-offender mediation would not take place in the case of offences like rape. Victim-offender mediation serves the resolution of conflict in petty and less-serious cases. What is important is that both parties are willing to participate in mediation. It is not possible for victim-offender mediation to take place against the express wishes of the victim and is prohibited by law (section 155a, third sentence, German Criminal Procedure Code). Nor would victim-offender mediation make sense in a case where the defendant denies the charges brought against him and maintains his innocence.

2. Who Carries out Victim-Offender Mediation?

It is possible for the court or the public prosecution office themselves to pursue conflict mediation between the perpetrator and the victim. However, they generally do not have time to do so, which is why the law also makes provision for victim-offender mediation to be conducted by an extra-judicial agency (section 155b German Criminal Procedure Code).

In Germany there is no one single agency which is responsible for carrying out victim-offender mediation. Rather, it is up to the individual federal states (Länder) to decide who to commission with victim-offender mediation. This is why there is a large number of different organisations in Germany which deal with victim-offender mediation. It is also not necessary for the organisation to be a State agency. It is in fact the case that the majority of cases are dealt with by private organisations, which are partly funded by the State. This can take place in the form of payments from one of the justice ministries, for example, or through the assignment of fines by the public prosecution office or the court.

3. What Procedure does Victim-Offender Mediation Follow and what are the Implications of Victim-Offender Mediation for the Criminal Proceedings?

To give you an idea of how the victim-offender mediation procedure works in practice, as well as of the consequences this can have for the defendant, I would like to give you a typical example.

Offender A and Victim B both had a love affair with the same woman. One evening, A was sitting in the pub when B suddenly turned up accompanied by this lady. A realised that his lady friend was apparently being unfaithful to him and became so enraged at this that he hit Victim B over the head with a beer bottle. B suffered concussion and sustained a laceration.

A was overcome with remorse shortly after the act and already expressed his regret at his actions when he was initially interviewed by the police. The public prosecution office, to whom the case was passed on, decided that extra-judicial conflict mediation should be attempted in this case. The case was then passed to organisation O, which conducts victim-offender mediation.

The conflict advisor employed by organisation O firstly met A and B separately to establish their willingness to enter into the process of conflict settlement. Both parties were asked about how they viewed the issue of payment of damages for pain and suffering. Once both A and B had stated their willingness to enter into victim-offender mediation, the conflict advisor invited them both to take part in a meeting together. This gave A the opportunity to explain his reasons for his actions to B and to apologise for his behaviour. The two of them agreed on 2500 euro damages for pain and suffering.

Once the damages had been paid, the conflict advisor produced a report on the conflict settlement and submitted it to the public prosecution office, who, in turn, terminated the proceedings with the court's consent.

As you can see, the criminal proceedings were not concluded by the conflict advisor. This is an important point to note. Whilst it is possible for dispute settlement to take place independently of criminal proceedings, the decision on the final termination of proceedings still remains in the hands of the public prosecution office or the court. Nor is the public prosecution office obliged to terminate proceedings following mediation. It can still prefer charges if it has grounds to do so, for example if prior offences have now come to light. Reparation by the offender, expression of apology and his behaviour after the offence are, however, then taken into account as mitigating circumstances by the court when sentencing.

A further important point to be noted is that the victim still has the option of pursuing further claims, for example a greater amount of non-pecuniary damages, in a civil action. Victim-offender mediation can end criminal proceedings, but not civil proceedings.

4. What Happens if the Offender does not have any Money?

Usually, one of the focal points of the extra-judicial conflict resolution between perpetrator and victim will be reparation for damage. However, it is often the case that the offender is not able to make reparation due to his financial circumstances.

That is why a so-called "victim fund" is available at many conflict mediation centres. The offender can be granted an interest-free loan so that immediate reparation can be made. It is also possible for the offender to be paid from this fund for performing community service and for him to then use this money to pay reparation.

5. Benefits of Victim-Offender Mediation

For the victim

Victim-offender mediation can represent simplified and expedited proceedings for imposition of a penalty which spares the victim a long wait for the main hearing with its uncertain outcome. It creates the possibility of having material and financial claims met quickly and without a great deal of red tape, within a realistic framework. One must also not underestimate the importance for the victim of having the opportunity to explain his situation and his feelings of fear or anger to the offender. The expression of apology by the perpetrator and the acknowledgement of his guilt before the victim can contribute significantly to re-establishing peaceful relations between the parties.

For the offender

The offender has the opportunity to face up to the consequences of what he has done and to contribute as far as possible to putting things right. In the course of mediation he can take responsibility for his actions. Having to deal with the victim can most certainly have an influence on his future behaviour. In addition, there is the possibility of reaching termination of the proceedings and avoiding conviction as a result of victim-offender mediation.

6. Significance of Victim-Offender Mediation in Practice

The constant growth in the number of cases in which victim-offender mediation is used demonstrates its increasing acceptance. It is clear from the table in the annex that the use of victim-offender mediation has increased in almost all the federal states. For example, there were 707 cases of victim-offender mediation in North-Rhine/Westphalia in 1997, against as many as 2485 in 2000, which constitutes an increase of greater than three-fold. Victim-offender mediation is an excellent means of re-establishing peaceful relations under the law between perpetrator and victim, promoting reparation of the damage caused and, at the same time, reducing the burden on the public prosecution offices and courts. Continued positive development can thus be anticipated.

D. Ancillary (Adhesion) Proceedings

During criminal proceedings the hearing deals with the offence and the perpetrator's guilt. There is usually no decision on the victim's entitlement to pecuniary damages or damages for pain and suffering. It is up to the victim to assert such claims within the framework of civil proceedings. However, the possibility exists in Germany of asserting a pecuniary claim which has arisen as a result of the offence during the criminal proceedings, too. By means of so-called ancillary (adhesion) proceedings, a victim or his heirs can, upon application, assert claims for compensation, for example.

In order to better elucidate the benefits of ancillary proceedings I would like firstly to explain a few basic points in respect of German criminal procedure.

Unlike civil proceedings, which are governed by the parties' autonomous control to determine the subject-matter of proceedings, criminal proceedings are not adversarial. The objective of criminal proceedings is to establish the substantive truth in respect of the offence and to impose punishment on the guilty offender. As a result, the German criminal justice system differs fundamentally to that under Anglo-Saxon law, for example, which is traditionally structured as an adversarial system. This means that the public prosecution office on the one hand and the defendant and his counsel on the other have control over the proceedings, and they can exercise that control over the subject-matter of the proceedings by withdrawing the charges. The judge is merely a sort of neutral referee who gives a judgment on the basis of the evidence for the prosecution and for the defence collected by the parties.

In contrast, under German procedural law it is the public prosecution office which is initially obliged to conduct investigations and prefer charges, having examined all incriminating and exonerating factors. Once charges have been preferred, it is the judge who has the authority to direct proceedings. He must be familiar with the information contained in the files, he conducts questioning and takes all evidence which might incriminate or exonerate the defendant on his own responsibility. This obligation to clarify the facts of the case, which is enshrined in the German Criminal Procedure Code, can require of the court that it hear

exonerating evidence even if this is against the wishes of the defendant. Likewise, the court can choose to hear incriminating evidence even if the public prosecution office shows no interest in it. This does mean, however, that the defendant and the public prosecution office cannot dispense with the continuation of taking of evidence even if both parties were to agree on this. The court is under an obligation to clarify the facts of the case.

If ancillary proceedings are conducted, the victim shares this obligation to clarify the matter. He does not have to take evidence himself, but can leave it to the public prosecution office and the court to establish the defendant's guilt.

1. Circumstances in which it is Possible for Ancillary Proceedings to take Place

Firstly, the victim must file a written application, whereby an oral application is sufficient if this is made when the main hearing is being conducted. The victim must substantiate his application, which means that he must describe what he wants to obtain from the defendant and give his reasons. If the victim wishes to sue for damages for pain and suffering, however, he does not have to stipulate a specific amount. It is be left up to the discretion of the court to determine the amount of damages to be paid.

The following pecuniary claims, in particular, can be asserted by the victim in ancillary proceedings:

- Claims for damages for pecuniary loss and damages for pain and suffering,

- claims for surrender and/or claims for restitution of the unjustified enrichment (for example, for return of a stolen item).

2. Possibility of being Granted Legal Aid

If the victim wishes to call on the services of a lawyer in asserting his claims, and if he does not have the means to pay for these services, he can apply for legal aid. Legal aid is granted where

- the victim is unable to pay the costs of litigation or can only pay in instalments,

- there is the prospect that the outcome of the case will be successful.

3. Advantages of Ancillary Proceedings

There are many advantages of ancillary proceedings, especially for victims of crime:

- Ancillary proceedings provide the opportunity for the consequences of the offence under both criminal and civil procedure to be dealt with in one single set of proceedings. If the victim is granted compensation in ancillary proceedings he does not have to institute civil proceedings in addition to the criminal proceedings in order to assert his claims.

- The victim has a right to be present and a right to be heard. This means that the victim is entitled to be present during the entire proceedings. He would otherwise not have such a right to be present if he were required as a witness for the proceedings and did not have the status of private accessory prosecutor. In such a case, the victim would have to wait outside the courtroom until he was called for questioning and would only subsequently have the opportunity of being present at a hearing open to the public.

- In addition, the victim has the option of filing applications for the taking of evidence, objecting to orders given by the presiding judge or asking questions. Under section 257 German Criminal Procedure Code the victim also has the right to make statements after the defendant has been questioned and after each item of evidence is taken.

- The fact that the principle of official investigation applies in criminal proceedings is particularly advantageous to the aggrieved person. According to this principle, in order to establish the truth the court must, of its own motion, extend the hearing of evidence to cover all facts and evidence which are of significance for the decision. Unlike in civil proceedings, therefore, the aggrieved person does not have to furnish evidence but can leave it to the court and the public prosecution office to clarify the facts of the case.

- Lastly, the aggrieved person still has the possibility of asserting claims before the civil courts which he unsuccessfully asserted in the criminal proceedings. In principle, therefore, the aggrieved person can only gain by pursuing ancillary proceedings, and has nothing to lose.

4. Ancillary Proceedings in Practice

In spite of the advantages in terms of saving time and resources that arise in dealing with the civil law dispute and the criminal case in one and the same set of proceedings, ancillary proceedings lead a somewhat shadowy existence. In 2001, 402,993 convictions were imposed in the German local courts (*Amtsgerichte*), but in only 3,510 of these cases were ancillary proceedings conducted. In respect of criminal proceedings pursued in the first instance at regional courts (*Landgerichte*), ancillary proceedings were conducted in only 164 cases of 12,887 convictions.

What are the reasons for this?

One significant point is that the court is not automatically compelled, as a result of the application being made, to conduct ancillary proceedings. Thus the court can dispense with issuing a decision in ancillary proceedings if this would prolong the criminal proceedings. If the court decides to follow this course of action, the applicant does not have any means of recourse against the court's decision. The reasons why there is a cautious attitude in practice in respect of ancillary proceedings are widely known.

- Ancillary proceedings are viewed as something that is alien to criminal proceedings. Criminal proceedings serve the purpose of assessing the defendant's guilt. Assertion of claims for damages should be left up to the civil courts.

- One should not underestimate the fact that decisions made in ancillary proceedings can serve as an additional source of error which hold the danger of the judgment being set aside in appellate proceedings.

- However, the main point is that ancillary proceedings can place a further burden on the court. The increased demands that this can place on the court in terms of time and resources are said to be considerable. It is the delays in the proceedings caused by the hearing of additional items of evidence that are feared by the court and the public prosecution office. From time to time, criminal judges also find it excessively demanding having to make decisions on civil law matters that are often complex.

5. Possible Solutions

In Germany, efforts are currently being made to reform the Code of Criminal Procedure. One important focus of these efforts is victim protection and, in this connection, the strengthening of ancillary proceedings. The following approaches for solutions are currently the subject of intensive discussion:

- In future, it should not be so easy for the court to dispense with giving a decision in ancillary proceedings.

- Consideration is also being given to establishing the possibility of contesting a court's decision to dispense with a decision in ancillary proceedings.

- Victims should be better informed about the possibility of pursuing ancillary proceedings.

- The scope of possibility in ancillary proceedings is to be broadened. In future, the parties should also be able to reach a settlement, for example on the payment of damages for pain and suffering.

- In addition, there is discussion about the extent to which the criminal judgment can attain the effect of being binding on proceedings before the civil court. It is currently the case that all evidence must be heard again in civil proceedings and it is not possible for the outcome of the taking of evidence in the criminal proceedings to be relied upon.

The topic of ancillary proceedings will be the subject of much discussion in Germany in the near future. It remains to be seen which concrete regulations ultimately become law. However, the basic trend towards strengthening ancillary proceedings is clear.

III. PART 2: VICTIM COMPENSATION BY THE STATE

A. The Victims Compensation Act

If the State does not manage to completely prevent violent acts in spite of all its efforts in crime prevention, it must, in its role of protector vis-à-vis its citizens, of course assume responsibility for the victims of these crimes.

This was the governing principle behind the Act on Compensation for Victims of Violent Acts, which entered into force on 16 May 1976.

A society which embraces values of social justice cannot take an indifferent attitude to victims of violent crime. It is not enough to refer to the civil law provisions on compensation. Whilst it is true that the clear-up rate in respect of violent crime is very high, offenders are very often not in a position financially to make reparation for the damage.

It is the object of the Victims Compensation Act to compensate for the consequences in terms of health and the resulting financial consequences, and not leave the victims of violent crimes completely on their own.

1. When can a Victim Benefit under the Victims Compensation Act?

Anyone who has suffered a detriment to their health as a result of an unlawful and violent act committed with intent or of defending themselves from such an act is entitled to benefit under the Act. Family members of someone who has died as a result of such an attack also have an entitlement.

The injury suffered may not be solely of a pecuniary nature. Rather, it is the aim of the Victims Compensation Act to ease the burden of the additional expenses for the aggrieved person which are incurred as a result of the consequences of the damage caused to their health.

The offence must have been committed within the territory of the Federal Republic of Germany. If the offence was committed on board a German vessel or aeroplane, there is also an entitlement under the Victims Compensation Act. However, no compensation is granted for acts committed abroad.

The Victims Compensation Act is of course applicable to Germans, but citizens of foreign countries can also be eligible. Thus, provision under the Victims Compensation Act also applies to all citizens of the European Union. In addition, foreign citizens are also covered if they come from a country for whose nationals EU legislation or international agreements provide for equal treatment with German citizens.

The Victims Compensation Act applies to all other foreign citizens on the basis of reciprocity. This means that if a German were the victim of a violent offence in that person's country of origin, he would be granted compensation equivalent to that available under German law.

Since 1990 foreign citizens lawfully resident in Germany for more than six months have also been covered by the Victims Compensation Act and entitled to benefit in accordance with the length of residence. If a person has been lawfully resident in Germany for at least three years he is entitled to benefit on an equal footing with a German or an EU citizen.

Tourists and visitors who are victims of a violent act in Germany can be granted a one-off hardship payment if they have suffered severe injury as a result of the offence.

2. What Types of Support can be Granted under the Victims Compensation Act?

As already mentioned above, compensation for damage of a purely pecuniary nature cannot be granted under the Victims Compensation Act, nor is it possible for damages for pain and suffering to be paid. Payment is be made for reimbursement of costs incurred as a result of the injury to health. The most important items provided for are as follows:

- *Medical treatment*

This includes mainly out-patient treatment, treatment by a physician, dental care, provision of medication, dressings and remedies, as well as dentures etc., in-patient treatment and provision of medical aids.

Home help and benefits in the event of long-term care dependency.

Basic pension

This is not means-tested, but is calculated according to the degree of incapacity to work. The basic pension is intended to compensate for the loss of physical integrity and the non-quantifiable increase in expenditure incurred as a result of the injury caused. A maximum of € 615 is payable monthly.

Additional severe disability allowance

In the case of a person suffering particularly severe injury, the basic pension can be augmented by payment of this allowance.

Not only the victim himself can receive compensation, but members of his family may also be entitled. If the victim died as a result of a violent attack the widow and any children can be given a pension. In certain cases it is even possible for the parents of victims of violent crime to be granted a pension.

I would like to illustrate the practical application of the Victims Compensation Act by way of an example which actually took place in Germany as described:

On 11 June 2000 a husband and father of three children was beaten to death by three men in Dessau. He was survived by his wife and his three children aged between five months and eight years. The perpetrators were found guilty of murder and sentenced on 30 August 2000. An application for victim compensation made by the surviving relatives was already submitted to the competent pensions office in June. Once the investigation files had been obtained, it was possible for this application to be granted as early as 16 August 2000, i.e. before judgment was given in respect of the perpetrators. The wife was granted a non-means-tested widow's pension of approximately € 300. The children were granted a monthly pension for the loss of one parent of approximately € 85 each. Depending on financial circumstances, this basic pension can be augmented by a means-tested compensatory pension for both wife and children.

3. Who Decides on Whether Victim Compensation is to be Granted?

It is the pensions office which is competent for deciding on whether victim compensation is to be granted. One important point of interest is that the pensions office is autonomous in its assessment of the evidence. This means that it is not bound by the assessment under criminal law when coming to its decision.

If, for example, the court merely finds the perpetrator guilty of negligence, it is quite possible that the pensions office can find that the perpetrator acted with intent and thus grant the victim compensation.

Even if the defendant is acquitted, the entitlement to victim compensation is not automatically extinguished. By the same token the fact that the perpetrator is convicted does not automatically mean that the claim will be granted.

The degree of importance of the Victims Compensation Act is demonstrated by the amount of money paid out in this connection. In 2001, the federal government and the regional governments spent a total of approximately 198 million Deutschmarks on the application of the Victims Compensation Act, which corresponds to around 100 million euro.

B. Victim Compensation Funds of the Federal State

A further form of State aid are funds which were set up so that in certain cases, victims could be given a helping hand as quickly as possible and with the least possible bureaucracy involved. However, there is no legal entitlement to payment from one of these endowment funds.

At federal level, funds were set up for victims of right-wing extremist attacks as well as for victims of terrorist crimes. These are budgetary allocations which can be included again in the national budget every year and must be reviewed annually. For this reason, material aid for victims of crime is paid in the form of one-off special payments.

1. Hardship Payments for Victims of Right-Wing Extremist Attacks

Unfortunately, the number of attacks committed against foreign citizens by violent right-wing extremists has been increasing over the last few years. The fund demonstrates the fact that right-wing extremism is deplored and is a sign of the solidarity of the State and its citizens with the victims.

There was provision in this fund for a total of 2.5 million euro for victims of right-wing extremist attacks in the federal budget for 2002.

2. Hardship Payments for Victims of Terrorist Crimes

There was provision for 10 million euro for victims of terrorist crimes in the 2002 federal budget. This fund was only set up in May 2002. The reason for this was the terrorist attack outside a Jewish synagogue on the Tunisian island of Djerba on 11 April 2002. Fourteen Germans were killed in this attack, and it left its mark on seventeen others for life, some of whom suffered severe burns. Since this act was committed abroad, it was not possible for support to be obtained under the Victims Compensation Act. So as to not leave the victims and the bereaved families of those killed completely on their own, the Federal Government decided on 24 April 2002 to make aid payments available from federal funds and established this emergency fund for this purpose. As early as 24 May 2002 the first instructions for payment from this fund were made.

It has since been possible for German victims of the terrorist attack in Bali and family members of those killed to receive payments from this fund.

C. Victim Compensation Foundations of the Individual Federal States

In addition, the individual Federal states make provision for funds in their budget in order to ensure individual support for victims of violent crime. The state of Baden-Württemberg, for example, has also made available a fund of approximately 1.3 million euro for this purpose.

An example of how this might work in practice:

A family from Stuttgart is on holiday in Scotland when the father is shot dead during a robbery. The Victims Compensation Act does not apply because the crime was committed abroad. However, since there is no terrorist or right-wing extremist connection, in this case the family can only receive assistance through payment from this fund.

D. Efforts at a European Level

I would like to conclude by outlining the direction being pursued in the European Union in respect of victim compensation. A Directive which is intended to establish EU-wide minimum standards for the compensation of victims is currently the subject of discussion. The reason for the Directive is that the level and standard of compensation varies from one EU country to another. There are even two countries, Italy and Greece, that do not have any regulations on compensation at all.

This means that if a German travels on holiday to Greece and is the victim of a violent crime, he has no entitlement to compensation. The German Victims Compensation Act would not apply because the offence was committed abroad, and in Greece there is no possibility of obtaining compensation from the State.

However, if the situation is reversed and a Greek person is the victim of a violent crime in Germany, he is certainly entitled to be given compensation under the Victims Compensation Act.

The objective of the proposed Directive is thus to ensure that all EU citizens and people lawfully resident in the EU can obtain a reasonable level of compensation for injury to their health suffered as a result of being the victim of a crime committed within the EU.

There is currently intense discussion about this proposal at the level of the EU. It may well take quite some time before this Directive is adopted, but the objective is clear: there should be equal standards for compensation across the European Union.

IV. CONCLUDING REMARKS

I hope that I have been able to give you a comprehensive survey of the possibilities victims in Germany have to obtain reparation.

APPENDIX

Cases in Which Victim-Offender Mediation was Conducted 1997 to 2000

Federal State	**1997**	**1998**	**1999**	**2000**
Berlin	98	80	142	248
Brandenburg	2136	2174	2344	2636
Hamburg	123	145	217	239
Hesse	172	205	295	618
Mecklenburg-Western Pomerania	no data	85	87	173
Lower Saxony	no data	753	948	1449
North-Rhine/Westphalia	707	1341	1871	2485
Rhineland-Palatinate	895	505	2056	1367
Saarland	11	28	149	167
Saxony	264	326	297	342
Saxony-Anhalt	44	604	462	569
Schleswig-Holstein	530	469	688	709
Thuringia	65	90	149	119
TOTAL	**5045**	**6805**	**9705**	**11121**
Annual increase	in %	34.9	42.6	14.59

Total increase since 1997 (not including Mecklenburg-Western Pomerania and Lower Saxony): 120.43 %
Brandenburg and Thuringia: approximate figures.

RESTORATIVE JUSTICE: THE THAI EXPERIENCE

*Dr. Kittipong Kittayarak**

I. INTRODUCTION

"Restorative justice" is the name given to a wide range of emerging justice approaches that aim for a more healing and satisfying response to crime. While each approach may be different, the basic philosophy and principles of restorative justice are common: restorative justice views crime as harm to people and justice as restoring social harmony by helping victims, offenders and the community to heal. In fact, restorative justice is not a wholly new concept, elements of restorative justice have been presented in major criminal justice systems for many decades, in some cases, centuries. With the obvious shortcomings of conventional criminal justice and recent interest in reassessment of the relationships between offenders, victims and the State in criminal cases, there are growing interests in restorative justice in many jurisdictions around the world, including in Thailand.

The fundamental principles shaping the framework of restorative justice can be best described by the following[1]:

1. Crime is a human process whereby humans violate social relationships, both personal and those implied relationships with others as a consequence of being members of communities. Crime is not merely an act of breaking laws of the state; it is a tearing of the social or community fabric; it is the violation of one human being by another.
2. The proper goal of justice is to repair the damage done and restore relationships, personal and communal, to their original state to the extent possible.
3. To have a chance at restoration, victims of crime must have the opportunity to choose to be involved in the process of justice. Such involvement may include: information, dialogueue with the offender, mutual resolution of conflict with the offender, restitution, reduction of fear, heightened sense of safety, partial ownership of the process, getting the experience resolved and renewing hope.
4. To have a chance at restoration, offenders committing criminal acts must have the opportunity to accept their responsibilities and obligations regarding individual victims and the community as a whole. Such opportunity may lead to: participation in defining their obligations, safe face-to-face encounters with victims, understanding the impact of their own actions, creative ways of providing restitution, identifying their own needs, partial ownership of the process, getting the experience resolved and renewing hope.
5. To have a chance at restoration, the local community and its resources must be brought to bear on the needs of victims and offenders as well as in prevention of delinquent and criminal acts.
6. To have a chance at restoration, the formal criminal/juvenile justice system must continue to work to ensure victim and offender involvement which values genuine engagement of all participants without coercion. It must continue to monitor and follow-up on accountability. It must exhaust less restrictive interventions before moving toward incarceration alternatives as it seeks to promote justice in the community.

In Thailand, like in many other Asian countries, restorative justice is not a new approach but a familiar concept well entrenched in the Thai traditions and culture. Many elements of restorative justice still remain in the traditional way of communal justice in some rural areas. With such a solid background in the Thai culture and increasing problems resulting from the shortcomings of conventional criminal justice, it is not

* Director General,
Department of Probation,
Ministry of Justice,
Kingdom of Thailand

[1] Mark S. Umbreit and Robert B.Coates, Multi-Cultural Implications of Restorative Justice: Potential Pitfalls and Dangers (1998), pp.1-2.

surprising to see a growing interest in restorative justice in Thailand. In my paper I examine the attempt to introduce restorative justice in Thai criminal justice. Although restorative justice has been *reintroduced* in Thailand only recently, and an attempt for its implementation is only in the beginning stage, restorative justice has been very well received by the criminal justice communities and the public. There are also many indications that it is likely to be adopted as a viable alternative to the formal criminal justice process for some types of offenses soon.

II. WHY RESTORATIVE JUSTICE? : THE CASE OF THAILAND

There are many reasons why Restorative Justice has received much interest in Thailand.

A. The Shortcomings of Conventional Criminal Justice

During the past decade Thailand has witnessed a growing awareness and concern about the ever-increasing size of its prison population and the continued and increasing reliance on the use of imprisonment at sentencing. The problems have been exacerbated by the widespread use of methamphetamine, which has doubled the prison population during the past five years. Before 1996, the prison population in Thailand had remained approximately 120,000 but the "get tough" policy on drugs, which did not provide adequate attention to the demand side, has resulted in a rapid increase of inmates, more than half of whom are drug users or addicts. According to the statistics revealed in September 2002, there were approximately 250,000 inmates in prison while the available space could handle only 100,000 persons. Considering the manpower of 10,700 correction officers, the ratio rate of officers to inmates is approximately 1 to 24, which is very far from the internationally acceptable rate of 1 to 4 or 5.

Overcrowding has caused many problems within the criminal justice system ranging from the high costs of criminal justice administration, riots and human rights problems in prisons and the failure of rehabilitation during confinement, etc. With the severity of the problems at hand, the policy on incarceration will gradually change and, in my opinion, prisons will soon be preserved only for dangerous criminals who should be kept in confinement. The future direction on the treatment of offenders in Thailand, in my opinion, will be toward community corrections: the trend which coincides with principles of restorative justice.

Apart from problems of overcrowding, the Thai criminal justice system also faces problems of case backlogs. The lack of screening processes, such as diversion programmes and other alternative measures, during the police and prosecution levels have resulted in an influx of criminal cases to the formal justice processes, which now inundate the work of the police, the prosecution and the court. It is not surprising to see a criminal case taking more than a year to be decided in the criminal courts of first instance and several more years before a final decision of the Supreme Court is given. Realizing the problem of delay in the criminal process the Constitution of 1997 has stipulated that a suspect shall rightfully receive an "expeditious, continual, and fair" investigation or trial. In implementing the constitutional provision, it was found that a criminal case pending the consideration of the court has to wait for more than a year before the case will be adjudicated. As a result, it is obvious that more alternative measures and diversion programmes have to be urgently introduced at the pretrial stage so as to be able to achieve a speedy trial in Thailand.

With such shortcomings, the Thai justice system is now in search of new justice initiatives as a means to solve the problems. As a result, when the concept of restorative justice has been presented to the public, it has received considerable interest among practitioners and academics. This is partly due to the fact that restorative justice not only presents new ways of looking at crime and punishment, but it also introduces alternative and diversionary measures which also help reducing caseloads and prison populations. In addition, restorative justice also brings new dimensions to the solution of the high financial and human costs of justice and to the expanded role of victims, offenders and communities in criminal justice.

B. The Need for more Community Involvement in Criminal Justice

During the past 2 decades Thailand has witnessed an increasing interest in community participation in the administration of the country. This phenomenon was the result of the long campaign for democracy, which culminated in the Constitution of 1997, widely called the People's Charter. During the drafting of the Constitution, there were strong interests on the part of the people at the grassroots to have a greater role in administering the country. As a result, the Constitution contains many provisions aiming at transforming the country's philosophy of government from "representative democracy" to "participatory democracy". The Constitution has created the ground rules for transforming Thailand from a bureaucratic polity prone to abuse

of political rights and corruption into more participatory in which citizens will have greater opportunity to shape their own destiny. It has set the framework of laws and administrative procedures, which promote citizen participation, protect individual liberties, restricted state's power to infringe upon individual rights, advocate an independent judiciary, and create mechanisms for greater transparency and an accountable government. It encourages decentralization by delegating more powers to local administrations and communities.

In the area of criminal justice, community participation in justice administration used to be the hallmark of traditional Thai culture and traditions. Many conflicts were resolved, with mutual consent and satisfaction of the adversaries, within the communities by respectable persons in the communities, mostly the elders, village-leaders, etc. Through the community bonding and networks, the duties of crime prevention, treatment and support of offenders had largely remained within the community. However, because of the country's reliance on highly centralized control of government for many decades this has resulted in the decline and weakness of the role of the community particularly in these very important functions. With the establishment of police stations in all districts all over Thailand with highly centralized command from the police headquarters in Bangkok, the rural community, which used to play a key role in crime prevention and, sometimes, mediation of minor infractions, have almost completely abandoned their roles.

With this new movement toward the revival of the community spirit and decentralization of power of the central government to local administration, the prospect of involving the community to have a more meaningful role in the administration of justice is better than ever. The obvious shortcomings of the Thai criminal justice system mentioned earlier have made people think back to the good old days of strong community participation and networking which made a great contribution to the success of crime prevention and treatment of offenders in the community.

The widespread use of drugs has also highlighted the need for more community involvement in crime prevention and control. With such immense workloads of trivial drug cases in the criminal process and increasing numbers of drug addicts/users, the policy makers have come to realize that there is no way to fight the problem without full participation of the communities and all sectors within the society. There is an increasing awareness that crime cannot and should not be the sole responsibility of the State to tackle alone. The community and other private parties should join in and share such responsibilities with the State in the form of a partnership.

With such a background, it is not surprising to see that the government has put the policy of public participation and involvement in criminal justice administration among its high priorities. The Department of Probation, together with other relevant governmental and non-governmental agencies, are working on several pilot projects all over Thailand in creating or bringing back "community justice networks" in the community to assist in crime prevention and treatment of offenders in that community. These new networks will also attempt to find linkages with local administrations, which are now enjoying more autonomy in accordance with the new Constitution. The results of these pilot projects will help our future planning to involve local communities to enter into "partnerships" with the State in areas of crime prevention and control.

The above-mentioned phenomenon has, I believe, contributed greatly to the implementation of restorative justice principles, as communities will play an important role in the process of achieving restorative outcomes.

C. Wider Interest in the Protection of the Rights of Victims

As in many countries, the rights of crime victims have received due attention in Thailand only recently. With the advent of the new Constitution of 1997, widely called the People's Charter, there are two provisions that directly addressed the right of crime victims. Section 53 provided that:

"Children, youth and family members shall have the right to be protected by the State against violence and unfair treatment.

Children and youth with no guardian shall have the right to receive care and education from the State as provided by law."

Although the protection rendered by this Section does not address crime victims in general, it however deals with such issues as domestic violence which is one of the major areas where victims need special protection and treatment.

In addition, Section 245 of the Constitution stipulates that:

"In a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law.

In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive an aid from the State, upon the conditions and in the manner provided by law."

The increasing awareness of the rights of victims in the Thai criminal justice system was a result of a long campaign for criminal justice reform in the country. With the mandate by the Constitutions, the past five years saw a dramatic increase in the protection of crime victims in both laws and practices. The Criminal Procedure Code was amended to adopt a new procedure for interrogation of children who were victims of violence, particularly domestic violence. They were allowed to have a prosecutor, psychologist and social worker present during the interrogation. Teleconferencing was also provided during court hearings so as to reduce the pressure of confrontation with the defendants. Moreover, recently Parliament passed the law on compensation for crime victims and the wrongfully accused. Currently, the Ministry of Justice is in the process of preparing a ministerial regulation setting up the scheme for compensation.

As restorative justice places great emphasis on restoring the plight of crime victims, such heightened awareness of the rights of victims of crimes has directly helped generate interest in restorative justice.

D. Recent Criminal Justice Reform in Thailand

Another major problem with the administration of criminal justice in Thailand, is the "non-system" of the criminal justice agencies. Unlike in most countries where major organs in the criminal justice system, such as the police, the prosecutors, the probation and correction officers, are under the purview of the Ministry of Justice, in Thailand, criminal justice agencies are scattered in different places. Such an unorganized structure of the criminal justice system is one of the major causes for the lack of cooperation and coordination among organs within the system. Each agency in the criminal justice system often focuses its resources in solving problems or creating works and projects within its own organization without adequate consideration of the impact of such efforts on the criminal justice process as a whole. These have resulted in repetition of works, the building of empires among criminal justice agencies, the lack of national criminal justice policy, the end results of which is inefficiency in the administration of justice. This has made it very difficult to initiate or implement any new criminal justice policy.

The recent overhaul of the criminal justice system was aimed at solving this structural problem. According to the new structure, the judiciary, which has long been under the Ministry of Justice, became an independent entity. At the same time, the Ministry of Justice, which used to be a small ministry overseeing only the administrative works of the judiciary, has become the focal point for justice administration, quite similar to the Ministry of Justice of Japan.[2] In this new structure, all agencies concerning justice administration, including those dealing with the treatment of offenders, were brought together under the same organization. Most importantly, a new agency called the Office of Justice Affairs was established with the aim of being a platform for policy planning and budget allocation within the justice system. To help the effective functioning of this new office, the National Committee on Justice Administration, chaired by the Prime Minister, will be created. Apart from the heads of criminal justice agencies within the Ministry of Justice, the Committee, according to the draft law proposed to the cabinet for approval, shall also, *inter alia*,

[2] The new Ministry of Justice consists of the following agencies: (1) The Office of the Permanent Secretary, (2) the Office of the Minister of Justice, (3) Office of Justice Affairs, (4) The Special Bureau of Investigation, (5) the Institute of Forensic Science, (6) the Rights and Liberties Protection Department, (7) the Department of Correction, (8) the Department of Probation, (9) the Department of Child Observation and Protection, (10) the Department of Legal Execution. In addition, there are 3 other agencies which are not within the Ministry of Justice but under the direct supervision of the Minister of Justice; they are the Office of the Attorney General, the Office of the Narcotics Control Board and the Office of the Anti-Money Laundering Board.

consist of the Prosecutor General, Police Commissioner General, Secretary General of the Court of Justice, representatives of the Bar, the Law Society, academics, and related NGOs.

With this new structure, it is a lot easier to design and implement new criminal justice policies and initiatives, including restorative justice, as a means to solving inherent problems with the administration of justice.

III. HOW RESTORATIVE JUSTICE WAS INTRODUCED IN THAILAND?

Against this background, I would like to turn my attention to how the concept of restorative justice was introduced in Thailand. As mentioned earlier, even though during the past decade the concept of restorative justice has been known and discussed among a few criminologists in the academic world, it was formally introduced to Thailand only recently. The principles of restorative justice was mentioned for the first time on October 6, 2000 at the National Seminar on Strategies for Criminal Justice Reform in Thailand organized by the Thailand Criminal Law Institute at the Government House. In the Seminar, a numbers of strategic plans and proposals aiming at the overhaul of the criminal justice system were introduced. Among the many plans and proposals made, it was also suggested that "there must be a paradigm change from retributive to restorative justice". However, as there were many issues presented at the Seminar, restorative justice was mentioned only briefly.

However, the first national seminar on restorative justice, which formally introduced restorative justice to the Thai criminal justice communities, was organized subsequently on January 6, 2002. Prior to that there were several seminars and workshops on New Zealand's "family conferencing model" which was introduced not as a restorative justice programme but as a means to deal more effectively with juvenile cases. The restorative justice concept, which is the framework of the family conferencing model, has not been mentioned distinctively in those seminars and workshops.

In fact, the idea of organizing a national seminar to officially launch the restorative justice concept in Thailand was carefully planned so as to be able to achieve optimal result. The venue was chosen at the Government House and the audiences were top criminal justice officials, leading academics and the elite within the Thai society. The Seminar was presided over by Dr. Thaksin Shinawatra, the Prime Minister of Thailand, who is also a criminologist. The Seminar was also attended by HRH Princess Bajrakitiyabha, the grand daughter of the Crown Prince of Thailand, who is currently doing her doctoral degree in law at Cornell Law School. The Seminar was broadcast live all over Thailand by a public television channel.

The Seminar has achieved quite a successful result. There was good feedback as the media has paid great interest to this new justice initiative. Several articles were published in major newspapers, both English and Thai regarding restorative justice. The Prime Minister himself gave several interviews afterward in support of this new concept, particularly in the area of juvenile justice. The organizers also published several books on restorative justice. Moreover, the restorative justice concept is now taught in advanced criminal law courses in the major law schools as well as in other criminal justice institutions. To my knowledge, there are at least 4 Ph.D. candidates whose doctoral dissertations focus on restorative justice. Due to the success in the launching of the idea, Thailand's major research funding agencies have expressed their willingness to support further studies on the application of restorative justice in Thailand.

Despite the fact that there are many reasons for applying restorative justice programmes in Thailand and strong support for implementation as mentioned above, real implementation is not at all easy. First of all, the drastic differences of the restorative justice concept from the mainstream criminal law ideology makes it quite difficult to convince a number of conservative criminal justice officials to understand and accept the idea. Moreover, as restorative justice is an evolving concept with no exact definition or formula, it is difficult for criminal justice officials to understand, let alone to support the idea. Moreover, the Thai criminal justice system is not familiar with any diversion programmes, either at the police or prosecution level. Normally, criminal cases proceed mostly through the official procedure from the police to the prosecutors, who rarely use their discretion to dismiss a case. Almost all criminal cases with sufficient evidence, except minor offenses with a fine as the maximum penalty, are prosecuted in the courts. Such unfamiliarity with informal procedure makes it more difficult to initiate and successfully implement restorative justice programmes, which in themselves are more advanced forms of diversions where restorative processes and outcomes are key elements to the success of the programmes.

One aspect, in my opinion, which partly contributes to the successful introduction of the idea of restorative justice to the Thai justice circles and the general public, is the name in Thai of restorative justice. Instead of translating it literally which would make it sound much more difficult and less comprehensible in Thai, I have deliberately chosen the Thai word *Samarn-Chan*, which means "social harmony." As a result, the Thai terminology for restorative justice for the Seminar is *Yutithum Samarn Chan*- justice for social harmony- the term in Thai which, in my opinion, may capture the true essence of restorative justice far better than a literal translation. This has proven to be an appropriate and strategically correct choice, since the word is well received by the media and the public as well as people in academic circles.

IV. DRUG REHABILITATION ACT OF 2002: AN IMPORTANT FOUNDATION FOR RESTORATIVE JUSTICE PROGRAMMES

Another important development, which may provide a good foundation for the implementation of restorative justice programmes in Thailand, is the recent passage of the new Drug Rehabilitation Act of 2002 with the aim of implementing demand reduction programmes to counter the widespread use of methamphetamine in the country. Although Thailand has been quite successful in cutting down heroin production and consumption, we are still facing the problem of the widespread use of methamphetamine. Methamphetamine is much easier to produce than heroin and is as lucrative. Although the volume of the drug seized has notably increased, there is still widespread drug abuse, including among the young. The Thai government has placed the drug problem issue high on its agenda. It has introduced the holistic approach to drug prevention and suppression. While the government will continue with its efforts in supply-side reduction by stepping up its strong law enforcement on drug producers and traffickers and cutting down the entry of production from abroad, at the same time, it will also put great emphasis on the reduction of the demand for the drug by concentrating more on prevention strategies as well as on rehabilitation of drug addicts.

As mentioned earlier, Parliament recently passed the Drug Rehabilitation Act of 2002. This law has for the first time introduced compulsory drug treatment programmes to the country. According to the implementation plan, the programmes will start operation, during the first phase, within 36 selected provinces in early March 2003, and for the rest of the country in July this year. The compulsory treatment programme will for the first time introduce "drug diversion programmes" to Thai criminal justice. It will allow drug addicts to undergo treatment instead of prosecuting them. If they are willing to receive treatment and relinquish their drug habits, the prosecutors will drop the charges and they will be assisted in continuing their daily lives in the community as ordinary people. To ensure that this new initiative will be successful, the Department of Probation, in its capacity as the coordinator of the programmes, has worked closely with many government and non-government agencies as well as the communities all over the country. It is believed that by concentrating seriously on rehabilitation and prevention, Thailand will be able to make progress in the fight against drugs. By such policy, the government will be able to step up the suppression as well as to precisely target its suppression so that those punished will be the ones who deserve punishment, not the addicts who themselves are the victims of the drug problem.

The introduction of the compulsory treatment policy is a new concept in drug rehabilitation in Thailand. It will complement the voluntary treatment programmes, which we now have. As a matter of fact, the compulsory treatment programme will strengthen the voluntary programmes, as it will increase their clients immensely. With this new and clear policy from the government, Thailand is on the right track to pursue its demand reduction policy. It is necessary that the drug rehabilitation capacity be increased to meet the rising demand. However, to be successful in these undertakings it is important to involve the communities more in the process of rehabilitation. In addition, we need to think about the issue of reintegration into society of these addicts. The communities must support and encourage them to start new lives.

According to the new procedure specified by the law, those arrested under drug consumption charges will be sent to the Department of Probation for assessment and a review of the level of their addiction. The Probation Department has set up the so-called "drug rehabilitation committees" in every province all over the country to do the job. The Committee consists of a prosecutor as chair and a doctor, a psychologist, a social worker and two representatives of the communities. The Committee will design drug treatment programmes for each individual drug users/addicts. If they are able to meet with the rehabilitation programmes prescribed by the drug Committee, their charges will be dropped. Currently, more than half of

the police, prosecutors and judges caseloads are drug cases, the programmes will not only introduce an appropriate solution to the drug problem, but they will also help in reducing the pressure of the heavy drug caseloads on the Thai criminal justice system.

Moreover, the Drug Rehabilitation Act and the national policy on drugs will rely heavily on reviving the community spirits and involving them in the drug rehabilitation programmes. Through the new policy, the Probation Department will try to establish "community justice networks" within certain communities around the country. These networks will, among other things, assist in the persuasion of drug users/addicts to receive treatment in voluntary treatment programmes (without having to arrest them). Family and community support and encouragement are also necessary during and after the treatment. These networks will collaborate closely with the volunteer probation officers in the aftercare and the follow up of the drug users and addicts within the community after the treatment. If successful, the responsibilities of the networks will hopefully be extended to other functions such as the prevention of crime, community mediation, etc.

In my opinion, this new law will directly contribute to the application of restorative justice in Thailand in many aspects. Firstly, the new drug diversion programmes will make the Thai criminal justice officials familiar with the concept of suspension of prosecution and diversion programmes. This is a major breakthrough since Thailand, unlike in some countries, has never before adopted any kind of diversion programmes as a normal practice. Given the large amount of cases going through this channel, it will make these diversion programmes at the prosecution level a common practice in all jurisdictions. This will also support the draft bill on suspension of prosecution of the Office of the Attorney General, which will soon be sent to the cabinet for approval before being forwarded to parliament.

V. SELECTED AREA FOR TRIAL APPLICATION: DOMESTIC VIOLENCE

Domestic violence, particularly when female spouses are assaulted by their loved ones, has recently received a great deal of attention in Thai society. Through long, continued and efficient campaigns by women rights advocates, the public has started to realize the inadequacies of the conventional criminal law and criminal justice process in protecting the rights of the aggrieved wife. In such cases it is obvious that in most cases the victims do not want their husbands to be put into prison; they just want them to change their behavior and stop hurting them. The criminal justice system in Thailand does not leave many choices for the aggrieved wives, since the police, for obvious reasons, do not want to receive complaints as the incidents are viewed as family matters. The beaten wives will mostly be forced to reconcile with the aggressors, a venue which does not adequately protect them or guarantee that future similar incidents will not occur. On the other hand, if the police decide to proceed with the complaints, it is more likely than not that the wives will later request the police or prosecutors to withdraw the case for fear that the husbands will have to be imprisoned, a result which will directly affect the women and their children economically and socially. Such dilemma represents the weakness of the existing conventional criminal justice process to which restorative justice can appropriately fill the gap.

As a matter of fact, an attempt to introduce the restorative justice approach to the solution of domestic violence was made even before the formal introduction of the restorative justice concept in January 2002. A few years earlier, while serving as the Director of the Thailand Criminal Law Institute, I and a group of women's rights advocates attempted to introduce programmes for treatment of the aggressor as part of the alternatives to prosecution in domestic violence cases. At that time, although the idea was well received by academics and practitioners, it was very difficult to start the programme without a strong commitment from the police, the prosecutors and a coordinating agency, such as, for the case of Thailand, the probation services. After I had the opportunity to run the Department of Probation in August 2001, I then reintroduced this programme on the first appropriate occasion in November of 2002, since November is the month for campaigning against violence against women and children.

The project, which was named by the media as "husband rehabilitation clinic" or, literally in Thai, "husband repairing factory", aims at setting up a diversion programme at the prosecution level for treatment of abusive husbands. It is proposed that the police, after receiving complaints from the victims of aggression, proceed with the case rather than viewing it as a family matter and decline to accept the complaint. At the prosecution level, the prosecution will consider conditional dismissal of the charge if the following prerequisites are met: consent of the victims, the aggressors are repentant and willing to undergo a

treatment programme if necessary, the nature of the case is appropriate for pretrial dismissal (factors such as the gravity of the case, etc. will be looked at). If the prosecutor decides that conditional dismissal is more appropriate than prosecution, he will submit the case to the probation officer. The probation officer, after considering the facts and circumstances of the case, may organize a conference among the victim, the aggressor, their relatives (if necessary) and respected members of the community (if appropriate) to find appropriate measures for the treatment of the aggressor and the solution to the personal conflict and/or other problems. In this process, the probation officer will act as a facilitator trying to seek reconciliatory measures for the belligerent couple. The aggressor may be subject to some or all of the following conditions: attending appropriate treatment programmes, be required to regularly report to his probation officer within a specified period of time, providing restitution or rendering community service as deemed necessary. If the aggressor was able to meet with the conditions set for him, the probation officer will report the positive results to the prosecution who will then drop the charge. On the contrary, if the agreed conditions were broken the prosecutor will continue with the suspended prosecution.

By having this alternative programme, it is hoped that not only both the victims and aggressors in domestic violence will be appropriately taken care of, but such measures will also allow the police to be more efficient in the preventive campaign against domestic violence.

As mentioned earlier, the project was proposed once again in November 2001 during the National Seminar for the Protection of the Right of Women and Children, an event held every year during the month of November. This time it began to receive wider support from the public and has become front-page news. However, it was not until November 2002 at a Seminar on Restorative Justice and Domestic Violence, organized by the Department of Probation and the Thailand Research Fund (TRF), that it became the talk of the town and one of the biggest news during the campaign month for ending domestic violence.

Although the proposed scheme has received a lot of publicity and overwhelming support from the public, the Department of Probation is still unable to launch the project as early as expected due to reluctantance on the part of the Office of the Attorney General to start the suspension of prosecution scheme without any back up law on it. The proponents of the scheme are of the opinion that no law is needed in this case since in limited circumstances, particularly in petty crimes, the prosecution has already adopted the opportunity principle of dropping prosecution of several cases on the grounds that prosecution will serve no public interest. Such non-prosecution orders were issued even without any conditions. As a result, in domestic violence cases where the victims provide their consent; the nature of the case is not aggravated; and the offenders are willing to undergo and complete rehabilitative and restorative programmes, there are even less grounds for prosecution. Although there is no real opposition to the idea, some believe that it may be better to wait for the law on suspension of prosecution before attempting an innovative idea such as this. Others, particularly more conservative criminal justice and judicial officials, may simply not understand the seriousness of the problem and may not see any urgent need for a special programme of this kind.

Despite the obstacles for the immediate implementation of the scheme, I am quite confident that the project will soon be implemented. Recently the Office of the Attorney General has shown an interest in the programme and a discussion with the Department of Probation as to how to implement such programme will soon occur.

Apart from the area of domestic violence, attempt has been made in the use of restorative justice approaches in juvenile justice. Currently, there are ongoing research projects aiming at setting appropriate schemes for restorative justice approaches in dealing with juvenile delinquents. In addition, the Department of Corrections has initiated a pilot project on restorative justice in Nontaburi prison by setting up a restorative justice process between the victims of crime and their relatives with the inmates before providing parole. These are some examples of the healthy trends towards more widespread adoption of restorative justice principles in the Thai criminal justice system in the near future.

VI. FUTURE TRENDS OF RESTORATIVE JUSTICE IN THAILAND

Restorative justice policies are, in my opinion, a benevolent means of addressing crime problems and, in the case of Thailand, are appropriately capable of addressing many concerns in the administration of justice. Underlying the crime prevention goals of restorative justice is the reduction of prison populations and formal criminal justice processing through the rehabilitation of offenders by committing them to assuming greater

accountability and sensitivity to their victims. The procedures through which prison reductions are to occur involve the use of various forms of diversions from courts as well alternatives to incarceration which also coincides with the current policy of reducing cases coming into the formal justice processes. In addition, the restorative process by which restorative outcomes are achieved is the process that involves and empowers individuals and communities to deal with many of the crime and disorder problems normally dealt with by the state criminal justice system. In line with the policy of more community participation and involvement, restorative justice emphasizes the solving of crime and justice problems through the delegation of many aspects of criminal justice decision making to the local level. It also supports the use of partnerships, where desirable, between the private parties, that is, individuals and communities on the one side, and the public spheres, that is, state agencies, such as police, prosecutors and probation services, on the other.

Although it will not be easy to bring restorative justice policies into practice within a short period of time, the prospect of its being accepted into the mainstream criminal justice system are very bright. In the case of Thailand, I believe that it is necessary to make sure that restorative justice is a complement to and not a replacement of conventional criminal justice. Moreover, it is important to, at least at the outset, carefully select areas of trial application that can guarantee success with fewer objections. For example, restorative justice policies may be initiated in juvenile justice and other areas where the plights of crime victims are obvious, such as in domestic violence, car accidents, etc. In addition, it is also important to distinguish restorative justice from other diversion programmes by placing the utmost importance on restorative processes where victims should be placed at the center of the attention with appropriate participation from the offenders and the communities. Finally, we have to be mindful that restorative justice is an evolving concept and there is no definite formula for success. What works in one society may not fare as well in others. Each country has to find its own recipe which properly balances the conventional role of criminal justice with this new concept so as to be able to come up with a better way to ensure justice to all.

A BRIEF OUTLINE OF THE CURRENT SITUATION ON THE PROTECTION OF VICTIMS OF CRIME IN THAILAND

Dr. Kittipong Kittayarak[*]

I. INTRODUCTION

Early in history, criminal law was essentially law for victims. Victims of crime were the center of the administration of criminal justice. Most criminal sanctions aimed at providing redress to the victims, typically in the forms of compensation and restitution. The concept of crime as a "private wrong" has been replaced by the emergence of the notion that crime is an act against the well being of the state and thus needs "public prosecution". The importance of the role of the victim of crime was limited to that of a "witness". Over the past few centuries, the defendant and the State evolved as the two parties with legal standing in criminal proceedings. The victims were virtually forgotten and became, in the words of Bard, "the party without institutionalized voice in the legal process"[1].

The changing paradigm during that period was based on the following premises[2]:

1. A crime is primarily an offense against the government rather than a private wrong.
2. The government, because it acts for the good of the citizenry, cannot be held accountable for its mistakes or negligence in the administration of criminal justice.
3. Specially trained professional officers are better at controlling crime and seeing that justice is accomplished than the private citizens or victims of the offenses.
4. Victims are useful to the system as information sources and witnesses; their interests are not important to the system and could interfere with the efficient administration of justice.
5. Because of the great power of the state and the potential for abuse, persons accused or suspected of committing a crime need to be protected with an array of procedural rights and privileges.

This "new paradigm" which has remained the mainstream thinking of the criminal justice systems around the world for a long time until the older ideas have been rekindled only recently by the movement for the protection of crime victims.

II. CURRENT SITUATION REGARDING THE RIGHTS OF VICTIMS OF CRIME IN THAILAND

As in many countries, the rights of crime victims have received due attention in Thailand only recently. There are several factors leading to the awareness of the plight of victims of crimes in Thailand. To begin with, in my opinion, the movement for the protection of rights of women and children has contributed a great deal to the awareness and concerns of the plight of victims of domestic violence and child abuse. Dissatisfied by the poor response of the criminal justice system, which does not adequately protect women in case of sexual assault and domestic violence, leaders of the movement have effectively highlighted the weakness of the criminal justice systems and created civil society networks to substitute such shortcomings. They have brought to light the plight of crime victims and the necessity for them to be better assisted, supported, informed and, sometimes, participated in their own criminal trial. In addition, the increasing awareness of the rights of victims in Thai criminal justice was a result of a long campaign for criminal justice reform in the country. Such movement, which happened during the drafting of the Constitution of 1997, allowed the opportunity to put several provisions regarding the rights of victims in the Constitution. For instance, Section 53 provided that:

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[*] Director General,
Department of Probation,
Ministry of Justice,
Kingdom of Thailand

[1] M. Bard, "Unblaming the Victim" in Social Policy (Winter 1985) at 43-46.

[2] P.S. Hudson, "The crime victim and the criminal justice system: A time for change" Pepperdine Law Review 11(1984), at 24.

"Children, youth and family members shall have the right to be protected by the State against violence and unfair treatment.

Children and youth with no guardian shall have the right to receive care and education from the State as provided by law."

Although the protection rendered by this Section does not address crime victims in general, it however deals with such issues as domestic violence, which is one of the major areas where victims need special protection and treatment.

In addition, Section 245 of the Constitution stipulates that:

"In a criminal case, a witness has the right to protection, proper treatment and necessary and appropriate remuneration from the State as provided by law.

In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive aid from the State, upon the conditions and in the manner provided by law."

This provision is a mandate for the setting up of the scheme for compensation and assistance of victims and witnesses in the Thai criminal justice system.

With the mandate by the Constitution and the increasing interest of the general public in the necessity of reform of the criminal justice system, the past five years saw a dramatic increase in the protection and assistance of crime victims in both laws and practices. The Criminal Procedure Code was amended to adopt a new procedure for interrogation of children who were victims of violence, particularly of domestic violence. They were allowed to have a prosecutor, psychologist and social worker present during the interrogation. Teleconferencing was also provided during court hearings so as to reduce the pressure of confrontation with the defendants. Moreover, recently Parliament has passed the law on compensation for crime victims and the wrongfully accused. Currently, a new agency called Department of Rights and Liberties Protection, which includes a division on victims' assistance, was recently established. The Department is now in the process of preparing ministerial regulations setting up the scheme for compensation.

III. VICTIMS' RIGHTS TO INFORMATION AND PARTICIPATION IN THE CRIMINAL JUSTICE PROCEEDINGS

The right of crime victims to be informed is perhaps the most fundamental right without which the other rights and services available to them may be meaningless. There has been an increasing consensus among many countries that it is necessary to change current practices, which do not provide basic information to crime victims about the status of their cases. To some critics, the underlying thinking for these changes, however, may not result directly from the recognition of the significance of the right of the victims of crime as much as of the fact that the criminal justice system would benefit by "being nicer to victims". Several research studies have pointed out that the reason that victims of crime did not report crime incidents to the police was because they were apprehensive about how they would be treated and whether they would be believed. Moreover, the major reason why victims and witnesses did not cooperate with the authorities were not because they were uncooperative but because they were intimidated by the criminal justice system and uninformed as to what they were expected to do. As a result, there have been notable improvements in the criminal justice systems of many countries in regard to new developments designed to address victim's needs for better treatment and more information, as well as to the need of the State to have cooperative witnesses.

Although such developments are very much welcome, it should be noted that crime victims do not just want to be treated nicer but to be able to participate in the criminal justice system. In this aspect, there has been heated debate on whether or not and to what extent it should be allowed. Advocates of victims' rights to participate in the criminal justice process present a host of arguments in its favor, ranging from the moral to penological. Some argue that sentencing will be more accurate if victims convey their feelings and that the criminal justice process will be more democratic and better reflect the community's response to crime. Victim participation will also remind the judges and prosecutors that behind the state remains a real person with an interest in how the case is resolved. It may also lead to increased victim satisfaction and cooperation with the criminal justice system, thereby enhancing the system's efficiency. Moreover, when the court hears from offenders' family and friends, fairness dictates that the people who were actually injured should be

allowed to speak. Some researchers also suggested that victim's participation also promotes psychological healing of victims as well as the rehabilitation of offenders as they confront the reality of the harm that they caused to victims.

On the other hand, opponents of the movement also pointed out many reasons for disagreement. For instance, some suggested that it might disrupt court proceedings or expose the court to public pressure from which it should be insulated. Moreover, critics are afraid the court may be prejudiced by the presence of victims, which may diminish the quality of justice. Prosecutors and judges may be cautious of this since it means that their control over cases will be eroded.

A. Right to Information

In general, the right of victims to be informed has not yet been legally guaranteed in Thailand. In practice, however, victims were given some types of information according to the internal policy or directives of each criminal justice agency. Although in my opinion, there would be no strong objection to the enhancement of the right of crime victims to be informed of the status of their cases, there has been inadequate attention to its improvement by the relevant authorities. This may be because of the lack of appropriate perspectives on crime victims on the part of the Thai criminal justice officials.

As far as the notification of termination of investigation proceedings and decisions of the prosecution are concerned, crime victims are not automatically entitled to the notification of termination of proceedings from the police nor do they automatically receive any notification from the prosecution on whether or not the case is prosecuted. Practices vary from office to office on this.

Regarding the inspection of files and information, the victims of crime in Thailand do not have any right to inspect the files of inquiry. During the drafting of the Constitution, a question was raised as to whether and to what extent the victims of crime should have the right to access the police and prosecutor's files. However, after a debate, it was decided that they are not allowed to see the files except their own statement, since there was a fear that important evidence might be jeopardized. In practice, however, the police and prosecutor, upon their discretion, will allow some access by the injured party, particularly to the injured party's lawyer.

With regard to the right to know reasons for non-prosecution, Section 241 of the Constitution provided that "In a criminal case for which the public prosecutor issues a final non-prosecution order, an injured person, the suspect or an interested person has the right to know a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to the making of the order for the case, as provided by law". The aim of this provision is to make the prosecutor's decision not to prosecute more transparent as it may be checked by the injured party. Moreover, this may allow the injured party to decide whether or not he will start his own private prosecution.

Apart from the above mentioned right to information, I believe that it is also necessary to keep the victims of crime informed of the outcome of court proceedings and the release of the offenders from custody.

B. Right to Participation in Criminal Proceedings

Unlike in most countries where there has been heated debate regarding whether or not victims of crime should be allowed to participate in judicial proceedings, Thailand, under the still prevalent concept of private prosecution stipulated in its Criminal Procedure Code, allows victims of crime the full right to bring their cases to the court by themselves as joint prosecutors. Although the laws on criminal procedure in Thailand were modeled after the civil law system, many elements of common law were presented in the laws as well as in practices, including the concept of private prosecution.

According to the Thai criminal procedure, the victims of crime have the full right to bring the case to court by themselves without having to initiate a complaint to the police. Criminal offenses have been classified into two types: compoundable and non-compoundable offenses. Compoundable offenses are non-serious crimes; while non-compoundable offenses are more serious crimes which have a more adverse impact on society.

For compoundable offenses the decision on whether or not to initiate criminal proceedings remains fully within the hand of the injured party. The injured party may either request the police to proceed with criminal

investigation by submitting a complaint to the police or he or she may prosecute the case directly to the Criminal Court by himself. Without a complaint from the injured party, neither the police nor the prosecutor can start investigation or prosecution. In addition, if the injured party decides to withdraw the compliant during any stage of the criminal proceedings, the case will be dismissed.

In regard to non-compoundable offenses, however, the main responsibilities of criminal prosecution remain with the State throughout the prosecution. The injured party, however, can still play a role in the criminal proceedings. For instance, apart from being able to file a complaint to the police or file a separate suit directly to the Court, the injured party can also submit a request to the court for permission to join in the prosecution's case as a "joint prosecutor". The prosecutor, however, is in charge of the case and can request the court to withdraw the status of joint prosecutor from the injured party if he thinks he or she may jeopardize the case.

In reality, there are not many cases brought to the Court through this private prosecution channel. This is because of the high cost of litigation and the lack of investigation facilities and capabilities on the part of the injured party.

In my opinion, the model in Thailand is a result of the product of the westernization of law but not of genuine concern for the right of the accused. In fact, the choice of the victims of crimes should not be between joining the proceedings as a "joint prosecutor" or not joining at all. Instead of providing such avenue, which is in fact impractical, the criminal process must take into account the real needs of the victims of crime. Most victims, I believe, do not want to be involved to the extent of being a "joint prosecutor". In most instances, they want to have the right to observe and to have some "ownership" of the process. I am in support of the model of "private accessory prosecutor" as adopted in Germany which may provide a middle ground for victims' participation in criminal proceedings.

IV. CRIME VICTIM'S RIGHT TO RESTITUTION AND COMPENSATION

It is obvious that crime victims suffer damage from crime in terms of loss of property, bodily injury, death and mental suffering. Such suffering definitely causes some damage and costs to the victims. It is only fair to say that such damage and costs should not be left unaddressed, but, where appropriate, offenders should make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment of the harm or loss suffered, and reimbursement of expenses incurred as a result of the victimization. To obtain such restitution, many jurisdictions allow the consideration of civil claims in criminal proceedings or the issue of a restitution order directly by the court. Apart from claiming directly from the offenders, who oftentimes are unable to pay their dues, crime victims may generally be entitled to compensation from the State for monetary relief, separate from the apprehension and conviction of the offender.

A. Civil Action in Criminal Procedure

In Thailand, the injured party is not allowed to enter into the so-called *partie civile*, a procedure whereby the victim of crime can pursue a civil claim against the offender at the same time and in the same proceedings as the criminal trial. However, the Thai Criminal Procedure allows the prosecutor, in some types of offenses, such as in cases of theft, snatching, robbery, gang-robbery, piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property, to apply for restitution of the property or the value thereof on behalf of the injured party. A civil case can also be instituted by the injured party in connection with the criminal case. However, in reality such an avenue is too difficult to attain restitution since the injured party would need to have assistance from a lawyer and the lengthy civil proceeding would deter such practice.

B. Restitution

A Restitution order issued directly by the criminal court that the offender should compensate the victim is another method that, if available would directly assist the victim of crime to attain restitution. However, in Thailand, there is no law allowing the court to issue such an order. In order to assist the victims of crime, the Court in some countries may on its own initiative and discretion issue such order. Restitution, in my opinion, if appropriately used, is an effective measure, which may serve rehabilitative and punitive purposes. It is a good way to alleviate harm done to the victim and may provide a constructive way for the offender to be held accountable for their action.

C. State Compensation Scheme

Although crime victims are entitled to the choice of *partie civile* or restitution order as mentioned earlier, in reality, it would be difficult for them to receive adequate compensation or any compensation at all. This is because in many criminal cases offenders cannot be identified and brought to justice. Moreover, offenders may lack enough money to make up for victims' damages. Victims themselves may not be able to collect enough evidence to sustain civil actions as well as to hire a lawyer. For these reasons, state compensation is a necessary means of providing financial relief for victims of crime.

As mentioned earlier, the Thai Constitution of 1997 stipulated that a state compensation scheme for victims of crime be established. Recently, the Victim Compensation Act of 2001 was promulgated and the Ministry of Justice is in the process of drafting ministerial regulations for the implementation of the scheme.

V. RESTORATIVE JUSTICE AND VICTIMS OF DOMESTIC VIOLENCE: A PILOT PROJECT

As in the case of Thailand it is very difficult to introduce restorative justice from a top down approach, we decided to start with the issue of domestic violence, particularly in cases of battered wives. This is because domestic violence particularly when female spouses are assaulted by their loved ones has recently received a great deal of attention in Thai society. Through long, continued and efficient campaigns by women's rights advocates, the public has started to realize the inadequacies of the conventional criminal law and criminal justice process in protecting the rights of the aggrieved wife. In such cases it is obvious that in most cases the victims do not want their husbands to be put into prison; they just want them to change their behavior and stop hurting them.

Unlike in other countries where the criminal justice system may already have more appropriate alternatives the criminal justice system in Thailand does not leave many choices for the aggrieved wives, since the police, for obvious reasons, do not want to receive these complaints as the incidents are viewed as a family matter. The battered wives will mostly be forced to reconcile with the aggressors, a venue which does not adequately protect them or guarantee that future similar incidents will not occur. On the other hand, if the police decide to proceed with the complaints, it is more likely than not that the wives will later request the police or prosecutors to withdraw the cases for fearing that the husbands will have to be imprisoned, a result which will directly affect the women and their children economically and socially. Such dilemma represents the weakness of the existing conventional criminal justice process to which restorative justice can appropriately fill the gap.

As a matter of fact, an attempt to introduce the restorative justice approach to the solution of domestic violence was made even before the formal introduction of the restorative justice concept in January 2002. A few years earlier, while serving as the Director of the Thailand Criminal Law Institute, I and a group of women's rights advocates attempted to introduce a programme for the treatment of the aggressor as part of an alternative to prosecution in domestic violence cases. At that time, although the idea was well received by academics and practitioners, it was very difficult to start the programme without a strong commitment from the police, the prosecutors and a coordinating agency, such as, for the case of Thailand, the probation services. After I had the opportunity to run the Department of Probation in August 2001, I then reintroduced this programme on the first appropriate occasion in November of 2002, since November is the month for campaigning against violence against women and children.

The project, which was named by the media as "husband rehabilitation clinic" or, literally in Thai, "husband repairing factory," aims at setting up a diversion programme at the prosecution level for treatment of abusive husbands. It is proposed that the police, after receiving complaints from the victims of aggression, proceed with the case rather than viewing it as a family matter and decline to accept the complaint. At the prosecution level, the prosecution will consider conditional dismissal of the charge if the following prerequisites are met: consent of the victims; the aggressors are repentant and willing to undergo a treatment programme if necessary; and the nature of the case is appropriate for pretrial dismissal (factors such as the gravity of the case, etc. will be looked at). If the prosecutor decides that conditional dismissal is more appropriate than prosecution, he will submit the case to the probation officer. The probation officer, after considering the facts and circumstances of the case, may organize a conference among the victim, the aggressor, their relatives or trusted persons (if necessary) and respected members of the community (if appropriate) to find appropriate measures for the treatment of the aggressor and the solution to the personal conflict and/or other problems. In this process, the probation officer will act as a facilitator trying to seek

reconciliatory measures for the belligerent couple. The aggressor may be subject to some or all of the following conditions: attending appropriate treatment programmes (such as programmes to control anger or to quit drinking, etc.); regularly report to a probation officer within a specified period of time; and providing restitution or rendering community service, as deemed necessary. If the aggressor is able to meet with the conditions set for him, the probation officer will report the positive result to the prosecution who will then drop the charge. On the contrary, if the agreed conditions are broken the prosecutor will continue with the suspended prosecution.

By having this alternative programme, it is hoped that not only both the victims and aggressors in domestic violence will be appropriately taken care of, but such measures will also allow the police to be more efficient in the preventive campaign against domestic violence.

As mentioned earlier, the project was proposed once again in November 2001 during the National Seminar for the Protection of the Rights of Women and Children, an event held every year during the month of November. This time it began to receive wider support from the public and has become front-page news. However, it was not until November 2002 at a Seminar on Restorative Justice and Domestic Violence, organized by the Department of Probation and the Thailand Research Fund (TRF), that it became the talk of the town and one of the biggest news items during the campaign month for ending domestic violence.

During the early debate on at what stage should the case be referred to this restorative process, there were suggestions that this should be done during the police level. However, there are several reasons which have made it less appealing to do as such. Firstly, it is not legally possible for the police once they have accepted the complaint by the battered wife to use its own discretion not to pursue the case. Secondly, there are some concerns in regard to the use of discretion at this level which has low visibility and thus is difficult to structure and control.

Although the proposed scheme has received high publicity and overwhelming support from the public, the Department of Probation is still unable to launch the project as early as expected due to reluctantance on the part of the Office of the Attorney General to start the suspension of prosecution scheme without any corresponding legislation. The proponents of the scheme are of the opinion that no law is needed in this case since in limited circumstances, particularly in petty crimes, the prosecution has already adopted the opportunity principle in dropping the prosecution of several cases on the grounds that prosecution will serve no public interest. Such non-prosecution orders were issued even without any conditions. As a result, in domestic violence cases where the victims provide their consent, the nature of the case is not aggravated and the offenders are willing to undergo and complete a rehabilitative and restorative programme, there are even less grounds for prosecution. Although there is no real opposition to the idea, some believe that it may be better to wait for the law on suspension of prosecution before attempting an innovative idea such as this. Others, particularly more conservative criminal justice and judicial officials, may simply not understand the seriousness of the problem and may not see any urgent need for a special programme of this kind.

Despite the obstacles for the immediate implementation of the scheme, I am quite confident that the project will soon be implemented. On the latest movement, the Office of the Attorney General has shown an interest in the programme and a discussion with the Department of Probation as to how to implement such a programme will soon occur.

VICTIM SUPPORT IN THE UK – ITS HISTORY AND CURRENT WORK

Peter Dunn *

I. INTRODUCTION

Victim Support is the national charity for victims of crime in England, Wales and Northern Ireland and it includes the Witness Service. Scotland also has Victim Support but because its legal system is different to that of the rest of the UK, Victim Support Scotland is a separate organisation. Our role is to help people cope with crime.

II. VICTIM SUPPORT

- Supports victims
- Supports witnesses in all criminal courts in England and Wales
- Campaigns for victims' rights
- Trains staff in other agencies
- Provides consultancy services

Victim Support is the national charity for victims of crime and witnesses. We are an independent service offering free and confidential help, irrespective of whether or not a crime has been reported. Our primary purpose is to help people cope with crime. In recent years we have offered help and support to people attending court, through our witness services. We also campaign for victims' rights and we are regularly consulted by a range of public agencies about issues concerning victims.

We offer training and consultancy services to public agencies and commercial organisations, for example we recently ran a national training programme for the new Youth Offending Teams in victim awareness, via the Youth Justice Board. We also offer consultancy to retail and security firms whose staff have been victims of crime at work.

Victim Support was founded in Bristol, which is in south west England, in 1974 by a police officer and a probation officer. There are now 374 Schemes throughout England, Wales and Northern Ireland, organised into 52 Areas which are coterminous with police and other criminal justice agency boundaries. These are 52 separate charities with their own boards of trustees, which are affiliated to the National Association of Victim Support Schemes (normally known as Victim Support). London and Surrey are organised differently. In London there are 32 boroughs and each has its own separate Victim Support service. In Surrey there are a smaller number of individual services for each major town in the county.

In Victim Support we have:

- 13,803 volunteers
- 1140 staff (98 of these at National Office);

and our finance comes from:

- Central government (the Home Office) which in 2001-2 contributed £27 million, (equivalent to Yen 4.7 billion). This is 80% of our funding
- Local government and donations, which provides 20% of our funding.

Victim Support is a charity, and this enables us to remain independent of central government and the criminal justice system.

* Head of Research and Development,
Victim Support National Office,
United Kingdom

III. VALUES AND PRINCIPLES

- Services are free and confidential – we do not pass information about victims on to other individuals or organisations without the victim's consent
- Valuing diversity helps make our services equally accessible
- We are independent of the criminal justice system, but able to influence it
- We work in partnership with other organisations, locally and nationally.

Confidentiality can be a difficult principle to uphold. Courts and police sometimes expect us to tell them if witnesses we are in contact with do not want to give evidence. The 1998 Data Protection Act has made some police services less willing to share information with us, and we need this information to receive and prioritise referrals. The 1998 Human Rights Act means we have to balance the principle of confidentiality with principles such as the right to life, so in some very limited and exceptional circumstances we would have to breach confidentiality if, for example, someone's life is in danger.

Valuing diversity includes:

- Ensuring staff and volunteers reflect the demographic mix of the communities in which they work
- Making services equally accessible to everyone, regardless of language, race, disability, sexuality etc.
- Ensuring people are offered support in a manner which is appropriate to their needs
- Taking action to promote anti-discrimination initiatives
- Ensuring staff and volunteers are treated fairly.

Although most of our income comes from the Home Office, we are an independent charity and this means we can, when necessary be critical of government initiatives that fail to promote the rights of victims and witnesses. Working in partnership means using local structures (more information about this is available in a later part of this paper) and working with other voluntary and statutory organisations to provide the best possible service to victims and witnesses. Examples of partnership work include the provision of local services to domestic violence victims and support for young witnesses with the NSPCC. In domestic violence work, we do not operate refuges (houses where women who are victims of domestic violence can stay, with their children, to escape the violence). So we have to refer women in need of this provision to the local branch of Women's Aid or Refuge. Similarly, although we support witnesses in court, some specialist aspects of the support might be undertaken by other agencies. The National Society for the Prevention of Cruelty to Children work with children who have been abused, and they might sometimes act as preparer if the child has to go to court. So it is important that we work closely and co-operatively with a range of other agencies.

IV. VICTIM SERVICES

In 2001-02 we contacted:

- 1,257,089 victims
- 151,603 crown court witnesses in 88 crown courts
- 103,073 magistrates' court witnesses in 207 magistrates' courts.

We do not usually offer a service to victims of minor offences and car theft victims, unless these have an unusually significant impact for the person, such as racial harassment or the theft of a disabled person's car.

The Magistrates' Court Witness Service is a very new development for Victim Support. During the year 2000-2001 we have increased the number of services in the magistrates' courts and all criminal courts in England and Wales now have a witness service.

Our 374 local services are managed by 52 Areas (with the exceptions of London and Surrey). Each Area has a Management Committee who are the trustees of the local charity, which employs an Area Manager, a coordinator for each local service and a small number of administrative staff. Most of the support of the victims is done by unpaid volunteers. Areas are individual charities, affiliated to the National Association of Victim Support Schemes.

The witness services are managed by a coordinator, most of whom are supervised by area managers, except in London and Surrey. Some judges and court officials were initially resistant to the establishment of

witness services, fearing that the service might interfere with the judicial process. However, in many instances the improved support of witnesses has enabled trials to continue when they previously might have failed, and this has helped witness services gain credibility and the respect of witnesses and the court.

Victim Supportline operates during daytime and evening hours, and is run from Victim Support National Office. It is staffed by a manager, six coordinators and a team of volunteers. Last year it took 22,083 calls. Its telephone number is 0845 30 30 900.

97.3% of the victims we help are referred directly by the police, who ask victims if they consent to their details being passed to the local Victim Support scheme. (The Data Protection Act, implemented in October 2001, has made this more difficult.) If the offence is one of domestic violence, homicide or sexual crime, referrals are not made directly. This is particularly important with domestic violence, when we must ensure that contact from a volunteer does not put the victim at further risk.

Victim Support wants to increase the number of victims referred by themselves or other agencies. This is so that we can offer a service to many more of the 54% of victims who, according to the 1999 British Crime Survey do not report the offence to the police.

A. Referral Trends in 2001-02

- More referrals of violent crime (robbery up by 13%)
- Less domestic violence (down by 5% on last year, following a steady increase)
- More referrals of racially motivated crime (up by 13%) – a tenfold increase since 1993
- 27% of referrals are burglary victims
- More referrals of criminal damage (up 8%)

To some extent, these figures replicate current crime trends in the UK, where burglary and theft has reduced slightly, but violent crime has increased. There is more street robbery, partly due to thefts in the street of mobile phones etc by young people, committed against young people. Very recently, there has been an alarming increase in gun crime which is a source of great concern as these offences are a feature of deprived urban communities, and witnesses are often too intimidated to give evidence. The trend for a very large increase in referrals concerning domestic violence, racially motivated crime and other hate crime (including homophobic crime) may be due to more awareness of the extent of these offences, better and more informed police response to it; and for racist crime the establishment of reporting centres. These are at locations other than police stations where racist incidents can be reported to the police, and where Victim Support is often represented.

Types of crime referred to us:

- 65% of referrals are for people who have been victims of property crime such as burglary and criminal damage.
- 29% is violent crime, including homicide, sexual offences and robbery.
- 6% is for referrals of other crime categories, including road death.

V. SERVICE DELIVERY

By volunteers supervised by a smaller number of paid staff

- By specialist staff for supporting victims of racist or homophobic crime and domestic violence
- All volunteers are carefully selected and trained (40 hours basic training)
- Serious crime training is available for more experienced volunteers who want to broaden their skills and experience.

VI. TRAINING

All volunteers must complete a basic training course (about 40 hours). This covers a range of topics including:

- Victim Support aims, values and organisation
- The impact of crime on victims and significant others
- Listening skills and support skills
- Diversity and equal opportunities.

Volunteers are usually expected to work for a few months before going on to do further specialist 'serious crime' training. This includes courses on:

- Supporting victims of racist crime
- Sexual violence (separate courses for supporting male and female victims)
- Domestic violence
- Supporting people bereaved by homicide

There is a separate training programme for Witness Service volunteers.

VII. VOLUNTEER MANAGEMENT

Volunteers are selected by an interview with the local co-ordinator (service manager) and sometimes a committee member. References are taken up and a Criminal Records Bureau check is undertaken to find out whether the potential volunteer has any criminal convictions. Having a criminal record will not automatically bar someone from volunteering for Victim Support – it depends on the nature of their record. Volunteers are expected to attend for regular supervision with the local co-ordinator.

Victim Support volunteers can often do their work in the evening or at weekends, whereas Witness Service volunteers must be available during the day. They are expected to work about one day per fortnight, though many do more hours than this.

VIII. REFERRAL AND ALLOCATION

The Victim's Charter specifies we must contact referrals in 4 days. The local co-ordinator receives the referrals by fax from the police each day and these are prioritised for contact either by letter and leaflet, telephone call or a personal visit to the victim's home by a volunteer. The proportion of victims receiving a personal contact was 23.4% in 2001-02. The number of contacts varies according to type and seriousness of offence, ranging from on average one or two for burglary victims, to six or more for people bereaved by homicide.

Police referrals contain varying levels of information. Sometimes this is sufficient to enable the priority the referral is given to be determined. We should receive data including name, address, offence, ethnic origin, and whether or not they are a repeat victim. But these details are not always available. The co-ordinator will prioritise the referral according to these criteria. Elderly people, victims of hate crime and repeat victims usually get priority. The proportion of victims receiving a personal contact is rather low at 23.4%. It is low because we do not have the resources to speak to every victim, and some do not want contact. However, research suggests that even receiving a letter and one of our leaflets helps victims recover from the effects of crime, because it demonstrates that people care about them.

IX. THE VICTIM SUPPORT SERVICE MODEL

Victim Support provides information, practical help and emotional support to people who have experienced a crime, to witnesses, and to their families and friends. Our services are based on the principle of community involvement – for many people, the expression of concern by a fellow citizen can be very helpful in repairing the harm done by crime. We try to ensure that our volunteers reflect the diversity of the communities in which they work. Our services are provided in the following ways:

- We contact people by letter, 'phone or visit. For some types of crime, such as when someone is bereaved by homicide, we make contact in a different way that reflects the particular sensitivity of the situation.
- We will arrange for a trained volunteer to see people in their homes, at our local office, or sometimes at another place that is safe and convenient for the person being supported.
- The volunteer will provide people with plenty of time and will listen while people talk about their reactions to the crime. If it will help, the volunteer will give information about the wide range of emotions that are normal following a crime.
- The volunteer will identify help and support that will most usefully meet the person's needs and expectations. If help is wanted that is beyond the scope of Victim Support, such as bereavement counselling or re-housing, we will assist with finding that help.
- If practical help is needed, we will try to arrange it. Practical help can include applying for criminal injuries compensation, providing support if the person wants to go to the police station, help with

claiming benefits, access to crime prevention advice, and a range of other services. People bereaved by homicide may need our help with arranging a funeral, while others may need us to advocate on their behalf with other organisations such as the Criminal Injuries Compensation Authority or the local housing department.

- We help people get information. This includes information about their rights, and if they have reported the crime, with progress in the case.
- We can arrange support at court through the Witness Service, which operates in every criminal court in England and Wales, and which is part of Victim Support.
- All our staff and volunteers are carefully selected, trained and supervised to help ensure that we support people in a genuine and professional manner.

Emotions felt on being victimised include shock, anger, fear (about going out, or staying in, about being a victim again, about encountering the offender, about other people's reactions); the shattering of our normal assumptions about life and other people, and sometimes guilt. It is important that people's feelings are listened to and acknowledged – friends and family often jump too quickly to giving advice and telling people to "put it behind you now". VS volunteers are trained to listen, give the victim time to express their emotions, without giving ill informed advice.

Advocacy can include pressing housing authorities to re-house, liaising with the police, writing a letter to the Benefits Agency etc. Last year we helped about 20,000 people with criminal injuries compensation claims, including helping victims with appeals.

Research shows that what victims are most frustrated by is the lack of information – about progress with their case, about the court process, and progress with their claims.

The Victim Support service is not:

- Counselling
- Legal advice
- Medical intervention

and we cannot normally make our service available when no criminal offence has taken place. However, in practice we do sometimes offer support when it is not certain that a crime has been committed. An example of this is road death. 71% of Victim Support services offer help to people bereaved by road death. That help has to be offered before it is known whether or not one of the drivers involved will be prosecuted.

The British Association for Counselling and Psychotherapy define counselling as being a process that "takes place when a counsellor sees a client in a private and confidential setting to explore a difficulty a client is having, distress they may be experiencing, or perhaps their dissatisfaction with life or loss of a sense of direction or purpose" (BACP, *'Training and Careers in Counselling'*, 2001). Counselling is beyond our remit because we do not have the resources to offer it, nor the expertise to supervise staff or volunteers engaged in practising counselling. However, all our volunteers are trained to use some counselling skills, particularly active listening. Counselling has had a "bad press" in the UK in recent years. Nor do we offer psychological debriefing.

We do not offer legal advice but we can sometimes help victims to access *pro bono* legal advice.

We do not usually provide a service where no crime has been committed, though in some circumstances we might offer support if none is available from other agencies, for example to people bereaved by suicide.

X. LOCAL PARTNERSHIP WORK

The 1998 Crime and Disorder Act established local crime reduction partnerships. The Act specified that all agencies are equal partners in reducing crime and the effects of crime.

Victim Support is involved, providing information of effects of local crime on victims and sometimes, information about patterns of unreported crime. Partnership work offers opportunities to influence the policies of other local agencies and to improve the service offered to victims by helping organisations to work together effectively and share information. It also enables us to reach out to the 50% of victims who do not report the crimes they have suffered and who therefore are not referred to Victim Support by the police.

XI. SERVICE EXAMPLE: RACIST CRIME

The Stephen Lawrence enquiry report (1999) prompted the development of better services to victims of racist crime. This includes:

- Specialist training programme for volunteers working with racist crime
- Third party reporting
- Better partnership work in responding to victims' needs

Stephen Lawrence was an eighteen year old black man who was murdered in 1993 by a group of racist thugs while on his way to meet friends near his home in south London. The subsequent police investigation failed to find sufficient evidence to secure convictions of those who were arrested and charged with his murder. Such was the level of public concern that an enquiry into the police handling of the case was established. It reported in 1999 and the results of the enquiry caused a scandal in the extent of the institutional racism in the criminal justice system that was revealed. The enquiry's findings have prompted a large scale programme of criminal justice reform which is still ongoing. Third party reporting enables people who have been victims of racist crime to report at a location other than a police station if that is preferable to them, for example at a Victim Support office or a local community centre.

The following example describes some work undertaken by the Victim Support Racist Incidents Officer in Northampton, which is a large town in the English midlands. It illustrates how a local Victim Support Scheme was able to help a victim of racist crime despite there being no criminal prosecution. The victim's real name is not Mrs Jones.

Mrs Jones worked full time and owned her house. For several months she had experienced regular minor damage to her car. She thought this was strange because nobody else in her street had their car vandalised. Sometimes she found that people had trampled and broken plants in her front garden, and sometimes rubbish bins were emptied out all over it.

The problem of the damage to her car got so bad that friends and relatives felt anxious about visiting her, in case their cars were damaged too.

Mrs Jones, who is African-Caribbean, reported the incidents to the police on several occasions and they thought it was racially motivated but could not catch the offenders. They referred her to Victim Support.

When the Victim Support volunteer came to see Mrs Jones she told the volunteer she had also received verbal abuse in the street, with people shouting racist remarks. She said she did not take much notice because she had put up with this sort of thing most of her life.

The volunteer involved the Victim Support Racist Incidents Officer, who contacted the police and the local authority. A meeting was held and it was suggested to Mrs Jones that the police could install a surveillance camera temporarily. Mrs Jones agreed and this was done. The police watched the video tape, and they were able to identify the people damaging her car and garden. Using this evidence, the local authority began eviction proceedings against the offenders, who were local authority tenants, and they left the area.

The harassment stopped. Despite the fact that the evidence was insufficient to bring about a prosecution, it did enable the eviction of the offenders and this brought some peace at last for Mrs Jones.

XII. WITNESS SERVICE

The Witness Service is part of Victim Support and it offers:

- Pre-trial visits to familiarise witnesses with the courtroom
- Information about the court and legal process
- Separate waiting areas with support available
- Enhanced support for vulnerable and intimidated witnesses
- Help after court if it is needed.

The police and the Crown Prosecution Service are responsible for informing victims of the progress of the case, including the outcome of the trial if the victim has not remained in court to hear it. However, the Witness Service often gets involved in contacting the police and CPS on witnesses' behalf to speed up the process of information giving.

XIII. THE LEGAL CONTEXT AND VICTIM SUPPORT STRATEGY

The legal context: in English law, victims have no status in criminal proceedings and are not entitled to representation. They have no status in court unless they are witnesses. The presumption of defendant's innocence until proven guilty can unfortunately imply that the victim is lying. The adversarial legal process means witnesses are subject to attempts to discredit their evidence as lawyers fight it out between them in the courtroom. Victims also have no right to challenge a Crown Prosecution Service decision not to prosecute. They can bring about a private prosecution though this is impractical in most instances due to cost. The parents of Stephen Lawrence brought a private prosecution of the young men who were acquitted of his murder, but it failed. It may be that the unsatisfactory position of victims in the English criminal justice process is a factor that has prompted the development of such an extensive programme of support for victims and witnesses.

The Victim's Charter was first introduced in 1990, and updated in 1995. It is currently being revised again. It places obligations on the criminal justice agencies to treat victims better, but currently, no statutory means of enforcement exists so if agencies fail to meet their commitments, the most that can happen is that a complaint can be made. The Charter may have statutory authority when it is revised later in 2003. Victim Support is the only voluntary organisation that has obligations under the Victim's Charter.

XIV. CURRENT AND FUTURE CHALLENGES FOR VICTIM SUPPORT

- Ensuring consistent, higher standards of service provision
- Maintaining a focus on victims amongst a wide range of criminal justice initiatives including restorative justice
- Pressing for adequate resources (of every £100 spent on the criminal justice system in the UK, only £0.20 is spent on supporting victims and witnesses).

Victim Support welcomes the current effort to increase the provision of restorative justice, where this can bring real benefits to victims by them receiving a sincere apology, being able to tell the offender how they have been affected, or when the offender can help restore at least some of what the victim has lost as a result of the offence. However, sometimes victims are put under inappropriate pressure to be involved in restorative justice activity which is primarily for the benefit of the offender or the criminal justice system, not for the victim. Even when this does not happen, involvement in local restorative justice partnerships can be a very resource-consuming activity for Victim Support services.

We want to ensure more consistent standards of service provision, so that victims are entitled to a broadly similar level of service wherever they live.

Supporting victims of racist and homophobic attacks is a particular challenge, as they can be highly traumatised but often do not report the crime. The British Crime Survey found that Asian people in particular were most likely to be the victims of racist crime, but least likely to be satisfied with Victim Support's services. We want to recruit more volunteers from minority ethnic groups, publicise our services more widely, and make more interpreters available.

The very limited extent of research about child victims suggests that they can be more affected by crime than adults, and yet their needs are often unmet. We have recently secured funding from a corporate donor to carry out research into their needs, and we are now devising a service model for helping victimised children that we hope to pilot in 2003.

Implementing the new provisions for vulnerable and intimidated witnesses (I will say more about this in the second paper) is a major challenge for us at this time. So too is the need to increase the number of non-police referrals, i.e. the 50% who don't report the crime so that we can reach people who are afraid or see no point in reporting what has happened to them. We also need to ensure that service provision is based on reliable evidence of what is effective in supporting victims and witnesses.

A. Meeting the Challenges Ahead

We Aim to Achieve:

- A more professional service, with -

- Improved training in dealing with the effects of serious crime, homicide, domestic violence, racist crime etc.
- Continued development of the new 'area' structure to free up coordinators to manage and supervise the volunteers
- Performance measures
- New inspection processes
- Better policy and practice guidance.

To add to our training provision, National Occupational Standards for work with victims have been developed in conjunction with the Community Justice National Training Organisation. They describe the skills staff must develop in order to work effectively in this area (known as 'competencies'), and the standards to be applied to the work. This helps staff and volunteers gain national vocational qualifications and can make volunteering more attractive, as well as helping to drive up standards.

At the same time we are developing new performance measures so that we will be in a better position to tell what is, and what is not effective in supporting victims; and we have established a Victim Support inspectorate to monitor standards of service provision.

B. Looking to the Future

In the Future Victim Support will be:

- Campaigning for a legislated, joined-up approach to victims
- Developing services that are based more on what works, with better standards, and greater consistency in service provision
- Establishing our service to children, people bereaved by road death, vulnerable and intimidated witnesses
- Making services available to more people who don't report crime.

Only 3% of victims come into contact with the criminal justice system. We want agencies dealing with health, housing, employment, insurance and compensation to work together better to meet the needs of the remaining 97% to ensure that the effects of crime are reduced instead of aggravated.

We will campaign for victims' rights to be protected in legislation, and that these rights should be specific, enforceable, and the responsibility of defined agencies.

We campaigned for a Commissioner for Victims of Crime to ensure that victims' rights are addressed throughout all public agencies. Provisions for a Commissioner have now been introduced but he or she will have no statutory powers.

We are reviewing our own services to ensure that they are provided to better quality standards, are based on sound knowledge of what is effective best practice, and are provided consistently across the country. This means making services available to more people, such as children and those affected by road death, as well as increasing the satisfaction of victims and witnesses with the service provided.

We want to reach more people who are victimised, especially those who do not report crime to the police. The British Crime Survey consistently shows that only about half of all crime is reported to the police. Half of all crime is not reported because people think it is too trivial, they feel that there is little the police can do about it, they are ashamed of being victimised, or they mistrust the criminal justice system. We need to be less dependent on police referrals so that we can support those victims who don't report. This involves having more money available to advertise our services, evaluating our services, and achieving a higher public profile.

VICTIM SUPPORT IN THE UK – VICTIM SUPPORT SERVICES IN DETAIL

Peter Dunn *

I. INTRODUCTION

In this paper I will describe in more detail some of our services. In particular, the paper will address:

- Post traumatic stress disorder and victimisation
- What Victim Support provides to victims who want or need counselling
- Support for victims during the police investigation of an offence
- The UK system for criminal injuries compensation and our role in supporting victims' applications for compensation
- Provisions for vulnerable and intimidated witnesses.

II. THE VICTIM SUPPORT SERVICE MODEL

We provide:

- Emotional support
- Practical help
- Information

We do not usually provide:

- Legal advice
- Counselling
- Medical intervention.

It is worth taking some time to describe some of the emotions that are common for people who have been recently victimised. These include shock, anger, fear (about going out, or staying in, about being a victim again, about encountering the offender, about other people's reactions); the shattering of our normal assumptions about life and other people, and sometimes guilt. Guilt can arise if victims feel that they have somehow contributed to the offence, and it can be a powerful emotion despite the fact that obviously, the offender is the only person who is responsible for the offence they have committed. It is important that people's feelings are listened to and acknowledged – friends and family often jump too quickly to giving advice and telling people to "put it behind you now". VS volunteers are trained to listen, give the victim time to express their emotions, without giving hasty advice.

Many victims need advocacy. This can include pressing housing authorities to re-house, liaising with the police, writing a letter to the Benefits Agency etc. Last year we helped 14,000 people with criminal injuries compensation claims, including helping victims with appeals.

Research shows that what victims are usually most frustrated by in the criminal justice process is the lack of information – about progress with their case, about the court proceedings, and with progress if they are making a criminal injuries compensation claim.

III. POST TRAUMATIC STRESS DISORDER

I want to turn now to the subject of post traumatic stress disorder (PTSD). There is evidence that PTSD can often follow an experience of victimisation, especially when the crime has had serious consequences for the victim. It is important to remember that what might be a relatively trivial offence for one person can be serious and traumatic for another, so we should never assume that a particular crime is not serious because we do not view it as serious from our own perspective. PTSD can follow from victimisation because crime shatters our basic assumptions about life. We may feel that all our beliefs about other people being mainly

* Head of Research and Development,
Victim Support National Office,
United Kingdom

good and altruistic no longer apply. This can make the person feel that nobody can be trusted, that life can never be the same again, and that there is no longer any sense of security about our world. Research into psychiatric disorder following victimisation has shown that:

- 1 in 4 crime victims met lifetime criteria for diagnosis of PTSD (1993 study)
- In a 2000 study, 60% – 95% of victims met criteria for psychiatric disorder.

This can be particularly acute for people who have been bereaved by homicide. For them, the legal process following homicide interferes with their grieving process. They may not be able to persuade the coroner to release the body at an early stage, and multiple post-mortems may be requested. Many people find that they cannot begin to recover until the offender has been convicted, and this can take a year or more. The court process is experienced by many victims of serious crime as re-victimising, causing what is termed secondary victimisation – especially when their role and the importance of the deceased to them is ignored in the criminal justice process.

Some of the basic assumptions that most of us hold, and which victimisation shatters, include:

- A sense of invulnerability – although people realise crime happens, it happens to other people
- The world is controllable, predictable and meaningful – serious crime is unpredictable and often senseless
- We all have at least some sense of autonomy and positive self perception – crime can destroy this.

(Janoff-Bulman, R., 'The Aftermath of Victimisation' 1985).

"For people bereaved through homicide, the event is so momentous that time becomes defined in relation to the traumatic loss (anniversaries, birthdays etc.) and the perpetrator is often a trusted family member". (Resnick et al (1993) quoted in Mezey, G., 'Family Responses to Traumatic Bereavement Following Murder', 2000). In Mezey's study, she estimated that 1 in 10 victims met the criteria for current diagnosis of PTSD. Mezey studied 41 relatives of murder victims and 17 victims of serious assault. Between 60 and 95 per cent of the victims scored in a range on psychiatric questionnaires that normally differentiates psychiatric patients from those with no diagnosed psychiatric disorder, and "in particular, high rates of post traumatic stress disorder were identified". 37% of relatives of murder victims had commenced psychotropic medication since the murder and 27% had given up work.

There is still controversy about what exactly constitutes PTSD.

Research demonstrates that emotional support reduces psychiatric distress after a traumatic event, and that non-judgemental, empathetic listening helps people bereaved by homicide; while ventilating anger, grief etc. reduces the intensity of psychological distress. When effective emotional support is made available to people who have experienced a traumatic event, they are less likely to go on to develop symptoms of psychiatric disorder.

Non-judgemental, empathetic listening includes not making judgements about whether or not the person deserved to be a victim or somehow contributed to the offence. This is important to the recovery of surviving loved-ones. Media reporting of murder almost always contains judgements about the guilt or innocence of the victim. For example when an 'innocent' child is killed, the reporter's outrage is boundless, whereas if a prostitute is killed, the story is less newsworthy and peppered with references to the victim's bad lifestyle, as if they somehow deserved to be murdered. Empathy involves being able to listen to the victim and hear what they are saying from the victim's perspective rather than from one's own, inevitably different view. It is about getting alongside the victim and suspending personal judgement and it is in these skills that Victim Support volunteers are trained.

Victims of serious crime are often under pressure to put the event behind them and get on with life. This can make people feel that they must present a calm image and not get upset. Suppressing feelings of grief can predispose people to psychological distress later.

Victim Support's experience in the UK is that mental health professionals tend to underestimate the impact of crime. That impact is often greater when crime is involved because of the intent of the offender to cause harm to the victim, which is often accompanied by a fear of it happening again and a loss of trust or belief in other people.

For victims who may be suffering from PTSD or at risk of developing it, we offer:

- Emotional support, practical help and information
- Volunteers trained and selected to cope with the strong feelings expressed
- Liaison with health professionals if the victim consents
- Access to specialist help (through organisations such as Support After Murder and Manslaughter etc);

and referral takes place in line with the service model that I have already described.

We cannot approach health professionals about individual victims unless the victim consents. Some Victim Support services have arranged for volunteers to be based in hospital Accident and Emergency departments, with mixed success. We also produce information materials for health professionals to counter the tendency for the impact of crime to be underestimated.

We help victims consider other sources of specialist help, e.g.

- SAMM (Support After Murder and Manslaughter) offer self-help groups and telephone support from people who have had similar experiences
- Compassionate Friends for support and local groups
- CRUSE for bereavement counselling
- Childhood Bereavement Project for bereaved children
- Child Victims Trust for bereaved children
- RoadPeace for people seriously injured or bereaved in road crashes. They offer a telephone support service and a network of local self-help groups.

IV. SUPPORT AND THE USE OF COUNSELLING SKILLS

I have been asked to describe in this paper how Victim Support provides counselling to victims. Firstly, we need a definition of counselling. The British Association of Counselling and Psychotherapy defines counselling as a process "that takes place when a counsellor sees a client in a private and confidential setting to explore a difficulty a client is having, distress they may be experiencing, or perhaps their dissatisfaction with life or loss of a sense of direction or purpose."

Counselling tends to be beyond the remit of Victim Support because:

- It usually involves a long term programme of work that Victim Support does not have the required level of financial or human resources to offer
- There is some evidence that badly conducted counselling can make the problem worse. Counsellors therefore must be rigorously supervised by other counsellors, and we do not have the resources to do this
- Counselling often needs to address other issues in the person's past which are not necessarily related to their experience of crime.

Victim Support volunteer training teaches some counselling skills, such as active listening. This involves listening to the person and then feeding back what they have said, to demonstrate that they have been heard and understood. Active listening can be very affirming and helpful for victims, many of whom feel they are not listened to by criminal justice agencies. But using counselling skills does not mean that counselling is offered. We also involve volunteers who are counselling students but again, this is to offer support not to provide counselling. Victims who want counselling are usually referred on to their doctor, or to specialist counselling organisations such as CRUSE Bereavement Care. But there are often long waiting lists for counselling (up to six months is common) so it is important that we provide support in the meantime.

The Victim Support role with victims who are still involved in the police investigation is limited. We help by:

- Accompanying the victim to the police station, if they want this
- Helping the victim access information about the progress of the case, or to supply evidence in connection with criminal injuries compensation claims
- Working with police Family Liaison Officers
- Supporting the victim through restorative justice interventions.

The Victim Support role in supporting victims through the police investigation is often, in practice, very limited because:

- 97% of victims are referred to us by the police and by then they may have already made a statement

- They are more likely to need our help in getting information from the police about the progress of the case. It is important that we help victims gain such information – particularly when it might be bad news for the victim who will need informing sensitively and may need support afterwards; for example if the offender who assaulted them, who they may fear, has been given bail.
- Family Liaison Officers are used by all police services in England and Wales. Their role is to provide a link between the partner or family of someone bereaved by homicide and the police. They are specially trained to offer support and give information with a high level of sensitivity. However, they are also part of the police investigation (and they may be investigating the family they are dealing with) so their role in giving support is limited. Victim Support works closely with FLOs. We, and SAMM, contribute to their training.
- Victim Support works with victims who, following the arrest of an offender, are invited to take part in restorative justice interventions such as restorative conferences and reparation under the provisions of reparation orders (see the 1998 Crime and Disorder Act, and the 1999 Youth Justice and Criminal Evidence Act).

V. CRIMINAL INJURIES COMPENSATION

The UK Criminal Injuries Compensation Scheme for victims of violent crime was established in 1964, and revised in 1979, 1994, and 1996. It was replaced by a new scheme in 2001. The original 1964 scheme was non-statutory and based on 'common law' – the award was assessed on the personal circumstances of the victim. It did not compensate where injuries were sustained within a family (e.g. in cases of domestic violence). It was for 'innocent victims', i.e. those who could show they had not in any way contributed to the offence of violence that they had suffered. Establishing the scheme on a non-statutory basis meant that providing compensation was within the 'gift' of the government at the time. It could be withdrawn at will, without the need for discussion in Parliament, perhaps in the event of economic recession or if for some reason it became less imperative to help victims. Making common law awards meant that the amount of compensation awarded was based on individual considerations, on a similar basis to how compensation is awarded in civil proceedings. 'Common law' refers to a set of established precedents not written down in statute and it is a concept that appears in other aspects of English law. For example, murder is a common law offence. Common law awards meant that, for example, a concert pianist with a hand injury would receive more compensation than a bank clerk with a similar injury. Awards were made available only to 'innocent victims' (for example, those who had not struck the first blow), who had reported the crime to the police, and who had no criminal convictions. Most of these principles remain in force today under the existing 2001 scheme.

There have been four major revisions of the CIC scheme:
- 1979 – injuries sustained in a family setting were included, and time limits were introduced
- 1994 – the first tariff scheme was introduced
- 1996 – the statutory scheme was established under the 1995 Criminal Injuries Compensation Act
- 2001 – the current scheme established, with a10% increase in tariff levels, and the introduction of bereavement awards for same sex partners.

In 1979 victims of domestic violence and children who had experienced sexual or physical abuse from family members became eligible for awards. Time limits were introduced, possibly to restrict the growing cost of the scheme arising from increased public awareness of it and the inclusion of more categories of eligibility.

In 1994 the tariff was introduced. Fixed payments were made according to the nature of the injury, but many felt that the awards were much less generous than in the previous scheme. The period in which to apply was reduced from three years to one year after the offence. The tariff scheme was introduced to reduce costs and reduce the time taken for awards to be made. The tariff enabled junior officials to determine levels of awards, instead of this process being undertaken by (more expensive) Board members. It was possible for claims to be re-opened in certain circumstances, such as where injury had resulted in significant deterioration in health at a later date.

In 1996 the scheme became statutory for the first time. This followed a judicial review of the introduction of the 1994 scheme, which was held to be unlawful because it was not established in statute. The Criminal

Injuries Compensation Authority replaced the earlier Board and an independent Criminal Injuries Compensation Appeals Panel was created.

In 2001 the current scheme was established. Awards can be increased if victims of sexual offence can demonstrate they contracted AIDS as a result of the offence. An increase in awards for victims of child sexual abuse was also put in place.

A. Why was the CIC Introduced?

During the 1960's a more 'liberal' treatment of offenders had emerged, so there was also pressure for the better treatment of victims. There was also more awareness of the state's duty to victims and possibly, a realisation of the need to obtain and keep victims' engagement in legal processes. After Victim Support was established in 1974, there was further pressure for a statutory scheme. The acceptance of more 'liberal' treatment of offenders resulted in a range of provision, during this period, for early release of prisoners on licence, more community sentences as alternatives to prison, the introduction of legal aid for defendants etc. There was a need to 'tip the scales' back in favour of the victim, whose interests were seen as being left behind in attempts to treat offenders better. The state was seen as having a responsibility on behalf of the community to help people innocently hurt through crime. There was also recognition that the state had an interest in helping victims who could easily become disillusioned with the criminal justice system and therefore withdraw their co-operation with it, which would result in failure to report crime, reluctance to give evidence, and pressure for the harsher treatment of offenders.

During the 1970's and 1980's, victims' organisations such as Victim Support argued strongly for better help for victims, including a properly established compensation scheme. A 1978 House of Commons debate on the scheme was prompted by the murder of a Member of Parliament's daughter, and this event may well have been instrumental in prompting the 1979 amendments to the scheme.

A 1992 Victim Support working party on criminal injuries compensation concluded that state compensation must continue to be available to victims of violent crime based on arguments of "human dignity, on equity (including the obligation to make public expenditure towards the victim not totally disproportionate to what is spent on the apprehension, conviction and punishment of the offender) on social justice (the responsibility of society to care for its least fortunate members) and on the basic human right to some form of recognition and reparation". The working party also stated why victims of violent crime merit such compensation that is not awarded to victims of accidents or natural disasters: "suffering caused by a deliberate criminal act of another human being is on that account alone likely to be particularly distressing and personally damaging [and] an element in that distress is a sense of being let down by society as a whole".

B. Why Should the State Only Compensate Victims of Violent Crime?

Part of the reason for the Scheme not becoming statutory until 1996 was that arguments about who the state should compensate, and how, were so difficult to resolve. There was a strong argument that if the state compensates victims of violent crime, then it should compensate victims of all crime but the cost of this would be prohibitive. Other considerations included questions about whether the state should also provide compensation to people born with disabilities, those with serious illness, and people injured in accidents.

In 1990, the British Government ratified the 1990 European Convention on Victims of Violent Crimes which called for compensation that would cover "at least…loss of earnings, medical and hospitalisation expenses and funeral expenses, as and regards dependants, loss of maintenance" and this probably provided further impetus to place the scheme on a statutory basis.

C. Conditions for an Award

The current CIC scheme is for victims of violent crime, but violence is not defined. The following conditions must be met for an award to be made:

- The crime must be reported promptly
- The victim must not be in any way culpable for the offence
- The victim must co-operate with the police
- The victim can have no significant unspent convictions.

Violence usually involves a physical attack on the person, but it can also include arson, poisoning, and sometimes threats. It only includes road traffic incidents where it can be shown that the driver collided with

the victim with the intention of causing injury. Compensation can be for physical or mental injury (e.g. PTSD, depression).

Awards will not be made if the crime is not reported to the police, but the offender does not need to be caught for an award to be made. The crime must be reported "without delay" unless there are special circumstances. Applications for awards must be made within 2 years of the offence.

If the victim is seen as culpable in some way, an award will not be made (e.g. if the injury was sustained in a fight and the victim punched the offender first). Culpability can be assumed if the victim was drunk or on drugs at the time. I suggest this is unjust because some offenders use intoxication as a mitigating factor but for victims, this has the opposite effect!

Awards will not be made where the victim has not co-operated with the police or courts.
Awards can be reduced or withheld if the victim has unspent criminal convictions, depending on the nature of the convictions and the time that elapsed between the conviction and the injury. If the victim is sentenced for a criminal offence after making an application, the award can be withheld or reduced.

The tariff contains 27 amounts ranging from £1,000 to £250,000. Death can result in an award of £11,000 (or £5,500 to each close relative). Loss of earnings after 28 weeks is covered and victims can apply for the cost of ongoing care. The maximum possible award is £500,000 and children who have lost a parent can apply for awards for "loss of parental services".

D. Concerns about the Current CIC Scheme

- The 1979 rule still applies and this means that people cannot claim compensation for offences committed against them if they lived in the same household as the offender prior to 1979. This affects victims of child sexual abuse in particular
- Levels of awards were increased in 2001 and should be up rated annually in line with inflation
- Victims have to establish their innocence. It is often difficult to demonstrate that they did not provoke an attack, particularly if the attack took place in a bar. Similarly, awards can be withheld or reduced if the victim was intoxicated. Awards can be withheld unless the victim of sexual offences can demonstrate they did not consent to sex (as opposed to it being an offence because they were too young to engage in lawful sex with the offender)
- Victims in receipt of state benefits find their benefits reduced if they receive an award of over £3,000 and withdrawn entirely if the award is over £8,000 until such time as they have spent the award on subsistence
- Having unspent convictions does not necessarily imply that the victim contributed to the offence. A child can be denied compensation for the death of a parent if the parent had unspent convictions
- The rule that claims must be made within two years of the offence, and that the offence must be reported promptly, often result in claims being refused. For example, the police often ask victims reporting offences to go away and wait for a police officer to visit them. In cases where this has taken place a few days later, the police have told the CICA that the offence was not reported promptly
- The Criminal Injuries Compensation Authority has unfair advantage over appellants in hearings before the Criminal Injuries Compensation Appeals Panel because they employ case officers to present their evidence, and Legal Aid is not available to appellants.

E. Support Offered

CIC – the Victim Support role: part of the support we offer to victims of violent crime involves informing them about the CIC scheme and helping them apply. We offer services at three levels:

Level 1 - minimum level of service -

- Every Scheme should consider whether victims of violent crime referred to them could potentially make a claim for CIC.
- Provide information about tariff scheme and copies of the correct, up-to-date application form, offer help with filling in the forms.
- Provide the *Guide to eligible victims of violent crime.*

Level 2 – a higher level of service which involves -

- Handling the claim once the form has been sent off

- Keeping accurate up-to-date records on each application
- Acting as correspondent
- Explaining the initial decision and the review process
- Helping with the application for review
- Explaining the review decision
- Providing information about the appeal process.

Level 3 – advocacy for victims whose claims are rejected -
- Preparing the papers for the appeal
- Preparing the applicant for the hearing
- Attending the hearing with the applicant as moral supporter
- Acting as a representative at the hearing.

All victims ought to be offered support with their claims up to and including the appeal stage where relevant. (except those to whom schemes are not required to provide the level 1 service because they have no trained volunteers, etc).

The number of victims helped with CIC claims in 2001-2002 increased: we helped almost 14,000 people.

VI. VULNERABLE AND INTIMIDATED WITNESSES (VIWS)

The 1999 Youth Justice and Criminal Evidence Act introduced the concept of VIWs and 'special measures'-
- Witnesses may be vulnerable and/or intimidated due to personal characteristics or the nature of the offence
- Special measures are needed to safeguard them in legal proceedings or enable them to give effective evidence.

(The 1999 Act also introduced Youth Offending Panels, which are now the principal means of providing restorative justice interventions for young offenders.)

The Act provided for special measures that can be taken in court to help witnesses give evidence when, without such measures, they would be either unwilling or unable to give satisfactory evidence. Special measures can be needed as a result of personal characteristics, situational factors, or a combination of both.

The 1999 Act followed the publication of 'Speaking up for Justice', the report of a parliamentary commission in 1998 which made 78 recommendations, most of which were enacted in the 1999 Act. The commission was established following increased awareness of existing measures being inadequate, high attrition rates; and campaigning from groups representing victims, women, children and disabled people. The Commission heard evidence from a wide range of organisations that support vulnerable people, and from Victim Support which had campaigned on these issues for years.

There were already some provisions for supporting vulnerable witnesses, for example the 1988 Criminal Justice Act established the admissibility of closed circuit television or video evidence with child witnesses, and subsequent legislation had prevented people charged with rape from cross-examining their victims in person. However, such measures were inadequate. For example, these did not help adults with learning difficulties whose evidence was often ruled inadmissible because they were considered 'incompetent witnesses'. There was also concern about high attrition rates. This describes the situation where trials are abandoned because witnesses will not give evidence out of fear of reprisals, or anxiety at the prospect of appearing in court.

A. The 1999 Act Established Definitions of Vulnerability

- Situational factors:
- Nature of offence (e.g. rape)
- Dangerousness of the defendant
- Relationship of witness to defendant
- Racially/homophobic motivated offence
- Witness and defendant living near each other.

(1) Nature of offence (e.g. rape) – there was an acceptance that some offences have such a harmful effect on the victim that if they are called to give evidence, they cannot be anything other than vulnerable as a result.
(2) The dangerousness of the defendant, or their associates, may cause the witness to be vulnerable; for example, if the defendant has threatened the witness.
(3) Relationship of witness to defendant: there is a recognition that victims of domestic violence, for example, may be vulnerable because they have previously been intimidated by the defendant and may have to remain in contact with the defendant to facilitate contact with children, etc.
(4) Racially/homophobic motivated offences are often the culmination of series of incidents of harassment or bullying. People who have been attacked for an aspect of themselves that they cannot change may well be harmed much more significantly by the impact of the crime than those who are offended against for other reasons not concerned with such personal aspects of the self.
(5) Where the witness and defendant live near each other there is a higher probability of the witness feeling intimidated about giving their evidence.

B. Definitions of Vulnerability

- Personal characteristics:
- Age
- Disability
- Dependence
- No previous experience of opinion being sought
- Anxiety to please.

C. Special Measures

- Use of screens
- Giving evidence by CCTV link or with the help of an intermediary
- Excluding people from the courtroom
- Allowing video recording as evidence-in-chief
- Pre-recorded video cross-examination
- Removal of wigs and gowns;

And a presumption that special measures will be used for certain offences/witnesses.

(1) Screens prevent the witness and the defendant from seeing each-other, without preventing eye contact between the witness and the judge, jury and counsel.
(2) Evidence can be given via CCTV link or with the help of an intermediary. Intermediaries are people who have the required level of skills to communicate with the witness and the court. They can be used to help witnesses who have communication disabilities or with very young children, who might not otherwise understand what is being asked of them. This is a very new area of provision which will shortly be piloted.
(3) The press and the public can be excluded from the court room if it can be shown that a more private atmosphere will enable the witness to give their evidence more effectively.
(4) Evidence recorded on video tape can be accepted where the witness cannot be expected to give their evidence in court, as can –
(5) Pre-recorded cross examination where it is felt that video recorded evidence must be 'tested'.
(6) If it is considered that a less formal atmosphere will help the witness give evidence, the judge can order that wigs and gowns are removed to make the court feel more informal.

All these provisions are subject to challenge by defence solicitors. The Crown Prosecution Service recommends what, if any, special measures are needed before the case comes to court. If defence counsel wish to challenge the use of special measures, the judge decides which, if any, will be applied in that individual case. For some offences, and some witnesses, there is a presumption that special measures will apply – for example, with children and rape victims.

D. The Victim Support and Witness Service Role with VIWs

- Pre-trial visits
- Sometimes acting as 'preparer' for young witnesses
- Accompanying witness in the CCTV/video room
- Meeting the witness and providing a separate waiting area with support

- The provision of a 'seamless' service through Victim Support and the Witness Service. A good example of this was during the trial of Dr Harold Shipman in 2001. Dr Shipman was convicted of murdering twelve of his patients, but was suspected of killing hundreds more. Victim Support provided a programme of support to bereaved partners and relatives, bringing them to the court each day in minibuses, handing them over to their Witness Service colleagues, and bringing them home again at the end of the day.

Our service to vulnerable and intimidated witnesses began to develop almost as soon as the Witness Service became established in the Crown Courts in the early 1990s:

(1) All witnesses are contacted before their court date, provided we have been given advance notice of them by the police. They are then offered the opportunity to come to the court before they give evidence, when the Witness Service volunteer will show them a court room, explain who sits where, what the roles of the various people in court are, etc. The Witness Service will be told if the witness is considered vulnerable or intimidated, and will then offer an enhanced level of service, for example visiting children at home with their carers before the pre-trial visit.

(2) A 'preparer' will help the young person review their witness statement before they give evidence, so they know what to say and what will be asked of them. The preparer is not the same person that will support the witness on the day of the court appearance.

(3) In some courts, the Witness Service sits in the video room with the witness. In other courts, this is the role of the court usher. The preferences of the resident judge, and the availability of ushers, determine which approach is taken.

(4) The Witness Service can meet vulnerable or intimidated witnesses at the court entrance and take them to a waiting room separate from where the defence witnesses wait.

(5) Victim Support can arrange to bring vulnerable and intimidated witnesses to court, and hand them over to the Witness Service. For legal reasons, a Victim Support volunteer cannot support the witness in the court building.

E. Our Services for VIWs are Still Being Established

A number of difficult issues have emerged:

- A need for agreements with the police, CPS etc. at a time when new data protection legislation and the Human Rights Act 1999 are making public agencies very cautious about sharing information
- The high level of judicial discretion which means practice varies from one court to another
- Inadequate funding in advance of implementation (July 2002)
- The physical characteristics of the court room
- Pressure from other agencies to undertake inappropriate work.

(1) Referral procedures for vulnerable and intimidated witnesses have had to be agreed with the Crown Prosecution Service and the Court Service. Other agreements have had to be made, to strictly define the roles of each agency and individual.

(2) These have been difficult because of data protection issues (the need not to divulge more confidential information about the person than is required in order to deliver a service to them) and because of the variability of practice from one court to another. For example, some judges want the Witness Service to accompany witnesses in the CCTV room, others require the court usher to do this work.

(3) The special measures were implemented in July 2002 but at that time, the Home Office had not specified which agency would undertake each role in supporting witnesses and Victim Support had received no additional funding for this work. Witness Services came under pressure from their courts to step in where no other agency was providing a service.

(4) Some courts have found it difficult to provide additional court entrances, separate waiting rooms etc because of the physical characteristics of the court house, which are often old buildings in town centres, with little space around them for extension.

(5) In some areas the Witness Service has been under pressure to undertake work that is beyond our remit. For example, transporting intimidated witnesses to court, which should be the role of the police.

VII. SUMMARY

In summary, this paper has addressed the following issues:

- Work with people who suffer from PTSD

- Counselling for victims
- Support for victims during police investigations
- Criminal injuries compensation
- Help for vulnerable and intimidated witnesses.

RESTORATIVE JUSTICE IN MINNESOTA AND THE USA: DEVELOPMENT AND CURRENT PRACTICE

*Kay Pranis**

I. DEFINITION

Restorative justice has emerged as a different framework for guiding responses to crime at all levels of the criminal justice system. Howard Zehr identifies three concepts as pillars of this framework: 1) Restorative justice focuses on harm. 2) Wrongs or harms result in obligations. 3) Restorative justice promotes engagement or participation (Zehr, 2002). Restorative justice, then, encompasses responses to crime that move toward understanding, acknowledging and repairing harm. Achieving understanding, acknowledgment and repair requires direct participation of victims, offenders and affected communities in the process of justice. Since harm is the central problem in a restorative framework, restorative justice requires a response that does no deliberate further harm.

In the restorative framework mutual responsibility is the loom on which the fabric of community is woven. Crime represents a failure of responsibility, clearly on the part of the offender and sometimes on the part of the larger community. Restorative justice aims to re-establish mutual responsibility.

Restorative justice focuses the response to crime on healing for all the wounds associated with the crime. Consequently, any action that moves toward healing for anyone affected by a crime - victim, friends and family of the victim, affected community members, offender, offender's family and friends – in a way that consciously minimizes any further harm is restorative.

II. HISTORY – MINNESOTA

Restorative justice has ancient and widespread roots. Processes that focused on repair of harm and acknowledgement of wrongdoing were a part of most ancient cultures and are still practiced today among many indigenous people around the world. Many of us use such practices in our families and social communities. However, the formal justice system in Western societies in the late 20th century was not based on the philosophy of restorative justice. Several streams of change have influenced and informed the contemporary movement to shift the basis of the formal justice system to a restorative one. The *feminist movement* raised questions about male models of justice that are rule-based but not sufficiently contextual or caring. The *victims' movement* illuminated the woeful lack of attention to victim needs and interests. The shift in social work from a *deficit orientation to a strengths orientation* challenged basic assumptions in criminal justice practices. The *alternative dispute resolution movement* in the legal field offered new models for working through conflict. In the field of business the *movement toward flattening hierarchies and empowering workers* marked a shift from relying on 'power over' for the desired ends to using 'power with'. The *communitarian movement* suggested that active community participation in decisions affecting community life is an essential element of a healthy society. The growing *movement for recognition of indigenous understandings and ways of life* has provided a conceptual framework of inter-relatedness and practical models for community based responses to wrong-doing. The restorative justice framework is consistent with all these streams of change and gains energy and insight from the work in those fields.

In the 1980's restorative justice in the U.S. existed in a few small programmes doing victim offender mediation. Those were generally operated by faith based groups working in partnership with local justice agencies. Minnesota had two programmes in the 80's – one operated by a private not-for-profit agency

* Restorative Justice Planner,
Minnesota Department of Corrections,
U.S.A.

(Minnesota Citizens Council on Crime and Justice) and one within a county corrections agency. Other programmes existed that were consistent with restorative values (restitution, respectful community service, victim services) but they were not clearly articulated as restorative programmes based on a conscious philosophy of healing as justice.

In 1989 a not-for-profit community agency doing work on justice issues in Minnesota began advocating restorative justice as appropriate public policy. In 1990, in collaboration with St. Paul Area Council of Churches, the Minnesota Citizens Council on Crime and Justice sponsored a statewide conference on restorative justice. The idea was still very marginal and only attracted a small number of justice professionals. However, in the early 90's the Minnesota Department of Corrections created an ad hoc committee to study restorative justice and determine whether the Department should take any action regarding restorative justice. Minnesota had a history of innovative criminal justice policy, including the development of the first community corrections programme in the United States in the 1970's. The interest in restorative justice was not based on any particular problem or crisis but on an on-going interest in promoting progressive corrections policy. In December of 1992 the ad hoc committee organized another statewide conference on restorative justice. This conference attracted major leadership in corrections from across the state. The recommendations from the conference discussions led to the creation of a position a year later at the Department of Corrections dedicated to promoting restorative justice.

The Minnesota Department of Corrections had a national reputation for leadership in the field of corrections. Consequently, the creation of that position gave legitimacy across the U.S. to restorative justice as a public interest, not just a private, faith-based interest.

Key characteristics of Minnesota's approach:

1. The position of Restorative Justice Planner, though located within the Department of Corrections, was created with a broad vision. The job description for this position specifically calls for working with law enforcement, courts, social services, education and community groups – not just with corrections. The scope of the job gave permission to invest time in fields other than corrections. The development of parallel activities and interest in education, police and neighborhood organizations has created a powerful momentum for the vision of restorative justice.

2. The position is fully focused on promoting and supporting change and does not involve operating a programme or providing direct service.

3. The position was not accompanied by mandates. All the work of the Restorative Justice Initiative involves voluntary participation by agencies and organizations. Because ownership and commitment are critical elements of a restorative approach, mandates could undermine the fundamental values.

4. While the vision of the position is clear, there has been a great deal of strategic freedom which has allowed the restorative justice initiative to respond to unexpected opportunities. There has not been a fixed plan of action nor emphasis on particular outcomes. Flexibility in the pathway has contributed enormously to the success of the proliferation of efforts outside of corrections.

5. The Restorative Justice Initiative does not rely on positional authority but relational influence. Staff promote system and community wide change, without the use of formal authority or statutory power, by engaging all stakeholders in a voluntary, respectful process of examining an alternative vision and allowing local control over the decisions to make change, the specific path of change and the pace of change.

The work of promoting restorative justice in Minnesota began with public education to any interested group – probation officers, lawyers, police officers, civic groups, church groups, college students. Initially public education was conducted primarily through public speaking and dissemination of written materials. Later the availability of videos and websites added helpful tools. Early, positive coverage in newspaper stories helped spread the message of restorative justice to the general public.

The emphasis of the public education was on the philosophical framework, the value structure, rather than specific implementation strategies. The assumption of this approach was that the philosophy is the foundation and that within that philosophy there might be many different ways to develop practices. Each

community has to determine how to put those values into practice to fit its unique circumstances. Knowledge of the underlying philosophy is essential to being able to respond to changing circumstances.

Public education is generally done in an interactive format using questions posed to the audience to elicit, from their own life experience and common sense, the basic ideas of restorative justice (Pranis, 1998). The following questions are used:

- What are the forces shaping our behavior such that most people do the right thing most of the time? Which of those forces are the most powerful?
- When you have been victimized or unfairly treated, what were your feelings and what did you need?
- If we had a good process in the community to resolve conflict and harm what would we want to be the characteristics of that process?

My experience in conducting that exercise with a variety of audiences (lawyers to inmates to church groups) is that every group produces the same basic list for each question and the answers are consistent with restorative values. That experience gives me confidence that the public has a natural understanding of and support for restorative justice.

Wherever people responded to information with interest and a desire to develop local programmes or practices, the Department of Corrections staff helped to organize and facilitate local planning groups to lead change toward a restorative vision. Change was based on voluntary participation by both professionals and community members. No legislation was enacted to enable restorative approaches. The specific practices were assumed to be legal under existing statutes because, although they were not mentioned in statute, they in no way violated those statutes.

The major existing restorative practice in 1994 when the position began was victim offender mediation. But probation officers, based on restorative values, began to identify other ways to move toward restorative goals, including:

- putting more emphasis on restitution,
- designing community service that involved offenders in work valued by the community,
- providing opportunities for victim input into community service assignments,
- finding for more ways to involve community members and
- providing more information to victims about offender compliance with conditions of probation.

One probation office designed a community intervention process with offenders based on a widely used chemical dependency intervention model. Community members sit with the offender and discuss how his behavior affects everyone and what is needed to get him and the community back on track.

Later in 1994 a visitor from Australia introduced family group conferencing to Minnesota and in 1995 several police departments established family group conferencing as police diversion programmes for youth. In 1995 circle sentencing was introduced from Canada and in 1996 the first community based circle sentencing project working with both juveniles and adults was established. In 1996 the Vermont reparative board model was introduced and a neighborhood of Minneapolis established a neighborhood board programme to address quality of life offenses (vandalism, soliciting prostitutes, public urination, low level drug possession) committed by adults.

Rural communities, suburban communities and inner city neighborhoods have designed and implemented various adaptations of victim offender mediation, group conferencing, reparative boards and peacemaking circles as programmes working in partnership with the justice system. In some jurisdictions the justice system itself has worked to infuse restorative justice principles throughout the work of the organization. In Minnesota prisons interested staff have found ways to incorporate restorative principles into the function of the prison.

The Restorative Justice Initiative of the MN DOC has worked closely with individual citizens, community groups and professionals in the system to nurture the growth of restorative justice.

III. WHAT ARE THE PRACTICES? WHAT DOES RESTORATIVE JUSTICE LOOK LIKE ON THE GROUND?

An eighty-year-old woman, disturbed by noises in the middle of the night, discovered a masked man wielding a crow bar attempting to force his way into her house. She called the police and they found the perpetrator nearby. The victim accepted the opportunity to meet face to face with the young man, who had pled guilty to the offense, to tell him how the crime had affected her life and to participate in deciding how he should make amends. The offender also agreed to participate. A trained facilitator met with both parties separately to hear their stories and explain the process. When the parties came together the elderly woman described the emotional trauma which was heightened by the recent loss of her husband. The offender apologized and agreed to pay the costs of an alarm system for her as well as the cost of replacing the door. He promised the woman that he would not do it again. Some months later the woman read in the local paper that the same young man had burglarized a local business. She called the facilitator and asked to meet with the young man again. She was very upset that the young man had not kept his word to her. With some trepidation the young man agreed to meet with her. At their second meeting the elderly woman repeated again and again, "How am I going to know you won't do this again?? How am I going to know you won't do this again? How am I going to know you won't do this again?" Finally, they agreed that he would call her on the phone every week to reassure her that he was not getting into trouble. Two years later he was still crime free since that incident – the longest time he had gone without committing a new offense.

A sample of images of restorative justice in action:

- With the support of a community circle, a young man, who stole his father's credit card and charged over $1,000 in goods, apologizes to his father, turns over his federal and state income tax refunds to his dad and does community service at a local church. His dad says, "I got my son back."
- Inmates from a woman's prison help build a Habitat for Humanity home for a family.
- A young woman who stopped dancing for years after a traumatic rape rises from her chair and dances gracefully around the room after a face to face meeting with the perpetrator.
- Under the guidance of a community circle and local probation, a dozen adolescents do home repairs worth $12,000 on a house they vandalized. The victim stops by to observe their work and they share the excitement of their accomplishments with him.
- A woman in her 70's, whose daughter was raped and murdered over twenty years ago, travels hundreds of miles to speak to groups of inmates in adult and juvenile prisons and offers hope that they can change.
- Women inmates listen to a panel of adolescents describe the impact on their lives of having Mom in prison.
- After sharing stories of pain, connecting to one another and to a sense of common fate, neighborhood residents become involved in establishing a transitional house for sex offenders in their neighborhood and defend it from an attempt by the city to close it.
- Surviving family members of a victim provide input at a parole hearing, express their concerns and are provided with support that was not available at the time of the crime many years earlier.
- A suburban financial consultant, arrested for soliciting a prostitute in an inner city neighborhood, meets with neighborhood residents to discuss the impact of his behavior and then provides service to the neighborhood by conducting financial classes and counseling for inner city residents. He continues to offer free classes after his required community service hours are completed.
- The stepfather of two juveniles arrested for attacking him discloses for the first time to the mediator his own childhood sexual victimization after a victim offender mediation session reveals that the adolescents' behavior was triggered by memories of earlier victimization by their biological father.

Because restorative justice is a philosophy to guide all activities in response to crime, it is not a fixed set of practices. However, there are several practices that have emerged under this philosophy that exemplify the philosophy and are often the core of efforts to build a more restorative system. The practices which bring victims and offenders or victims, offenders and community members together in a facilitated dialogue to determine what is needed to repair the harm and build a better future are those generally associated with restorative justice. Many other practices, by working with just offenders or just victims, also work toward the vision of restorative justice by supporting victims, involving offenders in repairing harm, increasing offender awareness of responsibility or other restorative goals but may not involve a face to face dialogue between the victim and the offender.

A. Face to Face Restorative Practices - Various Models (Pranis, 2003)

Victim offender dialogue/mediation/conferences. The classic victim-offender mediation model involves a victim and an offender meeting in a facilitated process in which each party has the opportunity to talk about what happened and ask questions. Emotions are allowed to be expressed within a respectful atmosphere. Most mediations result in a consensus agreement about activities the offender will undertake to meet the needs or expectations of the victim.

Restorative group conferences. This model is based on the family group conference introduced in the U.S. in 1994 from Australia. It is an adaptation of a traditional Maori process for resolving community problems. In this process the victim, victim supporters, offender, offender supporters and a facilitator engage in a dialogue to explore what happened, how each of them has been affected, and what needs to happen to make things as right as possible. The facilitator may use a script to guide the dialogue. Every participant has an opportunity to speak to the issues and the agreement. Expressing emotions is encouraged. Again, agreements about the obligations for the offender are by consensus of all participants.

Peacemaking circles. Based on American Indian talking circles, the peacemaking circle process involves the victim, victim supporters, offender, offender supporters and interested community members in a structured dialogue about what happened, why it happened, what the impact is, and what is needed to repair the harm and prevent it from happening again. Participants sit in a circle without tables or other furniture. An object, called a talking piece, circulates in order among participants who speak only when they are holding the talking piece. The use of the talking piece reduces the role of the facilitator and eliminates cross-talk or interruptions because the talking piece designates who may speak while all others listen. The process may involve separate circles for the victim and offender before all parties are brought together to determine an action plan to address the issues raised in the process. By consensus the circle may develop the sentence for the offender and may also stipulate responsibilities of community members and justice officials as part of the agreement.

Community boards or panels. In this model a small number of trained community members meet with an offender to talk about what happened, how it has affected the victim and the community and to determine activities to be undertaken by the offender to address restorative goals. Some panels involve victims, others get input from the victim.

These models are relatively fluid and are continuously being adapted to meet particular circumstances or to take advantage of a technique learned from another model. Some restorative group conferencing models include community members who were not directly attached to the event. Some victim offender mediation sessions encourage participants to bring supporters and allow them to speak at some point in the process. Some group conferencing programmes use a talking piece for the agreement phase of the process but not for other phases.

All of these processes require admission by the offender of the charge or some portion of the charge. Victim participation is always voluntary and offender participation is typically voluntary or represents some level of willingness relative to other options. These processes can be used for hearing victims' stories and for determining obligations of offenders at many different points of the justice system: informal diversion, formal diversion, post-charge-pre-adjudication, and post adjudication as part of the sentence. The peacemaking circle process can be used for the adjudication itself as a sentencing circle. In the United States referral to a restorative process by the justice system is optional.

There is great variety among states and localities in the implementation process and choice of models. In some states a model may be relatively standardized and in others each group or community designs its own unique approach consistent with the philosophy of restorative justice. In Vermont community boards, initiated by the state Department of Corrections, are in every county and the model is similar throughout the state. In Colorado a common group conferencing model is used in many communities around the state, but each programme is locally initiated.

In Minnesota programmes have developed from grass roots organizing around the philosophy and vary considerably in the specifics of implementation. These face-to-face programmes have been initiated by a wide variety of people – probation officers, judges, prosecutors, community activists, victims, police, faith

communities, non-profits. Local restorative justice programmes have been initiated in many different ways. Here are a few examples:

1. Example 1: Victim/Citizen Initiated Partnership with the Justice System

A single man living in an older, middle class suburban neighborhood returned home from a birthday celebration to find his home in a shambles - food stuffs from the refrigerator on the floor and walls, every mirror and light fixture broken, a stereo stolen - a mess. When informed that the perpetrators were neighborhood kids, he was alarmed to realize he didn't know them and resolved to be involved in working with them. He was initially rebuffed by the prosecutor's office which informed him that they were interested in "consistency, not creativity." Subsequently, the case was moved to the Community Corrections Department, who referred it to the victim offender meeting programme and the victim got an opportunity to meet with and then work with the juveniles.

As a result of his experience he became very interested in the broad scope of restorative justice and decided that his community needed to be involved.

He began dialogue with key leaders in the schools, churches, community corrections, city government, the judiciary and police. He convened those interested and began the process of education and reflection on restorative justice, a vision for their community and possible steps toward that vision. Because of his life long interest in and commitment to young people, students were recruited to participate and have been an integral component of the group.

Members of the group arranged speaking engagements at various churches to raise awareness in the larger community. They recruited volunteers to become trained as facilitators for family group conferencing. A small grant was obtained to support efforts to apply restorative justice in the schools.

The group continually assessed its membership and sought to add missing voices or perspectives. The group often opened meetings with discussion of an object brought by one of the members as a metaphor for justice. This reflective activity has been useful for keeping the group connected to its underlying values and purpose.

The formation of the group was initiated by a citizen. The Community Corrections Department has provided staff support for some of the activities because of its mission to involve community and develop restorative approaches.

About six months after the group was organized the Community Corrections Department approached the group to explore their interest in trying the peacemaking circle process for a case from their community. The Council said, "yes." The Dakota County Community Corrections Department in collaboration with the DOC Restorative Justice Initiative facilitated training and technical assistance for the Council as they proceeded with the case. Again students participated in all stages of the process, including students who have been in trouble.

In the planning stage for a second case handled by the Council, involving several juveniles and multiple victims, conflict arose among various participants of the Council. The relationship between justice system professionals and other community members is not an easy one. A healing circle was held at the completion of that case to work through the conflict and try to learn from one another.

Because of the work of the Council, the local school district created a staff position to develop wider use of restorative planning for behavior problems in the schools. The police department has become more responsive to the use of restorative processes as a result of the Council work.

Council meetings are open to all interested persons. Decisions are made by consensus of those in attendance. The Council has struggled in its relationship with the prosecutor's office. Originally, the local police department sent cases for diversion directly to the Council. Later the police agreed to send all cases through the prosecutor's office which would then decide whether to send it to the Council. That change resulted in a dramatic reduction in cases coming to the Council. Some Council members felt that there was a significant loss of local control in that shift and that it undermined an important principle of restorative justice regarding community empowerment.

2. Example 2: Programme Initiated by the Police Spreads to Other Parts of the Community

A police department in a suburban community decided to try family group conferencing because they were so frustrated by the lack of significant consequences in the juvenile cases they were sending to the county attorney's office to be prosecuted. A veteran officer of the department attended training and was very skeptical of the process. Nevertheless, he tried the process and found it to be so impactful, especially for victims, that he began to use it for nearly all juvenile offenses asserting, "In 25 years of policing, I've never found anything this effective". He later became a trainer in family group conferencing and a national leader in restorative justice. He continually improved and expanded the programme, using it for offenders with multiple offenses and felony-level offenses. He worked with the local school district, encouraging them to use group conferencing as a school discipline strategy. Later he introduced peacemaking circles to the community and began referring some cases to peacemaking circles. After several years of success within the police department he organized a community justice council to involve community members in a partnership with the police department to manage restorative efforts in the community.

3. Example 3: Programme Initiated by a Coalition

In a Minneapolis inner city neighborhood a City Council member, Hennepin County probation officers and the neighborhood organization worked together to establish a reparative panel programme to address low level quality of life crimes in the neighborhood. A grant from a supportive state agency funded an extensive planning process involving key stakeholders in designing a programme for their neighborhood. They researched various models and chose the reparative panel model from Vermont in which community volunteers meet with offenders to discuss the crime and determine what the offender will do to make amends to the neighborhood. An Advisory Board of stakeholder representatives provides on-going guidance to the programme.

In addition to the use of these face-to-face processes at the front end of the system, all of these processes can be used when an offender is returning to the community after serving a period of incarceration. Reintegration into the community is always a critical time for the community and the offender and is often a difficult time for the victim as well. These processes allow an opportunity for dialogue about fears, concerns and hopes, provide input into conditions which might be a part of the release plan, and can develop support plans to maximize the possibility of successful re-entry so that new victims are not created.

B. Non Face-to-Face Restorative Practices

In many cases it will not be appropriate or feasible to have a face-to-face meeting between the victim and offender. However, efforts toward the goals of repairing harm to the victim, offender and community and encouraging offenders to take responsibility are still possible and are clearly within the restorative vision. These practices often involve working just with the victim or with the offender. Additionally, not all harm can be repaired by offenders alone. Often community or government resources are needed in addition to offender efforts, so offenders may not be involved at all in some restorative practices that serve victims' needs, such as victim reparation funds provided by government or victim support activities provided by the community.

Victim services provide information and support to victims, acknowledging the harm the victim has experienced and reconnecting the victim to the community. *Victim reparation funds* help repair the financial harm to victims. *Community support for victims* – One of the primary responsibilities of the community in the restorative framework is to rally around victims. In Billings, Montana, a Jewish family was the victim of a hate crime. Someone threw a brick through their living room window and painted swastikas on the house. A neighbor hung a Star of David (a symbol of the Jewish faith) in their window as a sign of support for the family. Subsequently, the Billings newspaper printed a half-page Star of David and people all over the city cut out the Star of David from the paper and hung it in their windows to support the family. The offender was never caught but the community sent a clear message of support for the victim and the behavior stopped.

Community service, if designed to be work that is valued by the community, gives the offender a sense of accomplishment and involves the offender in repairing harm to the community. Creative community service projects involving inmates in institutions have given them a way to repair harm to the community while locked up. *Restitution* involves the offender in direct repair of the harm to the victim. *Apologies and apology letters* are restorative if they are sincere and clearly take responsibility for the harm done. They help repair harm by restoring a sense of what is right and wrong and affirming that the victim is not responsible for the hurt or loss. As in any restorative practice the victim has a choice about whether to receive an apology.

Several restorative practices bring victims and offenders together, but not the victims and offenders of the same incident, so they are not face-to-face in the same sense as the practices described above. *Victim impact classes or panels* for offenders on probation or in prison increase offender understanding of the impact of their behavior, an important component of taking responsibility. These classes or panels also provide an opportunity for victims to tell their story, an important part of the healing process for many victims. *Victim offender groups* - generally involving victims and offenders impacted by serious crimes and meeting weekly for 10 – 12 weeks in a prison - provide opportunities for offenders to learn about the impact of victimization in an even deeper way than the impact classes. Similarly, they provide victims with an opportunity to share their story in a more personal process. Citizens, Victims & Offenders Restoring Justice Project, a pilot programme in a Minnesota prison, brought together surviving family members of murder victims, inmates serving time for murder or manslaughter and citizens to share the anger, pain and grief that resulted from criminal acts in their lives. Over a period of 12 weeks each participant shared his/her story. Victim participants impressed on inmates that healing from violent crime is a long and painful process and that they may never fully heal. Offenders expressed deep remorse and acknowledged responsibility for their crimes.

Taking responsibility and making amends, core components of the restorative vision, are often part of *treatment programmes or cognitive skills programmes*. Consequently, many of these programmes contribute to restorative goals as long as the means of achieving those goals are consistent with restorative values. Any practice that diminishes the core self of the victim or offender or is disrespectful of human dignity would not be restorative.

Restorative practice for professionals in the justice system may be as ordinary as *carrying the values of restorative justice into all interactions with offenders and victims*. It may be answering the phone with compassion and patience when an angry victim is calling about the case, or it may be routinely asking questions of the offender to prompt offender awareness such as: Who was harmed by your actions? What could you do to make it right?

The *involvement of community volunteers* in victim services or programmes to support offenders making amends or making changes in their lives is also a restorative practice. Volunteer assistance to victims and offenders reconnects them to the community fabric. One of the harms of crime is the disconnection and isolation that result from crime for both victims and offenders. By giving of themselves, volunteers help mend the tear in the community fabric caused by the crime.

C. Restorative Practices in Justice Systems Management

Restorative practices encompass more than the ways that professionals or community members might work with victims and offenders. Very important management practices and infrastructure within organizations support personnel in implementing restorative practices in their direct work with offenders or victims. Restorative management practices include training staff in restorative justice, job descriptions that prioritize restorative justice, policies that support restorative goals and performance measurement systems that give weight to expectations consistent with restorative philosophy. For example, when an offender owes money for fines, fees and restitution, which is paid first? Systemic restorative practice puts the restitution first (Maloney, Bazemore and Hudson, 2001).

IV. RESTORATIVE PRACTICES BEYOND THE JUSTICE SYSTEM / INFLUENCES BEYOND THE JUSTICE SYSTEM

Everything described above in restorative practices relates to the criminal justice system. These practices also have application in many other settings. A model of punishment for wrong-doing similar to the justice system is common in schools, workplaces, communities and families. Because all the same problems with the model arise in those settings, the philosophy of restorative justice has moved beyond the criminal justice system to other sectors where people are searching for a more constructive way to respond to harm – a way that does no further harm and that seeks learning and long term resolution.

A. Restorative Measures in Schools

The Minnesota Department of Children, Families and Learning promotes restorative measures in K-12 schools as an alternative to suspension or expulsion and as a classroom management tool to prevent small problems from becoming major flare-ups (Karp and Breslin, 2001). Peer mediation, group conferencing and

peacemaking circles are used to resolve conflicts or behavior problems between students and sometimes between students and staff.

1. Snapshots of Restorative Measures in Schools

- A tenth-grade student was referred to circle for attendance issues. In addition, he had been in trouble for smoking. During the second circle, he told a story about how he had not felt comfortable in school since he had been expelled the fall of his eighth-grade school year for the remainder of that year. No one at the high school had any idea how traumatic the experience had been for him until both he and his mother talked about it in the circle. He told the members that this was the first time since the eighth grade that he felt anyone at school had really tried to understand where he was coming from.
- A student in an elementary school threatened to "burn the school down" following recess. This incident occurred soon after the events in Littleton, Colorado, and his anger sparked fear among his classmates. The teacher requested a circle of understanding for the students. The next day, the entire classroom participated in a circle. Many of the students reported experiencing nightmares as a result of the student's threat. During the circle, students expressed their feelings about how the threats had impacted them. The students also reflected on how their behavior had an effect on the student and how they were responsible, to a degree, about what happened to him. At the conclusion of the circle, the boy agreed to make changes in his behavior by: 1) not swearing or threatening others, 2) thinking before speaking and 3) walking away when he was mad to cool down and then talk it out later. He also agreed to write an apology letter to his classmates. His classmates agreed to make changes in their behavior by: 1) being nicer to him, 2) not telling lies about him, 3) not teasing him, 4) playing with him so he would have more friends, 5) being his partner in class, 6) helping him make new friends, 7) sticking up for him in a good way, 8) forgiving him and giving him a second chance, and 9) playing basketball with him after school.
- A teacher requested a Circle of Understanding with a student after he yelled at the student for not completing his homework. The teacher wanted to repair the harm done to the student out of anger and frustration. In the circle, the student's mother said, "Welcome to being human". The student said, "We all can do better and I'm ready to do my part". The teacher had the courage to admit his mistake and seek help in repairing the harm through the circle.
- A student made derogatory comments to three others about their race. Through the circle process the victims explained what the comment reminded them of: an uncle being shot by a white man who called him the same name as he was shooting him, a movie that has "those people dressed in white doing mean things to us," and another victim said, "it hurt my heart badly and I need to do something about it." The offender explained that he then understood what he said was wrong. The students became friends and play together daily.

In addition to addressing specific conflicts peacemaking circles are used to address more generalized climate problems of the entire classroom such as bullying or scapegoating. Peacemaking circles are also used as a prevention measure to help elementary students cope with emotional events such as a teacher or other students leaving or a trauma experienced by a class member. One elementary classroom did a healing circle for a classmate whose infant sister died.

On several college campuses restorative practices are an alternative to the traditional discipline process.

B. Restorative Approaches to Child Welfare

In the field of child welfare there is widespread use of models based on the New Zealand family group conference method. Sometimes called family group decision making, that process involves the family in designing a plan to address the safety of children in the family. This process did not develop within the philosophical framework of restorative justice but is increasingly recognized as restorative in its approach. In Canada peacemaking circles have been used to determine outcomes in child welfare cases.

C. Restorative Approaches in the Workplace

A recent international conference on restorative practices offered intensive training and workshops on using restorative practices in the workplace. Several social service organizations and a juvenile corrections facility have begun using group conferencing and peacemaking circles in the workplace to deal with staff conflict or performance problems. Staff at a residential programme for juveniles in Minnesota participated in a one and a half day peacemaking circle to work through the anger and hurt that resulted from a workers'

strike and the choice by some workers to cross the picket line. The circle helped the organization move past the anger and re-focus on helping young people - the mission of the agency.

In Minnesota, prison staff are using restorative practices to address staff conflict and worker dissatisfaction at many different levels. In a peacemaking circle with the warden and the watch guard, requested by a front line corrections officer to share his frustration with management practices, the officer acknowledged his own responsibility in the difficult relationship. The officer left the circle with a renewed sense of hope that his voice could be heard without acting out. Longstanding anger and resentment have been aired and common ground reasserted through the use of peacemaking circles between the top administration team and the lieutenants in that prison. Respectful truth-telling in restorative processes is transforming an atmosphere of fear and helplessness to one of hope and shared responsibility.

D. Other Uses of Restorative Approaches

In Minnesota an ad hoc group representing various health related professional regulatory bodies of the state (for example, the Minnesota Board of Family Practice) is meeting to explore using restorative approaches to resolve complaints against members of those professions.

In an Oregon apartment complex, a planned eviction was averted by using a peacemaking circle for the problem tenant and other tenants to work through the issues prompting the proposed eviction. The Methodist Church has begun training bishops to use the circle process to respond to conflicts within congregations.

Members of an immigrant community struggling with conflicts between the "old way" and the "new way," between men and women, and between young and old are coming together in peacemaking circles to listen respectfully to one another's anger, pain and hope.

In many settings outside the justice system, restorative practices are being used to respond to conflict or harm by engaging those most impacted in working out a resolution that repairs the harm where possible and moves toward healing for all parties.

V. WHAT ARE THE CHALLENGES FACING RESTORATIVE PRACTICE?

Balancing the need for flexibility and responsivity and the desire to standardize. The process of creating restorative responses to crime is necessarily holistic, circular, shaped by those closest to the problem, responsive to the specifics of the situation (not universal) and messy (Pranis, 1997a). At the same time there is a need to describe and quantify what is happening to be accountable to the larger society and ensure fairness and appropriateness.

Maintaining a focus on victims' needs and concerns. Very often victims are not involved or are brought into the planning and implementation of restorative practices as an afterthought (Achilles and Zehr, 2001). It takes great vigilance to avoid slipping into the habit of framing everything around offenders (Pranis, 1997a). For example, people often begin with the question, "For what kinds of offenses is restorative justice appropriate?" That question centers on the offender. What happens if we ask, "For what kinds of hurts is restorative justice appropriate?"

Staying true to the values of the new paradigm. Any new way of doing work faces a strong tendency for older, familiar patterns to reassert themselves. Over time key elements of practice may become blurred or erode. Time pressures, lack of a sense of competence in the new way, lack of training, resistance to change – all of these factors can cause practitioners to take short cuts or do it the old way.

Reducing dependence on professionals. Several decades of referring more and more community problems to professional services (e.g. police, social services) have eroded community skills and sense of efficacy in handling community problems (Pranis, 1997b). Many lay people do not speak up, or they defer to professional opinions, waiting for the experts to solve the problem. Professional skills and knowledge have an important contribution to make, but they are only one source of information and resources. Community insight, skills and resources can make a much greater contribution than is currently the case.

Using the full capacity of restorative processes. Many programmes deal only with first time offenders and very low-level cases, which might be more readily resolved in an informal community or family process and

should not enter the criminal justice system at all. Restorative processes have the capacity to deal with very difficult situations, and, because they are generally more time intensive, using them for primarily low level offenses fails to take advantage of their full potential in improving community life.

Integrating values into technique. In restorative justice, how to be with people is as important as what to do with people. Actions are not independent of core values. Specific techniques, formulas for action, are subject to contextual determination and cannot be rigidly set. Yet as a culture we do not have much patience for discussions of values. Neither do we give much thought to how we can intentionally apply values on a daily basis to guide decisions within a span of options available (Pranis, 1997a). Criminal justice professionals frequently say, "Just tell me what to do". Action without understanding the underlying values can produce results contrary to the intention.

Sufficient referrals. In many community based programmes, we find the paradox of unused community capacity to handle cases side by side with an overloaded system that does not take advantage of that capacity. Even in jurisdictions sympathetic to restorative programmes, it is a challenge to provide a steady flow of referrals. The habits and momentum of the system are difficult to modify to create a non-standard channel for cases. Many programmes whose services are primarily delivered by community volunteers find that they spend more time trying to get referrals than they do in maintaining their volunteer corps.

Creating a workable interface with an adversarial system. Restorative processes build relationships and trust. Truth telling is considered essential to developing effective solutions. If a person who reveals information out of trust is then thrust into an adversarial process that threatens harm or feels very disrespectful, the person will understandably experience a sense of betrayal of the trust extended (Pranis, 1997a). Issues of confidentiality are very thorny in practice.

Creating appropriate systems of community accountability and government accountability. Communities are not always fair and even-handed and government structures are not always responsive to legitimate community needs and interests. How do we ensure that community based processes honor restorative values such as equality, fairness, and the intrinsic worth of every human? How do we ensure that the formal justice system shares responsibility and power with the community while protecting individual rights of both victims and offenders? Restorative justice requires a relationship of mutual responsibility between communities and formal government, but we lack clear mechanisms for responding to a failure of responsibility on the part of the community or formal government in these processes.

Openly articulating a commitment to compassion and love in our work. Ironically, love and compassion are thought of as soft, when in fact it takes much more courage to speak of love and compassion than to speak of hate and vengeance in public discourse. Compassion and our capacity to connect as human beings are at the core of restorative philosophy. Accountability is a natural by-product of healthy love. If we love someone, we know it does harm to his/her soul to harm others and that the way to heal the soul is to take responsibility and to make amends. Healthy love is the environment most conducive for a wrong-doer to take full responsibility and to make the changes necessary to make sure it won't happen again. Healthy love does not excuse behavior or run away from responsibility. Walking the path of compassion is extremely hard work – it's not for the faint of heart.

VI. TRENDS

Interest and awareness of restorative justice are steadily growing. Nine years ago when I started my job at the Minnesota Department of Corrections there were only a handful of people who had heard of restorative justice. A recent poll in Minnesota indicates that 1 in 5 adults in Minnesota has heard the term 'restorative justice.' The number of books and articles in the criminal justice field about restorative justice has mushroomed in the past several years. Though far from being mainstream practice, restorative justice can no longer be ignored by any serious student of criminal justice.

For the most part practitioners have been at the forefront of this movement in the U.S. rather than academicians and theoreticians. It was Howard Zehr's direct experience in doing victim offender mediation that led to the theory he describes in Changing Lenses, the foundational book of the current restorative justice movement.

Developments in the field have sometimes defied the expectations of restorative justice practitioners themselves. The early victim-offender mediation practitioners assumed that victim-offender mediation would never be used in cases of serious violent crime. However, several victims of serious crime, wanting something to help them move on in their lives, insisted on the opportunity to meet with the offender. Facilitating face to face meetings in cases of severe violence is now a growing area of practice and research with formal programmes in at least nine states.

Another unanticipated development is the realization that implementing restorative practices with victims and offenders challenges traditional organizational structures. Management practices toward employees in most organizations trying to implement restorative approaches are not consistent with the fundamental democracy of restorative practices and the emphasis on relationship building as the pathway to desired behavior. Restorative justice is prompting deep self-reflection at personal and organizational levels as practitioners recognize that the values of restorative justice apply to all aspects of our lives and require us to live them as well as use them with victims and offenders. Healing processes are needed for front line workers who have often felt powerless and discounted in their organizations.

Practitioners in some areas are beginning to explore the potential of restorative practices to address larger social harms such as racism and bias. The experience of the Truth and Reconciliation Commission in South Africa suggests a possible role for restorative justice in acknowledging and healing the historic trauma that contributes to the struggles of African American and Native American people in the U.S.

Restorative justice practices in the justice system are generally appended to the mainstream system and supported by discretionary or soft money. To move past being a novelty for a few cases to become a normal way of doing business in the justice system, it will be necessary to shift resources more systemically and infuse all activities and functions of the justice system with restorative values.

Although still only impacting a small percentage of cases in the criminal justice system, restorative justice philosophy is energizing a wide range of activities across the United States toward a vision of wholeness for all those harmed by crime. The restorative justice movement is very dispersed in leadership and activity. It has many of the characteristics of a grassroots movement, although there is significant government involvement in some places. Without large amounts of money, high profile leadership or a marketing plan, the movement has, nevertheless, spread across the country in justice systems and is now influencing other fields such as education and social services. There is a remarkable level of coherence and focus in the movement, in spite of the lack of a national voice or organizing infrastructure.

VII. CONCLUSION

The restorative justice movement is deeply rooted in values of interdependence and non-domination. Holding those values in healthy balance requires continuous dialogue with deep listening. Honoring each individual as a unique and indispensable part of the larger whole supports people in acting on behalf of their own well-being in balance with the well-being of others. The task of restorative justice is to create spaces in which people can experience one another through heart and spirit and can access their own capacity for wisdom and healing through relationships with others.

A colleague from education, after listening to several people discuss restorative justice, said, “Oh, I get it. It’s like 30 years ago when we threw a bottle out the window, we thought we threw it away. Then the environmental movement taught us: There is no “away”. Wherever we throw it, it is still part of us. Restorative justice says the same about people”. The restorative justice movement calls for mindfulness about our connections and our impact on one another. That is the basis for healthy living in our families, schools, neighborhoods, workplaces and in the justice system.

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RESTORATIVE JUSTICE IN MINNESOTA AND THE USA: IMPLEMENTATION AND OUTCOMES

*Kay Pranis**

I. IMPLEMENTATION

Restorative justice is not a particular programme or a fixed set of practices. It is a framework for guiding our actions in large and small ways in every part of the justice system. Additionally, restorative justice places a high value on: 1) empowering those closest to the problem (including the offender) to design a specific solution tailored to the problem and 2) viewing every problem as an opportunity to learn. Consequently, fluid, flexible approaches are essential to maintain the spirit of restorative justice – to leave key decisions to the stakeholders and to continually incorporate new learnings. So, in many ways restorative justice is a journey, more than it is a destination. If the journey is guided by the principles and values of restorative justice, the destination may be one that no one anticipated, but it will be one that serves all the stakeholders.

So, questions of implementation take a different form than in many other kinds of change in public systems. There is no single path toward a restorative vision. There is no blueprint with precise instructions for how to do it. The path must be responsive to the particular context of each community and to opportunities as they emerge and must always be rooted in the values of respect, self determination , mutual responsibility and inclusion.

There are, however, conditions which increase the likelihood of success in implementation efforts. Some of those are:

- Commitment from the top and bottom of the criminal justice system
- A passionate champion for the vision
- A strong partnership between citizens and the justice system
- An open planning process that allows all interested parties to help design the restorative approaches to be used
- Active involvement of victims and victim advocates
- Attention to the relationships of those working together toward a restorative vision
- Open, respectful engagements with those who disagree
- Periodic return to a discussion of underlying values to affirm the shared vision

II. ROLE OF STATUTES

Legislative action and statutory changes have not played a large role in the development and growth of restorative practices. Statutes have been enacted in some states, but they are often reactive rather than proactive. Government support at the state and federal level has generally been through executive branch agencies. In Minnesota, where nearly every model of modern restorative practice has been implemented, there was no enabling legislation to begin restorative practices. Implementation has been regarded as within the discretion of existing statutes. After programmes were already in place, a definition of restorative programmes was put into statute to ensure that newly created grant monies would be properly allocated. In some cases, such as Vermont, statutory change was necessary to create options other than prison and probation, but leadership in that policy change came from the Department of Corrections, not the legislature.

Restorative justice legislation in most states other than Minnesota and Vermont has been focused on the juvenile justice system. In many states that legislation has been part of a larger package of legislation that was very non-restorative in its approach. In Illinois, for instance, the bill supporting restorative justice for minor offenses also mandated a larger number of juveniles be transferred to the adult system to face punitive adult sanctions.

* Restorative Justice Planner,
Minnesota Department of Corrections,
U.S.A.

Because in the U.S. the restorative justice movement has been largely a practitioner movement, for the most part advocates for restorative justice have implemented these approaches by using their existing span of control or discretion in their jobs, rather than seeking permission from legislative bodies or high level policy makers.

III. ASSESSING EFFECTIVENESS

A. The Power of Questions - Asking the Right Questions

Restorative justice practice recognizes that the question you ask dramatically impacts the intervention that will follow (Pranis, 2003). For instance, when you change the question from,

"What should we do to this offender because of the harm he/she did?" to "What should this offender do to make amends for the harm he/she caused?" an entirely different direction in the intervention follows. The shape of our questions determines the shape of the answers to a particular problem.

In a day long seminar on the overrepresentation of African Americans in Minnesota prisons, one small discussion group was asked to respond to the question, "How is Minnesota so successful in keeping white people out of prison?" At first some participants laughed and thought perhaps it was a facetious question. It was not. It was a serious question. When the group began to answer that question, the discussion provided a very different direction for action than would have emerged in answer to the question, "Why is Minnesota locking up so many African Americans?"

An entire field of study, Appreciative Inquiry, has emerged from the recognition that the way we frame the question has enormous implications for what answers will emerge to shape actions that have real life consequences (Hammond, 1996). Therefore, the questions we choose and the way we understand those questions is very important. The questions we ask are often not neutral. It is a core premise of qualitative research that assumptions are embedded in our questions that are shaped by our values and beliefs (Lofland and Lofland, 1995; Patton, 1990). Examining those assumptions and the underlying values can help clarify how we are using questions and where particular questions might lead us.

Analysis of restorative justice and its practices raises several layers of relevant questions: questions about restorative justice as a philosophy (Van Ness and Strong, 2001; Braithwaite and Petit, 1990) and questions about the design and implementation of restorative justice practices in relation to that philosophy (Bazemore and Schiff, 2001). Within the practices questions are an important tool in prompting dialogue among participants about particular events. Asking the right questions - questions that assist individuals or groups in accessing their own wisdom and in reflecting from a posture of seeking positive outcomes - is essential to each of these layers.

B. Rethinking the Question: Does it Work?

One of the most commonly asked questions about restorative justice is, "Does it work?" It's a natural question, because people want to know if an effort is worth putting energy into, yet it can be a misleading question if we are not clear about whether we are talking about restorative justice as a philosophy and guiding vision, or whether we are talking about the practices that put that vision into practice. The question, "Does it work?" usually asks for quantitative evidence. A philosophy or guiding vision is chosen based on a sense of deep inner truth and does not limit itself to that which can be proven by evidence. A philosophy can express our hopes and aspirations, not just our current reality. Choosing our philosophy matters. The world is not an objective reality that remains the same regardless of what we believe (Kuhn, 1962). To a large degree our beliefs shape the world we create with our actions and our energy. Choosing a positive vision contributes to creating a more positive world.

C. Does Restorative Justice Work as a Philosophy?

So, let's ask the question, "Does it work?" of restorative justice as a philosophy and guiding vision for every aspect of how we respond to harm. What do we expect from a philosophy? We expect that it guides us in understanding how life works and in being intentional about identifying the values we wish to live by and then figuring out how to make them operational. We ask it to give us clear direction about how to conduct ourselves, even in very difficult circumstances. What do we expect of a vision? We expect that it inspires, that it describes a world that we would want to live in, that it draws out our capacities, that it aligns separate individuals in a common quest or endeavor. In the case of a paradigm shift from a current dominant

philosophy to a new philosophy, we expect the new philosophy to resolve persistent problems in the prevailing philosophy (Bazemore, 2001).

Does restorative justice as a philosophy and guiding vision meet these expectations? Restorative justice appears remarkably successful as a philosophy and guiding vision. Restorative justice sets out a clear set of values to shape our actions. As a philosophy, it assists us in understanding the concrete, personal harm of crime and its effect on relationships and community. It also helps us design pathways for repair and healing of those negative impacts. It provides reasonably clear direction for our conduct. While not prescriptive about strategies, restorative justice is clear about the goals of actions and the value-constraints that limit actions. Practitioners may disagree about some specific approaches and their degree of restorativeness, but there is a high level of agreement about what core practices look like and what makes them restorative (McCold, 2000; Bazemore, 2000; Walgrave, 2000).

As a philosophy for a new paradigm, restorative justice does resolve serious dilemmas of the prevailing paradigm of justice. The criminal justice system is under great stress and pressure to demonstrate its effectiveness. Both the public and professionals within the system register high levels of dissatisfaction. In the current paradigm, the criminal justice system faces the following dilemmas:

- lack of clarity about the purpose of sentencing;
- contradictory impulses between punishment and rehabilitation;
- victim frustration and alienation;
- public expectation that the criminal justice system will control crime;
- failure of increasing punishment to change behavior;
- skyrocketing costs of punishment;
- failure to integrate social justice with criminal justice;
- widespread system overload (Pranis, 1992).

Despite heroic efforts of dedicated professionals and high levels of spending over the past two decades, relatively little progress has been made on these problems within the dominant paradigm. Restorative justice as a philosophy resolves these persistent problems.

Lack of clarity about the purpose of sentencing. Restorative justice establishes the purpose of sentencing, above all else, as repair of the harm done to the victim, to the offender himself, and to the community, including the harm of losing a sense of safety within the community. Other purposes may be served but are secondary.

Punishment vs rehabilitation. Restorative justice replaces the focus on punishment, measured by how much pain is inflicted, with a focus on accountability, measured by taking responsibility and taking action to repair the harm. This kind of accountability, while often painful, supports growth and healing and does not conflict with rehabilitation.

Victim frustration. Restorative justice prioritizes victim involvement, victim choice, and a sensitivity to victims' concerns throughout the process, including post adjudication. Without a victim perspective, we cannot be sure of exactly what the harm was and what would be helpful to repair the harm. Victim satisfaction is a high priority in restorative justice (Achilles and Zehr, 2001; Umbreit, 1999).

Failure of increasing punishment to change behavior. Restorative justice is not premised on the assumption that punishment will change behavior and does not rely on producing results through punishment.

Public expectation that the criminal justice system will solve the problem of crime. We know that actions of the criminal justice system have limited impact on the crime rate, yet our paradigm suggests that the criminal justice system has a primary role in changing crime rates. We are unable to deliver what the model seems to promise. Restorative justice has a goal of reparation and measures outcomes based on the question: "To what degree has the harm been repaired and power relationships put right?" In restorative justice crime control is clearly identified as a function of community and government partnerships that include criminal justice but extend well beyond criminal justice.

Skyrocketing cost of punishment. Restorative justice requires fewer investments in punishment since the system is measured, not by how much punishment is inflicted, but by how much reparation and healing are achieved.

Failure to integrate social justice with criminal justice. This is perhaps the most serious failing of our present system. Restorative justice clearly defines a relationship between social justice and criminal justice. The community is held responsible for community "shalom." Individuals are held responsible for their behavior. A bad environment does not excuse individuals of responsibility for causing harm to others, but at the same time the community is held accountable for promoting community peace, including social justice. The community is expected to take responsibility for supporting victims, helping offenders take responsibility, and addressing underlying causes of crime. The community is not allowed to simply banish people and expect someone else to deal with the behavior as though the community had no part in creating the problem. Restorative justice integrates individual and social responsibility in a coherent conceptual framework (Pranis, 2001).

System overload. Responding to crime through repair of harm, problem-solving through conflict resolution, and involving families and communities spreads the workload to multiple stakeholders, not just the criminal justice system, and engages all these stakeholders in a commitment to finding workable solutions (Braithwaite, 2001).

As a paradigm shift, restorative justice helps us understand differently the problems that are intractable in the current paradigm and provides direction for resolving those problems.

As a vision restorative justice has energized a grassroots movement across the globe in the face of one of the most powerful and entrenched systems in the modern world, the criminal justice system. With very little money and a prevailing public discourse in the media and politics that is exactly the opposite of restorative justice, this vision is nonetheless moving powerfully forward. Many criminal justice professionals speak of being reenergized and invigorated by this vision in a way they have not experienced in the past twenty-five years of their careers. Restorative justice as a vision has brought together people who would never have imagined working together - inner city residents with criminal justice professionals, former victims with former offenders, European-Americans with African-Americans, judges with community members, gang members with police, conservatives with progressives, atheists with Christians. Restorative justice as a vision has provided common ground for a wide variety of perspectives and world views.

As a vision restorative justice has drawn out skills, energy and passion from people who previously saw no place for themselves in responding to crime. Energy to address the problems of crime and conflict in our communities is coming from many outside the justice system, creating a sense of shared ownership of the problems and the solutions. As a movement with no clear center, singular leadership or national infrastructure, restorative justice has a remarkable sense of coherence across cultures, organizations, and sectors in the U.S. Restorative justice is moving organically and is not dependent upon charismatic leadership or traditional structural legitimacy for its sense of authenticity and purpose.

Restorative justice is clearly inspiring, describing a world people want to live in, drawing out potentials, capacity, and aligning endeavors in a common quest. As a vision, it works.

D. Do the Practices of Restorative Justice Work?

Now, let's examine the question, "Does it work?" as it might be applied to restorative justice as a cluster of practices that put the philosophy of restorative justice into effect. What do we expect of our practices? What would be the characteristics of "working" for practices intended to move toward this vision and how would we measure those? We expect our practices to be consistent with the values and direction embedded in our philosophy. We expect our practices to result in changes that move us closer to the world described by our vision. To "work" as a practice is both a means and an ends question. The practice must not only produce results that move toward the vision, but it must also produce those in a way that does not violate the philosophy. Otherwise the practice is not working to operationalize that philosophy.

The vision of restorative justice describes a world in which harm has been repaired for victims, offenders, and communities and a world in which those who cause harm take responsibility and contribute to the repair. It also describes a world in which power relationships are put into proper balance. So our practices should

result in victims, offenders and communities who are in some way in a better position than they were before the restorative intervention. Our practices should have offenders involved in repair of harm to the victim and the community, and they should support offenders in taking responsibility for their actions.

The following characteristics describe practices that are "working" to move us towards that vision (Pranis, 1994) and provide guidance on what we may wish to measure:

- The practice provides opportunity for increased involvement of victims.
- The practice produces repair of the harm of the crime for victims to the degree possible.
- The practice increases offender understanding of the harm of the behavior to the victim, the community, and the self.
- The practice encourages offenders to take responsibility for the harm done.
- The practice actively engages the offender in repairing harm to the victim and the community.
- The practice produces repair of the harm of the crime for the community to the degree possible.
- The practice involves community members and encourages the community to take a share of responsibility for repairing harm and managing behavior in the community.
- The practice results in changes that will reduce the likelihood of the crime happening again.
- The practice increases the capacity for self-regulation in individuals and communities.

It is not necessary for a restorative practice to have all of those characteristics. It must, however, have at least one of them and must not in its implementation undermine any of the others.

A broad overarching question for any specific intervention is: Does the intervention leave the community stronger than it was before the crime happened (Pranis, 2001)?

In addition to the characteristics listed above, it is necessary to examine how the practice is carried out, the "means" question. If the process of responding to an offender is humiliating or demeaning, the outcome is unlikely to be a respectful attitude by the offender. If the process of responding to a victim is patronizing or discounts the victim's voice, the outcome is unlikely to be the recovery of personal power (Pranis, 1997b). Are the means consistent with the desired ends? Is the practice carried out with respect toward and acknowledgement of the inherent human dignity in everyone?

IV. OVERVIEW OF RESEARCH

The face-to-face practices are designed to increase victim involvement, produce repair of harm, increase offender understanding, encourage offenders to take responsibility and actively involve offenders in repairing the harm, the characteristics identified earlier for practices that "work". Research results indicate that implementation is achieving these goals.

Multiple research studies on victim offender mediation and family group conferencing demonstrate high levels of victim satisfaction, high levels of offender satisfaction and increased payment of restitution compared to court ordered restitution. A meta-analysis examining 22 control group studies of 35 individual restorative justice programmes (26 youth, 9 adult) concluded that compared to victims who participated in the traditional justice system, victims who participated in restorative processes were significantly more satisfied and that offenders in restorative justice programmes were significantly more likely to complete restitution agreements (Latimer, Dowden, Muise, 2001). The meta-analysis also found reduced recidivism rates for the restorative justice programmes.

Umbreit, Coates and Vos (2002) in a review of 63 studies of restorative justice conferencing in 5 countries (46 studies of victim offender mediation, 13 family group conferencing studies and 4 assessments of peacemaking circles) found remarkably consistent levels of victim and offender satisfaction with conferencing strategies, increased likelihood that restitution contracts would be paid and crime reduction for a significant number of offenders who are involved in restorative conferencing approaches.

A qualitative study of a community circle programme in a suburban community found that victims in the circle process felt supported by the community and welcomed the opportunity to participate in the justice process (Coates, R. Umbreit, M. Voss, B. 2000). The typical case in this programme was a pre-charge juvenile misdemeanor referred by the police. In the study every circle participant was able to point out at least one important outcome of the circle. The most important outcomes were: offenders accepting

responsibility and being accountable, addressing future relations between the victim and the offender, opportunity to express feelings and awareness of support from the community. The study also found an unusual willingness of volunteers to contribute hours and hours to the work of the circle. "Council participants have strengthened their own sense of being part of a community and of sharing responsibility for what happens in its boundaries (p.74)."

Research on victim offender mediation and dialogue in crimes of severe violence consistently shows high levels of satisfaction and perceptions that the process was helpful on the part of both victims and offenders (Umbreit, Coates, Vos, 2001). Effects of the mediation session for victims included feeling heard, experiencing less control of the offender over them, reduced fear, increased trust in relationships with others, seeing the offender as a person rather than a monster, a sense of peace, reductions in suicidal feelings and release from anger (Roberts, 1995).

A study to determine the effectiveness of the Hollow Water First Nation's holistic healing programme, a circle process for sexual abuse victims and offenders, concludes that the programme saved over $3 million in justice costs over a ten year period, in addition to improving economic, cultural and social sustainability of the community (Couture, Parker, Couture, Laboucane, 2001). Recidivism in that programme is approximately two percent.

The Woodbury Police Department Restorative Community Conferencing Programme, one of the earliest restorative group conferencing programmes in the U.S., has collected data from participants in their programme since 1996. The results show very high overall satisfaction rates each year – 8 or higher on a 10 point scale - of offenders (ranging from 71% – 100%), victims (ranging from 86% to 100%) and offenders' parents (ranging from 80% - 85%). The data also show high levels of perception of fair treatment by victims, offenders and offenders' parents and almost unanimous agreement that participating in Restorative Justice was preferable to having the situation handled by the court system.

This programme uses restorative group conferencing with juveniles. A wide range of offenses have been conferenced. The largest offense categories are juvenile alcohol offenses, theft, shoplifting, assault (both felonies and misdemeanors), damage to property, controlled substance and disorderly conduct. An analysis to examine recidivism included 281 cases. Slightly over half (52.7%) of the offenders were first time offenders; the remaining offenders had prior records ranging from one prior to 25 priors. There were 84 cases with two or more priors. The study found that recidivism rates under the conferencing programme were 33.1% compared to 72.2% for juvenile cases the year before the conferencing programme began. The study also found a change in the pattern of re-offending. Those who participated in conferencing did not re-offend as quickly and tended to have a less serious subsequent offense when compared to those who re-offended without going through a conference. By using conferencing for most juvenile offenses in Woodbury, the Police Department has significantly reduced the number of cases it sends to the County Attorneys office, clearly a cost saving to the County. In addition the public rating of the Woodbury Police Department by the community has improved.

These are the results called for in the vision. If implemented in ways consistent with the values (respect, voluntariness, equal voice), then these face-to-face practices do successfully operationalize the philosophy. They work.

A. Assessing the Effectiveness of Non Face to Face Practices

The non face-to-face practices identified as restorative are so designated based on whether they fit one or more of the characteristics identified for practices that "work," so by definition they can serve restorative ends. Those non face to face practices include: victim services, victim reparation funds, community support for victims, community service by offenders, restitution, apologies, victim impact classes or panels, victim-offender groups, treatment programmes or cognitive skills programmes and involvement of community volunteers.

However, for many of these practices, such as victim services, restitution or community service, research based on specifically restorative outcomes has not been conducted. Some seem intuitively obvious. For instance, restitution clearly repairs some of the harm to the victim and thus "works" on that dimension of restorative justice, if its implementation is consistent with restorative values. Without research, though, questions remain about whether the victim perceives restitution as repair of the harm. In a restorative

framework the people directly impacted determine the efficacy of an intervention. Much work remains to be done in assessing effectiveness of these practices in achieving a restorative vision.

Some work has been done evaluating other non face to face practices such as victim impact panels and victim-offender groups. Research conducted on the Citizens, Victims & Offenders Restoring Justice Project in Minnesota (a twelve week group) found dramatic shifts in victim perceptions pre and post participation in the group (Burns, 2002). After participation in the group victims believed that the wounds and healing of offenders is important, offenders seem to feel sorry for what they did, and offenders were held accountable. Other researcher observations include: signs of increased group integration; creation of a safe, supportive environment; offender accountability; positive changes in participants feelings toward one another and a greater willingness to consider and engage in restorative responses to crime (Burns, 2003).

B. Research on Restorative Practices in Schools

Early research on restorative practices in schools shows promising results. A three year pilot project using restorative measures in five public schools in Minnesota found that the implementation of restorative practices has improved student behavior and created a more collaborative school culture. In one school yearly referrals to the office for acts of physical aggression dropped from 773 to 153 over a three and a half year period (Riestenberg, 2001). The results of these pilot projects prompted the Minnesota Department of Children, Families and Learning to fund several pilot projects to test strategies for promoting systemic change toward restorative school environments.

In a study of a school based restorative group conferencing programme in Colorado participants strongly agreed or agreed that (Ierley & Ivker, 2002):

- The facilitators were effective and fair in handling their case. 97 %
- This process helps to create a safer school environment. 92 %
- This process helps to hold offenders accountable. 91 %
- They feel satisfied with the outcome of this process. 96 %
- They feel the process resulted in a fair and just outcome. 100 %

Cases referred to the programme included harassment, fighting, theft, vandalism, arson, drugs and truancy.

C. Public Opinion Research

Public opinion research in Minnesota consistently demonstrates a strong public leaning toward a restorative approach to responding to crime. A statewide survey conducted by the University of Minnesota Center for Survey Research in the fall of 2002 had several questions related to Restorative Justice. The results of the survey indicate growing awareness of Restorative Justice and consistent public interest in the fundamental goals of Restorative Justice.

- When asked about the possibility of a face to face meeting with the offender if they were the victim of a property crime, 78 percent of respondents indicated that they were likely or very likely to participate.
- A question about purposes of sentencing in violent crimes indicates only a 12 percent support for retribution – a common justification of costly punishment. Respondents expressed very high support – 61 percent - for making sure the offender does not commit the offense again. Restorative approaches are consistent with that goal and offer innovative ways of changing and monitoring behavior so the harm is not repeated.
- Another question about victimization in violent offenses indicates a preference for genuine apology and efforts at repairing the harm (51 percent) over severe punishment (41 percent). That preference clearly demonstrates an inclination toward restorative approaches even in serious offenses.

When asked whether they had ever heard the term restorative justice 1 in 5 adults indicated that they have heard the term.

Similar results were found in questions on the statewide surveys in 1991 and 1992. The 1991 survey included a question about strategies for reducing crime. In response to the question, "For the greatest impact on crime, should additional money be spent on more prisons, OR spent on education, job training and community programmes?" Eighty percent of the survey participants chose education, job training and community programmes, while 16 percent chose prisons.

These results demonstrate a community understanding of the importance of putting things right, making amends and building a better future.

V. COMMUNITY BUILDING OUTCOMES

It was suggested earlier in this paper that restorative interventions should leave the community stronger than it was before the crime happened. Simply removing members from the community does not leave the community stronger – perhaps less vulnerable, but not stronger. What kinds of interventions strengthen the community?

- Interventions that strengthen positive relationships or create new positive relationships.
- Interventions that increase awareness of interconnection and mutual dependence.
- Interventions that increase the sense of citizen efficacy in solving problems.
- Interventions that create informal safety nets or support systems for people at risk.

Successful community building outcomes are sometimes achieved even in circumstances where an offender is not successful. We are, as yet, relatively unsophisticated in measuring community building outcomes because very little attention has been directed to establishing and measuring those outcomes compared to offender outcomes, but they are clearly very important outcomes and we do have some indications of success in that area.

Restorative justice views crime as an opportunity to reweave the social fabric by developing social capital and informal social control through restorative processes. The following stories from the street are evidence of the community building outcomes resulting from restorative interventions:

- A woman from an inner city neighborhood community justice circle that works with African American juveniles saw one of the 'circle kids' with a group of other kids on a street corner getting into a fight. Because she has a relationship with the youngster through the circle, she pulled over and called to him to get into her car. He jumped into her car and got himself out of potential trouble. (creating new positive relationships)
- Two community members in a downtown neighborhood met through participation in a community restorative justice conference and discovered they live near one another. They subsequently worked together to organize a clean up of their block. (creating new positive relationships, increasing the sense of citizen efficacy)
- A community member felt empowered after participation in a restorative justice conference to speak to a man smoking marijuana at her bus stop. She told him that she has to catch the bus there and it is not okay for him to smoke marijuana in the bus stop. The man left. She stated that she would never have done that prior to her experience in the community conferencing process. (increasing the sense of citizen efficacy)
- One member of a community justice circle group working with a 19 year old offender spoke of seeing the applicant in the community a couple of times since the last circle. He recalled one incident where they greeted one another and he expressed pleasure at that exchange. "The other time I saw you, but you didn't see me," the community member continued. He went on to describe the applicant on his bike, talking to someone in a car who was in the street holding up traffic. He looked at the applicant and said, "That tells me about you and whether your attitude is changing. That was not respectful." While working diligently to support and help this young man, the community is also clearly setting out standards of behavior for everyone in the community, not just the offender.
- As a result of an assault by another juvenile an adolescent boy moved to a distant city to live with his father. Following a victim offender mediation regarding this case, the mother of the offender contacted the mother of the victim expressing concern for her loneliness since her son moved away. The mother of the offender suggested that they do something together. They discovered a mutual interest in theater and began to attend plays together. (creating new positive relationships)
- In the peacemaking circle process with a juvenile, the Community Justice Committee discovered that one of the problems in the family was constant conflict between the juvenile and his brother. A minister who is a member of the circle spent time with the brother and encouraged him to attend the next circle, which he did. During that circle it became apparent that both brothers were very interested in car racing. A community member offered both brothers a pass to the local racetrack in exchange for some help from them. A new relationship was created with this community member and the relationship between the brothers was strengthened by emphasizing common ground. The brother voluntarily attended the next circle for the offender. (creating safety nets)

- In an upper middle class suburb of St. Paul, an adolescent girl was charged with marijuana possession. Initially, the mother could not believe her daughter could be involved with drugs. In the family group conferencing process, which this city uses for all diversion cases, the mother was confronted with the reality of her daughter's use of drugs. The mother became concerned about the role of the broader community context in her daughter's behavior. She suggested to the police department that there was a need for a community wide dialogue on shared values and community standards to communicate clear boundaries to the young people of the community. The police department worked with this mother to organize a process called Focus on Community United by Shared Values, whose aims are to establish a committed relationship between the youth and adults of the city, to focus on developing the character and capabilities of all people, young and old alike, and to be responsible members of the community. (increased awareness of interconnectedness)
- Several volunteer community members of a Community Response to Crime panel gave their home phone numbers to a juvenile, suggesting that he call them if he has a problem. (creating a safety net for a person at risk)
- An eighty year old victim of an attempted burglary, disappointed that the offender re-offended after promising never to do it again, met with him, and asked insistently over and over, "How am I going to know you won't do this again?" She calls him regularly to make sure he stays out of trouble. (creation of new positive relationship)
- A victim of juvenile vandalism participated in the circle process. Shortly after the case was resolved he was diagnosed with terminal cancer. A circle member who had worked closely with him throughout the case visited him in the hospital, taking him homemade soup and flowers. Another circle member played the violin at his funeral. (creation of new positive relationships and a support system)
- The responsibility to rally around the victim can take countless forms. Churches in a small town in Florida organized to reach out to the families of two college students who were murdered by high school students in the Florida town. Representatives from the Florida community traveled to Maryland to plant trees in memory of the murdered young men. They also provided housing for the family of the third victim who was severely beaten and was hospitalized in the Florida town. (awareness of interconnectedness)
- Victims of the Oklahoma City bombing who traveled to Denver, Colorado, to attend the trials were provided with extensive support by churches and community volunteers in Denver. (awareness of interconnectedness)
- Twelve middle school students were involved in vandalizing an empty home in the community. During the peacemaking circle process the students and their parents identified the lack of a place for students to hang out together as a contributing factor. Members of the community justice council worked with Community Education to develop additional teen activities in their summer programme and are exploring the feasibility of a teen center in the community.
- In a suburban community the victim, offender, offender's mother and neighborhood residents gathered to resolve vandalism of a neighborhood tree house which had caused extensive conflict in the community. While the police officer was working to find a suitable place to meet, a neighborhood resident, who had participated in the process in another case, suggested that they could resolve the case themselves without the police, and they did. The agreement addressed both the individual responsibility of the offender and the responsibility of the neighborhood to be more connected and get to know one another. The police accepted the agreement. Extensive use of family group conferencing by the police department as the response to juvenile crime has resulted in an increase in community skills in problem solving and conflict resolution. (increased sense of community efficacy)
- In spite of difficulties with the offender, participants in a peacemaking circle project in a diverse inner city community express confidence that through this process the community will be strengthened. "What's most important here is the community coming together. The details of how we do it are not as important as the community doing something." Use of the circle process as a response to crime has increased the community's sense of capacity to address very difficult community problems. (increased sense of community efficacy)
- "What do you do here?" the woman asked. She noted that the atmosphere around the building had changed. "There were always lots of kids hanging around, making a lot of noise and they never helped open the door when my arms were loaded. Now it's quieter and when they are around, they run to open the door for me and want to know if you are in there doing circle." The woman she was speaking to had done several circles with neighborhood kids and it had apparently changed the climate of the neighborhood.

VI. REFLECTIONS ON ASSESSING OUTCOMES

The evidence I have presented about the effectiveness of restorative justice as a philosophy and a set of practices has used a wide variety of sources and types of information. Rigorous scientific research is one of those sources of information, but only one of many. Scientific research typically asks the question "Does it work?" as it arises in the current paradigm, a paradigm based on the assumption of objective knowledge that must be validated in rational processes (Pranis, 2003). However, restorative justice posits a different set of assumptions based on interrelatedness. In an interrelated world knowledge is not an objective entity with an existence on its own. Knowledge is always in a context and rational processes are not the only way of gaining or demonstrating knowledge. The restorative paradigm requires that we explore other ways of looking at questions and knowledge and that we maintain some awareness of when we are using the old paradigm to discuss the new paradigm.

Rigorous scientific research is also very costly. Many communities do not have the resources to conduct such research. If we require rigorous scientific proof to make a change, then we may always be stuck with a particular way because we cannot afford the 'proof'. Scientific research is valuable, but other sources of information are valuable as well, including feedback from others, direct experience and intuitive knowledge. In my experience in the U.S., decisions about criminal justice public policy are based more on stories than on scientific evidence. Stories are a profound way to share information and to convey deeper meanings.

In the academic and professional fields the question "Does it work?" is given great weight and primacy. The question is typically asked as though we have a clear consensus about what "works" means. But as we have seen it is not a transparent question. And it may not be as important as we have assumed in the way we are currently asking it. My experience in public speaking to very diverse groups in many different communities across the U.S. is that lay community members rarely ask, "Does it work?" when restorative philosophy and restorative practices are described to them. They more frequently ask, "Why aren't you already doing it that way?"

For many a restorative approach is common sense and does not require proof – just as many aspects of our life do not require proof. We don't ask for proof that we should eat when we are hungry or that we should sleep when we are tired. Some people don't need proof that, when harm happens, we should focus our response on repairing the harm. And many don't need proof to know that bringing people together in a safe, respectful, reflective process to speak truth and listen deeply will make the community healthier and safer.

Rhea Miller in her book, "Cloudhand, Clenched Fist", writes about paradigm shifts and an expanded understanding of how we know what we know. Knowledge is not just about facts that arise from the experience of another (normal science), but about the relationship those facts have to our own experience. External "proof," if not resonant with our own truth, is not very compelling. The authenticity and authority of an idea arises from the collective and individual experiences of a group. It cannot simply be bestowed by the pronouncement of an expert. "Does it work?" as a primary, driving question arises in the context of normal science in the old paradigm. In a paradigm shift, great caution must be exercised in using the questions of the old paradigm to determine validity of the new paradigm.

"When a community can draw on and trust its own inner resources to discover the validity of a new paradigm, the community is liberated from bondage to old embedded, fixated ways of being in the world. The community is then able to embrace the creativity of chaos, the possibilities of dreams. People are empowered to imagine new ways of being, to problem-solve on a deep level." (p. 60)

What do we ask about our practices to create a feedback loop of information that will support learning, growth and improved practice in moving toward a restorative vision? In "Ethics for the New Millenium" the Dalai Lama suggests that ethical actions are those that support the well-being of others. We cannot know what is ethical without paying attention to how it will impact others, and we cannot know how our actions impact others without asking them. So, perhaps, for ethical practice, the first and foremost question is: What is the impact of these interventions on the lives of real people from their perspective – all the people who are affected by our actions? And when we get the answer to that question, we ask further: Is that what they want and what we intended? The answers to these questions can guide us as we move forward.

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PARTICIPANTS' PAPERS

COUNTRY REPORT: PAKISTAN

Abdul Latif Khan[*]

I. VICTIMS OF CRIME

In Pakistan, the present criminal justice system is primarily based upon the codified penal and procedural laws designed by the British masters in the colonial era of British Indian history. It includes the Criminal Procedure Code of 1898 and Penal Code of 1860. Since these criminal laws did not provide for any concept of restorative justice we have not inherited a system having any such provisions. Our system is still based upon the accusatorial principle i.e. the state is a party in any criminal transaction. Punishment of the offender as a rule has been provided as the only penalty for the criminals instead of extending any relief/remedy to the victim. It truly speaks of the underlying objective that the state is interested in maintaining 'order' and writ of the state in the society instead of taking care of the victim.

A. Statutes

However in the course of development, Pakistan as a country tried to improve the inherited criminal laws to make them more consistent with and beneficial for the society. In brief, these codified changes are:

1. Qisas and Diyat Ordinance

"Crime of retribution and compensation *(Diyah)* involve homicide, bodily injury or other forms of harm committed against the physical security of the person. Homicide is of three categories: - It may be pre-meditated, involuntary, or voluntary. Only pre-meditated homicide involves a penalty under the law of Qisas. Qisas refers to a specified punishment in Quran and Sunnah. They are labeled as such because the punishment imposed is either a just-retributive penalty equivalent to the injury inflicted on the victim, or takes the form of pecuniary compensation (Diyat) for the victim's injuries. Diyat is imposed only if just-retribution is not executable or the victim waives his right to demand it. The decision whether or not to prosecute rests with the victim and his relatives. In the event of a conviction they have the choice between the sanction of retribution or exacting compensation or pardoning the offender altogether. In the last event the court reserves power of discretionary punishment of the offender.

The Quran has described a very important principle of civil law, i.e. equality of men and the necessity of awarding proportionate punishment to all offenders, without distinction, unless and until the offender is pardoned by the relatives of the victim under circumstances that are expected to lead to improvement of conditions.

The Islamic law of just-retribution provides a very effective and practical means to put a stop to murder and safeguard human life. A man who shows a callous disregard for the life of a fellow-person loses his right to live. The option to pardon allowed to the heirs of the slain person, should not be regarded as likely to encourage murder, for such option is not synonymous with exemption from punishment as in ordinary circumstances the murderer will have to pay the blood-money. Moreover, the would-be murderer possesses no means to know that the heirs of the person whose murder he contemplated will actually be persuaded to pardon him; so the fear of capital punishment will always be there to deter him from the commission of the crime. Again, pardon or remission is permissible only where the circumstances are such that the pardon or remission is likely to improve conditions and bring about good results for all parties concerned.

To prevent crime, Islam really aims at the elimination of the conditions that cause it. It seeks to remove the very root-cause of all crimes by working a complete moral reformation in man. But it does not remain

[*] Deputy Inspector General of Police,
Mardan Region,
NWFP,
Pakistan

content with that. It also prescribes deterrent laws in conformity with the dictates of reason, justice and humanity.

The individualization of punishment under Islamic law is fundamental, whether as to *Hadd*, *Qisas* or *Tazir*. The Diyah, by contrast, is not strictly punishment, but is in the nature of compensation, which must be paid to the victim as reparation for injury. It is sometimes confused with punishment because the amount of compensation is specified in advance. That practice is evidence of the firm adherence to the principle.

Difference between Qisas and Revenge

There is a difference between Qisas and Revenge. In revenge, the punishment inflicted on the offender is neither equal nor similar and some times innocent people can become a victim of revenge. While in qisas the equality of quantum of crime and of punishment is strictly adhered to. The law requires that a person shall not inflict a greater degree of harm than that which has been inflicted. If equality in awarding punishment by way of qisas is not practicable or possible then some other punishment is awarded. Secondly the process of revenge goes on between strong and weak while qisas is awarded by the order of the court and the entire community is under an obligation to help the victim until qisas is executed.

Preference of Diyah over Qisas

As between Qisas (just-retribution) and Diyah (blood money), the Quran clearly indicates the preference for the Diyah and forgiveness. Islam recommends reconciliation in murder cases so that peace and tranquility emerges ultimately. Murder is a compoundable offence under the existing law.

Thus, the combination of Diyah and forgiveness produces a powerful material and spiritual inducement to forsake *Qisas* as retaliation. Consequently, one must interpret the crimes of *Qisas* as being based on a general deterrence policy which recognizes the victim's sense of vindictiveness against his aggressor, while limiting the consequences of the penalty to the harm done and establishing the alternative remedies of victim compensation or outright forgiveness.

Qisas in Hurt Cases

The law includes many detailed provisions regarding cases of hurt and "Itlaf" (total or partial damage to any limb or organ of the body) and has provided for "Arsh" "Zaman" and "Diyah" as various modes of compensation.

In cases where extreme punishment of *Qisas* is not an adequate relief, *Diyah* is payable according to the yardstick fixed by law. At times, the full amount of compensation in the form of Diyah is payable to the aggrieved whereas, at other occasions, only a proportionate amount of Diyah is recoverable. If, for instance, the sole organ or limb of a person is totally damaged due to the act of an individual and he is deprived of making use thereof permanently, the full amount of Diyah would be recoverable. The cutting off of the nose etc. of an individual can be quoted as an instance. If both organs or limbs like hands, eyes, feet are damaged, full compensation in the form of Diyah would be payable but if one of the two is damaged then proportionate Diyah to the extent of one-half would be payable. This principle would follow in other cases as well.

It should be noted that in certain circumstances, a fine could only be imposed if the damage caused is of a negligible extent. If a person has, for instance, six fingers of a hand and damage is caused totally or partially to the sixth additional finger, no compensation in the form of Diyah can be recovered. But the aggrieved person can only approach the court that shall award him reasonable compensation by imposing a fine on the offender. Similarly, if certain damage is caused to a sexual organ of an impotent male person, the victim can only be compensated by way of payment of a fine because it cannot be said that he suffered an irreparable loss. The fact cannot, however, be lost sight of that in certain cases a larger amount of compensation by way of Diyah can also be granted if the damage caused is of an extensive nature. If, for instance, one of the teeth out of 32 teeth is initially damaged but the said damage has also adversely affected the remaining 31 teeth, the offender must compensate the victim for the damage caused partially to the said 31 teeth.

Other Expenses Recoverable

It would be an injustice to the victim, if he is not awarded compensation for the injuries sustained, but rather left to expend his own money on the treatment of the inflicted injuries. The present law is not oblivious to the practical difficulties and the hardships of the victim and has specifically provided that the victim must be given adequate relief and compensation for the following: -

1. Hospital expenses.

2. Pain and suffering caused by the injury and
3. Pecuniary loss.

Provision for Negligent Driving

Negligent Driving and other rash acts causing hurt entail criminal punishment under the law besides "Arsh" and "Daman" specified for the offence.

Aaqilah

Sometimes an offender may be helped by his community to pay the blood money. When death has been caused by negligence or mistake, Aaqilah of the offender i.e. those who have a common interest with the offender arising out of their profession or simple neighborhood or the merchants who occupy premises in the same market, must pay the blood money to heirs of the deceased. The reason is that it is the duty of the person's Aaqilah to watch over his conduct and the law presumes that the wrongdoer would not have acted in the way he did, unless they neglected their duties. In this way his community has been burdened with the so-called light penalty.

Qasamah

To prevent crime and making every locality conscious of being a helping hand in the overall objective of good order in society another novel concept has been introduced by the law, which is called "Qasamah".

It is a general term for oath. As *Qasamah* means, "to divide", we seem to have here the usual transition between the meanings to cut and to decide so that *Kasam*' would be the deciding, strong word.

If a dead body is found in a certain locality with signs of foulplay on it the heirs of the deceased are entitled to select a maximum of fifty inhabitants from the place to take an oath that none of them killed him. If they take the oath then the competent court of jurisdiction has the discretion to nominate several or all of the inhabitants for the payment of blood money. Whoever refuses to take the oath shall be kept in simple imprisonment until the time of his confession, or his willingness to take the oath, or disclosure of information pertaining to the real murderer. Similarly, if a dead body is found at the door of a man's house he will take the oath and if he swears that he did not kill him, then the court will decide as to whom is liable for the payment of Compensation.

Ghurrah

Ghurrah (compensation) is due in the case of destruction of an embryo or a fully formed child still-born as a result of assault suffered by the mother during her pregnancy. Thus the law provides an effective remedy in case of injury to unborn children.

From the above discussion, it is vividly clear that the Penal law of the country has provided ample opportunities of compensatory justice to the victim in the shape of Qisas, Diyat, Arsh, Zaman, Aaqila, Qasamah and Ghurrah. As mentioned earlier no homicide, hurt, injury or damage remains uncompensated, but despite the prevalent law, the ideal results in the area of restorative justice are yet to be achieved.

2. <u>Haddood Ordinances of 1979</u>

Hadd means to check or stop. It also means measure, limit and in law it means a punishment, the measure of which has been definitely fixed by the Holly Quran and Sunnah i.e. by the Holly Prophet (peace be upon him). The major crimes covered under this category are theft, robbery, illegal sexual intercourse, drinking of alcohol etc.

Since Islam as a religion carries a full social system in its lap, therefore it has provided a complete societal restorative system for the tranquility, harmony and health of the society as a whole. In Pakistan, offences against the Property Ordinance, Zina Ordinance and Prohibition Order envisage such provisions. A detailed discussion of these laws will infringe the remaining topics.

In Islam the various categories of punishment have been prescribed according to the nature, type, and its impact on the society or the individual victim. If the offence infringes the rights of Allah or in other words if it is against the good order and welfare of the entire community then the punishment is harsh. If it is a matter concerning the individual then leniency can be adopted, which may even include forgiveness by the victim and his family, as well as patching up of the matter through compromise.

B. Pilot Programmes or Schemes for Crime Victims

As far as pilot programmes or schemes meant for deliberate or concerted efforts on the part of government are concerned, no such initiative has been taken or is in the offing. Statistical information or evaluation of outcomes is therefore out of the question.

C. Measures to Protect Victims of Crime

In Pakistan victims of crime can only be protected through tougher bail conditions and the police by the request of and at the victim's expense. Similarly there is no quasi-legal setup for swift victim restoration. Compensation paid by the offender after compromise reached through the efforts of elders/notables of the locality is the only restoration. We are not in a position to provide separate rooms in courts for victims, witnesses and offenders. Victims of crime have to appear before the court of law in order to record their statements. Similarly there is no organizational set up for any immediate and direct support for the victims of crime.

D. Participation of Victims in the Criminal Justice Process

The victim has a right of complaint, right to arrange a private prosecution for his case, and a right to record his statement in the court of law. If he has entered into a compromise with the offender, on the victim's request the offender can be released in compoundable cases.

E. Provision of Information to Victims of Crime

The law of Pakistan provides for the giving of information to the victim of crime at different stages in a criminal proceeding. At the time of registration of a criminal complaint he receives a copy of the registered First Information Report. On the eve of arrest of the offender, he is called for the purpose of an identification parade. As per the law the state is bound to inform the complainant at the time of submission of the complete case file to the court for trial.

F. Problems

1. Lack of Governmental Interest

Pakistan, as a country, has not been able to formulate any such deliberate programme or scheme to protect the rights of victims. Nor is it on the agenda to envisage a targeted law for such an issue. Why is this missing? Frankly speaking, it is not a priority of the government. Firstly we as a country have been struggling for political stability since independence in 1947 and have not been able to strengthen our cardinal institutions. Secondly, financial constraints of the government hamper any such initiative.

2. Divergent Social Conditions

In a country, which is heterogeneous in social systems, geography and ethnicity, it is not possible to follow an agenda of directed change as is required to provide for a victim protection system.

3. Illiteracy and Backwardness

Since the conceptual framework for the purpose is missing, development of institutions is unthinkable. Such concepts are concomitant with the economic development that, in turn, is dependent on the education-level and infrastructure of a country. We as a country are still living in a developing stage having a low literacy rate, battered governmental institutions and backwardness. We are suffering from some intrinsic handicaps since independence, which have inhibited us from progress.

4. Lack of Community Interest

On the other hand, individuals or community organizations are also not interested in the phenomenon. In fact there is a problem of awareness. We as a society have not been able to take up the issue. Sporadic efforts are there, for example some NGOs are working for rape victims or against child abuse. But their role is negligible, cosmetic, and dubious in nature.

G. Solutions

1. Awareness Campaign

Although the concept is concomitant with the development as discussed above, an awareness campaign could be started for the issue, and it would definitely serve the purpose. The first step in achieving the objective should be conceptualization of the issue. This would be through interaction with those people who

are running the system in different developed countries. The Present seminar will provide an opportunity for member developing countries for conceptualization of the issue. Such seminars will trigger an awareness campaign and development of crime victim protection institutions will follow.

2. Role of Community

Since the government of Pakistan is not in a position to prioritize the issue, the role of community-based organizations has become more important. Developed countries as well as individuals of the society should dole out funds and human resources for the establishment of restorative institutions.

3. Role of Government

On the other hand the legal aspects required for the development of crime victim institutions should be covered through legislation by the government. Deliberate and concerted efforts are needed on the part of the government in order to provide a legal framework and motivation to the community based organizations for taking up the issue.

II. RESTORATIVE JUSTICE APPROACHES

A. Current Situation

Restorative Justice as such is a new and emerging concept having a bearing upon the restoration and rehabilitation of crime victims and offenders. It can be defined as a systematic response to wrongdoing that emphasizes healing of the wounds of the victim caused or revealed by crime. It is not a quasi-legal pluralist alternative to the modern juridical order. It is a middle-range paradigm, a stabilizing influence fostering confidence in mainstream legal and political institutions.

In the backdrop of the above-mentioned concepts, Pakistan as a country is not following a deliberate and specific programme for achieving a restorative justice system. However the present laws related to criminology envisage provisions, which can become the basis for adopting a balanced restorative justice approach. These laws include;

(i) Qisas and Diyat ordinance: as discussed in the previous pages.
(ii) Juvenile Justice System Ordinance-2002

In a deliberate effort the government of Pakistan has enacted a law for Juvenile delinquents. The main thrust of the law is on restoration, and rehabilitation of teenagers who are booked under certain offences so that they can again become useful members of the community.

1. Salient Features of the Act

Although deficient in certain critical areas, the Act incorporates several provisions that add to the protections afforded to children under domestic law. These provisions include:-

(i) Requiring provincial governments to establish one or more juvenile court for each local area, with exclusive jurisdiction over cases involving children.
(ii) Granting children a right to counsel at government expense and providing that court-appointed counsel have at least five years of standing in the profession.
(iii) Prohibiting the imposition of the death sentence, amputation, or whipping of children, or assignment to hard labour while in a "borstal or other such institution".
(iv) Prohibiting the imposition of handcuffs, fetters, or corporal punishment on children" at any time while in custody.
(v) Prohibiting the arrest of children below the age of fifteen under laws relating to preventive detention or vagrancy.
(vi) It specifies the persons who may be present during a juvenile trial, and prohibits publication of the proceedings of a trial without the juvenile court's authorization.
(vii) Immediately upon the arrest of a child, police must notify his or her guardian as well as a probation officer, who is to prepare "a report on the child's character, education, social and economic background".
(viii) On taking cognizance of an offence the juvenile court shall decide the case within four months.

B. Absence of Targeted Programmes

As far as targeted programmes like VORP or VOM or FGC are concerned, these are post-dated concepts for our country. We have the basic laws which provide a foundation for a restorative justice system but such programmes need more awareness, community participation and the will of the government. We do have the

conciliatory committees, peace committees or mediation councils but those are informal and specific to certain communities of the country.

C. Conducive Conditions

Conducive conditions for adopting a diversion system for restorative justice vary from social group to social group. Pakistan as a heterogeneous country cannot follow a uniform approach for the purpose. It is full of divergent social setups having their peculiar norms of taking on the victims of crime and offenders.

D. Fate of Outcomes of the Restorative Process

Outcomes of a restorative process are, legally speaking, bound to be ratified/validated by a court of law if a legal process in a certain crime case has been put into motion. However, it is a well established judicial practice in Pakistan that decisions coming out of a restorative process are ratified & validated by the court of law especially in compoundable offences like murder, etc.

Though criminal law or procedure in the country does not specifically provide for such restorative process the compoundable nature of certain offences allows the adaptation of the restorative process.

E. Ensuring Clause

Different social groups ensure out of court settlements as the courts in Pakistan entertain the outcomes of a Restorative process.

Social pressure in the phenomenon is an ensuring clause. However courts are not bound to necessarily ratify the compromise.

F. Problems and Solutions

Pakistani society as a whole enjoys a well established family system and tribal affinities. We are well interwoven in our social groups, especially in rural areas. Resolution of conflicts and problems through a committee of elders (conciliation committee) has been a norm in our rural areas since long ago. We are not facing the problem of anomie or "Lonely crowd syndrome" as is faced by the developed world specially the west. Therefore adopting a well-defined restorative justice approach is not as difficult as it would be in the west where ' neighborhood' does not exist. However, since we are passing through a transition phase in which urbanization has been a hallmark, therefore family institutions & primary groups are bound to break. We are going towards the stage of "Lonely crowd syndrome". Therefore I see this time as ripe for adopting modern techniques & approaches of the restorative justice process.

COUNTRY REPORT: PAPUA NEW GUINEA

Noel Sarei[*]

I. VICTIMS OF CRIME

A. Current Situation

1. Papua New Guinea Legislation

Papua New Guinea has legislation policies, which are directed at the protection of victims of crime. The Papua New Guinea Constitution speaks of the Basic Rights of all people (Division 3. Basic Rights. Sections 32-56) but not specifically on the 'victims of crimes'. The Papua New Guinea Department of Attorney General in its 2000 Policy on Community Corrections further made a commitment to protect the victims of crime in Papua New Guinea. The ten year plan – *The National Law and Justice Policy and Plan of Action 2001-2010* entitled *Towards Restorative Justice* pursues very strongly the development of a Victim Support Policy. The Policy states: "*Developing a Victim Support Policy promotes another goal of the law and Justice Policy. That goal is to bring the victims of crime and conflict back into the centre of the law and justice process. All too often, victims are either ignored or sidelined under the current system. A vital step towards restoring confidence and genuine fairness in law and justice processes is to recognise the injury suffered by victims and to support when appropriate*". The aim of this policy is to evaluate and strengthen the existing support structures such as the women's refuges; Police Sexual Offences Section; the parole and probation; Life Line, social workers at the hospitals; the churches; criminal compensation; the courts; and the non-government organizations who are taking the lead to provide assistance to the victims of crime.

2. Customary-Traditional Laws

In addition to the legislation, in the 865 plus ethnic communities in Papua New Guinea, there is what is called the Customary/Traditional or Tribal Laws, which protect the victims of crime in the individual communities too. The cultural laws are the unwritten laws of the original people-the inhabitants of Papua New Guinea. The Papua New Guinea Constitution allows for the practises of the customary laws; however, it is applied only at the village level and not in the urban areas. The customary laws are only practiced in a society which has the same common norms and values, and the process of the application of the customary laws. Customary laws have been in existence and practised by the common group of people for thousands of years.

3. Non-Government Organizations Support

Local non-government organizations like Life Line, ICRAF, Peace Foundation, the Salvation Army, and the Christian women and women's associations also provide shelter, legal assistance and counselling to victims of crime. The churches in Papua New Guinea also offers spiritual, moral counselling, shelter and materials to victims of crime. These are done on a temporary basis.

(i) Current Situation in Relation to the Protection of Victims of Crime

Customary-traditional (laws) system

In the Traditional System (commonly called the Customary-Traditional Laws), the victims are protected from further harm (physical, mental, and spiritual) by the Chiefs, Council of Chiefs or, Council of Elders, their immediate families and extended relatives depending on which region of the country where these laws are practised. The victims are compensated using the traditional laws, through paybacks, sorcery and witchcraft, or through the traditional ways of mediation, and through exchange of goods and materials, to compensate for the shame, the loss of life, or injury suffered by the victim.

Formal courts

[*] Senior Rehabilitation Officer,
Papua New Guinea Correctional Service,
Papua New Guinea.

In the formal courts of law, the victims are protected by the state whereby the offender is remanded in custody without bail. Again depending on the severity of the offence committed, the offender has the right to bail. It is the police that protects the victims and their witnesses, however there is no confidentiality and privacy for victims or their witnesses in giving evidence, or even attending court cases. There are no special services provided by the Government (Papua New Guinea Government) towards the victims of crime. They are treated like any other citizen of Papua New Guinea, who stands before the court, in the presence of those in attendance, in giving evidence. The NGOs, the churches and traditional societal laws help the victims. Families and friends of the victim offer security, moral and spiritual support to the victims.

(ii) Current Situation in Relation to the Active Participation of Victims in the Criminal Justice Process

The victim has the right to lay a complaint to the police through the formal laws. The victim has the right to lay complaint through the traditional laws for hearing and seeking retribution or other forms of punishment as governed under the traditional laws to the Chief, or the Elders of the community.

There is no private prosecution for victims/offenders. The police deal with the victim's complaint and if the complaint is justified, the offender is placed on trial. The victim has the right to withdraw the case and sort the complaint through other forms of alternatives to imprisonment like restitution, which is the common practice of the Papua New Guinea society. The victims do have the privilege of having a say on the release of the offender; whether the offender should or should not be released. But the final decision comes from the State through its agent, the parole board. The victim has the right to seek compensation to recover loss or damages in material, or money terms for bodily harm, or loss of belongings. Other forms of punishment and correction are made by the formal courts. The Papua New Guinea Criminal Code also allows for compensation to victims and families of victims.

(iii) Current Situation in Relation to Providing Information for Victims of Crime

There is no information system in place in Papua New Guinea to assist and keep the victim informed of the process taken in the initial investigation, trial and conviction. The police carry out the investigations and information is only given when necessary. This means that if the police require more information from the victim, they will interview him/her again without fully informing the victim of the offenders/witnesses statements.

Furthermore, because of the lack of networking system amongst the major stakeholders within the government, the people, the non-government organizations, and the churches, it is difficult to know the actual total number of victims who have been given assistance by these agencies. In saying that, individual agencies do have their own registers, registering the victim's names and the nature of their complaint.

B. Problems

1. Lack of Strengthening of Existing Support Structures

The fundamental problem now is the immediate need to strengthen the existing legislation through the reform, which is currently taking place within the law and justice sector. The problem is based on the current ad-hoc arrangements, which are practised, by the law and justice sector, the non-government organizations, the churches, and the people living in the villages, towns, and cities in Papua New Guinea. These agencies are operating separately and in isolation from each other. Although they come together during seminars and workshops to present and exchange information, there is also the need to exchange, share and support each other through technical and human resources. At the moment, it is difficult to manage, to monitor, or even evaluate the services that are provided to the victims of crime by these numerous agencies. On the same note, there is no information system, set up in the country to assist in providing reports and statistics on the number of victims and the kind of assistance offered.

2. Non-Recognition of the Dual Law System – The State and the Customary Laws

(i) Limitations of Government Legislation

In addition, Papua New Guinea, as a developing nation, is adjusting itself to the dual system of laws; the formal (government laws) and the informal (traditional or customary laws), which are practised in Papua New Guinea. The formal laws do not specifically cater to the "rights of victims" even though there are provisions in the Papua New Guinea Constitution and 'The National Law and Justice Policy and its Plan of Action'. The formal laws are superior to the customary laws but the constitution and the

numerous legislation, which are currently in force do not state as to what extent. There is no clear demarcation between the government's legislation and the customary laws.

(ii) Limitations of Customary-Traditional Laws

The informal law is an unwritten law governed by the principles of traditional norms and values where each ethnic group in Papua New Guinea exercises, to address problems (land disputes, marital issues, children fighting, rape cases, stealing of crops, domesticated animals, cutting of timbers on someone's land, killing of a person during disputes, murder etc.) at the village (hamlets) level. The traditional-customary laws are only exercised by people with the same traditional norms and values and who have the same local language and customs, and practise by other people (through marriage, or adoption) who understand the traditional norms and values of a particular ethnic group, and recognise and accept them as laws. These laws are referred to as "tribal laws" especially by the Aboriginal people of Australia and other Asian and middle eastern countries. Customary laws are difficult and actually do not have a standing in the urban areas or settlements. The customary laws have infinite boundaries because of the limitless options that are exercised and which upon mediation are accepted by a common group of people whereas the powers of the government laws are limited.

3. Contrasting Views on Government vs Customary-Traditional Laws

The government's legislation are laws, which have no feelings and do not have respect over the people. The customary laws take into consideration the alternatives and options available to the victims and the offenders before decisions are handed down.

4. Poor Coordination of Law Enforcing Agencies within Multi-Racial Groups of People Living in Settlements

And on the other side, there is a very thorny issue, which involves people of different ethnic groups living in the same location (settlements). It is very difficult to apply customary/traditional laws to sort out problems amongst these multiple groups of people. There is a lack of long-term coordination of law enforcing agencies to coordinate and control the lawlessness in the settlements especially in Port Moresby, Lae, and Madang. On most occasions the law enforcing agencies like the police ignore the trouble that crops up at the settlements. And this is due to either manpower and most importantly, its non-presence (the police station and police officers living amongst the people) at the various settlements. Lack of such vital services only adds to the rise of lawlessness.

5. Isolation of Non-Government Organizations

Non-government organizations, in their own ways are contributing a lot to providing assistance to victim of crime and also to the offending persons. Unfortunately, all of these organizations tend to work in isolation from each other. The methods, which are used by them, also vary because of their specific visions and goals, and this creates animosity amongst individual organizations.

6. Poor Information Dissemination

Another problem is the lack of information dissemination to the people at the urban and village levels. The government lacks the resources to disseminate information, which is necessary for the people to understand, including the rights of the victims of crime. The majority of the people (85%) in Papua New Guinea live in the rural villages and only about 15% live in the urban areas. The government system, because of financial problems could not set up or even improve the existing infrastructure such as roads, healthcare, education, law and justice agencies, and police stations. Due to a lack of such vital infrastructure, the communication between the people and the government could hardly take place. People tend to settle problems at their own level either with, or without the presence of the law enforcing agencies.

C. Solutions

The Government should seriously look at the legislation through relevant agencies, which are the Department of Social Welfare and Development, the Attorney General, and the police, to formulate legislation to protect the victims of crime. Non-government Organizations, churches, the victims themselves and rehabilitated offenders should also be consulted to provide opinions that will help in the formulation of legislation on the policy of the protection of victims.

The traditional-customary laws should be strengthened and be formally recognised and accepted by the government. This will enable Papua New Guinea to operate a "dual law system"; the formal and the traditional-customary laws. There is an immediate need to set up information technology that can be shared

by all the stakeholders in Papua New Guinea for future planning and policy directions, earmarked to serve the interests of the victims of crime.

D. Future Prospects

It takes the will and commitment of leaders and people to work together, to protect the victims of crime. The mechanisms of implementation of policies lies with the policy makers and those who are in the position to disseminate information to the rest of the people in both the urban and rural areas. The government and the customary laws should work hand in hand together, with a clear set of responsibilities highlighting the powers of these two sets of laws and their jurisdiction boundaries. All stakeholders should work together, to help and assist each other in information, technical and human resources towards a better working relationship for a common cause-helping the victims of crime in Papua New Guinea.

II RESTORATIVE JUSTICE APPROACHES

A. Current Situation

Currently there are no recognized or formal established, legislated procedures or structures to enable the police, correctional service, the probation office, youth and social development department and other related agencies to work together to process a restorative justice approach. But there are relief agencies such as the Melanesian Peace Foundation, Salvation Army, National Council of Women, ICRAF, the churches, and others but their help is very much on a small-scale level.

The government has taken steps to create conditions for its social partners to organise and operate freely, with improved accountability measures that can be taken to promote restorative justice. The Papua New Guinea constitution and directive principles and national goals recognise that traditional villages (hamlets) and communities to remain as viable units of Papua New Guinea society require active steps to be taken to improve their cultural, social economic and ethnical quality.

1. New Directives

In 2000, the National government of Papua New Guinea endorsed a major policy setting the directions for law and justice into the future. This policy recognises that criminal behaviour is a largely youthful and male phenomena and its underlying philosophy is based on restorative justice. The following quote from the policy illustrates the nature of restorative justice within the policy:

"The policy adopts the concept of restorative justice as a core rationale for the long-term future of the law and justice sector. This is the rationale or philosophy that links the work of all the law and justice agencies and other relevant groups in the community concerned with the promotion of peace and good order. The policy proposes a gradual and deliberate shift away from past approaches that have been retributive and adversarial in character."

"Restorative Justice is a problem solving, forward looking approach to crime and conflict. It can be contrasted with the backward looking focus of most criminal justice systems, which tend to concentrate on establishing, who was to blame for a particular act that has taken place. The restorative approach represents a change from an adversarial and retributive orientation to one of cooperation and partnership between the various stakeholders in the promotion of peace and good order. Restorative justice envisages a central and active role for the community in the maintenance of peace and resolution of conflict. "

2. Restorative Justice is the Ancient Law of Papua New Guinea

Restorative justice is a method of dealing with conflicts in communities. It was the normal process in Papua New Guinea before the village courts were introduced and recently it has been discovered by the legal system in New Zealand (Aotearoa), Australia and other places. As the name suggest its aim is to restore the community, the victim, and the offender so that reconciliation and forgiveness can be restored.

3. Restorative Justice Process Plays a Complimentary Role

At a close examination we may observe that this concept resonates with our traditional modes of dispute resolution in Papua New Guinea societies. Most importantly we can observe that it promotes a more human solution by involving everyone who has a say to express themselves. While in the developed countries that have been using the modern formal systems they are just recognizing restorative justice. In Papua New Guinea, most of our rural population continue to use solutions to settlement of disputes and conflict from our traditional society that easily fall within the restorative justice framework in everyday life. The national law and justice policy merely recognises that Papua New Guinea should examine the existing approaches in our

traditional society, and should reinforce them into practice in the modern justice system. The concept of restorative justice is not new to Papua New Guinea. It embodies many of the values and practices familiar in our traditional societies. As such it provides a framework for building a more responsive and socially appropriate system of justice that is capable of meeting the challenges that lie ahead. Most significant of all, the restorative justice vision resonates with that of the highest law in this land: the constitution of Papua New Guinea. It represents a real attempt to develop a system of law and justice that is truly Papua New Guinea in spirit and practice.

4. Restoration is an Art of Melanesian Practices

The Melanesians people have used mediation and restorative practises for thousands of years in dealing with conflicts of all kinds. Methods varied somewhat from place to place and sometimes the ways of customs were a bit rough and ready, and contained elements of retributive justice, such as cutting off fingers or cooking a mans feet to make him confess to sorcery. This is not surprising because all systems can be expected to fail under stress from time to time. However custom did work and was usually just.

In the present system in the villages of Papua New Guinea, there is a structure that operates within the framework of the Villages Court Act that consist of a village magistrate and a police constable. The village constable is usually the 'big man' in the village and the advisor is the traditional position of the village. The position is not for a single man or woman, this is simply because they may have a conflict of interest, or unwilling for fear of offending others and also they refuse to work if the government fails to pay them.

5. Process of Melanesian Restorative Justice

Restorative justice in a Melanesian way uses three processes by their dealings with one another. *Consensus* is the need to talk about the matter, provide all stakeholders with a chance to express their views and come to a decision which provides some benefits for all. The parties are allowed to tell their story again during the meeting but when parties meet separately they are not allowed to bring up the story again during the meeting this can sidetrack the important part which is the reconciliation.

Win –Win Mediation is the concept used when two parties are in conflict over a matter such as a difference of opinion over land, property, children, or family differences between churches, these are best settled by win-win mediation. Mediation must avoid shame otherwise to save face in the sight of the community the losing party will be generally obliged to find some way of payback. To Melanesians a win-lose decision is abhorrent.

Custom Law: (Restorative Justice) Is the process, which concentrates on mending the broken relationship that brought about the crime and brings a peaceful solution of healing back to the village. This is done when the offender is confronted with his action, which has brought harm to others. The confrontation brings shame to the offender and so that questions can be asked for forgiveness and agreement to restitution. The offender can now be reunited with the victim and the community through a ceremony of forgiveness. Custom law is used when one person commits an offence against another. Many traditional methods are very good, (a meal for reconciliation) checkpoints are also used as preventative measures this is done through extended families. Hence if there were a conflict in the family, a relative would pay visits to check there is normalcy.

6. Restorative Justice Relationship with the Government Initiatives

Restorative justice is not a stand-alone, isolated system; it should have a relationship with government initiatives and the criminal justice system operation. Therefore there has to be a recognized structure in place with the criminal justice system and all new initiatives stated in the new national law and justice policy, which include: justice centres; non-custodial sentencing and rehabilitation; increased community participation; crime prevention; human rights; and corruption, so that it will fully implement the process of restorative justice. In addition attention should be given to the rights of women in the justice system, the issue of development, recognition of informal institutions that prevents criminal acts, and local level government reforms.

7. Can Mediation and Restorative Justice Replace the Courts?

There are numerous cases where the court system is the only road to follow. Mediation and restorative justice can only be used when both parties agree. Mediation and restorative justice cannot be used in a case involving compensation, which looks to making a profit. Any case where the person does not admit his guilt

must go to a court so that witnesses can be called and evidence produced. Also in the constitution of Papua New Guinea it asserts that there has to be rejection of violence and seeking consensus as a means of solving common problems, hence it is crucial for the government to put in place mechanisms and systems for resolving conflicts and to be able to respond quickly so as to avoid further escalation and stimulation of volatile situations. The concept of restorative justice is a key initiative aimed at solving problems through consensus. In light of the concept of restorative justice the practice has been very successful in Bougainville in terms of reconciliation, mediation, and actual training to solving conflicts. There has been a lot of effort that made the process successful and because it really suited the traditional norms and values in terms of solving disputes.

8. A Case Study on Bougainville (see Appendix)

During the Bougainville crisis there were no courts because those few people with weapons reigned in anarchy, so the people went back to the traditional way of solving disputes. That time there was a non-government organization on the island called Peace Foundation Melanesia who took the initiative and began conducting training and activated the concept of restorative justice which the majority of people who had been using the customs law started expressing themselves that the idea best suited the Melanesian way of solving disputes. Restorative justice in the context of Papua New Guinea has been proven to give the villages (Hamlets) a chance to reaffirm their values and mend relationships, it is also cheap; there are no legal fees for lawyers, etc. It is traditional, it is effective and people generally prefer it. Unfortunately there are no records because people thought that it was 'in the blood' and didn't use written records. But time has brought changes and now there is a high demand for records of peace ceremonies, reconciliation, mediation and other restorative justice related events that will shape the future sustainability, improvement and implementation of restorative justice. The main contribution of Western world restorative justice was to provide a firm point-by-point process to follow to obtain the best results of restorative justice. The essential Melanesian contribution is that the community is a major stakeholder and must be actively involved.

9. Penalties

In mediation and restorative justice the parties decide for themselves what they must do to make up for the wrong. Restitution is expected in restorative justice: e.g., "A pig for a pig and a house for a house". Money stolen by a person at any level must be returned. If the individual is not able to meet the restitution then the burden falls on the extended family.

10. Compensation Payment

One particular practice, which appears to be fast developing in Papua New Guinea especially in the highlands of Papua New Guinea where compensation is widely practiced, is the payment of customary compensation by the offender to either prevent the matter being reported to the police or the authorities. Money compensation is a very bad way of making up for the wrong done to a person or the community. It is not traditional and leads to bigger and bigger payments and there is no sorrow or forgiveness, as the victims become more and more money face. There will be times when the community will be unwilling to forgive the person immediately. Offences such as murder, rape, and incest cannot be settled easily. In this case a decision may be made whether to exile the offender for a time and make arrangements for reconciliation and forgiveness when he returns after a set time. Another traditional payment for murder is for the family of the offender to pay a certain amount of land to buy back the blood. Land can buy blood but money cannot.

B. Problems

1. Unwritten Laws

Custom law in the past has failed because it is not written and so is unable to stand against the written law of the land. It is therefore essential that the decisions of the mediation be made in writing and be signed by both parties as well as outside witnesses. The moral and cultural fiber of the society is being eroded through the extensive use of formal court proceedings.

2. Adverse Impact of Development Trend

The rapid change process brought about by modernization and development while it has brought many benefits, it has been at the expense of the peoples' spiritual growth as evidenced by a weakening of the community spirit and environment, corruption, cultural confusion and others. This has generated feelings of insecurity, fear, and distrust in the hearts of people and led to civil conflict as a lead up to lack of enforcement of the constitution.

3. Failure of Innovation and Accountability

Also the existing centralized system of government administration (including political aspects) at all levels needs to be improved upon in terms of accountability and innovativeness in dealing with the country's cultural and geographical diversity, in considering the restorative justice approach.

C. Solutions

1. Political Commitment and Responsibility

There are wide ranges of solutions for the concept of effective restorative justice implementation in Papua New Guinea. Political commitment and responsibility will be necessary to direct financial and technical resources to restorative justice. This support has to be consistent over the long term as many good projects and activities have been made ineffective by severe budget cuts, and lack of continuing support from changing governments; as a matter of fact everything starts with politics and ends with politics.

2. Deliberate Legislation Intervention

Deliberate legislation interventions are required to ensure that restorative justice serves to improve the quality of life of all the citizens and that it progresses in a fair and equitable manner. The government will need to review its legislation and policies and identify ways of establishing a core restorative justice department for processing and administration purposes.

3. Effective Governance

Effective governance also means being responsive to what the norms and values of society requires. We learned from previous cases that minor offences which can be solved through community justice have been an after-thought, but the consultation and social participation by the local communities must be an integral part of the decision making process from the start, concerning all matters that will affect the process of restorative justice. The people and the government need to be made aware (in an empowering way) that restorative justice is not just the responsibility of the government but also the civil society, non-government organizations, churches, individuals, community, and interested groups.

4. Community Empowerment

Encouraging people and agents of the civil society to participate in the process of restorative justice does not just mean decision by consensus. It can be as simple as giving people an opportunity to have their say. The government's role should be to establish the processes of restorative justice and mechanisms necessary for promoting civil participation, to facilitate this process and to ensure that resources are directed to groups and individuals to undertake their work.

5. Information is an Important Mechanism

There is a need for information that is relevant, accurate, and reliable in order to be able to plan, monitor and evaluate the impact of restorative justice development. Having an informed society or government is necessary for understanding the nature of down falls and the trends that may occur as disturbing mechanisms. This will enable the government to make policy choices based on unshakable facts rather than assumed facts. Hence not only should 'bottom up' feed back be promoted, but also the research community will need to be supported to produce facts that have seeds of new scenarios and action strategies in them; information that is outcome related.

D. Future Prospects

1. Enabling Conditions for Effective Restorative Justice Practices

The pursuit of restorative justice should not be driven by the desire to improve the country's international credibility, for example, but a desire to create a harmonious and healthy society and to put the meeting of their basic human needs first. The furthering of educational training endeavours to equip officials and advisors with knowledge and skills essential for dealing with developmental planning and administration of restorative justice.

2. Central Mechanism Organ

The establishment of a central organ, that has the responsibility for improving, maintaining and administering restorative justice development. The culture of Papua New Guinea has educated and sustained generations of people for thousands of years. It will also mean that a great deal of systematic

participatory research into culturally based knowledge and processes must accompany development planning efforts so that traditional knowledge and ways of doing things can contribute to building effective solutions for restorative justice.

3. Practical Positive Support

There are many aspects of life in Paua New Guinea, which, if given positive encouragement and practical support, could promote social progress in our country. For instance, the people have a capacity for creativity and giving, as in all human beings, but many Papua New Guinean still value social relationships above the desire to acquire material things. The objectives of restorative justice in Papua New Guinea can be achieved only within a context of enabling conditions that will ensure that peace, harmony, promotion of human rights, public accountability and effective governance of the restorative approach that will build upon the strength of the existing cultural and social system.

The manner in which progress has been introduced from the modern world raises important questions about the concept of development in Papua New Guinea. Much of what has been presented to Papua New Guinea by the outside world as development has brought an imbalance in a number of aspects of integral human development. It is crucial that the concept of restorative justice be revisited and activated for development and understood as a process of sustainable improvement, then it is far more likely that future programmes of national development will be sustainable and will lead to a better life for the people of Papua New Guinea.

4. Role of the Media

The media often moulds public opinion and if the media is prepared to do so, it can play a significant role in the public education as to the proper treatment of restorative justice. This has been very evident in the societies of Papua New Guinea where a lot of mediation, reconciliation, peace ceremonies and practices of restorative justice have been performed in isolation and without media coverage. It is simply because there have been a lot of miscalculations on the importance of such occasions which has led to an adverse long-term impact on the survival of the society.

APPENDIX

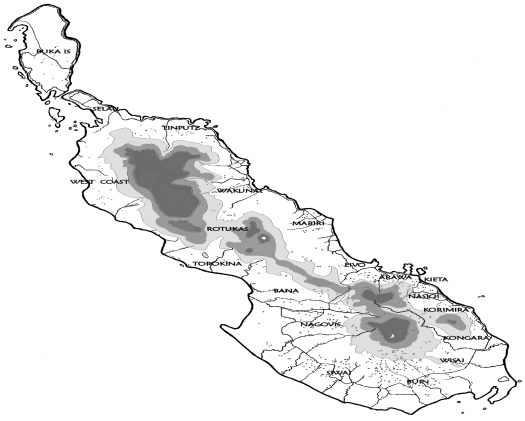
The following is an extract from the author's PowerPoint presentation at the Seminar.

Map of Papua New Guinea

- Population 6 million
- About the same size as New Zealand
- 800 languages
- Largest population is found in the highlands

Bougainville

- Population about 160,000
- Largest population is in the south
- Mountain regions are very cold
- Two active volcanoes



Surrender of Guns

Three Traditional Processes for Dealing with Crisis Related Crime

1. Reconciliation between groups of fighters and the community.
2. Custom Law (Restorative justice) for dealing with individuals who have committed a crime within the community.
3. Official execution for unrepentant re-offenders.

Common Process for Reconciliation: 1

- Reconciliation uses a win-win mediation process.
- In the first step there is no attempt to identify the offenders.
- Mediator shuttles back and forth to obtain agreement that both sides want to end the fighting (Months).

Common Process for Reconciliation: 2

- Mediator shuttles back and forth to decide on the details of the reconciliation package –place, gifts, speakers, who carries out the ceremony, etc (more months).
- Gathering of gifts and all stakeholders from all over Papua New Guinea to give credibility to the ceremony.

Common Process for Reconciliation: 3

- The two groups meet for the ceremony which is conducted by the chiefs. It is essential that all parties are given due respect and are satisfied with the process and their part in the ceremony.
- Speeches, exchange of gifts, shaking of hands, outpouring of grief and relief by all present.

Common Process for Reconciliation: 4

- This is just the first step. The step which declares a cease fire - no more fighting.
- Further ceremonies continue for years to cement the first agreement.
- At some such ceremony the offenders will confess their killing to the families of the victims.
- The reconciliation ceremonies may continue for many years.

Reconciliation Ceremony

- The outward form of Reconciliation ceremonies vary from place to place but the basic process is the same.
- Major reconciliations require chiefs.
- Minor reconciliations are carried out by appropriate persons.

Reconciliation at Kunua

Note
- The offenders
- The victims
- The coffin
- The pig
- The food
- The witnesses
- The chiefs

Execution of Criminals

- At present in Bougainville the police are not in a position to deal with men who have gone feral during the years of crisis.
- A number of traditional style executions have been carried out.
- Some people tell me that it is a much more civilized way than sending a person to jail where they lose their humanity and are treated as animals by warders and each other and return as hardened criminals.

GENERAL DISCUSSION PAPER

I. INTRODUCTION

The main theme of the 123rd International Senior Seminar was "The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process specifically considering Restorative Justice Approaches." During this seminar, we had seven general discussion sessions to identify and clarify problems and to find practical solutions and future prospects for various issues related to the protection and support of victims of crime and restorative justice approaches with the active participation of all participants, visiting experts from overseas and UNAFEI faculty members.

The essential parts of the discussions were crystallized as the following selected recommendations.

To implement the recommendations, the relevant agencies of the United Nations and UNAFEI may provide necessary assistance.

II. PART 1 : SUPPORT AND PROTECTION OF VICTIMS OF CRIME

There has been little attention paid to victims of crime in criminal justice systems until recently and their main role has been limited merely to being "witnesses". However, people have acknowledged the importance of support and protection for victims because victims not only face loss of life, physical injury, loss of property and various kinds of damage, but also suffer emotional shock and stress as well as secondary victimization.

Under these circumstances, "The Principles of Justice for Victims of Crime and Abuse of Power" was adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985. The Principles require nations and nationals to have sympathy and respect for the victim.

Therefore, the following goals should be achieved in order to fully implement support and protection for victims of crime.

(1) To give victims due legal status and establish systems for supporting the interests of victims such as participation in criminal proceedings.
(2) To provide immediate medical, material, social and psychological support to victims suffering from post crime trauma.
(3) To ensure that the institutions involved in the process of victim support do not marginalize any segment of society.
(4) To make all kinds of relevant information to victims available promptly and free of charge.
(5) To provide necessary protective measures for victims/witnesses who are worried about offender's retaliation in order to ensure their safety and realize justice.

A. Recommendations

1. In the countries from where the participants come, the areas of concern in victim support are so wide and varied that in order to embark on a programme of such magnitude would be too ambitious and the scant resource availability will be a serious impediment. As such it is recommended that in each of the counties only those areas should initially be targeted which are of very high concern and carry serious sensitivity. These programmes could then be gradually expanded to cover other areas as awareness amongst the public takes place and resources are available.

2. With due consideration to each country's context, we need to set up pilot projects for victim support and assistance. These should include governmental and non-governmental organizations and involve the local communities. Balance, coordination, collaboration, and networking in service delivery among relevant agents would be the keys in addressing individual needs of victims.

3. Since better development of victim support and assistance requires better understanding of victims, there is a need to plan and conduct systematic training of facilitators. Experts from countries with advanced victim support systems, e.g., the U.K., the U.S., etc. should be invited with help from the donor countries for imparting training to trainers of facilitators. Services of locally available experts, e.g., psychiatrists and sociologists, should be utilized as well.

4. As formal intervention tends to require a lot of resources, where appropriate, we may utilize more

informal support and assistance by communities. Traditional wisdom and customs should not be disregarded or disqualified since community development and mobilization may have potentialities to extend more appropriate services for victims in crime than institutionalized systems. In several developing countries, the informal social support systems are very strong and dependable but may with time whither away without being replaced by better or more effective ones. Therefore there is a need to strengthen and formalize the traditional systems. Relying purely on borrowed concepts would prove detrimental to the values propounded by the United Nations Declaration on the subject.

5. Basic information about criminal proceedings (such as the arrest of the offender, prosecution, schedule of trial, release on bail, sentence, escape and release of the offender from custody or correctional institutions) should be provided to victims by the competent authorities like the police, public prosecutor, court or correctional institution through any such means that are accessible to the victim i.e. letter, fax, email etc. Other information should be provided upon request by an application of the victims and decided by the police, public prosecutor, the court, or correctional institution considering that disclosure of some information could hinder criminal investigation and proceedings and violate the rights to privacy of offenders and others, and have a negative impact on the victims themselves and society.

6. The criminal justice system exists not only to punish the criminals but also to help the victims of crime. Every country recognizes that the victims should be given an opportunity to play a more active role at every stage of criminal proceedings. In order to positively reflect victims' rights at trial, we recommend the introduction of "private accessory prosecutions" if necessary, where the victims can participate in criminal trials as private prosecutors in addition to public prosecutors. To what extent the victim can exercise their rights at trial should be discussed in the respective countries based on their own criminal justice systems.

7. Besides, in order to secure the victims' rights and prevent abuse of power and ensure judicious use of discretion by public prosecutors, we have to establish adequate measures or systems in cases where public prosecutors have decided not to prosecute the suspect. Private prosecution is one thing, and a review system of non-prosecution cases is another thing. Every country in which a private prosecution system is adopted has to pay meticulous attention to ensure that the victim should not be placed in a disadvantageous situation because of poverty or/and lack of legal expertise. In countries where private prosecutions are not available, there should be some appropriate measures to complain or appeal against the decision of non-prosecution by public prosecutors. The decision of non-prosecution by public prosecutors should be reviewed by other appropriate authorities in the countries concerned. As characteristics of society and culture differ from country to country, we have to carefully consider which system is suitable to be adopted in our respective societies.

8. The police and other criminal justice related authorities should provide protective measures to victims/witnesses in danger such as escort services, quick response to their calls and necessary arrangements to protect them from offenders who threaten witnesses.

9. All countries are aware of their responsibility for protecting victims from intimidation, harassment, retaliation and/or any harm by offenders, because victims are part of our society and justice cannot be realized without cooperation and participation of victims. We should introduce measures to protect victims such as providing separate waiting rooms between offenders and victims/witnesses, and partitions in courtrooms. A video link should also be introduced if financial circumstances of the respective countries enable this.

III. PART 2 : RESTORATIVE JUSTICE APPROACHES

As victim protection and support gained ground, the restorative justice approach also emerged as a new concept to tackle problems which the criminal justice system was failing to address. The restorative justice approach is one which considers the loss caused by crime through the active participation of the victim, offender and the community.

“The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century” was adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Vienna in April 2000. It encourages the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties. Based on this Declaration, the working group of the Commission on Crime Prevention and

Criminal Justice drafted in 2002 the "Basic principles on the use of restorative justice programmes in criminal matters" as a United Nations standard for restorative justice.

Although restorative justice has been defined in numerous ways, we reached a common understanding about restorative justice from practical aspects as follows. Restorative justice provides a process with opportunities for victims, offenders and the community affected by a specific offense and is a means to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.

We also identified the aims and goals of restorative justice as follows:

(1) Healing victims of crime and all parties affected by crime
(2) Repair the harm caused by crime
(3) Reintegration of victims and offenders into the community
(4) Asking an offender to be accountable
(5) Deliberative democracy (decision making process)

Based upon the above-mentioned definition, the aims and goals of restorative justice and discussion on various issues related to the practical application of restorative justice approaches, we chose the following recommendations for the vital points of introducing and utilizing restorative justice approaches.

A. Recommendations

1. When each country initiates restorative justice approaches, pilot programmes which correspond with problem-oriented approaches should be started, considering the feasibility and efficacy of such approaches.

2. Each country should consider the following points in practicing restorative justice approaches:
   (i) The state should try to solve general problems such as lack of awareness and constraints of resources when introducing restorative justice approaches.
   (ii) The state should ensure a fair process and outcome for the parties concerned in restorative justice approaches.
   (iii) The state should take effective measures ensuring justice and ensure parties have equal bargaining power.
   (iv) The state should protect the human rights of offenders under the due process of law such as:
      (a) The right to equal protection under the law
      (b) The right to freedom from torture and cruel treatment
      (c) The right to be presumed innocent
      (d) The right to be tried by an impartial court
      (e) The right to assistance of legal counsel.

3. Though the research so far conducted has proven that restorative justice approaches are useful in prevention of re-offending, and provided results to the satisfaction of the parties to a large extent, there is still a need for more research on restorative justice approaches and practices widening the scope, particularly in the field of domestic violence.

4. Since restorative justice is a new concept, adequate information about restorative justice should be provided not only to the general public but also persons working for the criminal justice system in order to enhance awareness. Appropriate training should be given to facilitators and other persons concerned with restorative justice approaches.

5. When the restorative justice process such as the victim offender reconciliation programme (VORP), victim offender mediation programme (VOM), victim offender dialogueue programme (VOD) and family group conferencing (FGC) are implemented, the following guidelines should be observed in these programmes and conferences.
   (i) Participation should be voluntary.
   (ii) Appropriate preparation should be carried out for each particular situation.
   (iii) Trained facilitators and mediators should guide the process.
   (iv) Appropriate follow-ups should be carried out to confirm the implementation of the agreement.
   (v) There should be feedback loops to determine the impact of the process on the participants.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

- ***123rd International Senior Seminar***

UNAFEI

The 123rd International Senior Seminar

Left to Right:
Above:
Prof. Muira

4th Row:
Mr. Takagi (Chef), Mr. Inoue (Staff), Mr. Ihara (Staff), Ms. Masaki (Staff), Ms. Matsushita (Staff), Ms. Yamashita (Staff), Mr. Tanaka (Staff), Ms. Tsubouchi (Staff), Ms. Nagaoka (Staff), Mr. Kai (Staff)

3rd Row:
Mr. Nakayama (Staff), Mr. Penjore (Bhutan), Mr. Dennery (El Salvador), Mr. Daassi (Tunisia), Mr. Dalinting (Malaysia), Ms. Akiyama (Japan), Mr. Haque (Bangladesh), Mr. Ozawa (Japan), Mr. Yoshida (Japan), Mr. Toishi (Japan), Mr. Kataoka (Japan), Mr. Nabana (Japan)

2nd Row:
Mr. Koike (Staff), Mr. Bastola (Nepal), Mr. Justalero (Philippines), Mr. Sarei (Papua New Guinea), Mr. Butar Butar (Indonesia), Mr. Khan (Pakistan) Mr. Naveed Khan (Pakistan), Mr. Laukaphone (Laos), Mr. Castro (Chile), Ms. Rhujittawiwat (Thailand), Ms. Boonsit (Thailand), Mr. Shash (Egypt) Ms. Hayashi (Staff), Ms. Hoshino (JICA)

1st Row:
Mr. Fukushima (Staff), Prof. Kakihara, Prof. Teramura, Prof. Tachi, Prof. Someda, Ms. Frey (Germany), Mr. Dunn (U.K.), Ms. Pranis (U.S.A), Director Sakai, Prof. Braithwaite (Australia), Dr. Kittipong (Thailand), Ms. Kittayarak (Thailand), Dep. Director Akane, Prof. Tanabe, Prof. Takasu, Prof. Kuwayama, Mr. Ezura (Staff), Mr. Eratt (L.A.)