

BEST PRACTICE IN RESTORATIVE JUSTICE CONFERENCE FACILITATION: SOME BIG IDEAS

Restorative Justice Conferencing

On a clear autumn day, 18 year old Michael was walking home following a school football training session, looking forward to a shower, dinner and a bit of study before hitting the sack. His day had started early and he was a little tired and hungry. He was one of 3 children, an excellent student with a large circle of friends. Five minutes from home, as he was walking along the footpath, he was hit by a car driven by 25 year old Peter, as it veered off the road. Michael suffered severe internal injuries, head injuries and several broken limbs. He died in the ambulance on the way to hospital. Peter was drunk. He'd been at the local pub celebrating a birthday with friends and had decided to go home for dinner before continuing the party at another venue later that night. This was a tragic and life changing event, affecting a significant number of people. A police investigation was held, followed by a court appearance and Peter ended up spending 3 years in prison. Just prior to his release a Restorative Justice Conference was convened involving Peter, his family and friends and the family and friends of Michael.

Michael's Mum and Dad together with his sister and a number of friends attended the Restorative Justice Conference. His father in particular had expressed a strong desire to punish Peter and was eager to see that he said everything he could to make Peter feel the pain that Michael had felt and to ensure Peter felt guilty and carried that guilt with him for the rest of his life. Through the process of the Restorative Justice Conference, Peter explained what had happened on the day of Michael's death. Michael's Dad had his say at length, his Mum and sister talked about how they heard what had happened and what it has meant to them since, and together they agreed that Peter had a life ahead of him with the prospect of work and a family of his own, whereas his actions that day had resulted in the death of a young man and the never ending grief of that young man's family. It was a difficult, sad event, yet immediately following the formal conclusion both families embraced and wished each other well. How is it possible that we should be capable of this level of civility and generosity when confronted by those who are responsible for our worst nightmare?

In all sorts of circumstances, when we cannot figure out how to come together and understand others, we seem to be capable of unbelievable treachery. And yet when we have the opportunity to engage and learn from others, we're also capable of the most amazing generosity. This seems particularly true when crime and conflict have occurred. The starting point for Restorative Justice Conferencing is a desire to provide a forum where people affected by crime can come together, understand what has happened and explore the possibility of preventing any further harm, while making amends for what has already happened.

Restorative Justice is a term widely used to describe a number of processes that bring together those affected by a crime or conflict. These processes provide people with the opportunity to be involved in understanding what happened, how people have been affected and how best to repair any resulting hurt or harm.

Conferencing is a particular form of Restorative Justice which has been trialled and tested over time in various jurisdictions. The most definitive and rigorous of those studies was carried out in England in the adult criminal justice system by the Justice Research Consortium, headed up by Sherman and Strang. That study used the scientific model of research whereby cases in which offenders admitted to the crime, were randomly assigned to either one of two process; a court for sentencing or a

Restorative Justice Conference involving victims, offenders and their respective families and friends, for resolution¹.

This chapter is based on the model of Restorative Justice Conferencing tested by that research, as it pertains to crime committed by adults². That model was developed by myself and colleagues in the early 1990s, following a trip to New Zealand to observe first hand the New Zealand Family Group Conference process³. What struck me with great force on this trip was the simple idea that we should bring together those most directly affected by crime and allow them to decide what to do next, rather than impose sanctions from on high and expect people to get on with their lives. As is often the case, great ideas come from within smaller communities and of particular importance was the manner in which individuals within Maori communities were able to influence policy makers in changing the criminal justice system in NZ⁴. Having witnessed Family Group Conferences in NZ and written a discussion paper for the NSW Police Minister and Commissioner, I set about building a coalition of like minded people. Central to this were two colleagues, Sgt Terry O'Connell and academic David Moore, both from southern NSW. We became great mates and together formed a team determined to bring significant change to the criminal justice system.

As we increased our understanding and experience of the conference process, we generated increasing interest in the work we were doing. O'Connell was facilitating Conferences (not yet known as RJ Conferences), Moore was pursuing and developing theories to help us explain and fine tune the process, and I was doing what I could to keep the initiative alive within the NSW Police Service. What we developed was a process that differed to the NZ approach in that we did not have the offender at the centre of the process, nor the victim, but rather the incident.

We asked a different set of questions than those typically asked by the criminal justice system: who did what and what do we (parents, teachers, managers, police, courts,) have to do to them? In their place we were informed by the questions: What's happened? How have people been affected? What can we do to make things better?

Working within the NSW Police Service and with Charles Sturt University, we developed the model to the point where we had a sufficiently strong theoretical basis and a robust process that could be relatively easily taken to scale across the state⁵. This involved seeing crime as a form of conflict rather than a dispute and addressing it through a process that emphasised the principles of

¹ See Sherman & Strang <http://www.smith-institute.org.uk/file/RestorativeJusticeTheEvidenceFullreport.pdf> [Sherman, Lawrence W](#) and [Strang, Heather](#) (2007). *Restorative Justice: The Evidence*. London: The Smith Institute review of research on RJ in the UK and elsewhere shows that across 36 direct comparisons to conventional criminal justice, RJ has 1) substantially reduced repeat offending for some offenders, but not all; 2) doubled (or more) the offences brought to justice as diversion; 3) reduced crime victims' post-traumatic stress symptoms and related costs; 4) provided both victims and offenders with more satisfaction with the system than they would otherwise experience; 5) reduced crime victims' desire for violent revenge against their offenders; 6) reduced the costs of criminal justice, when used as diversion; 7) reduced recidivism more than prison in the case of adults or as well as prison in the case of young people.

² See Shapland et al

³ As the NSW Police Commissioner's Adviser of Youth Justice, I led a delegation to New Zealand at the invitation of the NZ Principal Youth Court judge, Michael Brown, to observe their FGC Program. Accompanying me on that trip were Sgt Stephen Ireland of the NSW Police, Michael Hogan of the NSW Youth Justice Coalition and John Ryan from the Police Minister's Office. I co-authored a paper with Steve Ireland for the Commissioner and Minister titled 'Can it be done another way?' proposing adoption of the NZ FGC Program. This paper started the RJ ball rolling in Australia.

⁴ I make particular mention of Peter Sharples and Mick Brown, though there would be numerous others.

⁵ Then Assistant Commissioners Jeff Jarratt and Christine Nixon were strong supporters and advocates of Restorative Justice Conferencing in policing and the criminal justice system.

deliberative democracy. Once we took this approach outside the confines of the criminal justice system and tested its application with adults in the workplace, we started to realise its full potential. From a shaky and enthusiastic start in the early 1990s we finally joined forces with three Canadians in early 2000 and set up ProActive ReSolutions.

Since the early 1990s when we first started facilitating Restorative Justice Conferences and teaching others to facilitate, we have been thinking about how to improve what we do. This has allowed us to establish a clear methodology and a model of best practice in Restorative Justice Conferencing. This chapter looks at what we consider the big ideas informing RJ, putting those ideas into practice and the challenges faced by facilitators and teachers of Restorative Justice Conferencing.

Justice

The work of Restorative Justice Conferencing is underpinned by ideas worth revisiting.. The first one is Justice. As adults we're keenly aware when we feel we're not being treated fairly or justly. Justice is an experience many feel is often lacking in their lives. Therefore central to any process that provides people with a feeling that justice was delivered, is the requirement that the facilitator has a working definition of justice by which to judge the process' success or failure.

In training people to become facilitators, we spend time discussing what Justice means. The definition of Justice comes in three parts⁶. As the facilitator:

1. We make it our business to ensure that the participants understand and accept the rules of the process (fair rules),
2. We manage the process such that the group stick to the rules (fair play) and
3. We see to it that everyone present is involved in determining what needs to happen to repair any hurt or harm (fair outcomes).

It follows therefore that the only outcome we look for as facilitators is that at its conclusion the participants feel as if the process was fair. That is, the people affected by the crime feel that the process was just. This is what a facilitator should aim to achieve.

Deliberative Democracy

The second big idea is that to deliver a feeling of fairness or justice, the guiding principles of a Restorative Justice Conference must be fundamentally democratic. Not democratic in the representative sense but democratic in the deliberative sense⁷. That is:

- everyone affected by the crime is encouraged to attend and gets to have their say (participation)
- all opinions are considered (political equality)
- all the ideas raised are talked through (deliberation)
- no one person is able to dominate the Conference (non-tyranny).

To be genuinely democratic a Conference must get as close as possible to satisfying these four precepts: participation, political equality, deliberation and non-tyranny. These ideas are crucial for good facilitator practice and for the delivery of justice.

Of the four conditions necessary to deliver deliberative democracy, participation remains one of the most difficult for facilitators to translate into practice. There are very few crimes committed which do not affect a wide system of relationships: the victim, the offender, family members, extended family, friends, neighbours, work colleagues, community workers, drug or alcohol counsellors and police officers. Take the Restorative Justice Conference mentioned in the opening paragraph. Thirty

⁶ Transforming Conflict in workplaces and other communities – McDonald & Moore

⁷ Essays on Reason and Politics: deliberative democracy. Eds J Bohman and W Rehg, 1997, MIT

five participants attended and participated and that number could have stretched to many more. For facilitators the more participants involved, the more likely it is that the participants will engage with others, learn how deeply each other has been affected and provide ideas to respond to the hurt and harm, while considering ways to prevent future harm.

Sadly for most programs, this number of participants would be the exception rather than the rule. Our sense is that facilitators -often decide not to include a wide group of people. I believe this is much more about the facilitator's anxiety at not being able to control a larger group of people, control than it is about people not wanting to attend. At ProActive ReSolutions we regularly get twenty plus participants along to RJ Conferences and it's not unusual to have in excess of thirty people in attendance. Programs run in the workplace can provide much bigger obstacles to people attending than in criminal matters. For example, the risks of speaking your mind in a RJ Conference in the workplace can have serious political repercussions for you in your continuing relationships at work. Yet the number of participants in our RJ Conferences in the workplace are significantly larger than those run in most programs in criminal justice systems. When training people to become facilitators, we ask them to include rather than exclude people who have a relationship to those affected, or to what happened.

At the Conference, the facilitator needs to ensure that everyone's opinions are considered and that no one dominates or bullies others. Preparation - (ensuring the right people attend and understand the process)- is essential. So is good facilitation. Facilitation is not only about technique. However to be a good facilitator technique is critical. A facilitator should work hard not to be noticed by the participants. The role is not designed for people who want to rescue others, or for facilitators who want to be the centre of attention. In fact it's the exact opposite. Good facilitation requires an awareness and understanding of the principles involved and an adherence to informed technique. When we facilitate a process that delivers justice through participation, equality, deliberation and non-tyranny, we enable a group affected by a crime to understand better what has happened and why it took place. The group also gets to learn more about how they and others have been affected by what's happened and eventually to determine what to do, if anything, to make things better. This is where the principles of a deliberative democratic process allow for the building of consensus on any future action. An effective Restorative Justice Conference is capable of transforming conflict being experienced between people as a result of a crime, into cooperation and even collaborationⁱ.

Crime as Conflict

In training facilitators we discuss the idea of crime as a form of conflict - when a crime occurs, it happens on someone else's terms, generally comes uninvited and cannot be undone. This can leave strong negative feelings toward the people responsible and creates conflict between the people involved. Conflict by definition involves strong negative feelings towards others, so any process that is going to respond to conflict must allow for those feelings to be acknowledged and talked through.⁸ This means that the process should not be dominated by a search for the truth or the facts, but rather be a forum for understanding the impact of crime and what that means for the future. Emotions are contagious. In a Restorative Justice Conference they are encouraged by the facilitator to be expressed openly, shared with others to deepen the understanding of what has happened and what needs to be done to make things better. The process is designed to transform conflict into collaboration and this is largely done by allowing the group to understand the emotional impact of the crime, as well as any material cost.

⁸ Transforming Conflict. Moore and McDonald

Victims or offenders or neither?

Another idea central to Restorative Justice is that it is not a process developed for individual offenders or individual victims. While we regularly hear people talking in support of Restorative Justice because it is seen as being victim centred, this was never the reason we designed the facilitation process as we did. Restorative Justice Conferencing is not about the victim and it is not about the offender. We seem to have gone from working in a system that was once focused on rehabilitating the offender (and completely ignoring the victim), to a system where we focus on supporting the victim, with little public mention given to reintegrating offenders back into their communities. When a crime occurs, it inevitably affects more than the victim/s. It does indeed affect the person most directly harmed, but it also has an effect on everyone in a relationship with that person. And they can include immediate and extended family, friends, neighbours, colleagues and anyone who may have witnessed the offence taking place. Likewise offenders typically have families and friends and at times work colleagues, all of whom may know of or have heard about the offence. And even if they haven't been affected by what has happened, they may well be able to contribute to the discussion. We believe, somewhat paradoxically, that the way to change an offender's behaviour is not to focus on him or her, but rather to allow everyone else to talk of their experience with the offence. All of us, not just the offender, can learn how the crime has affected each of us. The totality of what has happened and the experience of being confronted by that totality in a dignified yet direct manner, gives the offender and the whole group a lot to take away and digest, not least a powerful incentive not to re-offend.

Defining Community

Being clear on what we mean by community is important. We define the community as those who caused the harm and those who have been affected. The definition implies that those most directly responsible for the crime and those most affected, have the first opportunity to respond, by hearing what has happened and why, by understanding the consequences of that action, and by determining what can be done in response.

When we become involved as members of the affected community, we feel a collective and individual civic responsibility to reduce the possibility of further crimes being committed by the same individual. In a criminal justice system where Restorative Justice Conferencing is available, it increases our responsibility to be involved in responding to crime. This responsibility is an important part of our civic duty. The facilitator needs to understand and accept that responsibility when persuading people to attend a Restorative Justice Conference. As a helpful consequence, once involved it seems that not only do participants experience high satisfaction levelsⁱⁱ but offenders are less likely to re-offend having attended a Restorative Justice Conferenceⁱⁱⁱ.

Principles, Process and Practice

When preparing and facilitating a Restorative Justice Conference for adults, we argue that an understanding of the principles underlying the process is essential knowledge as a precursor to good practice. When providing training to potential facilitators in Restorative Justice Conferencing for adults, we always begin with a conversation around the principles behind the practice. Our ability to transform conflict into acceptance, understanding and even cooperation, is best explained by a theory of conflict transformation, a blend of ideas informed by biology, psychology, social theory, political philosophy, and systems theory^{iv}. We're interested in knowing:

- What is the meaning of justice?
- What is the essence of democracy?
- What encourages cooperation and discourages conflict?
- What is the relationship between physical well-being and emotionality?
- What aspects of emotional experience are universal?

- What size groups are most sustainable?

Thinking through responses to these questions helps better understand what takes place when we bring together groups of people in conflict which, in turn, forms a foundation for the work that is to follow.

Adult participants are generally expected to be aware of the risks involved in being vulnerable in front of others. As adults we are usually more aware of what's at stake than teenagers and children. When participating in a Restorative Justice Conference, we can expect adults to be hesitant in being open about their behaviour and how they're feeling. This makes crucial the facilitator's understanding of his or her role and adeptness with the process and techniques they will use. For example, adults are believed to be less malleable than young people, for whom there is almost an unwritten rule that their circumstances and/or their youth make them more open to influence from those close to them, and more willing to change behaviour which may not be as entrenched as it could be with adults. With adults in the workplace, we pay particular attention to being transparent and clear in our preparations. At a Conference, adults are more likely to challenge the process, to challenge the facilitator's authority or to alter their story once faced with the reality of being face to face with those they've harmed, or those who have harmed them. Thus, facilitator preparation involves explaining the process and responding to any concerns or queries around that, including participation, technique and possible threats or repercussions.

Facilitation

Prior to each Conference, the facilitator needs to know how to persuade those affected by a crime that coming together in a Restorative Justice Conference will be helpful. The relationship between the facilitator and the participants, begins from the moment contact is made. Important principles to guide us in our work as facilitators are transparency, clarity and respect. Facilitators must consider the importance of being transparent with those being persuaded to participate in a Conference. Transparency in this context means that we are open about all aspects of Conferencing: the guiding principles, the process and the program under which it is operating. Facilitators show their respect for the participants by being well prepared and by ensuring they maintain a respectful stance towards all those with whom they are dealing. Finally, facilitators must strive for clarity which is the most difficult of the three principles. It means using consistent language, being able to explain the key principles and responding to any questions on the process.

Once we begin, there are three stages to a Restorative Justice Conference. Stage one is really a formal inquiry into what happened. The facilitator asks the offender to speak first and paint a picture of what happened. The willingness of the offender to speak at length and relate what happened to the group in sufficient detail can vary greatly. Facilitators must be ready to encourage the offender to tell the story in as much detail as necessary. There are prompts and techniques available to the facilitator to ensure this happens. The facilitator's role is best understood by the techniques we've developed over the last decade or more. When used well, these prompts and techniques ensure the offender retells the story of the offence in full.

Offenders are invited to speak first by describing what they did, for a number of reasons:

- It is the start of them taking responsibility for their behaviour
- It means for the first time they get to acknowledge what they've done to themselves as much as to others
- Others get to hear the offender give their account of the incident
- The offender instigated the crime, so they get to go first

Should the facilitator allow the offender to leave out significant pieces of the story, others present may get agitated and angry and the Conference could become an argument about what happened. When training facilitators, we spend time concentrating on Stage One. This is to ensure that the process gets the best start possible. The facilitator can use prompts such as:

- "Take us through step by step . . ."
- "What happened then?"
- "And then?"
- "And then what happened?"

The facilitator is also made aware of 'echoing' the last phrase used by the speaker to encourage them to continue. In Conferences we insist facilitators not paraphrase what others have said, as people in conflict we can be hyper-sensitive to any hint of bias from the facilitator. The technique is to pay attention to what is being said by the person speaking and should they stop for some reason, we simply repeat the last few words they had to say, rather than paraphrase everything they have said.

Prior to moving on to the next speaker, the offender is asked who has been affected by the crime. Offenders tend to answer this question correctly, as the key people are in the room. They're then asked how they think those people might have been affected. This is a much harder question. No matter the response, the facilitator should move to the next stage by asking how others were affected.

Once the offender has told their story and described how others have been affected, the focus shifts to those affected. Each person should be given time to talk about how the crime has affected them. This second stage of the Conference takes time, as each person usually tells their story from a very personal perspective. Only when everyone has spoken should the facilitator give the offender a chance to respond and again take responsibility by apologising for their actions. The third and final (formal) stage, involves asking people for suggestions to repair any hurt and harm and reaching agreement on how best to achieve that.

Challenges

Every Restorative Justice Conference has its potential challenges. I was asked to run a Conference for a large organisation where a number of men had reportedly sexually harassed and, in one case, assaulted a number of female colleagues. The police were involved as were legal advocates for the participants. The preparation involved speaking to each of the offenders and informing them of the process would begin by telling the story of what they did. They each reluctantly agreed to this. The female victims had agreed to be involved and were looking forward to the opportunity to speak directly to their male colleagues and be involved in determining what to do next. One of the women had her husband present while another brought her father with her, a man who had retired from the organisation some years previous. All of them had family and/or friends present.

The challenges faced in this Restorative Justice Conference came firstly from the offenders. Following the introductions, I asked the first of the group to tell us what had happened at the Christmas social function. He began by saying that he had acted inappropriately and apologised for his behaviour. I prompted him to continue and he repeated what he had said. I prompted him a third time and he repeated himself again. After giving him more time to answer, I moved on to the second offender. He answered in exactly the same way repeatedly, just as his colleague had done. I then moved on to the third offender who did the same using slightly different words. With one offender left I wasn't hopeful and when I asked him he failed to answer at all. It is our practice when facilitating RJ Conferences to always follow the script we developed. This ensures we do not get sidetracked and means we don't have to concern ourselves with what questions to ask participants

and in what order. At that stage I put my script down and just sat there looking at the offenders, hopeful that they would come to their senses.

None of them did. Then one of the female victims asked if she could speak, to which I nodded. She told the group what they had done to her in some detail and suggested they open their mouths or she'd leave and it would be dealt with differently. Then another of the women detailed what had happened to her. This is not how a Restorative Justice Conference is supposed to start. The script doesn't ask that the victims accuse the offenders of committing the crime. The situation was tense, but nobody attempted to get up and leave. We teach facilitators that when we are not sure what to do, the best thing is to do is nothing. So I sat there and did nothing. It seemed that the group of men had got together and decided they needed to attend the Conference as a way of avoiding more formal action. The silence was overwhelming. After what seemed like an eternity, the offender who had previously said nothing raised his hand. I look at him and he spoke..

He talked about his experience as a man in the organisation, being bullied and harassed by other men over his appearance, and how he found it difficult to cope with, to the point where he had contemplated self harm and resigning. At that point he faced the women and told them that he had behaved terribly and he knew he had and there were no excuses. He said that he had been making them feel exactly the same as his male colleagues (mates) had been making him feel. He then faced his male colleagues and let them know that he was going to talk about what he'd done and he expected each of them to follow suit. They did.

As the facilitator, the challenge here was to stick to the script and when that failed, to do nothing. The challenge was to have sufficient faith in the process and trust that groups generally do well. The challenge was not to get too concerned that the Conference might 'fail' I had done everything possible to prepare the Conference and there were no indications that the offenders were going to behave as they did. The challenge was not to feel responsible for their behaviour. The reality was that the Conference got back on track and we started from the beginning again, with the same questions, asked in the same neutral tone, only this time the offenders answered in full.

- Another challenge in this Conference was that, a man who had previously worked for the organisation, the father of one of the victim's, was at times abusive and angry and threatened to harm the offenders. I was aware of how strongly he felt prior to the Conference, so I deliberately sat him next to me. Each time he became abusive I used the techniques we teach on defusing aggressive behaviour; looking him directly in the eye, looking at those who came with him to remind them of their responsibility to monitor and manage his behaviour, and being sure not to pay him more attention than necessary (to name a few). We always prefer to have people affected by the behaviour involved in the Restorative Justice Conference. The point is also worth making that the father had reason to be angry. The facilitator's job is not to judge people by the way they feel. He was affected by what had happened to his daughter, and by the fact that the organisation had not provided a safe workplace for her, and by the slow and inadequate response of the organisation. The fact that he displayed his anger repeatedly was not to be discouraged; at least not initially. We teach facilitators to be alert to all behaviour in a Conference, so when someone gets loud and abusive toward others, our job is to allow time for others to rein him in, not to immediately jump in and attempt to calm him down. His anger was also directed at the people who made him angry, so what better forum to express it. Ideally we require the facilitator to allow behaviour we find difficult (by the same person) to go unchallenged. This allows us to see whether it is likely to continue and dominate the conversation. The challenge here is to allow it to happen on three occasions and then respond by alerting those closest to the person to support him or her by calming him down. If you feel uncomfortable as the facilitator, then you can generally guarantee others do as well. However your discomfort is not sufficient reason to

interrupt proceedings. When a facilitator interrupts, it is almost always about responding to their own discomfort at feeling distressed. Distress experienced by participants is not to be interfered with because the facilitator is uncomfortable.

In short, the most significant challenges facilitators face is ensuring:

- they get all those affected by what has happened along to the Restorative Justice Conference
- they get the full story of what happened told by the responsible person or people
- they are comfortable with silence
- they display a steady and slow pace in their speech and demeanour
- they do not become part of the conversation

The final point here is crucial. As facilitators, we are not part of the community of people as defined by the offence. The facilitator's role is simply to prepare people to attend and participate and to provide the forum for the conversation. We have no role in worrying about how participants behave or feel, beyond getting our preparation and facilitation correct. The process is designed for facilitator's to use authority as a funnel to channel authority back to those who are most affected by the offence. We are giving whatever authority we have back to the affected community. Their willingness and capacity to take that authority will largely depend on the facilitator doing their job well enough so that people take the authority and accept the responsibility that goes with it.

The facilitator's task is to provide people who have been affected by a crime or a conflict with an opportunity to clarify what has happened, to understand how it has affected each of those present, and to determine what needs to be done to repair any hurt and harm. That's a lot for any of us to achieve. When a facilitator understands and embraces the principles, the theory and the technique, the participants demonstrate time and again that they are prepared to engage with each other and transform the conflict into cooperation.

ⁱ Restorative Justice: the case for wider adoption. Lucian J Hudson, Cornerstone Global Blue Paper, December 2010. www.cstoneglobal.com

ⁱⁱ **Restorative justice: the views of victims and offenders The third report from the evaluation of three schemes Joanna Shapland et al Centre for Criminological Research University of Sheffield** Ministry of Justice Research Series 3/07 June 2007

ⁱⁱⁱ **Does restorative justice affect reconviction?** The fourth report from the evaluation of three schemes **Joanna Shapland et al** Ministry of Justice Research Series 10/08 June 2008

^{iv} Transforming Conflict pps 49- 50