

# Restorative Group Conferencing: An Alternative Response to Juvenile Crime in the Yukon, Canada<sup>1</sup>

Jeff D. May, Justice Department

University of Alaska Fairbanks

## ***Abstract***

*Restorative Community Conferencing is a dispute system design strategy espousing principles of restorative justice that has been formally adopted by the Department of Health and Social Services in Yukon, Canada to respond to juvenile crime. In May 2010, the University of Alaska Fairbanks Justice Department hosted an intensive training provided by the Yukon's Youth Justice Restorative Community Conference Program Coordinator on restorative justice philosophy and this specific conferencing practice. This article reviews and discusses restorative justice generally and describes the operation of restorative community conferencing (referred to hereafter as RCC) specifically. Based on suggestions found in the restorative justice and dispute systems design literature and personal observations made at this training I recommend three considerations to those developing alternative, restorative-focused juvenile crime resolution strategies. First, agencies or community groups should engage the community and other stakeholders in early discussion regarding the concept of restorative justice. This helps ensure that strategies are guided by a common understanding of values and outcomes desired from the resolution process. Second, great effort should be made to include these same individuals in the actual design stage of the alternative dispute system design. Third, flexibility needs to be emphasized, embraced, and built into the process itself. Future research needed in this area includes, but is not limited to, analyzing the extent RCC fits organizational design strategies recommended by dispute systems design experts and the extent to which the program is achieving intended restorative goals.*

## **Introduction**

Frequently, governments are called upon to more effectively address crime and conflict, and they are turning to restorative justice as a solution (Van Ness & Strong, 2010). Alaska is experiencing this call. Many states, like Alaska, have full prisons, overflowing criminal dockets, and alarming recidivism rates. A recent Fairbanks, Alaska newspaper column noted Alaska's growing incarceration rate and corresponding rise in correctional costs (Fairbanks Daily News Miner, Jan. 30, 2011). The columnist referenced the Alaska Department of Corrections deputy commissioner's recent comments to the Senate Judiciary Committee. According to the commissioner, Alaska's incarceration rate has more than doubled since the 1980s, two out of three prisoners are re-incarcerated within three years for violating probation or committing another crime, and if the State's intervention efforts do not change Alaska can expect to require twice as much prison space by 2030. Referring to the State of Texas' successful increased focus on treatment, the deputy commissioner said: "[t]he Texas experience is illustrative of what Alaska is clearly able to accomplish with leadership, vision and commitment to invest wisely today in best practices that have been shown to reduce prison growth, cut state corrections spending and serve to make Alaska's community safer and healthier places to live. This is the Cost Effective justice approach." Embracing restorative justice philosophy and implementing

processes designed to achieve its goals are best practices that can reduce prison growth, cut correctional costs, and strengthen the health and safety of our communities (Sherman & Strang, 2007; Umbreit, Vos & Coates, 2006, Umbreit, Coates & Vos, 2004; Zehr, 2004). Restorative justice philosophically shifts our view of crime and our response to problematic behavior. Rather than viewing crime as a violation against the government and determining the appropriate level of punishment, restorative justice focuses on determining what actions are necessary to repair the harms caused by an offense, actively involving the offender in these reparation efforts, and assisting victims and offenders in growing closer to the community (Bazemore & Schiff, 2001; Pranis, Stuart & Wedge, 2003; Umbreit, Vos, Coates & Lightfoot, 2005-2006; Van Ness & Strong, 2010; Zehr, 2002).

Restorative justice literature commonly refers to specific processes implemented in Northwestern Canada, such as Peacemaking Circles and Circle Sentencing (Bazemore & Schiff, 2001; Van Ness & Strong, 2010). In May 2010, the University of Alaska Fairbanks Justice Department invited Valarie Binder, the RCC Program Coordinator for Youth Justice, Department of Health and Social Services, Yukon Government (referred to hereafter as Yukon Government) to train participants how to use restorative justice with juveniles.<sup>ii</sup> The Yukon Government, and Ms. Binder specifically, generously shared their experience, knowledge, and training materials with a group of interested justice practitioners, faculty, students, and others gathered at the Fairbanks campus.<sup>iii</sup>

There were two training sessions. The first focused extensively on what restorative justice is and its fundamental goals and underlying values. Participants received a “Restorative Justice: Principles, Practices, and Implementation” manual (referred to hereafter as the RJPP manual) to accompany the first session’s instruction. The second session focused on conferencing specifics and facilitation skills. Participants received a “Facilitating Restorative Community Conferences” manual (referred to hereafter as the FRCC manual) to accompany session two’s instruction.<sup>iv</sup>

While information on restorative justice philosophy and the conferencing method is readily available from other sources, the Yukon Government’s particular application of conferencing adds new experience to the collective body of knowledge in this field. This experience provides a specific example of a governmental effort to implement restorative justice philosophy for others seeking to develop and implement their own alternative strategies. Additionally, it provides a case study for future research in restorative justice and dispute system design. This article focuses on the former – holding the Yukon Government’s restorative community conferences out as an example – and leaves the case study for effectiveness for another day. This article describes the concept of restorative justice generally and the Yukon’s conferencing model specifically, shares personal insights gained through participation in the training, and discusses how future efforts to develop restorative processes can be more effective.

## **I. Restorative Justice Philosophy**

Restorative justice is a guiding philosophy broader than any one specific approach (Bazemore & Schiff, 2001; Umbreit et al., 2006). Restorative justice views crime and the response to crime through a different philosophical “lens.” Crime is considered important because of the harm it causes others, and effective responses involve efforts to repair the specific harms caused in ways that strengthen weak ties between victims, offenders, and their communities (Zehr, 1990). Through this lens punishment takes a back seat to reparation and reintegration.

Restorative justice expresses fundamental values and principles necessary for an effective conflict resolution process (RJPPPI, 2010; Van Ness & Strong, 2010). A restorative process requires (1) focusing on the harm that has resulted; (2) assisting offenders fulfill their reparative obligations to others; and (3) victim, offender, and community engagement and participation (RJPPPI, 2010; Umbreit et al., 2005-2006; Van Ness & Strong, 2010). Stated differently, “[r]estorative Justice requires, at a minimum, that we address victim’s harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders and communities in the this process” (RJPPPI, 2010, p. 11).<sup>v</sup>

Victims, offenders, and communities collectively identify harms, needs, and obligations in a unified effort to heal and put things as right as possible (Braithwaite, 1989; Van Ness & Strong, 2010; Zehr, 2002). This empowers those most impacted by a crime, helps offenders actively meet their obligation to make amends, and encourages others to support victims and offenders in the reparation and healing process (Zehr, 1997; Umbreit et al., 2005-006). When these occur there is greater probability of victim satisfaction (Umbreit et al., 2006) and offender reintegration because communities see persons taking active efforts to heal rather than passive accountability through punishment (Braithwaite & Roche, 2001).

### **A. Restorative Justice is focused on repairing the harm**

Restorative justice’s focus on rectifying damage, not merely on punishment or “just desserts,” is perhaps its most defining characteristic (RJPPPI, 2010; Umbreit et al., 2005-2006; Van Ness & Strong, 2010). Our current retribution-based model of justice focuses extensively on punishment-oriented concerns such as who committed the crime, what laws were broken, and how should the person be punished? Restorative justice focuses on distinctively different questions such as what harm has occurred, what must be done to repair this harm, and who is responsible for this repair (RJPPPI, 2010; Umbreit et al., 2005-2006; Zehr, 2002)? These latter questions demonstrate restorative justice’s goal of identifying ways conflict or crime has impacted specific victims, offenders, and communities, and discovering ways to remedy these harms and mend damaged relationships. To this end, restorative justice is often referred to as a peacemaking process.<sup>vi</sup>

### **B. Restorative Justice Encourages and Assists Offenders to Fulfill their Obligations**

Harming others creates an obligation to make things right. Full restitution is not always possible, but processes should encourage and allow offenders to make personal reparative efforts to those they have harmed (Claassen, 1996; Van Ness & Strang, 2010; Umbreit et al., 2005-2006). These reparative efforts take numerous forms, but to remain in harmony with restorative justice goals and values, reparative efforts should not be viewed as punishments or restrictions. When viewed as punishment reparative efforts become a form of passive responsibility. When viewed as obligations to repair damage caused to the victim and community the offender is taking personal, active responsibility for their choice (Braithwaite & Roche, 2001). Incarceration and other punitive restrictions may temporarily serve community safety goals, but in and of themselves they fail to increase understanding of how crime has harmed others or make amends (RJPPPI, 2010).

When offenders fulfill their obligation to repair and seek reconciliation for the harm they caused it draws upon the offenders’ strengths and reminds themselves and their communities that

they remain an important part of the community. This process condemns wrongful behavior while still treating offenders with respect (Umbreit et al., 2005-2006). Supporting offenders in their reparation efforts and incorporating tasks that simultaneously build an offender's competencies increase the level of reintegration (Pranis et al., 1998; RJJPI, 2010).

Strategies focused on punishment are ill suited to provide meaningful victim reparation or offender reintegration. Restorative justice focuses on obligations rather than punishment. All requirements imposed on the offender should be viewed as ways fulfilling this obligation.<sup>vii</sup> People feel good about those who meet their obligations, and that includes the persons who fulfill them. Crime often damages relationships and trust. Restorative justice emphasizes the value of respect and positive relationships by demonstrating a respectful process aimed at restoring damaged relationships.

### **C. Restorative Justice Encourages Victim, Offender, and Community Participation**

Restorative justice encourages ownership of community conflict and discord (Christie, 1997; Van Ness & Strang, 2010). Rather than shifting disputes to a government agency to resolve, restorative justice seeks victim, offender, and community ownership in conflict resolution. All are viewed as stakeholders in the conflict and should aid in identifying the harm created, suggesting possible reparation efforts, and assisting in the process of healing and reparation (RJJPI, 2010; Umbreit et al., 2005-2006).

Victim involvement validates them as members of the community whose opinions and feelings matter. It also enables the offender and community to understand the ways crime has impacted the victim (Braithwaite, 1989; Van Ness & Strong, 2010; Zehr, 2002).

Direct involvement of the offender aids in understanding the reasons and contributing factors for the offense. It provides insight into the offender's character and situation which helps identify realistic ways the offender can seek reparation. Direct involvement allows greater opportunity for sincere apology and active reparation efforts which help victims and docket

Community involvement is fundamental to an effective restorative response (RJJPI, 2010; Umbreit et al., 2005-2006). Our Western legal systems create a professionalized process that, in a sense, steals ownership of community conflict. This government ownership in the name of protecting society's interests actually dis-empowers citizens, offers little to restore victims, and alienates offenders (Achilles & Zehr, 2001; Crawford & Clear, 2001; RJJPI, 2010; Umbreit et al., 2005-2006). Conflicts become depersonalized and invisible to the very group with the vested interest in the process used and outcomes achieved (RJJPI, 2010). Restorative justice takes the opposite approach by promoting broader involvement to help ensure the full impacts of crime are identified, that responses are culturally relevant,<sup>viii</sup> and communities identify conditions contributing to the problem (RJJPI, 2010). Community participation also reinforces social norms of acceptable behavior and fosters community self-reliance (RJJPI, 2010; Van Ness & Strong, 2010). Yet to be restorative-focused, community involvement should build local capacity and express community condemnation in constructive ways that encourage and assist offenders in their efforts to correct their errors and rejoin the community (RJJPI, 2010).

Ultimately, restorative justice seeks to move from a system where the justice system works separate and independent of the community to a system where the government follows community leadership because it views the community as an effective problem solver. When this occurs, formal justice professionals operate in support of community efforts and goals while protecting the rights of individual parties and ensuring fairness in the process. (RJJPI, 2010).

## **II. Restorative Community Conferencing**

Restorative processes are numerous, ranging from victim impact panels, circle processes, mediation processes, community reparative boards, and conferencing processes (Bazemore & Schiff, 2001). These processes vary in style, but can be united in their focus on restorative goals and values. Specific conflict resolution strategies are more or less restorative depending on their ability to satisfy each of the core objectives of restorative justice (Van Ness & Strong, 2010). The Yukon Government currently uses a conferencing model in juvenile offenses, and the thrust of the 2010 training focused on teaching these conferencing specifics and facilitation skills.

### **A. The Restorative Community Conferencing Process**

Group conferences vary in name and style, but each tends to use group discussion attended by a combination of victims, offenders, their respective family members or other support persons, and some additional community members such as government representatives (Bazemore & Umbreit, 2001; Umbreit et al., 2006; Van Ness & Strong, 2010). Conferencing is a traditional dispute resolution approach practiced by the Maori people of New Zealand. Social service providers in New Zealand recognized the benefits conferencing had amongst the Maori and formally adopted this process. Conferencing entered the New Zealand criminal justice system in the late 1980s when legislation made conferencing the standard response for juvenile crime (Bazemore & Schiff, 2001; RJJPI, 2010). In the criminal justice context, conferencing can be used in diversionary settings (pre-arrest, pre-trial, and pre-sentence) or for post-sentencing decisions (probation, incarceration, pre-release planning) (RJJPI, 2010; FRCC, 2010).

The Yukon Government adopted the conferencing process, referred to as restorative community conferencing, pursuant to the Yukon Criminal Justice Act for use in juvenile offenses (FRCC, 2010). This Act mandates young offenders be given the opportunity to participate in conferences.<sup>ix</sup> Victims, offenders, and their family or support groups are all involved. The process is directed by facilitators trained in restorative justice philosophy generally and the conferencing process specifically (FRCC, 2010).

RCC in the Yukon begins when a matter is referred to a trained facilitator by the court or law enforcement officials. The facilitator then initiates the process by conducting pre-conference meetings with the victims, offenders, and their identified support persons to determine their willingness and appropriateness to participate in a restorative community conference. If appropriate, the facilitator arranges and conducts a group conference attended by the various parties (FRCC, 2010). These conferences predominately use the circle setting, but unlike a general talking circle, conferences limit community participation and follow a prescribed discussion format (FRCC, 2010). Generally, the conference results in a written agreement detailing the reparation actions required of the young offender. The process is voluntary and focuses on engaging support systems available to the victims and offenders (RJJPI, 2010).

Specifically, RCC consists of the following steps or stages:

- (1) Pre-conference meetings with all of the major parties;
- (2) Conference introductions;
- (3) Explanation of the roles of the participants;
- (4) Establishing guidelines for the process;
- (5) Participant descriptions of the incident and its impacts;

- (5) Collaboration on how the harm can be repaired and future incidents prevented;
- (6) Formation of a written agreement by all parties;
- (7) The signing of the agreement; and
- (8) Adjournment (RJJI, 2010, p. 57).

Conferencing is not appropriate in all cases (FRCC, 2010). Voluntary participation is necessary for active acceptance of responsibility. Offenders cannot effectively participate unless they are willing to admit to the harm done, demonstrate a willingness to problem solve, and will accept their obligations to make needed amends (FRCC, 2010). Similarly, community involvement is destructive if it cannot focus on condemnation of the offense and associated behaviors, and instead becomes a forum for condemning victims or offenders as persons. To this end, facilitators must seek to address the readiness and willingness of each party to move towards reparation and reconciliation.

## **B. Pre-Conference Preparations**

Facilitators educate potential participants about the conferencing process through pre-conference meetings. These meetings provide information about the conferencing process, how it contrasts with traditional court processes, and its potential benefits and risks. This allows the parties to make an informed decision regarding participation (FRCC, 2010). These meetings also enable the facilitator to gauge the receptiveness and readiness of the participants for the process. If conferencing is deemed appropriate, facilitators use these meetings to make arrangements for the actual conference such as determining the location, time, and who will be attending.

Conducting meaningful pre-conference meetings with victims and offenders is imperative. Continuously, Ms. Binder stressed the need for pre-meetings and noted this stage of the process takes up the majority of time she spends on any single case.<sup>x</sup> Sometimes multiple visits are required to assess the capability of the parties to successfully conferencing together and adequately prepare them for the process (FRCC, 2010).

Facilitators assist the participants in gaining comfort with the process by demonstrating active listening, caring, and empathy in the initial pre-meetings. Facilitators help these parties develop realistic expectations regarding the outcome of the conference and develop a strategy for dealing with potential challenges and complications that may arise in the conferencing process. Ultimately, the facilitator must decide on the appropriateness of convening a conference (FRCC, 2010).

Pre-conference meetings begin with the offenders. This avoids developing a victim's false hopes regarding a conferencing opportunity (FRCC, 2010). Often initial contact is made by phone, but facilitators request a personal visit with the offenders and their parent or guardian if the offender is a minor. This personal visit is essential for determining the appropriateness of the conference because attitudes and concerns can better be detected (FRCC, 2010). Offenders often engage in common mental justifications for their actions such as displacing responsibility to others, minimization of the consequences, dehumanization of the victims, and justification based on the similar wrongdoing of others. Facilitators must assist offenders move past these justifications if offenders are to accept responsibility and stand accountable (FRCC, 2010). The facilitator and offender explore realistic ways to make up for the harm done and identify persons who can offer support through this process (FRCC, 2010). Meetings with young offenders will occur in the presence of a parent or guardian. The Facilitator should allow the parents to share their feelings and validate their concerns, but should try to assess the youth's willingness to participate and the appropriateness of conference participation (FRCC, 2010).

Next, the facilitator contacts each victim in a similar fashion to determine their willingness to participate. Facilitators should not try to sell conferencing, discuss the needs of the offender, or minimize the impact of the crime during pre-conference meetings with victims (FRCC, 2010). Additionally, the facilitator should not promise things outside their control such as how an offender will react in the conferencing process. Facilitators should be prepared to address a victim's questions such as what will happen if the other party refuses to cooperate; what other recourse is available; and how the victim will be benefited (FRCC, 2010)? These meetings allow victims to vent their anger and frustration; understand the difference between the conferencing process and traditional court processes; learn about the attitude and circumstances of the offender (if the offender permits sharing this information); make an informed decision about participation; develop realistic expectations of how the offender might repair the damage they have caused; decide who they wish to speak first at the conference; and help the facilitator identify persons who could offer them support during this process (FRCC, 2010).

During initial visits the victims and offenders identify support persons to attend the conference with them. The facilitator must meet with these individuals and explain the purpose of conferencing and their role in that process. (FRCC, 2010). These support persons can be family members, friends, teachers, co-workers, coaches, or any other person who can offer support. Other community members appropriate for the gathering are also identified, recruited, and prepared for conference attendance. These are often persons whose occupations require involvement such as arresting officers, school administrators, and probation officers. It may also include community members connected with the incident or persons involved (FRCC, 2010).<sup>xi</sup> Community members affected by what has occurred belong at a conference, but if they are seeking involvement for vengeance their attendance is inappropriate. The facilitator must invite those who belong, avoid those who are not appropriate, and make sure everyone is clear on his or her role in the conference and the purpose and goals of conferencing (FRCC, 2010). Conferencing should include as many of the persons impacted by the harm as possible, provided the participants are informed who will be there and feel safe about participating (FRCC, 2010).

### **C. The Community Conference**

Facilitators arrange a safe site for the conference and create a setting that enhances the restorative nature of the process. This is accomplished through room selection, seating arrangements, and the discussion format.<sup>xii</sup> For example, participants are generally seated in a circle because this fosters the idea of working toward a common goal (FRCC, 2010). Additionally, refreshments are provided as a mental reminder of the restorative objective of the gathering, and they provide a way for participants to relax and interact at the conclusion of the conference (FRCC, 2010). The atmosphere in conferences will vary depending on the nature of the offense, attitudes of the participants, and the facilitator's style (FRCC, 2010).

Facilitators must set a relaxed tone, but maintain some formality to the conference. Conferences are generally conducted in the following order: (1) introductions are made and preliminary matters addressed by the facilitator; (2) participant's share their stories, views, and feelings about the offense; (3) the discussion turns to group consensus building regarding reparations needed; and (4) these decisions are documented in a written reparation agreement that is signed by the offender and the conference closes (FRCC, 2010).

Preliminary matters begin with the facilitators introducing themselves and explaining their role. This is followed by participant introductions. The facilitator also re-explains the purpose, agenda, and ground rules for conference conduct. Following these preliminary matters, participants have the opportunity to discuss the matter. For victims it is usually an explanation of

how the offense has harmed them and the impacts felt. For offenders it is an explanation of their conduct and feelings about what they have done. There is a specific speaking order in the conferences. Victims are given the choice of speaking first or having the offender go first. If victims have no preference, the facilitator makes this decision which generally has the offender speaking first.<sup>xiii</sup> Once victims and offenders have addressed the group, the victim's supporters share their thoughts, followed by the offender's supporters doing the same (FRCC, 2010). After all have had the opportunity to speak, the facilitator gives the offender the opportunity to respond to anything that was said. Hearing the stories may conjure up remorseful and apologetic feelings that should be shared.

The discussion should move to how the identified harms caused can be rectified. The victim and the offender are asked to suggest how the harm can be repaired. After both have made their suggestions the facilitator asks for ideas from the various supporters and other community members (FRCC, 2010). To help foster discussion, the facilitator may remind participants of some reparative options, including financial payment to victims, work for victims, work for the community, an apology, and anything else aimed at healing harms yet stays true to the restorative non-punitive focus of the conference. (FRCC, 2010).

The group should come to a consensus decision<sup>xiv</sup> about what is to be done and document this in a reparation agreement. The FRCC manual (2010, pp. 99-100) contains a sample reparation agreement. The agreement should be written down in specific, attainable, and measurable terms. The facilitator then closes the conference.

#### **D. Roles of Conference Participants**

Victims are participants and a primary objective of the process is to repair their harms. The entire process should be structured to validate their concerns and feelings. Victims should share their honest feelings about how the offense has impacted them. They also participate in deciding what reparations are to be made.

Offenders explain their behavior, their feelings, and what they would like to do to help. They also participate in deciding what reparations are needed. This begins their journey toward accepting responsibility for their actions. This journey continues as they actively work to fulfill their obligations stated in the reparation agreement.

Support persons help ensure the process stays restorative focused. Supporters of the victim help to elaborate on the harm experienced and the needs of the victim. Thus, the restorative goal of harm identification is better accomplished. Supporters of the offender help identify causes of the incident, challenges the offender faces, strengths of the offender, and offer help and encouragement in changing behavior and making reparation. This helps ensure that reparation plans are constructive in nature and the offender is supported in their efforts to make reparation. Involvement of both groups brings experience, resources, and experience to the conference which can help in developing creative yet realistic reparation agreements. These supporters also help foster reintegration efforts by establishing a support base for the victims and offenders. Lastly, the involvement of these supporters helps strengthen the community itself. These supporters provide a valued community perspective. They help participants realize that events impact many persons indirectly (FRCC, 2010).

Community perspectives and desires are further represented through the attendance of any other community member selected for attendance. These participants help identify broader more indirect communal harms the conduct has caused. Involving members of the community also help traumatized communities resolve the hurt felt which allows them to see beyond the actions to the need to assist the victims and the offenders heal and reintegrate (FRCC, 2010).



Building community support also increases awareness of the caring attitude the community possesses (FRCC, 2010).

A facilitator has several functions and roles. They create a safe atmosphere, but one that allows for free expression of emotion. They demonstrate active listening and empathy. The facilitator should also assist the process to move through its various stages and complete all the reparative agreement (FRCC, 2010). Facilitators must realize that the conferencing model is based on “the principle of self-determination” (FRCC, 2010). This means participants are provided the opportunity to reach a voluntary, un-coerced agreement. Facilitators should provide information about the process, address issues as they arise, and help explore options. However, the facilitator is not a party to the agreement and cannot personally ensure that each participant has made a fully informed choice nor will they fulfill their obligations.

A facilitator must remain impartial throughout the entire process. If this impartiality cannot be maintained, the facilitator should withdraw. Impartiality requires facilitators to consciously assess their own biases and agendas. They must recognize personal issues and ascertain their ability to remain even-handed (FRCC, 2010).<sup>xv</sup> The facilitator is not an arbiter or mediator and should not be directive or act as an authoritative figure. It is not the role of the facilitator to tell others how to resolve their harm. The participants must come to this conclusion. Participants should not be counseled; facilitators should focus on empowering participants to solve their own disputes (FRCC, 2010).<sup>xvi</sup>

If conducted properly, conferences focus on the harmful behavior without condemning the offender (FRCC, 2010). Participants are empowered through the consensus-based process of identifying the underlying causes of the harmful behavior and developing plans to rectify the situation in ways that address the needs of the victim and offender.

### **III Recommendations for Future Efforts to Implement Similar Alternative Juvenile Approaches**

Restorative justice lies within the broader topic of alternative dispute resolution (ADR). As a field, restorative justice has grown and culminated in several decades of research and experience. Yet, other relevant research and experience is abundant from those involved in the broader ADR movement. Cross-pollination of these fields increases our effectiveness at designing and implementing alternative approaches to juvenile crime. In this section I offer recommendations grounded in both the restorative justice and ADR literature, and which are supported by my own observations at the 2010 Restorative Community Conferencing training.

Restorative justice and ADR, with its specific focus on conflict management systems design (DSD), have much in common and much value to share. Alternative Dispute Resolution (ADR) refers to “any method of dispute resolution other than formal adjudication such as court litigation or administrative proceedings” (Costantino & Merchant, 1996, p. 33). ADR processes, such as mediation and arbitration, grew out of corporate dissatisfaction with traditional litigation that is extremely costly, lengthy, and negatively impacts ongoing relationships. Overcrowded court dockets further spurred the use of alternative resolution processes, even to the extent that some courts created court-ordered ADR programs (Costantino & Merchant, 1996; Lipsky, Seeber & Fincher, 2003; Ury, Brett, and Goldberg, 1988). In the 1980s several experienced ADR professionals began focusing specifically on the mechanics of designing effective alternative resolution approaches. These designers sought to identify the details necessary for effective processes such as structure, appearance, influences that promoted use of them, and the expertise needed to use them (Costantino & Merchant, 1996). This created a focus area within the ADR field known as dispute systems design (DSD). Ury, Brett, and Goldberg (1988), three of these

early designers, published a landmark book focusing on DSD which categorized dispute resolution processes into three main types, promoted six principles for setting up a resolution process, and discussed the stages of designing a dispute resolution system. In a narrow sense, DSD describes the development and evaluation of alternative dispute resolution systems. In a global sense, DSD is synonymous with ADR and refers to any conflict resolution system. For example, Smith and Martinez (2009) refer to DSD as developing and implementing internal processes adopted to prevent, manage, or resolve disputes that unfold in organizations or institutions.<sup>xvii</sup> The variety of DSDs is numerous, varying from formal processes like a state or federal courts of law to very informal collective choice arrangements where the parties can make the rules and control the outcomes. Ury, Brett, and Goldberg (1988) classify the various processes by whether they resolve disputes with a focus on the parties' interests, their rights, or their power. For example, negotiation practices facilitated by a neutral third party are interest focused. Traditional court and processes where a neutral third party applies set rules of decision to decide outcomes is a rights-focused DSD. Lastly, processes resolved by strikes, walk-outs, and even war are power focused.

Smith and Martinez (2009) suggest the variety of DSDs can also be logically arranged on a horizontal scale ranging from processes where the parties have no control over the process used or the decision obtained (i.e. court trial), all the way to processes where the parties involved have a high level of control over process form and the decisions rendered (i.e. negotiation). The DSD literature suggests that interest-based approaches operate on the top tier of available alternatives (Costantino & Merchant, 1996).

Conceptually, restorative justice calls for using interest-based DSDs that provide high levels of input, participation, and control by the parties with a stake in a particular dispute. Restorative justice advocates for collective choice processes and believes such processes focus on the harm crime causes the corresponding need to rectify that harm, rather than on an abstract need to punish for retribution's sake.<sup>xviii</sup> The 2010 RCC training provided unique exposure to a specific restorative conflict resolution approach (DSD) to juvenile crime by one trained and experienced with the process.

Based upon my observations as a training participant and the suggested practices in both the restorative justice and dispute systems design literature I make three recommendations to groups seeking to implement this or any other restorative-focused alternative dispute resolution strategy for juvenile crime: (1) become grounded in the concept of restorative justice prior to developing and implementing a specific process; (2) engage and involve the community in all phases of development and implementation; and (3) recognize the flexibility of processes available and build some flexibility into specific processes implemented.

### **A. Understand Restorative Justice Fundamentals before Developing and Implementing Specific Processes**

Communities need a mutual understanding of how crime impacts them and their desired objectives from a corrective response. Without this common direction programs can fail to address community needs and have harmful unintended consequences. Lewis Carroll's (1898) classic children's story *The Adventures of Alice in Wonderland* is illustrative. In that story Alice comes to a crossroads with two paths laid out before her leading in different directions. Alice asks the Cheshire cat, "Which path shall I follow?" The cat answers, "That depends where you want to go. If you do not know where you want to go, it doesn't matter which path you take."

Communities and justice agencies can avoid this indecision and uncertainty through early community dialogue regarding how crime is impacting them and what they hope to accomplish in a conflict resolution scheme. When this dialogue occurs people identify the issues they face, the resources available, their capacity to address the issues, and they can create specific mechanisms for accomplishing desired objectives and meet the needs of those impacted by the offenses.

Ms. Binder masterfully demonstrated the importance of this concept by beginning her training with various group activities where restorative values such as respect, active listening, and valuing cultural differences were practiced. These group exercises focused on helping participants gain comfort with each other, see the group's broad diversity, and explore collective beliefs about the effects of harmful behavior and the needs of those impacted by it. Because group responses mirrored the underlying theme and overall objectives of restorative justice, participant responses naturally led into a presentation of the core values and principles of restorative justice. Ms. Binder connected our own innate beliefs to restorative justice philosophy. It became apparent that restorative justice resonated with the personal beliefs of the training participants. Understanding the values, principles, and objectives of restorative justice generally paved the way for seeing how the Restorative Community Conferencing model is specifically structured to accomplish these ends. Once united by a common understanding of the impacts of crime and the needs of the various parties impacted by it, participants were prepared to discuss specific strategies.

Communities, as did the participants in this training, need a clear unified vision regarding the goals of conflict resolution prior to implementing specific programs.<sup>xix</sup> This requires community dialogue. This initial dialogue cannot be skipped without jeopardizing the effectiveness of a selected response. Presenting, or worse yet, imposing, specific conflict resolution strategies on communities without laying this groundwork reduces the ability of community members to understand and assess the value of a particular practice. The process may not accurately address the needs of the parties involved or accomplish desired outcomes.

## **B. Involve the Community in All Stages of the Process**

The need for initial community dialogue about restorative justice as a concept is just part of a larger need to involve the community in all aspects of the process of designing and implementing a dispute resolution system. Groups seeking to design alternative restorative-based DSDs must involve the localized community members in the design stage. While the importance of victim, offender, and community involvement is discussed extensively in the restorative justice literature, most of the discussion focuses on participation in the particular process implemented (Umbreit et al., 2005-2006; Van Ness & Strong, 2010).<sup>xx</sup> DSD professionals are more explicit in their literature about the need to create consensus-based resolution processes developed from the ground up with the input and participation of the groups that will be subject to them (Costantino & Merchant, 1996; Ury et al., 1988; Lande, 2002). Two observations during the training demonstrate the importance of this involvement at the design stage.<sup>xxi</sup>

During one small group activity participants discussed a hypothetical juvenile crime situation and identified persons who should be included in the community conference. I recommended convening the restorative conference with just victim, offender, their family members, and perhaps an additional community member or two closely connected to the issue. Several Native participants in my group informed me that failure to include village Elders in a conference would be fatal to its success because of their perceived value in resolving community issues. I did not understand the significance of having village Elders involved in a conflict

resolution process. This exchange demonstrates the danger of having outside groups impose a particular process or program on a community. Such a program may be culturally irrelevant and unsupported by community members.

This concept was further reiterated later in the training by the comments of a participating Elder from the lower Kuskokwim River region. She commented on her years of personal experience watching the State of Alaska come to the villages and impose programs designed to “fix” their problems. This Elder noted the negative sentiments of the villagers and the lack of community support because little effort was made to consult with the communities themselves regarding their needs and desires.<sup>xxii</sup>

Care must be taken that restorative justice and various restorative conflict resolution processes are not imported in a similar paternalistic fashion. Strategies can and should be tailored to fit the various communities and organizations implementing them. Community involvement in dispute systems design develops common understanding and commitment to the effort (Lande, 2002). It helps ensure that processes are culturally relevant and accepted in the communities they serve. (Bunting-Graden, 2007; Schneider, 2008).

I offer a word of caution at this juncture. While the importance of community participation in the design stage is critical, people should avoid becoming overly fixated on whether a particular DSD begins with a true grass-roots initiative or from an organization perceived as having power such as a state judicial system trying to create alternatives to the traditional rights-based framework such as restorative conferencing. Rather, effort and attention should be focused on ensuring a balance between the need for support, participation, and commitment from top-down governmental justice systems and the bottom-up localized citizenry.<sup>xxiii</sup> Without support, participation, and commitment of both groups any alternative restorative-focused DSD will fail to meet desired objectives.

In the United States, government initiated court proceedings are top-down institutions using rights-based processes that follow a commitment to the rule of law.<sup>xxiv</sup> In the juvenile crime context, any alternative interest-based DSD operates in the shadow of larger rights-based court procedures. Juvenile crime is a legitimate concern of the government who has the authority to enforce and punish unacceptable behavior and to protect children. Because the government retains authority over these matters communities are likely to see government-sponsored efforts to more effectively resolve juvenile matters. The RCC process discussed in detail here is a prime example. These programs can remain true to the design principles heralded by DSD professionals and the ideals of restorative justice professionals so long as there is adequate stakeholder involvement in all stages of the design and implementation process. What is important is commitment to and involvement in the alternative processes from both government agencies and the local communities where the processes are used.

Without commitment from the justice system few matters will be referred to alternative interest-based processes. Skepticism may make justice officials reluctant to allocate meaningful support to these processes such as funding. Groups may also experience the creation or retention of legislative impediments to creative alternatives.<sup>xxv</sup> Communities may experience capacity gaps that the state can help to temporarily fill.<sup>xxvi</sup> For instance, trained community facilitators may move and the government can assist in providing training to others, temporarily filling that role.

Equally important to the successful creation and administration of an alternative restorative-focused DSD is localized commitment to the process. Local support increases the availability of community resources such as informal support groups like churches, school officials, and youth groups. It also ensures community perspectives and concerns are voiced as individual matters are resolved. Localized commitment increases the cultural relevance of the outcomes.

Voluntary interest-based DSDs need to co-exist with formal court proceedings, so that in appropriate circumstances parties have the ability to pursue the “justice” they deem important. The commitment to the rule of law and rights-based processes in the United States must not disappear, but rather become the forum of choice for parties unwilling to temporarily set rights aside to explore a more satisfying interest-based alternative.<sup>xxvii</sup> Effective dispute resolution processes must provide the ability to loop back and forward between rights-based and interest-based options (Ury et al., 1988). Both forms of DSD serve important ends. In most conflicts there is a need for peace and justice, but one may be need to be emphasized more than the other depending on the needs of the parties (Schneider, 2008). Selecting one forum in lieu of the other is a conscious value trade-off. Selecting consensual interest-based processes emphasizes restorative values of peace and healing, but decreases formality, consistency, emphasis on rights protection. Rights-based processes sacrifice full investment of all stakeholders at the expense of rights protection.

To enhance governmental support, representatives of the juvenile justice system should be involved and included in the development process. This is true even if the process is initiated at the local citizen level. To ensure internal support from the local citizens these individuals must also be involved in all stages of government-initiated conflict resolution processes. When this level of involvement is achieved communities are more likely to create a balanced restorative approach.

### **C. Restorative Justice is Flexible**

Howard Zehr (1990) refers to restorative justice as a different lens through which we view conflict. There are numerous ways people can resolve conflicts that stay true to restorative principles and lead to desired outcomes. People must be informed that restorative justice is broader than any one specific approach and communities have great flexibility in designing dispute resolution processes that meet their needs. Once designed, it remains important to remember the need for some flexibility in how a particular process is applied to varying circumstances. DSD professionals also echo the importance of flexibility and adjustment to reliable feedback from the participants. This allows communities to determine the strengths and weaknesses of their conflict management system (Costantino & Merchant, 1996).

The importance of understanding restorative justice’s flexible nature became apparent during the 2010 RCC training. As participants discussed the specifics of RCC, the visiting magistrate from Galena, Alaska became frustrated when he realized that the conferencing model, as practiced by Youth Justice in the Yukon, may not fit well with the current practices, legal constraints, and cultures of his particular area. The magistrate commented on his desire that the training would provide a model he could take back and immediately apply in the villages he serves. When he felt conferencing would be difficult to implement he had to step back and see that restorative justice is broader than a single program and perhaps a different restorative approach would work in his area.<sup>xxviii</sup>

There is a lesson here. Individuals believing they can attend a weekend seminar or read a book on a particular process and expect to simply mirror this “restorative justice” in their own community in a rigid fashion are likely to be disappointed. Instead, individuals must gain an understanding of the flexible nature of restorative justice. This can be accomplished by emphasizing the distinction between restorative justice as a concept and specific conflict resolution strategies. It is also more likely to be realized in situations where communities actually assist in the development of specific strategies.

For example, cultural differences need to be taken into account when customizing the DSD (Schneider, 2008). Alaska Natives have an ethic of truth telling (Alaska Natives Commission Report, 1993). Natives are trained to confess truthfully with the expectation that their sentences would be fashioned with compassion. The ethic becomes problematic in adversarial rights-based DSDs. A process needs to reflect and value this ethic.<sup>xxx</sup> While structure is important, the values promoted by the system are for more important (Schneider, 2008).

The processes need to be flexible as well. Schneider (2008) discusses the need for a DSD to be customized to the needs of the particular conflict and stakeholders involved. She uses lessons learned from trying to use a standardized practice in handling large tort class action claims and international DSDs. For example, a community may have several distinct cultural groups and a practice may need some adjustment to accommodate that uniqueness.<sup>xxx</sup> Additionally, some conflicts are very personal occurrences between a victim and offender whereas others have larger direct impacts on the broader community. A process, be it mediation, a circle, or a group conference, should seek to tailor its structure to the specific needs of the parties. Conversely, it may be wiser to just use one of several process options depending on which appears to better accommodate the needs.

The point is the need to emphasize and create flexibility rather than rigidity. Consistency and rigid formality has its proper place in rights-based DSDs, but interest-based DSDs will function best with an opposite approach.

## Conclusion

Crime weakens communities because it strains relationships between community members. Criminal responses must attend to these strained relationships and rebuild community ties. (RJJI, 2010). Punitive responses aimed at retribution and deterrence offer little hope of repairing harms to victims and restoring weakened community relationships. Conflict resolution processes should build positive relationships, increase community capacity in resolving conflict, increase an awareness of the community's strengths and weaknesses, and create informal support systems for victims and offenders (RJJI, 2010). Unlike the rights-focused court processes most commonly used, restorative-focused processes seek to achieve these outcomes.

Guided by the fundamental precepts of restorative justice philosophy, the Yukon Government has developed a specific approach aimed at addressing juvenile crime. While the conferencing process, as practiced in the Yukon, may not be the process of choice for other communities, it offers an excellent example of one that is restorative. After personally practicing general facilitation skills, modeling pre-conference meetings with victims and offenders, and participating in a mock conference I am convinced that the process is designed to incorporate restorative values and produce restorative outcomes. Further research should be conducted to determine if, as applied, these Restorative Community Conferences are actually producing the desired outcomes envisioned. Setting that important research aside for another day, I have shared three recommendations for those seeking to design and implement similar restorative processes.

First, future efforts to promote restorative justice should begin with community discussion and dialogue about community conflict, the harm it creates, and the ultimate desired objectives from the response. Conscious reflection fosters self-realization of the gross inadequacies of a retribution-oriented approach to conflict resolution. Communities will see the need for a more balanced approach that better serves the needs of victims, offenders, and their communities. Exploring these issues demonstrates that restorative values are woven into their personal and social fabric. Crime matters because of the harm it causes others and the

relationships impacted. Addressing these harms has greater value than punishment for retribution or deterrence. Communities see they have a role in their own destiny.

This community dialogue can occur in many forums and in various ways. Concerned community members can organize and assemble with the purpose of discussing these important issues. Government agencies and educational institutions can sponsor such gatherings. Traveling to communities and introducing specific processes such as victim-offender mediation, victim-impact panels, circle processes, or conferencing processes offers little hope of success unless and until those communities have identified the fundamental goals and values of a balanced conflict resolution system. Many of these processes can be used in punitive fashion if they are not guided by underlying restorative objectives. For example, a circle process can be unduly destructive for offenders and their families if it solely focuses on community condemnation and shaming. But, if guided by restorative justice philosophy these circles will realize that only to the extent these expressions are turned to constructive reintegration efforts will they have any lasting benefit.

Second, care must be taken that restorative justice and various restorative conflict resolution processes are not imposed by an outside group on a community. Community involvement in dispute systems design is necessary to long term support. It develops common understanding and commitment to the effort. It helps ensure that processes are culturally relevant and accepted in the communities they serve. This builds a stable foundation for whatever program is implemented because it is grounded on unified efforts and commitment of the community members. At a minimum, it offers a perception of substantive control by allowing parties a voice in a respectful manner. Beyond that it develops a process that allows for personalized agreement that meets their interests in a process where they have had some level of control (Schneider, 2008).

Finally, communities and other agencies seeking restorative alternatives are wise to recognize the flexibility at their disposal. The beauty of interest-based, consensually-derived processes is their ability to adapt to the individual needs of the stakeholders and the various types of conflict encountered. No one process should be rigidly imposed on a community.

Ultimately, restorative processes allow for greater application of the concepts such as authority, responsibility and accountability. Instead of being abstract terms used and imposed by a formal court, restorative processes allow for encounter, dialogue, and a consensus decision making by those most impacted by an offense. This involvement fosters active rather than passive responsibility (RJPP, 2010; Bazemore & Schiff, 2001; Braithwaite & Roche, 2001; Daly, 2000). Active responsibility builds competency, self-respect, and fosters bonding between offenders, victims, and other community members. The Yukon Government has furthered this important work by providing an example to which others can look for guidance. Combined with other lessons learned from restorative justice and DSD specialists, communities are more likely to experience success in their efforts.

<sup>i</sup> Special appreciation is given to Valarie Binder, Restorative Community Conference Program Coordinator for Youth Justice, Department of Health and Social Services, Yukon Government for her willingness to share her knowledge and expertise to the University of Alaska Fairbanks. Appreciation is also given to the Yukon Government for its willingness to allow Ms. Binder to share training materials and manuals with us.

<sup>ii</sup> This article uses the term “juveniles” because it is the common term used in Alaska. In Canada, juveniles are referred to as “youth” or “young persons” age 12 to 17 years.

<sup>iii</sup> Professor David Professor David of the UAF Justice Department was the impetus behind this training. Blurton spent countless hours arranging and preparing for Ms. Binder’s visit.

<sup>iv</sup> The first manual titled *Restorative Justice: Principles, Practices and Implementation* provides training curriculum developed following the 1996 US National Institute of Corrections Videoconference on Restorative Justice as a cooperative agreement with the Florida Atlantic University Community Justice Institute, with active involvement from the National Institute of Corrections (RJPI, 2010). The manual is a version of that curriculum which has been amended and organized to meet the Yukon Restorative Community Conferencing Program's specific training needs. With permission from the NICC, the second manual is titled *Facilitating Restorative Community Conferences* and contains materials originally produced by the Minnesota Department of Corrections that has similarly been amended to meet the needs of the Yukon Conferencing Program (FRCC, 2010).

<sup>v</sup> The RJPI (2010) training manual provides a list of Zehr and Mika's (1998) "sign posts" or signals demonstrating a restorative approach exists. Conflict resolution processes are restorative when they:

- (1) Focus on the harm created by wrongdoing more than laws violated;
- (2) Equal concern and commitment is shown to victims and offenders and involving both in the process;
- (3) Efforts are made to restore the victims by empowering them in the process and responding to their perceived needs;
- (4) Support is given to offenders while encouraging them to understand, accept, and carry out their obligations;
- (5) Those involved recognize that while offender's obligations may be difficult, they are not designed to inflict harm upon the offender and they must be achievable;
- (6) Opportunities for dialogue are provided between victims and offenders as appropriate;
- (7) Collaboration and reintegration are encouraged rather than coercion and isolation;
- (8) The affected community is involved which empowers the community by increasing its capacity to recognize and respond to the sources of community crime;
- (9) Attention is given to unintended consequences of our actions and programs; and
- (10) Respect is shown to all parties involved.

<sup>vi</sup> Even in international disputes there is a call for more victim-focused processes, and international dispute systems designers are looking to restorative justice for an example (Schneider, 2008).

<sup>vii</sup> Commentators on designing conflict resolution systems such as Andrea Kupfer Schneider (2008) indicate dispute resolution systems that do not seek for peace and for justice fail to provide long-term solutions. Schneider (2008) discusses situations where justice (i.e. convictions by a court of law or similar authority) without peace or healing have proven a temporary fix. Schneider also provides examples where the opposite has been true. She concludes that most conflicts require both peace and justice and suggests that different processes are needed depending on these two co-existing needs. Restorative justice commentators such as Braithwaite and Roche (2001) suggest that processes focused on restorative justice can meet both these aims because restorative justice fosters peace and healing, but does not ignore the importance of personal accountability. However, accountability in restorative justice is not reached through passively accepting punishment imposed by a third party, but rather by investing oneself in active efforts to repair damage caused. The accountability Braithwaite and Roche describe better satisfies the "justice" Schneider (2008) addresses.

<sup>viii</sup> The RJPI manual (2010) discusses the importance of cultural attunement when selecting and implementing restorative practices and programs. The manual describes cultural competence as the ability of organizations and systems to function and perform effectively in cross-cultural situations. Cultural competence enables persons to live, work, educate, and serve in diverse settings. Primarily, it requires willingness to value the cultural diversity in the delivery of services to all segments of a particular population. Current justice practices often impose white, middle-class values of the majority group on minority populations. Difficulties arise when these majority values are used to judge the intelligence, mental health, and appropriate behaviors of other cultures. Where there is disconnect between value systems care must be given to make responses culturally relevant and meaningful (FRCC, 2010).



<sup>ix</sup> In her editorial comments to this article, Ms. Binder explained that although conferencing is mandated in Canada under Federal legislation – the Youth Criminal Justice Act, these conferences are not specifically restorative. Health and Social Services (H&SS), Yukon Government recognized an opportunity to establish a Restorative Community Conference Program which would reflect the spirit of the Act as set forth in the YCJA preamble. To this end, H&SS went a step further and created a Conference Advisory Committee whose purpose is to review and make recommendations on best practices for the establishment of the Yukon “Rules for the Convening and Conducting of Conferences under the Youth Criminal Justice Act”. Membership includes: Public Prosecution Service of Canada (PPSC); Crown Witness Coordinator, PPSC; Yukon Legal Services Society; Royal Canadian Mounted Police; Territorial Court of Yukon; Victim Services, Department of Justice, YG; Department of Education, YG; Community Justice Committees; Council of Yukon First Nations (CYFN); First Nations not represented by CYFN: Ross River Dena Council and Kwanlin Dun First Nation, Vuntut Gwitchin First Nation, and Liard First Nation; and Youth Justice, Department of Health & Social Services, Yukon Government.

<sup>x</sup> This conferencing process is labor intensive. Ms. Binder indicated that matters can take between 25–40 hours from initial referral to final conference conclusion. Most of this time is spent in pre-conference work.

<sup>xi</sup> The training participants were able to role play with partners the process of calling victims and offenders. The training manual contains useful guides on what to discuss with each during this initial phone call (FRCC, 2010, pp. 54-55). The facilitator should introduce him or herself and set up an in-person meeting to discuss the process. A telephone call is not the time to discuss the conferencing process in detail because too much detail about conferencing in the phone call may cause these persons to feel there is no need for a subsequent in person visit. The personal visit is crucial to allow the facilitator to gauge the appropriateness of the conference and build trust and rapport (FRCC, 2010).

The in person meeting, called the “preparation meeting,” usually occurs at a private place that is convenient to the individuals such as their home. It is recommended that offenders be contacted and visited first because learning the offender’s interest in participating can help ensure the victim’s hopes for a conference are not prematurely raised. Additionally, these early meetings with the offender may lead to some information that the offender is willing to allow the facilitator to share with the victim which may mitigate some of the victim’s fears that would preclude them from participating (FRCC, 2010).

When youth are involved, preparation meetings should occur with parents and the minors together. Facilitators are counseled to never meet alone with youth for liability, safety, and time efficiency reasons. Facilitators must also be aware of their own safety. They should not remain in places they feel uncomfortable or where angry emotions are not under control, or where parties are under the influence of drugs or alcohol. Facilitators are also counseled not to reveal private information about them that could compromise their safety. Most facilitators do not reveal their home address or their home phone number. Contact with the facilitator should occur at work or other places agreeable to the parties and phone contact should be made through a work number (FRCC, 2010).

<sup>xi</sup> The FRCC manual (2010) suggests having either the victim or offender, along with their respective supporters, show up twenty to thirty minutes prior to the conference. Staggered arrival times help the facilitator check on the readiness of each group and answer any specific last minute questions. This also reduces potentially harmful pre-conference interaction. The manual recommends not having the two groups sit together without the facilitator present, and suggests that a site with separate waiting rooms may best accommodate this.

<sup>xi</sup> The FRCC (2010) participant manual suggests that this decision is based on knowledge of the participants. If there are multiple victims or offenders facilitators should consider having them speak prior to the others because this sets a serious and thoughtful tone. Ms. Binder suggested normally having the offender speak first because this demonstrates responsibility.

<sup>xiv</sup> Consensus-based decisions are ones that all parties can agree to support (FRCC, 2010).

<sup>xv</sup> Facilitators must develop and demonstrate strong communication skills such as active listening, using silence at appropriate times, questioning in ways that elicit valuable information, and confirming the content of what others say as they express themselves (FRCC, 2010). Facilitators need to suspend judgment and separate behavior from the persons participating so as to allow for open-minded and uncritical progress through the stages of the conference. Facilitators must also be aware and tolerant of communication differences among the parties participating. There may be differences in eye-contact, personal space; and tone which are attributed to cultural distinctions rather than level of remorsefulness and willingness to accept responsibility (FRCC, 2010). Facilitators must be conscious of their own body language, vocal tone and word choices, and emotional expressions. Facilitators must also develop proper techniques for offering feedback (FRCC, 2010). Facilitators must remember they are not participants in the conflict. Their role is to facilitate the progress of the others who are tasked with the responsibility to come to agreement. Facilitators watch, remind participants of the ground rules, assist the conversation along when needed, but are not responsible for the final outcome of the conference (FRCC, 2010). The training manual provides a great description of the duties and responsibilities, the qualifications needed, the skills needed, and knowledge of the conferencing process (FRCC, 2010).

<sup>xvi</sup> Co-facilitation by two trained facilitators may be a useful option. Potential benefits include increased safety, another person's assessment of the situation, and assistance in facilitation when difficulties arise or another viewpoint on how to address the case may be useful. If a case involves multiple offenders or victims, a co-facilitator can help address these complexities. If co-facilitators are used it is important for them both to meet all of the participants prior to the actual conference. This means that it is not appropriate to divide the cases during the preparation phase for quickness in preparation of the parties (FRCC, 2010). If one facilitator cannot make a pre-meeting, they should schedule time prior to the conference to get to know the participants (FRCC, 2010).

<sup>xvii</sup> The term DSD was coined and used in the business world to describe the purposeful creation of alternative dispute resolution processes for handling conflicts because businesses were dissatisfied with time-consuming and costly court processes (Lipsky, Seeber & Fincher, 2003, p. 6; Ury et al., 1988). However, DSD has broader application than just alternative dispute practices for handling internal employment grievances and contractual disputes. In reality, the term describes all types of civil and criminal justice systems, even those created by a national government (Bingham, 2008; Smith & Martinez, 2009). In fact, international forums addressing global disputes are DSDs (Schneider, 2008; Bunting-Graden, 2007).

<sup>xviii</sup> Bingham (2008) encourages considering justice-related outcomes in the design and evaluation stage. She notes that the "justice" these various processes produce depends on who designs the system, what are their goals, and how they exercise power in the process. Justice has many definitions, one of which is commonly addressed in the restorative justice literature.

<sup>xix</sup> See e.g. Paffenholz (2003, p. 3) and Bunting-Graden (2007) who recommend an analysis of the interests, goals, and commitments of the main stakeholders take place as the initial stage in dispute system design.

<sup>xx</sup> In fact, this was mirrored in the 2010 Restorative Community Conference training. There was extensive discussion of stakeholder involvement in the conferencing process, yet no emphasis on the need for stakeholder involvement in the design stage. The Yukon's Restorative Community Conferencing model was created by the government, and I wondered what level of community input went into its design and the decision to adopt that process.

<sup>xxi</sup> The training described the role of community involvement in the Restorative Community Conferences convened and in post-conference reparation and reconciliation efforts. However, the need for community

involvement in the design stage of a specific community response was not emphasized. The RJPP (2010) training manual introduces the concept of community involvement in systems design on page 10 by asking the following thought-provoking questions: (1) “If we were to develop a process together, creating a sketch that gives us the general outline of our shared sense of what it would look like – what would be the characteristics of this process?”; (2) “What is your community’s interpretation of and response to justice?”; and (3) “What is the justice response unique to your area?” Yet, there was no training time devoted to these questions or the broader topic of community involvement in the design stage. Participants from a wide variety of places and cultures were gathered, and it would have been valuable to learn of various formal and informal processes used to handle community conflict. By reflecting on current practices in our various areas we might have noticed cultural differences unique and important to particular areas and people. More emphasis on community involvement in the design stage would apprise participants of the dangers of imposing programs, even those believed restorative in nature, upon communities.

<sup>xxii</sup> In 1992, Congress initiated a study on the status of Alaska Natives and their communities. A common theme emerging from the research is the inability to take ownership in local economics, government, and conflict resolution. Official recommendations from the study included calling for empowering Alaska Natives to design and carry out solutions. The report concluded that tribal councils and village people need to regain inherent responsibility for village problem solving. The state court system cannot rob them of the opportunity and obligation of developing dispute resolution bodies and procedures that are consistent with the predominant cultures of the village (Alaska Natives Commission Report, 1994).

<sup>xxiii</sup> Schneider (2008) discusses the need for this bottom-up and top-down support and commitment in DSDs implemented at the international level. Her observations have similar application to the juvenile crime context.

<sup>xxiv</sup> It should be noted that juvenile matters are treated in a more rehabilitation-oriented fashion. Juvenile courts have sought to balance the need for rights-based protections and the need for interest-based remedies. What has resulted is a rights-based adjudicatory phase followed by an interest-based sentencing phase. Additionally, court systems have furthered their expansion of therapeutic courts which follow a similar approach in adult cases.

<sup>xxv</sup> For instance, Alaska’s statutes expressly allow judges to consider the negotiated agreements between victims, offenders and community members in their sentencing decisions, except in cases of robbery, arson, extortion, coercion, and domestic violence situations. See Alaska Statute 12.55.011(2010). If justice system officials and the Legislature gained more confidence in the ability of consensus-based processes to safely handle these matters such exceptions in the law might disappear.

<sup>xxvi</sup> Bunting-Graden (2007) argues that even DSDs created by international actors such as the United Nations should promote local ownership. She notes that local institutions should be capable of accommodating these international actors when and if they need to step in and fill capacity gaps. Smaller communities with limited resources may experience similar capacity gaps.

<sup>xxvii</sup> This commitment to the rule of law and rights-based processes must not disappear because it provides necessary protection against the arbitrary and unlawful exercise of authority over an individual by the government. Yet, the inadequacy of a rights-based model to meet the reparative and restorative needs of crime victims, offenders, and their communities is the very catalyst for many alternative interest-based DSDs.

<sup>xxviii</sup> To her credit, Ms. Binder recognized this frustration, spoke to the flexibility of restorative justice, and encouraged participants to remember that they should develop processes that work for them. To the Galena Magistrate’s credit, he has become an outspoken proponent of restorative justice and is working to implement restorative strategies such as community talking circles to provide a community recommendation in sentencing.

<sup>xxix</sup> Schneider (2008) shares another power example of this principle from the Timorese culture.

<sup>xxx</sup> This concept ties back to the importance of community involvement in the development of a community dispute resolution process. When this occurs various cultural values are expressed and communicated, the dispute resolution process naturally adopts a blending of these values, communities will feel real ownership in the problems and the solutions, the power of informal social control mechanisms is harnessed, cultural

norms and identity will actually be reinforced, and communities take greater responsibility for their well-being (RJPP, 2010). Blending and working within various cultures presents challenges, but addressing them early will increase the potential effectiveness of any restorative processes implemented. Communities that have carefully thought about cultural issues are more likely to successfully work through them as their program develops.

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