

Workshop session 4: Training of mediators and legal professionals and standards of good practice

RESTORATIVE JUSTICE AND TRADITIONAL LEGAL CULTURE IN THE CONTEXT OF CONTEMPORARY CHINESE CRIMINAL JUSTICE REFORM

by **Jianhong Liu (USA)**

It has been estimated that there are about 1000 restorative justice programs in the world, and at least eighty countries have adopted some form of restorative justice program in response to crime problems. As an important initiative for criminal justice reform, restorative justice has predominantly taken place in countries with Western legal systems, particularly those with common law and civil law traditions as a response to the limitations of the conventional Western criminal justice system. The motivation or impetus for restorative justice may be different in Eastern countries. To fully understand the complexity and prospects of the development of restorative justice in different contexts, examination of the influence of tradition and contemporary political and socio-legal forces is necessary. What distinctive principles of their philosophical and legal cultural traditions impact the development of restorative justice in different countries? How do different contemporary political and legal contexts interact with the growth and practice of restorative justice? Are there different patterns or pathways of development for restorative justice in different legal and political contexts? These are some of the theoretical questions to be answered.

John Braithwaite once wrote "Confucius is the most important philosopher of restorative justice."¹ Scholars generally believe that there must be a strong consistency between the principles of modern restorative justice and ancient Confucian Philosophical ideas. However, few studies have analyzed Confucius's work and identified the specific ideas which encourage restorative justice values and practices. John Braithwaite also pointed out that it is "a pity that so few Western intellectuals are engaged with the possibilities for recovering, understanding and preserving the virtues of Chinese restorative justice while studying how to check its abuses with a liberalizing rule of law."² It is unfortunate that the Western restorative justice movement has not yet borrowed much theoretical insights from studying the valuable heritage of Confucius's ideas, which is truly a profound source of wisdom for modern Western restorative justice reformers.

The first part of my presentation examines Confucian philosophy and legal cultural values that are compatible with the philosophy and principles of restorative justice. The presentation first explains the core concept of Confucian thought: *Ren* and *Li*. Confucius explained, "*Ren* means loving others"³. The concept reflects the fundamental idea of humanity and secularity in Confucianism. *Li* is a moral code. *Li* embodies Confucius's ideas of social order and social relations in a harmonious and just society. Confucius stressed that *li* is taught to people through moral education. *Ren* and *Li* are the foundation other principles of Confucian thought are built on. I examine three Confucian principles that exhibit strong restorative characters.

One. *Li* and *Fa*: The Principles of Administration of Law. Confucius said: "Regulated by *fa* or law, the people will know only how to avoid punishment, but will have no sense of shame. Guided by virtues and *li*, the moral code, they will not only have a sense of shame but also learn to correct their wrong doings of their own accord"⁴ From Confucius's point of view, *fa*, or formal law, focuses on punishment, while *li*, or moral code, emphasizes prevention. In administering the law, the principle is that the punishment should supplement moral education. Moral teachings are given priority and higher status compared to law and punishment. Punishment is only a tool, while moral teachings and internalization of ethics are the fundamental purpose of justice. The use of punishment must be to enhance the

¹ Braithwaite, John. 2002. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

² Braithwaite, John. 2002. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

³ The Analects of Confucius, passage translated by me.

⁴ Analects of Confucius, book two, article three.

effectiveness of justice and to realize the goal of moral teachings. The essential purpose of Confucian moral philosophy is to maintain and to restore social order and human relationships in a long-lasting and effective way.

Two. Harmony and *wu song* (no law suit) as the Highest Ideal and Mediation as the Main Method. Confucius said: "The way I try a lawsuit is not different from others. But it would be better still if there were no lawsuits."⁵ In contrast to the Western tradition, the upholding of the law was not the objective of the legal process. The ultimate objective of law was to achieve harmony and restore peace.

Three. The Concept of Justice: *tian li ren qing* (fair and respect for human feelings). Fairness was based on finding the truth. The methods or procedures used to find the truth do not matter. The rights of the suspect were rarely a concern, as long as the truth was found. The idea of due process was unknown in Traditional China. The concept of rights was moral rather than legal, and was of paramount importance. The moral concept of rights safeguards the moral "gentleman" against infringement by inferior and immoral people taking advantage of litigation. Morality was of paramount concern. Although many of Confucius's ideas are subjected to criticism, they contain many valuable insights for restorative justice.

The second part of my presentation explains how four major Chinese contemporary Criminal justice programs exhibit characteristics of restorative justice. One, Mediation Program. In contemporary China, the most popular forms of mediation include mediation by a People's mediation committee, by the town's legal service, by law firms, and in rural areas by respected family clan leaders, by relatives and friends, or by neighbors. Among these forms, the most important is mediation by a People's mediation committee. This is a mediation organization legitimized by the government and by law.

Two, Criminal legislation with Restorative character. Although the mainstream features of the Chinese criminal justice system are now based on state primacy in the punishment of criminal offenses; since the legal reform, there have been a number of laws reflecting restorative features that retain the influence of the Chinese legal tradition. I provided several examples in the presentation.

Three, Restorative justice in Juvenile justice and law. Consistent with restorative justice, the Chinese juvenile justice system emphasizes the principle that "education is the priority, punishment is only a supplement" (*De Zhu Xin Fu*). It stresses the use of "reintegrative shaming" and "thought education" to help the offender feel shame for their behavior and to be willing to accept their mistake and make a change.

Four, Community based correction. Community based correction is a new initiative since 2003 in criminal justice reform. Community correction emphasizes the participation of the community in the process in order to educate offenders' thinking, to provide legal and moral education, to correct their unhealthy psychology and behavior, to help them to recognize their mistakes and repent for them, and to be willing to give up past patterns of antisocial behavior and reintegrate themselves into the community. These methods may not strictly copy the popular methods established in Western restorative justice programs, but they are very consistent with them, particularly with their emphasis on community participation, persuading offenders to regret their mistakes, and re-integration. The emphasis on community participation in the correction process reflects similar values of restorative justice.

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⁵ Analects of Confucius book Twelve, article thirteen.

Workshop report by Mari-Cruz

The presentation emphasised the differences between the formal law and the traditional Chinese culture. In the Confucian theory and ethics the principle of moral cause has a priority over the legal cause, as people could learn to avoid punishment but not shame. In general, traditional Chinese people prefer mediation conducted by neighbourhood committee members than going to court. This committee is elected amongst the neighbours and appointed by the government. There were some questions about whether this committee acted as a mediator or as an arbitrator. As the presenter answered, this committee was more close to arbitration than mediation.

RESTORATIVE JUSTICE PROGRAMS IN THAILAND

by Wanchai Roujanavong (Thailand)

The Thai criminal justice system has implemented restorative justice programs since 2003. Presently, about 9,700 conferences were conducted for juvenile cases and 75% of them resulted in non-prosecution order. For adult cases, about 1,500 direct mediation meetings were conducted and 86% of them resulted in agreements made.

The presentation will introduce the restorative justice programs implemented in Thailand and discuss about the future plan as well as some critical issues relating to Thai legislation and policy. The outline of the presentation is as follows:

- Background of the implementation of restorative justice in Thailand
- Family and community group conferencing
- Victim-Offender Mediation
- Restorative justice programs for juvenile
- Implementation
- Policy and legal issues
- Restorative justice programs for adult
- Implementation
- Policy and legal issues
- Case study discussion
- Future Plan

Wanchai Roujanavong is director general of the Department of Probation in the Ministry of Justice in Thailand. He has been at Cornell University, has a certificate in Crime Prevention and Treatment of Offenders from UNAFEI, Japan, and one in International Cooperation on Criminal Matters from Oxford. He has been in several high administrative offices, e.g.; Director general of the Department of Juvenile Observation and Protection in the Ministry of Justice, director of the Criminal Law Institute. Provincial Public Prosecutor in several provinces of Thailand. He has been involved or has headed several projects and commissions, e.g. as president of the 'Fight Against Child Exploitation Foundation, of 'End Child Prostitution, Pornography and Trafficking Foundation, he has been an UNODOC Expert, concerning laws relating to narcotics, organized crime, trafficking of women and children,; of extradition, and of international cooperation in criminal matters. He has also done research on organized crime and has written a book; 'Organised Crime in Thailand'

Workshop report by Mari-Cruz

In Thailand family committees represent traditional values. Thanks to them disputants do not go to court in case of offences. Disputes are moderated by a group of old people who resolve the conflict in a "natural" way. Parties need to go the legal authorities in case of crime or extreme violence. During the discussion it was noted that it is common for both countries, China and Thailand, to consider a bad practice to accuse somebody using official channels. Harmony is very important even in conflict situations.

LEGISLATING MEDIATION PROCEDURE IN FINLAND

by Outi Mustajoki (Finland)

New legislation on mediation procedure has recently been adopted in Finland. Act on Mediation in Criminal and Certain Civil Cases has come into force on 1st January 2006 (further on referred to as the Act). The Act contains provisions on the administrative organization of mediation services, government compensation for operation expenses and the procedure for carrying out mediation.

The primary scope of application of the Act is victim offender mediation. The civil cases that may be handled on the basis of the Act are restricted to minor cases only. There is a separate act which regulates judicial mediation, i.e. a procedure in which a general court judge may act as a mediator in a civil case or a petition. Claims for damages based on a crime may, however, always be dealt with in the same mediation procedure as the crime itself, regardless of, for example, the amount of the damages. This presentation is focused solely on victim offender mediation and application of the law to criminal cases.

Mediation in criminal cases has already been quite well established in Finland, even before the enactment of the new law. Mediation has not, however, been available for every citizen. Up till now, mediation services have been offered voluntarily by certain municipalities. According to the Act, mediation services have to be arranged nationwide as of 1st June 2006. The State Provincial Offices (five in total) are responsible for arranging the services in their respective areas. Expenses incurred in the provision of mediation services are compensated from government funds. For the parties of a criminal case mediation services are provided free of charge.

The operating units which provide the mediation services are called mediation offices. These offices may be operated by municipalities or some other public or private service providers according to separate agreements or other arrangements with the State Provincial Office. In every mediation office there is a co-ordinator, a person who is in charge of the operations. There may also be mediation advisors, whose duty is to supervise and monitor the work of mediators, and other necessary permanent staff. The actual mediation is generally carried out by voluntary lay mediators, who have received appropriate training for the task. Voluntary mediators are not paid for their work but they are compensated for their expenses.

The general conditions for mediation in criminal cases include personal and voluntary consent of all parties and their capability of understanding the meaning of mediation and the solutions arrived at in the process. The consent may be withdrawn at any time, in which case the mediation has to be stopped. As to the crimes which may be dealt with in mediation, the Act, in a very general level, refers only to eligibility of the crime for mediation, taking into account the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. The Act does not, for example, contain any specific limitations relating to the seriousness of the crime as such. Only referring certain types of crimes involving underage victims to mediation has been expressly restricted. In practice, however, mediation has rarely, or perhaps never, been used in cases of serious crimes, for example manslaughter or rape. I doubt that these practices will change even after the enactment of the new law. Nor does it seem to be the intention or the goal of the legislators, according to the travaux préparatoires.

The Act does not contain any predetermined limitations to the age of the parties. There are, however, special provisions concerning for example legal presentation of minors as well as other legally incompetent persons.

According to the Act, mediation is possible at any stage of the criminal procedure and even after trial. In practice, mediation has rarely been used after pressing charges. Most cases have, so far, been referred to mediation by the police during the pretrial investigation or by the prosecutor during the consideration of charges. This will most likely be the case also in the future.

Besides the police and the prosecutor, also other authorities as well as the parties themselves may refer cases to mediation. If the crime involves violence directed at near relation, the proposal for mediation must come from the police or the prosecutor. If the police or the

prosecutor assesses that any case, which they are dealing with, is eligible for mediation, and if the general conditions are filled, they are, according to the Act, obliged to inform the parties of the possibility of mediation and also refer the case to mediation.

It is always the person in charge of the mediation services in the mediation office who decides whether to accept the case for mediation or not. It seems unlikely that a mediation office would normally refuse to accept a case for mediation, if the proposal comes from the authorities. In some situations this is possible, however. The mediation office might, for example, after meeting with the parties, detect that the consent of one of the parties is not voluntary.

The parties must participate in the mediation meetings in person. The mediation is carried out without audience. A custodian or other legal representative, as well as an assistant or a support person, may, however, normally be present at the mediation meeting. The discussions during the mediation meetings are, as a rule, confidential. In the later phase of handling the case, a party may not, without the consent of the other party, refer to what the latter has presented during mediation in order to reach agreement. The Act also forbids the mediator to testify about the contents of the discussions in the mediation proceedings, unless weighty reasons require otherwise.

After a successful mediation, the mediator draws up a document on the agreement of the parties. This document may be used freely in the later stages of dealing with the case. The agreement reached by the parties, and sometimes just participating, or mere willingness to participate, in the mediation process, may have various effects to the criminal procedure. In cases of lesser crimes mediation may result in discontinuance of the criminal proceedings. Mediation may also lead to non-prosecution, waiving of sentence or to a more lenient punishment.

Although the new legislation will undoubtedly increase awareness of the possibility of mediation, the challenge of making the practices uniform still remains. Uniform practices are, at least in my opinion, the only way to guarantee real equality to the citizens who are parties in a criminal case. As mentioned earlier, the police and the prosecutor are obliged to refer a case to mediation, if they assess it eligible for it. However, the broad definition of eligibility, provided by the law, allows the authorities to use so much discretion, that similar cases may very well be treated quite differently depending on, for example, the opinions and values of an individual policeman or a prosecutor. Some guidance can be obtained from the Government Proposal for the Act and the related Legal Affairs Committee report. Another question is how thoroughly will the individual officials go through them, if at all.

Steps have already been taken to increase and to ensure the uniformity of practices in mediation procedure. In the autumn of 2005, the Prosecutor General appointed a working group consisting of representatives of various authorities to handle issues relating to mediation from the point of view of the prosecution service. In the final report of the working group, which was given in January 2006, different aspects of mediation procedure have been discussed in a practical level and several views on recommended practices have been expressed. The report has been sent to all prosecution units. However, no binding directions or guidelines have been given to the prosecutors. Quite recently, in June this year, the Ministry of Internal Affairs has given the police general guidelines regarding mediation with an attached memorandum drafted together with the Office of the Prosecutor General. These general guidelines are binding, but quite brief in scope. The memorandum is more specific, but only of informative nature.

So far, no specific guidance has been given to the mediation offices or the State Provincial Offices. The general management, supervision and monitoring of mediation services fall within the jurisdiction of the Ministry of Social Affairs and Health. Under its auspices acts the Advisory Board on Mediation in Criminal Cases. Some measures to ensure uniformity of practices will most likely be discussed and taken by the Board in the near future.

The need for education and co-operation between different authorities regarding mediation procedure, as well as monitoring the implementation of the Act, have been widely emphasized. A lot has already been done in this respect, but every authority, who is involved in mediation procedure, has to make sure that this work will be continued.

Outi Mustajoki is a 37-year old Finnish lawyer, working currently as a legal adviser in the Office of the Prosecutor General in Helsinki. His professional experience includes, among other things, working as a district prosecutor. He has been a deputy member of the Finnish Advisory Board on Mediation in Criminal Cases and a member and secretary of a working group considering mediation procedure appointed by the Prosecutor General.

Workshop report by Vera van der Does

During this presentation, Outi Mustajoki, gave a very thorough overview on the developments in the field of legislation on the mediation procedure in Finland.

Mediation is conducted by lay persons, that passed a selection and were given a training on mediation skills.

All elements of the legislation were touched upon: the general conditions to be met, who can refer a case, and the effects of mediation in the criminal procedure. In the Act, eligibility for mediation is very broadly defined. This means that there are hardly any limitations in theory. There are no age limitations or limitations regarding the offence (with the exception of cases involving an underage victim) or the stage of the criminal proceedings. In practice however, it is to be seen whether the law will be used also for more serious offences and after charges have been pressed.

In conclusion, some challenges were presented regarding mediation in Finland, stressing the importance of uniformity of practices throughout the country and the importance of making mediation truly restorative.

After the presentation many questions arose and comments were made. Many possible flaws were discussed (the issue of mediation agreements and procedures forming evidence in a criminal procedure and the issue of confession). In general, comparisons were made between practices and situations in the countries of the participants. A remarkable difference that was brought to the attention was the situation in which, in Finland, the experience is that victims mainly involve in mediation for financial matters. This experience was not shared by the participants working in the field in other countries. They, on the other hand experienced that financial aspects were not the main concern for victims.

IMPLEMENTING RESTORATIVE JUSTICE IN THE NETHERLANDS

by John Blad (Netherlands) and Antony Pemberton (Netherlands)

In comparison with other neighboring countries like Belgium, Germany, the United Kingdom the development of restorative justice practices in the Netherlands lags behind. All though mediation in the field of civil law is widely practiced and experiments with mediation in criminal cases have been undertaken since the 1980's the Netherlands still lacks a nationwide program for restorative justice.

To facilitate the development of restorative justice in the Netherlands a group of academics, mediators and representatives of various organizations in the criminal justice system have founded the Platform for Mediation in Criminal Justice. One of the primary goals of the platform is to develop a set of standards and principals that can serve as guide for the implementation of restorative justice in the Netherlands and also lays the foundation for possible further legislation in this area. The Platform's draft 'Central document' is the result of the deliberations and debate in the platform.

The Central document is the proposed topic of the workshop. Representatives will present the key issues and participants will be asked to reflect on and discuss the choices the platform made on these topics. In particular attention will focus on the relationship with the criminal justice system, the standards for mediators and the position of victims. The input received from the participants will be used for the further development of the document which will be published at the end of 2006.

Antony Pemberton MA is senior staff member for Dutch Victim Support. He is program manager for Victim Support's restorative justice activities, editor of the Dutch Flemish Journal for restorative justice and is completing a PhD-project on victims within restorative justice at the International Victimology Institute at Tilburg University.

Dr. John R. Blad (1950) is Associate Professor in Criminal and Criminal Procedural Law at the Law School of Erasmus University Rotterdam. He is editor of the Dutch-Flemish Journal of Restorative Justice (Tijdschrift voor Herstelrecht) and his main academic interests are in penal theory and criminal justice philosophy. His dissertation of 1996 was a critique of criminal justice abolitionism ('Abolitionisme als Strafrechtstheorie, Gouda Quint, Deventer). In criticizing abolitionism he discovered the possibilities of restorative justice. Other topics on which he contributed substantially were decriminalisation of euthanasia and physician (and citizen) assisted suicide in the Netherlands and community dispute resolution. His most recent Dutch publications have been on the possibilities of 'restorative social policy' and on restorative detention.

Workshop report by Vera van der Does

The key question of the presentation was which the best ways were to implement restorative practices in a legislative manner, incorporated in the criminal procedure.

As an introduction, developments during the last decades were sketched, that have resulted in a very punitive way of thinking the currently dominating Dutch society. This punitive atmosphere partly explained why there was hardly any interest from the politicians and legislators and why they considered mediation as a 'soft' option. It was considered not suited to fit within the criminal procedure. It was only a service for victims outside of the criminal justice system.

However, things needed to change due to the European Framework Decision of 2001 which holds an article obliging Member States to promote the use of penal mediation and arrange the possibility for agreements reached in this process to be taken into account. For the moment, the suggested Bill only mentions that the possibility to use penal mediation can be introduced via an administrative regulation (however, there is no sign the legislator will be introducing such administrative regulation in the near future).

With this in mind, John Blad presented his opinion and designed his preferred way to capture mediation in legislation as an option incorporated in the criminal system (referring to three

international documents of great importance containing declarations of principles that have to be taken into account).

John Blad made a distinction between mediation in criminal matters *without* intended legal consequences and mediation *with* intended consequences. He stated the need for the state to take responsibility for both. Regarding the first, there is a need for the state to provide financial support to make the mediation service freely available. For the latter, there is a need for the legislator to step in. The legislator must provide clarity on the consequences of mediation. This to provide insight in two crucial issues: the presumption of innocence and the predictability (legal certainty) of legal consequences. Because mediation implicitly asks the defendant to give up his procedural rights, the defendant needs to have clarity regarding the consequences.

After answering all the questions, John Blad closed the session by calling upon all participants to send their best practices as regards legislation.

LEARNING TO BE RESTORATIVE

by Tim Chapman (Northern Ireland)

Introduction

The development of restorative justice in Northern Ireland is set in the context of a history of violent civil conflict and the contested nature of the relationship between the state and local communities. The peace process has included a fundamental review of criminal justice. One of its conclusions was to develop restorative justice for young people who commit criminal offences.

In Northern Ireland there is a thriving community restorative justice sector. However, its relationship with the state sector is problematic due to political issues over policing. The Police Service for Northern Ireland use restorative processes for the cautioning of young people.

More recently the Youth Conference Service, part of the Youth Justice Agency, has been established to provide youth conferences for young people who have persisted in their offending. Youth conferences include the young person responsible for the harm, his or her family and supporters, the person who has been harmed, his or her supporters, a police officer and a youth conference co-ordinator. Only the most serious criminal offences (e.g. murder) are excluded from conferences. As long as the young person consents, a conference is held in almost every case in Northern Ireland.

Staff Development – objectives and achievements

The University of Ulster was contracted to provide the staff development programme for the Youth Conference service. In preparing this programme the University team conducted a major review of the literature. Key conclusions included that conferences were most effective if the victim actively participates, if the young person expresses genuine remorse and if a strong action plan is agreed and fully completed. The team concluded that these success factors are likely to be a product of highly skilful practice. The staff recruited were highly experienced in working with young people and all had professional qualifications.

After two years of operation, the independent evaluation found that

- Victim participation was 69%
- 92% were observed to express remorse
- 71% of young people and 79% of people harmed were satisfied or very satisfied with the plan
- 91% of young people and 81% of people harmed preferred the conference to court proceedings
- 94% of the agreed plans were successfully completed.

Staff development – process

The University produced a practice manual which included the legal regulations, the philosophy of the 'Balanced Model' of restorative justice, the knowledge and skill base for restorative justice and practice guidelines for each step on the youth conference process. A 10 day foundation skills course was designed, recorded in a training manual and delivered. Foundation training was followed up with quarterly practice development days and supported by one to one coaching support. The Youth Conference Service recognised as they encountered increasingly challenging cases that a more advanced programme was required to maintain excellent standards. This has evolved into a Diploma and Masters programme in Restorative Practices.

Staff development – some issues and approaches

Experienced staff bring with them a great deal of confidence and a good grounding in interpersonal skills. They also carry knowledge and practice skills which not compatible with restorative processes. This meant that the training had to offer opportunities for participants to feel 'consciously incompetent'. This called for participation in five days of challenging role play. To 'be' restorative is to adjust one's sense of purpose, one's identity as a professional

and one's belief system, not just intellectually, but in how you act in relation to others. This can only be learnt experientially.

The University did not adopt the 'script' approach preferring to enable practitioners to be creative and have 'conversations with the materials of the situation' (Schon). We wanted them to see uncertainty as source of learning. The most difficult thing to let go of proved to be the professional need to control and 'know best' what the solution was.

The training used a coaching model. Perceiving the restorative justice process as inclusion, participation and transformation, coaching enables all parties to understand what possibilities are presented by a conference, to choose to participate, to develop the capability required to participate effectively, to 'do themselves justice' at the conference, and to make and keep to agreements.

Other areas of skill developed in this model included facilitating storytelling, the expression of powerful emotions and the use of dialogue.

The Masters programme

This will be delivered by the University of Ulster. It consists of six modules: Foundation skills, Reflective practice, Restorative responses to harm, loss and grief, Restorative responses to people who harm, History, theory and research of restorative practices, Developing skills, and a dissertation. The programme will be practice focused and flexible in its application (justice, education, family, community) and its delivery. It will be delivered at the University campus in Belfast. But it can be delivered outside Northern Ireland if sufficient people from one area enrol.

Tim Chapman has 25 years of experience of work with the Probation Service. He is now an independent consultant specialising in restorative justice. He worked with the University of Ulster to develop the practice manual and training programme for the Youth Conference Service in Northern Ireland. He has published widely.

Workshop report by Anne Salberg

In this workshop, no café conference was held but the time has been dedicated to a large presentation followed by questions from the audience.

The presenter exposed the 10 days foundation training he has conceived for Youth Conference Process.

Some questions challenged the chosen model, like:

- Is a 10 days long process of learning enough to integrate the "paradigm shift"?

Tim Chapman thinks it is not, this is why a subsequent programme has also been offered.

- Should the language be more balanced to describe the participants: "young person" (neutral for the offender) and victim (defines a role)?

The audience proposed to use "the person harmed" and "the person who has harmed" as a more neutral language. It was accepted by the presenter.

NIGHTMARE ON RESTORATION STREET

by Vince Mercer (UK)

As practitioners we rightly pay regard to best practice. However we can equally learn from our experience of RJ 'nightmares'. We have all had moments when things have not gone to plan and sometimes seem to take a pathway escalating towards potential disaster!

As reflective practitioners we need to feel comfortable in taking the learning out of such situations, be honest enough to admit our errors and mistakes and resolve not to do the same again. Equally we may have been in situations which may have been beyond our control and events occur which we could not have possibly anticipated. Such is the unpredictable joy of restorative practice!

This workshop will begin with some anecdotal sharing of RJ nightmares to set the scene but will encourage participants to share their own experience and learning from it.

So if you have a good story to tell....then come along and bring your sense of humour and the absurd....

Vince Mercer has a long experience of working with serious and persistent young offenders in the UK. Since 1999 his main interest has been the establishment and development of restorative approaches to the work. In 2000 he established the Greater Manchester Youth Justice Trust Family Group Meetings Project. He is an experienced RJ Practitioner and Project Manager, with widespread experience of delivering training in the field of RJ in the UK and in the Russian Federation.

Workshop report by Nerea Marteache

The aim of this workshop was to create a space where the participants could share their experiences (their nightmares) in a context where nobody would judge them, just listen to them. After a short presentation about the use of bad experiences that can be useful for learning, both the speaker and the participants shared some examples of mediation processes where something went wrong and analysing what the mistakes (if any) might have been and how the situation could have gone differently. An interesting conclusion was to see that when a situation goes wrong there is not always something that the mediator could have done to "solve" the problem (although they keep thinking what they could have done better): people sometimes do unexpected things and that can also happen in a mediation context.

VOM-TRAINING IN NORWAY

by Merete Granrud (Norway) and Grete Stabekk (Norway)

The Norwegians Mediation Service is regulated by an act called The National Mediation Service Act from 1991. The regulations relating to mediation by the National Mediation Service describes the task and purpose of the National Mediation Service Office. Section 1 states that:

The task of the Service is to mediate in conflicts arising because one or more persons have inflicted damage or loss or otherwise offended another person Mediation by the National Mediation Service Office is intended as an alternative to ordinary criminal proceedings and to the resolution of other conflicts the parties themselves shall actively contribute.

Mediators in the National Mediation Service in Norway are laypeople; they are non-professionals who do their work as mediators voluntary and in their spare time. No special education is required, but we do look for some personal skills such as the ability to stay neutral, to be a good listener, to be able to lead a process and so on when we choose our mediators.

The mediators are appointed by a committee consisting of a representative from municipality, the prosecuting authorities and the leader of the district National Mediation Service. Mediators are appointed for a period of four years.

The mediators must have reached the age of 18. They must be trustworthy and eligible for election in municipal elections. Any person who in five years immediately preceding his or her appointment has been sentenced to a suspended custodial sentence, or has been sentenced to immediate imprisonment and was not released, on probation or finally, more than ten years prior to his or her appointment is precluded from being appointed as mediator.

The training endures for 2x2 days with a period of approximately eight weeks in between so that the new mediators have a chance to observe mediations in real life. Together with an experienced mediator they also have the chance to try their new skills as a co-mediator.

Overview of the content of the training

The first day of the course:	The second day of the course:	The third day of the course:	The fourth day of the course:
<ul style="list-style-type: none"> -What is the National Mediation Service? -What is mediation -The role of the mediator -Conflicts and feelings -Communication and communication skills -Role-play that focus on the role as a mediator 	<ul style="list-style-type: none"> -Strategies in conflict situations -Roles in a conflict -Different phases in the reaction process -Roleplay with focus on feelings 	<ul style="list-style-type: none"> -Experiences from the practise period -Roleplay -More about the role of the mediator and communication skills -Perception -Own feelings and reactions -Prejudices 	<ul style="list-style-type: none"> -Legislation -The Act relating to mediation by the National Mediation Service (The National Mediation Service Act) -Other relevant laws -The mediators manual -Case procedure and case procedure rules -The agreement

We use the work-shop model in our training (except for the fourth day of the course). We talk about the role of the mediator and about good communication skills. Through different exercises the new mediators develop new skills. They learn about the different phases in the reaction process and to be aware of what kind of predisposed expectations and prejudices they have themselves, and to be aware of the fact that different people understand the same situation in different ways. Our exercises are based on everyday-life, the examples are situations that are well known for all of us, and the new mediators are encouraged to use their

own experiences in the exercises and share this with the other participants on the course and tell for example how do they themselves react in a conflict and what kind of feelings and needs are to be found beneath anger?

The last day of the course we lecture about legislation, case procedure rules, and the agreement. We also present a manual that provides answers to the most common questions that turn up in mediation.

The new mediators are ready to start after the fourth day of the course, but very often they start together with an experienced mediator. The head of the mediation service office or an adviser will supervise them. Supervision is available for all mediators through the whole term of office, but an extra eye will be kept on the new ones. There are also gatherings several time a year for all mediators where there is a chance to share experiences, to discuss difficult problems and to develop new skills.

The training in Norway is short compared to the training offered in many other countries, but never the less - it does work. Of course there is always room for improvements, but our mediators are not supposed to be experts of any kind, they shall have their focus on leading the process – and let the parties themselves take care of the subject of the conflict, of the proof, of the law and so on. That leaves the mediator with only the mediation process itself – and the process is, after all, best developed in real life.

Facts about the National Mediation Service

- The National Mediation Service is run by the Government
- The Ministry of Justice has the superior responsibility
- The National Mediation Service administration runs 22 district office with altogether 600 mediators

Facts about the mediation process

The mediation process has 5 steps

1. Introduction
2. What happened?
3. How do you experience the conflict, the damage or the loss?
4. Do you have a solution?
5. Agreement

Grete Stabekk is Head of Office of The Mediation Service in Oppland County. She has been in the job for about 12 years. She is a trainer for new mediators. She has also taken part in the work of making a Manual for the Mediators. Earlier she has been working in the social security office. She has study law.

Merete Granrud is Head of Office of The Mediation Service in Østfold County. She has been working with mediation for about 13 years, as a mediator and as an adviser in the National Mediation Service. She has also taken part in the work of making a Manual for the Mediators. She has is a Master of Management.

Workshop report by Lara Baena Garcia

Merete Granrud and Grete Stabekk presented their experience in developing a training program for voluntary mediators in Norway. They explained the legal and institutional framework in which they work and how the national mediation service functions. Afterwards, they described the training program they first designed and how it evolved as they gained more experience and feedback from new mediators. There was little time for debate and, before closing the session there was only some time for a few questions about the decision of having only voluntary mediators (not professionals), the criteria applied for selecting them, and how often they gather once they finish their initial training.

ON THE SUMMER SCHOOL IN PILSEN

By An Marchal (Belgium)

It is clear that training of mediators (volunteers and professionals) is of high importance. Much know how and experience has been developed at local, national level. But a strong need was felt to cross national borders and to learn from others who develop training programs and standards, for example by bringing up a pool of supportive practitioners.

For the first time, in June/July 2005 a European Summerschool for trainers and practitioners of victim offender mediation took place in Pilsen (Czech Republic). 24 participants of different countries participated, and worked together on different themes.

The European Recommendations on the training of mediators in criminal matters (AGIS 1) were explained and evaluated. A Scottish training programme (SACRO) was used to inspire trainers getting more material and methods. And the educational system of the probation and mediations staff of the Czech Probation and mediation service was presented.

The Barcelona conference will give us the opportunity to meet the Summerschool participants, and each other interested in training mediators or facilitators. In this workshop, we will evaluate the past Summerschool and will discuss the further steps to take for a next one (target group of participants, themes, purposes). We will also prospect other possibilities of international exchange between trainers and/or practitioners of VOM.

An Marchal is working at the secretariat of Suggnomè, a private NGO that employs 15 victim offender mediators in Belgium (Flanders). As a 'forumworker', she is responsible for creating and maintaining a forum for restorative justice, a meeting point and discussion room for each one interested in restorative justice and victim offender mediation (by means of a newsletter, a website, seminars ...). Besides, it is also her task to support mediators, for instance by stimulating international exchange and by organising formation and training. As a member of the Practice and Training Committee of the European Forum, Suggnomè she has participated to the organisation of the Summerschool in Pilsen (June 2005).

Workshop report by Lara Baena Garcia

This presentation was about the summer school in Pilsen that was organised a year ago. It was the first experience of a summer-school for trainers of mediations. An Marchal, who works at Suggnomè, in Belgium, is already organising next summer's school. During the workshop she tried to gather opinions of people attending it on different issues related to that event: what are the interests for the next summer-school (2007), whether it should be addressed to trainers or also to mediators, or if it should focus only on mediation or also on conferencing.

PROMOTING GOOD PRACTICES OF VICTIM OFFENDER MEDIATION IN SERBIA: A JOURNEY TO IMPROVING QUALITY STANDARDS OF PRACTICES

by Jasna Hrnčić, Dusica Vujacic-Richer, Gorana Ilic and Tijana Marinović (Serbia)

Code for Criminal Proceedings

In May 2006 a New Code for Criminal Proceedings was adopted by the Serbian Parliament which would be enacted on the first of January 2007. It would make provisions for a “settlement with the injured party” for adult offenders. Also, for the first time in Serbia, this would provide a legal basis for implementation of victim offender mediation for adult offenders.

Laws

- 2004-2006: series of laws in Serbia with provisions for mediation
- February 2005: Serbian Law on Mediation
- May 2005: Two sub-laws of the Law on Mediation:
 - On training of mediators
 - On an official list of licensed mediators

CHILDRENS’ CHANCE FOR CHANGE PROJECT

Juvenile Justice Code

On the first of January 2006 a new Serbian Juvenile Justice Code was adopted. This would accomplish two things:

- make provisions for a “settlement with the injured party” for juvenile offenders
- for the first time in Serbia, it would provide a legal basis for the implementation of the restorative justice approach and victim-offender mediation in criminal matters

Sub-laws will be expected to be adopted on the first of July 2006.

On the first of September 2004 a juvenile justice reform project in Serbian and Montenegro started which was called “Childrens’ chance for change” (CCC). It was the result of an agreement between the Government of Serbia and Montenegro, UNICEF and the Swedish International Development Agency (Sida).

The objective and components of the CCC project

The overall project objective was to promote the comprehensive and multi-disciplinary reform of the juvenile justice systems in Serbia and Montenegro for better protection and promotion of the rights of children at risk and in conflict with the law.

There were 4 components of the project:

- Advocacy
- Policy development and related legislative and administrative reforms
- Capacity building
- Development of alternative community-based care and prevention programmes

Mediation at the Juvenile Correctional Institution in Krusevac (JCIK)

JCIK is a reform school for children, age 14 and above, in conflict with the law. This is the most severe sentence for an offence that is made by children who were, at the moment of the offence, between the age of 14 and 16.

At this school Victim-Offender mediation (VOM) is a suitable approach for the resolution of conflicts between juveniles. These conflicts are frequent, sometimes with serious consequences and often with characteristics of a criminal act. The more severe conflicts result in disciplinary measures.

Restorative approach in Serbia through CCC project

It was the first restorative approach for juvenile offences that was introduced and established in Serbia and which had consequences on policy as well as on local community level:

- Mediation Programme at the Juvenile Correctional Institution in Krusevac
- The Diversion Scheme Project in Nis
- Mediation Network of Teams for Child Protection in 14 municipalities
- Faculty of Political Sciences in Belgrade; post-graduate studies in mediation
- Legal provisions for the victim-offender mediation for juvenile offenders

MEDIATION PROGRAMME AT THE JUVENILE CORRECTIONAL INSTITUTION IN KRUSEVAC

The Mediation Service at JCIK

- October 2003: the Mediation Service was established at JCIK. It was the first victim-offender service in Serbia and Montenegro which was developed in a partnership between JCIK, the Ministry of Justice of the Republic of Serbia and UNICEF.
- February 2004: a successful mediation and completed agreement was recognized by JCIK authorities as an alternative to disciplinary measures.
- October 2005: a VOM mandatory was offered to all juveniles in peer conflicts in the institution.
- June 2006: a settlement with the injured party was recognized in the new draft "JCIK House Rules" as a service that JCIK provides for juveniles in the institution.

Objective of JCIK Mediation Service

"To facilitate and encourage positive resolution of conflicts between juveniles at JCIK in which another persons' rights were violated through systematic implementation of mediation processes, in order to:

- Support rehabilitation and reintegration of victims and offenders
- Improve quality of life juveniles
- Improve pro-social capacities of juveniles
- Decrease anti-social behaviour of juveniles

The role of the JCIK Mediation Service in the wider community

The JCIK Mediation Service is a model for similar services in institutions and local communities in the country. It gives a basis for:

- Good practices
- Ground Rules, administrative procedures and record keeping
- Promotional materials

The service also led to an initiative for multi-sectoral, community-based Mediation Centre in Krusevac where the first referrals by a local court were dealt with. It also gave premises for VOM services provided within a prosecutors' office.

Challenges JCIK Mediation Service

- Coordinating mediation duties with other work tasks
- Incorporating mediation within the disciplinary system
- New behavioural management system at JCIK
- Gang conflicts
- Power imbalance
- Cultural diversities

JCIK Mediation Service at present

The Service is currently composed of 20 volunteers, staff members of JCIK and the Centre for Social Work in Krusevac (CSWK).

95 cases have been referred to the Mediation Service:

- 57 cases: mediation with agreement, all agreements fulfilled while parties were at JCIK
- 15 cases: in process of making agreement
- 11 cases: mediation without agreement
- 12 cases: parties in conflict who refused mediation

Future plans

- To develop peer mediation
- To develop mediation for conflicts between juveniles and staff
- To strengthen the mediation network with other similar services
- To acquire licences for mediation
- To continue with education (training of trainers (T.o.T.), peer mediation)
- To influence the policy development of VOM practices in the correctional system in Serbia
- To address cultural diversities

THE DIVERSION SCHEME PROJECT IN NIS

Objectives of DSP Nis

1. To provide children and juveniles, in conflict with the law and at risk, with access to diversion schemes in order to divert them from entering into legal procedures.
2. To advocate for and support the adoption of restorative justice principles in juvenile justice practice.
3. To promote rehabilitation and reintegration of all that are harmed by juvenile offences or serious conflicts of children/juveniles through providing victim-offender mediation services and other forms of restorative justice practices.

Development of DSP Nis

Since 2002 UNICEF has been supporting a Diversion Scheme Pilot Project in Nis (DSP Nis)

- 2002: Initiation: partnership with key stakeholders
- 2003: Training of 40 professionals and students in Nis
- 2004: Facilities – Nis Mediation Centre – provided by the City of Nis and equipped by UNICEF
- 2005: Financial support of the Ministry of Labour, Employment and Social Policy (MoLESP)
- 2006: Project expansion

DSP Nis at present

It has been recognized by MoLESP as a model project for the development of similar services in the country and is currently composed of 38 project members (professionals and students) and 7 volunteers.

The main activities include VOM, follow-up of the mediation agreement, activities of the four work groups and peer supervision meetings.

Victim-Offender Mediation and follow-up

18 cases have been referred to DSP Nis:

- 8 cases: agreement reached
- 4 cases: in process of making an agreement
- 5 cases: parties in conflict have refused mediation

7 cases have a follow-up agreement:

- 3 cases: follow up completed, agreement reached
- 4 cases: in process of follow up

Future plans of the DSP Nis

- To fully mainstream VOM as a regular service in Nis
- To serve as a model of good practice for similar initiatives in the country
- To continue with further education (T.o.T., peer mediation)
- To develop other restorative justice forms such as youth courts
- To develop peer mediation in schools
- To strengthen a network with similar national and international services
- To influence policy development of VOM practices with juvenile offenders in Serbia

- To acquire licences for mediation

Activities of work groups

Community Participation Work Group (10 members):

- Circular letters for schools and institutions
- Project presentations

Restorative Justice Work Group (8 members):

- Media presentation
- Round tables
- Design and distribution of promotion material
- Follow-up of relevant legislations

Work Group for Youth (12 members):

- Four series of 16 workshops on restorative justice and mediation with 50 school children

Monitoring and Evaluation Work Group (8 members):

- Developing forms for Monitoring and Evaluation
- Monitoring of mediations

MEDIATION NETWORK OF TEAMS FOR CHILD PROTECTION: Project “Outreach Mobile Teams for Child Protection”

Challenges DSP Nis

External:

- Overcoming professionals' fear of compromised competence by referring cases to DSPN
- Impacting the inflexibility of the local justice system for new approaches
- Providing systematic supervision of mediations
- Facilitating official regulations for proceedings of a settlement with injured party

Internal:

- Resolving disagreements regarding ensuring project sustainability
- Reducing disproportion between expectations and achievements in VOM

Mediation network within OMTCP project

- July 2001: The project OMTCP piloted in 4 municipalities in Serbia and was later expanded to 14 municipalities
- September 2004: Project OMTCP became an integral part of the “Children's Chance for Change” project
- December 2005: New OMTCP project cycle in Serbia; focus on VOM services
- December 2005: Mediation Network of Teams for Comprehensive Child Protection established within OMTCP (municipalities: Obrenovac, Pozarevac, Bujanovac, Presevo, Lebane, Jagodina, Leskovac, Smederovo, Valjevo, Bor, Krusevac, Bajina Basta, Zemun)

Basic principles of OMTCP

- Partnership between nongovernmental (NGO) and governmental (GO) sector
- Multi-systemic approach
- Outreach to the children and families in need
- Individualized child-centred approach
- Participatory approach
- Prompt reaction
- Full availability
- Flexibility
- Social mobilization of local community
- Networking

The network at present

It is currently composed of 54 mediators, professionals in local Mobile Teams (NGO) or Centers for Social Work (GO)

Main activities:

- Victim-offender mediation: over 70 cases
- Follow-up of mediation agreement
- Peer supervision: regional meetings (four regions)
- Awareness raising regarding the advantages of preventing children from entering legal producers
- Lobbying for opening mediation centres in home municipalities

Objectives of the network of teams for comprehensive child protections

- To advocate for and support adoption of restorative justice principles in juvenile justice practice
- To provide, organize and promote mediation as a method of overcoming serious conflicts in which at least one party is under the age of 18 and where rights were violated or harm was inflicted to the person or organization

The network' strengths

- Development of VOM services as part of a continuum of care for children in conflict with the law and at risk
- Social mobilization of the local community
- Reaching populations who are usually not included into mainstream services
- Networking between mediation teams

The network' challenges

Challenges in local communities

- Reducing professional exclusivity in institutions
- Overcoming professionals' fears of compromised competence

Challenges inside the network:

- Consistent application of methodology
- Networking between geographically distant mediation teams
- Harmonising the quality of mediation services throughout the network
- Providing continuous education and supervision

Faculty of Political Sciences

In 2005 a partnership was established between the Centre for Social Work in Belgrade, City Hall Belgrade, Faculty of Political Sciences in Belgrade (FPSB), Ministry of Labour, Employment and Social Policy and UNICEF

Post graduate studies in Mediation in the Department for Social Policy and Work, FPSB (training):

- Theories of conflict
- Theory and practice of mediation
- Cultural diversity
- Family mediation
- VOM
- Peer mediation

Mediation Centre in the Centre for Social Work in Belgrade (practice):

- Family mediation
- VOM
- Peer mediation

The network' future plans

- To establish VOM as a regular service in local communities
- To provide a model of mediation networking between diverse local communities
- To continue with further education (T.o.T., peer mediation)
- To develop peer mediation in schools
- To strengthen the mediation network with similar national and international services
- To influence policy development of VOM practices with juvenile offenders in Serbia
- To acquire licences for mediation

Associations of mediators

- 2006: establishment of the **Association "Mediator"**, primarily composed of legal professionals
- 2006: establishment of the **Association of Mediators "UM"**, supported by the CSW Belgrade, primarily composed of social service professionals. The main objectives were:
 - Providing mediation services
 - Improving mediation practices
 - Organizing trainings
 - Cooperating with other similar organizations
 - Developing standards of practice and trainings in cooperation with other stakeholders in the country
 - Advocating for mediation

These two associations collaborate closely on the development of quality standards of mediation practice.

IMPROVING QUALITY STANDARDS OF MEDIATION PRACTICE AND MAINSTREAMING MEDIATION

The centre for mediation for the Republic of Serbia

This centre is established in July of 2006 and founded by the Government of Serbia, Belgrade Bar Association, National Bank of Serbia and Child Right Centre

It focuses on mediation in commercial, property, civic, family and criminal matters.

The activities are:

- Training of mediators
- Issuing licences for mediators
- Keeping official lists of licensed mediators
- Adoption of a code of conduct for mediators
- Public awareness campaign
- Providing mediation services

Challenges of further development of VOM in Serbia

- Development of standards of VOM practices in the best interest of the child
- Incorporation of the best VOM practices in the system
- Positioning of VOM and restorative justice in on-going justice reform in Serbia
- Harmonization of different initiatives for mediation in Serbia

Future plans

To network with key stakeholders in order to:

- Develop clear standards of VOM practice for juvenile offenders
- Promote VOM-services for juvenile offenders in all communities in Serbia
- Develop a professional code of conduct for VOM
- Develop a system of licensing for VOM
- Develop a system of education, accreditation and supervision for VOM

Dr. Jasna Hrnčić, clinical psychologist and psychotherapist, Ph.D. dissertation in the juvenile justice area at the University of Belgrade, scholar with the Belgrade Institute for Studies in

Criminology and Sociology, UNICEF consultant for juvenile and restorative justice; worked as a researcher in last twelve years; author of 25 scientific publications.

Dusica Vujacic-Richer, clinical psychologist and psychotherapist, UNICEF Juvenile Justice Project Officer, leader of the “Children’s Chance for Change” project aiming at reforming the juvenile justice system in Serbia and Montenegro; twenty years of professional experience in international organizations and within UN dedicated to raising standards of protection of human/child rights.

Gorana Ilic, Coordinator of the Diversion Schemes Project in Nis, with seven years work experience in NGO sector focusing on implementation and coordination of social protection projects; was engaged as UNICEF consultant to support establishment of the Mediation Centre as a part of the Diversion Schemes Project in Nis.

Tijana Marinovic, Juvenile Justice Project Assistant, UNICEF Belgrade Office, with more than ten years of work experience in child protection and educational programmes, within domestic NGO’s and international organizations, including the Save the Children UK Belgrade Office, OSCE Mission to Serbia and Montenegro, and UNICEF Belgrade Office.

BEST PRACTICE FOR RESTORATIVE JUSTICE WITHIN RESTORATIVE JUSTICE PROVIDERS AND THE SCOTTISH CHILDREN'S HEARING SYSTEM

by Billy Nicol (UK)

Measuring good practice

Baselines

- Where do we start?
- Values, skills or processes.

What is good practice, who decides?

- Common values in RJ and YJ?
- Common skills?
- Shared processes?
- Draft 'best practice' in Scotland (www.restorativejusticescotland.org.uk)
- Processes agreed across Scotland (Restorative Justice in the Children's Hearing System)

Measurement

- What are we measuring?
- Re-offending is not that appropriate
- Criminogenic risk/need changes made would affect re-offending
- What about persons harmed?
- What do these tell you about practice?.....

In practice -

- Consulting teams around Scotland to see how they see things
- Introducing ideas round teams (personal visits)
- Collect subjective 'Organisational self-assessment' (see handout) and compare with 'performance'
- Look cross-site and across services

Practice

- Introducing observation and assessment?
- People find this threatening
- Again round the teams to ask them what they think of the ideas etc....
- Consultative processes are going well

Experience

- Introduced observer – practitioner shadowing, with checklists available from wnicol@aberdeen.sacro.org.uk
- Draft guide to reduce fear and misuse
- If gaps then support offered, not a top down management tool

Accreditation

- Of services?
- Of staff?

Scottish Restorative Justice consultancy is looking at ways of accrediting services so that services who are not delivering can be supported to change

Billy Nicol is Youth Justice Adviser for Sacro, Scotland's largest provider of Restorative Justice services. He has worked in Restorative Justice services with young people and with adults in Aberdeen since 1998.

Workshop report by Borbala Fellegi

The discussion was mainly about the standards, training and accreditation of mediation. It was agreed that already existing quality standards (e.g. standards by the Mediation UK, other

best practice guidance) can be well used to establish the basis of the different schemes. However, in order to provide high level quality services, it is also important to provide possibilities for co-mediation, peer-supervision and constant consultation for professionals. It is more advisable to organise shorter classroom trainings at the beginning and later on focus more on the previously listed in-service trainings elements. For other actors of the criminal justice system, more general awareness training about mediation can be offered in order to stimulate more effective cooperation between the mediation services and the other relevant agencies.

WORKING UNDER THE AEGIS OF THE CRIMINAL JUSTICE SYSTEM: IMPLICATIONS FOR RESTORATIVE JUSTICE PRACTICE

by Margarita Zernova (UK)

On the basis of findings resulting from an empirical study of one family group conferencing project in England this paper critically examines the implications of restorative justice operating under the auspices of the criminal justice system. It discusses four ways of dependence of restorative practice on the criminal justice system: funding, referrals, legal framework and the system-oriented practitioners.

The paper argues that the reliance of restorative justice on the criminal justice system for funding is problematic because it puts pressures on the project workers to demonstrate that progress towards the goals prescribed by the criminal justice system is made. This leads to restorative justice being made to serve the agenda of the system and the restorative ideal being diverted from the original vision.

The dependence of restorative justice on the criminal justice system for referrals has at least two negative implications. First, an earlier intervention by the criminal justice system can obstruct the achievement of restorative justice goals. Second, a particular framework has been established by the criminal justice system, which influences the restorative justice process and outcomes. Empirical examples have been provided to illustrate these undesirable consequences.

Empirical evidence also demonstrates that when restorative justice adopts the legal framework, it operates in the name of reparation of harms presumably caused by crimes, while avoiding ethical discussions of whether, for example, harm may exist outside crime, or whether some definitions of crime may be questionable, or whether reparation of crime's harm is necessarily desirable and morally right in a particular circumstance. Accepting the criminal justice system's labels 'victim' and 'offender' produces a situation where what in reality could well have been a conflict with social-structural is reduced to an interpersonal conflict.

When restorative interventions are facilitated by practitioners within the framework pre-established by the criminal justice system this prevents a possibility of ethical discussions outside that framework. Empirical findings have been put forward hinting that the reliance of restorative justice on the system-oriented practitioners may enable the state justice system to promote its objectives in an invisible way and thus allow the state to govern troublesome individuals in a hidden form.

The paper concludes by suggesting that the dangers caused by the reliance of restorative justice on the state justice system could be avoided, but this is unlikely to happen, unless restorative justice is radically separated from the state-sanctioned justice.

Dr. Margarita Zernova is a postdoctoral research fellow in the Institute of Applied Ethics of the University of Hull. Her doctoral research involved an examination of aspirations of proponents of restorative justice and experiences of participants in family group conferences. She is currently researching ethics of restorative justice.

INTERAGENCY COOPERATION – THE WAY FORWARD

by Rose Sweeney and Barry Moore (Ireland)

The SRSB is an independent statutory body set up under the Children Act 2001. Its functions include liaising with the various agencies and advising the Courts in relation to appropriate accommodation and services for children who offend. This function is carried out in keeping with the ethos of the Children Act: Detention as a last resort.

Description of proposed content of Presentation:

- Sergeant Moore will give a brief overview of the RJ practise of Juvenile Liaison Officers, An Garda Síochana
- Rose Sweeney will give a brief overview of the role of the Special Residential Services Board
- Sergeant Moore and Rose will then give an overview how interagency co-operation has both prevented and diverted children, brought before the court, from re-offending.

Rose Sweeney is a qualified Primary School Teacher. Since qualifying in 1990 she has taught 8 to 12 year olds in a social disadvantaged area of Dublin, 14 to 18 year old in a Special School which catered for children with social and behavioural difficulties, set up and was principal of a school within a residential home for children, under High Court Orders, who were at risk to themselves and others. In 2000 Rose completed her Masters in Educational Leadership, her thesis was titled 'Leaders Perspectives on Early School Leavers'. Since 2003 she has worked as both a Development Officer and is currently a Court to the Special Residential Services Board.

Barry Moore is a member of An Garda Síochana since 1980. His career includes both uniform policing and detective work. He has a cross section of experience between mainstream and Community Policing. In 1997 Barry was appointed Sergeant of the Juvenile Liaison Officers within an area of high social deprivation in Dublin City. His work involves dealing with juveniles, initially within the community through a restorative practice and in some cases through the juvenile Court

Workshop report by Zuzana Slezakova

During the workshop an overview was given of:

- The Irish practice of Juvenile Liaison officers;
- The Role of their Special Residential Services Board (an independent body which liaisons with the various agencies and advise Courts in relation to appropriate accommodation and services for children who offended);
- How agency co-operation has both presented and diverted children, brought before the court, from re-offending.

Examples from practice and afterwards discussion helped to better understand the presented overview.

BECOMING A RESTORATIVE SCHOOL – WHAT TRAINING AND SUPPORT DO EDUCATIONALISTS NEED?

by Belinda Hopkins (UK)

An exploration of initial training needs and ongoing support, with reference to several existing DVD's of current work in the UK and the gaps in emphasis that still exist. An experiential workshop in which participants are invited to be constructively critical and to design their own training DVD.

Belinda is Director of Transforming Conflict, the National Centre for Restorative Justice in Education. She and her team of 14 trainers offer training, consultancy and ongoing support to educationalists integrating restorative approaches into their day to day interactions with young people. Belinda's book 'Just Schools', and her recently completed doctoral thesis, focus on the implementation of a school-wide restorative approach to building, nurturing and repairing relationships.

Workshop report by Belinda Hopkins

During the workshop the following elements were discussed as important elements for an introductory film for educators:

- an overall introduction
- role plays
- how is the change introduced at the beginning – broaden the context
- children, parents + teachers speaking
- showing how, rather than talking about
- pictures, children's drawings
- head etc. talking with conviction

SUPPORT AND SUPERVISION

by Liz Duffy (UK)

This workshop will outline Sacro's support and supervision policy and procedures. It will help participants to understand the purpose and functions of supervision. It will also give an understanding of roles and responsibilities within supervision. It will enable participants to plan and participate fully within supervision.

The workshop will also consider structured Annual Performance Review. It will identify where individual support and supervision fits into the overall aims of the organisation.

Liz Duffy has worked with Sacro for twelve years, initially as a volunteer mediator. She then took up the position of youth justice project worker in 1996. Liz is now team leader for the adult mediation and reparation service and youth justice service within North and South Lanarkshire.

Workshop report by Clara Casado

Liz Duffy, as line manager, reported about some positive experiences concerning the support and supervision-policy of SACRO.

Support and supervision are different fields than case-supervision. The concerns related to the cases with which the SACRO workers deal on a daily basis, are shared in the "team meeting" and it is considered as a separate subject from the work supervision which focuses on the work conditions, quality and satisfaction.

Support and supervision are necessary services in order to create a clearly designed structure and make service providers entirely familiarised with the system.

The supervision consists of different aspects:

- Communication: it is primarily important to create a good and safe environment to open communication. The line manager will attend any need or concern of its employees at any time without forcing to wait to the supervision meeting, although the issues will also be raised in the meeting to share with the rest of the co-workers.
- Learning and development: encourage long-term workers to try different things or fields in their work as a way to ensure quality and good standards.
- Support: listening and providing healthy conflict solving problem approaches in the daily work.
- Managing performance: help to find solutions to make things better.

DOING NOTHING: A COMPARISON OF THE EFFECTS OF EARLY RESTORATIVE INTERVENTION AND NON-INTERVENTION ON THE CRIMINAL CAREERS OF THREE COHORTS OF 'EARLY-STAGE' YOUNG OFFENDERS IN ENGLAND AND WALES

by John Pitts (UK)

This paper reports the findings of a study of young offenders referred to three Youth Offending Teams (YOTs) in the UK. In two of these YOTS, young people are subject to restorative interventions following their first or second offence, whereas in the third, Northamptonshire, they are dealt with informally for a first offence and by a simple warning for the second. Earlier research undertaken in Northamptonshire compared differences in outcome, measured in terms of re-conviction, before and after the implementation of the Crime and Disorder Act (1998), which formalised interventions with young offenders and required that they become involved in restorative interventions at an early stage in the 'criminal career'. The findings indicated that one effect of the changes ushered in by the 1998 Act was to increase prosecutions by 22% and formal pre-court referrals by 13%. Overall, it appeared that the 1998 reforms had increased the annual throughput of Northamptonshire YOT by 35%. The researchers expressed concern that this posed a potential threat to the good practice, which had generated low pre-1998 Act re-conviction rates. These findings led Northamptonshire YOT to institute an, essentially illegal, element of informalism into their system. The research reported here compares outcomes in the the Northants YOT, in the two years to January 2006, with those in two other YOTs, where the legislation has been fully implemented and first- and second-time offenders are subject to restorative interventions.

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