

CHAPTER 1: ORIGINS AND IMPLEMENTATION

Several broad processes of reform appear to have influenced the development of the Wagga model of juvenile justice. Three of these seem particularly significant. None are specific to Australasia. The first is reform of the philosophy and practice of juvenile justice. The second is a reform of philosophies and practices of criminal justice systems in general. The third is reform of the structure and mandate of police agencies. The development of the Wagga model can be interpreted as a confluence of these three processes of reform.

(1) The first broad process of reform to have influenced the development of the Wagga model is the reform process within juvenile justice systems. Theory and practice in these systems have long been influenced by tension between two competing models. One is the legal formalist or just deserts model. It responds to illegal actions with punitive official reactions. The alternative to this is the welfare model. It aims to provide additional social support for young perpetrators of illegal actions. Modern systems of juvenile justice emerged when the welfare model was offered as an alternative to legal formalism in the late nineteenth century. The notion that the criminal justice system should mete out just deserts to young offenders was challenged by the notion that young people who committed illegal acts deserved additional support rather than carefully calibrated punishment. The provision of therapeutic support was seen as a more humane and more effective response than was retribution.¹

Public policy in juvenile justice has oscillated between these two positions ever since. Departments, statutory bodies, independent pressure groups and moral entrepreneurs have all urged either leniency or toughness. All have been backed by some sort of theory. The welfarist position is frequently informed by a simplistic sociological conception of individual enculturation, the legal formalist position by an equally simplistic psychology of human motivation. One result of this polarisation has been an inherent instability in the formal arrangements of juvenile justice systems. The temptation for populist political interference is considerable. A change in the general political climate prompts a shift towards welfarism or back towards legal formalism. Another political change prompts another shift, and so on.

A favoured administrative response to this problem has been to separate the roles of punishing and supporting young offenders. Rather than having to choose, every decade or so, between greater retribution or greater efforts at rehabilitation, state agencies have pushed for legislation providing both responses. Separate agencies or divisions administer punishment or therapeutic support within the one big system. Expansion of that system has removed some of its instability. Systemic expansion has been the preferred response of people working within existing agencies.

There has, however, been an alternative response to the question of whether the state should be concentrating on retribution or rehabilitation. The alternative response has been that the state should be providing as little as possible of either. Over the last two decades, much credence has been given to the notion that young people should have as

¹ J. Seymour *Dealing with Young Offenders*, Sydney: Law Book Company, 1988 remains the most impressive study of these issues as they apply to Australia.

little contact as possible with the juvenile justice system. This position has frequently been supported by what criminologists call "labelling theory", a widely accepted formulation of which was provided by Howard Becker in the early 1960s. Becker argued that:

deviance is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an "offender". The deviant is one to whom the label has successfully been applied; deviant behaviour is behaviour that people so label.²

According to the theory, the act of labelling a person as deviant becomes a self-fulfilling prophecy. Once labelled, a person will tend to behave accordingly. And contact with the juvenile justice system is said to burden young people with just such a label. Now the evidence for this claim is mixed, and labelling theory has been criticised on various grounds. It has been suggested that labelling theory is more an attitude or a perspective than a theory; that it fails to explain the psychological processes by which the burden of a label produces corresponding behaviour; that it ignores existing temperamental predispositions; that it underplays resistance to labelling; that it focuses only on reactions to negative labels, ignoring reactions to positive labels.

Despite its empirical and logical weaknesses, however, labelling theory has shown a great deal of cultural strength. Among many policy makers and practitioners, it is now received wisdom that contact with the system labels a person, that labelling produces stigma, that stigma lowers self-esteem, and that this lowered self-esteem prompts anti-social behaviour.

A major ramification of this received wisdom is that any program offering "diversion" from the system is assumed to be worthy, because diversion will help to avoid labelling and stigma. General assumptions about the value of diversion have encouraged the development of more efficient filtering systems, whereby first and second-time offenders are diverted, and only multiple offenders are admitted to the system. The question then is what happens to multiple offenders once they are admitted. While belief in the general value of diversion has grown, faith in the possibility of rehabilitation in an institutional environment has diminished.³ In the apparent absence of a third alternative, there have been calls from some quarters to move away from the rehabilitative ideal and move back to a retributive model of criminal justice for those who are admitted to the system.

The various voices calling for a return to retribution have differing motives, but it is important to understand the sentiment with which they are engaging. That sentiment is, above all, the righteous anger of victims and of potential victims - those made fearful by reports of crime. And the power of this righteous anger has too frequently been overlooked. It has generally been overlooked by proponents of the welfarist model of juvenile justice. It has also been overlooked by proponents of the model that prefers diversion to either just deserts or welfare. But anyone concerned with the politics of criminal justice in general cannot afford to ignore a sentiment so powerful as

² H.S. Becker *Outsiders: Studies in the Sociology of Deviance*, New York: The Free Press, 1963, p.9

³ As suggested by the memorable title of Francis A. Allen's *The Decline of the Rehabilitative Ideal*, New Haven, Yale UP, 1981

righteous anger. The victims' movement is powered by righteous anger, and the emergence of this movement has made it near impossible for politicians to ignore the problematic role of victims in current criminal justice practices. The demand for a better deal for victims was certainly a second influence on the development of the Wagga model. Diversion alone could no longer be considered an adequate response to problems of the justice system.

(2) A second major influence on the development of the Wagga model, then, has been the search for philosophies and practices of criminal justice that take account of the needs of victims of crime. "Victimology" and the victims' movement have emerged in the industrialised democracies since the early 1970s. Their emergence has been attributed to the confluence of several other, broader social movements, including those demanding equal opportunities for women, tougher responses to crime, and respect for civil rights.⁴

During the same period, many of those who retained some faith in the rehabilitative ideal began to look for alternative methods by which to achieve rehabilitation. Under the influence of the victims' movement, broader questions began to be asked about the parties affected by crime, the desired outcomes from the criminal justice system, and the most appropriate processes by which to achieve those desired outcomes.⁵

One important result of deliberation about the criminal justice system has been the emergence of the paradigm of "restorative" justice. Within this paradigm: crime is viewed as a social phenomenon that is best addressed through social processes; individuals must take responsibility for their behaviour, but so too must the communities to which they belong; the primary role of the state here is to safeguard just processes; the goal of such processes is not retribution by the state but restoration through social reintegration of victims and offenders; recourse to the formal court system should be kept to a minimum; the development of local processes for achieving restorative justice should be encouraged; ideally, not only victims and offenders but also members of their respective communities should be involved in these processes.⁶

The most significant attempts to put this theoretical paradigm of restorative justice into practice have been various victim-offender reconciliation or mediation programs. Some of these have been reasonably successful, but most have also met with significant procedural difficulties.⁷ The reasons for these difficulties are clear. Mainstream criminal justice systems continue to focus on the offender, continue to assume that retribution has some inherent value, and continue to operate on the assumption that state officials must impose retributive penalties. Accordingly, where referrals are made to some restorative process from within the mainstream criminal justice system, those administering the restorative process have to choose between two positions. First, they may increase the likelihood of referrals from that mainstream system by allowing their

⁴ A. Karmen *Crime Victims: An introduction to victimology*, Belmont, CA: Brooks/Cole 1984

⁵ D.W. Van Ness "Restorative Justice" in B. Galaway & J. Hudson *Criminal Justice: Restitution & Reconciliation*, Monsey, NY: Willow Tree Press, 1990

⁶ T.F. Marshall "Grassroots Initiatives towards Restorative Justice: The new paradigm", Paper presented to Fullbright Colloquium, University of Stirling, 1-4 September 1992

⁷ See Galaway & Hudson, *op. cit.* and H. Messmer & H-U. Otto (eds) *Restorative Justice on Trial*, Dordrecht: Kluwer Academic, 1992

restorative process to be corroded by retributive values. Alternatively, they may pay the price of faithfulness to the restorative ideal but receive very few referrals.

A compromise between these two positions has meant that restorative justice programs have, in practice, been both somewhat corroded and somewhat marginalised during the last two decades. Programs have tended to operate on a small scale, and have frequently failed to escape the traditional paradigm according to which officialdom focuses on some form of punishment for the individual offender. There are three possible responses to this combined problem of marginalisation and corrosion of values. One is to presume that there is something intrinsically wrong with the theory of restorative justice. The second is to presume that there is something wrong with the way in which restorative principles have been put into practice. The third is to presume that both theory and practice need improving.

This report does not take issue with the central theoretical principals of restorative justice, which will be discussed further in the sixth chapter of this report. The report is concerned, however, to with the existing gaps between theory and practice in restorative justice. Accordingly, the key practical problem faced by restorative justice programs to date will be discussed here. This practical - or procedural - problem is how a significant number of cases may be referred from a retributive justice system to a restorative process without the principles of that restorative process being corroded. The most obvious solution to this problem is to avoid referral to the retributive system in the first place. Cases may be diverted at the point of entry to the criminal justice system. Rather than simply being diverted away from retribution and/or official therapy, however, they can be diverted towards a restorative process.

If the relevant officials are to divert cases from the criminal justice system, however, they must feel confident about several issues. First, they must feel that the arguments supporting diversion are at least partly valid. Second, they must feel that the principles supporting the involvement of victims in restorative processes are at least partly valid. This is not too tall an order. Both diversion and victim involvement in restoration are now sufficiently developed as clusters of theory and practice as to be generally acceptable. But if the relevant officials are to divert significant numbers of people towards a restorative process, and not simply away from the present system, they must also feel confident about a third issue. They must feel confident about exercising their discretion to encourage community participation in issues of justice. And if they are to encourage greater community participation, officials must first have given a good deal of thought to the ultimate goals of their intervention.

The developers of the Wagga model had reassessed the goals of their intervention, and were prepared to try a fundamentally different approach. But the impetus for reform in the city of Wagga Wagga cannot be explained solely by reference to those processes of reform in juvenile justice that had made diversion a valid goal. Nor can the willingness to experiment with a new approach be explained solely by reference to those reformist trends in criminal justice that had encouraged greater concern for the needs of victims, and greater concern for restoration rather than retribution. To explain the willingness of local police to involve in a restorative process all of those affected by a crime, one must also consider a third set of reforms - reforms to contemporary policing.

(3) A third major reform process to influence the development of the Wagga model, then, has been the cluster of reforms collectively called "community policing". This community policing movement can be seen as just one manifestation of a more general pressure on political and economic systems for greater openness to public scrutiny and for increased participation in decision-making. And the New South Wales Police Service was only one of many police agencies to be influenced by the community policing movement during the 1980s. Nevertheless, as is often the case in policing, the reform process in the New South Wales Police Service was initiated by adverse publicity followed by a public inquiry.

Guided by a new and unusually impressive Commissioner, the New South Wales Police Service underwent a major reform during the second half of the 1980s. The philosophy of "Community Based Policing" was adopted as the official guiding philosophy of the Service in 1987. The state was divided into four administrative regions, each region divided into around half-a-dozen districts, each district divided into patrols, and each patrol into sectors. At least in theory, and where appropriate, responsibility within the organisation was devolved to lower levels. A considerable degree of autonomy to experiment with new programs was given to district and patrol commanders. Greater consultation between police and public was encouraged.⁸

One practical consequence of the adoption of community policing as a guiding philosophy was the introduction of beat policing, the basic idea of which is that individual officers are assigned responsibility for specific localities or beats. They are encouraged to work towards a safer community with the people who live or work in those beats. Beat policing programs were introduced in several Sydney metropolitan patrols in 1988. The patrol commander for the city of Wagga Wagga, Chief Inspector Kevin Wales, oversaw the introduction of a similar program in his patrol in 1990. Ultimately, it was this initiative that led to the development of the Wagga model of juvenile justice. The way in which this occurred is an important case study in the translation of philosophy into practice. Several factors are of particular significance here.

First, the impetus to establish a beat policing program in Wagga Wagga came as much from outside the police service as from within. A (civilian) Community Consultative Committee for Wagga Wagga had been established in 1987 after a public meeting. The chair of that committee, Marie Thompson, has taken an active and constructive role in promoting links between local police and other members of the Wagga community. Her committee suggested adapting the practice of beat policing to local conditions. So beat policing in Wagga Wagga was a genuine community initiative.

Second, the officer who was given the task of establishing beat policing in Wagga Wagga was well placed to succeed. Senior Sergeant Terry O'Connell brought academic and industrial perspectives to the task. He was completing a Bachelor's degree in social welfare when he took it on. He was also Deputy President of the New South Wales Police Association. Given this background, he was familiar with the major theoretical issues informing service delivery in policing, familiar with comparable

⁸ See D.B. Moore "Criminal Justice and Conservative Government in New South Wales (1988-1992): The significance of police reform", *Police Studies*, 15 (2) 1992: 41-54

issues in education and welfare, and aware of the industrial ramifications - negative and positive - of any major change in police procedures.

Third, the introduction of the beat policing program increased the degree of consultation and cooperation between local agencies - particularly that between schools and police. The Police Citizens Youth Club played a major role in a series of programs that strengthened these links. Crime prevention workshops offered by police in schools appear to have had as significant an effect on police officers as they have on school students. The effect of these workshops and related programs is summarised in a 1992 letter from the head of the beat police to the Education Department's local Home School Liaison Officer:

The need for an Alternative Program for Adolescent School Refusers is well recognised. With the inception of Beat Police within Wagga Wagga in November 1990, the historically difficult area of juvenile crime was given a high priority. For the first time, Police were able to begin to appreciate the complexity of the problem and recognised that our past approach mainly centred upon the symptoms and not the underlying causes of the problem.⁹

As this excerpt suggests, the groundwork for a significant reform to police relations with young people had been laid. An historical perspective suggests that it had been laid at two levels. At a general cultural level, the groundwork for reform consisted of three prevailing modern ideas about social regulation. One was that young people ought to be diverted, where possible, from the formal juvenile justice system. A second prevailing idea was that victims and others affected by crime ought to be more involved in the response to crime, and that that response ought to be informed by restorative principles. A third idea was that government agencies, including police, should be more responsive to the needs of local communities. The specific manifestation of this idea in policing has been the community policing movement.

At the local level the groundwork for reform was laid by the philosophy of community policing. That philosophy encouraged the development of a Community Consultative Committee in Wagga Wagga. The committee called for the introduction of beat policing which, in turn, encouraged much greater consultation and cooperation between police and other agencies in the city. Greater cooperation between schools and police, in particular, prompted a reassessment of the role of police in dealing with young people. In this way, developments at the local level prepared the ground for the development of a new model of juvenile justice which would combine principles of diversion with principles of victim-offender reconciliation. Given the importance of these local initiatives in this sequence of events, it is ironic that the final impetus to develop the Wagga model came from head office, while the model's central process was imported from overseas.

The final impetus to develop the model was an expression of concern from the office of the regional commander. The ratio of cautioning to court appearances for young people apprehended by police in the Wagga patrol was considered to be too low. As the Wagga Patrol Commander put it, the staff officer in the regional office:

⁹ Terry O'Connell to Phil Gooley, 17 July 1992

was one of the fellows that said to me, "You understand, Mr Wales, that only eighteen percent of your juveniles are getting the benefit of a caution?". And that alarmed me, because I didn't believe that that should be so. And I did something about it - with Terry O'Connell and his system.

The staff officer had miscalculated slightly. The rate of cautioning as against court was a little higher - twenty-three percent, not eighteen. But that was still a very low rate. Changing this situation was not quite as straightforward as the Patrol Commander suggests. In order to increase the rate of diversion in Wagga Wagga, the head of the beat police first had to ascertain why police in the patrol were loathe to divert young people from court. If this was because police considered the current cautioning process inadequate, some alternative process would have to be devised or imported. As it happened, the alternative process was imported rather than devised. It was imported from New Zealand, via police headquarters in Sydney - and not by a sworn officer.

During October 1990, the first of several Australian missions to study the impact of New Zealand's *Children, Young Persons and their Families Act, 1989* had been undertaken. John McDonald, adviser on juvenile justice to the New South Wales Police Service, had travelled to New Zealand with an officer from the Police Service, a member of the Police Minister's staff, and the head of the state's Public Interest Advocacy Centre. Impressed by what he saw, McDonald co-authored a paper entitled *Can It Be Done Another Way?*. It suggested alterations to the state's juvenile justice system. In particular, it suggested that the Family Group Conference process could be used by police for dealing with a large proportion of cases involving young offenders. The Police State Executive Group - the Commissioner and Assistant Commissioners - endorsed the proposals of the report when it was completed in November 1990.

The report was subsequently circulated widely to relevant agencies and individuals. It first reached Terry O'Connell in his capacity as Deputy President of the New South Wales Police Association. The idea was that the Association might consider the ramifications of the report's proposals. It was in his capacity as head of the Wagga Wagga beat police, however, that O'Connell saw a more immediate application for the family group conference process. Accordingly, he invited John McDonald to Wagga Wagga in July 1991 to meet with police and with members of the Community Consultative Committee. McDonald also met with a group of academics and legal and welfare professionals during his visit. Several of the academics saw the potential of the proposed scheme to translate social theory into practice. In particular, they noted similarities between the principles of family group conferences, and principles outlined in a recently published book, *Crime, Shame and Reintegration*.

In that book, Professor John Braithwaite of the Australian National University had argued that there could be more constructive processes for responding to crime than those currently employed by modern formal systems of justice. He was critical of processes designed primarily to stigmatise offenders, suggesting that such processes were premised on a flawed explanation for why people do or don't commit crime. Braithwaite argued, instead, for processes designed to reintegrate both victims and offenders back into the community in the wake of a crime. The family group conference, originally developed by Maori people, was a fine example of such a

process. From the academic perspective, the proposals had an additional attraction. A model of juvenile justice built around family group conferences presented an unusually good opportunity for an interplay between sophisticated theory and innovative practice. One could be tested against the other.

Members of the Community Consultative Committee and some police also expressed interest in McDonald's proposal. They saw the potential for a program which increased the rate of diversion from the official system, which also addressed victim's needs, and which was in harmony with some key principles of community policing. A sub-committee of the Community Consultative Committee agreed to compare Family Group Conferences and Community Aid Panels with the current offerings of the juvenile justice system. Marie Thompson and Terry O'Connell travelled to New Zealand to study changes in juvenile justice there since the introduction of the 1989 legislation. Both returned convinced that the development of a model using family group conferences could greatly improve the official response to crime in their city.

But they faced a political obstacle in Sydney. Another process, known as the community aid panel, was being proposed as a solution to problems of juvenile justice in New South Wales. Then Premier Greiner had apparently been convinced of the value of community aid panels by a central coast magistrate who had been involved with a panel in his district. The principles of the panel were simple enough. A community aid panel aimed to divert young offenders from the formal court system. It offered a caution, much like the traditional Sergeant's caution, and sometimes also imposed conditions or tariffs such as community service. Unlike the traditional Sergeant's caution, the panels involved professionals from several agencies. The underlying dynamic was essentially the same, however. State officials focussed on the failures or needs of an individual offender. Addressing those failures or needs, it was hoped, would reduce the likelihood of reoffending. Certainly, the Premier was convinced.

Local practitioners, however, were sceptical. On the basis of what they had seen in New Zealand, both Marie Thompson and Terry O'Connell considered that family group conferences were superior to community aid panels in several respects. Family group conferences focused on the incident rather than the offender. They involved the victim. They involved other people affected by the incident. They were potentially less bureaucratically complicated than panels. Participants, rather than officials, could decide on a tariff if they felt the imposition of a tariff was necessary. Compliance with agreements would be more likely if participants themselves designed and agreed on the conditions of agreements, rather than having them imposed. Police would also be more likely to refer cases to a process that addressed the needs of victims and other people affected, rather than just addressing the needs of offenders and officials. And there were also good theoretical reasons why a well-coordinated program of family group conferences should reduce the total rate of reoffending. The family group conference was a process, then, that seemed primarily designed to meet the needs of local communities rather than the needs of public officials.

After consultation with her fellow committee members, Marie Thompson wrote to the newly appointed Police Commissioner Tony Lauer, informing him that the Community Consultative Committee had approved the development in Wagga Wagga of a juvenile

justice model using family group conferences. This put the Commissioner in a quandary. He was faced with members of a police patrol and a Community Consultative Committee who had done exactly what his recently retired predecessor John Avery had long advocated. They had convened, consulted and researched, and had now produced a constructive proposal, which they hoped to implement in their city. Unfortunately, Police Minister Pickering had already followed his Premier's lead on the issue of juvenile justice reform. Community aid panels were to be the centrepiece of the state government's reforms to juvenile justice. Family group conferences apparently conflicted with that vision. As relations between the newly appointed Commissioner and the Police Minister were already tenuous, the issue was not taken further in Sydney. Chief Inspector Wales received a memorandum advising that police in the Wagga Wagga patrol were to have nothing to do with family group conferences.

Kevin Wales was now in a quandary. The realities of state government decision-making processes were in direct conflict with the rhetoric of community policing. Wales had asked his beat police to improve their system for dealing with cases involving young offenders. His officers and the Community Consultative Committee had designed an apparently workable system for his patrol. Now they were being told that community aid panels were politically popular in Sydney, and were thus the only option available to the citizens of Wagga Wagga if they were not satisfied with the current system of cautions, courts, and detention.

Thompson and other members of the Community Consultative Committee took their case to the local media. This local pressure helped the Patrol Commander to take a principled stance and resist the pressure from Sydney. He allowed the beat police to proceed with their plans. Terry O'Connell found an entirely legitimate means by which family group conferences could be convened under existing conventions, legislation and administrative guidelines. Conferences could be convened in much the same way as traditional police cautions. The Commissioner's instructions on cautions made limited use of the discretion of police guaranteed under common law. Following an initial investigation, and where guilt is admitted, police have the discretion to administer an official caution rather than refer a matter to court. The idea now was that, rather than asking the offender and their parents or guardians to be talked at by a sergeant, police might instead invite all of the people affected by an incident to resolve the issue themselves. Terry O'Connell was now faced with a question of social psychology: Under what circumstances would his colleagues refer a greater proportion of cases to a cautioning program?

To answer this question, O'Connell surveyed around fifty of his colleagues. The survey revealed unanimous dissatisfaction with the current juvenile justice system. All of the respondents thought that young offenders were not being made to take responsibility for their actions, that current responses to juvenile offending largely ignored victims, that families of young offenders frequently showed no apparent interest in their child(ren), that young offenders were contemptuous of police, and that the whole community suffered from the effects of juvenile offending.

Despite this deep dissatisfaction with the current system, the proposed introduction of family group conferences was greeted with caution and scepticism. Local police

nevertheless agreed to a trial of the proposed scheme once O'Connell, who was familiar with industrial negotiations, had asked them to consider a series of propositions. His colleagues agreed: that police are the key players in the initial intervention for a transgression of the law; that the nature of an initial intervention will strongly influence whatever process follows; that the decision to caution or to send a young alleged offender to court is generally decided by the nature of this initial intervention; that victims and police are generally unimpressed with the outcome of court cases for young alleged offenders. Accordingly, police would support any means by which the impact of a police caution could be increased without violating the rights of the young person concerned. They would also support any process that involved victims without violating their rights. They agreed that such a process might produce a better outcome for young offenders and their families. The process might, therefore, also represent a better outcome for police.¹⁰

The officers surveyed accepted that a new system of juvenile cautioning should be introduced, and that it would be based on the family group conference process developed in New Zealand. The aim of the new system would be to "maximise the impact of juvenile cautioning". The new system would thus be called an "effective cautioning scheme". No new legislation would be required, nor any new guidelines, other than at the local level.

Terry O'Connell was then faced with task of designing a format for these "effective cautions". They would be closely modelled on the New Zealand family group conferences, but would be simpler. The design of family group conferences in Wagga Wagga was also influenced by the format of crime prevention workshops in schools. Instead of asking workshop participants to assume the perspective of people involved in a hypothetical incident, the conference coordinator would be asking people involved in a real incident how that incident had affected them.

In August 1991, O'Connell convened his first family group conference in Wagga. He invited the victim of a motorcycle theft to the seminar room at district headquarters in order to discuss the matter with the offenders and their families. The victim took some persuading, but eventually attended the police station. He was furious about damage to his bike and the effrontery of those who had taken it in the first place. He was seeking retribution. An hour later, he and the offenders left unscathed. They had arranged for the repairs, and were discussing their mutual interest in bikes. This was an easy case.

When local high school students caused several thousand dollars worth of damage to a car-wash business during their end of school celebrations in October, however, matters looked a little more complicated. Following initial investigations and straightforward admissions of guilt, two meetings were convened. The first occurred at the high school, and led to the election of a group to represent all of the students involved in the incident. The second meeting was held at the car-wash, and was attended by students, families, teachers, the owner of the business and an employees. Agreements for compensation - partly monetary, partly involving unpaid work - were easily

¹⁰ A more detailed description of these negotiations is provided in D.B. Moore & T.A. O'Connell "Family conferencing in Wagga Wagga", in C. Alder & J. Wundersitz, *Family Conferencing and Juvenile Justice: The way forward or misplaced optimism?*, Canberra: AIC, 1994

reached. The parties to the agreement were even more impressed by the process itself than by that positive outcome. The incident and its aftermath received publicity not only in the local media, but also in Sydney.¹¹ The credibility gap was crossed at this point. Sceptical local police conceded that the "effective cautioning scheme" was capable of producing constructive outcomes.

By March of 1992, the new model was up and running. Terry O'Connell and the two other sergeants from the beat police were coordinating conferences. The objectives of the model were formalised in that month. The "effective cautioning using family group conferences" had seven formal objectives: These were: (1) to insure that the young offender understands the seriousness of his/her offence; (2) to minimise the opportunity of the young person re-offending; (3) to provide the young offender with an opportunity to accept responsibility for his/her offence; (4) to ensure that family and significant others are made accountable; (5) to provide the victim(s) with some input into the cautioning process; (6) to improve the opportunity for victim restitution or compensation; (7) to provide police with an opportunity to contribute in a significant and satisfying way to the processing of young offenders.¹²

In order to ensure that these objectives were sought collectively, the beat police established a review committee or "adjudication panel" to review each juvenile justice case that came before them. At the end of each week, a committee of senior sergeants would meet and consider all summary matters for which the preliminary investigation had been completed. Where guilt had been admitted, the review committee could opt to divert the case from court. But rather than just diverting cases to the traditional Sergeant's caution, they now had the option of diversion to a family group conference. So the Wagga model involved a dual procedural change. First, the introduction of family conferencing was a significant procedural change within the cautioning process. Second, the establishment of the review committee was a significant change at the gateway to the formal system. It was a significant change to the way in which the decision to send a case to court or caution was made. The effect of this dual procedural change was dramatic.

In the year 1989/90, 23% of young people apprehended by police had been dealt with by way of caution. This had risen during the following year, 1990/1991, to 44%. Furthermore, the number of total police interventions involving young people fell from 425 to 355. There are several factors that may have contributed to the increase in the rate of cautioning and the reduction in the total number of police interventions before the introduction of family group conferencing. The most significant would appear to be the influence of beat policing and of greater involvement in schools on police attitudes towards young people. Increased interaction between police and young people on a constructive basis appears to have affected the way in which police dealt with that minority of young people who are apprehended for transgression of the law.¹³

¹¹ "Students apologise for muck-up pranks" *Wagga Wagga Daily Advertiser*, 19 October 1991

¹² Cited in B. Coates, N. Couling, K. Dymond & J. Jamieson *Report on Support for Young Offenders who have been subject to the Wagga Wagga Police Cautioning Process*, Wagga Wagga: Charles Sturt University School of Humanities & Social Sciences, August 1992

¹³ Criminal Information Reports, Patrol Intelligence Officer, Wagga Wagga Patrol. cited in T.A. O'Connell "Wagga Wagga Juvenile Cautioning Program" in L. Atkinson & S. Gerrull (eds) *National Conference on Juvenile Justice*, Canberra: AIC, 1993, pp. 221-2

The introduction of the review committee and of effective conferencing using family group conferences had a yet more dramatic influence on both the rate of cautioning and the total number of interventions. Having fallen from 425 to 355 from 1989/90 to 1990/91, the total rate of police interventions involving young accused fell even further in 1991/92. Total interventions for that year were 186. Several factors may have contributed to this marked fall in the number of interventions between 1991 and 1992. It is possible: (1) that officers were anticipating the review of their intervention by a sceptical group of sergeants on the weekly review committee; (2) that officers were showing a heightened concern for the rights and needs of victims, and that this correlated with (3) a reduced concern with technical trivia; (4) that fewer offences against good order were being committed and/or detected. Certainly, police statistics show that of those 186 individuals who were subject to police intervention, 72% were cautioned rather than issued with a court attendance notice.¹⁴

The introduction of the family group conference as an option for dealing with juvenile justice cases can be seen as part of a broader package of initiatives guided by the philosophy of community policing. Nevertheless, the process itself seems to have had a significant effect on the nature of policing in the Wagga patrol. The introduction of the new process is associated with a substantial decrease in the total number of police interventions involving young people, and with a substantial increase in the number of those cases dealt with by way of "caution" rather than in court. The reason for the growing willingness to deal with a case by way of caution is almost certainly that "cautions" are usually now more significant interventions than was formerly the case. In sum, police are intervening less, but they are ensuring that more is done when they do intervene.

The sorts of outcomes achieved in conferences help to explain the growing willingness of the review panel to have cases dealt with by way of family group conference rather than court. The most significant outcomes of the process appear to be the constructive agreements reached by participants, the high rates of compliance with those conference agreements, high rates of victim participation and the general satisfaction of participants with the conference process. Some of these outcomes are easily measured, and will be discussed further in the report. Others have been related among police as individual anecdotes. The power of this culture of "war stories" should not be underestimated. The beat police consciously promoted the telling of "war stories" by making them readily available. From early in 1992, investigating officers were encouraged by conference coordinators to attend conferences and to observe outcomes. Their direct input to the conference process has usually been minimal, but they have been impressed by the experience of a cooperative and constructive response to the offending behaviour of young people.

The telling of war stories about the process, and the high degree of police involvement with the introduction of the new model, seem to have contributed to an acceptance of the model among police. This reform seems not to have caused the resentment and frustration so common when new duties and programs are simply imposed by senior or middle management on rank-and-file police. Police have been able to adopt the new model at their own rate, and to feel some ownership of that model. An important

¹⁴ *ibid.*

distinction must be reiterated here, however. The *model* has certainly been established as a significant modification of police practice, and one over which police feel they have some control. The family group conference *process*, however, is essentially controlled by the whole community of people participating in a conference, not by police. The next chapter considers the nature of that process in detail.