

INTRODUCTION

This report is concerned with a process known as the family group conference, the basic principles of which are simple. In the wake of an offence, and where guilt is admitted, victims, offenders, and their supporters are given an opportunity to meet in the presence of a coordinator or facilitator. Conference participants are encouraged to discuss the direct or indirect effects of the incident on them. They may then negotiate plans for repairing the damage and minimising further harm arising from that incident. The conference process is guided by participatory democratic principles. It seeks a just response to a harmful breach of social and/or legal norms.

The report analyses the dynamics of this process. Analysis is undertaken within an interdisciplinary theoretical framework that includes psychology, social theory, political science and moral philosophy. However, the report is not concerned with the conference *process* alone. It is also concerned with one particular administrative *model* within which that process is employed. The model in question was developed as a way of dealing with matters of juvenile justice. For the obvious reason that it was developed in the southern New South Wales city of Wagga Wagga, it has become widely known as the "Wagga model". The essential features of the Wagga model are that family group conferences are convened by police, and are convened within the same legal and administrative framework that allows for the formal cautioning of young people. There is, however, a fundamental difference between a formal caution and a family group conference. In the former, a state official focuses on the character of an individual and urges change. In the latter, state officials cede to the community of people most affected by an incident the authority for responding to that incident. In a conference, the focus is ultimately on the incident itself, rather than on the victim or the offender. Furthermore, a collective rather than an individual response is sought to that incident.

While a model in which police coordinate conferences is something new, the family group conference is not. The process is derived from Maori practice. As one of its foremost advocates, Judge Michael Brown, rightly reminds people: "We've been doing this for hundreds of years!". Not surprisingly, many indigenous peoples find aspects of the process familiar. But it is only recently that the conference process has been adopted and adapted in Australasia within the legal and social regulatory system derived from Britain. Various models employing the conference process are now emerging. These models are distinguished, in the first instance, by the department or departments that coordinate the process. In New Zealand, the department of social welfare has been the central coordinating agency for the conferencing program. In Wagga Wagga, in other parts of New South Wales and in the Australian Capital Territory, conferencing programs have been established by police. (Although at the time of writing, the Department of the Attorney General in New South Wales has been seeking to limit the role of New South Wales police in this program.) In South Australia, the court services department is responsible for convening family group conferences. In Western Australia, "multi-agency youth justice teams" have been established to trial family conferencing. And in Queensland, school guidance officers have begun to employ the process for dealing with serious incidents of victimisation within schools. Despite these differences, however, central agencies and local

reformers have had similar rationales for wishing to improve the juvenile justice system. These rationales include:

The desire to find a process that reduces rates of reoffending, and that, in the long-term, reduces the number of young people who reach the system of detention centres and jails.

This argument is very popular in principle. Few are prepared to experiment with properly evaluated programs in practice.

The desire to reduce the number of young people being sent to court.

There are, in turn, several reasons for wishing to reduce this number:

(1) The efficiency argument. Around two thirds of first offenders do not reoffend. Therefore, according to this line of argument, the valuable time of highly trained judges, lawyers, police, and other court officials is wasted on first offenders. Their cases do not warrant official intervention beyond the initial investigation. This argument is popular with many criminologists and with public officials who have budgetary responsibilities.

(2) The labelling theoretical argument. According to this line of argument, appearance before a court labels a young person as an offender, and the burden of this label actually increases the likelihood of reoffending. The evidence is at best mixed, but the argument has been popular.

The desire to extend to victims the right to participate in the process by which a community responds to an offence.

There is growing dissatisfaction with the almost exclusive focus of modern systems of criminal justice on the accused. Some politicians and state agencies have been happy to interpret the concerns of victims' rights groups as a call for tougher penalties, since echoing a call for tougher penalties may translate into additional votes or greater departmental funding. But victims' rights groups are not necessarily calling for tougher punishment. They certainly *are* calling for procedural justice, whereby victims play some sort of active role in proceedings.

The desire to extend to other people affected by an offence the right to participate in the process by which a community responds to that offence.

The immediate victim of an offence is not the only person other than the offender who is affected by that offence. Anybody with emotional ties to either victim and offender will be affected, as will any officials who are involved in the formal response to the offence.

The desire to find an alternative process to both the traditional sergeant's caution and the court process.

Many police are disillusioned with both of these responses to juvenile offending, but in the absence of viable alternatives, they will continue to put large numbers of young people before the courts. Police do this largely in order to send a message - to their colleagues and to victims - that the matter in question is considered to be serious.

The relative worth accorded these various arguments has varied from one jurisdiction to another, from one agency to another, and over time within particular jurisdictions and agencies. The two key variables determining the worth accorded these arguments are (1) the department that is advocating procedural change, and (2) the point in the system at which the debate is being conducted. Policy officers in an Attorney General's department, for instance, will emphasise a very different set of rationales to that emphasised by educational practitioners.

Similar variables appear to influence the dynamics of the conference process itself. Thus, conference dynamics seem to be influenced by the philosophy of the department responsible for convening the conference. A conference coordinated by police or school guidance officers is likely to differ from a conference coordinated by officials from departments of social welfare, Attorneys General, or court services. And, secondly, conference dynamics seem to be influenced by the level in the system at which a program of conferencing is developed. A model developed locally is likely to differ from one imposed by a central agency.

The development of the Wagga model offers an interesting case study in the ways in which reform agendas are influenced by the agency promoting reform and by the level in the system at which debate occurs. Thus, the debate that led to development and implementation of the Wagga model was initially prompted within the New South Wales Police Service at the senior management level. Members of the State Executive Group endorsed a debate about juvenile justice reform during the final year of John Avery's term as Commissioner, which ended in March 1991. A similar debate was conducted at a local level in several parts of the state. In the Wagga Wagga patrol, many members of the local community other than police were involved in this debate. The debates conducted within and between government agencies were concerned with issues very different from those raised in debates at the local community level. But the differences have been more profound than that. The central and local debates have not just been concerned with different issues; they represent different views of the world.

This issue is raised here because it relates to the nature of this evaluation. Debate at the level of State politics frequently assumes the model of a scientifically guided society, in which experts locate problems and suggest solutions. Debate at the local level, in contrast, is informed by what has been called the ideal of a "self-guiding society". According to this model, the opinions of experts are consulted, but the aim is to reach mutually satisfactory arrangements through broad political debate, rather than to have solutions imposed by a central technical elite.¹ Debate surrounding the model illustrates both of these tendencies. As the Wagga model has received publicity, so it has received criticism. The nature of this criticism will be considered in more detail in

¹ C. Lindblom *Inquiry and Change: The Troubled Attempt to Understand and Shape Society*, New Haven: Yale University Press, 1990

the body of the report. Nevertheless, it is worth summarising here the main concerns, many of which have been advanced by people unburdened by facts about the theory and practice of the Wagga model.

First, various central government agencies and interest groups are united in their confident assertion that police lack the skills or wisdom to coordinate conferences. Those arguing along these lines seem to share the assumption that conference coordination is synonymous with "mediation". The assumption is false. There are some fundamental differences between mediation and conferencing - as those trained mediators who are coordinating conferences in South Australia and Queensland have been quick to recognise.²

Second, some criminologists and politicians have argued that police cannot be trusted with the carriage of the process.³ The stated basis of their claim has generally been a concern that police should not play the role of "judge, jury and executioner". In reality, police in the Wagga model do not play any of these roles, let alone all three. It has been a disturbing feature of the debate surrounding conferencing that inappropriate clichés such as this have been allowed to pass uncriticised as informed comment.

A third line of criticism has come from agencies such as the New South Wales Bureau of Crime Statistics and Research. This line of criticism concerns efficiency. The Bureau has argued that more than two thirds of young people who are apprehended and placed before the courts by police do not reoffend.⁴ This is an empirical fact. On the basis of this fact, it has been suggested that the convening of family group conferences may be inefficient and is, therefore, an inappropriate way of dealing with first offenders. The Bureau's claim is not wrong, but the measure of efficiency on which the claim is based is a measure defined solely from the perspective of courts administration. It is an exceedingly narrow measure of efficiency. It is not concerned with the adequacy, in human terms, of the court's response to criminal behaviour. Nor does it focus on the subsequent behaviour of anyone other than the accused. It is a measure that overlooks the behaviour, let alone the welfare, of other people affected by the incident in question.

When criticism of a program is based on one department's definition of efficiency, that criticism has assumed a model of a scientifically-guided society. According to this model, a technocratic elite best knows society's problems and is best able to supply appropriate answers. But there is a strong alternative model, deriving from an alternative political tradition. According to the alternative model of a self-guiding society, those most affected by any new program must be consulted and involved. This alternative model assumes that it is not possible to measure the appropriateness of any program without consulting a representative sample of the people most directly affected by it. And in criminal justice, those most affected are victims, offenders, their respective communities of care, and the officials who deal with the case. The opinions of a representative sample from all of these groups are essential to any full evaluation

² See, for example, Tim Goodes, "Family Conferences" in *Mediation News* 2 (3) 1994

³ Examples of these approaches can be found in R. White & C. Alder, eds, *The Police and Young People in Australia*, Melbourne: Cambridge University Press, 1994, and in the latter half of Alder and Wundersitz.

⁴ "Doubts over Youth Punishment Scheme", *Sydney Morning Herald*, 14 April 1994

of a justice program. In line with that philosophy, this report offers findings from a long process of consultation with many members of the Wagga community.

The report should be seen as part of a wider process of evaluation. It analyses the conference process, it allows participants to speak for themselves, it gives rank-and-file police a voice, and it offers a theoretical model to explain key aspects of both process and model. In addition to this qualitative material, the report provides as comprehensive a quantitative analysis as has been possible, given the available statistics. The results of this quantitative analysis are useful, but we are aware of its limitations. Of these, two are most obvious: (1) statistical analysis is confined to one patrol, and (2) it is confined to measures of recidivism. The reasons are as follows:

First, the nature of the pilot program was such that policing in Wagga since the introduction of family group conferencing could be compared only with policing in Wagga prior to the introduction of the new program. Other variables could not be controlled for. To do so will require a larger experiment, with more control over the collection of statistics. Second, the satisfaction of participants with the conference, and the honouring of conference agreements, have not been independently measured across the entire patrol for the whole period. These measures may be considered to be just as important as rates of recidivism. There are strong indications that participants have actually been more satisfied with the conference process than with alternative procedures, and that almost all conference agreements have been partially or completely honoured. Rates in excess of ninety percent have been measured for both indicators.⁵ Again, however, a larger trial is needed to test these measures in a methodologically rigorous manner.

The current evaluation may be compared to a standard "phase two" trial by which any new drug or procedure in medicine is evaluated. In the medical model, a preliminary or "phase one" trial tests for "toxicity". It aims to determine, as far as is possible, that the procedure in question is at least no worse than the existing alternatives. (In this case, the New Zealand experience provided evidence that the conference procedure is not "toxic", and indeed, may be highly beneficial. In that sense, the New Zealand experience may be counted as a phase one trial and evaluation of family conferencing.) A phase two trial then seeks to further test and improve the procedure so that it works as well as possible - consistent with all available theory. Only then is the procedure subject to the third phase of testing involving a large, randomised trial. This report can be read as the summary of a phase two trial and evaluation.

The Wagga pilot program and evaluation was to have been followed by a larger, phase three trial of the program in New South Wales. It had been hoped that up to fifteen police patrols might be involved in that trial. People deemed eligible and willing to participate would be randomly assigned to either the old "treatment" - the court - or the new "treatment" - a family group conference. The funding to begin this trial in 1995 had been made available, rank-and-file police in the relevant patrols were willing to proceed, and the key researchers had designed the research methodology. Despite earlier expressions of commitment to program evaluation, however, senior police

⁵ The chief limitation here being that these figures were gathered only from conferences convened by Terry O'Connell

opposed this phase three evaluation. The Assistant Commissioner responsible for Education and Training, the Deputy Commissioner, and the Commissioner of Police refused to allow a large trial to proceed. Their official reasons remain unclear.

A phase three trial is now to proceed on a reduced scale in the Australian Capital Territory. The trial will focus on the results of intervention for three categories of offence. It will seek to compare the effects of intervention involving a court appearance with the effects of intervention involving a conference. Key indicators for the evaluation include the costs of both forms of intervention, the rate of victim participation, the overall rate of participant satisfaction, and the degree of procedural justice.⁶ These indicators are considered no less important than the more familiar indicator of the rate of subsequent offender reappréhension, which will also be measured in the Canberra trial.

The conferences that are to be evaluated in the Australian Capital Territory are convened by members of the Australian Federal Police. Their program is based on the Wagga model. Conference coordinators in Canberra have been trained according to the manual, *Convening Family Conferences*, a copy of which is provided as an appendix to this report. The manual has drawn on ideas arising from the research described in the report. Many of these ideas may be found in the body of the report, which is organised as follows:

The first chapter of the report describes the development and implementation of the model. It is concerned with the politics of policing - both inside and outside the service. It places the development of the model in the context of broader reform processes. In particular, it is concerned to explain how movements to divert cases from the formal justice system, and movements to acknowledge the rights of victims, have been accommodated within the rhetoric *and* the reality of community policing.

The second chapter presents excerpts from fourteen conferences convened by Terry O'Connell in Wagga during 1992 and 1993. In choosing conferences for transcription and analysis in the report, it was considered appropriate to avoid variations in the style of coordination, as this variable would have further complicated an already complex task. In all other respects, the conferences were chosen at random. Neither the senior researcher nor police attempted to nominate a "typical" conference or incident. The edited transcripts are reproduced here in order to convey to the reader some feeling for the format, dynamics and complexity of conferences. Of course, a good deal of the content of conferences is not conveyed in transcripts. Facial expressions, gestures, postures and vocal tone are not readily captured in print. Nevertheless, these less readily recorded factors in a conference may be as important as are those issues of conference content and format that the transcripts do manage to convey. (The sixth chapter, which deals with theory, considers these questions of communication further.)

The third chapter considers the opinions of conference participants. They were interviewed around six months after their conference, and were thus in a position to have reflected on its effects. Some of these participants had actually attended more

⁶ The latter indicator will be adapted from Tom Tyler's important work on procedural justice, *Why People Obey The Law*, New Haven: Yale, 1990

than one conference, and some offered, in addition to their personal perspective, a perspective informed by their profession - be that as teacher, youth worker, or lawyer. Some of those with dual personal and professional perspectives made very constructive suggestions - as did police who have been involved with the scheme. The voices of some of these police appear in the fourth chapter.

The fifth chapter offers a the detailed statistical analysis of official police interventions in Wagga Wagga. This chapter has been prepared by statistician Lubica Forsythe, whose exhaustive analysis covers all official police interventions involving young people in the Wagga patrol from 1990 through 1993. The essential findings of her statistical analysis are (1) that there has been none of the net widening predicted by critics of the scheme, and (2) that there appears to have been a significant reduction in the rate of reapprehension of those who - had they been apprehended prior to 1992 - would have been sent to court, but who, instead, attended a family conference. There are three major possible explanations for this reduced rate of reapprehension. The least plausible is that young people who attend family group conferences become more skilful at avoiding apprehension than do their counterparts who attend court. A second, somewhat more plausible explanation is that labelling theory is correct, and the mere fact of not having to appear before the court made this group of young people less likely to reoffend than their counterparts who attended court. More plausible than either of these explanations, however, is a third explanation couched in terms of the ability of family group conferences to meet the procedural, psychological and material needs of participants more fully than alternative procedures are able to do. This line of explanation suggests that the conference process is able to send a strong message condemning the behaviour, while nevertheless providing support not for both victim and perpetrator. This explanation suggests that the findings from Wagga Wagga are consistent with the theory of reintegrative shaming.⁷ That theory is discussed in the sixth chapter.

The sixth chapter of this report considers the broader practical and theoretical ramifications of the model in the light of conference transcripts, comments made by participants and other observers, and the statistical analysis. An important aspect of the Wagga model has been the opportunity for those involved in its development to discuss the model with colleagues in other agencies and jurisdictions. In the course of these discussions, various alterations to the model have been suggested, and some of these suggestions have been implemented. In addition, a great deal of work on an explanatory theory has been done. Discussions with colleagues in Australasia, North America, Southern Africa and Western Europe (including Britain) have contributed to the development of a plausible and reasonably comprehensive theory. This theory accounts for many aspects of the family group conference process itself, and also for other aspects of the model in which the process is employed.

The report concludes with a list of recommendations. These should be considered as part of a wider, ongoing debate. It is hoped that the report will be of interest to anyone concerned with the ways in which communities respond to harmful, illegal behaviour. It is also hoped that the report will better equip people to contribute to debates about

⁷ J. Braithwaite *Crime, Shame, and Reintegration*, Sydney: Cambridge University Press, 1989

the juvenile justice system. We hope to have described at least one way in which greater justice might be achieved within that system for all of those affected by crime.