YOUNG WOMEN AND THE CRIMINAL JUSTICE SYSTEM

A/Prof Christine Alder, Department of Criminology
The University of Melbourne

Paper presented at the
Juvenile Justice: From Lessons of the Past to a Road Map for the Future Conference
convened by the Australian Institute of Criminology
in conjunction with the NSW Department of Juvenile Justice
and held in Sydney, 1-2 December 2003
Introduction

In this paper I hope to identify some issues around the needs and interests of young women that need to be taken into consideration by those who are promoting the introduction of restorative justice practices into juvenile justice. In this paper I focus on family group conferencing.

Whether considering victims or offenders, there is very little research that considers the dimension of gender in the conferencing process or outcomes. Some consideration has been given to the appropriateness of conferences in cases in which women or girls are victims, particularly of sexual violence (eg Stubbs, 1997; Hudson, 1998). However, there is only one report of research findings on conferencing that considers the situation of young women as offenders (Maxwell, Morris, Robertson, and Anderson, 2002).

In the chapter from which this paper is drawn (Alder 2001) I draw upon research on girls experiences of juvenile justice more generally to suggest that there are issues that need to be acknowledged, researched and addressed if the promises of restorative justice are to hold true for young women. Three sets of concerns are outlined: 1) Community values, expectations and understandings about girlhood and their implications for decision-making in relation to girls’ behaviour; 2) Girls experiences of juvenile justice including issues of shame and self-harm, management of identity, and the need to establish trust; and 3) Juvenile justice workers perception that “girls are harder to work with”. Juvenile justice system research on each of these issues indicates that we cannot simply assume that boys and girls will experience conferencing in the same way or that the outcomes will be the same for boys and girls.

Before considering what a new policy or program might offer, we need to first consider the objectives we hope to achieve. In relation to young women in juvenile justice I have argued that our overall objectives should be about facilitating and enabling young women to be able to lead safe, secure and independent lives. They should enable young women to participate as citizens of their community, that is, to be able to participate and contribute to their community in meaningful ways that provide them with a sense of self worth. These are objectives that I have in mind as I consider the possibilities of family group conferencing for young women in juvenile justice.

What Might Family Group Conferencing Offer Young Women?

I would like to begin by noting that the theories and principles that form the basis for conferencing suggest that they have much to offer young women.

Young women in the juvenile justice system are keen to have more meaningful involvement in decisions made about their lives. It is clear from talking with young women in the juvenile justice system that they are very concerned to be able to “talk” with someone who genuinely cares for them and with whom they can work to change their life circumstances (Alder and Hunter 1999).

In relation to conferences in Adelaide, Jan Kitcher similarly found that co-ordinators uniformly felt that girls were able to express their feelings in conferences, and in fact observed that they were more eloquent than the boys. An indication of this was the observation that girls were more likely to argue about the outcome.

2. Community Involvement: Creating New Opportunities
The National Council for Research on Women in the United States (Phillips 1998) notes that “Partnerships among family, schools, community programs, and cultural organizations can provide opportunities for girls, and let them know that they are valued community members”. Potentially,
Group Conferencing with young women offenders might provide a mechanism for the involvement of a range of community agencies and services, outside of juvenile justice in the establishment of new opportunities for these young women.

3. Respect for Integrity and Dignity of the Offender
Young women who have committed a criminal offence find themselves particularly stigmatised in a culture in which being “bad” is inconsistent with expectations of femininity in a way that it is not necessarily inconsistent with understandings of masculinity for young male offenders. It is perhaps not surprising therefore, that young women in the juvenile justice system are particularly concerned that they are treated with respect and dignity (Alder and Hunter 1999). The principles of restorative justice which espouse maintenance of the integrity and dignity of the offender are therefore of interest to those of us concerned about the well being of young women in the juvenile justice system.

Issues of Concern

While in conferencing has the potential to offer much to young women in juvenile justice, current practice experience and research suggest that there are a number of issues that need to be addressed when conferencing is being considered.

1. Community Values and Expectations
Traditionally juvenile justice system responses to young women have been significantly influenced by members of the community other than juvenile justice personnel, in particular their family, teachers, social workers, and neighbours (eg Carrington, 1993; Gelsthorpe 1986). Consistently research the U.S., Britain and Australia found that decisions in relation to young women taken by all these parties reflected concerns about girls’ sexuality and their independence -their “passionate and wilful” behaviour (Alder 1998). As a consequence, research throughout the 1970’s and 80’s showed that young women in juvenile justice were often the subjects of more prolonged and intrusive interventions than boys.

We cannot assume that informal processing will necessarily be benign or neutral given the breadth of feminist research documenting the extent to which girls’ behaviour is judged, controlled and disciplined informally. Alternatives may simply reproduce such practices in the absence of the checks and balances of the formal court system such as public records and the prospect of appeal.

Community understandings of gender appropriate behaviour and appropriate response can be expected to affect not only the decisionmaking process, but also the outcomes of any such decision-making. Restorative justice might be about reintegrating the offender into a community that is not always the most welcoming of offending young women.

People attempting community integration projects for girls have indicated that community attitudes and responses present them with some of their greatest difficulties. In South Australia, the coordinator of a community work program, noting the difficulties her program had in placing young women, commented, “Young women referred with community service orders are often stigmatised in the community as being “very bad”…. there is greater acceptance in the community of offending by young males”. She found that workers needed to undertake more intensive networking to gain relevant and appropriate work opportunities for young women (Althorpe 1996:68)

Community understandings and reactions to them, are not trifling matters for young women trying to establish themselves in a community. Negative interactions with those in the community setting in which they have been placed may significantly affect the young woman’s successful completion of community based activities. In Queensland girls are twice as likely to be breached for non-
compliance with the conditions of a community service order (Beikoff 1996:20). Also in the US a higher proportion of girls than boys are institutionalized for parole and probation violations. Adult women offenders in the US are more likely than men to be breached for “technical parole violations”, that is breaches of conditions related their behaviour in the community while on parole, as opposed to committing a new offence.

In summary, what little evidence we have about women serving community based orders suggest that they have more difficulty successfully completing such orders. While at this point there is not a lot of research to draw upon to help us understand this situation, it does suggest that we have to think carefully about the form and nature of the expectations we place upon young women offenders in the community. It is probably the case that the placement of offending girls in the community will require considerable effort be undertaken to prepare not only the young woman concerned, but also the setting, including others in with whom she will be working.

**Considering Girls’ Experiences**

Girls offending is less accepted by the community and both their male and female peers, than it is for boys. Thus for girls’, their offending challenges their status and value as a “woman”, and thereby has significant negative implications for their sense of identity and sense worth.

1. **Shame and Self-Harm**

   In part as a consequence of this, and also because there is a tendency for young women to self-blame in any case, some girls feel guilt and “shame” about their actions in a way that makes it difficult for them to talk about their offending, as they might be expected to do in a conference. Some conferences require not only that the offender talk about their offending, but that they acknowledge “shame” and contrition. This process is one that would need to be handled very carefully for some girls for whom there may be a delicate balance between exhibiting contrition and remorse, and feelings of guilt and self-blame and self harm.

   Conferencing systems differ in the degree to which they expect to establish “shame”, or elicit expressions of contrition, as opposed to establishing outcomes. The implications of these differences for girls need to be examined.

2. **Managing Their Own Stories**

   It is not only their offending that girls may be reluctant to talk about in a conference setting. Managing their own life history, their “story”, is for some girls in juvenile justice an important part of a process of both self-protection and of establishing their independence and their self-sufficiency. Young women with more extensive experiences with juvenile justice and welfare become fed up with being asked about very personal issues by a seemingly never ending stream of workers. Privacy and their independence are highly valued by these young women and managing their own stories becomes a significant mechanism for asserting both of these. They become very careful about how much and what they tell, to whom and when.

   All of these actions may be understood by others as recalcitrance, “being difficult”, or of reflecting a lack of humility, or of a failure to show remorse. Again, conferences differ in the significance they give to examination the offenders personal circumstances and background. The ramifications for girls of these differences warrants investigation

3. **Establishing Trust**

   A not unrelated issue for some young women in the juvenile justice system is the issue of trust. Who they will talk to and what they will talk with them about is related to the extent to which they believe they can trust a person. Given the backgrounds of many of the young women, they are
justifiably cautious about trusting people to understand them or to do the right thing by them. The expectation that a young women will be forthright and honest when confronted by a group including strangers, no matter how well intentioned, may be problematic in these circumstances. The establishment and maintenance of “trustworthiness” needs to be an acknowledged and a key objective of processes involving young women in juvenile justice.

“Girls Harder to Work With”

1. Attitude

In general those working with delinquent youth find girls more difficult to work with than boys (Baines and Alder 1996). If experienced workers find this to be the case, then it is worth considering the reasons for this before involving other folks in key decisions.

In general youth worker describe girls as “verbally aggressive”, “hysterical”, “manipulative”, “dishonest” and “untrusting”. Boys, on the other hand, are described as “honest”, “open”, “less complex” and “easier to manage”. Workers are also frustrated by their own lack of experience and the lack of suitable service options for them to draw upon in addressing the girls problems.

This is an observation that needs to be better understood and addressed, or its ramifications for the process of conferences needs to be further examined.

ii. Concerns regarding sexuality and emotionality run through youth workers’ reasons for why they find girls more difficult to work with. Many young women in the juvenile justice system have been, and may be in a situation where they continue to be, physically and sexually abused. Increasing public acknowledgment and awareness of this situation has meant that in recent years it has become one of the generally understood explanations for young women’s “troublesome behaviour”.

While there are some problems with this situation (Baines 1996). At the same time, it is nevertheless the case that many young women in the juvenile justice system have been physically and sexually abused, and that many of them have not disclosed this fact, or the name of their abuser, to anyone. One would want to avoid the situation where a conference involved a girl’s abuser participating in the determination of her penalty for an alleged offence. This clearly raises issues that need to be acknowledged and addressed in relation to how decisions are made about the participants in conferences involving young women who are offenders.

Some have argued that a strength of the conferencing model is that it requires that the offender recognise and acknowledge that they have caused harm to a victim. The rhetoric of such models draw clear distinctions between victims and offenders. Recent feminist literature has challenged the form of this dichotomy, noting that women and girls are often both victims and offenders (eg Maher 1992). The framing of restorative justice practices such as conferencing in terms of victim awareness strategies becomes questionable when so many girls are themselves victims.

Further as noted above, a problem confronting those working with young women is not that these young women are not aware of the pain that they have caused or that they are not ready to take responsibility or blame for their actions, in fact, the problem is the reverse.

Girls and Conferencing Some Preliminary Research Findings.

Since first writing the chapter upon which this paper is based, Maxwell, Morris, Robertson, and Anderson (2002) produced a paper that presents some preliminary findings regarding gender differences in experiences of conferences in New Zealand. In general, girls were less likely than boys to feel that they were consulted about the process or that they were participants in the process.
Their responses to the victim were “less positive” than boys. For example 51% of girls, compared to 75% of boys indicated they could understand how the victim felt, or that they were able to make up for what they did (68% of girls compared with 81% of boys). In terms of the responses to them in the family group conference, girls (63%) were less likely than boys (77%) to feel that they were treated fairly, that they were treated like a trustworthy person (31% girls vs 50% boys), that they were shown forgiveness (49% girls vs 61% boys), or that people were giving them another chance (60% girls vs 83% boys).

The conclusion from these preliminary research findings is that “…these data indicate that we cannot assume that a family group conference will provide a similar experience for everyone…we need to know about what is really going on.” (Maxwell, Morris, Robertson, and Anderson 2002:11).

**Conceptual Dilemmas**

While there is some research evidence suggesting the need to give consideration to the form and nature of conferencing for young women, there are also some conceptual issues that need to be addressed if we are to develop restorative justice practices that address the needs and interests of young women.

1. **“Accountability”**. In general this term is used in relation to holding the young offender accountable for her actions. I am concerned about the level of community accountability. The history of the outcomes of decisionmaking in relation to young women’s troublesome behaviour across a range of “community” organisations including juvenile justice, welfare, mental health, medicine and education, indicates that there are issues of equity and proportionality that require some level of community accountability, or decisionmaking accountability.

2. The term **“community”** is central to the notion of restorative justice, and many other commentators discussed the problems with this concept as it is used in these circumstances. One aspect of this discussion that is raised for me by the situation of young women, is the need to acknowledge that there is not a single, unified community to which everyone relates or of which everyone is a member. Young women who have left home and having been living “on the streets” for some time, have often developed a “community” of their own. Often in order to survive, they have a relatively loose association of peers and others who they look to for protection, shelter, conversation, and advice is the “community” with which they feel most closely.

For some young women, this is the community that is more welcoming and has been more supportive and protective than the one to which juvenile justice and welfare want to “reintegrate” them. In fact, it is this second community that from the young women’s perspective has harmed them, and continues to harm them. They feel, and in fact, have been ostracized, caste out of that community. As we talk about “community” we need to be able to recognize these diversity of communities and the dilemmas their often contradictory expectations pose for young women.

3. **“Harm”** is another concept that is often used in statements of restorative justice. In general talk of “repairing harm” refers to either the harm suffered by the community or the victim. The situation of young women draws our attention to the fact that we also need to acknowledge and address the “harm” caused to the offender, perhaps especially by the community. In particular, young women with extensive juvenile justice and/or welfare backgrounds, generally have long experience of being ostracized and stigmatized in a wide variety of both direct and indirect, personal and more general ways by organizations and individuals in the community. If we are interested in “reintegrating” them, this is going to have to both acknowledged and addressed. This requires addressing aspects of the community’s actions that cause ongoing “harm” to young women.
4. “Repairing the harm”. What does “repairing” mean? In the case of young women, it is evident that the “harm” caused to the “community”, that is, parents, teachers, social workers and neighbors, is often not so much the criminality of her actions as it is that her actions contravene dominant understandings of acceptable feminine behavior. Does repairing the harm in this case, entail reinforcement of the communities traditional expectations of young women? Does this mean that restorative justice is by its very principles, inherently conservative on these dimensions?

On the other hand, is there room for the processes of restorative justice, to repair the harm done to young women by conservative expectations, by challenging traditional expectations and understandings of what it is to be a “good girl”? At this point, most of these concerns remain unresolved, but their resolution has significant implications for the possibilities that restorative justice does, or does not, offer young women.

Conclusion

Overall the principles of some restorative justice models suggest potential benefits for young women in the juvenile justice system. Particularly worthy contributions would be the potential for community change and development, and the possibility for respecting young women’s contribution to decisionmaking regarding the most appropriate outcome for their offending behaviour. On the other hand, if young women’s needs and interests are to be addressed by restorative justice practice, they have first to be acknowledged. Their omission thus far from restorative justice rhetoric in relation to juvenile justice does not inspire confidence that young women’s interests will be adequately addressed in practice. Of particular concern is the possibility that unfettered community values will result in young women being more disadvantaged by the outcomes than they would have been by a system with a more formal process of review and appeal. There remain a number of unanswered questions about restorative justice practices in relation to young women offenders. Before we can feel comfortable about the use of restorative justice practices with young women in the juvenile justice system, these questions and the issues raised in this paper, need to acknowledged and addressed. Most urgently, the practices of restorative justice need to be evaluated and monitored in regard to their implications for young women.
References


Department of Youth and Community Care (1999) What About the Girls? Young Women’s Perceptions of Juvenile Justice Programs and Services. Brisbane: Department of Youth and Community Care


