

# ***S A J J***

## ***South Australia Juvenile Justice Research on Conferencing***

**Technical Report No. 1  
Project Overview and Research Instruments**

by

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**December  
1998**

# SAJJ Technical Report No. 1

## Project Overview and Research Instruments

### Abstract

This report describes the South Australia Juvenile Justice (SAJJ, pronounced "sage") Research on Conferencing Project. Part I gives an overview of the

- legal and organisational context;
- preliminary research leading up to SAJJ;
- research questions;
- time frame and source of funding;
- ways the project differs from the Reintegrative Shaming Experiment (RISE);
- general design considerations;
- theoretical aims;
- sampling plan;
- data gathering plan;
- conference numbers (estimated and actual);
- procedures in conducting interviews with the young people (offenders) and victims; and
- features of the SAJJ-98 sample

Part II describes the six instruments used in Phase 1 of the project (March-July 1998), providing background material and notes on how each instrument was designed, the source and rationale of question items, and what problems (if any) emerged in using each instrument. The instruments, which are shown in Appendices 1-6, are the

- Youth Justice Coordinator (YJC) survey;
- Police Youth Officer (PYO) survey;
- Briefing-Observational Protocol (the BOP);
- Young Person (YP) interview;
- Victim interview; and
- Victim no-show interview (for victims who did not or could not attend the conference).

The aim in assembling this document is both to describe the SAJJ project and to assist others who plan to conduct research on conferencing and restorative justice processes more generally. Daly, as Project Director, wrote the report; it was reviewed and edited by all the project's 1998 research assistants. Three researchers -- Venables, McKenna, and Mumford -- began work on SAJJ in January and February 1998, and they had key roles in establishing office procedures, preparing items for and revising the research instruments, and conducting the observations and interviews in Adelaide from February through June 1998. Christie-Johnston began work on the project in May, assisting Daly in the Port Augusta phase of the research in May and June 1998.

When citing this report, please use:

Daly, Kathleen, Michele Venables, Mary McKenna, Liz Mumford, and Jane Christie-Johnston (1998) *South Australia Juvenile Justice (SAJJ) Research on Conferencing, Technical Report No. 1: Project Overview and Research Instruments*. School of Criminology and Criminal Justice, Griffith University, Queensland.

This report and appendices are on the Australian Institute of Criminology website at this address: [www.aic.gov.au/rjustice/](http://www.aic.gov.au/rjustice/)

Two hardcopy versions of this report are available: one with the appendices (in very limited supply) and one without the appendices. Those wishing to receive a copy of the research instruments should obtain them at the AIC website.

## Acknowledgments

### *in preparing this document*

In addition to the careful review and comments by the SAJJ researchers, I thank Lyn Hinds, Heather Strang, and Joy Wundersitz for their comments on an earlier draft, and Sgt Dave Wardrop for providing police documents. I also acknowledge and thank [Carto Graphics](#), Adelaide for granting permission to use the maps used at page 29 and 30 of this report.

### *in conducting this research*

The research depended foremost on the cooperation and goodwill of the conference coordinators, police officers, young people (offenders), victims, and their families. Many other key people are acknowledged in the body of the report.

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## Table of Contents

*Part I: Overview of the SAJJ project*

<i>Section</i>	<i>Topic</i>	<i>Page</i>
<u>1</u>	<u>Legal and organisational context</u>	<u>5</u>
<u>2</u>	<u>Preliminary research leading up to SAJJ</u>	<u>9</u>
<u>3</u>	<u>Research questions</u>	<u>10</u>
<u>4</u>	<u>Time frame and source of funding</u>	<u>11</u>
<u>5</u>	<u>Comparison of SAJJ with RISE</u>	<u>11</u>
<u>6</u>	<u>General design considerations</u>	<u>12</u>
<u>7</u>	<u>Theoretical aims</u>	<u>13</u>
<u>8</u>	<u>Sampling plan</u>	<u>14</u>
<u>9</u>	<u>Data gathering plan</u>	<u>19</u>
<u>10</u>	<u>Conference numbers (estimated and actual)</u>	<u>19</u>
<u>11</u>	<u>Interviews of young people (offenders) and victims</u>	<u>22</u>
<u>12</u>	<u>Selected features of the SAJJ-98 sample</u>	<u>24</u>
	<u>Map 1: South Australia</u>	<u>29</u>
	<u>Map 2: Adelaide and surrounding area</u>	<u>30</u>

<i>Table</i>	<i>Title</i>	<i>Page</i>
<u>1</u>	<u>SAJJ eligible offences</u>	<u>17</u>
<u>2</u>	<u>Distribution of offences in metro Adelaide and northern tier region</u>	<u>18</u>
<u>3</u>	<u>Estimated conferences from SA FY-97 data and actual SAJJ-98 conferences set, completed, observed</u>	<u>20</u>
<u>4</u>	<u>Files allocated and SAJJ-eligible offences</u>	<u>22</u>
<u>5</u>	<u>Interviews with the YP offenders and victims</u>	<u>23</u>
<u>6</u>	<u>SA FY-97 and SAJJ-98 comparisons</u>	<u>25</u>
<u>7</u>	<u>SAJJ-98 sample, selected features:</u>	<u>27-28</u>
	(a) offence type, (b) victim-offender relationship,	
	(c) victim injury and economic loss,	
	(d) place of incident, (e) gender and primary YP/victim relations	

*Part II: Research Instruments*

<i>Section</i>	<i>Topic</i>	<i>Page &amp; Appendix No.</i>
	<u>Conceptual starting point</u>	<u>31</u>
	<u>YJC and PYO surveys (background)</u>	<u>34</u>
<u>1</u>	<u>Youth Justice Coordinator (YJC) survey</u>	<u>35 and No. 1</u>
<u>2</u>	<u>Police Youth Officer (PYO) survey</u>	<u>36 and No. 2</u>
<u>3</u>	<u>Briefing-Observational Protocol (the BOP)</u>	<u>38 and No. 3</u>
<u>4</u>	<u>Young Person (YP) interview</u>	<u>45 and No. 4</u>
<u>5</u>	<u>Victim interview</u>	<u>51 and No. 5</u>
<u>6</u>	<u>Victim no-show interview (for victims who did not or could not attend the conference)</u>	<u>54 and No. 6</u>
	<u>A brief conclusion</u>	<u>55</u>
	<u>References</u>	<u>56</u>

## Part I: Overview of the SAJJ Project

### 1. Legal and organisational context

In South Australia (SA), conferencing is part of a statutory scheme, which was established under the *Young Offenders Act 1993*.<sup>1</sup> A "minor" criminal offence committed by a "juvenile" (a person aged 10-17 years) can be referred to a conference by a police officer. Magistrates (or judges) can also refer court files to a conference, as a check on police discretion. The *Young Offenders Act* does not specify which offences are considered "minor," and over the years, the SA Police Department (SAPOL) has developed administrative orders to guide the referral decision. The most recent, General Order 8980, issued in February 1998, sets forth these general guidelines for cases that would be suitable for a family conference (p. 21):

- any offence for which the youth has already received a formal police caution;
- any offence the officer considers desirable for a victim to participate in a family conference; and
- any offence (or series of offences, but not exceeding three) that result in a loss or damage to property that is greater than \$5,000 but less than \$25,000.<sup>2</sup>

Even if a youth has previously been charged in court, s/he can be considered for a family conference.

A police officer may use discretion in deciding what is "minor" based on the circumstances of the offence, the youth's involvement in the offence, the youth's personal situation, the victim's views and how much the victim suffered, the nature and extent of the youth's

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<sup>1</sup> The *Act* drew from recommendations by a Parliamentary Select Committee on the Juvenile Justice System, established in 1991. That Committee dealt with the recent history of juvenile justice in SA, which shifted from a "welfare model" orientation (Juvenile Courts Act of 1971) to one that incorporated more elements of procedural rights and formality (the "justice model" as legislated in the Children's Protection and Young Offenders Act of 1979). From 1979 to 1993, referrals were made by Screening Panels (composed of a police officer and social worker), who could direct that (a) no further action was necessary, (b) a police caution should be administered, (c) the case should go to a Children's Aid Panel, or (d) the case should go to the Children's Court (as it was then called). Data for 1990/91 showed that the Screening Panel diverted 64% of cases to Children's Aid Panels and 36% to the Children's Court (Interim Report, Select Committee, 1992: 25). The rate of youth appearances in court varied little from 1979/80 to 1990/91, ranging between 16 to 20 youth per 1000 in the youth population (Interim Report, Select Committee, 1992:24; see also Wundersitz 1992). Data for the post-*Act* period (1994 to the present) on the rate of youth appearances in court have not been generated for comparison. Over the 4-year period (1994-97) court referrals have been 42 to 49% of official police apprehensions; formal cautions, 34 to 39%, and family conferences, 16 to 18% (Office of Crime Statistics 1998: 22). These percentages cannot be compared directly with those for the time period before the introduction of conferencing.

<sup>2</sup> "Minor" offences that can be handled with a formal caution or a conference are defined more precisely to include: any summary offence; any minor indictable offence, where the penalty is (i) imprisonment for not more than 5 years or (ii) imprisonment for not more than 5 years for dishonesty offences involving \$25,000 or less; and breaking with intent to commit dishonesty offences involving property of \$25,000 or less (SAPOL General Order 8980: 13).

previous offending, and the "public interest." The nature of the offence and the youth's previous contacts with the criminal justice system are the major discretionary criteria. Because the police have discretion in interpreting the *Act*, "minor offences" that are referred to conference can be quite serious matters, including sexual assaults and robberies.

In Adelaide, there are 12 to 14 specialist Police Youth Officers (PYO's) in SAPOL's Young Offender Unit, whose duties include the referral of files to family conference and participation in the conference itself.<sup>3</sup> The PYO's are attached to about 8-10 offices in the metropolitan area, and they have coordinating responsibility for the state's 9 country divisions. In the country town areas, there are no specialist PYO's. Rather the officer in charge of each police station acts as the PYO.

PYO's are responsible for overseeing the juvenile justice system practices in their area. As part of their general duties, they administer formal cautions (and coordinate the activities of other cautioning officers), act as liaisons with community groups, develop methods of improving youth-police relations (such as youth camps), monitor young offenders, and adjudicate reports of offences to determine whether the case should go to court or be diverted from court. In preparing for a conference, PYO's are to familiarise themselves with the offence, the youth, and the victim; they are to find out whether compensation is being sought, and if so, how much; they are to contact the investigating officer for views on undertakings, and they should know what penalties the Youth Court might impose in a similar case. Their role in the conference is to provide a summary of the offence and if the victim is not present, to provide any relevant information about the victim; they are to listen to participants, answer questions, and participate in the process of deciding the outcome.

Ideally, in a conference, an offender takes responsibility for the offence, the victim describes the impact of the offence effectively to the offender, and all conference participants discuss and reach consensus on what the offender should do to recompense the victim and, if necessary, the community (see Office of Crime Statistics 1996; Wundersitz and Hetzel 1996 for more detailed descriptions of conferencing practices in SA).

Conferencing is today considered one form of "restorative justice" practice, whose principles include offenders repairing harms done to victims, victim-offender reconciliation, and democratic decision-making by the parties involved in a crime, not just state officials. However, when conferencing was first introduced in South Australia (and in New Zealand in the 1980s), the concept of "restorative justice" was then not widely used.

One potentially contentious area for the PYO's and YJC's is the police officer's role in deciding the outcome. While a PYO is instructed to "agree with the views of the other participants when they reach a consensus" and to "make every effort to negotiate the outcome," the outcome is "not regarded as validly made unless the youth and the [PYO] concur on the decision" (SAPOL General Order 8980: 28). If an officer thinks that the

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<sup>3</sup> This description comes from SAPOL General Order 8980 (1998: 25-30); because the numbers of PYO's and departmental units have varied from 1996 to the present, I have used ranges rather than precise figures. It is important to emphasise that a study of *actual* police discretionary decision-making in referring files to conference (or court) has not yet been carried out in SA. Therefore, we lack rudimentary information on what kinds of offences are more likely to be referred to conference than to court; and what mix of offence characteristics and previous offending is used by the police in making these decisions.

"proposed outcome is manifestly inadequate, impractical, or inconsistent with the *Act*" (including a consideration of the "deterrent effect on the youth" of the sanctions), s/he can disagree with the outcome proposed. At a minimum, just two people must agree to the agreement: the young person (offender) and the PYO. If they fail to agree, the matter is referred to the Youth Court, where a magistrate (or judge) acts as the "referee" in deciding the outcome. The matter remains to be a family conference disposition, however. Although an apparent "police veto" is in place in deciding an outcome, statistics for FY-95 suggest that it is rarely invoked in a unilateral sense. Of the 1,880 cases disposed in that year, 41 (or 2%) involved the "youth disagreeing" or "electing Youth Court" (SA Office of Crime Statistics 1996: 86).

As established in the *Young Offenders Act* 1993, conferencing in SA is "the second level of processing in a three-tiered system" (Wundersitz and Hetzel 1996: 115). The first or "front level" is police cautions. The least serious form of caution is an "informal caution," a warning given by an officer in the street, but not recorded as an official police action. The more serious form of caution is the "formal caution." This is issued when an offence is "more than trivial," the youth has already received an informal caution, and the offence has no victim; or if there is a victim, the value of the property lost or damage caused is not greater than \$5,000 (SAPOL General Order 8980: 15). As part of a formal caution, a police officer can require a youth to pay compensation to the victim of an offence (not to exceed \$5,000, set by policy), carry out community service (not to exceed 75 hours, set by statute), apologise to the victim, or "do anything else that may be appropriate under the circumstances." Such undertakings have a maximum duration of 3 months.<sup>4</sup>

By comparison to formal cautions, undertakings agreed to in a family conference have higher maxima: compensation (not to exceed \$25,000, set by policy) and community service (not to exceed 300 hours, set by statute). Undertakings have a maximum duration of 12 months.<sup>5</sup> The third level of processing is the Youth Court, where the most serious offences ("major indictables") are dealt with, together with those young people who have been in trouble with the police many times before. The Youth Court has the most severe array of penalties, including detention. Community service hours may not exceed 500 hours.

Since February 1994 when conferencing began in SA, Youth Justice Coordinators (YJC's) have convened 1,400 to 1,600 conferences each year, disposing 15 to 18% of youth justice

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<sup>4</sup> Data for calendar year 1997 show that when police issued compensation undertakings as part of a formal caution, 46% of young people were to pay \$1-50, and an additional 29% were to pay \$51-100. For community service, 63% of young people were to work for 1-10 hours, and an additional 26% were to work for 11-20 hours (SA Office of Crime Statistics 1998: 95-96).

<sup>5</sup> Data for calendar year 1997 show that when compensation is part of a family conference undertaking, 44% of young people were to pay \$1-50, and an additional 29% were to pay \$51-100. For community service, 24% of young people were to work for 1-10 hours, an additional 29% were to work for 11-20 hours, and an additional 13%, for 21-30 hours (SA Office of Crime Statistics 1998: 117-118). While the compensation proportions are about the same for formal caution and conference, the length of time for community service is longer in conference outcomes.

cases subject to official police action.<sup>6</sup> More youth justice cases are conferenced in SA than in any other state or territory in Australia.<sup>7</sup>

The SA Family Conference Team offices are located in (1) Adelaide (the state's capital), an office servicing the metropolitan area, as well as towns in the southern part of the state and those to the near north; and (2) Port Augusta, an office servicing a very large geographical area from the middle of the state to its northern border (see Map 1). During Phase 1 of SAJJ (March-July 1998), there were seven YJC's (plus the Senior) in the Adelaide office and two YJC's in the Port August office. There are three administrative staff supporting the YJC's in Adelaide, and one, in Port Augusta.

When the Adelaide Senior YJC receives a referral from the police (or every so often, from a magistrate), it is allocated to one of Adelaide YJC's, who is then responsible for making arrangements to set up the conference. This task can sometimes be straightforward and other times, quite difficult, depending on the offence and the people involved. YJC's need to make decisions on *when* to schedule the conference to suit participants' schedules, *where* to schedule it, and *what* people should be there. When the Port Augusta office receives files from the police, the YJC's and staff jointly make decisions on scheduling and file allocation. Files coming into the Port August office, especially those involving Aboriginal youth, can require even more time to set up: the YJC's often need to put in more effort to ensure that young people and their families understand the process and show up on the day.

At a minimum, a conference must have a young person (offender) and PYO present, along with the YJC as facilitator. The most recent published data available (for fiscal year 1995) show that the average number of conference participants is small: 67% had three or fewer participants (excluding the YJC and PYO) (SA Office of Crime Statistics 1996: 111).

Conferencing in the ACT, though comparable in spirit to that in SA, differs in some important respects: (1) a police officer convenes and runs the conference, (2) the theory of reintegrative shaming is more prominently featured, and (3) there is no legislative basis for conferencing. The Re-Integrative Shaming Experiment (RISE) is currently studying the comparative effects of court and conference on offenders and victims in the ACT. That project, and the ACT more generally, give a substantially greater role to the police and to "restorative community policing" in conference practices (Sherman et al 1998). Compared to all other Australian states and territories, the ACT is unusual in that it has no legislative basis for conferencing, and the process is lodged entirely within a police organisation.

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<sup>6</sup> "Official" police records (or actions) include formal cautions, conferences, and court dispositions, but not informal cautions.

<sup>7</sup> The number of *young people* for whom conferences are set is about 1,800 a year. Western Australia also appears to handle nearly this number. For fiscal year 1998, there were 2,800 referrals (here I assume young people) to conference for the Perth metropolitan area, about 84% of which were accepted. Of this group, a significantly minority (30 to 40%, it is estimated) are disposed of by the Juvenile Justice Team and the YP, whereas the remainder are more "full blown" conferences. It would appear, then, that Western Australia may handle 1,400 to 1,600 young people a year by conference, although complete records are not kept, and the estimate does not include conferences held in the country areas (Bill Williams, WA Juvenile Justice Team, personal communication). For New Zealand, just over 6,600 youth justice conferences were held in 1996/97. In the ACT, an estimated 200 to 250 youth justice conferences have been held annually since 1995 (Jeff Knight, Australian Federal Police, personal communication).

During the early years of conferencing in Australia, there was debate over whether police-run conferencing was a sound idea (Alder and Wundersitz 1994). During the early 1990s, all Australian states and territories experimented with conferencing in a variety of organisational contexts. Two models emerged for the handling of criminal cases:<sup>8</sup> the "Wagga" style model of police-facilitated conferences, and the "New Zealand" model, which has two professionals present: a facilitator (not a police officer) and a police officer. Today, of the four Australian states with legislatively-based conferencing (South Australia, Western Australia, Queensland, and New South Wales),<sup>9</sup> all have a role for the police in the conference process, but not as the conference coordinator or facilitator, and all have rejected the idea that conferencing ought to be lodged solely in a police organisation (for jurisdictional comparisons, see Bargen 1996, forthcoming). Thus, RISE is studying a particular form of conferencing in handling criminal matters, one that is police-run and largely police "owned." That form, though unique in the Antipodes today, features in jurisdictions in the United States, Canada, and England. In Australia and New Zealand, conferencing is lodged in a variety of non-police organisations, such as the Courts Administration Authority (in South Australia), the Attorney-General's Department (New South Wales), or Family and Community Care (Queensland).<sup>10</sup> The SAJJ project can be seen to compliment RISE in examining a different form and organisational placement of conferencing.

## 2. Preliminary research leading up to SAJJ

From September 1995 through May 1996, I conducted preliminary research on "diversionary conferencing" in the Australian Capital Territory (ACT) and "family conferencing" in SA. The research was undertaken while I was a Senior Fulbright Scholar at the Research School of Social Sciences in the Australian National University, located in Canberra, the ACT. That year I observed a total of 30 conferences, 15 in the ACT and 15 in South Australia. Of the 30, 24 were for youthful offenders and 6 for drink drivers (see Daly 1996). I also observed the first year of the implementation of the Reintegrative Shaming Experiment (RISE), learning from the experience of Heather Strang (RISE Project Manager) and the RISE researchers.

In October and December 1995, I spent two weeks visiting the South Australia Family Conference Team, spending considerable time with Jan Kitcher (Senior YJC) and other members of the team. I observed conferences scheduled out of the Adelaide and Port Augusta offices. During this time, I talked with the YJC's and PYO's -- both in Adelaide and Port Augusta -- about their conference roles and aims.

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<sup>8</sup> Conferencing is not confined to youth justice cases, however. Transformative Justice Australia, established in the mid-1990s by several people familiar with the Wagga process, has redefined the conferencing process to deal with conflicts in the workplace and schools, with an emphasis on "individual and collective transformation" (David Moore, personal communication).

<sup>9</sup> Legislation has been passed in Tasmania, but the organisational placement of conferencing has not been settled.

<sup>10</sup> Placement has varied in Queensland, having been in Justice and Attorney-General's Department in the early and mid 1990s.

From my observations of youth justice conferences in the ACT and SA during 1995-96, I found variation in the degree to which conferences met their objectives of offender accountability, victim voice, full participation, and consensual decision-making. Forty-six percent of youth justice conferences were, in my judgment, clear "successes" using these criteria; the remainder had some or many deficits (Daly 1996). From that study, I refined further a series of participant behaviours that one would expect to see, at least ideally, in a "successful" conference. They included the offender taking responsibility for the incident, the victim speaking effectively about the impact of the offence, a series of "movements" between the offender and victim (or their supporters), which suggested improved understanding or empathy of the other's position, and participation by all the major parties in fashioning an agreement.

These behaviours and movements are part of a repertoire of restorative justice practices that are familiar to restorative justice researchers and practitioners. To date, the focus of research has been on assessing whether practices reflect the spirit and intent of legislation (e.g., Maxwell and Morris 1993 on New Zealand conferencing); whether they comport with a theory of reintegrative shaming (e.g., Braithwaite 1989; Sherman et al. 1998), or whether they reflect a mix of reintegrative shaming and feminist caring labour theories (Pennell and Burford 1996).<sup>11</sup> The SAJJ (pronounced "sage") project asks whether the major dimensions of "successful" conferences -- restorativeness and democratic process -- are present in conferences, how these judgments may vary, and whether conference outcomes affect participants in the future.

### 3. SAJJ Research Questions

Drawing from research on restorative and procedural justice, the SAJJ project poses these questions:

Q1: Are two dimensions of restorative justice, namely, *restorativeness* for victims and offenders, and *democratic process* in group decision-making, present in conferences?

Q2: Do judgments of *restorativeness* and *democratic process* vary by

- participants' roles (coordinator, police officer, victim, and young person or offender)<sup>12</sup>
- participants' social locations (age, gender, race-ethnicity)
- context (urban/rural)
- the kind of harm (violent or property, personal or organisational)?

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<sup>11</sup> There are, of course, other restorative justice *practices* that could be enumerated here, e.g., sentencing circles in Canada and conflict resolution in schools or workplaces; here I focus on those that have gathered data systematically and with a set of explicit theoretical statements about what structures the inquiry.

<sup>12</sup> Naming 10-17 year olds who have broken the law is not straightforward. In SA (and Australia, more generally), the preference is to use the term "young person" or "young people" rather than "offender." Throughout this report I shall use these terms interchangeably, or at times, the abbreviated "YP." This terminology can be a problem, however, because crime victims can also be "young people."

Q3: Does it matter that a conference is "successful" (or not) for the future behaviour or well-being of offenders and victims?

The focus of SAJJ is on ways of measuring (1) restorative justice practices and (2) variability in the conference process and participants' understandings of it. While some may assume that a "successful" conference will have positive effects in the future, the research treats this as an open question.

#### 4. Time frame and source of funding

The research questions and design were set forth in an Australian Research Council (ARC) grant proposal in February 1997. In October 1997, an ethics application was submitted to the Griffith University Ethics Committee; and in November 1997, I learned that I was awarded the ARC grant to conduct the research. During the next two months, I hired research assistants (university students in Queensland and South Australia), made plans to relocate myself from Brisbane to Adelaide, and laid the groundwork to begin the field research in March 1998.

Phase 1 of the field research commenced on 9 March 1998, lasting until mid-July 1998; during that period, I was based in Adelaide full-time, with a 3-week segment in Port Augusta in the last week in May and first two weeks in June. After I returned to Brisbane, data reduction commenced in August 1998. Phase 2 of the research will begin in Adelaide in March 1999, lasting until July 1999, when follow up interviews with offenders and victims will be carried out.

#### 5. Comparison of SAJJ with RISE

In planning SAJJ, I wanted to build upon, but depart from RISE. Both projects are similar in that they are assessing whether conference participants experience elements of procedural and restorative justice. SAJJ differs from RISE in these ways:

- SAJJ does not use a randomised experimental design to compare outcomes of court and conference cases;
- SAJJ is studying non-police facilitated conferences;
- SAJJ focuses on whether (or how) participants' roles and social locations affect judgments of restorative and procedural justice;
- SAJJ examines specific movements between an offender and victim in a conference, whereas RISE centres on an offender's behaviour, recording relatively little about the victim's behaviour or the relationship between an offender and victim; and
- SAJJ is not testing a theory of reintegrative shaming or restorative community policing.

For the last item, the SAJJ project takes an *iterative* view of restorative justice, that is, one that emerges from moving between actual practices and ideal theoretical principles. RISE addresses questions on the impact and the costs of court and conference, using a research design that can test for the different effects of each on (i) participants' judgments of the fairness of these two justice "sites" and (ii) offenders' future involvement in the justice

system. SAJJ addresses questions of variability in conference process (along dimensions of procedural and restorative justice), variability in participants' judgments of the "success" of conference processes, and the viability of conferences for different groups and in different areas.

In addition to these differences are those associated with budget and time. RISE is substantially more costly than SAJJ for several reasons: (1) the added costs and complexities associated with a random assignment of cases and a comparative analysis of court and conference processes and outcomes and (2) the longer period of time needed to gather a sufficient number of youth justice cases in the ACT. Because the assignment of eligible juvenile cases to RISE has been slow and because the design calls for assembling a relatively large number of cases<sup>13</sup> for statistical tests, the RISE project has gone on for some time, longer than had been envisaged. While RISE has been gathering data for 3-1/2 years (beginning July 1995 with an expected completion date late in 1999 or early 2000), SAJJ gathered Phase 1 data over a 4-month period in 1998, with Phase 2 data estimated to take another 4 months in 1999. RISE is the largest and most expensive criminological study funded in Australia (funds spent to date are AU\$1,300,000, with the total cost on completion estimated to be AU\$1,800,000). The funding level for SAJJ is considerably lower at AU\$120,000, less than one-tenth the cost of RISE.

Although RISE and SAJJ are examining conference processes (and in RISE, court processes as well), the projects are studying rather different legal and organisational contexts within which conferencing takes place. In addition to the professionals at the conference (in SA, at a minimum, two; in the ACT, at a minimum, one), there are differences in the kinds of offences conferenced (there are more restrictions on what can be conferenced in the ACT), the length of time from the offence to the conference (SA may take somewhat longer), and what the conference is supposed to achieve. These legal and organisational differences will play importantly in a comparative analysis of the meaning and "effects" of conferencing for participants in the RISE and SAJJ studies.

## 6. General design considerations

In designing SAJJ, I wished to

- use a combination of data gathering methods, that is, both quantitative measures and more open-ended questions that asked for participants' understandings in their own words;
- be an active researcher in the project, not directing it from a distance;
- gather data on a relatively small number of cases, but do so in depth;

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<sup>13</sup> The RISE design now calls for gathering data on a total of 150 juvenile property cases, 150 juvenile property (shoplifting) cases, 100 juvenile violence cases, and 900 drink driving cases (of these, 50% will be court, and 50% conference). The drink driving portion was completed at the end of 1997; conferencing for drink-driving in the ACT ceased when the RISE cases had been gathered. While there are, on average, 200-250 youth justice cases conferenced a year in the ACT, a smaller number were deemed to be RISE-eligible because (i) full admissions must be made and (ii) the case must be viewed as court-eligible by the police. Like SA, referrals to conference in the ACT are made by the police.

- work with people at the research site (especially the police officers and coordinators) in developing instruments; and
- draw from published literature in the area, but bring to SAJJ my longstanding interests in how justice principles and practices work in the real world of inequality and group differences.

## 7. Theoretical aims

Although the SAJJ project identifies a particular set of research questions, it is informed by a wider set of debates and literatures on justice and punishment. In particular, I am interested to:

- develop an iterative understanding of the idea of restorative justice. Specifically, while I want to determine how close conference practices come to ideals, I am also interested to discover whether practices may contain emergent restorative justice principles.
- probe the interrelationships between elements of retributive and restorative justice. From my preliminary research on conferencing, I have argued that it is inappropriate to characterise restorative and retributive justice in oppositional terms (Daly and Immarigeon 1997; Daly 1998); using SAJJ data, I can test this claim further.
- relate the results to the theoretical/research literatures on informal and formal justice. I am interested to show the ways in which these two modes of doing justice articulate, overlap, separate.
- relate the results to the theoretical/research literatures on the politics of crime control. In particular, I am interested to explore how restorative justice fits into Garland's (1996) argument on the current economic and political "predicament of the state" -- to adopt a policy of crime prevention (via a "responsibilisation strategy") while also needing to appear to be "tough" on crime (via rhetorics and practices of increasing imprisonment).
- relate the race, gender, and age dynamics in conference practices to feminist, critical race, and sociological literatures. I am interested to move on from older ideas of "differences in treatment" based on age, gender, race, etc., to newer ideas of how multiple social relations are expressed and contested in the conference process, including how participants reflect on what has occurred.
- see the project as one piece in a larger, more comparative understanding of restorative justice in Australia and elsewhere. I am interested to connect the findings not only to other research in Australia but to related projects in the United States, England, and several European countries.

## 8. Sampling plan

In devising the sampling plan, I had three major concerns: (1) to study variation in conference practices in the city and in country towns; (2) to study variable experiences with the conference process for Aboriginal and non-Aboriginal young people; (3) to study conferences with "more serious" offences and those where a victim's presence would be maximised.

### *Urban and rural areas*

A map of SA provides a sense of the size of the state, problems of delivering the conferencing idea to a population dispersed across a very large area, and the sampling problem facing me (see Map 1). I wanted to study conferencing not only in an urban context, but also in the more sparsely populated areas of the state. At 379,900 square miles, the state of SA is 1.45 times larger than the state of Texas in the United States, but SA's population of 1.4 million people is about 8% the population of Texas. Metropolitan Adelaide (Map 2) encompasses a large area, running about 40-50 kilometres from the city centre to the northern suburb of Elizabeth, and 40-50 kilometres from the city centre to the southern suburb of Christies Beach. About 10 kilometres west of the city are the beaches lying on the Gulf of St. Vincent, and 10 to 20 kilometers east of the city are the Adelaide Hills and the more easterly suburb of Mt. Barker. Just outside the metropolitan area are the famed wine regions: to the north, the Barossa and Clare Valleys, and to the south, McClaren Vale.

The sampling plan drew from the SA Office of Crime Statistics data on juvenile case disposition in FY 1997 (July 1, 1996-June 30, 1997) (hereinafter called SA FY-97 data).<sup>14</sup> A preliminary plan was refined in discussions with Joy Wundersitz and Justine Doherty (Director and Research Officer, respectively, SA Office of Crime Statistics) and Jan Kitcher (Senior YJC, SA Family Conference Team) in February 1998. The aim was to balance the budget-driven practicalities of data gathering (that is, to observe no more than 7-10 conferences per week, to complete the conference observations in 12 weeks, and to focus on particular geographical areas) with theoretical concerns of having an adequate coverage of offence types, Aboriginal representation, and urban-rural variability. Our sampling decisions were based on SA FY-97 data, though previous years showed similar patterns.

In 1997, there were a total of 8,810 police apprehension reports for juveniles in SA. Of this number, 504 had an "unknown" police action. For the 8,306 reports where a police action was known (or recorded), 34% were disposed of by formal caution, 18% were referred to a family conference, and 45%, to the Youth Court (3% were withdrawn) (SA Office of Crime Statistics 1998: 72, 5). In February 1998, Justine Doherty prepared a geographical analysis of family conference cases. That analysis showed that of the 1,490 offender cases finalised by a family conference in FY-97, the place of disposition was:

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<sup>14</sup> FY-97 data are distinguished from SA 1997 data in that the latter are for the 1997 calendar year, as reported in a SA Office of Crime Statistics (1998) publication.

925	(62%)	metropolitan Adelaide area
255	(17%)	the northern tier, including the country towns of Port Augusta, Whyalla, and Port Pirie, together with Ceduna, Coober Pedy, and Port Lincoln
267	(18%)	all other SA areas, including York Peninsula, the Riverlands, and towns south and east Adelaide such as Mt Gambier and Renmark
43	( 3%)	postcode unknown
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1,490	100%	

After considering several sampling options, I decided that the SAJJ sample should include all the offence-eligible conferences set in metropolitan Adelaide and the "three country towns" of Port Augusta, Whyalla, and Port Pirie.

What I refer to as "the northern tier" is a huge geographical area, which begins after a 3-hour drive north of Adelaide (at Port Pirie) and encompasses the northern and western 70% of the state's total land mass. The two YJC's who are based in the Port Augusta office are responsible for organising conferences for this entire area (although from time to time, Adelaide YJC's may be called on for assistance). The northern tier includes the Eyre Peninsula (and Port Lincoln, approximately a 3-hour drive southwest of Port Augusta), Ceduna (to the west of Port Augusta about 5-1/2 hours' drive), and Coober Pedy (to the north and west of Port Augusta, about 6 hours' drive). North of Coober Pedy and west are the Anangu Pitjantjatjara Lands ("the Lands"), traditionally owned by the Anangu Aboriginal people. Conferences are held throughout the northern tier, although mainly in the centres of Ceduna, Coober Pedy, and Port Lincoln, as well as the country towns in the SAJJ sample. For reasons of cost and time, I decided to focus research attention only on the "three country towns," and not attempt to sample from the entire northern tier. Port Pirie is a 3-hour drive north of Adelaide, and Port Augusta is an hour north of Port Pirie; Whyalla is about an hour's drive southwest of Port Augusta.

The third major geographical area is the remainder of SA; it includes the Riverlands, York Peninsula, and areas lying south and east of metropolitan Adelaide, e.g., Mt Gambier. The Adelaide YJC's are responsible for organising conferences for offence taking place in these areas.

#### *Aboriginal presence and urban/rural share*

SA data for FY-97 show that the Aboriginal share of the northern tier cases was 47%, while in metropolitan Adelaide, it was 5% (table prepared by SA Office of Crime Statistics, February 1998). Because Aboriginal presence is greater in the country towns and the more rural and remote areas of the state than in Adelaide, it was important to include the country towns in the SAJJ sample to increase Aboriginal presence in the sample.

SA FY-97 data show an 80-20 percent split in cases disposed in metropolitan Adelaide and the northern tier, respectively, and I had initially thought I could replicate that split in the SAJJ sampling plan. That was too ambitious, I realised soon after the research commenced in March. To have achieved an 80-20 split (or better), I would have had to increase the length of the country town observational period from 12 weeks to at least 18 weeks, and optimally, 24 weeks.

*Type of offence*

Using SA FY-97 data, we find that the Adelaide YJC's completed just over 20 conferences in a normal work week. Because I did not have sufficient research staff to observe all these conferences, I needed to identify a smaller set of offences that would produce 7 to 10 conferences a week. I decided to include as a SAJJ-eligible offence *category*, those offences most likely to have personal (as compared to organisational) victims and those generally considered to be "more serious." The idea was to capture those offenses likely to have the greatest emotional impact on personal and organisational victims, and those where there may be victim "movement" from a position of negativity or fear. Thus, with the exception of embezzlement, offences involving organisational victims (like shops or other commercial establishments) were excluded. However, those involving what might be considered "community organisational victims" (schools, churches, housing trusts, government agencies) were included. Having observed many low-affect conferences during my preliminary research in 1995-96, which had no victims present (e.g., all the drug offences) or had somewhat jaundiced store security personnel present as victims (the shoplifting cases), I was not inclined to spend limited resources observing these conferences and conducting interviews with the young people and victims involved.<sup>15</sup>

Table 1 lists the SAJJ eligible and non-eligible offences, and Table 2, the offence distributions by geographical area. Included are all the personal crimes of violence; breaking and entering a dwelling, school, or other public building; attempting to steal a car; embezzlement; property damage to a dwelling, school, or other public building; and resisting the police. Excluded were all drug and good order offences, all the other thefts and frauds, all the other break and enters and related offences, all the other property damage offences, and all driving-related offences.

From FY-97 data, one finds that SAJJ-eligible offences were a somewhat higher share of cases in the northern tier region than metropolitan Adelaide (Table 2). Further analyses of these data suggest a complicated pattern of offence, urban and country town (or rural) area of disposition, and Aboriginal presence. SAJJ eligible offences form a substantially higher share of Aboriginal cases in the country than in the city, whereas for non-Aboriginal cases, this urban-country town difference is not as great. One reason is a different mix of offences handled by a conference in the city and country towns: in general, in the city, one finds a higher share of larcenies from shops, whereas in the country towns, there is a slightly higher share of assaults and burglaries.

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<sup>15</sup> While shoplifting offences are important to study and would surely be important to the organisations involved, the RISE project will provide definite answers to the conference and court handling of this type of offence.

Table 1

## SAJJ eligible offences (shown with shaded background)

## assaults

indecent assault and sexual assault

robbery

break and enter to dwelling, schools, other public building

break and enter shops; other offences related to break and enter

illegal use or larceny of motor vehicle

embezzlement

all other larcenies and frauds

property damage by arson

property damage of dwelling, school, motor vehicle, public building

other property damage

hinder/resist police

other good order offences

drug offences

driving-related and other offences

Eligible areas: metropolitan Adelaide, country towns of Port Augusta, Whyalla, and Port Pirie

Table 2. Distribution of offences in metropolitan Adelaide and northern tier region, SA FY-97 data (SAJJ-eligible shown with shaded background)

	SA FY-97 data	
	metro Adelaide N=925	northern tier N=255
assaults	12%	14%
indecent/sexual assault	1	2
robbery	1	0
b/e dwelling, schools, other public bldg	9	16
b/e shops and b/e related	4	4.5
illegal use or larceny of mv	6	4
other larcenies	28	18
embezzlement	1	0
other frauds	1	<1
property damage by arson	1	1
property damage to dwelling, school, mv, public bldg	7	9
other property damage	3	4.5
hinder/resist police	2	<1
other good order*	12	17
drug offences	11	7
driving-related and other	1	3
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	100%	100%
SAJJ-eligible	40	46
not eligible	60	54

\*These include unlawful possession of weapon, disorderly behaviour, indecent language, graffiti, breaches of bail, liquor licensing, and trespassing.

Note: This chart was prepared from requested computer runs to the SA Office of Crime Statistics in February 1998, drawing from SA data for fiscal year 1997; data on cases disposed by area or region are not normally shown in SA Office of Crime Statistics annual reports.

## 9. Data gathering plan

My initial plan was to gather data on a total of 100 conferences over a period of 12 weeks: 80 in the metropolitan Adelaide area (March through May 1998), and 20 in the country towns (April through June). It became clear as the field work commenced that the expected number of country town conferences might only reach 13 to 14. The actual number of SAJJ-eligible conferences held and observed was 89: 80 in the metropolitan Adelaide area and 9 in the country towns (see Table 3 and related discussion below).

For each SAJJ conference:

- a SAJJ researcher observed and recorded what happened, using the Briefing Observation Protocol (the BOP);
- the conference coordinator completed a self-administered survey (the YJC survey);
- the police officer completed a self-administered survey (the PYO survey);
- an attempt was made to interview all the offenders (or young people) at the conference in a face-to-face interview (the YP interview); and
- an attempt was made to interview the victim associated with the conference in a face-to-face interview (the Victim interview, for those who attended) and a phone interview (the Victim no-show interview, for those who did not or could not attend).

The 89 conferences produced a total of 107 YP offenders and 89 victims to be interviewed. Of the 107 offenders, interviews were completed with 93 (87%). Of the 89 victims, interviews were completed with 79 (89%). Interview completion rates were higher in the city (89%) than in the country towns (75%) (see Table 5 and discussion below).

During March to June 1999, follow-up interviews (face to face) will again be conducted with the offenders and victims associated with the conferences.

From police records, criminal history data have been gathered on the 107 YP offenders for all contacts with the police (formal cautions, conferences, and court dispositions) *before* the date of their scheduled conferences and up to December 9, 1998. A second pass through police records will be carried out in late 1999. The analysis of re-offending will focus on the 6-month and 18-month anniversary dates of the YP's attendance at the SAJJ conference.

Face-to-face interviews will be conducted in 1999 with the YJC's and PYO's, both those in Adelaide and the three country towns.

## 10. Conference numbers (estimated and actual)

Using SA FY-97 data, I estimated the number of conferences that would likely take place in metropolitan Adelaide and the three country towns; these estimates and what actually occurred are set forth in Tables 3 and 4.

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Table 3. Estimated conferences from SA FY-97 data and actual SAJJ-98 conferences set, completed, and observed

	metro Adelaide	northern tier	
SA FY-97 data			
<i>YP offenders</i> disposed	925	255	
est. annual completed <i>conferences</i>	841	232	
<b>Estimates from SA FY-97 data</b>			
SAJJ-eligible offences (.40 of Adelaide & .46 of PA region)			
est. <i>YP offenders</i>	370	117	
est. <i>conferences</i>	336	107	
			3 country towns
Numbers during the 12-week period			
est. <i>YP offenders</i>	93	15	
est. <i>conferences</i>	84	13	
<b>Actual SAJJ-eligible conferences set, held, and observed</b>			
Offence-eligible conferences set in the 12-week period	93	10	
Conferences held	84*	9*	
Conferences observed and in SAJJ sample	80**	+ 9	= 89

\*In Adelaide, a total of 9 conferences did not go forward because the YP offender did not show up on the day (N=7) or did not admit to the offence at the conference (N=2). In the country town sample, one conference did not go forward because the YP offender did not admit to the offence at the conference.

\*\*In Adelaide, 4 conferences were not observed because the YP or family member refused permission to be observed (N=2) or the conference was deemed ineligible because the YP was already in the SAJJ sample (N=2).

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Recall from the SA FY-97 data that there were a total of 925 and 255 cases (that is, numbers of offenders) disposed of by family conference in metropolitan Adelaide and the northern tier region, respectively. The expected number of conferences will be smaller than the number of cases because 9% of conferences involve more than one offender; on average, each conference has 1.1 young people/offenders. Thus, as shown in Table 3, the estimated number of conferences held in metropolitan Adelaide and the northern tier region in FY-97 was 841 and 232, respectively. To estimate the numbers of SAJJ eligible offenders and conferences in 1998, I applied the 40% and 46% figures, respectively, to the city and country region. I then divided the annual estimates by four to get a 12-week estimate for metropolitan Adelaide, and I divided the annual estimate by eight to get a 12-week estimate for the three country towns in the broader northern tier region.<sup>16</sup>

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<sup>16</sup> In 1997, of the cases disposed in the northern tier, half came from the three country towns. Thus, I divided the 12-week estimate for the northern tier in half.

Comparing the expected and actual numbers, I estimated that 84 SAJJ offence-eligible conferences would be held in the 12-week period in metropolitan Adelaide. That is precisely what occurred: during the 12-week period, 84 conferences went forward of 93 that had been set. Nine did not go forward either because the young person did not show up (N=7) or did not admit to the offence at the conference (N=2). Of the 84 completed conferences, 4 were not in the final SAJJ conference sample: in 2 conferences the YP or parent refused to be observed by SAJJ,<sup>17</sup> and 2 conferences were deemed ineligible because the YP was already in the SAJJ sample.

For the country towns, I estimated that 13 SAJJ offence-eligible conferences would be held during the 12-week period. What happened was that 10 were set, though 9 actually went forward. In one country town conference, the young person did not admit to the offence at the conference. The numbers for the country towns would have been even lower were it not for the fact that, late in the research period, a magistrate referred five SAJJ-eligible court files to a conference because, reportedly, they had been "adjourned too many times" in court.

The estimate for metropolitan Adelaide was borne out by the actual numbers, but that for the three country towns was not achieved. The major reason was the number of SAJJ offence-eligible files allocated during the research period. During the 12-week research period in metropolitan Adelaide (9 March - 29 May 1998), there were 236 conference files allocated,<sup>18</sup> 45% of which were for SAJJ offences. However, for the northern tier during the 12-week research period (1 April - 26 June), there were a total of 63 conference files allocated, just 33% of which were for SAJJ-eligible offences.

If the conferences set in the country towns had had a higher fraction of SAJJ-eligible offences, then the country sample would have had 13-14 conferences.<sup>19</sup> The optimal sampling strategy would have been to increase the country town research period from 12 to 24 weeks. Budget constraints precluded that more ambitious effort, and even the more modest effort did not yield the expected number of cases. If country town research is to be part of future studies (as it definitely should be), researchers should be aware that it takes

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<sup>17</sup> The refusals occurred only during the first week of the field work. They did not occur after we (that is, the SAJJ group working with the YJC's) put in place a consistent method by which to inform the YP's, victims, and their families of the research project. In talking with the YP, victim, and their supporters while preparing for a conference, the YJC's briefly described the research and sought permission from the parties to be observed by SAJJ. In addition, a flyer describing the research project was enclosed in an invitation packet that is mailed a week before the conference.

<sup>18</sup> The analysis of file allocation was based on the SAJJ group double-checking all the files for SAJJ-eligibility before the file was passed along to an individual YJC to set up a conference. The length of time between when a YJC receives a file and when the conference is set varies a great deal. During the 12th week of conference observation, there were pending SAJJ-eligible files, but the conferences were set some time after the end of the SAJJ observation period. This explains why in Table 4, for Adelaide, if you take .45 of 236, the result of 106 is higher than the 93 shown in Table 3.

<sup>19</sup> As it turned out, during the 12-week period in the three country towns, there were no referrals for conference from the police in Port Pirie. Thus, the country town sample includes cases only from Port Augusta and Whyalla.

considerably more time and money than city research.<sup>20</sup> Moreover, in light of the numbers of country cases conferenced, there will be greater error associated with making estimates, especially those for a relatively small window of time.

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Table 4. Files allocated and SAJJ-eligible offences

	metro Adelaide	northern tier	total
SA FY-97 data			
YP's conferenced	925	255	1180
% with SAJJ-eligible offences	40%	46%	41%
SAJJ analysis of files*			
allocated during the 12-week research period in 1998			
total allocated	236	63	299
% with SAJJ-eligible offences	45%	33%	42%

Note: The numbers from the SA FY-97 data are for finalised YP offender cases disposed, whereas the SAJJ analysis of "files allocated" refers to conferences, not YP's.

\*For Adelaide (9 March-29 May); for the northern tier (1 April-26 June).

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## 11. Interviews of YP offenders and victims

The 89 conferences produced a total of 107 YP offenders and 89 victims to be interviewed. The decision was made to interview all the offenders who had attended the conference, but to interview only the "primary" victim, in the infrequent cases where there was more than one victim associated with the conference. (This approach replicates that of RISE.) Table 5 shows the completion and declination rates for the interviews.

The overall interview completion rate was 88%. We were able to achieve this high completion rate for several reasons. All the YP offenders and their families (or supporters), and all the victims and their supporters (if the victim was under 18) received an information flyer about the SAJJ project in the invitation packet mailed out a week before the conference by the Family Conference Team staff.<sup>21</sup> The presence of the SAJJ researcher was reinforced on the day on the conference, when the YJC would note that the SAJJ researcher was in the room, but like others in the room was bound by the privacy and confidentiality provisions of the *Young Offenders Act*. The YJC also noted that the SAJJ researcher might approach the young person and victim at the end of the conference about

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<sup>20</sup> For example, in addition to several visits to Port Augusta to set up a second research office and to work with the YJC's in planning the research, I needed to make presentations to each of the country town police departments to let members know about the research and to enjoin their cooperation.

<sup>21</sup> Staff at the Family Conference Team offices in Adelaide (Vicki Green, Jackie Wake, and Marian Charman) and in Port Augusta (Heather Kenny) carried out key tasks associated with the research, which greatly assisted in its smooth implementation.

the possibility of an interview. The YJC's opening helped to facilitate the SAJJ researcher's initial conversations with the young people (and their families) and with victims (and also their families if the victim was a minor). At the end of the conference and only if it was felt appropriate, the SAJJ researcher would introduce herself, answer any questions about the research, and try to find out what times would be convenient to call to arrange an interview time. When the time came to make the phone call to set up an interview time, the YP offenders and victims (or their parents) were not surprised; indeed, a common response would be for the speaker to say to another in the household, "it's the researcher calling." Often (though not always) the person who observed the conference was the person who conducted the interview with the offender or victim or both.<sup>22</sup>

Table 5. Interviews with the YP offenders and victims

	metro Adel	3 country towns	total
Interviews to be done			
YP offenders	96	11	107*
Victims	80	9	89
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	176	20	196
Interviews completed			
YP offenders	85	8	93
Victims	72	7	79
	---	--	---
	157	15	172
Reason for not completing interview (N=24)			
YP offender declined**	11	3	14
Victim declined	8	2	10
	---	--	---
	19	5	24
Overall completion rate:	172/196 = 88%		
YP offenders:	93/107 = 87%		
Victims:	79/ 89 = 89%		
metro Adelaide:	157/176 = 89%		
3 country towns:	15/ 20 = 75%		

\*The initial count was of 110 YPs, but two were ineligible because they withdrew from the conference agreement (there was a third YP at the conference who agreed with the agreement); another was ineligible because she was already in the interview sample. The total number of 107 YP offenders is of discrete individuals.

\*\*Some offenders and victims actually declined to be interviewed; others would not respond to our repeated phone calls or efforts to reach them.

<sup>22</sup> See the section on the YP interview for further discussion of this decision.

## 12. Features of the SAJJ-98 sample

Whenever a form of survey research is undertaken, a major question asked is, are the results generalisable and to what population or phenomenon? The SAJJ sample was not a random sample of all conferences, but a sample of those dealing with particular offences, those of personal violence and the more serious kinds of property offences. Some organisational victims are included (like schools, churches, and community organisations), but others are excluded (that is, shops or stores, except for embezzlement). The rationale was that when individuals or community organisations are victimised, there may be a heightened sense of feeling about these offences (compared with offences against commercial organisations) because they affect the security of individuals and "the community" most directly and visibly.

Table 6 compares features of the SAJJ-98 sample with SA FY-97 data. Note that the SA FY-97 data shown here do not (with one exception)<sup>23</sup> come from the SA Office of Crime Statistics (1998) report, but rather from statistics that were generated for me in February 1998. Note too that the offence detail I had when selecting the SAJJ sample is not shown in the SA Office of Crime Statistics (1998) report. (Although it would be better to compare SAJJ-98 data with SA-98 data, the latter will not be available until some time in 1999.)

The SAJJ-98 sample does not include two major groups of offences (Table 6). Excluded are those property offences involving larcenies from shops, motor vehicles, and other sources; breaking and entering a shop, receiving stolen goods, property damage to a shop, and interference with a motor vehicle. Together these offences were 34% of cases disposed of by conference in FY-97 in metropolitan Adelaide and the northern tier region. A second set of excluded offences are all the drug offences; all the public order offences, including disorderly behaviour and indecent or offensive language; all graffiti and related offences; all the driving or traffic related offences; and all offences involving illegal possession or use of weapons. These were 25% of cases disposed of by conference in FY-97 in the two geographical areas.

Although offence *categories* are not indicative of the seriousness of offences nor can one assume a uniform seriousness within any one category (Daly 1994), the aim was to select the offences that are typically associated with greater seriousness in the public's mind. The aim was also to maximise the likelihood of victim presence and victim concern (anger, negativity, strong emotions of some sort) with the offence. The SAJJ-98 sample more than doubles the presence of (a) personal crimes of violence (from 15% to 38%) and (b) the more serious kinds of property offences (from 26% to 62%).

Compared with the offence composition in the SAJJ-98 sample, which went according to plan, the urban-country composition did not. It would have been preferable to have had a minimum of 15% country town cases, rather than the 10% achieved. As a consequence, the Aboriginal share of young people in the SAJJ-98 sample (12%) is a bit lower than that in the SA FY-97 data (14%). Drawing from SA Office of Crime Statistics (1998: 112), the gender composition of conferenced cases in 1997 (20% female and 80% male) was the same for the SAJJ-98 data (22% female and 78% male). The SAJJ-98 sample can be used to generalise to the more serious kinds of offences that are disposed of by conference,

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<sup>23</sup> The exception is the gender table, which draws from Office of Crime Statistics (1998: 112).

largely in the metropolitan Adelaide area. There is country town and Aboriginal presence in the SAJJ-98 sample, but the relatively low number of cases imposes limits on statistical comparisons of groups and on inference making.

Table 6. SA FY-97 and SAJJ-98 comparisons

<b>Offence mix</b>	SA FY-97 (N=1180)	SAJJ-98 (N=107)	
personal crimes of violence	15%	38%	
SAJJ-eligible property & resist arrest	26	62	
non-eligible property	34		
good order, drugs, driving, other	25		
	---	---	
	100%	100%	
 <b>Area mix</b>	 SA FY-97 (N=1180)	 SAJJ-98 (N=107)	
metro Adelaide	78%	90%	
northern tier(SA FY-97, left column)			
3 country towns (SAJJ-98, right column)	22	10	
	---	---	
 <b>Aboriginal-other Australian mix</b>	 SA FY-97 data		
	-----		
	metro Adelaide (N=925)	PA region (N=255)	total (N=1180)
			SAJJ-98 (N=107)
Aboriginal	5%	47%	14%
other Australian	89	46	80
unknown	6	7	5
	---	---	---
 <b>Gender mix</b>	SA 1997 data Office Crime Stats (1998) (N=1612)		SAJJ-98 (N=107)
female	20%		22%
male	80		78
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Although data analysis is underway, some features of the sample can be described (Table 7). (Note that these are *preliminary* analyses and are subject to change.) About 44% of the conferences dealt with assaults (common and more serious forms, including sexual assault), about one-quarter dealt with property damage (including arson), and 15% each dealt with breaking & entering and motor vehicle theft. Half the conferences dealt with offences in which victims and offenders were strangers or only known to each by sight around the neighbourhood or school. Victims were injured in nearly 30% of matters, and over 60% of victims had out-of-pocket economic losses. For those with losses, the average loss (after insurance) was about AU\$1,076.

Nearly 40% of conferences dealt with incidents that occurred in or near the victim's home or the home of a friend, relative, or neighbour of the victim. The remainder occurred in non-domestic locales, notably in schools or on school property (30%).

Of the 89 conferences, 13 (or 15%) had two or more offenders present at the conference. Of the 89 young persons designated as the primary offender, 76% were male, and 24% female. Of the victims, 38% were female, 34% male, 7% male and female, and 20% were organisational victims, mainly schools.

It is too early to say how this sample of SAJJ offences differs from those in RISE, the Bethlehem project, or those conferenced in New Zealand in the early 1990s. I can say that the goal of observing conferences that addressed serious matters, with the potential for high emotional intensity for victims (and offenders) was achieved.

Table 7. SAJJ-98 sample: conference-based distributions

## (a) Offence type

offence	N	%	type of victim		
			personal	org	pers & org
assault-common	26	29.2	23		3
assault-serious	10	11.2	7		3
sex assault	3	3.4	3		
robbery	1	1.1	1		
b/e house	6	6.7	6		
b/e school	4	4.5		3	1
b/e other	3	3.4		3	
illegal use m/v	14	15.7	14		
embezzlement	2	2.2		2	
damage-arson	5	5.6	3	2	
damage-house	4	4.5	4		
damage-school	6	6.7		6	
damage-mv	2	2.2	2		
damage-other	3	3.4	1	2	
	89	100%	64	18	7
			72%	20%	8%

## (b) Victim-offender relationship\*

	N	%
immediate family (mo-fa or sis-bro)	8	9
relatives	0	0
well known	18	20
casual acquaintance	20	22
known by sight or around school or neighborhood	5	6
stranger -- not known before incident	38	43
	89	100%

## (c) Victim injury and economic losses

victim injured?	N	%
yes	25	29
no	64	71

victim had economic losses (out-of pocket, after insurance)?

yes 62% range: AU\$16 - 7000

average for all cases: AU\$750

average only for those with losses: AU\$1076

## (d) Place of incident\*

	N	%
at/in V's home	18	20
near V's home	3	3
on street near V's home	9	10
at/in/near V's friend's/rel's/neighbour's home	4	5
on street near V's friend's/rel's/neighbour's home	0	0
inside restaurant/bar/nightclub	0	0
other bldg	7	8
parking lot or garage	9	10
inside school bldg	7	8
on/ near school property	20	22
in apt yard, field, playground	2	2
on street, not near V's own or friend's home	4	5
on public transport or inside station	0	
other	6	7
	89	100

## (e) Gender and Primary YP/Victim Relations

Primary YP sex	female	21	24%
	male	68	76%
		89	100%

YP sex	victim sex			org	total N
	female	male	hh or mixed		
female	13	3	1	4	21
male	21	28	5	14	68
	34	32	6	18	89
	38%	34%	7%	20%	100%












Note: Where a victim is a person and an organisation, the gender of the personal victim is shown.

\*Codes for the victim-offender relationship and place of incident are from the U.S. National Crime Victimization Survey.

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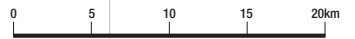
**Legend to all Regional Maps**

- Highway with route number..... 
- Sealed road, Major; Other..... 
- Unsealed road; Track..... 
- Distance in kilometres..... 
- Railway line with station..... 
- Dog fence; Prohibited area..... 
- Region boundary (various colours)..... 
- Watercourse..... 
- Lake, Perennial; Mainly dry..... 
- National or conservation park..... 
- Bookmark Biosphere Reserve..... 

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# Adelaide and Adelaide Hills



## **Part II: Research Instruments**

The research instruments were constructed and revised during January to March 1998. There were two major phases of instrument construction. In the early phase (January-February), the self-administered surveys for the YJC's and PYO's were developed; once they were in a final form, the SAJJ researcher's observation protocol was prepared. In the later phase (March), the offender and victim interviews were constructed and finalised.

During the preparation and revision of the instruments, I wrote memos that clarified my thinking on essential research questions and how they could be best operationalised. I read other research instruments, especially those developed by the RISE project, by Maxwell and Morris (1993) for New Zealand conferencing, Umbreit (1994) for victim-offender mediation programs in U.S. cities, and McCold and Wachtel (1998) for police-run conferencing in Bethlehem, Pennsylvania. Additional sources of items and question areas came from Tyler (1990) and Tyler et al. (1997) on procedural and social justice, and O'Connor and Sweetapple (1988) on adolescent understandings of legal process in juvenile court. Because I was new to Australia, to the state of South Australia, and to the field of adolescent law-breaking, I sought advice from other researchers on optimal ways of asking questions and fielding the research, especially in the interview phase. Instrument development and implementation would not have been possible without the generosity of time and the goodwill of other researchers at key stages. My thanks and appreciation especially go to Heather Strang, Ian O'Connor, Robert Boeckmann, and Malcolm Mearns. Others who provided advice and help were Andrew Goldsmith (Associate Investigator for SAJJ), John Braithwaite, Geoffrey Barnes, Nova Inkpen, Lisa Maher, Lubica Forsythe, Don Weatherburn, Mark Israel, Tom Tyler, Steve Barton, Bridget Booth, Warren Guppy, Arnold Dodd, and Alan Wanganeen.

Once drafts of the instruments had been constructed, the SAJJ research assistants (Michele Venables, Mary McKenna, and Liz Mumford) were actively involved in proposing new items, in revising the wording of items, and in suggesting a different sequence of items (or sections). We had many long and intensive meetings where both the content of the instruments and the implementation of the research were discussed.

### **Conceptual starting point**

In mid-January 1998, and in preparation for a one-week visit to Adelaide to review the draft instruments with the Youth Justice Coordinators (YJC's) and Police Youth Officers (PYO's), I wrote a memo that summarised what I had learned from my preliminary research, that reviewed major debates about conferencing, and that identified a way to bring the large questions down to an operational form. That memo organised my discussions with the coordinators and police in developing and revising items for their surveys. The memo text is placed in a boxed format to show its time-based fieldnote quality.

*January 1998 research memo*

Central to knowing whether family conferencing is a viable policy in the handling of juvenile (and perhaps adult) cases is how it “works” on the ground, in practice. There are many claims made about what conferencing is and should be, but little is known of what happens in conferences and whether the goals of conferences are achieved. Moreover, we do not know whether, even if all the goals are achieved in a conference, this affects conference participants positively over the long term.

One way to measure “what happens” is to ask a global question, “was this conference successful?” and to find out what conference participants understand by “success” and how that varies. For example, a PYO may have a different understanding of success than an offender, or a YJC may have a different understanding of success than a PYO.

Conceptualising success is not a simple matter because (1) many things are supposed to happen in conferences, perhaps many more things (or contrary things) than is possible to achieve; (2) conference participants have different roles in conferences and they have different relationships to an offence, and hence, they would expect different things from a conference proceeding; and (3) there may be inflated desires for “justice” (however different these may be for participants), which can never ultimately be fulfilled by a conference.

A reading of the *Young Offenders Act 1993* suggests little clarity in defining conference “success.” Goals appear to be in conflict with one another; as a consequence, the police and coordinators continue to focus their attention on clarifying the ambiguities. Moreover, as studies of the implementation of the *Act* reveal, system workers have had different interpretations of its scope over time. To study the meanings of conference “success” is important, but we cannot be concerned simply with that. We need to know whether variation in conference success (however defined) at Time-1 foreshadows future behaviour and attitudes of conference participants at Time-2. To study this relationship is also complex. We cannot assume that one event in the life of an individual can “cause” something to happen (or not happen) in the future. There are too many intervening events in a person’s life, and any simple claim of causality in human affairs is untenable. But we can begin to identify those elements in a conference that were salient (or not) to participants at the time and that have had a continuing influence (or not) on their attitudes and behaviour.

There is considerable debate among researchers, lawyers, conference advocates, and system officials about whether conferences are a good or bad thing. That debate reflects the dilemma of “doing justice in an unjust world.” Some argue, for example, that informal mechanisms of “doing justice” give offenders and victims more “voice” in describing what happened to them and in resolving the conflict. Others counter by saying that power imbalances between adults and young people mean that “legal safeguards” and “rights” must be maintained; hence formal mechanisms are required to “protect the weak.” Some argue that “individualised justice” -- where a specific agreement is tailored to an offender and victim -- is the most satisfactory form of justice. Others counter by arguing that “equity” (perhaps uniformity?) is the more important justice element.

*January 1998 research memo (continued)*

The history of juvenile and criminal justice systems has oscillated between the demands for consistency (or uniformity) and those for personalised (or individualised) responses. A shifting stance of "helping" and "punishing" offenders has also featured in this history. Conferencing is at the vortex of these mixed demands for justice.

Virtually all commentators I've read argue that conferencing reflects a "restorative" philosophy, whereas the traditional juvenile/criminal justice system reflects a mix of retributive ("punishment" oriented) and rehabilitative ("welfare" oriented) approaches. I would dispute this position based on my observations of conferences in South Australia and the ACT. Specifically, what I find most interesting about conferences is that they do not lend themselves easily to philosophical or empirical compartmentalisation. In one conference, participants will speak of retribution, of rehabilitation, and of restoration. It is the ability of conference participants to move flexibly (even if they are unaware of it) among these different philosophies that I find most intriguing. We need only look at the political history of conferencing to see that it has accommodated the desires of the right, left, and middle in gaining an apparent political consensus.

In this study, I simplify the research literature on conferencing by identifying two elements that recur in analysing and evaluating conference "success." Those elements are: (1) was the conference "restorative?" and (2) was the conference "democratic"?

But what does it mean to be "restorative" and "democratic" in this particular context? Perhaps it will never be possible to "restore" victims to a pre-crime existence or to have a "democratic" process when severe power-imbalances, especially those associated with age, are present in these events. Hence, these terms should be viewed as ideals, not expected to arise even in the most successful conferences.

We can operationalise these terms by identifying particular behaviours that would be associated with them. We may also wish to compare our measures with those used in other studies. For example, in the RISE project, the focus is on whether offenders were "reintegratively shamed." Thus, particular behaviours are expected to occur in a conference, e.g., the offending behaviour, not the person is stigmatised; emotional or physical states of "shame" are evinced when the offender covers his/her face or looks to the floor; and the offender's supporters show or verbalise respect and love for offenders.

I am interested to devise different observational measures of "restoration" for offenders than RISE, and to find ways of tapping "restoration" for victims. Furthermore, I want to expand on the New Zealand research on conferencing, which shows the quite different perceptions that emerge from participants on "democratic process." I want to build in the idea that conference participants, because of their different roles in a conference and different relationships to an offence, will have different judgments of conference "success." I expect that social relations in the wider society -- of class, race-ethnicity, gender, and age -- will affect such judgments.

## YJC and PYO Surveys

Making judgments about conference "success" (using dimensions of restorativeness and democratic process) was central to the development of the YJC and PYO surveys. I devised a draft survey for each group, which had items in these areas: (1) the offender's and victim's behaviour during the conference, (2) victim and offender interactions (including those of their supporters), (3) the character of the conference process and outcome (procedural justice and participation in decision-making), and (4) judgments of the other professional's performance (that is, the YJC's judgment of the PYO's behaviour, and vice versa). In intensive and separate meetings with the YJC's and PYO's<sup>24</sup> in January 1998 to go over each survey's content, I learned several things. First, my research focus on conference "success" was of some concern to the YJC's because they worried that the research instrument would suggest that their behaviour did not "measure up" to some unachievable, perhaps undesirable, ideal. Second, and having allayed the YJC's concerns, I discovered that while judgments of "success" were a good way to tap the dynamics of conferences, there was another phenomenon that needed to be studied. That was the relationship between a YJC and PYO in the conference itself and the differing "justice aims" of the members of each group.

As we went over the draft instruments, several points emerged. From the YJC perspective, some PYO's could be disruptive of the conference "flow," try to "take over" the conference process, lecture the young person (inappropriately, in the YJC's mind), and emphasise certain types of conference outcomes. From the PYO perspective, some YJC's did not manage the conference process well or were not sufficiently attention to "the police perspective." It became clear that these judgments of the other professional's behaviour in the conference needed to be structured into the instrument. Because the SAJJ project had to be on "neutral ground," it was important that the number of items and their wording be perceived as fair to both groups. From my conversations with the YJC's and PYO's, it was uncertain how often conflicts between them emerged in the conference setting. They reported that such problems could occur, although perhaps infrequently and only with certain YJC-PYO pairings.

In addition to identifying several new areas in the survey, the focus of our discussions was making sure that the items contained the right words. Because this was a self-administered survey, clarity of word choice was essential for getting meaningful and complete answers. As a practical matter, it was important to make sure that the police and coordinators were on side with the project and with the survey's content. If they believed that the survey items were mostly meaningless, poorly worded, or missed the point, why should they bother completing them?<sup>25</sup>

Out of discussions with both groups, I learned that they preferred the chance to comment on their responses, e.g., to clarify or justify their answers to the close-ended items. Short

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<sup>24</sup> Meetings were held only with the Adelaide YJC's and PYO's in January. Draft copies of the instruments were sent for field testing and review to the YJC's in the Port Augusta office and to the police officers in the three country town sample.

<sup>25</sup> Because the SAJJ group was in regular contact with the YJC's and PYO's, we were able to follow-up on any surveys not yet handed in. There was a 100% response rate for both surveys.

comment lines were added for each of these questions, as were longer lines for those questions where we sought a fuller explanation for their answers.

## 1. YJC Survey (Appendix 1)

YJC's generally have more contact than PYO's with the conference participants because of their time spent talking with the parties when setting up the conference. Part A of the YJC survey taps into the coordinator's knowledge of participants' emotions and priorities in the pre-conference period. This is a key source of information for restorative justice researchers, who typically do not have the resources to interview participants before a conference. Moreover, if participants are apathetic or their priorities toward the case are low, the conference may have difficulty getting off the ground. Part A of the YJC survey also gives coordinators the opportunity to document their labour in putting a conference together, including locating appropriate venues, setting convenient dates and times for participants, and organising security measures, if necessary.

Part B of the YJC survey follows the chronology of the conference itself: Phase I (introductions), Phase II (the young person's behaviour during the discussion of the offence and its impact, victim-offender relations in this phase and later in the outcome discussion; the exchanges between the YP's supporters and the victim and their supporters, and Phase III (the outcome discussion, who participated, degree to which the outcome was achieved by group consensus, the "justness" of the outcome). Then, there are a series of items that tap the YJC's judgments and reflections of their own and other's behaviour (26-38) with a global measure of conference "success" (41). Item 39 asks whether they think the young person will get into trouble again.<sup>26</sup>

For measures of restorative justice, in Part B, items 3-18 tap the YJC's perception of the degree to which the YP accepted responsibility for the offence, was remorseful or defiant,<sup>27</sup> was involved in the conference, was prepared to offer an apology, among other items. This set of questions also asked about the YJC's perception of the degree to which the victim and their supporter(s) were effective, and the extent of movement and mutual understanding between the victim and YP that was expressed in words or in a more symbolic way.

In the "opinions, impressions, and reflections" section (p. 6), several items elicit the YJC's perceptions of procedural justice.<sup>28</sup> These are item 27 ("tried to convey that you were a fair person," an indicator of decision-maker *neutrality*) and item 36 ("process of deciding the outcome was fair," a global indicator of *process fairness*). Two items can be analysed as indicators of procedural justice and as the YJC's evaluations of conference attendees' behaviour or support. Item 26 ("PYO lectured the YP inappropriately") can be a

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<sup>26</sup> As I discuss more in Section 3 on the BOP, when there was more than one offender (or victim) in a conference, a "primary" offender (and victim) was identified, who would then be the subject of the YJC's, the PYO's, and the SAJJ researcher's judgments of "the YP's" or "the victim's" actions and words before and during the conference. This approach was taken because it is difficult (perhaps not even possible for the YJC and PYO) to accurately describe the numerous exchanges that occur between an offender and victim, when one attempts to do so simultaneously for two or more offenders (or victims) and their supporters.

<sup>27</sup> The defiance item was taken from the RISE global observation instrument (the pink booklet), question 29.

<sup>28</sup> The concept and measures of procedural justice are discussed more fully in the YP interview section.

procedural justice indicator of the YP's *standing*, as well as a YJC judgment of whether the police behaved appropriately in the conference. Item 29 ("the YP's parent[s], who were present at the conference, seemed to have the YP's best interests at heart") can be a procedural justice indicator of the YP's *trust* in a decision-maker, as well as a YJC judgment of the degree of parental support for the YP.

Although there are procedural justice measures in the YJC and PYO surveys and in the BOP, the procedural justice items are most developed and extensive in the YP and victim interviews.

Item 40 gives a list of ten potential "justice aims," from which the YJC was asked to tick no more than three. Three listed aims are punishment or deterrence oriented (items 1, 5, and 8 on the list), five are restorative justice oriented (items 4, 6, 7, 9, and 10), and two could be either (items 2 and 3). The list of justice aims came not only from the research literature, but also from discussions with the YJC's and the PYO's about what items should be on the list. Item 40 asks for the YJC's and PYO's justice aims for the *particular conference*, not in a general sense. This question has a shared meaning with question 55 in the RISE global observation booklet (the pink one). However, the RISE question asks the observer to note "*how much* the conference [took] into account principles of ... punishment, repaying the community, repaying the victim, preventing future offences, and restoration." Thus, while SAJJ asks *what* the YJC and PYO wished to see happen with respect to justice aims, RISE asks *how much* discussion of these aims occurred.

RISE is not surveying the conference facilitators (in the ACT, these are police officers) about their conference aims and judgments in detail as SAJJ is.<sup>29</sup> RISE and SAJJ comparisons will be most appropriate in the researcher's observations of what occurred at the conference, in addition to material gathered from the interviews with the YP's and victims. Focusing for the moment on conference observations, one finds measurement difference in the RISE and SAJJ instruments. Whereas SAJJ questions typically ask, "to what extent did ... happen?" with four anchors: "not at all, somewhat, mostly, and fully," RISE questions more often ask, "how often" and "how much did ... happen" with an 8-point scale, anchored at one end, "not at all" and at the other end, "very much." These and other measurement differences are not major and can be adjusted in making comparisons.

There are differences in the observational emphases of RISE and SAJJ. In the SAJJ instruments, greater attention is given to (1) the victim and to the character of the movement between victim and offender during the conference, (2) the relationships between the YJC and PYO, and to their behaviour toward other conference participants, and (3) the YJC's preparation for the conference and to their knowledge of pre-conference emotions and priorities of conference participants.

## 2. PYO Survey (Appendix 2)

The format of the PYO survey and most items in it are identical to the format and content of the YJC survey. There is no "pre-conference" Part A, of course, but there are several

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<sup>29</sup> The RISE facilitator survey is very short, having two items that ask about the conference outcome and one that asks about the victim's needs being met.

questions at the start of the PYO survey that ask the officer to consider, "what went through your mind before the conference began?" Compared to the YJC, the PYO often knows less about the case and the conference participants (though this is not always so). Because the YJC runs the conference and introduces the police officer as one "conference member," it may not be clear to others in the room (and especially to the young person) that the PYO has considerable legal power. Recall from an earlier section in this Technical Report (Part I, Section 1) that a conference outcome must be agreed to, at a minimum, by the PYO and the YP.<sup>30</sup> In the conference itself, the PYO will summarise the information in the apprehension report (usually at the beginning of Phase I of the conference), and the young person will be asked by the YJC, "Is that how you remember it?" and "Do you agree with the officer's version of what happened?" And, either in Phase II or III, the officer is asked by the YJC to comment on the consequences and risks of future offending for the young person.

In the PYO survey, two items elicit the police officer's judgment of how well the YJC opened the conference and the YP's understanding of their legal position. These items (and similar ones in the BOP) will be used to determine whether the YP is both advised of and understands his/her legal rights and options in the conference process. Whether such legal knowledge (and "legal protections") are present has been the subject of much debate in the conferencing literature (see, e.g., Barga 1996). With data gathered from the PYO survey, our observations using the BOP, and our interviews with the YP's, the SAJJ project hopes to elucidate the legal positioning of adolescents in a diversion-from-court process.

Like the YJC survey, the PYO's are asked a similar set of questions on their perceptions of the degree of "restorativeness" in the conference, with items 6-11 tapping the degree to which the YP accepted responsibility for the offence, was remorseful or defiant, was involved in the conference, was prepared to offer an apology, among other items. We asked the PYO's similar questions about their perceptions of victim-offender relationships and the outcome discussion in Phases II and III of the conference. We added some new questions. These included items 26 and 27 ("to what degree did you feel you needed to press your position for the outcome?" and "to what degree was the YJC attentive to the police perspective in the outcome decision?"). In the opinions and reflections section, items 30, 31, 37, and 44 were added ("the YJC managed movement through the conference stages well," "the YJC asked for your input about the outcome at the right stage in the conference," "there were questions thrown up at you about initial police action (for example, during arrest or apprehension) which were uncomfortable to you," and "the YJC negotiated the outcome well."

Analyses of the YJC and PYO surveys will compare their perceptions of conference processes and outcomes, examining sources of conflict, if any, in the conference process. The YJC's and PYO's perceptions will be compared with those of the SAJJ researcher. Ultimately, we are interested to see whether observed behaviour in the conference has any

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<sup>30</sup> The YJC's and PYO's may view the matter differently. Whereas the YJC's may view this police legal role as a form of "veto power," the PYO's will say that "two people have the power to veto the agreement." If the YP and PYO do not agree, the matter is referred to a magistrate or judge, who acts as a "referee" in deciding what the final agreement will be. There can be some ambiguity in how the "court referral" is described to those at the conference; often, it is stated in a simple way that the matter "will be referred to court," leading the YP and victim (and their supporters) to infer, wrongly, that it becomes a court case.

bearing on how the YP viewed the encounter and was affected by it, and similarly how the victim experienced the encounter and was affected by it.

One item in both surveys (as well as the BOP) bears mention. This is YJC item Part B-21 (PYO item 24), which asks the YJC's, PYO's, and SAJJ researchers to show a percentage for each conference participant that describes the extent of their involvement (a) *in proposing ideas* for the outcome and (b) *in working it out*. This item initially drew from the New Zealand research instrument, which asked "so who really decided the outcome?" The New Zealand item is not optimal, though, because several people might have participated in the discussion, but the respondent is asked to pick just one. Moreover, from my discussion with the police officers, I learned that there are two components in the outcome discussion. One is *proposing ideas* or *putting ideas on the table* for an outcome, and another is *discussing those ideas*. Although members of all three groups (the YJC's, PYO's, and SAJJ researchers) thought that this question may be too difficult to answer, everyone did answer it. The raw estimates of percents can be converted to other variables (such as the YP had no or little involvement in proposing ideas, but was involved in discussing them, the victim was the only conference participant who proposed ideas, there was equal participation by all in discussing the ideas, etc.). The percents alone can be misleading, of course, if the number of people at the conference is not also considered.

How the YJC's and PYO's view the dynamics of the outcome discussion, coupled with the offenders' and victims' perceptions, will be analysed to determine how congruent their perceptions are.

### 3. The Briefing-Observation Protocol (the BOP) (Appendix 3)

The BOP builds on, but extends the YJC and PYO surveys in several ways. It contains many of the same items that are in the YJC and PYO surveys (BOP 9-31, 35-37, 44, 66-67) or those with slight modifications (38-43, 45-65). The similar items focused on elements of restorative justice, fairness of process, professionalism of the coordinator's and police officer's actions and words, judgments of the amount of participation by the participants, the "justness" of the outcome, whether the young person would get into trouble again, and a global rating of the conference. The BOP will act as an "adjudicator" of sorts for the potentially different realities of the coordinator and police officer, and in some instances, of the young person and victim.<sup>31</sup>

There were six new features in the BOP. First, there was a one-page briefing section that guided a pre-conference discussion between a SAJJ researcher and YJC. The idea of having a pre-conference briefing emerged from my discussions with the YJC's in January when we reviewed an early draft of the YJC survey. It turned out to be an important addition to the research, and I recommend it to others. During the briefing session, the YJC informed the SAJJ researcher of difficulties they faced (if any) in preparing for the

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<sup>31</sup> In the early days of the research, the YJC's and PYO's knew that their counterparts were judging elements of their conference behaviour, and that the SAJJ researchers were making judgments of both. Some research participants were interested to see copies of the instruments, including those used in the interviews with young people and victims. My policy was that all instruments (blank ones, of course) were available to any research participant -- police officer, coordinator, young person (or family member), and victim. There was no reason for secrecy and every reason to make the methods and instruments transparent to enjoin cooperation and trust.

conference, and in particular, when and whom to contact in securing interviews with the young person and victim. When a conference involved more than one offender, the PYO was consulted on who they thought was the "primary" offender for purposes of observation. Where there was more than one victim, the YJC was consulted on who the "primary" victim was. In the briefing, item 6 asks, "is there any information about the case that the YJC finds important to bring to SAJJ attention?" This question was meant to bring out any complexities in the case that were not apparent from the police report, especially as they affected the SAJJ project's ability to secure an interview with the young person or victim. The briefing session also permitted the SAJJ researcher and YJC to coordinate travel to and from the conference.<sup>32</sup>

Second, the BOP contained a section on how well the YJC introduced the conference to participants and whether information about the YP's legal rights was conveyed correctly and in a way that someone attending a conference for the first time would understand (items 1-11 under the headings, "roles and process" and "legal advice/rights)." In this section, we also recorded whether the young person was paying attention and seemed to understand what was being said.

Third, item 32 was added, in which the SAJJ observer was to characterise the emotional content of a conference. We recorded whether there were angry or aggressive remarks, arguing, and crying, and the gender of participants and emotions.

Fourth, several items (33-34) asked the SAJJ observer to record whether she was moved by exchanges between participants. In this way, the emotional dimensions of conferences (in this instance, whether there was evidence of an offender and victim making a connection with one another) could be registered, to some extent, by the observer's own emotions.

Fifth, item 58 on whether the victim seemed to be "distraught or upset by what the YP or their supporters said to them, even by the end of the conference" had a further "comments" area for the observer to note potential "revictimisation" of the victim. Any item like this needs to be handled with care, but previous research suggests that about one-quarter of victims can feel worse after a conference (Maxwell and Morris 1993); my observations of conferences during 1995-96 also revealed that one-quarter of victims were made to feel like offenders or treated with disrespect in some way (Daly 1996). It is important that the phrase, "even by the end of the conference," is added because a YP or their supporters can say things that may initially upset victims (e.g., having to recall their feelings in the immediate aftermath of an offence), but these feelings may subsequently be addressed during the conference.

Finally, a new section on "Racial-ethnic, gender, age, and class dynamics in the conference" (items 68-78) was added. This section aimed to document the variety of ways in which power and prejudice were evident in the conference.

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<sup>32</sup>Getting to and from the conferences was not a simple matter, some venues being an hour's drive away. Thus, SAJJ researchers travelled with the YJC whenever possible. To avoid the perception by any conference participant that the SAJJ researchers were allied with the YJC's, we tried as much as possible not to be seen getting in and out of the car with the YJC. But, ultimately, the SAJJ project relied on resources and in-kind support of the Family Conference Team (and the Courts Administration Authority, more generally). The SAJJ research office was housed in the Youth Court, along with the magistrates, judges, and members of the Family Conference Team.

In the BOP, there are several places where the recorder-observer is asked to "See background notes." I wrote these notes to provide some justification for my thinking and some background for my research assistants, who had not observed a conference before working on the project (excluding Christie-Johnston who had observed about 150 conferences in the ACT). These notes were circulated and discussed as we sought to develop a "common mind" in observing the conferences.

The following note on conference Phases II and III tried to impart the complexities and contingencies of victim and YP "movement" in a conference, and the kinds of "connections" that can be made by participants.

*Background notes, BOP items 13-33 on Phases II and III*

A difficulty in recording and evaluating "what happened" in a conference is that there are subtle shifts of position by the key people involved and there are sequences of behaviour that make conferences move toward more (or less) successful conclusions.

A typical sequence in a "good" conference is when the YP admits to what they have done and shows some remorse for doing it. This can serve to dissipate some anger by the victim, who may now shift toward a somewhat more conciliatory or empathetic position. At the same time, the victim sees that the YP's supporters have in some sense been harmed by the YP's behaviour and that the YP may have already been punished. When the victim tells their story about what happened and seeks to find out from the YP "why me?," there can be a further shifting of position as the YP begins to understand more clearly the consequences of their act and, in responding to "why me," can begin to offer reassurances that the behaviour won't happen again.

The optimum situation, then, is one where the YP is prepared to do something to make amends for the victim, and the victim does not solely wish to punish the YP but to "help them" or to seek restitution alone. One desirable result is that the YP spontaneously apologises for the offence and the victim accepts the apology with a sense of forgiveness. This may serve to reduce the victim's desire to punish the YP and to seek a different response (or mix of responses) to the offence. YJC's say that another indication of a "good" conference is when the YP is able to show their maturity and resourcefulness to the other adults in the room; in some sense, to show the adults a positive side of him/herself that may come as a surprise.

Other important connections are made in conferences. One that interests me is the connection between the YP's supporters and the victim or the victim's supporters. Movement here can be more frequent (and as important) as that between the YP and the victim. When ties are formed between individuals in these groups, there can be a wider community benefit as citizens make new connections across current rifts. I am interested in the routine ways in which mothers (who are more often present than fathers in conferences) "do" this community work, although it can occur between fathers (or other key male adults) and between men and women.

*Background notes, BOP items 13-33 on Phases II and III*

All of the optimal developments do not happen most of the time, but they provide a sense of what SAJJ observers should be looking for and taking note of during conference Phases II and III.

The next note reflects my early thinking on ways of operationalising the idea of "procedural justice" in the conference setting. I worked with Robert Boeckmann in devising more detailed measures of procedural justice in the YP offender and victim interviews.

*Background notes, BOP items on fairness in Phase III*

The idea of "democratic process" is vague and difficult to pin down, but in general, it involves two elements in these conferences: (a) the degree to which all the key conference participants (YP, victim, and their supporters) have a say in (or voice a position about) what should be done and (b) the degree to which key conference participants were involved in deciding the outcome. Tyler (1990) finds that "process control" (or having a say) is more salient to people's judgements of whether decisions are fair than is "decision control" (or deciding what should be done). His research studied police and court decisions, not the sort of deliberations that take place during conferences. It assumes adults, not adolescents are involved in a dispute process. It further assumes that a neutral third-party is the "decision maker." In conference decision-making, there is greater complexity in the kinds of interactions that can take place, and there is no single "third party" decision maker.

A recurring point in Tyler (1990) is that "having a say" is more important than actually controlling the content of the decision. Thus, Maxwell and Morris's (1993) focus on "who decided" in the New Zealand research may tell only part of the story. If the YP believes that they have "had a say," independent of whether they actually "decided" the final outcome, they may perceive the outcome as fair.

Many conferencing commentators, typically those who have never observed a conference, focus on the power of the police to coerce the YP into an agreement. They miss an essential source of coercive power -- that of the YP's parents -- who may interrupt, speak on behalf of the YP, attempt to dictate terms of an agreement, and in general, not permit the YP a say or a voice. We want to be paying attention to these multiple sources of coercive power in the conference (item 37). We know from Maxwell and Morris (1993) that the conference participants who felt most satisfied with having made decisions on the outcome were the police officer and the parent(s); the YP was the least satisfied. This suggests that the YP may perceive the whole conference situation as being a silent participant in a "room full of adults" (Haines 1996).

The last BOP background note describes how to view and record "power relations" in a conference. A major difficulty in observing "power relations" in conferences is that they can work in subtle ways, and they can shift about. Differing observers are likely to have differing frames of reference in deciding what "counts" as an instance of "wrongful power" being expressed.

*Background notes, BOP items 68-78 on power relations*

There are subtle (and sometimes not so subtle) ways in which power relations are expressed and challenged in conferences. Because earlier sections of the BOP already explored position-based sources of power or authority (that of the PYO, the YJC, other professionals; the parent in relationship to the YP), this section focuses on four dimensions of social location (race-ethnicity, gender, age, and class).

An axiom of research on informal processes, like conferencing, is that while such processes make dialog and discussion possible, they permit relations of inequality in the wider society to be reproduced and perhaps amplified. Thus, for example, some feminist commentators (eg., Stubbs 1995) are concerned that conferencing cases involving violence between a man and woman (as offender and victim, respectively) may put victims in an especially vulnerable position. The man may intimidate the woman, blame the woman for her victimisation, or in other ways, "revictimise" her in the conference setting. Courts do this too, of course, but the major difference between a court and conference proceeding is that a court does not allow for open, largely unconstrained discussion of conflict or contested "facts." In courts, power is checked (to some degree) by rules concerning who can speak, when they can speak, and what they are permitted to speak about.

When observing conferences and taking note of race/gender dynamics, be aware that "race" is not a code word for black, Aboriginal, or Asian. Whites are racialised subjects too, although they are in the "unmarked" subject position. So too for gender. Gender dynamics can emerge in interactions among women and among men, as well as between them. "Blokiness" is a good example of that for men.

We should focus our recording attention on those features of conferences that are relatively easy to count and classify, not those features that are hard for people to observe. Therefore, I am interested in our noting whether the following events occurred in a conference:

1. Remarks made about racial and gender groups that are (a) stereotypical or (b) derogatory/prejudicial in nature.

(a) Stereotypical remarks occur when negative group characteristics are attributed to an individual. "That's what's wrong with you welfare mothers: you never want to work." Or "that's what's wrong with the way your kind brings up kids: you let them run wild."

(b) Derogatory remarks are those that put down another, using gender or racial-ethnic based classifications. The person making the derogatory remark assumes a position of superiority over the other. A recent conference I observed had an example. A woman reported with some enthusiasm that her son's dog was effective in running after a "Vietnamese kid" who had come to her gate. (It wasn't clear from the context of her remark whether the young person was just walking by or doing something more sinister from her point of view.) Had a Vietnamese person been in the room, I'm certain the woman would never have told this story. When she did tell it, the group laughed, though

*Background notes, BOP items 68-78 on power relations*

somewhat nervously. This shows how "whiteness" as a racial identity is routinely consolidated in interaction. For purposes of the observations, we need not distinguish between stereotypical remarks and derogatory remarks, but I did want to draw SAJJ researcher's attention to it.

2. Words or actions by a conference participant (or several) that intimidate another (or several other) participants. A YJC gave the SAJJ group a recent example, albeit extreme, of a man who tried to intimidate the YJC by challenging the way he was running the conference. Intimidation can also occur when victims, offenders, or their supporters make rude or abusive comments to each other, or in some instances, threaten them. Intimidation can take a variety of forms, both verbal and non-verbal. As a consequence, it may be hard to see in a conference observation, though it can be followed up in the interview phase.

3. Conference discussions dominated by one person or members of particular groups. Here, we want to consider whether member(s) of a particular group dominate the discussion in terms of airtime and commentary. Focus here only on the participants, not the YJC or the PYO:

(a) From Haines (1996), would we say that the conference looks like a "powerless youth" in a "roomful of adults"?

(b) From Blagg (1997) and Cunneen (1997), would we say that in conferences involving members of different racial/ethnic groups, that whites had the last word or the upper hand, or in other ways controlled the conference?

(c) From Stubbs (1995), would we say that a man (or some men) had the last word or the upper hand, or in other ways controlled the conference? Are women less likely to speak or get a point of view across?

(d) There is nothing explicit in the literature about class, except as this relates to the role of the professionals dominating the discussion. I take it as axiomatic that law and the justice system are founded upon and work with middle-class ideas of "proper" ways of dressing, codes of conduct, speaking styles, life choices, leisure time activities, etc. Class is most visible when there are differences in the class locations of the participants. Perhaps we should focus on that dimension for purposes of our observations.

#### 4. Power inversions

I want us to be aware of when power relations are challenged, and subordinates claim a moment of power.

Age: An age-based power inversion can occur when there are multiple YP's, who may bring their friends as supporters. What can happen is (a) the YP and their associates can wrest power from the adults; and (b) an adult victim is not effective, and as a consequence, is put in a relatively less strong position (rather than being on the moral high ground).

*Background notes, BOP items 68-78 on power relations*

Race/ethnicity: In conferences involving different racial-ethnic groups, there can be inversions when members of a presumptively subordinate group are able to take charge in their interests. Another way this occurs is by silence and withdrawal rather than by speaking. This can be a most effective form of "resistance" by members of racial-ethnic minority groups.

Gender: I have not witnessed a good example of a gender power inversion, I suppose mainly because among the adults in the conferences, I have not seen a pattern in which men or women as a group tended to dominate the discussion. There is usually a stand-off or a mixed participation pattern. The area is also complicated by the fact that more mothers than fathers turn up to conferences as YP supporters, while most (about 80%) of YP's are male. Hence, with a female adult (parent) and a male adolescent (both son and offender), it is unclear what would constitute a "gender inversion" on an expectable pattern. What we might look for here, then, is whether one or more women took charge of the conference in their interests. That might include their ability to point out what "the men got wrong" or the ways in which a "male perspective" lacks an understanding of the situation. It may also occur when a female YP is able to challenge sexist or sexualised constructions of her behaviour.

It is difficult to "see" power operating in unjust ways in proceedings like conferences. Participants may perceive the situation to be "unjust" or feel intimidated, but an observer cannot by observation alone know what participants are thinking or feeling. This section on recording power relations in the conference process, then, is a preliminary foray into a "hard to measure" area where *subtleties of communication* not *smoking guns* are the norm.

How long a conference lasts is an important item to measure, and after observing conferences for about a week, we elected to mark the "end" of the conference when the coordinator said "the conference is over" (note that this differs from what is said on the BOP itself for "time conference ended"). The YJC's comment to the group marked the moment when the agreement had been decided, when the victims could leave, but the agreement had not yet been written by the YJC or signed by the YP and YJC. Our reasons to change the definition for "time conference ended" were two-fold. First, there could be an excessive time recorded as "conference time" when the coordinator was in fact engaged in administrative activity (in one instance, the signing process was held up for 25 minutes when a computer was down). Second, we found that once the coordinator said "the conference is over," the conference participants would get up and leave the immediate area, but mill around outside the room. A better use of our time was to be in a position to record any exchanges that may be occurring (including those outside the room) rather than to witness the signing of an agreement. Thus, our measure of "conference time" was the actual time spent by all the participants in the conference.<sup>33</sup> Our observations of "what

<sup>33</sup> By comparison in RISE, the conference "end" is just after the agreement is signed. We started our observations using this measure. Indeed, one sees on the BOP "after the agreement is explained and signed" as defining when the conference "ended," but this instruction was not in fact in use during the research.

happened at the conference" continued after the conference "ended" (using our definition), however, and BOP item 80 taps that.

Careful readers of the BOP will note that it does not record what was in the final agreement. We obtained an official copy of the agreement document (the same one that the YP receives) that is produced by the YJC, and thus there was no reason to record the information on the BOP.

A final note on the BOP. On the last page, the observer is asked to draw a diagram or map of the conference participants, including where they sat as observer. The SAJJ group soon decided to use the back page of the BOP because there was more space to draw it there. Having a map of where conference participants sat is an excellent research tool. First, it helps to recall the conference for the observer, and it is a good way to count the number of participants. Second, we used this map in our interviews with the YPs and victims, again to help them recall the conference (if memories had faded), but also to ask them a series of questions about the roles of the YJC and PYO in the conference.

#### 4. YP interview (Appendix 4)

The YP interview posed challenges of a conceptual and more technical sort. Conceptually, it was important to draw from research not only of restorative and procedural justice, but also to learn about the young person's understandings of their legal status and relationship to legal authority. Technically, we needed to complete the interview in 45 minutes or less; otherwise, we risked losing the YP's interest and attention. I wanted the interviews to reflect what the young people felt happened at the conference, and as much as possible in their own words, but as a practical matter, with five people conducting the interviews, they needed to be delivered in a comparably "standard" way.

In preparing the YP interview, many decisions large and small needed to be made. What was the appropriate mix of close-ended and more open-ended items? Which items (and previous research) was most important to replicate or modify? What was the optimal way of ordering questions? What form should the demographic items take to afford comparison with other surveys? Should the interviews be tape-recorded? Should the YP's be "paid" for their time or offered incentives to complete the interviews? Should we ask about the YP's law breaking activities that had not come to police attention?

Here's a summary of the decisions we made:

- The interview is composed largely of close-ended items, but there are 18 items in which the interviewer transcribes from the tape (or written words for those interviews that were not taped) what the YP says in their own words.
- The interview draws from O'Connor and Sweetapple (1988) on adolescent views of the legal process; it uses or modifies items contained in the schedules in RISE, Umbreit (1994), Maxwell and Morris (1993), but adds many new items; and it draws considerably on recent developments in operationalising the concept of procedural justice, with modifications appropriate to a process that has not one, but two apparent legal authorities.

- The interview begins with easy-to-answer demographic questions, followed by a chronological ordering of the young person's experiences before the conference, at the conference, and after it.
- The demographic questions use the RISE categories, where necessary, for comparison.
- Over 90% of the interviews were tape recorded; of the 93 YP's interviewed, 7 declined our request to tape their interview.
- None of the YP's was paid for the interview, whether in money or incentives such as movie tickets.
- No detailed questions were asked that sought self-reported involvement in law-breaking. To have done so would have taken considerable time, and it was not a goal of the research. Official data on police contacts will be gathered and analysed.<sup>34</sup>

At no time did I consider using a self-administered survey. In light of the age of some of the young people, their reading and comprehension skills, and the complexity of some of the question areas, face-to-face interviews were necessary. Those choosing to use self-administered surveys in research on adolescents often do so to keep costs down, but if this route is taken, only the most simple questions can be asked, or they can be asked only of those with the requisite reading and comprehension skills.

*Observer and interviewer: same or different person?*

Another methodological issue confronted the SAJJ group: should the person who observed the conference also be the person who conducts the interview with the young person (or victim)? Flexibility of staffing was essential because for 10 research weeks we were observing conferences at the same time that we were carrying out interviews. We considered arguments for having one person be the observer and interviewer, or having different people carry out these tasks, aware of debate over the optimal ways of proceeding. In the RISE project, for example, the decision was made that the interviewer should be a different person than the observer<sup>35</sup> because, it was believed, this increased the objectivity of (or reduced potential bias in) the interview data gathered. After considering the issue at length, the SAJJ group came to the opposite conclusion on ways of increasing the quality of data gathered. Having familiarised herself with the details of the case, talked to the YJC about it and observed the conference and seen the dynamics unfold, the SAJJ researcher was able to pose the interview questions and understand the young person's answers with the conference context in mind. Thus, where it was possible, the person who observed the conference carried out the interview.<sup>36</sup>

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<sup>34</sup> YP follow-up interviews for 1999 will probe whether the 1998 conference had any impact on the YP's law-abiding or law-breaking behaviour; however, it will not estimate self-reported delinquency.

<sup>35</sup> This holds for the offender interviews, but not the victim interviews.

<sup>36</sup> Of the 172 completed interviews, 70% were carried out by a researcher who had observed the conference. The person observing the conference would pass along any relevant information to the person conducting the interview to avoid any embarrassment or other difficulties when conducting an interview. For example, some

The desirability of increasing the intersubjective meaning in the interview had to be balanced alongside the desirability of conducting something approximating a "standard" interview across the five SAJJ researchers. Using an approach that O'Connor (1998) terms "invitational and conversational," the SAJJ group aimed to develop a degree of "rapport," albeit difficult to achieve in a first-time interview. We were not aiming to maximise the "objectivity" of the interview, but rather to maximise the accuracy and probity of the interviewees' answers. For example, if an offender or victim did not understand a question, we rephrased it or sought other words to make the meaning more plain. Such rephrasing was necessary in those interviews with the 10 to 12 year olds and those with an intellectual disability.

Highlighting the areas of the YP interview, I shall move through each interview section. The procedural justice questions are asked throughout the interview, but the concept of procedural justice is addressed in Section 5.

### *Section 1*

At the end of Section 1, several questions ask about "being in trouble with the police before." The aim was not to elicit details of prior involvement, but rather to determine what the young person's prior exposure to the juvenile justice system had been before the conference. Such exposure (especially to court process) can "harden" the YP to legal authority. Whether the YP had been to a conference before and whether they thought it was fair (a procedural justice item) were important in understanding their judgments of the fairness of the conference.

### *Section 2*

This section asks about the YP's experiences with the police and what they were thinking about before going to the conference. The police questions were adapted from Tyler (1990: 204); items 2-5 and 2-6 record what the YP said in his/her own words, where something was said.

One important area to explore in restorative justice processes (like conferences) is whether participants know what, in general, is supposed to happen and whether they have given any thought to what they want to say or to see occur. It cannot be assumed that participants have such knowledge or have prepared for a conference. Items 2-7 to 2-9 ask the YP what information they were given, and items 2-10 to 2-12 ask "what you hoped would and wouldn't happen at the conference," the latter set was suggested by Ian O'Connor to find out what young people may have anticipated in this legal process.

Items 2-13 to 2-15, coupled with 2-17 to 2-19, are adapted from other instruments (RISE and Umbreit's) that try to assess a young person's feelings toward a conference and the victim "before" and "after" a conference takes place. The degree to which the young person gave some thought to what they wanted to say to a victim is asked in 2-20.

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victims were especially traumatised by the incident, and relationships between young people and their parents may have been strained.

### *Section 3*

The focus of this section is on what the young person remembered happening at the conference and what they understood to be their legal position and options. The conference map is an excellent device in the interview process; it helps to change the pace and also serves as a good memory jogger for the young person (and interviewer).

Global procedural justice questions are asked about "being treated fairly" by the YJC, the PYO, and the victim (or victim representative), if one was present. We were interested to learn if the young people knew the difference in the roles of the YJC and PYO, and who they thought had "more power" to decide what was in the final agreement. Item 3-6 taps whether the young person thought the police officer at the conference treated them "the same" or "more" or "less fairly" than the apprehending officer.

Questions 3-8 to 3-10 centre on what the young person's actual knowledge was of their legal standing and options. O'Connor and Sweetapple (1988) found that young people were unsure and mistaken on what occurred in their juvenile court case. My reading of the research literature on restorative justice suggests that few have probed the question of legal knowledge of young people; rather, it has been assumed. Thus, we asked the young people what they knew about the conference process and whether they understood the consequences of electing certain options (such as not agreeing with the police officer). Whom do they think has "the power" in a conference, the YJC or PYO? Can they differentiate between the roles of the coordinator and police officer in a conference?

Items 3-11 and 3-12 can be linked with 3-21 and 6-4. All tap the extent to which the young person is focused on concerns for "self" or has "other regarding" feelings toward the victim. These items emerged as the SAJJ group became increasingly aware that it was important to ask key conceptual questions concerning empathy or orientation to "the other" in as direct and simple manner as possible.

Items 3-13 through 3-19 adapt in spirit from Umbreit's (1994) questions (especially 3-13, 3-14, and 3-17), although the SAJJ group added new items such as "to let people know that you can be trusted," "... that the behaviour won't happen again," and "... that you usually don't do things like this." These items operationalise the sense of "pride" in being a "good" person and a concern to win back the trust of those adults who are important in the young person's life.

Item 3-22 on fairness in the way the agreement was decided (procedural justice), coupled with the people the YP can identify as being involved in the outcome discussion, tap whether the young person believed they participated in and had some say in the final agreement. Their judgment of the "justness" of the agreement is asked in 3-24.

### *Section 4*

Global measures of procedural justice (4-1 to 4-3), outcome control, outcome fairness, and outcome favourability (4-4 to 4-6) are asked in this section. Item 4-7 has been used in Tyler's research and in RISE. The global satisfaction question is ubiquitous, and while we

cannot be sure what respondents mean when they say they are "satisfied,"<sup>37</sup> we would be remiss to leave it out.

### *Section 5*

Most of the items in this section are measures of the components of procedural justice, including the *neutrality* of the decision-maker, the ways a person is treated by legal authorities (*standing*), the person's *trust* in the benevolence or caring of legal authorities, and whether the person has some *voice* in the legal process.

Robert Boeckmann, author of a recent book with Tyler (Tyler et al. 1997), is now a lecturer at Flinders University in Adelaide. We collaborated in devising and refining items for the YP interview (these items were used also in the Victim interview), and I have drawn from his knowledge of conducting research on procedural justice. Drawing from my notes of discussions we have had, I summarise what I have learned, together with some of the problems in applying procedural justice measures to conferencing processes and outcomes.

### *Procedural justice*

During the early 1970s when psychological research in the area began, the assumption was that people wanted the most favorable outcome for themselves in a legal proceeding (Thibaut and Walker 1975). Over the next 10 years, it became evident that the *process* was as important as the outcome, but still it was assumed that the process was important in an instrumental sense, that is, having process control was thought to be important because it led to a favorable outcome. Work by Tyler in the 1980s suggested that process control was independent of outcome control and that people wanted to state their case for other non-instrumental reasons. Thus, process control was de-coupled somewhat from outcome control in the evolving depictions of people's perceptions of procedural justice. Psychologists then turned their attention to identifying elements or "markers" of procedural justice that were part of process control. The elements include: an authority is viewed as benevolent or caring (*trustworthy*) and as neutral (*neutrality*), and people are allowed to state their case (*voice*) and are treated with dignity and respect (*standing*).

There is currently a good deal of fluidity (and some confusion) in the field on identifying and defining elements of procedural justice, and this has occurred for several reasons. First, researchers often need to modify items to make them relevant to particular legal or organisational contexts; there is thus no standardized set of items, but rather items that may be comparable from one study to the next. Second, depending on which group of decision-makers is being studied (e.g., judges, police, educators), there may be greater salience of one element of procedural justice than another (e.g., "neutrality" of decision-maker is more important in people's evaluations of judges, whereas "respect" or "standing" is more important in people's judgments of the police). Third, elements such as "standing" and

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<sup>37</sup> As Maxwell and Morris 1993: 116 suggest, "Researchers have uniformly failed to identify what it actually means when parents and young people say that they are 'satisfied' and we raised elsewhere the possibility that this means nothing more than relief that 'nothing worse' happened." They find further that "young people who received the most severe penalties were almost three times as likely to express dissatisfaction as those who received less severe penalties, and the parents of those receiving the most severe penalties were twice as likely to express dissatisfaction as the parents of the young people who received less severe penalties." These New Zealand findings suggest that "satisfaction" did not tap elements of "process control" but rather "outcome control" or "outcome favourability," using procedural justice vernacular.

"voice" have a shared meaning; therefore, items that may initially attempt to measure these dimensions may fall out differently when one analyses the data.

In identifying and selecting procedural justice items, I ran into a problem: the procedural justice literature assumes there is just one authority who is listening, being neutral, being respectful, and the like toward a person. In a restorative justice process, where there are multiple authorities (both legal and non-legal like family members) and where the young person (offender) may not even know who the legal authority *is*, creating appropriate items is a challenge. We did not want to ask a young person a very long set of questions that sought their evaluation of all the various authorities in the room, along dimensions of neutrality, trust, standing, and voice. At the same time, it was important to ask what they thought of the behaviour of some authorities in particular.

Thus, in Section 5, item 5-1 asks specifically about the YP's judgment of the *coordinator's* neutrality, whereas item 5-7 asks for a generic judgment of whether "people" treated them in a respectful manner at the conference. More of the items took the generic form, where generic "people" were doing things rather than a particular authority. From time to time, we ran into problems asking these questions. For example, a young person would say, in response to item 5-9, that "my parents" were looking out for their best interests, but not the victim. When this occurred, we would say, "yes, we know it's hard, but what do you think in general" or "what's your general feeling?"<sup>38</sup>

Of the procedural justice items in Section 5 (5-1 through 5-10, potentially 5-13 and 5-15), there was one that the young people had difficulty understanding. That was 5-3 on "whether other people's ideas were favoured over yours at the conference." And, in general, the longer the item (as in 5-11), the more likely it may need to be rephrased with a smaller number of words.

Other items come from Umbreit (1994) (5-11) and RISE (5-13 to 5-16), with item 5-12 ("conference was largely a waste of time") being a SAJJ-created item that used the simplest and most direct language possible. Item 5-17 asks which people at the conference the young person could rely on, and which they could most rely on for support. I was curious to see if there was a gendered component to support, with the hypothesis that YP's will say they rely more on female than male supporters, especially mothers more than fathers. From my conference observations in 1995-96 (Daly 1996), I found that both mothers and fathers were present in 30% of conferences, mothers only in 40% of conferences, fathers only in 14%, and no parent or family member present in the remaining 16%.

The items on whether the young person's respect for the legal system, the police, and the law has gone up or down come from RISE, and they will be important indicators of how the conference increased (or decreased) the legitimacy of legal authority in the young person's eyes. We had some concerns that young people would not be able to easily distinguish among the legal system, police, and the law, but most seemed to have no difficulty making such distinctions.

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<sup>38</sup> Just as we began to field the YP interview, Tom Tyler was visiting Flinders University in March 1998. I asked him how to handle these "generic questions," and he recommended this course of action.

### *Section 6*

This section has a variety of questions. The young person's feelings toward the victim *now* (6-1 to 6-3) can be compared with their feelings toward the victim *before* the conference. Item 6-5 is an important indicator of the degree to which the young person says that s/he is committed to staying out of trouble, with the "do not know/unsure" anchor being a key one. Their evaluations of the conference process (6-6 to 6-8), especially their responses in their own words, provide language that is more adolescent- than adult-centred. Similar evaluation items are used in Umbreit (1994) and the RISE instruments.

Asking the young people for another contact name and address (besides their current one) of another family member or friend who would know where they were, was important for maximising the rate of completing interviews in 1999. Heather Strang suggested this item based on the RISE project's efforts to locate people for the Year 2 interviews. The last items in which the interviewer records the YP's attitude toward and understanding of the interview come directly from Tyler's (1990) instrument.

The most crucial feature of any interview instrument is whether the words used and phrasing of questions are comprehensible and meaningful to those being interviewed. A good deal of the SAJJ group's time was spent in revising items for clarity of meaning, especially to young people in Australia. As a native U.S. speaker, I could not know the nuances of Australian English and slang, but I could be sure that members of the SAJJ group would be quick to spot them! Also, in borrowing items from other surveys, especially those used in U.S. studies, the SAJJ group spent considerable time in rewording these items to make them more Australian and youth friendly.

When conducting the interview itself, we first went through the consent procedure (with a parent present to listen and to sign the consent form). After the consent form was signed, we asked to interview the young person alone, without the parent (or guardian) present. In some instances, however, a parent wanted to be present in the interview. The interviews with the young people normally took 35 to 50 minutes.

## 5. Victim interview (Appendix 5)

Like the content of the YJC and PYO surveys, where there is a relational pairing of items and where the analysis will focus, in part, on the different perceptions of the coordinators and police officers, so too for the design of the YP and Victim surveys. Similar items are asked of the young person and victim with respect to their knowledge about the conference beforehand, what they expected might happen, what occurred in the conference, global judgements of fairness, and specific judgments of what occurred in the conference (Victim interview Sections 2, 3, 4, and 5). I shall not review those sections because there is considerable overlap. Instead, I focus on three new question areas: the victim's previous victimisation experiences, the material and psychological harm the victim experienced as a

result of the incident, and the degree of "victim shift" or change of attitude toward the offender.<sup>39</sup>

For previous victimisation, the question was keyed to the 6 months before the incident that led to the conference, following standard victimisation survey format. Victims who have been recently victimised and poorly treated by the police or not satisfied with the justice system response may already be negatively oriented toward the conference process. For the losses or harm that victims experienced as a result of the incident, this series of questions was taken almost verbatim from RISE.

The important addition to the interview is the "victim shift" component. One member of the SAJJ group (Venables) plans to write her Honours thesis on this element of the restorative justice process, and I have drawn from her memo, which reviews the questions used in other researchers' schedules.

There are two parts to the "victim shift" area of inquiry:

(a) What was important to the victim *before* the conference (to punish, to help, to deter the offender, among other items) and what was important *after*?

(b) Did the victim's attitude toward the offender become more positive (or not) during the conference? If their attitude changed (whether more positive or more negative), why did this happen?

For (a), the items combine a linguistic convention used in RISE, in which the victim is asked about their feelings toward the offender before and after the conference,<sup>40</sup> with the content of Umbreit's questions about what victims hoped to achieve from the conference (1994: 216-219). In reviewing Umbreit's items, Venables finds (and I concur) that the response anchors were skewed too heavily toward restorative approaches, and they did not offer sufficient space for victims to discuss feelings of punitiveness or self-interest. Thus, in the list of "before" and "after" items, we listed the major modes of responding to an offence: punishment, compensation, helping the offender with counseling, apology from the offender, and deterring the offender. In addition, items 3-14 and 6-14 seek to determine whether victims are mainly "self-interested" or "other regarding" in meeting with the offender.

For (b), a positive or negative change of the victim toward the offender is a crucial element in understanding the impact of a conference on victims. The SAJJ instrument expands on this dimension to a far greater degree than Umbreit's, with greater attention to a time-based dimension to "what's important" to a victim before and after the conference. Also, we take much greater care in the SAJJ instrument than does Umbreit (and also McCold and

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<sup>39</sup> Throughout the Victim interview, the term offender was used, not YP because we thought that many victims would be annoyed with the YP convention. Readers will note that offender is used more in this section of the Technical Report than previously.

<sup>40</sup> We also use this convention in asking victims about their anger toward, fear of, curiosity about offenders, among other items, before and after the conference.

Wachtel) in probing the victim's sense of "fairness." Umbreit's schedule asks two questions about a victim's sense of "fairness" (Q's 47-48, p. 225). The first asks for a victim's general view about how the criminal justice system should respond to crime (i.e., by punishing the offender, paying back the offender, getting help for the offender, among others), calling these "concerns ... related to fairness in the justice system." The next question then asks the victim a yes/no question, "... did you experience fairness within the justice system in your case?" Umbreit's items focus only on the *outcome* of a mediation, not on the process, and "fairness" is used in a rather confusing way to refer to kinds of sanctions that ought to be imposed. The SAJJ instrument explores "fairness" at greater length, with an explicit concern to address victims' judgments of process and outcome control.

In Section 6 of the Victim interview, items ask whether the victim felt positive or negative (or neither) toward the offender before the conference, and then several items later, after the conference. The victim is then asked whether their attitude changed toward the offender, and in what ways.

For the set of questions asking if the victim was more positive, we are interested in the relative importance of procedural justice ("the conference process"), restorative justice ("offender's willingness to make things right," among others), and an informal justice process that permits the victim to see the offender in the context of their relations to others. For victims who felt more negative after the conference, we wanted to make sure that their views were registered, with the same mix of procedural and restorative justice items.

Like the YP interview, portions of the Victim interview elicited the victim's thinking or explanations in their own words. These items included what they thought might happen at the conference; what they wanted to say to the offender; what they hoped would and wouldn't happen; the impact of the offender's account of the offence on them; their views on the outcome; their reasons for why respect increased or decreased toward the police, justice system, and law; why they think it likely or unlikely that the young person will get into trouble again; and their reasons for recommending (or not) the conference to others. For these items, their responses were transcribed from the tape (or notes) for analysis.<sup>41</sup>

The Victim interview took longer than the YP interview, normally lasting 50 to 75 minutes (a bit shorter when the respondent was a teenager), depending on how much the respondent wished to speak. The process was similar to that for the YP interview: we first went through the consent procedure and had the respondent sign a consent form (and if the victim was under 18, a parent or guardian must also sign the form). The interviews were conducted with the victim alone, and a portion of the interviews were conducted in the respondent's workplace (especially when a school was victimised), as well as in their homes. For both the YP and Victim interviews, we conducted the interview wherever the respondent felt most comfortable; typically, this was either at home or the workplace.

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<sup>41</sup> Only one victim refused to have the interview tape recorded.

## 6. Victim no-show interview (Appendix 6)

Of the 89 victims, 23 (or 26%) did not attend the conference. I decided to conduct interviews with this group of "victim no shows"<sup>42</sup> by phone rather than face to face because I believed that we could learn what we needed to know over the phone rather than spend additional resources on face-to-face interviews. While phone interviews can be more convenient for researchers and less costly, they are not without problems. It is harder to maintain people's interests during a phone interview, and for a variety of reasons, this group of victims was already "more difficult" to interview. The interview completion rates give an indication: of the 23 no-show victims, 18 (or 78%) were completed, whereas for the 66 victims who attended the conference, 61 (or 92%) were completed.

There is great variety in victims' experiences with offences and offenders, and in the analysis of "no show" victims, we'll be interested to see whether these victims did not attend the conference because (1) of a general disinterest in the process (or a feeling that that nothing could be served by attending it), (2) they still felt fearful or very angry, or (3) they had scheduling conflicts and travel time difficulties.

There is likely to be a similar structure of citizen response to justice and research interventions. That is, those who wish to be "not involved" in a legal process will feel the same toward participation in research. For offenders (and for some victims), there can be a wariness when being asked to be interviewed for a research project. Can they be sure, for example, that the researcher will keep her promise of confidentiality? They may see few differences between a legal and social research intervention.

The "no show" interview was designed to take no more than 20-25 minutes. Researchers should expect interviews of victims (whether face-to-face or phone) to last longer than they plan for. The reasons are twofold: these victims are likely to be adults, who are more talkative than adolescents, and the experience of being a crime victim is one that people like to talk about and with some important exceptions,<sup>43</sup> they will open up and describe their experiences with interviewers at length. As an ethical matter, it is important to listen, and we did.

The "no show" interview has virtually the same items as the Victim interview, except that it excluded the irrelevant items (such as experiences at the conference) and rephrased others. For example, in the introduction to "what's important" for the victim at the conference (Section 3) we say, "People have different opinions about what's important at conferences ... *Had you gone to the conference*, how important would each of the following things have been to you? ..." And in another (3-9), we say, "While you didn't attend the conference, it's important we learn what you would have liked to have seen happen for this particular case ..." We asked directly, "Can you tell me why you chose not to attend or were unable to attend [the conference]?" And we asked about the victim's experience with a Victim Support Services (VSS) representative (3-13), if the victim had one.

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<sup>42</sup> It is somewhat misleading to call this group "no shows" because a portion of them wanted to attend the conference, but it had initially been cancelled or the venue was too far from where they lived.

<sup>43</sup> For example, when an offence is one that victims feel "responsible" for or ashamed of (e.g., female victims of sexual or family violence) or when a victim simply wants "to get the offence behind" them.

## A brief conclusion

Research on conferencing -- and on informal and restorative justice more generally -- is in its infancy. There are no formulas, no standard questions to ask, no settled recipes on how to depict and understand these processes. This document describes a particular project with a specific geographic and cultural flavour, but it also may be of some assistance to others who intend to embark on research of this kind.

Today, there is both great optimism and pessimism about what this "new" form of justice might be able to deliver. Research is lacking on what routinely happens in these events, what emotions are engaged (or disengaged), what conflicts emerge, and what "lessons" participants take from them. Is this a better form of justice or just another diversion from court? Are people prepared to take the time to listen and speak in these proceedings, or is the courthouse with a bureaucratic and monologic voice of law preferable for "busy victims" or "busy people" more generally? And from the perspective of those accused of crime, typically more marginalised members of society, is the "restorative justice" experience really any different from that in court? Ultimately, perhaps it doesn't matter what crime victims and lawbreakers "think" about the idea and process. What may matter most is how lawyers, magistrates, and judges position themselves toward a process that announces the death of the legal professional.

Research on restorative justice needs to be paying careful attention to the dynamics of the conference proceedings themselves, and what occurs before and afterwards. Comparison with other legal processes (like interactions with the police or in courtrooms) needs to be done, as well. At the same time, researchers will need to take a broader view. How do people make sense of this "new" justice idea? Are they prepared to participate in a process that asks them to think differently about their relationship to law and criminal harm? Will they find that agreed outcomes are "too lenient"? Will they worry that outcomes in the aggregate may appear "too inconsistent"? Research needs to be attentive not only to how the process has the potential to change *offenders* (the focus of most studies) but also to how it may change *victims* and the politics of crime control.

Whereas Phase 1 of the SAJJ project paid careful attention to questions of procedural and restorative justice within the conference process itself, Phase 2 intends to explore some of these broader political questions.

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