

facing the DEMONS

Ted Wachtel



In *Facing the Demons*, friends and family of 18-year old murder victim, Michael Marslew, confront two of the four offenders several years after the armed robbery which took his life. The dramatic “conference” provides an opportunity for everyone to address unresolved feelings and questions about the tragic event which so harshly impacted their lives. Our existing criminal justice system provides no such opportunity—but conferencing advocates say that it should ■

Facing the Demons confronts the horror and trauma of murder without flinching. The film sets the stage for the conference by revisiting the crime scene, a Pizza Hut in suburban Sydney using police videotape of the investigation and a photograph of the body of the victim. The aftermath of the crime is shown through television news coverage of the victim’s family, the funeral, and the arrest of the four young men, one of whom shot Michael Marslew in the back of the head at point blank range.

Viewers then follow Terry O’Connell, a dedicated police officer, who as the conference facilitator, visits potential participants to explain the benefits of the process and invite their involvement. Finally, the conference itself takes place — an intense emotional encounter between those whose lives were transformed when Michael Marslew died.

Conference Participants

Why would anyone want to participate in a conference for such a heinous crime? Wouldn’t the offenders fear the wrath of Michael Marslew’s family and friends? Wouldn’t those who loved and cared about Michael want to avoid revisiting their feelings about the murder?

Viewers learn that those who cared about Michael, his parents, friends and co-workers, are still haunted by their feelings. More than four years after his death



they struggle with their trauma.

Sara, the victim's friend, has lost her way in life. She has quit school and cannot function. Ken, the victim's father is a driven man who formed a charitable organisation after his son's death, "Enough is Enough," to crusade against violence. Joan, Michael's mother, divorced from Ken before the murder, still envisions Michael as she last saw him in the morgue. She expresses her bitterness saying:

I think in the old days when they used to let the family stone them to death — I think it was a very just punishment for people and it would have also helped us get rid of some of the anger.

Karl, who organised the robbery, is also haunted. He constantly thinks about what he did and the pain he caused. He says:

Confronting Michael's family is confronting people whose pain I'm responsible for. For me, the way I look at this pain, I can visualise it, like a ball, a big ball in the stomach or the chest, and it constricts. It's a physical thing and I want to give them the opportunity to unload that ball, or some of it at least, because I'm the one that put the ball there. So if I put the ball there, then I've got to take it away.

What is Conferencing?

A conference is a structured, voluntary meeting between offenders, victims and both parties' family and friends in which they deal with the consequences of the crime and decide how best to repair the harm. A conference can be used in lieu of traditional disciplinary or justice processes, or where that is not appropriate—as in a murder or other serious offence—as a supplement to those processes.

Conferences provide victims and others an opportunity to confront the offender, express their feelings, ask questions and have a say in the outcome. Of-

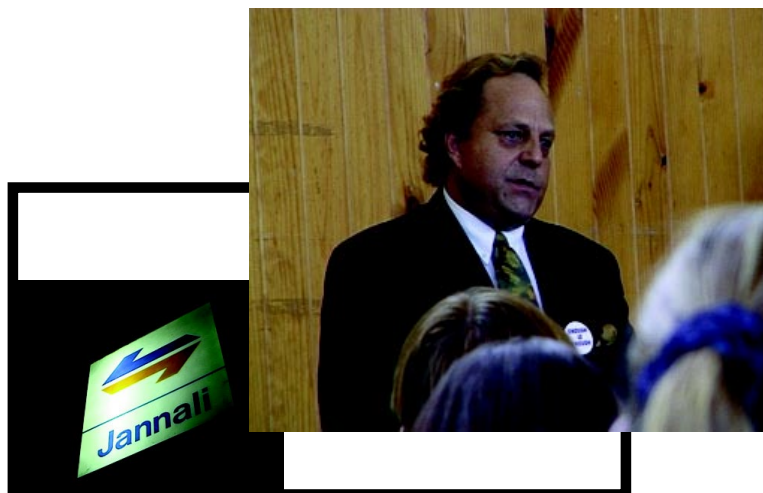
fenders hear firsthand how their behaviour has affected people. They may begin to repair the harm by apologising, making amends and agreeing to financial restitution or personal or community service work. Conferences hold offenders accountable while providing them an opportunity to discard the "offender" label and be reintegrated into their community, school or workplace.

New Zealand Origins

Conferencing began in New Zealand with the Children, Young Persons and Their Families Act of 1989 which legislated the use of a "family group conference" (FGC) for all young offenders. The Act was a political response to Maori dissatisfaction with their children's disproportionate representation in the New Zealand welfare and justice systems. The conferencing process has some similarities to the consensus decision-making processes characteristic of Maori and other indigenous peoples. New Zealand conferences are often held on the *marae*, the spiritual and social centre of Maori communities, when they involve Maori offenders.

Conferencing Pioneer

Terry O'Connell pioneered the scripted version of conferencing in the early 1990's in Wagga Wagga, New South Wales, by bringing together young offenders and the victims of their crimes, along with family and friends. O'Connell has since become an international consultant, trainer and lecturer who advocates for the widespread use of conferencing, not only for crimes, but as an effective response to wrongdoing and conflict in any setting, including



schools and workplaces. He currently is the Australian Director of Real Justice, an international program dedicated to the spread of conferencing and related “restorative practices.”



The version of conferencing developed by O’Connell differs from the New Zealand process in several respects, the most notable difference being the facilitator’s use of a simple script to guide the process. In New Zealand conferences are also held to deal with child protection and child custody issues, not only with criminal offences.

In the scripted version of conferencing, facilitators ask the offenders to tell what they did and what they were thinking about when they did it. The facilitator then asks victims and their family members and friends to talk about the incident from their perspective and how it affected them. The offenders’ family and friends are asked to do the same.

Finally the victim is asked what he or she would like to be the outcome of the conference. The response is discussed with the offender and everyone else at the conference. When agreement is reached, a simple contract is written and signed.

O’Connell also facilitated some of the first conferences with adults and with offenders in prison. He fostered the first use of conferencing in schools. He has advocated the use of conferencing in dealing with complaints against police by citizens and with internal police disciplinary matters. He has done extensive training to implement these strategies with the Thames Valley Police, one of the largest police services in the United Kingdom and the first to adopt conferencing with young offenders in that country.

Underlying Theories

Two books, although written without any awareness of conferencing, have proved helpful in providing theoretical explanations for why the process works so well. *Shame and Pride*, written by Donald Nathanson, articulates the “affect theory” of psychologist Silvan S. Tomkins, who said that the healthiest environment for human beings is one that encourages free expression of emotion, minimising negative emotion and maximising positive emotion, but allowing for the expression of all emotions. The scripted conference deliberately encourages free expression of emotion or affect and, as a result, leads people toward resolution and well-being.

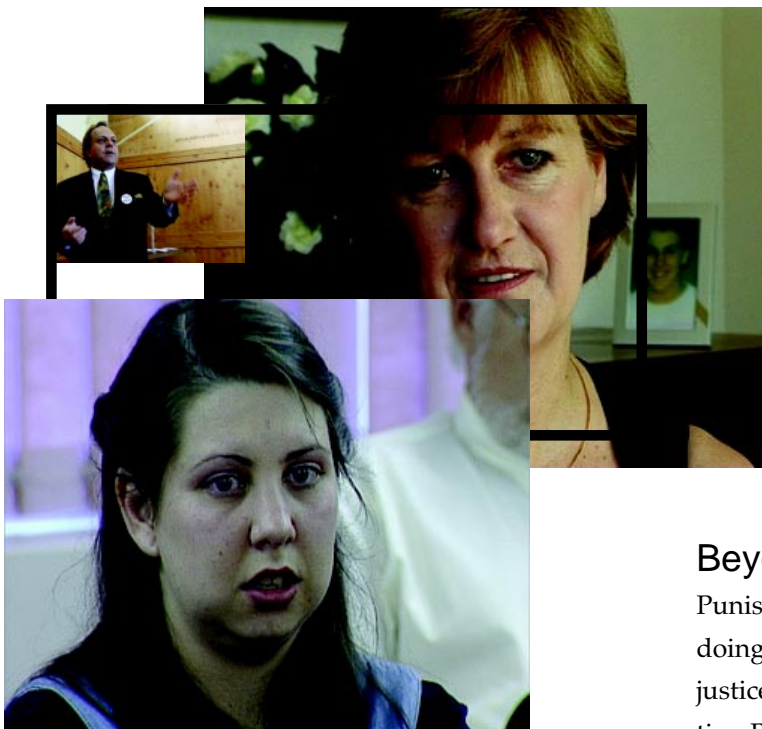
The “reintegrative shaming theory” of Australian scholar John Braithwaite provides a sociological explanation for conferencing. According to his book *Crime, Shame and Reintegration*, societies that reintegrate offenders, rather than stigmatising and casting them out, have the lowest crime rates. The conference provides just such a reintegrative experience by allowing the offender to apologise and offer reparation. In crimes involving irrevocable loss, such as the Michael Marslew murder, reintegration may be much more limited than in conferences for lesser crimes.

Restorative Justice

Although conferencing developed independently in New Zealand and Australia, it is now often associated with the “restorative justice” movement which began in North America in the 1970’s with the use of a process called “victim-offender mediation.” Victim-offender mediation soon spread to Europe and elsewhere.

When conferencing arrived on the world scene from New Zealand and Australia, it influenced some mediators to include the family and friends of victims and offenders in mediation sessions, which had typically included only the primary offender and victim. Restorative justice advocates started referring to conferencing as a restorative justice process.

Restorative justice, like conferencing, differs from our existing justice system by viewing a crime as harm done to people or a community, not as a violation of a law or an offence against the state. Restorative justice sees offender accountability as repairing



harm, apologising and taking responsibility, not as punishment. Restorative justice brings the victim's rights and needs to the fore.

Varied Uses of Conferencing

The conferencing process can be used in a variety of settings:

- Conferencing can be employed by schools in response to truancy, disciplinary incidents, including violence, or as a prevention strategy in the form of role plays of conferences with primary and secondary school students.
- Police can use conferences as a warning or diversion from court, especially with first-time offenders.
- Courts may use conferencing as a diversion, an alternative sentencing process, or a healing event for victims and offenders after the court process is concluded.
- Juvenile and adult probation officers may respond to various probation violations with conferences.
- Correctional and treatment facilities may use conferences to resolve the underlying issues and tensions in conflicts and disciplinary actions.
- Colleges and universities can use conferences with dormitory and campus incidents and disciplinary violations.
- In workplaces conferencing addresses both wrongdoing and conflict.

Conferencing has influenced the development of a range of possible responses to offences and inappropriate behaviour in a variety of settings. These “re-

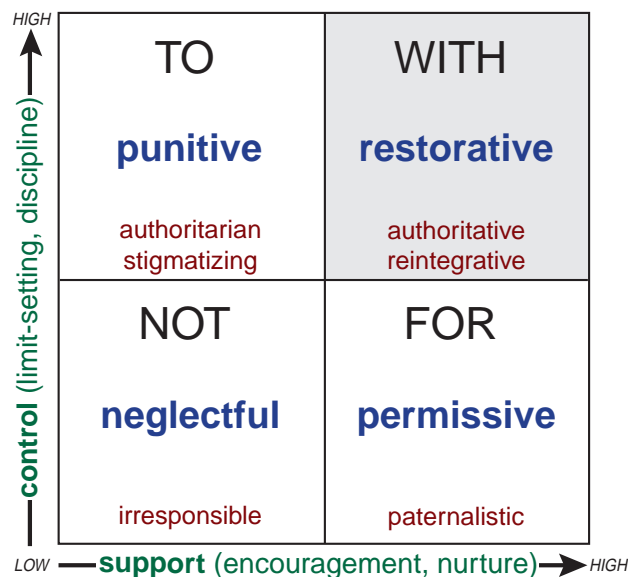
storative practices” range from formal processes like conferences to less formal, less time-consuming processes which nonetheless have the same goals as a conference—to make offenders aware of how their behaviour affects others, to repair harm to victims and others, and to create opportunities for meaningful exchange and emotional expression.

Beyond Punishment

Punishment in response to crime and other wrongdoing is the prevailing practice, not just in criminal justice systems but throughout most modern societies. Punishment is usually seen as the most appropriate response to crime and wrongdoing in schools, families and workplaces. Those who fail to punish naughty children and offending youths and adults are often labelled as “permissive.”

Punishment offers a very confined perspective and limited choice—to punish or not to punish. The only other variable is the severity of the punishment, such as the amount of the fine or the length of the sentence. However, one can construct a more useful view of social discipline by looking at the interplay of two more comprehensive variables, control and support. The use of the term “control” refers to high control of wrongdoing, not control of human beings in general. The ultimate goal is freedom from the kind of control that wrongdoers impose on others.

Social Discipline Window



“Control” is defined as discipline or limit-setting and “support” as encouragement or nurturing. Now one can combine a high or low level of control with a high or low level of support to identify four general approaches to social discipline: neglectful, permissive, punitive and restorative.

The permissive approach (lower right of social discipline window) is comprised of low control and high support, a scarcity of limit-setting and an abundance of nurturing. If permissive, one would do everything FOR wrongdoers, justify their behaviour and ask little in return.

Opposite permissive (upper left) is the punitive approach, high on control and low on support. If punitive, one would respond to wrongdoers simply by doing things TO them. Schools and courts in most countries have increasingly embraced the punitive approach, suspending and expelling more students and imprisoning more citizens than ever before.

The third approach, when there is an absence of both limit-setting and nurturing, is neglectful (lower left). If one were neglectful, one would NOT do anything in response to inappropriate behaviour.

The fourth approach is restorative (upper right), the approach that conferencing represents. Employing both high control and high support, the restorative approach confronts and disapproves of wrongdoing while supporting and valuing the intrinsic worth of the wrongdoer. By responding in a restorative manner, one does things WITH wrongdoers, involving them directly in the process. A critical element of the restorative approach is that, whenever possible, the restorative approach also includes victims, family, friends and community members—those who have been affected by the offender’s behaviour. So conferencing demonstrates a whole different approach to social discipline which relies, not on punishment, but on engaging everyone who has been affected in resolving the wrong.

English Studies

Facing the Demons is a drama as powerful and emotional as any novel or play. The characters are diverse in personality, but are bound together by Michael Marslew’s murder. Now, four years later, Terry O’Connell invites them to revisit the tragic event.



The following questions provide starting points for discussion.

- Who do you think were the heroes/heroines in the conference and why?
- What challenges did Senior Sergeant Terry O’Connell face in setting up the conference?
- Contrast how Ken Marslew and his ex-wife Joan Griffiths reacted to their son’s death?
- How did the conference help Michael’s closest friends, Sara and Brendon?
- How did Michael’s family and friends react to the offenders? Cite instances of their reactions, such as anger or forgiveness, as shown in the conference.
- If you were a friend or parent of Michael, how would you have reacted in the conference?
- Why was the film called “Facing the Demons”?



Studies of Society and Culture

The widespread adoption of conferencing would have a very significant impact on our society and culture. Read this story and respond to the questions.

In the State of Minnesota, in the U.S.A., youths vandalised a number of ice fishing houses on a lake. The public prosecutor, because of the difficulty of matching specific damage to specific offenders, decided not to pursue the case. Police, instead, offered the victims an alternative response to the wrongdoing they had suffered. One particular victim, whose elaborate two-storey ice fishing house had suffered considerable damage, was enraged because the case was not going to court. He threatened to display his rage at the conference.

The youths, ice fishing house owners, and their respective family and friends gathered for the conference. First, the offenders admitted their wrongdoing and described the damage that they had done. Then each of the victims expressed how they had been affected by the destruction of ice houses that they had built themselves. The adult son of the angry owner of the two-storey fishing house spoke for his father and expressed, in rather poignant terms, how he had spent much of his childhood working with his father and the rest of his family building their house for each winter fishing season.

He suddenly realised, when faced with the destruction the youths had caused, how much that experience meant to him. His father, instead of expressing

his rage as threatened, chose not to speak until the end of the conference.

Then he spoke with great emotion, thanking the youths for having vandalised his ice fishing house and explaining that until the conference he had never heard his son express how much their shared experience meant to him. The father then invited all of the boys and their fathers, when the damage was repaired, to spend a weekend with his family fishing on the lake.

- What are the pros and cons of handling an offence like this without going to court?
- If conferencing were used to respond to most crimes, including those committed by adults, how would our society be affected?
- Would conferences eliminate the need for prisons?

Role Play: Find the conference script posted on the Real Justice web site (www.realjustice.org/Pages/script.html). Form into groups of five to eight and provide each group with a copy of the script. Each group should imagine an offence (avoid serious or traumatic offences) and assign roles to each person





Legal Studies

Facing the Demons challenges our conventional ideas about crime and punishment. Conferencing may provide an alternative to court or a supplement to court—either way it gives offenders, victims and their families and friends a whole different way of dealing with the aftermath of an offence.

The Truth and Reconciliation Commission in South Africa has been described by Desmond Tutu as an exercise in restorative justice. If a person admitted his or her crime to the Commission, he or she was given amnesty. The Commission allowed the acknowledgement of a vast number of crimes that would not have been dealt with if left to the legal system.

in the conference: conference facilitator, offender, victim, offender supporters, victim supporters. Conduct a conference. Discuss the experience and the outcome. Talk about how it felt to play the different roles.

Psychology

Silvan Tomkins identified nine innate affects in human beings which are the basis of emotional development: interest-excitement, enjoyment-joy, surprise-startle, shame-humiliation, distress-anguish, fear-terror, anger-rage, disgust and dismell.

If affects are felt but not expressed, they can become toxic and lead to emotional, psychological and even physical discomfort. As mentioned before, conferences allow for the free expression of emotion, in a way that maximises positive emotion and minimizes negative emotion, the optimal environment for human interaction.

- In *Facing the Demons*, what emotions did people express in the conference?
- How did the conference help or harm the participants?
- Compare and contrast the way the criminal justice system deals with emotion and the way conferencing deals with emotion.

Answer and discuss the following questions.

- What are the goals of our current criminal justice system and to what extent are they successfully accomplished?
- How might the use of conferencing affect our current criminal justice system?
- To what extent does the current criminal justice system deal with the needs of victims and their family and friends?
- How might conferencing help meet those victim needs?
- If conferencing were adopted by the criminal





justice system for youth and adults, would it work better than punishment in reducing crime?

- What are the similarities and differences between conferencing and South Africa's Truth and Reconciliation Commission?

Using the Internet

- Where is the Real Justice organisation located?
- Name several other restorative justice processes besides conferencing.
- What are the results of the RISE (Re-integrative Shaming Experiment) project in the Australian Capital Territory?
- What outcomes were reported for the Restorative Policing Experiment in Bethlehem, Pennsylvania?
- In the school setting, what did the Queensland Community Conferencing Pilot find?
- What have researchers Morris and Maxwell concluded about the New Zealand youth justice conferencing experience?
- What are some of the significant restorative justice web sites?
- In what countries does there seem to be the most significant amount of restorative justice activity, and what makes you think so?

References

Braithwaite, J. (1989). *Crime, Shame and Reintegration*. New York: Cambridge University Press.

Brown, M.J.A. (1995). "Background Paper on New Zealand Youth Justice Process." <http://www.realjustice.org/Pages/NZ.html>.

Hayes, H., Prenzler, T. and Wortley, R. (1998). "Making Amends: Final Evaluation of the Queensland Community Conferencing Pilot." <http://www.gu.edu.au/school/ccj/amends.html>.

McCold, P. (ed.). (1997). *Restorative Justice: An Annotated Bibliography*. Monsey, New York: Criminal Justice Press.

McCold, P. and Wachtel, B. (1998). "Restorative Policing Experiment." <http://www.realjustice.org/Pages/mn98papers/summary.html>.

Morris, A. and Maxwell, G. (1998). "Restorative Justice in New Zealand: Family Group Conferences as a Case Study." *Western Criminology Review* 1 (1). Available online: <http://wcr.sonoma.edu/v1n1/morris.html>.

Nathanson, D. (1992). *Shame and Pride: Affect, Sex and the Birth of the Self*. New York: Norton & Company.

O'Connell, T., Wachtel, B. and Wachtel, T. (1999). *Conferencing Handbook: The New Real Justice Training Manual*. Pipersville, Pennsylvania: Piper's Press.

Real Justice. (2000). "What is Conferencing?" <http://www.realjustice.org/Pages/whatisconferencing.html>.

Strang, H., Barnes, G.C., Braithwaite, J. and Sherman, L.W. (1999). "Experiments in Restorative Policing." <http://www.aic.gov.au/rjustice/rise/progress/index.html>.

Wachtel, T. (1997). *Real Justice*. Pipersville, Pennsylvania: Piper's Press.

Wachtel, T. (1999). "Restorative Justice in Everyday Life: Beyond the Formal Ritual." <http://www.realjustice.org/Pages/anu.html>.

About the Author

Ted Wachtel is an American educator who has developed schools for delinquent and troubled youth for the last 20 years. He is the co-author of *Toughlove* and the *Conferencing Handbook: The New Real Justice Training Manual*, and author of *Real Justice*.