

COOPERATION BETWEEN RESEARCHERS AND PRACTITIONERS AND THE IMPACT OF RESEARCH ON POLICY MAKERS

GENERAL REMARKS

In this section the plenary presentation and those in the workshops and not least the discussions following them were dealing to a large part with general problems, including ethical questions of the mutual influence of research and practice as well as of research and policy-making. More technical issues of doing research were addressed e.g. by Murray Davies and by Steve Kirkwood. Finally, Marian Liebmann and Dobrinka Chankova dealt with the special role and importance of teaching in connection with promoting restorative justice.

Plenary session: 'Research informing practice and practice informing research'

Presented by: Christa Pelikan (Austria)

Chair: Frauke Petzold

This is an account of research experiences and the draft of an agenda for further research and further cooperation in this field.

It is not the whole gamut of research though, I will and can attend to. The emphasis will be clearly on qualitative research or on combinations of qualitative and quantitative research.

This is not to imply that quantitative research is of less importance and could and should be neglected. I will briefly deal with its potential and its limitations. But I do want to emphasise what is indicated in the title of this conference's theme and this speech - and what Bram van Drooghenbroek and Erik Claes have called the 'reflective dialogue', a dialogue that takes place between practitioners and researchers.

One will rightly ask also about modes of cooperation between researchers and policymakers and about the ways research is presented to the wider public. I will touch on these issues only in passing. But since I regard practitioners also as involved as actors in the arena of policymaking, the potential impact of research on policymaking, or rather the use to be made of research will be dealt with.

I might say that much in advance - namely that I regard the dialogical approach as the most promising path the 'Königsweg' also in that field of action.

This presentation consists of four parts: I will talk about:

- the research experience that constitutes the basis of my thinking.
- What has research to offer to the practitioners?
- What are the conditions for research to become useful?
- In which way could and should researchers and practitioners cooperate?

1. About my research experience

1.1. Accompanying research

This experience is derived mainly from the first accompanying research I did when the pilot project of out of court offence compensation started in Austria. Already the way the steering group for this pilot project was constructed was conducive to a mode of cooperation that installed research as one of the actors in this project. This steering group was comprised of the social workers at various pilot sites (probation workers entrusted with the new task of working as Konfliktregler'), and the researchers. I was also involved in explaining the project to the state prosecutors and the judges at the courts chosen for the pilot. A big part of the research consisted in a file analysis to explore the potential of cases suitable for being referred to VOM. The qualitative strand consisted of talks/interviews with the actors - social workers and prosecutors or judges dealing with the cases. Each case was thoroughly discussed based on a documentation provided by the new 'mediators' and complemented by the material contained in the respective court file. In addition there were several occasions for discussing the progress of the pilot project with all the professionals *involved including the representatives from the ministry of justice and the ministry of family affairs supporting and funding the pilot project*.

One can say that I have been walking alongside the other actors in this pilot project and that I have stimulated and supported reflection by listening, by comparing, summarising, and analysing.

1.2. Participating as a researcher in a course dedicated to the development of methods of VOM.

This was a short but rather impressive experience. It has to be understood in the context of the Austrian way of developing VOM - with no previous mediation experience of the social workers who were assigned the task of Konfliktregler'. In a series of sessions, concrete cases that had already been handled were discussed. I proposed a typology of cases based on the concept of relational distance (that had been developed at my institute in the course of empirical research that resulted in the book 'Everyday nuisances and life-time catastrophes' and was based on Donald Black's 'Elementary forms of conflict management'). Its suitability was tested and a range of strategies for working with different types of cases was developed as a result of intensive discussion.

1.3. ATA and partnership violence

This research although well designed and with quite surprising results did have little impact on the practice of VOM-workers and only recently I have been asked by Neustart to start a new research project that is intended to further test the hypotheses, especially so the statement concerning the potential empowerment of women. This time by using also a quantitative approach.

2. What has research to offer: or what is the surplus value of research?

Research, by producing scientifically based knowledge provides for cognition **cognisance** (German: Erkenntnis), in the specific case of RJ-practices it offers a contribution to better understand what happens in RJ and what is the position of RJ in society.

The characteristics or qualities of such scientifically based knowledge / cognisance are:

- 2.1. Scientific knowledge is generated through **second order observation**, guiding a specific type of perception. This means that practice is described and analysed from outside. (Luhmann 1993: 403 f.) The researcher takes **a meta-perspective** vis-à-vis the micro- and macro-processes of restorative justice, i.e. the inside of 'mediation' or conferencing on the one hand and at the dynamics of establishing and promoting RJ as part of the legal and criminal policy within a society, on the other.
- 2.2. Scientifically guided observation and the knowledge generated is **'handlungsentlastet'** (a term created and used by Jürgen Habermas (1992, meaning that it is cognisance relieved (freed) from the pressure of immediate action. It

remains thus outside the 'whirl of action' and - more important - outside the constraints of 'reality' of everyday life, outside organisational constraints and outside the constraints of acting in the arena of politics. Both qualities (second order observation and '*Handlungsentlastung*') allow for perceiving phenomena and developments through a different lens - in the last instance this results in a distancing effect. (a V-effect or alienation-effect)

- 2.3. Second order observations are then analysed and interpreted by using and applying **theoretical concepts, or more precise: through the introduction of relevant differences** ('*Differenzschemata*') that is through 'differences that make a difference' (Bateson). The introduction of these concepts opens new paths to cognisance.

On theoretical concepts

Theoretical concepts in turn are generated within a theoretical framework deductively or inductively from other empirical research.

Pompeu Casanovas and Marta Poblet have assembled and systematized the different fields of knowledge that might bear relevance on the study of the micro-foundations of restorative justice. They have stated that these fields relate to four different domains: society, culture, mind and language, each of them hosting a number of concepts: empathy, cognition, emotion aggression forgiveness guilt remorse and shame 'belonging' to the domain of the mind. Politeness, Ethnicity, violence, conflict, dialogue, argumentation and conciliation to the domain of culture, the latter could, of course, also be placed in the domain of 'language', where we find apologies, excuses, frames, scripts, schemes, prototypes, discourse and speech. It is easily recognisable that the domains overlap and that the concomitant fields of research under which they are dealt with do so as well. Casanovas and Poblet state that restorative justice is a highly trans-disciplinary domain over human behaviour, culture, conflicts and rights. *"Loosely speaking both the type and degree of scientific concretion and abstraction expand from neurosciences and brain studies to specific forms of human interaction and social organisation."* (Casanovas/Poblet 2007, 241) or in other words: *"Knowledge can be ordered in a continuum from behavioural sciences to social, legal and philosophical studies"*. In their contribution to the book 'Images of Restorative Justice Theory' they bring forward the example of neurosciences and its contribution to the understanding of 'empathy', quoting the definition by Lawrence et al. (2006, 1173) that empathy is *"a higher order construct which can be broken down into: cognitive empathy - that is 'understanding and predicting someone else's mental state' and affective empathy - 'experiencing an appropriate emotion as the result of someone else's mental state."* They go on to say that empathy is a much discussed issue but that *"there is general consensus that human ability to understand others' feelings and thoughts, to place ourselves in the place of another person, constitutes the kernel of representational processes - imitation, identification, or projection - and emotional social processes such as sharing compassion, pity and forgiveness. Evidence of the neural bases of empathy and forgiveness has been recently collected."* (242)

Excursus on neurosciences, or: don't be afraid!

I will deal shortly with, on the one hand, the surface and on the other hand, the deeper understanding of the contribution of neurosciences to an understanding of RJ-processes.

The surface understanding relates to the notion of an appalling reductionism, i.e. to reducing the complex orbit of social relationships to the notion of a bio-technical switchboard stripped of that human or even divine spark that seems to be the essence of human existence and of the functioning of society. But by going deeper into the matter it becomes increasingly visible that these new and startling research results can contribute to a deeper and enriched understanding of our position, of the position of human beings in the world. The more recent - and more sophisticated - research in the neurosciences brings to the fore the importance of 'the social' of communication / interaction regarding the constitution of the Mind: In the words of one of its protagonists: *"Overall the basic problem with all exclusively biological approaches to human cognition especially when they address its uniquely human aspects, is*

that they attempt to skip from the first page of the story, genetics, to the last page of the story, current human cognition, without going through any of the intervening pages. In my opinion, any adequate theory of human cognition must provide some reasonable account of the processes of sociogenesis in historical and ontogenetic time that intervened between the human genotype and the human phenotype.” (Tomasello 2006:215)

This well-founded critique of the simplistic view of the neurosciences does away with much of the awesome effect of those ‘results’, especially of the stunning pictures procured and presented to the marvelling surrounding world. They do NOT speak for themselves but need interpretation. (as do numbers and statistics...) They afford internal critique, i.e. regarding methodology and from the point of view of a philosophy of science and they afford - and this is my main point - interactive interpretation.

What emerges from such internal critique amounts to the notion that the very existence as human being is created through communication - interaction imprinting on the ‘mind’ or, in fact, constituting the Mind.

What does this teach us? Here is first of all the requirement for the researchers of internally scrutinising and checking the results produced - methodically and according to the standards set of a philosophy of science.

But it is the practitioners and also the policymakers that are called upon to ask for the relevance, the usefulness and the applicability of research result - and of concepts.

Let’s go back to the issue of scientifically founded concepts and differences.

There is another contribution to ‘Images of Restorative Justice Theory’ that is relevant to the issue of theoretical concepts. It is the late **Brian Williams’** short essay on ‘Empathy for victims’. Brian Williams has been concerned with the increasing role, feelings and emotions play in the study of criminal justice; and with the repercussions this might have for restorative justice and the study of restorative justice processes. He quotes empirical research on empathy and the three types of empathic reactions derived from it: cognitive, affective and communicative. He suggests that this might provide the basis for constructing a continuum of types of empathic reactions. This could in turn be a *“valid approach that might have a good deal to offer to those engaged in evaluating what is happening for the parties during restorative justice processes.”*

For me and against the background of what I have said previously, Brian’s account of research results on empathy constitutes a good example of the importance of differences (*‘Differenzschemata’* - Bateson’s differences that make a difference!) The concept of empathy is differentiated along the dimension of the prime ‘location’ of empathy. This has at least ‘heuristic’ value, as a contribution toward understanding - on the side of the researcher, which is a prerequisite for further exploring and researching the phenomenon at stake.

(Interestingly, Brian had arrived at the recommendation to researchers to use combination of quantitative and qualitative studies methodological triangulation) He stresses the need to clarify conceptual issues and to develop research instruments. And he calls for collaboration between practitioners and researchers. His closing statement reads: *“Practitioners and restorative justice advocates are clearly convinced of the benefits of restorative justice for offenders and victims, and of the validity of trying to generate empathy on the part of offenders. Their collaboration in the design and execution of appropriate research will be important in establishing whether, and in what circumstances, such confidence is justified.”* (231)

Cooperation is indeed the theme to be addressed. The reason I have been dwelling at some lengths on what I regard as the achievements and qualities of scientific research is exactly the challenge (the source of uneasiness?) these qualities pose for practitioners and for a fruitful cooperation.

To emphasise **the main points** so far: We do have **the step of scientifically guided observation (second order observation) followed by analysis and interpretation based on scientifically generated (theoretical) concepts.**

As a brief remark on the side: These very steps, observation/perception, analysis and interpretation can also be found in quantitative research. Collecting data is just another type of observation, and quantitative data analysis is never an end in itself but involves interpretations and the application of concepts.

3. What are the conditions for research to become useful?

We are talking about the ways research results - scientifically generated knowledge or scientific cognisance - can contribute to enlightenment understood as elucidation, as clarification in a wider sense, as 'rationalisation'.¹ A reflective practice is called for; a rationally guided action - a better practice in the end!

My experience as a researcher has taught me the following: if this knowledge, if those interpretations are just handed down to the practitioners with the claim of representing scientific truth they will remain outside - a truth separate - maybe even regarded as a 'higher' truth, but at the same time standing aloof.

Let me at this point insert some more general thoughts concerning the general perception of science and scientific knowledge. Scientific knowledge/cognition is indeed of an ambivalent nature. Mostly, it has a high standing, a good status in the everyday world. But at the same time it is often looked at with considerable distrust, or even contempt: the image of the ivory tower conveys this ambivalence.

I do not know which attitude is more difficult to deal with on the side of the researcher - but the first one '*Wissenschaftsgläubigkeit*' (unstinting faith / belief) might be more problematic, or even dangerous. It often goes together with a kind of passive submission to science and scientists. The label 'scientific' seems to convey a type of consecration that the ordinary citizen is not to desecrate. And this might prove quite ominous. (cf. the Milgram experiments)

But even when such fears appear unwarranted, passive acceptance is clearly not a favourable precondition for making sensible use of research results.

Personally, I have experienced quite often this strange mixture of distrust, even contempt and - not veneration - but faithful acceptance. On the one hand: why should those scientists/researchers know better than we ourselves (the image of the ivory tower - knowledge that is created artificially and has lost contact with real life!) - and on the other: but this is scientific evidence, it stands above our commonsensical understanding - but there, far away from 'our' reality it ought to remain!!

The solution is a simple one: Researchers cannot become relevant other than by becoming partners in a dialogue.

4. In which way could and should researchers and practitioners cooperate?

But let's go back again to my main argument that is related to the specific qualities of scientifically created cognition, and especially so the quality of scientific interpretations.

Because scientific interpretations of the world are interpretations that are distanced, not submerged into the whirl and muddle of action and exposed to the constraints of everyday life and its 'reality', and because they have been extracted and constructed by referring to the world of science and are therefore something different, something of its own; because of this, to become relevant to the practice, **they have to be brought home** and have to be confronted with **the everyday understanding** and the common sense interpretations of actions and of practices.

Niklas Luhmann from whom I have taken the concept of the second-order observation has stated: *The scientific observer as a second-order observer can contribute to enlightenment through his distanced knowledge; but this becomes effective only when and where the*

¹ interestingly, enlightenment in German has a more generalised meaning and does not pertain exclusively to the era of the Enlightenment. See for example the quotation of Habermas: "Commonsense who holds many illusions about the world has to accept and submit to becoming enlightened by the sciences without any reservation". (my translation) („Natürlich muss sich der Commonsense, der sich über die Welt viele Illusionen macht, von den Wissenschaften vorbehaltlos aufklären lassen.“)

differences (the differentiating concepts) this kind of cognition uses can be acceded and adopted by the target persons of the 'enlightening endeavour'. I.e. to those that have to become enlightened. (my translation) („Der (wissenschaftliche) Beobachter kann auf diese Weise aufklären, wobei die Aufklärung aber nur wirkt, wenn sie ein Differenzschema verwendet, das der Aufzuklärende übernehmen kann“ (Luhmann 1984: 654)

What does this mean and imply? The researcher 'offers' to the practitioner, whom he has observed as a distanced second order observer, his/her interpretation, using theoretically based (refined) concepts. And he/she enters a discourse whose aim it is to examine the plausibility and the 'practicability' of these concepts. The concepts he/she introduces have to make sense for the practitioners and they should in the most favourable circumstances produce a surplus value of cognition, and finally be capable of impacting on the practice.

In another context I have formulated: that the acceptance and the adoption of scientific interpretations, of explanations, or of statements of causation cannot be imposed on the practitioners (nor on a general public); it needs their becoming convinced as a result of confrontation and discussion (German: 'Auseinandersetzung').

If this discourse succeeds, I - as a researcher - might get this kind of feedback: What you have told us about empowerment as it happens in VOM: well I can see it now. It might - at first instance - sound abstract and distant from any reality but I can see and feel it.

In other words, I contend that the introduction of scientifically derived concepts can prove a valuable tool for better understanding RJ-processes. And by better understanding them it can promote the quality of those processes to serve clients - people using these processes - maybe the communities of care, and finally, society at large.

To repeat and summarise: As a researcher you have to make this offer: "I have seen this - and described it with these concepts - can you see it and understand it this way as well - could it help you in understanding better - more adequately - what is happening - and finally: Could this understanding become systematised to serve as guidance for further actions to become systematically improved and to make it more effective?"

The examples: 'recognition and empowerment'

At that point I will return to my experience as a researcher and I will take from it two examples for the introduction and for the use of scientific concepts. I do this not least because I have so far failed to convey those concepts I am going to talk about; (at least this is the case concerning the concept of recognition)

With regard to recognition and empowerment: I have not invented them. In the case of empowerment I have invented a German translation though; I have created the word *Mächtigung* which does not exist. There is '*Ermächtigung*' but this is a 'terminus technicus', especially in legal usage it is a formal authorisation to act on behalf of somebody. Therefore it does not really catch the meaning of empowerment, which - as with community - is then left non-translated. The story is a different one regarding 'recognition' and its German equivalent '*Anerkennung*', - which in fact conveys more and has a more intricate meaning than recognition.

On recognition:

I have derived the use of the term recognition from two sources, or two branches of science - empirical research - observation of mediation processes on the one hand and the psychoanalytic theory of Jessica Benjamin on the other.

How did I come across the concept of recognition and its application to the observation and analysis of VOM-processes? In the course of doing accompanying research of the first pilot projects on VOM. I arrived at the concept of the 'power of understanding'. I had approached the qualitative material asking: What are you doing, when you are doing this well? What might account for failures? It became visible that there is more to this procedure than just applying a script to bring people together - although this might mean a lot already. But to produce more deep reaching effects you have to move people - to move them toward understanding and to take responsibility to perceive an event of wrong-doing in a way that

enables both to move on. The term 'understanding' seemed to serve the practitioners very well in this phase.

When I was doing the project on partnership violence with more intensive observation and with clients' interviews as well, I could dig deeper into these processes. At that time the concepts of empowerment and recognition were already at the back of my head and I tried first to grasp empowerment by analysing my observation protocols: how could empowerment be brought about? Recognition then appeared as a pathway to empowerment.

What is recognition?

Recognition pertains to interaction, to dialogue, one could say. Recognition means the act of recognising the other person, of perceiving and understanding his/her words and her actions. In the course of the restorative justice process this act of recognition is to be performed by the mediator or facilitator. He/she is to recognise, to 'take in' each of the parties involved; this example can set in motion the process of mutual recognition.

I have attempted to deepen this concept of recognition by taking recourse to the work of the philosopher and psychoanalyst Jessica Benjamin, as presented in her book 'The Bonds of Love'. (1988) Recognition according to this line of thought is the starting point as well as a prerequisite of any good 'successful' psychological development; it is a kind of reciprocal interaction that is apt to overcome the opposing forces, or rather: the societal dynamics of domination and submission; or in other words: the dichotomy of master and servant. Expressed as a paradox: true recognition can only come from somebody who is recognised. Mutual recognition affords standing up to the tension of recognising the other as different and simultaneously holding on to one's own difference.

In the mediation process, the mediator applies recognition to both parties, he/she 'takes them in' and extends understanding. The effect is supposed to be twofold: I gain recognition - first by the mediator - and thus I become more prepared to recognise the other. I can hold my ground and stand up to the tension of the other having different interests, without taking recourse either to submitting to him/her or to overpowering him/her - by means of physical or psychological violence. And these processes are reciprocal.

The concepts of respect and the concept of understanding are close to 'recognition' although they are not synonyms. A specific quality of recognition can be seen in the fact that it is truly about the process that is flowing between the 'I and the other'. It is not one-sided - extending respect or understanding toward the other - as a kind of generous act. Although it affords being assured about oneself, this assuredness can only be gained by recognising one's being dependent on and being influenced by others - remaining oneself.

Recognition thus provides the path for real remorse on the side of the perpetrator, and for forgiveness on the side of the victim - although we might be aware that these deep-reaching processes will not occur as a regular effect.

But I have indeed seen and heard - with my own eyes and ears - these processes happen - in the course of the research project on mediation in domestic violence cases.

I saw also the failures in the interaction between mediator and perpetrator - and again applying - trying out the concept of recognition it made me perceive and understand the dynamics at work. Its lack on the one hand leaving the perpetrator angry and 'untouched' - fending off responsibility - in the other slowly confronting himself with his own dark side.

These insights are something to communicate to practitioners - something that might become useful and influential for their further work and thus prove beneficial for the clients.

This is research that is NOT producing recipes but knowledge - enlightenment that can guide the practitioners' actions.

References

Bateson, G. Bateson, G. (1979). *Mind and Nature: A Necessary Unity (Advances in Systems Theory, Complexity, and the Human Sciences)*, Cresskill, New Jersey (Hampton Press)

Benjamin, J. (1988): *The Bonds of Love. Psychoanalysis, Feminism, and the Problem of Domination*, New York (Pantheon Books) Black, D. (1990):. The elementary forms of conflict management, in *New Directions in the Study of Justice, Law, and Social Control*, prepared by the School of Justice Studies, Arizona State University. New York: Plenum Press, 43-69

Casanovas, P, Poblet, M. (2007): Micro-foundations of restorative justice: a general framework, in: Mackay, R. et al. (eds.), *Images of Restorative Justice Theory*, Frankfurt/Main (Verlag für Polizeiwissenschaft), 234-258.

Habermas, (1992): *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, Frankfurt/Main: Suhrkamp

Hanak, G., Stehr, J., Steinert, H. (1989): *Ärgernisse und Lebenskatastrophen. Über den alltäglichen Umgang mit Kriminalität*, Bielefeld (AJZ Verlag)

Kreissl, R., Steinert, H. (2008): *Für einen gesellschaftstheoretisch aufgeklärten Materialismus. Soziologische Lehren für die Neurophysiologie - und umgekehrt. (unpublished manuscript)*

Luhmann, Niklas (1984). *Soziale Systeme. Grundriss einer allgemeinen Theorie*. Frankfurt/Main: Suhrkamp

Luhmann, Niklas (1993). *Das Recht der Gesellschaft*. Frankfurt/Main: Suhrkamp.

Pelikan, C. (2000): *Victim Offender Mediation in Domestic Violence Cases. A Research Report*. United Nations Congress: Ancillary Meeting, Vienna, Austria (<http://www.restorativejustice.org>)

Williams, B. (2007): Empathy for victims, offending and attitudes, in: Micro-foundations of restorative justice: a general framework, in: Mackay, R. et al. (eds.), *Images of Restorative Justice Theory*, Frankfurt/Main (Verlag für Polizeiwissenschaft), 225.234

Christa Pelikan is a researcher at the Institute for the Sociology of Law and Criminology in Vienna. She has been working in the field of criminal law, especially victim-offender mediation and in the field of family law. She is a founding member of the European Forum for Restorative Justice.

Building restorative justice through a case based and reflective dialogue between researchers and practitioners

Presented by: Erik Claes and Bram van Drooghenbroek (Belgium)

Chair: Simon Green

This workshop started from a particular field experience in Belgian restorative justice practice for juveniles. A researcher (Claes) assisted as an observer several mediation sessions organised and guided by a mediator (Van Drooghenbroek). During intense feedback moments, both partners discussed the key-moments of the sessions, the interventions of the stakeholders, their emotions, attitudes, processes of changes. They unravelled the evolving relations between the parties, but also paid attention to the attitude of the mediator. This intensive reflective dialogue resulted in the redaction of a joint- paper on responsibility and accountability in restorative justice programmes for juveniles (An English translation of this paper will be made available for the workshop).

In the first part, the initiators of this workshop addressed their story to an audience of scientists and practitioners. They reported briefly on their dialogical experiences, thereby focusing on two issues, each raised from a distinct perspective: 1. From the point of the view of the mediator, the issue will be raised: 'How did this dialogue with a normative theoretician affected the self-understanding of the mediator?' 2. From the perspective of normative theory the issue will be addressed: 'How does the assessment of normative concepts and

principles (such as responsibility, accountability, checks and balances, proportionality) in practice bear on the more theoretical debate around restorative justice and his underlying values?'

In the second part of the workshop, the initiators presented two questions to the audience, which were discussed in plenum, after short deliberation in groups.

Erik Claes is an associate professor at the KULeuven (Belgium) where he teaches Introduction to law, criminal law theory and professional ethics for criminologists. His research interests revolve around restorative justice and the philosophy of the criminal law.

Bram Van Drooghenbroek works as a mediator for the Flemish mediation office Suggnomè. His field experience relates to victim offender mediations for juveniles as well as for adults.

Workshop notes by Daniela Bolivar

This presentation showed the experience of a researcher and a practitioner working together. The researcher assisted as an observer to mediation sessions made by a mediator, developing moments of discussion afterwards. Both analyzed and discussed the key moment of the sessions. As a result of the dialogue after each mediation session, a paper with some reflections of mediation and juveniles was elaborated.

From the mediator's perspective, the invitation to participate in this experience may be felt useful and threatening at the same time. The mediator could feel that reflections on his own practice could potentially show elements difficult to accept. However, the potential benefits in participating in such as experience, motivating this mediation to do so.

On the other hand, the intention of the researcher (Erik) was to find out to what extent he could offer to the practice of mediation a theoretical framework from the perspective of the philosophy of law. In this presentation, both researcher and mediator discussed the topic of responsibility and shaming.

According to the researcher, what he was able to offer to this mediator were reflections on what type of conceptualizations he was using in the topic of responsabilization. First of all, this issue is tricky because the person - the mediator or the victim- who is responsabilizing the offender - is in a position which implies the risk of being intrusive, oppressing and arbitrary. In addition, the researcher gave the mediator a list of values he realized were important in his practice: constraining values (such as respect), maximizing values (such as enhancing the offender's sense of responsibility, or maximizing satisfaction of the parties) and emerging values (such as forgiveness). However, the researcher was not able to give to the mediator a coherent normative framework of values. According to Erik, restorative justice is not yet able to give a normative framework to guide the mediator on the issue of responsabilization. According to the mediator's experience, having dialogues after each mediation session was an important input to his practice and forced him to reflect on the concept of shaming and responsibility and the way they normally use them in mediation and conferences.

They finalized their presentation asking some questions such as under which conditions, if any, a mediator team must include a researcher in its practice and which kind of risks, if any, there are when practitioners and researchers work together.

Action-research in the field of restorative justice: an opportunity or a risk?

Presented by: Inge Vanfraechem, Ivo Aertsen and Leo Van Garsse (Belgium)

Chair: Karen Paus (Norway)

In the Belgian experience, collaboration between researchers and practitioners has been one of the key factors to stimulate the development of restorative justice. But what kind of research are we talking about? How can we conceive a respectful collaboration?

In this workshop, the concept and practice of action-research were discussed: how can researchers and practitioners work together in developing innovative practices or evaluating existing practices?

The following topics were addressed:

- What is action-research?
- Why we should use it?
- How to start up action-research? Who should be involved? What are the pre-conditions?
- How can it be done in practice? Examples of victim-offender mediation, conferencing and restorative justice in prisons in Belgium.
- The possible outcomes of action-research and how to integrate it in further practice and policy development, and in ongoing research and theory building?

The presenters are researchers and practitioners that were involved in action-research and therefore wish to present the theme in an interactive manner, to show the (dis)advantages of action-research from both sides.

Inge Vanfraechem works as a researcher at the National Institute of Criminal Sciences and Criminology, federal Ministry of Justice in Belgium, on the evaluation of victim policy. She is the vice-chair of the European Forum for Restorative Justice. She obtained her PhD in criminology at the K.U.Leuven on the topic of Family group conferencing for serious youth delinquency. She is an affiliated researcher at the Leuven Institute of Criminology, K.U.Leuven, Research Line of Youth Delinquency and of Restorative Justice. Her main research interests include victimology, restorative justice and youth delinquency. Links: www.euforumrj.org, www.nicc.fgov.be, www.law.kuleuven.be/linc.

Ivo Aertsen is professor of criminology at the Catholic University of Leuven. His field of interest is victimology, penology and restorative justice. Before he started research and teaching, he worked in the prison system and in victim support. Ivo Aertsen led COST Action A21 - a European research network on restorative justice.

Leo van Garsse holds a master-degree in pedagogy (Leuven 1980). Since '87 he has been actively involved in the practice and the implementation of several applications of victim-offender mediation in Flanders. Since 1998 he's employed by "Suggnomè, Forum for Mediation and Restorative Justice", an umbrella-organisation for the promotion of Restorative Justice in Flanders. From 2004 on, as a representative of Suggnomè, Leo Van Garsse was closely involved in the preparation of a legal framework for victim-offender mediation in Belgium.

Action-research in the field of restorative justice: opportunity or risk?

Inge Vanfraechem, Ivo Aertsen and Leo Van Garsse

Verona, 17-19 April 2008
Fifth Conference of the European Forum for
Restorative Justice



Action-research project: Mediation for Redress

- A practitioner's approach:
 - From 1987: NGO 'Oikoten' - A limited mediation-practice with juveniles
 - 1993 – 1995: K.U.Leuven - Action-research 'Mediation for redress':
 - Application of mediation in serious cases (adults) ?
 - Relevance for the criminal justice system ?
 - 1996- 1997: Establishment of the Leuven Mediation Service
 - 1998 – 2007: NGO 'Suggnomè' - Generalisation of the offer
 - 2005: Federal law on mediation (in adult criminal law)
- The importance of action-research: A 'nostalgic' evaluation from the position of the practitioner



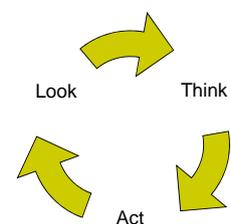
Action-research project: Family Group Conferencing (Hergo)

- A research approach
 - 2000-2003: K.U.Leuven - Action-research 'Family group conferencing' (prolongation 2004-2005):
 - For serious youth delinquency
 - At the level of the youth court
 - In 5 judicial districts in Flanders
 - Outcome:
 - Can work for certain cases
 - Incorporated in new Juvenile Justice Act of 2006
- Continuation?



On action-research

- A participatory, interactive form of research
 - Practitioners taking part in the research
 - Researchers taking part in practice
- General aim = to solve a problem or to bring a change
- A combination of research, reflection, learning and change
- Two types:
 - Pragmatic
 - Normative
- Theory building



Opportunity 1 – for practice



Action-research as a strategic lever

- 1987-1992: the isolated practice with juveniles
- from 1993: practice subject of constant reflection
- 1994-1995: practice subject of independent evaluation
- 1996 -: the further implementation process

Opportunity 2 – for research



Action-research and the sense of reality

- Action research takes you out of the ivory tower
- Theory offers an important input ...
... but practice forces you to be realistic.
- Eg. role of the police: symbolically representing society?
- Eg. crime and problems of the juvenile: to be split up?

Risk 1 – for practice



The researcher: a thief of practice ?

- Learning to speak in a new language
- Research steering practitioners' priorities ?
- The ownership of the findings: outcomes of research or the merits of practice ?
- The temporary character of the collaboration: the post-research syndrome

Risk 2 – for research



Research losing its neutrality – scientific status of the outcome

- Research: 'independent and neutral' <-> Action-research: involvement
- Can you be objective when evaluating a practice you helped to build up?
- Or are you a believer from the outset?
- Can the outcome of the research entail a negative evaluation?
- Is the outcome objective?

Discussion



1. Action-research does not result in science
2. Action-research: how to bridge action and research?
3. Developing permanent partnerships between practitioners and researchers?

Discussion (notes by Daniela Bolivar)

One of the questions that arose after these presentations was if there is any difference between traditional research and action research with regard to the researcher's responsibility for the results obtained by the study. What is the position of the researcher?

In the particular case of action research, it is possible to ask where the main researcher's responsibility is. With his/her results or with the practice? What could happen if the results are unfavourable for the practitioners? According to one of the discussants, the researcher is useless for the practice if he/she is not able to face these difficulties and to stand up to 'unfavourable results.

The conflict of interest between research and practice can be avoided by continuing communication. Thanks to permanent dialogues, reflections and the search for better options, neither the practitioner nor the researcher will have surprises at the end of the research. It is important to establish common objectives, redefine problems, define new strategies, continuing evaluation. This cycle must be repeated all the time. Part of action-research is to study processes more than outcomes; in this type of research process evaluation is even more important than the final result.

Action research necessarily requires empathy with the other side, to learn and use the same language. Because of the practitioner becoming submitted to criteria beyond his/her control, this experience may be experienced as threatening. That is why it is so important to take care of the relationship, which means in practice to keep a close relationship during the whole action-research process.

Research and policy making in Western-Australia - Hijacking of community-based RJ projects by the bureaucracy

Presented by: Brian Steels and Dot Goulding (Australia)

Chair: Inge Vanfraechem (Belgium)

Both Brian Steels and Dot Goulding have extensive experience as academic researchers and practitioners of restorative justice processes. They developed, serviced and researched a communitarian model of restorative and transformative justice in local Magistrates' Courts in Perth Western Australia, targeting serious and repeat adult offenders. The researchers completed two major restorative justice research projects in the Perth metropolitan area and in a remote Indigenous community. Both projects had socially significant results in terms of community involvement, victim satisfaction and heightened levels of responsibility taking by offenders. However the bureaucratic paradigm hijacked both projects thus negating the underpinning ethos of restorative justice. In the first project the bureaucracy tried to replicate the methodology however was unsuccessful in terms of victim participation and the other project was directed in a 'top down' manner by the government based funding body, effectively diminishing local Indigenous involvement. With these experiences in mind, the researchers pose the question: 'Where to now for restorative justice in a bureaucratized world where the language of RJ is misappropriated and RJ is in danger of becoming a net widening tool within criminal justice systems?'

Brian Steels and Dot Goulding have extensive experience as academic researchers and practitioners of restorative justice processes. They have studied various restorative justice models in New Zealand, the United Kingdom, and the European Union. They are Research Fellows at the Restorative Justice Research Unit, Centre for Social & Community Research, Murdoch University.

Restorative Justice Revisited in Western Australia



Dr Brian Steels & Dr Dot Goulding

Restorative Justice Research Unit
Centre for Social & Community Research
Murdoch University
Perth, Western Australia

www.cscr.murdoch.edu.au

Restorative Justice Revisited in Western Australia



Community versus bureaucracy

- 2 RJ studies in metro & rural areas
- Results of both studies
- Dissemination of findings
- Capture by the bureaucracy
- What happened: metro & rural
- What does this mean for RJ?

Project 1: Perth metro area



- Magistrates' Courts
- Restorative & transformative justice model
- Adult serious & repeat offenders facing prison
- 153 referrals
- 98 offenders engaged in transformative process
- 50 face to face conferences (victims/offenders)
- 48 reached mutually agreeable resolutions
- 34% engagement by victims & support networks
- All offenders returned to court for sentencing

Project 2: Roebourne WA



90%+ Indigenous population

- Magistrates' Court
- Whole of community involvement
- 4 Local Indigenous communities
- 'Bottom up' model used
- Intensive community collaboration
- Controlled & regulated by government funding body
- Locals wanted issued resolved in the community
- Funding body insisted Courts be involved
- Resistance & frustration amongst local Indigenous people
- Ongoing difficulties doing research for government

Results of studies: Metro



- High levels of victim satisfaction (90%+)
- Both process and outcomes
- Victims moved quickly into recovery mode
- Promoted feelings of safety
- Increased levels of understanding & forgiveness
- Better mental health outcomes for victims
- Less punitive in terms of sentencing outcomes
- Reduced levels of neutralisation amongst offenders
- High levels of responsibility taking amongst offenders
- Provided meaningful apology/reparation
- Support networks involved in responsibility taking
- Empowering for individuals, family & community

Results of rural study



- A preferred model among the Aboriginal community
- Key respected community members trained in process.
- Continues to be used by local people outside of system
- Indigenous methodology gained support from local people and court/police but not Victim Services and Corrections
- Court services welcomed the process
- Process was captured by non-Indigenous workers in Corrections
- VMU given task part-time, without success
- Current process is not used by local people
- Local people now back to adversarial system

Dissemination of findings



- Refereed journal articles
- Seminars
- International/national conferences
- WA government departments
- Non government organisations
- Church groups
- Websites & local media

Bureaucratisation of RJ



- Government funding sources steer study direction
- Political pressure on local community groups
- Inadequate resources allocated to local NGOs
- **Bureaucratic controls** (top down modelling)
- Captures & misappropriates language
- Refutes emotion as a legitimate part of process
- Acts irrationally with respect to effectiveness of RJ & cost of RJ process
- Assumes control, including control of victims and offenders

What happened after both studies?



Metro: recognised that results were significant
Bureaucracy replicate only parts of methodology
Selective in process

Failed to engage victims (less than 5%)

Failed to engage family/community supports

Rural: Devalued local Indigenous needs
Stakeholder group wholly bureaucratic (no Indigenous representation)

Bureaucratic obstacles at every level

Overall: Bureaucracy wanted control of RJ process

What does this mean for Restorative Justice?



- Somehow community has to regain control
- RJ needs to fit in with criminal justice processes
- Process has to be valued in its own right
- Bureaucracy controlled RJ becomes another net widening process
- Needs a 'wholly' rather than a 'pseudo' RJ model
- Needs to occur at point of arrest through the entire criminal justice system

Contact Details



- Dr Brian Steels

bsteels@inet.net.au

B.Steels@murdoch.edu.au

- Dr Dot Goulding

D.Goulding@murdoch.edu.au

Restorative Justice Research Unit
Centre for Social & Community Research
Murdoch University

Workshop notes by Lieve Bradt

Brian Steels and Dot Goulding have developed, serviced and researched a communitarian model of restorative and transformative justice in local Magistrates' Courts in Perth Western Australia. In this workshop Brian and Dot presented the results of their two major restorative justice research projects in the Perth metropolitan area and in a remote Indigenous community.

The research in the *Perth metropolitan area* involved adult serious and repeat offenders facing prison. There were 153 referrals resulting in 98 offenders engaging in transformative process. In total 50 face to face conferences were organised, of which 48 reached mutually agreeable resolutions. In these conferences 34% involved an engagement by victims and support networks. All offenders returned to court for sentencing. With regard to victims the research showed that these conferences resulted in (a) high levels of satisfaction (90% and more) about both process and outcomes, (b) victims moving quickly into recovery mode, (3) promoting feelings of safety, (4) increased levels of understanding and forgiveness and (5) better mental health outcomes. With regard to offenders the findings showed (1) less punitive in terms of sentencing outcomes, (2) reduced levels of neutralisation amongst offenders, (3) high levels of responsibility taking amongst offenders, (4) provided meaningful apology/reparation. The research concerning *Indigenous communities* involved 4 local Indigenous communities and used a bottom up model with involvement and collaboration of whole the community. The research indicated that the model used was a preferred model among the Aboriginal community. Key respected community members trained in process. The Indigenous methodology gained support from local people and court/police but not from the Victim Services and Corrections.

Both projects had socially significant results in terms of community involvement, victim satisfaction and heightened levels of responsibility taking by offenders. However, the bureaucratic paradigm hijacked both projects hereby influencing practice in a negative way. In the first project the bureaucracy tried to replicate the methodology, however was unsuccessful in terms of victim participation (which was less than 5%) and engagement of family/community supports. The other project was directed in a 'top down' manner by the government based funding body. As a result local Indigenous needs were devalued. The stakeholder group were wholly bureaucratic with no Indigenous representation. Overall it can be said that the bureaucracy wanted to control the restorative justice process. The presentation of Brian Steels and Dot Goulding showed that the bureaucratisation of restorative justice can have negative impacts on restorative justice practices. The question that both researchers posed was 'Where to now for restorative justice in a bureaucratized world where the language of RJ is misappropriated and RJ is in danger of becoming a net widening tool within criminal justice systems? According to them the following lessons can be learned:

- Somehow community has to regain control
- RJ needs to fit in with criminal justice processes
- Process has to be valued in its own right and needs a 'wholly' rather than a 'pseudo' restorative justice model
- Restorative justice needs to occur at point of arrest through the entire criminal justice system

Evolution needs 'evaluation'

Presented by: Véronique Dandonneau (France)

Chair: Inge Vanfraechem (Belgium)

Evaluation is a way to show objectively and scientifically the practice and the usefulness of mediation in penal matters, which is the main and most significant measure of restorative justice in France.

Actually, to prove the social effectiveness of this measure and its consequences, we need to assess and to analyse it in order to understand the challenges or the supportive factors.

For Citoyens et Justice, it was clear that VOM's future, its impacts on the judiciary environment, on social integration and on recidivism prevention needed an evaluation. It was the only way to collect quantitative and qualitative data on the impact of this measure.

It was in this context that the federated associations of our network got involved in this action-research with the aim of developing and improving our practices.

This evaluation was operated in a collective process in collaboration with policy makers (mainly French ministry of justice) practitioners and citizens.

Citoyens et Justice will present the methodology chosen and applied by the independent university team who realised this research. We will also present the main elements and conclusions rising from this study.

The interest of this presentation is to highlight the importance of evaluation in order to prove to policy makers the usefulness of this measure and to allow the evolution of restorative justice's measures.

Véronique Dandonneau is the legal expert who manages European projects within Citoyens et Justice, (Federation gathering the associations doing mediation in penal matters in France). She used to be a mediator in penal matters in a victim support association for several years.

Citoyens et Justice

Evolution needs evaluation
The NGO's french experience

Véronique Dandonneau

Verona 17th april 2008



1. The context of this evaluation process

- An exploratory research
- In the funding reform framework
- A research dedicated to the general interest
- A general evaluation of all the measures

Citoyens
et Justice

2. The evaluation methodology The 4 steps of the action-research

1st step
Observation on the spot

2dn step
Attendance VOM

3rd step
Individual interview with all the
protagonists

4th step
National survey within Citoyens et
Justice network

Citoyens
et Justice

3. The research results

- 3.1 The institutional and functional framework
- 3.2 The type of VOM
- 3.3 Effects and consequences of VOM

Citoyens
et Justice

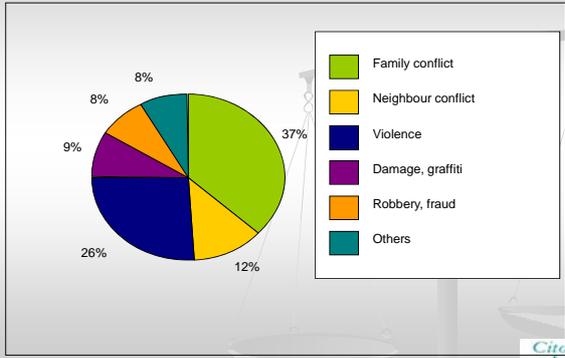
3.1 The institutional and functional context

- Average duration of the NGO'S
 - Average 13 years old
- NGO's activities
 - Average number of VOM
 - Various type of measure managed
- NGO's location
 - Close to courts
- NGO's team
 - Staff
 - Type of staff
 - Mediators description
 - The necessary qualification



3.2 THE TYPE OF VOM (.../...)

3.2.1 The conflict



Conflict Type	Percentage
Family conflict	37%
Neighbour conflict	12%
Violence	26%
Damage, graffiti	9%
Robbery, fraud	8%
Others	8%



3.2 TYPE OF VOM (.../...)

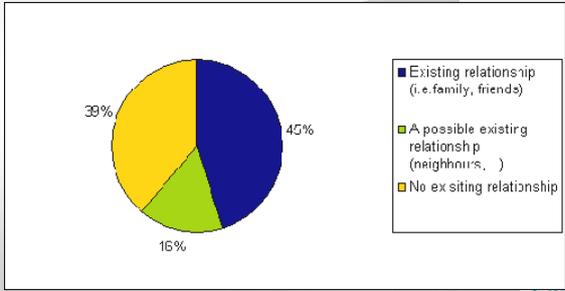
3.2.2 The protagonists

- The victim : in 90% the victim is an individual
- A link between the victim and the offender exists in 57% of cases



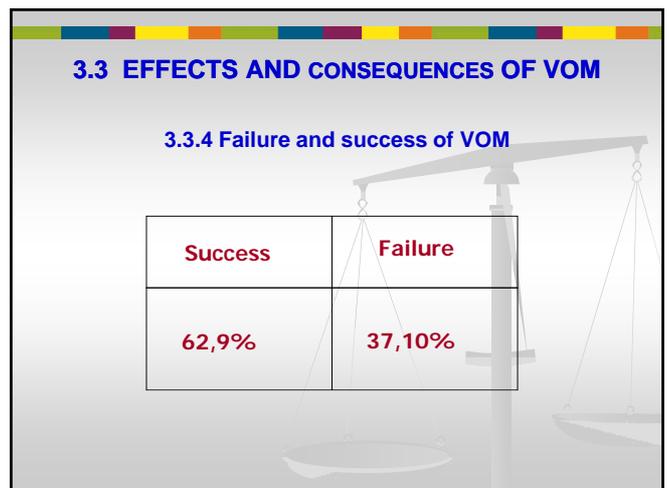
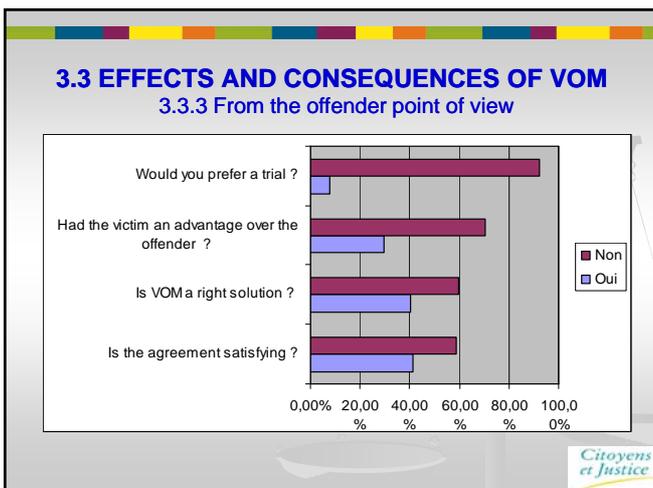
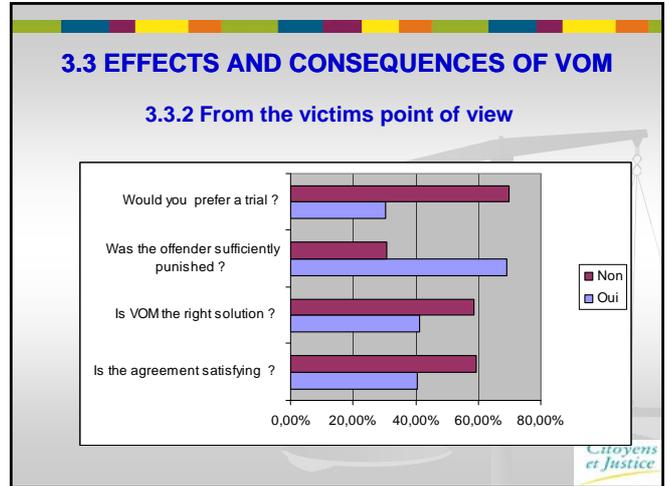
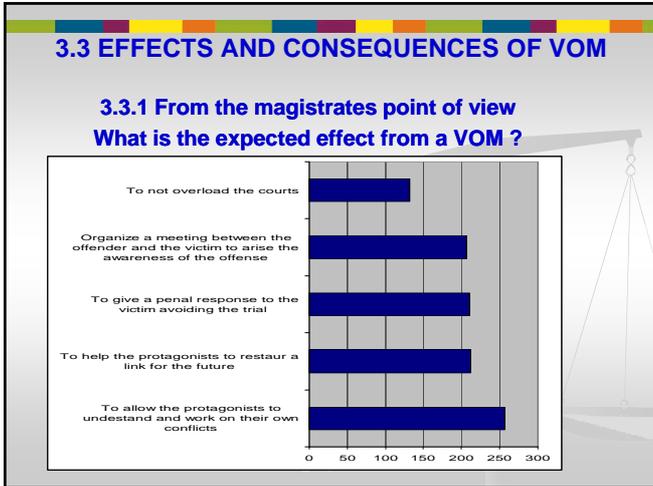
3.2 THE TYPE OF VOM

3.2.3 The conflict context



Conflict Context	Percentage
Existing relationship (i.e. family, friends)	45%
A possible existing relationship (neighbours, ...)	16%
No existing relationship	39%

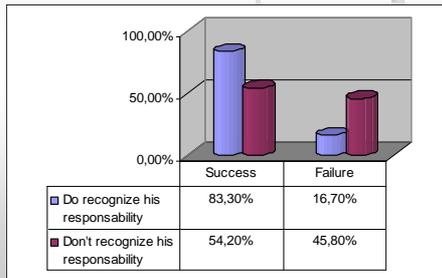




3.3 EFFECTS AND CONSEQUENCES OF VOM

3.3.4 Failure and success of VOM

The Responsibility recognition by the offender impacting the VOM



Citoyens
et Justice

Conclusion

- **To obtain data**
 - To have an objective point of view
- **To improve VOM's practice**
 - To develop a professionalisation process
 - To implement evaluations indicators
- **To highlight the NGO's practice**
 - To the magistrates
 - To the authorities
 - To the citizens

Workshop notes by Lieve Bradt

The presentation of Véronique Dandonneau focused on research conducted on mediation in penal matters in France. Mediation in penal matters is the main and most significant measure of restorative justice in France. The purpose of this presentation was to highlight the importance of evaluation as a way to show objectively and scientifically the practice and the usefulness of mediation to the policy makers in order to allow and enable the evolution of restorative justice in France. In order to prove the social effectiveness of mediation, there is a need to assess and to analyse mediation so that it becomes clear what the challenges or the supportive factors are.

Véronique Dandonneau first outlined the context of the research:

- The research was operated in a collective process in collaboration with policy makers (mainly French ministry of justice), practitioners and citizens.
- This research was an exploratory action research to research the impacts of mediation on the judiciary environment, on social integration and on recidivism prevention
- The research was necessary in order to have data to assure funding
- The aim of the research was to prove the quality of the service, to develop and improve the service
- with a view on general implementation

The methodology of the research (quantitative and qualitative) consisted of four main parts:

- observation in an NGO
- attendance of victim-offender mediations
- individual interviews with all actors involved in victim-offender mediation
- national survey

The main results can be presented with regard to different aspects:

- institutional and functional context: The average existence of the NGO's was 13 years. The NGO's are located close to the courts. This is considered to be a supportive factor. Each NGO has an average of 5 mediators in service. Each NGO did an average number of victim-offender mediations and managed various types of measures. As a result of these findings 'Citoyens et Justice' decided to establish a training centre within their service.
- VOM: 12% of the cases were family-related, 34% of the cases dealt with conflicts between neighbours. With regard to the relationship between victim and offender, the results point out that
 - in 45% of the cases there was an existing relationship between victim and offender, in 39% there was a possible relationship and in 16% there was no relationship between the victim and the offender.
 - Interviews with the magistrates showed that magistrates consider mediation as a way to allow the protagonist to understand and work on their own conflict. They do not consider mediation as an important way to avoid overload for the courts.
 - When victims were asked if the agreement was right for them, 60% answered it wasn't. Also 60% of the victims said that mediation was not the right solution for them. However, when asked if they prefer trial they also said they don't prefer trial and that according to them the offender is sufficiently punished.
 - With regard to the efficiency of the measure: 62,9% was a success (i.e. an agreement was reached and respected by the actors) and 37,1% failed. When looking at the relation between success/failure and recognition of the responsibility by the offender, the results showed that in 83,3% of the cases where the offender recognized his/her responsibility the mediation was a success and in 16,7% a failure. In cases where the offenders didn't recognize their responsibility 54,2% of the mediations were a success and 45,8% were a failure.

Discussion (Steels/Goulding and Dandonneau)

Both presentations raised some questions during the café conference:

- How do we keep the ideal models of theory relevant to practice?
- How to ensure that practitioners are involved with theory building?
- How can we ensure that we keep the ideas of restorative justice as bright as possible?
- How do we help practitioners, academics, policy makers and the community to talk to each other?
- How important is it to have legislation to promote restorative justice?
- What is the nature of bureaucracy? Do we want to engage people in change or do we want to preserve the status quo?
- Should we try to find ways to educate people in restorative justice?

Research and Policy: Competing or reconcilable agendas for restorative practice?

Presented by: Simon Green (U.K.)

Chair: Brian Steels (Australia)

This presentation drew on my recent publication entitled 'Restorative Justice and the Victims' Movement: meaningful reform or still being manipulated?' (in Johnstone, G. and Van Ness (2007) *Handbook on Restorative Justice*, Cullompton: Willan).

Specifically, the focus was upon the translation of the principles of restorative justice into the practice of restorative justice. Terms like 'victim', 'offender', 'community' and 'justice' are imbued with historical, cultural and legal values which cannot be unconsciously assimilated in a restorative framework without implications. These implications can range from the inadvertent exclusion of some people from restorative processes through to the wholesale corruption of restorative goals. The victimological commentary about the political manipulation of crime victims (Elias 1993, Williams 1999) compounds this problem and has the potential to derail many restorative projects. Whereas implementation issues have often been cited (Dignan 2005) as the root cause of failure in restorative projects this presentation will argue that without a clear epistemology which provides a restorative interpretation of key terms and concepts restorative justice will always be vulnerable to the imposition of alternative values and agendas.

The role of both researchers and policy-makers is therefore central to how this concern is overcome. Given that all criminal justice initiatives develop within a political environment it is crucial that researchers are able to inform the development of policy with both theoretical and empirical information and that policy-makers articulate the wider social, economic and political constraints that need to be accommodated within a restorative model. This presentation will conclude with some thoughts for best practice about how this dialogue might be productively achieved in his presentation Simon Green criticized the fact that often the state and the victim are assigned a neutral position, whereas they aren't neutral. Offenders and victims can often be found in the same groups of people. Secondly, he addressed the issue of victim manipulation in victim-offender mediation. This manipulation occurs in three ways:

- electoral gain: image of the ideal victim with whom we sympathise, by standing next to the victim, you are considered to be tough on crime. In this way victim-offender mediation can be abused by electoral gain
- governmental: shift responsibility from the state towards the victim in the approach to crime
- ideological: the state is not longer able to assure welfare for all its citizens, consequently there seems to be a shift towards the active participant in order to get welfare

All these, result in the idea that there is a neutral definition of the state and the victim. The victimological commentary about the political manipulation of crime victims compounds this problem and has the potential to derail many restorative projects. The system is open to corruption and co-option. The criminal justice is being represented as the bad guy and victim-offender mediation as the good guy. Communication is not intrinsically and exclusively connected to restorative justice. We need to be critical of the regulation of restorative justice. We need to take a step back and think about what restorative justice is all about? Which practices belong to restorative justice? It seems as if currently all sorts of practices are called restorative justice. The definition of restorative justice is so much expanding that it doesn't mean anything anymore. Simon Green argues that there is a need to develop a common language. Without a clear epistemology which provides a restorative interpretation of key terms and concepts restorative justice will always be vulnerable to the imposition of alternative values and agendas. It is crucial that researchers are able to inform the development of policy with both theoretical and empirical information and that policy-makers articulate the wider social, economic and political constraints that need to be accommodated within a restorative model.

Simon Green is lecturer in criminology and community justice at the University of Hull, England. Current research interests are in community justice, crime data analysis, social theory and the victims of crime. He and Professor Gerry Johnstone are launching a distance learning Masters Degree in Restorative Justice in September 2008.

Workshop notes by Federico Reggio

Simon Green's presentation started with a question: can research and policy cooperate when they deal with Restorative Justice? Politics and Research - as Simon Green noticed - have two different agendas and methods, and this could be easily a source of misunderstanding, as well of conflicting perspectives.

Such a situation, nevertheless, seems to be further problematic because, although Restorative Justice has developed within its advocates and scholars a particular language, it lacks of epistemological clarity, so that its core-concepts appear to be in lack of clear definitions, and, therefore, they can be potentially manipulated (especially when the subject moves from theory or practice to political choices). This is - according to Green - a blind spot that affects Restorative Justice and shows its weakness especially in relation to developing policies oriented to an authentic restorative approach to justice. By this way, the presentation briefly showed how the concept of 'victim' may change, according to electoral, governmental, or ideological lenses and, inside those lenses, according to different views.

Here appears also a lack of 'aetiology', which is perhaps the other side of the lack of epistemology which Green underlined: there is (e.g.) a large and widespread referral, within the world of RJ, to victims, but there seems to lack a clear notion of 'victim', as well as how can a victim become so defined.

According to Green, what nowadays prevents from developing a more defined conceptual background for Restorative Justice is the attitude of thinking RJ as an alternative, as an antidote to "something else": this way, however, one can perhaps easily understand what RJ is 'not', but this does not necessarily provide a clearer definition of its core-concepts.

As a conclusion, Green's presentation underlined a core-issue that emerged also in other workshops (Wright-Reggio; Mackay-McDonough) and that therefore was also part of a further discussion in the café-conference: there is the need of a more rational dialogue in order to develop a common "language" (in terms of "meanings") for Restorative Justice; there is also the need of combining research in a more 'wholesome' way (with its different subjects and perspectives) and empirical data, in order to clearly understand what is restorative or not, and to distinguish Restorative Justice from a vague issue of strengthening social dialogue at different levels, including criminal justice's topics and sectors.

The final question, addressed to Simon Green, dealt with the problem of Restorative Justice's lack of epistemic grounds, and the possible methods that could help in a further clarification. As it emerged, in fact, the mere search for an agreement among scholars and practitioners does not seem to be a good solution, as long as the problem does not deal with 'conventions', but with 'contents' that should be recognizable and valid also outside the world of those who already place themselves within this paradigm's approach.

Researching attitudes towards restorative justice and VOM: Comparing Qualitative and Quantitative approaches

Presented by: Galma Jahic and Seda Kalem (Turkey)

Chair: Ian MacDonough (U.K.)

In this workshop, qualitative and quantitative ways of studying attitudes towards restorative justice and victim-offender mediation will be discussed, drawing from three different research projects addressing RJ and VOM in Turkey. Those include:

- Quantitative research on judges and their understanding of the purpose of punishment and how they perceive the restorative value of punishment;
- Qualitative research on judges, prosecutors, and lawyers, including in-depth interviews on their understanding of VOM;
- and quantitative research on how aware the general population is of VOM possibilities in Turkey.

These three research projects highlight how different approaches can provide us with different information on how restorative justice is understood, each in its own way, with each approach leaving some questions unanswered. Different methodological problems and suitability of these methods for different types of questions will be discussed. Participants will be encouraged to share their experiences with different methodologies used, or different populations addressed, in order to gain a broader picture of methodological issues in researching on awareness and understanding of restorative justice.

Galma Jahic is a lecturer and a researcher at Istanbul Bilgi University Faculty of Law. She has obtained MA in Criminal Justice from Rutgers University School of Criminal Justice in Newark NJ, and is currently working towards her PhD in Criminal Justice.

Seda Kalem is a PhD student in sociology at New School University Graduate Faculty, NY. She is a lecturer and a researcher at Istanbul Bilgi University Faculty of Law. Her main area of interest is law and society research, with a special focus on courts and perceptions of justice.



**Researching attitudes towards restorative justice and VOM:
Comparing Qualitative & Quantitative approaches**

Seda Kalem & Galma Jahic
Istanbul Bilgi University

Social Research

- What do different methods of data collection aim at?
- What kind of questions can be answered through different methods?
- How can different methods contribute to the analysis of social action and development of social policy?

Social Research

- Quantitative vs. Qualitative Research
- Both can be used to address most questions
- Main difference:
 - numerical X non-numerical data
 - how concepts that are studied are defined
 - Top down X Bottom up
- So the difference is not necessarily in the questions asked, but in the data used to answer the questions, and how data are obtained
- Complementary methods
- Each contribute in its own way to understanding attitudes

Quantitative X Qualitative

- All observation is qualitative in nature
- In Quantitative research, qualitative observation is quantified
 - "What do you think of Seda as a mediator?" (qualitative)
 - "On scale 1-10, how would you evaluate Seda as a mediator?" (quantitative)
 - "Seda is a good listener" Yes-No (quantitative)
- Qualitative information:
 - Is rich in meaning
- By quantifying:
 - Summarize, aggregate, and made data more explicit, but also lose richness of meaning

Quantitative Methods

- Focusing attention on defining concepts and specifying meaning
 - Researcher decides *a priori* on concepts
- Strengths:
 - Easy to compare across groups/over time
 - Sampling and representation (generalisability)
 - Produces data that are easier to summarize and understand

Quantitative Methods

- Weaknesses
 - Hard to explain the “how’s of behaviour”
 - Not as suitable for bottom up research (because of the need for clear concepts)
 - Loss of information
 - Easily misinterpreted

Qualitative Research

- Primary concern is describing and understanding
 - “gives access to the observation of others”
 - Can provide material for quantitative research (provides variables, hypotheses, issues)
 - What people perceive and how they interpret what they perceive
 - Defining concepts bottom up
- Strengths
 - Detects variation in meanings attached to actions and events
 - Allows for depiction of mental schemes, thinking patterns, description of processes
 - Not concerned about generalisability, but rather depth

Qualitative Research

- Weaknesses
 - Not suitable for large scale comparison
 - Sacrifice uniformity, precision, measurement
 - Not suitable for statistical analysis
 - But can be quantified
 - Can be discredited for being “anecdotal”

Quantitative X Qualitative

- “Research, like diplomacy, is the art of possible.” (Michael Quinn Patton, 1990)

Restorative justice research

- What can be researched:
 - People (their knowledge, beliefs, attitudes, satisfaction, etc)
 - But also process and outcomes (speed, benchmarks, nature, problems, etc)
- Populations that can be studied:
 - General population
 - Parties
 - Facilitators
 - Practitioners
 - Other actors in the system
 - Policy makers

Illustration of how both methods contribute to body of knowledge: Example of the Study of Law

- How can we look at law by using social science research methods?
- What can we learn from both quantitative and qualitative studies?

Quantitative Research

Question:

How and by whom is the law used and when and by whom is it not used?

- Since 1960s law and society scholars had been conducting surveys of legal use: when, where and under what circumstances people turn to law?

Quantitative Research

- Much of this work described unequal access to law through an essential economic and social structural model
- Citizens with greater access to education, income or familiarity are more likely to resort to law for dispute resolution

Quantitative Research

- “If law failed to meet its public aspirations, how did it retain support among the people and how did it continue to achieve the sense of consistency, accessibility and fairness and thus legitimacy?”
- Poverty, race or other factors identifying the disadvantaged in the society were found to be poor indicators of explaining when and why people resort to law

Quantitative Research

- One answer was “myth of rights”; because people believe in this myth (one way to explain legitimacy of law)
- Another answer was “procedural justice”; also measuring attitudes towards the legal system, confidence in the ways of law, satisfactions and concerns about the system.
People are attached to a set of procedures rather than an abstract myth of rights; people evaluate their experiences with the law and develop their attitudes towards it in terms of processes rather than outcomes

Qualitative Research

- Further research showed that the picture was more complicated
- In these works, little attention was paid to *how* people’s attitudes are shaped

Qualitative Research

- It turned out that in procedural justice studies, researchers often began these surveys with a “model of fairness as it is defined by the existing legal processes and doctrine”.
- This kind of research has thus been criticized for “reinscribing existing models of fairness, aspirations of and values of legal liberalism without making them problematic for the respondents”.

Qualitative Research

Question:

What does using the law and not using the law signify to the people? (not only how and by whom the law is used)

Qualitative Research

- Ethnographic methods of observation and interviewing were used to study disputing behavior and recourse to law
- Fieldwork in particular locations, a neighborhood, a courthouse, a community center etc.
- Allowed to capture the meanings people attach to their interactions with the law

Qualitative Research

- These studies demonstrated that all social groups experience problems that can become legal disputes and people interpret these problems and/or deal with them differently
 - BUT not exceptionally due to economic or social status indicators; also cultural factors shaping not only behavior but the meanings people attach to these behaviors
- Eg: What is the socially accepted definition of normal behavior?

Different methods in RJ related research: 3 Studies

Method used	Population studied	
	General Population	Practitioners
Quantitative	Justice Barometer (National survey, structured face-to-face interview)	Sentencing research (Mail-in survey)
Qualitative		VOM practitioners (in depth face-to-face interviews)

- ### Studies
- **VOM practitioners**
In-depth interviews with 30 practitioners (judges, prosecutors, lawyers)
 - **Sentencing**
Mail-in survey of 200 judges
 - **Justice barometer**
Nation wide survey conducted in three waves over one year among an urban sample of 1000 respondents (total of 3038 at the end)

- ### Methods- VOM Practitioners
- What did we aim?*
- Depict the gap between law in books and law in action through the problems cited by people who practice law on the ground
 - Outline a detailed map of thinking patterns and perceptions among practitioners regarding the subject of mediation

- ### Methods-VOM Practitioners
- What did we ask?*
- Opinions on using mediation in criminal cases
 - Opinions on the offenses included in mediation
 - Reasons for files not being sent to mediation (defendant, victim)
 - Opinions on the qualities for mediators (lawyers? people with law degree? people with no law degree?)
 - Opinions on the training given to mediators
 - Opinions on the suitability of mediation with the social fabric
 - Opinions on the compatibility of mediation with their personal conceptions of justice

Methods-VOM Practitioners

What did we find?

Problem: hard to summarize the results of qualitative analysis in two slides!

It is still possible to refer to the types of problems, issues raised by the practitioners which can later on be taken up for further analysis

Methods-VOM Practitioners

- Prosecutors who are more actively involved in the mediation process seem to refer to the problem of increased work load due to mediation much more often than judges
- All three groups seem to refer to the problem of practice; mediation is considered to be "positive in theory, negative in practice"
- A lack of information and correct understanding of mediation among citizens has been raised as a problem by all three groups; mediation training is criticized for being too abstract

Methods-VOM Practitioners

- When asked about the offenses in mediation, judges and prosecutors seem to refer quite rarely to the compatibility of these offenses with general principles of restorative justice
- The practice of lawyers being mediators has been considered as an important feature; importance of legal education and training has been emphasized

Methods-VOM Practitioners

- There seems to be a shared skepticism regarding the compatibility of mediation with the social fabric, although it is also mentioned that it can be made compatible in the long run through the establishment of necessary institutional frameworks, through the correct application of the procedures
- When asked about the compatibility of mediation with their own understandings of justice, practitioners seem to refer to principles of restorative justice more often than when they do when asked about the compatibility with the social fabric

Methods- SENTENCING

What did we aim?

- Understand how judges define perceive different purpose of sentences in criminal cases
- How is restorative dimension related to other dimensions of the sentence

Methods- SENTENCING

What did we ask?

- Opinions on different goals of the sentence:
 - Structured questions
 - Both direct and indirect questions:
 - Sentence should restore victim's damage
 - Restoring victims is one of the prime concerns of the criminal justice system.
- Difficulties in sentencing particular cases

Methods- SENTENCING

What did we find?

	No. of items	Mean	SD
Rehabilitation	13	3,93	0,44
Moral Balance	5	3,45	0,59
Restorative Justice	6	3,07	0,61
Incapacitation	10	2,81	0,55
Just Deserts	10	2,64	0,53
Deterrence	7	2,68	0,62

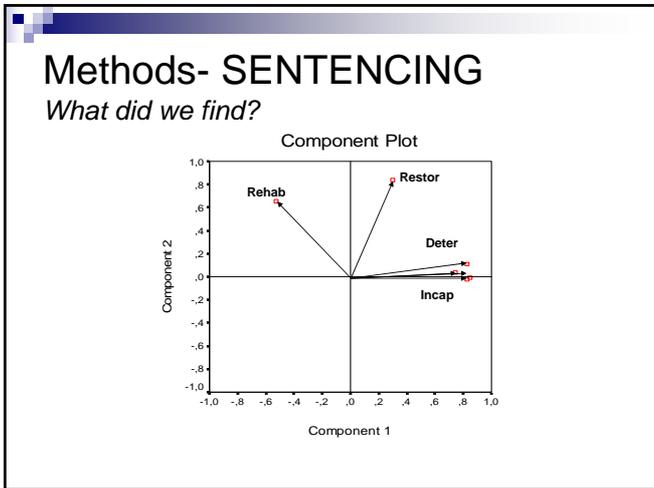
Methods- SENTENCING

What did we find?

Component Matrix

	Component	
	1	2
JD	,824	-,022
INCAP	,844	-,011
DETER	,824	,107
REHAB	-,525	,651
MORAL	,740	,040
RESTIT	,299	,839

Principal Component Analysis.



- ### Methods- JUSTICE BAROMETER
- What did we aim?*
- Study the knowledge of legal system and VOM
 - Potential likelihood of using VOM

- ### Methods- JUSTICE BAROMETER
- What did we ask?*
- Level of knowledge regarding VOM in Turkey
 - “When people say they know, do they *really* know”
 - Relationship between knowledge and potential use of VOM
 - Structured questions

- ### Methods- JUSTICE BAROMETER
- What did we find?*
- Something called “victim-offender mediation” has been introduced to the Criminal Procedure Code. Do you know what this process is about?
 - 43% - Yes; 57% - No
 - Given 3 definitions and asked to pick the one that they think is closest to describing VOM:
 - Two parties discussing the conflict and making the decision on their own.
 - 25,5%
 - A 3rd person making the decision after listening to two parties to the conflict.
 - 47,5%
 - 3rd person helping the two persons to make their own decision on the conflict.
 - 27,1%

Methods- JUSTICE BAROMETER

What did we find?

- After explaining what VOM is, asked whether, if a victim of a crime would prefer to benefit from VOM or would prefer for an offender to be tried and get a sentence:
- 52% would prefer VOM, BUT varied depending on their initial understanding:
 - Two parties discussing the conflict and making the decision on their own.
 - 45,66%
 - A 3rd person making the decision after listening to two parties to the conflict.
 - 50,22%
 - 3rd person helping the two persons to make their own decision on the conflict.
 - 56,21%

Methods- JUSTICE BAROMETER

What did we find?

- Previous experience also matters:
- Those who have been tried for a crime:
 - 63,9% - VOM
 - 36,1% - Trial and punishment
- Those who have been a victim of a crime and went through a trial:
 - 54,7% - VOM
 - 45,3% - Trial and punishment

Workshop Notes by Seda Kalem

Jahic and Kalem showed how different methods of data collection can be used to do research on restorative justice and Victim Offender Mediation. They stated that although both quantitative research and qualitative research can be used to address most questions, but the data used to answer the questions and the ways in which data are obtained differ in each method. In quantitative research, qualitative observation is quantified and by quantifying, data are summarized, aggravated and made more explicit. The data obtained through quantitative research are easy to compare across groups and over time, they can be generalized and they are easier to summarize and understand. Yet, the fact that the researcher in quantitative studies decides a priori on the concepts causes data to lose richness of meaning which makes it unsuitable for bottom up research. Qualitative research, on the other hand, is said to be primarily concerned with describing and understanding by giving "access to the observation of others". It is able to detect variation in meanings attached to actions and events, allows for the depiction of mental schemes, thinking patterns, description of processes and also helped to define concepts bottom up by hearing what people perceive and how they interpret what they perceive. On the other hand, qualitative research is not suitable for large scale comparison; it sacrifices uniformity, precision and measurement; it is not suitable for statistical analysis and it can be discredited for being too "anecdotal".

Jahic and Kalem then moved on to three projects related to restorative justice research they have conducted in Turkey as researchers at Istanbul Bilgi University Human Rights Law Research. In one study, they gave information on thirty in depth interviews they have conducted among judges, prosecutors and lawyers in Turkey regarding the use of VOM in criminal proceedings. They stated that this type of qualitative research allowed them to outline a map of thinking patterns and perceptions among practitioners regarding mediation which can later on be taken up for further analysis, possibly through the use of quantitative methods. In context of another study using quantitative methods, Jahic and Kalem referred to a sentencing research they have carried out through mail-in surveys to judges in Turkey. In this survey, they aimed to understand how judges define different purposes of sentences in criminal proceedings and understand how restorative justice is related to other dimensions of the sentence. In yet another quantitative research conducted by Istanbul Bilgi University Human Rights Law Research Center, Jahic and Kalem referred to a nationwide survey called Justice Barometer. The survey conducted among the urban population in Turkey aimed to understand the citizens' perceptions of and experiences with the legal system in Turkey. The survey also included questions on VOM practice in Turkey which has recently been included into the criminal code with the latest changes in 2005. The questions aimed to study the knowledge of the legal system and VOM in Turkey together with displaying the potential likelihood of using VOM. Jahic and Kalem explained that the results of the survey showed that among 57% of the population who stated that they know what VOM is, only 27,1% actually know the correct definition of VOM and that when the correct definition is explained to all respondents 52% stated that they would prefer to use VOM. Jahic and Kalem stated that these results display that by using different methods of data collection, it is possible for researcher to have different levels and kinds of data on similar issues which can allow the researchers to look at these issues from a variety of perspectives, to detect a variety of problems and a variety of policy recommendations for dealing with these problems. The speakers finished their presentations asking the participants for their feedback, for their recommendations on how this kind of research can be carried out alternatively and what other types of questions can be used through other types of research.

Research and practice

Presented by: Beata Czarnecka-Dzialuk (Poland)

Chair: Ronald Hinch

We know from the Polish experience that it is important for good cooperation between researchers and practitioners to have a common goal. This was the case in the first evaluative and action-oriented research of the experimental program of mediation in juvenile's offender's cases. This common goal was the will to try and to introduce new, reasonable, useful - also for the victims - and more effective means of responding to crime, especially if committed by juveniles. The experimental program was created by people from different circles - among them social worker, scientists, volunteers of NGO "Patronat" helping prisoners and their families, probation officer, judge, politician). It has been operational since mid-1995 in 5 (then 8) family courts districts for about 3 years. The research was planned as a part of the experimental program and was carried out between 1997 and 1999 thanks to a grant allocated by the National Committee for Scientific Research and was directed by the Institute of Law Studies of the Polish Academy of Sciences by Professor Dobrochna Wójcik and myself, with the help primarily of mediators from the Polish Centre of Mediation.

Methods of evaluation were: on the one hand, collecting data concerning mediation proceedings, characteristics of offences, offenders, victims and mediation outcomes (using court files); on the other hand, interviews with mediators and participants in order to receive feedback. Other features crucial for the good co-operation were:

- involving practitioners (mediators, judges) into the research project;
- the fact, that the whole team has completed mediation training;
- getting the views of practitioners during regular evaluative meetings;
- presenting the first results of the research to the practitioners and policy makers;
- international co-operation (consulting the experimental program and the research project with foreign experts, first mediation training) and support (Heinrich Böll Foundation - financing i.a. first international conference on theory and practice of V-O reconciliation and publishing the book, as well as costs of organizing first mediation centers; Council of Europe - financing and co-organizing two CE seminars for practitioners on VOM in juvenile and in adult offenders cases).

The role and the results of the regular meetings of a whole team should be stressed, as they have enabled:- exchange of views, asking questions, discussing difficulties;- opportunity to improve co-operation; participation in the meetings the Ministry of Justice representative, inviting deputies and senators as well as representatives of self-government of few towns for some meetings;- creating good interpersonal relations;- modification of the program and expanding of the research (more severe cases accepted - cases with many punishable acts and many parties, including another three family courts); - opportunity to maintain the interest and feeling the common goal.

The formula of action-oriented research and of involving researchers in organizing experimental program have brought advantages: direct influence and possibilities to modify the program, better understanding, noticing practical problems, that have prevailed over disadvantages, like threat for being objective and lack of distance.

The research and its positive results (83% accepted proposal of mediation; 93% mediation ended with the agreement, 95% of the agreements fulfilled, low re-offending rate - 14,4% in 1,5 year period) have definitely important role to introduce VOM into the law (in adult

offenders cases - criminal codes of 1997, juvenile law - 2000) and practice². Already the preliminary results were presented during seminars, meetings of the parliamentary commissions, policy makers learned about VOM during the research team meetings; some of the team took part in legislative work on regulation regarding mediation, using research results as arguments; involving local self-government have helped to create mediation centers in few towns; involving judges has helped to get more cases for mediation³.

Referring to the Polish experience, certain general questions should be considered, as the relationships between researchers and practitioners, what they expect from each other - the need to exchange information, the role of the inquires and pools, trainings, courses (as for example School of Restorative Justice in Warsaw), meetings, advising. Another important problem is carefully drafting the research to get the results that are interesting and useful for the practitioners and then - implementing them.

The role of the international co-operation is to be stressed again. There was very good experience with study visits for researchers and practitioners in the frame of the program on co-operation in restorative justice field of British Academy and the Polish Academy of Sciences. Comparative research and programs are also of importance - for example, findings of the European program on professional training have been implemented in Poland.

Last but not least the need to further develop advising, access to the statistical data and information on legal regulation and practice in different countries should be mentioned.

Beata Czarnecka-Dzialuk is Ph.D. in Law, associate professor in the Institute of Law Studies of the Polish Academy of Sciences and in the Institute of Justice by the Ministry of Justice. She is responsible for several publications on juvenile justice (i.a. the book on juveniles appearing before family court - procedural aspects). Interest in Victim-Offender Mediation since 90' - founding member of the "Initiative group for introducing mediation in Poland"; - co-author of the research project on evaluation of the experimental project of VOM in juvenile cases (results published in the book).

Workshop Notes by Martin McNeese

Regarding the Polish experience, Beata Czarnecka-Dzialuk emphasized that the following points must be kept in mind: What are the relationships between researchers and practitioners? What do researchers and practitioners expect from one another?

It is important to have a common goal and to have new, reasonable, useful means of responding to crime. You need different circles each with its own strengths and experiences within RJ Initiative Groups to overcome differences and difficulties which you can encounter. Unity and diversity make the strength you need to succeed. Research should be planned as part of an experimental program of victim-offender mediation (VOM).

The aims of Beata Czarnecka-Dzialuk's RJ group in Poland have been to provide information for juvenile law reformers, researchers, and practitioners giving them with expert information to changing views, to ask questions to further thought processes, and to discuss difficulties to further the RJ development process. It is important to seek opportunities to improve cooperation between researchers and practitioners. According to Beata Czarnecka-Dzialuk, creating good interpersonal relations between researchers, practitioners, and then policymakers gets positive results.

² Number of mediation in adult offenders cases referred by the courts has raised from 366 in 1999 up to 5052 in 2006 and referred by the public prosecutors - respectively from 40 to 1447; the number of mediation in juvenile cases was in the first years after experimental program surprisingly low - 63 cases in 2000 and in 2006 - 366

³ There was stagnation in victim-juvenile in juvenile offender mediation for few years (maybe resulted from "post-research syndrome" - I refer to presentation: I. Vanfraechem, I. Aertsen, and L. Van Garsse - Action-research in the field of restorative justice: an opportunity or a risk?)

Programs can be modified, research can be expanded with good interpersonal relations. Participation by researchers and practitioners in meetings of the Ministry of Justice is important to ensure that policymakers are aware of data and proposals found through research and policymakers need to know what issues practitioners face.

Some research team members should participate in legislative work on regulations regarding mediation. Regular meetings are needed to maintain interest and common goals.

Two in one - being a researcher and practitioner at the same time:

Advantages:

- a) direct influence on the process of implementation and execution of the project.
- b) possibility to modify programs to better fit current needs and to ensure that programs better fit practitioner and policymaker needs.
- c) opportunity to gain better understanding of needs, strengths, and shortcomings of the project, including facilitation in noticing practical problems.

Disadvantages: staying objective.

The role of international cooperation:

- 1) Seeing is believing.
- 2) Advising.
- 3) Access to statistics, data, and information on legal regulations.
- 4) Comparative research and programs.

Monitoring and evaluation - practice and research working together: a national model

Presented by: Murray Davies (U.K.)

Chair: Karen Paus (Norway)

In Scotland there is a commitment from the Scottish Government to the provision of restorative processes in the youth justice system so that all people harmed by youth crime will be given the opportunity to participate in a restorative justice process. These services are delivered through 32 local government authorities

To ensure consistency of provision and data collection and to allow cross-site comparison this provision is supported by three key processes:

- The development of Best Practice Guidance for Restorative Practitioners, their Case Supervisors and Line Managers which established nationally recognised standards and definitions of best practice.
- A national programme of training to support the Best Practice guidance to enable practitioners to develop the skills required
- The provision of a national web based **monitoring and evaluation system** to support the consistent delivery of services. A web based approach allows local input to a national database. Data can be extracted locally for local reporting and is also available nationally for monitoring and reporting

Data recording and collection in Restorative Justice cases is complicated by multiple interconnections. Restorative Justice data collection tools are rarely able to capture the variety of interactions between participants such as what offences were committed by whom and against whom, and what responses were made, who made them and to whom were they offered.

Electronic data recording allows these difficulties to be overcome and the **Viewpoint Client Form** is based on a unique tree structure which records data as a case which allows data

about multiple Person's Responsible, Person's Harmed, the processes each has been involved in and the outcomes to be recorded. In Scotland data can be recorded consistently across the country and information about all participants in all processes and the outcomes is recorded. An electronic data recording system can also support practice standards and definitions by providing 'pop up' information windows. Additionally an electronic system allows consistency checks to be built into the data entry system and error messages to be displayed, and restrictions on further data entry be applied if there are inconsistencies or incompleteness in data entry.

The monitoring and evaluation system in Scotland combines two features: a Client Form for use by practitioners to record case details; and a set of questionnaires for use with Viewpoint ACASI (audio computer assisted self interviewing)

Electronic data collection systems have advantages over paper based approaches: more accurate data is collected, data input fields can be controlled for consistency, and research evidence in relation to audio CASI shows that service users are more engaged in the feedback process, and the methodology is known to be effective in collecting data about sensitive subjects

Questionnaires have been developed for feedback from Person's Harmed, Person's Responsible and Support Persons involved in a case. Information is sought from Person's Responsible about decisions to participate in the process, an evaluation of their participation, what was achieved, about giving an apology, and about deciding and agreeing an action plan. Person's Harmed also provide feedback through questionnaires asking about information provided beforehand, about decisions to participate, about what was achieved by communicating with the Person Responsible, information is sought about any apology, about the action plan and fairness to Person Harmed, their evaluation of taking part, if they felt more or less safe and their view of any changes in the Person Responsible. Questionnaires are also available for support persons who participated in a process to complete.

Questionnaires can be completed online or offline but all data is stored in one central database and questionnaires are automatically linked to the client form and other information about Person's Responsible and Person's Harmed.

The Viewpoint multimedia ACASI instrument is an interactive questionnaire tool, delivered on a computer with internet access or downloaded to a stand alone computer. In the full, interactive version, all text that appears on the screen is read out loud by animated characters, aiding literacy difficulties. Respondents can choose from a selection of animated characters and can choose from a selection of animated and colourful screen backgrounds. A simpler version of Viewpoint is also available for adult use. Routing or filtering for follow-up questions is automatic. Self-complete methods are generally viewed as advantageous, in terms of being cheaper and quicker to administer and also in terms of avoiding interviewer variability and bias, particularly in terms of under-reporting issues that could be sensitive. Self-complete approaches using new technology in particular have been associated with a number of advantages and have been identified as of particular benefit to special groups, such as children and young people. ACASI approaches have also been associated with aiding literacy difficulties, with an enhanced sense of privacy and with increased disclosure of sensitive information. The use of automatic skip and branch patterns is thought to decrease respondent error or fatigue and allows the use of more complicated questionnaires.⁴

⁴ See, for example, Davies, M. & Morgan, A. (2005). Using Computer-Assisted Self-Interviewing (CASI) Questionnaires to Facilitate Consultation and Participation with Vulnerable Young People. *Child Abuse Review* 14, 389-406;

Data monitoring, analysis and reporting

An electronic web based monitoring and evaluation system ensures that all data is immediately accessible. Up to date information is available about cases being worked on by local services. Local managers have an immediate overview of the work being undertaken, and national evaluators can provide a up to date national information.

All data, Client Form data and questionnaire responses, are accessible for local analysis as well as for national reporting. Local information can be compared instantaneously with national data reports.

A particular value of this approach to monitoring and evaluation is that local services have data available to report on the work they are doing. Such information can be vital to ensure that local policy makers and those responsible for funding services are aware of the work and its effectiveness. Regular reporting is possible on up to date data.

Linking data collection to service delivery ensures that data entry is not duplicated. The monitoring and evaluation system meets the need to record local practice and also ensures that data is available for national evaluation.

Murray Davies is a director of The Viewpoint Organisation which has developed the electronic monitoring and evaluation system. He is a qualified social worker and has for the past 12 years led the development and application of computer assisted self-interviewing methodologies in youth justice and social care

Restorative justice as diversion from prosecution: evidence informing practice

Presented by: Steve Kirkwood (U.K.)

Chair: Brian Steels (Australia)

SACRO delivers Restorative Justice Services in 5 of Scotland's 32 Local Authority areas as a voluntary alternative to prosecution in cases of minor crime committed by adults. Cases only go through restorative processes (using shuttle dialogue or face-to-face meetings) if the person responsible for the offence and a person harmed by the offence are willing to use the service. When people are willing to use the service, success rates (as indicated by a fulfilled agreement on how to deal with the aftermath of the offence) are very high at 82% overall. Service users mutually agree on a positive way in which the offence should be dealt with, and the data show that they come up with a variety of meaningful ways in which amends can be made. In over three-quarters of successful cases no money exchanges hands and completion rates of agreements (91%) are higher than those of court mandated fines.

Although the services have a high success rate, the participation rates for cases range across services and time from 30% to 47%, falling below the target of 50%. The most common reason for non-participation is that the person harmed by the offence is unwilling to use the service or does not respond to correspondence. Practitioners fed back to the researcher that this was an area of concern and research should therefore be conducted to see what could be done to encourage higher rates of participation. A specific research question was whether participation rates were affected depending on who was contacted first - the person responsible for the offence or the person harmed. Logistic regression analysis of the service data showed that, when taking a range of factors into account, the strongest significant factor was who was contacted first; service users were nearly twice as likely to participate if the person responsible for the offence was contacted first. The results also showed that, when controlling for other factors, one of the service areas had a higher participation rate and success rate than the others. These results were fed back to the service teams and events were arranged to discuss and standardise best evidence-based practice.

Steve Kirkwood is a Research Officer for Sacro (Safeguarding communities - reducing offending), as well as a volunteer Restorative Justice Facilitator for Sacro's Restorative Justice (Diversion) Service in Edinburgh, Scotland.

Workshop Notes by Lieve Bradt

Steve Kirkwood presented the results of his research conducted within Sacro. Sacro is a Scottish voluntary sector organisation which delivers Restorative Justice Services in 5 of Scotland's 32 Local Authority areas as a voluntary alternative to prosecution in cases of minor crime committed by adults. Cases only go through restorative processes (shuttle dialogue or face-to-face) if the person responsible for the offence and a person harmed by the offence agree to participate or the case is returned for prosecution. They receive about 700-900 cases per year.

Steve Kirkwood presented some information with regard to the cases:

- Outcomes from case referrals: withdrawn by PF (4%), victim or accused moved away (2%), accused denies offence (4%), accused no response (9%), accused not willing (3%), victim no response (15%), victim not willing (29%), unsuccessful (6%), successful (28%)
- Participation rates: the participation rates for cases range across services and time from 30% to 47%, falling below the target of 50%. The most common reason for non-participation is that the person harmed by the offence is unwilling to use the service or does not respond to correspondence. Practitioners fed back to the researcher that this was an area of concern and research should therefore be conducted to see what could be done to encourage.
- Agreement outcomes from successful cases: work for community (2%), charitable donation (1%), attend specialist agency (0.5%), apology/explanation (32%), issues resolved (24%), financial reparation (22%), non-harassment agreement (12%), already made amends (3%), reparative task (3%), other (1%).

In his research Steve Kirkwood used logical regression analysis of service statistics in order to find an answer to the following research questions:

- What factors predict participation?
- What factors predict a successful outcome?
- What factors predict financial reparation?

As predictor factors the following were used: service (A, B, C), type of offence, gender and age of accused, whether accused had history of offending, whether victim was known to the accused, number of people involved, who was contacted first, whether victim was individual or organisation, type of RJ process. With regard to research question 1 significant predictors of participation were accused contacted first (x 2.0); criminal damage (x 1.4); male accused (x 1.3); no offending record (x1.2); service B (x 1.2); age of accused (likelihood of participation decreased with age). With regard to research question 2 significant predictors of successful outcome: service B (x 1.9%). No other significant factors. With regard to research question 3 significant predictors of financial reparation: dishonesty offence (10.7%), criminal damage (10.5%), victim not known to accused (5.7%), service B (2.5%)

The main findings of the research were:

- participation is more likely if the accused is contacted before the victim (when taking a range of factors into account, the strongest significant factor was who was contacted first)
- participation is more likely for young and male accused, those with no history of offending and cases of criminal damage
- financial reparation more likely for cases of dishonesty and criminal damage and where the victim is not known to the accused

- higher levels of participation, successful outcomes and financial reparation for service B

These results were fed back to the service teams and events were arranged to discuss and standardise best evidence-based practice. It is now standard practice for accused to be contacted before the victim.

Steve Kirkwood posed some questions for discussion: (1) is contacting the victim first/last best informed by evidence of effectiveness, ethics and safety or importance of symbolic gesture? And (2) should cases be selected based on what is most likely to succeed or who is most likely to benefit?

Several questions/issues were raised during the café conference:

- When is one choice preferred to the other with regard to contacting the offender and the victim? According to Steve we should first contact the offender. If not, we risk secondary victimization.
- The concept of restorative justice is indeed very vague. This vagueness is rather dangerous since we don't know whether we understand the same things if we talk about restorative justice, neither whether we agree on the same things. How can we find a way to make our vision of restorative justice more clear? Is it possible to have one definition of restorative justice?
- How can we let the majority of the victims benefit from restorative justice? We need to know what victims want.
- Can victims address the service whether or not there is an offender and whether or not they reported the crime? If yes, we are working harm-oriented instead of crime-oriented.

Building RJ: a journey through practice, organising, training and writing

Presented by: Marian Liebmann (UK)

Chair: Ian MacDonough (UK)

This workshop described how RJ practice, organising, training, research and writing can all link together to build RJ - indeed it is essential that they do. The workshop draws on the presenter's experience in these areas, with examples of ways in which each element can contribute positively; and also some stories of failure and lessons learned. There is reference to ways in which research can be used (and misused); ways of influencing policy makers; ways of engaging the public; working with the media; using different kinds of writing.

Different agendas

The title of this conference brings together the public, policy makers, practitioners and researchers - we need to remember they all have different agendas.

Public: need help when they are in trouble, and need personal safety if involved in RJ.

Policy makers: need popular policies which are cost-effective (i.e. cheap), and which help them to stay in power.

Practitioners: need to 'ply their trade' and do more RJ.

Researchers: need to answer particular questions, e.g. what works? under what conditions? with which client group? The particular questions are often determined by who is funding the research.

Building RJ

There are several elements which are needed to build RJ - they are all vital and all need to interact with each other:

Organising: an organised service is needed to operate RJ

Training: people need to be trained so that they are effective

Practice: RJ processes are at the heart of the matter

Evaluation & Research: monitoring and evaluation are needed to check whether the service is working as envisaged. Research can help to answer some of the larger questions, e.g. re satisfaction and recidivism.

Publicity: communication is important to 'spread the word' and inform policy makers.

Each separate activity needs to feed into the others in an ongoing circular process.

Organising

Fundraising: needs a new angle

Premises: easy access

Staff: coordinator/ manager; administrator; intake; mediators; others (paid and/ or voluntary)

Structure of service: everyone needs to know what they are doing

Referral system: links to other organisations needed

Publicity: need to inform other agencies; get public on board; recruit practitioners

Training

Skilled trainers: who also have experience of RJ

Enough time: time to gain practical skills

Practical arrangements: venue, time, food, equipment, materials, transport

Right people to train: ensure that those trained are able to be practitioners

Right stage of service: delay training until rest of service is in place

RJ Practice

Cases to work on: need appropriate referrals coming in to achieve service delivery

Practitioners available: need mediators available

Quality assurance: need to keep up high standards and principles

Supervision & appraisal: need regular supervision and annual appraisal

Ongoing training: increasing skills and knowledge

Certification of practice: need practical way of acknowledging competence

Evaluation & Research

Monitoring & evaluation: to check whether the service is working as envisaged.

Research: to answer some of the larger questions e.g. what works? Under what conditions? With which client group?

Positive and negative uses: to inform policy and practice; to gain advantage

What works? - can cover many aspects, e.g. victim and offender satisfaction, cost-effectiveness, service delivery, agreements kept, reduced recidivism, community support.

Publicity

Different audiences: policy makers, politicians, public, professionals

Writing: leaflets, articles, books; case studies, reports, research

Radio, TV & press: preparation; press releases; dilemmas re cases; training

Policy makers: special schemes to provide good information

Politicians: lobbying and campaigns

Public: engaging interest; responding to opportunities; going to public events

Conclusion

To build RJ successfully, all these elements are needed, and they need to feed back into each other, continually influencing each other and RJ practice.

Marian Liebmann has worked with offenders and victims of crime. She was director of Mediation UK for several years, and since 1998 has worked as an independent RJ consultant and trainer in the UK, and in several African and East European countries, including a 3-year project in Serbia. She has written/edited ten books, the latest being Restorative Justice: How It Works, published in April 2007.

Teaching restorative justice in universities and beyond'

Presented by: Dobrinka Chankova (Bulgaria)

Chair: Keith Simpson

It could be claimed that Restorative justice (RJ) is already a well-developed and well-grounded concept. Numerous good quality books have been published, many national, regional and international conferences have been organized, research projects have been launched and successfully accomplished, international instruments have been adopted. Nevertheless it seems that RJ and the restorative ideal still keep the character of an elitist concept, a lasting intellectual exercise of a limited number of well educated people, academics and top professionals. Although everyone can easily agree about their valuable contribution for creating of RJ theory and policy, one can argue whether we should stop here. Undoubtedly, these are not the people that mostly need their own product. One might dare to say that knowledge about RJ values, principles and practices should be broadly spread. If we wish to create a wide restorative culture and wish to see restorative models largely applied we should break up the limits of our coterie of RJ protagonists and go to the public. To establish a good restorative climate in any given country we should begin with teaching.

We have already made a start.

According to a recent Internet survey restorative justice has been introduced as a part of the university curricula (in different variations) in a number of leading universities - mainly in the USA, Canada, Australia, New Zealand - countries with established RJ traditions. Only a few European universities are offering RJ as a study subject or a separate programme. In addition, it should be noticed that in some universities in states where RJ is a rather new concept (e.g. Bulgaria, Hungary) RJ ideology and models are now being taught within various university programmes and departments, with a remarkable success. As a rule RJ is well received by the majority of students, studying in different faculties and having different educational backgrounds. This could be summarized by saying that the universities are a fertile ground in which the idea of RJ can grow.

It is true that still a relatively small number of students, studying mainly law, social science and humanities receive this knowledge. Specially designed Master's and Doctor's programmes also attract few RJ candidates. Even if we add distance e-learning programmes, summer schools and any other academic activities, we are not reaching a substantial number of students imbued with the RJ idea.

However, various ways of in-service training, continuing education, lifelong learning etc. exist as well. In Bulgaria, for example, RJ is a part of the training programme of mediators. It is a key element of the compulsory syllabus but the Institute of Conflict Resolution (a research and training organization) has developed a specialized module as well. The 3-year-experience showed that the candidates for mediators - most of them practising lawyers and other qualified professionals - also accept the RJ philosophy but they are more sceptical, especially at the beginning, and need more evidence of the benefits of RJ. They need to understand that RJ is not just an extension of conventional thinking, it is a different paradigm, as Howard Zehr and many others have pointed out: not based on the threat of punishment but on putting right the harm as far as possible, and by consent as far as possible.

According to the information available, training of criminal justice practitioners in RJ philosophy and practices is being organized in many countries, including Bulgaria. Our experience has shown that they are the most difficult audience. Initially there was strong resistance towards restorative practices which were considered as directly affecting the sovereignty of the state and its monopoly in matters of justice as well as threatening the judicial community's vested interest and territory. Although it could be stated that this has

been more or less overcome, there is an innate conservatism among the judiciary in many European countries, including Bulgaria. And if RJ training occurs at a late stage of their professional development many of them are not best prepared to accept new ideas and working paradigms. Moreover, still a rather narrow segment of professionals receives this continuing education.

Restorative justice in its original form is considered to be a new way of thinking about crime and criminal justice. Lately restorative practices have been applied in new domains - schools, communities and within the family context. Restorative approaches are not a panacea for all problems in schools but, if implemented correctly, they can improve the school environment, enhance learning, and encourage young people to become more responsible and empathetic. So, in Bulgaria we have experimented with teaching RJ in a secondary school (10 to 18-year-old students), as a part of a project against violence. A consortium of scientists, from the University of Surrey, Trinity College Dublin, Catholic University - Leuven, University of Cordoba, University of Stavanger and our own Institute of Conflict Resolution, has developed a training manual which has been endorsed in Norway. It was written in English and translated into Bulgarian, Spanish, German and Flemish.⁵ A substantial part of this manual was dedicated to restorative approaches towards school conflicts. Although a demanding and challenging task, it was worth the effort. In fact, teaching RJ to the teachers was the bigger problem, the pupils were a more favourable audience. Now this manual is being successfully used by some other research groups which further disseminate RJ idea among teachers and school students.

Our conclusion and recommendations are: Teaching of RJ in the European universities should be further promoted. But teaching of restorative values should start in the middle and secondary schools. And not only in a selected number of schools with open minded directors, ready to experiment; the whole school restorative approach should be the general policy. This is the only way to create a restorative culture, which we desperately need. Is it more important - and cost-effective, and socially justifiable - to concentrate efforts on teaching RJ in schools, and not only in elite universities, or on the training of a limited number of professionals? We should move from a fragmented approach towards global teaching of a restorative ethos. And it should not be done too late.

Probably we should start a new campaign trying to convince the teachers, civil servants in the ministries of education and maybe the ministers of education themselves of the benefits of restorative practices. For sure, new books have to be written, in which restorative principles and values should be adapted to the school settings. In this direction we already have some good examples coming from England, the USA etc. But from separate, episodic actions we should turn to a universal (or at least European) policy of teaching RJ in schools.

Large campaigns could help to cover a broad audience but for a sustainable effect they should be permanent, or at least long lasting. Not only one RJ day, a week, or even a year; I would suggest the next decade to be announced as a RJ decade. As an immediate action I would propose to approach the European Ministers of Education Standing Conference at the Council of Europe and to offer them our cooperation to make RJ idea a substantial part of the school education, in compliance with the European Commission for the Efficiency of Justice, the Council of Europe Guidelines for a Better Implementation of the Existing Recommendation concerning Mediation in Penal Matters (2007), United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002), and similar policy statements.

Dobrinka Chankova is an Associate Professor of Criminal Procedure Law at South-Western University, Blagoevgrad, Bulgaria and the Chair of the Institute of Conflict Resolution- Sofia. She has researched a number of projects at both national and international level and has published widely in the areas of restorative justice and victim-offender mediation.

⁵ www.vista-europe.org

Discussion (notes by Borbala Fellegi)

The presenter asked several questions to the participants, such as: how to create a restorative culture in a certain society? Where should RJ be taught: in schools, in elite universities, or via the training of a limited number of professionals? How should it be done, and by whom? During the group discussion participants highlighted that judges and prosecutors can become highly open and supportive to VOM, if they have the chance to personally observe mediation sessions. Conditions of how to invite observers to mediations were also discussed. An interesting debate was about whether it would be useful if judges and prosecutors would not only observe but also participate in meetings as stakeholders in the mediation process. As it was pointed out, such process could be useful only if the participants agree on letting legal practitioners in the discussion, and if stakeholders of a criminal case (victims, offenders, community representatives, legal practitioners, other professionals) can truly form a kind of community in which the offended 'crime' is considered as a shared conflict to be solved together.

Concerning the issue of how to teach mediation in schools, the importance of peer mediation was highlighted. Finnish participants presented their highly successful practices (agreement and compliance rates are above 90%) by which they make children from the age of 8 mediate between each other concerning smaller incidents/conflicts happening during the daily life of the school. Discussion was also about what the difference is between teaching constructive conflicts resolution techniques, mediation and restorative justice in the school setting. It was pointed out that the main challenge in implementing school mediation is not the teaching of young people, but the awareness raising amongst the teachers. Nevertheless, a whole-scale approach is essential in order to successfully implement restorative justice into schools. Such reforms are more effective if the main argument is that all the people should have the *right* to express their emotions and needs to the other party when affected by a conflict.