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Therapeutic Jurisprudence’s Challenge to the Judiciary

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Abstract

Judges have the potential to refine their judging skills through a study of the principles and practice of therapeutic jurisprudence. Judges should put aside any preconceptions they have concerning the relevance of therapeutic jurisprudence to their particular area of judging.

It is not suggested that judges should approach therapeutic jurisprudence uncritically. However, approaching therapeutic jurisprudence with an open mind provides judges with the opportunity to learn, to add tools that they consider to be potentially useful to their judging tool box and to put aside those they consider would not assist them. While therapeutic values may need to be subordinated to other justice system values according to the need of the case, communication and other techniques suggested by therapeutic jurisprudence may still assist judges to perform their vital role.

Judges also have the ability to contribute to the development of therapeutic jurisprudence and in particular therapeutic judging practices. Judges have already contributed significantly to this development. By sharing their own experiences in applying therapeutic principles in judging, they can assist other judges who may be in similar situations in judging in the future and may help to refine particular approaches to judging. This development of judging techniques can contribute to producing better outcomes for those involved in or affected by the court processes and for the community generally.

Introduction

Therapeutic jurisprudence offers judges techniques and principles that promote the attainment of therapeutic outcomes such as the resolution of underlying issues associated with legal problems. These techniques and principles also equip judges to perform their daily technical functions concerning the conduct of the court and the gathering and interpretation of evidence and delivery of judgment more effectively. Misconceptions concerning the nature and application of therapeutic jurisprudence have hindered the wider adoption of therapeutic jurisprudence by the judiciary. Through the exploration of therapeutic jurisprudence and the sharing of the experience of using therapeutic jurisprudence techniques, judges have the ability to contribute to the development of therapeutic jurisprudence and to best practice in judging.

Therapeutic jurisprudence has become one of the most significant influences in court practice and approaches to judging over the last decade or more. While producing skepticism in some quarters, it has growing appeal, particularly for judges dealing with offenders with significant offending-related problems who have been unable to resolve their problems during prior contact with the court system. It is a part of a wider trend within the legal system towards more comprehensive, participatory, and psychologically optimal means of resolving conflict (Daicoff, 2000; King et al, 2009). Therapeutic jurisprudence has led to the production of bench books to assist judges and magistrates seeking to judge in a therapeutic key and to training programs on the topic. Its influence extends to the judiciary of a growing number of countries around the world.

Therapeutic jurisprudence is concerned with the law in action and with law reform from the perspective of wellbeing related goals and practices (Wexler, 1990, 2000; Winick & Wexler, 2003). It asserts that laws, legal processes and legal actors may have a positive, negative or neutral effect on parties, victims, witnesses, jurors and other people involved in their application. Some aspects of legal processes, for example, may have positive effects, while others may be
negative. Therapeutic jurisprudence draws from findings from the behavioral sciences to make suggestions for reform. As Winick (2003, pp. 1062-1063) note

Legal rules and the way in which they are applied are social forces that produce inevitable, and sometimes negative, consequences for the psychological well being of those affected. Therapeutic jurisprudence's basic insight was that scholars should study those consequences and reshape and redesign law in order to accomplish two goals - to minimize antitherapeutic effects, and when it is consistent with other legal goals, to increase law's therapeutic potential.

For example, therapeutic jurisprudence has used findings in the areas of health and psychology to suggest methods of judging and legal practice that can help promote offender rehabilitation (e.g., Wexler, 2008; Winick & Wexler, 2003; King, 2009). Therapeutic jurisprudence does not contend that wellbeing should be the dominant value that the law should consider in each situation. It does assert that the law should take wellbeing into account along the other values that the law must take into consideration. The weight the law places on the need to minimize negative effects and promote positive effects on wellbeing will vary according to the circumstances of the case.

It is understandable that therapeutic jurisprudence should appeal to the behavioral sciences for findings and insights that could inform the development of a more therapeutic approach to the law – whether it is in the context of judging, legal practice, or the drafting and application of the law in practice. The law and the behavioral sciences share an interest in the nature of the psyche and human behavior and how the psyche may be healed and dysfunctional behavior prevented (King, 2006, pp. 92-93). Areas in which the interests of the law and behavioral sciences overlap include the prevention of crime, offender rehabilitation, the healing of dysfunctional families with children at risk, and the healing of victims of crime.

There have been a variety of responses from judicial officers to therapeutic jurisprudence. Although acknowledging the value of therapeutic jurisprudence in particular judging contexts, Chief Justice French (2009) noted that the term “may continue to raise eyebrows amongst some members of the judiciary” (p. viii). Taking the latter kind of response further is the contention that it is contrary to the judicial function for judges to be actively engaged in processes such as those utilized in drug courts to promote offender rehabilitation (e.g., Hoffman, 2002). Others have recognized some of their own practices as therapeutic jurisprudence and concluded that they already apply it. A further response is to embrace it and use it to justify existing practices that have therapeutic purposes but not to appreciate all of the subtle nuances of therapeutic jurisprudence.

Perhaps the most graphic illustration of the last response is in the area of problem-solving courts. Thus, advocates of drug courts – courts that seek to promote the rehabilitation of offenders with substance abuse problems – have claimed therapeutic jurisprudence as their underlying philosophy (Hora, Schma & Rosenthal, 1999), yet it is arguable that some of their practices depart from what therapeutic jurisprudence would regard as best practice (King, 2009, in press a and b; Wexler & King, 2010). Another response borne of the close association between therapeutic jurisprudence and problem-solving courts is to consider therapeutic jurisprudence principles and practices only relevant to judging in problem-solving courts or in contexts where offender rehabilitation is to be promoted.

The result of these responses is that some have underestimated the worth of therapeutic jurisprudence and the potential it offers for promoting the attainment of justice system goals through more humane and psychologically optimal methods of judging and legal practice. Others have departed from what therapeutic jurisprudence advocates as best practice but operate under the banner of therapeutic jurisprudence: From the concept of using judicial practices to promote therapeutic goals they have advocated practices that are heavily influenced by conventional
approaches to judging, practices that therapeutic jurisprudence literature suggests are anti-therapeutic or at least not the optimal way of promoting therapeutic goals such as positive behavioral change and offender rehabilitation (King, 2009; King, in press a; Wexler & King, 2010).

This article argues that therapeutic jurisprudence warrants a more careful consideration by members of the judiciary than that suggested by the responses detailed above. It contends that to apply therapeutic jurisprudence in its fullest in judging requires particular interpersonal and intrapersonal skills which, despite being not normally included in judicial or legal education, can be learned and developed (King, 2009). In particular contexts – such as those in which judging is directed towards promoting positive behavioral change – therapeutic judging also requires an understanding of the stages and processes involved in positive behavioral change and of the practices that support it. The addition of therapeutic jurisprudence related knowledge and skills has the potential to improve not only the therapeutic goals of judging but also its other functions such as the hearing and interpretation of evidence, delivery of judgment and the functioning of the courtroom (King, in press b).

This article examines judicial responses to therapeutic jurisprudence in the light of judicial practices advocated in the therapeutic jurisprudence literature. The article is not concerned with one of the judicial responses noted above: that it compromises the judicial function to apply therapeutic jurisprudence in judging, particularly in the context of drug courts or other problem-solving courts. I have presented an extensive argument elsewhere that properly done, applying therapeutic jurisprudence in judging is entirely consistent with and indeed promotes the judicial function (King, 2010).

I. We Already Do This

Some judicial officers when first encountering therapeutic jurisprudence say that it is something that they already practice. They remember incidents where they have had a therapeutic goal in mind when judging or have applied a particular strategy that is recognized as therapeutic by therapeutic jurisprudence. However, the risk in assuming one is already applying therapeutic jurisprudence is that one does not explore it further or examine its potential application in the broad range of judicial contexts in which the judge or magistrate is involved.

In any event, the experience of having a therapeutic purpose or using a therapeutic approach on some occasions – whether as judge or lawyer – does not mean that one has the necessary knowledge and skills to apply the law in a therapeutic manner in any situation that demands it. As Freiberg (2010, p. 5) astutely notes: “In the same vein, many English literature students discover that they have been speaking prose all their life. But that does not make them an author or an English literature scholar.”

Unlike other fields of judging such as sentencing, civil and criminal trial practice and appellate judging there is no developed case or statute law that sets out the principles of and directs practice in judging in a therapeutic manner (King, 2009, p. 1). Established legal texts have addressed this topic. The literature in this area has only begun to emerge in the last twenty years.

The knowledge and skills needed to judge in a therapeutic manner have not been the subject of judicial education until very recently. Like other forms of judging and like disciplines beyond the law, the knowledge and skills of therapeutic jurisprudence based judging can only be developed by study, education, training, and practice.

Therapeutic jurisprudence offers a justification for judging in a therapeutic manner. It also provides an understanding as to why particular forms of judging may be and why other forms of judging may not be therapeutic. It is evidence based. It uses findings from the behavioral sciences to inform the development of therapeutic judging practices. An understanding of these findings and their translation into judicial practice is essential to judging in a therapeutic key.
Recognition of past therapeutic practices is valuable – indeed, it may assist other judicial officers in their therapeutic approach to judging. However, therapeutic jurisprudence challenges judicial officers to become familiar not only with its approach but also with the therapeutic principles of judging that it suggests and the reasons why they are used. It also challenges judges to adopt and apply these principles where appropriate, to each aspect of judging.

II. We Already Do This in Drug Courts

Therapeutic jurisprudence has gained the particular attention of advocates of problem-solving courts. These are courts established to address underlying issues associated with a person’s legal problem. Drug courts assist participants to address substance abuse problems that have led to their offending. Family violence courts assist victims of family violence to gain support and protection and may also promote perpetrators’ involvement in rehabilitation programs. Mental health courts promote participants’ engagement in a treatment regime to address mental health issues connected in some way to their offending. Reentry courts supervise participants while they engage in programs to assist their settlement back into the community after a period in prison. These courts often take a collaborative approach involving professionals from multiple disciplines, have differing roles for legal professionals, judicial supervision, and court engagement with community agencies.

These courts are commonly called ‘problem-solving courts’ for good reason: the literature commonly conceives that the court resolves the underlying problems of the participants (King, 2009; King, in press a).

Perhaps the most significant connection made between therapeutic jurisprudence and problem solving courts is in the case of drug courts. In the late 1990s drug court advocates asserted that drug courts were essentially therapeutic jurisprudence in action (Hora, Schma & Rosenthal, 1999). Thus, Hora, Schma & Rosenthal (1999, p. 440 & 448) commented that “we propose to establish therapeutic jurisprudence as the DTC movement’s jurisprudential foundation” and “[a]lthough born without the advantage of therapeutic jurisprudence analysis, the DTC [drug treatment court] movement represents a significant step in the evolution of therapeutic jurisprudence – the evolutionary step from theory to application.” They went even further, claiming that “[w]ithout being conscious of its use, DTCs have been applying therapeutic jurisprudence to the problems of addicted criminal defendants” (Hora, Schma & Rosenthal, 1999, p. 536).

In a sense this contention is a variation of the judicial response discussed earlier that judicial officers already apply therapeutic jurisprudence. But in this case drug court advocates also acknowledge that drug court practices can be improved through the application of therapeutic jurisprudence principles (Hora, Schma & Rosenthal, 1999).

This section of the article argues that the suggestion that drug courts already apply therapeutic jurisprudence ignores significant parts of the therapeutic jurisprudence literature, particularly its emphasis on promoting intrinsic sources of motivation, limiting restrictions on the autonomy of those involved in legal processes and empowering those with legal problems and underlying issues to address their problems.

Winick (1992) describes the difference between the nature and effects of intrinsic and extrinsic motivation as follows:

Intrinsic motivation involves self-determining behavior and is associated with an internal perceived locus of causality, feelings of self-determination and a high degree of perceived competence or self-esteem”. With extrinsic motivation, on the other hand, the perceived locus of causality is external and feelings of competence and self-esteem are diminished (p. 1761).
Winick (1992, p. 1761) asserts that intrinsic motivation is more effective in promoting success and satisfaction in action than extrinsic sources of motivation.

The value therapeutic jurisprudence places on empowering individuals in addressing their legal problems is based not only on the understanding that such an approach is more effective in problem-solving but also on its assertion that the state should not unnecessarily limit individual autonomy through the pursuit of therapeutic goals (Winick, 1997). Therapeutic jurisprudence does not support a therapeutic state. Indeed, it suggests that therapeutic goals need to be considered along with other justice system and societal values.

An emphasis on using extrinsic sources to promote participants’ motivation to change, such as forms of compulsion, is apparent both in the definition of drug courts and in their operation. For example, Hora, Schma & Rosenthal (1999, p. 459) adopted the following definition of drug court from the National Association of Drug Court Professionals and The Office of Community Oriented Policing Services, US Department of Justice:

[A] court with the responsibility of handling cases involving...[non-violent] drug-using offenders through an intensive supervision and treatment program. Drug Court programs bring the full weight of all intervenors (e.g., the judge, probation officers, correctional and law enforcement personnel, prosecutors, defense counsel, treatment specialists and other social service personnel) to bear, forcing the offender to deal with his or her substance abuse problem or suffer consequences.

Later they noted:

The procedures of the treatment program reflect the premise that the DTC utilizes the coercive power of the court to encourage the addicted offender to succeed in completing the treatment program. (Hora, Schma & Rosenthal, 1999, pp. 475-476).

Intensive court supervision is seen as “providing the incentive for the defendant to stay in the program” (Hora, Schma & Rosenthal, 1999, p. 523).

Examples of drug courts described by Hora, Schma & Rosenthal (1999, pp. 488, 492, 495 & 511) require participants to complete particular assigned tasks and to engage in particular programs determined by the court. For example, one court required those engaging in its program to participate in Narcotics Anonymous and another in either Narcotics or Alcoholics Anonymous.

Sanctions and rewards are a critical component of drug court processes. They are extrinsic sources of motivation to change. Hora, Schma & Rosenthal (1999, p. 528) describe sanctions as “therapeutic incentives.” They make the following observation concerning the application of sanctions in drug courts:

Instead of immediately revoking a drug offender's probation and putting him or her in jail for a positive urinalysis, a DTC will utilize a form of ‘smart punishment’. Smart punishment by DTCs means ‘the imposition of the minimum amount of punishment necessary to achieve the twin sentencing goals of reduced criminality and drug usage’. Smart punishment is not really punishment at all, but a therapeutic response to the realistic behavior of drug offenders in the grip of addiction (Hora, Schma & Rosenthal, 1999, pp. 469-470).

Punishment is used to compel compliance with the drug court program. Indeed, “the shock of incarceration may serve to break down the person's denial of her addiction” (Hora, Schma & Rosenthal, 1999, p. 474). Drug court advocates suggest that, rather than such court processes being seen as punishment, they are really part of the treatment process, a form of therapeutic jurisprudence (Hora, Schma & Rosenthal, 1999, p. 473). They suggest that “without
knowledge about addiction and the effects of drugs, the DTC judge can not purposely intervene and apply the “smart punishment” necessary to keep the offender on the path to recovery” (Hora, Schma & Rosenthal, 1999, p. 477). Drug courts typically also utilize a range of incentives to promote compliance with the program – such as decreased court attendances, less stringent program conditions and the awarding of vouchers and tokens.

Hora, Schma & Rosenthal (1999, p. 522) acknowledge that defendants can volunteer to participate in drug court programs. However, it would appear that, from the examples they have given, defendants’ decision-making ability is limited once the defendants have entered the program.

The drug court focus on court as problem solver, the emphasis on external sources of motivation to change, and the practice and language of coercion stand in distinct contrast with the therapeutic jurisprudence literature. As Winick (2003, pp. 1067-1068) comments:

…)problem solving court judges must understand that although they can assist people to solve their problems, they cannot solve them. The individual must confront and solve her own problem and assume the primary responsibility for doing so. The judge can help the individual realize this, and, together with treatment staff, can help the individual to identify and build upon her own strengths and use them effectively in the collaborative effort of solving the problem.

Whereas therapeutic jurisprudence sees the collaborative effort as being between the individual participant and the court team, the drug court literature sees the collaboration to be between the court and members of the drug court team alone (King, in press a).

Therapeutic jurisprudence favors an approach that respects the individual as the source of the change process (Winick, 2003; Winick & Wexler, 2003; King, 2009). It advocates techniques that engage with participants and that support their internal change mechanisms. Instead of directly confronting participants with the reality of their problems, it advocates processes that assist participants to engage in the cognitive processes needed for positive change to occur, such as motivational interviewing.

Motivational interviewing uses the expression of empathy, developing discrepancy between the individual’s own stated goals and their behavior, avoiding arguments with the individual, rolling with resistance and promoting self-efficacy – the individual’s confidence in their ability to change (Miller & Rollnick, 2002; Winick, 2003; King, 2009b, pp. 174-179). In rolling with resistance, the judicial officer or lawyer does not meet resistance to change with confrontation or coercion but rather utilizes techniques such as active listening or reframing in order to assist the individual to work through the resistance (King, 2009, p. 177).

For motivational interviewing, confronting resistance is likely to be counterproductive by promoting further resistance to change. Therapeutic jurisprudence sees paternalistic and coercive processes as promoting resistance to change and as hindering self-efficacy (Winick, 2003, pp. 1071-1078). They can also promote other negative psychological reactions such as diminished self-esteem and resentment (Winick, 2003, pp. 1071-1078).

Rather than imposing program conditions upon participants, such as engagement in directed forms of treatment, therapeutic jurisprudence prefers an approach that includes participants in the decision-making process concerning the nature of treatment and other program conditions (Winick, 2003, p. 1073). Instead of using processes of confrontation or coercion when problems arise, therapeutic jurisprudence prefers using forms of dialogue with participants that assist them to identify the cause of their problems and possible solutions and encourages them to formulate and implement a rehabilitation plan or relapse prevention plan as needed (Winick, 2003; Winick & Wexler, 2003, King, 2009). While the court and members of a court team may provide input into the formulation of the conditions and support for the participant in implementation, the process of respectful dialogue promotes agreement between the parties.
Therapeutic Jurisprudence’s Challenge to the Judiciary

Where there is disagreement as a proposed course of action, therapeutic jurisprudence suggests that the judicial officer utilizes techniques of dialogue and persuasion (Winick, 2003; King, 2009, pp. 172-174). In the most serious cases of breaching program conditions, however, the circumstances of the case may be such that the court may have little choice but to take a coercive approach given the therapeutic and non-therapeutic related justice system values it must promote (King, 2009).

The therapeutic jurisprudence sources cited above in making the argument that drug court practice departs from therapeutic jurisprudence in significant respects are subsequent to the linking of therapeutic jurisprudence to drug courts. However, from its early days therapeutic jurisprudence has stressed the importance not only of participants’ choice but of participants’ active involvement in decision making concerning treatment and on methods that promote intrinsic motivation rather than resort to extrinsic motivation as a first response. For example, Winick (1992, pp. 1758-1759) suggests that participants set their own goals for treatment as it promotes their commitment to and ability to achieve the goals. Goal setting is an important tool in therapeutic jurisprudence based judging (King, 2009, pp. 167-170).

Wexler (1993, p. 293), in proposing that criminal courts could use health compliance principles to promote defendants’ compliance with probation conditions, suggested that defendants should have active input into determining the conditions of probation and that the resulting determination could be put in the form of a behavioral contract. The contract would be an agreement between the defendant and the court for the performance of the probation conditions and could contain agreed incentives and sanctions. Taking this course would mean that interactions between the bench and defendants should be in terms of what the defendants have agreed to do rather than what they are to be ordered to do. In taking this approach, defendants are accorded respect as individuals who have insight into their problems and who are capable of designing and implementing solutions. The behavioral contract can be referred to by the court in taking a motivational interviewing approach in addressing participant problems (King, 2009, p. 176).

The linking of therapeutic jurisprudence to drug courts was a milestone both for drug courts – and problem-solving courts generally – and for therapeutic jurisprudence. However, a close examination of the principles of therapeutic jurisprudence and the practices and asserted principles of drug court suggests that there are significant differences between the two as to what is therapeutic and as to what is best therapeutic practice in drug courts and in problem-solving courts generally.

The assertion that drug courts apply therapeutic jurisprudence even when taking a coercive approach may simply be a different view as to what is therapeutic jurisprudence from that contained in the existing literature. After all, there are differences in outlook and practice between therapists and other health professionals and consequently there could be differences in views as to what therapeutic principles and practices should be applied in judging and legal practice (King & Batagol, 2010, p. 416). However, the differences between drug court practices outlined above and therapeutic principles contained in the therapeutic jurisprudence literature and the case for drug courts’ departure from these principles have not been considered in the drug court literature.

III. Therapeutic Jurisprudence is only for Problem-Solving Court Judges

The close association of therapeutic jurisprudence and problem solving courts, especially drug courts, bears the risk that the application of therapeutic jurisprudence to other judicial contexts will be ignored. For example, some commentators have thought that therapeutic jurisprudence is offender-oriented (Stewart, 2005, p. 35; Holder, 2006, pp. 37-40), even though there is therapeutic jurisprudence literature on its application to the situation of victims (e.g., Winick, 2000).
It is clear from the literature that the scope of therapeutic jurisprudence extends to all judging contexts. For example, there is work on the application of therapeutic jurisprudence to judging in appeal courts (e.g., Des Rosiers, 2000; King, 2008a), sentencing (Wexler, 2001), judging in trials of sexual offences against children (King, 2008b) and judging in coroners courts (King, 2008c).

The literature on therapeutic jurisprudence and appeal courts describes ways in which appeal judgments can be structured so as to help minimize further conflict between parties (Des Rosiers, 2000) and how appeal judges should address the issue of errors by lower court judges so as to avoid promoting antagonism (King, 2008a). Work in the area of trials involving alleged sexual offences against children suggests techniques judges can utilize to settle child witnesses and promote a more suitable environment in which they give their evidence. Therapeutic jurisprudence scholarship also suggests techniques trial judges can use to minimize the possibility that their evidence would be assessed on the basis of myths concerning the functioning and reliability of children (King, 2008b).

Therapeutic jurisprudence also provides suggestions concerning the conduct of sentencing hearings, the inclusion of defendants in the determination of the conditions of probation or similar community-based supervision orders and the structuring of sentencing remarks that can help to promote justice system goals such as offender rehabilitation and victim and offender respect for the court process (Wexler, 2001; King, 2006; Dearden, 2010). For example, in a case involving a charge of dangerous driving causing death, Queensland District Court Judge Dearden crafted sentencing remarks sensitive to the wellbeing and situation of both the family of the victim and the offender: *R v Kohler* (2010).

Further, there is a processes already used in some problem-solving courts. For example, in magistrates’ courts in Australia, there is increasing judicial application of therapeutic jurisprudence principles in dealing with a wide range of offences and offending related problems, particularly in the case of court diversion programs, problem-solving style court lists, and Indigenous sentencing courts (King et al, 2009).

IV. The Wider Application of Therapeutic Jurisprudence for the Judiciary

The knowledge and skills advocated by therapeutic jurisprudence can assist in promoting both the therapeutic and technical aspects of the judging role in mainstream courts as well as in problem-solving courts (King, in press b). Technical aspects are the role of and processes of the court in receiving and interpreting evidence, applying the law to the facts and delivering judgment or sentence.

Perhaps the most basic skills that therapeutic jurisprudence sees as vital to the judicial role are communication skills. Good communication skills are fundamental to all forms of judging, whether it be for a therapeutic purpose or not. There is increasing recognition of the need for the development of judicial communication skills. For example, a recent white paper on procedural justice produced for the American Judges Association (Burke & Leben, 2007, pp. 13-14) noted inadequate body language as a problem amongst judges.

For therapeutic jurisprudence, a wide range of communication skills and a keen understanding as to the nature and elements of communication are essential for judging in a therapeutic manner. These skills include:

1. Knowledge of the factors that inhibit communication and those that promote it
2. Awareness of the effect of one’s communication on others
3. Awareness of the effect of particular language and expression, body language and tone and manner of delivery on communication with others
4. Listening skills, including active listening
5. The expression of empathy
6. How to respond to promote dialogue (King, 2009, pp. 121-149).

Lawyers and judicial officers are accustomed to manipulating language to produce particular effects in court, but they generally have not been trained concerning the use of language to produce a therapeutic effect or to avoid an anti-therapeutic effect. For example, a simply question to a drug court participant – “Why did you not do counseling this week?” – may produce immediate defensiveness and even resentment as the participant may well interpret it as containing an implication that the participant is at fault (King, 2009, 132). However, counseling may not have gone ahead because the counselor was ill or the participant was given the wrong appointment time. A more neutral and less accusatorial form of the question would be: “What happened with counseling this week?”

These skills can be applied in general courtroom situations such as dealing with querulous litigants, settling and communicating with witnesses with special needs, communicating with parties, addressing juries, delivering judgments, and demonstrating to parties that they are being listened to and their case being carefully considered by the court. According to procedural justice, demonstrating to the parties that they are being heard, their cases taken into account and that the court cares about them and their position is important in promoting party respect for the court and its orders (Tyler, 1992-1993; Winick, 2000).

Knowledge of how and why people change and of processes that uphold and those that may hinder the change process is valuable for judicial officers operating in any context where the need for behavioral change on the part of parties is important to the comprehensive resolution of the legal problem. These are areas in which therapeutic jurisprudence has contributed significantly to the development of best practice. While problem-solving courts are the most common example of the operation of these principles and practices in the judicial context, they are also relevant in the area of child protection, family law, general criminal law, mental health law, and in some civil cases.

Conclusion

Judges have the potential to refine their judging skills through a study of the principles and practice of therapeutic jurisprudence. Judges should put aside any preconceptions they have concerning the relevance of therapeutic jurisprudence to their particular area of judging.

It is not suggested that judges should approach therapeutic jurisprudence uncritically. However, approaching therapeutic jurisprudence with an open mind provides judges with the opportunity to learn, to add tools that they consider to be potentially useful to their judging tool box and to put aside those they consider would not assist them. While therapeutic values may need to be subordinated to other justice system values according to the need of the case, communication and other techniques suggested by therapeutic jurisprudence may still assist judges to perform their vital role.

Judges also have the ability to contribute to the development of therapeutic jurisprudence and in particular therapeutic judging practices. Judges have already contributed significantly to this development. By sharing their own experiences in applying therapeutic principles in judging, they can assist other judges who may be in similar situations in judging in the future and may help to refine particular approaches to judging. This development of judging techniques can contribute to producing better outcomes for those involved in or affected by the court processes and for the community generally.
Endnotes

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References


Abstract

If mediation is to succeed as a valuable multi-disciplinary practice, it is imperative that the mediation community acknowledge and support the integral approach implied in Standard IX of the ABA, ACR, and AAA respective ethics codes. Currently there is a substantial gap between theory and practice and an unduly constrained conception of what mediation can be. A significant part of the problem stems from a reluctance on the part of the mediation community to challenge claims of brand distinction emerging in the mediation field. While branding may serve to increase market-share for its respective brand proponents, unchallenged, it risks unduly restricting and thereby impoverishing mediation as a coherent and integrated professional activity. This paper challenges much conventional wisdom regarding claims of brand distinction, exclusivity, and superiority, and invites the mediation community to participate in the construction of a brand-free open-source alternative.

Introduction

In the contemporary mediation field it is not unusual to hear mediators publically exalting their espoused approach to mediation while, in private practice, adopting a combination of several approaches depending on the nature of the case before them. Mediators often feel compelled to put forth their respective versions of mediation as a kind of market-place brand to convince potential clients that they have the highest and best practice.

From a sociological perspective, branding can produce a much needed counter-weight to the institutional inertia that resists positive change in an established social field (Abbott, 2001). Branding can help marshal energies that challenge the existing social order by offering legitimated alternatives. In the contemporary mediation field brands have emerged that have challenged the existing legal order. For example, the Harvard facilitative or interest-based method has produced a much needed alternative to the standard positional bargaining approach common in the legal field (Fisher and Ury, 1981). The Harvard Method frees disputants from their oft-overly constrictive legal positions, allowing them to explore a wider array of solutions, based on the parties’ underlying interests. Branding has helped this method emerge as a prominent approach to mediation which has proven both theoretically simple and robustly applicable to a host of disputing environments.

Nevertheless, there is a potential dark-side to branding and the mediation community is now confronting it. Branding can engender unsavory bickering and fatuous claims of supremacy, supplanting a genuine debate about the relative merits of each approach. Moreover, the finely-textured and fluid nature of social conflict and its associated multi-causality resists any exclusive a priori approach. Accordingly, it is unlikely that any mediation approach can make a legitimate claim of superior exclusive application. Yet, several practitioners attempt to do just this, espousing an unwavering commitment to their chosen approach across various disputing contexts and throughout the mediation process.

The following vignette is instructive as a case study demonstrating the need for a brand-free multi-disciplinary approach. Although it represents a relatively straight-forward case, its facts readily point to issues that require a flexible, and, at times, eclectic approach to mediation, as I will demonstrate in the remainder of this paper.
A Mediation Vignette – A Family Dispute

A husband and wife who have recently separated seek mediation. Both are concerned about the custody of the two minor children (brother and sister), whose ages are 11 and 13 years, respectively. The spouses are also concerned about division of a substantial number of family assets including their family home, their two cars, and their joint investments. Lastly they are wondering if there are any spousal maintenance and child support obligations and how they will work this out. The parties inform the mediator that they would like to use mediation as an alternative to traditional litigation.

Let us suppose a mediator who regularly mediates a variety of different cases agrees to help the parties in this vignette. Would you expect her to apply the same approach in this case as she would in any business, labor, personal injury, victim-offender mediation, or other mediation sector? Suppose these disputing spouses were extremely self-directed and knowledgeable professionals as opposed to parties unsophisticated in legal matters? Would you expect that to affect her approach? Further, would you expect her to modify her approach based on an assessment of the particular personality of the parties, or, for instance, even less tangible aspects such as their respective moral development? Suppose they live in a close-knit, culturally-bound community, such as an Amish community, a Kibbutz in Israel, or a First Nations’ village in Canada. Would you expect that to affect the mediator’s approach? Are there not a host of other factors and considerations that would shape the mediator’s approach still further? If you answer any of these questions in the affirmative, is it not inaccurate and possibly disingenuous for this mediator to assert that she follows one particular mediation approach and not others? Arguably, it is both. Yet, many mediators do just this.

To understand why mediators claim to use one espoused approach despite evidence to the contrary it is important to understand the sociological and market-place forces influencing mediators, as social actors. Because mediation arose more as a practice than a theoretically-derived discipline, its theoretical base has not developed in a consistent nor coherent fashion (Deutsch, 2000). This is largely because practitioners have had little time to document and even less motivation to share their practices with academicians, with whom they have little in common (Deutsch, 2000). Academicians, for their part, have often demonstrated a greater deference to theories generated in the hallowed halls of academe over folk-wisdoms, intuitions, and mediator narratives emerging directly from practice (Deutsch, 2000). The net effect has been a continuing disconnect between theory and practice. Consequently, in the absence of careful documentation and robust, coherent theory development mediation organizations have simply sought market advantage by promoting their particular approach over alternatives.

To break out of this self-limiting trajectory, it is imperative for the mediation community to explore theory-to-practice connections and potential syntheses among competing approaches where such reflects the realities of practice. Equally the community needs to identify and acknowledge differences between approaches where they truly exist. Perhaps it is time to turn this whole brand supremacy phenomenon on its head. Mediation’s clients would surely be the principle beneficiaries of such an exercise, as they tend to be more concerned with effective practice and positive results over mediator claims of brand distinction and supremacy. The mediation community should therefore consider a discussion aimed at exploring a diversity of approaches and potential integration based on actual practice, i.e., an integral approach, rather than one based on espoused a priori commitments and oft-tenuous distinctions.

Arguably, this discussion must start with a practice-derived theory of mediation—a reflexive practice, supported by sound sociological methods. I have spent the last few years...
actively facilitating such a discussion among practitioners; a project I christened The Integral Mediation Project. Its focus is both the integration of theory and practice as well as the reconciliation among approaches where appropriate. It is the intention of the project to see this integral approach grow as a viable open-source option at the various mediation centers and universities providing mediation training. The project provides a kind of professional space akin to Jurgen Habermas’ public sphere for the mediation community in which to explore a plurality of approaches emerging in the rigors and throes of various practices (Habermas, 1980, 1984, 1987,1990).ii Moreover, the project provides a professional space in which mediators can examine the ideographic nature of practice without fear of losing favored status among fellow practitioners and without the need to serve fixed theoretical ideologies.

In the mediation field, there is evidence that brand bickering has engendered a stifled discourse replete with expedient commercial and political speech which has produced blind spots, theory-to-practice gaps, marginalization, alienation, and rules for professional ethics that are out of step with the exigencies of everyday mediation practice (Farned, 2010, Jarrett, 2007, 2009; Riskin, 1994, 1996, 2003). This result is highly ironic in a field whose raison-d’être purports to be the effective resolution of conflicts through a free exchange of ideas. The mediation community therefore needs a public space for free debate; a professional discourse which bridges various approaches while respecting differences where such emerge in the mediator’s practice experience. Moreover, such an approach could serve to bridge the theory-to-practice gaps and other ailments that currently bedevil the mediation field.

This paper represents an invitation toward an integral approach. Integral Mediation is pragmatic exploring strategies and techniques that work best in the moment they are needed, even if they contradict a priori theoretical commitments. Its focus is on function over form. As soon as a strategy or technique becomes ineffective, the integral mediator must let it go, in favor of more effective ones. Indeed, such flexibility and adaptation lies at the very heart and soul of mediation. The integral approach is motivated by the discovery of maximum value in any mediated exchange. Recognizing that social interaction is always shifting, the integral approach must pursue adaptive strategies rather than a fixed theoretical frame. Integral Mediation must therefore be grounded in adaptive practice.

Importantly, the integral approach does not seek to exclude or denigrate alternative approaches. Rather, it simply acknowledges the reality that certain mediation approaches are becoming increasingly entrenched and institutionalized. By denigrating or, alternatively ignoring the institutionalized approaches the integral method would simply create yet another competing brand, which risks reproducing the same brand-bickering exchange that now beleaguers mediation practitioners. Instead, the integral approach represents a true alternative—an open-source meta-practice available to any practitioner committed to exploring and expanding integration.

The integral approach provides a potential bridge between previously- declared mutually exclusive approaches through a focus on reflexive practice—an approach in social science which recognizes adaptation through self-awareness (Bourdieu, 1977, 1992). Reflexive practice invites mediators to consider integrative strategies and techniques that they may have previously dismissed, based on espoused a priori brand form requirements. Moreover, it invites the mediation community to consider how it might develop theory based on connective strategies and techniques.

Part I of this essay presents the policy rationale for Integral Mediation and invites the mediation community to consider a protocol for developing integral practice. Part II provides an analytical schema acknowledging and comparing prominent contemporary approaches. Part III briefly maps out interpretive methods that serve to undergird the integral approach as a reflexive activity. Part IV explores, in particular, the difficulties with the neutrality and impartiality ethics
and suggests how to develop ethics more integral to actual mediation practice. Part V applies hypothetical integral-mediation techniques to the family dispute described in the vignette.

I. The Policy Rational for Integral Mediation

Standard IX of the jointly-adopted mediator ethics code of the Association for Conflict Resolution (ACR), the American Bar Association (ABA), and the American Arbitration Association (AAA) provides the rational basis for the integral approach. Pursuant to Standard IX mediators should foster diversity within the mediation field, make mediation accessible to clients, assist the public in developing an improved understanding of, and appreciation for, mediation, and to demonstrate respect for differing points of view within the field. See Standard IX.

“Standard IX Advancement Of Mediation Practice

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.
2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.”

Standard IX provides the aspiration that mediators should advance the practice of mediation, by fostering diversity and respect for different approaches within the mediation field. If respect for diversity and differing points of view in the mediation field is to be meaningful both academics and practitioners need a professional space in which they can engage in critical debate. Arguably, Standard IX therefore countenances and even supports a professional space in which mediators work out compatibilities and incompatibilities through a good faith dialogue.

Over the last five years, having interviewed 155 practitioners, I have concluded that this does not appear to be happening with the vigor one would hope for an emerging professional field. Instead, the field is often deadlocked by claims of brand distinction and supremacy (Farned, 2010; Jarrett, 2009). Not infrequently, the voices of various devotees seek to distinguish and even, in some instances, exclude alternative mediation approaches on both philosophical and theoretical grounds (Farned, 2010; Jarrett, 2009; Riskin, 1994, 1996, 2003). In the past few years, I reported evidence that seemingly mutually exclusive approaches are often driven, in significant part, by a strong desire to create a marketing edge (Farned, 2010; Jarrett, 2007, 2009).

Market competitors seek to distinguish themselves in their espoused uniqueness. Seeking distinction through exclusion may be good for the career of the particular proponent(s) making such claims, but arguably detrimental to discovering best practices in mediation. Moreover, claims of brand distinction and supremacy that attempt to exclude alternatives often thwart the possibilities of an authentic practice-based discourse. The result is a dead-end debate based on
marketing and political concerns that will ultimately lead to the impoverishment and contraction of mediation as valuable service for the community.

In light of aspiration, and perhaps, ethical imperative contained in Standard IX, the mediation community needs a forum to actively develop integrative possibilities. But a truly integral approach cannot simply be an exercise in which mediators simply throw together divergent approaches in an arbitrary and capricious manner. Rather an integral approach must work out the practical logic of each approach and its associated claims to distinction in order to demonstrate both authentic difference and potential integration. The integral approach, while seeking genuine goodness of fit between theory and practice and amongst various practices, must not dismiss genuine incompatibilities where these flow naturally from practice. Otherwise the integral approach will likely produce the same stifling dead-end debate that has befallen other approaches.

Nothing in Standard IX requires integration at the expense of unique practical applications. Integral mediation consistent with Standard IX should permit a myriad of approaches that further unique goals and objectives in mediation, often associated with divergent disciplines of origin, such as law, social work, psychology, counseling, sociology, and business, etc. In fact, the added value of integral mediation is that it expressly recognizes and acknowledges divergent approaches to mediation. Moreover, it challenges those who assert the supremacy of one approach over others to demonstrate such supremacy in the circumstances in which it is practiced. Integral mediation seeks meaningful synthesis between approaches at a practical level, where possible, without sacrificing the underlying commitments upon which these approaches are based. In short, any synthesis must flow organically from the logic of practice.

The renowned German social philosopher, Jurgen Habermas (1980, 1984, 1987,1990) argues that debate that is coerced through political and economic forces cannot yield communicative action or authentic dialogue, as he defines it. In fact, he contends that coerced debate is, by its very nature, antithetical to communicative action precisely because it cannot produce accurate representations of social reality that incorporate the true beliefs of the debating parties. At best, it amounts to commercially or politically expedient speech masquerading as a free debate. Accordingly, for Habermas communicative action can only arise from a social space in which participants feel free to reveal their authentic experience without fear of political or economic marginalization (Habermas, 1980, 1984, 1987,1990).

Habermas (1980,1990) provides a set of useful parameters for integration in social and professional discourse. The integral approach can benefit from his notion of communicative action which emphasizes the conditions under which uncoerced speech and collective creativity are possible (Habermas, 1980, 1984, 1987,1990). Habermas (1980, 1990) asserts that the following are necessary conditions (or ground-rules) for genuine communicative action, wherein groups attempt to synthesize ideas.

"1. Every subject with the competence to speak and act is allowed to take part in a discourse.
2a. Everyone is allowed to question any assertion whatever.
2b. Everyone is allowed to introduce any assertion whatever into the discourse.
2c. Everyone is allowed to express his attitudes, desires and needs.
3. No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in (1) and (2)."

Mediator conferences, whether face-to-face or virtual, need to provide a space for open discussion with the above parameters or guidelines. Following them will produce a more genuine debate in the mediation community. Unfortunately, currently both professional and community
mediation conferences often follow the traditional ‘expert model’ in which a panel of three to five privileged individuals frames the issues and debate. For integral possibilities, we need to adopt more facilitative formats in which members are able to participate on a more equal democratic footing, from a variety of disciplines. Nothing suggested here precludes mediation conferences from holding standard expert panels. What is needed is an additional interactive discussion forum dedicated to integral practice.

New group facilitation practices, such as open-space technology, offer a practical way to put Habermas’ public forum into action (Hermann, 2006). The mediation community needs to open a public space for such forums. For open space technology there are five basic parameters (Hermann, 2006). They are as follows;

1. a broad, open invitation that articulates the purpose of the meeting, i.e., to surface useful integral strategies in mediation;
2. Participant chairs arranged in a circle to put practitioners on an equal footing, instead of the traditional front-facing format;
3. a wall poster or chart of issues and opportunities posted by group participants;
4. an open discussion space with many breakout spaces in which participants move freely between, learning and contributing as they brainstorm and develop ideas; and
5. a ‘breathing’ and ‘pulsation’ pattern of flow, between plenary and small-group breakout sessions.

The free-flow and exchange of ideas is at the base of open space technology (Hermann, 2006). While it may seem more chaotic than the standard expert panel it allows for the emergence of un-coerced ideas that when later organized can provide the data for integral practice. The initial chaotic information on wall posters or charts can be reduced to writing later and organized in more linear form (Hermann, 2006). The breathing and pulsation pattern of flow between the plenary and breakout groups produces an unrestricted stream of information (Hermann, 2006). Breakout sessions could tackle particular mediation case studies, based on discipline, sector, and cultural context. Interestingly, with the advent of internet technology these open space sessions could now expand to include online conferencing rooms as well as traditional face-to-face settings (Hermann, 2006).

In sum, significant development in integral-mediation theory will only come about when the mediation community provides an uninhibited professional space for information gathering among practitioners. The mediation community would benefit significantly by encouraging genuine dialogue in open space forums.

II. Contemporary Mediation – An Analytical Framework

In exploring mediator intervention in social conflict it is useful to analyze three dimensions or levels of analysis drawn from the sociology of knowledge, i.e., the interactional, epistemological, and, ontological. The three together provide a useful schema or mental map by which to locate each mediation approach as it relates to the others. In particular regard to the interaction level we can further unpack that dimension into three further parts, i.e., disputant interaction, mediator intervention in use, and espoused mediator theory. See Figure 1.
Ontology refers to the nature of social reality itself. In the mediation field, that would go to the nature of the social conflict itself. Epistemology refers to the theory of knowledge about social reality. Interaction refers to, among other things, the symbolic, conversational, and behavioral aspects of interaction between all possible parties to the mediation, including the mediator.

It is imperative that we vigorously explore the connections between ontology (social reality), epistemology (knowledge of social reality), and social interaction to move beyond bickering mediation factions. As discussed in the introduction, the mediation field, an activity of otherwise great promise, remains bedeviled by theory-to-practice gaps. Arguably, because we have been too quick to accept claims of espoused practice without due critical analysis we have failed to map out and develop clear connections between ontology, epistemology, and mediated social interactions.

From the interpretive paradigm in social science, the very nature of social reality implies that epistemology is always negotiated in any mediated interaction. Accordingly, mediators, along with their clients, engage in a process in which they co-create social reality and determine relevant facts in each and every instance of mediation. One simple reason that mediators often denigrate alternative approaches is that they do not accept other versions of ontology, epistemology, and interaction. Unfortunately, this refusal to integrate approaches thwarts the potential for mediation because it denies the very fact that mediated interactions can be, by their very nature, uncertain and chaotic.

In truth, there is no one-size-fits-all in mediation. Mediators often make the mistake of claiming they have found the one-size approach but this ignores the nature of social reality. At mediator conferences one often hears mediators promoting their a priori fixed model, arguing that their chosen model not only describes social interaction but also defines ontology and epistemology in the very terms of the model they have produced. From the interpretive sociological paradigm, no matter how great its accuracy, a map should never be confused with the territory it purports to describe. Accordingly, no matter how good the mediation brand is, it is still limited precisely because it is just a brand.

Accepting the complexity of social reality and social conflict does not require one to retreat to the extreme post-modernist position that all aspects of social reality are mere constructions of the mind (Aylesworth, 2005). Rather it is to admit that the social world is ultimately knowable and known inter-subjectively, i.e., through inter-subjective agreement about particular social conflicts in question. Therefore while participants, including the mediator, negotiate all aspects of their social reality during mediation, there still exist physical, economic, political, even geographic constraints that limit the potential outcomes in any given case.

Arguably, we also need to acknowledge mediation is essentially a complex adaptive system, and as such, is always adjusting (Ruhl, 2009). There is simply far too much complexity in social interactions for mediators to steer those interactions based on unnecessary self-imposed
constraints. As practitioners readily attest knowledge of disputant reality and interaction can shift at any given moment in mediation, based on a host of interacting social factors, e.g. shifts in the relative power of the parties, shifting social location in the larger community, increasing knowledge, shifting attorney influence, and the like. In short, by its nature, social reality tends to be negotiated and emergent in mediated social interactions. It therefore seems puzzling why mediators would be so quick to espouse a fixed a priori approach in the face of such realities. Arguably, they do so because market-forces compel them to do so. Branding is the result.

While the integral approach, as an alternative, is eclectic, one cannot simply throw different approaches together and hope they will somehow fit. This eclectic tack would not do justice to the unique texture of each approach. In addition, doing a mediation-light version of several differing approaches would be unproductive because it would likely produce a poor rendition of the original approaches, resulting in their muddling. This is because interactions associated with each approach may connect to differing and oft-mutually exclusive ontologies and epistemologies. Logical consistency is required.

Mediation brand proponents often confuse interaction with ontology and epistemology and insist that their particular interactive method proves their slant on social reality and its relevant facts. This can result in a reification of the particular approach. The integral approach avoids this by reminding us negotiated ontology and epistemology determine social interaction and vice versa in each instance of mediation. Integral mediation simply recognizes that coherent ontology, epistemology, and interaction emerge in mediation and that the mediator’s role is to help the parties develop and maintain coherence between them. Correspondence and convergence between these elements is what produces meaning and added value for the parties, as they struggle with their dispute, in any given instance. The integral approach recognizes the role of the mediator is to help the parties discover instances of shared meaning.

A. Acknowledging Contemporary Mediation Approaches

After surveying the opinions of 155 mediators over five years, I discovered surprisingly that a significant number (61) would simply prefer to ignore the existing contemporary brands and develop an empirically based alternative. Yet to ignore existing approaches would do the very thing the branding process has already done, i.e., to dismiss the alternatives. For this reason, it is it important to recognize other contemporary approaches and acknowledge how they differ with respect to ontology, epistemology, interaction and mediator interventions.

The four prominent contemporary approaches are facilitative/interest-based, evaluative, transformative and narrative (Bush and Folger, 1996; Jarrett, 2009; Riskin, 1994, 1996, 2003; Winslade and Monk, 2000). Each claims a different ontology and epistemology. From each flow the logical mediator interventions, strategies, and tactics. For the sake of convenience the focus is limited to these four, although one could conceivably use this schema for any mediation approach that comes along. See Figure 2.
From each approach in contrast we can see why there is often tension and dissonance between differing mediation approaches. The social world is framed divergently in each. Moreover, mediators see their role differently in each. For facilitative/interest-based mediators the world is a modernist reality in which observations can reveal essential interests motivating legal positions (Fisher and Ury, 1981, Moore, 1996). For these mediators, revealing underlying interests diffuse disputes and producing interest-based solutions (Fisher and Ury, 1981, Moore, 1996). For evaluative mediators the world is filled with conflicts resolvable through the application of precedent and previous authority to guide the parties (Levin, 2000-2001; Stark, 1997). Accordingly, providing evaluations to the parties is the best way to resolve disputes (Levin, 2000-2001; Stark, 1997). For transformative mediators the world is a humanist challenge in the face of which humans and communities can evolve morally (Bush and Folger, 1995). For this approach, encouraging in a non-directive way moments of mutual empowerment and recognition to encourage moral growth is the best-practice for mediators (Bush and Folger, 1995). For narrative mediators the world is social constructed through language and therefore narrative mediators enter the language game directing parties from conflict-saturated narratives to conflict-reduced shared narratives (Winslade and Monk; 2000).

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**Figure 2**

**Application - Hierarchy of Integration**

<table>
<thead>
<tr>
<th>Category</th>
<th>Sociological Frame</th>
<th>Facilitative/Interest-based</th>
<th>Evaluative</th>
<th>Transformative</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontological</td>
<td>Social Reality</td>
<td>Essentialist</td>
<td>Historical</td>
<td>Humanist</td>
<td>Post-modern</td>
</tr>
<tr>
<td>Epistemological</td>
<td>Knowledge of Social Reality</td>
<td>Interest-Oriented</td>
<td>Precedential</td>
<td>Relational</td>
<td>Social Constructivist</td>
</tr>
<tr>
<td>Disputant Behavior</td>
<td>Social Interaction</td>
<td>Conflict over competing interests</td>
<td>Competition for most persuasive legal position</td>
<td>Conflict as a Failure to recognize fellow humanity</td>
<td>Conflicting Narratives</td>
</tr>
<tr>
<td>Mediation Approach</td>
<td>Brand Commitment</td>
<td>Focus on Interests</td>
<td>Establish and apply Precedent</td>
<td>Provide opportunities for mutual empowerment and recognition</td>
<td>Deconstruct/Reconstruct Narratives</td>
</tr>
<tr>
<td>Chosen Intervention - Declared Goals, Strategies and Tactics</td>
<td>Espoused Practice</td>
<td>Move parties from Positions to Interests</td>
<td>Provide parties with an assessment</td>
<td>Encourage and Reinforce instances of empowerment and recognition</td>
<td>Surface dominant and subordinate narratives and establish functional shared narrative</td>
</tr>
</tbody>
</table>

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An Invitation to Integral Mediation
In sum, we may have put the cart before the horse. That is, each approach seems to have first established its own interaction rituals and corresponding method and then proceeded to map out a social world based on the requirements of the method. The chosen ritualized intervention becomes the social frame or world-view for any and every social conflict. A truly integral approach must surely work the other way around, first unpacking ontology and epistemology in a self-critical fashion before seeking methods that seek to address them. Only then will we effectively tackle conflict in all its complexity.

B. Sourcing Many Disciplines of Origin

There has also been a struggle emerging between competing disciplines of origin in the mediation field (Abbott, 2001; Jarrett, 2007, 2009). In particular, there appears to be a struggle over the relative value of fundamental skills associated with each source discipline. For example, lawyers often claim knowledge of the law and the legal system as a special claim of distinction in the mediation marketplace. Similarly, social worker, sociologists, psychologists, and counselors often claim special skills regarding knowledge of social processes and socially-useful interventions. Further, anthropologists can claim specialized knowledge about the parties’ cultural backgrounds and disputing contexts. Still further, labor relations experts, managers, business professionals, and accountants can claim respective skills in management, appraisal, and evaluation.

In fact, divergent disciplines of origin naturally contribute diverging ideas about ontology, epistemology, and corresponding skill sets. Some see this as a problem because they are concerned one source-discipline, in a struggle over turf, may come to dominate mediation practice at the expense of others. However, this result can be avoided by acknowledging a host of useful skills sets associated with each discipline of origin. The integral approach adds value by integrating and improving mediation through inclusion and the process of continual refinement.

Any successful inter-disciplinary dialogue cannot privilege one discipline over others but rather must acknowledge the unique value-added component of each approach. In so doing, it provides a strong basis for mediator educational development. For example, it may be that some legal training is useful for mediators dealing with particular disputes, where legal issues play a prominent role. We could then work to identify the legal knowledge most useful to mediators and build this knowledge base into mediation training. Similarly, certain counseling intervention skills might also be useful where continuing co-disputant interaction is important. This knowledge could also be identified and included in mediation training. The same is true for each of the disciplines of origin. Moreover, as new disciplines emerge, as in, for example, On-line Dispute Resolution (ODR), new internet emerging communication technologies, video-conferencing, etc. the integral approach would also welcome their added-value components. By adopting this on-going value-capture approach mediation can continue to evolve, improve, and effectively redefine itself. See Figure 3.
Figure 3

*Integral Mediation* and Disciplines of Origin

*Figure 3* reminds us that mediation is not one set of skills but an aggregate of several distinct disciplines, and therefore an open-source activity. In truth, a wide array of skills is useful in mediation and that practice is not the exclusive property of one source discipline. Disciplines of origin are themselves always evolving (Abbott, 2001). To keep up mediation must do the same.
Therefore, combining disciplinary skill-sets requires constant loop-backs to an array of disciplines of origin.

This approach makes a good case for the development of inter-disciplinary programs within the universities. It is fitting and appropriate that the very community that touts dispute resolution and inter-collegiality take a leadership position on this matter in the universities (Volpe and Chandler, 2001). Moreover, it is also an opportunity to improve curriculum in higher education to meet contemporary social realities. It is the students themselves who are often demanding this kind of practice-based education, which mediation and conflict resolution, in general, can deliver.

The integral approach is also useful for higher educators because it allows us to demonstrate the social benefits to students of a complex adaptive system in action (Ruhl, 2009). By establishing continuing feedback loops between practice, mediator intervention strategies, and ideas associated with source disciplines we can closely examine and continually develop responsive and socially-relevant curriculum. This is true both for dedicated dispute-resolution programs and programs within the traditional disciplines, including law school, social-science departments, business schools, nursing, social work schools, and so on. In short, including eclectic skills can enhance both mediation and mediation-related curriculum in a host of higher education settings.

C. Affirming The Role of Culture

Culture is attaining a position of greater importance in conflict resolution as social interactions in the world become increasingly inter-connected and globalized (Fernando, 2010). So too is the need to learn methods that help us understand the variance in culture and its differential effects on culture (Fernando, 2010). It is wholly unrealistic to expect the cultural environment to adjust to the mediator. But this is what a number of mediators currently do when they apply their respective methods to conflicts arising in a different cultural environment from which they originate. It is therefore important that our mediation interventions recognize and adjust to suit the particular cultural context in which the dispute emerges.

Changes in the cultural field affect the mutually agreed-upon aspects of ontology, epistemology, and social interaction, in mediation (Bourdieu, 1977, 1992). The integral approach must continually adjust itself to shifts in the cultural field. Arguably, no fixed-commitment approach can adjust adequately to the finely textured shifts produced by cultural forces. In fact, it is not unreasonable to expect mediation approaches lifted from one cultural milieu to be naturally disconnected from practice in the other cultural fields in which they are applied. Accordingly, a priori commitments to any of the approaches in Figure 2 might actually work against value shifts consonant with human experience in differing cultural climates.

Cultural and collective identity can loom large in many so-called resource-based disputes (Rothman, 1997; Volkan, 1997). In fact, such issues can dwarf the relative importance of resource-based interests in these matters (Rothman, 1997). Jay Rothman (1997) has aptly developed this theme and demonstrated its application in his work. Cultural and identity-based values shape epistemology and social interaction and are particular to each society (Volkan, 1997). The integral approach must recognize that participants from different cultures must first acknowledge each others’ differing value commitments before attempting to address other issues, including economic interests. This is precisely because the very nature of social reality, including symbolic meaning, is a negotiated matter in mediation. Even though the parties do not share those cultural values they must at least accept that they are real and meaningful for the other party--these values reflect cultural capital.
Culture is like the air we breathe. We take it for granted until we have a change in its composition. Parties need a disputing space in which they feel comfortable enough to navigate the tensions that emerge during challenges to collective identity, which is inevitable in identity-based disputes. The effective mediator must therefore help the parties work through a series of adjustments to create a sturdy-enough disputing space that promotes authentic communicative action despite cultural dissonance. The mediator does this so the parties are free to frame and tackle the particular issues in dispute, in spite of divergent cultural bases. In short, the mediator helps the parties establish, assert, clarify, re-negotiate, and modify cultural meaning throughout the mediation.

The sociological discipline of symbolic interactionism is instructive here as it reminds us that individual disputants act not only as individuals per se, but also as agents of larger social collectivities, whether these individuals are aware of it or not (Goffman, 1955, 1974; Lemert, 1997). Cultural values shape social identity just as the latter shapes our cultural values. They are inextricable. An integral approach therefore requires the mediator to evaluate the extent to which issues in mediation touch and concern the very identity of the parties. When identity-based conflict emerges, the mediator must recognize that a significant amount of work needs to explore connections between individual and socio-cultural identity. Without addressing the nature of the larger collective identity meaningful long-term resolutions may continue to elude us.

The other reason that the integral approach must adjust for cultural climate is based on very real political considerations. With the renaissance of culture and self-identified cultural communities in recent times, mediators find the parties themselves expressing greater interest in socio-cultural aspects of conflict (Abramson, 1997). Also, if certain mediation protocols allied with cultural communities are included, while others excluded, by imposition of courts, legislators, and main-stream mediator organizations then these standardized models may come to be viewed as culturally imperialistic. For example, if legal culture trumps others only because it is more closely allied with sources of social power, then people will become resentful of its culturally imposed codes of conduct. This development may well work to alienate communities, rather than bring cohesion and mutual understanding. This result would also be extremely ironic, given the oft-expressed restorative spirit of mediation.

D. Exploring Practice Sectors

Effective practice must adapt to substantively divergent disputing sectors. The nature and quality of mediator interactions will inevitably vary with the particularities of each sector of social activity. For example, construction mediators encounter social situations that family mediators do not as an artifact of the respective spheres of social interaction. Similarly, workplace mediators encounter very different situations than victim-offender mediators. Further, personal injury mediators deal with very different concerns than elder mediators, and so on. The differences have become so great that some mediators now argue that we should simply recognize that the mediation field has actually splintered into many divergent fields even though practitioners still cling to the term ‘mediation’ in all these different instances.

The majority of interviewees were in favor of preserving the larger field as a distinct identity. Mediation in all the above contexts arose as an informal alternative to contemporary legal processes. The latter in turn produces bureaucracy which constrains all aspects of modern social life (Weber, 1947, 1976). Demonstrating the success of a common activity, such as mediation, in all these varied sectors reminds us of the human potential to create meaningful dispute-resolution practices outside traditional bureaucratic categories. In this sense, the integral approach is life affirming for both the individual and the community, providing a separate and distinct social space in which to resolve social conflicts.
If we allow mediation to simply splinter into each of the sectors in which it is applied, it risks becoming just another constrained, bureaucratized activity (Weber, 1947, 1976). In effect, what we then call ‘mediation’ risks losing its vigor and potential for human emancipation. On the other hand, idealizing social conflict in a *one-size-fits-all* analysis with no recognition of sectoral contingencies is naïve. This approach would also ultimately and ironically impoverish mediation, because it would not fully acknowledge the realities of modern bureaucratic life in which people have to live (Weber, 1947, 1978). In the extreme it would become an idealistic exercise without a materially-based connection. Therefore, the integral approach must lie somewhere between these two extremes—capable of both autonomy from and connection with recognized bureaucracies and supporting legal processes.

Despite differences, it is evident that certain sectors and associated practice groups are situated much more closely to certain others. In fact, it is useful exercise to consider potential groupings where practices might share similar themes. See *Figure 4*. 
In Figure 4, several practitioner practice-group categories are outlined, as themes emerging from interviews with 155 mediators. It is not difficult to hypothesize natural affinities and disaffinities between practices in certain sectors vis-a-vis others. Consider the following sector groupings. Family, estate, elder, and child protection mediation tend to share common concerns about the best interests of vulnerable family members. Victim-offender mediation, school, peer mediation, family-group conferencing, and talking circles often focus on the rehabilitation and socialization of young people. Commercial, construction, consumer, and personal injury mediation often resolve contract rights and industry-norm violations and attendant compensation. Community and Neighborhood-Justice mediation, despite an apparent myriad of conflict themes share the common goal of restoring on-going relations and peace in local neighborhoods. Employment, workplace civil rights, and mediated labor relations focus on resolving disputes in the workplace and promoting industrial peace.
While one might disagree as to the exact groupings, it becomes evident natural affinities exist that may benefit from common practice development. It becomes equally evident that natural differences exist which require caution in migrating logic and practice from one sector to another. Future research that explores the essence of various sectors and mediator adaptations would be of great value. This is a theme that is yet to be fully developed in the mediation community.

III. Mediation As A Reflexive Practice

Mediation has the potential to reflect, reveal, and produce knowledge regarding social conflict for those involved in the process. It is even possible to consider whether mediation may be an emerging form of social science in its own right. Mediators engage in social construction with their clients. Mediators help parties figure out what is meaningful to them and what is not. In this sense, mediators engage in instances of social interaction and symbolic exchange—notions developed in interpretive sociology (Goffman, 1955, 1974; Lemert, 1997; Weber, 1978). The work of distinguished sociologist, Erving Goffman, is instructive for mediators as it elaborates certain instances of symbolic interaction that are central to mediation processes, including framing, face-work, ritual, dramaturgy, impression management, and the interaction order. (Goffman, 1955, 1974; Lemert, 1997). Mediators, as social actors, are compelled to frame disputes, engage in face-work and ritual, and work within the interaction order.

Whether they are aware of it or not, mediators are also tapping psycho-social processes within both their clients and their own beings. If mediator interventions both respond to and produce psycho-social events during mediation mediators are undoubtedly acting as change agents both in and on the shared social reality of their clients. Pierre Bourdieu (1977, 1992) argues convincingly that knowledge derived directly in any field of conflict tends to produce a reflexive practice, i.e. a practice derived from the social field which, in turn, motivates the actor to influence that social field (Bourdieu, 1977, 1992). Arguably, when mediators develop intuitions, cognitive schemas, analytical frameworks, and theories directly form mediation practice they are engaging in a form of reflexive practice.

Reflexive practice differs from theory development in traditional science because it countenances an actor who influences the social world, as he or she acts in and on that world. Contrast this approach with the classical view of science, in which researchers develop a theory, derive several hypotheses and then test those hypotheses empirically (Ellis, 1993). Accordingly, the observer then adjusts the theory based on the empirical evidence and then starts the cycle anew, incrementally adjusting and refining theory (Ellis, 1993). See Figure 5.
While this classic model of knowledge development is not without merit, it is not as robust as the reflexive approach in the social sphere, precisely because the social field is continually shifting and social actors within the field are self-aware agents. Perhaps, because the classic model has been the dominant paradigm in numerous academic disciplines up until recent times many in the mediation community have tended to frame practice in the terms of this classic worldview. Unfortunately, finely textured, multi-layered, and self-organizing human interactions tend to elude this classic theory development.

Restrained by this classic paradigm, each mediation brand, as discussed above, has tended to become self-affirming, reproducing its own logic for any given conflict. For example, evaluative mediators tend to construct theory relying on the evaluative framework. Accordingly, good mediation for them tends to look like instances of evaluation. Similarly, interest-based mediators construct theory based on the interest-based framework. Accordingly, good mediation for them tends to look like instances of interest-exploration, moving the parties from legal positions to interests. Further, narrative mediators build theory based on the narrative framework. Accordingly, good mediation for them tends to look like the unpacking of narratives. Lastly, transformative mediators build theory based on the transformative framework. Accordingly,
good mediation for them tends to look like instances of mutual recognition and empowerment. The point in each of the above is that mediators construct events in mediation based on their respective frameworks. The rationality for their respective hypotheses is already contained within their respective *a priori* theories.

In contrast, the reflexive approach, while acknowledging the value of theory, requires the mediator to recognize his or her own influence on the disputing dynamics and the potential distortion the mediator produces (Bourdieu, 1977, 1992). The process is dialogic, in which all parties are constantly negotiating meaning with the help of the mediator. The mediator does not presume to be an external observer. Admittedly, the narrative approach also acknowledges this negotiated nature of social interaction but the narrative method insists that language alone produces meaning. The narrative approach does not recognize the structural aspects of social reality that may be present without language. In contrast, the integral approach does countenance this possibility.

At a pragmatic level, it is striking that a significant number of newly trained mediators that I have interviewed in the last five years have reported disillusionment with the stultifying nature of mediation training. Among these students, I have discovered a shared sense of disappointment on what the *a priori* fixed-framework approach has produced, i.e., a collection of self-restricting paradigms. As a result, students feel a lack of resonance between their training and their respective experience in mediation. Moreover, in some instances, mediation students reported feeling alienated from mediation service-provider organizations because these latter students could not make an unwavering commitment to the organization’s particular mediation *brand*.

Fortunately, it would appear that the reflexive approach can provide a promising alternative as one that can account for social reality in moment-to-moment interactions. Accordingly, the reflexive practitioner pays attention to her own experience and reactions as she observes these moment-to-moment micro-interactions. The practitioner then carefully notices how these inner experiences occur in relation to her interaction with others, noting patterns, themes, and tendencies. Theory development is tied much more closely to one’s inner experience and the production of shared-meaning as opposed to the cataloguing of general social rules. In short, reflexivity ties together experience with observation in a meaningful way. For reflexive practitioners, meaning is thought to emerge within *fields* of activity. The *field* of activity is the chosen unit of analysis and refers to the totality of the relevant social facts surrounding the dispute. For reflexive practitioners, practice logic is unique to each field (Bourdieu, 1977, 1992).

Reflexive practice also attempts to tackle the problem of the *double-hermeneutic* which complicates knowledge production in social science (Smith, 1998). That is, social reality in any interaction requires any speaker or writer to first interpret social reality as he or she sees it, and then convey that interpretation to the listener or reader. That listener or reader, respectively, must further re-interpret the speaker’s message in his or her own context. With particular regard to reflexive practice in mediation this means that the mediator, twice removed from the initial social facts in any dispute, must now attempt to gauge the degree to which the disputant’s interpretation shapes the facts and the extent to which the mediator’s own interpretation shapes the facts still further. To solve this problem, Max Weber proposed the development of *verstehen*, or contextually-relevant understanding, of the other’s social reality, achieved by first admitting one’s own biases and worldview (Weber, 1947, 1976). Accordingly, the reflexive practitioner must constantly strive to understand his or her own worldview.

In mediation, the problem of re-interpretation is exacerbated by back-and-forth interactions between the mediator and the parties. In mediation, it is not uncommon to experience multi-hermeneutic feedback loops, information travelling in all directions—back and forth between various parties and the mediator throughout the process. It makes little sense to
lead with theory, doctrine, or ideology in this environment. Rather it is better to emphasize the inter-relation between observation and experience. Reflexive practitioners therefore construct dispute-resolution practice based on their immediate interaction, rather than doing so based on preconceived notions. In this way, reflexive practice supports mediation to develop as a complex adaptive system.

Social conflict between social actors is, by its nature, rife with instances of increased complexity and chaos. People hire mediators for their willingness and ability to manage this complexity and chaos; not to hide from it with fixed mental maps. Therefore, the integral approach, which seeks to bring theory to practice and practice to theory, necessitates methods capable of navigating such chaos. Integral mediation therefore relies on reflexive practice its disciplinary cousins. The latter are offered here as additional methods that support reflexivity. They offer pathways to move beyond the fixed-frame approach. Each method represents a distinct discipline in its own right. One therefore cannot give each the treatment it deserves here, but rather introduce it and discuss its potential contributions for mediation. The selection includes those disciplines mediators identified as the most relevant to mediation as a reflexive practice.

A. Grounded Theory

Grounded-theory encourages practitioners to build theory from the ground up rather than the top down. Hence, the name, grounded theory. Glaser and Straus (1967), its founders, used the concept to gather social information and theory directly from experience, rather than imposing a priori theory on social situations. Their work in grounded theory is instructive to the integral approach, because it essentially reverses the direction of the wheel in Figure 5, above. It shifts the focus to experience first and only then develops theoretical categories that emerge in the empirical experiences of practitioners. Practitioners develop theory based on categories that participants report as meaningful to them. Grounded theory forces the researcher to frame the field and its component parts as the participants see them. However, it is not just gathering folk-wisdom. The researcher remains critical of the categories she constructs and develops at all levels (Charmaz, 2006; Glaser and Straus; 1967).

As discussed above, a significant number (61) of the mediators I interviewed argued that the mediation community should set aside the existing mediation brands. Of this group, a significant sub-group (32) argued for a grounded-theory approach to the production of mediation theory. Arguably, most practicing mediators work discretely in this fashion anyway. Hence, grounded theory may simply be an acknowledgement of the realities of contemporary mediation practice. As such it may well provide an effective framework for mediator education.

According to Strauss and Corbin (1990, 1997) Grounded theory involves various kinds of coding by the researcher, progressing from fragmented concrete elements toward greater levels of abstraction. The researcher goes through several levels of coding. First, open coding involves identifying, naming, categorizing, and describing phenomena (Strauss and Corbin, 1990, 1997). In mediation, the mediator, as researcher, could simply explore the words the parties use as they describe their dispute. Mediators might also record their sessions and observe the words that they themselves use in iterative exchanges with their clients throughout the mediation. In the divorce mediation vignette, above, for example, the mediator might find that the parties use words such as “worry”, “uncertainty”, “concern for the children”, and “instability” when discussing the ongoing custody of their child. Here the mediator simply notes the relative frequency of words used by the parties. The theory posits that words used with greater frequency represent areas of greater relevance for the parties, so that the parties themselves determine the most substantively relevant categories.
Second, **substantive coding** is the process in which one finds thematic connections among disparate ideas (Strauss and Corbin, 1990, 1997). This goes beyond mere **content analysis** because the themes do not emerge from a review of the literature. In the vignette, for example, the grounded theorist might surface “the-best-interests-of-the-children” theme based on the concerns of the parents, rather than on some a priori legal theory. The chosen theme must capture the theme associated with the words of the parties—in the vignette, “worry”, “uncertainty”, “concern for the children”, and “instability”. The practitioner would not impose this thematic category unless it was the best fit, among all potential alternatives.

Third, the researcher engages in **axial coding**, looking to see how certain substantive categories might relate to others (Strauss and Corbin, 1990, 1997). Researchers attempt to fit generic categories together framing relationships between them. In the divorce mediation vignette, the mediator might relate the general category, ‘concern for welfare of the children’, with greater emotional disequilibrium and loss of stability in the parents’ respective lives. It might well be that words like rules, stability, good-communication, and co-parenting become the second set of relevant words, forming the second category of heightened need for ‘on-going co-parenting communication’. But it is not that the researcher simply takes the categories suggested by the parties, as insiders. Rather, the practitioner has to be able to justify the chosen categories logically.

Fourth, the researcher may choose one category and relate all other categories to that one. This is **selective coding** (Strauss and Corbin, 1990, 1997). Here the assumption is there exists at least one category in any data set that strongly connects to every other relevant concept. In the vignette, the ‘best-interests-of-the-children’ theme might be such an example. The principle code selected must be the one that is most associated with the motivations of the parties.

Memo-ing one’s own reactions as they occur, or shortly thereafter, is part and parcel of the grounded method (Charmaz, 2006; Glaser and Straus; 1967). During the mediation, the mediator would simply make notes to him or herself. Invited observers could also do this while watching the parties and mediator in session. If the parties agree to allow the mediator and observers to keep their notes, then these become data memos for later **content analysis**. Memos should contain both concrete and abstract categories. Concrete categories are good for building concepts from the ground up while more abstract concepts are better for general theory development.

While Glazer and Strauss came to disagree on the level of formality necessary to develop thematic categories, they both emphasize the key tenet that one starts with the empirical evidence and then moves to create theories from the relevant emerging categories. Glazer (1992) insists on keeping the process more informal while Strauss (1990) argues for a much more formalized categorization process. Mediators must undoubtedly find their own level of comfort and style in the coding process. Mediators can use either method to discover recurring themes that characterize their respective practices.

### B. Phenomenological Sociology

Phenomenology explores the meaning of the social world through the eyes of the participants. This approach posits the concept of **Lebenswelt** or *life-world* in which people strive to make meaning of the social world. Researchers explore the formal structures of concrete everyday experiences to access this *life-world*. For Alfred Schutz (1932, 1967) who is the founder of modern phenomenological sociology, one can only know the social world through the senses. Accordingly, we form mental structures through which we experience the *life-world*. The task of phenomenological sociology is to describe, catalogue, and interpret these mental structures and their meaning for participants in their everyday lives. Alfred Schutz (1932, 1967)
went further than traditional phenomenology developed by Edmund Husserl (1927-28) to look at the significance of social experience rather than the formal structure of intentional or directed experience. The main point of phenomenology is that experience can only be known through our mental structures which are themselves the unit of analysis—the examined events. To posit anything beyond these mental structures is to simply step beyond the reach of the phenomenal world, and in Schutz' view, beyond the limits of social science can reach (Schutz, 1932, 1967).

Mediators can use the concept of *life-world* to explore the lives of the disputes through the respective descriptions of the parties. Mediators can encourage parties to reveal their inner descriptions about their interactions with others in their dispute, primarily in caucus (private session) with each party, before moving to the joint-session. Mediators can surface the frames and schema that the disputants use to describe the nature and quality of their relations in relation to particular co-disputants. Mediators would open up this phenomenological world before directing the parties toward the standard joint-problem solving frame. This approach would diverge from much contemporary interest-based practice in that it would provide the mediator with the opportunity to flesh out much more subjective meaning associated with the parties’ respective *life-worlds*, before moving the parties to the joint-problem solving frame and the respective parties’ interests. In the vignette, the mediator might explore how the spouses’ respective *life-worlds* have shifted since the breakdown of the marriage and how this shift has changed the nature of interactions after the separation. The mediator could record these descriptions to access the kinds of misattributions that often escalate social conflict and produce deadlocks. The mediator could also explore their own concept of *life-world* and how it shifts in mediation itself, in response to the responses of the disputants.

Interestingly, phenomenology is one of the disciplines to draw attention to the double-hermeneutic, discussed above. Mediators are wise to draw attention to the process of phenomenology itself to the disputants and the dangers of the double hermeneutic. As is often the case, in the vignette, by time the spouses finally see the mediator, it might well be that they can no longer see each other except through severely distorted frames—their respective their chaotic experience, filling them with anxiety, producing misattributions, and escalating a mutually destructive set of behaviors. The mediator could bring the attention of the parties to these misattributions and their predictable effects, through the phenomenological method. While this may not solve the dispute it certainly would go a long way to revealing and unpacking some of the distortions associated with family break-ups.

### C. Sociological Introspection

Closely related to phenomenology, but arguably more reductionist, is the discipline of sociological introspection advanced by Wilhelm Wundt (Blumenthal, 2001). Introspection, generally, involves examining the mental structures, shapes, and thought forms associated with certain experiences (Blumenthal, 2001). The discipline ultimately confronted much criticism because it was difficult, if not impossible, to reproduce thought forms in any objective manner (Nisbett and Wilson, 1977). Gestalt psychologists distinguished their work from introspection in that they argued that experience formed holistically rather than in elemental perceptions. They demonstrated several examples of this including the principles of pragnanz, grouping, similarity, proximity, repetition, figure-to-ground relationship, closure, and continuation (Koffka, 1936).

William James, the father of modern psychology and pragmatism, also explored *introspection*, but in the end, settled on *retrospection* (James, 1890, 1981). James (1890, 1981), reasoned that *introspection* was really *retrospection* because the instant one reflected on one’s thoughts, the thoughts themselves now shifted to a new thought, i.e., the thought of one looking at
one’s thoughts. He could not find an answer to this conundrum. Thus, for William James, only retrospection was available to conscious scrutiny, as a practical matter.

Despite these legitimate critiques, there has been a resurgent interest in the discipline of introspection. The advent of human-computer interactive technologies has, in part, fueled this resurgence. Meta-sensitive scanning devices can now virtually read the minds of human subjects, recognizing corresponding brain activity for individual words and phrases (Gray, 2010). This is more than tracking general patterns but rather recognizing individual elements of consciousness that correspond to particular words and phrases (Gray, 2010).

Introspection is linked to work on heuristics (mental short-cuts). For example, Lubell and Scholz (Retrieved, 2011) have used introspection to study cooperation, reciprocity, and the collective action. Arguably, the work of Chris Guthrie on heuristics and cognitive biases and their effects in bargaining also provides a practical use for introspection. Guthrie et al. (2007) consistently demonstrate the effects of cognitive biases and their capacity to trump rational-choice behavior in judging, decision-making, and a number of bargaining circumstances, contrary to the predictions of rational-choice theory.

Introspection, as a research tool, offers mediators an opportunity to explore the parties’ respective heuristics and reveal them in their associated thought-forms. As a practice tool, introspection could help practitioners explore their own introspected thought forms during the mediation. Often revealing such thoughts can help develop and build trust and social capital with, and between, the parties.

In recent years, sociological introspection, as an auto-ethnographic research tool, has emerged as an outgrowth of the discipline. Researchers use this method to study emotion and lived experience associated with particular social events (Ellis, 1991a). It requires the researcher to pay attention to thought-forms associated with her inner emotional experience in response to external social events (Ellis, 1991a). Mediators might use this method, both as a practice and research tool, pausing to empathize with the respective disputants at strategic points during the mediation while noting the emergent ideation associated with their experience. In the vignette, the mediator could use this approach to describe her own thoughts relevant to her interaction with the divorcing parties and any emotional chaos they are experiencing. This very act of responsibly revealing one’s own ideation tends to be disarming and ironically works to diffuse anxiety in both the speaker and the listener.

Sociological introspection takes significant practice in order for the mediator to arrive at the point at which he or she can naturally generate a continuing introspective log throughout the mediation. It requires great concentration and situational awareness. Importantly, sociological introspection is not intended as a self-indulgent exercise but rather one that can produce greater empathy and understanding. It provides a window into the less rationally-available aspects of disputes.

D. Mindfulness

Practiced regularly, mindfulness meditation tends to enhance concentration and situational awareness (Riskin, 2004). Prof. Len Riskin (2004) has introduced the practice of mindfulness meditation to both mediation and legal communities in recent years. He has successfully demonstrated the benefits of mindfulness in both these arenas (Riskin, 2004). Riskin’s work, while similar to the other self-reflective approaches, is indeed unique. For example, while sharing several common elements with introspection, mindfulness is much less structured and much less formal. Mindfulness involves gently observing from a non-judgmental
frame of mind those events that are occurring in one’s mind, body, and emotions. It explores any arena available to the senses.

Rather than becoming caught up in or captured by his or her thoughts the observer simply notices them as they occur allowing them to come and go as they may. In some ways, one might argue this is the very opposite of introspection where one is attempting to more analytically catalogue ones ideation and thoughts. Accordingly, with mindfulness meditation, the practitioner does not attempt to hang on to the thoughts or catalogue them but rather simply observe them as they naturally emerge and dissipate. Mindfulness meditation permits the attention to wander where it will, not directing it. So all the senses, thoughts, emotions, breath, and surroundings all become locations to which one’s attention may wander.

Riskin (2004) urges us to use mindful practice in mediation as a way to reflect on all aspects of interaction, thoughts, and senses. Mindfulness can produce a focused mental state in both the mediator and the parties. The mediator might practice mediation generally and rely on it more readily as a responsive strategy in face of intense emotional exchange between the parties. In the vignette, for example, the mediator might even invite the husband and wife to engage in a few short minutes of mindful practice as a way to diffuse chaotic emotion, allowing them to bargain more effectively in their own cause. The mediator might even teach the parties meditation as part of the mediation process. In the vignette, the mediator could encourage the husband and wife to meditate prior to the mediation session, and, at certain points, during the session, permitting them to develop a more responsive parenting plan.

Mindfulness practice tends to slow down one’s subjective experience of the world, increasing responsiveness while reducing condemnatory, judgmental ideation and reactiveness (Riskin, 2004). Many people in divorce disputes, as in the vignette, find themselves reacting to the other person in self-destructive, chaotic exchanges. This is a natural part of human conflict so mediators can rely on methods like mindfulness to diffuse these exchanges and empower the respective parties. At the very least, mindful practice helps one to put some conscious space between one’s immediate psycho-physical reactions and one’s communicative responses. That reflective space permits one to choose one’s response which arguably provides for greater agency and ultimately better mediated agreements.

In the vignette, the mediator might find it useful to simply observe her thoughts, feelings, and bodily sensations as the parties work through their dispute. As the parties move through various stages of the bargaining, the mediator might notice how her thoughts tend to emerge and subside. Again, this takes a great deal discipline because the mediator has to continue to be mindful not only of her inner life, but also to the external events in the mediation room. Otherwise, like with introspection, the mediator could become overly self-indulgent, which is never the goal of mindfulness. In short, with practice, mindfulness can improve mediator presence and moment-to-moment awareness in the mediation room, thereby providing a stronger experiential base upon which to build a more accurate theory of mediation.

The above use would already be very valuable to both mediators and clients. Yet, there is another potential use more directly connected to sociological research. For example, after the mediation is over, and before journaling or note-taking regarding relative successes and failures in the mediation the mediator might engage in a short mindfulness session alone, after the parties leave the room. The point here is that the accuracy of the notes would tend to improve with the benefits of mindful practice following mediation. This can provide another method by which to improve those much needed theory-to-practice connections.
E. Integrating Mediation, Participatory-Action Research and Dispute-Systems Design

Participatory-action research (PAR) encourages field research in which disputants, communities, and organizations are welcomed as active participants in the research and regarded as co-researchers (McIntyre, A. 2008; McTaggart, R., 1989; Stringer, E. T., 2007). According to this approach the researcher enlists the help of the participants themselves to help provide the data. For mediators, this could entail enlisting the support of the disputants during mediation and exploring the larger organizations and communities in which disputes occur.

Kurt Lewin (Lewin, 1946, 1958) originated the original action-research method from which PAR emerged. Lewin, like Pierre Bourdieu, above, posited the existence of fields of social activity (Lewin, 1946, 1958). Lewin viewed all disputes as occurring in some larger field of activity that exerts a myriad of pressures on the disputants, shaping their evolving interactions. Arguably, Kurt Lewin was one of the first sociologists to recognize social fields as complex adaptive systems. For Lewin, every field is composed of multi-vectored and oft counter-veiling forces which act in very predictable ways on the disputants, influencing their behavior (Lewin, 1946, 1958). Understanding the actor-to-field connections is crucial to understanding the life of any conflict within the field. In the vignette, for example, the role of third party stakeholders, such as the children’s respective grandparents, aunts and uncles, members of their extended families, neighbors, and school teachers, etc., are individually and collectively likely to exert significant pressures on the parents in what would otherwise be an isolated dispute over custody of and access to the two children. The participatory-action approach invites the mediator to explore these influences within the larger social field with the disputants treating them co-researchers.

This is where PAR can add great value to mediation, because it is idiographic in nature. It seeks to assist the clients to take action to solve the conflict, rather than remaining a ‘pure’ or dispassionate research method (McIntyre, A. 2008; McTaggart, R., 1989; and Stringer, E. T., 2007). In this sense, it is a good fit with mediation, which is also practiced on a case-by-case basis. Accordingly, the mediator, as researcher, and the clients would become partners in the research regarding the clients’ dispute. Just as in mediation, the researcher, does not retain property in the research data, but uses the information to directly assist the parties. If other stakeholders are invited into the process, those community members could also become active participants in any mediated solutions. The mediator may seek input in memos, journals, and general feedback. In larger community disputes, where confidentiality is not an issue and the mediator has consent of the parties, he or she could even employ the more community-oriented action research techniques, such as the facilitation of community group discussions, talking circles, individual confidential interviews, and town-hall meetings, and so on. In these instances, the mediator, as researcher, might then choose to emphasize the narrative approach, above, eliciting storytelling, organizational narratives, and even multi-generational oral history where appropriate, through PAR techniques (McIntyre, A. 2008; McTaggart, R., 1989; and Stringer, E. T., 2007).

There exist some notable connections between PAR and the contemporary practice of Dispute-Systems Design (DSD), a practice familiar to many mediators, wherein dispute resolvers work with organizations to design conflict-resolution systems for groups, communities, and organizations (Costantino and Merchant, 1996). This connection is not surprising as both PAR and DSD share very similar goals, i.e., to develop local, ground-up practices that best serve the community or organization in which they are developed. In addition, the notion of interests often central to both mediation and DSD is also present in the PAR research approach. In the vignette, if the spouses live in a small tight-knit community it might be useful for the mediator to help
these spouses explore the surrounding community dynamics to discover the inevitable community influences on the presenting family dispute. The mediator, as researcher, could expand the understanding of the dispute and therefore the potential set of mediation approaches. This approach, in turn, increases the potential set of solutions, from knowledge gained through PAR interviews, fact-finding, and assessment in that community. The mediator might then recommend, for example, with the consent of the parties, a Talking-Circle approach, in which a greater number of extended family members are invited to participate, particularly where those members will have an active care-giving role with regard to those children. Other disputants in that community could then also avail themselves of similar processes in the future when they are confronting like family disputes.

It is therefore worthwhile for mediators and DSD consultants to explore action research methods to enhance DSD and organizational theory in order to expand the scope and relevance of mediation practice. In sum, participatory action research can serve the goals of mediation and dispute systems design by helping to develop more tailored mediation protocols that better meet the needs of parties disputing in unique community and organizational environments.

In sum, the élan vital running through each of the above social research practices is a shared commitment to interpretive science and reflexive knowledge. Each method recognizes that social reality is mediated through the human senses and. Moreover, each method acknowledges that mediators, as social actors, act not only in the world but also on it. Integral practice that draws on these methods must therefore acknowledge inherent mediator bias and social-interaction effects, feedback loops, and associated complexity in all aspects of practice. Integral practice views these methods as mutually complementary and not mutually exclusive. See Figure V.
Each method acknowledges that the mediator and the parties are always negotiating the very nature of social reality itself. For mediation, theory development is more likely to flourish with the idiographic approach over the hard and fast nomothetic (fixed-rule) methodology. Through a reflexive, multi-iterative frame, mediators can come to develop an intuitive understanding of dispute patterns, tendencies, and valences that emerge in any field of social conflict. It is this intuitive knowledge that the integral approach must tap to accurately log effective mediation practice.
IV. Identifying *Integral* Practice Ethics

Ethics codes can help define a discipline, in either productive or unproductive ways. Developing ethics codes that are accurate and correlate with best practices in any discipline helps to undergird that discipline. Conversely, adopting ethics purely for political expedience can be self-defeating and undermine the discipline in the long run. In a rush to mimic other source disciplines such as law, discussed above, mediator organizations have promulgated ethics codes that do not always fit well the exigencies of mediation practice. Interestingly, the legal field has played a prominent role in this misbegotten adoption of certain counter-productive mediator ethics (Jarrett, 2006). The legal field produces considerable forces that act on the neighboring social spheres of activity, including the mediation field (Bourdieu, 1986). For instance, lawyers and judges are much more likely to refer cases to mediators who fit their own worldview and share doctrinal paradigms—the juridical (Bourdieu, 1986; Jarrett, 2006). It is only natural that these legal gatekeepers support what they know and recognize in their existing practices. In order for mediation organizations to receive referrals they therefore have to appeal to the juridical worldview and its associated ethics. As a result the legal field produces a significant vector shaping these emerging mediation ethics, adopted by various mediation organizations.

In order to develop ethics more integral to mediation the mediation community must develop its own more unambiguous practice-based ethics—integral ethics. In a survey of mediator ethics codes I discovered that almost all of them require the mediator to be either neutral and/or impartial (Jarrett, 2006). On the surface this sounds well and good and even desirable. As part of this study, when mediators were asked what they actually meant by impartiality and neutrality, it appeared that mediators had several divergent and sometimes contradictory notions of what these terms mean. Therefore, before we can even attempt to adopt these ethics we need to figure out what exactly they mean. Moreover, even if we could determine what these two terms actually mean, they may still not represent best practices in mediation.

The neutrality and impartiality ethics appear to have emerged from the legal source discipline and associated juridical doctrine that judges must maintain the perception of impartiality so that litigants will view the judge’s authority as legitimate and more freely comply with unfavorable decisions (Bourdieu, 1986; Jarrett, 2006). Mediation organizations appear to have un-reflexively adopted these notions in whole cloth, rather than establishing their own ethics that respond to the finely textured needs of mediation practice (Mayer, 2004). This is an unintended consequence of the fixed doctrinal approach to mediation, which produces these kinds of blind-spots and mimicry. Adopting legalistic ethics will ultimately impoverish and institutionalize mediation because it renders mediation court-lite, preventing it from developing organically as its own independent practice. If legally derived ethics worked without mediation then we wouldn’t need mediation in the first place. Mediation came along because there was an obvious need for it in the standard litigation map and we are now ironically in danger of thwarting its potential through excessive deference to legalistic ethics.

To make matters worse, impartiality or neutrality in any abstract sense in mediation may well be impossible, so as to make such a requirement absurd and meaningless (Jarrett, 2006, 2009; Mayer, 2004). We know, from the reflexive and interpretive-science perspective, observers are always working to understand and explore their own biases. Ironically, for verstehen, a key concept of Max Weber’s sociology, mentioned above, exploring one’s own biases is the only way one can truly see social reality in an unbiased fashion (Weber, 1947, 1976). The problem is that imposing the neutrality and impartiality ethics on the mediator means that that practitioner cannot openly admit bias and partiality without risking potential condemnation, poor evaluations, and even potential reprisal by the parties. If the mediator could admit and explore bias reflexively
with the parties she may well come to gain a far more impartial view of the social conflict and be of greater assistance to the parties in their efforts to resolve their dispute.

Imposing neutrality and impartiality may not only weaken the potential of mediation practice it might even exclude certain forms of mediation, contrary to Standard IX promulgated by ACR, AAA, and ABA, discussed above. It would indeed appear that the neutrality and impartiality ethics contradict the diversity ethic contained in Standard IX. Certain mediation practices that do not align themselves with standard legal doctrine may be the casualties of imposing whole-cloth ethics without modification from originating source disciplines. For example, ho'oponopono practitioners in Hawaii, Peace-making mediation among Native groups in North America, and South East Asians have reported that imposing neutrality and impartiality requirements would actually work to undermine effective practice (Honeyman, 2004; Jarrett, 2009).

Often indigenous protocols work best through the mediation work of wise and respected Elders. These Elders are often effective precisely because they are connected to the parties by relation or social proximity. To require such a practitioner to have no prior relations with parties or biases toward certain issues including family, community, and health might well prove counter-productive to the mediation process (Honeyman, 2004; Jarrett, 2006, 2009). Yet the Uniform Mediation Act, adopted in several states, like many organizational ethics codes prescribes impartiality, unless expressly waived by the parties. Do we simply redefine and exoticize their practices to exclude them from the reach of mediation’s logic and debate? This may well effectively eliminate Wise-Elder Mediation as a form of practice because it cannot be so narrowly constrained.

One can apply the same logic to several sectors of practice including, among others, victim-offender mediation, family mediation, child-protection mediation. For example, in family disputes, it would be unreasonable to require the family mediator to remain neutral and unbiased toward the interests of the child. Like-wise, in victim-offender mediation cases it would be unreasonable to expect the mediator to remain issue-neutral on matters of serious crime. Surely, in these areas, we would reasonably expect the mediator to be expressly biased and evidently partial. Crime victims have a right to be free of crime and children have a right to good parenting, respectively. In the vignette, for example, we would surely all hope that the mediator would favor the best interests of the child and depart from neutrality on this issue, where necessary.

In sum, these simple examples quickly demonstrate the problem of imposing inappropriate ethics on the practice of mediation. Placing unnecessary and misleading restrictions on mediators only impairs their ability to engage in effective practice. The problem is that mediation cannot be easily normalized as a dispute-resolution process, so we need integral ethics that represent the finely textured variations associated with each manifestation of practice. The integral approach must therefore develop conduct codes that permit a variety of approaches. Integral codes could define mediators broadly as those third parties who assist others to negotiate their conflicts and then work out directives for particular applications. Regarding, neutrality and impartiality ethics, in particular, the integral approach would pursue ethics that support mediation fairness, so that all sides are fully informed and have a reasonable chance to communicate their respective interests, rather than imposing judicial ethics based on courtroom norms. Fairness could be maintained, for example, by requiring mediators to encourage the parties to seek independent legal advice regarding any mediated settlement. In conclusion, the integral approach requires us to re-think our notions of what constitutes good mediation ethics.
V. Applying Hypothetical Integral-Mediation Techniques

The integral approach recognizes and explores the natural movements in mediation, rather than seeking to maintain a fixed a priori approach. The mediator does not force any particular direction upon the parties. The integral skill-set lies in recognizing the difference between party-directed changes in direction versus movements resulting from coercion. In the vignette, for example, the mediator would briefly describe the prominent approaches to mediation right at the outset and let the divorcing parties decide how they wish to proceed. The parties may seek one or a combination of approaches that the mediator would apply at different times during the mediation. The mediator would also reveal the approaches she is willing and able to apply in the mediation. In describing up front the various approaches in a forthright manner the mediator preserves the agency of the parties and her own professional integrity.

This does not mean that the mediator is completely non-directive. The mediator may steer the process relying on professional judgment guided by reflexive practice discussed in Section III, above. The mediator may assume directive authority where appropriate and to the degree to which she is comfortable. This process is tantamount to Peters and Waterman’s loose-tight management properties where the process maximizes the individual autonomy while maximizing the benefit of legitimate mediator authority (Waterman and Peters, 1982). The degree of their co-existence is part of professional, reflexive discernment. For example, in the vignette, after the customary setting of ground-rules the parties may initially seek a hands-off approach from the mediator. Often parties entering mediation wish to direct their attention to issues they deem relevant. The integral mediator would respect the parties’ mutual choice to discuss, for example, child-custody arrangements, over a myriad of other related family issues.

Although issue-reframing is the next standard ritual of many mediation trainings mediators do not need to follow this practice slavishly. It is merely one tool among many. Reframing exercises that assist the parties to contextualize the dispute are often useful but by no means absolutely necessary. In the vignette, as the parties discuss the custody arrangement, they may attempt to assert legal positions concerning custody and struggle through these positions to gain control and create meaning with regard to their parenting responsibilities. The mediator may help the parties to reframe the issue as a joint concern over safety for the children but that frame may later yield to another as the mediation progresses. Re-framing is a useful technique for narrowing a dispute, but its over-use can become its misuse. The mediator must gauge the relative value of this approach vis-à-vis others in the moment she chooses to adopt it. If parties continue to be engaged then the mediator may find it useful to continue with it. If not, the most effective course for the mediator is to seamlessly move on to adopt another approach.

The reflexive mediator notices voluntary shifts and constantly seeks micro-agreements for any new shift in movement throughout the mediation process. These shifts are recognizable because they are often accompanied by expressions of frustration, anger, fear, resistance, or any other myriad of emotions. The mediator might wish to help the parties follow these shifts, but only to the extent the parties benefit from, and agree to, them. In the vignette, this might mean that the parties set aside the initial frame of the legal custody arrangement to explore the broader emotive aspects associated with child welfare. The mediator would simply note the qualitative shift in direction and gently encourage the parties to explore these broader aspects, if they so agreed. If the parties had set ground rules at the outset, agreeing to discuss solely legal matters, then the mediator would remind the parties of this and seek both parties’ agreement to follow the newly emerging theme, adjusting the ground-rules as needed. Often, the parties need to explore the broader emotional life of the dispute before they are able to move to more narrow substantive issues, and integral approach allows them to do this.
A. Bracketing

If, on the other hand, one of the parties did not want to follow this particular shift in movement into the broader emotive dimensions then the mediator would have to assess whether both parties could still have a productive mediation on the custody arrangement or other narrower financial matters alone. If the parties could still work out practical matters in the interim then the mediator might invite the parties to consider *bracketing* the broader emotional concerns temporarily to address the more immediate, practical parenting and financial arrangements. Sometimes this latter approach can at least have the parties build some basic interim agreements on parenting plan, visitation, asset division, and the like, without having to solve the parties’ larger emotional grievances, which the parties can still address in mediation at a later time. The mediation process can therefore become either broad or narrow depending on the direction the parties choose to follow.

This *bracketing* technique can be counter-intuitive for many practitioners—particularly those with training in counseling and social work. Nevertheless, on a short-term basis it is often the only way to sort out the immediate needs of the parties and their children, without resorting to draconian measures imposed by the court. In addition, mediators report that parties are more likely to follow agreements even if narrow in scope, over court-imposed orders. These narrow mediated agreements therefore have a practical utility, even if they don’t address the larger issues in dispute. The integral approach therefore countenances practices that support these narrow interim agreements.

If the parties at some point choose to explore the broader, emotive dimensions of the dispute then the integral practitioner would be prepared to do so as well. For this shift she will need a different set of strategies than those that seek to narrow the issues to immediate concerns about short-term practical parenting and financial arrangements. It may be that a more humanistic or transformative approach might be useful but the mediator cannot presume so. Instead, the integral mediator would inform the parties of the value of a more humanistic approach and invite them to consider shifting their work in that direction. In the vignette, for example, the mediator would seek consent from the parties to open up the discussion to relational themes including shared child-caretaking, re-defined and newly-emerging relationships, aging, mutual recognition of contribution to the relationship, mutual empowerment in face of the new respective social realities.

B. Shelving

The *integral approach* requires the mediator to seek micro-agreements at every turn that allow for a shift from one approach to another throughout mediation. In the vignette, the mediator need not simply drop the financial or legal matters, which as a practical matter, requires a resolution but rather encourage the parties to return to them at a later time. The mediator would simply encourage the parties to *shelve* the matter while they explore a new shift in direction. The mediator would use *shelving* to remind the parties later at strategic times that they agreed earlier to address certain other matters which allowed them to fully concentrate on more immediate concerns. The integral practitioner recognizes the potential for a myriad of effective shifts that are facilitated by shelving. This shelving technique unlocks creative energy during mediation and minimizes interference with this energy’s natural flow, by providing a way to reduce distraction.

Practitioners often report themes that emerge in the conversational foreground and then dissipate and recede into the background during any mediated discussion. Continual adaptation through micro-agreements is the key to navigating these organic shifts for the practitioner committed to integral practice. In the vignette, for example, the parties, having aired emotional
matters, may then desire to shift again, making statements about the ‘best interests of the child’. This shift may signal the parties’ wish to explore interests or it may be a proxy for a legal position that requires the mediator to engage the parties in an exploration of interests, as the Harvard Method would prescribe (Fisher and Ury, 1981). In either event, if the integral practitioner concludes, upon reflection, that the parties would benefit from exploring their respective interests, then she would readily switch to an interest-based approach. Accordingly, she would then assist the parties to determine their respective interests, so that they were evident to each other. While the practitioner readily shifts to the interest-based approach she is also ready to let it go when she perceives an impetus to shift away from the interest-exploration exercise.

C. Validating

Facilitative and evaluative approaches are not logically incompatible, as often claimed, precisely because the integral practitioner can use bracketing to separate the respective facilitative and evaluative exercises. It is even possible for the integral mediator, with proper authority, to engage the parties in facilitative interest exploration with regard to evaluative issues, such as the legal requirements for custody, child support, spousal maintenance, and asset division. The integral mediator could explore interests around these issues in a facilitative way, but proceed to become the agent of reality with regard to the viability of party-proposed solutions upon completion of the facilitation-based exercise.

The mediator would make abundant use of caucus for this purpose as well as the joint meeting. In the vignette, the mediator could for example address the legal requirements for custody and access or visitation by asking questions that explore the ability of the respective parents to meet these requirements. In the vignette, the mediator would first engage in the facilitative questioning to arrive at a set of solutions. She would then provide, if so requested, an evaluation of the potential solutions by the parties. Where the mediator uses two or more distinct approaches to get at one particular matter, we call this validating—that is, the mediator actively uses two or mediation approaches to validate the same issue in dispute.

Because the integral practitioner does not restrict her approach, she could, with legitimate authority and mutual consent, adopt a more evaluative approach, but she has to be cautious in doing so. In the vignette, for example, the lawyer-mediator might provide an evaluation to the divorcing parties. A non-lawyer mediator could request a legal opinion from a lawyer to assist the parties. In either case, the mediator would make abundant use of the private session or caucus as well as the joint-session for the discussion of evaluations. The use of private session often reduces the risk of reactive devaluation that may occur in the joint session.

D. Linking

It is important to distinguish validating from the process of linking, a process in which the mediator assists the parties to address two different but dependent issues. For example, in the vignette, the mediator might address custody and visitation or access within the same approach. She would assess which approach would best reveal the link between the two related issues. This is a judgment call in each and every case. Note that using one approach does not exclude the use of others, but timing is important. If the mediator adopts the evaluative approach it may be more difficult to move to a facilitative, or even transformative or humanistic approach later on in the mediation through ‘anchoring effects’ created by the evaluation. The integral mediator is therefore always mindful of the timing of each approach.

Let us suppose the mediator is conducting this particular mediation in a culturally-bound community. Mediating in this particular context can create disputing dynamics that require the
mediator to explore party interactions with the surrounding community. For example, the Amish, members of a Kibbutz, Mennonites, Hutterites, Native Hawaiians, various indigenous groups, etc. share this common theme in which the parties are mediating within the smaller surrounding community as well as in the larger society.

E. Surfacing

There are often power dynamics in these communities that benefit from a more narrative approach. To ignore these dynamics invites entrenchment and deadlock and the possibility of unfair agreements. Instead, where appropriate, the integral mediator would invite a shift toward the narrative as parties wrestle with the various issues in dispute. This could entail the mediator surfacing larger historical narratives and community dynamics, beyond those of the immediate presenting dispute. In the vignette, if the wife raised the issue of women in the community experiencing discrimination in allocation of property and resources, then the mediator would allow this party to explore this theme in the mediation, before discussing parenting arrangements and the like. It is often useful for the other party to hear this narrative, even if he does not agree with it, precisely because it opens up possibilities of authentic communication.

Winslade and Monk (2000) have ably demonstrated the value of the narrative approach for the exploration of power dynamics. They have demonstrated the value of narratives in providing natural shifts toward value-orientation and collective identity, which often undergird presenting disputes. Jay Rothman (1997) also reminds us of this link between the narrative and identity-based conflict. Allowing a space for story-telling in mediation is useful if it surfaces narratives that fuel the dispute and prevent its resolution. It can be useful for the integral mediator in this circumstance to explore the narrative in the caucus first and then carefully return the parties back to the joint session after they have fully developed their respective narratives. The mediator does this because the telling of the narrative in private session, while full of sound and fury, will often dissipate its caustic energies and refine its edges for the later joint session. This also permits the mediator to help communicate its essence better to the other party later in the joint session.

In the vignette, the mediator opening up a narrative effort, could assist the parties to explore a host of issues concerning extended family, friends and supporters in the local community, local institutions, government bureaucracies, and the parties’ relations with the larger surrounding community. Listening to narratives would likely reveal the story not only of the divorcing couple and their children but also of the surrounding community itself in which this particular family dispute emerged. The mediator would work to surface and unpack narratives that reveal power relations and social forces within the surrounding community that impinge on and motivate the seemingly isolated choices of the parents in the dispute. For example, the parents may reveals difficulties in accessing community resources for the children, which often gives rise to conflicts between the parents—a source of tension the parents can often misattribute to each other. In this way, exploring narratives often reduces the prevalence of these misattributions and increase the possibility of resolution.

In sum, in this divorce vignette, one can readily see how an integral practitioner could adopt relatively simple techniques to shift between several approaches during mediation. Integral practice does not privilege one particular approach over others. Nor does it require transformation above all else. Rather it focuses on the given party’s choices and insists on coherence and continuity throughout the entire mediation, through reflexive practice. Employing relatively simple techniques like bracketing, shelving, validating, linking, and surfacing assists the mediator to work coherently and seamlessly in this regard.
Conclusion

If mediation is to succeed as a valuable multi-disciplinary practice, it is imperative that the mediation community acknowledge and support the integral approach implied in Standard IX of the ABA, ACR, and AAA respective ethics codes. Currently there is a substantial gap between theory and practice and an unduly constrained conception of what mediation can be. A significant part of the problem stems from a reluctance on the part of the mediation community to challenge claims of brand distinction emerging in the mediation field. While branding may serve to increase market-share for its respective brand proponents, unchallenged, it risks unduly restricting and thereby impoverishing mediation as a coherent and integrated professional activity. The challenge for the mediation community is both modest and ambitious at the same time. It is modest in that it requires the mediation community to acknowledge and validate what is already happening in the practice of mediation. It is ambitious in that it invites the mediation community to explore and clearly articulate integral possibilities which call into question claims of brand exclusivity and superiority. In a nutshell, integral mediation represents the brand-free open-source alternative. As such it invites both scholars and practitioners to work in concert to explore, expand, and inter-relate various aspects of mediation theory and practice in order to unlock mediation’s great potential.

References


In numerous case interviews (155), I found mediators would initially report their espoused approach only to reveal later in private that they had serious doubts about being able to maintain their given approach throughout the entirety of any given mediation. In fact, mediators would often reveal that they felt the need to maintain a public commitment to one approach to continue to receive referrals from various groups, organizations, and institutions.

Jürgen Habermas defines the public sphere as follows.

“...a discursive space in which individuals and groups congregate to discuss matters of mutual interest and, where possible, to reach a common judgment. ...a theater in modern societies in which political participation is enacted through the medium of talk" and "a realm of social life in which public opinion can be formed."

Standard IX Code of Ethics for Mediators. Adopted by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution.


Mediation, as a discipline, occupies a privileged, albeit uncomfortable, station in academia as it stands at the cross-road between academia and practice. Maria Volpe and David Chandler have aptly described the role of those who combine teaching academics and practice as that of the ‘Pracademic’. In terms of social network analysis Pracademics often serve as nodes in the networks between the universities and industry. Because of this role, Pracademics, who mediate have a significant opportunity to inform mediation practices with the discourses and debates of social science.

Uniform Mediation Act, promulgated by the National Conference of Commissioners on Uniform State Laws. Website:

Restorative Community Conferencing is a dispute system design strategy espousing principles of restorative justice that has been formally adopted by the Department of Health and Social Services in Yukon, Canada to respond to juvenile crime. In May 2010, the University of Alaska Fairbanks Justice Department hosted an intensive training provided by the Yukon’s Youth Justice Restorative Community Conference Program Coordinator on restorative justice philosophy and this specific conferencing practice. This article reviews and discusses restorative justice generally and describes the operation of restorative community conferencing (referred to hereafter as RCC) specifically. Based on suggestions found in the restorative justice and dispute systems design literature and personal observations made at this training I recommend three considerations to those developing alternative, restorative-focused juvenile crime resolution strategies. First, agencies or community groups should engage the community and other stakeholders in early discussion regarding the concept of restorative justice. This helps ensure that strategies are guided by a common understanding of values and outcomes desired from the resolution process. Second, great effort should be made to include these same individuals in the actual design stage of the alternative dispute system design. Third, flexibility needs to be emphasized, embraced, and built into the process itself. Future research needed in this area includes, but is not limited to, analyzing the extent RCC fits organizational design strategies recommended by dispute systems design experts and the extent to which the program is achieving intended restorative goals.

Introduction

Frequently, governments are called upon to more effectively address crime and conflict, and they are turning to restorative justice as a solution (Van Ness & Strong, 2010). Alaska is experiencing this call. Many states, like Alaska, have full prisons, overflowing criminal dockets, and alarming recidivism rates. A recent Fairbanks, Alaska newspaper column noted Alaska’s growing incarceration rate and corresponding rise in correctional costs (Fairbanks Daily News Miner, Jan. 30, 2011). The columnist referenced the Alaska Department of Corrections deputy commissioner’s recent comments to the Senate Judiciary Committee. According to the commissioner, Alaska’s incarceration rate has more than doubled since the 1980s, two out of three prisoners are re-incarcerated within three years for violating probation or committing another crime, and if the State’s intervention efforts do not change Alaska can expect to require twice as much prison space by 2030. Referring to the State of Texas’ successful increased focus on treatment, the deputy commissioner said: “[t]he Texas experience is illustrative of what Alaska is clearly able to accomplish with leadership, vision and commitment to invest wisely today in best practices that have been shown to reduce prison growth, cut state corrections spending and serve to make Alaska’s community safer and healthier places to live. This is the Cost Effective justice approach.” Embracing restorative justice philosophy and implementing
processes designed to achieve its goals are best practices that can reduce prison growth, cut correctional costs, and strengthen the health and safety of our communities (Sherman & Strang, 2007; Umbreit, Vos & Coates, 2006, Umbreit, Coates & Vos, 2004; Zehr, 2004). Restorative justice philosophically shifts our view of crime and our response to problematic behavior. Rather than viewing crime as a violation against the government and determining the appropriate level of punishment, restorative justice focuses on determining what actions are necessary to repair the harms caused by an offense, actively involving the offender in these reparation efforts, and assisting victims and offenders in growing closer to the community (Bazemore & Schiff, 2001; Pranis, Stuart & Wedge, 2003; Umbreit, Vos, Coates & Lightfoot, 2005-2006; Van Ness & Strong, 2010; Zehr, 2002).

Restorative justice literature commonly refers to specific processes implemented in Northwestern Canada, such as Peacemaking Circles and Circle Sentencing (Bazemore & Schiff, 2001; Van Ness & Strong, 2010). In May 2010, the University of Alaska Fairbanks Justice Department invited Valarie Binder, the RCC Program Coordinator for Youth Justice, Department of Health and Social Services, Yukon Government (referred to hereafter as Yukon Government) to train participants how to use restorative justice with juveniles.ii The Yukon Government, and Ms. Binder specifically, generously shared their experience, knowledge, and training materials with a group of interested justice practitioners, faculty, students, and others gathered at the Fairbanks campus.iii

There were two training sessions. The first focused extensively on what restorative justice is and its fundamental goals and underlying values. Participants received a “Restorative Justice: Principles, Practices, and Implementation” manual (referred to hereafter as the RJPPI manual) to accompany the first session’s instruction. The second session focused on conferencing specifics and facilitation skills. Participants received a “Facilitating Restorative Community Conferences” manual (referred to hereafter as the FRCC manual) to accompany session two’s instruction.iv

While information on restorative justice philosophy and the conferencing method is readily available from other sources, the Yukon Government’s particular application of conferencing adds new experience to the collective body of knowledge in this field. This experience provides a specific example of a governmental effort to implement restorative justice philosophy for others seeking to develop and implement their own alternative strategies. Additionally, it provides a case study for future research in restorative justice and dispute system design. This article focuses on the former – holding the Yukon Government’s restorative community conferences out as an example – and leaves the case study for effectiveness for another day. This article describes the concept of restorative justice generally and the Yukon’s conferencing model specifically, shares personal insights gained through participation in the training, and discusses how future efforts to develop restorative processes can be more effective.

I. Restorative Justice Philosophy

Restorative justice is a guiding philosophy broader than any one specific approach (Bazemore & Schiff, 2001; Umbreit et al., 2006). Restorative justice views crime and the response to crime through a different philosophical “lens.” Crime is considered important because of the harm it causes others, and effective responses involve efforts to repair the specific harms caused in ways that strengthen weak ties between victims, offenders, and their communities (Zehr, 1990). Through this lens punishment takes a back seat to reparation and reintegration.
Restorative justice expresses fundamental values and principles necessary for an effective conflict resolution process (RJPPI, 2010; Van Ness & Strong, 2010). A restorative process requires (1) focusing on the harm that has resulted; (2) assisting offenders fulfill their reparative obligations to others; and (3) victim, offender, and community engagement and participation (RJPPI, 2010; Umbreit et al., 2005-2006; Van Ness & Strong, 2010). Stated differently, “[r]estorative Justice requires, at a minimum, that we address victim’s harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders and communities in the this process” (RJPPI, 2010, p. 11).

Victims, offenders, and communities collectively identify harms, needs, and obligations in a unified effort to heal and put things as right as possible (Braithwaite, 1989; Van Ness & Strong, 2010; Zehr, 2002). This empowers those most impacted by a crime, helps offenders actively meet their obligation to make amends, and encourages others to support victims and offenders in the reparation and healing process (Zehr, 1997; Umbreit et al., 2005-006). When these occur there is greater probability of victim satisfaction (Umbreit et al., 2006) and offender reintegration because communities see persons taking active efforts to heal rather than passive accountability through punishment (Braithwaite & Roche, 2001).

A. Restorative Justice is focused on repairing the harm

Restorative justice’s focus on rectifying damage, not merely on punishment or “just desserts,” is perhaps its most defining characteristic (RJPPI, 2010; Umbreit et al., 2005-2006; Van Ness & Strong, 2010). Our current retribution-based model of justice focuses extensively on punishment-oriented concerns such as who committed the crime, what laws were broken, and how should the person be punished? Restorative justice focuses on distinctively different questions such as what harm has occurred, what must be done to repair this harm, and who is responsible for this repair (RJPPI, 2010; Umbreit et al., 2005-2006; Zehr, 2002)? These latter questions demonstrate restorative justice’s goal of identifying ways conflict or crime has impacted specific victims, offenders, and communities, and discovering ways to remedy these harms and mend damaged relationships. To this end, restorative justice is often referred to as a peacemaking process.

B. Restorative Justice Encourages and Assists Offenders to Fulfill their Obligations

Harming others creates an obligation to make things right. Full restitution is not always possible, but processes should encourage and allow offenders to make personal reparative efforts to those they have harmed (Claassen, 1996; Van Ness & Strang, 2010; Umbreit et al., 2005-2006). These reparative efforts take numerous forms, but to remain in harmony with restorative justice goals and values, reparative efforts should not be viewed as punishments or restrictions. When viewed as punishment reparative efforts become a form of passive responsibility. When viewed as obligations to repair damage caused to the victim and community the offender is taking personal, active responsibility for their choice (Braithwaite & Roche, 2001). Incarceration and other punitive restrictions may temporarily serve community safety goals, but in and of themselves they fail to increase understanding of how crime has harmed others or make amends (RJPPI, 2010).

When offenders fulfill their obligation to repair and seek reconciliation for the harm they caused it draws upon the offenders’ strengths and reminds themselves and their communities that
they remain an important part of the community. This process condemns wrongful behavior while still treating offenders with respect (Umbreit et al., 2005-2006). Supporting offenders in their reparation efforts and incorporating tasks that simultaneously build an offender’s competencies increase the level of reintegration (Pranis et al., 1998; RJPPI, 2010).

Strategies focused on punishment are ill suited to provide meaningful victim reparation or offender reintegration. Restorative justice focuses on obligations rather than punishment. All requirements imposed on the offender should be viewed as ways fulfilling this obligation. People feel good about those who meet their obligations, and that includes the persons who fulfill them. Crime often damages relationships and trust. Restorative justice emphasizes the value of respect and positive relationships by demonstrating a respectful process aimed at restoring damaged relationships.

C. Restorative Justice Encourages Victim, Offender, and Community Participation

Restorative justice encourages ownership of community conflict and discord (Christie, 1997; Van Ness & Strang, 2010). Rather than shifting disputes to a government agency to resolve, restorative justice seeks victim, offender, and community ownership in conflict resolution. All are viewed as stakeholders in the conflict and should aid in identifying the harm created, suggesting possible reparation efforts, and assisting in the process of healing and reparation (RJPPI, 2010; Umbreit et al., 2005-2006).

Victim involvement validates them as members of the community whose opinions and feelings matter. It also enables the offender and community to understand the ways crime has impacted the victim (Braithwaite, 1989; Van Ness & Strong, 2010; Zehr, 2002).

Direct involvement of the offender aids in understanding the reasons and contributing factors for the offense. It provides insight into the offender’s character and situation which helps identify realistic ways the offender can seek reparation. Direct involvement allows greater opportunity for sincere apology and active reparation efforts which help victims andocket

Community involvement is fundamental to an effective restorative response (RJPPI, 2010; Umbreit et al., 2005-2006). Our Western legal systems create a professionalized process that, in a sense, steals ownership of community conflict. This government ownership in the name of protecting society’s interests actually dis-empowers citizens, offers little to restore victims, and alienates offenders (Achilles & Zehr, 2001; Crawford & Clear, 2001; RJPPI, 2010; Umbreit et al., 2005-2006). Conflicts become depersonalized and invisible to the very group with the vested interest in the process used and outcomes achieved (RJPPI, 2010). Restorative justice takes the opposite approach by promoting broader involvement to help ensure the full impacts of crime are identified, that responses are culturally relevant and communities identify conditions contributing to the problem (RJPPI, 2010). Community participation also reinforces social norms of acceptable behavior and fosters community self-reliance (RJPPI, 2010; Van Ness & Strong, 2010). Yet to be restorative-focused, community involvement should build local capacity and express community condemnation in constructive ways that encourage and assist offenders in their efforts to correct their errors and rejoin the community (RJPPI, 2010).

Ultimately, restorative justice seeks to move from a system where the justice system works separate and independent of the community to a system where the government follows community leadership because it views the community as an effective problem solver. When this occurs, formal justice professionals operate in support of community efforts and goals while protecting the rights of individual parties and ensuring fairness in the process. (RJPPI, 2010).
II. Restorative Community Conferencing

Restorative processes are numerous, ranging from victim impact panels, circle processes, mediation processes, community reparative boards, and conferencing processes (Bazemore & Schiff, 2001). These processes vary in style, but can be united in their focus on restorative goals and values. Specific conflict resolution strategies are more or less restorative depending on their ability to satisfy each of the core objectives of restorative justice (Van Ness & Strong, 2010). The Yukon Government currently uses a conferencing model in juvenile offenses, and the thrust of the 2010 training focused on teaching these conferencing specifics and facilitation skills.

A. The Restorative Community Conferencing Process

Group conferences vary in name and style, but each tends to use group discussion attended by a combination of victims, offenders, their respective family members or other support persons, and some additional community members such as government representatives (Bazemore & Umbreit, 2001; Umbreit et al., 2006; Van Ness & Strong, 2010). Conferencing is a traditional dispute resolution approach practiced by the Maori people of New Zealand. Social service providers in New Zealand recognized the benefits conferencing had amongst the Maori and formally adopted this process. Conferencing entered the New Zealand criminal justice system in the late 1980s when legislation made conferencing the standard response for juvenile crime (Bazemore & Schiff, 2001; RJJPI, 2010). In the criminal justice context, conferencing can be used in diversionary settings (pre-arrest, pre-trial, and pre-sentence) or for post-sentencing decisions (probation, incarceration, pre-release planning) (RJJPI, 2010; FRCC, 2010).

The Yukon Government adopted the conferencing process, referred to as restorative community conferencing, pursuant to the Yukon Criminal Justice Act for use in juvenile offenses (FRCC, 2010). This Act mandates young offenders be given the opportunity to participate in conferences. Victims, offenders, and their family or support groups are all involved. The process is directed by facilitators trained in restorative justice philosophy generally and the conferencing process specifically (FRCC, 2010).

RCC in the Yukon begins when a matter is referred to a trained facilitator by the court or law enforcement officials. The facilitator then initiates the process by conducting pre-conference meetings with the victims, offenders, and their identified support persons to determine their willingness and appropriateness to participate in a restorative community conference. If appropriate, the facilitator arranges and conducts a group conference attended by the various parties (FRCC, 2010). These conferences predominately use the circle setting, but unlike a general talking circle, conferences limit community participation and follow a prescribed discussion format (FRCC, 2010). Generally, the conference results in a written agreement detailing the reparation actions required of the young offender. The process is voluntary and focuses on engaging support systems available to the victims and offenders (RJJPI, 2010).

Specifically, RCC consists of the following steps or stages:
1. Pre-conference meetings with all of the major parties;
2. Conference introductions;
3. Explanation of the roles of the participants;
4. Establishing guidelines for the process;
5. Participant descriptions of the incident and its impacts;
(5) Collaboration on how the harm can be repaired and future incidents prevented;
(6) Formation of a written agreement by all parties;
(7) The signing of the agreement; and

Conferencing is not appropriate in all cases (FRCC, 2010). Voluntary participation is necessary for active acceptance of responsibility. Offenders cannot effectively participate unless they are willing to admit to the harm done, demonstrate a willingness to problem solve, and will accept their obligations to make needed amends (FRCC, 2010). Similarly, community involvement is destructive if it cannot focus on condemnation of the offense and associated behaviors, and instead becomes a forum for condemning victims or offenders as persons. To this end, facilitators must seek to address the readiness and willingness of each party to move towards reparation and reconciliation.

B. Pre-Conference Preparations

Facilitators educate potential participants about the conferencing process through pre-conference meetings. These meetings provide information about the conferencing process, how it contrasts with traditional court processes, and its potential benefits and risks. This allows the parties to make an informed decision regarding participation (FRCC, 2010). These meetings also enable the facilitator to gauge the receptiveness and readiness of the participants for the process. If conferencing is deemed appropriate, facilitators use these meetings to make arrangements for the actual conference such as determining the location, time, and who will be attending.

Conducting meaningful pre-conference meetings with victims and offenders is imperative. Continuously, Ms. Binder stressed the need for pre-meetings and noted this stage of the process takes up the majority of time she spends on any single case. Sometimes multiple visits are required to access the capability of the parties to successfully conferencing together and adequately prepare them for the process (FRCC, 2010).

Facilitators assist the participants in gaining comfort with the process by demonstrating active listening, caring, and empathy in the initial pre-meetings. Facilitators help these parties develop realistic expectations regarding the outcome of the conference and develop a strategy for dealing with potential challenges and complications that may arise in the conferencing process. Ultimately, the facilitator must decide on the appropriateness of convening a conference (FRCC, 2010).

Pre-conference meetings begin with the offenders. This avoids developing a victim’s false hopes regarding a conferencing opportunity (FRCC, 2010). Often initial contact is made by phone, but facilitators request a personal visit with the offenders and their parent or guardian if the offender is a minor. This personal visit is essential for determining the appropriateness of the conference because attitudes and concerns can better be detected (FRCC, 2010). Offenders often engage in common mental justifications for their actions such as displacing responsibility to others, minimization of the consequences, dehumanization of the victims, and justification based on the similar wrongdoing of others. Facilitators must assist offenders move past these justifications if offenders are to accept responsibility and stand accountable (FRCC, 2010). The facilitator and offender explore realistic ways to make up for the harm done and identify persons who can offer support through this process (FRCC, 2010). Meetings with young offenders will occur in the presence of a parent or guardian. The Facilitator should allow the parents to share their feelings and validate their concerns, but should try to access the youth’s willingness to participate and the appropriateness of conference participation (FRCC, 2010).
Next, the facilitator contacts each victim in a similar fashion to determine their willingness to participate. Facilitators should not try to sell conferencing, discuss the needs of the offender, or minimize the impact of the crime during pre-conference meetings with victims (FRCC, 2010). Additionally, the facilitator should not promise things outside their control such as how an offender will react in the conferencing process. Facilitators should be prepared to address a victim’s questions such as what will happen if the other party refuses to cooperate; what other recourse is available; and how the victim will be benefited (FRCC, 2010)? These meetings allow victims to vent their anger and frustration; understand the difference between the conferencing process and traditional court processes; learn about the attitude and circumstances of the offender (if the offender permits sharing this information); make an informed decision about participation; develop realistic expectations of how the offender might repair the damage they have caused; decide who they wish to speak first at the conference; and help the facilitator identify persons who could offer them support during this process (FRCC, 2010).

During initial visits the victims and offenders identify support persons to attend the conference with them. The facilitator must meet with these individuals and explain the purpose of conferencing and their role in that process. (FRCC, 2010). These support persons can be family members, friends, teachers, co-workers, coaches, or any other person who can offer support. Other community members appropriate for the gathering are also identified, recruited, and prepared for conference attendance. These are often persons whose occupations require involvement such as arresting officers, school administrators, and probation officers. It may also include community members connected with the incident or persons involved (FRCC, 2010).xi Community members affected by what has occurred belong at a conference, but if they are seeking involvement for vengeance their attendance is inappropriate. The facilitator must invite those who belong, avoid those who are not appropriate, and make sure everyone is clear on his or her role in the conference and the purpose and goals of conferencing (FRCC, 2010). Conferencing should include as many of the persons impacted by the harm as possible, provided the participants are informed who will be there and feel safe about participating (FRCC, 2010).

C. The Community Conference

Facilitators arrange a safe site for the conference and create a setting that enhances the restorative nature of the process. This is accomplished through room selection, seating arrangements, and the discussion format. xii For example, participants are generally seated in a circle because this fosters the idea of working toward a common goal (FRCC, 2010). Additionally, refreshments are provided as a mental reminder of the restorative objective of the gathering, and they provide a way for participants to relax and interact at the conclusion of the conference (FRCC, 2010). The atmosphere in conferences will vary depending on the nature of the offense, attitudes of the participants, and the facilitator’s style (FRCC, 2010).

Facilitators must set a relaxed tone, but maintain some formality to the conference. Conferences are generally conducted in the following order: (1) introductions are made and preliminary matters addressed by the facilitator; (2) participant’s share their stories, views, and feelings about the offense; (3) the discussion turns to group consensus building regarding reparations needed; and (4) these decisions are documented in a written reparation agreement that is signed by the offender and the conference closes (FRCC, 2010).

Preliminary matters begin with the facilitators introducing themselves and explaining their role. This is followed by participant introductions. The facilitator also re-explains the purpose, agenda, and ground rules for conference conduct. Following these preliminary matters, participants have the opportunity to discuss the matter. For victims it is usually an explanation of
how the offense has harmed them and the impacts felt. For offenders it is an explanation of their conduct and feelings about what they have done. There is a specific speaking order in the conferences. Victims are given the choice of speaking first or having the offender go first. If victims have no preference, the facilitator makes this decision which generally has the offender speaking first. Once victims and offenders have addressed the group, the victim’s supporters share their thoughts, followed by the offender’s supporters doing the same (FRCC, 2010). After all have had the opportunity to speak, the facilitator gives the offender the opportunity to respond to anything that was said. Hearing the stories may conjure up remorseful and apologetic feelings that should be shared.

The discussion should move to how the identified harms caused can be rectified. The victim and the offender are asked to suggest how the harm can be repaired. After both have made their suggestions the facilitator asks for ideas from the various supporters and other community members (FRCC, 2010). To help foster discussion, the facilitator may remind participants of some reparative options, including financial payment to victims, work for victims, work for the community, an apology, and anything else aimed at healing harms yet stays true to the restorative non-punitive focus of the conference. (FRCC, 2010).

The group should come to a consensus decision about what is to be done and document this in a reparation agreement. The FRCC manual (2010, pp. 99-100) contains a sample reparation agreement. The agreement should be written down in specific, attainable, and measurable terms. The facilitator then closes the conference.

D. Roles of Conference Participants

Victims are participants and a primary objective of the process is to repair their harms. The entire process should be structured to validate their concerns and feelings. Victims should share their honest feelings about how the offense has impacted them. They also participate in deciding what reparations are to be made.

Offenders explain their behavior, their feelings, and what they would like to do to help. They also participate in deciding what reparations are needed. This begins their journey toward accepting responsibility for their actions. This journey continues as they actively work to fulfill their obligations stated in the reparation agreement.

Support persons help ensure the process stays restorative focused. Supporters of the victim help to elaborate on the harm experienced and the needs of the victim. Thus, the restorative goal of harm identification is better accomplished. Supporters of the offender help identify causes of the incident, challenges the offender faces, strengths of the offender, and offer help and encouragement in changing behavior and making reparation. This helps ensure that reparation plans are constructive in nature and the offender is supported in their efforts to make reparation. Involvement of both groups brings experience, resources, and experience to the conference which can help in developing creative yet realistic reparation agreements. These supporters also help foster reintegration efforts by establishing a support base for the victims and offenders. Lastly, the involvement of these supporters helps strengthen the community itself. These supporters provide a valued community perspective. They help participants realize that events impact many persons indirectly (FRCC, 2010).

Community perspectives and desires are further represented through the attendance of any other community member selected for attendance. These participants help identify broader more indirect communal harms the conduct has caused. Involving members of the community also help traumatized communities resolve the hurt felt which allows them to see beyond the actions to the need to assist the victims and the offenders heal and reintegrate (FRCC, 2010).
Building community support also increases awareness of the caring attitude the community possesses (FRCC, 2010).

A facilitator has several functions and roles. They create a safe atmosphere, but one that allows for free expression of emotion. They demonstrate active listening and empathy. The facilitator should also assist the process to move through its various stages and complete all the reparative agreement (FRCC, 2010). Facilitators must realize that the conferencing model is based on “the principle of self-determination” (FRCC, 2010). This means participants are provided the opportunity to reach a voluntary, un-coerced agreement. Facilitators should provide information about the process, address issues as they arise, and help explore options. However, the facilitator is not a party to the agreement and cannot personally ensure that each participant has made a fully informed choice nor will they fulfill their obligations.

A facilitator must remain impartial throughout the entire process. If this impartiality cannot be maintained, the facilitator should withdraw. Impartiality requires facilitators to consciously assess their own biases and agendas. They must recognize personal issues and ascertain their ability to remain even-handed (FRCC, 2010). The facilitator is not an arbiter or mediator and should not be directive or act as an authoritative figure. It is not the role of the facilitator to tell others how to resolve their harm. The participants must come to this conclusion. Participants should not be counseled; facilitators should focus on empowering participants to solve their own disputes (FRCC, 2010).

If conducted properly, conferences focus on the harmful behavior without condemning the offender (FRCC, 2010). Participants are empowered through the consensus-based process of identifying the underlying causes of the harmful behavior and developing plans to rectify the situation in ways that address the needs of the victim and offender.

III Recommendations for Future Efforts to Implement Similar Alternative Juvenile Approaches

Restorative justice lies within the broader topic of alternative dispute resolution (ADR). As a field, restorative justice has grown and culminated in several decades of research and experience. Yet, other relevant research and experience is abundant from those involved in the broader ADR movement. Cross-pollination of these fields increases our effectiveness at designing and implementing alternative approaches to juvenile crime. In this section I offer recommendations grounded in both the restorative justice and ADR literature, and which are supported by my own observations at the 2010 Restorative Community Conferencing training.

Restorative justice and ADR, with its specific focus on conflict management systems design (DSD), have much in common and much value to share. Alternative Dispute Resolution (ADR) refers to “any method of dispute resolution other than formal adjudication such as court litigation or administrative proceedings” (Costantino & Merchant, 1996, p. 33). ADR processes, such as mediation and arbitration, grew out of corporate dissatisfaction with traditional litigation that is extremely costly, lengthy, and negatively impacts ongoing relationships. Overcrowded court dockets further spurred the use of alternative resolution processes, even to the extent that some courts created court-ordered ADR programs (Costantino & Merchant, 1996; Lipsky, Seeber & Fincher, 2003; Ury, Brett, and Goldberg, 1988). In the 1980s several experienced ADR professionals began focusing specifically on the mechanics of designing effective alternative resolution approaches. These designers sought to identify the details necessary for effective processes such as structure, appearance, influences that promoted use of them, and the expertise needed to use them (Costantino & Merchant, 1996). This created a focus area within the ADR field known as dispute systems design (DSD). Ury, Brett, and Goldberg (1988), three of these
early designers, published a landmark book focusing on DSD which categorized dispute resolution processes into three main types, promoted six principles for setting up a resolution process, and discussed the stages of designing a dispute resolution system. In a narrow sense, DSD describes the development and evaluation of alternative dispute resolution systems. In a global sense, DSD is synonymous with ADR and refers to any conflict resolution system. For example, Smith and Martinez (2009) refer to DSD as developing and implementing internal processes adopted to prevent, manage, or resolve disputes that unfold in organizations or institutions. The variety of DSDs is numerous, varying from formal processes like a state or federal courts of law to very informal collective choice arrangements where the parties can make the rules and control the outcomes. Ury, Brett, and Goldberg (1988) classify the various processes by whether they resolve disputes with a focus on the parties’ interests, their rights, or their power. For example, negotiation practices facilitated by a neutral third party are interest focused. Traditional court and processes where a neutral third party applies set rules of decision to decide outcomes is a rights-focused DSD. Lastly, processes resolved by strikes, walk-outs, and even war are power focused.

Smith and Martinez (2009) suggest the variety of DSDs can also be logically arranged on a horizontal scale ranging from processes where the parties have no control over the process used or the decision obtained (i.e. court trial), all the way to processes where the parties involved have a high level of control over process form and the decisions rendered (i.e. negotiation). The DSD literature suggests that interest-based approaches operate on the top tier of available alternatives (Costantino & Merchant, 1996).

Conceptually, restorative justice calls for using interest-based DSDs that provide high levels of input, participation, and control by the parties with a stake in a particular dispute. Restorative justice advocates for collective choice processes and believes such processes focus on the harm crime causes the corresponding need to rectify that harm, rather than on an abstract need to punish for retribution’s sake. The 2010 RCC training provided unique exposure to a specific restorative conflict resolution approach (DSD) to juvenile crime by one trained and experienced with the process.

Based upon my observations as a training participant and the suggested practices in both the restorative justice and dispute systems design literature I make three recommendations to groups seeking to implement this or any other restorative-focused alternative dispute resolution strategy for juvenile crime: (1) become grounded in the concept of restorative justice prior to developing and implementing a specific process; (2) engage and involve the community in all phases of development and implementation; and (3) recognize the flexibility of processes available and build some flexibility into specific processes implemented.

A. Understand Restorative Justice Fundamentals before Developing and Implementing Specific Processes

Communities need a mutual understanding of how crime impacts them and their desired objectives from a corrective response. Without this common direction programs can fail to address community needs and have harmful unintended consequences. Lewis Carroll’s (1898) classic children’s story *The Adventures of Alice in Wonderland* is illustrative. In that story Alice comes to a crossroads with two paths laid out before her leading in different directions. Alice asks the Cheshire cat, “Which path shall I follow?” The cat answers, “That depends where you want to go. If you do not know where you want to go, it doesn’t matter which path you take.”
Communities and justice agencies can avoid this indecision and uncertainty through early community dialogue regarding how crime is impacting them and what they hope to accomplish in a conflict resolution scheme. When this dialogue occurs people identify the issues they face, the resources available, their capacity to address the issues, and they can create specific mechanisms for accomplishing desired objectives and meet the needs of those impacted by the offenses.

Ms. Binder masterfully demonstrated the importance of this concept by beginning her training with various group activities where restorative values such as respect, active listening, and valuing cultural differences were practiced. These group exercises focused on helping participants gain comfort with each other, see the group’s broad diversity, and explore collective beliefs about the effects of harmful behavior and the needs of those impacted by it. Because group responses mirrored the underlying theme and overall objectives of restorative justice, participant responses naturally led into a presentation of the core values and principles of restorative justice. Ms. Binder connected our own innate beliefs to restorative justice philosophy. It became apparent that restorative justice resonated with the personal beliefs of the training participants. Understanding the values, principles, and objectives of restorative justice generally paved the way for seeing how the Restorative Community Conferencing model is specifically structured to accomplish these ends. Once united by a common understanding of the impacts of crime and the needs of the various parties impacted by it, participants were prepared to discuss specific strategies.

Communities, as did the participants in this training, need a clear unified vision regarding the goals of conflict resolution prior to implementing specific programs. This requires community dialogue. This initial dialogue cannot be skipped without jeopardizing the effectiveness of a selected response. Presenting, or worse yet, imposing, specific conflict resolution strategies on communities without laying this groundwork reduces the ability of community members to understand and assess the value of a particular practice. The process may not accurately address the needs of the parties involved or accomplish desired outcomes.

B. Involve the Community in All Stages of the Process

The need for initial community dialogue about restorative justice as a concept is just part of a larger need to involve the community in all aspects of the process of designing and implementing a dispute resolution system. Groups seeking to design alternative restorative-based DSDs must involve the localized community members in the design stage. While the importance of victim, offender, and community involvement is discussed extensively in the restorative justice literature, most of the discussion focuses on participation in the particular process implemented (Umbreit et al., 2005-2006; Van Ness & Strong, 2010). DSD professionals are more explicit in their literature about the need to create consensus-based resolution processes developed from the ground up with the input and participation of the groups that will be subject to them (Costantino & Merchant, 1996; Ury et al., 1988; Lande, 2002). Two observations during the training demonstrate the importance of this involvement at the design stage.

During one small group activity participants discussed a hypothetical juvenile crime situation and identified persons who should be included in the community conference. I recommended convening the restorative conference with just victim, offender, their family members, and perhaps an additional community member or two closely connected to the issue. Several Native participants in my group informed me that failure to include village Elders in a conference would be fatal to its success because of their perceived value in resolving community issues. I did not understand the significance of having village Elders involved in a conflict
resolution process. This exchange demonstrates the danger of having outside groups impose a particular process or program on a community. Such a program may be culturally irrelevant and unsupported by community members.

This concept was further reiterated later in the training by the comments of a participating Elder from the lower Kuskokwim River region. She commented on her years of personal experience watching the State of Alaska come to the villages and impose programs designed to “fix” their problems. This Elder noted the negative sentiments of the villagers and the lack of community support because little effort was made to consult with the communities themselves regarding their needs and desires.xxii

Care must be taken that restorative justice and various restorative conflict resolution processes are not imported in a similar paternalistic fashion. Strategies can and should be tailored to fit the various communities and organizations implementing them. Community involvement in dispute systems design develops common understanding and commitment to the effort (Lande, 2002). It helps ensure that processes are culturally relevant and accepted in the communities they serve. (Bunting-Graden, 2007; Schneider, 2008).

I offer a word of caution at this juncture. While the importance of community participation in the design stage is critical, people should avoid becoming overly fixated on whether a particular DSD begins with a true grass-roots initiative or from an organization perceived as having power such as a state judicial system trying to create alternatives to the traditional rights-based framework such as restorative conferencing. Rather, effort and attention should be focused on ensuring a balance between the need for support, participation, and commitment from top-down governmental justice systems and the bottom-up localized citizenry.xxiii Without support, participation, and commitment of both groups any alternative restorative-focused DSD will fail to meet desired objectives.

In the United States, government initiated court proceedings are top-down institutions using rights-based processes that follow a commitment to the rule of law.xxiv In the juvenile crime context, any alternative interest-based DSD operates in the shadow of larger rights-based court procedures. Juvenile crime is a legitimate concern of the government who has the authority to enforce and punish unacceptable behavior and to protect children. Because the government retains authority over these matters communities are likely to see government-sponsored efforts to more effectively resolve juvenile matters. The RCC process discussed in detail here is a prime example. These programs can remain true to the design principles heralded by DSD professionals and the ideals of restorative justice professionals so long as there is adequate stakeholder involvement in all stages of the design and implementation process. What is important is commitment to and involvement in the alternative processes from both government agencies and the local communities where the processes are used.

Without commitment from the justice system few matters will be referred to alternative interest-based processes. Skepticism may make justice officials reluctant to allocate meaningful support to these processes such as funding. Groups may also experience the creation or retention of legislative impediments to creative alternatives.xxv Communities may experience capacity gaps that the state can help to temporarily fill.xxvi For instance, trained community facilitators may move and the government can assist in providing training to others, temporarily filling that role.

Equally important to the successful creation and administration of an alternative restorative-focused DSD is localized commitment to the process. Local support increases the availability of community resources such as informal support groups like churches, school officials, and youth groups. It also ensures community perspectives and concerns are voiced as individual matters are resolved. Localized commitment increases the cultural relevance of the outcomes.
Voluntary interest-based DSDs need to co-exist with formal court proceedings, so that in appropriate circumstances parties have the ability to pursue the “justice” they deem important. The commitment to the rule of law and rights-based processes in the United States must not disappear, but rather become the forum of choice for parties unwilling to temporarily set rights aside to explore a more satisfying interest-based alternative. Effective dispute resolution processes must provide the ability to loop back and forward between rights-based and interest-based options (Ury et al., 1988). Both forms of DSD serve important ends. In most conflicts there is a need for peace and justice, but one may be need to be emphasized more than the other depending on the needs of the parties (Schneider, 2008). Selecting one forum in lieu of the other is a conscious value trade-off. Selecting consensual interest-based processes emphasizes restorative values of peace and healing, but decreases formality, consistency, emphasis on rights protection. Rights-based processes sacrifice full investment of all stakeholders at the expense of rights protection.

To enhance governmental support, representatives of the juvenile justice system should be involved and included in the development process. This is true even if the process is initiated at the local citizen level. To ensure internal support from the local citizens these individuals must also be involved in all stages of government-initiated conflict resolution processes. When this level of involvement is achieved communities are more likely to create a balanced restorative approach.

C. Restorative Justice is Flexible

Howard Zehr (1990) refers to restorative justice as a different lens through which we view conflict. There are numerous ways people can resolve conflicts that stay true to restorative principles and lead to desired outcomes. People must be informed that restorative justice is broader than any one specific approach and communities have great flexibility in designing dispute resolution processes that meet their needs. Once designed, it remains important to remember the need for some flexibility in how a particular process is applied to varying circumstances. DSD professionals also echo the importance of flexibility and adjustment to reliable feedback from the participants. This allows communities to determine the strengths and weaknesses of their conflict management system (Costantino & Merchant, 1996).

The importance of understanding restorative justice’s flexible nature became apparent during the 2010 RCC training. As participants discussed the specifics of RCC, the visiting magistrate from Galena, Alaska became frustrated when he realized that the conferencing model, as practiced by Youth Justice in the Yukon, may not fit well with the current practices, legal constraints, and cultures of his particular area. The magistrate commented on his desire that the training would provide a model he could take back and immediately apply in the villages he serves. When he felt conferencing would be difficult to implement he had to step back and see that restorative justice is broader than a single program and perhaps a different restorative approach would work in his area.

There is a lesson here. Individuals believing they can attend a weekend seminar or read a book on a particular process and expect to simply mirror this “restorative justice” in their own community in a rigid fashion are likely to be disappointed. Instead, individuals must gain an understanding of the flexible nature of restorative justice. This can be accomplished by emphasizing the distinction between restorative justice as a concept and specific conflict resolution strategies. It is also more likely to be realized in situations where communities actually assist in the development of specific strategies.
For example, cultural differences need to be taken into account when customizing the DSD (Schneider, 2008). Alaska Natives have an ethic of truth telling (Alaska Natives Commission Report, 1993). Natives are trained to confess truthfully with the expectation that their sentences would be fashioned with compassion. The ethic becomes problematic in adversarial rights-based DSDs. A process needs to reflect and value this ethic. While structure is important, the values promoted by the system are for more important (Schneider, 2008).

The processes need to be flexible as well. Schneider (2008) discusses the need for a DSD to be customized to the needs of the particular conflict and stakeholders involved. She uses lessons learned from trying to use a standardized practice in handling large tort class action claims and international DSDs. For example, a community may have several distinct cultural groups and a practice may need some adjustment to accommodate that uniqueness. Additionally, some conflicts are very personal occurrences between a victim and offender whereas others have larger direct impacts on the broader community. A process, be it mediation, a circle, or a group conference, should seek to tailor its structure to the specific needs of the parties. Conversely, it may be wiser to just use one of several process options depending on which appears to better accommodate the needs.

The point is the need to emphasize and create flexibility rather than rigidity. Consistency and rigid formality has its proper place in rights-based DSDs, but interest-based DSDs will function best with an opposite approach.

Conclusion

Crime weakens communities because it strains relationships between community members. Criminal responses must attend to these strained relationships and rebuild community ties. (RJJPI, 2010). Punitive responses aimed at retribution and deterrence offer little hope of repairing harms to victims and restoring weakened community relationships. Conflict resolution processes should build positive relationships, increase community capacity in resolving conflict, increase an awareness of the community’s strengths and weaknesses, and create informal support systems for victims and offenders (RJJPI, 2010). Unlike the rights-focused court processes most commonly used, restorative-focused processes seek to achieve these outcomes.

Guided by the fundamental precepts of restorative justice philosophy, the Yukon Government has developed a specific approach aimed at addressing juvenile crime. While the conferencing process, as practiced in the Yukon, may not be the process of choice for other communities, it offers an excellent example of one that is restorative. After personally practicing general facilitation skills, modeling pre-conference meetings with victims and offenders, and participating in a mock conference I am convinced that the process is designed to incorporate restorative values and produce restorative outcomes. Further research should be conducted to determine if, as applied, these Restorative Community Conferences are actually producing the desired outcomes envisioned. Setting that important research aside for another day, I have shared three recommendations for those seeking to design and implement similar restorative processes.

First, future efforts to promote restorative justice should begin with community discussion and dialogue about community conflict, the harm it creates, and the ultimate desired objectives from the response. Conscious reflection fosters self-realization of the gross inadequacies of a retribution-oriented approach to conflict resolution. Communities will see the need for a more balanced approach that better serves the needs of victims, offenders, and their communities. Exploring these issues demonstrates that restorative values are woven into their personal and social fabric. Crime matters because of the harm it causes others and the
relationships impacted. Addressing these harms has greater value than punishment for retribution or deterrence. Communities see they have a role in their own destiny.

This community dialogue can occur in many forums and in various ways. Concerned community members can organize and assemble with the purpose of discussing these important issues. Government agencies and educational institutions can sponsor such gatherings. Traveling to communities and introducing specific processes such as victim-offender mediation, victim-impact panels, circle processes, or conferencing processes offers little hope of success unless and until those communities have identified the fundamental goals and values of a balanced conflict resolution system. Many of these processes can be used in punitive fashion if they are not guided by underlying restorative objectives. For example, a circle process can be unduly destructive for offenders and their families if it solely focuses on community condemnation and shaming. But, if guided by restorative justice philosophy these circles will realize that only to the extent these expressions are turned to constructive reintegration efforts will they have any lasting benefit.

Second, care must be taken that restorative justice and various restorative conflict resolution processes are not imposed by an outside group on a community. Community involvement in dispute systems design is necessary to long term support. It develops common understanding and commitment to the effort. It helps ensure that processes are culturally relevant and accepted in the communities they serve. This builds a stable foundation for whatever program is implemented because it is grounded on unified efforts and commitment of the community members. At a minimum, it offers a perception of substantive control by allowing parties a voice in a respectful manner. Beyond that it develops a process that allows for personalized agreement that meets their interests in a process where they have had some level of control (Schneider, 2008).

Finally, communities and other agencies seeking restorative alternatives are wise to recognize the flexibility at their disposal. The beauty of interest-based, consensually-derived processes is their ability to adapt to the individual needs of the stakeholders and the various types of conflict encountered. No one process should be rigidly imposed on a community.

Ultimately, restorative processes allow for greater application of the concepts such as authority, responsibility and accountability. Instead of being abstract terms used and imposed by a formal court, restorative processes allow for encounter, dialogue, and a consensus decision making by those most impacted by an offense. This involvement fosters active rather than passive responsibility (RJPPI, 2010; Bazemore & Schiff, 2001; Braithwaite & Roche, 2001; Daly, 2000). Active responsibility builds competency, self-respect, and fosters bonding between offenders, victims, and other community members. The Yukon Government has furthered this important work by providing an example to which others can look for guidance. Combined with other lessons learned from restorative justice and DSD specialists, communities are more likely to experience success in their efforts.

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i Special appreciation is given to Valarie Binder, Restorative Community Conference Program Coordinator for Youth Justice, Department of Health and Social Services, Yukon Government for her willingness to share her knowledge and expertise to the University of Alaska Fairbanks. Appreciation is also given to the Yukon Government for its willingness to allow Ms. Binder to share training materials and manuals with us.

ii This article uses the term “juveniles” because it is the common term used in Alaska. In Canada, juveniles are referred to as “youth” or “young persons” age 12 to 17 years.

iii Professor David of the UAF Justice Department was the impetus behind this training. Blurton spent countless hours arranging and preparing for Ms. Binder’s visit.
The first manual titled Restorative Justice: Principles, Practices and Implementation provides training curriculum developed following the 1996 US National Institute of Corrections Videoconference on Restorative Justice as a cooperative agreement with the Florida Atlantic University Community Justice Institute, with active involvement from the National Institute of Corrections (RJPPI, 2010). The manual is a version of that curriculum which has been amended and organized to meet the Yukon Restorative Community Conferencing Program’s specific training needs. With permission from the NICC, the second manual is titled Facilitating Restorative Community Conferences and contains materials originally produced by the Minnesota Department of Corrections that has similarly been amended to meet the needs of the Yukon Conferencing Program (FRCC, 2010).

The RJPPI (2010) training manual provides a list of Zehr and Mika’s (1998) “sign posts” or signals demonstrating a restorative approach exists. Conflict resolution processes are restorative when they:

1. Focus on the harm created by wrongdoing more than laws violated;
2. Equal concern and commitment is shown to victims and offenders and involving both in the process;
3. Efforts are made to restore the victims by empowering them in the process and responding to their perceived needs;
4. Support is given to offenders while encouraging them to understand, accept, and carry out their obligations;
5. Those involved recognize that while offender’s obligations may be difficult, they are not designed to inflict harm upon the offender and they must be achievable;
6. Opportunities for dialogue are provided between victims and offenders as appropriate;
7. Collaboration and reintegration are encouraged rather than coercion and isolation;
8. The affected community is involved which empowers the community by increasing its capacity to recognize and respond to the sources of community crime;
9. Attention is given to unintended consequences of our actions and programs; and
10. Respect is shown to all parties involved.

Even in international disputes there is a call for more victim-focused processes, and international dispute systems designers are looking to restorative justice for an example (Schneider, 2008).

Commentators on designing conflict resolution systems such as Andrea Kupfer Schneider (2008) indicate dispute resolution systems that do not seek for peace and for justice fail to provide long-term solutions. Schneider (2008) discusses situations where justice (i.e. convictions by a court of law or similar authority) without peace or healing have proven a temporary fix. Schneider also provides examples where the opposite has been true. She concludes that most conflicts require both peace and justice and suggests that different processes are needed depending on these two co-existing needs. Restorative justice commentators such as Braithwaite and Roche (2001) suggest that processes focused on restorative justice can meet both these aims because restorative justice fosters peace and healing, but does not ignore the importance of personal accountability. However, accountability in restorative justice is not reached through passively accepting punishment imposed by a third party, but rather by investing oneself in active efforts to repair damage caused. The accountability Braithwaite and Roche describe better satisfies the “justice” Schneider (2008) addresses.

The RJPPI manual (2010) discusses the importance of cultural attunement when selecting and implementing restorative practices and programs. The manual describes cultural competence as the ability of organizations and systems to function and perform effectively in cross-cultural situations. Cultural competence enables persons to live, work, educate, and serve in diverse settings. Primarily, it requires willingness to value the cultural diversity in the delivery of services to all segments of a particular population. Current justice practices often impose white, middle-class values of the majority group on minority populations. Difficulties arise when these majority values are used to judge the intelligence, mental health, and appropriate behaviors of other cultures. Where there is disconnect between value systems care must be given to make responses culturally relevant and meaningful (FRCC, 2010).
In her editorial comments to this article, Ms. Binder explained that although conferencing is mandated in Canada under Federal legislation – the Youth Criminal Justice Act, these conferences are not specifically restorative. Health and Social Services (H&SS), Yukon Government recognized an opportunity to establish a Restorative Community Conference Program which would reflect the spirit of the Act as set forth in the YCJA preamble. To this end, H&SS went a step further and created a Conference Advisory Committee whose purpose is to review and make recommendations on best practices for the establishment of the Yukon “Rules for the Convening and Conducting of Conferences under the Youth Criminal Justice Act”. Membership includes: Public Prosecution Service of Canada (PPSC); Crown Witness Coordinator, PPSC; Yukon Legal Services Society; Royal Canadian Mounted Police; Territorial Court of Yukon; Victim Services, Department of Justice, YG; Department of Education, YG; Community Justice Committees; Council of Yukon First Nations (CYFN); First Nations not represented by CYFN: Ross River Dena Council and Kwanlin Dun First Nation, Vuntut Gwitchin First Nation, and Liard First Nation; and Youth Justice, Department of Health & Social Services, Yukon Government.

This conferencing process is labor intensive. Ms. Binder indicated that matters can take between 25–40 hours from initial referral to final conference conclusion. Most of this time is spent in pre-conference work.

The training participants were able to role play with partners the process of calling victims and offenders. The training manual contains useful guides on what to discuss with each during this initial phone call (FRCC, 2010, pp. 54-55). The facilitator should introduce him or herself and set up an in-person meeting to discuss the process. A telephone call is not the time to discuss the conferencing process in detail because too much detail about conferencing in the phone call may cause these persons to feel there is no need for a subsequent in person visit. The personal visit is crucial to allow the facilitator to gauge the appropriateness of the conference and build trust and rapport (FRCC, 2010).

The in person meeting, called the “preparation meeting,” usually occurs at a private place that is convenient to the individuals such as their home. It is recommended that offenders be contacted and visited first because learning the offender’s interest in participating can help ensure the victim’s hopes for a conference are not prematurely raised. Additionally, these early meetings with the offender may lead to some information that the offender is willing to allow the facilitator to share with the victim which may mitigate some of the victim’s fears that would preclude them from participating (FRCC, 2010).

When youth are involved, preparation meetings should occur with parents and the minors together. Facilitators are counseled to never meet alone with youth for liability, safety, and time efficiency reasons. Facilitators must also be aware of their own safety. They should not remain in places they feel uncomfortable or where angry emotions are not under control, or where parties are under the influence of drugs or alcohol. Facilitators are also counseled not to reveal private information about them that could compromise their safety. Most facilitators do not reveal their home address or their home phone number. Contact with the facilitator should occur at work or other places agreeable to the parties and phone contact should be made through a work number (FRCC, 2010).

The FRCC manual (2010) suggests having either the victim or offender, along with their respective supporters, show up twenty to thirty minutes prior to the conference. Staggered arrival times help the facilitator check on the readiness of each group and answer any specific last minute questions. This also reduces potentially harmful pre-conference interaction. The manual recommends not having the two groups sit together without the facilitator present, and suggests that a site with separate waiting rooms may best accommodate this.

The FRCC (2010) participant manual suggests that this decision is based on knowledge of the participants. If there are multiple victims or offenders facilitators should consider having them speak prior to the others because this sets a serious and thoughtful tone. Ms. Binder suggested normally having the offender speak first because this demonstrates responsibility.
Consensus-based decisions are ones that all parties can agree to support (FRCC, 2010). Facilitators must develop and demonstrate strong communication skills such as active listening, using silence at appropriate times, questioning in ways that elicit valuable information, and confirming the content of what others say as they express themselves (FRCC, 2010). Facilitators need to suspend judgment and separate behavior from the persons participating so as to allow for open-minded and uncritical progress through the stages of the conference. Facilitators must also be aware and tolerant of communication differences among the parties participating. There may be differences in eye-contact, personal space; and tone which are attributed to cultural distinctions rather than level of remorsefulness and willingness to accept responsibility (FRCC, 2010). Facilitators must be conscious of their own body language, vocal tone and word choices, and emotional expressions. Facilitators must also develop proper techniques for offering feedback (FRCC, 2010). Facilitators must remember they are not participants in the conflict. Their role is to facilitate the progress of the others who are tasked with the responsibility to come to agreement. Facilitators watch, remind participants of the ground rules, assist the conversation along when needed, but are not responsible for the final outcome of the conference (FRCC, 2010). The training manual provides a great description of the duties and responsibilities, the qualifications needed, the skills needed, and knowledge of the conferencing process (FRCC, 2010).

Co-facilitation by two trained facilitators may be a useful option. Potential benefits include increased safety, another person’s assessment of the situation, and assistance in facilitation when difficulties arise or another viewpoint on how to address the case may be useful. If a case involves multiple offenders or victims, a co-facilitator can help address these complexities. If co-facilitators are used it is important for them both to meet all of the participants prior to the actual conference. This means that it is not appropriate to divide the cases during the preparation phase for quickness in preparation of the parties (FRCC, 2010). If one facilitator cannot make a pre-meeting, they should schedule time prior to the conference to get to know the participants (FRCC, 2010).

The term DSD was coined and used in the business world to describe the purposeful creation of alternative dispute resolution processes for handling conflicts because businesses were dissatisfied with time-consuming and costly court processes (Lipsky, Seeber & Fincher, 2003, p. 6; Ury et al., 1988). However, DSD has broader application than just alternative dispute practices for handling internal employment grievances and contractual disputes. In reality, the term describes all types of civil and criminal justice systems, even those created by a national government (Bingham, 2008; Smith & Martinez, 2009). In fact, international forums addressing global disputes are DSDs (Schneider, 2008; Bunting-Graden, 2007).

Bingham (2008) encourages considering justice-related outcomes in the design and evaluation stage. She notes that the “justice” these various processes produce depends on who designs the system, what are their goals, and how they exercise power in the process. Justice has many definitions, one of which is commonly addressed in the restorative justice literature.

See e.g. Paffenholz (2003, p. 3) and Bunting-Graden (2007) who recommend an analysis of the interests, goals, and commitments of the main stakeholders take place as the initial stage in dispute system design.

In fact, this was mirrored in the 2010 Restorative Community Conference training. There was extensive discussion of stakeholder involvement in the conferencing process, yet no emphasis on the need for stakeholder involvement in the design stage. The Yukon’s Restorative Community Conferencing model was created by the government, and I wondered what level of community input went into its design and the decision to adopt that process.

The training described the role of community involvement in the Restorative Community Conferences convened and in post-conference reparation and reconciliation efforts. However, the need for community
involvement in the design stage of a specific community response was not emphasized. The RJPPI (2010) training manual introduces the concept of community involvement in systems design on page 10 by asking the following thought-provoking questions: (1) “If we were to develop a process together, creating a sketch that gives us the general outline of our shared sense of what it would look like – what would be the characteristics of this process?”; (2) “What is your community’s interpretation of and response to justice?”; and (3) “What is the justice response unique to your area?” Yet, there was no training time devoted to these questions or the broader topic of community involvement in the design stage. Participants from a wide variety of places and cultures were gathered, and it would have been valuable to learn of various formal and informal processes used to handle community conflict. By reflecting on current practices in our various areas we might have noticed cultural differences unique and important to particular areas and people. More emphasis on community involvement in the design stage would apprise participants of the dangers of imposing programs, even those believed restorative in nature, upon communities.

In 1992, Congress initiated a study on the status of Alaska Natives and their communities. A common theme emerging from the research is the inability to take ownership in local economics, government, and conflict resolution. Official recommendations from the study included calling for empowering Alaska Natives to design and carry out solutions. The report concluded that tribal councils and village people need to regain inherent responsibility for village problem solving. The state court system cannot rob them of the opportunity and obligation of developing dispute resolution bodies and procedures that are consistent with the predominant cultures of the village (Alaska Natives Commission Report, 1994).

Schneider (2008) discusses the need for this bottom-up and top-down support and commitment in DSDs implemented at the international level. Her observations have similar application to the juvenile crime context.

It should be noted that juvenile matters are treated in a more rehabilitation-oriented fashion. Juvenile courts have sought to balance the need for rights-based protections and the need for interest-based remedies. What has resulted is a rights-based adjudicatory phase followed by an interest-based sentencing phase. Additionally, court systems have furthered their expansion of therapeutic courts which follow a similar approach in adult cases.

For instance, Alaska’s statutes expressly allow judges to consider the negotiated agreements between victims, offenders and community members in their sentencing decisions, except in cases of robbery, arson, extortion, coercion, and domestic violence situations. See Alaska Statute 12.55.011(2010). If justice system officials and the Legislature gained more confidence in the ability of consensus-based processes to safely handle these matters such exceptions in the law might disappear.

Bunting-Graden (2007) argues that even DSDs created by international actors such as the United Nations should promote local ownership. She notes that local institutions should be capable of accommodating these international actors when and if they need to step in and fill capacity gaps. Smaller communities with limited resources may experience similar capacity gaps.

This commitment to the rule of law and rights-based processes must not disappear because it provides necessary protection against the arbitrary and unlawful exercise of authority over an individual by the government. Yet, the inadequacy of a rights-based model to meet the reparative and restorative needs of crime victims, offenders, and their communities is the very catalyst for many alternative interest-based DSDs.

To her credit, Ms. Binder recognized this frustration, spoke to the flexibility of restorative justice, and encouraged participants to remember that they should develop processes that work for them. To the Galena Magistrate’s credit, he has become an outspoken proponent of restorative justice and is working to implement restorative strategies such as community talking circles to provide a community recommendation in sentencing.

Schneider (2008) shares another power example of this principle from the Timorese culture.
norms and identity will actually be reinforced, and communities take greater responsibility for their well-being (RJPPI, 2010). Blending and working within various cultures presents challenges, but addressing them early will increase the potential effectiveness of any restorative processes implemented. Communities that have carefully thought about cultural issues are more likely to successfully work through them as their program develops.

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Examining the Abyss: An Epistemic Inquiry into Violent Human Conflict, Embedded Human Existence and Multiplex Methodology

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Abstract

This essay presents an argument for a two stage process of "rational" thinking involving first embedded thinking consisting of full ground inquiry into the inevitably embedded existence of actual human beings. This reflects the Aristotelian influence of his fourfold causal structure as being the basis or all unique phenomenon. In turn, this initially requires epistemic inquiry and examines the, in the case of violent human conflict, the often unimaginable Abysses out of which knowledge originates. The second stage consists of the careful abstraction from the actual by confirmation and falsification to more theoretical generalizations and "explanations" that are actually found in the specific disciplines. This is the Platonic realm of metaphysics and seeks to generalize from the unique experience or existence. Both processes of Aristotelian and Platonic reasoning are required for an accurate description, understanding and explanation. Specially, such full ground or embedded rationality, thinking and inquiry requires calculating carefully the precise "ratio" or reasons for combining specific degrees of uniqueness and explanation to describe a specific phenomenon or complex phenomena.

Elaborating upon the idea of multiple modeling found in Allison’s Essence of Decision, I have described in this essay the need to develop competing and complimentary causal constructs in an interdisciplinary causal structure or constellation, described here as multiplex methodology, in an attempt to fully disclose and reveal more fully in the future a phenomenon as complicated as violent human conflict. All violent human conflicts end eventually, though often at much greater costs to all the participants. It is hoped that the better and more accurate understanding of such conflicts provide a first step in resolving them.

Introduction: When the Killing Begins

In the following pages, violent human conflict will be defined, in a preliminary way as a human encounter in which one or both parties seek to achieve specific goals by physically coercing, harming or killing, if possible, the other party (Galtung, 1996; Tilly, McAdams & Tarrow, 2003). “Party” or “parties” in this case refer to other groups of human beings, spanning from individuals, or the ethnic group to the nation-state. In violent conflict, one or more parties see another group or groups as an obstacle to the obtainment of their goals. Rather than forsake these goals, the group is willing to engage in violent behavior in order to convince, coerce or even destroy the other group or groups that are perceived, or actually do, stand in the way.

One of the characteristics of such lethal contests is often the presence of intensely competing epistemologies dealing each side’s privileged knowledge claims and discourse on what constitutes valid knowledge and the “true” account of the conflict. Violent human conflict almost always involves an intense competition over which side’s truth will endure and become the privileged discourse of description and analysis. For instance, epistemic pluralism, which can
be defined as competing descriptions and narratives of the same factual conditions (Boudreau and Polkinghorn, 2009) is almost always a characteristic of such conflicts. In other words, unlike most social conflicts, in lethal contests there is often an absence of a shared epistemology among the contending sides; “truth” itself is contested and considered a great prize in violent human conflict. As we shall see, the complexity of the struggle is compounded by the presence of contested and competing geographies, human agencies and intended outcomes. The problem then, from a methodological perspective, is how to capture and investigate the composite complexity of this phenomenon in which knowledge claims, and truth itself is almost always deeply contested.

This presents a profound epistemic problem. Epistemology is the study of the origins, nature, methods and limits of knowledge. Ever since the Enlightenment, scholars and scientists have largely assumed that educated people looking at the same or similar factual situation would come to the same or similar conclusions. In violent human conflicts, this is patently not the case. Participants with the same or similar backgrounds and educations often make wildly different knowledge claims concerning the same supposedly factual conflict.

So, this essay attempts to answer the epistemic question: How do we know and study such violent human conflicts? In the following pages, we will explore the origins, nature, and limits of knowledge claims concerning such conflicts, and then attempt to provide a “multiplex” methodology for investigating these conflicts as they actually exist in their unique ontological site or local setting. (Boudreau 2009; Druckman, 2005) Such a complex and unique phenomenon often characterized at its core by epistemic pluralism can’t be easily captured in a single theory or methodology; it requires a compound and sequential method of inquiry and investigation to match the compound realities occurring in a violent conflict.

As we shall see, Graham Allison’s classic text *Essence of Decision* (1971) provides a prototypical case study of such a multiplex approach in conflict analysis. In this book, Allison uses three sequential conceptual frames of reference to analyze the 1962 Cuban missile crisis. By doing so, he demonstrates the methodological power of using multiple modeling to analyze a specific conflict in order to achieve a richer and more complete understanding of an unique event. In the following pages, Allison’s path-breaking case study and methodological innovations will be developed one step further; specifically, the concept of a multiplex methodology will be introduced that incorporates a causal matrix consisting of multiple frames of reference using revelatory and contingent causality in order to discover new knowledge concerning a complex phenomenon such as human conflict. In particular, this essay will argue that multiplex methodology provides a preliminary means of insuring the construct validity of the causes as well as effects (Cook and Campbell, 1979). The essay will end by making an argument for using case studies as a preliminary, necessary but not sufficient method of understanding each unique, violent and complex human conflict.

I. **Background: Complexity, Causality and Case Studies**

Violent human conflict is one of the most, if not the most, complex social phenomenon that human beings experience. In violent human conflict, especially those involving ethnic groups or entire nations, participants often have deep convictions that frequently have bloody consequences in organized action (Galtung, 1996) concerning contested geographies, historical narratives, moral grievances, religious values, or sometimes even competing cosmologies and gods (Boudreau, 2008). Such complex social organizations in collision create significant dilemmas for any researcher attempting to understand their full scope and significance. Linear thought or what Max Weber describes as “operational rationality,” with its emphasis on single-sourced cause and effect simply doesn’t reflect and can’t capture the complex realities, epistemic
pluralism and contested causes of violent human conflict. From this perspective, to “single source” the cause of a deadly human conflict and attribute it solely to “interests,” “needs” or “identity” is almost always oversimplified. To investigate deadly disputes using a single type or disciplinary system of methodology usually results in a reductionist and incomplete understanding of a complex phenomenon such as human conflict. For instance, the “Correlates of War Project” at the University of Michigan has for years used mathematics and advanced statistical methods to determine whether there are significant correlations between specific events or phenomena and the outbreak of war. (Singer & Diehl, 1990). This effort certainly has worthy intentions and goals but potentially dangerous consequences. For instance, this information, when and if obtained, could possibly help to prevent war but also, conversely (though unintentionally) could conceivably be used to inform governments when is the most opportune time to strike first.

Yet, the Correlates of War project will never be able to give us a full understanding of war or other violent social conflicts. Goedel’s Theorem, in effect, cautions us to be very careful in asserting that a singular theoretical or methodological preeminence can provide complete explanations, whether in mathematics or the social sciences. Goedel’s Incompleteness Theorem asserts that no formal system can be both consistent and complete (Berto, 2010). Intended for mathematics, Goedel’s theorem demands, I think, a certain intellectual modesty concerning any theory or system in asserting that only one methodology, especially a scientific one, can lead to the complete explanation or truth about violent human conflict. So arguing by modest analogy, other methods of inquiry are necessary if we wish to develop a “complete” understanding concerning the multiple possible causes of lethal contests.

This does not mean that the pursuit of understanding into violent social conflicts is eclectic or improvised; on the contrary, this is an extremely complex phenomenon that we are trying to understand and no single method, no single approach can claim to have a monopoly on the truth, especially when the “truths” of the conflict are in such deadly competition. We will need multiple methods and multiple schools of thought even to begin the process of understanding and explaining violent conflict accurately…. 

In fact, Gandhi was among the first to note the existence of these contested truths in human conflict. During his illustrious career, he described his method of nonviolently campaigning against British colonialism Satygrapha—which literally means truth force – which required that the other sides’ contested narratives be incorporated as well into a new “Gandhian synthesis” that reveals the truths for both sides of the conflict, a process that Joan Bondurant describes as the “Gandhian dialectic” (Bondurant, 1958). This is one of the reason’s Gandhi’s autobiography is entitled Experiments with Truth.” He recognized that contested truths are often embedded in the very fabric of human struggle. Gandhi refused to take comfort in reducing the complexity of conflict to one main “cause” or “truth.”

So, the first prerequisite of “true” knowledge claims is that they should accurately reflect in their origins the complexity of the actual phenomena that they purport to describe, understand or explain (Christie, 2010). This is why the investigation of conflict necessarily involves, at first, the use of compound or multiple steps of inquiry in progressive sequence emphasizing different types of causality. In particular, using such causal constructs requires true interdisciplinary studies and inquiry, a branch of knowledge largely lost, in my judgment, since the ancient Greeks and Aristotle.

II. The Starting Point: Interdisciplinary Inquiry into Embedded Human Existence

Interdisciplinarity is a unique, preliminary and often missing first stage of inquiry between philosophy, pure theory or “speculative reasoning” (Boudreau, 2009) and the specific
domain disciplines of the social sciences. Interdisciplinary inquiry seeks to understand a unique phenomenon in its embedded existence while subsequent disciplinary methods seek to explain a phenomenon in terms of the prevailing episteme of “identify and difference” (Foucault, 1982). So, in the following essay, “understanding” will refer to the knowledge that results from studying a unique phenomenon, while “explanation” will refer to the knowledge claims made in attempting to generalize into a more comprehensive theory. Hence, the embedded reasoning or full ground thinking required to account for a complex conflict is based upon the unique proportion of understanding and explanation used to comprehend a specific phenomenon or phenomena. This is the role of interdisciplinary inquiry—to calculate the proper “ratio” or reason between understanding and explanation needed to reveal and analyze a complex reality. (Such an understanding of the role of such interdisciplinary or preliminary reasoning is consistent with the original Latin origins of "reason" which is derived from the Latin word "ratio" meaning "proportional relation.") Interdisciplinary reasoning establishes the proportional relationship between understanding and explanation; to a much greater extent than usually acknowledged or appreciated, we already do this, but the revelatory role of such reasoning is recessed, backgrounded and hence often implicit while the explanatory role of operational reasoning is all too often fore-grounded, explicit and hence privileged (Boudreau, 1991; Von Wright, 1971).

In other words, interdisciplinary has a revelatory role that is contingent upon the preliminary disclosure concerning the causal constructs of the human condition as an embedded existence. By this, we mean that human life is always found deeply embedded within a specific place, ecology, culture, society, language and historical moment. Or, as Heidegger states in Being and Time, human life is "thrown" into a unique time and place and such "thrownness" is a fundamental precondition of Dasein's existence (Heidegger, 1962, 1996).

In contrast, theories as explanations, and theoretical thinking in particular, often literally rip the human being out from the inevitably embedded existence that gives us life, and--in doing so-- violently abstracts human life from its geographical, ecological, biological, cultural and historical uniqueness. Such abstracted, socially constructed theoretical thinking is often found in the basic premises about human beings and agency found in the specific disciplines. For instance, in psychology, the emphasis is almost inevitably first on the isolated individual--abstracted from his or her family or extend social context. In economics, the individual is often assumed to be more or less a calculating machine that is always attempting to maximize his or her utilities or interests, despite the massive evidence to the contrary, such as firemen, policemen or soldiers serving in armies and who are willing to sacrifice their lives for other, and too often do. In Sociology, the individual is seen as a social unit deterministically characterized to a greater or lesser degree, by the society that he or she lives in. All of these theoretical constructs of the individual contain elements or truth but are highly abstracted from the embedded individual that actually exists in the world. (As Prof. Al Cope use to say, "any truth, especially partial ones, when pushed to the extreme is dangerous.") As such, these disciplinary definitions of the individual give extreme expression to the Platonic quest for a realm of ideas that can then "explain" each specific phenomenon. In contrast, the Aristotelian quest was to preserve embedded human life within its natural ecology of life. We shall explore more of such Aristotelian reasoning shortly when we examine his famous fourfold causal structures.

Yet, in truth, when we analyze and try to explain phenomena, we need both our Platonic and Aristotelian philosophical inheritance in deciding the proper relation between uniqueness and generality, or between understanding and explanation, in our reasoning. This is what interdisciplinary inquiry and reasoning, entitled here as preliminary or even primary reasoning, seeks to accomplish. As we shall see, this requires a twofold causal matrix in interdisciplinary inquiry that provides both revelatory and contingent causal constructs. The need for such complex reasoning is especially evident in the most complicated of all human social phenomena--violent human conflicts.
In particular, violent human conflict is always embedded in a unique and often local place and historical time. So, in our current study, the explicit assumption is that such interdisciplinary inquiry is necessary in order to capture the uniqueness of a complex phenomenon such as violent human conflict in its original ontological site, or “local realism (a term borrowed from Quantum mechanics.) Such uniqueness can’t be glibly reduced to the over generalized and theoretical assumptions concerning place and a unique historical moment existing as Cartesian coordinates in a presumed universal time and space continuum; this is pure theoretical fiction, especially if the premises of such theoretical generalization have not been specifically confirmed or falsified in subsequent research. In short, interdisciplinary inquiry is a way to capture and understand uniqueness; only when the phenomenon is understood as it actually exists can attempts to generalize from it be made.

Such an interdisciplinary methodological approach is necessary to correct the most egregious omissions of current theories or research on human conflict. First and foremost is that theories about violent human conflict suffer from what Cook and Campbell describe as “construct under representation” which they define as: “the operations failing to incorporate all the dimensions of the construct” (Cook and Campbell, 1979, p 64.) They see this as a serious threat to construct validity in general. In the following essay, I will attempt to address this threat to construct validity in the field of conflict analysis by developing interdisciplinary causal constructs of violent social conflict.

A vivid example of construct under-representation in the field of conflict analysis is the almost predictable lack of maps and geographical analysis in any publication dealing with violent human conflict, as though human conflicts happen in a topographical void. Fighting for contested geography is often the lifeblood of armies yet is barely mentioned in the growing literature in conflict analysis. Military establishments throughout the world spend an inordinate amount of time preparing and reading maps in specific conflicts or wars while theoreticians of the same conflicts rarely, if ever, use maps in their analysis; this omission only highlights the poverty of current causal constructs in the field. Notable exceptions to this are the book Contested Lands (2007) by Prof. Bose and the parallel development in the field of geography of “contested geographies” as a developing field of sub-specialization (Phillips, 2005).

An added danger to the validity of research, besides the construct under representation, is that the construct validity of effects is often overgeneralized. Disembodied theory building is often given the pride of place in the production of new “knowledge” in conflicts. Hence, the unique people, place and historical moment of each violent conflict is largely lost and replaced by the overgeneralized construct validity of one or two effects—such as identity formation or interest based outcomes— that may be prevalent across many different—though certainly not all-mortal conflicts.

Finally, to make matters more complex, any single cause of the competing knowledge claims that originate from highly contested epistemic encounters between knowing subjects, such as claims to contested geography, can constantly interact with other causes and thus intensify the conflict’s complexity. So, at first glance, the compound realities of lethal contests almost defy traditional definition and description; scholars have and will inevitably contest the sources, substance and significance of such conflicts almost as hotly as the combatants themselves.

To decipher this complexity, the scholar as researcher and experimenter needs to combine different, compound, and parallel methods of interdisciplinary inquiry in order to understand the complex causalities and compound realities of violent human conflict. Thus, the immediate task is to reveal or disclose the full complexity of a unique phenomenon, such as violent social conflict through interdisciplinary research. This is what the multiplex methodology seeks to accomplish. Simply stated, it provides a way to study an embedded and unique phenomenon while also providing a method for careful, calculated generalization—after all the causal constructs have been identified.
As we shall see in the next section, multiplex methodology uses a dual system, or causal matrix, consisting of revelatory and contingent causation in investigating conflicts between inevitably "embedded" human beings or societies. An accurate interdisciplinary understanding of dual nature of causation in insuring the construct validity of causes in violent human conflicts is a necessary but not sufficient condition for their eventual understanding. When combined, each of these causal systems provide a point d’appuie, or departure point, for entering and deciphering the hermeneutical circles (like the descending circles of Dante’s *Inferno*) that surround and suffuse violent conflicts between human beings.

### III. Multiplex Methodologies: A Neoaристotelian Framework for Conflict Analysis

A multiplex methodology is not so much a single “method” to collect data; instead, it is a compound, contingent and sequential structure of inquiry in case studies that utilizes parallel and multiple processes of data collection using a variety of disciplinary methodologies to insure the “construct validity of causes” that incorporate all dimensions of the conflict. A multiplex methodology first seeks to provide *revelatory structures of inquiry* into the conflict consisting of *rival hypotheses* that involve contingent causal constructs and their interrelationships identified in a tentative causal constellation. Such contingent constellated causal structures (Kuhn, 1970) discloses possible relationships that can then be tested and corroborated in the conflicts unique ontological site using process tracing (Homer-Dixon; George and McKeown) and subsequent disciplinary methods of data collection, confirmation or falsification. Only once such a contingent process of revelation and subsequent confirmation or falsification of constellated causal representation is conducted can more general theories of conflict be constructed or implied. In this way, for instance, the epistemic pluralism found in almost all violent human conflicts can be identified or revealed and investigated.

To accomplish this, the Aristotelian famous fourfold causal structure can be employed as the basic structure of multiplex methodology. “Cause” here will be used in its original Greek meaning—naming to “reveal or disclose” that which is. Specifically, the ancient Greek word “Άτια” which Aristotle uses in both his *Physics* and *Metaphysics* (1941) to describe his fourfold causal structure always meant to “reveal” or to “disclose.” For Aristotle, this fourfold causal framework concerning the material, efficient, formal and final “causes” of a specific phenomenon was a *revelatory structure of inquiry*.

Hence, the first use of “cause” in a multiplex methodology requires the researcher to reveal or disclose, if possible, the full range of contested truths concerning geography, ecology, history epistemology, needs, interests and goals found in a violent human conflict. This should be done *in parallel* for both or all groups involved in a deadly dispute. After this is completed, and the construct validity of causes is assured, then the process of careful generalization from the particular can begin, if necessary, by using contingent causality consisting of confirmation and falsification techniques of verification (Boudreau, 2009).

In view of this, I believe that a violent human contest can best be studied in a preliminary way by Aristotle’s sequential fourfold causal structure consisting of the following interrelated concepts that are looking for contested truths in the following areas: (1) The **Material Cause** which consist of the inevitable ecological and geographical embeddedness of the human beings in conflict; the purpose of this “cause” is to reveal or disclose the unique ecologies, contested geographies (localities), competing or contested maps and actual typologies (human perception of these localities) often involved in violent human conflict; elsewhere, I describe the material cause as the ontological site unique in time and place that inevitably characterizes human life (Boudreau, 2009). (2) The **Efficient Cause or Human Agency** consisting of competing or
contested human behavior, needs, emotions or agencies engaged in a violent human conflict; this also includes the contested histories of previous encounters where actual confrontations, attacks and battles occurred that often characterize the groups in actual conflict. Emotional analyses of violent human conflicts are one of those often missing causal constructs yet obviously deeply felt hurt or anger can contribute significantly to a human conflict, so this factor is included here for possible investigation; (3) The Epistemic Cause as the “formal cause” which Aristotle defines as the “ways in which we describe” the resulting structure. Following his lead, the formal cause can be characterized as how those who make knowledge claims describe and justify their verbal assertions. Hence, it will be described here as the epistemic cause or causes include the competing knowledge claims, contested histories, competing and socially defined identities, discourses and narratives by all the epistemic communities (Haas, ; Boudreau and Polkinghorn, 2008) involved in violent human conflict used to explain and justify their actions including, among other things, dehumanizing and legitimating the killing of another human being (Camus). (4) The Final Cause or goals of the conflict which can either be, in violent human conflict, competing interests, and the win/lose Nietzschean “Will to Power” or,—using the appropriate conflict resolution methods of intervention and transformation—the “Will to Empower” all the participants in a violent human conflict. (This is where third party intervention and efforts at conflict resolution can play the greatest role, especially by providing reframing or alternative frameworks of understanding to the participants themselves or seeking the common ground, if any, within the contested narratives of the competing groups.) Ideally, each of these sequential “causes” of conflict must be confirmed or falsified for each unique conflict before subsequent theoretical generalization can proceed.

IV. The First Cause: The Material Preconditions of Life

The specific sequence of these “causes” is deliberate and demonstrates the interdisciplinary nature of the subsequent inquiry; in particular, it is significant that Aristotle posts the efficient cause second in the sequence of his fourfold causal structure; for Aristotle, positing human agency first as the “efficient cause”—free from material conditions or constraints—would have been literally heresy, and considered an act of hubris in the classical Greek world in which he lived. For Aristotle, human life was always found and embedded in an ecological or material foundation. In short, for Aristotle, human life is never found in abstraction from its material or earthy preconditions for its biological existence. In Greek, “ikos” means “home.” Thus, the original meaning of the word “ecology” in Greek literally means the study of one’s true home. So in today’s world, the basic level of analysis in such embeddedness is now the earth as a whole including its ecology upon which all human life exists and depends. So, in Aristotle fourfold causal structure, these can be truly and accurately portrayed as the “first cause.”

Unfortunately, the modern social sciences have apparently forgotten this key Aristotelian insight in their various definitions of human agency which often contain no reference at all to our material or biological conditions as the “first cause” of existence (Boudreau, 2009). For instance, according to economic theory, the human agent is often viewed as being solely concerned with maximizing his or her utilities or interests. This is described as “rational” behavior—as though human life exists in a biological void. So, it is possible in today’s university to educate economists who have little or no understanding of the earth’s ecology or of the profound interrelationships between the environment and economic activity. Furthermore, this basic definition of rational human behavior does not explain, within its own terms, the motivation or behavior of the millions of police, firemen, soldiers or even teachers throughout the world who work for something other than monetary reward; finally, the environmental impact of economic decisions is rarely if ever studied or anticipated, as the BP oil spill in the Gulf in 2010 vividly illustrates. In fact, the earth’s ecology is rarely listed in the index of most college or MBA text
books—even though economic decisions are having a decisive and deleterious impact on the earth’s ecology. In other words, Aristotle’s first cause is largely looked over or even totally ignored by the so-called “rational” agents of economic theory—which have profound consequences for people’s actual choices and human ecology in the modern world. This is theoretical fiddle playing while the world burns. Thus we need to return to the wisdom of the ancient Greeks and to Aristotle for whom human life was always embedded in a material and ecological foundation which is appropriately paced here as the first cause.

Scholars such as Clifford Geetz or Athony Giddens have critically noted that the modern social sciences, especially in the Anglo-American world, often implicitly assume the preeminent ascendancy of methodological individualism, often apparently free from any material and even social conditioning or constraints (Geertz, Giddens, 1984). This methodological individualism has explicitly or implicitly become the dominant paradigm in grading, graduate schools, pedagogy and purposes of the modern disciplinary domains throughout the modern world, especially in the field of economics. We will not make the same mistake here…..

Ironically, Aristotle provided the philosophical basis in his works for the subsequent specialization of knowledge into distinctive disciplines (Boudreau, 1997). Unfortunately, the history of scholarship since Aristotle’s time has largely followed the path of the increasing specialization of knowledge; such specializations often consist of highly abstracted and hence somewhat artificial epistemic and territorial boundaries of the “mainstream” domain disciplines (Campbell, Abbott, Boudreau). So, in many ways, Aristotle was the first and last interdisciplinary scholar as his fourfold causal structure demonstrates.

This does not meant that the researcher must slavishly follow his sequential causal constructs in investigating a specific and unique phenomenon; each researcher can posit different (though obviously related) causal constructs within each level of the fourfold structure; for instance, if we add Marxist materialism to the first level of analysis, the first cause can also reflect the various group’s economies and economic interests that inevitably interact with the material and biological basis of life; as we shall see, such causal constructs contained within his fourfold causal construct ultimately depend on the explicit choices of the researcher. In short, there is a certain latitude in choosing the various constellated causal constructs at each step as long as the choices are made explicit and justified by the circumstances of each unique conflict; such flexibility in the construct of the methodology reflects the need for intensely focused interdisciplinary inquiry. There should always be a first cause consisting of life’s material and ecological preconditions. But other frameworks of analyses can be added here or to subsequent causal factors. For instance, in his essay on the Question of Technology (1977), Heidegger posits the efficient cause as human agency last in his reconstruction of Aristotle’s fourfold sequence of causes. This potential for reformulation, addition and even rearrangement of the subsequent causal structures provides potentially greater revelatory power in any subsequent analysis.

This is also why this fourfold causal structure is referred to Neo-Aristotelian; since it may usually involve a refinement, reinterpretation or elaboration of Aristotle’s original fourfold structure. As the works of Haywood Alker and other attest, there has been a resurgence in neo Aristotelian analysis in the social sciences in recent years (Alker ; ) As we shall see, such a preliminary neo Aristotelian analysis is best done in a preliminary way by a case by using case studies to understand violent human conflict. We will come back to this critical point shortly.

Embedded thinking, as embodied in Aristotle's first cause, could even be useful in addressing effectively global climate change. On a personal note, I believe that a profound revision of the way we think, and privilege "correct thinking" is radically required since the imposition of purely theoretical thinking upon the earth—as embodied in the erroneous assumptions of universal time and space, inherent in the now global use of Cartesian Coordinates imposed upon unique ecologies and use to destroy or profoundly modify them, separates each part from the whole; in turn, this is, to a large degree, responsible for the growing ecological
So a new way of embedded thinking, as embodied in Aristotle first cause, is needed if we are to understand and explain the conflict that we have created, or those that are coming, due in part to erroneous ways of thinking in the past. The good news is that such thinking is possible; the human mind has an extraordinarily transformative and Protean potential to change.

V. The Efficient Cause As Human Agency

An assumption of multiplex methodology is that, in its actual existence, human life or agency is pre-theoretical and ontological; that, in its most basic form, human agency is already immersed, involved and “thrown” into the world; in short, human existence as “Being in the world” ((Heidegger, 1962, 1966). is used here to describe this pre-theoretical and pristine phenomenon (Boudreau, 2009).

The further presumption in this neo-Aristotelian framework is that human agency and especially contested human agencies are always situated in such a unique ontological site that can’t be universalized, spatialized or temporalized into general theory about human behavior unless the precise embeddedness of a particular conflict is specifically confirmed or falsified in subsequent research. In short, human agents, especially in violent conflicts, aren’t theoretically interchangeable. When the killing begins, there is rarely, if ever, at first a “universal knower,” enjoying full information, who can comprehensively scan the resulting carnage from the Mt. Olympus of scientific objectivity; this is also true for the participants who are usually deeply engaged in their unique conflict. For instance, an Irishman may kill or die for a united Ireland, but might care less about Israel or India. An Israeli might kill or die for a greater Israel, but might care less about a united Ireland or India. An Indian soldier may kill or die in the Kashmir for a greater India but may care less about a united Ireland, or for Israel. The point is that specific material conditions often “cause” or reveal specific subsequent human behavior or agency. Of course, we can abstract from each of the conflicts in Ireland, Israel or India and make wonderful Platonic generalizations about the “ideal” of human conflict in more abstract theory. Yet, such rarified theory comes at the cost of the unique knowledge and understanding to be gained by looking at the specific geographies, contested typologies, cultures and epistemologies involved in violent human conflict. Yet, such knowledge acquisition of the “ontological site” and local realism is one of the primary purposes of interdisciplinary inquiry. It should not be lost lightly in the rush to make theoretical generalizations about human conflicts……

VI. The Third Cause: “What the thing is defined as being essentially”

The origins of Aristotle’s third cause, the formal cause, needs further clarification within the context of an interdisciplinary causal structure examining violent human conflict. Aristotle’s understanding of the “formal” cause is partially in reaction to his teacher Plato, who believed that true knowledge consisted in the recollection of the ideal forms, and not simply of things in themselves. Yet, Aristotle—his most gifted pupil at the Academy-- was not so sure; in particular, Aristotle was uncomfortable with Plato’s notion of the transcendent “Ideal.” Rather than look for “aitia” of a form in transcendence, Aristotle looked for a phenomenon’s form in nature, which is consistent with his overall metaphysical view of a world in becoming, developing from a
potentiality to the actual, like the famous Aristotelian acorn, driven by the phenomenon’s unique telos, or purpose as it becomes a “final” cause—in this case, the oak tree.

So, rather than describe a phenomenon’s “ideal” cause, as Plato might, as in a revealing or disclosure of a phenomenon’s form, Aristotle describes the “formal” cause, which is often roughly translated as the phenomenon’s “essence;” but a more accurate understanding is, as he describes it, “the form or characteristics of the type, conformity to which brings it within the definition of the thing we say it is, whether specifically or generically...” (From Aristotle’s *Physics*, the Wicksteed and Cornford translation, Loeb Classical Library series, as quoted in *Aristotle to Plotinus*, p. 45, 1956). In another translation of this passage Philip Wheelwright substitutes the word “pattern” for the word “characteristics,” noting that the original word is *paradeigma*, “ i.e. what the thing is defined as being essentially” (Wheelwright, p.26, 1951). Thus, for Aristotle, there are two key characteristics of the formal cause: “the definition of the thing we say it is” and its *pattern* which is also often described as its “essence.” The former aspect of language as the revelatory power is often overlooked in Aristotelian studies, yet it is critical to the act of “revealing or disclosing” the pattern or essence which, for Aristotle, is true knowledge; in short, *how we define* the pattern or essence is true knowledge, and consists, as Heidegger states in his essay on *The Question of Technology*, as a bringing forth or a revealing (Heidegger, 1977). This latter Neo-Aristotelian definition of the third cause as epistemic is, one should note, more consistent with the Aristotelian meaning of “cause” as “atia.” This gives birth, to Aristotle’s classical concept of causation as a revelation of the complex configuration of causal relationships that characterize any unique phenomenon, not as a Platonic recollection of the Ideal.

Given this, the “form” or “characteristics” usually found or revealed by the third cause is the pattern of social interaction often found in human conflict. Such a pattern or *paradeigma* usually results from the epistemic encounter which can be defined as the basic social encounter or engagement between two or more human beings who are simultaneously active hermeneutical agents that are continually interpreting and reinterpreting, not only their surrounding material contest, but each other in a constant process of social construction, cooperation, competition and conflict (Boudreau, 2008; Boudreau and Polkinghorn, 2008). Whether it’s across the boardroom or across the battlefield, people confront each as knowing, interpretive beings. When found in peacetime, such an epistemic encounter is often a variation of the “I-Thou” encounter so cogently and potently characterized by Martin Buber in his philosophical works (Buber, 1971). For Buber, the “I-Thou” encounter represents the human encounter (of each other) in its greatest potential and promise.

As Buber notes, these “I-Thou” or epistemic encounters are factually distinct from encounters with oneself or one’s self-consciousness, such as a Cartesian encounter consisting of “Cogito Ergo Sum.” Furthermore, the form or characteristic of this “cause” is qualitatively different than a human subject’s encounter with an object—even though each participant in a deadly human conflict may wish to objectify and dehumanize the other as a “thing” or an “I-It” (Buber, 1971)

When contested, these encounters often result in very different interpretations, narratives and “explanations” of the same unique event. This gives rise to the resulting epistemic pluralism, mentioned above, that challenges the Enlightenment idea that the same or similar people with similar backgrounds or beliefs will view the same event in the same or similar way.

In a violent human conflict, due to the resulting epistemic pluralism, the Enlightenment idea of a universal knower rarely, if ever exists, especially at first. In fact, the results are often the reverse; the contested assertions and descriptions of such epistemic encounters and the resulting epistemic pluralism in violent conflicts often create “rhetorical” or even “Rorschach” realities that might tell us more what the participants want to believe themselves concerning volatile and traumatic events. They also may be trying to convince the world of the righteousness of their
actions rather than impartially describing the “pure facts” on the ground – if such can be found. Instead, all too often, the participants’ interpretation of contested events prove to be partial, perspectival (Nietzsche, 1974; Merleau-Ponty, 1963) and prejudiced (Palmer, 1969; Gadamer, 1960) in a violent human conflict (Boudreau and Polkinghorn, 2008). As an epistemic cause of the conflict, the researcher should first simply record and compare these contrasting assertions and narratives-- as well as possibly match them against the efficient cause to see if there is a consistency between talk, thought and action. The simple “fact” is that epistemic pluralism exists, consisting of often profoundly different narratives and accounts of the same or sequential encounters in a violent human conflict; researchers should record this fact, if it is actually found to exist. Later, in the next section, we will see how such research may be useful in moving the contending parties to a conflict from a zero sum to a positive sum outcome.

So, as used here, the epistemic cause reveals how the participants describe their own involvement in the conflict, the conflict itself and the other side’s possible dehumanization as the conflict proceeds; thus the epistemic cause reveals the progressively wider hermeneutical circles of contested histories, narratives and justifications of a unique conflict. Such an analysis of the epistemic causation of human conflict is necessary, though not sufficient; to develop and define multiplex causal constructs that presents a robust and accurate representation of each unique conflict.

VII. The Final Cause: The Will to Power vs. A Will to Empower

Most violent human conflicts, especially in their escalatory or protracted periods, are characterized by a “will to power” in that each side wants to win. Yet, as the continuing costs of the conflict become more fully apparent, there is often a rethinking by one, both or all parties to the conflict concerning how to settle or even resolve the bloody contest in which they are engaged. If the goal is “unconditional surrender,” then the end result can only be the physical destruction of the opposing side’s government and often a large proportion of its population and homeland. So, not surprisingly, the outcome for many violent conflicts, considering the extraordinary costs of “total victory,” is often conditional and incomplete. This requires that each side begin to think about what the other sides wants as the conflict reaches an apparent stalemate (Zartman & Faure, 2006).

At this point, national diplomats and those trained in conflict resolution can have their greatest impact (Kelman, 1997). Diplomats and other nongovernmental or track II specialists (Diamond and McDonald, A. J., 1996; Montville, 1987) can help each side reformulate their positions and desired goals to include some of the needs and goals of the other side (Byrne and Irvin, 2000; Abu-Nimer, 1999). At this point both or all sides are, in effect, trying to empower both themselves and the enemy other in order to live peacefully together in the future. This is the critical transition point of the conflict from a zero/sum or “win/lose,” to a positive sum or “win/win” (Deutsch M. and Coleman, P. eds., 2000) There are a variety of mechanisms that can help at this point including third party intervention (Boudreau, 1991), peace initiatives (Osgood, 1962), facilitated workshops (Fisher, 1996) and mediation (Bervovitch, 1996; Sandole, 1998). A multiplex analysis of such a conflict should be able to identity the possible “salient points” common ground or even transformational forces (that already may exist in the conflict’s competing narratives and goals so that all sides can come together, settle, manage, or resolve their differences and let their children grow up in peace.

VIII. Parallel Process of Inquiry

To be accurate, a multiplex investigation into human conflict must strive to represent accurately the contest truths of both or all sides to the deadly dispute. This requires, as an integral
part of a multiplex methodology that parallel processes of inquiries into the construct validity of causes be conducted in both or all epistemic communities engaged in violent conflict. The idea of simply interviewing an “expert” on the topic may be acceptable in journalism but is simply not adequate in any scholarly analysis of conflict, or—for that matter—any other subject involving contested truths; there needs to be parallel inquiries in all of the affected and involved groups in order to represent accurately the exact issues and contest truths that divide the warring sides. This means going directly, if possible, to the participants themselves in parallel investigation of contested truths. As Prof. Brian Polkinghorn always admonishes concerning methodological issues, “Let the data do the talking!” This can be done by creating parallel structures of inquiry as a basic standard of validity (not to mention integrity) in preliminary research. In this way, multiplex methodology seeks to create epistemic structures that enable, if not require, the researcher to reveal and disclose the sources as well as the significance of contested truths among the participants themselves.

These constellated causal constructs have to be developed in parallel for both or all sides to the conflict and include their possible interrelationships. This requires, if applicable, conflict mapping (Wehr, deBono) that begins with the actual contested geographies of the conflict’s ontological site and the resulting epistemic pluralism (Boudreau, 2009). The end result of this stage of multiplex methodology is a representational map or "conceptual constellations" (Kuhn, 1970) of the parallel contingent causalities and their complex configuration of interrelationships that reflects as accurately as possible the actual and unique violent conflict.

Such parallel and almost inevitably contested causal constructs is why this methodology is called multiplex. The original meaning of the word “multiplex” is to send out simultaneous, multiple messages often traveling in opposite directions on the same wire. The word has more modern connotations of manifold viewings, as in a multiplex cinema with multiple theaters. The multiplex methodology presented here incorporates all of these antecedent meanings in its effort to reveal manifold, parallel and often contradictory causal constructs concerning the same phenomenon. This can best be achieved, in the first instance, in a case study. We will come back to this point later in the essay.

IX. The Causal Matrix: Revealing New Knowledge

The Latin origin of the word “matrix” is womb or beginnings. Recognizing the protean possibilities of this word, Donald T. Campbell was the first (to my knowledge) to use the word “matrix” in a methodological context. (Campbell and Fiske, 1959; Cook and Campbell, 1979). As Creswell states, “The concept of mixing different methods probably originated in 1959, when Campbell and Fiske used multiple methods to study validity of psychological traits. They encouraged others to employ their ‘multimethod matrix’ to examine multiple approaches to data collection in a studies.”) (Creswell, p.15)

Given this background, a causal matrix is a specific means for creating or revealing new knowledge. Specifically, the causal matrix in multiplex methodology consists of dual revelatory and contingent structures of causal inquiry that ideally contributes to the revelation or creation of new knowledge. In other words, the matrix consists of a twofold structure of causality that sequentially incorporates the ancient Greek and more modern definitions of “cause.” First, the causal matrix attempts to enhance and insure the construct validity of causes by revealing all the possible causal constructs necessary to represent a complex phenomenon accurately. Second, the causal matrix identifies and tests, in a preliminary way, the necessary implication of cause with effect. This latter causal construct which explores the precise “cause and effect” that may exist within a fully revealed phenomenon can be described as contingent causality since we are still at the stage of preliminary research. In this way, it attempts to insure in a preliminary way the construct validity of effects as well as causes. Finally, using a process of confirmation or
falsification of the original causal constructs, it proceeds to build careful generalizations from actual case studies. We will briefly review each of these steps in the following sections:

X. Revelatory Causation: Disclosing Robust Representation of a Unique Phenomenon

The purpose of the multiplex methodology is to discover new knowledge and make valid knowledge claims about a violent conflict; to accomplish this, the causal matrix at the heart of multiplex methodology uses Aristotle fourfold causal structure to reveal (Atia) the most accurate representation of the causal constructs possible that are inherent in a complex and unique phenomenon such as a violent human conflict. Specifically, as we have already seen, it first incorporates revelatory causality in order to develop the most robust constellated conceptual representation of the complex conflict under study. This insures that our resulting knowledge claims do not result from construct under representation which should and will question the construct validity of our hypothesized causes. Long ago, Plato warned us of the danger of “terrible simplificators” in politics or education who teach by omission to promote their partisan purposes. The use of revelatory causation as the first stage of the causal matrix attempts to avoid the dangers of Platonic partisans, whether in politics or scholarship, which try to convince us, not by the accuracy of their ideas, but by the strength of their passion. In short, the causal matrix is a means of insuring that nothing is omitted, either by intent (self interests) or ignorance, in the casual constructs of violent human conflict.

XI. Second Stage of the Causal Matrix: Establishing Cause and Effect

Defined in this way, contingent causality can take the dual form of exploring a specific relationship to see if “cause or effect” exists, or it can posit in a preliminary way both the “cause and effect” in a relationship and then test the data to see if supports such a hypothesis. For instance, in his ground breaking research, Thomas Homer Dixon examines the role of environmental factors in causing human conflict (1984). In the book entitled Ecoviolence: Links among Environment, Population and Security, Thomas Homer Dixon and Jessica Blitt raise the possibility of a positive relationship between environmental scarcity and violent conflict in the very beginning of the book stating that:

“By the year 2025, world population will be nearly 8 billion. This figure represents an increase of almost 2 billion in just over 20 years. As a worldwide figure, the number is disturbing enough, but the implications of rapid population growth for specific regions are sometimes truly alarming. Over 90 percent of the expected growth will take place in developing countries, in which the majority of the population is often dependent on local renewable resources like cropland, forests, and fresh water supplies. In many places, these resources are being degraded and depleted: soil is eroding from farmland, forests are being logged and burnt away, and rivers are being damaged by pollution. The resources that remain are often controlled by powerful interest groups and elites, leaving even less for the majority of the population. What, if any, are the links between this increasing scarcity of renewable resources—or what we call ‘environmental scarcity’—and the rise in violent conflict within countries in recent years? (Homer-Dixon and Blitt, 1998)”

This introduction to their book raises some extremely serious and complex questions. Most importantly, for our purposes, is the problem of: “How does the researcher demonstrate, at least in a preliminary way, that such a contingent causal relationship exists between environmental scarcity and violent conflict?”
Homer-Dixon tries to answer this question in an earlier work entitled, “Strategies for Studying Causation in Complex Ecological Systems,” [hereafter simply referred to as “Strategies”] Homer-Dixon address the causal relationship between environmental scarcity and conflict. In doing so, Homer-Dixon pursues a method of inquiry that is interdisciplinary in all but actual name.

Though he does not use the language of interdisciplinarity, Homer-Dixon is, in effect, describing the role of contingent causality in interdisciplinary inquiry, in which both the independent and dependent variables are hypothesized to have a relationship in the preliminary stages of research. As such, his research vividly reveals the potential role of contingent causality in analyzing violent human conflict.

XII. Second Stage of the Causal Matrix

This raises the problem of how such contingent causality is tested in a preliminary way in order to proceed to more rigorous proof of a causal construct? As Prof. Homer-Dixon points out in Strategies, a prominent method to provide such a preliminary connection is process tracing. For instance, Alexander George and Timothy McKeown state that: “process tracing often involves dropping down one or more levels of analysis to develop a more finely textured and detailed understanding of the causal steps between the independent and dependent variables ((1985:31). In process tracing, George and McKeown write:

The process of constructing an explanation is much like the construction of a web or network...The growth of the web orient[s] the search for more pieces, just as the growth of a jigsaw guides the search for pieces that will fit together with what is already assembled.

The problem then becomes one of accepting or rejecting the subsequent causal hypotheses. George, McKweon and Homer-Dixon posit “process tracing” as a means for making such selections. (We will not duplicate their argument here, but simply refer the reader to the original essay.) The key to such a process seems to be a comparison of a number of case studies using a correlation analysis in an attempt to determine if the distribution of case studies as hypothesized is significantly different from a distribution that could be expected by chance alone. This is certainly a very useful and positive way in which to establish the possible validity or irrelevance of the results. Stephan Van Evera elaborates upon other ways besides process tracing to build theory stating that:

“Investigators can use four basic methods to infer theories from case studies: controlled comparison, congruence procedures, …process tracing… and the Delphi method. Controlled comparison compares observations across cases to infer theories. Congruence procedure and process tracing deduce theories from observations within cases. The Delphi method consults the views of case participants.” (Emphasis added: Van Evera, 1997)

Using techniques such as process tracing, confirmation, comparisons or falsification methods to scrutinize the data can be a powerful way to insure the construct validity of a subsequent theory, as long as the theory itself doesn’t suffer from overgeneralization. We will examine these issues and processes more closely in the following section.

XIII. Third Stage: Cautious Generalization and Theory Building

In his classic book, An Essay on Human Understanding, David Hume warned about the dangers of inductive overgeneralization (1955). This is especially true in the emergent field of Conflict Analysis where, already, differing schools contend that human conflicts are best understood as competition mainly between interests (Fisher and Ury), identities (Rothman) or needs (Burton,). There may be some truth in such theoretical assertions but each unique human
conflict can be about much, much more..... As such, any inquiry using a multiplex methodology first seeks to understand each conflict in its uniqueness before venturing on to build theory, or placing a specific case study within a greater theoretical context.

To make greater theoretical generalization, an interdisciplinary scholar of human conflict must proceed with great caution so that unique features that may causally contribute to a specific conflict are not lost needlessly. So, at this preliminary stage of inquiry, both corroboration (Quine, 2006) and falsification (Popper, 1979) are useful, though not always sufficient, to insure the construct validity of a causal relationship or relationships beyond a unique event. (To accept Popper’s specific methodology of falsification as a partial procedure within the causal matrix to insure the construct validity of causes and effects or the resulting preliminary hypotheses is not the same as accepting Popper’s entire epistemological argument for “objective knowledge,” with which I have profound reservations and disagreements.) In other words, generalization can only proceed at the interdisciplinary level after a very careful process of confirming or falsifying a particular unique causal construct or relationship is complete. Constructing a theory in this way is like peeling away an onion, and calls for a very careful research recipe. Otherwise, too much may be lost in the rush to develop a rather bland generalized theory that may be more tautological than informative.

Furthermore, as Foucault point out, western thought, especially since the beginning of the 17th century, has sought to spatialize knowledge: “What is striking in the epistemological mutations and transformations of the seventeenth century is how the spatialization of knowledge was one of the factors in the constitution of ...knowledge as science.( Foucault)” This is particularly true of the spatialization or universalization of a unique place as universal space set within Cartesian coordinates that are subsequently imposed upon any space on earth. (The resulting fragmentation of the earth environment into tiny, disconnected parcels of land and the resulting destruction and disasters in the global environment are an seemingly inevitable “effect” of such spatialization—but this is the subject of another essay.)

In contrast, interdisciplinary inquiry initially refuses to spatialize or universalize space -- and the unique geographies which embed human agency-- unless all the relevant contingent causation is falsified. Interdisciplinary inquiry utilizing a multiplex methodology seeks to investigate and reveal human agency in its unique localities, ecologies and geographies; it does not presume that human beings operate in a universal space, free from material, biological, geographical or cultural constraints unless specifically falsified by subsequent research. This certainly does not rule out the spatialization of theory or knowledge in the domain disciplines; sometimes, such spatialization can serve certain specific and beneficial ends. However, the lack of spatialization in interdisciplinary inquiry--which seeks understanding of embedded human existence in its unique place-- distinguishes it qualitatively from the highly specialized inquiry of the specific disciplines.

Finally, what is true for space in interdisciplinary inquiry is true for time as well; violent human conflict always occurs within a unique historical moment. In short, interdisciplinary inquiry in the social sciences refuses to reduce the uniqueness of a specific time and place to universalized Cartesian time-space coordinates without falsifying the contingent causation of embedded human agency. This is why interdisciplinary inquiry using the multiplex methodology uses the case study that preserves the unique place and historical moment as the basic building block of subsequent analysis concerning violent human conflicts. So we will turn to the invaluable potential role of case studies in conflict analysis in the following section.

So, in summary, the first goal of the causal matrix is to present as fully developed and robust conceptual representation of the conflict’s causes. Only then can causal constructs be developed that can be tested for their necessary implication (Hume, 1955) and thus insure the “causal construct of effects” (Cook and Campbell, 1979). In this stage of inquiry, the independent variables are related to the dependent variables through process tracing and then tested for the
construct validity of effects. The dual methods of confirmation and falsification, when coupled, can often provide a higher degree of validity than either method alone (Cook and Campbell, 1979). In short, multiplex methodology uses a compound system of causation or causal matrix to reveal, investigate and accurately represent violent conflicts.

XIV. Case Studies: Capturing the Living Fire of Violent Human Conflicts

As Robert Yin states, a case study is most appropriate when the researcher “wants to cover contextual conditions—believing that they might be highly pertinent to [the] phenomenon of study (Yin, 2003).” As argued above, human agency is inevitably embedded in “contextual conditions” within the ontological site, the location and often the source of human conflict. To understand these conflicts in their local realism, the case study is, in the first instance, the preferred methodology of research.

As we have seen, human conflict is, in its first instance, a uniquely local phenomenon, both in time and space. Furthermore, as argued above, the ontological site is in such conflicts often an extremely complex and contested location consisting of competing geographies, narratives, interests, identities and gods. Yin’s argument for a case study seems to anticipate this complexity of human conflict stating that: “The case study inquiry copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result relies on multiple sources of evidence with data needing to converge in a triangulating fashion, and as another result benefits from the prior development of theoretical propositions to guide data collection and analysis (Yin, 2003).”

Yin is speaking to the central strength of a case study—namely its ability to capture a unique and embedded phenomenon in the inherent complexity of its ontological site (Yin, 2003; Boudreau, 2008). First, he sites the need for multiple sources of evidence, a feature described above as multiplex modeling and methodologies, to best understand and differentiate the data between the parties engaged in a unique conflict (Yin, 2003).

In view of this, when dealing with lethal contests between human beings, a good case study should include, consistent with a neo-Aristotelian fourfold causal framework, evidence of: a) a dual (parallel) or multiple identification of the competing geographies and contested lands (Bose, 2007; Phillips, 2005); b) contested human agencies consisting of the historical and current actual or ontological sites where confrontations, conflict, battles and war occurred; c) epistemic pluralism consisting of contested historical and cultural narratives (Seneci, 2000) concerning selective suffering or grievances (Volkan, 1998) as well as competing causes of the conflict; (4) evidence of contested outcomes, goals and the ultimate objectives of the contesting agents. This results in dual(parallel) or multiple possible explanations of the conflict; As Yin emphasizes the point that research can be guided in a preliminary stage by “theoretical propositions” or what Campbell describes in the foreword of Yin’s book as “plausible rival hypotheses.” In his foreword to Yin’s book, Prof. Campell identifies such “plausible rival hypotheses” as the very essence of science. In the context of the multiplex methodology, such “plausible rival hypotheses” are the essence, or end result, of a good case study.

Robert Yin elaborates upon the appropriateness of the case study, defining it in the following terms: “A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident. (Yin, 2003)” Perhaps the most famous example, which Yin cites, concerning the use of a case study to analyze contesting human agencies is Graham Allison’s Essence of Decision in which he uses three differing paradigms or models to analyze the Cuban Missile Crisis (Allison, 1971; Allison & Zelikow, 1999).
Prof. Allison used three sequential frameworks of analysis to investigate the same data and event—namely the Cuban Missile Crisis of 1962 in which the United States and the Soviet Union came to the brink of nuclear war. These three subsequent frameworks consisted of the rational actor, organizational and bureaucratic models of analysis. Allison was able to demonstrate, using these three sequential models, very different insights, explanations and outcomes concerning the U.S. government policy choices actually made during this dangerous confrontation. In short, his use of the three frameworks tremendously enriched our understanding of this critical, and nearly disastrous, event. Armed with such information, we are hopefully better prepared to prevent such a dangerous confrontation spinning out of control in the future.

Though Prof. Allison obviously did not specifically use a neo-Aristotelian framework, nor did he conduct a similar investigation of the Soviet side (especially since the secrecy of that regime did not make such an investigation possible), his use of the three sequential frameworks demonstrates the power of such multiple modeling of the same event to reveal more fully the complexity of the choices made and their actual or potential consequences or outcomes in the most dangerous nuclear crisis so far in human history.

**Conclusion**

This essay has presented an argument for a two-stage process of "rational" thinking involving first embedded thinking consisting of full ground inquiry into the inevitably embedded existence of actual human beings. This reflects the Aristotelian influence of his fourfold causal structure as being the basis or all unique phenomenon. In turn, this initially requires epistemic inquiry and examines the, in the case of violent human conflict, the often unimaginable Abysses out of which knowledge originates. The second stage consists of the careful abstraction from the actual by confirmation and falsification to more theoretical generalizations and "explanations" that are actually found in the specific disciplines. This is the Platonic realm of metaphysics and seeks to generalize from the unique experience or existence. Both processes of Aristotelian and Platonic reasoning are required for an accurate description, understanding, and explanation. Specially, such full ground or embedded rationality, thinking and inquiry requires calculating carefully the precise "ratio" or reasons for combining specific degrees of uniqueness and explanation to describe a specific phenomenon or complex phenomena (Boudreau, 1991).

Elaborating upon the idea of multiple modeling found in Allison’s *Essence of Decision*, I have described in this essay the need to develop competing and complimentary causal constructs in an interdisciplinary causal structure or constellation, described here as multiplex methodology, in an attempt to fully disclose and reveal more fully in the future a phenomenon as complicated as violent human conflict. All violent human conflicts end eventually, though often at much greater costs to all the participants. It is hoped that the better and more accurate understanding of such conflicts provide a first step in resolving them.

Albert Camus once stated that: “I hope for not a world in which there is no murder, but for a world in which murder is not legitimate.” Achieving this will depend on first, the accurate representation of human conflict and second, upon their effective resolution. In particular, the epistemic causes concerning the parochial processes of legitimating of violence must be fully explored and understood before violence can be radically delegitimized as a way to resolve conflicts between human beings. At the farthest frontier of human possibility, I believe that such a world is possible, though it may seem highly unlikely in today’s current political climate. Yet, what if earlier pioneers for social justice and peace were deterred by the monumental task problems that they faced? If this had happened, then African slavery in the New World or Nazism might never have been abolished. In short, positive change is still possible.
As Harriet Tubman poetically and proudly mused after slavery and the American Civil War ended, “the greatest storm the world had ever seen came to an end one bright, sunny day…..”

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Embracing Citizen Oversight: A Police Executive’s Guide to Improving Accountability

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Abstract

Citizen oversight of police is a product of the police profession’s failure to reassure the public that police organizations have the ability to hold police officers accountable for their actions. There is a widespread belief that citizen oversight systems can be more effective at holding police officers accountable and reducing police misconduct. Unfortunately, most citizen oversight systems have failed to achieve those goals. Much of the failings can be attributed to poor planning, unrealistic expectations, and the lack of political and financial support. However, the overriding obstacle to the success of many citizen oversight systems is the resistance from police officers and police administrators. The dilemma for citizen oversight entities is creating a working relationship with the police while still remaining independent and impartial. Understanding the factors that contribute to this strained relationship and working to remove those barriers are critical to establishing an effective accountability system. Police leadership must take an active role in developing a strong working relationship with citizen oversight personnel in an effort to bring respect and credibility to the police accountability system and to reestablish public confidence in the police organization.

Introduction

There is no other profession that demands more accountability than that of a police officer. Police officers have tremendous power, which includes the power to take away another’s freedom and someone’s life. Law enforcement officers have accepted a position of visible authority within their communities and are held to a tremendously high standard of honesty, integrity, equity, and professionalism. Public trust in law enforcement may be fleeting if police executives do not continually reinforce sound, ethical policies and procedures to agency personnel and to the public. Law enforcement executives, therefore, bear the responsibility for demonstrating proper behavior, informing the community about their department’s role in maintaining honor and integrity within the organization, and building and sustaining a trusting working relationship between the public and the police (Office of Community Oriented Police Services [COPS], 2007). Police misconduct is nothing new in the United States. Use of excessive force, unjustified shootings, race discrimination, and a general lack of accountability for officer conduct have been serious problems since the first police departments were created in the early nineteenth century (Walker, 2005). Building and maintaining community trust is the cornerstone of successful policing. The building and maintenance of trust takes a great deal of continuous effort. Unfortunately, the ethical work of thousands of local law enforcement officers is easily undone by the actions of one unethical officer. Often the indictment of one seems like an indictment of all. Once misconduct occurs, the Internal Affairs function of the law enforcement agency becomes the primary method of reassuring the community that the police can and will aggressively
address and resolve unethical behavior. In short, the integrity of the police will always dictate the level of community trust. Every day, tens of thousands of law enforcement personnel throughout the United States perform honorable and conscientious police work, but irreparable damage has been done to the entire profession by a small percentage of dishonest police officers (COPS, 2007).

I. Background

The first attempt to create police standards of behavior began in the 1920s, which is referred to as the era of police professionalism. Problems continued to exist and citizens began to believe that police could not adequately investigate themselves for wrongdoing. Activist groups began to argue for citizen review of police as early as the 1940s (Chasnoff, 2006). The demand for citizen oversight continued in the 1950s and 1960s as a result of the civil rights movement and the perception in many quarters that law enforcement responded to racial unrest with excessive force. Many of these early review procedures were short-lived. Citizen review was revived in the early 1970s as urban African-Americans gained more political power and as more white political leaders came to see the need for improved police accountability. Most oversight procedures have come into existence after a high-profile case of alleged police misconduct (usually a shooting or other physical force incident), often involving white officers and minority suspects. Racial or ethnic allegations of discrimination are often at the heart of movements to introduce citizen oversight (Finn, 2001). In fact, civilian oversight typically emerges in the context of public reaction to high-profile examples or allegations of police misconduct, often accompanied by a perception that justice against the police officers concerned is not achieved (Miller, 2002).

In 1991, the Rodney King beating aroused a wider community, and police reform was no longer principally the province of communities of color and civil libertarians. Grievances against the police and calls for reform became mainstream and legitimatized, as exemplified by Warren Christopher and his commission investigating the LAPD. The work of the Christopher Commission and legislation authorizing the Department of Justice to seek to enjoin patterns of police misconduct, along with news and editorials about police failings in Los Angeles, New York, Washington D.C., and elsewhere, led to increasing demands for accountability (Bobb & Pearsall, 2010). Because of the historic problems with internal police complaint procedures, civil rights activists have long demanded the creation of external citizen complaint procedures, usually in the form of a civilian review board (Walker, 2005). By 2000, citizen review had become more widespread than ever before in the United States. Almost 80 percent of the largest cities had some form of citizen review. By 2004, virtually all of the big city police departments in the United States were subject to some form of citizen oversight (Walker, 2005). Civilian oversight has become commonplace because it satisfies a need in most American jurisdictions. Local executive branch officials, local legislatures, criminal courts, and civil courts generally do little to punish and deter routine acts of misconduct or to reform problematic police department policies. When scandals erupt, crises occur, and police misconduct obtains momentary political salience, cities create civilian oversight bodies to fill this oversight gap (Clarke, 2009).

The emergence of citizen review of police as an accountability measure is a product of the law enforcement profession’s inability to maintain public trust as it relates
to holding their own accountable for their actions. Over the years, this accountability void has been filled by public demand to have citizens actively oversee and monitor police accountability mechanisms. Whether or not citizen review has accomplished the goal of holding police officers more accountable for their action is unclear. In the past 15 years, the need for police monitoring has focused on a perception held by some that the police lack the objectivity and distance to police themselves meaningfully. There is a lively debate whether internal affairs should be replaced with outside professional investigators working for independent boards empowered to adjudicate and impose discipline, with or without the concurrence of the police chief. In contrast, other police reformers see internal affairs and external monitoring as complementary, arguing that the power to adjudicate wrongdoing and impose discipline belongs in the first instance to the police (Bobb & Pearsall 2010). Many cynics believe that American police are incapable of reforming themselves and that police subculture is resistant to all efforts to achieve accountability. Regrettably, a review of police history lends an uncomfortable amount of support to this pessimistic view (Walker 2005).

Many of the citizen oversight systems that have been established over the past few decades have failed due mainly to the lack of support by the police departments they are trying to oversee. Many of those that have not failed are severely limited in their effectiveness in their efforts to improve police accountability (Walker, 2005; Finn, 2001). The purpose of this project is to identify the factors that have contributed to both the success and failure of citizen oversight, and to determine what measures police administrators should take to develop more effective and collaborative citizen oversight systems. It is only through these efforts that police departments and citizen oversight personnel have the opportunity to establish truly effective oversight mechanisms that will garner public trust. In the past, police leadership in general has either contributed to the problem or has taken a passive approach in resolving the issue (Wechter, 2004). Police leadership has a duty to the citizens they serve as well as to the officers they supervise to participate actively in building an accountability system that the public can support. Without this effort, the public will continue to distrust the police, citizen oversight systems will flounder, and police leadership will lose all credibility by reneging on their fundamental responsibility to establish effective accountability measures.

II. Problems Associated with Citizen Oversight

Over the years, citizen oversight mechanisms have struggled to provide effective accountability measures for police departments. Many of the citizen oversight systems have failed, and those that have survived continue to experience difficulty accomplishing their goals and maintaining the trust of the public and the police officers they oversee. Some of the factors that have contributed to this problem include a general lack of political and financial support, poor planning, and unrealistic expectations. However, the main factor that keeps citizen oversight agencies from seeing their full potential is the adversarial relationship between the citizens involved in the oversight system and the police organization. Many citizen oversight systems were created in response to real or perceived problems with the police organization and their inability to hold their police officers accountable for their actions. When citizen oversight systems fail or become maligned by police personnel, public trust in the police department will continue to
deteriorate. Ultimately, the failure of citizen oversight is a failure of police leadership. Police administrators must find a way to improve the working relationship between citizen oversight entities and the police department. This is the only way to restore public confidence in their police agency.

A multitude of literature exists on the subject of citizen oversight of police. Much of the literature involves professional journals and articles written by citizen oversight practitioners and police professionals. In addition to books and professional journals on the subject, much of the literature comprises reports created by large research entities such as the International Association of Chiefs of Police, The Office of Community Oriented Policing Services, and the Department of Justice, National Institute of Justice. Other literature includes reports generated by the American Civil Liberties Union in both New York and New Jersey. Source material was located online through the use of a variety of search engines. I located a number of references by visiting the websites of some of the professional citizen oversight organizations. These organizations include the National Association for Civilian Oversight of Law Enforcement (NACOLE), and the Police Assessment Resource Center (PARC). Key words used in the literature search included the following: citizen oversight of police, civilian oversight of police, citizen oversight, police accountability, police misconduct, police culture, models of citizen oversight, police code of silence, police internal investigations, police citizen complaint procedures, best practices for police accountability, building public trust in the police, and conflict resolution.

III Models of Oversight

There are three basic types of oversight models used to ensure police accountability: (a) internal accountability systems; (b) citizen oversight; and (c) consent decrees. Internal accountability systems involve police administration conducting the business of holding their own accountable for misconduct. These types of systems are also referred to as internal investigations. Citizen oversight systems are mechanisms that involve the use of non-law enforcement personnel to oversee the agency’s accountability measures. Finally, consent decrees are judicial mandates by the government to address patterns and practices of police misconduct. Since this project involves relationship building between citizen oversight entities and the police, the discussion regarding consent decrees will be fairly limited. The primary discussion will focus on citizen oversight and internal accountability mechanisms. Consent decrees are a federally mandated intervention established in only the worst of circumstances. Once police leadership understands how to work with citizen oversight entities and improve their internal accountability systems, agencies will be better prepared to avoid the need for such drastic intervention.

A. Citizen oversight

Civilian oversight involves people outside the police gaining access to previously non-public or secret internal police processes in order to hold law enforcement accountable for its actions, policies, and priorities. In practice, however, there is always a
division of responsibility between external review and law enforcement’s own internal review systems (Phillips & Trone, 2002). Citizen review, civilian review, and civilian oversight are used interchangeably. The aspects of the citizen complaint process fall into three broad categories: (a) community outreach to inform the public about the complaint review system; (b) the complaint investigation process; and (c) staffed and managed complaint review system. It is necessary to have a process for screening complaints, quickly weeding out those that are clearly frivolous and concentrating on the serious ones. The solution to this problem is to accept and record all complaints without judging their merits and then screen them on the basis of clearly articulated criteria (Walker, 2005).

Citizen review bodies have been established in a variety of ways such as municipal ordinance, state statute, voter referendum, executive order, police chief administrative order, and memorandum of understanding (Walker, 1995). There are four basic models of citizen oversight: (a) fully external investigation and review process; (b) internal investigation with external review by a civilian board; (c) professional monitor/auditor; and (d) hybrids (McDevitt, Farrell, & Andersen, 2005).

Fully external models can have complete autonomy from the department to both conduct investigations and make findings. These models are most necessary in communities where the police agency has completely lost community confidence in the internal affairs division to conduct investigations. Initially, these models are viewed very positively by the community as independent investigations of police misconduct. Unfortunately, over time, many of these models come under similar criticism as processes they were intended to replace. Fully external models can quickly become overextended and many do not finish their investigation of complaints in a timely manner (McDevitt et al., 2005). Also known as a Class I model, the most independent citizen review bodies have citizens handle complaints instead of sworn police officers. A full-time professional investigator who is not a sworn officer conducts the initial fact-finding investigation of each complaint. Non-sworn personnel also review investigative reports and make recommendations to the law enforcement chief executive (Walker, 1995).

Examples of Class 1 models can be found in Minneapolis and Berkeley, CA. Minneapolis uses a Civilian Police Review Authority (CRA). The CRA receives, considers, investigates, and makes determinations regarding complaints. It is independent of the police and is made up of mostly citizens appointed by the City Council and the Mayor. In 1997, there were three investigators; two were ex-police officers not from Minneapolis. The chief of police makes disciplinary recommendations. The chief must provide his reasons, in writing, to the CRA and the Mayor, for whatever actions he takes (International Association of Chiefs of Police [IACP], 2000). Berkeley has the Berkeley Police Review Commission (PRC). The PRC claims to be the oldest civilian review board in the US. Formed in 1973, it is independent of the Berkeley Police Department. The Commission is made up of nine members, appointed by the City Council. No member may be an officer or employee of the City of Berkeley. The Commission Investigator conducts his own independent investigation of any complaints made concurrent with the internal affairs investigation. Upon completion of the investigation, a Board of Inquiry, made up of three commissioners, hears the case. The board will make a finding of “sustained (true and unjustified action),” “not sustained (not sufficiently proved),” “exonerated (true but justified action),” or “unfounded (not true).” Findings by
the Board can be appealed if there is new evidence or a substantial mistake was made in the way the first hearing was conducted. The PRC does not recommend discipline; that is up to the City Manager (IACP, 2000). It is important to remember that in these oversight models, the oversight practitioners stress their independence from the police department and their own investigative powers. Subpoena power is of the utmost importance (Chasnoff, 2006).

Another example of a model with full investigative power is the Police Ombudsman for Northern Ireland. An office formed in 2000, it takes full responsibility for receiving and investigating complaints against police, and Ombudsman investigators have the same legal powers as police officers. If the Ombudsman feels there is sufficient evidence against an officer, he or she will recommend that the Director of Public Prosecutions prosecute the officer, or will recommend to the police that the officer receive disciplinary action (Miller, 2002).

In the internal investigation with external review model, the external board is freed from the burden of conducting separate investigations, which may prevent backlog. The external board also retains autonomy from the department. The external boards that do not conduct separate investigations must rely on the information about the investigative process that is provided from the department (McDevitt et al., 2005). Also known as a Class II model, sworn officers in the police department investigate citizen complaints. A non-sworn individual or a board that contains at least some non-sworn people reviews the officers’ reports. The individual or board then recommends action to the chief law enforcement executive (Walker, 1995). It does not conduct its own investigation. The main function is to review completed investigations by police personnel to determine if they have been properly conducted. Some of these boards have the power to return investigations to the department for further investigation if they feel they are not complete (Chasnoff, 2006). Portland, Oregon’s Police Internal Investigations Auditing Committee (PIIAC) is an example of a Class II model. The PIIAC is composed of city council members. It hears appeals from citizens on internal investigations, performs random audits of internal investigations to determine whether complete and unbiased investigations have taken place, and reviews all closed use of force cases. PIIAC does not perform independent investigations. The police chief makes all disciplinary decisions (IACP, 2000). In South Africa, the Independent Complaints Directorate will investigate more serious offenses – notably deaths in custody or by police action – as well as certain complaints involving serious criminal offenses by police officers. However, the remaining complaints are referred to the police for investigation (Miller, 2002).

In a monitor or auditor system, an external person experienced in the investigative process reviews investigations (ongoing and after a decision is made) and makes recommendations. Auditors have experience in the investigative process and are well trained to evaluate the completeness of investigations. Monitors traditionally have unfettered access to all material and relevant investigations or reviews. The monitor may be perceived by members of the community as working for the police organization. Without any direct reporting responsibility to the community, monitors can be seen as inside players with an overriding interest in preserving their good relationships with the department (McDevitt et al., 2005). Also known as a Class III model, the monitor studies department policy and makes recommendations to improve systemic processes
(Chasnoff, 2006). A good example of this model can be found in San Jose, CA. San
Jose’s Independent Auditor can take citizen complaints, but she does not investigate
them. Complaints are investigated by the San Jose Police Department’s Professional
Standards and Conduct Unit (PSCU). The auditor can sit in on questioning during the
investigation phase but cannot question. The auditor can recommend modifications of
policies and procedures but her recommendations are not binding. The Independent
Auditor does not discipline officers and cannot appeal the chief’s decisions regarding any
sanctions (IACP, 2000). Within the United States, some monitors have been judicially
appointed for a limited period to oversee specific, legally binding reforms within police
departments, such as when “consent decrees” are agreed upon between the police
department and state or federal government (Miller, 2002).

Many models exist as hybrids that merge features from two or more different
varieties of citizen review into their own unique systems. For example, the Minneapolis,
Minnesota civilian police review operates in two stages. First, paid, professional
investigators and an executive director examine most citizen complaints to determine
whether there is probable cause to believe that police misconduct occurred. Next,
volunteer board members conduct closed-door hearings to decide whether they should
support the allegations in probable cause cases. In Orange County, Florida nine volunteer
citizen review board members hold hearings, open to the public and the media, on all
cases involving the alleged use of excessive force and abuse of power after the sheriff’s
department has investigated them. A member of the department helps coordinate the
review board's activities (Finn, 2000). In his article on citizen oversight of police,
Chasnoff (2006) provides a number of examples of hybrid models. In Los Angeles
County, an auditor reviews ongoing investigations, recommends how an investigation
should proceed and has the authority to send an investigation back for further work. In
Portland, Oregon they have a separate office which takes complaints and can review the
police internal investigation and send it back for further work. A separate group of
citizens can hear appeals. In Albany, New York the Citizen Review Board reviews
internal police investigations and has the authority to call for an independent
investigation if necessary. Dayton, Ohio has an ombudsman who decides if a complaint is
referred to police internal affairs or is handled by his or her office. They also have a
Citizen Appeal Board. Salt Lake City, Utah allows for concurrent Review Board and
internal police investigations. The Review Board investigator can sit in on the internal
police investigation interviews and take notes, or can conduct a separate interview.
Finally, Seattle, Washington has a police internal investigations unit that is headed by a
civilian. In addition, Seattle has an independent auditor and a separate Citizen Review
Panel.

In one recent survey, approximately 80% of the American public reports that they
favor the use of civilian review. Many citizens see civilian review as a logical outgrowth
of community oriented policing (IACP, 2000). One of the most extensive studies of
complainant satisfaction was done as part of an evaluation of the complaints system for
England and Wales. Their dissatisfaction was centered on the investigation process,
which complainants felt was biased in favor of police, starting with the fact investigations
were done by police. Eighty-three percent of survey respondents were dissatisfied with
the way the police conducted the investigation. This was the main influence on the fact
that 96% were dissatisfied with the outcome. Almost 90% supported the view that "the
whole investigation should be carried out by someone other than the police.” Of additional significance was the fact that over two-thirds developed a more negative view of police as a result of their experience with the system (Prenzler, 2004). When communities know that an agency’s internal investigation will be scrutinized by non-police overseers, their confidence in the integrity of the investigation and any resulting adjudication of an officer’s actions is enhanced (Pitcher, Birotte, & Sibley, 2010). Oversight systems can improve the quality of a department’s internal investigations of alleged officer misconduct. Some agencies report that officers perform more thorough investigations of such cases because they know that the oversight body—and, through it, the general public—will be examining how accurate and unbiased their reports are (Finn, 2000).

Public confidence is almost universally cited as a primary criterion for evaluating police discipline, and a number of public opinion surveys have been conducted on the issue of who should handle complaints against police. The British Social Attitudes Survey has included a question on police complaints processing since 1990—with the question restricted to serious complaints. The most recent survey, conducted in 1996, showed 89% of respondents supported the proposition that serious complaints should be investigated by an independent body, not by the police themselves (Prenzler, 2004). While no empirical evidence may show that oversight systems deter police misconduct, citizen review may help in three ways to improve officer actions. First, by recommending additional training for errant officers, oversight bodies can encourage officers to learn how to avoid the behavior that led to citizen complaints. Next, oversight systems may discourage some officers from engaging in misconduct by reducing their chances for promotion. Finally, when law enforcement agencies adopt policy and procedure changes recommended by oversight bodies, officers gain a better understanding of how they should perform their duties (Finn, 2000). Civil liberties groups have commented that civilian review agencies are much more likely than police to initiate reviews into new law enforcement technologies, public order tactics, treatment of crime victims or other issues that entail civil liberties concerns and require clarification of best practice procedures (Prenzler, 2004). More often, oversight bodies offer recommendations intended to improve department policies governing officer behavior. Oversight systems have also recommended changes to policies and procedures that prove more favorable to officers. If both sides make a sincere and sustained effort to work together, citizen oversight can help law enforcement administrators perform their jobs more effectively and with increased public support (Finn, 2000). One clear benefit that can be claimed for citizen review processes is that they make the complaint process more visible, often more accessible, and perhaps more legitimate (Livingston, 2004).

Despite serious reservations about citizen oversight, many law enforcement administrators have identified several ways that such systems can benefit police agencies. These include bettering an agency's image with the community, enhancing an agency's ability to police itself, and, most important, improving an agency's policies and procedures (Finn, 2000). Independent police monitoring promotes accountability and transparency and helps restore frayed relations between communities and the police by helping to rebuild mutual trust and respect (Bobb & Pearsall, 2010).

Finn (2000) reported on a survey that was administered to complainants, police administrators, elected officials, and members of the community regarding their
experiences and perceptions of citizen oversight of police. Complainants reported feeling validated when their allegations were sustained and appreciative having the opportunity to be heard by an independent third party. Complainants felt satisfied the process appeared to hold police and sheriff’s departments accountable. Police administrators said that citizen oversight can improve their relationship and image with the community and increase public understanding of the nature of police work. They indicated that citizen oversight can improve the quality of the department’s internal investigations and reassure a skeptical complainant. Finally, police administrators indicated that citizen oversight can help subject officers feel vindicated, help discourage misconduct, and improve the department’s policies and procedures. Elected officials indicated that citizen oversight can demonstrate their concern for police conduct to constituents and reduce the number, success rates, and award amounts of civil suits against the city or county. Members of the community at large have suggested that citizen oversight has helped to reassure the community that appropriate discipline is being handed out for misconduct and has increased their understanding of police behavior.

B. Traditional accountability systems

There is very little literature as to what constitutes a traditional accountability model. The lack of literature and research is probably because the traditional model is pretty much the same in every organization; law enforcement policing themselves through the use of best practice policies and procedures, and the establishment of some sort of internal investigations unit. Most of the research regarding oversight models is dedicated to citizen oversight and consent decrees.

C. Consent decrees

As part of the Violent Crime Control and Law Enforcement Act enacted by Congress in 1994, Section 14141 of Title 42 prohibits governmental authorities or those acting on their behalf from engaging in “a pattern or practice of conduct by law enforcement officials” that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. Whenever the Attorney General has reasonable cause to believe that a violation has occurred, the Justice Department is authorized to sue for equitable and declaratory relief to eliminate the illegal pattern or practice. The outcome of such a suit is more commonly known as a Consent Decree (Livingston, 1999). Attention to organizational and management problems is also the central thrust of the federal “pattern and practice” suits that have been brought against law enforcement agencies under Section 14141 of the 1994 Violent Crime Control Act. These “consent decrees” require agencies to implement specific organizational reforms (Walker, 2005).

IV Citizen Oversight – Weaknesses

There is a pervasive uneasy feeling that citizen review is not the panacea many expected it to be (Livingston, 2004). An increasing number of observers argue that the traditional strategy of civilian review of complaints, to the extent that it is limited to reviewing individual citizen complaints, is not likely to reduce police misconduct or
produce long-term improvements in the quality of police services even in the best of circumstances (Walker, 2005). There are serious limitations to what citizen review can accomplish. To be most effective, citizen oversight must complement other internal and external mechanisms for police accountability (Finn, 2001). The International Association of Chiefs of Police (2000) surveyed law enforcement executives across the country and identified the most significant concerns law enforcement executives had with regard to civilian oversight:

- Officers become wary of review and avoid conflict in order to reduce potential allegations.
- When citizen review first begins there may be a marked increase of complaints, especially from critics of a police agency.
- Citizen members of a review board may not have a law enforcement background and fail to understand proper police policy and procedure. Accordingly, they may not judge officer actions correctly.
- Citizen review may lead to a chief losing control over the agency discipline process.
- Citizen review/recommendations may promote police policies that cannot or are too difficult to be implemented. Inability to implement recommendations could degrade the public view of the agency.
- Citizen review may create animosity between the officers and the public.
- The often political nature of citizen review may introduce partisan politics into law enforcement decision-making.
- Costs of review mechanisms, both financial and human, may burden the department.

A. Poor planning and implementation

Civilian oversight systems are often put together quickly and with little thought as to their workability or with much consideration as to how they fit into the review systems already in place. To be successful, an oversight system must first establish the objectives the procedure is designed to achieve—something few oversight planners have done (Finn, 2001).

B. Lack of power and authority

Citizen review advocates argue that subpoena power is necessary for the thorough investigation of complaints. Police officers, on the other hand, generally oppose granting citizen review bodies subpoena power (Walker, 1995). Civilian review agencies have often lacked the authority to accomplish their stated objectives. For example, promising independent review of citizen complaints without the power to conduct any investigations. Others have had the power to conduct independent investigations but have lacked the staff and resources needed to succeed. Some have suffered from poor management, and others have failed because of a lack of political support, disinterest by police management, or staunch opposition from the local police union (Walker, 2005). Virtually all citizen review bodies in the United States have the authority only to recommend disciplinary action to the police chief executive. Local or state civil service
law generally specifies the chief executive’s responsibility regarding officer discipline (Walker, 1995). Regardless of structure, almost all civilian oversight bodies lack the authority to directly discipline officers and modify police department policies (Clarke, 2009).

C. Unreasonable expectations

Civilian review boards reflect a criminal process model of citizen oversight, directed toward investigating citizen complaints for the purpose of punishing guilty officers. The underlying assumption is that the investigation of complaints by persons who are not themselves sworn officers will produce more thorough and independent investigations, with the result that more complaints will be sustained and more officers disciplined. More discipline, in turn, is expected to deter future officer misconduct on the part of both the officer disciplined (specific deterrence) and other officers (general deterrence). To date, however, there is no evidence that civilian review boards are effective in achieving their stated goals. They do not sustain a significantly higher rate of complaints than police internal affairs units (Walker, 2005). Another reason for conflict regarding citizen oversight is that even with advance planning, public officials, police and sheriff’s department executives, union leaders, police officers, and community activists usually have different expectations of what oversight should and can accomplish (Finn, 2001). In the arsenal of tools used to hold police accountable, Citizen Review Boards (CRBs) are both touted and dismissed by activists. For years they were thought of as the means to end police brutality, yet great frustration has set in as most Civilian Review Boards have proven ineffective (Chasnoff, 2006). The argument for rule-enforcement models proceeds from the assumption that involving citizens in the complaint process will help ensure that complaints against police are treated properly – that they are investigated fairly and thoroughly, and more fairly and thoroughly than if handled solely by police. This model is consistent with many of the formal structures for citizen input into the complaint process. However, not even the most assiduous complaint investigation can overcome a basic problem with the traditional argument for citizen review: namely, its focus on the retrospective investigation of complaints as a principal mechanism for rooting out officer malfeasance and enhancing the performance of police (Livingston, 2004). A continuing challenge, therefore, is to create practical mechanisms for citizens routinely to oversee and influence the conduct of law enforcement, including the manner in which police exercise their powers to arrest, interrogate, and use lethal and non-lethal force (Phillips & Trone, 2002). The findings in many oversight investigations leave one or both parties displeased. Oversight personnel face expressions of dissatisfaction from police officers, complainants, and community members; opposition from individual officers and their unions; and resistance from police managers and agencies. Harsh criticism, sometimes delivered in public forums or in the press, can tarnish the reputation of the individual investigator and the agency itself. Enduring such criticism, when it is unwarranted, is demoralizing (Wechter, 2004).

D. Lack of support

The problem that most civilian oversight bodies face is that, once they are created and the crisis passes, governments tend to ignore their need for adequate resources,
political support, or amendments to their enabling legislation. Activists once committed to creating civilian oversight bodies often fail to provide continued support and turn against established civilian oversight agencies by criticizing them as inefficient and ineffective. Such criticisms are often well-founded because resistance from rank-and-file police officers, police department leaders, and police unions can cripple a civilian oversight body. As a result, numerous civilian oversight bodies have failed and been dissolved (Clarke, 2009). Many advocates of civilian oversight argue that there will never be enough resources to support external oversight alone. Creating false expectations about what an oversight agency can achieve only leads to public frustration and disenchantment. These concerns have convinced some people that civil society should play an active role in strengthening law enforcement’s own controls, rather than attempting to supplant them (Phillips & Trone, 2002). The Office of Citizen Complaints (OCC) in San Francisco was once praised as an effective external-investigative body, but is now an example of how even a well-run external-investigative agency can quickly start to fail. In 2007, the local press excoriated the agency after an audit revealed that it had failed to complete many investigations in a timely manner, and that the statute of limitations on many complaints had expired before disciplinary action could be taken. It was also alleged the OCC investigators discouraged individuals from filing complaints due to big caseloads. Though other factors probably contributed to these failures, the agency’s lack of resources clearly caused it to function in ways that undermined the integrity of the investigative process (Clarke, 2009). Another example of the lack of support contributing to failure has occurred in New York. The City Charter provisions that established the New York Police Department Citizen Review Board as an independent entity speak to certain principles of civilian oversight: transparency of process, fairness and objectivity, and accountability. A report authored by the New York Civil Liberties Union in 2007 demonstrates that New York City’s oversight system did not reflect those principles. The reasons for the lack of principles are fundamental – lack of support from public officials, obstructionism by the police, and inadequate financial resources. As much as increased organizational transparency and civilian oversight have become the reality for many law enforcement agencies across the country, the primary challenge, according to a large number of law enforcement and civilian oversight personnel, is the relationship, or lack thereof, between oversight personnel and police (Pitcher et al., 2010). Agencies charged with providing oversight of police face stiff resistance from law enforcement. Political officials are often silently complicit in this standoff. Faced with this political dynamic, oversight agency board members and top administrators often defer to the police. This dynamic has undermined the civilian review function in many United States cities (New York Civil Liberties Union, 2007).

E. Poor public perception

Civilian oversight does not guarantee legitimacy, and certainly there are examples where oversight agencies have not enhanced confidence in the police, for example, when oversight is not seen as independent or when it is perceived as ineffectual (Miller, 2002). For any oversight entity to maintain its overall effectiveness and integrity within the system and in the community, it has to be viewed as truly independent in thought and action (Pitcher et al., 2010). In one study conducted by the Vera Institute, it was determined that citizen dissatisfaction with the New York Citizen Complaint Review
Board rose the further they pursued their complaints. 84% of those who had their complaints fully investigated expressed dissatisfaction with the complaint review procedure (Livingston, 2004). Perceptions can play a huge role in the success or failure of an oversight entity, especially when the ACLU is involved. In their 2007 report on the New York Citizen Review Board, the New York Civil Liberties Union indicated that the oversight agency investigated fewer than half of all complaints that it reviewed, and it produced a finding on the merits in only three of ten complaints disposed of in any given year. For the complainant, the perception of having been wronged is what is at stake. Communicating well with community activists is also a very important endeavor. The criticisms of community activists are important because public perception is such a crucial aspect of police accountability. It is not enough that a police department reduces the number of excessive force incidents and investigates complaints thoroughly; it is also necessary that the department be perceived as doing so (Walker, 2005).

F. Traditional oversight

Internal oversight systems involve law enforcement personnel policing their own. An Internal Affairs Unit is one example. A significant experience of review agencies involves the discovery that police internal affairs departments are often content to operate on a purely reactive basis. Complaints are investigated, findings made, and penalties assigned, but there is no analysis to find patterns and facilitating factors in incidents and no experimentation with preventive initiatives (Prenzler, 2004). Nationally, municipal law enforcement agencies sustain an average of only 10.1 percent of all citizen complaints reviewed internally (Walker, 1995). Much like with citizen oversight agencies, many critics of police accountability systems believe this number should be much higher. Another weakness in internal oversight systems was illuminated by the American Civil Liberties Union of New Jersey when they sent volunteers into a number of New Jersey police departments to test their citizen complaint processes. Their report indicated that even when their volunteers were able to connect with a police employee, they had difficulty finding someone able to provide information about the complaint process. They indicated that their volunteers quickly learned that it can take several tries to reach a person with accurate complaint information (New Jersey Civil Liberties Union, 2009). Another example of why trust in police has faltered is illustrated in the report titled Linking Law Enforcement Internal Affairs Practices and Community Trust Building. Brown, Trahilis & Kaur (2008) provide survey results that give rise to the perception by many that police cannot police themselves. They report that in 2008, the IACP and COPPS Office conducted a nationwide survey of police departments regarding their citizen complaint process. The goal of the survey was to identify trends and common procedures among larger, midsized, and smaller agencies during the citizen complaint process. The survey was sent to 9000 agencies, and a total of 1705 responded to the survey (18.9% response rate). The most notable findings are as follows:

- 22.6% of the respondents do not accept anonymous complaints.
- 23.5% of the respondents require the citizen actually to sign the complaint before it is accepted.
- 91.8% of respondents indicated that they do not receive input from the community regarding their citizen complaint process.
• 33.4% of the departments indicated that no one is designated within their departments to handle an internal investigation.
• 60.1% of the respondents indicated that they do not provide Internal Affairs training to newly promoted supervisors.

The real need for citizen participation in complaint review may stem instead from the shortsightedness of police managers who often conclude that complaints are unimportant because most of them are not sustained (Livingston, 2004). In their 2009 survey of over 500 New Jersey police departments, the New Jersey Civil Liberties Union found that few departments met the requirements of state law as it related to mandated citizen complaint procedures and making the process more accessible to citizens. Some of the most notable findings are as follows:

• 63 percent of agencies require complaints to be filed in person.
• 68 percent of agencies do not accept complaints by telephone.
• 86 percent of agencies will not mail complaint forms or allow them to be picked up from the station and taken home.
• Only 4 percent of agencies said that they accept complaints online.
• 49 percent of agencies do not accept anonymous complaints.
• Of the 41 percent of agencies that said they accept anonymous complaints, 17 percent said that anonymous complaints are not investigated.
• 74 percent of agencies do not accept third-party complaints.
• 79 percent of agencies said juveniles had to have a parent or adult with them to file a complaint.
• Many police agencies will not accept complaints from citizens outside regular business hours or on weekends and holidays.
• Although 88 percent of agencies stated that a person’s immigration status would be irrelevant to filing an IA complaint, only 42 percent of those agencies assured our volunteers that ICE would not be contacted if the complainant was undocumented.
• Police agencies failed to provide written acknowledgment of the complaint in 70 percent of the cases, and they failed to provide the complainant with the final disposition 10 percent of the time.

If the internal misconduct investigation vindicates the officer, it contradicts the complainant’s perceptions of what took place. Some people can accept such a finding. Others cannot, and may doubt the competence, impartiality, or judgment of the fact finder (Wechter, 2004). If people do not feel comfortable or do not know how to file complaints, the internal affairs process is defeated before it begins (New Jersey Civil Liberties Union, 2009). When citizens begin to lack faith in internal affairs processes and have no knowledge of how they work, they become less comfortable allowing the police to police themselves. When a police department resists implementation of citizen review, public suspicion is heightened that a department is not operating as fully in the interests of the community as it should nor is it as forthcoming as it should be on critical issues (IACP, 2000).
G. Police Subculture and the Code of Silence

Policing has historically been an insular occupation traditionally averse to transparency and skeptical of the value of citizen oversight. In police culture, the prevailing view is that police are best suited to monitor themselves. As a result, the investigative and disciplinary processes are secretive; police officials often refuse to confirm or deny that a particular incident or officer is under review. Even when an investigation is made public, the outcome often is not. The lack of transparency means that the community is left with speculation rather than facts (New Jersey Civil Liberties Union, 2009). One of the greatest obstacles to the investigation of misconduct incidents and to police accountability generally has been the refusal of involved officers to give honest answers to investigators. Officers who witness events under investigation often refuse either to report what they observed or give complete and honest answers to investigators. This problem is generally referred to as the “code of silence,” and it has been identified in innumerable reports as an impediment to the investigation of officer misconduct (Walker, 2005). Police departments generally have a closed, paramilitary culture that emphasizes loyalty, and is distrustful and often disdainful of outsiders who judge it (Wechter, 2004). The code of silence involves four distinct actions: (a) not reporting other officers; (b) falsely claiming not to have seen the events in question; (c) actively lying to investigators; and (d) colluding with other officers to create a cover story. One problem that has occurred in some police departments is that important facts are omitted from the investigative report, with the result that the complaint is not sustained (Walker, 2005). Effective oversight inevitably requires a reasonable working relationship with police departments, given that receiving, investigating, and overseeing complaints, disciplining officers, and changing policy cannot be carried out by oversight agencies without police cooperation (Miller, 2002). Another obstacle to police accountability, and part of the basis for the code of silence, is that officers do not see themselves as part of an overall accountability effort. Their relations with internal affairs are as much an attitude of us versus them as is their relations with the community (Walker, 2005)

H. Hostility

Hostility by police departments and police officers to civilian oversight is probably one of the most significant factors that helps explain the failures and underperformance that have afflicted civilian oversight agencies (Miller, 2002). This type of overt opposition is reflected in the New York Police Department’s delay in producing (or in refusing to produce) records and documents to the Citizen Review Board; and in the department’s failure to present police witnesses for interviews. This unwritten policy of non-cooperation is also reflected in the police department’s refusal to adopt reforms in police practices as recommended by the Citizen Review Board; in the dilatory pace at which the department reviews and adjudicates substantiated complaints; and in the dismissal or non-prosecution of substantiated Citizen Review Board cases referred to an administrative trial (New York Civil Liberties Union, 2007).
I. Strained relationships

Citizen oversight staff raise several concerns about their relationships with the police and sheriff’s departments whose investigations they review. Their most common concerns are that in some cases officers refuse to answer questions, departments resist providing needed records—or fail to provide them in a timely manner, officers do not understand the oversight system’s mission and legitimacy, and departments ignore the oversight body’s findings or policy and procedure and training recommendations (Finn, 2001). A continuous challenge for civil society is to engage the police in collaborative reform initiatives, while at the same time remaining independent and impartial. By maintaining sufficient distance from the police, oversight mechanisms are better able to preserve their clarity and objectivity and keep the oversight process itself from becoming corrupted by the interests or culture of the police. At the same time, an oversight agency’s ability to investigate complaints and monitor police investigations depends on collaboration with the police, which can become impossible if relationships are fraught (Phillips & Trone, 2002). Many police administrators and officers have criticisms of local oversight bodies, most of which fall into three categories: (a) citizens should not interfere with police work; (b) citizens do not understand police work; and (c) the process is unfair. In their 2007 report on the effectiveness of New York’s Citizen Review Board, the New York Civil Liberties Union concluded that the civilian oversight system of the New York Police Department had failed because the system had been subverted and co-opted by the police department. Most police administrators believe that their agencies should have the final say in matters of discipline, policies and procedures, and training (Finn, 2001). The difference in how police officers should be disciplined has truly been a major bone of contention between police and citizen oversight personnel. The New York Civil Liberties Union (2007) reports that of the more egregious cases of misconduct that have been substantiated by the Citizen Review Board and referred to the NYPD for disciplinary action between 2000 and 2004, the police commissioner had rejected the Citizen Review Board’s findings in 63 percent of those cases. When discipline was imposed, it was strikingly lenient in light of the severity of the misconduct that has been documented by the Citizen Review Board. In addition, the department took no disciplinary action against almost 30 percent of police officers named in substantiated Citizen Review Board complaints. Between 2000 and 2005, the NYPD disposed of substantiated complaints against 2,462 police officers: 725 received no discipline. While many law enforcement administrators and officers consider the oversight process unfair because outside reviewers are unfamiliar with police work, they have other objections to citizen oversight. For example, unjust criticism and lengthy delays represent two concerns that many officers have about the oversight process (Finn, 2000).

J. Investigative difficulty

Allegations of police misconduct are emotionally charged. Complainants may feel deeply violated and expect the complaint investigator to provide them with justice (Wechter, 2004). Many citizen complaints do not involve the alleged violation of one or another bright-line rule, but instead implicate standards of reasonableness – standards that derive much of their meaning from circumstances that cannot be fully articulated outside their invocation on a case-by-case basis, and that as a result do not generate clear
boundaries between appropriate and inappropriate conduct in many cases (Livingston, 2004). In New York City, the rules of the Citizen Review Board state that in order to substantiate a police-misconduct complaint, the Citizen Review Board’s investigative record must demonstrate that the alleged misconduct occurred based upon a preponderance of evidence. Under this standard, the burden of proof requires a showing that the alleged misconduct occurred based on 51 percent of the evidence. Citizen Review Board investigators have asserted that civilian complainants are held to a higher standard, one that requires a showing, at a minimum, of clear and convincing evidence that the alleged misconduct occurred (New York Civil Liberties Union, 2007). Complaint investigators serve multiple constituents; the complainant, police management, the officers accused of misconduct, the police department as an institution, and the community at large. Each has a significant but differing interest in the outcome of the investigation, and actions taken as a result (Wechter, 2004).

K. Qualifications to judge

Most agencies have opposed citizen oversight because they feel that oversight procedures represent outside interference, oversight staff lack experience with and understanding of police work, and oversight processes are unfair (Finn, 2001). Many police officers view citizen investigators as suspect, because they believe that someone who is not a police officer lacks experience and credentials to understand the demands on an officer (Wechter, 2004). Because they lack experience as law enforcement officers, oversight members may have difficulty fairly determining whether officers have engaged in misconduct. Citizens generally are not familiar with pertinent case law governing officer behavior nor do they understand the nature of police discretion, the methods employed to train officers, or the totality of the circumstances of an incident that can influence officer behavior. Officers frequently observe that state medical boards, composed only of physicians, investigate doctors for malpractice, and only attorneys investigate lawyers for misconduct. Similarly, some police argue that only law enforcement officers have the knowledge to investigate and judge other sworn personnel (Finn, 2000).

V Evaluating Citizen Oversight Systems

The arguments made for and against oversight, which rely on questions of effectiveness, draw on assumptions that are largely untested and unproven. Furthermore, these assumptions can be very difficult to test empirically. The literature on oversight consists largely of descriptions of the development, functions, and achievements of oversight agencies. Formal evaluations of oversight mechanisms or developed theories of oversight are less common (Miller, 2002). Evaluating the impact of enhanced oversight is extremely difficult because of the problem of developing objective performance indicators and the number of variables involved. Some research has been attempted, using measures such as police officer perceptions of the rigor and deterrent impact of the different systems, as well as substantiation rates, action taken, and public confidence. The limited evidence available suggests that the more assertive an agency is, and the more it engages in independent investigations or supervision of police investigators, the more
likely it is to score higher on these indicators than preceding police dominated systems. External agencies also appear to be much more open in documenting police misconduct and the outcomes of complaint processing (Prenzler, 2004). Criteria for successful citizen oversight mechanisms can be based on integrity, legitimacy, and learning. Integrity refers to whether the complaints process is fair, thorough, and objective. Legitimacy describes how the complaints processes are perceived, notably by the public, complainants, and the police. The idea of legitimacy can be extended to broader areas of police policy. Learning refers to the extent to which the complaints process provides meaningful feedback which contributes to the involvement of the process and the police department generally. This criterion can be extended to organizational responses to other issues besides complaints (Miller, 2002).

As mentioned earlier, another method that has been used to determine citizen oversight effectiveness is the sustain rate. The sustain rate is the number of citizen complaints that contain enough evidence to support that the complaint against the officer is valid. Once completed, each complaint investigation is evaluated to determine a finding. The American Civil Liberties Union of New Jersey (2009) points out that there are generally four types of findings; (a) sustained – the investigation disclosed sufficient evidence to prove the allegation; (b) exonerated – the alleged incident did occur, but the actions of the officer were justified, legal and proper; (c) not sustained - the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation; and (d) unfounded – the alleged incident did not occur, or there is insufficient information to conduct a meaningful investigation.

Overall, citizen oversight agencies do not sustain significantly higher rates of complaints than police internal affairs units. For these reasons, the sustain rate is really not a valid measure of the effectiveness of a complaint review process (Walker, 2005). One example in which poor sustain rates were used to discredit a citizen oversight entity was the New York Civil Liberties Union 2007 report on the Citizen Review Board in New York City. The report indicates that the Citizen Review Board substantiated, on average, 5.2 percent of complaints closed. The New York Civil Liberties Union stated that those numbers are far below the substantiation rates reported by civilian oversight agencies nationally. In fact, when comparing sustain rates nationally, both internal (police) and external (citizen) complaint procedures sustain about 10-13% of all complaints (Walker, 2005). Livingston (2004) also indicated that in 2000, New York’s Citizen Complaint Review Board completed 2418 full investigations into officer misconduct. Of these, only 189 involved at least one substantiated allegation.

There is still much debate as to what type of performance measures should be considered when trying to evaluate the effectiveness of any police accountability system. The data has already proven that citizen oversight mechanisms are no more effective than traditional methods at reducing the incidents of officer misconduct or increasing the number of complaints that are sustained. However, when we look at the impact citizen oversight systems have on the public’s comfort zone with police accountability, citizen oversight systems seem to have the upper hand.

A. Systemic Alternatives

An open, accessible, and accountable citizen complaint process is a key component of police accountability. A citizen complaint process is a mechanism by
which a police department can make itself accountable to the people it serves by hearing and investigating their complaints, and administering appropriate discipline when warranted. The new police accountability requires officers to respond in a polite, professional, and informative manner to all citizens, regardless of the circumstances of the encounter, and to respond professionally when citizens say they want to file a complaint (Walker, 2005).

**B. Focus on organizational change**

Reformers err in placing so heavy a burden on control mechanisms as a way of solving long-standing problems in the police field, and in viewing control almost exclusively in terms of punishing officers for wrongdoing (Livingston, 2004). Deterrence is only one of a number of ways to address misconduct. Other approaches include a more proactive focus on identifying and resolving underlying systemic problems within police organizations. These problems might include, for example, deficiencies in police policies, management, supervision, or training (Miller, 2002). Another general approach involves working with police agencies to identify and resolve systemic problems related to management, supervision, training, or other aspects of law enforcement that cause or perpetuate misconduct (Phillips & Trone, 2002). Accountability in policing, however, may sometimes be better promoted by an approach to complaints that is less concerned with individual culpability and more concerned with using complaints to enhance police performance (Livingston, 2004). The basic thrust of the new police accountability is a focus on organizational change, a departure from past reform efforts that have focused too much on individual officers who may have used excessive force or made a racially biased arrest. The result has been a misplaced attention to symptoms rather than underlying organizational causes (Walker, 2005). Working alongside the police does not mean forgiving misconduct or lessening the rigor of civilian oversight. But it does require oversight agencies to consider the perspectives of law enforcement, particularly the shortcomings and difficulties of police work, such as poor pay, training that is frequently inadequate, and the high stress and anxiety associated with life-threatening employment conditions. The lesson: focusing solely on misconduct may result in a police force that feels unfairly criticized and is therefore unwilling to engage in the kind of collaboration that is necessary to advance lasting reforms (Phillips & Trone, 2002).

**C. Improving the process**

An open and accessible process for accepting misconduct complaints from citizens is essential. Swift and thorough investigation of citizen complaints by a professional Internal Affairs office can provide the facts chiefs need to make appropriate and informed decisions on disciplinary action (IACP, 2000). Having different options for citizens with grievances is especially important when citizens are afraid to file a complaint with the very agency they feel victimized them. For this reason, national best practices standards dictate that people be able to file complaints in a variety of ways. Police departments must establish accessible citizen complaint procedures, train their personnel, impartially investigate each grievance, and release the resulting information to the public (New Jersey Civil Liberties Union, 2009). McDevitt, Farrell & Andersen
provide six key principles which are common among all successful review models:

1. The community has a role in complaint review and oversight.
2. Alternate decision-making structures that work completely outside the department are complex and costly.
3. Civilian oversight can help increase and improve communication with the public.
4. Civilian oversight works best when it is triggered automatically, in addition to appeals from complainants (most serious complaints should be reviewed by citizen oversight body).
5. Models of civilian oversight should provide regular reports to the public, which are transparent, rigorous and credible.
6. There is no one best model.

Complainants need to understand, as they participate in the process, that their side of the story is being heard. They need to understand the limitations of fact finding: they certainly should be aware that even if their individual complaints are not substantiated, they have made a record which in itself is a valuable contribution to better policing. On the other side, police should perceive that the process is thorough – even aggressive – but fair. And citizen review agencies should afford both police and complainants timely resolution of their complaints – an important point given that the failure of such agencies to dispose of complaints in a timely manner has been “a pervasive problem across the country” (Livingston, 2004). Regardless of staffing resources, the Internal Affairs function should be established in every agency as an Office of Professional Standards (OPS). It can be managed by one person or several, depending on agency personnel resources, but must be distinct because it is an essential unit ensuring behavior accountability to the agency leadership and the community (COPS, 2007). In addition, there should be some mechanism for citizens involved in compliant review to bring issues to the attention of police managers: the people who are often best positioned to evaluate complaint patterns (Livingston, 2004).

D. Building relationships

Improving relations between the police and the public is absolutely paramount when trying to build and maintain public trust. Finn (2001) provides three preliminary steps that can help significantly to reduce conflict among all the parties involved in citizen oversight:

- Either initiate the oversight system without the impetus of a controversial police shooting or avoid consideration of the incident in the planning process.
- Involve representatives of all concerned parties in the planning of the oversight procedure.
- Establish clear, measurable objectives for the oversight system.

In a survey of residents of Rio de Janeiro and São Paulo who filed complaints against the police, 62 percent were not satisfied by the work done by the ombudsmen’s office. This response is hardly surprising since 56 percent of the people surveyed did not even know the results of their complaint. By keeping complainants informed about the status of their cases, the ombudsmen’s offices might be able to improve significantly how the public
views their work and the police (Phillips & Trone, 2002). Many law enforcement administrators have worked with citizen review members to address concerns and find ways of improving their relationships. For example, some agencies train oversight staff and volunteers. In Rochester, New York candidates for the review board attend a condensed version of a police academy run by the police department (Finn, 2000).

E. Setting realistic goals

Finn (2000) provides possible objectives planners can establish for citizen review of the police:

- Increase public confidence that the police or sheriff’s department is addressing citizen complaints fairly and thoroughly.
- Reassure the public that the police or sheriff’s department appropriately disciplines officers who engage in misconduct.
- Defuse citizen hostility toward public officials or the police. This is typically the reason most oversight systems are established.
- Improve the fairness and thoroughness of the police or sheriff’s department’s investigations of citizen complaints (for example, by auditing the department’s own procedures or conducting investigations in tandem with or instead of internal affairs department investigations).
- Reduce misconduct by police officers, such as verbal abuse, use of excessive force, and discriminatory enforcement of the law.
- Reduce the number of police shootings.
- Help ensure that officers who engage in misconduct are appropriately disciplined.
- Provide the public with an understanding of the behavior of police officers and sheriff’s deputies.
- Provide the public with a window on how the police or sheriff’s department investigates allegations of officer misconduct.
- Increase legitimate citizen complaints by, for example:
  1. Providing an avenue for filing complaints that is less intimidating than going to the police or sheriff’s department.
  2. Increasing confidence that complaints will be taken seriously.
  3. Providing more accessible locations for filing.
- Provide an open and independent forum for the public to express general concerns about the police or sheriff’s department’s operations or about officer conduct.
- Provide a mechanism through which citizens can suggest recommendations for improving police policies and procedures and police training.
- Establish a mediation option for resolving selected complaints to achieve one or more of the potential benefits of mediation.

F. Understanding roles

The citizens involved in citizen review agencies cannot take over management of the police. They can play a role in seeing that the information in complaints is available in a useful form. They can point to trends and argue for attention to the signals that
complaints can send (Livingston, 2004). Even when citizen oversight systems have some authority over the police, they generally exercise it cautiously. For example, oversight bodies in St. Paul, Minnesota and Flint, Michigan have never used their subpoena power to compel officers to testify. Moreover, most oversight staff members agree that citizens should not have the power to discipline officers. They realize that giving citizens that authority could violate state laws, city charters, or collective bargaining agreements with police unions. Such authority would also detract from holding the agency's administrator accountable for ensuring proper standards of professional conduct (Finn, 2000). Merrick Bobb, monitor of the Los Angeles County Sheriff’s Department and director of Police Assessment Resource Center (PARC), has pointed out that when oversight agencies get involved in investigating allegations of misconduct and determining punishment, they are required to make judgments about both the officers and the citizens involved. In order for those judgments to be accepted as legitimate by both the police and the public, the oversight agency must be widely regarded as impartial and objective. And to achieve such status, the agency has to function in a deliberate and pragmatic fashion, resisting impulses to advocate wider social change or to amplify the public outrage that led to its creation (Phillips & Trone, 2002).

G. Lessons learned

Finn (2001) provides several considerations and actions that can help address police concerns about the oversight process, including:

- Recognizing the typically advisory role oversight bodies play but also documenting the judicious role most oversight systems have adopted.
- Training board members thoroughly and publicizing how carefully they have been prepared.
- Accepting that the mission of oversight is to provide for citizen, not professional, review.
- Highlighting that oversight bodies agree with the police or sheriff’s department’s findings in the vast majority of cases.
- Publicizing particularly high-profile cases in which the oversight body has sided with the subject officer(s).
- Working to reduce delays in holding hearings and reviews.
- Explaining how oversight findings can benefit officers.
- Sitting down and resolving misconceptions and conflicts face to face.

Some of the best lessons that can be learned about improving police oversight mechanisms come from consent decrees. The Chief of the Civil Right’s Division’s Special Litigation Section has publicly stated that local departments seeking to avoid federal intervention would be well advised to undertake changes in their operations consistent with the provisions of consent decrees.

H. Police Leadership Responsibilities

Although virtually every expert on policing will say that the key is leadership, few of them can offer specific guidance on how a strong leader can effect lasting change (Walker, 2005). Civilian oversight can never substitute for good police leadership or
displace internal methods of fostering a culture of accountability and responsibility. By exposing police practices, pointing out the shortcomings in police self-regulation, reporting honestly on the depth and pace of police reform, and engaging the public and the police in a dialogue, however, civilian oversight is a vital part of democratic policing (Phillips & Trone, 2002). Effective police executives use information from complaints to correct poor performance or misbehavior and to put in place systems to prevent future problems. By improving police practices and policies, good internal affairs systems can head off expensive litigation (New Jersey Civil Liberties Union, 2009). The chief of police must establish, model, and support a culture that “promotes openness, ensures internal and external fairness, promotes and rewards ethical behavior, and establishes a foundation that calls for mandating the highest quality service to the public” (COPS, 2007). Police leaders need not, and must not, end up in a reactive stance, leaving the issue of citizen oversight to be raised by others in government or the community. Deliberate and thorough analysis of the factors necessary for informed decision-making by a chief is required (IACP, 2000). While implementing strong internal affairs procedures and controls is important, true community partnership includes ongoing dialogue with the community. Without this critical component, citizens have no alternative but to call for some form of citizen review (IACP, 2000). Law enforcement administrators should demonstrate their willingness to work cooperatively with oversight members. Police supervisors and oversight staff should meet regularly to discuss any specific misconceptions or conflicts and to share information (Finn, 2000). The aspiration of police managers should be to identify those officers who are engaged in problematic behavior before this behavior has resulted in clear violations of law or policy. Supervisors can then assist officers in changing their practices. Simple mistakes should routinely evoke coaching, consideration of options, training, and other such control options. Discipline is appropriate in the fact of true incompetence or irresponsibility (Livingston, 1999). A disproportionate number of complaints against some officers are a symptom of a problem between the agency and the community, and supervisors have an obligation to do everything reasonably possible to identify the causes of this problem and to address it (Livingston, 1999). When local officials begin talking about setting up a citizen oversight system, administrators can become involved in the planning process. Active involvement allows administrators to ensure that the oversight system has realistic and specified objectives. Without well-defined objectives, an oversight system can cause the involved parties to have different expectations for how the process should operate and what it should accomplish (Finn, 2000). Faced with concerns about the oversight process, law enforcement administrators have discovered that they can take steps that may short-circuit future tension and lead to a successful relationship with oversight members. First, administrators can initiate citizen oversight systems. For example, the chief of the St. Paul, Minnesota Police Department decided to implement an oversight system to gain citizens' perspectives on the behavior of department officers. The seven-member commission meets monthly to review cases investigated and decided by the department. The members, including two police officers, make their own findings and, in sustained cases, recommend discipline to the chief who makes the final decision (Finn, 2000). For the many law enforcement agencies that currently have civilian oversight in some form, and for those anticipating additional operational review and scrutiny, it is important that they strongly consider building effective relationships with oversight entities. Once
successfully established and properly maintained, an effective relationship with a civilian oversight entity can directly benefit a police or sheriff’s department’s investigations through the provision of valuable investigative insight and criticisms, and by helping to retain community trust in an organization by providing a positive backspin following critical incidents (Pitcher et al., 2010). Finn (2000) provides some steps that both citizen oversight practitioners and police executives can take to build relationships with police unions. Oversight planners successfully have

- involved union leaders in designing and setting up the review procedure.
- accommodated some union concerns.
- addressed union concerns about biased review procedures by ensuring the review process is scrupulously fair.
- highlighted shared objectives, such as a joint interest in fair treatment of officers by internal affairs.

VI Discussion

Researchers agree on a number of factors related to citizen oversight of police: a) there is a general public perception that citizen oversight systems improve police accountability, and that police agencies cannot effectively police themselves; b) many citizen oversight systems have either failed or are not operating effectively; and c) police resistance is the major contributor to the failures. These conclusions are a common thread throughout the literature; however, the conclusions are based primarily on anecdotal information versus fact. These obstacles present ongoing problems for both police administrators and citizen oversight personnel with their efforts to maintain the public’s trust. A number of factors have contributed to these general conclusions that warrant further analysis and discussion. With a better understanding of these issues, police leadership will have the ability to build better working relationships with citizen oversight personnel and improve the overall accountability of their agency.

A. Public Perception

Public perception is a powerful driving force for the implementation of citizen oversight mechanisms. There is convincing evidence that the public has a favorable attitude toward citizen oversight. IACP (2000) conducted a survey and reported that 80% of the public favors the use of citizen oversight to oversee police conduct. Prenzler (2004) reported that in a 1996 survey, 89% of respondents indicated that serious complaints should be conducted by an independent body and not by the police. This distrust of police has been a major issue ever since the first law enforcement agencies were established. Over the years this distrust has only been exacerbated by high profile cases of police misconduct and corruption and the perception that internal accountability mechanisms have protected officers from discipline. Unfortunately, there are plenty of examples to support that many police agencies condoned this type of culture. One of the most significant examples of this is the Los Angeles Police Department, and their response to the Rodney King incident (Bobb & Pearsall, 2010). Though many police practitioners would argue that police do a satisfactory job in operating internal oversight systems, police leadership has done a poor job communicating this success to the public.
(Walker, 2005). Without strong communication, the public must speculate and base their conclusions on limited information. Clarke (2009) brings clarity to this point by stating that citizen oversight systems have become commonplace because they satisfy public desire to fill a perceived gap in police accountability and the belief that the police have not done enough to deter misconduct. If police leadership fails to change this perception, the public will continue to lack faith in their accountability measures and call for external oversight measures. Another factor contributing to public perception is the police department’s attitude toward citizen oversight. When a police agency resists the implementation of citizen oversight, public suspicion of the agency increases (IACP 2000).

Can police effectively police themselves? This question is a major topic of debate. Community activists and many citizen oversight practitioners believe they cannot (Walker, 2005). In fact, the mere establishment of citizen oversight by officials and politicians sends the message that the existing internal models of accountability have been ineffective in those agencies. Some of the perceptions regarding internal police accountability mechanisms are as follows: a) investigations are biased and favor the officer; b) the police subculture, also known as the code of silence, protects officers who commit misconduct; c) police operate in a secret society that condones misconduct and abuse; and 4) police leadership condones the problems (Finn, 2000; Wechter, 2004; Finn, 2001; Walker, 2005). The research clearly establishes that these perceptions are pervasive throughout the community. Unfortunately, police have contributed to these perceptions, and police leadership has done little to improve public confidence. The survey provided by Brown, Trahillis & Kaur (2008) offers critical information regarding what police agencies are doing or not doing that propagates the perception that police cannot police themselves. The 2008 survey was conducted by the International Association of Chiefs of Police and the COPPS Office. In general, the survey suggests many police agencies do not embrace the importance of sound police accountability practices. Some of the most significant findings include the following: a) 91.8% of respondents do not receive input from the community regarding their citizen complaint process; b) 60.1% do not provide Internal Affairs training to newly promoted supervisors; and c) 33.4% do not have a specific person designated within their department to handle internal investigations.

In 2009, the New Jersey Civil Liberties Union surveyed over 500 police agencies in the state of New Jersey. Some of the most notable findings are these: a) many police agencies will not accept citizen complaints outside of normal business hours; b) 63% require complaints to be filed in person; c) 68% do not accept complaints by telephone; d) 86% will not mail complaint forms or allow them to be picked up at the police station; e) 49% do not accept anonymous complaints; and f) only 4% of agencies said they accept complaints online. In their report, the New Jersey ACLU (2009) stated that if people feel uncomfortable or do not know how to file a complaint, internal affairs is defeated before it begins. Police must work to improve their relationships with citizen oversight entities and the public. A successful police accountability system, whether external, internal or both, is in the best interest of the police agency and the public they serve. In order for police leadership to improve their own accountability systems and to help citizen oversight mechanisms succeed, it is important to understand the factors that have contributed to a system’s perceived failure.
B. Citizen Oversight Effectiveness

Do citizen oversight systems improve police accountability? This question is a difficult one to answer. As described by Chasnoff (2006), citizen oversight systems have been both touted and dismissed. One of the main reasons for this wide-ranging reaction is citizen oversight practitioners have done little to establish formal and objective evaluation criteria. Very little research has been conducted into what makes a particular citizen oversight mechanism successful (Miller, 2002; Walker, 2005). Most of the success stories are not based on hard numbers, such as the reduction in complaints, the increase in sustained findings, the increase in discipline, or the decrease in the number of incidents involving officer misconduct. The claims of success are based more on intangibles such as public perception, better quality investigations, improved policies and procedures, and better transparency (Pitcher et al., 2010; Prenzler, 2004). The research clearly indicates that even after citizen oversight systems are established, police misconduct continues to occur. In fact, research supports that the sustain rates for officer misconduct stay virtually the same whether a citizen oversight system is established or not (Walker, 2005). Without clear criteria for evaluating citizen oversight systems, much of the criticism and accolades are based on personal opinion. Many of the researchers have concluded that even though the industry lacks adequate evaluation measures, the public perceives that most police accountability systems are strengthened by citizen oversight (Miller, 2002; Prenzler, 2004; Pitcher et al., 2010). Whether citizen oversight actually improves police accountability is simply irrelevant. The public’s perception that it does will drive public demand for citizen oversight of police now and in the future. Unfortunately, there is not a consensus as to what the perfect system should look like. There is a potpourri of models currently in operation today that claim varying degrees of success. However, the overwhelming sense is that many of the systems in place currently do not have the support or confidence of the police organization they are trying to hold accountable. For this very reason, citizen oversight systems continue to struggle and receive criticism from the police, city officials, elected officials, and the public. Though many citizen oversight practitioners and police administrators agree that citizen oversight can have a positive role in police accountability, there are a number of inherent flaws in the development, implementation, and operation of many citizen oversight systems. The failure of both citizen oversight practitioners and police executives to address these issues have contributed to the demise of many citizen oversight systems and the continued perception that police are incapable of policing themselves. These flaws include the following: a) poor planning and design; b) unrealistic expectations; c) inappropriate focus on individual misconduct and discipline; d) active resistance by police; and e) the failure of police leadership to embrace citizen oversight (Livingston, 2004; Walker, 2005; Finn, 2001; Clarke, 2009; Chasnoff, 2006).

C. Poor planning and design

Finn (2001) provides valuable insight into why many systems suffer from poor planning and design. Unfortunately, many citizen oversight systems were created in
response to a highly publicized, critical incident involving some sort of serious police misconduct. These decisions are usually made by elected officials responding to public pressure to have better accountability of police. This political reaction results in a hurried response that is not fully vetted and analyzed. Instead of having some type of temporary intervention in place to deal with the matter, officials decide that a long-term citizen oversight system is warranted. Without seeking proper guidance from all involved stakeholders, and without truly understanding the current accountability system, a citizen oversight mechanism is set into motion. Though the intentions are good, the lack of planning contributes to the overall confusion as to the purpose of the citizen oversight entity. The lack of planning also contributes to strained relationships with the police, unrealistic expectations by the public, and the lack of political and financial support (Walker, 2005; Phillips & Trone, 2002).

D. Unrealistic expectations

Much of the criticism that has been received by citizen oversight entities is that they do not meet the expectations of the public. The consensus by many in the public was that citizen oversight was the answer to fixing police corruption and abuse. To add to this dilemma, each stakeholder involved in the assessment of citizen oversight has his or her own expectation as to what citizen oversight should accomplish (Finn, 2001; Wechter, 2004). With the establishment of a citizen oversight system, the public expects more substantiated complaints, an increase in officer discipline, and a reduction in officer involved incidents. Research clearly indicates that these expectations have not been met. The sustain rate has remained the same even after the implementation of a citizen oversight system, and the number of officers disciplined has not substantially changed (Walker, 2005). One factor that makes it difficult to increase discipline is most citizen oversight entities only have the ability to recommend discipline, not the ability to administer it. In addition, no evidence in the research supports that increases in discipline have an effect on lowering incidents of misconduct. The research does not provide any evidence supporting the suggestion that police misconduct decreased after the implementation of citizen oversight. Though the perception that citizen oversight enhances police accountability is still quite strong, the research suggests that citizen oversight systems succeed at about the same level as internal oversight systems (Miller, 2002). The failure of many citizen oversight systems to meet expectations has led to many community activists and police reformers becoming disillusioned with citizen oversight systems and their ability to hold police officers accountable for their actions (Chasnoff, 2006; Phillips & Trone, 2002).

It seems that many citizens who support citizen oversight have a change of attitude once they experience the complaint process first hand. This change occurs with internal oversight models as well. A main reason for this change of heart is the citizen’s expectation that his or her complaint will be substantiated and the officer disciplined. If most police accountability models sustain an average of 10% of all citizen complaints, it leaves approximately 90% of all complainants unhappy with the outcome. One piece of information that supports this statement is the survey reported by Livingston (2004). The survey found that 84% of the complainants who had their complaint investigated by the New York City Complaint Review Board were dissatisfied with the process. When the
investigation vindicates the officer, it contradicts the complainant’s assertion of what occurred and causes that person to doubt the competency and impartiality of the process (Wechter, 2004). Citizen oversight systems have been set up for failure. The expectations listed above are unrealistic. When oversight entities fail to achieve these impossible expectations, the public becomes frustrated and even more cynical of the abilities of oversight entities to hold police officers accountable for their actions (Phillips & Trone, 2002).

Another unrealistic expectation involves the relationship between citizen oversight personnel and the police. Most of the researchers agree that a good working relationship between citizen oversight staff and police is the key to success (Miller, 2002; Phillips & Trone, 2002; Finn, 2000; Pitcher et al., 2010). On the other hand, many assert that to be effective citizen oversight must be observed as completely independent of the police department. How can any citizen oversight entity establish a good working relationship with the police and be perceived as being completely independent at the same time? This dilemma seems to be an insurmountable obstacle to overcome. There is a perception that many of the citizen oversight systems that have been established have failed because of the influence by police. A good example of negative police influence is the New York ACLU’s 2007 report on the effectiveness of the New York Police Department’s Citizen Review Board. In that report, the New York ACLU concluded that the citizen oversight failed because it had become corrupted by the police department. Striking a balance seems to be one of the major challenges for citizen oversight systems.

E. Inappropriate focus on individual misconduct and discipline

Research supports the conclusion that citizen oversight systems need to change their focus from individual misconduct and discipline to the broader scope of organizational change (Walker, 2005; Finn, 2001; Bobb & Pearsall, 2010; Miller, 2002; Livingston, 2004). Many of the current models of citizen oversight are set up to investigate individual misconduct and recommend discipline. There are a variety of reasons why these types of systems have had difficulty. As stated by Phillips & Trone (2002), when citizen oversight agencies get involved in investigating allegations and determining punishment, they are required to make judgments about the credibility of both the police and the citizen complainants. This role will undoubtedly lead to extreme criticism from both parties. Another downside to this style of citizen oversight is that the system is usually understaffed and under-funded, which usually causes enormous delays in the completion of investigations. These delays cause more friction between citizen oversight, police, and the citizen complainants.

A number of researchers agree that it was a mistake for citizen oversight systems to place such a heavy focus on control mechanisms as a way of solving long-standing problems and viewing control almost exclusively in terms of punishing officers for wrongdoing (Livingston, 2004; Walker, 2005; Miller, 2002). Accountability can be better promoted by an approach less concerned with individual culpability and more with enhancing police performance. Some have argued that the day-to-day investigations should remain with police while citizen oversight mechanisms focus on systemic changes in policies and procedures (Phillips & Trone, 2002; Walker, 2005; Miller, 2002; Livingston, 2004). Both Walker (2005) and Bobb & Pearsall (2010) suggest that the best
model of citizen oversight is the monitor/auditor system. In this type of system, the police department receives and investigates citizen complaints and the independent monitor reviews them for quality and fairness and makes recommendations to improve the system. In their opinion, this type of system is the only one that will work. Though some activists and police reformers will disagree, the evidence seems to support the opinion that a) many of the traditional models of citizen oversight have failed; b) those systems that conduct investigations are not adequately staffed or supported and receive overwhelming criticism from most of the stakeholders involved; and c) the evidence clearly indicates that citizen oversight systems do not improve the overall accountability of police officers.

Finally, the issue over discipline has been a major bone of contention. Even though there is no evidence to support that discipline improves accountability, many activist groups believe discipline is lacking in the police culture. One example that illustrates frustration with a lack of discipline is the New York ACLU’s report prepared in 2007. Their report communicates displeasure with the New York Police Department’s discipline rate. In the report, the New York ACLU indicates that between 2000 and 2004, the police commissioner rejected the Citizen Review Board’s findings in 63% of the cases. They indicated that when discipline was imposed, it was strikingly too lenient. A number of researchers agree that the decision regarding discipline should remain with the police department in order for citizen oversight entities to avoid this type of unmanageable conflict. Avoiding the conflict of discipline will enable citizen oversight entities to focus on the more realistic task of changing systemic processes. Focusing on the punishment of police officers will only increase the strained relationships between oversight personnel and police. In addition, most citizen oversight agencies do not have the power to impose discipline. Keeping discipline and punishment as a main goal of citizen oversight will only stimulate further frustration.

F. Active resistance by police

Research supports the conclusion that many citizen oversight systems receive active resistance from police. This active resistance only reinforces the public’s perception that misconduct is condoned within the police culture. Most researchers agree that police hostility toward citizen oversight is one of the primary reasons citizen oversight has failed (Walker, 2005; Wechter, 2004; Finn, 2001; New York Civil Liberties Union, 2007). Finn (2001) provides some insight into the frustrations experienced by many citizen oversight entities: a) police refusal to answer questions; b) police failure to produce adequate records in a timely manner; and c) police administration refusal to follow their recommendations. This active resistance is also illuminated in the 2007 report prepared by the New York Civil Liberties Union that evaluated the effectiveness of the New York Police Department’s Citizen Review Board.

Many researchers attribute this active resistance to what they call the code of silence (Walker, 2005; Finn, 2001; Wechter, 2004). As stated by Wechter (2004), the opinion of many is that police departments are closed, paramilitary cultures that disdain outsiders that try to judge them, and that many police officers view citizen oversight personnel as suspect because citizens lack police experience and credibility. Though the research provides ample evidence to support the opinion that police resist citizen
oversight, the research lacks in-depth analysis of why this resistance exists and how police leadership and citizen oversight personnel can deal with this opposition. It is in the best interest of both parties to find a solution to this dilemma. As long as this resistance remains in place, citizen oversight entities will struggle to achieve their goals and the public will continue to believe that police agencies are not interested in holding their own accountable.

G. The failure of police leadership to embrace citizen oversight

A number of researchers have indicated that the key to successful police accountability is leadership (Walker, 2005; IACP, 2000; Livingston, 1999; Phillips & Trone, 2002; New Jersey Civil Liberties Union, 2009). But as Walker (2005) points out, the research has been virtually silent as to how a strong police leader can effect lasting change. As discussed earlier, police leadership has done a poor job maintaining public confidence in their ability to manage accountability. Wechter (2004) captures this prevailing sentiment by stating that police administration has either contributed to the problem or has taken a passive approach to resolving the issue. Though most researchers agree that citizen oversight should not supplant police management, police leadership must do more to improve accountability. Police leadership must be proactive, not reactive (IACP, 2000). Police leadership must work to embrace citizen oversight and find ways to develop effective accountability measures that are supported by citizen oversight personnel, the police, and the public.
Accountability design

Police leadership must actively identify pitfalls and barriers to effective accountability. Managers must incorporate suggested practices into their accountability system, and use feedback from a variety of sources to learn what the public expects from their police department. Based on the research, the public expects the following: a) an open and fair citizen complaint process; b) a police culture that does not condone police misconduct; c) transparency; and d) a police culture that embraces citizen oversight and works collectively to improve police accountability. When citizen oversight becomes a part of the police organization, police leadership should work to encourage a monitor/auditor system and request that both police and the public become involved in the design and implementation of the system.

Realistic goals

The research has clearly supported the conclusion that many citizen oversight systems have failed because of unrealistic expectations. It is the responsibility of both the citizen oversight staff and police leadership to set reasonable goals and to communicate those goals to the community and the organization. Based on the research, police should retain the responsibility for the overall complaint, investigation, and discipline process while citizen oversight personnel concentrate on improving these mechanisms by recommending systemic changes to policies and procedures.

Improved relationships

Keeping citizen oversight out of the disciplining and punishing business will go a long way to improve relationships. Police will be better positioned to accept the role of citizen oversight as one of organizational change, and citizen oversight personnel will reduce the amount of criticism police receive from both the public and from other police officers. Police leadership must take an active role in educating police regarding the role and benefits of citizen oversight, and the need for increased transparency. At the same time, police leadership must educate citizens better regarding the nuances of police work and the police culture.

Expected outcomes

It is only through these efforts that police will rebuild trust with the public and be perceived that they can effectively manage police accountability and hold their own accountable for their actions. By understanding the reasons behind citizen oversight and helping to overcome the barriers to effective accountability, police leadership will improve the relationship between citizen oversight staff and police personnel. Improved relationships will ultimately result in better police services to the community, a better informed organization, improved morale, and a police organization that is trusted by their community.
Conclusion

Walker (2005) states that the research supports the conclusion that police are incapable of reforming themselves. Though this statement might not be fully supported by evidence, there is certainly data to support that citizen oversight has contributed to a variety of positive changes within the law enforcement field. A few of the most notable impacts have been an increase in transparency and significant changes to citizen complaint systems that have made it easier for citizens to express their concerns to police agencies regarding police conduct. Though the research indicates that citizen oversight systems have not necessarily reduced police misconduct, they have brought comfort to the general public by reassuring them that there are checks and balances to police power. It is time for police leadership to accept citizen oversight as a valid accountability function and to work with oversight staff to develop effective strategies to improve accountability mechanisms and reestablish the public’s confidence and faith in their police department.
Conflict Resolution in Corrections:  
Teaching, workshops and extra-curricular activities inside Eastern Correctional Institution of Westover Maryland  

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Abstract  
If Maryland can develop a statewide program that shows the kind of progress that ECI has shown over the last three years, then perhaps the country as a whole will see the benefits of using appropriate educational programs within the prison system. We think that the possibility of any adequate reformation within the prison system, whether it is state wide or nationwide, is unrealistic without the growth and exposure of programs like Conflict Resolution at Eastern Correctional Institution.  
During a presentation in one of the graduate classes at Salisbury University, which was conducted by Dr. Matlack and two other important prison officials, graduate students had a chance to hear the progress that was taking place inside of the prison. This sparked a lot of interest and creative thinking. The effect that this program has had on the institution as a whole is remarkable considering the significant decrease in the amount of infractions amongst inmates that have completed this program over the last three years. Perhaps, with a greater interest from more students, this may be the start for a positive future for conflict resolution growth within prisons as a whole.  

Introduction  
Eastern Correctional Institution (ECI) was opened in 1987 and is the largest prison in Maryland. ECI currently holds over 3,000 male inmates ranging from ages 17 to over 60 years old. The prison population includes over 74% African Americans and 26% Caucasian inmates. The top five categories of offenses are as follows: murder (670), robbery (581), drug offense (483), assault (481), and sexual assault (389). These are only five categories out of a total of 25 different possible offenses. There is a large amount of diversity in the population at ECI. Fortunately, there is also a moderate amount of diversity in educational programs available to inmates.

Currently there are many programs available to inmates to better themselves emotionally and mentally. There are programs in which inmates are paid to attend and there are also programs inmates can attend on a voluntary/unpaid basis. The following are a just a small list of programs available:
There are waiting lists for many programs but there is only one waiting list, at present time, for unpaid programs. The request rate for Creating Peaceful Resolutions is growing so fast that a waiting list has been created for future classes.

I. Creating Peaceful Resolutions

Creating Peaceful Resolutions, also called CPR, is an eight-week training class with three separate classes daily. This training was created and primarily taught by Dr. Eileen Matlack. The training is on a volunteer basis and inmates do not get paid when they attend. Each training session focused on a specific area of Conflict Resolution;

Week 1: Goals/Ground Rules/Conflict Styles
Week 2: Conflict Analysis
Week 3: Communication
Week 4: Conflict and Diversity
Week 5: Values/Moral/Power
Week 6: Issues/Interests
Week 7: Steps to Conflict Resolution
Week 8: Talking the Talk/Certificates

The typical class size of CPR trainings was between 20 to sometimes almost 30 inmates in one classroom.

In week one, the inmates discuss the ground rules and expectations of the class. The inmates also take a pre-test to see what they know about the conflict styles, causes and how to de-escalate a problem situation with six steps. They also look at several different definitions of conflict as well as conflict styles. The conflict styles discussed were the following; Accommodating, Competing, Avoiding, Compromising, and Collaborating.

In week two, inmates discuss conflict analysis and the continuum of approaches available. For example: Conflict Avoidance, Negotiation, Mediation, Arbitration, Judicial Decision, Legislative Decision, Nonviolent Direct Action, and Violence. They discuss each approach in more detail and discuss what they feel would be beneficial in their own life. They also look at five different conflict causes;

1. Data Conflicts
2. Interest Conflicts
3. Structural Conflicts
4. Value Conflicts
5. Relationship Conflicts

Data conflicts occur because of lack of information, different views on what is relevant or important and different assessment procedures. Interest conflicts occur due to procedural interest, psychological interests, content interests or perceived and actual competitive goals. Structural conflicts occur because of unequal power and authority, time constraints, destructive patterns of behavior/interaction and unequal control, ownership, or distribution of resources. Value conflicts often occur because of different ways of life, ideology, and religion as well as different criteria evaluating ideas or behavior. Lastly, relationship conflicts tend to occur because of strong emotions, misperception or stereotypes, poor communication and repetitive negative behavior.

During week three inmates discuss communication and its importance in conflict resolution. The class looked at barriers in communication. Inmates discussed stereotyping, blaming, sarcasm, threats, ordering, name-calling, racial slurs, generalizing, and physical barriers. For one activity inmates looked at a page of facial expressions and tried to figure out what each expression meant, also they looked at different examples of body language and what they could mean, for example crossed-arms or hands on the hip could mean authority or wanting to show power.

During the fourth week, the class focuses on how diversity can affect us and how to deal with conflict. They discuss the importance of understanding their own differences, values, beliefs, and behavioral norms as well as those of their conflict counterpart. When communication becomes difficult it may also be time to take a look at cultural differences and acknowledging these differences in order to understand each other’s point of view.

Week five focuses on values, morals, and power. An activity is conducted discussing values in which each inmate has to write down sixteen things they value in their life. Then when each inmate is done, they have to choose four that they are willing to have taken away from them. This process continues for two more rounds until they only have 4 left. The class looks at morals and the different levels as noted by Lawrence Kohlberg’s development of moral decision. It is as follows:

**Level One Pre-conventional Morality**
1. Avoids Punishment
2. Gains Rewards

**Level Two Conventional Morality**
1. Approval of others
2. Authority maintaining conformity

**Level Three Post-conventional Morality**
1. Individual rights, democratically accepted law
2. Individual principles of conscience

Lastly, the class looks at power as one of our basic interests or needs in life. Individuals want to have power in their lives and relationships. Power is simply the ability to influence others, and it can be good or it can be bad. What individuals do with power is their own choice and that is something the class discusses, as a whole, in detail.

In week six, the class looks at issues and interests. The class discusses examples of issues and what their corresponding underlying interests are. For example, the issue is "You are
driving too fast!” so the underlying interest could be safety, relaxation, or even consideration of others.

For week seven, the class focuses on the six-step process to conflict resolution. They are as follows:

- Step One: Calm Down
- Step Two: Think
- Step Three: Invite
- Step Four: Discuss the Problem
- Step Five: Brainstorm Possible Solutions
- Step Six: Evaluate and Choose Solutions

The class discusses each step in detail and applies it to a situation they had already been in. Once each class member is able to associate the process to a specific event, they are asked to figure out how that event could have gone differently by utilizing the six steps in everyday life.

Week eight is the last week of classes for Creating Peaceful Resolutions at ECI. Each inmate is required to take the post-test, which is the same as the pre-test. Then the class discusses what they enjoyed about the entire eight-week experience and what they felt was significant to them. We end the class by working through a role-play exercise that required the entire class to break up into pairs and conduct a negotiation. In observation, this activity goes very well and most of the groups come to some form of an agreement.

The advanced class, which is usually made up of 20 inmates, all of which have previously completed the 8-week course. There are high expectations for the individuals in this class as a whole. All of the inmates that are involved in the “video group” attended this inaugural class. The feel for this advanced class was much more relaxed and less organized, since Dr. Matlack has yet to establish a formal book written up like the beginner class material. There was much confusion from the inmates of what was expected of them and what the class was going to cover in general. The inaugural class consisted of one exercise, which basically took up most of the class time. The exercise showed which conflict style everyone was prone to choose in particular situations.

II. Special Circumstances

A specific class was comprised of one gang. The gang they represented was the “Bloods”, and all of the members were on 24-hour lock down. They were given a choice to either take the class for eight weeks which would lead to eventually getting off of lock down or they could stay in 24 hour lock down. 28 inmates agreed to be let out of their cells to attend this class. The prison was running out of options for what they were going to do with this specific gang because of their violent manner. This class was a unique experience because we (the teacher’s assistants) do not believe in forcing inmates to take classes about subjects that they are not interested in. It is a much harder task to gain buy-in from the participants if they do not believe in nor want to learn about the subject matter. During this class, two inmates that had previously taken the 8 week class came in to act as helpers. This became the norm for every class throughout the prison. The helpers are extremely valuable in aiding the teaching process.

Throughout the 8 weeks, the security level for this class was much greater than any other class that was held. The normal security was one guard on call directly outside of the room. During this class there were usually three guards supervising at all times. These guards were much more attentive to what was going on within the classroom and watched the inmates intensely as opposed to other classes. Once the class started it took a while to get all of the
inmates to partake in the pre-test due to a lot of grumbling and side conversations. The fact of the matter was that the inmates just didn’t want to be there. More than once we had a few inmates interrupt class inappropriately, and in the “Bloods” class it got out of control. More specifically, the inmates would talk loudly to each other and ignored the teacher’s lesson plan. At the end of the class, one of the helpers asked the class to stay for an additional five minutes while Dr. Matlack left the room so he could talk to them as a group. We later found out that he asked them to treat the teachers with respect and understand that the teachers were there to help them and that teaching is not easy. The next week, the inmates seemed to be more engaged in the class material, and they responded well to the encouragement of the helper.

III. Staff

There is also a CPR training course that is formatted for the correctional officers who work at ECI. It should be noted, at the request of the Warden, all administrative staff members at ECI take the same course that the officers eventually take. The officers go through the same training as the inmates, with the exception that the length of time is shortened. It is important for the guards to take this training so they can utilize these skills while at ECI and/or in their personal life. This also allows the correctional officers to discuss what is learned in the training with inmates.

IV. Video/Play Group

One of the other great opportunities at ECI is the Video/Play groups. There is one group for each side of the prison. These groups consist of inmates who have taken the 8-week CPR training. Inmates are able to develop videos and plays on their own and show everyday conflicts but also express how to use skills developed and learned through the CPR program to resolve a multitude of conflicts. The video/play groups meet weekly to practice lines and run through conflict resolution methods. One group completed a play called “10 Year Sentence” in which a man was sentenced to 10 years in prison and went through many life struggles including trying to raise a son from behind bars. The play was a great success for the inmates involved and showed how much they had learned from the classes that they had taken. It seemed to be an enjoyable process for them to be able to apply what they had learned and teach other inmates that had not been involved with any form of conflict resolution training.

V. Supportive Data

The data that supports the conflict resolution program goes as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>06/07</th>
<th>07/08</th>
<th>08/09</th>
<th>09/10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule Violations</td>
<td>1999</td>
<td>2021</td>
<td>1951</td>
<td>1950</td>
</tr>
<tr>
<td>Guilty Verdicts</td>
<td>1225</td>
<td>1362</td>
<td>1470</td>
<td>1451</td>
</tr>
<tr>
<td>Assaults/Staff</td>
<td>48</td>
<td>73</td>
<td>40</td>
<td>63</td>
</tr>
<tr>
<td>Assaults/Inmate on Inmate</td>
<td>202</td>
<td>214</td>
<td>223</td>
<td>202</td>
</tr>
</tbody>
</table>

Table 1 shows the amount of infractions for the entire institution over the span of four years. This includes inmates that have taken the conflict resolution classes and inmates that have not.
Table 2: INMATE INFRACTION RATES

<table>
<thead>
<tr>
<th>Conflict Resolution Group</th>
<th>Number of Inmates</th>
<th>Infractions 1 Year Pre-Class</th>
<th>Infractions Post-Class</th>
<th>Number Post Class Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>42</td>
<td>39</td>
<td>29</td>
<td>19</td>
</tr>
<tr>
<td>2</td>
<td>56</td>
<td>74</td>
<td>60</td>
<td>16</td>
</tr>
<tr>
<td>3</td>
<td>62</td>
<td>28</td>
<td>36</td>
<td>14</td>
</tr>
<tr>
<td>4</td>
<td>72</td>
<td>79</td>
<td>61</td>
<td>14</td>
</tr>
<tr>
<td>5</td>
<td>63</td>
<td>33</td>
<td>31</td>
<td>12</td>
</tr>
<tr>
<td>6</td>
<td>54</td>
<td>49</td>
<td>22</td>
<td>9</td>
</tr>
<tr>
<td>7</td>
<td>58</td>
<td>51</td>
<td>21</td>
<td>6</td>
</tr>
<tr>
<td>8</td>
<td>70</td>
<td>55</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>9</td>
<td>69</td>
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<td>2</td>
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<tr>
<td>10</td>
<td>61</td>
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<tr>
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<td>46</td>
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<td>12</td>
<td>17</td>
<td>8</td>
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</tr>
<tr>
<td>13</td>
<td>16</td>
<td>8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>701</td>
<td>534</td>
<td>288</td>
<td></td>
</tr>
</tbody>
</table>

*Groups 1 through 13 are from 2008 to 2010

Table 2 shows a decrease of infractions in every group after taking the class, with the exception of one group that had a rise of infractions. Group 1 had 39 infractions 12 months prior to taking the class, and only 29 infractions 19 months after completing the class. Group 4 had 79 infractions 12 months prior to taking the class and 14 months after completion they had 61 infractions.

VI. Modifications

As with many other programs there are some elements that could be worked on. There were miscommunications as to who was in charge of what activity. At times it was very difficult to plan meetings because of this concern. There were also issues of who was responsible for what group, meaning video/play groups on both the East and West side of the prison. There were also some issues as far as participation of administrators in the video/play groups. At times it seemed as though administrators did not want to be responsible for designated groups. We feel there is need for modifications of the class for future meaningful progress. These modifications include: requiring all participants to have a General Education Diploma to be accepted into the class, limit the amount of classes that an inmate can miss to a maximum of 2 sessions with a result of having to take the class over if more than 2 sessions have been missed, and having mandatory homework assignments given out to all inmates for any session that is missed.

These modifications should make for a better and more active learning environment. Since this is a class that is, for the most part, voluntary than there should be no problems with inmates following the guidelines of the class. We do realize that this will alienate inmates, who do not have the necessary prior education, to not participate in the class and thus miss out on the knowledge of conflict resolution. But we feel that with its growing popularity amongst the inmates and the growing waiting list of inmates that want to participate in the class, these modifications might inspire inmates to further their education in other areas by getting their G.E.D and subsequently taking education more seriously. This should enhance the environment.
of the classroom. Understandably, these restrictions could cause conflicts amongst inmates due to their exclusion but as the teacher’s have observed inmates that have difficulty reading or writing tend to be left behind amongst the other inmates in the class. This is detrimental to their development as it is difficult for them to focus and retain the information they are learning.

Conclusion

If Maryland can develop a statewide program that shows the kind of progress that ECI has shown over the last three years, then perhaps the country as a whole will see the benefits of using appropriate educational programs within the prison system. We think that the possibility of any adequate reformation within the prison system, whether it is state wide or nationwide, is unrealistic without the growth and exposure of programs like Conflict Resolution at Eastern Correctional Institution.

During a presentation in one of the graduate classes at Salisbury University, which was conducted by Dr. Matlack and two other important prison officials, graduate students had a chance to hear the progress that was taking place inside of the prison. This sparked a lot of interest and creative thinking. The effect that this program has had on the institution as a whole is remarkable considering the significant decrease in the amount of infractions amongst inmates that have completed this program over the last three years. Perhaps, with a greater interest from more students, this may be the start for a positive future for conflict resolution growth within prisons as a whole.

References

Masters in Justice Administration
University of Alaska Fairbanks

The M.A. in Administration of Justice has been designed as a web-based degree program to accommodate the needs of Justice professionals for whom taking a two year leave of absence from their profession is not feasible, or for whom relocating to the Fairbanks vicinity is not possible. The M.A. degree program has attracted justice professionals from throughout the country who have found the flexibility of a web-based format useful.

Flexible on-line delivery for professional working adults designed to be completed in two academic years.

Elective concentration in:

- Restorative Justice and Therapeutic Jurisprudence
- Mediation and arbitration
- Alternative Dispute Resolution
- Organizational Development
- Dispute Systems Design
- Justice Management
Contributors

Therapeutic Jurisprudence’s Challenge to the Judiciary
Michael S. King

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Jeff D. May

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Mark Evenson

Conflict Resolution in Corrections: Teaching, workshops and extra-curricular activities inside Eastern Correctional Institution of Westover Maryland
Daniel Hirko & Ashley Simpson

1
13
49
71
93
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