

Justice is in the Design: Creating a Restorative Justice Treatment Model for Domestic Violence

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The battered women's movement was the first group to bring public attention to the prevalence of intimate abuse in American homes. Early on, this movement developed an educational approach, specifically tailored to male perpetrators who were victimizing female partners, that strove to change patriarchal attitudes and beliefs, which they held to be the root cause of violence against women. While these educational approaches addressed heterosexual male perpetrators of intimate abuse, they overlooked entirely the prevalence and dynamics of abuse in same-sex relationships or by heterosexual female perpetrators. This resulted in a political ideology that has subsequently influenced major federal legislation, while blocking experimentation with any treatments for intimate abuse that brought together the victim and the offender, such as couples counseling and restorative justice-based interventions. Generally, it was believed that because of the perceived power imbalance, female victims could not safely participate in any treatment with their abusive partner. This chapter reviews the arguments for and against using restorative justice in intimate abuse cases, and outlines how important issues like safety may be enfolded into restorative treatment models. To properly place restorative approaches in context, we briefly review the history of and research on intimate abuse treatment, particularly Batterer Intervention Programs, as well as the existing literature on the use of restorative justice in family violence cases. Finally, we discuss the development of a new restorative treatment now being tested in Nogales, Arizona, that has taken the lessons learned from batterer interventions and restorative justice approaches in family violence to provide a safe, flexible, and egalitarian treatment program for couples and families affected by intimate abuse.

An Alternative Theory of Justice¹

Restorative justice programs bring together professional and concerned citizens to restore victims, offenders, and communities through participation of a plurality of stakeholders in the process of recovering from crime (Braithwaite, 1999). At its core, RJ emphasizes interdependence between citizens and families, and assumes that all cultures will find this approach more emotionally satisfying than retribution (Braithwaite, 1999). Those who have something at stake in the events that occurred define what restoration means in a specific context; however, it generally encompasses what matters to the stakeholders, including restoration from injury or lost property, restoration of dignity, social support, security, and a sense of empowerment (Braithwaite, 1999; Zehr, 2002). While the modern RJ movement began in the 1970s, restorative practices were the dominant model of justice in many cultures until the modern era (Braithwaite, 1999). Many indigenous peoples have never stopped using it (Mirsky, 2004; Walker & Hayashi, 2004).

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A major principle underlying restorative approaches generally is that all cultures must adapt their restorative traditions in ways that are meaningful to them (Braithwaite, 1999). This allows great flexibility to address the needs of each offender, victim or crime. Additionally, all participants are regarded as having equal voices in the justice process and equal opportunities to air their concerns and participate in the discussion, and possibly resolution, of an offense (Burford & Pennell 1995; Mills 2006; Pranis 2002, Sherman 2000). A final idea that has emerged from such approaches is that restoring the parties to one crime can have a ripple effect in the family and community that surrounds them, and may potentially expose and mitigate past offenses, or prevent new ones (Mills, 2006; Robinson, 2003). In other words, the driving presumption of RJ is that justice can be personal, interactive, egalitarian, and transformative.

RJ models include victim-offender dialogue, community reparative boards, family group conferencing and peacemaking circles, among others; all are united in theory but vary in approach. The focus of this chapter is family group conferencing (FGC), which gathers family and supportive friends of the offender and the victim, together with a facilitator and relevant child welfare and criminal justice professionals, in a structured setting to hold the offender accountable for the harm done, ensure victim safety, facilitate open dialogue about the violence, and develop a plan to rectify the problem. FGC's underpinning theory is that family and social networks are in a strategic position to encourage the offender's reform, oversee the family's plan to stop abuse, as well as to monitor safety, thus preventing future violence (Burford & Pennell, 1998; Zehr, 2002). While some offenders may be moved to compliance with domestic violence laws and by the intervention of police and courts (Sherman & Berk 1984), RJ proponents argue that the most potent force in changing behavior lies with the family and friends the offender trusts and loves (Braithwaite, 2002; Mills, 2003; Mills, 2006).

While feminist academics and victim advocates continue to debate the utility of RJ practices in intimate abuse cases, they agree that more interventions are needed to address the complexities of this problem (Curtis-Fawley & Daly, 2005; Mills, 2003; Pennell & Francis, 2005). Additionally, advocates recognize that whether or not a couple separates following a violent incident, they may remain connected through their children and that interventions must address this reality and enhance the safety of both partners and their children (Mills, 2003; Pennell & Francis 2005). The growing use of family decision-making conferences in child welfare settings, and the well-documented co-occurrence of child maltreatment and intimate abuse (Edleson, 1999) has sparked a new discussion on how to safely apply RJ practices in intimate partner abuse cases (Curtis-Fawley & Daly, 2005; Mills, 2003; Pennell & Francis 2005; Strang & Braithwaite, 2002).

The Problem of Safety in Treating Intimate Abuse

Over the last 30 years, safety has been the driving concern in developing treatments for domestic violence and has significantly shaped systematic responses to this problem. One approach has been to develop coordinated community response models that encourage close collaboration among system and service providers to offer comprehensive, wrap-around services to better guarantee safety (Pennell & Francis, 2005). Pro-arrest policies, introduced in the 1980s (Maxwell, Garner & Fagan, 2001), and restraining, or no contact, orders were also designed to legally separate batterers from victims, while the shelter system sought to provide women victims a safe place away from home, should they need it. In time, women victims expressed their desire for treatment programs for their partners rather than arrest and incarceration, and, in response, courts began referring offenders to BIPs, such as the Duluth Model, a feminist, psycho-

educational approach whereby men are taught in isolation from their victims that battering is part of a range of male behaviors used to control women (Feder & Wilson, 2005; Jackson et al., 2003; Pence, Paymar, Ritmeester & Shepard, 1993). This coordinated community response continues to be the dominant approach to domestic violence, with an estimated 300 judicial systems nationwide using special domestic violence courts, court-ordered BIPs, judicial monitoring of defendants and probationers and “no contact” orders (Keilitz, Guerrero, Jones, Rubio, 2001).

Such strategies have reinforced the trend to separate abusive partners to address each party’s legal and treatment needs individually—and have been almost exclusively designed to address male violence perpetrated against females, while ignoring the fact that intimate violence afflicts both women *and* men (Mills, 2003; Straus, 1999). Furthermore, this approach presumes that all abusive men are equally socialized, and that their partners, parents and even a violent community, are secondary to the central causes of abusive behavior (Gondolf & Williams, 2001). As a result, much of the relevant theory and research has been similarly focused on a gendered conception of intimate violence and treatment.

Indeed, many advocates have argued that diverting the batterer’s attention toward family history, cultural identity, and dysfunctional behaviors excuses male privilege and violence (Adams, 1988; Kelly, 2003). Empirical studies, however, have shown a strong correlation between a childhood history of domestic violence, sexual abuse and other familial neglect, and an increased risk of adult offending and victimization (Ehrensaft, et al., 2003; Straus & Gelles, 1986). Alcohol abuse has been found to be a consistent risk marker for repeat assault (Gondolf, 2001). Although substance abuse or a history of childhood abuse does not relinquish domestic violence offenders from accountability, the research suggests that effective interventions must consider these factors (Mills, 1998; Mills 2003; Cavanaugh, & Gelles, 2005).

It is also important to acknowledge that criminal justice strategies often overlook the fact that many couples remain inextricably bound for a variety of reasons regardless of intervention or divorce (Mills, 2003; Straus, 1999). Despite no contact orders or the threat of future violence, offenders and victims often have continued contact during or after state interventions (Mills, 2003; Peled et al, 2000). Many other victims, even if they have left the relationship, remain connected to their abusers through children in common, or other family and community attachments.

In practice, most BIPs and probation services have inconsistent contact with victims and often rely on a one-time contact. Practitioners have advocated for ongoing risk assessment and case management support from BIP programs for the batterer, as well as the victim, whose appraisal of safety has been shown to be a significant predictor of additional violence (Davies, et al 1998; Gondolf, 2001; Pennell & Francis, 2005; Goodman et al, 2000). Those closest to the victim and offender may also be important resources in predicting, and possibly preventing, future violence (Pennell & Francis, 2005).

Initially, studies of BIP programs indicated high rates of success in reducing the frequency and severity of violence among offenders; however, methodological issues such as small sample size and a lack of appropriate comparison/control groups, rather than actual program success, have since been shown to be important factors in determining the reliability of this evidence (Feder & Wilson, 2005; Jackson et al, 2003). Recent evaluations using more rigorous designs have found little or no reduction in battering (Jackson et al, 2003). Low response rates and a failure to determine model fidelity also continue to hinder this research (Feder & Wilson, 2005; Jackson et al., 2003). This chapter aims to answer the concerns of this

literature and underscore how more inclusive treatments, such as restorative justice, may be applied to the complex range of intimate violence cases.

Restorative Justice and Why This May Be a Better Approach

Given safety concerns and, at the same time, the propensity of many couples to reunite after a violent incident, communities must recognize the importance of engaging those closest to the violence and their social supports in order to enhance safety and treatment. Treatments must also move away from one explanation for intimate abuse—patriarchy—and acknowledge the range of factors that may contribute to violence between partners, including substance abuse, financial problems, or family history of abuse. Interventions with a restorative approach are promising because they place the problem at the center—not the person or the gender.

Proponents of RJ contend this approach facilitates conversations between willing victims, offenders, their family and support networks, and increases the chance of condemning the violence, while permitting victims to express their needs and concerns (Curtis-Fawley & Daly, 2005). They contend that RJ encourages admissions of offending, rather than denial, validates the victim's experience, and provides assurances that the victim is not to blame for the abuser's violent behavior. RJ also gives victims a meaningful role in legal and treatment processes (Pranis 2002, Mills, 2006). Additionally, RJ may offer more options to victims who believe that prosecution does not meet their needs (Mills, 2006). RJ, they argue, attends to the lay, rather than legal, perspectives of crime and encourages a holistic understanding of the offense (Curtis-Fawley & Daly, 2005). Finally, some who promote RJ believe that it can better attend to the complexities of intimate violence, including when the victim is male, or the violence is bi-directional (Mills, 2003).

Both proponents and critics of RJ recognize that attention to victim safety and offender accountability must remain a priority. Central to this debate is whether or not standards can be developed to make RJ models satisfactory and safe for domestic violence victims, while also considering just outcomes for offenders (Braithwaite, 2002; Carter, 2003; Frederick & Lizdas, 2003; Pranis, 2002; Koss et al, 2003). By all accounts, the successful activism of some feminist advocates and academics, who believe that RJ is too “soft” on male offenders or may quiet female victims, has restricted application of RJ in domestic violence cases thus far; one consequence is the current dearth of scientific evidence to confirm or discount these claims (Curtis-Fawley & Daly, 2005).

However, strong support for using RJ in domestic violence cases comes from Burford and Pennell's (1998) study of a FGC-based approach to family violence in Canada. This study found a marked reduction in indicators of both child abuse/neglect and abuse of mothers/partners after the intervention, advancement in children's development, and an extension of social supports (Pennell & Burford, 2002). One year after the conferences, the incidents of abuse/neglect were 50% less compared to the year before, while incidents increased significantly for 31 families in the control group, who did not participate in an RJ intervention (Strang & Braithwaite, 2002).

Critics and proponents have expressed concern for victim safety and empowerment in RJ models where the victim and offender are both present (Umbreit & Zehr, 1996). Pennell and Francis (2005) conducted a series of focus groups with women survivors, shelter staff and academics to discuss the use of “safety conferences,” which are drawn from the FGC model and gather together the victim and her social support network to make decisions regarding safety. Focus group participants viewed the safety conferences as an opportunity to eliminate the

secrecy about the abuse, while also offering a comprehensive approach to plan for women's safety using family support. Shelter staff pointed out that safety conferences have the potential to educate the family group about domestic violence, gather support for both parties to address the violence, and help remove the stigma of returning to, or failing to leave, an abusive relationship. Focus group members all agreed that it might be too risky for some women, such as those residing in shelters or who lacked familial or emotional support, to participate in conferences; however, the survivors also felt that input from the abuser's family, particularly from offenders' parents who may have also been abused, would be welcomed and that the family could use FGC to exert control over the offender and to protect the victim. Finally, survivors agreed that, when possible, children should participate in conferences because they were aware of the violence and needed to be part of the deliberations (Pennell & Francis, 2005). While this study focused on women victims, the lessons learned could be applied to enhance the safety of all intimate abuse victims generally.

Recent studies of FGC in Minnesota, Pennsylvania, Australia and Canada have found higher rates of victim participation and satisfaction when compared to traditional approaches to crime (Braithwaite, 2002; Bazemore & Umbreit, 2001; Burford & Pennell 1998; Strang & Sherman, 1996). While critics of FGC have often expressed concern over power and control dynamics during and after the conferences (Busch, 2002), FGC partnership-building has been found to foster collaboration between family and service providers, and enhance safety and empowerment (Pennell & Burford, 2002). Pennell and Burford (2002) found that despite concerns that the offender's presence at the FGC would silence victims, female victims took leadership roles in deliberations and in developing plans to address offender accountability and problem-solving.

Admittedly, FGC research is still in its infancy—especially in domestic violence where many programs exclude such cases in their referral criteria (Pennsylvania Department of Child Welfare (PDCW), 2005; Chandler & Giovannucci, 2004). Several communities, however, are experimenting with RJ in intimate abuse crimes in Arizona, Hawaii, Canada, and Minnesota (Koss et al, 2003; Mirsky, 2004; Mills, 2006). In Nogales, Arizona, the community, together with the Santa Cruz County Court, has implemented a RJ-based domestic violence intervention called *Construyendo Circulos de Paz* (CCPs), or Constructing Circles of Peace. This program is a hybrid of the FGC and peacemaking circle models, and draws on the lessons learned from FGCs and batterer treatment, such as the need to improve standards and approaches to safety for all and enhance the availability of supplemental services (substance abuse treatment, job training) to address related problems. Although CCPs are offender-focused and administered through the criminal justice system in Santa Cruz County, they are driven by the Nogales community, who adapted the model to their needs and have made this process their own.

Construyendo Circulos de Paz: A New Restorative Model

The CCP model began as a vague notion in Linda Mills' 2003 book *Insult to Injury: Rethinking Our Responses to Intimate Abuse*, and was refined by a roundtable of experts in restorative justice, and domestic and family violence practice, in 2004 (Roundtable on Restorative Justice, 2004). The CCP preparation process was heavily influenced by Gale Burford, Joan Pennell and Susan MacLeod's FGC model developed for three communities in New Foundland, Canada. One major distinction of CCPs, however, is that it requires multiple contacts with participants rather than a single conference and follow-up conference. In fact, Arizona law requires that domestic violence treatments provide clients with 26 sessions. While

other communities may adjust the number of sessions according to their needs or local law, we believe that maintaining multiple contacts with the client and participants is a key feature of this model because it increases the likelihood of safety for all involved. It is important to note that in defining the CCP approach and practice, we drew considerably from the experience of those who had used restorative practices for intimate abuse. For example, the family preparation section was informed by the work of Judy Brown and the Tubman Family Alliance, as set out in the *Community Circles of Washington County – Cottage Grove Manual*, while the art of leading a safe and just circle was drawn directly from the work of Kay Pranis, Barry Stuart and Mark Wedge.

Overall Approach – CCPs approach violence as a possible element in any relationship dynamic, intimate or otherwise. While gender identity and patriarchy may play a part, CCPs are expansive enough to allow for the consideration of other factors that may cause or aggravate violence, including substance abuse, financial strain or disagreement, and family or personal history of abuse. CCPs are designed to provide a safe place to address all of these issues, so that those traditionally not afforded a voice may find one and that all may experience personal growth or healing. Everyone, regardless of title or role, has an equal voice in the circle, and may offer observations or points of view. This process upholds the integrity and dignity of all participants by allowing them to take a leadership role in resolving the violence in their relationships, and other identified issues, through joint problem-solving and consensus-building. Additionally, certain labels, such as victim and perpetrator, which commonly define family and domestic violence work, are modified upon acceptance into CCPs. The offender becomes known as the *applicant*, and the victim and all other support people as *participants*. These changes are meant to move the treatment away from judgmental and hierarchical language and are integral to maintaining the spirit of the peacemaking process.

There are four phases to this process: referral, preparation, circles, and maintenance.

Referral – In Nogales, an offender is referred to the CCP program by a presiding judge after a careful review of information on the offender/applicant, including criminal charges and history, and his/her relevant psychosocial history (prepared by the probation department). Once an applicant is accepted into the program, the Circle Coordinator begins the preparation process. Over a four-week period, the coordinator conducts individual intake interviews with the applicant and all potential participants. In the Nogales program, the coordinator is a professional with knowledge and experience in the areas of family or domestic violence, mental health and substance abuse, and familiar with the criminal justice and child welfare systems. Circles are co-facilitated by the coordinator and a trained community member, known as the Co-Circle Keeper. Community members participate in a five-day initial training and thereafter attend additional quarterly trainings on relevant topics (i.e., safety planning, substance abuse). Additionally, a community panel, called the Restorative Justice Advisory Team (RJAT), acts as a sounding board for the Circle Coordinator. The panel is intended to support the coordinator in balancing the risks of further abuse to family members with the goal of empowering the applicant and care community to take constructive action. The panel is made up of professionals, who may offer additional mental health or other clinical support to the program, and lay people from the community. They help the coordinator make judgments about whom to include, or not, in the circle.

Preparing for Circles – Once a case has been referred to the CCP program, a comprehensive intake and preparation process is conducted with all participants, including the offender, the victim (if they choose), family members, friends and other support people, as well

as any professionals who might attend the circle conferences to provide information to the group. We believe that an intensive circle preparation process is the integral first step to the safety and success of circle meetings. Individual intake meetings take place with each participant to educate them fully about the CCP process and answer questions, to discuss safety and develop a safety plan (both emotional and physical safety is addressed), and review each person's role in the circle proceedings. Intake interviews also give individuals a safe space and time to think through and process any emotional reactions that might hinder their positive participation in the circle process. In this way, each potential participant has an adequate opportunity to consider the invitation and to determine their interest in participating.

Preparing the Applicant – During the initial intake meeting between the Circle Coordinator and the offender/applicant, some of the following elements should be apparent in order to determine the applicant's desire and capacity to participate: The applicant takes responsibility for the incident(s) in question; the applicant indicates a desire and/or willingness to change her/his harmful behaviors; the applicant may have passed through the criminal justice system in the past without successfully making necessary life changes, and may benefit from community members' mentoring and supervision; the victim/participant indicates that the applicant may benefit from an extended care community's support. If the Circle Coordinator, in consultation with RJAT, seriously believes that circles would be unhelpful for the applicant or victim/participant, she/he may refer the case back to the judge for another disposition

As part of the CCP safety preparation process, the Circle Coordinator completes a psychosocial assessment (mental status, substance abuse history, social support, educational and vocational history, risk assessment and criminal history) to evaluate how the applicant can/will meaningfully participate in CCPs. The mental status assessment covers current and past suicidal and homicidal behaviors, including attempts, plans, and current or past history of psychosis. If an applicant is currently suicidal, homicidal or psychotic, the applicant is deemed ineligible for CCPs, and the case will be referred back to court.

During the intake interview(s) the Circle Coordinator also helps the applicant to identify a care community, including a designated support person and safety monitor. A *care community* may include family, the victim/participant, or friends who seek to help this applicant address his/her violence in constructive ways. Participation by care community members, including the victim/participant, is voluntary. In order to facilitate contact between the Circle Coordinator and the applicant's care community, the applicant must provide contact information to the Circle Coordinator. All care community members should have the right to attend unless they have been formally excluded by the Circle Coordinator (*see exclusion criteria below*). If members of the care community choose not to attend, their views about how to stop the violence in the family may be communicated through the Circle Coordinator, or through a special representative who participates in CCPs. The Circle Coordinator holds the final say about who will be invited, but this must be done in consultation with the applicant, victim/participant and the care community.

From this care community, the applicant chooses a *safety monitor*. Safety monitor(s) are one or more persons who are designated by participants to maintain constant contact with the applicant and victim/participant in order to monitor safety on an ongoing basis. Safety monitors must: 1) maintain close contact with the parties involved; 2) have direct or indirect experience with the parties and their history of violence; 3) be able to judge changes in the behavior of the applicant and victim/participant in order to interrupt potential violence; 4) have the trust of the parties involved; and 5) show a capacity to share sensitive safety information with the appropriate parties, including the authorities, if threats are made.

Additionally, the applicant identifies a *support person*. This person may be a family member, friend, or other supportive person whom the applicant respects and who will be able to help resolve any anger that may emerge during or after circles and can comfort the applicant if he/she is apprehensive about the process. The Circle Coordinator may veto the applicant’s selection. Some applicants may resist having a “support” person; however, it’s critical they have someone that they can count on when the conversation gets tough. This person could “help them cool off if things get tense” or “take them for a break if they get angry.”

Strategies for Applicant Participation

- Inform the applicant of the details of the abuse to be presented in the circle so that he/she is prepared for what will be discussed.
- Suggest that the applicant prepare a statement to read during the circle (if they want to publicly take responsibility for their actions or find it hard to talk about their feelings).
- Remind the applicant that the focus of the circles is to develop a plan for the future care and safety of all family members, not to lay blame, or determine guilt or innocence. The safety monitor will play a role in ensuring these goals are met.

Finally, the Circle Coordinator assists the applicant in preparing an *“Initial Social Compact”* (ISC). This document commits to writing the applicant’s goals for change and restoration, including pre-CCP treatment and a commitment to non-violence. The ISC is modified in the circles with input from participants, and as change occurs, throughout the CCP process.

Preparing the Victim/Participant – A victim’s participation is absolutely voluntary. If a victim decides to participate in CCPs, he/she must also go through a rigorous preparation process with the Circle Coordinator (*see section above on applicant preparation*), which includes filling out a danger assessment tool, such as *Campbell’s: Danger Assessment Instrument* (Campbell, 1985), and exploring the benefits and risks of taking part in the circle process. The victim/participant must also choose a care community, including a support person and safety monitor. It is crucial for the Circle Coordinator to develop strategies to ensure the views of the victim/participant(s) of abuse in the family are heard, especially if they are still at risk for further abuse. A victim advocate can assist in this process and should be contacted if the victim/participant requests one.

Strategies for Victim Participation

- Give her/him as much information as possible about available social services;
- Help identify a support person for all persons attending circles who are known to have been abused by the applicant in question;
- Have the victim/participant(s) write down their views to be read by her/his support person during the circle. This strategy can help silence critics since the support person can tell the family what life has been like for the victim/participant and what help she/he would like. This can also increase the level of support for the abused person among circle participants;
- Identify members of the family who are familiar with the abuse (e.g., someone who has witnessed the abuse or walked in just after an incident occurred), and who can play a role as safety monitor. Prepare them to raise these concerns so that the abused person does not have to offer information that may put them at risk of further abuse;

- Ensure that all issues are presented in a manner that does not jeopardize the future safety of any family member, especially those most at risk of abuse.

A victim/participant may choose to participate in CCPs directly, or may designate one or more friends, family members or community volunteers to attend the circles as their representative and to advocate for their concerns; provide the her/his concerns in writing to the Circle Coordinator or to a community member to be read aloud at the circle; or discuss the victim/participant's concerns with the Circle Coordinator, or co-circle keepers and/or the applicant's support persons, in advance of the circle.

Preparing the Care Community – Finally, the Circle Coordinator individually prepares each care community member identified by the applicant and victim/participant by assessing him/her for safety, offering a detailed overview of the CCP process, assessing the individual's ability to productively participate in CCPs, and explaining the role of safety monitors and support persons. The Circle Coordinator should stress that the best solutions for the long-term needs of the victim/participant will be those developed and supported by the care community. Care community members are also informed of any legal undertakings or agreements made by the public/court authorities pertaining to the circle (i.e., applicant's guilty plea and non-compliance conditions set by the referring judge).

The Circle Coordinator will provide ample opportunity for care community members to discuss their feelings about each family member, whom the Circle Coordinator will be contacting, including the applicant and the victim (if participating). Potential care community members' concerns should be expressed directly to the Circle Coordinator. If a care community member asks the Circle Coordinator not to contact another potential care community member, the Circle Coordinator must explore the reasons for concern and negotiate these requests with each member. Sometimes the very person the member does not wish to invite has the most information about what has been happening in the family.

There may be serious, legitimate concerns expressed about inviting certain members who have been abusive, aggressive, or otherwise destructive in the past. The Circle Coordinator should explore these concerns fully and, with the care community identified so far, decide on a safety plan and a strategy for contacting that potential member (if the group decides to reach out to this person). One strategy commonly used is for the Circle Coordinator to first interview the person without offering an invitation, and then consult further with the group about whether this person should be involved.

Including a Child or Young Person – Children or young people who participate in CCPs require special consideration. In the case of a minor, their view of the problem should be given weight depending on age, maturity and culture. The Circle Coordinator should interview each child and assess their capacity for meaningful participation. A parent or guardian must provide written consent for a minor to be interviewed and/or to participate in CCPs. It is preferable, but not necessary, to have the consent of both parents.

When a child or young person plans to attend circles, it is important that the Circle Coordinator prepare them completely for what to expect and how they can make their voices and views heard. Before the circles are held, the Circle Coordinator should meet several times with the child or young person and his/her support person to ensure that both the circle keeper(s) and the support person understand the child or young person's views, and to discuss the best strategy for presenting their concerns or wishes.

To prepare a child participant, the Circle Coordinator should:

- Get signed release forms for children under 16 who are considered mature enough to participate;
- Secure the verbal consent of children ages 12 to 16 who will either be interviewed or wish to participate in CCPs;
- Allow each parent the opportunity to participate with his/her child. (In cases where the parent and child have maintained little or no contact, the Circle Coordinator must extensively prepare both parties);
- Contact extended family of a parent who has had little or no contact with their children or relatives;
- Include caregivers (In cases where caregivers have a significant psychological attachment to a child or young person they should attend as full participants. In cases where they are not deeply involved with the family, such as short-term or emergency caregivers, have them attend as non-voting, information or advice-givers.);
- Assess the child or young person for safety and develop safety plan;
- Offer a detailed overview of the CCP process helping the child or young person understanding his/her role and preparing them for participation;
- Identify a support person to attend with the child or young person.

Anyone under 16 years of age who plans to attend circles must choose a support person to attend with them. The selection of the person is subject to veto by the Circle Coordinator, who must determine that the support person is not “aligned” in some negative way with any other participant and that he/she is capable of fulfilling this role (e.g., a trusted adult or relative rather than a school friend). The Circle Coordinator cannot act as the support person for the child or young person. Additionally, social workers, child protective service workers and other persons representing the referring agency are generally not appropriate support people for children. The chosen support person should be an adult free to concentrate on care and protection issues for this child or young person.

Strategies for Presenting a Child or Young Person’s View:

- Help the child or young person write down what they would like to say at the circle. This helps the young person to think about their feelings and concerns in advance.
- Identify a person to read these views at the circle. This is often a very powerful way to present a child or young person’s view and can lend credibility to their words in the eyes of adult family members.
- There may be some issues the child or young person would like to see addressed, but which they do not feel they can raise safely. Identify a (support person or a neutral family member) to raise these issues.
- Ensure that the safety monitor is aware of safety issues related to the child and any attending threats and has knowledge of the safety plan.
- Someone should be available to a child or young person after each circle to deal with any left-over emotions or concerns.

In cases where a child or young person will not attend CCPs, the Circle Coordinator interviews her/him to determine the best way to ensure his/her views will be presented at the circles. The child or young person’s view may be included via a written statement, picture, audio

or video tape. A trusted adult or relative (support person) may also present the child or young person's view. In these situations, it is useful to have reminders of the child present at the circles (e.g., a photograph, an empty chair).

Reasons for Exclusion – When the Circle Coordinator, in consultation with RJAT, seriously believes that proceeding to circles would be unhelpful for the victim/participant or the applicant, she/he has the right to halt the process at any time and refer the case back to the court. The Circle Coordinator may exclude a care community member from CCPs if their attendance is adverse to the interests of the applicant, the victim/participant, or would be undesirable for other reasons. The Circle Coordinator may exclude a child or young person for the same reason, or because the child's age or maturity level indicates an inability to understand the proceedings. The Circle Coordinator may exclude a participant if there is a serious threat of harm, a substantiated risk is posed to others, or a person exhibits serious mental disturbance, including unremitting substance abuse that may interrupt the circles. The Circle Coordinator may exclude a participant if that person will be significantly distressed by what is discussed, or when full participation may cause significant stress to the abused person in question.

Circles²: Constructing Peace – The stages outlined below should be described in the first formal circle. After this initial meeting, the phases are modified to fit the goals of each successive circle over the 26-week period of treatment.

Opening the Dialogue – The opening should NOT deal directly with issues related to the crime but should provide participants with a space in which to feel comfortable connecting and sharing. This phase plants the seeds of community *before* participants delve into more difficult, highly-charged issues.

- **Set the Tone on Arrival** – Give participants a chance to interact and connect.
- **Welcome Circle Participants** – Circle Keepers provide a brief description of the opening ceremony and explain how to use the talking piece (a symbolic object, such as a feather or leaf, chosen by the family to indicate that someone is speaking).
- **Opening Ceremony** – Circle Keepers offer a reading, meditation, or any activity of special meaning to the community.
- **Introductions and Check-In** – Passing the talking piece, participants may share who they are, how they feel and what they hope to achieve.
- **Limits of Confidentiality** – Circle Keepers explain that they are required to report threats of suicide, homicide, child abuse, or other acts of violence, to appropriate authorities or agencies.
- **Values and Guidelines** – Circle Keepers review basic values and guidelines, such as respecting each member's right to speak uninterrupted in the circle, making decisions by consensus, and agreeing to ensure that no more violence will occur in this family.
- **Storytelling** – Participants are invited to share a personal life experience to create deeper understanding and connections.
- **Summary** – Circle Keepers affirm everyone's participation and clarify the purpose of the circle.

² This summary is drawn directly from *Peacemaking Circles* (2003) by Kay Pranis, Barry Stuart and Mark Wedge. Pranis trained the Nogales community in this method in June and September 2004, and January 2005.

Other Considerations for Circles:

- Legal Information – It is important for everyone to know the facts of the crime. If a judge or investigating authority is present, he/she may lead this part. Other things may be shared, including brief opening statements by the probation officer or child welfare.
- Information or Social Service Providers Presentations – Information or social service providers inform participants about certain relevant issues (e.g., dynamic of abuse) and treatment resources available (e.g., AA or job training). Participants are given a chance to ask questions and address concerns about the information provided.
- Update on Applicant and Victim/Participant – An informed person updates the circle on the victim and applicant, relying on information from support persons and others.
- Safety Monitor – The Circle Coordinator reiterates the safety monitors’ role to the participants and addresses any new concerns.
- The Initial Social Compact – The Initial Social Compact is presented to the circle, and described as the applicant’s first steps toward recovery (*See Preparing the Applicant for a more complete description of the Social Compact*).
- Initial Discussion – Initial discussion focuses on the purpose of the Initial Social Compact, and the Social Compact that participants create each time they meet. Next, the discussion should focus on issues that lead to outbreaks of violence, underlying problems and dynamics, and intergenerational matters.
- Resources and Needs – The Circle Coordinator identifies what needs to take place in order to move forward, including whether all interests and concerns have been addressed; necessary funds are available; all people and agencies needed are on board; commitments have been spelled out; and the circle’s goals and expectations are realistic and feasible. Participants should be aware of what happens if commitments are violated.
- Safety Net – Provisions should be made for delays, violations or unforeseen interferences. It is important to set up “safety nets” in case some arrangements fall through (e.g., select back up support persons for the applicant or victim/participant).
- Summary – The circle must ensure that participants’ commitments and expectations are clearly articulated, that what qualifies as success or as failure is defined, and that a policy for handling violations of the agreement is created.

Building Consensus is critical to moving the CCP process forward but may take days, weeks, or even months. Sometimes the circle will convene only for the purpose of supporting the applicant as he/she makes changes in his/her life. It isn’t necessary that every circle involve the discussion of “heavy” issues; what is important is that the work continues on a weekly basis. If consensus cannot be reached on critical issues, even with this support, the case may be referred back to the judge.

Strategies for Building Consensus:

- Address the issues – Focus on repairing harm done to the victim/participant; healing the applicant; making amends with the community; and addressing the underlying causes of the violence or abuse to prevent further incidents. Circle members respond, identify challenges and express feelings, concerns, or hopes for change. All participants come up with a diverse range of options for addressing the problems, which build off of the Initial Social Compact.

- Move forward issues for action – A circle Keeper summarizes points of agreement, highlights remaining issues, and stresses the emerging potential of participants to revise and enhance the Social Compact, or to affirm the Initial Social Compact.
- Manage consensus – Circle Keepers acknowledge all participants' responses, restating their concerns, and thanking everyone for contributing.

Closing & Honoring the Good Achieved – Circle Keepers review points of agreement and disagreement. Circle participants share their final thoughts and review what each person has agreed to do. Circle keepers then summarize what has emerged from the circle, thank everyone for their participation, and introduce the closing ceremony, where participants may celebrate what has been accomplished and transition from the circle space back into their everyday lives.

Ongoing Circles meet weekly during initial six-month period and are essential to ensure that people are accountable to the agreements they make in CCPs, that old patterns do not reemerge, or if they do, that they are promptly addressed, and that those who need support receive it. In each ongoing circle the Social Compact is revised and updated as necessary. If the applicant, support persons, or agency professionals are not meeting their commitments, additional circles evaluate and determine the next steps. Each new circle follows a similar format to that laid out for the initial circle, depending on the needs of the participants.

Maintenance – Follow-up circles, which run beyond the initial six months, extend the community's ability to be self-reliant in dealing with crime and preventing further harms. CCPs celebrate progress and successes made by offenders, victims, volunteers and support groups. Participants, along with the circle keepers, develop a plan for maintenance that meets the needs of each individual applicant, victim/participant and their families.

As this overview of CCPs makes apparent, the restorative treatment of intimate abuse requires considerable resources and investment by all members of a community. However, the potential of this model to address intimate abuse in a more inclusive, safe and productive manner should energize those concerned by this social problem. CCPs and a BIP, also offered in Nogales, are being compared in a randomized study, funded by the National Science Foundation, and currently underway at New York University (NYU). (See NYU's Center on Violence and Recovery, www.nyu.edu/cvr.) While this program and study signal an important new direction in domestic violence practice and research, the need to rigorously test restorative and other treatments still remains. We hope this chapter inspires such endeavors.

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