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Pono Kaulike: A Hawaii Criminal Court Provides Restorative Justice Practices for Healing Relationships

Lorenn Walker and Leslie A. Hayashi

SITTING NEXT TO his adult sister, Frank whispers something to her. She turns toward him, glaring, and yells, "You're crazy!" He looks down, shuffles his dirty feet, shakes his head of long stringy hair covering his face, mumbles something, gets up and leaves his chair. A moment later, she turns to the two women sitting in her living room and says, with anguish and frustration, "He's gonna kill someone!"

The two women she pleads with are facilitators for the Pono Kaulike Restorative Justice program, a pilot project with a misdemeanor-level Hawaii state criminal court. Frank, his mother, sister and the facilitators, have been sitting in a circle in the family's home, located in a rural area outside of Honolulu, participating in a Restorative Conference for 45 minutes.

Frank is 31 years old and has been using crystal methamphetamine since he was in high school. He has a wife and two young children from whom he is estranged. Several years ago, he began hearing voices, and his body began twitching uncontrollably. He is homeless and lives in an old car belonging to his mother. He often comes to his mother's home, where his sister and her children also live, begging for money. They used to give him money, but now refuse. He has threatened them and they are afraid. His mother finally called the police and obtained a temporary restraining order (TRO) forbidding Frank from contacting the family. He violated the TRO soon after it was issued and was arrested. He spent a few days in jail before he appeared in Hawaii state district court. He pled guilty to the charge. His mother was present and spoke at his sentencing.

"He is my son. I don't want him on the streets like this, and I don't want him in jail. He's sick and needs help. He needs to be in a mental hospital, but he won't go," she told the judge with tears in her eyes.

The judge explains the Pono Kaulike program to Frank and his mother. She tells them it is voluntary and trained facilitators can assist their family to discuss how they have been affected by Frank's behavior, including his drug use, and what might be done to repair the harm it has caused. Frank agrees to participate, along with his mother, and later his sister.

The facilitators schedule a Restorative Conference with the family on a day, time, and place most convenient for all of them. The mother and sister work full-time, and the mother has a two-hour daily commute. The Conference is held at 4:00 p.m. during the week at the family's home.

Before his sister's passionate plea to the facilitators, Frank, his mother and sister spent 45 minutes discussing the situation, and signed a *Restorative Conference Agreement*, demonstrating their collective decision that:

- Frank will go to a [mental health facility] by tomorrow, Thursday, August 16, 2005 and tell them he is afraid that he might hurt himself or somebody else, to be admitted;
- If Frank does not check into a hospital tomorrow, Annabel [his mother] will get a TRO and call the police for the car.

After his sister's plea, however, the facilitators realize that Frank and his family cannot wait for tomorrow. Immediate help is needed

and addressing people's needs is a primary focus of restorative justice.¹

Frank has a dual diagnosis: he suffers from both mental illness and drug abuse. It is estimated that nationally, approximately one half of the people with severe mental disorders also abuse drugs; 53 percent of all drug abusers have a mental illness.² Working effectively with clients who have been dual diagnosed with mental illness and substance abuse is a complex task, and one that courts and correctional institutions are more frequently faced with.

The pilot restorative justice program offers important lessons and promising possibilities for the criminal justice system dealing with *family violence* and *intimate violence* cases. Family violence as used in this paper describes "violence between [unmarried] family members" while *intimate violence* and *domestic violence* are used to describe violence "by someone who is, was, or wishes to be involved in an intimate or dating relationship [including marriage]" with another person.³

¹ Howard Zehr (1990). *Changing Lenses*, Scottsdale, PA: Herald Press.

² Robert Drake (2003). *Dual Diagnosis and Integrated Treatment of Mental Illness and Substance Abuse Disorder*, 2003, National Alliance on Mental Illness, http://www.nami.org/Template.cfm?Section=By_Illness&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=54&ContentID=23049 (last visited April 23, 2006).

³ *National Consensus Guidelines on Responding to Domestic Victimization in Health Care Settings*, <http://www.endabuse.org/programs/healthcare/files/Consensus.pdf> p.10 (last visited September 3, 2007).

Benefits and Development of Restorative Justice

Restorative justice addresses both physical and emotional needs, including the need to repair relationships and build positive connections after wrongdoing. Three basic questions are addressed by restorative practices: 1: Who has been affected by the wrongdoing? 2: How have they been affected? 3: What can be done to repair the harm?⁴ Answering these questions in a restorative process promotes coping skills and healing.⁵

While "a great deal of the initiative for restorative justice programs has come from professionals within the criminal justice system"⁶ today, it is recognized that the definition and application of restorative justice is expansive:

Restorative justice is a broad term, which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem solving and violations of legal and human rights. These range from international peacemaking tribunals such as the Truth and Reconciliation Commission of South Africa to innovations within our criminal justice system, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities.⁷

The concept of restorative justice is ancient, and not restricted to Western legal justice systems. The modern restorative jus-

tice movement was "rekindled in the West from the establishment of an experimental victim-offender reconciliation program in 1974 in Kitchener, Ontario" but there is evidence that "restorative justice has been the dominant model of criminal justice throughout most of human history for perhaps all the world's peoples."⁸ While some academics question this assertion,⁹ it is clear that many indigenous cultures, including Hawaiians and other Pacific Islanders, have never stopped using restorative practices.¹⁰

Restorative justice recognizes the interconnectedness of people.¹¹ "Above all, restorative justice is an invitation to join in a conversation so that we may support and learn from each other. It is a reminder that all of us are indeed interconnected."¹²

According to psychologist and author Daniel Goleman, restorative practices help people to increase *social intelligence*, "a shorthand term for being intelligent not just about our relationships but also *in them*" (emphasis in the original).¹³ Social intelligence concerns developing self-awareness, and applying that awareness in interacting with others, something restorative practices encourage. Goleman says: "The emotional subtext of restorative justice urges offenders to change their perception of their victims from It to You—to awaken empathy."¹⁴

Research measuring empathy development shows it can prevent aggression and violence.¹⁵ Most people who commit crimes,

especially violent acts, put their own interests and desires before others. Providing processes for offenders that can shift their selfishness to empathy and concern for others is a violence prevention measure.

Restorative processes offer offenders perspectives away from their self-centeredness to consideration of others. Instead of focusing on what the offender's motivations were for engaging in harmful behavior, and furthering self-centeredness, solutions are sought by asking, "*what can be done to repair the harm?*"

Alan Jenkins' work with violent offenders in Australia suggests that professionals asking *why questions* may tend to discourage taking responsibility for behavior, while *questions about how* their behavior has affected relationships, and how they can maintain good behavior, encourages taking responsibility and changing behavior.¹⁶ Jenkins' work with violent offenders shows that elimination of language asking for external causal explanations for bad behavior, and instead asking for "Explanations based on a theory of restraint tend to promote helpful solutions in the form of responsible actions."¹⁷ This is not saying that offenders who desist from crime do not have excuses and rationalizations for their past offenses, i.e. challenging childhoods, poverty, etc., but rather desisting offenders have taken responsibility for their behavior and their feelings, and are focusing on how to restrain themselves from such behavior in the future. The idea is consistent with what Shadd Maruna says is important for understanding the theory of desistance: how people who make the decision to not commit crimes "maintain their resolve against short term temptations."¹⁸ Canadian research applying Jenkins' theory to non-offenders verifies that *how questions are asked* positively affects perceptions of responsibility and future performance.¹⁹

Restorative practices redirect the focus from the offender's motivations to the harm

⁴ Howard Zehr (2002). *The Little Book of Restorative Justice*, Intercourse, PA: Good Books.

⁵ Loren Walker (2000). *Conferencing: A Group Process That Promotes Resiliency*. Paper presented at The Second International Conference on Conferencing and Circles: Restorative Practice in Action. Toronto, Ontario, Canada, 10-12. August 2000. http://iirp.org/library/t2000/t2000_walker.html (last visited September 2007).

⁶ Susan Olson & Albert Dzur (2004). *Revisiting Informal Justice: Restorative Justice and Democratic Professionalism*, 38 *Law & Society Rev.*

⁷ Center for Restorative Justice, Suffolk University, College of Arts & Sciences, <http://www.suffolk.edu/research/6953.html> (last visited April 27, 2007) and Carolyn Boyes Watson (2008). Forthcoming, *Peacemaking Circles and Urban Youth: Bringing Justice Home*.

⁸ John Braithwaite (2002). *Restorative Justice and Responsive Regulation* 8 & 5 New York: Oxford University Press.

⁹ Anthony Bottoms (2003). Some Sociological Reflections on Restorative justice. In A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach, & M. Schiff (Eds.). *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms* Portland, OR: Hart Publishing.

¹⁰ Jim Dator (2000). *Law and Politics Book Review*, Vol.10, No 4, 291-297, reviewing Sheleef, L. (2002). *The Future of Tradition: Customary Law, Common Law, and Legal Pluralism*, Portland, OR: Frank Cass, <http://www.futures.hawaii.edu/dator/reviews/DatorSheleff.html> (last visited August 10, 2007).

¹¹ Howard Zehr (1990). *Changing Lenses*, Scottsdale, PA: Herald Press.

¹² Zehr, *supra* p. 63.

¹³ Daniel Goleman (2006). *Social Intelligence: The New Science of Human Relationships*, New York: Bantam Dell, p. 11.

¹⁴ Goleman, *supra* 295.

¹⁵ Albert Mehrabian (1997). Relations Among Personality Scales of Aggression, Violence, and Empathy: Validation Evidence Bearing on the Risk of Eruptive Violence Scale, *Aggressive Behavior*, Vol. 23, 433-445.

¹⁶ Alan Jenkins (1990). *Invitations to Responsibility: The therapeutic engagement of men who are violent and abusive*, Australia: Dulwich Centre Publications.

¹⁷ *Id.* at 58.

¹⁸ Shadd Maruna, w(2006). *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington D.C.: American Psychological Association, at 24.

¹⁹ Sara Healing (2004). *Questions about responsibility*. Unpublished honours thesis, Department of Psychology, University of Victoria, Victoria, B.C., Canada. (Available from the author, shealing@uvic.ca.)

caused the victim. Because the focus is on the harm, and how it might be repaired, restorative practices offer the possibility of a healthy shift to empathy and caring from self-centered thinking and behavior.

In Frank's case, instead of asking, "Why do you use drugs and threaten your family for money?" and other questions about his motivations, he and his family were asked how his behavior affected others, and what they needed "to repair the harm." The family came up with a positive solution, one that the courts and criminal justice system could not have accomplished.

The facilitators heard the sister's plea and were able to address the immediacy of the family's needs. The facilitators asked Frank:

"Instead of you having to drive all the way into town and going to the hospital all alone, let us give you a ride right now, okay?"

Frank balks at the idea, "No. I can go tomorrow."

His mother says, "But your car has no gas. You have no money. It's a good idea. Get a ride with them. I'll keep the car for you and give it to you when you come back, okay?"

After about ten more minutes of coaxing, Frank finally agrees to go to the hospital with the facilitators.

Frank's probation officer believes the Pono Kaulike program can do what the current judicial system cannot: "Because the meetings are held in the families' homes, and conducted by an agency outside of the court, the needs of the clients are more likely to be met. [The program] can help the defendants get the help they need."

The Pono Kaulike program also provides an opportunity to identify and solve potential problems between the parties that may again arise without some type of intervention. Victims are often subpoenaed to testify in

court against defendants. Especially in cases where witnesses are in an intimate or family relationship with the accused, they may be reluctant to appear, subjecting the cases to dismissal and themselves to potential bench warrants, and no one gets help. When the complaining witness does appear, cases are generally treated as isolated or specific offenses; the underlying relationship or emotional issues between a defendant and the complaining witness are left unaddressed.

Solution-Focused Brief Therapy Approach

Pono Kaulike uses the *solution-focused brief therapy* approach, which carefully uses language, and appreciates the importance of relationships in assisting troubled people to find their own solutions to problems.²⁰ Steve de Shazer, Insoo Kim Berg, and their colleagues at the Brief Family Therapy Center in Milwaukee, Wisconsin developed the solution-focused approach over 20 years ago.²¹

Insoo Kim Berg provided assistance on applying the solution-focused (SF) approach to the Pono Kaulike program shortly after its inception. Both the facilitators met with Berg and learned how to apply the approach. One facilitator had extensive contacts with Berg, meeting with her numerous times, and became a trainer on the SF approach.

The SF approach has been compared with *motivational interviewing* (MI), as the two are quite similar. "Because both SF and MI emerged in response and in contrast with prevailing medical/disease problem-focused models, they can be said to represent nonpathological and salutary or health-promoting therapeutic ventures. An interest in and a curiosity about clients' abilities, strength, and competencies, characterize both SF and MI counselors."²²

Both SF and MI use language skills to assist clients in determining and creating positive lives, and both "emerged in response to and in contrast with prevailing medical/

disease and problem-focused models."²³ Both have been successfully used with substance abuse²⁴ and violence cases.²⁵ Both SF and MI are considered "best practices" and are "evidence-based treatment interventions."²⁶

The key difference between the SF approach and MI is that SF views behavior as mainly "social construction through language," and suggests that, "language is reality." On the other hand, MI is anchored heavily in the "stages of change model" where counselors try to identify and assess what stage a client is at for desiring change. Once the MI counselor determines the client's stage, language skills are used to assist the client in achieving the desired change.²⁷

Problem-solving courts have used the MI approach successfully.²⁸ Problem-solving courts were "established to look outside the traditional framework of legal proceedings for solutions," and offer a holistic approach, including restorative justice, as one answer to the increasingly difficult cases entering the criminal justice system.²⁹

Restorative justice programs have successfully used the SF approach for child welfare,³⁰

²³ *Id.* at 39.

²⁴ Deborah H. Van Horn, & Donald A. Bux, (2001). A pilot test of motivational interviewing groups for dually diagnosed inpatients. *Journal of Substance Abuse Treatment*, 20, 191-195; Eric E. McCollum & Terry S. Trepper (2001). *Family Solutions for Substance Abuse: Clinical and Counseling Approaches*, New York: Haworth Press.

²⁵ Casey T. Taft, Christopher M. Murphy, Peter H. Musser, & Nancy A. Remington (2004). Personality, interpersonal and motivational predictors of the working alliance in group cognitive-behavioral therapy for partner violent men. *Journal of Consulting and Clinical Psychology*; Mo Yee Lee, John Sebold & Adriana Uken (2003). *Solution-Focused Treatment of Domestic Violence Offenders*, New York: Oxford University Press.

²⁶ Central East attc, The Addiction Technology Transfer Center Network, 2007, Best Practice Resources, Evidence Based Practices, http://www.ceattc.org/nidacsat_bpr_ebp.asp (last visited April 27, 2007).

²⁷ Lewis & Osborn, *supra*.

²⁸ Helen Harberts, Problem Solving Courts, Butte County District Attorney, <http://www.buttecounty.net/da/problem.htm> (last visited April 27, 2007).

²⁹ American Bar Association, *Problem-Solving Courts, Therapeutic Justice, Restorative Justice, Office of Justice Initiatives*, <http://www.abanet.org/justice/01summary/traditionalact/problemsolving.html> (last visited April 23, 2007).

³⁰ Andrew Turnell & Steve Edwards, *Signs of safety: A solution and safety oriented approach to child protection*, Norton: New York (1999).

²⁰ Insoo Kim Berg & Steve de Shazer (1993). Making numbers talk: Language in therapy. In S. Friedman (ed.), *The new language of change: Constructive collaboration in psychotherapy*, New York: Guilford Press.

²¹ Peter Dejong & Insoo Kim Berg, (2008). *Interviewing for Solutions*, Belmont, CA: Thompson Brooks/Cole.

²² Todd Lewis & Cynthia Osborn, Solution-Focused Counseling and Motivational Interviewing: A Consideration of Confluence, 82 *Journal of Counseling & Development*, 38-48 (2004).

schools,³¹ and prisons.³² The Pono Kaulike program is the first court-centered program reportedly using restorative justice combined with the solution-focused approach.

During the ride to the hospital with Frank, the facilitators speak cheerfully and calmly to him using *solution-focused language*, which focuses on his strengths and positive qualities.

"Your family really loves you. What did you do to get them to want to help you so much?" He smiles, and is relaxed during the 15-minute car ride.

At the hospital the facilitators wait with Frank.

"This is a nice quiet place. You're gonna get a good night's sleep here," they tell him.

"Yeah, it's good," Frank says, with a smile, running his hand along the top of a nearby table.

After an hour of waiting at the hospital, Frank is assessed and determined to be a danger to himself and others. Two hours after his sister's desperate plea, the hospital transports Frank to a nearby mental health facility where he is admitted and stays for over a month.

A year and a half after Frank's stay at the mental health facility, he is living in a long-term residential drug treatment program. He has lived there for a year and is expected to stay for at least another year. His mother participates in a weekly support group for families of residents in the treatment program.

Restorative Justice for Family and Intimate Violence Cases

Restorative justice is more effective in preventing repeat criminal behavior in serious offenses compared to other criminal justice interventions.³³ Just as important, victims and others affected by crime are more satisfied with restorative justice practices compared to other interventions.³⁴ Restorative justice has

also been shown to reduce post-traumatic stress and the "desire for violent revenge,"³⁵ something that is especially important in family violence cases.

Family Group Conferencing, a restorative practice that began in New Zealand and spread to the United States in the 1990s,³⁶ has a long history of dealing with domestic and family violence in child welfare cases.³⁷

New York University professor Linda Mills has described in detail the advantages of using a restorative approach in domestic violence cases and the failings of our criminal justice system to address this serious problem.³⁸ Mills argues that restorative justice should be used because it helps victims heal by meeting their need to *actively participate* in addressing the effects of crime.³⁹ However, some claim that restorative justice for domestic violence cases may re-victimize victims (because of power imbalances between men and women) and that it is "cheap justice" or a "soft option" indicating that society is not taking these offenses seriously enough.⁴⁰

The arguments against using restorative justice have successfully blocked application of it world-wide in domestic violence cases, resulting in a "paucity of evidence to confirm or discount the critics' or proponents' claims."⁴¹ Despite the fears that a power imbalance between men and women outweighs the benefits from any meetings between domestic violence offenders and victims, some public health and family therapy professionals advocate for couples treatment

interventions based on positive research results.⁴² Today, Mills is conducting research into the use of restorative justice in domestic and intimate violence criminal cases, and for couples who voluntarily seek services before police intervention.⁴³ Eventually, there will be more than a "paucity of evidence" on whether it is more effective than our current system.

Pono Kaulike Program

Pono kaulike translates from Hawaiian to mean "equal rights and justice for all."⁴⁴ The program began in 2003 and is named after a resolution enacted by the Hawaii State judiciary in 2000 for "Restorative Justice and *Pono Kaulike*." The resolution states that the "Hawaii State Judiciary shall continue to act in accordance with the principles of Restorative Justice and the concept of *Pono Kaulike*, signifying a dedication to Equal Rights and Justice for All and shall, in conformity with governing law, attempt to deliver services and resolve disputes in a balanced manner that provides attention to all the participants in the justice system including parties, attorneys, witnesses, jurors, and other community members who are active participants in the justice system."⁴⁵

The pilot program was conceived and provided by Hawai'i Friends of Civic and Law Related Education (Hawai'i Friends), a small non-profit organization that has assisted organizations to develop, implement and evaluate restorative justice programs since 1996.⁴⁶ In September 2002 Hawai'i Friends collaborated with the District Court of the First Circuit in Honolulu, State of Hawai'i, to develop and implement the Pono Kaulike

³⁵ Sherman & Strang, 7, *supra*.

³⁶ Russ Immarigeon, *Family Group Conferencing in Canada and the United States: An Overview*. In J. Hudson, Morris, Maxwell & Galaway (Eds.), *Family Group Conferences: Perspectives on Policy and Practice* (The Federation Press 1996).

³⁷ Paul Nixon, Gale Burford, Andrew Quinn & Josh Edelbaum, *A Survey of International Practices, Policy & Research on Family Group Conferencing and Related Practices*, American Humane Association, National Center on Family Group Decision Making, http://www.americanhumane.org/site/DocServer/FGDM_www_survey.pdf?docID=2841 (last visited September 8, 2007).

³⁸ Linda Mills, *Insult to Injury: Rethinking our Response to Intimate Violence* (Princeton, NJ: Princeton University Press 2003).

³⁹ Linda G. Mills, *The Justice of Recovery: How the State Can Heal the Violence of Crime*, *Hastings Law Journal*, Vol. 57, No. 3 457-508, February 2006.

⁴⁰ Sarah Curtis-Fawley & Kathleen Daly, *Gendered Violence and Restorative Justice: The Views of Victim Advocates*, *Violence Against Women* (2005) 11(5): 603-38.

⁴¹ *Id.*, at p. 9.

⁴² Gregory L. Stuart, Jeff R. Temple, and Todd M. Moore, *Improving Batter Intervention programs Through Theory-based Research*, *JAMA*, Vol. 298, No.5, August 1, 2007; Sandra M. Stith, Karen H. Rosen, Eric E. McCollum and Cynthia J. Thomsen, *Treating Intimate Partner Violence Within Intact Couple Relationships: Outcomes of Multiple Couple Versus Individual Couple Therapy*, *Journal of Marital and Family Therapy*, Vol. 30, No.3, 305-318, July 2004.

⁴³ The Center on Violence and Recovery, New York University, <http://www.nyu.edu/cvr/intimate/index.html> (last visited April 27, 2007).

⁴⁴ Mary Kawena Pukui & Samuel Elbert, *Hawaiian Dictionary* (1986).

⁴⁵ Hawaii State Judiciary, News and Reports, Judiciary in the Media, Hawaii State Judiciary (2000) http://www.courts.state.hi.us/page_server/Drafts/News/SpecialProjects/RestorativeJustice/63975281E9CF1F0EEB58B5337E.html (last visited April 4, 2007).

⁴⁶ Hawai'i Friends of Civic & Law Related Education, 2007, www.hawaiiifriends.org.

³¹ Laura Mirsky, 2006, *The Shefton Centre for Restorative Practice: A Restorative Community in the Making*, Restorative Practices eForum, http://www.npcresearch.com/projects_0035.php (last visited April 23, 2007).

³² Walker, Sakai & Brady, 2006, *supra*.

³³ Lawrence Sherman & Heather Strang, *Restorative Justice: the evidence* (2007), The Smith Institute, <http://www.smith-institute.org.uk/publications.htm> (last visited April 2007).

³⁴ Sherman & Strang, *supra*.

pilot restorative justice program. Start up grants from The Wallace Alexander Gerbode Foundation and the Hawaii Justice Foundation funded the pilot project.

Initially it was anticipated that the program would provide only *restorative conferences* for defendants, victims and their respective family and friends. This face-to-face meeting between an offender and a victim, with supporters for each party, has been considered a requirement for a "fully restorative" program.⁴⁷ However, such meetings were not always possible, because defendants pled at arraignment, a proceeding at which victims were not present and some victims were not willing to participate. Thus, modifications to the model were made.

"Partially restorative" programs effectively address people's needs but do not require meetings between victims, offenders and their supporters.⁴⁸ These partially restorative justice practices allow people affected by wrongdoing the opportunity to address their harms, and benefit from a restorative approach, when they frequently cannot engage in face-to-face meetings. The practices can assist them in dealing with the pain and hardship crime creates, without ever meeting together.⁴⁹

Additionally, in situations where groups have suffered hardship due to social justice problems, i.e., youth in the foster care system and homeless youth, there are no identifiable offenders to meet with. A partially restorative practice in social justice cases can provide victims with positive benefits.⁵⁰

Most criminal cases do not result in an offender ever being identified sufficiently for arrest and prosecution. Nationally, in 2005 law enforcement agencies identified offenders in 45.5 percent of all violent crimes and only 12.7 percent of property crimes reported.⁵¹ Further, approximately 47 percent of crime victims do not want to meet with offenders, when offered restorative justice meetings.⁵² Restorative justice in these cases, therefore, cannot include meetings between offenders and victims. Yet victims and offenders can successfully participate individually in restorative processes.

Three Restorative Models Offered

Pono Kaulike evolved to provide three distinct types of restorative justice meetings: *Restorative Conferences*, *Restorative Dialogues* and *Restorative Sessions*.⁵³

1. A *Restorative Conference* occurs when the defendant, victim, and supporters of both parties meet in a group. The group discusses how each member has been affected by the wrongdoing and how the harm may be repaired. The parties enter into a written *Restorative Conference Agreement*. The program has provided eight Restorative Conferences, including five family violence and three intimate violence cases.
2. A *Restorative Dialogue* occurs when the defendant and victim meet without family or friends. The victim and defendant enter into a *Restorative Dialogue Agreement*. Often victims simply want to know that the offender is remorseful for their harmful behavior. Ten Restorative Dialogues have been held, including three for family violence, six for intimate violence, and one for a neighbor conflict over animal nuisance.
3. A *Restorative Session* occurs when the parties are unwilling to meet with each other. The victim and or the defendant meet with the facilitators separately, and are encouraged to bring supporters to prepare a *Restorative Plan*. The Plans

outline self-improvement goals developed during the Restorative Session. The Plans also include how the defendant intends to reconcile with the victim, if that has not already occurred. The defendant may also indicate her or his willingness to meet with the victim, if the victim ever wants to meet. Participants are encouraged to bring supporters.

Twenty-five Restorative sessions were held for eight intimate violence cases (seven offenders—one offender had two sessions and two victims had sessions; both victims brought supporters and four offenders brought supporters); six for family violence cases (two offenders brought supporters), four for neighbor, two for friend, and one for each of the following cases: roommate, cab passenger, bar fight, road rage, and negligent homicide.

Implementation of the Pono Kaulike Program

The pilot program began providing services in April 2003. It was originally planned that only adjudicated cases where the defendant pled guilty to charges, and both the victim and defendant agreed to participate, would be referred to the program. It was assumed that the complaining witness would be in court when the defendant entered the plea. If both parties wanted to participate, the case would then be continued for sentencing to allow time for a Restorative Conference so that any terms the parties agreed to, such as substance abuse assessment and treatment, anger management or apologizing to the victim, could be incorporated at the sentencing.

However, the complaining witness was not always present at the court hearing, especially if the defendant pled at the arraignment stage. It was also discovered that defendants and victims benefited from participating in a restorative process even without the other's presence. As a result, it was decided that the defendant, with his or her permission, could be ordered into the program after pleading and sentenced at that time, even if the complaining witness was not present. This also allowed the facilitator time to contact the complaining witness to explain the process and arrange a restorative meeting if she or he wanted to participate.

The Restorative Conference Agreements, Restorative Dialogue Agreements and Restorative Session Plans are provided to the court and defendants' probation officers. Isaac Lawton, an adult probation officer who has

⁴⁷ Paul McCold, Toward a mid-range theory of restorative criminal justice: A reply to the Maximalist model. 3(4) *Contemporary Justice Rev.* 357-414 (2000).

⁴⁸ Loren Walker, *Restorative Justice Without Offender Participation: A Pilot Program for Victims*, Restorative Practices eForum, International Institute for Restorative Practices, 2004, <http://www.realjustice.org/library/lwalker04.html> (last visited April 27, 2007); and Loren Walker, Ted Sakai & Kat Brady, 2006, *Restorative Circles: A Reentry Planning Process for Hawaii Inmates*, 70 (1) *Federal Probation Journal*, 33-37 (2006), http://www.uscourts.gov/fedprob/June_2006/circles.html (last visited April 27, 2007).

⁴⁹ Walker, 2004, *supra* & Walker, Sakai & Brady, 2006, *supra*.

⁵⁰ Loren Walker, *E Makua Ana Youth Circles: A Transition Planning Process for Youth Exiting Foster Care*, 21 *Connections* 5 (2005), Victim Offender Mediation Association (VOMA), and Walker forthcoming *Waikiki Youth Circles: Homeless Youth Learn Goal Setting Skills*, 18(3) *Journal of Family Psychotherapy* August 2007.

⁵¹ Federal Bureau of Investigation, *Crime in the United States, 2005*. Washington, D.C., U.S. Department of Justice, <http://www.fbi.gov/ucr/05cius/offenses/clearances/index.html> (last visited April 28, 2007).

⁵² Walker, 2004, *supra*.

⁵³ Loren Walker & Leslie A. Hayashi, *Pono Kaulike: A Pilot Restorative Justice Program*, *Hawaii Bar Journal*, May 2004.

had several clients participate in the program, says that he likes it because: "When the defendant meets with the victim, the parties have an opportunity to address underlying issues and work out a solution." Lawton also sees value for defendants to participate in a Restorative Session when the victims do not. "Preparing a Restorative Plan makes the defendant accountable for his actions and future behaviors. It's like a 'behavioral plan' or a 'relapse prevention plan,' which addresses specific events and what the defendant will do. I like it," says Lawton.

Pono Kaulike Cases

It became evident early on that the best types of cases for the Pono Kaulike program were those involving parties with an ongoing relationship, such as relatives, neighbors, friends, spouses, or those with an intimate relationship. The charges have included disorderly conduct, harassment, assault, terroristic threatening, negligent vehicular homicide, criminal property damage, and animal nuisance, i.e., barking dogs.

To date 42 cases have been referred to the program. Of the cases referred, only two did not receive services. One case involved a homeless defendant who never contacted the facilitators, and the other case was dismissed before the defendant received services. Out of the 40 cases provided services, a total of 46 restorative meetings were held for 96 individuals, including nine children. In one case the defendant met with facilitators for three restorative meetings. In three cases, separate meetings were held for both victims and offenders. In another case a restorative dialogue was held, and later a restorative conference was held with more members of the defendant's family participating.

Forty of the restorative meetings involved violence or threatened violence. Eighteen were intimate violence cases between boyfriends and girlfriends, including several lesbian relationships; 13 cases were family violence; three cases were between strangers, including a road rage case, a fight between two women in a bar, and a fight between a cab driver and his passenger. Four more cases involving violence were between friends (one was a female defendant against her former female friend who began a romantic relationship with her boyfriend), roommates, and neighbors. Two cases involved non-violent conflicts between neighbors (barking dogs and property damage), and there was one

negligent homicide when a driver struck and killed a pedestrian.

In three of the cases that received restorative services, the defendants denied responsibility for the crime. One woman said, "It was the other lady that started the fight. She hit me. I was covering my head. We all got arrested. The cops believed her, but I never did it." She agreed to participate in the restorative program because she felt she wanted reconciliation for herself. It was an opportunity for her to address the false accusation.

Two other defendants, who were found guilty after trial and ordered by the court to participate in the Pono Kaulike program reported positive results. Both said the Restorative Sessions they participated in were "very positive." One said what he found most useful about the process was: "Reinforcing the positive things in my life." The other defendant, who was in the military, said that the process "Kept me in a optimistic view," and that he would recommend it to his "soldiers."

To date, twenty-two individuals, three victims and nineteen offenders, along with thirteen of their supporters, have participated in Restorative Sessions provided by the Pono Kaulike program.

Program Evaluation

The program has not yet been evaluated to determine whether it reduces crime, but it is expected that an evaluation will begin in early 2008. While we are hopeful the evaluation will show the program *has* prevented crime, we believe the measure of success for restorative programs includes more than a reduction in recidivism.

Positive cognitive processes underlie a healthy adaptation to trauma,⁵⁴ which is something restorative practices can accomplish.⁵⁵ Simply allowing people a voice in determining what they need to heal can be healing in itself.

Sixty-one of the eighty-seven adults who received restorative justice services completed written evaluations of the program.

⁵⁴ Melanie Greenberg, *Cognitive processing of traumas: the role of intrusive thoughts and reappraisals*, 25 *Journal of Applied Social Psychology* 1262-1296 (1995).

⁵⁵ Loren Walker, *Conferencing: A Group Process That Promotes Resiliency*, Paper presented at The Second International Conference on Conferencing and Circles: Restorative Practice in Action, Toronto, Ontario, Canada, 10-12 August 2000. http://iirp.org/library/t2000/t2000_walker.html (last visited April 27, 2007).

This survey consists of six statements with possible rankings from "very positive," "positive," "mixed," "negative," to "very negative." The statements are: "I believe the Restorative process was..."; "I believe the Agreement made is..."; "I believe justice was served by the Restorative process"; "I feel the participants' needs were met during the Restorative process"; "Compared to court, the Restorative process was"; and "I think the facilitator did good work with the Restorative process."

Sixty participants reported the process was very positive or positive. Only one participant reported any aspect of the process was negative, and only three others said any part of their experience was mixed. The person who said the restorative justice experience was negative was a defendant who had threatened his parents and engaged in a Restorative Dialogue with them. He indicated that the process did not serve justice because: "A pastor familiar to the spiritual problems in our family" did not come. However, he also said the process "was somewhat useful in the attempts to open communication."

The three participants who said aspects of the process were mixed included an offender's supporter, who found the process mixed for serving justice. She attended a Restorative Session for her friend who pled guilty to a charge of negligent vehicular homicide. The victim's family did not want to meet with the offender, while her friend wanted them to attend. The other two participants who found aspects mixed were an offender who threatened a taxicab driver and felt the process did not serve justice. He also wanted the victim to attend, but the victim refused. Finally, the wife of a man who was intoxicated and threatening his son, before being pushed and seriously injured from falling backwards, found the Restorative Conference agreement was mixed because her husband would not agree to quit drinking.

Twenty-two participants specifically mentioned that the restorative meeting was effective because it allowed communication between the parties. One mother who was the victim of a violent offense by her son said the meeting was useful because: "I could tell my son how I really feel and pray that he will respect me for what I did by pressing charges."

Another mother, who was the victim of an intimate violence offense committed by her child's father, said: "I think this program is better for families like ours and so much better for the kids because they get emotional a lot and they have been in enough already."

This woman participated in a Restorative Session with her current boyfriend and her child. During the Session she said what she wanted the offender to do to repair the harm, which included his participation in drug treatment and anger management. When the offender learned what the victim wanted at the Restorative Session he attended, he readily agreed. The victim's requests were presented to the sentencing court by the offender, and the court ordered him to comply with them.

A woman who was assaulted by her nephew stated that she found that "being able to apologize to my nephew" was the most useful thing about the Conference. When her nephew was arrested, she was also intoxicated and felt partly responsible for their fighting and his arrest. Both she and her nephew agreed to attend substance abuse treatment programs in their Restorative Conference Agreement. In most of the

agreements between victims and offenders, the victims agreed to many aspects of self-improvement, something that the current system cannot accomplish.

Twelve participants specifically mentioned that the restorative program was effective because it allowed them to say how they felt. A father who was seriously injured by his son thought that the best thing about the Conference was "to clean everything up and for forgiveness."

Participants also indicated that they preferred the restorative process to court. One defendant stated: "When I was in court, I felt scared and not comfortable. The conference is different because I can show and tell them how I felt." A mother who attended a Restorative Session with her son said: "It's better because we can speak openly. It's private." Another defendant said compared to court the conferencing process was "more in depth about relationship and communication."

The Future

When the Pono Kaulike program was initiated in 2002 as a pilot it was hoped it would become institutionalized by the Hawaii state judiciary. Since 2005, it has continued mainly through pro bono efforts. A legislative mandate with state funding is probably necessary to institutionalize the program. Seeking a legislative mandate might be a worthwhile strategy because the 2007 Hawaii legislature mandated a pilot project providing *Restorative Circles* for prison inmates and their loved ones.⁵⁶

"Restorative justice is by no means an answer to all situations. Nor is it clear that it should replace the legal system, even in an ideal world,"⁵⁷ but addressing family and intimate violence the way Pono Kaulike does is a step toward healing, which is something that our justice system should be concerned with, because if it were, that could influence offenders to be concerned with healing as well.

⁵⁶ Hawaii Legislature, Senate Bill 932, 2007, <http://www.capitol.hawaii.gov/site1/docs/getstatus.asp?query=SB932&currpage=1&showstatus=on&press1=docs> (last visited April 27, 2007).

⁵⁷ Howard Zehr, 2002, 12, *supra*.