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***South Australia Juvenile Justice
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Conferencing and Sentencing***

Technical Report No. 4

**In-depth study of sexual assault and
family violence cases**

by

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Abstract

SAJJ-CJ Technical Report No. 4 describes the conceptual basis for the In-Depth Study of Sexual Assault and Family Violence Cases (the “in-depth study”), the instruments used, and the study design and implementation. It is one of several studies in a programme of research on the race and gender politics of new justice practices, which has two empirical components: studies of the appropriateness of restorative justice in cases of sexual, partner, and family violence; and of white-Indigenous justice relations in sentencing practices.

The in-depth study centres on victims’ experiences of gendered and sexualised violence, and their views on and experiences with the conference process and its aftermath. The study analyses 14 cases of sexual and physical violence: it draws on police reports, interviews of the coordinators who organised and facilitated the conferences, and interviews of victims. The study time frame was a 6-month period, July to December 2001. Part I gives the study’s background and context, and Part II describes the interview instruments and how the research was carried out. Part III reflects on the research process. Several Appendices present the instruments and related documents in the study.

Like *SAJJ-CJ Technical Report No. 3* (Daly et al. 2005), which describes the data gathering and research plan for the Sexual Assault Archival Study (SAAS) in South Australia, the principle aim for this report is to show how the research unfolded, including the decisions taken, and how this was linked to debates in the research literature. We foreground the “logic in use” in the research enterprise and put the “reconstructed logic” in the background (Kaplan 1964). In so doing, we try to depict our thought processes in a “real time” account of the research process. A second aim is to make a conceptual and methodological contribution to research on restorative justice and the handling of sexual and family violence in the legal process.

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Many people have contributed to the success of the in-depth study, and we are grateful for their generosity. The support and assistance of (the then) Senior Youth Court Judge Andrea Simpson, (the then) Youth Court Registrar Janet Kitcher (now deceased), the Senior Youth Justice Coordinator (Senior YJC) Carolyn Doherty, and Senior Sergeant Dave Wardrop were pivotal in the planning and execution of the research. We thank all the Youth Justice Coordinators (YJCs), who participated in the research and assisted in the research design and instrument preparation: Carolyn Doherty, Marnie Doig, Eric Kasearu, Michelle McGeachie, Stewart Potter, and Grant Thomas. Other colleagues assisted in revising the interview instruments, and we appreciate the time and attention they gave to the project: Robyn Holder (ACT Victims of Crime Coordinator), Gillian Westhorpe (then, Manager, Early Intervention Project, South Australian Attorney-General's Department), Heather Nancarrow (Director, Queensland Centre for Domestic and Family Violence Research), and Julie Stubbs (Associate Professor, University of Sydney).

Sarah Curtis-Fawley worked closely with Daly in planning and executing the in-depth study in Adelaide, and with Brigitte Bouhours, preparing the materials for analysis in Brisbane. Leanne Weber (now a lecturer at the University of New South Wales) was a key member of the Adelaide research team; she worked on the SAAS project and a study of the Nunga Court with Daly. We are indebted to all of those who have contributed to the success of the in-depth study and to the larger programme of research.

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SAJJ-CJ Technical Report No. 4

In-depth study of sexual assault and family violence cases

Study context

SAJJ-CJ Technical Report No. 4 describes the research plan, methods, and instruments used in the In-Depth Study of Sexual Assault and Family Violence Cases (the “in-depth study”). Interview data (from conference coordinators) were gathered for all eligible cases finalised by a youth justice conference that took place from 1 July to 31 December 2001 in South Australia. Interview data (from victims) were gathered for all conferences that were held from 1 October to 31 December. During the research period, a total of 14 conferences were held (six family violence and eight sexual violence cases¹); all the coordinators for these conferences were interviewed to elicit detailed information on conference preparation, conference dynamics, and post-conference outcomes. Of the eleven eligible victims, seven were interviewed.

The in-depth study is one of several studies in a programme of research on the race and gender politics of new justice practices in Australia, New Zealand, and Canada, which has two empirical components: studies of the appropriateness of restorative justice in cases of sexual, partner, and family violence; and of white-Indigenous justice relations in sentencing practices (Indigenous sentencing courts and Community Justice Groups). Since 2003, these components have overlapped as we explore the views of Indigenous and non-Indigenous women toward restorative justice in cases of partner and family violence, and how family violence cases are handled in Indigenous sentencing courts,

The in-depth study is part of the first component. Another major study in this component is the Sexual Assault Archival Study (SAAS), which collected and analysed 385 youth sexual violence cases, which were finalised in court or by conference or formal caution in South Australia from 1 January 1995 to 1 July 2001 (see Daly et al. 2005 for the technical report, and Daly 2006 for a major journal article). The judicial sentencing remarks, which were available for a subset of 55 legally more serious cases, were content analysed (Bouhours 2006; Bouhours and Daly forthcoming; Daly and Bouhours 2007). Further analyses of the SAAS dataset are underway; they include analyses of attrition of sexual cases in court, re-offending, and the character and diversity of youth sex offending.

To date, one article has been published from the in-depth study cases (Daly and Curtis-Fawley 2006), and a second is in preparation (Daly and Nancarrow 2007). Daly and Curtis-Fawley (2006) analysed two sexual assault cases, having adolescent offenders and victims, and described the experiences of the victims as their cases moved from reporting the offence to the police, to the pre-conference period, the conference itself, and their reflections on the experience. Daly and Nancarrow (2007) took a similar approach, but the cases were of sons assaulting their mothers.

¹ We use the term “family violence” as an umbrella concept, which includes partner, adolescent-parental, sibling, and adult-parental (elder) violence. The term is used by Australian Indigenous women to refer to an even wider set of social relations and violence. In this research on youth conferencing, the six family violence cases were of adolescents assaulting parents.

Other studies by the research group include interviews of directors or managers of victim advocacy or service provider groups in South Australia and Queensland (Curtis-Fawley and Daly 2005), and opinion leaders in New Zealand, to elicit their views on using restorative justice or established criminal justice in response to partner, sexual, and family violence; an interview study of Indigenous and non-Indigenous women's views on the appropriateness of restorative justice in responding to partner, sexual, and family violence (Nancarrow 2003, 2006); and observational and interview studies of urban Indigenous sentencing courts and other justice practices in more remote areas of Australia (Marchetti and Daly 2004; Marchetti and Daly 2006). A special issue of *Theoretical Criminology* on Gender, Race, and Restorative Justice (2006) has been produced (co-edited by Daly with Kimberly Cook and Julie Stubbs); in that issue and elsewhere (Daly and Stubbs 2006; Daly 2005) are overviews of feminist engagement with restorative justice and the race and gender politics of new justice practices in Australia, New Zealand, and Canada.

This programme of research differs from the South Australia Juvenile Justice (SAJJ) Research project on conferencing (1998-99), which analysed the dynamics and outcomes of conferences for youthful offenders in South Australia.² *SAJJ Technical Reports Nos. 1 and 2* describe the project's research design and the development of the observational and interview instruments, and many articles and book chapters have been published from the SAJJ 1998-99 datasets. All the research studies and publications relating to these two major programmes of research (SAJJ, and the race and gender politics of new justice practices) are available at the Project Director's website, www.griffith.edu.au/school/ccj/kdaly.html

Technical Report No. 3 (2nd edition, Daly et al. 2005) for the SAAS gives a comprehensive review of the legal contexts of the youth justice system in South Australia and the sentencing options available to Youth Court judges and magistrates. It reviews the literature and debates concerning the appropriateness of restorative justice in cases of gendered and sexualised violence, and it describes how the universe of 385 cases of youth sexual violence were handled by the police and courts in South Australia over a 6.5 year period. Readers should refer to that report for the legal contexts of youth justice, sentencing options, and the decisions taken in the SAAS. *Technical Report No. 4* focuses on the conceptual basis for the in-depth study, including the design of the instruments; and how the study was implemented. A portion of the text in *Technical Report No. 3*, which reviews feminist debates on restorative justice, remains highly relevant, and is again used here.

Note on terminology

Legally speaking, only those young people who have admitted to an offence (or are found guilty) can be termed "offenders." The term is appropriate for all the conference cases in the in-depth study, once a young person has admitted to offending. Some say that a complainant is not a victim until there is a legal determination that an accused person is an offender. Because offenders have made admissions for cases to be referred to a conference, the legal status of "victim" is not in doubt in the in-depth study. Some argue that "survivor" is preferable to victim, but we use the term victim for ease of presentation.

² Note, however, as discussed in Part II, that the 2001 Youth Justice Coordinator and Victim Interview instruments drew on items used in the SAJJ 1998-1999 observational and interview instruments. The SAJJ project had three sexual assault and five family violence cases that can be compared and analysed with those in the in-depth study.

Table of Contents

Part I

Conceptual Basis for the In-Depth Study 7

1. Feminist debates on restorative justice 7
2. South Australian youth justice system and legal context 9
3. Questions and problems raised from the literature 11
4. Strengths and limits of the in-depth study 12
5. Research questions 13

Part II

Study Design, Instruments, and Data 15

1. Study design and time frame 15
2. Instrument development 19
3. Implementation 27
4. Description of in-depth study cases 29
5. Offender criminal histories 30

Part III

Reflections on the Research Process 31

References 32

Appendices

1. Project information flyer and Q & A sheet for the Youth Justice Coordinators 39
2. Youth Justice Coordinator pre- and post-conference interview 41
3. Victim interview 57
4. Youth Justice Coordinator consent package 75
5. Victim consent package and information sheet for assistance and counselling 77
6. Description of the 14 in-depth cases 82
7. Legal definitions of selected sexual offences in South Australia 85

Part I

Conceptual Basis for the In-Depth Study

The past decade can be viewed as the coming of age for restorative justice³ throughout the world, and particularly in Australia. A well-established form of restorative justice (RJ) for youth offenders, *diversionary conferencing*, now exists in all Australian states and territories (Daly and Hayes 2001, 2005). As RJ programmes have gained credibility and support by practitioners and policy makers, some states have expanded their use, and others are now piloting them for adult offenders. Despite the growth of RJ in Australia and elsewhere, certain types of crime have been considered inappropriate for restorative interventions, most notably gendered and sexualised violence.⁴

The feminist and RJ advocacy literature has been marked by intense debate addressing the benefits and potential dangers of RJ for gender-based violence. The vigour of the debate has been limited by a paucity of empirical data: opponents and supporters of RJ rely on assumptions and may make comparisons with related but distinct practices, such as mediation. Research opportunities are limited because few jurisdictions use RJ for these offences. One Australian jurisdiction, South Australia, is an exception in that it routinely uses conferences in youth justice cases of gendered and sexualised violence. The Sexual Assault Archival Study (SAAS) gathered and analysed data on 385 sexual violence cases, which were disposed of by court, conference, or formal caution from January 1995 to July 2001. The in-depth study was designed to provide a detailed qualitative understanding of the experiences of victims in the conference process.

1. Feminist debates on restorative justice

This research is motivated by a dearth of knowledge on the application of RJ to cases of gendered and sexualised violence, coupled with an interest in the politics of justice and the limits of law and legal reform to address these forms of violence. There are only two jurisdictions in the world, South Australia and New Zealand, which have routinely used a RJ process (conferencing) in responding to youth accused of sexual offences (largely sexual assault, but also including “no touch” indecent behaviour offences). In all other world jurisdictions, sexual offences have been placed off the restorative justice agenda, or perhaps considered for conferencing only on an ad hoc basis. Sexual violence is generally considered “too sensitive” or “too risky” to be handled by a RJ conference or to be diverted from court prosecution. We do not know how many jurisdictions use RJ youth conferences in cases of family violence. This matter is rarely discussed in the youth justice literature, and there is little systematic knowledge about the character of these cases. Part of the problem is that some offences (such as property damage) may well reflect violent relations among family

³ The term *restorative justice* refers to a variety of worldwide practices, including conferencing, sentencing circles, and types of victim-offender mediation. Compared to established criminal justice, its procedures are more informal, and non-legal actors are given a prominent role. To date, RJ practices are largely used for admitted offenders, that is, in the penalty, not fact-finding phase of the criminal process (for overview, see Daly and Immarigeon 1998).

⁴ *Gendered and sexualised violence* is an umbrella concept that captures Liz Kelly’s (1988) idea of a continuum of violence: child sexual abuse, incest, sexual assault, domestic violence, and family violence.

members, and an unknown (and not counted) portion of assault offences involve family members.

Several key arguments are used to bolster the position against using RJ in cases of gendered and sexualised violence.⁵ They focus on concerns for the victim, assumptions made of “the community,” the orientation of offenders, and the symbolic ramifications of RJ. The general assumption underlying a critical stance toward RJ is that gendered and sexualised violence should be dealt with seriously by the police and legal system; and by “seriously,” the advocates mean by prosecution in the juvenile or criminal court. Critical commentary (Acorn 2004; Busch 2002; Coker 2002; Goel 2000; Hooper and Busch 1996; Lewis et al. 2001; Shapland 2000; Stubbs 1995, 2002, 2004; see Curtis-Fawley and Daly 2005; Daly and Curtis-Fawley 2006; Daly and Stubbs 2006 for reviews) puts forward these points:

Concerns for victims

- RJ processes may put victims at risk of continued violence.
- An informal process can permit power imbalances to go unchecked and reinforce abusive behaviour.
- Some victims may be unable to advocate on their behalf effectively, and consensus building of a group may minimise a victim’s interests.
- There may be pressure to accept an apology.
- Outcomes are not serious enough.
- There may be hopes raised in a victim’s mind that an offender will change, when a relationship should be severed.
- Some victims may want the state to intervene on their behalf and do not want the burdens of participating in an RJ process.

Assumptions of “the community”

- Community norms may reinforce, not undermine male dominance and victim blaming.
- Friends and family may support victims, but they may also have divided loyalties.

Orientation of offenders

- RJ may not reduce re-offending.
- Offenders may view RJ processes as a “soft option,” reinforcing their belief that violence is not wrong.
- Offenders may use RJ processes to diminish guilt, trivialise the violence, or shift blame to a victim.

⁵ Most of the critical literature addresses the appropriateness of RJ for domestic (or partner) violence rather than for sexual assault and child sexual abuse, although there is recognised overlap among the three. Feminist debates on the merits and problems of RJ for these offences were an explicit focus of the design of the in-depth and archival studies.

Symbolic implications

- Informal processes and penalties (including apologies) may appear to deliver “cheap justice” (Coker 1999).
- It will appear that serious cases are not being treated seriously, and “re-privatised” after decades of legal reform to respond to them as “real crime.”

Although there are a variety of claimed potential problems with RJ processes for gendered and sexualised violence, there are also potential claimed benefits. Positive commentary (Blagg 2002; Braithwaite and Daly 1994; Daly 2002; Hopkins, Koss, and Bachar 2004; Hudson 1998, 2002, 2003; Koss 2000; Martin 1998; Mills 2003; Morris 2002a, 2002b; Morris and Gelsthorpe 2000; Pennell and Burford 2002; Presser and Gaarder 2000; Snider 1998; see Curtis-Fawley and Daly 2005; Daly and Curtis-Fawley 2006; Daly and Stubbs 2006 for reviews) makes these points:

- RJ processes may validate a victim’s experiences and acknowledge that she is not to blame for the abuse.
- RJ may address violence between intimates who will be in continued relationships.
- RJ processes may create forums that are better tailored to child victims’ needs and capacities.
- RJ procedures are open and flexible; because they are less formal, they may be less threatening to victims.
- RJ processes can give victims a chance to voice their story and to be heard.
- Victims can be empowered by participating in decision-making and negotiating desired outcomes.
- RJ procedures expect that offenders will take responsibility for their behaviour.
- RJ may create opportunities for relationships to be repaired, if that is what is desired.

In addition to the lack of empirical evidence on the appropriateness of RJ for gendered and sexualised violence, debates are limited in several other ways. Extant evidence comes from research on *youth justice* conferences as *a diversion from court*. However, critics typically have in mind the use of RJ for adult offenders, and they assume that RJ is principally or solely used as diversion from court. RJ processes could be used in other legal contexts, such as pre-sentence advice, an element (or condition) of sentencing, and pre-prison (or community penalty) release meetings. The in-depth study analyses victims’ experiences with conferences as a diversion from court for youthful offenders; however, RJ processes need not necessarily be confined to this legal context or age group.

2. The South Australian youth justice system and legal context

Refer to *Technical Report No. 3* for a detailed discussion of the South Australian youth justice system and the legal context of RJ conferences as diversion from court for youthful offenders (Daly et al. 2005: 11-15, and Appendices 1-3). Here, we sketch some features of the conference process and practices in South Australia.

In South Australia, when a youth admits to committing a “minor offence”⁶ and the police officer thinks the matter requires formal action, the officer may refer the matter to a family conference. Courts may also refer cases to a conference. For a conference to go forward, the young person and police officer, at a minimum, must be present; but a conference coordinator typically arranges to have the youth’s parent or guardian, the victim, and other supporters or community people present. The conference participants meet to discuss the offence, why it came about, how it affected the victim and others, and to decide on a penalty. Among the outcomes (or “undertakings”), a conference may require a youth to pay compensation to the victim (not to exceed \$25,000, set by policy), to carry out community service (not to exceed 300 hours, set by statute), to apologise to the victim or “to do anything else that may be appropriate in the circumstances of the case.” Undertakings have a maximum duration of 12 months (the longest of any Australian jurisdiction). The conference outcome is put in writing, acknowledged and signed by the youth, and an official record is kept.

In South Australia during the research period, there was a dedicated group of ten Youth Justice Coordinators (YJCs), including the Senior YJC, who are responsible for setting up conferences, running them, and conducting follow-up on conference outcomes. Eight YJCs are based in the state’s capital city, Adelaide; and two, in Port Augusta, a country-town about 4 hours’ drive by car from Adelaide.

Compared to other Australian jurisdictions (except Queensland), South Australia is unusual in that the legislation establishing youth conferences, the *Young Offenders Act 1993*, did not specifically prohibit any offence from being diverted from court to conference. Over the years, the police have developed and refined a series of administrative orders to guide the referral decision when the cases referred became increasingly serious as determined by the legal code.

In July 2005, a South Australian Parliamentary Select Committee on the Youth Justice System (hereafter “Select Committee”) tabled its *Report*, and it made 43 recommendations on the operation of the youth justice system. The proposed recommendations are animated by “the principle of minimal involvement of young people and early intervention,” which “should govern ... all parts of the system (Select Committee 2005: 37). They include the following: “minor offence” should be changed to “divertible offence” in the *Young Offenders Act*, there should be a more flexible interpretation of “admission to offending” for referral to conference, there should be a greater role for the courts in referring cases to diversionary conferences, and there should be an expanded use of conferences, including victim impact conferences. Some of these recommendations appear to reflect a Supreme Court decision (*R v Police* [2002] Gray J), which articulated an expanded interpretation of the Youth Court’s role in referring cases from court to conference.⁷

An important component to the handling of youth sexual offences in South Australia is the Mary Street Adolescent Sexual Abuse Prevention Programme. Mary Street provides an intensive therapeutic intervention, typically of one year’s duration, to address adolescent sex offending by young people aged 12 through 17 years. Conference and court outcomes may

⁶ The legislation specifies that “minor offences” could be diverted, but the Parliamentary Select Committee’s Report (2005: 42) proposed that offence eligibility should not be too restrictive, and referral should be of “divertible” offences. In practice, the referring of more serious cases has been occurring for some time; e.g., some rape cases have been diverted to conference.

⁷ As of this writing (December 2006), no action has been taken on the Select Committee’s recommendations.

include participation in the Mary Street Programme as part of the undertaking or penalty. Thus, any analysis of the strengths and limits of the court or conference response to sexual offending must also include the presence (or not) of an effective therapeutic process that works alongside the legal process. We note that there is no similar targeted programme for youth who are abusive or violent toward family members; and that, in general, the Mary Street programme is largely focused on youth in the Adelaide area (or those who can travel easily to Adelaide).

3. Questions and problems raised from the literature

There is a huge literature on victims of gendered and sexualised violence, and their experiences with the police and the legal process. This literature is segmented along the following lines: by whether the abuse is partner domestic violence or sexual violence; whether the victim is an adult, child, or youth; and whether an offender is an adult or a minor. The partner violence literature (or domestic violence “DV” literature) focuses on adult offenders and victims; and the sexual violence literature, on adult offenders and all ages of victims. (The term “family violence,” the preferred term for Australian Indigenous groups, covers a wider set of offences that involve not only family members but other kin and community groups or relations. It includes a substantially larger set of violent contexts, relations, and orientations of victims to informal and formal mechanisms of responding to violence.)

One problem we faced in linking the research literature to the design of the in-depth study is that the adult literature on sexual and family violence is not, at times, applicable to youth offenders. Second, while there is some overlap, the research literatures on DV and sexual violence tend to emphasise different problems for victims in the legal process. In the DV literature, the emphasis is on providing immediate safety of victims, addressing problems of on-going relations with an offender, and identifying enhanced methods of police protection (including presumptive arrest) and prosecution. In the sexual violence literature, the emphasis is on the “attrition” of cases from victims’ reports to the police to conviction, when a major share of cases are withdrawn, dropped, or dismissed; and the ways in which the prosecution and trial process often serves to re-victimise victims. While all DV cases are likely to reflect on-going violent relations, many sexual violence cases are “incident-based” (although on-going sexual violence can also feature in child abuse cases).

The DV literature places emphasis on a victim’s *need for resources*, whether to move on from the relationship or to change its disabling dynamics, whereas the sexual violence literature places emphasis on a victim’s *being believed* that s/he⁸ was subject to coerced (non-consenting) sex. Moreover, victims have different needs depending on whether the violence is on-going or not. When it is on-going, a need for protection from further abuse is required, but this is less the case for incident-based violence. In the sexual violence literature, there is substantially greater attention to redressing historic cases of sexual abuse, which may have occurred decades ago, mainly within families, institutional “homes,” and communities, both religious and secular.

⁸ The archival study of 385 sexual violence cases shows that females were 78% of all victims in the cases (Daly et al. 2005: 50). Although we use s/he in referring to victims and offenders, most victims of sexual and family violence are female, and most offenders are male.

In a general sense, we can see that the set of “concerns for victims” itemised above in Section 1 would apply to all victims of gendered and sexualised violence when using an informal process like RJ conferences. At the same time, it is important to recognise that victims (or their family members) face distinctive problems, which are set in motion by the character and quality of the violence.

For example, consider the question of victim needs (and experiences) in cases involving *youth* who sexually or physically abuse others. Except for “no touch” offences (such as indecent behaviour or “flashing”), when many victims are 18 or over, virtually all the “touch” offences have child or youth victims. What, then, does a socio-legal response or process (including the conference process) mean to a 3-year-old victim? Probably very little. However, it is likely to mean a lot to that victim’s supporter (typically a parent or another family member). Add to this a frequent pattern in intra-familial sexual violence cases: a victim’s supporter is also the offender’s supporter (that is, it is their mother). What, then, are “victim’s needs” in these cases? And how are “power dynamics” or the “revictimisation of victims” to be conceptualised?

Mothers (in particular) also face dilemmas when their children (typically sons) assault them or threaten to harm them (see Daly and Nancarrow 2007 for a review of the literature on adolescent violence toward parents). How do the dynamics of mother-son victim-offender relations compare with those of adult female-adult male victim-offender relations in partner violence? Are the needs (and experiences) of these two groups of victims similar or different?

In short, the variety of “experiences” and “needs” of victims in cases of youth violence raise many questions about how to fashion meaningful interview items and what to look for. They also raise questions about how, as researchers, we form ethical relations with victims, their supporters, or other family members.

4. Strengths and limits of the in-depth study

The major strength of the in-depth study is an ability to grasp the experiences of victims of gender-based violence with the conference process. Myriad claims have been made about the positive and negative effects of conferences for victims, drawing mainly from the mediation literature on DV and more generally from the crime victim literature. In 2001, when the study was launched, there were no studies at all, with the exception of Pennell and Burford (2000).

Our initial aim was to observe the conferences in order to explore the atmosphere and power dynamics in the conference itself. However, when planning the research in July and August 2001, it became clear that having a researcher present at the conference caused some concern to the YJCs. Moreover, and as importantly, we were only able to observe conferences during the 3-month period (October-December), when the full complement of researchers was on site. This 3-month window of time would yield, we estimated, a small number of conference cases (perhaps 7 to 10).

As discussed more in Part II, the final design centred on a 6-month period (July-December 2001), in which conferences for sexual and family violence cases were held. The YJCs were interviewed to elicit their views and judgments on the offender, victim, and conference process for all the cases during the research period; whereas only those victims whose cases were held during a 3-month period (October-December 2001) were interviewed. The

interview, although structured, permitted many openings for the YJCs and victims to speak about the case and their experiences at considerable length. This was reflected in the average length of the interviews. For the YJC pre- and post-conference interviews, it was 2 hours; and for the victim interview, 1.5 hours.

The strengths of the study lie in a detailed understanding of victims' experiences of violence and the conference process, and in particular, a temporal ordering of their experiences. They also lie in an appreciation of the problems faced by conference coordinators or facilitators in planning and managing these cases. The weaknesses are three-fold. First, the number of conference cases is small, reflective of the generally low frequency with which these offences come to the attention of police and are processed by the justice system. Second, we did not independently observe the conferences, but instead relied on the judgments and memories of the YJCs. We have every reason to believe what the coordinators told us: they were frank and offered a considered and thoughtful view of what occurred. Moreover, they have considerable experience working with these types of cases. They have been involved in training facilitators in other states, and they have developed a reflective practice knowledge of the problems and pitfalls that can arise in these cases (see Wallace and Doig 1999 for an early example). Third, the number of victims that could be interviewed was even smaller than the number of conference cases. Despite these limits, ours is the first to explore the dynamics of conferences, from a victim's perspective, for these kinds of offences.

5. Research questions

The in-depth study permits us to address these questions:

1. What are the "offence fact patterns" in youth cases of sexual and family violence, and how do these compare with adult cases?
2. To what degree are the claimed benefits and problems of the conference process for victims of sexual or family violence apparent from interviews of victims and conference coordinators?
3. What is the meaning and frequency of key concepts in the literature such as "power imbalances," "revictimisation" of victims, and the satisfaction of varied "needs" of victims (depending on the offence)?
4. To what degree do conferences for these offences comport with elements associated with "procedural justice" (that is, a general sense of fair treatment and being listened to by everyone) and "restorativeness"? What, more generally, is the meaning of restorative justice in these cases?

Part II

Study Design, Instruments, and Data

1. Study design and time frame

Planning for the in-depth study began in June 2001. During June to August, several ways of conceptualising the study were investigated by the Chief Investigator (Daly) with the Senior Youth Justice Coordinator (Carolyn Doherty) and members of the Family Conference Team. There were several matters to contemplate: what we were trying to accomplish, how it could be carried out within a specific time frame, and how operationally, the research could be accomplished in the light of staffing concerns, both those of the Family Conference Team and the research project. There was, moreover, a particular sensitivity to these cases.

Compared to the SAJJ 1998-99 project (see *SAJJ Technical Reports Nos. 1 and 2*; see also Daly 2002 and 2003 for indicative analyses), which examined all types of youth offences, there were heightened sensitivities and even greater emotional weight in the 2001 project. The reason, although obvious, is important to acknowledge and address. Research on sexual and family violence is often extremely emotionally charged because of the offences themselves (offending patterns and experiences of victimisation) and the reactions to the offences by those close to the victims and offenders (in particular, family members). The social relations and histories of the people involved (offenders, victims, family or supporters) can also be quite complex. As a consequence, the professional practice in responding to these cases, along with the associated protocols in conducting research on them, requires a heightened degree of sensitivity compared to the practices and research protocols for other types of offences.

Research operational plan

In July and August 2001, Daly began to work with the Adelaide YJCs in devising a set of “reflective questions” for gathering their views on the conference process. The inventory of areas and items subsequently grew into the Youth Justice Coordinator (YJC) Pre- and Post-Conference Interview, which is described in the next section. There were many revisions of this instrument, which reflected the coordinators’ experience with these cases and their knowledge of the debates in the area.

The decision was taken in early September that rather than having the coordinators write out their responses to a set of self-administered questions about the conference process, this would be elicited in interviews with a researcher before and after the conference took place. This approach had many benefits: the coordinators could more freely speak about or ruminate on a case, and the researchers could hear, respond, and probe further. Also, in early September, the decision was taken that the researchers would not observe the conference itself; hence, the coordinator served an important role in conveying to the researchers what occurred in the conference.

A research operational plan needed to be devised. Among the areas needing clarification were what offences were eligible, the roles of the coordinators and researchers, and the methods of appraising the victims about the project and contacting them. A protocol was devised, in consultation with the Senior YJC and other members of the Conference Team (see box on Research Operational Plan)

Research Operational Plan for the in-depth study (for conference cases held October-December 2001)

Memo prepared by K. Daly for meeting with the Family Conference Team, 4 September 2001

1. All police files come to the Senior YJC's (Carolyn Doherty's) desk. She checks to see if they are SAJJ-CJ eligible. These include:

- any sexual violence offences (including both "touch" and "no-touch" offences)
- assaults that are "family violence," e.g., with mothers, fathers, caretakers, other family members, or siblings as victims
- other legal categories (such as property damage) that have family violence elements.

2. An eligible file is allocated a purple folder, so that the researchers and team members can keep track of it easily.

The Senior YJC lists the family conference file number on her spreadsheet. The researcher or administrative staff person makes a copy of the police report for the research case file.

3. YJC role (items a, b, d, and e) and administrative staff person role (item c)

[Note: The following concerns arose, when the YJCs wondered if, in some cases, the victims should not be contacted by the research group.]

It is not clear at what point a YJC might make the decision that in some cases, the victim ought not to be contacted for an interview. I imagine that this would become clear in the pre-conference period, such that the items below (a to c) are not carried out at all. Alternatively, this decision may be made after the conference. From a methodological standpoint, it is important that the YJC provides the reason(s) for the decision.

Pre-conference conversation with victim

a. Some time during the pre-conference period, YJC says to the victim (or victim representative)

"A research group is analysing family conferences; and as part of the research, they'd like to interview you some time after the conference is over, when it is at your convenience. You'll receive more information in the mail about the project. It's entirely your choice on whether you want to participate in the research. And you can decide after the conference, when the researcher calls you, what you wish to do. But we're letting people know now about the research and that a researcher may be contacting them."

Research Operational Plan for the in-depth study (continued)

b. YJC has an information sheet to answer any questions the people may have.

For example, what is this project about? Why am I in the sample? How will confidentiality and privacy be preserved? [See the Q & A sheet in Appendix 1.]

c. When the conference invitation is sent out by the administrative staff to the victim (or victim representative), a flyer about the project is also sent. [See project flyer in Appendix 1.]

d. Before the conference, the YJC is interviewed by the researcher on pre-conference items.

e. Post-conference, the YJC is interviewed by the researcher on the remainder of interview items.

Notes:

1. It is optimal to conduct the YJC pre-conference items and interview before the conference. However, if for some reason, the interview cannot take place before the conference, the YJCs should aim to complete that information before the conference so that it reflects what they are thinking at that time.

2. The interview with victim/victim representative will take place after the post-conference interview with YJC. This will also be a time to determine appropriateness of the interview with victim.

3. Administrative staff pass along any file-related material to the researchers, such as the agreement, file header sheet, and undertaking completion sheet.

Several things to re-enforce:

1. YJCs alert victims to the research and post-conference interview. However, the research group is responsible for following this up and seeking agreement from victims for interviews.

2. I have prepared a Q & A sheet about the project, but the YJCs can refer any victim queries (or call backs to victims) to me.

3. The earlier “reflective questions” have now been formalised into the YJC interview, which I’ve made available to everyone (drafts have been circulated, and the questions have been modified a bit for clarity). A final version will be circulated shortly.

4. I will go through the consent protocols with each YJC individually.

Summarising the operational plan for the conferences that were held during October-December 2001, the Senior YJC identified eligible files, allocating them to the YJC. During conference preparation, the YJC relayed to the victim (or victim representative) that a research project was underway and their case was part of it. However, the victim was assured that it was their choice to be interviewed as part of the research. When the conference date was set and the invitation mailed to the victim (or victim representative), an information flyer about the research was included in the invitation package. The researcher conducted a pre-conference and post-conference interview with the YJC. After the post-conference interview, the researcher contacted the victim to arrange an interview.

During the research period, there was no case in which the YJC believed that a victim should not be contacted for an interview, contrary to their earlier concerns. For each case, the YJCs had a copy of the interview instrument to guide their thinking and to prepare for the interview.

Time frame

The study's time frame was bounded by a six-month period when the conferences were held (1 July – 31 December 2001). There were a total of 14 offence-eligible completed conferences by the conference team in the Adelaide office (see section 4 for details of the sample). We did not have the resources to analyse conferences organised by the Family Conference Team in the Port Augusta office.

We termed the conferences held during October-December 2001 as the “real-time” group, and those completed during July-September 2001 as the “retrospective” group. For the latter, the eligible files were identified, and the pre- and post-conference YJC interview was conducted in one session.⁹

During June to August 2001, the project Chief Investigator (Daly), although based at the time in her workplace at Griffith University, School of Criminology and Criminal Justice (Brisbane, Queensland), travelled to Adelaide several times to plan the research. In late August 2001, Daly relocated to Adelaide; and in late September, she was joined by researchers Sarah Curtis-Fawley and Leanne Weber, who worked full-time on the project for the next three months. The three researchers had two offices in the South Australian Youth Court (Adelaide), where data and documents were gathered for the in-depth and archival studies.¹⁰ Curtis-Fawley worked closely with Daly in refining the research instruments and conducting interviews with the YJCs and victims for the in-depth study. She stayed in Adelaide until late February 2002 and, among other tasks, completed several victim interviews.

In February 2002, the project shifted from Adelaide to Daly's workplace at Griffith University. During 2002, all the victim and YJC interview audio-tapes were professionally transcribed, and all the files were assembled. Curtis-Fawley and Bouhours worked on this

⁹ In the retrospective group, the conferences took place in July and August (none occurred in September); and the YJC interviews for them were conducted in August, September, and October. In all but one of the ten cases in the real time group, the interviews were conducted in two sessions, before and after the conference. Due to scheduling problems in one case, the YJC pre- and post-conference interview was conducted the day after the conference.

¹⁰ Daly, Curtis-Fawley, and Weber worked together on the archival study. Also during the research period, Daly and Weber observed the “Nunga Court” (an Indigenous sentencing court in Port Adelaide and Murray Bridge) eight times, and interviewed key legal officials and community people associated with the court.

data preparation phase of the in-depth study. However, during 2002-2004, the focus of the research group's efforts was on assembling and analysing the quantitative datasets from the SAAS project. In 2004, we began analysis of the in-depth cases.

2. Instrument development

YJC interview

The YJC interview evolved from a set of “reflective questions,” which the coordinator would answer before and after an eligible conference, to a detailed questionnaire, which was administered by the researcher. There was a good deal of discussion about what the items should be and how best to ask and order them, especially in light of the considerable variation in the kinds of cases that went to conference. For example, it was recognised that in many sexual violence cases, the actual victims would be too young to be interviewed;¹¹ thus, the YJC needed to consider the views and experiences of the victim representative (and also at times, both actual victim and victim representative). We also needed to be mindful of potential differences in the meaning of “power imbalances” for adult and youth offenders of domestic, sexual, and family violence.

In the early phases of instrument development, Daly wrote a memo to the Senior YJC about what the literature suggested were the dynamics to observe in the conferences. Portions of that memo are extracted in the next box.

Notes for developing reflective questions for the YJCs

1 June 2001 memo from K. Daly to the Senior YJC

The research and advocacy literature in this area is consistent, although it does not have in mind the family conference setting in handling youths' sexual assaults of and violence toward family members.

The assumption is that when victims meet offenders in gender-based offences, the offender will use his position to coerce or intimidate the victim in some way. This may result in a variety of negative consequences, including that the offence is trivialised and the penalty does not seem to respond to (or vindicate) the harm. In addition, the offender may not fully admit to the offence or deny its seriousness. These behaviours may lead to a “revictimisation” of the victim. Perhaps there are also dynamics in which youth are coerced or controlled, but I am not sure what these may be.

From Julie Stubbs's paper (given at a conference in Canberra in 2000 and published in 2002), which explicitly focuses on domestic violence and therefore assumes a male adult offender and female adult female, the following points were made.

¹¹ The archival study of 118 sexual violence cases that were set for conference during a 6.5 year period (January 1995 to July 2001) showed that the victim's median age at the time of the offence was 8.6 years (Daly et al. 2005: 42); 16 percent were under 5 years of age (Daly et al. 2005: 50).

Notes for developing reflective questions for the YJCs (continued)

1. RJ advocates construct (wrongly) domestic violence offences as “incident”-based rather than control-based. Control-based offences include behaviours that are “repetitive, meaningful, and strategic.”
2. It is important to position the victim as neither “too victimised to exercise choices” nor “active agents who are empowered through choice.” Rather women need information, but they make decisions within constraints in their lives.
3. One needs to determine whether in accessing criminal or welfare law, battered women are able to mobilise resources to provide safety.
4. The legal setting should be a place where women can exercise their rights, and where the threat of a criminal sanction could be used to challenge the coercive control of men. The legal setting should be a place where a woman’s victimisation is given external validation, where the seriousness of the offence is communicated, and where efforts to stop it are recorded. The legal intervention is more than simply an “expressive function.” It should be a further step of a “right to live without violence” and “to seek legal redress.”
5. Studies of partner violence show that men tend to minimise the violence, blame the victim, and underreport injuries and other forms of violence (Dobash et al. 1998). Offenders are “highly self-oriented, lack empathy and frequently deny responsibility, minimize the harm done and deflect blame onto others, particularly women” (Dobash and Dobash 1999; see also Ptacek 1999). The emphasis on offender apology in RJ conferences may be inappropriate for DV cases and further damage victims (Welfare and Miller 1999).
6. It is important to be aware of diversity among women (as victims), including in particular, racial-ethnic differences.
7. In an RJ process, the emphasis is on participation, apology, and reparation, whereas in the DV advocacy literature, the emphasis is on safety and external validation, rehabilitation, and deterrence. In other words, the emphasis in the DV literature is on safety from on going violence, as compared to apology and reparation for a discrete past event.
8. For outcomes, what is the character of the agreement? Stubbs suggests that the youth justice model is not particularly applicable for DV cases. What is required in these cases are extensive resources, and clear lines of accountability and responsibility: “who will monitor outcomes” and “over what period”?

Notes for developing reflective questions for the YJCs (continued)

9. The “community” or extended family may lack the capacity to help, or they may collude with the violence. “Denial, family solidarity, and divided loyalties” are problems (from Coker 1999).
10. Do the people in the room have a shared set of values that the violence is wrong? Are unequal relations being restored here under the banner of “making amends”?
11. Rather than expecting “the community” to mobilise resources, use a version of Joan Pennell and Gale Burford’s (2002) model, which explicitly views the conference process as a method of mobilising resources.
12. Are victims under pressure to participate? Are they given adequate information to decide whether to participate? What are (or should be) their legitimate expectations about the process? During a conference, are victims subject to “moralising discourses” such as being deserving or undeserving victims, good or bad women?

During July and August 2001, the reflective questions were reviewed, discussed, modified, and expanded, in consultation with the YJCs. A key conversation occurred late in August with Daly and a YJC, who was reflecting on the different dynamics in sexual and family violence cases. As anticipated by Stubbs (2000, 2002), this YJC observed that the family violence cases were different in important ways from the sexual violence cases (see next box on extract of fieldnotes).

Extract of Daly fieldnotes on a YJC discussion of the draft interview instrument
28 August 2001

Family and sexual violence cases

The YJC’s point was that in the family violence cases, there is a pattern of abuse that’s gone on for some time, behaviour of such an entrenched nature that for an offender, it’s “just another time that I’m meeting up with Mum.” There’s not an external presence saying that the violence is wrong. These cases do not have nearly the same degree of moral opprobrium attached to them as do the sexual assault cases. Thus, there is greater potential for revictimisation in the family violence conferences (in this case, where mothers are assaulted by their sons).

For family violence cases, because there is an entrenched relationship of violence, it was difficult to know how a short intervention for a longer set of problems could be effective, from the YJC’s perspective.

The youth offender may not see the problem with the violence; it has become acceptable, routine. This is in comparison to sexual assault where the youth knows that everyone disapproves. Thus, the youth may not think that family violence is really wrong. It may also be harder for the victim (typically a mother) to say she was hurt. Might we see family violence in the conference itself? Should we expect people to behave differently in a conference than in other contexts?

Extract of Daly fieldnotes on a YJC discussion of the draft interview instrument
(continued)

There's a taboo of sexual assault that works to the advantage of the conference in those cases. This is not the case for family violence. There is not a targeted programme for youth violence like the Mary Street programme for sexual violence, although the Mary Street programme could potentially take referrals for family violence.

Victim effectiveness

Victims may be "less effective" in family violence cases because they may not be able to describe the violence well, especially if it's on-going and entrenched. When describing their experiences, they may give diffuse, non-linear story of many events and interactions, and not focus on set of incidents in a linear way. This can be difficult to listen to.

As shown in Appendix 2, the final YJC interview, which was 13 pages in length, had five major sections.

Section 1. Offence "facts" and conference context

This section focuses on the people, offending pattern, and victim-offender relations in the case. It asks about how the offence(s) was (were) disclosed, and whether there were any changes in the living situation or family relations as a result of the offending.

Section 2. Pre-conference orientations of offender and victim

This section focuses on the offender's and victim's orientation to the offence and the conference before it was held. For the offender, items include the degree of priority given to the case, remorse, potential for "victim blaming," and attitude toward the conference. For the victim (the actual victim or victim representative, or both in some cases), items include the degree of priority given to the case; the degree of anger, fear, and altruism the victim expressed toward the offender; the victim's interest to participate in the conference; whether they were apprehensive (and why); and what they hoped to see happen from the conference.

Section 3. At the conference

This section focuses on how the conference unfolded and what occurred. It asks about how the story of victimisation was told and the degree to which the victim was effective in telling the story. It asks about the youth's behaviour at the conference, including the degree to which the youth intimidated the victim, accepted responsibility for the offence, was remorseful, and participated actively. A smaller set of similar questions is asked concerning the behaviour of the youth's supporter(s). For the victim's behaviour, these items are asked: the degree to which the victim trivialised the offence, the degree to which there was external validation that the victim was harmed and the offender was to blame, the degree to which there was an indication that the victim was "re-victimised" during the conference (see definitions below). A similar set of questions is asked for the victim representative's behaviour.

The next set of items focuses on whether a variety of other conference dynamics occurred, such as the youth's denying or taking responsibility, power dynamics, the role and behaviour of other conference participants (such as the police officer, the Mary Street counsellor), conference emotions, and whether there are any indications of "restorative gestures,

statements, or behaviours” (see definitions below). This last item is crucial theoretically since it is a global judgment of the meaning of “restorative justice” or “restorativeness” in sexual assault and family violence cases.

The YJCs are then asked to reflect on their actions and management of the conference process. Were they able to interrupt or shift a discussion that might have been potentially damaging to victims? Were there other conference dynamics or interactions that required them to intervene? What did they do?

Section 4. Deciding the conference outcome

In addition to the elements of the conference agreement, the major focus of this section is the process of the youth’s apology: how it was discussed, whether an apology was made, the degree to which it was sincere or not, among other questions. Items tap the character of both verbal and written apologies, apologies before the conference, and apologies by others in the conference (not just the offender).

Section 5. Post-conference reflections

This section asks about the YJC’s views on whether the case was appropriate for a conference, and what the difficulties and benefits of the conference process were for the youth, victim, and their supporters (see definitions below).

Definitions of key concepts

A major outcome of the iterative process between the researchers and YJCs, when constructing the interview instrument, is that key concepts were carefully reviewed and discussed. Here are some of the key concepts and definitions, which are also featured in the interview instrument as prompts:

- External validation of the victim: during the legal process, the offence is registered publicly as serious and wrong. Collateral indications are that the youth (or supporters) admit that what s/he did was wrong, and the victim is not blamed.
- Revictimisation: the victim is distressed by something said or done. It includes these actions or things said: a minimisation of the offence by any conference participant, the youth not fully admitting to the legal charge, the victim being intimidated or silenced by others, and the victim being blamed for the offence. (Later in the interview, the YJC has the opportunity to describe how this was managed and responded to.)
- Restorative gestures, statements, or behaviours: not only “positive movement” between the youth (or supporters) and the victim (or victim representative), but other indicators that may be relevant for these types of offences. (This question is keyed not only to what occurred in the conference itself, but also the time when participants are leaving the room or after the conference is officially over on the day.)
- Conference benefits and difficulties: among the benefits for the youth are the following: the youth taking responsibility for the offence, the youth supporter’s or other conference participants’ recognition of the wrong and harm to the victim, the youth or youth supporter(s) saying that what the youth did was wrong, and the youth taking steps to redress behaviour by counselling or other activity. Among the benefits for victims (or victim representatives) are the following: a general sense of external

validation of the wrongfulness of the act, the story of victimisation being heard by the youth and/or supporter(s), the youth's giving assurances of the victim's future safety, and the victim's ability to access resources. Conference difficulties would be the lack of any of the things listed above, or the presence of negative things. When it was possible, the YJC was also asked to consider the benefits and difficulties compared with the case going to court.

Some question items in the SAJJ 1998-99 study of youth justice conferences were used again in the YJC interview. Although many items were anchored from, say, "not at all" to "frequently" or "fully," these were largely prompts to elicit an open-ended reflection by the YJC of what occurred. This was a semi-structured open-ended interview: although the instrument guided the interview, it did not foreclose other avenues of discussion about the case.

Victim interview

Development of the victim interview instrument began with an exchange of emails in June 2001 between Curtis-Fawley and Daly on interview content. In early October, the development intensified and proceeded in earnest. The initial draft included many of the same items that we used in the SAJJ 1998-99 victim interview; and where relevant, comparison items with the 2001 YJC conference interview. New areas focused on translating victim advocates' concerns with RJ in cases of sexual and family violence to a set of interview questions. During October, there were six major revisions of the instrument. It was finalised in early November.

In addition to the literature on family and sexual violence involving adult victims, Curtis-Fawley wrote a detailed memo on how we could relate the findings of Morgan and Zedner's (1992) study on child victims in the legal process to our study. Similar to the problems we faced in developing the YJC interview instrument, we were challenged by attempting to relate the extant critical literature on restorative justice and gender-based offences, almost all of which assumed adult offenders and adult victims, to cases involving youth as offenders, and youth and children as victims (sexual assault) or youth as offenders and parents as victims (family violence).

In mid-October, we circulated a draft instrument for comment to three key people in the sexual assault and domestic violence area. They were Robyn Holder (ACT Victims of Crime Coordinator), Gillian Westhorpe (then, Manager, Early Intervention Project, South Australian Attorney-General's Department), and Heather Nancarrow (Director, Queensland Centre for Domestic and Family Violence Research). Fortuitously, Robyn showed the instrument to Julie Stubbs (Associate Professor, University of Sydney), while they were travelling on a plane together; and thus, Julie was also able to contribute her ideas. All provided helpful comments on the substance of the interview items, more effective choice of words, and related phenomenon we might also explore. We are grateful for the time they spent in helping to improve the questionnaire.

Our main aim for the victim interview was to test the claims made about the negative, disabling, or disadvantaging consequences of conferencing for victims; and to determine what benefit, if any, the victims saw from the conference process. In constructing the instrument and fielding it, we took the following into consideration.

(a) The question items had to be relevant to actual victims and to victim representatives (typically, these were mothers). In general, the questions should mainly focus on the actual victim's experience of the incident, and what happened before and after the conference. At the same time, we knew from the SAJJ 1998-99 project that when victim representatives speak for themselves about the effect of the incident and the conference, this too can be quite important.

(b) A good deal of information (demographic and offence) could be gathered before the interview. It needed only to be confirmed, rather than asked. As much as possible and practicable, interview time should be spent on the experience of violence and what happened.

(c) For the offence, several key things had to be borne in mind about "the incident" and its meaning to victims:

- For domestic or family violence victims, "incidents" have been going on for a long time. Hence, this "incident" is but one in a history of violence. It would be important to get this longer history before the conference was held, and also (as importantly) what happened after it. It will be important to determine why a victim decided to call the police in this incident and whether they had done so before.
- For sexual assault victims, what is disclosed and discussed in the police report may vary across reports in describing what occurred (from the tip of the iceberg to more complete information). Full or complete information may not occur in the conference, and it may be unethical for us to pursue it in an interview, unless the victim or victim representative wanted to discuss suspicions or concerns.

(d) As much as practicable and to aid the victim's recall, we should move through time in asking the questions. Thus, the temporal ordering would be the victim's (or another's) report to the police, the impact of the offence, and pre-conference experiences; then, what happened at the conference, and finally, to their current feelings about the conference and attitudes toward the offender.

(f) Rather than using terms such as "empowerment" or "revictimisation," among other key terms in the literature, questions need to be phrased in everyday terms, and as much as possible, linked to behaviours or feelings.

As shown in Appendix 3, the final victim interview, which was 15 pages in length, had six major sections.

Section 1. Demographics

Items concerning age, educational attainment, employment, and racial-ethnic classification were in this section.

Section 2. The incident and conference in context

This section focuses on the elements of the incident and the victim's experiences with the police, once it was reported. The information was elicited by giving a brief indication of what the researcher knew about the case ("here's a brief description from my notes") or about what the police report said ("looking at the file, my notes show that ...") and then asking if there was more to say, or "is this how you remember it"?

Items include how the police handled the complaint, how well the victim was informed about what was happening in the case, and if their views were taken into consideration in the police referral of the case to conference.

Section 3. Pre-conference experiences

Three major sets of questions are in this section: the impact of the offence (financial, physical, emotional); the information they had about the conference, and what they hoped would and wouldn't happen there; and their feelings and attitudes toward the youth (anger, fear, degree to which they felt positive or negative) and if they thought about what they wanted to say to the youth.

Section 4. At the conference, part 1

Items in this section focus on the degree to which the victim is able to tell the story of the offence and the victim's view of the offender's behaviour in the conference. Items ask about the degree to which (1) the offence was minimised, (2) conference participants blamed the victim, or (3) the youth attempted to control the victim. Another set of items asks about the things that were important, from the victim's perspective, to take place at the conference (e.g., receiving an apology, hearing the youth's account of what happened, being re-assured that the behaviour would not happen again). A final set of items asks about the victim's views on the agreement.

Section 5. At the conference, part 2

This section centres on global judgments of the conference process, with two major sets of items. One focuses on elements of procedural justice and effective management of the conference by the coordinator (e.g., degree to which the police officer treats the victim with respect, degree to which the conference is managed well, degree to which the conference is a waste of time). A second focuses on the degree to which the victim felt "better or worse by what happened," and what, if any, benefits occurred. This area taps the degree to which the victim felt "re-victimised" in any way (although this term is not used), what benefits (if any) the conference had for the victim, and what benefits the conference had for the youth.

Section 6. Post conference views and attitudes

The last section focuses on three areas: the victim's feelings toward the offender, the degree to which the conference helped to overcome problems, and several items tapping the degree to which the victim was satisfied by the conference experience or wished that the case had gone to court.

In light of my experience interviewing victims in the SAJJ 1998-99 study, I considered the potential benefits of interviewing victims twice, that is, several weeks after the conference, and then, perhaps 6 months later. Much can be gained by this approach because one can learn how much (or whether) the victim is still affected by the offence or the legal process, and whether there has been any further trouble from the offender. The last interview item asked if the victim would be willing to participate in a follow-up interview. As discussed in the next section, although this question was asked, we decided not to conduct follow up interviews.

Like the YJC interview, most items were anchored from, say, "not at all" to "frequently" or "fully," although these were largely prompts to elicit a more open-ended reflection by the victim of their experiences and viewpoints. This was a semi-structured open-ended interview: although the instrument guided the interview, it did not foreclose other avenues of discussion about the case.

3. Implementation

Eligible cases

During the 6-month period, there were 16 eligible cases. In addition, during the research period, the Senior YJC passed along two other files, seeking clarification on their eligibility. Each could conceivably be viewed as an extension of family violence since they involved assaults by a youth of their institutional carers. However, they were ultimately ruled ineligible for the research. Here are the brief offence “facts:”

Offender: male

While living in a community residence, the youth punched a female staff worker and kicked her in the shin. The assault arose as the youth was talking to another staff worker. He was getting angry and abusive toward the first worker and ran out of the room, and toward where the victim was standing.

Offender: male

While living in a community residence, the youth kicked a window. He was angry that he was being asked to clean his room. Before kicking the window, he verbally abused the female staff worker.

These cases are similar to several occupationally-related assaults in the SAJJ 1998-99 project: in the course of their employment, staff workers are assaulted (this occurred for police officers, teachers, and a bar bouncer). Although the youth in the above two cases were living in a residence, it was a home for transient people, and was not long-term. Because the assaults were occupationally related, not personal violence between family or kin, they were ruled ineligible. In addition to discussions with some YJCs, we asked Heather Nancarrow for her judgment.

Cases set for conference, but did not go forward

Of the 16 eligible cases, two conferences did not go forward.

In one, the case was originally referred to court, but then it was referred by the court for a conference, early in 2001. The court’s referral decision was appealed, but this was then withdrawn, and the case was referred again to conference. However, the case was never set for conference. The youth (aged 12) was charged on five counts of rape: he was accused of having anal intercourse with one brother (aged 5) and oral sex with him and a second brother (aged 6).

In the second, a conference date was set, but the youth did not show. Two other conference dates were set, and again the youth failed to appear. The case was sent back to the police, who referred the matter to court. The youth (aged 14) was charged with one count of property damage: after having an argument with his mother, he smashed her letterbox and flower pots.

Thus, there were 14 cases in the in-depth study. Of the 14, six were family violence, and eight were sexual violence. Four were in the “retrospective” group (the conference occurred 1 July – 30 September 2001), and ten were in the “real time” group (the conference occurred 1 October – 31 December 2001). All six of the family violence cases had adult victims. Of the eight sexual violence cases, all but two victims were under 12 years. (See Section 4 for details of the in-depth cases).

YJC interviews

The YJC interviews for the “retrospective” group were conducted first (30 August to 19 October) followed by those in the “real time” group (22 October to 19 December). All the interviews took place in the researcher’s or YJC’s offices in the Youth Court; and all were tape recorded. For each of the five YJCs who participated in the project, the normal ethical practice of providing an information sheet and securing informed consent were followed (see Appendix 4, YJC consent package).

Victim interviews

The process of making contact with the victims in the “real time” group was as follows. A letter was sent to each victim (or victim representative) about a week after the conference, which outlined the project and expressed our interest to interview the person. An informational flyer was enclosed about the project. The letter advised that we would ring the victim in the next several days to arrange for an interview.

There were 11 victims in the ten “real time” cases. In five, the direct victim was over 12 years of age and could be interviewed; but in six, the victims were too young to be interviewed, and a victim representative would be sought for an interview instead. Of the 11 victims, seven were interviewed (three direct victims and four victim representatives). The reasons for the four not being interviewed are as follows:

- The family of the victim (male, aged 10) had moved out of the area.
- The victim (a father, who was assaulted by his son) agreed to be interviewed on two occasions, but then cancelled; after repeated efforts to re-schedule, he said he did not want to be interviewed.
- The victims (male, aged 6, and female aged 5, who were indecently assaulted by the offender, who was their stepbrother and brother, respectively) were represented by the male victim’s mother (who was the offender’s father’s ex-girlfriend). She said she was too busy, she didn’t want to drag up the incident again, and was starting a new relationship.
- The victim (a mother, who was assaulted by her son) did not wish to be interviewed, but did not give a particular reason.

The victim interviews were conducted from 20 November to 17 January 2002. Efforts to secure interviews were made by Curtis-Fawley in January and February 2002, some of which resulted in completed interviews, and others, in refusals. The last contact with a victim (a refusal) was on 12 February 2002.

All the interviews took place in the victim’s home, and all were tape recorded. Curtis-Fawley travelled 6 hours by car to secure an interview in a country town, but apart from this interview, all were conducted in the Adelaide area. For the seven victims who participated in the project, the normal ethical practices of providing a project information sheet and securing informed consent were followed. We also provided a detailed list of contacts for assistance and counselling for those affected by sexual and family violence (see Appendix 5, victim consent package and information sheet for assistance and counselling).

No follow-up with victims

Although all the victim interviewees said it was all right for us to contact them for a follow-up interview, we decided not to pursue this option in mid-year 2002. The reason was that we had

gathered sufficient information to understand the benefits and problems of the conference process, some victims had reached closure on the offence, and further contact with the other victims would not add to our knowledge, nor benefit them. However, we did follow up on what happened to the offender by obtaining criminal history information for all contacts the youth had with the South Australian police up to December 2004, that is, three or more years after the conference was held.

4. Description of in-depth study cases

Appendix 6 shows the 14 in-depth cases, listed first by the family violence cases, and then, the sexual violence cases (identifying information is removed to preserve anonymity).

For the six family violence cases, all involved assaults by youth on their parents or step-parents: three of sons assaulting mothers, two of sons assaulting a father or step-father, and one of a daughter assaulting her mother. The youth were aged 13 to 16 at the time of the offence, and the legal offence was common assault.

For the eight sexual violence cases, all had male offenders, aged 10 to 17 at the time of the offence. Of the nine direct victims, seven were female, aged 3 to 13. In most cases (six), the victim was under 12 years of age, and in all of these, a victim representative spoke on behalf of the victim at the conference. In a minority of cases (three), the offending behaviour involved penetrative activity of some kind (digital penetration of the victim's vagina, forcing a dog's penis in the victim's mouth, and coerced sexual intercourse). Two cases involved repeated activity over a period of time. The legal offences were predominantly indecent assault (five cases); but there was one case of rape; one, of unlawful sexual intercourse, and one, of unlawful sexual intercourse with a person under 12 years (see Appendix 7 for a description of selected sexual offences in South Australia).

The length of time between "the offence" (which could span a period of time)¹² and the conference ranged widely, from one to 13 months, with a median just over four months. We expected that the time spent in these conferences would be longer than that for other offences; and this was borne out by the data. The 14 conferences ranged in time from 60 to 170 minutes (excluding any time taken for breaks)¹³ (median: 105 minute, or one hour 45 minutes). By comparison, the time range for the SAJJ 1998-99 conferences was 28 to 205 minutes (median: 83 minutes, or about one hour and 20 minutes).

The length of time from the conference to when each victim was interviewed ranged from one to seven weeks: one interview was conducted a week after the conference; two interviews, after two weeks; two, after three weeks; and two, after six to seven weeks.

¹² When an offence included several incidents for which accurate dates, or at least the dates of the first and last incidents, were available, we recorded these dates and calculated the offence date as the mid-point of these dates.

¹³ Conference time was calculated from the start of the conference to *when the YJC turned to write out the agreement*. It excludes any time taken for breaks to discuss the agreement or other reasons. Other research (such as the RISE experiment) estimates the amount of time from the start of the conference to after the agreement has been written out, as people are leaving the room. Although there can be important activity at this stage in the conference, we reckoned time in a more conservative manner.

5. Offender criminal histories

Data on the youths' criminal histories were provided by the South Australian police. They include cases that were finalised by formal caution, conference, and court; the date of the offences, and the outcomes and date of the outcome (dismissed, type of conviction, and type of penalty or outcome). These materials show each youth's entire criminal history, including adult criminal history, as registered by South Australian police, up until 3 December 2004. The police records also indicate the address of the youth for each police contact; this gives an indication of the degree of mobility (or lack of stability) in the youth's life. Although the data are complete for any official offending in South Australia, there is missing information on any offences that occurred outside of South Australia. The window of time for re-offending after the research conference is 3 to 3.5 years.

Part III

Reflections on the research process

Although a small number of cases was generated during the 6-month research period, this was balanced by a sense of satisfaction that we could learn about the experiences of victims (or their supporters) in some depth. At the time of the research, with one exception (Pennell and Burford 2000), there were no empirical studies of the conference experience for victims of sexual and family violence, from the perspective of victims and conference facilitators. At the time (and to this day), there were no focused studies of the conference process for these offences when youth are offenders.

A good deal of time and reflection was spent on developing the operational plan and constructing the interview instruments. The researchers gave careful attention to the ethics of conducting research on victims (or their representatives), who had been abused sexually or physically, and the YJCs spent considerable time and thought in reflecting on the dynamics of these cases. In studying low frequency events in the legal process such as youth sexual and family violence, it can be frustrating to realise that if we wished to gather information on more “real time” cases (that is, those in which we could follow conference cases as they were occurring), it would take a long time to do so. Based on the number of family violence cases in this study and the number of sexual violence cases in the SAAS study (which spanned 6.5 years), each year would yield a total of 12 family violence cases and 18 sexual violence cases. There is no question that one of the most challenging aspects of conducting work on restorative justice and sexual or family violence is the amount of time it takes to gain a sufficient number of cases.

One finding from the in-depth study is that victims handle the offences and react to them in myriad ways. They are not similarly harmed, nor do they respond to apparently similar harms in similar ways. Some offences occurred over the course of a period of time, whereas some were one-off incidents. There were varying degrees of coercion and domination by the offenders. On balance, most involved highly complex familial relations and dynamics.

The interview process was intense for the victims: there is often a degree of shame and embarrassment attached to these offences, and in those instances where a mother was a supporter of both a son and a daughter, there was a special burden. The conference process was also intense: strong emotions of anger, resentment, and a degree of trepidation among the participants were evident. These cases took more time for the conference coordinators to prepare, and they required a heightened degree of professional skill in negotiating and managing conference dynamics.

It has taken some time for the research group to return to these cases, prepare them for analysis, and report on what we have learned. The distillation of hundreds of pages of transcription and its reduction to an easily readable “story” about sexual or family violence and how it is handled informally and by the legal process takes great stamina, patience, and a particular kind of attentiveness to words and ideas that crystallise key moments in a socio-legal process. When we reported on the “emotion in the archive” in creating the sexual violence dataset (Daly et al. 2005: 62-63), we wished to emphasise the effect of reading nearly 400 files on sexual violence, some of which were highly disturbing and violent. The effect was compounded when we learned that the legal system was unable to respond effectively.

The in-depth study evoked a different kind of emotion. By depicting a chronology of events, through the perspective of the police (the police report), the coordinator (reflections on all aspects of the case pre- and post-conference), and the victim (reflections on victimisation and how it was addressed), we were able to more fully grasp the complexities and dynamics of these cases. We can appreciate the unique qualities and desires of the individuals, and the depth of feeling that permeates these cases. We may also be able to imagine ourselves taking the victim's journey, and in so doing, ask whether we would want to participate in a face-to-face meeting with an offender in the aftermath of sexual and family violence.

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Legislation and cases cited

Criminal Law Consolidation Act 1935 (SA)

Summary Offences Act 1953 (SA)

Young Offenders Act 1993 (SA)

R v Police [2002] SASC 403

Appendices

1. Project information flyer and Q & A sheet for the Youth Justice Coordinators	39
2. Youth Justice Coordinator pre- and post-conference interview	41
3. Victim interview	57
4. Youth Justice Coordinator consent package.....	75
5. Victim consent package and information sheet for assistance and counselling	77
6. Description of the 14 in-depth cases	82
7. Legal definitions of selected sexual offences in South Australia.....	85

Appendix 1. Project information flyer and Q & A sheet for the Youth Justice Coordinator

***South Australia Juvenile Justice & Criminal Justice
SAJJ-CJ Research on Conferencing and Sentencing Project***

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Family Conference Research

A university-led research project is under way in South Australia to learn about people's experiences with family conferences. It is called the *SAJJ-CJ* Research on Conferencing and Sentencing Project. *SAJJ-CJ* researchers will be studying a sample of conferences, and we'd like to conduct interviews with some of the key people involved in the conference, including the conference coordinator and victim. Your conference fell into the *SAJJ-CJ* sample.

It is very important to gain a complete picture of family conferencing, and as Project Director, I welcome your views. About a week or so after your conference is held, a *SAJJ-CJ* researcher will contact you to see if you would like to be interviewed for the research. The interview asks questions about how conference victims (or victim representatives) are affected by conferences, and what victims see as the benefits and drawbacks of conferences. It is important for you to know that all the data gathered from the project will be seen only by the *SAJJ-CJ* researchers -- not by the police, conference coordinators, or others at the conference. *SAJJ-CJ* researchers are bound by law to protect your privacy and to maintain confidentiality of data records.

If you want to know more about the project, please phone me or a member of the research group at 08/8204-0254.

SAJJ-CJ Q & A sheet for Youth Justice Coordinators (YJC)

General idea of what YJCs say to conference victims in the SAJJ-CJ sample.

YJC “script” to victims

“A research group is analysing family conferences. As part of the research, they’d like to interview you some time after the conference is over, when it’s convenient for you. You’ll receive more information about the project in the conference invitation. It’s entirely your choice on whether you want to participate in the research. And you can decide after the conference, when the researcher calls you, what you wish to do. We’re letting people know now about the research and that a researcher may be contacting them.”

- Why my case? The SAJJ-CJ sample is drawn based on the conference offence. The sample includes assault, sexual assault, and related offences involving personal violence.
- Your case is one of about 20 to 25 that SAJJ researchers will study in some depth in 2001.
- What is the research about? SAJJ-CJ researchers are interested in victims’ experiences with conferences and how conferences affect them. An information flyer will go out in the conference invitation that describes the project. After the conference, a SAJJ-CJ researcher will be contacting you (victim or victim rep) for an interview about your experience at the conference.
- The SAJJ-CJ research group has an independent role from the police and the Family Conference Team. They want to get your views and opinions about how you found the conference.
- The research is funded by a major grant from the Australian Research Council, and the Project Director is Associate Professor Kathleen Daly, Griffith University (Brisbane), School of Criminology and Criminal Justice. If you want to know more about the project, I can have her ring you.
- The SAJJ-CJ research group is bound by law to protect your privacy and to maintain confidentiality of data records. The relevant legislation is the *Young Offenders Act of 1993* (confidentiality and privacy) and the *Federal Privacy Act of 1988*.

Appendix 2. Youth Justice Coordinator pre- and post-conference interview

***South Australia Juvenile Justice & Criminal Justice
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YJC Pre-and Post-Conference Interview
2001

SAJJ-CJ Research on Conferencing & Sentencing
YJC Interview-2001

Time pre-conference interview began: SAJJ-R Number
Date of interview: SAJJ Number
YJC No.
Offence sexual assault (or related) OR
..... assault involving family member
..... other category (.....), but has family viol elements

Section 1
OFFENCE FACTS AND CONFERENCE CONTEXT

1.10 PEOPLE AND FACTS

YP

age at police interview sex: 1-male 2-female name (to replace 'the YP')
race/ethnicity: 1-Aboriginal 2-non-Aboriginal (identifies as 'Australian')
3-other ethnic identity (which?.....)

YP's supporter(s) and their relationship to the YP

age range (e.g, in 30s?) sex: 1-male 2-female 3-both names
relationship to YP
race/ethnicity: 1-Aboriginal 2-non-Aboriginal (identifies as 'Australian')
3-other ethnic identity (which?

Actual victim

age/age at disclosure Sex: 1-M 2-F name (to replace 'the victim')
race/ethnicity: 1-Aboriginal 2-non-Aboriginal (identifies as 'Australian')
3-other ethnic identity (which?

relationship to YP

Victim rep

age range (e.g, in 30s?) Sex: 1-M 2-F name (to replace 'the vic rep')
race/ethnicity: 1-Aboriginal 2-non-Aboriginal (identifies as 'Australian')
3-other ethnic identity (which?

relationship to actual victim

SYNOPSIS

The SAJJ-CJ group will have a copy of the AP. But, please give a brief synopsis of the offence. You may want to point out things not mentioned in the AP.

.....
.....
.....

1.20 DISCLOSURE

Any details you find relevant

.....
.....
.....

1.30 FAMILY RELATIONSHIPS

Were there any changes in family relationships/household living situation as a result of the offending, e.g., actions to address victim safety, separation of victim and offender, and related?

.....
.....
.....

1.40 CONFERENCE CONTEXT FOR YP

For sexual assault cases, where does this conference fit within the time line of [the YP's] offending, disclosure, and participation in Mary Street program? For family violence cases, where does the conference fit within a pattern of behaviour of the YP toward the victim (e.g, is this incident part of an entrenched pattern of behaviour)?

.....
.....
.....

Section 2
PRE-CONFERENCE

2.10 OFFENDER PRE-CONFERENCE ORIENTATION

[Questions focus on characterising the YP's orientation to the offence (or pattern of offences) and the degree to which the YP takes them seriously and is remorseful].

2.11 To what extent did/does [the YP] give priority to this case? (that is, 'too busy' or willing to attend any time)?

little or **good to**
none **some** **high** **very high**
1 **2** **3** **4**

2.13 How much contact did you have with [the YP] before the conference? (number of times spoke to YP before conference or amount of time)

.....

2.15 Before the conference, to what extent (or degree) was [the YP] taking responsibility for the offence?

not at all **somewhat** **mostly** **fully**
1 **2** **3** **4**

.....
.....

2.16 Before the conference, to what extent was [the YP] remorseful for his actions?

not at all	somewhat	mostly	fully
1	2	3	4

.....

.....

2.17 Are/were there indications that there may be some 'victim-blaming' or trivialisation of the offence by [the YP]?

no,	a little,	yes
not at all	somewhat	3
1	2	3

.....

.....

Now, for [the YP's] parent(s) or guardian ...

2.12 To what extent did/does [the YP's] parent(s) or guardian give priority to this case (that is, 'too busy' or willing to attend any time?)

little or	good to
none	some
1	2
	high
	very high
	3
	4

.....

2.14 How much contact did you have with [[the YP's] parent(s) or guardian before the conference? (number of times spoke to him/her/them before conference or amount of time)

.....

2.18 Do/did you anticipate any difficulties in the conference concerning the victim's safety?

no,	a little,	yes
not at all	somewhat	3
1	2	3

.....

.....

2.19 Are/were there any other things of concern to you in preparing the conference?

.....

.....

2.30 How would you characterise [the YP's] orientation to the conference in the pre-conference period

- sees him/herself to be more of a victim than an offender, or does not think that what s/he did was especially wrong (negative or somewhat negative orientation)
- is neutral toward the idea of a conference
- sees the conference as an opportunity to resolve the conflict/address problems (positive orientation)
- too little information to say or cannot characterise

2.40 VICTIM AND VICTIM REP PRE-CONFERENCE ORIENTATION

Where relevant for the sexual assault cases, answer the questions from the perspective of *both the actual victim and the victim representative*, even if the rep is speaking on behalf of the actual victim.

Actual victim

2.51 To what extent did/does [the victim] give priority to this case? (that is, 'too busy' or willing to attend any time)?

little or none	good to some	high	very high	.....
1	2	3	4	

2.52 How much contact did you have with [the victim] before the conference? (number of times spoke to victim before conference or amount of time)

.....

2.53 What degree of anger did/does [the victim] express toward [the YP] in your pre-conference conversations?

little or no anger	some anger	good deal of anger	intense anger	.....
1	2	3	4	

2.54 What degree of fear did/does [the victim] express toward [the YP] in your pre-conference conversations?

little or no fear	some fear	good deal of fear	intense fear	.....
1	2	3	4	

2.55 What degree of altruism did/does [the victim] express toward [the YP] in your pre-conference conversations?

little/no altruism	some altruism	good deal of altruism	high degree altruism	.....
1	2	3	4	

2.56 To what extent did/does [the victim] want to participate in the conference?

little or none	some	mostly	fully	.....
1	2	3	4	

Follow-up: *Were there changes over time in the victim's desire to participate in the conference?*

.....
.....

2.57 Is/was [the victim] apprehensive about facing [the YP] and/or others in the conference? 1=yes 2=no
If yes: *Could you tell me about that?*

.....
.....

2.58 What did/does [the victim] want from or hope to see happen from the conference?

.....
.....

Victim representative

2.70 To what extent did/does [the victim's rep] give priority to this case (that is, 'too busy' or willing to attend any time?)

little or none	good to some	high	very high	.....
1	2	3	4	

2.71 How much contact did you have with [the victim's rep] before the conference? (number of times spoke to him/her/them before conference or amount of time)

.....

2.72 What degree of anger did/does [the victim rep] express toward [the YP] in your pre-conference conversations?

little or no anger	some anger	good deal of anger	very intense anger	.....
1	2	3	4	

2.73 What degree of fear did/does [the victim rep] express toward [the YP] in your pre-conference conversations?

little or no fear	some fear	good deal of fear	very intense fear	.....
1	2	3	4	

2.74 What degree of altruism did/does [the victim rep] express toward [the YP] in your pre-conference conversations?

little/no altruism	some altruism	good deal of altruism	high degree altruism	.....
1	2	3	4	

2.75 To what degree did/does [the victim rep] want to participate in the conference?

little or none	some	mostly	fully	.....
1	2	3	4	

Follow-up: *Were there changes over time in the victim's desire to participate in the conference?*

.....
.....

2.76 Is/was [the victim rep] apprehensive about facing [the YP] and/or others in the conference? 1=yes 2=no
If yes: *Could you tell me about that?*

.....
.....

2.77 What did/does [the victim rep] want from or hope to see happen from the conference?

.....
.....

2.80. Pre-conference global comment

We've covered a lot of areas about pre-conference preparations and what you were able to learn of the YP's and victim's orientations. Is there any thing else about the pre-conference period you want to say?

(To consider the amount of time put in to planning the conference, special measures that you needed to consider in preparing for the conference, [eg., venue, security, time spent in persuading some participants to attend], shifting victim interests in terms of court and conference)?

.....
.....
.....

Time pre-conference interview ended:

Did you take a break in the interview? no yes ---->show estimated amount of time

What was the total time taken in the post-conference interview itself? (mins)

Section 3

AT THE CONFERENCE

Date, post-conference interview

time interview began

3.00 CONFERENCE DESCRIPTION

3.01 Make a diagram of the conference and who was present (on back page).

3.02 Time conference started

Time conference ended (when you turned to write agreement)

Break taken? no yes -----> how long?

Conference date

3.05 HOW STORY WAS TOLD OF OFFENDING AND VICTIMISATION

3.05 How was story of the victimisation told? That is, what was the way in which the information came out?

(This may be by YJC questioning of YP's behaviour, victim or vic rep's stories, or by both. Or perhaps in other ways. The 'story' itself may be conflictual. This information helps to provide a context to answer the next questions.)

.....
.....
.....

Actual victim

3.10 How effective was the victim in describing the offence and its impact?

not at all **somewhat** **mostly** **highly**
1 **2** **3** **4**

3.11 Why was the victim effective or not effective?

.....
.....

3.12 To what degree do you think did [the victim's] story have an impact on [the YP]? (or in the family violence cases, in the context of the conference?)

not at all	a little, but not much	somewhat	significant, a lot	.....
1	2	3	4	

What makes you say that?

.....

.....

Victim rep

3.15 How effective was [the victim rep] in describing the offence and its impact?

not at all	somewhat	mostly	highly	.....
1	2	3	4	

3.16 Why was [the victim rep] effective or not effective?

.....

.....

3.17 To what degree do you think did [the victim rep's] story have an impact on [the YP]?

not at all	a little, but not much	somewhat	significant, a lot	.....
1	2	3	4	

What makes you say that?

.....

.....

3.30 YP and YP's SUPPORTER(S) AT THE CONFERENCE

Focus on [the YP]

3.35 Was there any indication that [the YP] was exercising control over or intimidating [the victim or victim rep]?

not at all	a little, but not much	somewhat	frequently, often	.....
1	2	3	4	

What makes you say that (or what happened?)

.....

.....

3.36 Was there any indication that [the YP] was trivialising the offence (minimising the harm)?

not at all	a little, but not much	somewhat	frequently, often	.....
1	2	3	4	

What makes you say that (or what happened)?

.....

.....

3.37 To what extent did [the YP] accept responsibility for the offence?

not at all	somewhat	mostly	fully	.....
1	2	3	4	

3.38 To what extent was [the YP] remorseful for their actions?

not at all	somewhat	mostly	fully	.....
1	2	3	4	

3.39 To what extent was [the YP] defiant (ie., cocky, bold, brashly confident)?

not at all	somewhat	mostly	fully	.....
1	2	3	4	

3.40 To what extent was [the YP] actively involved in the conference (includes non-verbal behaviour such as active listening or other indicators of attentiveness)?

not at all	somewhat	mostly	fully	.....
1	2	3	4	

Focus on [the YP's supporter(s)]

3.41 Was there any indication that [the YP's supporter(s)] were exercising control over or intimidating the victim?

not at all	a little, but not much	somewhat	frequently, often	.....
1	2	3	4	

What makes you say that (or what happened)?

.....

.....

3.42 Was there any indication that [the YP's supporter(s)] was trivialising the offence (minimising the harm)?

not at all	a little, but not much	somewhat	frequently, often	.....
1	2	3	4	

What makes you say that (or what happened)?

.....

.....

3.50 VICTIM and VICTIM REP AT THE CONFERENCE

Actual victim: even if the victim is not present, items 3.51 and 3.52 may be relevant.

3.51 Was there any indication that [the victim] was trivialising the offence (minimising the harm)?

not at all	a little, but not much	somewhat	frequently, often	
1	2	3	4	.....

What makes you say that (or what happened)?

.....

.....

3.52 The research literature suggests that for victims, there can be an important moment in the legal process when they receive 'external validation', that is, the offence is registered publicly as serious, [the YP or YP supporters] admits that what they did was wrong, and the victim is not blamed for it. Did any of these things (or related things) occur in the conference?

not at all	partly, some degree	yes
1	2	3

What makes you say that (or what happened)?

.....

.....

3.53 Was there any indication that the victim was 're-victimised' during the conference? (In using this term, I mean that the victim was distressed by something said or done, including minimisation of harm by any conference participant, the YP not fully admitting to the legal charge, the victim being intimidated or silenced by others, the victim being blamed for the harm.) (Later in interview, the YJC has the opportunity to describe how this was managed and responded to.)

not at all	partly, some degree	yes
1	2	3

What makes you say that?

.....

.....

The victim rep

3.60 Was there any indication that [the victim rep] was trivialising the offence (minimising the harm)?

not at all	a little, but not much	somewhat	frequently, often	
1	2	3	4	.....

What makes you say that (or what happened)?

.....

.....

3.61 To what degree did [the victim rep] think he/she/they were to blame for the offence?

- | | | | |
|-----------------------|-----------------------------------|-----------------|--------------------------------|
| not at
all | a little, but
not much | somewhat | considerable
degree |
| 1 | 2 | 3 | 4 |

What makes you say that?

.....

.....

3.62 The research literature suggests that for victims, there can be an important moment in the legal process when they receive 'external validation', that is, the offence is registered publicly as serious, [the YP or YP supporter] admits that what they did was wrong, and the victim is not blamed for it. From the point of view of the vic rep, did any of these things (or related things) occur in the conference?

- | | | |
|-----------------------|--------------------------------|------------|
| not at
all | partly,
some degree | yes |
| 1 | 2 | 3 |

What makes you say that (or what happened)?

.....

.....

3.63 Was there any indication that [the victim rep] was 're-victimised' during the conference? [see definition in 3.53 and YJC opportunity to describe intervention below]

- | | | |
|-----------------------|--------------------------------|------------|
| not at
all | partly,
some degree | yes |
| 1 | 2 | 3 |

What makes you that?

.....

3.70 OTHER CONFERENCE DYNAMICS AND INTERACTIONS

3.71 Anything else happen that's important to note concerning

- the YP's taking/denying responsibility, power dynamics/power imbalances, coercion, manipulation, or intimidation by conference participants, re-victimisation
- role, behaviour, or comments of other conference participants (e.g., Mary Street counsellor, YP supporters, the police officer)
- conference emotions (eg., crying, arguing)

.....

.....

.....

.....

3.75 What kinds of restorative gestures, statements, or behaviours emerged (if any) during the conference, including during the time when participants are leaving the room or after it was officially over on the day? (By 'restorative gestures' is included not only 'positive movement' between the YP or YP supporters and the victim or victim rep, but other indicators that may be relevant for these types of offences.) (This question taps into a broader one, what is the meaning of 'restorative justice' or 'restorativeness' in sexual assault and family violence cases. What kinds of things can be achieved in conferences for these kinds of cases?)

.....

.....

.....

.....

3.80 YJC AT THE CONFERENCE

3.81 As coordinator, how did you (or were you able to) interrupt or shift the discussion when it was potentially damaging to victims (where relevant)? (This question is relevant when items 3.53 and/or 3.63 are answered yes or to some degree.)

.....

.....

.....

3.82 Were there other conference dynamics or interactions that required you to intervene? If so, describe what happened.

.....

.....

.....

Section 4
DECIDING THE CONFERENCE OUTCOME

4.10 What was the conference outcome/agreement?

.....
.....

4.20 Except for the apology (discussed in next question), were any of these things part of the conference discussion? (Tick any that are applicable):

- YP need for continuing counselling
- Keeping [the YP] away from the actual victim
- Keeping [the YP] away from other potential victims
- Victim need for counselling
- Other resources for the victim
- Other (describe)

4.30 YP apology (verbal at conference, promise to make written apology)

The apology process is complex and varies by case, especially in these conference cases. For example, Mary Street counsellors may advise against an apology at the family conference because it may be premature for a YP to make an appropriate apology when he does not have a deep understanding of the harm and its consequences.

4.31 For the verbal apology, describe what happened in this conference, including where relevant, how the apology process was discussed, to whom the YP made an apology, whether it was sincere, perfunctory, or had to be drawn out. Or perhaps, as in the family violence cases, an apology was made before the conference.

.....
.....
.....

4.32 For a written apology, describe how this was discussed in the conference and what the YP is expected to do.

.....
.....
.....

4.33 Anything else about the apology process? (This may tap into broader group notions of apology, not just the YP toward others.)

.....
.....

4.34 Are there any other things you want to say about the conference outcome?

.....
.....

Section 5
POST-CONFERENCE REFLECTIONS

5.0 Was this case appropriate for a conference? If yes, give reasons why you think so. If no, what were the sources of difficulty? (To discuss the benefits** of the conference for the YP, victim, and their supporters. Also, to discuss difficulties.)

.....
.....
.....
.....

5.1 Any other post-conference reflections?

.....
.....
.....
.....

**Among the benefits for [the YP] would be: YP taking responsibility for the offence, YP's (and supporters' and conference participants') recognition of the wrong and harm to the victim, YP (and supporters) saying that what [the YP] did was wrong, YP taking steps to redress behaviour via counselling or other activity. For victims or vic reps: a general sense of external validation of the wrongfulness of the act, the victim or victim rep's story was heard by [the YP] (and supporters), YP's giving assurances of victim's future safety, victim's ability to access resources. Difficulties would be the lack of any of the things listed above, or the presence of negative things. If possible, consider comparison to having the case go to court.

Time post-conference interview ended:

Did you take a break in the interview? no yes --->show estimated amount of time

What was the total time taken in the post-conference interview itself? (mins)

Appendix 3. Victim interview

South Australia Juvenile Justice & Criminal Justice
SAJJ-CJ Research on Conferencing and Sentencing Project

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Victim and Victim Representative Interview
2001

SAJJ-CJ Research on Conferencing & Sentencing

Victim and Victim Representative Interview 2001 SAJJ Number

Vic Number

SAJJ-R Number

Date of interview:

Time interview began:

Section 1 -- demographics of victim or victim representative

The first part of this interview asks about yourself, your family, and your school and work situation.

[We already have much of this info, so in many cases, we are confirming some of the details.]

[Record here any aspects of the case or interview that bear on this script, such as, 'there were 3 actual victims and 1 victim rep in this case' or 'parents of victim both wanted to contribute to interview.

Each interview script should gather info only for that victim.]

.....
.....
.....

1.01. Sex of victim or victim rep 1=male 2=female

1.02. Age of victim or victim rep

1.03. Were you born in Australia? 1= yes

2= no ----- > *Where were you born?*

1.04. How long have you lived in this area? all my life years

1.05. What is the highest grade or year of school (primary or secondary) you have completed?
[Interviewer to code from no formal schooling to year 12.]

For juveniles only

1.06. Are you currently in school (primary or secondary)?

yes ----- > *What year?* -----> **Skip to Q 1-8**

no

1.07. Since leaving school (primary/secondary), have you completed more years of schooling or obtained another qualification?

no

yes: *What is your highest qualification (completed)?*

2.03. Before this incident, had there been others like it involving [the YP]?

2=no -----> Go to Q 2.05

1=yes -----> 2.04. I'd like to know more about that -- so we can understand your experiences.

So when this happened to you before, what did you do? [Probes to determine what kinds of reactions or help-seeking behaviour were used in the past, what the victim's experiences were with the police.]

.....
.....
.....
.....
.....
.....

2.05. Looking at the file, my notes show that ... [how the police were contacted]

.....
.....

2.06. Is that how you remember it? (*anything more to add?*)

2.07. [If another person called the police]: *Did you want them to call?*

.....

2.08. [If the victim called the police]: *What was it about this particular incident that led you to call the police?*

.....
.....

2.09. [If the victim called the police]: *What were you hoping to accomplish by calling the police?*

.....
.....

When the police arrived, can you tell me

	yes	no
2.10. Did they try to find out what really happened?	1	2
2.11. Did they believe what you said about what happened?	1	2
2.12. Did they do anything you thought was wrong?	1	2

[If yes]: *What did they do?*

.....
.....

.....

I'd like you think about the time after the incident was reported [give date] but before the conference day [give date]

We're interested to know when you learned the case may go to conference, whether you were consulted, and what you felt at the time.

2.20. Soon after the incident, what did you want to see happen with the case?

.....
.....

2.21. How did you learn that your case would go to a conference?

.....
.....

2.22. Do you think your views were adequately taken into account in the process?

.....
.....

2.23. During the time before the conference, did you change your views about your case going to conference?

.....
.....

Section 3: pre-conference experiences

This section asks about the impact of the offence on you [the victim].

3.01. First, in terms of financial impact ... Did you have any out of pocket expenses from the offence?

1= yes -----> About how much was that?

2=no

3.02. Next, how significant were any physical injuries to you [the victim]?

not at all 1	some, but not much 2	of some significance 3	of great significance 4	NA 8
-----------------------------	-------------------------------------	---------------------------------------	--	-----------------

[Follow-up if 3 or 4]: Can you tell me why?

.....

3.03. Did you see a doctor or go to the emergency room?

1=yes -----> [write in what the victim did]

2=no

Finally, there are a variety of other effects from crime. Can you tell me whether any of these things happened to you [victim name] as a result of the offence. Please focus on the time *after the incident* but *before* the conference, that would be from to

Did you [victim name] experience

	yes	no
3.04. fearful of being alone	1	2
3.05. sleeplessness or nightmares	1	2
3.06. general health problems (headaches, physical pain)	1	2
3.07. an increase in suspicion or distrust of others	1	2
3.08. sensitivity to particular sounds or noises	1	2
3.09. loss of self-confidence	1	2
3.10. having problems concentrating	1	2
3.11. anything else I haven't mentioned?	1	2
[Key to the age of the victim]		
[For child victims, increase in aggression or other behaviours of concern to you?]		
[For fv victims, feelings of helplessness, isolation, or other things of concern to you?]		

.....

The next questions focus on what you learned about the conference process from the Family Conference office and the coordinator [name]

3.20. Had you ever been to a conference before, or heard about conferencing from others?

..... 2=no

..... 1=yes ----- > *What was your impression of conferencing?*

.....

.....

Before the conference,

3.21. Were you given information on what would happen at the conference?

none	a little, not much	some	a lot
1	2	3	4

3.22. Were you given information on what your role would be at the conference?

none	a little, not much	some	a lot
1	2	3	4

3.23. Were you given information on the kinds of possible outcomes that could come from the conference?

none	a little, not much	some	a lot
1	2	3	4

3.24. So, in general, would you say you had a good understanding of the conference process?

no,	a	yes	yes
not at all	bit	mostly	very good
1	2	3	4

Again, thinking about the time before the conference . . .

3.25. What were you hoping *would* happen there? (or what did you want to see happen?)

- (1)
- (2)
- (3)

3.26. What were you hoping *wouldn't* happen there?

- (1)
- (2)
- (3)

Again, thinking of the period of time before the conference . . .

3.27. Before the conference, how *angry* did you feel toward [YP name]?

not at all	a little	somewhat	very
angry	angry	angry	angry
1	2	3	4

3.28. How *frightened* were you of [YP name]?

not at all	a little	somewhat	very
frightened	frightened	frightened	frightened
1	2	3	4

[If 2 to 4]: *Can you tell me why?* [probe to determine if there had been other incidents after this one and before the conference, unless this has already been mentioned]

.....

.....

3.29. Before the conference, did you feel positive or negative toward [the YP]?

	a bit	neither	a bit	
negative	negative	pos/neg	positive	positive
1	2	3	4	5

3.30. Before the conference, did you think about what you wanted to say to [YP name] at the conference

no, not	a little,	yes,	yes,
at all	not much	somewhat	a lot
1	2	3	4

What did you want to say? [follow-up with] *Anything else?*.....

.....

.....

Section 4: at the conference, part 1

Now I want to ask you about what happened at the conference.
Here are the people who were there. [Show diagram]

First, I'd like to ask you about how the incident was described -- by yourself and others.

4.01. In listening to [YP's name] account (or story) of what happened, how did this affect you?
[For example, do you think [the YP] was being completely truthful about what happened?]

.....
.....

4.02. Did [YP name] say anything that surprised you?

..... 2=no

..... 1=yes ---- > What did s/he say?

.....
.....

4.03. Were you able to say what you wanted to say about what happened?

not at all	a little, but not much	mostly, not entirely	yes, definitely
1	2	3	4

What makes you say that?

.....

4.04. How much do you think [the YP] was listening to what you said?

not at all	a little, but not much	mostly, not entirely	yes, definitely
1	2	3	4

What makes you say that?

.....

4.05. Do you think that when you told your story, [the YP] felt remorseful for what s/he did?

not at all	a little, but not much	mostly, not entirely	yes, definitely
1	2	3	4

What makes you say that?

.....

4.06. Do you think that when you told your story, [the YP] reacted negatively toward you (for example, s/he became more angry or more hostile toward you)?

- not at all**
1
- a little, but not much**
2
- mostly, not entirely**
3
- yes, definitely**
4

What makes you say that?

4.07. In general -- at any time during the conference -- did [the YP] say or do anything to make the offence seem less serious or less harmful?

- not at all**
1
- a little, but not much**
2
- mostly, not entirely**
3
- yes, definitely**
4

If 2-4: What happened (or what did they say)?

.....

4.08. In general -- at any time during the conference -- did anyone else say or do anything to make the offence seem less serious or less harmful?

- not at all**
1
- a little, but not much**
2
- mostly, not entirely**
3
- yes, definitely**
4

What happened (or what did s/he say)?

.....

4.09. During the conference, was there any time when you felt you were being blamed for what happened?

..... 1=yes -----> [If yes] Who was doing this?

..... 2=no

-----> [If yes] What happened (or what was said?)

.....



Now, I'd like you to think about [the YP's] behaviour at the conference.

4.10. During the conference, did [the YP] try to control you or to frighten you?

- | | | | |
|-----------------------|-----------------------------------|-----------------|------------------------------|
| not at
all | a little, but
not much | somewhat | frequently,
often |
| 1 | 2 | 3 | 4 |

If 2-4: *What happened?*

.....

.....

4.11. How much do you think [the YP] accepted responsibility for the offence?

- | | | | |
|-------------------|-----------------|---------------|--------------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

4.12. How much do you think [the YP] was *really* sorry (genuinely sorry) for what s/he did to you?

- | | | | |
|-------------------|-----------------|---------------|--------------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

4.13. How much do you think [the YP] was defiant (ie., cocky, bold, overly confident)?

- | | | | |
|-------------------|-----------------|---------------|--------------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

4.14. How much do you think [the YP] was actively involved in the conference (that is, s/he was paying attention)?

- | | | | |
|-------------------|-----------------|---------------|--------------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

..... If the YP had supporter(s) at the conference

Now, I'd like you to think about [the YP's supporter(s)]' behaviour at the conference.

4.15. During the conference, did [the YP's supporter(s)] try to control you or frighten you?

- | | | | |
|-----------------------|-----------------------------------|-----------------|------------------------------|
| not at
all | a little, but
not much | somewhat | frequently,
often |
| 1 | 2 | 3 | 4 |

What makes you say that (or what happened)?

.....

.....



People have different opinions about what's important at conferences. Can you tell me *how important* these things were for you?

Was it important	not at all important	a little important	important	very important
4.16. To hear [the YP's] account of what happened.	1	2	3	4
4.17. To receive compensation from [the YP].	1	2	3	4
4.18. To tell [the YP] how the offence affected you.	1	2	3	4
4.19. To get answers to questions you wanted to ask [the YP] (eg., why did s/he do it?).	1	2	3	4
4.20. To have [the YP] apologise for what s/he did.	1	2	3	4
4.21. To be reassured by [the YP] that the behaviour won't happen again.	1	2	3	4
4.22. Was there something else I haven't mentioned that was important to you?				

..... 2=no

..... 1=yes ----- > *That was?*

Follow-up: *Which of these things was the most important to you?*



Let's talk about the part of the conference when people discuss the agreement -- meaning what [the YP] needed to do to make up for the offence.

4.30. How fair was *the way* that the agreement was decided?

[Q deals with process, including such things as everyone had a say and were listened to]	very unfair	unfair	very fair	fair
	1	2	3	4

4.31. Who was involved in deciding what would be in the agreement? [Determine which people the victim thought were involved in deciding. If just one name is given, ask] *Anyone else?*

..... everyone coordinator police officer

..... me (vic) vic supporters

..... YP YP supporters

..... other professionals

4.32. For the agreement, my notes show that [the YP] was to

.....
.....
.....

4.33. Do you think that the agreement was too easy or too harsh on [the YP], or was it about right?

too **about** **too**
easy **right** **harsh**
1 **2** **3** **4** **5**

Why do you think so?
.....

4.34. Were there things you wanted to have in the agreement that were not included in it?

.....1=yes -----> *And that was*?
.....2=no

4.35. Did you feel pushed into things you didn't want? (e.g., to accept an apology or agree to an outcome you thought was too easy on [the YP]?)

..... 1= yes -----> *What happened?*
..... 2=no

4.36. Do you think it is likely or unlikely that [the YP] will complete all the elements in the agreement?

very **very**
unlikely **unlikely** **likely** **likely**
1 **2** **3** **4**

What makes you say that?

Section 5: at the conference, part 2

Now, I'll read some statements. Can you tell me whether you agree or disagree with them.

	strongly agree	agree	disagree	strongly disagree
5.01. The police officer explained the implications of the YP's offending in a way that had an impact.	1	2	3	4
5.02. The police officer treated [the YP] in a respectful manner.	1	2	3	4
5.03. The police officer treated <i>you</i> in a respectful manner.	1	2	3	4
5.04. The coordinator managed the conference well.	1	2	3	4
5.05. The coordinator treated [the YP] in a respectful manner.	1	2	3	4
5.06. The coordinator treated <i>you</i> in a respectful manner.	1	2	3	4
5.07. The conference was largely a waste of time.	1	2	3	4
5.08. The conference helped to resolve issues that were important to you.	1	2	3	4
5.09. You felt safe at the conference.	1	2	3	4

Now, I'd like to hear in your own words -- and in greater depth -- about your experiences at the conference.

5.10. Did you leave the conference feeling better or worse by what happened there? [Probe: *Affected by things that [the YP], supporters, or others did or said? Glad that important things were addressed? Concerned that some things were discussed? Pleased/not pleased with what was in the agreement?*]

..... left feeling better left feeling worse other response

What happened?

.....

.....

.....

.....

5.11. Based on your experience at the conference, what do you think were the benefits *to you*? [Consider such areas as the conference empowering the victim, making up for the harm, external validation of victim. If victim sees no benefits, ask why s/he saw none.]

.....

.....

.....

5.12. Based on your experience at the conference, what were the benefits to *[the YP]* [Consider such things did it address the causes of the YP offending? Did s/he understand that what s/he did was wrong? If the victim sees no benefits, ask why s/he saw none.]

.....

.....

Section 6: post-conference views and attitudes

In the next set of questions, we ask how you'd rate your feelings toward the YP *today* (or now).

6.01. How *angry* are you toward [the YP] now?

- | | | | |
|-----------------------------|---------------------------|---------------------------|-----------------------|
| not at all
angry | a little
angry | somewhat
angry | very
angry |
| 1 | 2 | 3 | 4 |

6.02. How *frightened* are you of [the YP] now?

- | | | | |
|----------------------------------|--------------------------------|--------------------------------|----------------------------|
| not at all
frightened | a little
frightened | somewhat
frightened | very
frightened |
| 1 | 2 | 3 | 4 |

6.03. Do you feel positive or negative toward [the YP] (or neither)

- | | | | | |
|---------------------------|-----------------|----------------------------|---------------------------|-----------------|
| a bit
negative | negative | neither
pos/neg | a bit
positive | positive |
| 1 | 2 | 3 | 4 | 5 |

[Refer to Q 3.29 on p. 6 for their answer to this question before the conference.]

6.03. So it seems that as a result of the conference, your attitude toward [the YP] ...

..... didn't change, and you are 1=still positive, 2=still negative, 3=still neither

..... changed and you became

..... 4=more positive/sympathetic

.... 5=more negative/less sympathetic

Can you tell me why you (still feel positive, negative, neither) ... or (have become more positive or more negative)?

.....

.....

6.04. Do you think it likely or unlikely that [the YP] will be involved in another offence like this one (assault-related) in the future?

- | | | | |
|------------------------|---------------|-----------------|--------------------------|
| very
likely | likely | unlikely | very
unlikely |
| 1 | 2 | 3 | 4 |

What makes you say that?

.....

.....

Now, I'd like to ask about the effects on the conference on you.

Let me refer to what you said earlier about some of the effects of the incident on you.

[Check back to the victim's answers to effects listed on top of p. 5.

If there were no negative effects of the incident, go to Q 6.05.]

You mentioned that you had problems with ... [redacted]

6.04. Was the conference process helpful in overcoming any of these problems?

- not at
all helpful**
1
- a little,
not much**
2
- helpful**
3
- very
helpful**
4

.....
.....

6.05. Overall, how *satisfied* were you with how your case was handled?

- not at
satisfied**
1
- a little,
not much**
2
- satisfied**
3
- very
satisfied**
4

6.06. Looking back, are you glad that your case went to conference rather than court *or* do you wish it had gone to court? [Probe if they say 'don't know': *How do you think the court would have handled it?*]

..... **conference fine/OK** -----> *Why are you glad that it went to conference rather than court?*

.....
.....

..... **wish it had gone to court** ---> *Why do you wish it had gone to court?*

.....
.....

6.07. Would you recommend family conferencing to other victims who've experienced a similar kind of incident you did?

..... 1=yes *Why do you say that?*

..... 2=no

6.08. Would you recommend that the government keep family conferencing in the justice system?

..... 1=yes *Why do you say that?*

..... 2=no

6.09. I've asked you a lot of questions about conferences and your experiences. Is there anything you think I've missed or something you think I should know?

.....
.....
.....

We've now completed the questions about the conference. But I'd like to know if you'd be interested to participate in a follow-up interview ... about 6 months from now?

We find that victims' feelings about crime and the criminal justice system may change over time, and if you'd be willing to participate in the follow-up interview, we'd like to contact you and see how you're going.

6.10. If it is OK for us to contact you in about 6 months (you can decide then if you want to be interviewed or not), could you give us the contact details of a family member or friend who would know where you are (if you've moved) or if you're away for a while?

Person to be contacted:

Relationship to the victim:

Address (street)

(suburb/postcode)

Phone
(home) (work)

Time interview ended: Total time of interview (mins)

Did you take a break in the interview? [If yes, show estimated amount of time]

Any other comments about the context and conduct of this interview?

.....
.....
.....
.....
.....

Appendix 4. Youth Justice Coordinator consent package

South Australia Juvenile Justice & Criminal Justice Research on Conferencing and Sentencing Project

Kathleen Daly
SAJJ-CJ Project Director
Associate Professor
School of Criminology and Criminal Justice
Griffith University Qld 4111

SAJJ-CJ Research Group
c/o Youth Court, 75 Wright St
Adelaide SA 5000
tel 08 8204-0254
fax 08 8204-0513

SAJJ-CJ Research on Conferencing Information Sheet for Youth Justice Coordinators

An independent research project, funded by the Australian Research Council, is underway in South Australia to gather information about people's experiences with family conferences. SAJJ-CJ researchers will conduct interviews with the Youth Justice Coordinators (YJCs) and victims for a sample of violence cases. Because you were involved in a conference that fell into the sample, we would like to interview you. It is possible that you will be associated with several cases that fall into the sample over the field research period; thus, the consent form covers all the interviews conducted with you about the SAJJ-CJ conferences you organised and ran. The aim of the project is to learn about how victims and offenders are affected by conferences, what coordinators perceive occurs in conferences, and how coordinators anticipate and manage conference dynamics.

All the information gathered in the project is confidential. It will be seen only by the researchers, who are subject to the *South Australian Young Offenders Act (1993)* and the *Privacy Act (1988)*. The data gathered will not be used to evaluate an individual coordinator's job performance. When the study is complete, answers will be grouped in statistical aggregates, and pseudonyms (that is, not your real name) will be used.

The interview is in two parts with questions related to the offence and your pre-conference planning in the first part, and questions about what happened in the conference and post-conference reflections in the second part. Altogether, it should take about 1.5 hours to complete. Your participation in the research is voluntary, and you can end the interview at any time. I'd like to tape the interview and am seeking your consent to do that.

The conduct of ethical research in Australia requires that if any participant has a complaint about the manner in which a research study is conducted, the complaint is made to the Project Director (A/Prof Kathleen Daly, 08/8204-0254, 0409-924853, k.daly@mailbox.gu.edu.au); or if an independent person is preferred, to the researcher's university, either:

Griffith University's Research Ethics Officer, Office for Research, Bray Centre, Griffith University, Kessels Road, Nathan, Qld 4111, on (07) 3875 6618;

or

the Pro-Vice-Chancellor (Administration) Office of the Vice-Chancellor, Bray Centre, Griffith University, Kessels Road, Nathan, Qld 4111, on (07) 3875 7343.

Preliminary results from the research will first be shared and discussed with members of the Family Conference Team and Youth Court. Information about the project will be made available on the Project Director's website (<http://www.gu.edu.au/school/ccj/kdaly.html>).

South Australia Juvenile Justice & Criminal Justice
Research on Conferencing and Sentencing Project

Kathleen Daly
SAJJ-CJ Project Director
Associate Professor
School of Criminology and Criminal Justice
Griffith University Qld 4111

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c/o Youth Court, 75 Wright St
Adelaide SA 5000
tel 08 8204-0254
fax 08 8204-0513

YJC Consent Form

I consent to participate in the *SAJJ-CJ* Research on Conferencing Project as described on the information sheet. I understand that my participation is voluntary, that I can end the interview at any time, and that *SAJJ-CJ* researchers will protect the confidentiality and privacy of any information I give.

Signature: _____

Name (print): _____

Date: _____

Appendix 5. Victim consent package and information sheet for assistance and counselling

*South Australia Juvenile Justice & Criminal Justice
Research on Conferencing and Sentencing Project*

Kathleen Daly
SAJJ-CJ Project Director
Associate Professor
School of Criminology and Criminal Justice
Griffith University Qld 4111

SAJJ-CJ Research Group
c/o Youth Court, 75 Wright St
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fax 08 8204-0513

Information about the SAJJ-CJ Family Conference Research

A university-led research project is under way in South Australia to learn about people's experiences with family conferences. It is called the SAJJ-CJ Research on Conferencing and Sentencing Project. SAJJ-CJ researchers are studying a sample of conferences in 2001 that deal with assault-related incidents, and we are interviewing the victims (or their representatives) associated with those conferences. Your conference fell into the SAJJ-CJ sample, and we would like to invite you to participate.

The interview asks questions about how you, as a conference victim or a representative speaking on behalf of the victim, were affected by the conference and what you see as the benefits and drawbacks of the conference process. It is important for you to know that all of the data gathered from the project will be seen only by the SAJJ-CJ researchers -- not by the police, conference coordinators, or others who were present at the conference. SAJJ-CJ researchers are bound by law to protect your privacy and to maintain confidentiality of data records. When the study is complete, everyone's answers will be grouped together, and pseudonyms (that is, not your real name) will be used. We expect that the research results will have practical benefits for other crime victims and for improving the conference process.

This interview will take about one hour to complete. Your participation in the research is voluntary. That means that you don't have to answer any question that makes you uncomfortable and that you can end the interview any time. We would also like to tape record this interview and are seeking your consent to do that. If at any point in the interview you want us to stop the tape, we will of course do so.

The SAJJ-CJ research group is headed by Project Director, Associate Professor Kathleen Daly, Griffith University (Brisbane), and it has two research staff members. Should you have any questions about the project, phone the SAJJ-CJ Project Director or a member of the research group at 8204-0254, or 8204-0571.

The conduct of ethical research in Australia requires that if any participant has a complaint about the manner in which a research study is conducted, the complaint is made to the Project Director; or if an independent person is preferred, to the University, either:

Griffith University's Research Ethics Officer, Office for Research, Bray Centre,
Griffith University, Kessels Road, Nathan, Qld 4111, on (07) 3875 6618;

or

the Pro-Vice-Chancellor (Administration) Office of the Vice-Chancellor, Bray
Centre, Griffith University, Kessels Road, Nathan, Qld 4111, on (07) 3875 7343.

A final report of the *SAJJ-CJ* project will be available some time in 2003. Visit the Project Director's website (<http://www.gu.edu.au/school/ccj/kdaly>) or phone the Family Conference Team office (08/8204-0564) to obtain information about how to receive a copy of the results.

South Australia Juvenile Justice & Criminal Justice
Research on Conferencing and Sentencing Project

Kathleen Daly
SAJJ-CJ Project Director
 Associate Professor
 School of Criminology and Criminal Justice
 Griffith University Qld 4111

SAJJ-CJ Research Group
 c/o Youth Court, 75 Wright St
 Adelaide SA 5000
 tel 08 8204-0254
 fax 08 8204-0513

Conference Participant Interviewee Consent Form

I consent to participate in the *SAJJ-CJ* Research Project as described on the information sheet. I understand that my participation is voluntary, that I can end the interview at any time, and that *SAJJ-CJ* researchers will protect the confidentiality and privacy of any information I give.

	Interviewee		Parent/Guardian (if interviewee is under 18 years)
Signature:	_____	_____	_____
Name (print):	_____	_____	_____
Date:	_____	_____	_____

South Australia Juvenile Justice & Criminal Justice

Research on Conferencing and Sentencing Project

We would like to thank you for participating in this research project. If you require any assistance, there are a variety of agencies that provide services to the victims of violence, as well as the friends and family members of victims. Please don't hesitate to contact one of the following organisations:

Emergency Contacts

Crisis Care

13 1611

After hours crisis support (violence and abuse, suicide, child protection, etc) 4pm-9am plus weekends & public holidays

Life Line

13 1114

24-hour telephone counselling service staffed by volunteers.

Kids Help Line

1800 551 800 (Free Call)

Free, 24-hour telephone counselling and referral service (for issues of violence, bullying, drug and alcohol abuse, pregnancy, etc.) for kids aged 5-18.

Family & Sexual Violence

Domestic Violence Crisis Service

08 8223 2200

Telephone and face to face counselling, referral to safe accommodation.

Yarrow Place Rape

08 8226 8777 (M-F, 9am-5pm)

And Sexual Assault Service

08 8226 8787 (24 hours)

Counselling, advocacy, and education for survivors of sexual assault (ages 16 and older), as well as their partners, families, and friends.

Counselling & Health Services for Young People

Second Story Youth Health Service

Offers a range of services, including counselling, support groups, medical clinics, conflict resolution programs, and parenting education.

Central

57 Hyde St

Adelaide

08 8232 0233

South

62 Beach Rd

Christies Beach

08 8326 6053

North

6 Gillingham Rd

Elizabeth

08 8255 3477

Counselling for Adults, Young People, & Families

Centacare

08 8210 8200

Low cost counselling and education programs for individuals and families.

Counselling Services

08 8202 5190

Adelaide Central Mission

Sliding-fee counselling services for individuals and families affected by sexual and family violence

Youth and Parent Services

08 8202 5160

Offers conflict resolution services that help to resolve conflict between a young person and his or her parents. Can also provide temporary housing for young people who have left home due to family conflict.

Appendix 6. Description of the 14 in-depth cases

SAJJ Case #	type	offence	V sex & age	YP's sex & age	date of offence ^a	V-YP relation	offence facts (based on police report)
3	FV	assault on person	M, 40	M, 16	5-May-01	step father-son	Following an argument about money missing, YP became aggressive and abusive with step-father. He kicked step-father and threatened him with a fishing knife. YP admitted to kicking and holding the knife to V.
5 ^c	FV	assault on person	F, 47	M, 15	3-Jun-01	mother-son	Mother intervened in an argument between YP and his sister. YP hit mother with a broom handle. She left the house because she was scared and contacted police. Mother wanted police to intervene, but was reluctant to initiate proceedings. History of DV in household.
6	FV	assault on person	F, 46	F, 13	27-Jun-01	mother-daughter	While at home YP and her mum had argument about YP making long distance phone calls. YP punched her mother four times in the head and upper body. Mother tried to leave, but YP prevented her. YP threatened her mother with two knives, stating "I could kill you if I wanted to."
7 ^c	FV	common assault	F, 45	M, 15	6-Aug-01	mother-son	Victim was taking some left over pizza to her boyfriend, who lived next door. YP stopped her, grabbed her around the throat, and punched her in the face. YP strangled and held her against the wall before he released her and verbally abused her. History of DV in household.
10 ^c	FV	assault on person	F, 35	M, 16	3-Sep-01	mother-son	YP returned home intoxicated. He became aggressive toward his mother and ripped the phone from wall when she tried to call the police. V tried to leave, but YP pushed her against the door. He slammed a knife into the bench, narrowly missing V's fingers. He threatened to kill V if she tried to leave. V finally ran out of house and called police. Ongoing problems with YP unable to control anger when drunk.
12	FV	common assault	M, 37	M, 15	8-Oct-01	father-son	YP and his father had an argument in the front yard about YP's mother not giving YP a lift to work. YP was also in breach of a bail agreement. YP punched his father in the head about 12 times, resulting in soreness but no injuries.
1	SV	indecent assault	F, 5	M, 14	26-Jan-01	siblings (half brother)	In the family home, YP removed his sister's knickers and rubbed her genital area with his fingers. He also exposed his penis. Their mother later noticed something was wrong and V told what had happened. YP made admission when confronted by the parents.
2	SV	indecent assault	F, 3	M, 15	1-Dec-00	family friend	While V was at a BBQ with her grandparents, the YP fondled her genital area outside of her clothing. V told her grandmother and YP admitted to the offence.
4 ^b	SV	indecent assault	F, 12	M, 17	21-Sep-00	acquaintance	Victim & YP were at an army camp. YP pushed V to the ground and fondled her breasts, bottom, and genital area over clothing. YP tried to remove her pants, but V elbowed YP and ran away.
8	SV	rape	F, 8	M, 14	9-Jun-01 (reported offence)	Siblings (sister)	V and YP were playing in YP's bedroom at home. V was in the wardrobe with a blanket over her head. YP pulled V's pants down and inserted his finger into V's vagina. Their mother walked into the bedroom when the assault was going on. V was upset and crying and she was bleeding slightly. YP admitted to this offence and at least five past similar incidents over several years.
9	SV	indecent assault	M, 10	M, 10	13-Nov-00	friends	On the playground, two YPs play-wrestled with V, who is Aboriginal. Then YPs held the victim down and forced a dog's penis into his mouth. This YP admitted to the offence and said he was sorry. [co-YP went to court]
11	SV	ind asslt x 2	V1: M, 6 V2: F, 5	M, 13	15-Dec-00 (mid-point)	siblings (sister & step-brother)	YP fondled V1's penis and buttocks on several occasions. He fondled V2's (his sister) buttocks and had "simulated sex" with clothes on. YP's father discovered the latest assault in progress.
13 ^b	SV	USI	F, 13	M, 17	1-Mar-01 (mid-point)	step-sister	At the family home, YP coerced his step sister into sexual intercourse on at least three occasions. V also reported YP had previously fondled her on a daily basis. YP said the sexual contact occurred with V's consent.
14	SV	USI <12	F, 6	M, 12	1-Mar-01	step-sister	At the family home, YP removed his step-sister's pants and touched her on and inside vagina with his fingers.

SAJJ Case #	type	date of report to police	date of conference	days b/w offence & conf	V rep sex & age	No of participants excl YJC & PO	Length of conf (mins)	V int	V int date	days between conf & V int	length of V interview (mins)	pre conf interview	post conf interview	length of YJC int (mins)
3	FV	5-May-01	20-Jul-01	76	n/a	3	105	no				11-Oct-01	11-Oct-01	80
5 ^c	FV	3-Jun-01	9-Aug-01	67	n/a	2	90	no				19-Oct-01	19-Oct-01	140
6	FV	27-Jun-01	23-Aug-01	57	n/a	2	60	no				26-Sep-01	26-Sep-01	120
7 ^c	FV	6-Aug-01	23-Nov-01	109	n/a	4	100	yes	10-Dec-01	17	40	8-Nov-01	28-Nov-01	155
10 ^c	FV	3-Sep-01	23-Oct-01	50	n/a	3	105	no	refused	refused	refused	22-Oct-01	26-Oct-01	160
12	FV	8-Oct-01	12-Nov-01	35	n/a	3	60	no	refused	refused	refused	9-Nov-01	16-Nov-01	60
1	SV	27-Apr-01	4-Jul-01	159	F, 30s (mother)	6	120	no				30-Aug-01	30-Aug-01	100
2	SV	1-Dec-00	30-Oct-01	333	V rep 1: M, 61 (grandfather) V rep 2: F, 46 (grandmother)	8	170	yes	20-Nov-01	21	160 (rep 1) 100 (rep 2)	22-Oct-01	31-Oct-01	130
4 ^b	SV	21-Sep-00	28-Nov-01	433	n/a	6	150	yes	10-Jan-02	43	65	27-Nov-01	7-Dec-01	135
8	SV	16-Jun-01	12-Dec-01	186	F, 35-40 (mother)	4	140	yes	19-Dec-01	7	85	10-Dec-01	14-Dec-01	105
9	SV	16-Nov-00	18-Dec-01	400	n/a	2	70	no	moved away	moved away	moved away	19-Dec-01	19-Dec-01	130
11	SV	27-Sep-01	29-Nov-01	349	F, 30s (V2's mother)	3	90	no	refused	refused	refused	27-Nov-01	3-Dec-01	95
13 ^b	SV	17-Jul-01	26-Nov-01	270	n/a	5	125	yes	17-Jan-02	52	75	23-Nov-01	28-Nov-01	155
14	SV	04-Apr-01	5-Dec-01	279	F, 30s (mother)	6	115	yes	18-Dec-01	13	85	4-Dec-01	7-Dec-01	100

Notes: ^a When there were several known offence dates, the offence date is the mid-point of all dates. In case 8, the dates of previous incidents could not be ascertained; we use the date of the latest incident, which was reported to the police.

^b These two cases have been subject to analysis; see Daly and Curtis-Fawley 2006.

^c These three cases have been subject to analysis; see Daly and Nancarrow 2007.

Appendix 7. Legal definitions of selected sexual offences in South Australia

Definition of *sexual intercourse*: includes any activity (whether of a heterosexual or homosexual nature) consisting of or involving (a) penetration of the vagina or anus of a person by any part of the body of another person or by any object or (b) fellatio or (c) cunnilingus.

Rape

SA Criminal Law Consolidation Act 1935, Section 48.

Having sexual intercourse with another person without the consent of that other person, knowing that that other person does not consent to sexual intercourse, or being recklessly indifferent as to whether that other person consents to sexual intercourse (maximum penalty: life imprisonment).

Unlawful Sexual Intercourse with Person under 12

SA Criminal Law Consolidation Act 1935, Section 49.

Having sexual intercourse with any person under the age of 12 years (maximum penalty: life imprisonment).

Unlawful Sexual Intercourse

SA Criminal Law Consolidation Act 1935, Section 49.

- Having sexual intercourse with any person above the age of 12 years and under the age of 17 years. Defences: person alleged to have had sexual intercourse was 16 or older and the offender was either under 17 years or believed the person alleged to have had sexual intercourse was 17 or older.
- Having sexual intercourse with a person under 18 years by a person who is their guardian, schoolmaster, schoolmistress, or teacher.
- Having sexual intercourse with a person who by reason of intellectual disability is unable to understand the nature or consequences of sexual intercourse. Consent to sexual intercourse is not a defence to a charge of unlawful sexual intercourse. (For all three, maximum penalty: 7 years)

Indecent Assault

SA Criminal Law Consolidation Act 1935, Section 56.

Assaulting a person in an indecent, immoral, or obscene manner (maximum penalty: when victim is under 12, 10 years; otherwise, 8 years).

Incest

SA Criminal Law Consolidation Act 1935, Section 72.

Sexual intercourse between persons who are related, either as parent and child or as brother and sister (maximum penalty: 7 years).

Indecent Behaviour

SA Summary Offences Act 1953, Section 23(2).

Behaving in an indecent manner (a) in a public place, or while visible from a public place, or in a police station; or (b) in a place, other than a public place or police station, so as to offend or insult any person (maximum penalty: \$1,250 or 3 month