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Final Report

W. E. B. Du Bois Research Fellowship

Valli Kalei Kanuha, Ph.D.

November 26, 2006

## Abstract

This report details the activities, findings and implications for criminal justice policy and practice regarding the use of restorative justice and indigenous justice methods to address violence against women. A related interest of this project was to explore the existence of domestic and family violence in Native Hawaiian families in pre-contact Hawaii to uncover the indigenous sanctions and responses utilized by Native Hawaiians to address violence in intimate and family relationships. Major findings of this report include the paucity of empirical evidence regarding the feasibility or lack of alternative justice responses to address gender violence, as well as lack of intervention research regarding the feasibility and efficacy of indigenous and culturally derived justice strategies to address violence against women. Implications for criminal justice practice and policy center on the need for more informed dialogue and empirical research on restorative and alternative justice interventions to address crimes against women.

## Acknowledgments

Aloha Ke Akua, nā aumakua, nā kupuna, my parents and family for these blessings and the opportunity to study, learn about, and help my people.

My gratitude to Dr. Leora Rosen from the National Institutes of Justice for her patience, generosity and support of my Fellowship; and to Judy Shepard for her assistance and support during my too brief visit in the beautiful lands and with the people of Alaska. I am especially grateful for the new friendship and love of Heather Nancarrow and my tita, Jackie Huggins, and the many Aboriginal, South Sea Islander, and indigenous colleagues who hosted me so kindly and generously during my trip to Queensland. Mahalo to Kathy Daly and Joan Pennell for their important scholarship on RJ and feminism, and for wisdom shared. To Mimi Kim for her courage and determination.

To all of the informants, colleagues, and friends who gave their time, thoughts, and critiques so willingly for this project, I hope I've represented accurately your narratives, stories, and spirits. Any misattributions, misstatements or misinterpretations are my own, and I hope you forgive these errors.

For all of the women, children and men who live daily with violence, and who yearn for peace, and for our ancestors who lived, died and survived violence against their spirits and homelands, I humbly dedicate this report to you.

## Executive Summary

There were two key research interests that were pursued for this Du Bois Research Fellowship:

- 1) To explore whether violence against women similar to how we understand it in a contemporary context existed in Hawai`i before Western contact in 1778, and if so to illuminate what factors, processes, and social contexts were associated with sanctions or supports for such conduct, and
- 2) To study those elements and processes associated with indigenous sanctions related to violence against women to determine if and how any of these interventions might be culturally appropriate, relevant or effective with Native Hawaiians, indigenous populations, or other people of color in contemporary postmodern societies.

Three methods and related activities were proposed to explore the research interests posed above:

- 1) Literature review on restorative justice (also referred to throughout this report as “RJ”) and indigenous practices, especially as analyzed and/or applied to violence against women in an indigenous social context,
- 2) Collaboration with a Native Hawaiian historian and archival researcher to examine and analyze written and oral sources on Native Hawaiian culture and history for evidence of violence against women in the period of pre-contact with the West (~ 1778), and
- 3) Site visits to indigenous communities in Alaska, New Zealand, and Australia to explore if and how culturally-based, indigenous interventions were employed in cases of violence against women, and to study with feminist scholar-researchers with interests in restorative

justice, violence against women, and indigenous communities.

My extensive review of the literature on restorative justice, the commissioned archival study on domestic and family violence in pre-contact Native Hawaiian society, and study visits to Alaska and Australia uncovered the key and related themes below.

- 1) There is a notable paucity of empirically-based research on the use of RJ strategies with domestic and family violence involving adult victims and offenders.
- 2) Very few descriptive or empirically-based studies exist on the use of culturally-based interventions or policies derived from values, beliefs, traditions, and practices of ethnic minority populations to address either adult victims or victimizers in violence against women crimes.
- 3) There are consistent themes in the literature regarding strengths and cautions regarding restorative justice as a viable strategy to address domestic and sexual violence with adult survivors and offenders as articulated from both RJ proponents and critics.
- 4) Calls for prudence regarding the use of RJ to address violence against women are predominantly from feminist, anti-violence scholars, practitioners, researchers and policy makers.
- 5) Due to documented barriers and service gaps in, and subsequent critiques of the traditional criminal-legal response to violence against women in the U.S., there is an emerging interest from scholars and practitioners in communities of color, indigenous communities, and feminist anti-violence advocates in alternative justice methods to address gender violence.

- 6) Family group conferencing (also referred to throughout this report as “FGC”), perhaps the most frequently employed RJ strategy in the U.S. and internationally has its roots in the indigenous Maori of New Zealand. While FGC has been utilized as an alternative legal or child welfare response to child abuse/neglect or youth crime, it has rarely been used to process criminal cases of violence against adult women anywhere in the United States or other countries.
- 7) In Native Hawaiian as well as other Native or indigenous populations there existed culturally-derived social sanctions against family and intimate partner violence that are no longer viable in contemporary, post-industrialist societies. Hybridized (combining Western and indigenous) criminal-legal strategies that replicate traditional indigenous sanctions for use in their specific indigenous communities and social contexts have yet to be designed, pilot tested, and empirically studied.

The implications for criminal justice practice and policy flow directly from the study findings above. Given three decades of scholarly work and practitioner experience regarding violence against women, along with growing dissatisfaction with current criminal justice response to crimes of violence against women, the need for innovative justice intervention and prevention strategies is long overdue. Dialogues on alternative justice projects must bring together diverse stakeholders concerned with the development of culturally sensitive, effective criminal justice and crime prevention policy. These collaborations must include criminologists and practitioners with research and field expertise in RJ, alternative justice, and/or violence against women, along with indigenous practitioners and scholars with interests in gender violence, women’s issues, and ethnic-based criminal justice interventions.

The need for more intervention-based research and evaluation studies to empirically test the strengths, challenges, and promises of restorative and/or alternative justice strategies in cases of criminal violence against women must begin with caution and on a limited scale. These interventions must be developed by and/or under the close scrutiny of feminist anti-violence scholars, researchers and practitioners who are open to these alternatives in order to balance the legitimate cautions raised about such interventions and policies.

Finally there is a need for more empirical and rigorous study of culturally based interventions to address domestic and family violence. My archival research of family violence in pre-contact Native Hawaiian families is testimony that different forms of intimate partner, child, and intra-family abuse did indeed occur in Hawaiian society before contact from the West, but more importantly that culturally-contextualized sanctions and practices were employed to address such grievances. My dialogues with key informants in Alaska and Australia confirm that indigenous populations in these sites also have longstanding, culturally-bound strategies for addressing violence against women that, as with Native Hawaiians have not been employed since the onset of Western colonial-imposed judicial case processing policies and methods. Design, implementation and evaluation of hybridized (mixed indigenous and contemporary strategies) approaches that account for native and Western criminal-legal principles and practices must be funded as multi-year projects to rigorously track case outcomes longitudinally.



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We must accept some of the race prejudice in the South as a fact – deplorable in its intensity, unfortunate in results, and dangerous for the future, but nevertheless a hard fact which only time can efface.” (Du Bois, 1989, p. 120)

Race has always been the undercurrent of Louisiana politics. This disaster is one that was constructed out of racism, neglect and incompetence. Hurricane Katrina was the inevitable spark igniting the gasoline of cruelty and corruption. From the neighborhoods left most at risk, to the treatment of the refugees to the media portrayal of the victims, this disaster is shaped by race.  
Jordan Flaherty, journalist on Hurricane Katrina (Flaherty, 2005)

At a drug store on Canal Street just outside the French Quarter, two police officers with pump shotguns stood guard as workers from the Ritz-Carlton Hotel across the street loaded large laundry bins full of medications, snack foods and bottled water. “This is for the sick,” Officer Jeff Jacob said. “We can commandeer whatever we see fit, whatever is necessary to maintain the law.” MSNBC news story on Hurricane Katrina (MSNBC, 2005)

I hate the way they portray us in the media. If you see a Black family it says they’re looting, if you see a White family it says they’ve looking for food.  
Kanye West, rapper on Hurricane Katrina (Marks, 2005)

What in the name of reason does this nation expect of a people, poorly trained and hard pressed in severe economic competition, without political rights, and with ludicrously inadequate common-school facilities? What can it expect but crime and listlessness, offset here and there by the dogged struggles of the fortunate and more determined who are themselves buoyed by the hope that in due time the country will come to its senses?  
(Du Bois, 1989, p. 126-127)

When I completed this draft report in the waning days of summer 2005, every American as well as citizens across the globe were living and watching in shock as the devastating aftermath of Hurricane Katrina unfolded daily in cities across the U.S. South. An emerging

critique about both the allegedly preventable conditions of massive destruction from hurricanes and of the government's delayed and inadequate response to Katrina implied that racism and poverty were in part responsible for the damage and death toll to those most vulnerable in the South: the working class, poor, elderly, frail, young, African Americans and immigrants. As political commentator Tim Russert suggested, "The fact is, those who were well off were able to evacuate the city [of New Orleans] and those who were poor stayed behind. And those who are suffering and those who are dying are those very same poor people" (Russert, 2005).

As evidenced from the quotes above, the interface of race, ethnicity, economic status, educational opportunity, and crime as considered by W. E. B. Du Bois in the early 1900s continues to shape the landscape of American life and social policy even today, over 100 years later. Watching the indelible images and stories of those most affected by Hurricane Katrina has compellingly reinforced the honor and privilege I've had to be awarded the Du Bois Fellowship. It reminds me that none of us can encounter, deliberate, analyze or reflect upon crime and justice in the United States today as a century ago without also considering race, class, and other historical-cultural artifacts of American life.

For my Du Bois Fellowship I was interested in exploring two related research themes:

1. To examine whether violence against women similar to how we understand it in a contemporary context existed in Hawai'i before Western contact in 1778, and if so to illuminate what factors, processes, and social contexts were associated with sanctions or supports for such conduct, and
2. To study those elements and processes associated with indigenous sanctions related to violence against women to determine if and how any of these

interventions might be culturally appropriate, relevant or effective with Native Hawaiians, indigenous populations, or other people of color in contemporary postmodern societies.

Three methods and related activities were proposed and completed to collect data on the research interests posed above:

1. Literature review on restorative justice (also referred to throughout this report as “RJ”) and indigenous practices, especially as analyzed and/or applied to violence against women in an indigenous social context,
2. Collaboration with a Native Hawaiian historian and archival researcher to examine and analyze written and oral sources on Native Hawaiian culture and history for evidence of violence against women in the period of pre-contact with the West (~ 1778), and
3. Site visits to Native communities in Alaska, New Zealand, and Australia to explore if and how culturally-based, indigenous interventions were employed in cases of violence against women, and to study with feminist scholar-researchers with interests in restorative justice, violence against women, and indigenous communities.

As the key crime and justice issue explored in this fellowship and my major professional interest as a research scholar, for the purposes of this study “violence against women” will refer primarily to intimate partner violence, which is a pattern of intentional use of emotional, psychological, financial, physical, sexual and other types of violence to instill fear, coercion, and control by one intimate partner over the other. Because most of this violence is inflicted by males over their female partners, I will also use the term “gendered violence” to highlight the historical

nature of misogyny in male-female relationships. The term “battering” is sometimes used to differentiate the significance of an ongoing pattern of violence in intimate relationships vs. individual assaults, self-defensive violence, or other situational acts of abuse that are not accompanied by a societally-sanctioned belief system of domination within intimate relationships. While my research agenda does include study of violence in intimate lesbian and same-sex women’s relationships, this fellowship was limited to examination of violence in adult male-female relationships. Finally, since intimate partner violence often happens in cohabiting relationships whether or not legally sanctioned in marriage, and children of either/both members of the couple are involved as witnesses or victims themselves of abusive partner-fathers, the terms “domestic violence” or “family violence” may also be used to refer to the context of family or coupled life in which battering co-occurs.

#### Background and Literature Review on Restorative Justice

Restorative justice (also referred to as RJ throughout this report) refers to a set of principles, values and practices that focus upon “restoring” the harm done by crime and other violations of social norms and standards. Howard Zehr, longtime proponent and teacher of restorative justice states that RJ is based upon “an old, common-sense understanding of wrongdoing” and three key principles, that crime is a violation of people and interpersonal relationships, that violations create obligations, and that the most important obligation is to put right the wrongs done by an offender to the victim (Zehr, 2002, p. 19). John Braithwaite, a noted theorist-practitioner in the field states that RJ “is most commonly defined by what it is an alternative to” which is usually a punitive, retributive, individual offender-based, legal consequence in which the opinions and views of victims are rarely considered (Braithwaite,

2002, p. 10). Braithwaite proposes that RJ include values that intend to restore human dignity, injury, communities, damaged human relationships, freedom, compassion or caring, and empowerment. Pranis suggests that restorative justice “has as its core the concept of mutual responsibility and interdependence” (K. Pranis, 2002, p. 25). Umbreit states that in restorative justice victims are given the opportunity to “regain their personal power” and communities are helped to “build their sense of safety and capacity for collective action” (Umbreit, , p. 1). Most proponents view RF as a crime prevention strategy in which the entire community - not just the community justice system and offender - are responsible for repairing the harm caused by crime and restoring peace and justice to victims, their families, their communities, and the offender as well.

### Background of Restorative Justice

The current field of restorative justice has its roots in either ancient or modern societies, depending upon your point of view. Representing a perhaps “extreme” perspective on RJ’s origins, Braithwaite contends that “restorative justice has been the dominant model of criminal justice throughout most of human history for perhaps all of the world’s peoples” (Braithwaite, 2002, p. 5). Braithwaite as with other RJ proponents argue that restorative values and practices have more indigenous (native/natural) foundations as they are based in the fundamental belief that preserving the greater good of harmonious human relationships and communities through upholding of moral codes upon which collective norms and interests are based is paramount to meting out punishments to individual offenders on behalf of individual victims. The majority of restorative justice practitioners also believe that transferring enforcement authority for social violations from family or community to the state (church, government, King/Queen) has resulted

in our current-day global preference for using retributive and punitive consequences for wrongdoers rather than practices that are morally and socially transformative for offenders, victims, families, communities, and society as a whole.

Regardless of RJ's origins or history, most practitioners agree that restorative practices and programs have gained prominence at an institutional level in the West only in the past two decades. Its contemporary beginnings are an extension of the 1970s victim rights movement in the U.S., England, and Canada in which mediation programs were designed to bring together criminal offenders and victims "to meet face-to-face to talk about the crime, to express their concerns, and to work out a restitution plan" (Umbreit, Greenwood, Fercello, & Umbreit, 2000, p. 3). Then as currently, the majority of victim-offender mediation programs across the United States in particular are targeted to juvenile offenders (Umbreit et al., 2000).

### Restorative Justice Strategies

Building from the first victim-offender mediation program in Canada in 1974, restorative justice programs now fall into four general categories: victim-offender mediation, family group conferences (FGCs), circle sentencing, and community reparation. The strategy now most associated with the restorative justice field is family group conferences or FGCs. Developed in New Zealand to address the historical, colonial structure of the country's criminal-legal system and its specific failure to meet the cultural needs of indigenous Maori adolescents and families (The Children, Young Persons and their Families Act, 1989), FGC brings together youth offenders, victims, their families, and their communities to design a culturally-based, holistic plan to hold offenders accountable, to prevent future violations, and to assure that victims' needs and rights are valued (Burford & Hudson, 2000; Hudson, Morris, Maxwell, & Galaway, 1996;

Maxwell & Morris, 1996; Pennell & Burford, 1994; Umbreit, 2000). There are now hundreds of FGC programs throughout New Zealand, Australia, Canada, Europe, the United States and other countries.

Circle sentencing or circles are often attributed to the indigenous peoples of Canada and certain First Nations of the southwest United States (Bazemore & Griffiths, 1997; Kay Pranis, Stuart, & Wedge, 2003). Used as an alternative to a traditional hierarchical court proceeding, circles emphasize the shared values and relationships among participants (offender, victim, family, social workers, neighbors, teachers, spiritual guides, etc.) who all have an equal voice in determining a plan and outcome for an offender. Circle processes are grounded in agreed-upon rules of communication, roles of facilitators and participants, and culturally appropriate rituals.

Community reparation strategies have gained international prominence through their use in addressing human rights violations such as the South African Truth and Reconciliation Commission hearings on apartheid, the Canadian Royal Commission on Aboriginal Peoples, and the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from the Families (The Stolen Generations Inquiry) (Cunneen, 2001). Reparations have included financial remuneration or compensation to aggrieved population groups/communities, public apology, legal reforms, and/or reinstatement or granting of civil rights.

### Benefits and Risks of Restorative Justice

Restorative justice alternatives to traditional criminal justice processes and sanctions such as court proceedings, pleas, diversion, probation, fines, jail time, rehabilitation, etc. are still relatively new. However, proponents and opponents of RJ are equally staunch in their support or critique of these innovations. This section will outline the key arguments on both sides of the RJ

divide in order to establish a foundation for subsequent and specific discussion about application of RJ principles and strategies in family, domestic and family violence situations.

### Strengths of the Restorative Justice Approach

Over the past decade researchers and practitioners have articulated many and significant benefits of restorative justice principles and methods as alternatives to traditional justice injunctions. While there are many characteristics and elements of RJ as a guiding philosophy about human nature and our collective responsibility to each other, I will highlight four attributes of RJ that are particularly relevant to the research focus of this fellowship, the crimes of family and domestic violence. These four features are: harm as an organizing paradigm; focus on crime victims; engaging a “community of care;” and restoring or repairing harm by “putting things right.”

#### Harm as an Organizing Paradigm

An important feature of restorative justice is its emphasis on the principles and values that under gird the practices, methods and strategies of RJ as an approach to crime and justice. In fact, many would say this is its primary and distinguishing feature as a criminal justice response. Zehr (2002) offers three “pillars” or key principles of restorative justice. The first is that crime is essentially a harm done to people and communities. The focus of most social and legal institutions in contemporary Western societies however is that crime is a violation of laws and other codified rules of conduct enforced by the state. This notion of harm done against the “individual” victim of crime whether that victim is a single woman abused by her husband or a large corporation whose CEO has embezzled millions of dollars is the most oft stated essence of



RJ (Bazemore & Schiff, 2000; Braithwaite, 2002; Roberts & Masters, 1999; Ross, 1995; Strang & Braithwaite, 2001; Umbreit, 1996).

Zehr's second key concept is that harms or wrongs imply obligations and accountability from offenders to those harmed. As is common throughout the literature, predominant criminal justice policy is juxtaposed against RJ in that the state's interest in offenders is enforcing violations of the law while RJ is centralized around the view that "if crime is essentially about harm, however, accountability means offenders must be encouraged to understand that harm" (Zehr, 2002, p. 23).

The third of Zehr's organizing principles is that those who are actually affected by crimes must be significantly engaged in dialogue about the impact, consequences, and resolution of the harm caused by such infringements against them. Zehr and others suggest that there are many parties to "individual" criminal acts besides an offender and a victim; that is, families, neighbors, employers, church members, social workers, and the entire community around the offender and victim – whether known to or involved with either/both of them – may in fact also be "harmed" by such crimes and therefore may be "stakeholders" in its resolution.

#### Focus on Crime Victims

Victim rights advocates have claimed that crime victims have been relegated to an increasingly distal if not absent role in the criminal-legal system's resolution of crimes, what Strang calls "the theft of crime from victims" (Strang & Sherman, 2003, p. 16). In response, RJ proponents state that the voices, wishes, needs, involvement, and decision-making of victims must be central to justice seeking with criminal offenses. Umbreit (1996) states that RJ allows

an “expanded” and empowering role for victims by actively engaging them in the process of stating what they want and need from offenders and other stakeholders.

Victim-offender mediation was an early RJ strategy intended to focus on victim rights and needs by offering face-to-face encounters between victims and offenders as one mechanism by which offenders could hear directly from victims about the harm they had caused (Umbreit, 1994, 2003; Wright, 1996). Strang (2002), Coker (2002), and other practitioner-researcher-victim advocates (Pennell & Francis, 2005; K. Pranis, 2002) have articulated the ways victims want to actively participate in case processing, contribute to decision-making about consequences for offenders, receive support (material, emotional, and legal) for their experiences, and be treated with respect, integrity, and in some cases “to heal what has been broken” (Coward, 2000).

Concerns about how the needs of victims were being addressed in actual RJ practice have led to a proliferation and focus of research on victim attendance at, engagement in, and satisfaction with the process (Behrendt, 2002; Coward-Yaskiw, 2002; Strang, 2001; Strang & Sherman, 2003; Umbreit, 1994, 1996, 2000, 2003). For the most part, the literature appears to support that those victims who participate in alternative justice processes such as FGC or mediation are generally satisfied with the process. However, an additional and important finding is that there are a significant proportion of victims who actually do not attend or complete the RJ process even after initially choosing this alternative (Crime and Justice Research Centre, 2005; Paulin, Kingi, Huirama, & Lash, 2005). We need to have a better understanding about what happens between the point of entry into an alternative justice process and victim engagement in and completion of the process.

Engaging a “community of care” (Johnstone, 2002; Zehr, 1990)

A consistent theme associated with restorative justice is its goal to engage a broader set of stakeholders in criminal processing than just an offender and a victim. Involving such people as family members, clergy, friends and co-workers along with institutional representatives from child welfare, legal advocacy, law enforcement, and social service agencies who have a vested interest in both the offender and victim is one of Zehr’s key pillars of RJ (Burford & Hudson, 2000; Pennell, 2000; Zehr, 2002). Underlying this practice is the belief that offenders harm more than just individual victims, but that many other people and community institutions are also harmed when someone offends. It is suggested that while “community” is not only broadly defined but must be specifically contextualized for individual RJ cases, community might include “those affected by, or with an interest in, the offence,” those willing to provide support to the victim or offender after the conference, and support people for the victim and offender (Justice, 2003; McCold, 1995).

There are also RJ advocates espousing the importance of the long-range, social change aspects of community engagement in criminal case processing because we understand that all individual acts of crime are ultimately detrimental to the very fabric of society and social well-being, and conversely that the prevention of future crime is an investment to be made on more than just a case-by-case basis (Braithwaite, 2002).

Restoring or repairing harm by “putting things right”

Clearly a key concept of restorative justice is the focus on the harm caused when crimes are committed by one citizen against another. However, engaging offenders, victims and communities in a collective process whether or not the criminal-legal system is a principal player

in that process is for the express purpose of making amends to the victim and her community through various means including restitution, apology, community service, and sometimes by offenders merely acknowledging their responsibility for the harm caused by their actions.

Family group conferences are one strategy of RJ in which a critical element is the development and enforcement of concrete behavioral plans for “making right” the harms done by offenders. Importantly, these plans must not only address what offenders will do to fulfill their responsibilities and obligations to repair the harm to victims, but what they will do to better understand their conduct and how they will prevent future such acts (Burford & Hudson, 2000; Hudson et al., 1996; Umbreit, 2000).

Braithwaite was an early proponent who articulated the process of reintegrative shaming as one social-psychological device through which offenders could be engaged to understand how their conduct harmed victims and others (including the offender himself) (Braithwaite, 1989). The concept of reintegrative shaming suggests that informal though powerful relationships between offenders and those with whom s/he maintains intimate or even cultural-historical ties create an environment in which offender stakeholders including the victim, as well as the offender himself perceives the violation against a victim as shameful to both himself and more so to his community of care. However the objective of an offender experiencing shame about one’s conduct is not intended as punitive, but rather is engaged to help “reintegrate” offenders into the mainstream, law abiding norms of civil society by directly repairing the harm done by their actions.

### Risks of the Restorative Justice Approach

As stated earlier, there have been as many cautionary notes as praises for restorative justice as a criminal justice alternative, often by RJ proponents themselves (Daly & Immarigeon, 1998; Hopkins & Koss, 2005; Johnstone, 2002; Pennell & Buford, 2002; Strang, 2002; Strang & Sherman, 2003; Umbreit & Coates, 1998). In this section, I refer back to the four benefits of RJ discussed above to offer a contrasting view of how such benefits may also be liabilities or risks in terms of reforms or innovations in criminal justice interventions.

#### Harm as an organizing paradigm

No rational citizen concerned about crime prevention would contest the importance of considering the harmful effects of crime on victims. However with the retributive attitude that has surrounded crime and justice in most post-modern societies RJ's focus on the way crime results in harm to victims (and others) is more often superceded by the need to punish offenders. That is, centralizing "harm" as a psychological as well as material consequence of crime tends to divert attention away not only from offenders as the cause of that harm, but also from the intended and historically punitive consequences due those offenders (Zehr, 2002).

A related critique is that RJ practitioners are not only concerned about harms done to victims, but the affect of those harms on others including the offender him/herself. For example, some RJ supporters argue that the harm experienced by an offender who was abused as a child or has been victimized in some other way (including for example, by social forces such as racism) must be considered in our understanding of the causes for an offender's conduct. Indeed in some instances a plan of action resulting from an RJ intervention might include support, assistance, and resources directed to healing the injuries that caused the offender to harm his victim in the

first place. While not purposely redirecting the focus away from victims, RJ's approach of equivalent attention to harms done to offenders at the institutional-societal level is cause for concern particularly among crime victim advocates.

#### Focus on crime victims

How crime victims fare in restorative justice interventions constitutes the majority of stated risks about the RJ field. Howard Zehr states that in spite of his own positing about the importance of victim rights, in the early years he himself as well as others underemphasized victim needs and voices (Strang, 2002; Zehr, 2002). Over the years this oversight has been addressed in many of the later writings and applications of RJ such that there is now increased emphasis on victims' needs and rights (Wright, 1996).

Concerns about victims in the RJ process today center on a few recurring themes.

- The more informal and communal nature of RJ processes may actually be more threatening to some victims who prefer the relative anonymity, official, and formalized nature of the traditional court system (New Zealand Ministry of Justice, 1996).
- Actual or potential retaliation, or fear of same from the offender to the victim, particularly if details about the victim (such as residence, victim's current attitude about the offense or offender) become known to the offender is reason for caution and concern (Marshall & Merry, 1990).
- Victim involvement in the final plan and/or penalty process is based on the assumption that the victim assumes some degree of agency, power, self-confidence, and support to engage in the decision-making process vis a vis

criminal justice institutions (bench, probation, parole), the offender, and the offender's support system (Braithwaite & Parker, 1997; Stubbs, 2002; Umbreit, 1994)

- The time and investment (emotional, material, etc.) victims must commit to engage in a restorative justice process may be inconvenient, more than anticipated, and less satisfying than for victims who have clearer expectations about the legal processes involved in traditional justice system responses to crime.
- Lack of well-trained facilitators, moderators, or mediators who understand the specific vulnerabilities of victims particularly in situations of extreme violence or trauma may place victims in harm (Umbreit, 2003).
- Possible re-victimization due to all of the above factors, as well as social pressure by peers, the offender, family or community for the victim to participate in an alternative justice process may force victim compliance or cooperation (Daly, 2003).

#### Engaging a “community of care”

A primary critique of the communitarian principles associated with restorative justice is that it assumes the concept of “community” to be at least identifiable, tangible, and with specific boundaries and shared norms specifically about crime and justice (Pavlich, 2001). More importantly for the purposes of promoting alternative justice strategies, it presumes at least to some degree a collective understanding of, commitment to, and engagement in RJ values and processes at least by those individuals involved in RJ interventions but ideally by all stakeholders in a community of interest (McCold, 1995).

These are significant presuppositions upon which RJ is based. That is to enact RJ at its most effective one must have a defined “community” from which justice is restored to all members of a community and not just those offended. It assumes a shared notion about what constitutes crime and why crime occurs, and how violations of the law are handled including towards what end and by whom. Some have argued that industrialization and urbanization render these basic assumptions moot if not impossible to operationalize at a macro- or societal level since people and families across the globe are not only more mobile, but the majority of us - urban, suburban, and rural - do not live, work, or play in the same geographic or social area known as “communities” less than a century ago.

As many RJ principles and models have indigenous roots that long pre-date modern and Western influences the conundrum inherent in re/applying such practices in contemporary local or indigenous communities is that it romanticizes or “orientalizes” (Blagg, 1998) such practices, but more importantly does not account for the effects of colonization in restructuring the entire project of “justice” in Western and indigenous communities as well.

#### Restoring or repairing harm by “putting things right”

Perhaps the most oft cited critique of RJ’s harm paradigm and resultant goal of repairing harm done to victims is that it is “cheap” or “soft” justice (Coker, 1999; Curtis-Fawley & Daly, 2005). As Coker states, “apologies are overvalued: talk is cheap” (1999, p. 86). That is, instead of relying on the “heavy hand of the law,” it is suggested that RJ may appear to some as “an easy out” for offenders particularly given the mis/understanding that some RJ processes are intended to bypass the traditional judicial system. While a range of conditions may accompany the process of making amends from offender to victim, the fact that no jail time is a possible outcome for



example may give some offenders and their allies the impression that they can commit serious crimes without serious repercussions.

Another assumption of this particular theme is that offenders and/or their supporters are indeed interested in making amends or “putting things right.” A key foundation of RJ is that our society has become too punitive and retribution-oriented, which in fact has not reduced the crime rate but more importantly has not begotten more engagement or satisfaction among those most affected by crime, its victims. However, if traditional retributive methods have not been effective in either reducing or preventing crime why would we assume that focusing away from punishment (retribution) to repairing harm is not only a desirable alternative but a more effective one?

As with other aspects of restorative justice values and practices, RJ’s theological roots and subsequent belief in the power and desire of citizens in a civil society to treat others with decency and humanity – even or particularly criminals – while ideal may be naïve in our contemporary global society.

### Indigenous voices and cautions

This final sub-section offers some of the most complex and fervent cautionary notes regarding restorative justice. The majority of these opinions are from indigenous and non-Native practitioners, scholars or theorists concerned about the ways certain RJ strategies are culturally appropriated and practiced out of its originally designed social-historical context.

One of RJ’s most well known and adapted practice is New Zealand’s family group conferencing (FGC) model. Maori scholar Juan Marcellus Tauri (1995; 1999; 2004) has cogently articulated that the ways FGC has been co-opted by governmental and legal agencies in his own

country and across the globe. Tauri states that despite the widespread appearance of cultural acceptability and institutionalization of FGC in New Zealand in fact many conferences are not held on *marae* (traditional Maori meeting places), their state social welfare department still retains dominant control over procedures and enforcement, and “professionalization” of the FGC process prevails despite these conditions being expressly legislated in the 1989 Young Children and their Families Act. More importantly a significant proportion of Maori victims do not attend or express satisfaction with the process (Crime and Justice Research Centre, 2005; Paulin et al., 2005). Tauri concludes that this evidence “underlines the willingness of the State to disempower Maori by employing their justice processes while denying them a significant measure of jurisdictional autonomy” (1995, p. 1).

A second concern regarding RJ is that those practices such as FGC or circle sentencing that are supposedly rooted in or at least based upon Native traditions have often been transplanted or assimilated into cultural contexts far different than their original indigenous or cultural milieu. While many indigenous peoples share similar belief and value systems particularly with regard to social and communal relations and violations against same, it should be noted that often the State or criminal-legal institutions rather than Native peoples themselves that are responsible for the importation of these practices to process criminal cases. The assumption that such sacred and historically place-based practices can be translated and adapted to another site is evidence of the inherent racism and colonization of these governmental institutions, and what has been referred to as “indigenisation,” or cooptation of indigenous culture for the state’s benefit (Tauri, 2004).

Finally while many RJ proponents affirm the social change and community

transformative nature of restorative justice, indigenous advocates remind us that while RJ practices such as conferencing and circle sentencing may have originated in and subsequently been applied in a contemporary justice context to benefit indigenous peoples who have been ill-served or maltreated by the state, these practices are mainly designed to address specific harms in specific situations, and fall miserably short in advocating for the general human rights of Native peoples locally and globally (Coker, 2002; L. Kelly, 2002; Smith, 2005; Tauri, 2004).

### Summary of Literature Review on Restorative Justice

In summary while the more well-known and accepted RJ practices such as family group conferencing, peacemaking circles, and communitarian conferences are indigenous to Native peoples in the United States and abroad, the majority of early and current researchers, practitioners, and leaders in the restorative justice field are Whites with disciplinary foci in criminology, criminal justice, or law (Bazemore & Umbreit, 1994; Braithwaite, 2002; Daly & Immarigeon, 1998; Galaway & Hudson, 1996; Pennell & Buford, 2002; K. Pranis, 2000; Strang & Braithwaite, 2001; Umbreit, 1996; Wachtel, 1998; Weitekamp & Kerner, 2003; Zehr, 2002). As discussed above, however there are emerging voices of men and women of color, particularly Aboriginal and First Nations scholars and practitioners who are largely critical of the cultural appropriation of certain RJ practices by non-Natives, and also of what Tauri refers to as “indigenisation,” in which Native people are utilized by non-Natives to implement or enforce indigenous cultural practices that have been co-opted and institutionalized by Western, non-Native systems (Bazemore & Griffiths, 1997; Blagg, 1998; Coker, 2002; Tauri, 1995).

Second, while there is a prolific set of literature on restorative justice, particularly in the form of reports, conference proceedings as well as academic articles and books, the majority of

these writings are by RJ proponents, including those who are critically self-reflective of RJ principles and methods (Behrendt, 2002; Coker, 2002; Daly, 1999; Koss, 2000; Pennell, 2000; Strang, 2001; Umbreit & Coates, 1998).

Finally, given over two decades of thinking and practice in the field it is only relatively recently that empirical research on RJ projects have emerged (Bazemore & Umbreit, 1994; Burford & Hudson, 2000; Crime and Justice Research Centre, 2005; Daly, in press; Koss, Bachar, & Hopkins, in press; Pennell, 2000; Strang, 2002; Umbreit et al., 2000; Weitekamp & Kerner, 2003). Given legitimate criminal-legal concerns about RJ as a viable response to crime, the scant empirical evidence to support or refute restorative justice strategies is a serious limitation of this alternative justice intervention.

#### Restorative Justice and Violence Against Women

As evidenced above there is growing acceptance of restorative justice practices and programs along with an accompanying body of literature examining its use and efficacy. However a major area of critical discourse generated primarily by feminist, anti-violence practitioners as well as indigenous workers and analysts concerns the possible risks of applying RJ methods to domestic violence, sexual assault and other forms of violence against women.

I intentionally use the phrase, “possible risks” to refer to the existing literature. First, the majority of projects that have attempted to use RJ methods to address crime have primarily targeted juvenile (mostly male) offenders, not adult offenders or victims (Behrendt, 2002; Crime and Justice Research Centre, 2005; Daly, 2002, in press; Koss et al., in press; Morris, 2002; Paulin et al., 2005; Strang & Braithwaite, 2002). In the U.S., Pennell is one of the few RJ researcher-practitioners to conduct intervention research with adult victims of family violence,

child abuse and domestic abuse, although her research site was Newfoundland (Pennell, 2000; Pennell & Buford, 2002; Pennell & Burford, 1994). Second, as will become evident, the majority of concerns, criticisms, and apprehension about the use of RJ in domestic and family violence cases in the U.S. are conceptual and ideological in nature since there has been virtually no empirical or intervention research on this topic. Therefore, we really do not know whether the critiques of RJ are valid from an applied perspective.

This final section of my literature review highlights the specific issues raised about the application of restorative justice principles, values and practices in cases of violence against women. These debates foreground the field and archival research I conducted through this Du Bois fellowship that were aimed at exploring future directions for criminal justice policy regarding the use of alternative justice methods to address intimate partner abuse in adult relationships.

#### Victim agency and vulnerability

Perhaps the most consistent caution about the use of restorative justice to address domestic and sexual violence is its risk to women victims and survivors. Bannenberg and Rossner (2003) frame some of the unique issues regarding impact on victims in the inherent dynamics in gendered violence vs. other types of crimes. The authors suggest that some key distinctions that characterize domestic violence victims from other crime victims include fear of retaliation or increased violence from partner/offenders; that victims continue in relationships with their partners/offenders, complicated further if they have children together; ambivalence about staying or leaving the relationship; and lack of confidence in law enforcement and criminal-legal proceedings to end the violence, particularly if as with many survivors, they wish

to remain in their intimate relationships.

The agency of battered women has often been misconstrued even by the most stalwart of advocates. Mahoney (1994) has argued that we often conceive of battered women as either passive though resilient objects of their male partners or more rarely as retaliatory agents against same. Instead Mahoney suggests that most survivors are neither solely objects nor agents, but both/and depending on circumstances and context. Most feminist critics of RJ are particularly concerned about the assumption or expectation of “mutual responsibility and interdependence” (K. Pranis, 2002) among all parties in the RJ process, including survivor-victims when such equivalence among abuser and battered victim is by the nature of intimate violence nearly impossible.

The specific dynamics of power and control reinforced by all manner of violent acts in relationships where battering occurs are historically sanctioned by community norms that sanctify family and marital life. These dynamics implicitly place battered women in a subordinate position not only vis a vis offenders but in relation to the criminal-legal system as well. Therefore given the underlying principles and methodology of RJ anti-violence advocates argue that survivor agency is severely compromised if not unrealistic (Busch, 2002; Edwards & Haslett, 2003; Frederick, 2000; Strang, 2001; Stubbs, 2002). This is a particular concern of advocates for battered women of color or immigrant women who have multiple vulnerabilities in addition to being victimized by their partners (Busch, 2002; Coker, 2002; Daly, 1999; Goel, 2005). If indeed a key construct of RJ is that all participants come willingly to the process, certainly under what conditions and towards what end the victim engages in an alternative justice intervention must be clearly delineated.

“Reprivatization” of violence against women

For advocates in the global violence against women movement, bringing domestic and sexual violence “out of the home” and into the mainstream of cross-national social life has been an enduring and significant accomplishment. However, some critics of RJ suggest that the use of alternative justice strategies and particularly the process by which more informal encounters are held between offenders, victims (or their proxies), government or social agencies, and other community members reverses our long-held belief that violence against women is a serious social and criminal problem that should be addressed with the same traditional justice methods as other crimes (Coker, 1999, 2002; Curtis-Fawley & Daly, 2005; Daly, 2002). As discussed earlier Coker (1999) suggests that RJ may be viewed by participants and critics alike not only as “soft justice,” or not as legitimate as other state-controlled methods but that it may “under-theorize” the crime of male violence against women and girls.

An inherent tension in what has become the private-public nature of violence against women juxtaposes our traditional valorization and therefore privatization of family, marriage, coupling and “the home” with the public’s interest to control crime, and in particular those crimes committed in the sanctity of those patriarchal institutions that have historically been hostile to many women. Feminist advocates in particular have argued that RJ has the potential to reverse some of the public’s interest in crimes against women by rendering it once again a private matter to be resolved between individual victims and offenders, and their local or indigenous authoritarian systems of social control instead of state-sponsored and regulated judicial systems (Busch, 2002; Coker, 2002; Frederick, 2000; Frederick & Lizdas, 2003; Stubbs, 2002).

Finally, Coker (2002) offers a complex counter to both traditional and RJ crime processing methods in her analysis of the ways women at the margins – poor, non-White, immigrant, substance abusing, or incarcerated women – are actually “underprivatized.” That is, these socially stigmatized categories and the women associated with them are often overly controlled by the state in all domains of their lives. Therefore, Coker argues that in fact some socially marginalized battered women, if given the choice of “community control versus the oppressive intervention of the state...may choose the former” (2002, p. 133).

### The myth of “community”

Advocates in the American women’s anti-violence movement has for three decades upheld the multiple goals of protecting, empowering and ensuring the well-being of individual victims/survivors while also promoting reforms in social conditions and institutions that have long maintained the subordinate status of women and girls. These mutual aims were heavily reliant on social measures that required mobilization of oftentimes recalcitrant communities that were not only resistant to the notion that violence against women was as prevalent as claimed, but more importantly that gendered violence was a crime.

Almost four decades later, a major apprehension of many RJ critics and particularly feminist advocates is that the method is heavily reliant on such ideals as: “community responsibility for the behavior of its members” (K. Pranis, 2002, p. 27); “community members are actively involved in doing justice” (Zehr & Mika, 1998, p. 68); “belief in community’s inherent knowledge about how best to handle crime and harm” (Edwards & Haslett, 2003, p. 7); and even that participants in RJ processes “will take active responsibility for confronting structural problems such as racism in the community” (Braithwaite, 2003, p. 168).



No one concerned about civil society or justice for victims of violence would be indifferent about these aforementioned principles. However even after many decades of successful policy reform, it is often at the societal and community levels that widespread acknowledgment of violence against girls and women as a social problem is still elusive. Stubbs (2002), Kelly (1996), and Coker (2002) offer the following analyses of community vs. state processing of gender violence crimes.

- Community attitudes and beliefs about women, battering, and rape are replete with misogyny that promote and maintain such crimes;
- Batterers and perpetrators of gendered crime have more positive community support and status than do female victims, even to the point of being protected, harbored and excused for their conduct;
- Victims and survivors cannot be assured of the support and protection they may need from community members;
- Most communities do not share a single or unified “voice” particularly with regard to case processing crimes of gender violence;
- Community leaders are often men who are ill-informed about the dynamics underlying male violence against women and/or have a stake in maintaining the status quo regarding male dominance at a systemic or institutional level;
- “Community wisdom is valued over current research and information” regarding domestic and sexual violence (Edwards & Haslett, 2003); and,
- It is questionable whether most communities are designed for, capable of, or invested in assuming the role of the traditional judicial system specifically in managing crimes

against women.

### Goals of the restorative justice process in violent crimes against women

It is understood that law enforcement, the courts, and other institutions are authorized by the state to assure protection and justice for the populace in civil societies. Whether or not it is possible for these functions ever to be implemented or meted out fairly shall forever remain a matter of debate among criminal justice and civil rights theorists, researchers and analysts. The increasing interest in alternative justice strategies is in part generated by a perceived failure of the criminal-legal system to adequately or fairly punish wrongdoers, to contribute to crime prevention over the long term, and to preserve the general safety and well being of the citizenry.

The promise of restorative justice with regard to gendered violence is two-fold. First, while RJ is often posited as opposing the often retributive social attitude towards existing practices of crime processing, Daly (2002; 1998) suggests instead that as applied to crimes against women we consider the importance of retribution with offenders as part and parcel of justice for battered women in tandem with restorative strategies. Second, the required engagement with “community” in any effort to end violence against women given that such an evolutionary process is feasible would cohere with our longstanding social movement work to transform the very nature of society’s beliefs and attitudes about gender and violence against women.

The challenges listed below regarding RJ as a criminal justice alternative are focused on questions about both the immediate and long-term goals of the process with regard to violence against women, many of which are not necessarily key mandates or interests of the traditional justice system.

1. *Whose needs are paramount in the RJ process?* A constant criticism of the traditional justice system by RJ advocates is that it has marginalized the involvement or needs of crime victims. One major shared concern between RJ and anti-violence advocates is centralizing victims and survivors in the criminal processing system. Where these advocates part ways, however is that ideally restorative justice relies on communitarian principles and methods in which victim, offender, family members, and other stakeholders come together to restore the harm caused by the offenders conduct. Domestic and sexual violence advocates assert that the needs of survivors must always trump those of offenders, and perhaps others who've colluded with batterers' coercive, controlling and abusive behavior towards their partners.
2. *Offender rehabilitation vs. victim need for resolution.* The lofty goals of RJ tout a process that balances the needs, ideals, and outcomes for many stakeholders, including the criminal justice system. However, RJ views offender rehabilitation and victim resolution of inflicted harm as mutually necessary and compatible goals (Zehr, 1990). However placing rehabilitation of batterers within a "cooperative" or seemingly mutual crime resolution process with victims is not only dangerous but perhaps immoral and unethical as well. Part of the "cheap justice" critique is that "the victim becomes merely a means to the end of 'healing' the offender" (Coker, 1999, p. 85).
3. *Restoration from what to what?* Even the descriptor, "restorative justice" has been subject to some criticism from women's anti-violence practitioners. At its basis critics contend that in cases of intimate partner violence, to what state are we restoring

victims, offenders and communities? All battered women probably desire a restoration of those violence-free moments in their intimate relationships before the first name calling or slap, whether or not they remain with their partners. Rape survivors wish to restore themselves to a pre-assault, pre-trauma state. What do offenders wish for? What do communities restore? Most communities have never had an epoch when violence against women was non-existent, so perhaps the ideal is a transformation rather than restoration of community responsibility to stop the degradation of girls and women. More importantly, it is unclear if these goals for restoration, reconciliation or transformation are truly possible with restorative justice strategies, and if so what the shared responsibilities are for criminal-legal and other community institutions for enduring social change that respect, empower and protect girls and women in all aspects of social life.

4. *Different responses for different types of gender violence.* Most RJ proponents as well as critics engaged in the discourse on the conundrums of applying restorative norms and principles to crimes of gender violence fail to adequately account for different types of violence against women. Feminist criminologists such as Daly (Daly, 2002), Koss (Koss, 2000), and Hopkins and Koss (Hopkins & Koss, 2005) clearly describe the distinctions between intimate partner violence and sexual assault that affect not only how we think about these crimes but their appropriateness for case processing using alternative justice methods.

Domestic violence is exemplified by a pattern and complexity of controlling behaviors usually by one batterer against one intimate partner at a time, whereas sexual assaults are often

isolated incidents against one victim by sex offenders who may or may not have longstanding pathological patterns of rape or engage in episodic assaults on girls or adult women.

Domestic violence requires a victim who is engaged in an intimate relationship with a batterer however brief, while rape may occur in the context of an acquaintance relationship between assailant and survivor. The primary role of the judicial system with sexual assault cases is to successfully prosecute the offender, but in domestic violence cases the courts may be involved in the awarding of civil protective orders, criminally prosecuting batterers (rare), or perhaps authorizing safe custody or visitation arrangements for non-custodial, offending parents (often the male batterer-father).

Whether or how these very distinct manifestations of violence against women are addressed by RJ methods require more careful research and study by RJ and anti-violence advocates alike.

#### Summary of Literature Review on Restorative Justice and Violence Against Women

This select review of the growing literature on restorative justice and violence against women highlights some major themes about both fields of interest. The most important observation is that there are few if any commentaries on RJ and gender violence that are not authored by practitioners, theorists, researchers, or advocates well-informed about or immersed in the fields of sexual assault, domestic abuse, family violence or other forms of violence against women. And among all of these discussants, both the pros and cons of RJ as a viable justice alternative for gender violence cases are articulated. Importantly however, the majority of forewarnings about restorative justice as a remedy for crimes of violence against women are not necessarily based in empirical research but on well-founded theoretical analyses, reviews of the

existing RJ literature, field observations, and assuredly thousands of hours advocating for and providing safety to battered women, their children and their families. So as with the general RJ literature, with regard to gendered violence in particular we have separate and distinct bodies of literature on RJ and on violence against women, but virtually no studies of the application of RJ to criminal case processing of violence against women in the U.S. or elsewhere.

A related analysis about the existing literature is the obvious force of influence that anti-violence advocates have wielded in preventing RJ's foray into the gender violence field (Curtis-Fawley & Daly, 2005; Pennell & Francis, 2005; K. Pranis, 2002). In many ways, this point alone illustrates the political success of the contemporary women's and anti-violence movement in the U.S. and globally. Advocates have not only raised legitimate risks about the use of RJ in domestic and sexual violence cases but have through the strength of the movement's political will ostensibly blocked any complex discourse or resource allocation through which their concerns might be field tested. However as Curtis-Fawley and Daly (2005) implore, "the required learning cannot take place so long as principled decisions are permitted to prevail in the absence of empirical evidence" (p. 610).

Paradoxically perhaps the most significant theme in the literature is that most feminist anti-violence advocates while critical of and dubious about RJ principles and practices with domestic and sexual violence situations still appear interested in its use (Busch, 2002; Coker, 2002; Coward, 2000; Curtis-Fawley & Daly, 2005; Frederick, 2000; Frederick & Lizdas, 2003; Liz Kelly, 1996; New Zealand Ministry of Justice, 1996; Pennell & Francis, 2005). In particular Native men and women of color – supporters and critics alike - assert that a return to their indigenous ways of handling social and criminal violations will more effectively hold offenders

accountable for their crimes against women and perhaps prevent future acts of gendered violence (Behrendt, 2002; Blagg, 1998; Cunneen, 2001; L. Kelly, 2002; Ross, 1995). However the most important aspect of indigenous-based crime processing methods is that it must support sovereign self-determination, de-colonization efforts, and healing and protection of Native people from continued cultural and social decimation. Whether or not RJ can meet these particular cultural imperatives is yet to be seen.

Finally the major concern of all practitioners and scholars with regard to RJ and violence against women is discovering and affirming the experience of women survivors in an alternative justice process. Studies report that victims (including those from indigenous communities using their own local practices) who engage in either traditional or RJ systems do not differ significantly on measures of satisfaction except that alternative justice participants tend to feel more positively about the experience (Burford & Hudson, 2000; Crime and Justice Research Centre, 2005; Paulin et al., 2005; Ross, 1995; Strang, 2002; Walker, 2003). However some of those same studies and others also found smaller proportions of victim participation in RJ and less satisfaction among those who did complete the process (Crime and Justice Research Centre, 2005; Maxwell & Morris, 1993; Paulin et al., 2005). The limitation of these research reports is that most of the study cohorts contained few adult domestic or sexual violence victims. Herman's (2005) recent study of domestic and sexual violence survivors reported that victims were concerned about safety for themselves or others which included preventing future acts of violence from perpetrators. Importantly, the primary desire of survivors seeking traditional or alternative justice involvement was community acknowledgement for the gendered crimes committed against them, and not necessarily punishment or sanctions against perpetrators.

In conclusion, there are both strengths and limitations of restorative justice as a method for addressing violence against women. However the bottom line is that we lack adequate and rigorous intervention studies to validate theorizing on any and all sides of the restorative justice-gender violence discourse.

#### Intimate and Family Violence in Pre-Contact Native Hawaiian Society

*The following section of this report was written by Carol Silva, M.A., Native Hawaiian archival researcher. Proficient in speaking, writing, and translating to/from/into Hawaiian language, Ms. Silva is currently Chief of the Records Management Branch of the State of Hawaii Archives Division, and previously was Archivist for the Historical Records Branch of the Hawaii State Archives. As a key activity of this fellowship, Ms. Silva was contracted to conduct a literature review of pre-contact Native Hawaiian myths and legends to uncover themes or narratives related to family or domestic violence, with a particular focus on how such conduct was addressed in indigenous Hawaiian culture before the advent of European and American legal and judicial institutions in the early 1800s. As a Du Bois Fellow, my particular research interest in these pre-contact documents was to understand what indigenous social sanctions were employed in cases of domestic and family violence in Native Hawaiian society, and to determine and whether or not, or which justice strategies are relevant, feasible, or applicable in contemporary American and Hawaiian society today. I will conclude Ms. Silva's report with my own summary and conclusions of her study.*

#### An Overview of Traditional Hawaiian Culture

Hawaiians of old believed that a spiritual life force gave form and function to every thing above, upon and within the land and the sea. This supernatural energy was called mana. Mana



alone powered the universe and gave unique definition to all things. The more mana an entity possessed, the greater its sacredness and status. Mana was the essence of the 40,000 gods embodied in Nature. Mana spiritually charged the elements, the wind, waves and stars, flora and fauna, as well as Hawaiians from ranking chiefs to commoners throughout the centuries.

To safeguard this mana, sacred privileges and a governing body of laws or kapu were instituted. Some kapu were designed purely to honor the gods while others perpetuated respect for the power and rank of the chiefs. From antiquity until the death in May of 1819 of King Kamehameha I, the first ruler to unite all of the Hawaiian islands, chiefs proclaimed and enforced kapu for a number of critical reasons. Periods of temporary and often severe restriction spiritually prepared high priests and chiefs to appeal to the gods for victory and enduring political success, to seek relief from illness or large-scale disaster, and to ask for blessings upon special projects such as the carving of a temple image or of a seaworthy canoe.

Many of the kapu were regulatory and helped preserve delicate ecological balances in the cosmos by codifying conservation practices that were then uniformly applied and enforced. Other kapu gave preferential rights and privileges as well as correspondent responsibilities to those of rank and to males in general. Women, young girls and uninitiated boys were valued much less from a spiritual standpoint, thus, they had fewer liberties and observed additional, restrictive kapu. Though of unequal standing and importance, women, girls and young males were as closely monitored as the men for rigid adherence to the law. The advantage that males had over females was evidenced in male-only participation in ordinary ritual and worship. Women and children were invisible to the gods and were forbidden to approach or to appear anywhere near temples or other sacred sites. In addition, there was a sizeable body of kapu that

assigned all food preparation to men and reserved the eating of those foods that were higher in protein content to males. Such practices reinforced male dominance in spiritual as well as social and political situations.

Kapu were upheld by a priestly class who officiated at sacred sites and at temples of worship. There was no tolerance for any infraction or violation of these laws. Death was the usual penalty for disregard of custom or open disrespect shown toward gods, humans or Nature. Punishment was so swift and certain that only a miracle designed by a god could intervene to spare the life of an outlaw. Thus it was that all thoughts, customs and activities in a former time were strongly conditioned and controlled, if not completely defined, by the overriding concepts of mana and kapu.

#### The Traditional Family Unit

At the heart of Hawaiian society was the family and extended family. Multiple generations of blood-related family members and their spouses dwelt on homesteads, living and working cooperatively. The men undertook the occupations and subsistence tasks requiring heavier labor (farming, deep sea fishing, food preparation, wood and stone work) while women and children gathered shoreline fish, shellfish and seaweed, produced bark cloth for clothing and bed linen as well as plaited household items such as mats, baskets and bedding. These chores kept the adults of the homestead or *kauhale* sufficiently occupied for most of the daylight hours. As a result, the primary care of the children was entrusted to the elders, who were then excused from those labors that sustained and supported the basic quality of family life.

Couples paired out of affection and remained fairly monogamous. Marital unhappiness usually became a concern of the entire family for it was believed that any unresolved or long-

term emotional distress resulted in physical illness manifested by one spouse or the other, their child or even perhaps another spiritually or physically vulnerable family member. Thus, all conflicts were settled by and within the family with a respected elder facilitating and all relatives present and actively participating.

A deep and humbling spirituality bound the family tightly together. This reverence was derived from an innate acknowledgement and gratitude to the gods in Nature, upon whom life depended. In addition to these gods of the sea and tides, clouds, rain and fertility, there were also personal family guardian spirits and spirits of ancestors who protected, warned, healed and counseled in times of adversity or difficulty.

Thus, the traditional Hawaiian family can be best described as living seamlessly with their gods, guardians and spirits of departed kin in a close working and living environment. Conflicts were not allowed to fester and affect the spiritual, emotional or physical well being of the family unit and problems were openly communicated and corrected.

#### The Study of Domestic Violence in Traditional Culture (prior to known Western contact)

In approaching the study of domestic violence from a traditional perspective, it became important first of all to identify and define the various Hawaiian terms for abuse that would be encountered in mythological literature. Once an exhaustive listing was compiled, legends in Hawaiian were read and notes were made for tabulation and analysis.

#### The Language of Abuse

The Hawaiian language has no counterpart for the English phrase “domestic violence.” The closest term for any manner of abuse is “hana‘ino” which connotes committing an act that is

cruel, evil or injurious. This term is not limited to human relationships but applies to all kinds of mistreatment.

Among the words that relate generally to abuse, is found “māuna.” It appears in the following saying: “O kēlā kāne, māuna ka ‘ili” and translates as: “With that man, your skin will be bruised” figuratively indicating that remaining with him will surely invite a beating. Of the 20 words given for “to beat,” one is commonly used for humans in terms of physical abuse. This word is “pepehi” and it can be defined as “to assault, to strike.” “Pepehi kanaka” refers to the taking of human life. This phrase is encountered in the first law against murder, encoded in those words in 1827. The phrase “pepehi a make” is one seen in Hawaiian literature, court records and 19<sup>th</sup> century newspaper accounts. It is the equivalent of “to beat to death or to kill.”

Other terms were used figuratively as Hawaiians were masters of metaphor and double entendre when subtly referring to unpleasant or private situations. “Ku‘i palu” means “to pound, as bait” and indicated that a thrashing was given; “paluhe ka palu” is “the bait is pulverized” and refers to a meek, humble or abused person – one who was down-trodden. Verbal abuse was defined as “houhou...to make cutting or cruel remarks” or “Pololo ka waha...to talk abusively...”

Little else could be found to indicate abject violence or severe, lengthy abuse of any sort; neither were there words specifically for spousal, child, parental, or elder abuse.

#### Legends and Myths That Relate to Domestic Violence

Knowledge of the ancient gods, genealogies of good and evil chiefs and remarkable feats of champions, tricksters and fools were retained in Hawaiian oral tradition in the form of hundreds of tales. These legends bonded a people over many generations with an operative and

relatively constant worldview. Origins of creatures and plants were explained, famous champions were lauded and accounts of how wicked tyrants were ingeniously destroyed by gods and by humans were repeated. Historical details survived and moral lessons were perpetuated for the education and entertainment of people of all ages, gender and class.

Although, the earliest of these legends had not been recorded until the mid-1830s and 1840s, it is reasonable to accept them as reflective of a belief system and native values. Hawaiians of old placed much credibility in the spoken word. A single word was all that was needed to create or to destroy, for words were never taken lightly. Granted, some tales that were encountered contained exaggerations of reality for the purpose of simple amusement or to underscore a definite point. These legends, however, should not be taken any less seriously for the message they ultimately conveyed.

Nearly 300 legends and versions were examined for mention of domestic abuse and violence. Priority was given to those historical materials that were written or recorded by Hawaiians who lived a traditional lifestyle. Writings by foreigners who are generally acknowledged as having an exceptional understanding and respect for preserving the integrity of the native language and folkways were also included. Sources ranged from the 1840 writings of Native students and adults collected by Abraham Fornander in the Hawaiian language to published materials by the accepted Hawaiian historians of the 19<sup>th</sup> century. Literature authored and co-authored by Mary Kawena Pukui, the most recognized contemporary scholar in the field of Hawaiian language, folklore and culture was also a major source (Beckwith, 1997; Colum, 1937; Fornander, 1996; Green, 1928; Kalakaua, 1972; Kirtley, 1971; Moses, Nogelmeier, & Pukui, 2002; Pukui, 1995; Rice, 1978; Thrum, 1923, 1998).

### Summary of Findings

Approximately 300 legends were culled for study based on the narrow criteria stipulated above. Of these, 52 (17%) were identified as containing incidents of domestic abuse. A sizeable majority (31 out of 52; 60%) related to situations between husbands and wives, lovers and their affianced partners. Another six (12%) were examples of abusive relationships between demigods or shape-shifters (beings able to change their bodily forms and persona) and unsuspecting women. Five of the 52 (10%) described conflict between step-parents and children. Other relationships encountered less frequently dealt with abusive fathers, adoptive parents, sibling rivalries, a cruel grandmother and a heartless sister-in-law.

Jealousy was a motive in 11 (21%) of the 52 instances, physical injury was noted in another 11 (21%) legends. Desertion and unfaithfulness were found in nine (17%) and eight (15%) stories respectively. Neglectful conditions and murder were noted in five legends (10%). Abductions occurred four (8%) times with little or no resistance reported from women being kidnapped. Uncontrolled anger and cruelty were noted in three (6%) tales.

In 33 (63%) of the situations, the abuse was interrupted or stopped. Eight times (15%), the gods or spirit guardians intervened and brought relief and justice to the victim. Kahuna (priests) and third-parties came to the aid of the victim five times (10%), while spouses and children rescued and revenged their loved ones in four (8%) tales respectively. Others coming to the aid of victims included siblings, parents, lovers, in-laws and grandparents.

Below is a summary of these findings. Appendix C. contains a more detailed description of three legends mentioned in this section.

## Marital Discord

Problems within couples (whether husbands and wives, lovers or promised ones) were prominent motifs in mythology. Abuse stemmed from feelings of jealousy, anger, and selfishness on the part of the abusive partner. The legends describing these situations are listed below.

### Jealousy

Typically, a husband or lover became intensely jealous of their partners due to attentions paid by others outside the relationship. Sometimes these feelings were justified, sometimes imagined. The end result of these feelings of jealousy resulted in a broad spectrum of consequences, including:

- civil disorder because a beloved chiefess was victimized by her husband (Lono and Kaikilani)
- beating of sisters and brothers by a wife who suspects her husband of an affair with her sisters (Aukelenui)
- beating of an innocent woman to death numerous times by her espoused; she was revived each time by personal guardian spirits and finally by a stranger (Kahalaopuna)
- murder of a chiefess by her husband who hides her body in a sea cave (Kawelo)
- murder of a faithful wife who is suspected of infidelity (Lono and Kaikilani)
- murder of a first wife by a second wife and the consequent murder of the second wife by the husband. He revenges the first wife's death in this way (Hole of Blood)
- concealment of his sweetheart by a lover in a sea cave; Kona (leeward) storms enter and drown her. He honors her remains then commits suicide (Puupehe)
- covering her lover under lava, thus killing him (Pele and Lohiau)
- covering her lover and his companion as they play jackstones (Paula)

-concealment of a beautiful wife by her husband; her brother tricks her to escape as she dutifully and stubbornly complies with her husband's wishes for her to remain hidden (Hamamalau)

-murder by a wife of her husband's new paramour as well as his gruesome murder (Namakaokaopae)

### **Anger**

-beating of a wife by her husband because of her misjudgment in giving their child to her older sister who neglects the child (Keahialoa)

-a woman coldly murders her infant son and abandons her husband without an explanation (Keaniniulaokalani)

-murder of a wife by her husband because she is extremely manipulative and cruel to his sister and her family; the wife refuses to give them any fish and lies to him about it (Kukaohiaakalaka)

### **Selfishness**

-laziness: a man is neglectful and loses his wife because he doesn't provide any food or support; the gods teach him to farm and he wins her back again (Makanikeoe)

-difficult personality traits: a demanding and ill-tempered husband causes his wife to attempt an escape to the moon with the help of the gods; he tries to restrain her and breaks off one of her legs causing her to be lame. She lives safely on the moon (Hina)

-neglect: deceased husband's spirit returns to his wife but does not provide food; she starves (Nihooleki)

-abandonment: a husband leaves to live with another woman and the faithful wife's resourcefulness wins her husband back (Kawanuiaola)



-abandonment: a god deserts his wife to woo her twin; he is punished and his powers are taken from him (Laieikawai)

-abandonment: Hawaiian women and their children are left by Menehune husbands and fathers who are re-establishing racial purity; only 1<sup>st</sup> born sons were allowed to travel to a new island home (Menehune)

-unfaithfulness and neglect: a husband deserts his wife and causes her to starve; she is rescued by strangers (Nanaele)

-unfaithfulness and abandonment: a husband takes 2 kupua (shape-shifters) as lovers; his son turns them into fish, transforms his useless aunts into wiliwili trees and intimidates his father (Paula)

-efforts unappreciated: a wife tires of catering to her husband who sleeps after he eats; exhausted of attending to him, she jumps off a cliff to her death (Moli)

#### Retribution in Marital and in Paired Relationships

In nine (29%) legends out of a total of 31 that relate to couples, the abusive environment is recognized and the cause for violence is removed through some form of intervention. There is a pervasive sense that justice will be restored and that the abusive individual will be punished if not by humans, then by the spirit realm. A kahuna or a family member, the gods, spirits of the dead and even strangers, counsel the victim on a course of action or personally mete out penalties or revenge.

In a significant number of the tales, it is the love and commitment, the resourcefulness, wisdom and quick-thinking that saves or revitalizes the relationship if not the life of the spouse. The following is a sampling of legends encountered:

- abandoned wife's kahuna grandmother instructs on means of revenge (Namakaokaopae)
- husband's pride, wide-scale knowledge of his abuse and his wife's strong support by her family prevent him from reclaiming his wife (Hamamalau)
- wife's resourcefulness and devotion wins him back after his unfaithfulness (Kawanuialola)
- gods pity a man who lost his wife because he is lazy; they teach him how to farm and he wins her back (Makanikeoe)
- a woman transforms her starving family into rats to save them; she becomes a spring. When her brother discovers the wrong that his wife committed against his sister and her family, he kills his wife then he transforms into the first ohia tree (Kukaohiaakalaka)
- a couple have 3 children after which the wife returns to her homeland for a visit. While she is away, her husband strays and sires 2 children by different mothers. When she returns, she rejects her husband and takes a lover and bears a child by him. They reconcile and have another child together (Papa and Wakea)
- a chief finds a sweetheart who pines to death when he escapes her presence. He plans to retrieve her spirit from the netherworld in a very ingenious way and she is restored to life (Hiku and Kawelu)
- a man is killed for breaking the law, leaving his wife and child without support. He instructs her to gather his bones and to take their daughter to live in a cave. He steals from the chief and provides food for them there. The chief's kahuna tell the chief to build 3 houses in Waikiki as restitution. He does this and the man is restored to life (Pumaia)
- a man is distracted from his duties to his chief to revive a woman who gives him a feather cape in payment. The chief orders him to be killed; the man presents the cape and is spared (Eleio).

### Coupling of Humans and Shape-shifters

Shape shifters or kupua are beings that are part-human, part-animal capable of changing their appearance, persona and bodily forms. A theme was noted in which shape-shifters lured humans away, took human lovers or married human spouses. The dual natures of these kupua generally went undetected at the outset. However, it was these common characteristics and habits of their animal alter-egos that brought about abuse, neglect, abandonment and even serial murders. Some kupua fed on certain foods only at night in their animal forms and slept as humans during the day; others hid animal body parts under clothing when they took human form and once exposed, were killed.

Spirit lovers were capable of transforming themselves into a set number of different creatures, whether caterpillar, eel, sea cucumber, mo'o or water spirit, a hog, a lava eruption, or sea creatures. As a result of the godliness of the kupua shape-shifters, the basic human needs (i.e. food, companionship, etc.) of their wives were not recognized or met, and therefore neglect and abandonment followed. Examples of kupua and human pairings, the nature of the abuse and resolution are as follows:

-gross neglect of a shape-shifter husband brings about the wife's starvation; kahuna counsels family and they kill kupua (Caterpillar Wife)

-spirit lovers entice 2 naïve girls who become love-sick and obsessive; father traps and kills kupua (Puhi and Loli)

-spirit lover causes a woman to waste away; he is killed by instructions of a kahuna to her family (Puukamo'o)

-Pele's spirit takes Lohiau as a lover; her volcanic eruption kills him and the gods restore him to life (Pele and Hiiaka)

-Moholani's husband is lured by 2 ocean sirens who keep him from returning to his wife; their son transforms sirens into fish and issues a warning to father (Paula)

-the pig god Kamapuaa wooed Pele as a human; his prolific and lecherous habits caused Pele grief. Her sister takes the shape of a flying vagina and lures him to another island (Kamapuaa)

-a human/shark shape-shifter kills and devours women at sea; the village forces kupua to disrobe and a shark's mouth is found on his back. He is killed (Manonihokahi)

### Family Members

A number of dysfunctional domestic situations were found within the blood-related family unit. Parental cruelty and murder of children, sibling rivalries, abandonment, neglect and incest were uncovered in the following:

-impatient sister -covering her sister's friend and her favorite lehua groves under lava, turning them all to stone (Pele and Hiiaka)

-rage: murder of an infant by his mother because of an unexplained rage she feels for her husband (Leimakani and Luukia)

-abandonment of 5 helpful sisters by their brother (Laieikawai)

-father does not recognize his own son and kills him but a priest prays and revives him; his father then recognizes him and he is restored to full function (Kalanimanuia)

-father does not want his daughter to marry a conquering warrior so he hides her in a sea cave where she is bitten by crabs and eels; her lover finds her and she dies in his arms. He commits suicide (Kaala)

- a fetus knows that his siblings will kill him out of jealousy as soon as he is born so he remains in the womb for 5 years and is finally born as a length of rope that is set on a shelf. Gradually, he grows into a boy (Kaulu)
- father vows to kill newborn daughters until a son is born (Laieikawai)
- mother is angry for her husband sleeping with their daughter, thus, she transforms and appears in the family in every generation (Papa and Wakea)
- woman injures her sister's friend due to impatience and mean-spiritedness; sister embraces the lover she is ushering to be with the woman (Pele and Hiiaka)
- a child cries constantly and her father turns his back on her; she lives with a mo'o (lizard) and they later seek advice from a kahuna. She is tamed and returns to the family and marries a chief (The Girl and The Mo'o)
- a child is left out in the sun and wind on a beach while her older sister is gathering seafood; the gods protect her by causing a plant to grow over her as a shield against the elements (Pele and Hiiaka)
- a child is given by her mother in adoption to an older sister who neglects the child. The child's father sees this and beats the mother for her misjudgment (Keahialoa)

#### Step-parents and Step-children

The common motif of a cruel step-parent is evident in the following five legends:

- a jealous stepmother beats her stepchildren in the absence of their father. They escape several times and are hunted by their stepmother who physically abuses them each time. The children's father returns and kills the stepmother and in grief, takes his own life (punahou spring)

- a stepfather complains about the amount of food that friends of his stepdaughter consume. He punishes her and she escapes to seek out her biological father (Laukiamanu)
- a stepfather punishes his stepdaughter for bringing her friends home and eating all of the food in the house. (Kalanimanuia)
- a stepfather is generally abusive to his stepson (Opelemoemoe)
- a stepfather quarrels with his stepson and the boy leaves to find his biological father (Umi)

### Abduction

Women were kidnapped for two basic reasons. They were abducted for their rank and potential childbearing abilities or they were taken for their acknowledged beauty. The following illustrate cases of abduction which was almost universally reported as being accomplished without great resistance or long-term dissatisfaction on the part of the woman being taken:

- a wife is sought for a Molokai chief and she is taken as she swam; no mention of struggle (Kana)
- a wife is sought for a Lihue chief and she is taken as she surfs, settles for 10 years and has 3 children, then leaves with his blessings (Keleanuino'anaapiapi)
- a wife is sought for her beauty by the Kauai chief and she is taken from the Maui chief as she surfs (Kepakailiula)
- a sacred twin is taken by a trickster and abandoned by her grandmother; she is promised to the sun god who is lecherous and loses his powers as a result of his unfaithfulness (Laieikawai)
- a shape-shifter (shark and human) attacks women at sea with his single tooth, devouring them. He is caught by the men of the village and is put to death. The symbolism is sexual and is probably an instance of serial killing and serial sexual assault (Manonihokahi)

### Summary of Archival Study

Of all the legends examined that made reference to domestic abuse, it appears that spousal abuse and abusive situations between lovers were the most prevalent. Jealousy, anger and character flaws in males brought about an array of abusive behavior against their wives or their espoused. By contrast, abuse by females against males was encountered rarely, yet, it was seen in epic proportions in the well-known female legendary character of Pele, whose victims were her lover as well as family members who incurred her wrath.

Neglect and abandonment due to unfaithfulness were common motifs leading to starvation and sometimes to death. The inability of women to grow edible crops, prepare and cook food, and consequently to establish control over their own food sources led to a complete dependency upon males for survival. This fact perhaps bred a dangerous sense of obedience, duty and unquestioned commitment toward the men that literally fed them. This attitude also supported a dominant role for males in a relationship, a family and in a community as well.

The reliance upon males to sustain life and the inherent vulnerability of females as a result set the stage for mistreatment. Innocent victims were often safeguarded by gods, spirits of deceased family members, personal guardian spirits, kahuna, family, friends, and even by strangers who recognized their plight and who voluntarily came to their aid. Hawaiians of old firmly believed that misdeeds were always punishable. It was expected that retribution would be meted out - if not by humans then by the gods; if not now, then at some point in time. Upon this, they trusted and acted in confidence.

Domestic abuse in relationships with demi-god shape-shifters, the immediate family, step-relationships, and in-law-relationships was less prevalent than spousal abuse. In these cases

justice was almost always obtained. It is significant that even when vulnerable individuals are pitted against self-serving supernatural beings, mythology and cultural norms support a sense of fairness and justice gained by human victims.

In perusing a motif index of traditional Polynesian mythology, the incidence of unnaturally cruel acts by a husband against a wife as well as the incidence of mistreatment of children and step-children were similar among island groups. Thus, it appears that ancient Hawaiians may not have differed greatly from other Polynesian islanders in their accounts of domestic violence (as found in legend). However, several kinds of abuse that were encountered rarely if at all are those in which fathers abuse their children, fratricide, sororicide or of grandchildren who were violent towards their elders.

It is suspected that when Native Hawaiians themselves abandoned the ancient gods and the governing kapu as well as destroyed their old religion around 1819, these events brought about rapid changes in social values, norms and lifestyle. Gone was the intimate and delicate inter-relationship between gods and humans that assured that misdeeds were punishable. Victims were no longer protected by a higher power and the downtrodden lost their champions once the gods and guardian spirits faded from the common beliefs of the people.

The initial pangs suffered by Hawaiians in separating from the spirit realm were further aggravated by Western contact and the establishment of a global market economy. Foreign pre-occupations based on acquisition of material goods were easily transferred to Native Hawaiian chiefs and commoners alike in spite of these new and strange concepts. Dysfunction of all kinds seemed unavoidable.



As the early Western contact period of Hawaiian history is outside the immediate scope of this report, I can based on my knowledge and expertise surmise about the consequences that the end of a formal and ancient spiritual basis of social life brought to the Hawaiian people. The mythological evidence as presented here describes methods of rectifying abuse, mistreatment and violence via the human and the spirit worlds. However, once the ancient gods and spiritual foundation of Hawaiian life were no longer present, the basic systems of Native justice were compromised. Sanctions legislated and enforced by foreign colonizers and Western models of criminal justice processing became the prevailing substitute for ancient law.

#### Summary and Conclusions of Silva's Study on Violence Against Women in Pre-Contact Hawaiian Society

Native Hawaiians are currently over-represented in all indices related to family and intimate partner violence in Hawai'i. The majority of child and adult sexual assault victims and sex offenders are Hawaiians (Kunitake et al., 1997; Office of Hawaiian Affairs, 2002), while Hawaiians comprise the second largest ethnic group of those arrested and convicted for domestic violence-related offenses including homicide (Hawaii Department of the Attorney General, 2006; Office of Hawaiian Affairs, 2002). While Hawaiian women comprise only 9.8% of Hawai'i's population they represent 20% of those hospitalized for domestic violence-related injuries (Goebert, 1999). As a Native Hawaiian and scholar, my interest in violence against women among my own racial/ethnic identity group is decidedly personal and professional.

Given the above statistics, I have wanted to better understand the historical precursors of violence against women and children in contemporary Hawaiian society. This is the major reason I contracted for the study of violence in pre-contact Native Hawaiians as part of my Du Bois

Fellowship. I was not only interested in the existence of family or partner violence in pre-contact Hawai'i, but more importantly the ways such violations were managed prior to the introduction of Western legal tenets and procedures in the early 1800s. In addition, there are many Native populations who have claimed that family and domestic violence were non-existent before the colonizing influence of Western foreigners, and particularly Christianity's paternalistic and patriarchal concepts of marriage and family (Duran, Duran, Woodis, & Woodis, 1998; Merry, 2000; Sacred Circle National Resource Center to End Violence Against Native Women, 2000). I often wondered if before contact with the West ancient Hawaiians were also non-violent in their couple and family relationships given our reverence for children, elders, and family life as inextricably linked to our cosmology that all elements in nature are co-dependent.

Silva's study is groundbreaking in many respects. First it is the first review of ancient Hawaiian texts that confirm not only historical but mythological accounts of domestic and family violence in pre-contact Hawai'i, with the largest proportion by males against their female partners. Silva suggests that there were some structural and instrumental aspects of ancient Hawaiian society that explained why Hawaiian women might be more vulnerable to partner abuse such as their dependence on males' harvesting and preparation of food. Also such key emotions as jealousy and anger were common reasons for Hawaiian men abusing their female partners. These two emotions are significantly implicated in the dynamics of domestic violence reported cross-culturally in contemporary American society (Aldarondo & Mederos, 2002; Balzer, Haimona, Henare, & Matchitt, 1997; Dutton, 1998; Mousseau & Artichoker, no date; Pence & Paymar, 1993). Hawaiian women in pre-contact times would sometimes stay with offending husbands hoping for changes in their abusive behavior, would attempt to leave and be

brought back home by their batterers, or sought help from their families or others. These strategies used centuries ago by Hawaiian victims in the middle of the Pacific are remarkably similar to what battered women across the globe today employ to protect themselves and their families.

In addition to Silva's findings about the existence of violence in pre-contact Hawaiian families, various and complex remedies for these offenses were found in her study. These sanctions ranged from intervention by gods and "man" in the role of concerned family members, caretakers, siblings, and even animal forms. The consequences of domestic violence included banishment or loss of status/power in the batterer, death of the victim and abuser, and sometimes a happy ending where an offender would be instructed by gods, family members, or others to change his behavior. Silva argues that the norms, values and implicit understandings of spiritual forces that ruled harmonious relationships in ancient Hawai'i were used to manage such violations as domestic violence. Clearly underlying these strategies was a shared sense of community and mutual responsibility between humans, animals, the gods, and all elements in the cosmos including spiritual forces, ancestors, and guardians.

In conclusion, while the ideals of communitarianism as espoused by RJ proponents and the mutually dependent, spiritual nature of pre-contact Hawaiian life are most analogous in concept and application, it is difficult to imagine the ways these Hawaiian concepts for resolving offenses could be incorporated into current-day crime and punishment interventions. However what is most intriguing is that ancient Hawaiians were able to integrate both retributive and restorative strategies in the ways offenders were held accountable. And importantly, Hawaiian victims were often able to seek help, redress, protection and resolution of their violent situations

as likely by their own accord as by those around them intervening intuitively to preserve harmony on her behalf, for her children, and to help abusers stop behavior that was not only aberrant but disruptive to lōkahi or harmony in Hawaiian social life.

### Site Visits and Consultations

The third activity of my Du Bois Fellowship was to conduct site visits and engage in consultations with domestic and sexual violence practitioners and researchers in the United States and other countries. I was particularly interested in studying with practitioners and researchers whose focus was in either of two areas: violence against women in indigenous populations, and/or alternative justice methods to address sexual and domestic violence. In this section I will report on site visits in Alaska and Australia, and consultations with Dr. Kathy Daly, School of Criminology and Criminal Justice at Griffith University in Brisbane, Australia and Dr. Joan Pennell, Department of Social Work, North Carolina State University in Raleigh.

#### Site Visits to Alaska and Australia

I was honored to be hosted by domestic and sexual violence practitioners and scholars for one week in Alaska and two weeks in Australia. These sites were specifically selected because I was interested in meeting with indigenous or Native practitioners, and domestic violence advocates who could help elucidate my research interests in the ways domestic and family violence are constructed in indigenous communities and to examine the use, if any of indigenous interventions with intimate partner and family violence cases. In Alaska, I made contact with a domestic violence scholar with whom I had an already existing collegial relationship and in Australia, my itinerary was established with a colleague I had never met. Therefore, the key informants and groups with whom I met at each site were determined by my scholar-hosts. I

made independent contact with Drs. Daly and Pennell requesting consultative time as part of the Fellowship, both of whom graciously consented to meeting with me.

The study methods used for these site visits were varied. Most of my meetings with individuals or small groups were very informal. We met over coffee or meals, I would join an already-scheduled staff meeting or class in-progress, and I also did formal presentations (including a teleconferenced colloquium in Australia) on my work and research interests. I visited agencies and sometimes had the opportunity to meet with both staff and clients (battered women). There were hosted social gatherings to welcome me, some of which included large group dialogues with 20 people and others with informal one-to-one discussions. Sometimes I was able to take written notes or photos, but often it was culturally inappropriate to do so.

For the most part, my queries focused on the following topics:

- What is the incidence of domestic or family violence in your community (tribe, nation, group, township), and how do most community members understand or respond to the problem?
- Do you know if domestic or family violence existed in pre-contact times? If so, describe?
- Are there any indigenous or non-Western ways your community (tribe, nation, group, township) attempted to address domestic or family violence before Western legal and judicial systems were imposed? What were considered “traditional” methods to intervene, and did they work?
- Do you think it’s feasible to incorporate non-Western or non-punitive methods to address domestic or family violence? Why or why not? What would a community need to consider such options?

- Do you know of any indigenous methods that are currently being used in your community to address domestic or family violence, particularly ones that might be considered illegal or “unacceptable” under Western law? Can you tell me about any cases that used these methods and what the outcomes have been?
- Do you know about restorative justice? How feasible might such an approach be to address domestic and family violence in your community today?
- What is the relationship between mainstream domestic or family violence programs/services and indigenous or Native communities in your area? How do each perceive the other? What are the existing tensions, challenges and strengths of each/both in addressing domestic and family violence?

My consultations with Drs. Daly and Pennell were also very informal. Dr. Daly and I met together with groups in Queensland, and Dr. Pennell and I co-presented with a community group in Oakland, CA. Therefore, our time together was primarily spent in dialogue with others.

### Alaska

Alaska was selected due to existing professional contacts I had developed, its large rural population of Alaska Natives who still retain some of their pre-contact paradigms and cultural practices, and access to an established network of domestic and sexual assault programs (See Appendix A. for my Alaska Itinerary).

My itinerary was primarily arranged through Dr. Judy Shepard, Social Work Department at the University of Alaska at Fairbanks. Dr. Shepard has resided in Alaska for over 20 years, is a longtime domestic violence practitioner-researcher, and maintains extensive networks with indigenous communities through her teaching of Alaska Native social work students from around

the state, as well as her decades-long community service with domestic violence programs.

The visit to Alaska was the first of my consultative activities sponsored by the fellowship.

Highlights of my two-week site visit and consultations are described below.

There were some observations from my site visit to Alaska that were both surprising and confirmatory of other research activities undertaken during this fellowship. The first and honestly surprising finding was the paucity of visible or perhaps accessible programs or interventions targeted to Alaska Native populations that specifically utilize indigenous or Alaska Native cultural traditions, practices or strategies. When I specifically inquired from both Alaska Native and non-Native informants about the use of Native cultural practices to address family and domestic violence, most were unsure how such practices would be applied or adapted to deal with intimate partner violence. Specific concerns included training issues (how could domestic violence practitioners learn such cultural practices, or how could Native practitioners learn about domestic violence), where such programs would be located (in mainstream DV programs or in Native agencies), and the credibility of and funding for such programs within the mainstream compendium of social welfare and domestic violence services within the state or Alaska Native tribal communities.

From dialogues with both Native and non-Native practitioners, advocates and researchers throughout my visit, it is clear that the absence of indigenous-based family violence programs is due in large part to the longstanding influence of White feminist analyses and intervention models throughout Alaska. Whenever I inquired about interest in or any culturally based or alternative justice initiatives to address family and domestic violence, whether Native or not, most informants were either cautious, incredulous, or critical of such strategies. My experience

with other First Nations domestic advocates around the U.S. who have worked in more mainstream domestic violence programs, whether on reservations or in major American cities is that most are either disapproving of alternative or restorative justice methods or have little knowledge of them.

These findings bear out my literature review regarding the critical perspective of most domestic violence advocates about restorative or alternative justice strategies regardless of whether or not they are culturally based. As is also reported throughout the literature, it appears that much of this opinion even or particularly among my respondents in the field in Alaska was not based upon even cursory knowledge about RJ methods but upon ideological concerns about Coker's "soft justice" or informal crime processing methods, as well the reliance on male-dominated community or tribal leaders in both non-Native and Native communities.

During my site visit Alaska Native respondents who were also domestic violence advocates appeared more intrigued about such options, but also seemed almost apprehensive about stating their opinions about same. My opinion is that there may be more interest in such options by indigenous workers who are either less engaged in or new to anti-violence work and therefore somewhat removed from predominant White feminist perspectives. However it appeared that these indigenous workers were also well-inculcated to know that it might be "politically incorrect" to honestly state these unconventional views due in part to what appeared to be institutional racism and marginalization of Alaska Native populations and women in Alaska's statewide anti-violence network.

From other dialogues with both Native and non-Native practitioners and researchers, I believe there may be rural or geographically isolated indigenous communities that may be



employing more informal justice methods to address domestic, sexual and family violence in their communities. While for the most part unacceptable and in some cases illegal in most contemporary criminal justice contexts, these strategies were culturally coherent with traditional indigenous value systems for some of these communities. For example, while in Alaska I did hear of the use of banishment in one recurring, intergenerational case of incest (See Braithwaite (Braithwaite, 2002) and Findlay (Findlay, 2000) for discussions of banishment), and in two other cases heard of longtime and violent batterers who “disappeared.”

My site visit to Alaska uncovered some significant themes confirming the overriding influence of mainstream White feminist perspectives in family and domestic violence practice in Native and non-Native communities. I also think the fact that my travel itinerary was coordinated primarily by a non-Native academic, even with her extensive connections with Native women and domestic violence programs might have limited my access to more diverse and indigenous informants and perspectives.

### Australia

My original plan was to travel to both New Zealand and Australia, countries that have been engaged in many decades of RJ and women’s anti-violence work. However I was unable to coordinate my travel schedule with Maori colleagues in New Zealand. My primary contacts in Australia were arranged through feminist criminologist Dr. Kathleen Daly, the main consultant I hoped to study with during my fellowship. Dr. Daly joined me for three days in Mackay, Queensland under the sponsorship of the Queensland Centre for Domestic and Family Violence Research headed by Dr. Heather Nancarrow, Director of the Centre who planned and hosted my entire study trip. I spent two weeks in Australia, primarily conducting informal interviews,

visiting domestic violence and South Sea Islander cultural programs, and meeting with practitioners and scholars in the state of Queensland. One of the fascinating and moving experiences of the trip was traveling to the rural mining town of Mt. Isa where I observed an indigenous court presided over by indigenous (Murri) judge, Bevan Manthey (See Appendix B for Australia Itinerary).

Similar to my dialogues with indigenous and non-indigenous practitioners and scholars in Alaska, I did not hear of any indigenous or culturally based programs specifically designed to address family violence (the preferred term for all forms of intimate or family violence in Australia) in Queensland. There were a few culturally based (Aboriginal) programs for substance abuse, child welfare issues, and juvenile crime but none focused on family violence even as a co-factor with these other issues. Over the two weeks of my visit I spoke with over 30 Aboriginal and non-indigenous elders, scholars, researchers, child care workers, substance abuse counselors, sexual assault and domestic violence women's staff, teachers, cultural arts workers, judges, law enforcement and probation officers, social workers, hospital advocates, and lawyers. Upon inquiring, none of my respondents had heard of any indigenous-based family violence programs anywhere in Queensland or the country.

Upon further probing, most informants stated two possible reasons for the lack of indigenous family violence programs. First, many felt that the incidence of family violence in indigenous (Aboriginal and South Sea Island) communities was so commonplace that there was a certain level of both acceptability and acquiescence to the problem. In addition, it is my opinion that as in Hawaii and Alaska, the colonized relationship between Native people and the Western judicial system in Australia is so intact that most passively assent to the institutional

power and domain of the state in resolving criminal matters including family violence.

I was exposed to a number of excellent public awareness and community education campaigns to raise the issue of family violence within Aboriginal communities. One innovative strategy involved a well-known Aboriginal couple, both recording artists who lent the personal story of domestic violence in their relationship to a poster and concert tour. Apparently this public awareness campaign was one of the first using high-profile personalities and multi-media strategies specifically targeted to Aboriginal and indigenous populations. However, most informants reported that it is difficult to bring family violence to the forefront of Aboriginal communities given the multiple issues of poverty, alcohol and substance abuse, as well as other health and social problems in these communities.

Everyone I met was interested in and intrigued by the concept of restorative justice but reluctant about its feasibility in addressing family violence. Most informants' uncertainty about the RJ approach centered on key issues raised in much of the literature: possible coercion of victims to participate or to agree to conditions of the intervention due to fear of retaliation by offenders "or his family," disbelief that the community shared one voice about the seriousness of family violence and their subsequent role in protecting victims and holding offenders accountable, and lack of clarity about the actual application of RJ principles and methodology.

I also asked respondents about their interest in or opinions about the feasibility of using culturally based methods from their respective cultural, national or tribal contexts to address family violence. Again, while there appeared to be some tentative interest in culturally based justice alternatives, the main barriers were: lack of access to cultural practitioners or elders to train community members in their traditions; lack of agreement about what practices are indeed

“traditional” vs. hybridized; and finding elders, leaders or cultural practitioners who felt that family violence was a problem to be addressed using cultural approaches.

In one community meeting at the South Sea Islanders Community Meeting House in Mackay a number of informants offered that there was lack of interest among many young people in South Sea Island cultural traditions and that the loss of culture would first need to be addressed before its use to solve family violence could be considered. Throughout the state, many respondents argued that the Aboriginal and multiracial/ethnic non-White population of Queensland and its attendant inter-group conflicts would make it difficult to design culturally based interventions that would incorporate these complex diversities, histories, and political and social realities.

I learned that there were some Aboriginal communities in which indigenous communitarian methods were still employed though infrequently and usually subversively. I did hear frequent reports that banishment was still used in some areas. One of the indigenous community researchers also told the story of a man in his home village who had battered his wife and children quite severely. His punishment is that he was hit on the legs by the elders and leaders of the village such that he was permanently disabled but still able to walk. The cultural context of this justice method is that whenever the offender moved about in his village simply by seeing his limp everyone would know that he had committed a serious social violation. It was unknown to my informant whether in this case the justice meted out resulted in an end to the offender’s violence against his wife.

In the rural mining town of Mt. Isa, I had the honor of observing one of the innovative indigenous courts emerging in Australia. These courts have been nationally legislated to respond

to the overrepresentation of Aboriginal defendants and victims in the Australian criminal justice system. In order to respond in a more culturally appropriate and responsive manner, in those jurisdictions where there is judicial interest in establishing an indigenous court, the presiding judge may do so or may petition for state support for their region to hold an indigenous court. Mt. Isa is one of only a handful of indigenous courts in Australia presided over by an indigenous judge, The Honorable Bevan Manthey who travels to Mt. Isa every two weeks to hold court.

In Judge Manthey's court, he has enlisted two Aboriginal elders (one male, one female) who sit at the bench on either side of him at the front of the court. Apparently while many if not all Australian indigenous courts include elders who are appointed to participate in the judicial deliberations, the level, nature, scope, and manner of their involvement and authority vary considerably. Judge Manthey shared with me that it is important for the elders to sit at the bench with him to communicate to defendants the shared authority and esteem these elders are granted in his courtroom.

In Mt. Isa the indigenous court is also referred to as the Murri Court for the indigenous Murri people who predominate the region. All cases involving indigenous defendants are held over for Judge Manthey's court held every two weeks. On the afternoon I visited Mt. Isa, I observed the processing of four cases in the Murri court. One was for car theft, one was a domestic violence and drunkenness charge, one involved drunkenness and failure to care for a child, and the fourth was a follow-up for public drunkenness. In every case, the Judge would review the case with the defendant and make sure he/she understood the nature of the charges or the procedures that would occur in court. Some defendants were accompanied by a legal

advocate, while others came alone. In Mt. Isa, the police serve dual roles as law enforcement officers and prosecutors, so in every case the Chief Prosecutor who was the Police Commander presented the evidence for the state.

In one particularly intriguing case, a young woman had been charged with drinking and stealing a car. She readily admitted stealing the car, calmly stating that she did not have a car herself and she needed to get to the store to get baby food and was unable to walk the distance. The judge asked what she was planning to do with her life particularly as a mother with responsibilities for her young baby. The woman stated that she wanted to go to school and someday become a teacher. At this point, the Judge conferred with his Murri “co-judges” on the bench asking how they could assist this young woman. The male elder ran a day care center in a housing project and stated that he would be willing to have the young woman come to the center and volunteer as a teacher’s aide. The Judge inquired if the woman was interested in doing this, to which she consented. The judge reminded her that she was still under the court’s supervision in spite of the fact that she was not being sent to jail or fined, which he reminded her was the usual punishment according to the state. She agreed to meet the elder later in the afternoon at the day care center, and was told by the judge to return to court in one month to report on her progress.

In another case, Judge Manthey and the elders deliberated for a long period about the feasibility and utility of sending a male Aboriginal defendant back to his rural village (where he wanted to return) where there were family, community and other supports, but limited social welfare or substance abuse services. At one point the elders each spoke in turn to the young man in open court, asking about his motivations, type and nature of family supports, how he planned

to deal with his problems, and how he felt going home would help him in his recovery. It was obvious that Judge Manthey was ambivalent about sending the man back home where he lacked “formal” services and supports, but that he was taking the counsel of the elders under serious consideration. There were side-bar conversations off the record between the elders and the Judge while court waited. At the conclusion of the hearing, the young man was sent home and ordered to attend certain services, and to report back to the court in six months.

In conclusion, the study trip to Queensland, Australia was extremely illuminating as well as confirming about the challenges of designing and implementing culturally specific family and domestic violence programs that incorporate restorative justice principles and practices. Clearly there was universal interest in alternative justice strategies, particularly if they represent more traditional and indigenous perspectives. However there appeared to be some skepticism among most of the indigenous and non-indigenous practitioners and researchers about the capacity of their own communities to directly confront the issues of violence against women but more so to develop their own indigenous-based models to ameliorate, heal and prevent family violence in their communities.

#### Consultations with Kathy Daly and Joan Pennell

My consultations with Dr. Kathy Daly and Dr. Joan Pennell were substantively different in nature. I spent three days with Dr. Daly in Mackay, Queensland, two of which were in consultation with indigenous and non-indigenous community practitioners and researchers affiliated with the Queensland Centre for Domestic and Family Violence Research. The key themes of these meetings were summarized in the preceding section.

My consultation with Dr. Joan Pennell occurred under the sponsorship of Creative

Interventions, a community-based organization based in Oakland, CA whose mission is “to bring knowledge and power back to families and the community to resolve family, intimate partner and other forms of interpersonal violence at early stages and multiple points of abuse.” <http://www.creative-interventions.org/>. Creative Interventions was founded in 2004 by anti-violence community activist, Mimi Kim, M.S.W. whose work with the Korean American and other communities of color uncovered gaps in both the community and the criminal justice system response to domestic and family violence in marginalized communities (Kim, 2005). Ms. Kim and Creative Interventions is interested in the development of alternative and transformative justice strategies to address family and domestic violence in the Bay Area.

At a community meeting sponsored by Creative Interventions Dr. Pennell and I presented data from our various research projects focusing on culturally-based and/or alternative justice projects. Dr. Pennell’s research tested the use of family group conferencing with all forms of family violence, including intimate partner violence with indigenous populations based in Newfoundland (Pennell, 2000; Pennell & Burford, 1994). Her research is one of the few such projects in the U.S. that explored RJ with adult violence. Her study found that there was significantly more involvement, engagement, and satisfaction with FGC vs. traditional criminal justice interventions in intimate partner violence cases. Unfortunately the project was discontinued for lack of funding, and therefore ended any long-term follow-up of domestic violence victims and offenders who participated in FGC during the project period.

Both Drs. Daly and Pennell were supportive of the exploration and development of alternative justice interventions in the U.S. particularly within marginalized populations and communities of color with theorizing from, leadership by, and research and evaluation directed



by anti-violence activists and scholars from those communities. As researchers both also advocate for more rigorous testing of existing RJ initiatives, including the use of experimental designs. Finally, Daly and Pennell share the collective caution about the use of RJ with domestic violence cases. Their key concerns include accounting for victim coercion to participate, protection of victims from batterer retaliation, and careful outlining of values, principles and practices that also honor indigenous traditions while assuring that practitioners and community leaders understand the complex dynamics inherent in domestic and family violence criminal cases.

Due to their work in indigenous communities, Daly and Pennell believe that identification and training of key informants and leaders from target communities are critical to any initiative using alternative methods. In addition as scholars and researchers they believe we need better documentation of the range of indigenous methods that might be feasible to adapt or incorporate with existing Western methods in order to take a more conservative but purposefully victim-sensitive and protective approach in battering cases.

#### Summary of Site Visits and Consultations

The primary objective of my site visits and consultations was twofold. First I hoped to expand my knowledge of indigenous methods to address violence against women in other Native communities besides Native Hawaiians, which was uncovered through Silva's commissioned archival study of pre-contact Hawai'i. The choice of consultations with Dr. Daly and Dr. Pennell was to expose me to Dr. Daly's extensive feminist perspective and scholarship on restorative justice and domestic violence, and to Dr. Pennell's application of RJ principles and practices in one indigenous community intervention. Both of these objectives were well-met through the

Fellowship activities described above.

The major contributions of the site visits and consultations include:

1. There is great interest and caution in using RJ or indigenous alternative justice interventions with domestic or family violence cases in Native and non-Native communities.
2. There is a predominance of White, feminist perspectives, leadership, policy development, and intervention strategies in the anti-violence field in both Alaska and Australia from the smallest rural towns to large urban areas.
3. Indigenous communities in Australia and Alaska report that informal, culturally-based sanctions are being utilized to manage some battering situations, but these are often concealed from traditional legal systems and outsiders.
4. Prudence and limitations expressed about the use of alternative justice or indigenous cultural methods in violence against women cases center on accessibility of “appropriate” or viable cultural strategies, cultural practitioners who have the requisite interest and understanding of domestic or sexual violence dynamics, Western judicial systems that are open to such options, and training and resource issues.
5. Evidence regarding not only implementation processes but the efficacy of alternative justice methods in intimate partner violence cases is sorely needed to help broker cooperative partnerships and resources between courts, law enforcement, domestic violence programs and indigenous communities interested in pilot testing RJ or other strategies.

## Conclusions

My extensive review of the literature on restorative justice, the commissioned archival study on domestic and family violence in pre-contact Native Hawaiian society, and site visits to Alaska and Australia have uncovered the key and related themes below.

- 1) While there are a few select studies on the use of restorative justice with adult domestic violence cases, there is no body of empirically-based knowledge or research on the use of RJ strategies with domestic and family violence involving adult victims and offenders.
- 2) There is a paucity of empirically-based knowledge or research on the use of culturally derived or indigenous beliefs, traditions and practices to address violence against women.
- 3) There are consistent themes in the literature regarding strengths and cautions regarding restorative justice as a viable strategy to address violence against women as articulated by both RJ proponents and critics.
- 4) Calls for prudence regarding the use of RJ to address violence against women are predominantly from feminist, anti-violence scholars, practitioners, researchers and policy makers.
- 5) The field of violence against women cross-nationally continues to be dominated by the perspectives, theorizing, and policy advocacy of White feminists, many of whom have critiqued RJ and other alternative justice models as “soft” on holding batterers and society-at-large accountable for the social problem of gendered violence.
- 6) Due to documented barriers, service gaps, and abuses in the traditional criminal legal system, there is growing interest from scholars and practitioners in communities of color and indigenous communities, and among a subset of feminist anti-violence advocates in

alternative justice methods.

- 7) Family group conferencing, perhaps the most frequently employed RJ strategy has its roots in Maori culture and has been used with both indigenous and White populations. However, the use of FGC has not been documented with adult family violence interventions in either indigenous or White communities.
- 8) In Native Hawaiian as well as other Native cultures there were once (and are still covert) indigenous-based, social sanctions against family and intimate partner violence that may no longer be viable in contemporary, post-industrialist societies. Hybridized (combining Western and indigenous) criminal-legal strategies that replicate certain elements of traditional indigenous sanctions for use in and by specific indigenous communities and social contexts have yet to be designed, pilot tested, and evaluated.

#### Implications for Criminal Justice Practice and Policy

The major finding of this Fellowship is that there have been no intervention research studies in which a carefully crafted restorative justice model has been designed address domestic or family violence primarily focused on intimate partner violence. There are justifiable concerns raised both in the literature and among a plethora of practitioners, researchers, and policy makers about the use of RJ in domestic, sexual or family violence situations.

However, given three decades of scholarly and practitioner experience regarding domestic and sexual violence, along with growing dissatisfaction with the current criminal justice response to the crime of domestic violence, the need for innovative justice intervention and prevention strategies is long overdue. We must begin by convening and sponsoring well-organized, thoughtful, analytical and less rhetorical opportunities for dialogue on these issues.

These dialogues must bring together diverse stakeholders concerned about criminal justice and crime prevention, including policy makers, feminist criminologists with research expertise in RJ, alternative justice, and/or violence against women, practitioners and scholars working and researching in the fields of gender violence, women's issues, and indigenous issues, and Native and indigenous peoples. The conversation and analysis must begin.

Most of the research on the use of existing measures to hold batterers accountable for their crimes (with the possible exception of Gondolf) is inconclusive (Davis, Taylor, & Maxwell, 1998; Gondolf, Chang, & Laporte, 1999; Healey, Smith, & O'Sullivan, 1998; Heckert & Gondolf, 2002; Klein, 1996; National Institute of Justice, 2003a, 2003b). Given the meager efficacy rates of our current criminal justice interventions with offenders, we need to take the bold action of designing and pilot testing alternative/transformational crime processing strategies to address gender violence. These interventions must be developed by and/or under the close scrutiny of feminist anti-violence scholars, researchers and practitioners who are open to these alternatives.

There is a growing call for more and diverse justice methods to deal with gender violence particularly by women of color (Incite! Women of color against violence, 2002; Kim, 2005; Smith, 2005). Referred to as community accountability strategies, these measures are intended to restore and empower communities (families, friends, neighbors, churches, workplace) to take responsibility for the crimes of violence against women. Broader in scope but more narrow in practice than most already established RJ or communitarian strategies, community accountability as posited by women of color working in the anti-violence field is grounded as an alternative to traditional and existing criminal justice processing methods; however, it does not imply that all

crimes against women can or should be managed external to or separate from the current judicial system. It is not surprising that these calls for more and better justice would come from women of color working in the anti-violence field as their intersected (see Crenshaw, 1994) interests in both protecting the safety and rights of women, as well as seeking justice for communities of color – men and women alike – are fundamental concepts and practices in their advocacy work.

Another finding and subsequent implication for the criminal justice field is the need for more rigorous study of culturally based interventions to address domestic and family violence. My archival research of family violence in pre-contact Native Hawaiian families is testimony that abuse not did indeed occur in Hawaiian society before contact from the West but that indigenous and culturally contextualized sanctions and practices were used to manage such violations. This confirms as does data collected from key informants in Alaska and Australia that many Native peoples have longstanding traditional methods for addressing family and intimate partner violence. As suggested by Daly (1994; 1999; 2002; 1998), there are diverse indigenous and non-indigenous traditions that can be hybridized or coupled with current-day legal and criminal processes to account for the multiple and complex demands for security, justice and respect when dealing with family violence within communities with diverse cultural histories, values, and practices. These innovations must be funded as multi-year projects, along with research and evaluation to track outcomes and participants longitudinally.

In conclusion, I believe the research findings and subsequent recommendations for future research and policy directions in the field are consistent with and honor W.E.B. Du Bois's own intellectual view of the confluence of culture, crime, and justice as a fundamental aspect of

American life, and his vision of a world in which justice would prevail for those most marginalized and underserved.

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## Appendices

- A. Itinerary for Alaska Study Trip
- B. Itinerary for Australia Study Trip
- C. Abstracts of Select Hawaiian Legends

APPENDIX A.

Itinerary for Alaska Study Trip

22 March 2004

AM: Visit 1) battered women's shelter and 2) Cheghutsen Project (SED children)  
Evening: Meet with UAF distance class by phone about UH

23 March 2004

AM:

9:30 – 10:30 Meeting with the CATHERINE KOVEROLA, Chair of Psychology Dept and Community Psych

10:30 – 11:30 Meeting with PAM DETERS, Asst Prof, Psychology and Director of Alaska Natives in Psychology program

Meet Dean of the College of Rural Alaska

1:00 – 2:00 Meet with Social Work students

2:00 – 2:30 Meet with CECILE LARDON, Asst Prof & PI for Culture and Health in Alaska Natives Project

2:30 – 3:00 Speak at Judy's class or meet with JERRY MOHATT, Director of Center for Alaska Native Health Research (Psych Dept)

24 March 2004

Breakfast with UA sociology faculty members

Lv Fairbanks for Bethel

25 March 2004

AM: Visit Yukon Kuskokwim Health Corporation (wellness activities in the Yup'ik villages)

LARRY ROBERTS, Coordinator Rural Human Service intensive, visit with class

LUNCH with Lucy Bayles, the cooperative extension agent for the Bethel

PM: Tundra Women's Shelter; Judge Devaney's Therapeutic Court Program - Sally Howard, psychologist; Dr. Strongwolf

26 March 2004

Visit Y-K inhalant abuse facility.



## APPENDIX B.

### Itinerary for Australia Study Trip

#### **01 August 04, Monday**

Meet with Kathy Daly, Griffith University, Brisbane  
Community meeting with Centre staff and community practitioners

#### **02 August 04, Tuesday**

Meetings with Kathy Daly, Griffith University, Brisbane and Heather Nancarrow,  
Director, Queensland Centre for Domestic & Family Violence Research  
Evening Reception with South Sea Islander Community Group at SSI Hut

#### **03 August 04, Wednesday - Thursday**

Meetings with Centre's Aboriginal and Torres Strait Islander Reference Group; Mackay  
Domestic Violence Working Group; Centre staff

#### **06 August 04, Friday**

9 – 11 am Formal presentation sponsored by Queensland Centre for Domestic &  
Family Violence Research  
12 Lunch reception  
1-5 Meeting with Centre's Reference Group

#### **09 – 11 August 04, Monday - Wednesday** Mt Isa trip

Monday: Attend DV court; meet with community practitioners  
Tuesday: Attend Murri Court; reception and meeting with Magistrate Bevan Manthey and others  
working on Indigenous family violence; meet with indigenous legal services; meet with domestic  
violence services

#### **11 August 04, Wednesday**

Meet with Jackie Huggins, Aboriginal scholar and DV Research Working Group member

## APPENDIX C.

### Abstracts of Selected Native Hawaiian Legends

#### **Kahalaopuna**

This myth is significant in its personification of innocence and evil. It stands out as one of the most violent in terms of abusive domestic relationships. There is an accepted pre-destiny to live with violence out of duty and responsibility as well as to withstand mistreatment without personally seeking help. The cycle of abuse was broken only by guardian spirits and a compassionate passer-by who restores her life and seeks revenge for wrongs inflicted.

The heroine is pure, dutiful, of good breeding and she comes from exceptional bloodlines. She has long-honored a commitment to her betrothed chief and has been provided with food from his lands since infancy. He is weak-minded, easily influenced and given to believing in the most negative and idle hearsay. A seething anger is fueled by rumors of her loss of innocence yet when he encounters her directly, he is completely smitten by her great beauty. He struggles with his anger and the burning desire to possess her untouched by any other. To assuage his wrath, he murders her brutally and repeatedly, burying her body each time to conceal his crime. She is restored to life by guardian spirits only to fall prey to his violence again and again. She never falters in her duty to him and is powerless when she is with him. She is finally rescued from this cycle of abuse by a good chief who plots the death of the evil one. Yet, in the end, the heroine becomes careless and she is drawn into the surf where she is devoured by a spirit form of the evil chief.

The disturbing message in this version of the tale is that no matter how innocent and morally good the heroine is, she is still victimized and dies painfully in the end. Good does not triumph. She appears to be unable to break the cycle of abuse to the point that accepts death knowingly and allows her abuser to succeed in preventing further attempts to ever restore her life again.

#### **The Punahou Spring**

The orphaned children in this legend accept the constant abuse of their stepmother when their father is absent. They do not retaliate or complain to their father but instead escape from their home several times to seek relief from her mistreatment. When their father discovers the horror of the situation, he murders his second wife and takes his own life.

The children are resourceful and have extremely good survival skills. They are supported by spiritual guides and humans who help out of compassion and respect for their youthful ability to persevere despite odds.

#### **The Woman Who Married A Caterpillar**

This legend is typical of many in which a human wife unknowingly pairs off with a husband who is a demigod shape-shifter. She works hard to care for him but he does nothing to support her or fulfill her basic need for food. As a result of severe neglect, she reaches the point of death by

starvation. Her family becomes concerned about her increasingly bedraggled appearance and upon consulting a priest, they are told of the husband's true nature. They are given instructions to free the woman from abuse and to punish the abuser.