

LWVVA Restorative Justice Study

Consensus Questions and Supporting information

Question One: Do you support Restorative Justice programs as an option for our criminal justice system: for adults? ___ for juveniles? ___ for both? ___

Background:

Before looking at programs and users of programs, examine first the Restorative Justice (“RJ”) paradigm as contrasted with the traditional criminal and juvenile justice systems (“CJS”). Why? Because if programs are devised just for the purpose of reducing the caseload of the current system, or just as a means of using volunteers from the community to deal with victims and offenders, rather than CJS professionals., much of the purpose and possibilities of the RJ paradigm will be lost.

Regarding a definition: there has been much talk in the field about “defining” restorative justice, and one common conclusion is that there cannot be one “definition.” A paradigm is too broad for a simplistic one-line definition.

As one author says: “Restorative justice is the umbrella term that best defines and describes the nature of the reforms being advanced through this movement.” (Andrew N. Montgomery, 1998, *“Restorative Justice and the Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil’s Advocate,”* available at www.cfcj-fcjc.org/full-text/montgomery.htm)

RJ Advocates tend to believe that the “traditional” (by some referred to as “retributive”) system of administration of justice in the U.S. has not worked well, and has and will frequently fail to achieve healing, changes in behavior and just outcomes, regardless of how “tough” it is made because of the following:

1. It treats crimes as acts against the state, rather than breaches of relationship with individuals and/or a community, and thus does nothing about – and often hinders – meeting the human needs for restoration and reconciliation, *i.e.*, the acknowledgement and repair of harm done followed by reintegration.
2. Focus is substantially on the offender, with little focus on needs of the victims, and usually no focus on needs of the community.
3. Focus on punishment and incarceration, and the resulting increased spending on prisons and other institutions, has not proved to serve the long term interests of protecting society. (Federal and state courts and governments are now recognizing this, as many are changing their “3 strikes and you’re out” and increasing emphasis on re-entry programs to improve the current 67% rate of re-arrest.*)
4. Simply stated, the traditional adversarial CJS asks only three questions: What law was broken? Who did it? and How do we punish them?

* Of the 272,111 persons released from adult prisons in 15 States in 1994, an estimated 67.5% were rearrested for a felony or serious misdemeanor within 3 years, 46.9% were reconvicted, and 25.4% resentenced to prison for a new crime. Source: US Dept of Justice Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/crimoff.htm>, which has other statistics and resources for further research.

The RJ paradigm asks three different questions: "Who is hurt? What do they need? How can those needs be met?" (Howard Zehr, *Changing Lenses*) and is based upon a collection of principles and values, which are exemplified by the below "signposts" created by Howard Zehr and Harry Mika, two leaders of the RJ movement.

In regards to Question 1, consider whether or not these principles and considerations should apply to situations involving juveniles or adults or both. Then you can determine if programs and practices based on these should be developed for either group or both.

Restorative Justice Signposts

We are working toward restorative justice when we--

- I.focus on the harms of wrongdoing more than the rules that have been broken,
- II.show equal concern and commitment to victims and offenders, involving both in the process of justice,
- III.work toward the restoration of victims, empowering them and responding to their needs as they see them,
- IV.support offenders while encouraging them to understand, accept and carry out their obligations,
- V.recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable,
- VI.provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate,
- VII.involve and empower the affected community through the justice process and increase their capacity to recognize and respond to community bases of crime.
- VIII.encourage collaboration and reintegration, rather than coercion and isolation
- IX.give attention to the unintended consequences of our actions and programs,
- X.show respect to all parties, including victims, offenders and justice colleagues.

--*Harry Mika and Howard Zehr 5/8/97*

For additional examples of principles, see:

<http://www.restorativejustice.org.uk/resources/pdf/principles.pdf> (UK RJ Consortium)

<http://www.cnetwork.ca/RJ/NationalConsultation/BasicPrinciples.htm> (UN principles)

Programs: To be restorative, practices and programs should be based on these values and principles and aim at answering the three RJ questions: Who is hurt and how? What are their needs and how can those needs be met (which includes determining by who has responsibility for repair)?

By focusing on determining all harms, attention must be paid to who all are harmed. This may include direct victims, their loved ones, neighbors and their broader community. The family of the offender and others connected to the offender and his or her community may well be victims. Often, the offender him or herself is a victim – at least in the sense of being harmed -- by his or

her own actions, and at times, is a victim of the actions or inactions of others (*e.g.*, abuse, neglect, lack of community support, racism, and on).

Needs include repair – of property, physical and emotional injury, breached relationships, lost sense of security and control. Traditional justice processes, other than the occasional order for financial restitution or order to “stay away” from the victim, do not address these needs.

Opposition: Although there are few complete opponents of RJ, many people raise the following concerns, which are coupled with some responses:

1. If the goal is to involve victims in determining their needs and desired outcomes, what if they don't want to participate?

Any practices or processes should always be voluntary for victims. Their participation should be sought out and supported sensitively by people who have received some training in understanding victimization and trauma. (However, this does not mean they have to be professional counselors, etc.)

Victims' participation can range from being part of policy development to being in dialogue with the person who harmed them. For dialogue processes, if the actual victim does not want to or is unable to participate, others have “spoken for” them, such as a family member, or members of the affected community, or volunteers from the community at large who speak to the impact on the community, or “surrogate” victims who have been through similar crimes.

2. When victims do want to participate, are they getting their needs met?

Numerous studies, evaluations and self-reports have all indicated that participating victims feel safer, feel heard, and feel more satisfied than with the traditional justice system, where they have little opportunity to affect the outcomes of a case and to have their needs addressed. When local programs have measured self-reported victim satisfaction on each of these measures, results have typically been in the 85% to even 95% range. Victim satisfaction with traditional adversarial system has not typically been measured by individual jurisdictions.

3. In the US, there are thousands and thousands of juvenile and criminal cases. Not all victims and all offenders will be willing or ready to participate in a dialogue. What are ways that the CJS can be more restorative that don't involve direct contact between victims and offenders?

See information for Question Two.

Question Two: If yes, when should major interventions take place for juveniles? ___ for adults? ___

Simplistically, Restorative Justice practices can be divided into two major categories: processes that involve a direct meeting between the person or people that were harmed and the person or people who did the harm in a given situation (i.e., crime) and other practices/processes/policies.

First, practices bring the victim and the offender in a given case together for a facilitated dialogue:

There are many models of victim-offender dialogue (which go by a number of names, commonly “restorative conferencing,” “victim-offender mediation”). They are or should be completely voluntary for the victim and somewhat for the offender; usually involve some pre-meeting screening and preparation of participants; are facilitated by trained volunteers or professionals; and may involve supporters, service providers, neighbors, and/or other community members in the meeting. Generally the purpose is for all to hear one another’s experience of the crime in a safe environment, to learn of the impacts on those harmed, to learn of the reasons/thinking/attitudes of the people doing the harm, and often to hear apologies and to collectively come up with solutions for repairing the harm -- to the extent possible, and to create future plans for different behavior and reintegration into the community.

Victim-Offender dialogue processes are used around the country (and elsewhere) for:

- ◆ complete diversion of adult and criminal misdemeanors and some felonies from the criminal/juvenile justice system (*i.e.*, referred by parties themselves rather than reported to police, referred by police rather than filed, or referred by intake officers rather than beginning the court systems’ processes)
- ◆ prior to entering a plea so that the case is then diverted from the court system on the condition that any agreements reached are met or the victim is otherwise satisfied (this generally means that the judge, prosecutor and defense attorney are all approving of this diversion)
- ◆ after a plea and prior to sentencing, so that if there is an agreement about some actions needed to make repair or get services, for example, the judge will or may incorporate the agreement into the sentencing order
- ◆ as a term and condition of probation. Generally this means that the offender is not ordered specifically to meet with the victim, but rather is ordered to be screened or to cooperate with an RJ program, so that trained personnel can determine the appropriateness of the case for a dialogue and so that the victim does not feel pressured to participate
- ◆ post-sentencing: There are victim-sensitive programs that facilitate dialogues between victim and incarcerated offenders as requested by the victim and if the offender is willing. These are often involving crimes of severe violence and the facilitators should have substantial training and be able to take sufficient time to screen and aid participants to be sure that they are ready for these very difficult, but reportedly profoundly meaningful conversation. These can also be conducted in the community, where there is no incarceration or after return.

Other restorative practices: Many jurisdictions around the country are:

- ◆ Conducting victim awareness/empathy classes for offenders in the juvenile and adult institutions and in community-based corrections (*i.e.*, parole and probation)
- ◆ Conducting victim impact panels, involving victims who want to share their stories with offenders (not their own)
- ◆ Community/citizen circles which meet regularly with offenders still in or returning to their communities after detention or incarceration, to help hold offenders accountable while offering support for their efforts to reintegrate
- ◆ Assigning community service to offenders that is restorative in nature (*i.e.*, builds competencies and/or community connectedness, or serves the actual victims or otherwise meets the victims' needs/desires, or is chosen by the offender in order to find empower the offender to find and choose ways of contributing to ones' community)
- ◆ Creating restorative community projects, sometimes in partnership with other nonprofits, businesses, schools, etc., to which offenders may be assigned.
- ◆ Developing community advisory committees working on development of neighborhood safety and offender reentry programs
- ◆ Training justice and corrections personnel in victim sensitivity to reduce secondary victimization
- ◆ Facilitating dialogue and therapy groups inside correctional institutions that focus on offender accountability and developing empathy
- ◆ Supporting community dialogue practice that can address community members' safety concerns, placement of half-way houses and other transitional services
- ◆ Working with faith-based and community-based nonprofits to aid with victim assistance and offender re-entry

For an annotated bibliography of studies, please see:

<http://2ssw.che.umn.edu/rjp/Resources/Documents/RJAnnotations%20June%202003.pdf>

For examples of prison programs internationally using RJ principles, here are some websites:

<http://www.pficjr.org/programs/apac/reports>; <http://www.pficjr.org/programs/stp/>

Question Three: Who should be involved in the programs?

Juveniles

Adults

Victims
Offenders
Community members
Juvenile justice system
Family
Religious organizations
Schools
Employers (current/potential)

Victims
Offenders
Community members
Adult justice and corrections systems
Family
Religious organizations
Adult educational/training institutions
Employers (current/potential)

As the variety of practices and models tend to indicate, there are many stakeholders who are viable participants in dialogue, service, educational, and re-entry processes. In addition to those named above, there is also a role for law enforcement: defense and prosecution attorneys; judges; victim services and advocacy organizations; other victims and offenders not related to a specific case; volunteers as facilitators of dialogues, programs, and community services; and providers of social, psychological, substance abuse services.

Question Four: What programs should be offered as options?

- ◆ Victim offender dialogue
- ◆ Victim impact and empathy training
- ◆ Dialogue seminars about accountability and community involvement
- ◆ Other

These and other examples of restorative practices and programs are described under Question Two above.

Question Five: How should offender, family, relatives, neighbors, and community members be involved? (Example: required parenting classes)

For all categories, there is participation in crime prevention activities, community dialogue, public policymaking, and community development projects. In terms of legislating any of the following, there is a distinction between which the court has jurisdiction over (the offender) and others. As policies, however, the state and local legislative bodies and planners could allocate resources to supporting the maintenance of the following opportunities.

- A. Opportunities for **offender** participation could include:
1. Dialogue programs: Completing requirements of any referral to an RJ program; Victim-offender dialogues (if victim willing and case is appropriate), offender-community dialogues, and completion and compliance with any terms and conditions agreed to in dialogue process
 2. Other practices: restorative community service, financial restitution, repair to property damaged by offender or other service to victim (if victim willing), victim awareness/empathy programs, willingness to use social, therapeutic, and employment services (*e.g.*, parenting classes, substance abuse management program, job training)

B. Opportunities for **parental participation in juvenile cases:**
(This may require some legislative action to give courts further authority over parents of system-involved juveniles.)

Counseling, participation in dialogue processes, support offender's efforts to the best of their ability to comply with agreements (*e.g.*, transportation, supportive attitude, possibly paying restitution up front to victim if desired and creating repayment plan with juvenile). Care must be taken here as to not over-burden families already struggling with lack of resources.

C. Opportunities for **family/relatives involvement for juveniles and adults victims and offenders:**

Willingness to participate in dialogue processes and agreed-upon counseling, receiving support services, volunteer activities

D. Opportunities for **neighbors and community members:**

Willingness to participate in individual cases as they are impacted by a crime; support victims and offenders in healing and reintegration, be trained as community facilitators; help create and support restorative community service projects and job development.

Question Six: Who should collect information and set standards for options?

Local agencies

Funding sources

State agencies

Courts

Restorative principles emphasize meeting the needs of the people actually involved, *i.e.*, not just listening to, but involving the real stakeholders. Traditional justice system practices and policies emphasize the input and decision-making by professionals. However, one of the reasons the RJ movement has been expanding throughout the U.S., is that professionals such as judges and wardens, as well as legislators dealing with scarcer resources, are seeking new means for addressing the aftermath of crime and mechanisms for future crime prevention. Some have been open to new practices that involve sharing decision-making authority with others; some feel that the professionals have the expertise.

A number of states, such as Colorado, Vermont, and Minnesota, and many local jurisdictions have determined that their juvenile justice paradigm should be one of restorative justice, and are also experimenting with its broader application in the adult systems. In other countries, such as Australia and New Zealand, the juvenile system has completely moved to an RJ paradigm with systemic adoption of dialogue and conferencing for the vast majority of juvenile cases and they are expanding the restorative approach to adult cases as well.

Restorative justice also values developing processes and programs that are culturally appropriate. Thus there is a great deal of emphasis by proponents on not having a "cookie cutter" approach to developing programs. While this has led to challenges in developing standards of practice and evaluation, it has also led to tremendous creativity in molding practices that work for specific communities. With the great emphasis on community and volunteer involvement, this grassroots approach is critical for maximizing and sustaining this involvement.

On the other hand, the US system of justice is based on notions of fairness, including that “the punishment should fit the crime.” From an RJ perspective, “accountability” would be more appropriate than just the concept of punishment, but nonetheless, some element of balance is generally deemed necessary by proponents and is a concern raised by others. This concern is often addressed by the involvement of justice officials, whether judges or probation personnel, who, in regards to agreements for repair reached in a dialogue process, may retain the right to approve or disapprove of an agreement. The compliance is usually monitored by either the RJ program staff or the courts, and non-compliance usually leads the offender back into the traditional court response of graduated sanctions.

The RJ study done by the League this past year revealed that few of our jurisdictions did effectively track and monitor the amount of financial restitution ordered and collected and the hours of community service ordered and performed in the aggregate, nor the percentages of persons complying.

Leagues should recommend so if they believe that such data should be collected locally and reported to the state and the state provide some evaluation, which would also compare results based on whether hours and payments are court-ordered or agreed-to in a victim-offender or offender-community process.

Question Seven: Who should evaluate equitable access to the programs and the effectiveness of the programs? What measures are important?

(Examples: victim satisfaction, offender compliance, extent that harm is repaired, recidivism, restorative community services that build skills or offer reasonable financial fine)

The Virginia Supreme Court and the Restorative Justice Association of Virginia (RJAV) have been in discussion about developing standards of training and practice. This is a challenging issue as one of the RJ principles is inclusiveness and diversity– to require certification may preclude the involvement of many excellent volunteers.

For funding purposes, most local RJ programs measure some or all of the below items, either by internal or external evaluators. The auditors of funders generally review the effectiveness as well, whether from public or private funding.

Most justice systems do not measure these system-wide, but could. Localities could do random samples on the satisfaction measures, and the state could mandate evaluations of RJ and non-RJ programs.

The following measures are commonly offered as means of holistic evaluation of RJ programs, and might also be applicable to all cases:

Victim satisfaction (such as feelings of being heard, that the process was fair, that the offender was sincere and accountable, and was repair made)

Offender compliance and satisfaction (such as feelings of being heard, due process was served, that the outcome was fair and that they were able to comply with agreements reached. Some evaluations also discover that the offenders feel supported by others, including the victim.)

Restorative community service can be evaluated on how does the community benefit, the offender benefit, does the offender continue as a volunteer, are new projects developed with community and business support

Justice systems and program staff can be evaluated on how restorative and victim-sensitive they are as well.