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Restorative Justice Symposia Summary

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Restorative Justice Symposia Summary

National Institute of Justice

The material presented on these pages is the product of five regional symposia held on restorative justice between June 1997 and January 1998.

For some time now there has been growing dissatisfaction with the justice system. Citizens feel disconnected, victims are dissatisfied, and those working in the system are frustrated. Policymakers are increasingly concerned about the burgeoning cost of justice in the face of this discontent and the high rates of recidivism that exist.

Over the past decades, there has been growing interest in new approaches to justice, which involve the community and focus on the victim.

The current system, in which crime is considered an act against the State, works on a premise that largely ignores the victim and the community that is hurt most by crime. Instead, it focuses on punishing offenders without forcing them to face the impact of their crimes.

Restorative justice principles offer more inclusive processes and reorient the goals of justice. Restorative justice has been finding a receptive audience, as it creates common ground which accommodates the goals of many constituencies and provides a collective focus. The guiding principles of restorative justice are: [1]

1. Crime is an offense against human relationships.
2. Victims and the community are central to justice processes.
3. The first priority of justice processes is to assist victims.
4. The second priority is to restore the community, to the degree possible.
5. The offender has personal responsibility to victims and to the community for crimes committed.
6. Stakeholders share responsibilities for restorative justice through partnerships for action.
7. The offender will develop improved competency and understanding as a result of the restorative justice experience.

Notes

[1]Created for the National Institute of Corrections Nationwide Videoconference held December 12, 1996.

The content on this page is taken from materials collected in 1997 for national symposia on restorative justice. While more up-to-date resources on restorative justice are available, NIJ believes that this material still is useful to the discussion and exploration of restorative justice.

Why Change From the Present Justice System? Benefits and Barriers to Consider

A lot can be learned from those who laid the groundwork in implementing early restorative justice approaches. This section outlines some of the benefits and barriers to implementing restorative justice in your community.

Benefits

In assessing benefits, it is important to determine what good will come from restorative justice principles and practices. The results of a "benefit assessment" can help:

- Developing marketing messages for various constituencies, including community members, offenders and their advocates, victims and service providers, justice practitioners, elected officials, the news media, and allied professionals.
- Comparing existing approaches to justice in the context of a more beneficial approach, i.e. cost effectiveness, victim involvement, offender competency development, community appreciation of justice practices, etc.
- Building programs on perceived strengths.
- Evaluating programs, especially when benefits for these are tangible and can be measured in terms of performance outcomes.

Barriers

In assessing barriers, it is important to identify all possible challenges to the implementation of restorative justice programs and practices. The results of a "barrier assessment" can assist in:

- Early identification of potential opponents' arguments against restorative justice approaches.
- Focusing planning and implementation on reducing or eliminating possible barriers.
- Evaluating program effectiveness based upon success in overcoming any barriers.

It is important to note that no barrier is insurmountable. They should simply be viewed as "challenges" to be addressed up-front, and not avoided through the program planning, implementation and evaluation process.

Fundamental Concepts of Restorative Justice

1.0 Crime is Fundamentally a Violation of People and Interpersonal Relationships. [1]

1.1 Victim and the community have been harmed and need restoration.
1.1.1 The primary victims are those most directly affected by the offense but others, such as family members of victims and offenders, witnesses, and members of the affected community, are also victims.

1.1.2 The relationships affected (and reflected) by crime must be addressed.

1.2 Victims, offenders and the affected communities are the key stakeholders injustice.
1.2.1 A restorative justice process maximizes the input and participation or these parties-- but especially primary victims as well as offenders -- in the search for restoration, healing, responsibility and prevention.

1.2.2 The roles of these parties will vary according to the nature of the offense as well as the capacities and preferences of the parties.

1.2.3 The state has circumscribed roles, such as investigating facts, facilitating processes and ensuring safety, but the state is not a primary victim.

2.0 Violations Create Obligations and Liabilities.

2.1 Offenders' obligations are to make things right as much as possible.
2.1.1 Since the primary obligation is to victims, a restorative justice process empowers victims to effectively participate in defining obligations.

2.1.2 Offenders are provided opportunities and encouragement to understand the harm they have caused to victims and the community and to develop plans for taking appropriate responsibility.

2.1.3 Voluntary participation by offenders is maximized; coercion and exclusion are minimized. However, offenders may be required to accept their obligations if they do not do so voluntarily.

2.1.4 Obligations that follow from the harm inflicted by crime should be related to making things right.

2.1.5 Obligations may be experienced as difficult, even painful, but are not intended as pain, vengeance or revenge.

2.1.6 Obligations to victims such as restitution take priority over other sanctions and obligations to the state such as fines.

2.1.7 Offenders have an obligation to be active participants in addressing their own needs.

2.2 The community's obligations are to victims and to offenders and for the general welfare of its members.
2.2.1 The community has a responsibility to support and help victims of crime to meet their needs.

2.2.2 The community bears a responsibility for the welfare of its members and the social conditions and relationships which promote both crime and community peace.

2.2.3 The community has responsibilities to support efforts to integrate offenders into the community, to be actively involved in the definitions of offender obligations and to ensure opportunities for offenders to make amends.

3.0 Restorative Justice Seeks to Heal and Put Right the Wrongs.

3.1 The needs of victims for information, validation, vindication, restitution, testimony, safety and support are the starting points of justice.
3.1.1 The safety of victims is an immediate priority.

3.1.2 The justice process provides a framework that promotes the work of recovery and healing that is ultimately the domain of the individual victim.

3.1.3 Victims are empowered by maximizing their input and participation in determining needs and outcomes.

3.1.4 Offenders are involved in repair of the harm insofar as possible.

3.2 The process of justice maximizes opportunities for exchange of information, participation, dialogue and mutual consent between victim and offender.
3.2.1 Face-to-face encounters are appropriate for some instances while alternative forms of exchange are more appropriate in others.

3.2.2 Victims have the principal role in defining, and directing the terms and conditions of the exchange.

3.2.3 Mutual agreement takes precedence over imposed outcomes.

3.2.4 Opportunities are provided for remorse, forgiveness and reconciliation.

3.3 Offenders' needs and competencies are addressed.
3.3.1 Recognizing that offenders themselves have often been harmed, healing and integration of offenders into the community are emphasized.

3.3.2 Offenders are supported and treated respectfully in the justice process.

3.3.3 Removal from the community and severe restriction of offenders is limited to the minimum necessary.

3.3.4 Justice values personal change above compliant behavior.

3.4 The justice process belongs to the community.
3.4.1 Community members are actively involved in doing justice.

3.4.2 The justice process draws from community resources and, in turn, contributes to the building and strengthening of community.

3.4.3 The justice process attempts to promote changes in the community to prevent similar harms from happening to others.

3.5 Justice is mindful of the outcomes, intended and unintended, or its responses to crime and victimization.
3.5.1 Justice monitors and encourages follow-through since healing, recovery, accountability and change are maximized when agreements are kept.

3.5.2 Fairness is assured, not by uniformity of outcomes, but through provision of necessary support and opportunities to all parties and avoidance of discrimination based on ethnicity class and sex.

3.5.3 Outcomes which arc predominately deterrent or incapacitative should be implemented as a last resort, involving the least restrictive intervention while seeking restoration of the parties involved.

3.5.4 Unintended consequences such as the coaptation of restorative processes for coercive or punitive ends, undue offender orientation, or the expansion of social control are resisted.

Notes

[1]Used with permission form Howard Zehr, Eastern Mennonite University, and Harry Mika, Central Michigan University. Copyright 1997, Mennonite Central Committee.

Perspectives on Restorative Justice

Restorative justice is not a program that can be bottled. It is a compilation of principles and practices that come together to form an approach that involves all parties--the offender, victim, and community--to achieve justice.

This section details a few of the many different perspectives on restorative justice.

- The Minnesota Restorative Justice Initiative: A Model Experience
- Indigenous Justice Systems and Tribal Society
- Reemergence of Tribal Society and Traditional Justice Systems
- How to Build Community Support for Restorative Justice
- Communities and the Justice System- Turning the Relationship Upside Down
- Cultural and Diversity Issues

The Minnesota Restorative Justice Initiative: A Model Experience

By Kay Pranis, originally published in *The Crime Victims Report*, May/June 1997.

For the past three years, I have worked for the Minnesota Department of Corrections (DOC) promoting restorative justice throughout the state and providing technical assistance to those Jurisdictions and organizations interested in implementing the principles of restorative justice. It has been a journey of hope and discovery as I have learned about the incredible strength of those who have been victimized, the capacity of many who have caused harm to reclaim their lives and give back to their communities after decades of destruction and despair, and the wisdom of regular folks in the community who are teaching us how to wrap those who have been victimized in arms of loving comfort and protection and wrap those who have offended in arms of loving discipline and limits.

"Restorative justice" "Community justice" "Transformative justice"

"Restorative justice," "community justice," "transformative justice"-whatever term we like best-the vision is one calling us to build a society which honors the individual dignity of every human being and the centrality of relationships which give meaning to our lives. The cycle of despair concerning crime, fed by anger and fear, can become a cycle of hope when we create processes in which every participant is valued and every voice-the victim, the community, the offender-is heard in its pain, anger, fear, remorse, anguish or hope.

Need To Change Our Way of Thinking

As a society, we have been caught in thinking errors similar to those of the typical offender. Offenders will frequently assert that they had no choice, they had to steal something because they needed it, or they had to hit someone because that person had offended them. Offenders often have difficulty identifying other behavioral options.

As a society, we have been thinking that the only choice we have in responding to crime is to get meaner and meaner until we frighten people into behaving as we wish. But that is not the only choice we have for managing behavior, and fear is not the most powerful motivator.

We now know from years of research that positive forces are more powerful motivators than negative forces, that relationships shape behavior more than fear. We have changed the way we raise children and the way we run the workplace based on that research. It is time to apply that knowledge to the way we discipline community members who violate our rules. We have also been assuming that by being mean to offenders we are satisfying the needs of victims. Research on victimization tells us that the primary needs of victims are not met by simply exacting revenge on the offender.

Department of Corrections Restorative Justice Initiative

In 1990 several community groups and a not-for-profit criminal justice agency sponsored a conference on restorative justice and introduced the idea to some key practitioners in Minnesota.

Subsequently, the Department of Corrections created an internal committee to study restorative justice and make recommendations to the Commissioner. In late 1992 a statewide conference on restorative justice was held involving key leadership from all parts of the corrections system. As a result of the very positive response to that conference, the Department of Corrections created a full time position in February 1994, Restorative Justice Planner, to begin exploring the ways that the principles of restorative justice could be applied in corrections, courts, law enforcement, education, and communities.

Purpose of Initiative. The purpose of the DOC Restorative Justice Initiative is to promote and support the use of practices, policies, and programs chat focus on repairing the harm of crime and strengthening communities in all jurisdictions around the state. This effort responds to the growing realization that the current system is largely ineffective in meeting the needs of victims, reducing crime or increasing the public sense of safety. The scope of this effort extends beyond the Department of Corrections to include local corrections as well as community groups, policy makers, educators and law enforcement.

How It Works. The Initiative began with a broad education effort about the philosophical framework of restorative justice to engage the interest and enthusiasm of key stakeholders. Then, upon request from those agencies or jurisdictions interested in moving toward a more restorative system, the Initiative provides technical assistance in designing and implementing applications of the restorative justice philosophy. The Initiative also creates networks of professionals and community activists to support one another and share accumulating knowledge regarding new practices.

Education is provided through public speaking, training, an annual conference, distribution of written materials, and publication of a newsletter. Technical assistance is provided through on site and phone consultation, referrals to state and national experts, research, and skills training. Networking is promoted through organized special interest meetings, maintenance of a special interest resource list and phone referrals to interested colleagues.

Results

As a result of the Minnesota DOC Restorative justice initiative, new practices have been implemented in numerous schools, law enforcement agencies, community corrections departments, field services offices, juvenile facilities, adult institutions, and neighborhoods.

In the Schools. The Minnesota Department of Children, Families and Learning published a booklet entitled Restorative Measures which encourages schools to use restorative practices in response to discipline problems, particularly as an alternative to expulsion. Restorative practices in schools include peer mediation, classroom circles to resolve problems, and family group conferencing. All of these practices involve face-to-face resolution in which the multiple impacts of the offending behavior are identified and addressed. Those people most affected by the behavior play an important role in resolving the incident.

In Enforcement. The major new restorative practice in law enforcement, piloted by about a dozen police departments in Minnesota, is the use of family group conferencing as a diversion process for juveniles.

In Community Corrections. Community corrections departments and DOC Field Services offices have implemented victim-offender meeting programs, family group conferencing, a crime repair crew of supervised offenders, increased emphasis on paying restitution, community panels which meet with offenders, multi-disciplinary case management with juveniles and their families, and victim awareness education for staff.

In over 80 counties the Sentencing to Service program involves offenders in paying back the community through supervised work on projects valued by the community in lieu of days in jail.

In Prisons. Several adult institutions have begun to apply restorative principles in the institution. The women's correctional facility has increased the involvement of inmates in constructive community service, implemented a victim empathy curriculum for all new inmates entering the facility and encourages extensive community volunteer involvement in the facility. One correctional facility for men sends out supervised work crews for constructive community service, collaborates with a the Youth Service Bureau in designing a repeat juvenile offender program with the help of inmates, and incorporates victim empathy in the treatment programs.

In Neighborhoods. The Restorative Justice Initiative is also assisting several city neighborhood groups in developing ways for neighborhoods to be involved in holding offenders accountable and reintegrating offenders into the community fabric to avoid future offenses.

Role Of The State: Though Restorative Justice Must Be Designed And Implemented Locally, State Must Provide Leadership

Applications of restorative justice principles must ultimately be locally designed in a process which involves all stakeholders. There is no blueprint for a restorative response to crime. Each community must create its own vision and its own array of responses that take advantage of its unique resources and circumstances and are guided by restorative values.

Though the hard work of designing and implementing restorative programs and practices occurs at the local level, there is a very important role for the state. The experience in Minnesota indicates that the state can provide critical leadership in articulating a vision and giving legitimacy to that vision. The Restorative Justice Initiative uses the visibility and influence of a state agency to engage community members and professionals in a discussion of underlying values which guide our response to crime. The foundation for lasting change needs to build on a broadly shared vision. The state is in the best position to lead the process of creating and communicating a statewide vision.

The Initiative, by its example, is demonstrating a new relationship between the state and local communities. The Initiative promotes system- and community-wide change in our response to crime without the use of formal authority or statutory power by engaging all stakeholders in a

voluntary, respectful process of examining an alternate vision and allowing local control over the decisions to make change, the specific path of change, and the pace of change.

Another important role for the state is that of facilitator-providing education, assisting local jurisdictions in identifying helpful resources, connecting people with common interests and encouraging new ideas.

As state and local communities work in partnership toward a more restorative response to crime, it is the state's role to keep the theory in view, to stay referenced to the principles of restorative justice, while communities raise the issues encountered in practice as both work jointly toward refinements in the theoretical understandings and practice.

The state also bears responsibility for ensuring that community processes are fair and appropriate. For example, the community is not allowed to tacitly condone domestic abuse by putting pressure on a victim to accept a resolution which does not clearly condemn the behavior. The state must hold the community accountable to larger society norms and to the welfare of all its members, including both victims and offenders.

Pointers in Promoting and Implementing Restorative Justice

Some key points about how to effectively advance a restorative vision have emerged from our experience in promoting restorative justice:

- It is very important to be patient and to listen to the objections being raised, especially concerns expressed by victims.
- All restorative Justice practitioners should become knowledgeable about victimization.
- Energy is most effectively expended supporting those who are interested, not in trying to convince those who aren't. Watch for opportunities; remain flexible.
- There is no single path to restorative outcomes.
- A positive vision appealing to humane values is very powerful.
- Make your process safe for dissent. Listen, listen, listen.
- Return regularly to a discussion of underlying values and philosophy.

Engaging the Community

Several of the models arising from the exploration of more restorative responses to crime involve community members in the process of supporting victims and deciding the terms of accountability for those who have violated the community norms. Community panels for juveniles, family group conferencing, community intervention teams and sentencing circles consistently demonstrate the capacity of community members to call themselves and their offending members to a higher level of moral behavior.

Working With Offenders. In these processes community members are skillful at separating the behavior from the individual. They are able to confront the behavior and communicate anger and disapproval, while still holding out a hand to assist the offender in finding a new path. Community members repeatedly design unique forms of responsibility that fit the particular case

and give specific meaning to the obligations placed on the offender. In these processes community members are using the same skills which characterize good parenting.

The experience with sentencing circles in the Yukon teaches us that serious chronic offenders who are deeply entrenched in chemical dependency and a criminal lifestyle can change their behavior if the community provides sufficient support and monitoring. That experience also teaches us that communities can change and can become active guardians of the welfare of every member, including victims and offenders.

Response to Crime Must Build Community Strength. The most effective responses to crime are those which build community strength. Every criminal justice intervention should answer the question: Is the community stronger after the intervention than it was before the crime happened? Constructive conflict resolution is a building block of strong relationships. Criminal events provide opportunities for communities to experience constructive collective action, which builds new relationships and strengthens existing ones.

For example, the circle sentencing project on the Mille Lacs Reservation in Minnesota is building the community's capacity to work with its members in changing behavior and is providing a way for the community to affirm its norms and assist victims in their healing process. Two new circle sentencing pilot projects, one in the African-American community in Minneapolis and one in a suburban county, are in the planning stages.

It is hard work to prepare communities to take on this responsibility and to support them, but the results are beyond any which the system can achieve without the community.

In Designing A System All Stakeholders Should Be Included

The process of designing new system responses to crime should be grassroots and democratic in nature, including all stakeholders. Likewise, the resolution of individual criminal events should be democratic. To ensure that community processes are not advancing the interests of particular subgroups, especially those with power, it is critical that we create new ways to include the voices which are usually absent-those without power.

Traditional framing of democracy as majority decision making will not protect the invisible or the powerless in a community. Consensus building models provide more protection to individuals who lack constituencies. In the case of criminal events the powerless might be either the offender or the victim, or both. Processes such as family group conferencing and circle sentencing are based on finding consensus and involving all stakeholders. Those processes consciously include all voices and give them power to find constructive resolutions.

Restorative Justice Provides A Positive Vision

Restorative justice is calling us to a higher level of functioning-as individuals and communities. Our experience indicates that many in our communities are ready to reach for a positive vision of our future-a vision in which safety is related more to harmony than to hardware. We are limited only by the scope of our vision and our belief in our own capacity to care about others.

Indigenous Justice Systems and Tribal Society

In many contemporary tribal communities, dual justice systems exist. One is based on what can be called an American paradigm of justice, and the other is based on what can be called an indigenous paradigm.

The American paradigm has its roots in the world view of Europeans and is based on a retributive philosophy that is hierarchical, adversarial, punitive, and guided by codified laws and written rules, procedures, and guidelines.[1] The vertical power structure is upward, with decision making limited to a few. The retributive philosophy holds that because the victim has suffered, the criminal should suffer as well. It is premised on the notion that criminals are wicked people who are responsible for their actions and deserve to be punished. [2] Punishment is used to appease the victim, to satisfy society's desire for revenge, and to reconcile the offender to the community by paying a debt to society. It does not offer a reduction in future crime or reparation to victims.

In the American paradigm, the law is applied through an adversarial system that places two differing parties in the courtroom to determine a defendant's guilt or innocence, or to declare the winner or loser in a civil case. It focuses on one aspect of a problem, the act involved, which is discussed through adversarial fact finding. The court provides the forum for testing the evidence presented from the differing perspectives and objectives of the parties. Interaction between parties is minimized and remains hostile throughout. In criminal cases, punitive sanctions limit accountability of the offender to the state, instead of to those he or she has harmed or to the community.

The indigenous justice paradigm is based on a holistic philosophy and the worldview of the aboriginal inhabitants of North America. These systems are guided by the unwritten customary laws, traditions, and practices that are learned primarily by example and through the oral teachings of tribal elders.[3] The holistic philosophy is a circle of justice that connects everyone involved with a problem or conflict on a continuum, with everyone focused on the same center. The center of the circle represents the underlying issues that need to be resolved to attain peace and harmony for the individuals and the community. The continuum represents the entire process, from disclosure of problems, to discussion and resolution, to making amends and restoring relationships. The methods used are based on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature.[4]

Restorative principles refer to the mending process for renewal of damaged personal and communal relationships. The victim is the focal point, and the goal is to heal and renew the victim's physical, emotional, mental, and spiritual well-being. It also involves deliberate acts by the offender to regain dignity and trust, and to return to a healthy physical, emotional, mental, and spiritual state. These are necessary for the offender and victim to save face and to restore personal and communal harmony.

Reparative principles refer to the process of making things right for oneself and those affected by the offender's behavior. To repair relationships, it is essential for the offender to make amends through apology, asking forgiveness, making restitution, and engaging in acts that demonstrate a

sincerity to make things right. The communal aspect allows for crime to be viewed as a natural human error that requires corrective intervention by families and elders or tribal leaders. Thus, offenders remain an integral part of the community because of their important role in defining the boundaries of appropriate and inappropriate behavior and the consequences associated with misconduct.

In the American justice paradigm, separation of powers and separation of church and state are essential doctrines to ensure that justice occurs uncontaminated by politics and religion. For many tribes, law and justice are part of a whole that prescribes a way of life. Invoking the spiritual realm through prayer is essential throughout the indigenous process. Restoring spirituality and cleansing one's soul are essential to the healing process for everyone involved in a conflict. Therefore, separation doctrines are difficult for tribes to embrace; many find it impossible to make such distinctions. Whether this is good or bad is not the point. It is, however, an example of the resistance of indigenous people to accept doctrines or paradigms that contradict their holistic philosophy of life.

Law as a Way of Life

The concept of law as a way of life makes law a living concept that one comes to know and understand through experience. Law, as life, is linked to the elaborate relationships in many tribal communities. In some tribes it is exemplified by tribal divisions that represent legal systems prescribing the individual and kin relationships of members and the responsibilities individual and group members have to one another and to the community.[5] For example, in several Pueblo tribes, one is born into one of two moieties, or tribal divisions, decided by patrilineal lines. A woman can change membership only through marriage, when she joins her husband's moiety. Males generally cannot change their moiety, unless it is done during childhood through adoption or if their mother remarries into the opposite moiety. This illustrates how tribal law becomes a way of life that is set in motion at birth, and continues through an individual's life and death.

The indigenous approach requires problems to be handled in their entirety. Conflicts are not fragmented, nor is the process compartmentalized into pre-adjudication, pretrial, adjudication, and sentencing stages. These hinder the resolution process for victims and offenders and delay the restoration of relationships and communal harmony. All contributing factors are examined to address the underlying issues that precipitated the problem, and everyone affected by a problem participates in the process. This distributive aspect generalizes individual misconduct or criminal behavior to the offender's wider kin group, hence there is a wider sharing of blame and guilt. The offender, along with his or her kinsmen, are held accountable and responsible for correcting behavior and repairing relationships.[6]

Indigenous Systems Today

The status of tribes as sovereign nations are both preconstitutional and extraconstitutional. Tribes continue to possess four key characteristics of their sovereign status: a distinctive permanent population, a defined territory with identifiable borders, a government exercising authority over

territory and population, and the capacity to enter into government-to-government relationships with other nation-states.[7]

The administration of justice, law, and order is a function of government retained by the tribes as sovereign nations. It is within this realm that indigenous justice systems exist. Although there have been many efforts to limit the jurisdiction of tribal justice system [8] , tribes retain the authority to determine the legal structure and forums to use in administering justice and to determine the relationship of the legal structure with other governing bodies. Tribes have personal jurisdiction over their members and non-member Indians, territorial jurisdiction over their lands, and subject matter jurisdiction over such areas as criminal, juvenile, and civil matters. While limited by the Indian Civil Rights Act in sentencing, [9] tribes have concurrent jurisdiction over the felony crimes enumerated under the Major Crimes Act.[10]

The forums for handling disputes differ for each tribe, which may use varying combinations of family and community forums, traditional courts, quasi-modern courts, and modern tribal courts.

Family forums, such as family gatherings and talking circles, are facilitated by family elders or community leaders. Matters usually involve family problems, marital conflicts, juvenile misconduct, violent or abusive behavior, parental misconduct, or property disputes. Customary laws, sanctions, and practices are used. Individuals are summoned to these gatherings following traditional protocols initiated by the chosen elder. For example, in Pueblo communities the gathering is convened by the aggrieved person's family, which must personally notify the accused and his or her family of the time and place of the gathering.

Generally, elders are selected as spokespersons responsible for opening and closing the meetings with prayers. During the meeting, each side has an opportunity to speak. The victim may speak on his or her own behalf, and the family may assist in conveying the victim's issues. Extended family members often serve as spokespersons if the victim is very young or vulnerable. Similarly, a spokesperson may be designated to speak on behalf of the accused, especially if the accused is a juvenile or if other circumstances prevent the accused from speaking. When the family forum cannot resolve a conflict, the matter may be pursued elsewhere. Offender compliance is obligatory and monitored by the families involved. It is discretionary for decisions and agreements to be recorded by the family.

Community forums require more formal protocols than family forums, but draw on the families' willingness to discuss the issues, events, or accusations. These are mediated by tribal officials or representatives. Some tribes have citizen boards that serve as peace makers or facilitators. Customary laws, sanctions, and practices are used. Personal notice is made by tribal representatives to the individuals and families involved. Usually, this is all that is necessary to compel individuals to meet in both the family and community forums. When necessary, a personal escort to the gathering place may be provided by tribal officials. In some tribal communities notice may be by mail.

In the community forum, the tribal representative acts as facilitator and participates in the resolution process along with the offender and victim and their families. As with the family forum, prayers are said at the beginning and at closure. An unresolved matter may be taken to the

next level, however, but tribes may or may not offer an appeal process for the community forum. In the Navajo peacemaker system, formal charges in the Navajo district court may be filed. In some Pueblo communities, matters may be pursued through the traditional court. Offender compliance is obligatory and monitored by the families involved and tribal officials.

Traditional courts incorporate some modern judicial practices to handle criminal, civil, traffic, and juvenile matters, but the process is similar to community forums. These courts exist in tribal communities that have retained an indigenous government structure, such as the Southwest Pueblos. Matters are initiated through written criminal or civil complaints or petitions. Defendants are often accompanied by relatives to the hearings. Generally, anyone with a legitimate interest in the case is allowed to participate from arraignment through sentencing. Heads of tribal government preside and are guided by customary laws and sanctions. In some cases written criminal codes with prescribed sanctions may be used. Offender compliance is mandated and monitored by the tribal officials with assistance from the families. Noncompliance by offenders may result in more punitive sanctions such as arrest and confinement.

Defendants are notified in writing. Although rare, matters may be appealed to the tribal council. In some tribes where a dual system exists, interaction between the modern American court and traditional court are prohibited. That is, one may not pursue a matter in both lower-level courts. However, an appeal from either court may be heard by the tribal council, which serves as the appellate court. Generally, then courts record proceedings and issue written judgment orders.

Quasi-modern tribal courts are based on the Anglo-American legal model. These courts handle criminal, civil, traffic, domestic relations, and juvenile matters. Written codes, rules, procedures, and guidelines are used, and lay judges preside. Some tribes limit the types of cases handled by these courts. For instance, land disputes are handled in several Pueblo communities by family and community forums. Like traditional courts, noncompliance by offenders may result in more punitive sanctions such as arrest and confinement. These are courts of record, and appellate systems are in place.

Modern tribal courts mirror American courts. They handle criminal, civil, traffic, domestic relations, and juvenile matters and are guided by written codes, rules, procedures, and guidelines. They are presided over by law trained judges and often exist in tribal communities that have a constitutional government. Like traditional courts and quasi-modern tribal courts, non-compliance by offenders may result in more punitive sanctions such as arrest and confinement. Like quasi-modern tribal courts, these are courts of record, and appellate systems are in place.

Some of the quasi-modern and modern courts incorporate indigenous justice methods as an alternative resolution process for juvenile delinquency, child custody, victim-offender cases, and civil matters. The trend of tribal courts is to use the family and community forums for matters that are highly interpersonal, either as a diversion alternative, as part of sentencing, or for victim-offender mediation. Some are court-annexed programs such as the Alternatives For First Time Youth Offenders Program sponsored by the Laguna Pueblo tribal court in New Mexico. Under this program, juvenile offenders are referred to the village officers, who convene a community forum. Recommendations for resolving the matter may be court-ordered, or the resolution may be handled informally by the village officers. This joint effort by the court and village officers

allows them to address the problem at the local village level and to intervene early to prevent further delinquency.

Characteristics of Indigenous Law

Common terms or references to the law of indigenous societies include customary law, indigenous law, native law, and tribal or native law ways. All refer to the same concept.

Customary law is generally derived from custom. Custom in this sense means a long-established practice that has acquired the force of law by common adoption or acquiescence; it does not vary. [11]

Tribal common law is based on the values, mores, and norms of a tribe and expressed in its customs, traditions, and practices. In some tribes, the tribal common law has been set out in different court decisions and written opinions over time and has become case law. [12] Among several Pueblo communities, the matrilineal system holds that property belongs to the female. In a divorce or separation, property is divided according to the matrilineal definitions of property ownership and is written into the decisions of the traditional or tribal court. Similarly, Navajo courts incorporate Navajo common law in decisions in probate, criminal, and child custody cases, and marital conflicts. [13]

For many tribes along the Northwest coast such as the Yurok, customary laws dictate the areas where families can conduct their fishing, hunting, and gathering. These areas are passed down from one generation to the next. When someone fishes in another family's area, it is considered an affront to the entire family. By custom, the wronged family convenes a family forum as the proper way to handle the matter and to request compensation. Compensation may be with fish, fishing gear, feathers, hides, beadwork, traditional clothing, or other forms of payment.

Among several Pueblo communities, it is customary for discipline to be administered by the fiscale, who is responsible for maintaining the peace and overseeing the welfare of children and youth. It is a general practice for parents to summon the fiscale when their children are unruly or misbehaving. The fiscale advises the children about the consequences of their misconduct and may reprimand them or refer them and their parents to services such as counseling.

In many tribes, information, beliefs, and customs are handed down orally or by example from one generation to another. [14] For example, in the Minto Tribal Court of Alaska the resolution process involves a segment dedicated to "traditional counseling" by the facilitator or presiding judge. There is a general practice of "advising/giving" in the traditional courts of the Pueblos and the "talking to" in the Navajo peace making system. This segment is traditionally set aside for the spokespersons or tribal officials to speak of community values, mores, and the consequences of misbehavior or misconduct. Often these are conveyed in parables or creation narratives and beliefs. Advice is given about harboring vengeful feelings, and everyone is encouraged to renew relationships.

The Indigenous Justice Process

Indigenous methods of conflict resolution include traditional dispute resolution, peace making, talking circles, family or community gatherings, and traditional mediation, described only by the language of the tribal community. All these refer to the methods of resolving problems and to the methods of restorative and reparative justice.

The structure of relationships in many tribal communities is paramount to a legal system exemplified by the clan system. Tribal law determines clan identification, which is often matrilineal. Among Pueblo communities, moiety and clan affiliations determine for which group an individual will dance, sing, or hunt in social activities, which religious or medicine groups one may join, which political positions one may hold, whom one may court or marry, or what property one may own. The clan system regulates the behavior of its members. The interlocking relationships in tribal communities often determines the flow of how problems are handled.

For example, in many tribal communities, parents and the extended family are expected to nurture, supervise, and discipline their children. When parental misconduct occurs, such as with physical or sexual abuse or neglect, the parents and extended family convene through the leadership of an elder to address the matter. In a minor case of physical abuse or neglect, the family forum is used. The distributive aspect is invoked extensively to ensure protection of the children and to monitor and enforce proper parental behavior and responsibility, which is regulated by the family. More serious cases may involve tribal officials.

In the family and community forums and the traditional courts, those accused of wrongdoing are required to give a verbal account of their involvement in an incident, whether or not they admit to the accusations. [15] This verbal account is key in discovering the underlying factors precipitating the problem. It requires participation by the offender's family and relatives who may have to explain the offender's misconduct, especially when some type of victimization has occurred. For example, parents may be admonished for not providing proper discipline and supervision for their children who vandalized or destroyed property. Relatives may be criticized for allowing a son or brother to abuse his wife or children.

Verbal accountability by the offender and the offender's family is essential to express remorse to the victim and the victim's family. Face-to-face exchange of apology and forgiveness empowers victims to confront their offenders and convey their pain and anguish. Offenders are forced to be accountable for their behavior, to face the people whom they have hurt, to explain themselves, to ask forgiveness, and to take full responsibility for making amends. Observing and hearing the apology enables the victim and family to discern its sincerity and move toward forgiveness and healing. Forgiveness is strongly suggested, but not essential for the victim to begin healing.

The restorative aspect frequently involves the use of ritual for the offender to cleanse the spirit and soul of the bad forces that caused the offender to behave offensively. Ceremonial sweats, fastings, purifications, and other methods are used to begin the healing and cleansing process necessary for the victim, the offender, and their families to regain mental, spiritual, and emotional well-being and to restore family and communal harmony. [16]

The agreements reached in family and community forums are binding. Participants are compelled to comply through the same interlocking obligations established in individual and community relationships. Compliance and enforcement are important aspects of indigenous systems because there is little coercion. Accepting punishment does not guarantee that an offender will be accountable. Therefore, it is essential that offenders perform outward acts to demonstrate their responsibility for correcting behavior. Offender accountability is essential to ensure compliance with decisions and to prevent further criminality or relapse into deviant behavior. Equally important is for punitive sanctions to be decided and applied by individuals who were affected by the offender's behavior.

Historically, there is little evidence of penal systems in tribal communities. This fact remains today, although there are many who express the need for secure confinement facilities to address serious and violent crimes. Many customary sanctions to appease victims and to safeguard against vengeance are still in use. These include public ridicule, public shaming, whippings, temporary and permanent banishment, withdrawal of citizenship rights, financial and labor restitution, and community service. Some tribes still temporarily or permanently banish individuals who commit serious or violent crimes. Among the Warm Springs Tribes in Oregon, it is customary to refer lawbreakers to the "whipman," who may whip a person for misconduct. In the Laguna Alternatives for First Time Youth Offenders Program, community service is used extensively.

The indigenous process is also used in offenses where there are no victims, such as problems between parents and children, individual misconduct, or alcohol consumption. Family members affected by the offender's behavior or who are concerned with the offender's welfare may participate. Many tribal people view crime, delinquency, and other deviant behaviors as symptoms of bigger family problems. Widening the affected target group to include the offender, parents, siblings, and other extended family members enlists help from those most familiar with the situation to assist in correcting and preventing more serious crime.

The indigenous process can often be extremely uncomfortable and emotional because it involves participation by everyone affected, but great care is taken to provide a safe environment for matters to be discussed. The distributive nature of this process uses the extended family as a resource for the offender, the victim, and the community to resolve problems, to ensure compliance, to provide protection, and to retain ownership of the problems. [17]

Preserving Indigenous Systems

Tribes are faced with the inevitable conflict created by two justice paradigms competing for existence in one community. Many Americans believe the law is something to be applied and justice is something to be administered. In contrast, tribes traditionally believe law is a way of life and justice is a part of the life process. For one paradigm to exist, it must convert people to follow it. Although it appears that tribal courts follow the Anglo-American legal system, many adhere to the traditional values of the tribal justice system. This is largely because tribes have been wary of the ethnocentric view of the Western colonizers who devalued their legal structures and wanted to replace them with an imported Western system. [18] Tribes were also required to participate in the Anglo American legal system in order to protect their lands and people, but

they did so without trusting or believing it. This foreign system was imposed by the federal government, thereby thwarting their efforts to convert the tribes.

Attempts to strengthen and retraditionalize tribal justice systems stem from discontent with the efforts of modern tribal courts to address the crime, delinquency, social, and economic problems in tribal communities. It is joined by the dominant culture's current disillusionment with justice in this country, which causes doubt about retributive justice and a move toward a more restorative framework. [19] This emerging restorative perspective for the American justice system is illustrated by the following values:

All parties should be included in the response to crime-offenders, victims, and the community. Government and local communities should play complementary roles in that response. Accountability is based on offenders understanding the harm caused by their offense, accepting responsibility for that harm, and repairing it...Restorative justice guides professionals in the appropriate and equitable use of sanctions to ensure that offenders make amends to victims and the community. [20]

Conversion to the American justice paradigm is a difficult choice for tribes, particularly those with a functional indigenous justice system. For many, full conversion is not possible because the indigenous justice paradigm is too powerful to abandon. The strong adversarial features of the American justice paradigm will always conflict with the communal nature of most tribes. For this reason, the inherent restorative and reparative features of the indigenous justice paradigm will continue to be more appealing to the majority of tribal people.

Nonetheless, it is important for tribes to identify their community strengths and views on justice, law, and order. The role of non-Indians is to assist and support the tribes in strengthening their justice systems and to suppress the urge to take over or replace them. It is the sovereign and cultural right of tribes to explain, interpret, change, enact, and apply their own laws, oral and written, through whatever mechanisms they choose. It is their responsibility to teach the knowledge and skills embedded in their indigenous paradigm to their young. American Indian and Alaskan Native people have the clearest understanding of their indigenous law ways because they live them. They must be the messengers of this law to preserve its integrity, authority, power, and meaning to the people.

The many intrusions to the tribal way of life have interfered with the natural evolution of the indigenous justice paradigm, but while slowed, it has never stopped. The tribal resurgence to strengthen and retraditionalize their judiciaries has rejuvenated the evolutionary process. While mainstream society is in the midst of shifting from a retributive justice model to a restorative one, many tribes are strengthening their indigenous paradigm. In doing so, they are empowering themselves to provide a justice system that has meaning to the people they serve and the power to perpetuate what was preserved by the ancestors and passed on by the elders as testimony of their commitment to the future of tribes. Contemporary American Indian and Alaskan Native people are now faced with making the same commitment to preserve the indigenous justice system the elders maintained and find ways to perpetuate it.

Differences in justice paradigms

AMERICAN justice Paradigm

- Vertical
- Communication is rehearsed
- English language is used
- Written statutory law derived from rules, and procedure, written record
- Separation of powers
- Separation of church and state
- Adversarial and conflict oriented
- Argumentative
- Isolated behavior, freeze-frame acts
- Fragmented approach to process and solutions
- Time-oriented process
- Limits participants in the process and solutions
- Representation by strangers
- Focus on individual rights
- Punitive and removes offender
- Prescribed penalties by and for the state
- Right of accused, especially against self-incrimination
- Vindication to society

INDIGENOUS Justice Paradigm

- Communication is fluid
- Native language is used
- Oral customary law learned as a way of life by example
- Law and justice are part of a whole
- The spiritual realm is invoked in ceremonies and prayer
- Builds trusting relationships to promote resolution and healing
- Talk and discussion is essential
- Reviews problem in its entirety, contributing factors are examined
- Comprehensive problem solving
- No time limits on the process, long silences and patience are valued; inclusive of all affected individuals in the process and solving problems
- Representation by extended family members
- Focus on victim and communal rights
- Corrective, offenders are accountable and responsible for change
- Customary sanctions used to restore victim-offender relationship
- Obligation of accused to verbalize accountability
- Reparative obligation to victims and community, apology and forgiveness

Notes

[1] Yazzie, "Life Comes From It: Navajo Justice Concepts," Legal Education Series, *Alternatives in Dispute Resolution and Traditional Peacemaking* (Petaluma, CA: National Indian Justice Center, 1993) and Falk, *International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order*. 32 Temple L. Q. 295 (1959).

[2] Travis, *Introduction to Criminal Justice*, 2d Ed. (Cincinnati: Anderson Publishing Co., 1995) and Neubauer, *America's Courts and the Criminal Justice System,* 2d Ed. (Monterey: Brooks/Cole Publishing Company, 1984).

[3] Yazzie, supra n. 1; Tso, "Decision Making in Tribal Courts," 31 *Arizona L. Rev.* (1989); and Zion, "Searching for Indian Common Law," in Morse and Woodman, (eds.), *Indigenous Law and the State* (Forus Publications, 1988).

[4] Yazzie, supra n. 1. at 4.

[5] Connors and Brady, "Alaska Native Traditional Dispute Resolution," paper presented at the National Conference on Traditional Peacemaking and Modern Tribal Justice Systems in Albuquerque, New Mexico. Tribal Justice Center (1986), "Indian Jurisprudence and Mediation the Indian Way: A Case Review of the Saddle Lake Tribal Justice System," paper presented at the Conference on Mediation in Winnipeg, Manitoba.

[6] Melton, "Traditional and Contemporary Tribal Law Enforcement: A Comparative Analysis." Paper presented at the Western Social Science Association, 31st Annual Conference in Albuquerque, New Mexico, (1989).

[7] Valencia-Weber and Zuni, pre-publication draft, (1995), "Domestic Violence and Tribal Protection of Indigenous Women in the United States." Forthcoming, St. Johns University Law Review.

[8] See, the establishment of the Court of Indian Offenses in 1883; the unilateral imposition of law and order codes in 1884; passage of the Major Crimes Act, 18 U.S.C. §1153 (1885, Stipp. 1986); the Indian Country Crimes Act, 18 U.S.C. §1152 (1817); the Assimilative Crimes Act, 30 Stat. 717 (1898); Public Law 83-280, Indians-Criminal Offenses and Civil Causes-State Jurisdiction, 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. §1360. the Indian Civil Rights Act, 25 U.S.C. §1301 1303 (1968, Suppl. 1986); and Supreme Court decisions such as *Oliphant v Suquamish Indian Tribe,* 435 U.S. 191; and *Duro v. Reina, et al.,* 110 S.Ct. 2953.

[9] Indian Civil Rights Act, id. at 18, imposes certain protections and limitations on tribal authority and as amended in 1986 limits criminal punishment to one year imprisonment and a $5,000 fine.

[10] Major Crimes Act, supra n. 8, at 18.

[11] Zuni, "Justice Based on Indigenous Concepts." Paper presented at the Indigenous Justice Conference(1992).

[12] Austin, "Incorporating Tribal Customs and Traditions into Tribal Court Decisions." Paper presented at the Federal Indian Bar Association: Indian Law Conference in Albuquerque, New Mexico, (1992).

[13] Zuni, supra n. 11, at 25.

[14] Id.

[15] Melton, supra n. 6, at 16.

[16] Bluehouse and Zion. "Hozhooji Naaliannii: The Navajo Justice and Harmony Ceremony." 10 *Mediation Q.* 327 (1993).

[17] Canadian Institute for Conflict Resolution, "Report to the Council of Akwesasne Concerning a Peacemaking Process," in Ottawa, Canada (1990).

[18] Mohawk, Prologue, in Wallace, *The White Roots of Peace* (Philadelphia: University of Pennsylvania Press, 1946).

[19] "Victims Seeking Fairness, Not Revenge: Toward Restorative Justice," *Federal Probation* (September 1989). Van Ness, "Restorative Justice," Galaway and Hudson, eds. *Criminal Justice, Restitution, and Reconciliation* (Monsey, N.J.: Willow Tree Press, 1990).

[20] Bazemore and Umbreit, "Balanced and Restorative Justice: Program Summary." Office of Juvenile Justice and Delinquency Prevention, October (1994).

The Reemergence of Tribal Society and Traditional Justice Systems

by Carey N. Vicenti, Chief Judge, Jicarilla Apache Tribe
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Introduction

For many years now, I have been very close in friendship to my medicine man. When we see each other on the streets we will often wave. On occasion he has come to me for my advice. During one of our cordial discussions, he complemented me on my wisdom, my patience, and my perseverance. He then pointed out to me that our roles within our society were very much the same, except that he dealt with the good side and I dealt with the bad side.

What I did, as a judge within our tribal court system, was never characterized to me in that manner. And for several days, I had to sort through my metaphysics in order to live-in a good way-with his esteemed observation. I am sure that, to him, there is a kinship regarding our stature within our tribal society; as well, he must have noticed that both of us perform functions of ceremony, consultation, and curing. And because of my knowledge of the man, I am without doubt that his observation was not intended as a criticism, nor to vex me with some existential curse.

The medicine man was making a simple observation as to how we Jicarilla Apache people are. He described his role. Then he described my role. One might say that he made a karmic observation.

Whenever a person makes reference to good and bad in American society, one assumes a basic dichotomy or conflict. This was not what my medicine man intended. The medicine man merely pointed out that I have been charged by my destiny to perform those ceremonies, consultations, and cures in order to overcome the bad side of people's lives. It is my place in Jicarilla Apache society. And, as is often the case, I then send the individual to the medicine man in order for the medicine man to bless or baptize the individual towards complete cure of the calamity which has befallen him. We work together. For us, the rectification-or, if you prefer, the adjudication-of a problem spans a broad continuum from bad to good, and as good is accomplished, so too is the full restoration of the individual. While, on occasion, during the handling of problems within a court setting, the court may embark upon a determination of the mens rea of an individual, such a determination has limited usefulness and we must then return to our concern for the fate of the individual and the restoration of his spirit.

When Americans and Indians talk about "culture," they mean two different things. To the Native American. Culture is pervasive, encircling, all-inclusive. To the mainstream American, culture consists of an elective identity added to the essential American character.

It is not surprising, therefore, that in American society the question of justice is relegated to one institution, and all other things are left to a marketplace of religion and culture that prospers or

fails depending upon how individuals choose to exercise the liberty given to them under American law. By stark contrast, the Indian concept of the human being is one in which all aspects of the person and his or her society are integrated. Every action in daily life is read to have meaning and implication to the individual and guides how he or she interacts with tribal society or fulfills obligations imposed by society, law, and religion.

This helps explain why tribal courts do and should differ substantially from courts of the non-Indian world. Mainstream Americans do not consider that the very viability of the systems of tribal governance depend on the degree to which such governments are allowed to develop their institutions free from any outside interference. They assume that culture is a modular element to be merely added to one's life at one's election. Americans do not seem to understand that their system of government, that the institution of the courts and the workings of an adversarial system of justice, all amount to a large portion of American culture. Thus, America, in its attempts to correct what it perceives as a rampant injustice in Indian America, creates a greater injustice by forcing its culture upon Indian peoples.

Against the large tide of American culture that sweeps across Indian America with daily relentlessness, tribal cultures must struggle. Indian tribal culture is in crisis. We no longer possess the cultural objects that may stimulate our collective memory to recall many lost customs, traditions, and values. And yet, every reservation is experiencing the return of educated Indian people who are capable of discerning the invasion of non-Indian values into the Indian world. These new Indians, who have equal footing in both the Indian and the non-Indian world, are capable of articulating the effects America has had on the development of tribal society. Over the past two decades they have been successful in litigating and in gaining passage of federal legislation ultimately to create a wide enough path for the distinct culture in Indian society to reemerge. For the tribal courts, this means the restoration of traditional forms of adjudication.

The reader will notice that the parts to the rest of this essay appear to have been placed in reverse chronological order, going from "Death" to "Birth." But it could not have been written any other way. It was specifically organized so as to illustrate that not every American presumption has implicit validity. Some peoples have a different frame of reference. I will always be an Apache man advancing the beliefs of my grandfather and his father, and all our predecessors. I am not unlike most other Indians, whether educated or not. I am willing to challenge the ineluctable death of our culture and bring it to a new life. With this essay I hope to take care of one portion of the bad side and I will leave to my medicine man his blessing for the good side.

Death and Burial

The tribal court is a relatively new phenomenon in Indian country. It emerged originally out of the need, as perceived by the non-Indian occupants of Indian territory, to prosecute the "bad" Indian. In the early decades, therefore, the institution was inquisitional and was not intended to provide the constitutional safeguards that are now deemed indispensable. In 1934, Congress passed the Indian Reorganization Act, which was intended to loosen the authoritarian grip the federal government exercised over the management of the internal affairs of Indian reservations. The act allowed a tribe to organize under two vastly different forms of government. Under

section 16 of the act a tribe could adopt a constitution that governed the newly organized tribe. Under section 17, a tribe could organize a business committee to manage the tribe's affairs. It is important to recognize that many tribes did not take advantage of either section, choosing blindly to accept what the federal law would allow them to do in the future

After 1934, much of the inquisitional nature of the tribal court was shed, due primarily to the fact that the constitutions adopted by the various tribes provided sufficient guidance to Indian people regarding the administration of law in Indian country. That is not to say that federal control over the internal affairs of tribes had disappeared altogether. Rather, more elusive mechanisms were employed by federal officials to maintain the degree of control they deemed necessary. It should also be admitted that in many Indian communities the newly appointed judges were incapable of fulfilling the colonial role that existed prior to 1934, so non-Indian officials were occasionally invited in to "advise." By the mid-1960s, however, the influence of the federal government in the internal affairs of tribes had waned substantially.

As Indians gained greater control over their internal affairs, corruption also crept in. Tribal courts were occasionally manipulated by politically elected leadership. It having been determined that the federal constitution was not applicable to Indian tribes, the tribes freely adjudicated cases without concern for the emerging civil rights expectations of Indian people.

In the mid-1960s, Congress recognized that federal Indian law did not require constitutional rights to be afforded to people subject to the powers of tribal government. In an era when civil rights were prominently in the foreground of American politics, such omission was considered to be irreconcilable with the mood of the times. Therefore, in 1968 Congress passed the Indian Civil Rights Act. Under its terms, a list of civil rights, roughly reflecting the Bill of Rights, was imposed upon every tribal government.

Passage of the Indian Civil Rights Act was accomplished over the opposition of many Indian tribes. The relationship between the individual and his or her society was considered by many tribes to be their exclusive prerogative. By legislating civil rights upon Indian country, Congress inserted a portion of American culture into Indian society and attempted to supplant tribal culture, imposing a new order within tribal society that elevated the interests of the individual well above that of the family, the clan, the band, or the entire tribe. For many this signaled certain death to tribal society.

But tribal culture received a reprieve in 1978. In *Santa Clara v. Martinez,* the Supreme Court made it clear that although Congress had the prerogative through its plenary powers to impose a system of civil rights protection upon Indian country, it was nonetheless left to the Indian tribes themselves, through their judicial tribunals, to interpret how these concepts should be applied. The very narrow holding of *Martinez* was that the federal court was without jurisdiction to hear an alleged civil rights violation given that the only statutory relief into the federal forum was by a writ of habeas corpus. A claimant must therefore be in custody, suggesting that review within the federal court system was available only in criminal cases.

The *Martinez* decision was sufficient to place a makeshift wall between American culture and the cultures of the various tribes. The intrusion of civil rights philosophy into Indian society, and

the commensurate elevation of the status of the individual, were postponed. Many Indian tribes took this opening as an opportunity to return to practices that had evolved since the initial establishment of the inquisitional form of court in the late 1800s. Other tribes took the opportunity to reinstate traditional practices of problem solving. This renaissance of traditional adjudication practices was reinforced by the growing dissatisfaction with Western legal process as a whole. American courts have been experimenting with alternate dispute resolution in its many Western forms, thus validating, in part, the restoration of traditional Indian practice.

In the early 1990s many tribal judges and tribal leaders sought additional funding from Congress. After 2 and one-half years, Congress passed the Indian Tribal Justice Act, which was signed into law on December 3, 1993. Although it authorized up to $58 million to reinforce the functioning of tribal courts, to this day the act remains unimplemented and unfunded.

Preparation for Death

The brief history outlined above does not fully explain the evolving tribal court. It is hard for many Indian people to believe that the Indian Civil Rights Act did not bring the demise of traditional values and practice. American society did not realize the genuine sadness felt by traditional Indian people as their way of life became slowly dismantled.

Over the past two decades tribes have made sporadic efforts to preserve tribal culture. Most have focused on the preservation of native languages. But rapidly those languages are disappearing. Many tribes have undergone initiatives to restore the various tribal arts. On many reservations the practices of basketry, pottery, beadworking, woodcarving, sculpture, quillwork, and many other natives arts have been restored and have become part of daily life. However, the mere restoration of the Indian arts plays all too well into a modular notion of cultural pluralism. In part, these attempts to renew these traditional practices succeeded because they cater efficiently to the non-Indian concept of culture: a bit of culture one can buy at the market.

The real battle for the preservation of traditional ways of life will be fought for the bold promontory of guiding human values. It is in that battle that tribal courts will become indispensable. It is in the tribal court that the competing concepts regarding social order, and the place of the individual within the family, the clan, the band and the tribe, will be decided. It has been clear to tribal court judges for the past several decades that the expectations of the litigants in the tribal forum have not wholeheartedly favored an open adoption of American justice values. But in order to fulfill the expectations of the tribal litigant, the courts have found it absolutely necessary to consult tribal custom and traditions and incorporate these values into American-style legal systems.

In the past 50 years, since the passage of the Indian Reorganization Act, Indian country has greatly diversified. Perhaps it would have been possible 200 years ago to give a finite number to all the various settled forms of justice systems existing in North America. Today, we can point to more than 535 federally recognized Indian tribes. This does not necessarily mean there are that many different legal systems. Rather, there are more than 535 potentially identifiable discreet

systems of adjudication, each of which must account for cultures in their midst that are in volatile transition.

Many contemporary popular movements now operate in Indian country, affecting the development of the tribal courts. For instance, many tribal societies are being affected by the forces of evangelical Christianity. Other communities have seized upon the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act to assist in the assertion of traditional cultural rights. Those within Indian country are becoming vastly diversified compared to what may have been a more homogenous population 50 years ago. To a lesser degree, but not entirely absent as influences upon Indian society, are the global changes involving the fine tuning of human rights and the global trend toward regional and ethnic independence. Indian people also aspire to greater independence in spite of their long history as Americans.

Given the forces affecting tribal societies, the question must arise as to whether tribal courts can find stability within their own systems of government, and if so, to what extent will Western notions of justice or traditional Indian notions become prevalent.

Maturity

Before contact with non-Indians ever occurred, every tribe had its own institution for resolving problems. A "court," in many cases, never really existed. But among Indian peoples murders did occur, property was stolen, adultery was committed, and other transgressions against the social order occurred. We Apaches had a context against which the transgression could be read, interpreted, and resolved. We did not centralize all of our remedial powers into one institution. Rather, we would involve different elements of our society-the chief, the warrior societies, the families, the clan, the medicine man, and so on-in the resolution of the problem. Laws were not made by an institution such as a legislative body but by the normative power of the entire society. Each individual knew what was prohibited, where the prohibition came from, who would be empowered to decide corrective action, who would administer corrective action, and what the corrective action would be.

Expectations of justice were entirely different. For instance, among the Apaches the telling of truth is extremely important. It was not because truthfulness had achieved such a high virtue in our society. Instead, we view our reputations as being the most important of personal possessions. Thus, if a person told a lie, the person would fall into disrepute as a liar. The implications of such values in current legal process have been that few criminal cases are contested. A person who has committed a wrong freely confesses it. To a certain degree, the requirement that government prove guilt beyond a reasonable doubt legitimizes deception. Therefore, a defendant's rights are not necessarily perceived by Indian culture as something good.

Apaches rarely seek compensation for injuries. This is because we come to view injuries as defining moments. A person who loses an eye loses an eye for a reason-in some way to define himself. It is a teleological view of human experience. For the most part, this view disposes of all

injuries that occur by mere and gross negligence. Traditionally, if an intentional harm occurred, the offender would "own up" to the offense and make a restitutional gesture to the victim. An individual who confessed to having committed an offense could thus protect his or her good reputation.

In American society, restitution constitutes a very admirable traditional Indian practice. But our Apache restitutional gesture has little to do with economic value. The item or items used to provide restitution are symbolic of the remorse shown by the perpetrator. In the act of offering restitution, there is a transfer of power from the perpetrator to the victim. In offering restitution the perpetrator demonstrates the degree of remorse for having committed the intentional harm. The victim, after witnessing the gesture, has the power to determine whether the remorse was genuine. That determination depends on the degree to which the item or items involved in the restitutional gesture constitute a harm or loss to the perpetrator. If the offered restitution is without remorse, the victim can reject the restitution, and, thereafter, the perpetrator is disreputed until he or she comes forward with true remorse.

For certain problems there were certain known institutions that resolved those problems. One would not take a problem of one character to an institution that was not charged by tradition to solve those kinds of problems. And because we Apaches had placed such a high value upon our reputations, truthfulness was not a problem. Therefore, our institutions were not designed, as in American society, to discover the truth. Our institutions focused more upon determining the manner in which a transgression against social order would be remediated. As a result, in the development of the contemporary Apache courts, we have had a great deal of trouble developing a fin-tuned sense of legal process and a philosophy regarding evidence and burdens of proof and production. But our powers of remediation appear to go well beyond those employed by the Western world.

In our traditional society capital punishment consisted of exile. I know of no instances where death was ordered. "Shame" was our principal instrument of punishment (although "punishment" may not be an appropriate designation for the principle behind the corrective action). For the offense of adultery, a person had his or her nose sliced. (Adultery was considered an offense from which no person could recover and whose disrepute could shown obviously on the perpetrator's face.) In the Apache concept of transgression, we do not necessarily assign to a person a degree of intent, be it mere negligence, gross negligence, spur of the moment intent, or intention backed by planning. Each individual may take actions resulting in the transgression of tribal norms or mores because of badness that is operating within his or her life. That badness can be, and often is, a badness of heart-what Westerners might call sociopathic behavior-but the badness also may be explained by religious or spiritual reasons that have caused the state of heart, or by medical reasons that have caused momentary or periodic changes of behavior. So, in fashioning a remedy, much more attention has been placed upon determining other facts about the individual that can illuminate the metaphysical exploration of the individual undertaken by traditional participants.

The Apache remediator knows quite well that part of the remedy is in performing the exploration. Family members and friends may be brought in to discuss the changing world of the individual. We may explore everything from what he or she eats to which direction he or she

faces when going to sleep at night. We recognize that many of the proscriptions that have been handed down from generation to generation, although potentially obsolete or dogmatic, may have their justifications in older times. We cannot altogether abandon those inherited cautions simply because we have acculturated to the English language and an American way of life and cannot fully understand or appreciate the wisdom of our predecessors.

Although restitution, consisting of equivalent economic value, may be an appropriate remedy under some circumstances, in traditional Apache society we recognize that dialogue about the transgression may also be the best remedy as we restore the individual's reputation. Depending on the nature of the transgression, we may require the restitutional gesture to involve more than merely a victim but a victim's family, and even the entire society. We value remorse as a state of mind to be accomplished by a perpetrator. But we consider it essential that the internal and external life of any perpetrator be examined to determine whether the individual is healthy or whole. And ultimately, we desire to reintegrate the individual back into tribal society.

What I have described in very simple fashion are the salient points of a philosophy I consider important to this world. In our society, we see the importance of accomplishing a state of remorse, in order to humble the perpetrator, but also to cure the victim. In American society, there is no remorse. Remorse appears to be left to the victims and their families. A civil judgment is paid and business goes on; a punishment is meted and the remorseless criminal ferments his hatred in prison for years. How the remorselessness and the victimization collectively affect America is something worthy of exploration.

Youth

In the preceding text I gave what I hoped was sufficient guidance as to the dynamics which might cause a vast diversification of legal systems throughout Indian country. Certainly, by force of federal law, many tribes have had to import non-Indian values into Indian society. Indian people are influenced on a daily basis to accept western values and to expect legal process as it is portrayed on television and in the media. At the same time, many people perceive the early signs of cultural extinction and are fighting furiously to preserve what little we have of the past.

Over the past two decades we have sent young tribal members off to schools and colleges to become educated and gain expertise about the western world. After the return of the first waves of educated Indians, we experienced a brief era of acculturation during which time we accepted the apparent necessity of adopting written laws and refining our western-style institutions of adjudication. But in our growing sophistication and as a new wave of educated tribal members returned home questioning the values which we had previously uncritically imported, we now perceive our rights to culture as being part of a larger global more.

As a result of a series of federal laws passed in the last century, and reflecting the shifting sentiments of America toward Indian people, we also have further grounds for unique adaptation. Federal law has treated Oklahoma uniquely thereby placing the tribes of Oklahoma largely without territory over which to govern, nonetheless distributing Indian people throughout the state. Public Law 280 deprived Indian tribes in the States of California, Minnesota, Nebraska,

Oregon, and Wisconsin of all criminal jurisdictions except within the Red Lake, Warm Springs, and Menominee reservations. As a result of other provisions of Public Law 280, the States of Arizona, Iowa, Idaho, Montana, North Dakota, South Dakota, and Washington assumed a portion of jurisdiction away from Indian tribes. Finally the Alaska Native Claims Settlement Act (ANCSA) established a corporate form of governance for the various regions of Alaska. This system now confuses the efforts of the Alaska natives and the Alaska tribes to organize their own systems of adjudication.

Native American tradition still flourishes in Arizona, New Mexico, Alaska, the Rocky Mountain States and the States of the Northern Plains. This is not to say that there are not communities throughout the United States that maintain a strong tie to the past. The tribes of the Iroquois Confederacy, for instance, have maintained a virtual unbroken tie with the vast complex of values held by their ancestors.

Over the past few years several conferences have brought together many tribes to discuss the emerging movement toward restoration of traditional justice practices. These conferences have also brought in representatives from the Native Hawaiians. In addition, many tribal people have engaged in dialogue within indigenous groups from Central and South America, Polynesia, Papua-New Guinea, and other distant places. Thus hybridization of tribal justice systems is not only influenced by traditional tribal American culture, but also by the experiences of other tribes and other indigenous populations.

Among the tribes of the United States, there appear to be five general categories that describe the various developing tribal courts: the American model, the American-traditional hybrid model, the dual model, the traditional model, and the explorative or non-existent model.

The American model essentially follows the lead set by American jurisprudence. These courts generally appear within those tribal governments that have been organized under the Indian Reorganization Act. Under these systems there are distinct separations of powers, and mirror-image adoption of American legal process and jurisprudence. These courts refer to federal and state court decisions in order to formulate and justify the development of their own jurisprudence. Generally, these types of courts serve populations that are largely assimilated or acculturated to an American style of living with a more modular recognition of tribal culture and tradition. Often the courts have evolved in this manner due to the early influence of non-Indians. Either the Indian community found itself in close proximity to populations of non-Indians, individual federal officials exerted a great deal of authority and influence over the development of tribal systems, non-Indian attorneys hired by tribes were given greater freedom to influence the development of tribal legal systems, or Indian tribes employed non-Indians to serve in a judicial capacity during the formative years of the tribal court's development.

The hybrid American-traditional model far out-numbers all others. These courts fall in two general categories as well: those in proactive development, and those in reactive development. This hybrid group has developed in large part because of the indecision of populations to go with one or another expectation of justice. On the one hand, many tribal populations insist on importing and advancing traditional cultural values into the process of adjudication and urging a greater degree of flexibility and informality within court procedure. But many of the people are

also taken by the allure of civil rights and legal process. These hybrid courts serve populations that have a fairly equal mix of traditional native-language-speaking people and non-traditional non-native-language-speaking people.

The proactive hybrid court is in the minority. Their proactive nature highlights the fact that they are often well-developed, mature courts. The maturity is evidenced by the court's ability to command substantial attention during the tribal funding process (to gain sufficient annual funding), by having experimented with the use of form orders and petitions, by having experimented with the use of computers (in order to organize dockets and generate necessary court documents), and by consciously examining the incorporation of tradition and custom into the jurisprudence of the tribe. To a degree, the Jicarilla Apache tribal courts fit into this category. The courts of the Jicarilla Apache tribe, however, have only recently emerged from the reactive category.

The larger portion of hybridized courts are reactive. The designation "reactive" actually portrays the court as reacting to the circumstances around it as it evolves into a hybrid type of institution. Those forces include interference from elected leadership, lack of funding, public expectations, human resources limitations (most notably education and training), and so on. This category easily encompasses a majority of the courts in the Northern Plains, Oregon, Washington, Idaho, and Arizona. Many of these courts are conscious of the option to select and incorporate traditional justice practices into the jurisprudence of the tribe, but there is an absence of meaningful communication with the executive or legislative bodies to enable the court to justify or gain approval for such incorporation. Many of these tribes are postured to emerge from a reactive to a proactive state. In large part, funding stands as the single greatest obstacle toward change.

It is useful to examine parenthetically the effects of funding on the development of tribal courts. Although the number of law-trained Native Americans has increased substantially since the early 1970s, few Indian attorneys look to careers in the judiciary. In part, this has much to do with the fact that the educational process in law school, particularly in the field of federal Indian law, tends to encourage lawyers to aspire to careers in litigation. (The recent successful history of litigation of Indian issues tends to support that predilection.) Indian lawyers who fail to make it into the larger law firms generally look to Indian Legal Services or to solo practice. Recently, the Department of Justice has begun hiring many Native American attorneys in order to offset a deficit in its ranks. Still, the tribal courts are last in line to be considered for career development. Tribal courts have had to bear a reputation for providing little in the way of salary, and being particularly vulnerable to political forces, they tend to offer only short tenures on the bench. The inadequacy of funding also often means that courts do not have sufficient buildings, staffing, equipment, and supplies to do their work. This would not be a problem if there were other courts to resort to, but in many cases the tribal court has exclusive jurisdiction. Furthermore, tribal courts tend to take on other cases such as election disputes and constitutional challenges that test the validity and stability of tribal government.

In the absence of a viable court system, tribal government stands consistently at risk of shutdown or failure. In the absence of funding the courts can never quite attain the personnel who are competent to adequately justify the place and purpose of the court within the democratic

structure of tribal government. This, in turn, undermines the remainder of tribal government. Legislative and executive efforts to reinforce their regulatory initiatives, such as resource development, environmental protection, and fire protection, or to stimulate economic development, always fall short by virtue of this fundamental defect.

The dual model exists where a tribe has chosen to employ a traditional and an American justice system model, but by keeping a clear separation between the two and diverting cases based upon subject matter to the different courts. Predictably, the Western-style court tends to be hybridized. The most notable of this class is the Navajo Nation Court. A brief examination of Navajo case law indicates a regular and methodic reference by the justices of the Navajo Nation Supreme Court to tribal traditions and customs in rendering their decisions. Navajo Nation has what appears to be an America model court, but the jurisprudence relies heavily on Navajo tradition and custom. Many domestic relations type of cases are funneled to the Peacemaker Court, which incorporates Navajo religion into the problem-solving process. Increasingly, business-related cases are being submitted to the Peacemaker Court for solutions. The Peacemaker Court best represents traditional adjudication healing practice.

Nonetheless, it was pushed aside by federal authorities in favor of the American model. Eventually, under proactive judicial leadership the Peacemaker Court was re-established (although it was never truly gone). Many Pueblo courts have two court systems as well. The Pueblos have been highly successful at preserving traditional practice, but nonetheless, they have found it necessary to create an American model court to handle an increasing number of commercial claims.

The traditional model court has become rare. Several Pueblos adjudicate transgressions and solve problems in accordance with age-old practices. Many do not allow non-Indian practitioners to participate in the deliberative process. This restriction has brought much criticism and very little sympathy.

Of the last category, the explorative and the non-existent, there are several important observations. A majority of the Indian tribes and Alaskan Native villages do not have formal recognized systems of justice. This is not to suggest that these different communities do not have some means of adjudicating transgressions or of problem-solving. Rather, these adjudicative institutions generally are not recognized by the organic or positive laws of the tribes. With the passage of the Indian Tribal Justice Act in 1993, many of these tribes were encouraged to explore creation of a court system. Irrespective of the jurisdictional limitations placed upon any of the tribes by either Public Law 280 or the Alaskan Native Claims Settlement Act, it is clear that the tribes have inherent authority to adjudicate matters touching upon the organization of the family and tribal society. Therefore, the issues involving domestic relations and political organization are within their jurisdictional reach.

By this brief and rather rough generalization, it should be clear that most tribal courts are somewhat between formative and youthful stages of development. Few tribes have reached a level of maturity where they can meaningfully make choices between traditional practice and American legal process. We should all admit, though, that the development of the tribal courts has been significant in light of the fact that most of these courts began earnestly under Indian

control in the 1950s and 1960s. American jurisprudence, by contrast, has had more than 200 years to develop.

Birth

Whether tribes adopt traditional cultural practices in the long run is not without impact upon the rest of America. Because tribes are exploring variations on American jurisprudence, they are potentially small laboratories that can test new directions for American jurisprudence. On a more tangible level, because the Supreme Court, in the 1980s, took up the cases of *National Farmers Union Insurance Companies v. Crow Tribe*, and *Iowa Mutual Insurance v. LaPlante*, federal courts (and to some extent state courts), may be forced to examine the workings of the tribal courts. These two cases, though not confirming the civil jurisdiction of tribal courts over non-Indians, nonetheless require federal courts to stay their hands until non-Indian litigants have exhausted their remedies within the tribal court system. If traditional practice is incorporated into the tribal system to such an extent that it does affect commercial transactions with non-Indians or domestic relations concerning non-Indians, the federal courts may be in a position to place tribal courts under a microscope.

Previously these types of cases may have resulted in one form of balancing test or other, which may have sorted out the legitimate governmental interests of the tribe as compared to those interests and rights possessed by the individual. But this type of cross-cultural scrutiny gives abundant opportunity to the federal judge to engage in a dangerous exercise of ethnocentrism, ignoring the history surrounding the development of the particular court, the cultural forces that have shaped the jurisprudence of the tribe, the stage of development the court may be in, the resource deficit the tribal court may have suffered in its development, and the effects the rights of a non-Indian individual may have upon the human rights possessed by a collective of individuals who have lived here for centuries.

The *Iowa Mutual* case made reference to the principle of comity. When comity is brought forth as a measure between sovereigns, the courts abandon inquiries into jurisdiction or authority. The courts determine whether good relations between the sovereigns may outweigh any other interests. An enlightened federal court will surely perceive that with every Indian case appealed into the federal district court through the avenues created by *National Farmers Union* and *Iowa Mutual*, the notion of comity can be further refined. In the alternative, federal judges are likely to be faced with a difficult question as to what weight they must give to a tribe's need and desire to remain independent and unique. Federal courts will have to determine whether or not they are justified to criticize a tribal system where the tribe chooses consciously to avoid written laws, a written record, and other legal positivistic notions. Federal courts will have to develop a standard by which they can cross-culturally measure the validity of tribal process and of Indian expectations of justice. The challenge is whether or not federal and state courts, the American Public, and Congress are willing to allow for the birth of a new respect between Indians and non-Indians.

How to Build Community Support for Restorative Justice

by Kay Pranis, Restorative Justice Planner, Minnesota Department of Corrections, *editor's note*: This article, from the January/February 1997 *Community Corrections Report*, is adapted from a 1995 paper delivered in Montpelier, VT.)

A restorative response to crime is a community-building response. It is necessary to build a broad base of support for restorative justice principles and practices. Because restorative justice is grounded in community involvement, it is not possible to implement a comprehensive restorative system without community ownership and support. A comprehensive restorative response to crime engages the community as a resource for reconciliation of victim and offenders and as a resource for monitoring and enforcing community standards of behavior. The restorative justice framework calls for the inclusion of all stakeholders, especially victims and community members, in designing and implementing local justice practices. It is an empowerment model that must clearly be grounded in grassroots commitment at the local level.

Seek Broad-Based Decision Making

Corrections agencies are not typically oriented toward grassroots participation and are generally very hierarchical organizations. Restorative justice, on the other hand, is based upon highly participatory decision making, from individual cases to system design. Thus the corrections agency promoting changes toward the restorative justice model is challenged to provide leadership while not usurping the power of other participants. Any agency promoting change must model the values of restorative justice in its process by providing vision and encouragement to all stakeholders while avoiding specific directives.

There is an inherent tension between the desire of traditional stakeholders for details of implementation in order to understand the functional framework and the need for the leading agency to leave the details of implementation to the participatory process.

At early stages of discussion, participants may become impatient with philosophy and just want to be told what to do. The question of "how to" can be turned back to the participants; ask them to apply the principles and identify practices which fit the principles. Over a period of time the responses from participants can become the basis for providing multiple examples of restorative practice to bring life to the concepts. However, at all times the leading agency should resist the urge to develop detailed plans unilaterally because that might supplant the development of plans based on the participation of all the stakeholders.

Avoid Top-Down Mandates

Restorative justice should not be mandated in a top-down authoritarian process. The work of implementing the principles of restorative justice must be done at the local level and must

involve all stakeholders. There is no single road map or blueprint for building a restorative system; nor do we have answers to all the questions raised by the principles of restorative justice. The process of searching for answers should involve dialogue with all who have an interest in the question. The appropriate role of state, national, or regional leadership is to articulate the vision, disseminate information, and provide support and technical assistance to jurisdictions attempting to evolve to a more restorative approach. State and national agencies can also carry out pilot programs to demonstrate applications of the principles. State and national governments are responsible for monitoring outcomes to insure fairness, equity, and effectiveness of processes designed at the local level.

A clear understanding by practitioners and stakeholders, including the community, of the philosophical underpinnings is essential to ensure that changes are substantive and not merely cosmetic. Program implementation without an explicit understanding of underlying values often leads to undesirable results.

Look Beyond the Criminal Justice Arena

The process of implementing restorative approaches must model the principles themselves-e.g. victims must have a voice, the community must be involved. In fact, every citizen should be given opportunities to contribute to the community's vision of restorative justice. The community contains natural allies in fields outside criminal justice who can bring depth and credibility to the advocacy of a restorative approach. The work of promoting and supporting the use of restorative practices in criminal justice must be carried out across multiple organizational systems and levels. In particular, since the lead agency in change efforts will have direct authority over only a small percentage of those who shape criminal justice practice, progress toward a restorative approach requires engaging voluntary participation and interest.

Efforts to promote restorative justice should involve all levels of state, county, and city government and multiple sectors of the community, such as schools, social services, civic organizations, and faith communities, in addition to the traditional players, such as corrections, police, judges, prosecutors, and defense lawyers. Moreover, besides those community entities whose missions and interests are logically part of, or related to, the justice process, it is also essential to involve a diverse variety of other organizations from all cultural perspectives, with the objective of achieving proportional representation from cultural subgroups and ethnic communities.

Don't Minimize Problems to Be Faced

Though the restorative justice movement has recently experienced remarkable growth of awareness and interest, there are very serious problems ahead. Even where there is a high level of support for the restorative philosophy in the criminal justice system or community, the broader public policy trend around the nation is in the opposite direction. Prison populations are growing rapidly and the cost of that expansion threatens the availability of resources to work with victims and offenders in the community. Increasing dependence on incarceration may

further paralyze the system, making change much more difficult. Practitioners are frequently so overloaded that it is very difficult for them to think about questions of underlying values or philosophy.

There is also great risk that the existing system, with its overwhelming orientation to offenders, will be unable to shift to a truly victim-centered approach to resolving crime. The habits of the system are strong. Even in jurisdictions committed to shifting to restorative justice, corrections practitioners frequently forget to involve victim representatives in their planning at the beginning. It will take great vigilance to insure that victims issues are given proper consideration.

Facilitate the Process

The greatest risks identified by most critics involve implementation which fails to be true to the values underlying restorative justice. It is crucial that the values be clearly understood and frequently articulated to guard against the dangers of straying from them in practice. Research is needed to identify ways for the community to be more involved both in system decision making and working with victims and offenders. Engagement of the community in affirming and maintaining community standards is central to the success of a more restorative approach within the criminal justice system. Greater community involvement in a restorative justice process is a powerful way both to break the cycles of crime and violence and to increase the connections among community members. The more connected with each other community members are, the more likely they will be to restrain impulses which would be disapproved by the community. Professionals within the system can facilitate the process of engaging the community to become a primary resource in responding to crime in a restorative framework. Expanded community involvement and opportunities for constructive collective action will result in less fear and isolation and a stronger sense of community. Building community support includes gaining community approval of new approaches within the criminal justice system and engaging the community as a key actor in the process of responding to crime. The success of a restorative approach is dependent upon community support and involvement and requires specific attention and resources allocated to those efforts.

Communities and the Justice System: Turning the Relationship Upside Down

by Kay Pranis, Restorative Justice Planner, Minnesota Department of Corrections

My work on restorative justice over the past several years has taken me farther and farther down the road of thinking about community, the effect of crime on the community fabric, the responsibility of the community, the relationship of the community to all service systems. My thinking has been powerfully impacted by Tom Dewar, a colleague of John McKnight, who told a United Way committee that I participated in, "the net effect for communities of social services is negative," i.e. the way we have done social services has actually weakened communities. Subsequently, I found key writings by Tony Marshall and David Moore that describe how our increasing reliance on the criminal justice system has weakened communities.

The question of redefining the relationship between communities and professional systems has become a central issue for me. I know that many people are struggling with these issues because I heard many of these ideas touched on in comments and questions which came from the audience in the last session yesterday.

I will the use the word community broadly to refer to groups of people with some common interest and common experience who are not a part of the formal justice system.

Let's start by examining what is happening in most communities today.

Crime - fear - withdrawal - isolation - weakened community bonds - more crime. All of us, victims, offenders and community members, are caught in a downward spiral where more crime leads to greater fear and increased isolation and distrust among community members, leading to even more crime. Community safety depends primarily upon voluntary individual restraint on harmful behavior. The more connected community members are, the more likely they are to restrain impulses which would be disapproved by the community. As community bonds are weakened by fear and isolation, the power of community disapproval is reduced and crime increases. In the wake of crime, victims often experience isolation, frustration and powerlessness, which add to the pain of the victimization.

The relationship of the community to crime is quite complex.

1. The community is an entity affected by the behavior - hurt by the incident and therefore needing to express the hurt and vent the outrage (case specific).
2. The community is a collective, responsible for the welfare of its members - victims and offenders - thus required to seek and facilitate a remedy for the incident (case specific).
3. The community is a stakeholder in broader policy issues which affect long term community health and thus needs to participate in decision making and implementation of an effective criminal justice process
4. Community strength is the ultimate outcome measure for interventions

How does the current response to crime deal with those aspects of the community's stake in how we respond to crime?

1. The community is not generally recognized as a victim, the injury to the community fabric remains unrepaired, in fact the response may further injure the community fabric
2. The community is not generally involved in crafting an appropriate resolution which promotes healing or community peace. The community must live with the consequences of the way the crime is handled, but has little engagement in the process. If the process creates a more isolated victim and a more isolated offender the community will suffer.
3. The current system treats each crime individually and provides no systematic way to learn broader lessons from patterns of crime which reflect underlying social issues. Thus the long term health of the community is unattended by the current process.
4. The current system does not recognize community strengthening as an important outcome of effective interventions and makes no attempt to measure the impact of the intervention on the community.

The current response to crime often exacerbates the cycle of isolation and weakening of community bonds described above. Offenders are deliberately cut off from the community and victims are inadvertently cut off from the community through neglect, revictimization by the system and subtle messages of blame from community members.

In the past twenty to thirty years the direction of change in the relationship between the community and the criminal justice system has been toward less and less community involvement and more and more reliance upon the state, as represented by formal criminal justice processes - police, courts, corrections.

That relationship needs to be turned upside down. The community must become the first line of defense in maintaining community standards of behavior, with the criminal justice system used as a measure of last resort. Too often now the criminal justice system is the measure of first and last resort.

The criminal justice system cannot deliver improved public safety without the active involvement of the community. The community has tools which the system does not have. The community has resources which the system does not have. The community has power which the system does not have. Criminal justice system activity needs to be built around a core of community activity - not the reverse, which is generally true even in those places which have dramatically increased the level of community involvement.

David Moore writes, "Certainly, the formal procedures of the justice system-in which criminal law is applied-provide important safeguards for rights. At the same time, however, these formal procedures deprive people of opportunities to practice skills of apology and forgiveness, of reconciliation, restitution, and reparation. In assuming responsibility for social regulation when a citizen breaches a law and thereby challenges the moral order, the modern state appears to have deprived civil society of opportunities to learn important political and social skills."

Moore continues, "Where subtle methods of social regulation and control have been transformed or forgotten, the state is required to intervene with unsubtle methods of arrest and incarceration.

Criminal justice systems may continue to promote collective norms, but the modern rational state ultimately lacks the emotional resources to maintain-let alone strengthen-the moral order." I believe that the community does have the resources to do the moral work.

There are several key responsibilities in the community's work in responding to crime:

- The first is to rally around the victim and attend to the wounds of the victim.
- The second is to provide the opportunity for offenders to make amends for the harm of the behavior.
- The third is to establish norms and hold members accountable to norms.
- The fourth is to address underlying issues revealed by crimes (prevention).

In the work in Minnesota on restorative justice we are suggesting a reversal of roles between the system and the community. In that role reversal the community is the primary responder to crime and the system operates in support of the community.

This new relationship, which is indeed a partnership with the partners changing places, is shaped by several key ideas:

- The community is the source of moral authority or influence.
- The community is the center of decision making whenever possible.
- The community is the center of action.
- Formal government is the source of legal authority (as contrasted with the moral authority of the community).
- The government is in a position of broader oversight than the community.
- The government is the guardian of individual concerns (in contrast to community responsibility for collective concerns).

I will give a quick example of what I mean by this role reversal:

One responsibility of community in this approach is to participate in determining the terms of accountability, i.e. deciding on sentences for the offender. When the community is in that role the government or state role is to back up the community with legal authority. The community exercises moral authority in denouncing the crime and deciding requirements of offenders to make amends. The state exercises legal authority to formalize those requirements. The state also plays a role of oversight of the community process to ensure fairness in that process.

Examples:

1. Circle Sentencing: a community process (including both offender and victim communities) decides the sentence, the court pronounces the sentence and gives it full legal weight
2. Family Group Conferencing: the community of those affected by the crime decide what the obligations on the offender should be, the court uses its authority to make those legal obligations
3. Vermont Reparative Probation: a community process decides the terms of probation (i.e. the obligations of the offender), the court makes those legal obligations

The purpose of the legal authority is to affirm the community's authority and provide a mechanism for responding to failure to comply. The community's moral authority is central and the state's legal authority is secondary and a backup. Legal authority which is not clearly grounded in the community's moral authority, as demonstrated by active community involvement, is hollow and ineffective.

In general, communities manage individual behavior more effectively than governments do. However, communities need government support and resources and the perspective of an oversight mechanism which is separate from the community.

For these partnerships to work the parties:

- must have trust-the parties need to know they can rely on their partner-because their safety is at stake.
- must feel respected in the partnership.
- must feel necessary-they must feel that it can't be done without them-otherwise why waste time on it.
- must feel responsible-ownership and commitment come with a sense of responsibility.

The partnership should add value to the community and to the partners.

Because formal government processes have gradually taken over so much authority and power, the system also has a leadership responsibility in moving from the current approach to one in which the community is the lead partner. The system needs:

- To assist in developing the transformed community role through information, education and technical assistance.
- To link communities with others who have common interests and goals to share experience and learnings.
- To lead a process of clarifying the statewide vision and goals for the criminal justice process.
- To monitor community activities to ensure that values of the state and nation are honored (fairness, appropriate due process, etc.).

The bottom line for the system should be: Is the community stronger after the criminal justice intervention than it was before the crime happened? Only interventions which are grounded in the community and directed by the community are likely to strengthen the community.

Mutual responsibility is the loom on which the fabric of community is woven. Crime represents a failure of responsibility-clearly on the offender side-sometimes on the community side as well. Our response to crime must emphasize and re-establish mutual responsibility. The criminal justice system must facilitate and support this work, but it is primarily a community function. The community must lead its own moral work.

Our understanding of the relationship between community and the justice system in contemporary criminal justice has undergone significant change and is still in the process of evolving along the following path:

1. Justice system operates separately from, independent of the community.
    - Expert model, "We (justice system) have all the answers"
    - Community contact a nuisance, gets in the way of real work
    - Professional system defines and solves the problem
2. Justice system provides more information to the community about its activities.
    - Expert model
    - Community viewed as a client with a right to know something about what the professional system is doing
    - Professional system defines and solves the problem but keeps community more informed about what it does
3. Justice system provides information to the community about its activities and asks for intelligence information form the community to help do its work.
    - Expert model
    - Community seen as a client and as a good source of information for the expert work
    - Professional system defines the problem and solves the problem with useful information provided by the community
4. Justice system asks for some guidance in doing its work, recognizes a need for community help, places more activities in the community.
    - Modified expert model: experts provide leadership, but the contribution of the community is valued
    - Community as a cooperative agent, but justice system still in leadership
    - Community asked to help define problems but justice system is still chief problem solver, with help form the community
5. Justice system follows community leadership.
    - Expert systems as support systems
    - Justice system operates in support of community in achieving community goals while protecting rights of individuals and ensuring fairness
    - Community defines and solves problems with help from the justice system

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3. The current system treats each crime individually and provides no systematic way to learn broader lessons from patterns of crime which reflect underlying social issues. Thus the long term health of the community is unattended by the current process.
4. The current system does not recognize community strengthening as an important outcome of effective interventions and makes no attempt to measure the impact of the intervention on the community.

The current response to crime often exacerbates the cycle of isolation and weakening of community bonds described above. Offenders are deliberately cut off from the community and victims are inadvertently cut off from the community through neglect, revictimization by the system and subtle messages of blame from community members.

In the past twenty to thirty years the direction of change in the relationship between the community and the criminal justice system has been toward less and less community involvement and more and more reliance upon the state, as represented by formal criminal justice processes - police, courts, corrections.

That relationship needs to be turned upside down. The community must become the first line of defense in maintaining community standards of behavior, with the criminal justice system used as a measure of last resort. Too often now the criminal justice system is the measure of first and last resort.

The criminal justice system cannot deliver improved public safety without the active involvement of the community. The community has tools which the system does not have. The community has resources which the system does not have. The community has power which the system does not have. Criminal justice system activity needs to be built around a core of community activity - not the reverse, which is generally true even in those places which have dramatically increased the level of community involvement.

David Moore writes, "Certainly, the formal procedures of the justice system-in which criminal law is applied-provide important safeguards for rights. At the same time, however, these formal procedures deprive people of opportunities to practice skills of apology and forgiveness, of reconciliation, restitution, and reparation. In assuming responsibility for social regulation when a citizen breaches a law and thereby challenges the moral order, the modern state appears to have deprived civil society of opportunities to learn important political and social skills."

Moore continues, "Where subtle methods of social regulation and control have been transformed or forgotten, the state is required to intervene with unsubtle methods of arrest and incarceration. Criminal justice systems may continue to promote collective norms, but the modern rational state ultimately lacks the emotional resources to maintain-let alone strengthen-the moral order." I believe that the community does have the resources to do the moral work.

There are several key responsibilities in the community's work in responding to crime:

- The first is to rally around the victim and attend to the wounds of the victim.
- The second is to provide the opportunity for offenders to make amends for the harm of the behavior.
- The third is to establish norms and hold members accountable to norms.
- The fourth is to address underlying issues revealed by crimes (prevention).

In the work in Minnesota on restorative justice we are suggesting a reversal of roles between the system and the community. In that role reversal the community is the primary responder to crime and the system operates in support of the community.

This new relationship, which is indeed a partnership with the partners changing places, is shaped by several key ideas:

- The community is the source of moral authority or influence.
- The community is the center of decision making whenever possible.
- The community is the center of action.
- Formal government is the source of legal authority (as contrasted with the moral authority of the community).
- The government is in a position of broader oversight than the community.
- The government is the guardian of individual concerns (in contrast to community responsibility for collective concerns).

I will give a quick example of what I mean by this role reversal:

One responsibility of community in this approach is to participate in determining the terms of accountability, i.e. deciding on sentences for the offender. When the community is in that role the government or state role is to back up the community with legal authority. The community exercises moral authority in denouncing the crime and deciding requirements of offenders to make amends. The state exercises legal authority to formalize those requirements. The state also plays a role of oversight of the community process to ensure fairness in that process.

Examples:

1. Circle Sentencing: a community process (including both offender and victim communities) decides the sentence, the court pronounces the sentence and gives it full legal weight
2. Family Group Conferencing: the community of those affected by the crime decide what the obligations on the offender should be, the court uses its authority to make those legal obligations
3. Vermont Reparative Probation: a community process decides the terms of probation (i.e. the obligations of the offender), the court makes those legal obligations

The purpose of the legal authority is to affirm the community's authority and provide a mechanism for responding to failure to comply. The community's moral authority is central and the state's legal authority is secondary and a backup. Legal authority which is not clearly

grounded in the community's moral authority, as demonstrated by active community involvement, is hollow and ineffective.

In general, communities manage individual behavior more effectively than governments do. However, communities need government support and resources and the perspective of an oversight mechanism which is separate from the community.

For these partnerships to work the parties:

- must have trust-the parties need to know they can rely on their partner-because their safety is at stake.
- must feel respected in the partnership.
- must feel necessary-they must feel that it can't be done without them-otherwise why waste time on it.
- must feel responsible-ownership and commitment come with a sense of responsibility.

The partnership should add value to the community and to the partners.

Because formal government processes have gradually taken over so much authority and power, the system also has a leadership responsibility in moving from the current approach to one in which the community is the lead partner. The system needs:

- To assist in developing the transformed community role through information, education and technical assistance.
- To link communities with others who have common interests and goals to share experience and learnings.
- To lead a process of clarifying the statewide vision and goals for the criminal justice process.
- To monitor community activities to ensure that values of the state and nation are honored (fairness, appropriate due process, etc.).

The bottom line for the system should be: Is the community stronger after the criminal justice intervention than it was before the crime happened? Only interventions which are grounded in the community and directed by the community are likely to strengthen the community.

Mutual responsibility is the loom on which the fabric of community is woven. Crime represents a failure of responsibility-clearly on the offender side-sometimes on the community side as well. Our response to crime must emphasize and re-establish mutual responsibility. The criminal justice system must facilitate and support this work, but it is primarily a community function. The community must lead its own moral work.

Our understanding of the relationship between community and the justice system in contemporary criminal justice has undergone significant change and is still in the process of evolving along the following path:

1. Justice system operates separately from, independent of the community.
    - Expert model, "We (justice system) have all the answers"
    - Community contact a nuisance, gets in the way of real work

    - Professional system defines and solves the problem
2. Justice system provides more information to the community about its activities.
    - Expert model
    - Community viewed as a client with a right to know something about what the professional system is doing
    - Professional system defines and solves the problem but keeps community more informed about what it does
3. Justice system provides information to the community about its activities and asks for intelligence information form the community to help do its work.
    - Expert model
    - Community seen as a client and as a good source of information for the expert work
    - Professional system defines the problem and solves the problem with useful information provided by the community
4. Justice system asks for some guidance in doing its work, recognizes a need for community help, places more activities in the community.
    - Modified expert model: experts provide leadership, but the contribution of the community is valued
    - Community as a cooperative agent, but justice system still in leadership
    - Community asked to help define problems but justice system is still chief problem solver, with help form the community
5. Justice system follows community leadership.
    - Expert systems as support systems
    - Justice system operates in support of community in achieving community goals while protecting rights of individuals and ensuring fairness
    - Community defines and solves problems with help from the justice system

Culture and Diversity Issues in Restorative Justice

Perceptual Blocks

Perceptual blocks are obstacles that prevent the problem-solver from clearly perceiving either the problem itself or the information needed to solve the problem.

1. Seeing what you expect to see: **stereotyping**
    - You cannot see clearly if you are controlled by preconceptions.
    - Cognitive dissonance: devalue information that does not fit one's stereotype.
2. **Paradigm**-the way we see the world; a theory, an explanation, model, perception, or frame of reference

- Paradigms affect very powerfully how we interact with other people. As clearly and objectively as we think we see things, we begin to realize that others see them differently form their own apparently equally clear and objective point of view.
- "Where we stand depends on where we sit."
- Paradigm shifts: need to make adjustments as we learn more about culturally, ethnically, or racially different people. This may be like a conversion from one belief system to another.

3. Difficulty in Isolating the Problem

- Inadequate clues or misleading information
- Improper problem-identification and isolating the problem, e.g. quiet Indian children perceived as dumb, fearful, obstinate, etc. vs. being respectful, listening, observant, thoughtful

4. Tendency to Delimit the Problem Area Too Closely

- Placing/imposing too many constraints on possible solutions-tunnel vision, blinders

5. Inability to See the Problem from Various Viewpoints

- Need to see the problem form the other's point of view; need to view the solutions from the perspective of the client

6. Saturation

- Trickiest aspect of saturation is that you think you have the data, even though you are unable to produce it when needed
- Need to teach ourselves to see things we are used to ignoring
- Data arrives only occasionally or in the presence of large amounts of distracting data

Cultural Considerations

Inherent differences in world view, the role of family, social interaction within and outside of one's community environment, mandates awareness of culture as a factor in administering justice for **culturally different** people.

To limit the trauma of culturally different people involved in justice and correctional systems, it is critical for these systems to be sensitive to the type of environment the individual has been raised.

At least three levels on which culture plays a significant role include:

1. agency or program professionals and paraprofessionals need to be **culturally** sensitive;
2. the individual's level of **cultural proficiency** needs to be assessed; and
3. interventions and programs need to promote both in order to adequately address the needs of the culturally different child, youth, or adult and determine the most appropriate course of action.

Cultural Sensitivity means that individuals working with culturally different people must be aware of the cultural differences versus stereotypes and view these differences as a source of options and additional resources, rather than as constraints, to effective intervention.

Cultural Sensitivity requires:

- recruitment of culturally different professionals and paraprofessionals whenever possible,
- language interpreters when needed
- creative and assertive outreach to promote programs and include an array of options and support systems that may exist from within the family and the community

Cultural Proficiency refers to the level of knowledge and use of cultural ideals and practices within daily life for each individual child, youth, or adult.

Cultural Proficiency requires:

- the specific cultural or ethnic group to take responsibility in making opportunities for learning about the culture available and accessible to their members.
- The individual through his or her parents and family to take the responsibility for learning and acquiring the knowledge, skills, and abilities necessary to become proficient in one's culture.

Culturally different people are more sensitive to discrimination, and have had fewer positive experiences with being culturally different in a dominantly anglo or white world

- Impedes knowledge of one's culture; may view being culturally different as detrimental; and inhibit integration of cultural values/strengths into their life.
- Impairs their ability to effectively participate in both their ethnic community and mainstream society.

Interventions, programs, systems need to promote both in order to adequately address the needs of the culturally different child, youth, or adult and determine the most appropriate course of action.

- Cultural ignorance inhibits communication, understanding, empathy, etc. which limits the service provider from developing the best plan for intervention. It inhibits the use of

CULTURE AS A RESOURCE!!!!

Helping people, especially children, learn about and understand their culture develops a sense of pride, self esteem, and greatly enhances positive results with treatment or interventions and future behavior patterns.

Organizational Change

Convincing justice system officials to embrace a new paradigm is no easy task. It requires creative leadership and vision. It also requires a disciplined, long-term commitment. This section reports on the journey toward restorative justice through systematic change that took place in the Dakota County Community Corrections Department in Minnesota.

- Restorative Justice: Implications for Organizational Change
- Organizational Self Assessment . This form may be used to rank existing victim, offender, and community participation in the justice process to assess how well your organization is oriented toward change that encompasses restorative justice.

Restorative Justice: Implications for Organizational Change

by Mark S. Umbreit, Ph.D., and Mark Carey, Deschutes County Community Corrections

Introduction

Moving a corrections system to embrace a new paradigm of justice is no easy task. It requires creative leadership and vision. It also requires a highly disciplined, long-term commitment to implementing a new approach through a collaborative process involving all staff members. This article reports on the journey toward restorative justice through systemic change in the Dakota County Community Corrections Department in Minnesota.

Correctional systems are offender-driven, with little attention given to the needs facing individual victims or the victimized community. Even in those jurisdictions attempting to respond more effectively to victim needs, the emphasis tends to be upon the importance of offenders paying restitution to victims, often in the context of restitution payment being therapeutic for the offender. Rarely are victims given the opportunity to play a more active role in the justice process (Marshall & Merry; 1990; Umbreit, 1994b, 1991; Wright, 1991; Zehr, 1990).

The criminal justice system is focused upon the state as the victim, with the actual individual victim being placed in a very passive role and having little input. In the criminal justice system, adversarial relationships and processes are normative, as is the imposition of severe punishment in order to deter or prevent future crime. The fact that criminal behavior represents interpersonal conflict is ignored. The manner in which the criminal justice system frequently deals with victims and offenders often heightens the conflict.

There is an increasing national interest, however, in embracing the principles of a different paradigm of justice. "Restorative justice" (Bazemore, 1994; Umbreit, 1994a; Zehr, 1990) views crime as a violation of one person by another, rather than as a violation against the state. Dialogue and negotiation are typical, with a focus upon problem-solving for the future rather than establishing blame for past behavior.

Severely punishing offenders is less important than providing opportunities to empower victims in their search for closure through gaining a better understanding of what happened and being able to move on with their lives, to impress upon offenders the real human impact of their behavior, and to promote restitution to victims (Umbreit, 1994a). Zehr (1990) notes that instead of ignoring victims and placing both victims and offenders in passive roles, restorative justice principles place both the victim and the offender in active and interpersonal problem-solving roles.

These principles of restorative justice are now being seen in a growing number of communities throughout North America and Europe. In the past, advocates of restorative justice tended to focus on specific program initiatives in local communities. Today, restorative justice is more

frequently being advocated in the context of broad systemic change in entire correctional systems. The Balanced and Restorative Justice (BARJ) project, supported by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice, is the clearest example of such system change advocacy. The BARJ project is working intensively with five juvenile corrections systems in various parts of the country in an effort to initiate fundamental change in the manner in which those justice systems operate.

Restorative justice has tapped into a stream of energy and excitement within corrections departments nationwide. For many, this energy has remained inert for years under the pressures of changing public expectations, legislative mandates, public safety demands, and escalating probation caseloads. Probation departments are re-discovering the personal and professional motivations for their staffs entering the corrections field. Typically, those motivations are to promote offender change, to assist crime victims toward wholeness, and to make individual communities safer. For too long, the emphasis has been on surveillance and monitoring instead of those tenets brought forth by restorative justice principles such as competency development within the offender, victim participation and services, offender accountability, and community involvement and responsibility. Discovering this energy is a promising beginning for productive changes in corrections, but it is not enough. Planning for system changes in a bureaucratic organization is not easy even in the most fertile environments. Multiple barriers exist, ranging from workload to politics.

Dakota County is part of the Minneapolis/St. Paul metropolitan area, located just south of Minneapolis. With a population of 310,000, it is one of the fastest growing counties in the state. The Dakota County Community Corrections Department was selected as one of five jurisdictions nationwide to receive technical assistance through the BARJ project. Consultation services and training were provided for the purpose of helping the department learn about and adopt policies and programs consistent with restorative justice principles.

Dakota County is now one year into its planning process and is about to implement a number of practical restorative justice recommendations. The purpose of this article is to illustrate some of the planning activities needed to prepare the department for fundamental changes in the approach to and delivery of restorative services. That is not to suggest that there is only one way. Each agency has different resources, assets, deficits, priorities, motivations, and system environments that require varying approaches to planning changes. The authors hope this article will help flesh out some of the issues that agencies should think through and the activities they should undertake in a restorative justice planning process.

Preparing for Change

Perhaps the biggest mistake many organizations make when attempting to adopt restorative justice principles is miscalculating what a restorative justice agency is. Too often, restorative justice is viewed as a program, such as victim-offender mediation or community work service, or seen as a politically correct way of naming the activities already in place in probation departments. As a result, real changes don't take place. A new program is developed or an existing program is renamed and yet the desired outcomes are only achieved superficially, if at all.

Restorative justice is a way of thinking. It is a fundamentally different framework for understanding and responding to crime and victimization in communities. Correctional systems adopting a restorative justice approach are no longer driven by offender concerns only. Instead, they acknowledge the need for a three-dimensional response involving victims, offenders, and the community. Once correctional agencies clearly understand restorative justice, their activities will naturally follow it. However, agencies can't plunk down the latest restorative justice program and think that they are now performing restorative corrections. The transition is easier if agencies have staff members who "think restorative justice" and if they develop policies that have a clear purpose which brings about wholeness in victims, offenders, and communities.

An illustration might be helpful. A supervisor of a probation intake unit has hired a new probation officer who will be writing pre-sentence investigation reports. Often in such a situation, the tendency is to train the officer by explaining what the headings are in the report, when the report is due, and the various do's and don'ts. When we do this, we are describing the activities we want accomplished. We also do this when explaining probation contact standards. The probation officer is told how often each offender is required to be seen for the corresponding risk level. Rarely do we discuss what is the purpose of the investigative report or the offender contact. What is the outcome we are looking for? How does the desired outcome respond to needs of individual victims and the victimized community? If we simply describe the activities we expect the new officer to complete, we are not encouraging the new officer to think independently. Therefore, every time a new circumstance arises, the officer needs to consult with the supervisor in order to determine what the supervisor expects in that circumstance. We free up our personnel when we allow them to understand and work toward the restorative justice outcome and not simply perform a set of tasks.

Staff members in correctional agencies will not behave the way we want them to until we stop telling them how to act and instead tell them who they are and what outcomes we are looking for in their work. When we tell the probation officer that he or she is a restoration officer who is responsible for bringing about repair to the victim, competency development in the offender, and safety to the community, we have defined who the officer is and what outcomes we expect. That individual then is freed up to do his or her job and is less preoccupied with the specific activities which may or may not bring the department closer to meeting restorative justice goals. Despite the volatile nature of crime, there are very few circumstances where the restorative justice "roadmap" won't allow the officer to determine the best course of action.

Restorative justice is a way of thinking, a way of behaving, and a way of measuring. Until we change the way we think about why probation exists, we can't change our behavior. We can't measure the changes until our behavior changes.

One of the first steps in preparing for a restorative justice planning process is making sure that the agency leadership understands what restorative justice is. On the surface, the concept seems simple enough. In practice, it is much more difficult. Often, people grasp the concept but are not sure how the concept is put into practice. As with so many conceptual frameworks, one can justify most activities depending on one's understanding and emphasis on parts of the framework. Understanding a new conceptual framework requires careful study and discussion, thorough readings, conferences, and intrastaff dialogue. It is often the skeptics of the

organization who can be most helpful in the preparation stage. The skeptic might be the one to ask, "Why are we doing this? What is not working properly and needs to be fixed? How is this really different from what we are doing now?" These questions test the leadership's knowledge of the concept and help identify the concerns agency staff might have.

It is useful for the agency leadership to examine the existing organizational readiness for change. Is the agency ripe for positive change? What are the risks that might result in triggering momentum toward negative change? How motivated is the staff for change of any kind? What pressures exist that might make the timing for the planning process good or bad? Janssen (1987) speaks of organizational change in the context of a "Four-Room Apartment." These "apartments" or stages are: (1) contentment, (2) renewal, (3) denial, and (4) confusion. The collective staff attitude about the agency mission and direction and the staff understanding of the need for change are usually predominantly in one of these stages. When organizational change occurs, it tends to move in a circular motion from the upper left to the bottom right (i.e., from contentment to denial to confusion to renewal and back to contentment again). Naturally, the organization is most motivated for change in the confusion and renewal stages. Restorative justice provides a compelling reason for an organization to move into the renewal stage, which is often characterized by vibrancy, excitement, energy, and creativity. The actual organizational approach to restorative justice, however, should differ depending on the current stage of the organization. For example, if the agency is in the denial stage, the organization will need a great deal of time to discuss what isn't working well and the reasons to initiate change.

Agency workload can be a major barrier to an open discussion of the merits of a restorative justice planning process. When staff members are burdened by ever increasing workloads, it can be extremely difficult even to initiate the discussion. Staff members tend to view it as yet another meeting added to their workday which prevents them from getting their done. On the other hand, workload can be a motivating factor. Many probation officers have begun to realize that the caseload pressures have taken away job satisfaction and overall probation effectiveness. Given tight budgets and limited resources, relief from the burgeoning workload is not likely to be provided soon. These circumstances can be a major motivating factor, making an organization ready for change. Agency circumstances must be considered before initiating a planning process. The question of how the time invested in restorative justice planning will benefit the department, the clients served, and individual staff work must be answered before a planning process may successfully be launched.

The Trial Balloon

After agency leaders make an organizational assessment of readiness, they must introduce the restorative justice concept to the agency staff through a variety of presentations and smaller discussion groups. Since such a planning effort will affect every staff position represented both horizontally and vertically across the department, all staff members need to be exposed to an overview of the restorative justice framework, preferably simultaneously. It is helpful to answer the question "Why?" at this point. Why would the department undergo a large-scale planning process and invest up to hundreds of hours of staff time for what appears to be an abstract concept? Possible questions for management to expect include: What needs to be changed? How would this improve services? How would this help me with my workload? Am I going to be

expected to increase services to victims when I can't deliver sufficient services to offenders? If the community is supposed to be more involved, who is going to take the responsibility to foster that involvement? Are my day-to-day job responsibilities going to change? Is this planning process voluntary on my part?

These questions should not imply that the workforce will view restorative justice in a negative light. More often, probation staffs respond with enthusiasm and hope. It makes sense to them, especially as it becomes obvious that the social problems are becoming more complex and the criminal justice system can't be expected to be the sole response to the problem. Nonetheless, the agency director should expect a number of practical questions that seek to bridge the intellectual gap between the abstract concept which delivers well on promise and the detailed answers to "how does it affect me?"

At this introduction stage the agency may be most vulnerable to adopting quick fixes. The staff members most excited by the restorative justice framework will want to channel their energy into work products. Those intrigued by the concept but overwhelmed by current day-to-day activities will seek short-term solutions such as replicating a successful program started in another jurisdiction. Managers will be attracted to quick responses to avoid protracted planning processes that consume inordinate amounts of time. However, this is the time to exercise maximum discipline and self-restraint. The agency director can recognize staff time constraints by offering a longer planning timeframe. Many staff members will welcome a longer timeframe so that they can study the matter further and be involved in the planning process if they are offered the opportunity. Since restorative justice is a new way of thinking and organizing agency activities, it requires a lengthy period of time to understand and implement. It takes time to anticipate and plan for the fallout of major changes. Quick changes will result in problematic chain reactions that can jeopardize the positive change environment. The challenge to the agency director is to keep the excitement vibrant while holding back any "quick fixes."

Setting the Stage

Changing the way we think as individuals is not easy. We have a patterned way of conceptualizing and responding to events. It is no different with an agency and can be exacerbated by the diversity of the staff. Each organization has a culture of its own, a milieu which tends to perpetuate certain behaviors and attitudes and to discourage others. To alter this culture takes time and forethought. There are three cultural shift rules of thumb that can help in the planning process.

1. Involve all the staff members and support them.

Agency leadership cannot sustain a long-term cultural shift by fiat. It is the staff members who deliver the core services. They will either agree with, and act on, restorative justice or they won't. An internally motivated individual is nearly always better at delivering the product than one externally motivated. Ownership of an agency mission and its outcome is best accomplished when the "stakeholders" in that agency have been a part of defining that mission and outcome.

It's not enough to encourage staff members to participate. Often, barriers exist which prevent full participation. They may be large workloads or inconvenient scheduled meeting times. Staff members may require management reassurance that input is genuinely sought, even if the staff members' ideas are contrary to those of the administration. Most of us as employees seek both formal and informal permission to get involved and express opinions openly without fear of retaliation or labeling. Staff members need to know that the agency is interested in improving services, that staff members are in the best position to offer ideas that work given their direct experience, and that management is willing to reduce barriers that might prohibit them from participating. It is not necessary for all staff members to be involved in the planning process, but involvement of a large portion of the agency is helpful. These staff members will later become the groundswell of support and initiative.

There will always be, however, a small percentage of employees who will not offer input and who will disparage attempts to improve services. It's important to give these employees a chance to express their views and to attempt to accommodate any legitimate concerns, but not to allow unproductive criticism to lead to erosion of the planning process.

2. Take time.

There are no shortcuts to good planning, especially when it involves a foundational change (or enhancement) of correctional philosophy or principles. Restorative justice threatens existing thinking patterns and staff members need time to reflect on its principles, challenge its assumptions, and test its application.

For some, concepts must come from different sources in order to be credible. The technical assistance provided to Dakota County through the BARJ project was invaluable. Consultants from other jurisdictions presented information and demonstrated that restorative justice principles can be put into practice with positive results. Newspaper accounts, quotes from non-correctional personnel, and other sources all helped convey the message that restorative justice is not a whimsical fancy but a concept that has captured the curiosity, and often the support, of professionals of many disciplines.

3. Communicate, communicate, and communicate.

There can be no substitute for consistent and thorough communication. When workload increases, often the communication flow gets clogged and ineffective. Probation staff may be unaware of administrative planning activities and the time devoted to them. Assumptions are made about what is, or is not, happening. The administration makes assumptions about what is important to the staff. Constant communication is the only sure way to know how restorative justice is being received by personnel. This communication includes giving information, keeping the staff aware of planning efforts, and listening to staff observations, concerns, and ideas.

It is helpful to set up both formal and informal avenues for discussions on restorative justice. Staff members can be encouraged to attend outside training on the subject. Brown bag luncheons can be organized. Also, spontaneous discussions about restorative justice can often lead to

excellent innovative thoughts. As one staff member noted, even "bad ideas are better than no ideas at all."

The Wind Test

The planners who are exploring the ideas and implications of restorative justice for the department will become the internal experts. They will understand the concept and begin to imagine how it can be implemented. A collective vision will begin to emerge. As the staff planners spend more time on the subject, the tendency will be to lose touch with those staff members who chose not to participate in the planning process. Periodic "wind tests" are helpful to assess whether the planners are getting too far ahead of the staff body.

These wind tests might include sending out a memo describing the status of the planning project and inviting staff members either to sit in on a planning meeting or to express thoughts in writing or verbally. The agency might want to send out a survey (with a quick checklist format, along with an open-ended section for those who want to elaborate) to gauge how well staff members understand the restorative justice concept, whether they agree with it, and whether they have any other thoughts that would be useful to the planners. This reality check helps the planning group determine whether additional information is needed or if certain barriers or opportunities exist that need to be attended to. Some examples of Dakota County staff comments on such a survey early in the planning process included:

- In my opinion, restorative justice not only aids the victim, community and the offender, but also would help unify this department. It would give us all a clearer mission and therefore a more consistent response from us.
- I think it is away of thinking about correctional practice that is respectful toward offenders and victims.
- We shouldn't do the Victim Services piece.
- I agree with the general concepts but still question how this will be put into practice.
- Restorative justice tends to be simplistic. A cure-all answer/replacement to direct supervision, punitive consequences, and to supervising or monitoring increasingly large numbers of clients with insufficient staff.
- I am encouraged that the department is headed in this direction.
- Victims should have as much service as possible. I hope we will have a unit to specifically deal with restitution and additional informational services to be provided for them.
- Thanks for the opportunity to speak out as a department and wanting our input.

Communicating the results of the staff feedback is helpful. Staff members may or may not know how the rest of their colleagues are viewing the planning direction. It is useful to let them know that they are not alone in their concerns or to make them aware that there is a great deal of excitement about the potential benefits to the department.

The longer an agency studies restorative justice and considers possible recommendations, the more some staff members will want someone to come out and announce the changes that are to take place. Most of us don't like working in an environment in which there is an awareness that "something" is about to take place, but what that something is, and when it will happen, is unclear. Such an atmosphere is anxiety-producing. Management must resist this pressure to make

quick decisions, to "decide and move on," or it can undermine the grassroots ownership process of the planning efforts. However, staff members must be given reassurances that the planning process will not be prolonged beyond a reasonable timeframe and that they will receive opportunities to have their input considered before any final recommendations are implemented. Failure to provide some of these reassurances will create department-wide anxiety that could grow into paranoia.

The Big Kick-Off

Perhaps what contributed most to the Dakota County BARJ Project success was the use of all-day "kick-offs" or training sessions with national consultants who were credible, who were knowledgeable about corrections, and who had implemented restorative justice principles in programs and policies within their agencies. The BARJ model emphasizes the need for greater balance in corrections by focusing on the objectives of offender competency development, offender accountability, and community safety while concurrently focusing on the emotional and material needs of individual victims and victimized communities. Dakota County scheduled two all-day sessions (about 9 weeks apart), one with the director of the Deschutes County, Oregon, Community Corrections Department on competency development, and on with the chief probation officer in Quincy, Massachusetts, on accountability and community safety.

The consultants both provided an overview of what restorative justice means to a corrections agency. These overviews helped reiterate the basic tenets of the framework, which need to be repeated in order ensure more comprehensive learning. Both consultants provided practical examples of how restorative justice was implemented in their regions in order promote one of the three objectives. It was useful to use two different consultants, as both had different approaches to the concepts and different presentation styles, which meant that both reached a different segment of the staff attending.

The all-day sessions were divided into 1) a presentation of how restorative justice can promote specific objectives within the BARJ approach and 2) a brainstorming process on how Dakota County might implement policy and program changes. The brain storming served the following purposes:

1. It actively involved all members of the staff.
2. It required staff members to think about how restorative justice could help the agency in practical ways.
3. It gave staff members power over the department's future.
4. It tested the staff's understanding of restorative justice.
5. It provided the base from which to start action groups.

At the end of the second all-day consultation, the department staff had a more complete understanding of restorative justice and was beginning to envision how the department might deliver services differently if restorative justice provided the philosophical underpinnings of the agency's activities. At this time, staff members were solicited to volunteer for one of three action groups focusing on either competency development, accountability, or community safety.

Approximately 50 percent of the department staff volunteered to serve on one of the action groups.

Nuts and Bolts

One way to organize the staff planning effort is to divide the assignment into smaller, more focused work groups such as groups on community safety, competency development, and accountability. Dakota County staff members volunteered for a specific action group depending on which topic they thought they could contribute the most toward. Each group was to take the list of brainstormed ideas from the two all-day training sessions, debate the merits of them, and refine or reject them. The groups were to expand upon the recommendations that they believed had merit and submit them to management. The groups described each proposed action step in more detail, gave a means to reach the objective, and provided a timeline by which the action was to be completed and assigned to an individual department staff member who would be give the authority and responsibility to implement it.

The management provided each action group with a booklet that summarized the ideas generated and a list of guidelines designed to assist group members in staying on task and completing assignments. As few "rules" as possible were given in order to maximize the creativity of the staff groups. Some rules were necessary. For example, many ideas were expressed which may have benefited the department but were not linked to restorative justice. To keep the tasks focused, the groups understood that each recommendation was to somehow bring the department closer to a restorative justice corrections system. If an idea could not be articulated in that context, the idea was set aside for further consideration outside of the BARJ project.

Of particular importance was that resource constraints were removed. Creativity can be stifled when lack of resources is mentioned each time an idea is expressed. A well-designed concept that appears, on the surface, to necessitate a large infusion of time or money can often be implemented with few additional resources. This can be done by carrying out the idea in stages or shifting the existing resource allocation priorities. Removing the resource consideration freed up the staff to concentrate on restorative recommendations.

Given the breadth of the staff planning effort, Dakota County set up a Restorative Justice Steering Committee made up of two action group representatives from each of the three groups and administrative staff. The steering committee solicited thoughts, concerns, and ideas from the staff, explored common themes, and served as troubleshooters to address potential problems. When confusion arose, the steering committee discussed the issue and clarified the matter through the action group representative. In addition, it was discovered that some restorative justice action steps did not fit neatly into any of the three action groups established. For example, the proposals for determining outcome measures and promoting community involvement required discussion outside of the action groups. Therefore, the steering committee took on the roles of consultant to the action groups, addressing potential problems and devising department-wide recommendations that were greater in scope.

Creating a Vision

Once the restorative justice recommendations are developed enough to explain their practicality to all staff, the groundwork for the next stage is laid. In Dakota County, a vision of where the department wanted to be 5 years later was needed. It was not enough to understand restorative justice and to have a series of recommended action steps to implement. The department needed a compelling vision of what the staff activities and outcomes should look like further ahead. This vision would help carry the agency toward its goal. Rather than just a potpourri of restorative justice recommendations, the staff needed to visualize what services would actually be like if the staff pushed ahead as planned.

All staff members involved in the action groups were invited to a "vision assembly." It was an all-day event at which staff members were to create a vision using the ideas proposed by the three action groups. The invitees were given this task:

Imagine that the Dakota County Community Corrections Department no longer exists. All of you have mysteriously evaporated. There are no units. All of the equipment remains, but the staff is gone. There is no history. There is only the future. You have been asked to create a community corrections department that is restorative in design. All other parts of the criminal justice system remain the same-the same judges, attorneys, social services, etc. The "system" practices remain the same, but how you might respond to those practices may change. You can keep the same organizational structure or alter it altogether. Whatever your model looks like, the only requirement is that it must fit a restorative justice framework.

The staff was divided into three groups, with each group assigned the same task. Staff members divided themselves into groups depending on how they classified their current views on what the department should look like in five years. The three groups were: The Tinkerers (those who ascribed to the opinion that the agency only needed to tinker with existing services, organizational structure, and policies), The Radicals (those who wanted to sharply diverge from existing practice), and The Moderates (those in between the two extremes). Each group then documented its vision.

Surprisingly, the similarities in how the three groups viewed the vision were far more common than the differences. More amazing was the fact that the Tinkerers were more apt to sharply change the department than the Radicals were. A collective vision began to emerge with the group as items of agreement were pulled together. This consensus became the foundation for the proposed vision and ultimately the final action plan. The vision was given to the steering committee to finalize the details before presenting it to the full staff.

Preparing for the Unveiling

The final stage of the change process included a session with one of the national consultants who had undergone similar planning efforts and a presentation to all of the staff for feedback and further refinement. By now in the process, there should be no surprises. Management has communicated with staff members all through the process. Opportunities for input and feedback

have been provided. The staff has been anticipating the final recommendations for some time. The time is right.

It is at this stage that things can unravel. Up to this point, no staff member has been immediately threatened with a change in his or her day-to-day work activities. No manager has been asked to change the way he or she manages the unit or supervises the unit staff. It is not uncommon for many of us to delay consideration of, or ignore altogether, those events that may never come to pass until they actually happen. At this stage it will be increasingly apparent that a staff member might be asked to do something that he or she has not done before or is not immediately competent to do without training and additional experience. For example, the probation officer may be requested to provide to the client competency development instruction instead of the traditional monitoring of the client's activities. This shift in emphasis means that the probation officer must learn a new set of skills. For many, this will represent an exciting change for the betterment of staff, client, and public. For others, it will cause anxiety and possibly fear.

Management should take into account these real concerns when it proposes the recommendations. It may appear as if the process has to start over, but such action won't be necessary. It does mean that some staff will once again need some time to think through the implications that change will have for them. Patience and reassurance is helpful to get staff and supervisors through this stage. Piloting a significant change with a subset of the staff can be a way of working through both the potential pitfalls that come with any change and the anxieties.

What About the Rest of the System?

This article was written for the corrections administrator or planner who is seeking to initiate a planning effort in his or her corrections agency. Beginning a planning process for an entire criminal justice system would be a good subject for a different article. It would, however, be useful to comment here on the importance of including all the agencies in the criminal justice system when planning for restorative justice. Corrections is part of an interdependent system. Change in one part of the system affects other agencies in that system. Attempts to accomplish objectives can be thwarted or enhanced depending on the level of understanding and cooperation between each of the agencies.

Judicial commitment to restoration, for example, can be a key factor in how well a corrections agency meets its restorative objectives. If a corrections agency develops a victim/offender mediation program, for example, which is not supported by the judiciary, the program can fail quickly. On the other hand, if the court supports restorative concepts, a type of synergy can occur, resulting in system-wide application of restorative principles.

Any thorough planning effort should include efforts at educating system representatives on restorative justice and provide opportunities for their input. These efforts should not be limited to the criminal justice system. A key tenet in restorative justice is that the community become more involved in correctional matters at all stages. The community contains the primary players who can prevent crime. And, when crime does occur, the community can intercede in 1) providing the victim assistance, support, and security, and 2) providing for offender accountability and opportunities for productive change.

In fact, restorative justice planning without significant involvement of community leaders and neighborhood activists falls short of comprehensive restoration. Communities are more motivated to get involved in crime matters today than perhaps ever before in modern history. As do corrections professionals, citizens need a framework from which to think about crime, its causes, and effective interventions. Although citizens are an important resource for corrections, they have not been tapped to a significant extent until recently.

Concluding Remarks

Restorative justice provides a helpful framework for understanding crime and its consequences in a far more balanced perspective. Instead of being offender driven, it leads to policies and interventions that also address the needs of individual victims and victimized communities. Restorative justice emphasizes the importance of holding offenders personally accountable for their criminal behavior while maximizing opportunities for the active involvement of victims and community members in the justice process (Bazemore, 1994, 1992; Dignan, 1990; Maloney, Romig, & Armstrong, 1988; Marshall & Merry, 1990; Umbreit & Coates, 1993 ' 1992; Umbreit, 1994a, 1994b, 1989; Wright, 1991; Zehr, 1990).

Moving a corrections department to adopt restorative justice as its mission requires creative leadership, vision, and maximum involvement of all agency staff through continual two-way communication. The journey toward a more balanced and restorative justice system also requires a deep commitment to long-term systemic change that is grounded in a spirit of collaboration, renewal and hope.

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Restorative Justice Organizational Self Assessment

SECTION ONE: VICTIM

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
Victims and their families receive support and assistance (ie, emotional, physical, and spiritual)	_____
Victims are made aware of the case throughout the entire process and are asked for their opinions	_____
Victims are directly and actively involved in the justice process (from early stages to the end)	_____
Victims are financially restored and restitution is given priority by the justice system	_____
Victims have the opportunity to shape how the offender will repair the harm	_____
Victims have the opportunity to meet face to face with the offender with a trained facilitator	_____
Victims are satisfied with the justice process	_____
Victims have the opportunity to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and through other means	_____

DESCRIBE WAYS IN WHICH YOUR ORGANIZATION IS RESTORATIVE WITH VICTIMS, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH VICTIMS.

DOING NOW:

WHAT ELSE COULD BE DONE?

SECTION TWO: OFFENDER

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
Offenders complete financial and other forms of restitution in a timely manner	_____
Offenders use their assets to give back to the community by performing valuable work service or teach others, especially in their own neighborhoods	_____
Offenders are given opportunities to develop relationships with community members and experience bonding activities that provide value to the larger community	_____
Offenders face the personal harm caused by their crime through victim offender meetings, family group conferencing, attending victim impact panels, and other means	_____
Offenders develop the ability to be empathetic for their victims and others	_____
Offenders learn and practice competencies that address criminogenic factors (such as decision making, conflict resolution, peer groups, anger management, etc.) and reduce likelihood of return to crime	_____

Offenders understand their obligation to their community and learn mutual responsibility	_____
The offender's family or significant others are involved in similar programs as the offender	_____

DESCRIBE WAYS IN WHICH YOUR ORGANIZATION IS RESTORATIVE WITH OFFENDERS, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH OFFENDERS.

DOING NOW:

WHAT ELSE COULD BE DONE?

SECTION THREE: COMMUNITY

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
The community (ie, neighborhoods, schools, business, faith communities, etc.) allows the offenders to provide meaningful work as means of "earned redemption"	_____
Volunteers are recruited and trained to provide services to offenders, victims, and the community	_____
The community provides mentors for the offenders and their significant others, and offers assistance to increase their skills	_____
Community businesses provide training and work opportunities for offenders	_____

The community provides support services to victims	_____
Community members have opportunity to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and other means, and help set the goals and priorities of the justice system	_____
Justice system professionals collaborate with community organizations in order to provide community based interventions	_____
Justice system professionals assist with community and police in preventing crime and in solutions to challenging social conditions	_____

DESCRIBE WAYS IN WHICH YOUR ORGANIZATION IS RESTORATIVE WITH THE COMMUNITY, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH THE COMMUNITY

DOING NOW:

WHAT ELSE COULD BE DONE?

SECTION FOUR: JUSTICE SYSTEM

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
The system gives **balanced** attention to the victim, offender, and the community, and views each as equal customers	_____
Policy makers allocate resources appropriately to meet the objectives of safety, accountability, and competency development	_____

Restoration of all three customers is given higher priority over other objectives (such as case processing, sanctioning without objective, etc.)	_____
System outcome measures reflect the values of restorative justice	_____
Individual staff performance measures identify restorative expectations'	_____
The system has on-going training and orientation sessions on topics core to restorative justice	_____
The system seeks to hire employees with values consistent with restorative justice	_____
The system provides on-going training on victimology and victim sensitivity	_____

DESCRIBE WAYS IN WHICH YOUR SYSTEM IS RESTORATIVE WITH VICTIMS, OFFENDERS, AND THE COMMUNITY, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH EACH OF THE THREE. CUSTOMERS

DOING NOW:

WHAT ELSE COULD BE DONE?

SUMMARY

SCORING: TOTAL SCORE OF SECTION DIVIDED BY # QUESTIONS

	Total Section Score	Divided by # Questions	Equals Avg. Score

VICTIM	_____	8	_____
OFFENDER	_____	8	_____
COMMUNITY	_____	8	_____
JUSTICE SYSTEM	_____	8	_____

WHAT ARE YOUR AGENCY'S GREATEST STRENGTHS?

WHAT AREA HAS THE GREATEST NEED FOR IMPROVEMENT?

SECTION ONE: VICTIM

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
Victims and their families receive support and assistance (ie, emotional, physical, and spiritual)	_____
Victims are made aware of the case throughout the entire process and are asked for their opinions	_____
Victims are directly and actively involved in the justice process (from early stages to the end)	_____
Victims are financially restored and restitution is given priority by the justice system	_____

Victims have the opportunity to shape how the offender will repair the harm	_____
Victims have the opportunity to meet face to face with the offender with a trained facilitator	_____
Victims are satisfied with the justice process	_____
Victims have the opportunity to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and through other means	_____

DESCRIBE WAYS IN WHICH YOUR ORGANIZATION IS RESTORATIVE WITH VICTIMS, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH VICTIMS.

DOING NOW:

WHAT ELSE COULD BE DONE?

SECTION TWO: OFFENDER

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
Offenders complete financial and other forms of restitution in a timely manner	_____
Offenders use their assets to give back to the community by performing valuable work service or teach others, especially in their own neighborhoods	_____

Offenders are given opportunities to develop relationships with community members and experience bonding activities that provide value to the larger community	_____
Offenders face the personal harm caused by their crime through victim offender meetings, family group conferencing, attending victim impact panels, and other means	_____
Offenders develop the ability to be empathetic for their victims and others	_____
Offenders learn and practice competencies that address criminogenic factors (such as decision making, conflict resolution, peer groups, anger management, etc.) and reduce likelihood of return to crime	_____
Offenders understand their obligation to their community and learn mutual responsibility	_____
The offender's family or significant others are involved in similar programs as the offender	_____

DESCRIBE WAYS IN WHICH YOUR ORGANIZATION IS RESTORATIVE WITH OFFENDERS, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH OFFENDERS.

DOING NOW:

WHAT ELSE COULD BE DONE?

SECTION THREE: COMMUNITY

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank

The community (ie, neighborhoods, schools, business, faith communities, etc.) allows the offenders to provide meaningful work as means of "earned redemption"	_____
Volunteers are recruited and trained to provide services to offenders, victims, and the community	_____
The community provides mentors for the offenders and their significant others, and offers assistance to increase their skills	_____
Community businesses provide training and work opportunities for offenders	_____
The community provides support services to victims	_____
Community members have opportunity to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and other means, and help set the goals and priorities of the justice system	_____
Justice system professionals collaborate with community organizations in order to provide community based interventions	_____
Justice system professionals assist with community and police in preventing crime and in solutions to challenging social conditions	_____

DESCRIBE WAYS IN WHICH YOUR ORGANIZATION IS RESTORATIVE WITH THE COMMUNITY, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH THE COMMUNITY

DOING NOW:

WHAT ELSE COULD BE DONE?

SECTION FOUR: JUSTICE SYSTEM

Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

	Rank
The system gives **balanced** attention to the victim, offender, and the community, and views each as equal customers	_____
Policy makers allocate resources appropriately to meet the objectives of safety, accountability, and competency development	_____
Restoration of all three customers is given higher priority over other objectives (such as case processing, sanctioning without objective, etc.)	_____
System outcome measures reflect the values of restorative justice	_____
Individual staff performance measures identify restorative expectations'	_____
The system has on-going training and orientation sessions on topics core to restorative justice	_____
The system seeks to hire employees with values consistent with restorative justice	_____
The system provides on-going training on victimology and victim sensitivity	_____

DESCRIBE WAYS IN WHICH YOUR SYSTEM IS RESTORATIVE WITH VICTIMS, OFFENDERS, AND THE COMMUNITY, AND PRACTICAL WAYS YOUR AGENCY COULD IMPROVE ITS RESTORATIVE PRACTICES WITH EACH OF THE THREE. CUSTOMERS

DOING NOW:

WHAT ELSE COULD BE DONE?

SUMMARY

SCORING: TOTAL SCORE OF SECTION DIVIDED BY # QUESTIONS

	Total Section Score	Divided by # Questions	Equals Avg. Score
VICTIM	_____	8	_____
OFFENDER	_____	8	_____
COMMUNITY	_____	8	_____
JUSTICE SYSTEM	_____	8	_____

WHAT ARE YOUR AGENCY'S GREATEST STRENGTHS?

WHAT AREA HAS THE GREATEST NEED FOR IMPROVEMENT?

How to Change Your Local System

This section discusses ways to change your system from a retributive to a more restorative justice model.

- Taking Down the Walls: Measures to Integrate the Objectives of the Justice System with the Community's
- Tips on Action Planning and Behavioral Change
- Change Action: A 12-Step Process

Taking Down the Walls: Measures to Integrate the Objectives of the Justice System with the Community's

By Mark Carey, Director, Dakota County Community Corrections, originally published in *Community Corrections Report*, 1997, reprinted with permission)

The criminal and juvenile justice system has been closely scrutinized in recent times by academic pundits, elected officials, and the public. Generally, the evaluation has not been favorable, whether based on factual data or perception. The justice system has been ineffective at stemming the conditions that breed crime. Sentencing serves a useful purpose, but large-scale crime reduction is not one of them. The public is dissatisfied with the system's ability to create the kind of societal change, which would reduce their fear of crime. In addition, people tend to globalize their fears and anxieties, often applying sweeping judgments about an entire set of players, in this case toward both offenders and justice system personnel. The justice system will face a "we-they" response from the public until it addresses the human condition of fear due to the lack of familiarity with the justice process and the system's inability to resolve inter-personal conflict.

This article illustrates some of the ways the current Justice system inadvertently isolates the public from the halls which seek to dispense Justice, describes its consequences, and identifies some ways in which jurisdictions have begun to bring the work of justice into its communities.

Justice System Features that Isolate and Insulate

You know the analogies: the Berlin Wall, the Great Wall of China, the Walls of Jericho, etc. All of these historical events contain a common theme: walls separate people from each other. Regardless of any positive benefits they are perceived to produce (such as security), walls create a set of unintended consequences. America's justice system is no different in this regard. Its walls may be impervious to the casual observer, but the resulting separation is no less imposing than a physical fence. If the justice system is serious about serving the public, then a close examination of the ways it keeps the community away is worth exploring.

In the beginning of this century, the courts were closely bound to the community. Probation officers were seen as part of the community from which they served. Police officers were well known to the residents whose streets they walked and patrolled. Societal changes prompted the modern justice service delivery process. For example, the courts centralized judicial functions due to factors such as the shift from the dominance of the rural community, specialization, court unification, and severing the link between the courts and local politics (Rottman, 1996).

It is useful to examine how the modem day Justice system's process keeps the public away, which perpetuates a fear and anxiety-based cycle. The following are some prevalent features in today's US justice system which tends to create an insulation effect:

1. **Data Privacy and Convenient Access to Information:** States have data privacy laws that prohibit the release of private data on offenders. It is hard to argue the sensibility of having such laws. However, data privacy laws can be applied in extreme measures. For example, victims may not

be able to get information on offenders which would help protect themselves. The public cannot get easy access to information that tells them where offenders convicted of serious offenses are living. Information cannot be shared with schools on juvenile offenders when certain information can help the school protect the other students and teachers.

2. **Sterilization of Information:** Public agencies have access to private, public, and summary data, which is critically important to the development of public policy. How and whether this information is shared with the public is often a source of debate. When summary information is eventually made public, it is often "massaged" to such a degree that it appears sterilized to the casual reader or observer. It usually takes persistent inquiries and thorough information analysis to determine what major policy implications might be drawn from the data.
3. **Removal of Emotion from Justice Process:** The justice process seeks to establish a calming, orderly environment. When individuals express raw emotions, attempts are made to control and remove these expressions from the proceedings. Yet, it is precisely these emotions that need an avenue for expression. Crime is a form of interpersonal conflict. This conflict is emotionally charged and solutions often require the expression and remedy which makes justice system personnel uncomfortable. The process promotes a type of blanched participation. Often, one of the system goals (e.g., speedy case processing) takes precedence over the restoration of the victim, offender, and the community. The system machinery loses sight of a core objective, determining responsible parties and seeking a dispositional process and outcome that repairs the harm to the degree possible. In many cases, efficiency becomes an antithesis to effectiveness.
4. **Intimidating and Foreign Structures:** Courthouses are built with imposing and forbidding structural designs and materials. They take on a form of majestic air, complete with marble tile and mahogany paneling. Judges sit higher than others, and wear robes. Participants stand as the judge is introduced. The judge maintains order through the surroundings, bulletproof glass, metal detectors, use of the gavel, the presence of a bailiff, and the power inherent in the position. The language and legal process is foreign to most participants, especially victims who may have never entered a courtroom before this somber occasion. This is not a setting where a participant is made to feel welcome and where the message is given that one's input is sought and valued.
5. **Professionalization:** The Justice system is operated by those with a required education and experience background. The procedures are carefully scripted, as based on law, Court Rules, policies, or historical practice. Unless you're a member of the "system club" you cannot know what the unwritten rules are as to conduct and appropriate protocol. One gets the sense that one should "not speak unless spoken to."
6. **Public Service Convenience:** In many ways, American society is handcuffed to a 911 mentality. When problems exist among members of a community, they call government officials whether that be police, the local housing inspector, the neighborhood association officer, or the animal control officer. Conflict is seldom resolved directly by the affected parties, but is referred to professional experts. We have become a society of specialization that has led to a reliance on experts to handle our conflicts. We have willingly given over our conflicts and our autonomy to these experts, only to lose our ability to influence and shape the outcome of that conflict. It is precisely our anxiety around crime which propels us to seek solutions from professionals, which ultimately disempowers us and diminishes our sense of community responsibility.

These factors, in combination, create a fortress-like effect. It takes on a self-fulfilling role. For example, as justice system personnel gain more education and expertise in their field, there is a natural tendency to use this specialized language and procedures like a foreign language. A type

of dress and courtroom code of conduct is established. Friendships and social cliques develop. Over time, a type of closed system culture develops that shuns public scrutiny or influence. In fact, public input tends to mess up an otherwise fairly tidy set of procedures for those who work closely within the system.

Nils Christie (1977) describes interpersonal conflict as personal property. Conflict is something that is "owned" by those involved, and he argues that more conflict is needed in industrialized society, not less. He describes justice representatives as "professional thieves" in that they are trained at stealing conflict which has a paralyzing effect by disempowering victims and communities.

Consequences of the Isolation

The community's response to crime should not be surprising. Anger and fear leads to a tendency to isolate ourselves in order to keep potentially harmful events away from us (Pranis, 1996). Isolation leads to a breakdown of social bonding. We have retreated to the safety of our backyards. Front porches have been abandoned and, with that, our collective responsibility for the safety and welfare of our neighbors. We look out for ourselves. It is through social bonding activities between neighbors (such as joint garage sales, block parties, bridge clubs, informal gatherings, etc.) which promote interpersonal relationships and trust. Isolation, however, breeds unfamiliarity, which leads to the loss of trust and further isolation. This cycle creates fertile ground for crime to grow, thus accelerating a spiraling effect (figure 1). In addition, isolation creates an environment of anonymity whereby the offender is unknown to the community and not held accountable on an on-going basis. By being anonymous, the offender is freed from many informal societal constraints which can embolden the offender to partake in anti-social activities.

CYCLE OF CRIME

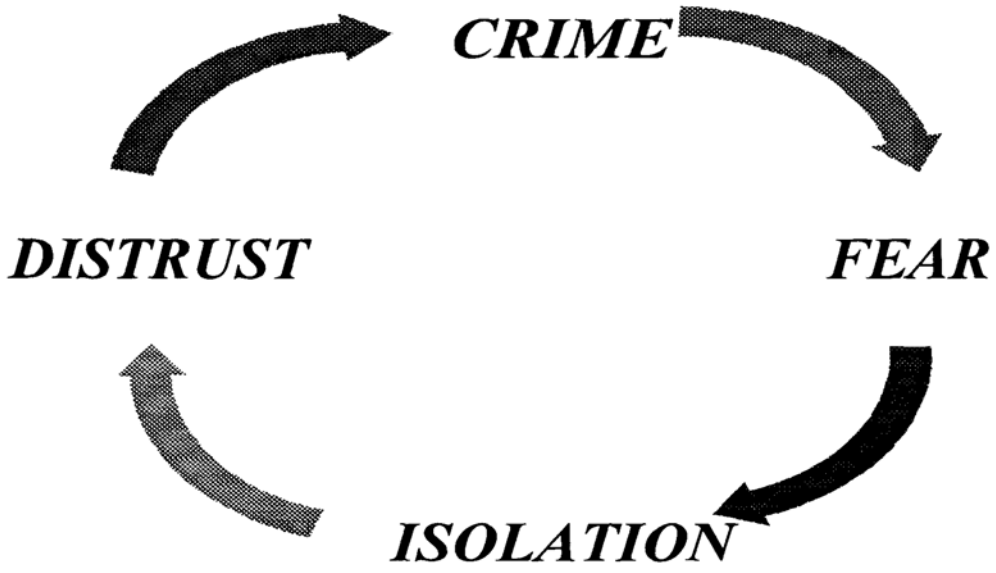


Figure I

This emotional response to events which create anxiety unfolds similarly by personnel in the justice system. When justice system personnel are criticized for their actions, there is a natural inclination to defend those decisions. Over time, there is a tendency to retreat in isolation from those who might seek blame when crime, especially repeat crime, occurs in local communities. One way to insulate itself, is for the system to limit easy access to information, or to control the nature of that information when it is released. Not surprisingly, the public ultimately will either stop listening, trusting, or understanding. This creates a spiraling cause and effect, which ultimately thickens the wall of insulation (figure 2). Like a piece of sand which irritates an oyster, provoking a chemical reaction and layers of substance that build up to form a pearl, both the public and the justice system simultaneously finds itself irritated and defensive, only to build up a wall of separation. In this case, however, what is left is not a pearl, but a wall of insulation.

THICKENING OF THE WALL PROCESS

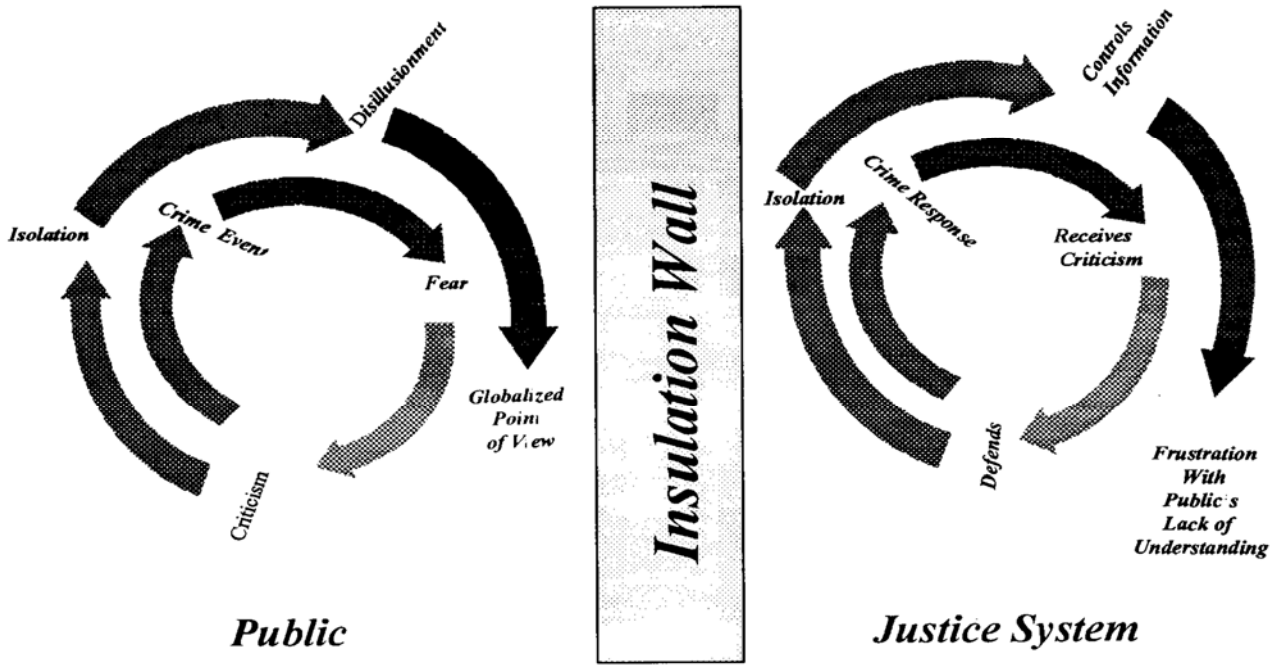


Figure 2

One way to understand the effects of system isolation is to examine how a justice system might answer these questions:

1. Is the justice process easy for a citizen to understand upon observation, or is it so filled with legal and expert jargon to make it largely incomprehensible?

2. Does the public have real access to the system (i.e., comfortable, respectful, inviting), or are there roadblocks to participation?

3. Do community members have an opportunity to truly influence the outcome, or is it almost entirely determined by the system personnel?

4. Is the system respectful of cultural, gender, socio-economical differences by the way it operates, or is it inflexible?

Promising Conceptual Frameworks Which Reduce System and Community Insulation

Fortunately, much is changing. System professionals and citizen members alike have recognized the need to join efforts to regain control over their neighborhoods. Crime can serve as a type of catalyst or "social fuel" which, if channeled, can provide the motivation and energy to empower a community to take fuller and more direct responsibility for crime and deteriorating social conditions (Christie, 1977).

A number of practical conceptual models have been popularized lately which provide compelling frameworks to help organize and articulate community based practices in responding to social problems, including crime. Some of these include communitarianism, community policing, devolution, Communities That Care, civic responsibility, community justice, and restorative justice. Programs operating out of a restorative or community justice model are producing tangible results which put the community on center stage.

Restorative Justice is a philosophical framework which puts the repair of crime as the predominant goal of intervention. Crime is viewed as a violation of one person by another as opposed to a violation against the state. The focus is on problem solving for the future rather than solely establishing blame for past behavior. Victims are given opportunities for input and for closure by gaining a better understanding of what happened, being able to move on with lives, impressing upon offenders the real human impact of their behavior, and promoting restitution payment plans. It puts victims and offenders in active and interpersonal problem solving roles. The community plays an important role in restorative justice as well. Some specific roles and responsibilities of the community are:

1. Supporting crime victims;

2. Establishing standards of conduct and condemning crime;

3. Providing opportunities for the offender to make amends (i.e., to "earn their redemption" and gain competencies which the community values); and

4. Establishing and maintaining community harmony.

Government can play a critical role in helping communities regain their sense of control and identity. This role is not to take over the community's organizing activities but to serve as a catalyst and facilitator by providing technical assistance, information, and seed funds when needed. Community organizing efforts have a better chance to break the cycle of crime by tapping into this "social fuel" and promoting activities that disrupt social conditions that breed crime. It is precisely the process of organizing and delivering these activities that bring about

familiarity, bonding, and trust which ultimately builds long-lasting community capital (see figure 3). The activities cannot simply be superimposed on existing service delivery corrections structures. Rather, neighborhoods and communities need to take on the responsibility for managing crime conditions.

RESTORATIVE COMMUNITY RESPONSE

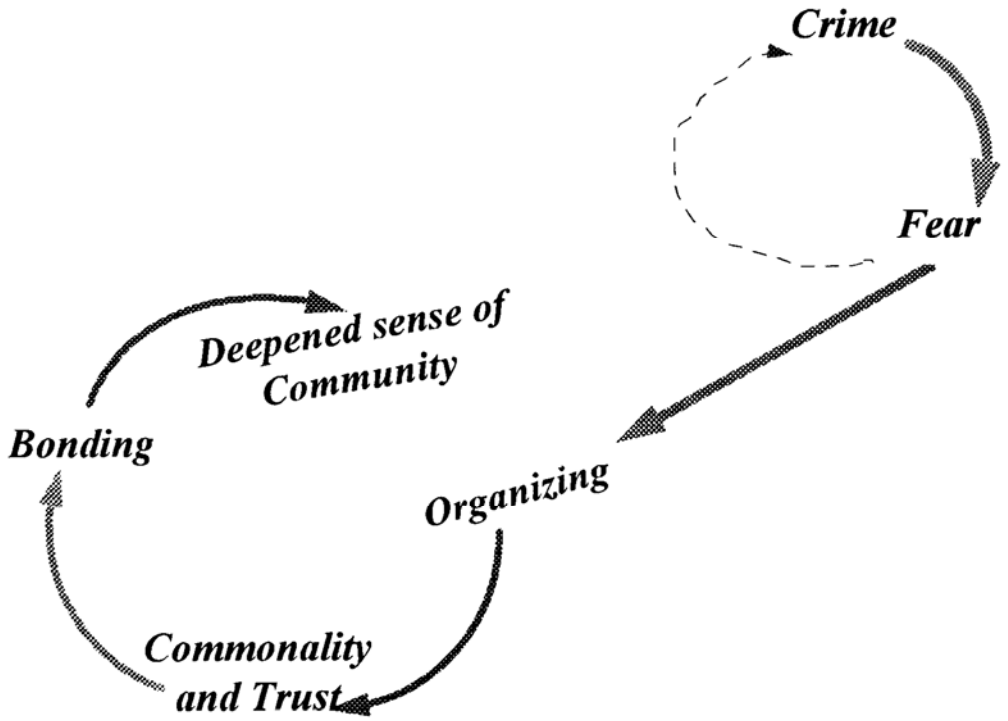
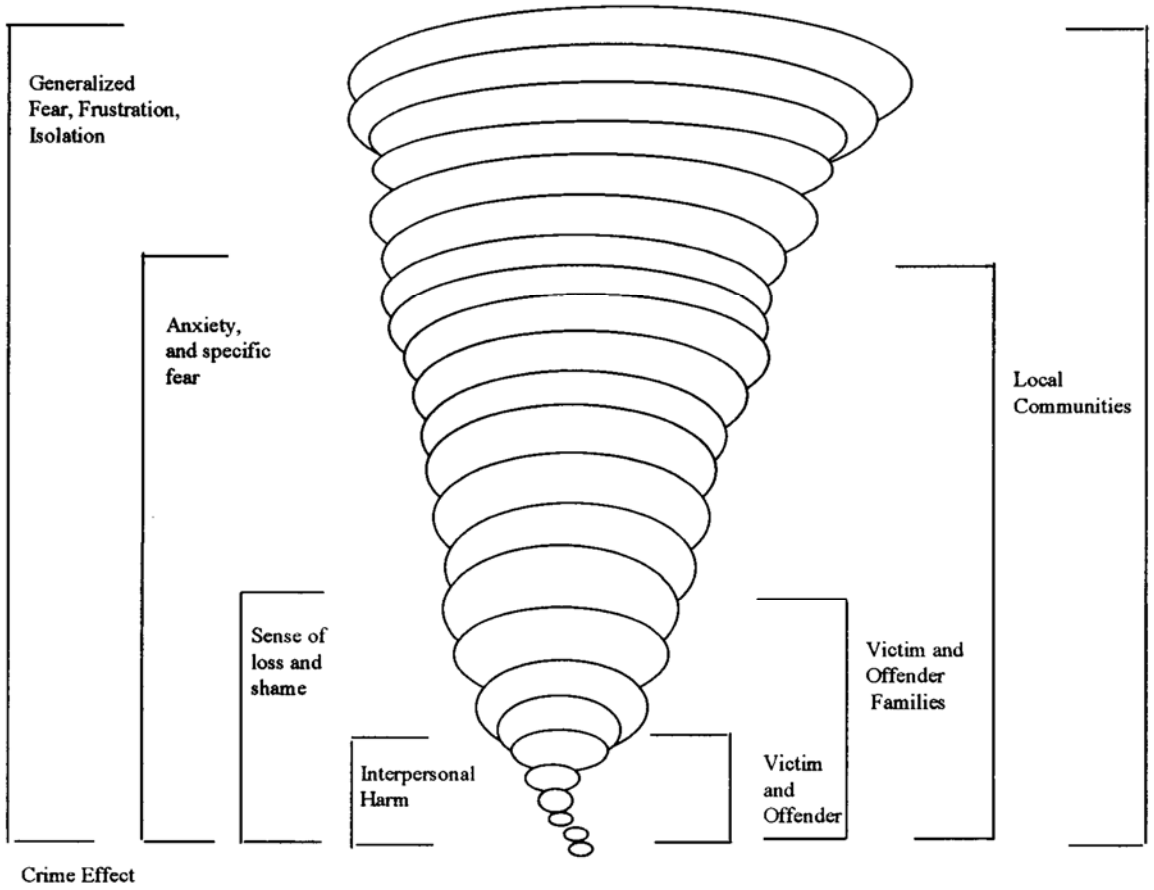


Figure 3

Justice system interventions, then, need to be more broadly applied. Rather than viewing crime simply as an illegal act against the state, it must see it as an interpersonal conflict against a victim and an entire community. Crime affects the large public body, as evidenced by generalized feelings of fear and anxiety, and by altered behavior (such as not leaving the home at might, purchasing security systems, avoiding normal social activities which put us at risk, etc.). It is helpful to see the affect of crime in its expansive form, as having a type of "whirlwind affect." A twister wreaks havoc on a wide-scale basis. The area where the twister touches the ground creates the most direct damage. However, the winds associated with the storm have a far-reaching impact, well beyond the point of ground contact. And, even in those areas where the twister does not cause damage, fear and anxiety are prevalent. The Justice system has traditionally focused solely on the point of contact: that of the offender, and to a lesser degree, to the victim (figure 4). Yet, the community is both a key victim and a resource for resolution.

WHIRLWIND OF CRIME EFFECT



Community-based and restorative-minded practices serve to remove the insulation between the system and the public in a meaningful way. They directly involve the public. These practices seek to restore the harmony at the community level. They may even access the community's resources to bring about restorative changes. Most importantly, the process goal is not to bring the community to the justice system, but to bring the justice system to the community. The common features in the promotion of a community-based, restorative approach are that they 1) fully inform those affected by the crime, 2) provide full access to decision making (in a way that is comfortable, convenient, and respectful), 3) use processes that are raw and real, 4) are consensual in nature whenever possible, 5) unite instead of break apart, 6) use the justice system as a backstop, not the backbone, and 7) are empowering in nature.

Promising Practices

Some of the newest applications of Justice in the community are truly connecting the justice system and the public in unique ways. *These practices are serving as bridges, gates, and pathways to integrate system and community objectives to such a point that they are being blended into one indistinguishable outcome: justice.*

Circle Sentencing: Circles are composed of offenders and their supporters, victims and their supporters, interested members of the general community, and criminal/juvenile justice system

representatives. They focus on peacemaking or healing. Circles are facilitated by community "keepers." The participants use a consensus building process. The needs of the victim and the community, as well as the needs and responsibilities of the offender are addressed through the circle process that results in the development of a plan. If the offender fails to fulfill his/her responsibility, the case is returned to the formal court process. Circles can also be used for family, civil, and other conflicts.

Crime Boards: Also known as reparative probation, Crime Boards are designed for offenders convicted of misdemeanors and non-violent felonies. The program involves face-to-face meetings between the offender and volunteer Community Reparative Board members. These members are citizens who are trained to intervene on cases referred by the court process. The purpose is to work out an agreement on how the offender is to make reparation to the victim and the community. Offenders are sentenced to the program by a judge following adjudication of guilt. The Board may meet with the offender after the initial meetings in order to monitor progress on conditions.

Family Group Conferencing: Conferencing is a process of intervention whereby community members affected by the crime come together to meet with the victim and the offender. The meeting is facilitated by a trained volunteer or police officer. The purpose is to talk about how the crime has affected each others' lives, and decide as a group how the harm is to be repaired. Conferences may be held before or after the adjudication process, or as an alternative to the formal justice system.

Community Policing: Community policing involves the assignment of law enforcement officers to a specific geographic area and may include the opening of "mini-stations" in neighborhoods. The officers develop trust through routine communication with community leaders, citizens, and business owners. Officers take on a problem solving approach rather than waiting to respond to a call after a crime had already occurred. The officers may also organize block clubs, support local merchant associations, and conduct other crime prevention efforts.

Neighborhood Probation: Also known as beat probation, neighborhood probation is similar to community policing whereby probation officers are assigned to geographic areas instead of having dispersed caseloads. The view the community as their client and establish community partnerships. They will often join the area neighborhoods in working with offenders to prevent recidivism, deal with community "hot spots," gang intimidation, drug houses, and other quality of life concerns. Efforts are also made to collaborate with other service agencies such as social services, public health, churches, etc.

School Based Probation: Similar to neighborhood probation, school based probation involves placing juvenile probation officers in schools. They are assigned the same geographic area as the school's and provide problem solving assistance to school for those students on probation. The objective is to monitor probationers while seeking ways to increase the likelihood of school success through improvement of grades, reduction in truancy and expulsions, and increase in high school graduation.

Community Courts: Community courts respond to the need to be closer to community needs by decentralizing court facilities. Also known as court devolution, the courts permit access at many remote locations whereby citizens can file forms, pay fines, and participate in the court process more conveniently. It requires collaboration between the court and one or more community groups in order to forge a more broadly based connection between the court and community. It includes three components including: resolving disputes directly and with the help of those affected, treating parties of a dispute as individuals rather than abstract legal entities, and using community resources in the resolution of disputes.

Community Prosecution: Community prosecution helps communities resolve immediate, specific crime related problems identified by the residents. Prosecutors may be assigned to specific neighborhoods and assist communities by explaining legal constraints that prevent law enforcement from acting, and devising alternative tools citizens and police can use when conventional ones fail.

Community Defense: Community defense seeks to provide legal services for the purpose of solving problems that foster crime and injustice before crime occurs. It seeks to address structural problems that are in existence in many communities. Rather than just representing individuals accused of crime, community defense attorneys are based in the community, are accessible to the public, and represent clients in an effort to avoid problems. The highest priorities are given to cases before an arrest is made. Assistance is offered to families and community members who are experiencing difficulties that can be addressed, in part, with legal assistance.

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How to Change Your Local System: Tips on Action Planning

The Community Needs To:

- Go to where the energy is (80/20 rule)
- Reclaim their moral authority
- Be guided by shared principles
- Establish collaborative, diverse, and multi-disciplinary teams

The Government Needs To:

- Delegate power to shape and decide
- Be patient and listen
- Give information (e.g. effective PSI strategies, reducing risk, increasing protective factors)
- Practice restraint
- Be clear on roles and expectations

System Features that Isolate and Insulate

- Data privacy and access to information
- Sterilization of information
- Removal of emotion from process
- Intimidating and foreign structures
- Professionalism
- Public service convenience

Crime Provokes Community Responsibility by:

- Calling attention to social problems and harmful social conditions.
- Providing opportunity for the community to affirm its values and behavioral norms.
- Causing a community obligation to provide a process through which this conflict can be resolved.

Thus, Crime is a form of "social fuel."

Sustaining Community Involvement

Solutions:

- Must win support of public, not assume
- Train citizens, not just practitioners
- Get organizations involved

Challenges:

- History of justice system-citizen cooperation
- Lack of organizational involvement
- Lack of understanding-i.e., message
- Previous victim experiences
- Community diversity

Four General Principles About Behavioral Change:

1. Behavior is derived from thoughts
2. Relationships count
3. Community accountability counts
4. Humans do not always follow principles

Change Action: A 12-Step Process

Key words to remember about a change process:

- Communication, communication, communication
- Involvement and access to decisionmaking
- Persistence by the leadership

1. **Gain Information.** Read and learn as much as you can about restorative justice. Understand the concept well enough that you can introduce it properly, and be able to set the tone for the rest of the agency to want to hear more about it. Recognize that a comprehensive change process will take a long time, and that every agency is doing some restorative practice now. The intent is to make your agency more restorative over time, to examine your existing beliefs about the purpose of crime intervention, and to shape your practice so that it more closely reflects restoration.
2. **Provide Introductory Training.** Arrange for initial training for all staff, not just management. Make sure that the management team has gained early knowledge about restorative justice before the training is offered to others. The managers' perceptions of the concept and initial training is key to how open others will be in being open minded. Be careful who you select for doing the training, and in its timing. Early, negative impressions can be difficult to overcome.
3. **Set Up a Planning Team(s).** Once the initial training is completed, and it is clear that the concept has some merit for possible implementation in your agency, set up one or more planning teams. These teams should be made up of a vertical slice of your agency. Multiple teams may be advisable depending on the type and size of your agency. Including representatives from services to the three customers (victims, offenders, and the community are extremely important). This feedback can come from direct participation on the planning team, focus groups, or other means. Decide whether to keep the planning only to your agency, or to include other stakeholders. If you select an internal-only team, decide how you will get other agency involvement. Select a chairperson(s) who does not have some hidden or overt agenda that would prevent a candid and frank discussion of the issues.
4. **Conduct an Organizational Audit.** An audit of your existing agency practices can identify what additional or enhanced restorative practices can be added, at the same time it reinforces existing restorative activities. Make sure the audit is conducted by multiple disciplines and employee status to ensure that a cross representative sample gives you a fuller picture of the perceived state of affairs.
5. **Determine Readiness for Chanage.** Assess how ready your agency, or the justice system as a whole, is for change. Examine what forces exist which support the possible change, and which resist the change. Determine how the different stakeholders might respond to the changes. This analysis will help you prepare a strategic plan for initiating action steps.
6. **Provide Additional, More Targeted Training.** Introductory restorative justice training is rarely enough. Usually, many questions and struggles arise after efforts to understand and implement the concept are attempted. Additional training that is specific to the agency's unique needs will provide targeted technical assistance.
7. **Develop an Action Plan.** The planning teams will devise a number of possible actions to be considered for implementation. The action steps can be organized into an action plan that

specifically details what the agency hopes to accomplish in the months to come. That plan provides the agency with a type of vision that helps guide resource allocation and prioritization.

8. **Develop a Strategy and Timelines.** The action plan should have realistic timelines and specific strategies to ensure successful implementation. Preferably, it will include action steps which guarantee early success. The strategies will need to be revised as unexpected events and perceptions arise.
9. **Review and Revise Agency Mission and Outcome Measures.** Early changes in the agency practices can occur without whole-scale changes in the mission. Over time, however, it will become evident to most agencies that the existing agency mission needs changes to reflect the emerging restorative practices and values. In addition, the specific outcome measures (which reflect why the agency exists) will need to be changed. As the outcomes change, more of the agency resources and attention will be directed to the new mission.
10. **Redefine Agency Values, Roles, Supports, and Expectations.** Staff will need a great deal of additional information about how the agency expectations are changing. They need to know what values are espoused, what roles they are to play, what new expectations exist, and how they can get support. Without clarification, staff will be confused as to how to prioritize their time, and what additional skills they need to acquire. In essence, the organizational culture will have changed, which creates anxiety. This culture change will likely disturb relationships, job security, individual competence, and other concerns.
11. **Review and Revise Job Descriptions and Reward System.** A complete organizational culture change requires that the leadership review the reward system. People gravitate to that which is rewarding to them, to what they gain some value from. This includes at least their relationship/recognition of their supervisor and peers, and their financial compensation.
12. **Evaluate the New Practices.** The changes must be evaluated to determine whether the new outcomes are being met. Upon this evaluation, the processes, policies, and programs can be refined in order to make further improvements.

Remember the "Re-" Factor: Each step above will need to be redone at some time (re-learned, re-audited, re-planned, re-determined, re-developed, etc.), the number of times dependent on the extent to which restorative justice practices and values do not coincide with existing organizational culture, values, and practices.

Promising Practices in Restorative Justice

Throughout the country, many communities are embracing the principles of restorative justice, resulting in the development of many promising practices. This section details a few of those practices.

- Victim Impact Statements (VIS)
- Restitution
- Sentencing Circles
- Community Service
- Family Group Conferencing
- Victim Offender Mediation
- Victim Impact Panels
- Victim Impact Class
- Community Restorative Boards

Victim Impact Statements

The victim impact statement (VIS) is one of the most effective means to communicate the "voice of the victim" throughout the criminal and juvenile justice systems. The use of VIS was initiated in 1976 by then-Chief Probation Officer James Rowland of Fresno County (CA), who felt that victims had valuable information they could provide to courts prior to sentencing.

A VIS is a victim's description of how the crime affected their life and the lives of their loved ones. The VIS provides the court and paroling authorities with vital information relevant to the short- and long-term psychological, physical, and financial effects of a crime on the victim and on others around them. The VIS can be delivered by victims orally (by "allocution"), in writing, or in audiotape or videotape formats.

VIS are commonly used by courts as part of pre-sentence investigations and at sentencing, and by paroling authorities as part of pre-parole investigations, parole release, and revocations. The use of VIS is a restorative practice that can assist in holding offenders accountable for their criminal or delinquent actions, promote community safety by providing important information relevant to decisions affecting case disposition, and involve victims in a meaningful way in what may be one of the most significant events of their lives. VIS are appropriate not only for individual victims, but for entire neighborhoods that are detrimentally affected by chronic drug or gang activities (called "community impact statements").

Goals

The goals of VIS are to:

- Document crucial information about the actual crime that may not be evident from plea agreements, dispositions, sentencing, or offenders' correctional case files, and that can serve to hold offenders accountable for the actual crimes they committed.
- Provide a format for victims -- including victims who may have special obstacles to accessing the systems such as child victims, victims with disabilities, and non-English speaking victims -- to present information to and participate in the criminal and juvenile justice systems.

Implementation

The systematic use of VIS requires the involvement of and coordination among key criminal and juvenile justice officials. For VIS to be an effective tool:

- *Prosecutors* need to inform victims of their right to submit a VIS;
- *Probation officials* need to practice due diligence in locating victims and documenting relevant VIS information as part of their pre-sentence investigations;
- *Corrections officials* need to maintain records of the VIS from the sentencing phase in a confidential section of the offender's file for review by paroling authorities, and notify victims of any rights they might have relevant to VIS input at parole hearings; and

- *Parole boards* should have policies that encourage the use of VIS by crime victims, both for parole hearings and parole revocation proceedings.

In many jurisdictions, victims are given printed forms describing the type of information that is most important to include in VIS. Often victim service and criminal justice professionals assist victims in filling out VIS forms. This guidance can help victims to include complete, pertinent information, and is particularly beneficial for victims who have had little or no prior interactions with the criminal or juvenile justice systems.

Lessons Learned

Many victims report that VIS increased their satisfaction with the entire criminal justice system. Research by Mothers Against Drunk Driving (MADD, 1994) found that 66 percent of victims were satisfied with the criminal justice system if they were given the opportunity to present *written* VIS, and 62 percent of victims were satisfied with the criminal justice system if they were given the opportunity to present *oral* VIS. Victim dissatisfaction with the criminal justice system increased to 75 percent when they were *not* allowed to submit written VIS, and to 78 percent when they were *not* allowed to present oral VIS.

A rich body of research concludes that two factors increase victims' overall satisfaction with the justice system and reduce victim trauma: (1) being taken seriously and being believed; and (2) being informed and involved in key justice proceedings related to their cases. VIS provide opportunities to fulfill both of these key elements that help victims reconstruct their lives in the aftermath of a crime.

For More Information

A comprehensive guidebook to the implementation of VIS, Impact Statements: A Victim's Right to Speak, A Nation's Responsibility to Listen , published by the National Victim Center, MADD, and the American Prosecutor's Research Institute in 1994, is available from the Office for Victims of Crime Resource Center.

Restitution

Criminal restitution is a process by which offenders are held accountable for the financial losses they have caused to the victims of their crimes. The restitution payment is the sum of money paid by the offender to the victim to balance this monetary debt.

Without restitution, a victim may be financially devastated by the crime committed against them. A victim's financial losses can also contribute to their experience of trauma and frustration with the criminal and juvenile justice systems. On the other hand, receiving a restitution payment can make a victim feel that the justice system is working on their behalf to ensure they are justly compensated for their losses. Moreover, restitution, as a part of the sentence or a condition of community supervision, is an essential aspect of holding offenders accountable for their crimes.

Restitution is considered to be a "core" victim right which is crucial to help victims reconstruct their lives in the aftermath of a crime. In recent years, restitution has been made mandatory for persons convicted of federal crimes. Additionally, 29 states require a court to order restitution to the victim or to state on the record the reasons for failing to do so (*1996 Victims' Rights Sourcebook*, National Victim Center).

Goals

The goals of restitution are to:

- Provide remuneration to victims who suffer financial losses as a result of crime. Such losses may include out-of-pocket expenses for medical or mental health treatment, property loss or damage, sexual assault examinations, HIV testing, participation in justice processes, and funeral costs.
- Hold offenders accountable for their actions, specifically those that cause financial harm to victims.

Implementation

Appropriate restitution orders are based on information provided by victims to the court about out-of-pocket losses and information about offenders' financial status and earning capacity. Victim input is usually gathered through either victim impact statements or pre-sentence investigations. Victims often need assistance to prepare complete, accurate documentation of their immediate and projected financial losses resulting from the crime. Such assistance can be provided by victim advocates, prosecution staff, or probation/parole personnel. Justice agencies also need to conduct comprehensive assessments of convicted offenders' assets and ability to pay, both immediate and long-term.

The ordering, collecting, and disbursing of restitution require strong collaborative efforts among many justice agencies. Justice officials need to practice "due diligence" in seeking court- or parole-ordered restitution payments from offenders. Records of restitution judgements should be

incorporated into offenders' case files at the court, probation, incarceration/detention, and parole stages of the criminal and juvenile justice processes. Victims should be advised of the types of remedies the system can pursue when offenders fail to comply with restitution orders, which include, but are not limited to, converting restitution orders to civil judgements, extending the terms of probation/parole until restitution is paid, asset forfeiture, garnishment or attachment, income withholding orders, revocation of the offender's driver's license, and revocation of probation/parole, in some cases.

Lessons Learned

A study involving 6,336 formal juvenile probation cases in Utah, conducted by the National Center for Juvenile Justice, found the use of restitution associated with significant reductions in recidivism among certain juvenile offenders. Juveniles agreeing to pay restitution as an informal disposition, as well as those formally ordered to pay restitution, returned to court significantly less often than juveniles who did not pay restitution (OJJDP, 1992).

Other studies have identified restitution as one of the most significant factors related to victim satisfaction with the criminal justice process (American Bar Association, *Improving Enforcement of Court-Ordered Restitution*, 1989).

A bulletin entitled Restitution: Making It Work is available from the Office for Victims of Crime.

Sentencing Circles

A sentencing circle is a community-directed process, conducted in partnership with the criminal justice system, to develop consensus on an appropriate sentencing plan that addresses the concerns of all interested parties. Sentencing circles - sometimes called peacemaking circles - use traditional circle ritual and structure to involve the victim, victim supporters, the offender, offender supporters, judge and court personnel, prosecutor, defense counsel, police, and all interested community members. Within the circle, people can speak from the heart in a shared search for understanding of the event, and together identify the steps necessary to assist in healing all affected parties and prevent future crimes.

Sentencing circles typically involve a multi-step procedure that includes: (1) application by the offender to participate in the circle process; (2) a healing circle for the victim; (3) a healing circle for the offender; (4) a sentencing circle to develop consensus on the elements of a sentencing plan; and (5) follow-up circles to monitor the progress of the offender. The sentencing plan may incorporate commitments by the system, community, and family members, as well as by the offender. Sentencing circles are used for adult and juvenile offenders with a variety of offenses and have been used in both rural and urban settings. Specifics of the circle process vary from community to community and are designed locally to fit community needs and culture.

Sentencing circles have been developed most extensively in Saskatchewan, Manitoba, and the Yukon and have been used occasionally in several other communities. Their use spread to the United States in 1996 when a pilot project was initiated in Minnesota.

Goals

The goals of sentencing circles include:

- Promote healing for all affected parties.
- Provide an opportunity for the offender to make amends.
- Empower victims, community members, families, and offenders by giving them a voice and a shared responsibility in finding constructive resolutions.
- Address the underlying causes of criminal behavior.
- Build a sense of community and its capacity for resolving conflict.
- Promote and share community values.

Implementation

A successful sentencing circle process depends upon a healthy partnership between the formal justice system and the community. Participants from both need training and skill building in the circle process, peacemaking, and consensus building. The community can subsequently customize the circle process to fit local resources and culture. It is critically important that the community's planning process allows sufficient time for strong relationships among justice professionals and community members to develop. Implementation procedures must be highly

flexible, because the circle process will evolve over time based on the community's knowledge and experience.

In many communities, direction and leadership are provided by a community justice committee that decides which cases to accept, develops support groups for the victim and offender, and helps to conduct circles. In most communities, circles are facilitated by a trained community member, who is often called a "keeper."

Sentencing circles are not appropriate for all offenders. The connection of the offender to the community, the sincerity and nature of the offender's efforts to be healed, the input of victims, and the dedication of the offender's support group are key factors in determining whether a case is appropriate for the circle process. Because communities vary in health and in their capacity to deal constructively with conflict, representatives of the formal justice system must participate in circles to ensure fair treatment of both victims and offenders.

The capacity of the circle to advance solutions capable of improving the lives of participants and the overall well-being of the community depends upon the effectiveness of the participating volunteers. To ensure a cadre of capable volunteers, the program should support a paid community-based volunteer coordinator to supply logistical support, establish linkages with other agencies and community representatives, and provide appropriate training for all staff.

Lessons Learned

Very little research has been conducted to date on the effectiveness of sentencing circles. One study conducted by Judge Barry Stuart (1996) in Canada indicated that fewer offenders who had gone through the circle recidivated than offenders who were processed by standard criminal justice practices. Those who have been involved with circles report that circles empower participants to resolve conflict in a manner that shares responsibility for outcomes; generate constructive relationships; enhance respect and understanding among all involved; and foster enduring, innovative solutions.

For a more complete discussion of sentencing circles, see *Building Community Justice Partnerships: Community Peacemaking Circles*, by Barry Stuart, available from Aboriginal Justice Section, Department of Justice of Canada, Ottawa, Ontario, K1AOH8; Fax - (613-957-4697, Attn. Learning Network).

Community Service

Harmed by criminal and delinquent activities, they can be at least partially restored by meaningful service that contributes to their improvement. Community service offers one way an offender can be held accountable to repair some of the harm caused by his or her criminal actions.

Community service is effectively used in all 50 states and at the federal level as a component of criminal sentences and juvenile adjudications involving diversion, probation, and parole. Restorative justice practices in institutions are also beginning to incorporate community service sanctions for infractions that have a detrimental impact on the "community" of a prison or detention center.

Goals

The goals of community service are to:

- Hold offenders accountable for the harm they have caused to the community.
- Provide communities with human resources that can improve the quality of life in public environments, business, and even individual residences.
- Help offenders develop new skills through supervised work activities.
- Allow victims a voice and occasionally some direct benefit by recommending the type of community service performed.

Implementation

Successful community service programs require a true public-private partnership. Residents in a community can enhance efforts of the criminal and juvenile justice systems by providing meaningful work experiences, volunteering to supervise offenders sentenced to community service, and serving as mentors for adjudicated youth in community service capacities. Examples of community service include: public work programs that beautify a community's environment such as park and roadside clean-up efforts or graffiti removal. Truly restorative community service offers crime victims the opportunity to provide input into the types of community service they would like to see the offender perform, including activities that directly benefit the victim or a charity or project of the victim's choice. Community service can also benefit victim service organizations, for example, by providing bookkeeping services to a rape crisis center or other valuable support, as described in the example below.

Lessons Learned

Adult and juvenile offenders, under the supervision of the Department of Community Corrections in Deschutes County, Oregon, have accomplished a number of human service and public works tasks, including the construction of a homeless shelter and domestic abuse crisis center. Offenders raised the money to pay for the building materials, as well as provided the

construction labor. This type of community service provides offenders an opportunity for skill development and interaction with positive role models, as well as learning about the needs of others and helping to create something of lasting benefit to the community.

Family Group Conferencing

Family group conferencing involves the community of people most affected by the crime -- the victim and the offender; and the family, friends, and key supporters of both -- in deciding the resolution of a criminal incident. These affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired. To participate, the offender must admit to the offense. Participation by all involved is voluntary. The facilitator contacts the victim and offender to explain the process and invites them to the conference; the facilitator also asks them to identify key members of their support systems, who will be invited to participate as well.

The conference typically begins with the offender describing the incident, followed by each participant describing the impact of the incident on his or her life. It is preferable to allow the victim to start the discussion, if they wish. Through these narrations, the offender is faced with the human impact of the behavior on the victim, on those close to the victim, and on the offender's own family and friends. The victim has the opportunity to express feelings and ask questions about the incident. After a thorough discussion of the impact of the behavior on those present, the victim is asked to identify desired outcomes from the conference, and thus help to shape the obligations that will be placed on the offender. All participants may contribute to the problem-solving process of determining how the offender might best repair the harm he or she has caused. The session ends with participants signing an agreement outlining their expectations and commitments.

Family group conferencing was developed from a Maori tradition in New Zealand, where it is currently used for most juvenile offenses. The process was adapted by police in Australia, and then introduced to the United States, where it is currently used by some police agencies, schools, and probation. Family group conferencing is most often used as a diversion from the court process for juveniles, but can be used after adjudication to address unresolved emotional issues or to determine the specific terms of restitution. The process has been used in a few adult cases. A variety of offenses have been resolved through family group conferencing, including theft, arson, minor assaults, drug offenses, and vandalism.

Goals

The goals of family group conferencing include:

- Provide an opportunity for the victim to be directly involved in the discussion of the offense and in decisions regarding appropriate sanctions to be placed on the offender.
- Increase the offender's awareness of the human impact of his or her behavior and provide an opportunity to take full responsibility for it.
- Engage the collective responsibility of the offender's support system for making amends and shaping the offender's future behavior.
- Allow both offender and victim to reconnect to key community support systems.

Implementation

The family group conferencing process has been implemented in schools, police departments, probation offices, and neighborhood groups. Either volunteers or paid employees can serve as facilitators after completing a required course of skills training. Besides involving the victim, offender, and their family members, a conference might involve other key people in the victim's and offender's lives such as teachers, other relatives, peers and special adult friends, and the like. Some family group conferencing programs are implemented within a single agency, while others are developed collaboratively among several agencies.

Lessons Learned

To date, two studies have been conducted to assess the impact of family group conferencing with youthful offenders. One study assessed the impact of a new law mandating the widespread use of conferencing in New Zealand. It found that families of offenders are more frequently and actively involved in the justice process when they participate in a family group conference, rather than standard justice processes (Maxwell and Morris, 1993). It also found that the offenders and victims, as well as their families, reported that the conference process had been helpful. Preliminary program evaluations in the United States also indicate high levels of victim satisfaction with the family group conferencing process and high rates of compliance by offenders with the agreements reached during conferences.

Practitioners observe a reduction in fear for many victims. When used as a diversion from court, family group conferencing provides a much speedier resolution of the incident than would otherwise be the case. Family group conferencing also builds community skills in conflict resolution and participatory decisionmaking.

Victim-Offender Mediation

Victim offender mediation is a process that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime. With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; to receive answers to lingering questions about the crime and the offender; and to be directly involved in developing a restitution plan for the offender to pay back his or her financial debt.

This process is different from mediation as it is practiced in civil or commercial disputes, since the involved parties are not "disputants" nor of similar status - with one an admitted offender and the other the victim. Also, the process is not primarily focused upon reaching a settlement, although most sessions do, in fact, result in a signed restitution agreement. Because of these fundamental differences with standard mediation practices, some programs call the process a victim offender "dialogue," "meeting," or "conference."

Currently, there are more than 290 victim offender mediation programs in the United States and more than 500 in Europe. The American Bar Association recently endorsed victim offender mediation and recommends its use throughout the country. A recent statewide survey of victim service providers in Minnesota found that 91 percent of those surveyed believe that victim offender mediation should be available in every judicial district, since it represents an important victim service.

Goals

The goals of victim offender mediation include:

- Support the healing process of victims, by providing a safe and controlled setting for them to meet and speak with the offender on a strictly voluntary basis.
- Allow the offender to learn about the impact of the crime on the victim and to take direct responsibility for their behavior.
- Provide an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

Implementation

Cases may be referred to victim offender mediation programs by judges, probation officers, victim advocates, prosecutors, defense attorneys, and police. In some programs, cases are primarily referred as a diversion from prosecution, assuming any agreement reached during the mediation session is successfully completed. In other programs, cases are usually referred after a formal admission of guilt has been accepted by the court, with mediation being a condition of probation (*if* the victim has volunteered to participate). Some programs receive case referrals at both stages. The majority of mediation sessions involve juvenile offenders, although the process is occasionally used with adults and even in very serious violent cases

In implementing any victim offender mediation program, it is critically important to maintain sensitivity to the needs of the victim. First and foremost, the mediator must do everything possible to ensure that the victim will not be harmed in any way. Additionally, the victim's participation must be completely voluntary, as should the participation of the offender. The victim should also be given choices, whenever possible, concerning decisions such as when and where the mediation session will take place, who will be present, who will speak first, etc. Cases should be carefully screened regarding the readiness of both victim and offender to participate. The mediator should conduct in person, pre-mediation sessions with both parties and make follow-up contacts, including the monitoring of any agreement reached.

Lessons Learned

A large multi-site study (Umbreit, 1994) of victim offender mediation programs with juvenile offenders found the following:

- 3,142 cases were referred to the four study-site programs during a two-year period, with 95 percent of the mediation sessions resulting in a successfully negotiated restitution agreement to restore the victim's financial losses.
- Victims who met with their offender in the presence of a trained mediator were more likely to be satisfied (79 percent) with the justice system than similar victims who went through the normal court process (57 percent).
- After meeting the offender, victims were significantly less fearful of being revictimized.
- Offenders who met with their victims were far more likely to successfully complete their restitution obligation (81 percent) than similar offenders who did not participate in mediation (58 percent).
- Fewer offenders who participated in victim offender mediation recidivated (18 percent) than similar offenders who did not participate in mediation (27 percent); furthermore, participating offenders' subsequent crimes tended to be less serious.

Victim Impact Panels

Victim impact panels provide a forum for crime victims to tell a group of offenders about the impact of the crime on their lives and on the lives of their families, friends, and neighbors. Panels typically involve three or four victim speakers, each of whom spends about 15 minutes telling their story in a non-judgmental, non-blaming manner. The offenders of the victim presenters are not present. While some time is usually dedicated to questions and answers, the purpose of the panel is for the victims to speak, rather than for the victims and offenders to engage in a dialogue.

Victim impact panels were first initiated in 1982 by Mothers Against Drunk Driving (MADD). In light of the devastating consequences of drunk driving on its victims and on society (causing over 17,000 deaths and more than one million injuries in 1995 alone), MADD felt that it was critical to change the generally accepted attitude that these incidents were "accidents" rather than crimes. They believed that a key component of changing attitudes was to confront drunk drivers with first-hand testimony from the victims of drunk driving crashes.

As a result of positive feedback from both victims and offenders who have participated in drunk driving panels, this strategy has been used with other crimes such as property crimes, physical assault, domestic violence, child abuse, elder abuse, and homicide (the survivors serve as panelists). Attendance by offenders at a panel is often court-ordered in juvenile and criminal cases, either at diversion or accompanying a probation sentence. Panels have also been used in prison and jail settings, with parolees, and in treatment programs, defensive driving schools, and youth education programs. Additionally, victim impact panels are often presented at training forums for juvenile and criminal justice professionals to help them better understand the scope and trauma of victimization.

Goals

The goals of victim impact panels are to:

- Help offenders understand the impact of their crimes on victims and communities.
- Provide victims with a structured, positive outlet to share their personal experiences and to educate offenders, justice professionals, and others about the physical, emotional, and financial consequences of crime.
- Build a partnership among victim service providers and justice agencies that can raise the individual and community awareness of the short- and long-term impacts of crime.

Implementation

Many criminal and juvenile justice agencies have institutionalized victim impact panels as a sentencing option. Victim service organizations either implement the program for the court, or work in collaboration with justice personnel to conduct panels. Whatever the structure, victim service agencies are usually best prepared to perform the critically important role of screening

victims to ensure they are sufficiently healed from their victimization experience not to be retraumatized by participating in the panel. Other implementation tasks are to prepare the victims for participation, moderate the panels, gather participant feedback information, and provide records of participants and program activities to the sentencing authority.

Lessons Learned

A research study of victims speaking on victim impact panels to convicted drunk drivers found that 82 percent of victims who told their stories to offenders said that speaking aided them in their recovery (Mercer, 1995). Ten percent felt they were neither harmed nor helped by the experience, and eight percent said they felt the experience had been harmful to them.

Most offenders who complete evaluations after listening to a victim impact panel indicate that their experiences were positive and educational, and contributed to a change in their attitudes and perceptions about their crimes.

Victim Impact Class

This page is archived material and is no longer updated. It may contain outdated information and broken links. The material presented on these pages is the product of five regional symposia held on restorative justice between June 1997 and January 1998.

The Victim impact class is an educational program designed to teach offenders about the human consequences of crime. Offenders are taught how crime affects the victim and the victim's family, friends, and community, and how it also affects them and their own families, friends, and communities. Specific modules address property crimes, sexual assault, domestic violence, child abuse and neglect, elder abuse and neglect, drunk driving, drug-related crimes, gang violence, and homicide. Victim impact classes have been adapted for both adult and juvenile offenders in diversion, probation, prison, pre-release, detention, and parole supervised settings.

A key element of the classes is the direct involvement of victims and victim service providers. They tell their personal stories of being victimized or of helping victims to reconstruct their lives after a traumatic crime. Parents of incarcerated youth and community representatives, such as insurance adjusters, may also speak to the class. Offenders are encouraged to enter into a dialogue with the guest speakers.

Some programs integrate victim impact panels, composed of three to four victims of the particular type of crime being examined, into the curriculum. When the panel format is used, the class participants may ask questions at the end of the presentation, but usually do not engage in discussion with the victim presenters.

This program was originally developed in 1986 by the California Youth Authority (CYA) and called the Impact of Crime on Victims Program. CYA offers this program to offenders incarcerated in CYA facilities throughout California.

Goals

The goals of victim impact classes include:

- Teach offenders about the short-and long-term trauma of victimization.
- Increase offenders' awareness of the negative impact of their crime on their victims and others.
- Encourage offenders to accept responsibility for their past criminal actions.
- Provide victims and victim service providers with a forum to educate offenders about the consequences of their criminal behaviors, with the hope that it will help to prevent future offending.
- Build linkages between criminal and juvenile justice agencies and victims and victim service organizations.

Implementation

The victim impact class program can be adapted to incorporate between eight and 40 hours of classroom activities. Strong support and involvement from crime victims, victim service

providers, and community members are essential to program planning, development, and implementation. Once a program is established, judges and criminal and juvenile justice agencies can refer or order offenders to participate.

Like any other program that brings offenders together with victims, it is essential that both participating offenders and victim speakers be carefully screened to ensure that they are appropriate candidates for this intervention. Every precaution should be taken to avoid any retraumatization of the victims involved. They should be thoroughly prepared before coming to the class and debriefed afterward.

Many programs provide an opportunity for offenders, after completing the course material, to conduct fund-raising activities or a community service project to benefit victims. For example, program participants at one CYA facility worked to raise funds for victims throughout the year, collecting more than $10,000 that was donated to a local child abuse council, battered women's shelter, and Parents of Murdered Children chapter.

Lessons Learned

A small study conducted in 1994 by the Washington Department of Corrections found that adult offenders under correctional supervision who participated in victim awareness classes were more likely to fulfill their restitution obligations to victims than non-participants (Stutz, 1994). Pre- and post-tests administered to offenders participating in the program indicated that most had increased sensitivity to and understanding of the negative impact of crime on victims (CYA, 1992).

In general, victims and victim service providers who participate as speakers in victim impact classes express high levels of satisfaction and believe that their involvement may help prevent offenders from continuing their criminal or delinquent activities in the future. One research study conducted to examine the effects on victims of speaking to convicted drunk drivers (Mercer, 1995) found that 82 percent of victims who told their stories to offenders said that it aided them in their recovery.

Community Service

Harmed by criminal and delinquent activities, they can be at least partially restored by meaningful service that contributes to their improvement. Community service offers one way an offender can be held accountable to repair some of the harm caused by his or her criminal actions.

Community service is effectively used in all 50 states and at the federal level as a component of criminal sentences and juvenile adjudications involving diversion, probation, and parole. Restorative justice practices in institutions are also beginning to incorporate community service sanctions for infractions that have a detrimental impact on the "community" of a prison or detention center.

Goals

The goals of community service are to:

- Hold offenders accountable for the harm they have caused to the community.
- Provide communities with human resources that can improve the quality of life in public environments, business, and even individual residences.
- Help offenders develop new skills through supervised work activities.
- Allow victims a voice and occasionally some direct benefit by recommending the type of community service performed.

Implementation

Successful community service programs require a true public-private partnership. Residents in a community can enhance efforts of the criminal and juvenile justice systems by providing meaningful work experiences, volunteering to supervise offenders sentenced to community service, and serving as mentors for adjudicated youth in community service capacities. Examples of community service include: public work programs that beautify a community's environment such as park and roadside clean-up efforts or graffiti removal. Truly restorative community service offers crime victims the opportunity to provide input into the types of community service they would like to see the offender perform, including activities that directly benefit the victim or a charity or project of the victim's choice. Community service can also benefit victim service organizations, for example, by providing bookkeeping services to a rape crisis center or other valuable support, as described in the example below.

Lessons Learned

Adult and juvenile offenders, under the supervision of the Department of Community Corrections in Deschutes County, Oregon, have accomplished a number of human service and public works tasks, including the construction of a homeless shelter and domestic abuse crisis center. Offenders raised the money to pay for the building materials, as well as provided the

construction labor. This type of community service provides offenders an opportunity for skill development and interaction with positive role models, as well as learning about the needs of others and helping to create something of lasting benefit to the community.

Marketing and Media

This section describes innovative ways to market the concept of restorative justice to criminal justice system practitioners as well as to the media. It provides information highlighting how each component of the criminal justice system benefits by embracing restorative justice.

Restorative Justice: What's in it for Prosecution

1. Minor cases from problem addresses (multiple calls in previous year) are more effectively handled by referral to a community dispute resolution center than by criminal justice processing (Harrisburg, PA). Subsequent court time is not required.
2. A number of studies of restorative practices (restitution, mediation, family group conferences, victim impact panels) indicate that recidivism decreases.
3. Giving victims choices at all stages returns a sense of control to them, and decreases fear.
4. In some research studies (at least one county in N. Carolina) a reduction in court caseload can be measured when victim offender mediation is offered. (CAUTION: care should be taken to insure several points of referral exist, so most or all eligible cases are referred. Often, this is not so).
5. More options generally will enhance the plea negotiation process.
6. Victims are demanding a fuller role; restorative approaches provide it, and leave victims more satisfied.
7. The politically powerful victim movement can be allies for positive system change.
8. All justice professionals have some responsibility to improve the system, and RJ offers a common umbrella under which many disciplines and the community can work together.
9. Restitution agreements are reached and met more fully with RJ approaches.

Restorative Justice: What's in it for Defense

1. Research has demonstrated that in control group situations, offenders are sent to jail less often (New Zealand) or for shorter periods of time (Ohio).
2. Offenders perceive RJ processes to be fairer than traditional criminal justice processes.
3. Offenders better understand the nature of the offense and their impact on the victim.
4. Some diversionary approaches can avoid the criminal record.
5. More options generally will enhance the plea negotiation process.
6. Victims who confront their offenders to discuss the incident often are less desirous of retribution and increase their concern for offender treatment.
7. The politically powerful victim movement can be allies for positive system change.
8. RJ offers some promise of moving away from the oversimplified "lock 'em up" approach.
9. All justice professionals have some responsibility to improve the system, and RJ offers a common umbrella under which many disciplines and the community can work together.

Caution: due process considerations must be taken into account.

Restorative Justice: What's in it for Judiciary

1. Using restorative justice principles as a model for the future, victims and community will be more directly involved in the judicial process.
2. A number of studies of restorative practices (restitution, mediation, family group conferences, victim impact panels) indicate that recidivism decreases.
3. Giving victims choices at all stages returns a sense of control to them, and decreases fear. They (and offenders) rate RJ approaches as fairer than the criminal justice process, and report greater satisfaction.
4. In some research studies (at least one county in N. Carolina) a reduction in court caseload can be measured when victim offender mediation is offered. (CAUTION: care should be taken to insure several points of referral exist, so most or all eligible cases are referred. Often, this is not so.)
5. More options generally will enhance the plea negotiation process, thereby keeping the case out of court.
6. The politically powerful victim movement can be allies for positive system change.
7. All justice professionals have some responsibility to improve the system, and RJ offers a common umbrella under which many disciplines and the community can work together.
8. Restitution agreements are reached and met more fully with RJ approaches.

Restorative Justice: What's in it for Law Enforcement

1. Minor cases from problem addresses (multiple calls in previous year) are more effectively handled by referral to a community dispute resolution center than by criminal justice processing (Harrisburg, PA). This puts police back on patrol faster and does not require subsequent court time.
2. With police-based family group conferences, there was a reduction of 27% in crime. (Wagga Wagga, Australia).
3. Giving victims choices at all stages returns a sense of control to them, and decreases fear.
4. Community policing is a natural partner to restorative justice philosophy and programs. Both emphasize problem solving and viewing the big picture. Some restorative techniques, like family group conferencing and community sentencing boards, can help police share in a structured way power and control with the community.
5. Supervised inmate crime repair crews can help secure a victims home (fix broken doors, windows, etc.) and other property after a crime, to ease the task of the officer on the scene and protect the household from further victimization.
6. The politically powerful victim movement can be allies for positive system change.
7. All justice professionals have some responsibility to improve the system, and RJ offers a common umbrella under which many disciplines and the community can work together.
8. Some restorative justice practices (like victim impact panels) can work even if the perpetrator is not apprehended.

Restorative Justice: What's in it for Elected Officials

1. The future will involve victims and community more directly in the justice process. Restorative justice principles offer a template to structure that evolution.
2. A number of studies of restorative practices (restitution, mediation, family group conferences, victim impact panels) indicate that recidivism decreases.
3. Giving victims choices at all stages returns a sense of control to them, and decreases fear. They (and offenders) rate RJ approaches as fairer than the criminal justice process, and report greater satisfaction.
4. In some research studies (at least one county in N. Carolina) a reduction in court caseload can be measured when victim offender mediation is offered.
5. With costs of corrections encroaching on other funding needs, with little to show for it in terms of citizen satisfaction or lowered recidivism, a more innovative approach is needed.
6. The politically powerful victim movement can be allies for positive system change.
7. All elected officials have some responsibility to improve the justice system, and RJ offers a common umbrella under which many disciplines and the community can work together.

Restorative Justice: What's in it for Crime Victims and Service Providers

1. Crime victims traditional roles as solely "witnesses" or "complainants" are expanded to incorporate victims as *clients* of the criminal and juvenile justice systems.
2. Victims are given an active voice in the system, as well as in other matters related to their case.
3. Restorative justice approaches offer victims important *choices* related to their cases, which can help return a sense of *control* to their lives in the aftermath of a criminal or delinquent act.
4. The four core victims' rights— information, input, restitution and protection— are all afforded through restorative justice programs and practices.
5. Victim satisfaction is often directly related to the levels of participation and respect they are afforded by the criminal and juvenile justice systems— levels that are increased through restorative justice approaches.
6. Important partnerships are forged among crime victims, victim advocates, justice and allied professionals, and community representatives to prevent and respond appropriately and sensitively to crime and delinquency.
7. Victim/offender programs offer crime victims the opportunity to seek answers to crucial questions they may have resulting from their victimization.
8. Offender accountability to the victim provides opportunity for both remorse from the offender, and recourse for the victim.
9. Many victims believe their involvement in restorative justice programs and approaches will help offenders develop empathy and understanding for the harm and pain they have inflicted upon their victims, their own families, their communities, and themselves.
10. Restorative justice approaches provide opportunities for communities to learn about and support sensitive responses to victims of crime.

Restorative Justice: What's in it for Corrections

1. The cost of corrections— due largely to increasing prison construction— is skyrocketing and, in some states, surpasses the amount of taxpayers' dollars spent on higher education.
2. Many corrections and their allied justice professionals feel that the current system of corrections "doesn't work," which can lead to higher levels of staff frustration, cynicism and burnout. Restorative justice programs offer promising alternatives to the "status quo."
3. Restorative justice practices provide innovative, sound approaches for some offenders that do not require incarceration, and are cost-effective when compared to the expenses related to prison/jail construction and maintenance.
4. Restorative programs and processes hold offenders accountable to their victims and communities for their criminal and delinquent actions.
5. Important partnerships are formed with allied justice professionals— law enforcement, prosecutors, defense attorneys, the judiciary and courts— that can enhance more coordinated, cost-effective and consistent programs and services.
6. Crime victims, who have been traditionally suspect and critical of corrections, are viewed as "clients" of corrections, and their involvement usually improves their opinions of and relationships with corrections.
7. National, state and local victim service providers work closely with corrections in the restorative justice model, and form partnerships that view the rights and interests of victims, offenders and the community as equal.
8. Restorative justice responses to critical incidents and workplace violence provide greater opportunities for victim involvement, offender accountability, and correctional community support for developing a fair and appropriate response to staff victimization.
9. The community enhances correctional operations and programs as volunteers and in advisory capacities, expanding opportunities to initiate and expand programs for offenders, as well as for their victims.
10. Model restorative justice programs currently sponsored in community and institutional corrections have been enthusiastically received by offenders, victims and correctional staff, and have been positively highlighted by the news media.

Engaging the Media

The news media comprise a key element of any public safety effort. Journalists have a significant role in educating the public about crime, contributing to crime prevention and community safety efforts, and publicizing major policy initiatives that affect crime and victimization. Historically, much public safety/crime reporting has been negative, and somewhat critical of entities that are charged with protecting people who live in the United States. Some exceptions -- including poignant stories of crime victims' struggles and innovative programs that incorporate community members to fight crime -- exist. Restorative justice can be such an "exception."

There has been little new media coverage of restorative justice. Several factors account for this fact:

- Restorative justice cannot be reduced to a "soundbite" and, as such, can be difficult to define in terms to which the news media are accustomed.
- Many restorative practices are best defined for the news media in their *program* context, as opposed to the general principles upon which they are based.
- Some restorative justice practitioners lack strong news media contacts, and/or experience in dealing with journalists.
- The media may be suspect of new approaches to justice, particularly those that lack evidence of success that is provided by longitudinal program evaluation. Many restorative justice practices and programs are too new to be declared "successful."

The power of the news media can be intimidating. Restorative justice practitioners should *not* be afraid of initiating media interactions but, rather, should embrace media relations as an opportunity to educate the community about restorative justice, its principles and benefits.

This section is intended to be a "primer" on restorative justice and public relations.

Additional resources to develop and/or enhance media relations skills are included at the end of this text.

Who Are the Media?

The "media" consist of a variety of entities and individuals, and offer endless opportunities for publicity about restorative justice. Practitioners should look beyond traditional media venues, and incorporate all reasonable opportunities for community outreach into their media efforts. The major venues for community-based media outreach include the following:

- Print media.
- Electronic media.
- The World Wide Web.

Print Media

Daily newspapers: There are over 2,000 daily newspapers in the United States, ranging from small town newspapers to USA Today (with a worldwide circulation and distribution). Journalists who might be interested in restorative justice approaches include:

- *Crime reporters*: Can be identified by either contacting dailies and requesting specific names, and/or by reading the newspaper to cull reporters who are assigned to the crime beat.
- *Feature reporters*: Assigned to report on general topics that are of interest to readers, of which public safety is a priority. Feature articles tend to be longer, and focus more on programmatic solutions to problems facing a community.
- *Editorial boards*: Responsible for researching and writing opinion columns on topics relevant to a community or region. The editorial section in daily newspapers is one of the "most read" pages, and one of the most effective outreach tools if the editorial slant is positive. The best way to access editorial boards is to prepare a "press kit" (described later in this text) that describes a program in detail, mail it to the paper's editor, and request a meeting with the editorial board.
- *Weekly Newspapers*: Weekly publications tend to cater to smaller communities and, as such, focus on activities that are important to a small region of neighborhoods. With smaller staff and longer deadlines, weekly newspapers are a significant venue for restorative justice practitioners.
- *Syndicates and News Services*: News services (such as *United Press International* and *Associated Press*) are usually located in larger cities. Often, local news articles that are deemed "of interest" to larger audiences are distributed and published by news services. News syndicates extend public outreach from major news media (such as the *Los Angeles Times* and *New York Times*) to hundreds of other newspapers for publication.
- *Special Interest Publications*: Wherever there is a "special interest," there is usually a publication that publicizes it. Myriad publications are targeted at women, persons of color, geographical jurisdictions, labor unions, faith communities, etc. Special interest publications include media venues geared toward justice professionals, crime victims, community leaders, and juvenile and criminal offenders.

Electronic Media

Network Television: Television is regarded as the source of news for two-thirds of people in live in America. Most communities, regardless of size, have at least one network affiliate. In addition to news broadcasts, other areas of interest include: talk shows; morning lead-ins to the network morning shows; television actualities/editorials; public service announcements; and documentaries and other special broadcasts that focus on topics of interest to a community.

Independent television: Many communities also have independent stations that offer the same media outreach opportunities as network television.

Cable television: Local cable stations offer myriad opportunities for public service programming, and should be contacted to determine their lineup. In addition, cable also offers "community calendar" stations that update viewers on activities scheduled in the upcoming weeks.

Radio: When one considers that virtually every home and car have a radio, this is one of the most significant venues for public outreach about restorative justice. Radio venues include: all news; talk radio; ethnic stations; and educational radio (such as Public Service Broadcasting).

The World Wide Web

Many restorative justice practitioners have created their own web sites on the Internet to provide consistent, comprehensive information about their efforts. Web sites can be electronically linked to other sites built upon mutual interests, such as criminal and juvenile justice, victim assistance, and community mobilization. In addition, the world wide web offers endless opportunities for improved communications through electronic mail.

Community Resources for Restorative Justice Public Outreach

Restorative justice practitioners can tap a variety of resources to support their public outreach and community education efforts. Some suggestions for building a strong outreach program include:

- *Offenders on community service*: If any offenders under community supervision have experience in writing, journalism, communications and/or graphic design, their talents can be put to use in a very restorative manner! Community supervision officers should be asked to be alert for clients who fit any of these categories.
- *Colleges and universities*: Through partnerships with various departments in higher education, internships provide immeasurable benefits for both sponsoring agencies and students. Journalism and communications departments should be contacted to determine opportunities for obtaining such student support.
- *Commercial art schools*: Since 1986, commercial art schools have contributed incredible artwork to various versions of the annual National Crime Victims' Rights Week Resource Guide, which is utilized for public outreach.
- *Public relations firms*: Some firms take on special projects or "adopt" non-profit organizations on a pro bono basis. Public relations firms can help with marketing plans, message development, graphic design, writing and much more.
- *Civic organizations*: Many community-based civic organizations serve as clearinghouses for matching their volunteers with worthy causes. Civic volunteers can help plan and implement special educational events, or contribute to the development of public education resources.

Developing Good Media Contacts

It is important to remember that journalism is a fast-paced profession, with reporters often moving quickly to new, different assignments. As such, practitioners should remember that *any roster of media contacts should be updated at least every six months.*

There are ten excellent approaches to developing and maintaining good media contacts:

1. Start with your local library. Ask a librarian to help you locate directories of news media (there are several that deal with both print and broadcast media). Directories are organized by community/zip code, so contacts for your local media should be easy to identify. Begin creating

a media database, with names, addresses, telephone numbers, fax numbers, and e-mail addresses for crime beat reporters, editors, feature writers, and talk show hosts or producers.

2. Read the news, watch television, and listen to the radio. Are there are reporters, talk show hosts, editorial writers or newscasters whose stories indicate an interest in innovative approaches to society's problems?
3. Compliment the media! When you read, view or listen to a good story, drop a note to the reporter. Send a carbon copy to the reporter's editor, for good measure!
4. Determine if your region has a chapter of Delta Sigma Chi, the society of professional journalists. Often, issues related to crime are on their annual conference agendas. Make a call to see if you can speak at one of their frequent training programs.
5. Don't be afraid of the "cold call." Once you've identified journalists that cover social and justice issues, pick up the phone and explain your work in restorative justice. Offer to send an information package, and keep your resources professional and brief.
6. Be proactive with the media. Write letters-to-the-editor. Contact radio and television stations to see if they accept actualities, which are simply editorial broadcasts that express an opinion.
7. Get to know the editors of your community's newspaper(s). Write a letter explaining your program, its mission and goals, and how it differs from current approaches to justice. Request a brief meeting to fill them in on details. You'd be surprised how many of these contacts turn into editorial board sessions!
8. Be a valuable resource to the media. Use your good contacts in the justice community to your advantage -- become a "human Rolodex" for journalists, providing them with referrals that can help them expand and shape stories.
9. Non-profit agencies should consider asking a journalist to serve as a member of the Board of Directors or in some other advisory capacity. They can make consistent, valuable contributions to your media outreach and community education efforts.
10. Find out where journalists hang out in your community. Usually, it is a restaurant or lounge close to their offices. Casual, impromptu meetings often turn into long-lasting relationships.

Building Successful Media Relationships

Veteran award-winning journalist Colleen Patrick identifies three factors that are key to successful media relationships: attitude; preparation; and persistence. Patrick offers "checklists" of ideas that might contribute to each of these factors:

Attitude

- Am I open and sincere?
- Am I ready to receive critical questions about my subject and not be defensive?
- Have I dealt with my emotions adequately? Am I ready to talk to the media without losing my temper?
- Am I prepared to present my subject briefly and enthusiastically?
- Do I feel confident about the merits of my story and presentation?
- Do I believe I sound like I am confident?
- Do I feel positive about what I have to say?
- Do I believe others will benefit from this information?
- Am I ready to be pleasantly assertive if I am put off at first by someone who does not seem to be interested in my story?

- Am I ready to keep calling and writing until I feel my story has a fair hearing?
- Am I ready to ask for advice if I believe I need help?
- Am I ready to have fun with this process?

Preparation

- Is my press release, press letter, fact sheet, backgrounder or story announcement brief and neat?
- Does every word count on my paperwork?
- Are all the releases, fact sheets, letters or backgrounders easy to read?
- Do I have copies of newspaper clippings or other additional information to include which might make my topic more credible?
- Am I sufficiently knowledgeable about my subject to talk comfortably about any aspect of it?
- Do I know whom to contact if I need more information?
- Am I willing to rehearse my presentation before I speak with media contacts?
- Am I ready to enjoy my contact with the media?

Persistence

- Have I made a complete list of media people to call so I have someone else to call if I am turned down?
- Am I ready to start all over again tomorrow if I am turned down today?
- Am I ready to listen to constructive feedback about my approach and presentation?
- Am I confident enough to understand the difference between constructive feedback and someone's incorrect opinion?
- Am I ready to do more homework in case I need more information?
- Do I have someone or a group of supporters to be there for me if the going gets tough?
- Am I willing to listen to those who disagree with my side of the story?
- Am I willing to understand that both sides of any issue deserve to be heard?

"Speaking the Language" of Journalists

Journalists need and like information that is direct, concise and to-the-point. Rambling sentences, typos, and/or inaccurate information will cause your media outreach to be ignored. While not everybody is an excellent writer, often practitioners can work in "teams," combining an "idea" person with someone who possesses strong writing skills.

Two important resources should be considered for use by restorative justice practitioners:

1. Any "Journalism 101" textbook, which is readily available in the bookstore of most community colleges and universities. Journalism texts cover basic writing skills. In addition, if you know what journalists are taught, you will have a better idea of how to best present your information in a manner that is preferable to them.
2. A "stylebook" for writers and editors, which is considered the "bible" for journalists. Stylebooks include tips on language use, style of presentation, and definitions of terms. An excellent stylebook is published by *U.S. News and World Report*, and is available. *The U.S. News & World Report Stylebook for Writers and Editors* is available by contacting (800) 836-6397, Extension

2500, or by writing: *U.S. News Stylebook*, c/o Sisk Fulfillment, Dept. 2500M, P.O. Box 470, Federalsburg, MD 21632.

Tools of the Trade

There are six essential "tools of the trade" in dealing with media professionals.

- Press release.
- Public service announcements.
- Editor's advisory.
- Opinion/editorial columns.
- Letters-to-the-editor.
- Press conference.

Each of these tools requires considerable planning, yet is quite simple to master with practice. An in-depth overview of each tool, developed by the National Victim Center, is included in Appendix A of this section.

Conclusion

It is essential to remember that while you and your organization need the media, the media also need you! Restorative justice practitioners have much to offer media professionals, who are constantly seeking fresh and innovative story ideas. When these ideas are presented in a timely, professional and accurate manner, the opportunities for building strong, ongoing relationships with the news media to enhance public education and community outreach efforts are endless.

Writing a Press Release

(Media Relations Methods, Source: National Victim Center, 1990)

PURPOSE

A press release informs the media about your organization's upcoming activities, special events, or ongoing programs for victims' rights.

DESCRIPTION

A press release is the most widely used method to attract media attention and coverage of your activities. Press releases serve as official invitations to special events, "for your information" communications to let the media know about your special programs, and as means to encourage more extensive coverage of a particular issue.

Keep in mind that everything your organization does is not newsworthy. If you inundate the media with press releases, you'll find your organization in the "boy who cried wolf" syndrome; i.e., when you really have something important to announce, nobody is interested because they're tired of continually hearing from you.

Prior to writing a press release, ask yourself the following questions:

- Is this information really newsworthy to the general public, or only to victims and advocates?
- What is the highlight or main feature of this news item?
- Should my release be distributed to newspapers, radio, television, or "all of the above?"
- Is there a creative "angle" I can pursue to make my release more interesting and appealing to the assignment editors and news directors?
- Should I write two separate releases (one for print media and one for electronic media)?

When in doubt, contact a reporter or editor with whom you have established a good working relationship. Explain in detail the nature of the event or activity your proposed release will address. Ask him or her if it is, indeed, news. Follow the advice you receive, as it will usually be accurate.

The main reasons press releases fail to be published, broadcast, or effective in drawing media attention include:

- Lack of newsworthiness
- Lack of clarity
- Lack of content
- Lack of detailed facts
- Lack of contact information
- Late delivery

By following these tips, you will improve your chances of obtaining excellent press coverage as a result of your press release:

- Always print your release on letterhead if it addresses an event or program of your organization.
- The top left-hand corner of the page should include the date of release underlined with either a specific date or "For Immediate Release," along with the date the release is written. The top right-hand corner should include the name of a person to contact for more information, a title (when applicable), and his or her area code and telephone number.
- Begin your first, or "lead," paragraph with the name of the city in which the event will occur or where your organization is located.
- The "lead" paragraph is the most important part of your press release. Often, assignment editors and news directors will not read beyond the lead paragraph. Use the lead paragraph to capture the essence of your story. Include the following information in this order:

WHAT: The specific event, program or activity

WHO: Your organization or the participants in the event

WHEN: Day/Date/Time (include a.m. or p.m.)

WHERE: Location of the event (including street address)

WHY: The primary Purpose of the event or program

- Limit your press release to one page. The media will contact you for additional details, as needed.
- Always type your release double-spaced, and have at least two people carefully edit it and review it for typographical errors before distribution.
- After the lead paragraph, expand upon the key information by providing greater details of the event or activity.
- indicate if any "VIP's" will participate in the program or be present at the event.
- For special events, describe any special effects, visuals or other media attractions.
- Whenever possible, develop a creative, eye-catching headline. If you have no appropriate headline, leave adequate space for the editor or news director to fill one in.
- Always include at least one good quotation from the major figure involved in the event or activity.
- Always be clear and concise, using short descriptive sentences.
- Check every statement in your story for accuracy. Be prepared to support your facts with background research or information.
- If your release offers a publication, information or assistance, make sure your final paragraph indicates how to contact your organization for additional information.
- If your press release must exceed one page, type "--MORE--" in the bottom right-hand corner. Indicate "Page Two" on the second page.
- Never mention door prizes, raffles, etc. in the body of the release, as such inclusions are against the law.
- At the conclusion of the release, type either "-30-" or "###" in the center of the page below the final paragraph (this signifies "the end").

- Always keep the original copy of every release you distribute. You will need it not only for your media files, but for reference if a reporter calls for additional information (especially if the author of the press release is out of the office).
- Always let your staff and volunteers know when a release has been mailed so they will know to expect calls from the media.

Know your deadlines for submitting press releases to your local media. Usually, they require two to three weeks advance notice of a special event. Always meet the specified deadline, and follow-up the press release with a personal telephone call offering additional information and details. For special events, send an "Editor's Advisory" out immediately prior to the event (refer to the "Editor's Advisory" section for additional details).

Who should receive your press release? Usually, it is the assignment editor covering the "community news" or "crime beat" for your local newspaper, or the news or public service directors at radio and television stations. Take time to call these media and find out the names of these people. A personalized envelope and letter will get a lot more attention than one which merely says "Attention: Assignment Editor." Maintain accurate records of these names, and up-date your list at least twice a year.

Your press release should be accompanied by a cover letter stressing the importance of your event or program and personally inviting the media to attend.

Excellent resources for learning how to write for the media and, in particular, how to write press releases are journalism textbooks for high school students or first-year journalism majors in college. These publications can provide you with a wealth of information about technique, style, and content. Check with your local schools and college bookstores to see which textbooks best suit your needs.

Creating a Public Service Announcement

Media Relations Methods, Source: National Victim Center, 1990

PURPOSE

Public service announcements provide your community with powerful public service messages about victims' rights at no cost to your organization.

DESCRIPTION

Public service announcements (PSA's) can be utilized in three mediums:

- Newspaper (print PSA's);
- Radio (audio PSA's); and
- Television (video PSA's).

PSA can deliver messages about your organization, its activities, or victims' rights issues in general. The National Association of Broadcasters suggests that PSA's "should sound like a cross between a news story and a commercial message." Your PSA's should be brief, well-written in a "conversational" manner, and interesting.

PSA's target different news mediums, as well as different audiences. Your methods for producing a print PSA for your local newspaper will differ from those you use to broadcast a radio or television PSA. Likewise, your audiences will differ. At times, you will want your PSA's to reach victims and, in other instances, the general community will be your target.

PSA's are a valuable "freebie" to victims' rights advocates. Producing an effective PSA usually costs little but your time and creativity. And PSA's are available only to non-profit organizations.

There is a great deal of competition among non-profit organizations for public service announcement time and space. Usually, a media outlet cannot tell you when your spot will be aired. Your PSA, along with those of other non-profit organizations, will be placed into rotation and aired or printed alternately with those from other groups.

You can work to assure greater public exposure for your PSA's by presenting them to your news media in a professional, timely manner. If you understand the PSA requirements from your local media, and you know the message and audience you are attempting to reach, you will be well on your way to developing a comprehensive public announcement campaign.

Print Public Service Announcements

Print PSA's are designed strictly for publication in newspapers or magazines. These mediums require not only good copy, but also a well-developed graphic design. Print PSA's for

newspapers are published in black-and-white, while magazine PSA's can incorporate many colors. The size of print PSA's varies, and is dependent upon a publication's policies and available space.

Before you produce print PSA's, contact your local newspaper or magazine. Ask to speak to the community service director (also known as the public service coordinator). You should ask him or her the following questions:

- Do you accept print PSA's?
- If yes, are there any general policy guidelines for non-profit groups which wish to submit them?
- What is the general size of print PSA's in your publication?
- What type-face do you recommend we use?
- Do you prefer "camera-ready" art or will your art department lay out our PSA?
- How much advance time do you require before our print PSA will be published?
- Do you have any example of print PSA's you have published in the past that we can use for guidance?

Once you've answered these questions, you will possess the knowledge you need to produce your print PSA.

The style and quality of print PSA's varies, as organization resources also greatly differ. However, there are some specific guidelines for producing a print PSA that apply to all organizations:

- Keep your message short and simple.
- Your graphic design should also be simple and pleasing to the reader's eye.
- Don't hesitate to ask a local artist or art student to help you with the graphic concept and design.
- Always include information about how readers can contact you for additional information (telephone number and address are helpful).

If your local newspapers and magazines do not publish print PSA's, there's another excellent alternative to delivering your message. Most of them will have a community calendar or "bulletin board." This special column highlights the activities and special programs of community service and public outreach programs. Find out who writes or edits these columns and what they require in terms of copy. Keep them on your permanent mailing list. And make sure your special events and activities are featured prominently in the community calendar.

Radio Public Service Announcements

Radio PSA's are the most widely used medium to deliver public service messages. The number of local radio stations far exceeds newspaper and television mediums. And radio formats incorporate fast-paced, continuous programming that never stops.

Radio PSA's vary in length. The most popular spots incorporate:

- 15 Seconds (40 - 45 words)

- 20 Seconds (45 - 55 words)
- 30 Seconds (55 - 85 words)
- 60Seconds (140 - 160 words).

The length of your PSA limits the scope of your message. However, it is important to always include the "5 W's" in your message: "Who, what, when, where and why."

There are several methods to bring your PSA to the attention of your local radio station:

Announcer copy: You provide the station's public service director with written copy which is read "live" by the disc jockey.

Pre-recorded copy: You provide the public service director with a cassette or reel tape of your message. Sometimes, celebrities or other recognized people will pre-record a strong public service message which you can reproduce for several mediums.

Self-recorded copy: Many radio stations encourage non-profit organizations to record their public service message themselves at the radio station.

You should always provide written copy of your PSA to the public service director of the radio station. He or she may wish to incorporate portions of your message in actual airplay. Most stations prefer copy on 8-1/2" x 11" paper; some like copy on index cards. Always make sure your PSA contains the following information:

- Name of sponsoring organization
- Contact information (name, address and telephone number)
- Requested start and stop dates
- Length of PSA
- A brief description of the topic

It's a good idea to also ask the radio station to "co-sponsor" your message by adding a tag, such as: "This important public service message is brought to you by the Smithtown Victim Advocacy Program and Station K-105."

It's also important to know the policies of local radio stations regarding public service announcements. You should ask the following questions:

- Do you broadcast PSA's?
- What format do you require? Live? Announcer copy? Pre-recorded copy?
- Is there a limit to the number of PSA's my organization can submit each year?
- Which length do you prefer for PSA's? 10 Seconds? 30 Seconds?
- Do you prefer written copy or details about the event or activity for your producer to write about?
- Does the station provide PSA production services?
- How much "lead time" (advance copy or notice) do you need for my PSA?
- Do you prefer announcer copy or index cards? Which format best suits your needs?

- Would your station be interested in developing an ongoing, public service campaign with my organization about victims' rights issues?

Once you obtain this information, keep it! Include it in your media directory or on index cards in a card file.

Television Public Service Announcements

Television PSA's are more difficult to produce and broadcast than radio and print PSA's. Think about what it costs to purchase 30 seconds of commercial time on television. Then remember that each television PSA eliminates commercial revenue from the station's coffers! Also, stations are required by law to allot a certain amount of time for PSA's each year.

Television PSA's should be 15 or 30 seconds long. Like all PSA's, they should include the important "5 W's": "Who, What, When, Where, and Why." The message should be simple, direct and targeted to television viewers. And don't forget to provide a written script of your PSA with contact information.

Find out your local television stations' policies about video PSA's. Ask the same questions included in the previous section on radio PSA's. And make sure you retain this valuable information!

In addition, you need to know:

- Could the station use background footage of some of your past activities for the PSA?
- Whom do they prefer announcing the PSA? One of your organization's spokespersons? A television announcer? Another local personality?
- Will the station air high-quality video PSA's produced outside of its studio?
- Will the station provide production services, such as film crew or graphic design?
- What size tape does the station require? ½ inch? ¾ inch?
- Can they incorporate visual aids, such as slides or photographs?

It never hurts to ask a station's public service director if they will produce a PSA with your organization's message. Other excellent resources are the communications or radio/television departments at your local colleges. Students are often looking for projects to develop and expose their talents.

Most states have a professional association of broadcasters which is affiliated with the highly effective National Association of Broadcasters. You may wish to contact the association in your state to discuss your public service needs. Its personnel may be interested in promoting victims' rights issues on a statewide basis, so don't overlook this opportunity!

Writing Editorials

Media Relations Methods, Source: National Victim Center, 1990

This page includes guidance on drafting:

- Editor's Advisory
- Op-ed Columns
- Letters to the Editor

Editor's Advisory

PURPOSE

An editor's advisory provides newspaper editors and radio/television news directors with brief, succinct information about a special event or program and, in particular, press availability opportunities.

DESCRIPTION

Editor's advisories should not, in general, be substituted for a press release. Rather, they arc an excellent tool to enhance your press release by reminding the media of a special event or press conference the day before it happens. Editor's advisories are usually reserved only for the editors and producers of major mediums, such as daily newspapers, network affiliates on television and radio, and key radio stations. For major events, editor's advisories can be mailed to your entire media list as a "friendly reminder" of your activities.

Composing an editor's advisory is similar to writing a press release. It should be no more than one page, double-spaced. Your message should be brief and to the point.

Your editor's advisory contains release and contact information exactly the same as a press release. However, the body of the advisory contains only the briefest of details outlined in the following manner:

WHO:

WHAT:

WHEN:

WHERE:

WHY:

NOTE: (includes featured speakers, special visuals, etc.)

BACKGROUND INFORMATION: (limit to one paragraph)

If your advisory is distributed as an enhancement to a press release, no follow-up phone call is necessary. If you have mailed your advisory as the sole means of informing the media of your activity, you can contact the person to whom you mailed the advisory and ask if they need additional information.

Editor's advisories are particularly effective when you are under extreme time constraints. Also, editor's advisories can be used when you are scheduling a more informal "press availability" session, rather than a press conference.

Opinion/ Editorial Columns

PURPOSE

Opinion/editorial columns (often referred to as "op/ed" pieces) provide the general reading public with your views, opinions and positions about important issues which affect violent crime victims and the criminal justice system. Such columns also provide you with the opportunity to discuss your state's legislative goals for victims' rights.

DESCRIPTION

The most frequently read section of most newspapers is the "op/ed" page, which features editorials written by editorial staff, letters-to-the-editor, other editorial columns, and columns by guest writers. Op/ed pieces cover a wide range of subjects, including international affairs, national/state/local politics, social issues, economic concerns and (yes!) victims' rights and related criminal justice issues. Take a look at your local newspaper's op/ed page(s). You'll find yourself agreeing with many of the columns and being vehemently opposed to others' thoughts and positions. In either case, however, all the columns probably provide you with plenty of "food for thought."

Opinion/editorial columns can be written to address an important current issue. They can respond to prior columns or articles published by that particular newspaper. Or they can simply be a forum to discuss a "burning" issue affecting your community.

Clearly, opinion/editorial columns addressing victims' rights fit nicely into all three categories. They provide an excellent forum for the average citizen (or not-so-average victim or advocate) to voice a personal opinion or organizational policy for all to read.

Before you submit an opinion/editorial column, it's a good idea to contact your newspaper's editorial staff and ask the following questions:

- Do you publish op/ed columns?
- Are there any guidelines I should follow when I submit an op/ed column?

- Is there a suggested length for the column?
- What are your advance deadlines for submitting op/ed columns?
- To whom should I submit it?

When you sit down to write your opinion/editorial column, consider the following suggestions:

- The column's author(s) should possess good writing skills. You may wish to collaborate with two authors: One who is knowledgeable about the topic you addressing, and one who has strong writing skills.
- If you are writing in response to a previously published column, article, or letter-to-the-editor, briefly outline the contents of that piece in your first paragraph and note its date of publication.
- If you are writing on behalf of an organization or coalition, make sure your column adheres strictly to its policies and positions.
- Use letterhead if you are representing your organization.
- Make certain all your facts are well researched.
- Outline your thoughts before you begin writing the text, and carefully follow that outline.

- Use relevant statistics, case studies, and other current data to emphasize and support your message.
- Remember, your mission is to not only communicate your message, but to persuade your readers that your position is believable and correct.
- Carefully follow the deadline and length requirements requested by the newspaper.
- Type your column double-spaced.
- Have two or three people edit and proofread your first and final drafts.
- Provide the editor with a brief personal biography. Include your affiliation with victims' rights.
- Submit a black-and-white photograph, if requested.

- Ask the editor to include a "tag" so that readers know how to contact you and your organization for additional information. Provide him or her with your name, organization, address, and telephone number.

Opinion/editorial columns are a simple, free way to educate your community about your organization's programs and policies. Take time to write a column and submit it. You'll be glad you did!

Letters-To-The Editor

PURPOSE

Letters-to-the-editor provide you or your organization with a forum to express your personal opinion about specific issues.

DESCRIPTIONS

Letters-to-the-editor comprise one of the most widely read sections of your newspaper. There are some general conditions under which you may wish to write a letter to your newspaper's editor, including:

- To express your opinion about a victims' right or criminal justice issue in general
- To express your opinion about an article, column, or letter previously published in the newspaper
- To express discontent with a specific part of a newspaper's publication, such as an article or editorial cartoon you may have found to be offensive
- To invite your community to attend a special event for victims' rights
- To thank the newspaper, an elected official, your community, etc. for supporting your efforts and
- To discuss pending victims' rights legislation.

Letters-to-the-editor cost little but your time and creativity. They are an effective way of expressing your organization's views to a large audience.

When you write a letter-to-the-editor, follow the general guidelines offered in the section entitled Opinion/Editorial Columns. Keep it short-one or one-and-a-half pages double-spaced is adequate. Don't be afraid of controversy. And always say what you feel is right.

If a particular issue is extremely important, consider orchestrating a "letter tree" to your editor. Ask five or ten of your colleagues to submit a letter pertaining to the subject at hand. Often, the editorial page editor will enclose several letters addressing the same issue in a special box which really stands out on the page.

Always remember that the editor has the right to shorten your piece because of space limitations. In other words, what you submit may not always be exactly what gets printed.