

## THE ESSENCE OF RESTORATIVE JUSTICE AND HOW IT WORKS ?

The Restorative Justice concept can be described as this:

a worldwide method of dealing with harm caused by one individual to another, working alongside traditional justice systems - especially within criminal justice. Its priorities are to healing the harm caused, and not to distributing punishment. The victim, the offender, and the affected community are all part of finding a satisfying resolution to the offense, without retribution and without incarceration.

Restorative Justice is not an alien concept; it is being practiced around the globe. It also has been the method of dealing with unacceptable social behavior for millennium by ancient and indigenous cultures. Long before nation-states in the twelfth-century took over the status of being the victim, and long before the seventeenth-century when prison was determined to be the most scientific punishment for crime, the concepts upheld by Restorative Justice were being used. The Restorative Justice system is not meant to replace the Criminal Justice System. It is a side-by side alternate way to seek justice using a different process producing different outcomes.

The Restorative Justice process has as its general principles.

- The harmed party is the victim - the state is not the victim.
- The offender is included in the process of healing the harm caused.
- The victim has a voice, the offender has an accountable responsibility, and the community's secondary victims - the victim and offender families, and other stake holders - also have a voice.
- Together, all find an appropriate, agreeable and fair resolution of what needs to be done to heal the harm caused to the victim, return the offender to an honorable status, and ultimately find a satisfying justice for all concerned.
- For cases involving criminal prosecution, Restorative Justice requires the offender to admit their part, and voluntarily participate.
- Prosecutorial jurisdictions must allow the Restorative Justice process to take over.
- Courts must approve the final resolution as fair, accountable and accomplishable.
- The offender becomes accountable to the resolution.
- Should the resolution not be accomplished as prescribed, the jurisdictional court has the discretion to take back the case for further action.

## RESTORATIVE JUSTICE METHODS.

There are three basic methods for utilizing Restorative Justice principles and techniques. Experienced Restorative Justice practitioners will often apply their own modifications to these basic methods. In addition, a number of community peace and justice models have been developed around the basic Restorative Justice principles and techniques.

### Core Elements of Restorative Justice Conferencing in Criminal Justice.

Restorative Justice as a method of criminal justice can be applied pre or post indictment. In these cases, the offender has been referred to the process by the district prosecutors, or by the judiciary of the jurisdiction. The offender and their defense attorney must agree to Restorative Justice Conferencing in lieu of the judicial process.

The first requirement of the offender is that their guilt is admitted and not disputed. The second requirement is they agree to meet through the process with the victim. Third, they agree to work towards a resolution of the harm caused to the victim and others who are secondarily involved. Next, the victim must agree to the process and to meeting the offender face-to-face. Both the offender and victim are separately interviewed and prepared for the process. The interviews are conducted by the impartial facilitator who facilitates the conference. Separately they relate their version of the event, the events leading up to the offense, and any circumstances which might be necessary to discuss within the conference. They are told that they can be accompanied by any supportive person, either involved or not, who will be able to speak at some point. The offender is told that their attorney will not be able to speak on their behalf, as the offender is in the conference to speak for their own self. Both victim and offender are told in advance that they each are to abide by the rules of respect for each member of the conference; speak when it is their turn without threats, accusations, shouting or malignant. The conference space, they are told, is a neutral safe place where each party can express themselves without reprisal or disrespect. The facilitator remains neutral, advancing the discussion in an orderly fashion, allowing each participant to speak their points until satisfied, eventually reaching a point where a resolution to the harm can be discussed and produced.

### Family Group Conferencing

This form of Restorative Justice Conferencing is similar in process and technique except that it brings in more individuals involved in the offense beyond the two primary voices, adding to the total picture of the offense. Family Group Conferencing, like its name, involves related parties to the offender and victim, supporters of both sides and the most affected members of the community. It operates under the same methods as the conferencing outlined above, and it does

allow the victim and offender to meet face-to-face in a neutral safe place. The conference is a forum where all parties are recognized as equal, with each identified as a specific entity, that is, victim, offender, secondary victim, family members for both, friends and key supporters for either party. The facilitator has done all the preparation as described above.

### Peacemaking and Sentencing Circles

This is another level of conferencing which includes more voices. Most often the additional individuals are representatives of the community's justice and social support services, as well as other community members. The process works in the same manner as the conferences explained above with all parties to the conference working to find a consensus to resolve the harm caused. The resolution must be one that is possible for completion, accountable to the criminal justice system, and one which offers potential for positive change in the offender and the community. Again, the prosecutors and judiciary agree to the use of these conferences. When completed they are reviewed by the court to determine if the resolution agreement is fair, just, accountable and accomplishable. If the agreement is not approved, the conference may be held again, or the judiciary may decide the case needs to be tried in court. If the terms of the agreement are not met or refused to be met by the offender, over whatever period allowed, the criminal justice system is able to take back the conference's decision and return to prosecution, or apply some court order to get the agreement terms completed. Again, the Restorative Justice system is not meant to replace the Criminal Justice System. It is a side-by-side alternate way to seek justice using a different process seeking different results.

### Victim - Offender Mediation

Frequently, the first question asked by a victim of a crime is, "Why me?" In the Criminal Justice System the offender is often never asked that question, and certainly not by the victim. Even more, it is usually never answered, especially after the trial and conviction, and the offender is incarcerated. Victim-Offender Mediation often occurs while the offender is incarcerated.

Under the Victim-Offender Mediation process both individuals get to meet and relate their own experiences in this unifying event; Victim-Offender Mediation is not a mediation or conflict resolution as in civil law. Here both parties are recognized for their part in the event. That is, the offender did the offense, the victim was harmed by it. This mediation allows discourse between the two parties. The victim is able to ask and hopefully receive an answer to, "Why me?" The offender is able to hear about the impact the offense had on the victim. The victim is also able to hear and perhaps understand the circumstances and motivations of the offender, leading up to the offense. This process is often difficult to arrange. Both parties are apprehensive. Meeting each other can cause emotional strain - and yes, for the offender as well. It requires an

experienced facilitator in order to not further harm to the victim. Even so, through this process both parties have the ability to understand for themselves the real meaning and emotions behind, “Why me?”

To be sure, this method does not have potential at all levels of offense. It is clear that lower level crimes seem to fit this form of conferencing. There have been occasions where this type of meeting has been used between offenders and victims of personal violent crimes after the offender has been incarcerated. Usually, this is done with a great deal of preparation and forethought some time later in the sentence period. This form of meeting is specifically designed to address the “why me” question, and to open the eyes of the offender as to the harm, pain and residual consequences the victim has experienced - such as, in assault, rape, and occasionally by the survivors of murder victims.

## APPLICATIONS.

There are other variations of conferencing that go beyond those described above. A variety of Restorative Justice application methods have been developed by court systems, criminal justice systems, and community peacemaking initiatives. Restorative Justice principles have also been used by community and municipal entities for community peace building, consensus-building, and strategic-planning. Among those are the Community Reparative Boards, established by municipalities within their court systems to deal with neighborhood disturbances. Another is Juvenile Accountability Conferencing (JAC) developed and used by the Rochester New York USA Police Department for use within the city’s public schools as a juvenile delinquency intervention. And another, is Restorative Approaches in Your Neighborhood. (RAYN) initiated by the Leicestershire UK Police Constabulary for use by patrol officers and neighborhood organizations to deal directly and quickly with antisocial behavior. Also, a successful model called Restorative Initiatives in Community Harmony (RICH), developed at PORTSource Foundation USA, utilizes RJ techniques to create consensus and policy within and between diverse municipal populations.

Author: James A Termotto, Sr. CRJP, MTS, MA, BS  
PORTSource Foundation USA  
Rochester New York USA, January 2010  
[www.PORTSourceFoundation.net](http://www.PORTSourceFoundation.net)