

Restorative Justice without Offender Participation: A Pilot Program for Victims

BY LORENN WALKER, J.D., M.P.H.

INTRODUCTION

"Shut up or I'll kill you!" shouted the man as he shoved the hard barrel of a 9 mm handgun into the young woman's stomach. She was a store clerk. The robber wanted her to open the store safe. "I don't have the whole combination," she sobbed. "Where's your purse?" he demanded. He took the \$32 out of her wallet along with her car keys. Then he wrapped duct tape around her mouth, hands and feet. He left her face down on the ground and ran from the store. Until she was rescued and untied by a co-worker about an hour later, she imagined him returning and shooting her. She kept thinking about her two young children, whose father was already gone, and what they would do without their mother.

The robber stole her car, which ran out of gas a few miles from the store. The police found the car and impounded it. She was stunned when she had to pay \$92 for towing and storage fees to get her car back. Her boss later reimbursed her.

The robber was apprehended in another holdup. She was subpoenaed to testify at his trial. She waited outside the courtroom for an hour and a half while she was taunted and threatened by the robber's family. Although she was afraid, she still testified.

Her experience in court was brief and painful. The robber's lawyer acted like she had done something wrong and was lying. "Isn't it true you never saw his teeth clearly? You don't even know if he had gold caps on his teeth or not, do you?" he sneered, raising

his eyebrows at the jury. She left the courtroom feeling dreadful and dirty. She longed for a hot shower.

Ten years later the woman was still haunted by the experience. Why did the robber pick her store to rob that day? Why did she risk her life and lie to him about not having the combination to the safe? What would her children have done if she had been killed?



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What happened to the robber after the trial? Was he convicted or acquitted? She had talked only briefly with her husband about the experience and remained deeply troubled by it.

The woman later learned about the experimental restorative justice program reported

in this paper. The program provided two trained facilitators who came and met with her at her home. For the first time, she had a detailed conversation about the effects that the crime had had on her life. Six months after this restorative process, she reported, "It helped me a lot. I used to think about the robbery all the time." The conversation "helped me to not worry about it anymore." Today, she is working toward a bachelor's degree in criminal justice.

PROGRAM DEVELOPMENT

The Hawai'i Friends of Civic and Law Related Education (Hawai'i Friends), collaborated with the International Institute for Restorative Practices (IIRP), on the Restorative Justice Without Offender Participation Project, beginning in June 2002. At a meeting in August 2002 and through subsequent email exchanges, IIRP staff assisted in designing the restorative processes, and in planning how to obtain cooperation from government and other agencies and how to engage the public.

In addition, a group interested in victim services in Honolulu, including representatives from the Honolulu Police Department, the State Department of the Attorney General, the U.S. Attorney General's offices, the City and County of Honolulu Prosecutor's Office, Mothers Against Drunk Driving (MADD), Kapiolani Sex Abuse Treatment Center, Community Alliance on Prisons and the State Crime Victim Compensation Commission,

helped develop and guide this experimental program through a series of three meetings, beginning in September 2002.

RESTORATIVE JUSTICE

Restorative justice is a response to crime that considers the needs of victims, offenders and the community (Zehr, 2002). While the modern restorative justice movement began in the 1970s, some believe that "restorative justice has been the dominant model of criminal justice throughout most of human history for perhaps all the world's peoples" (Braithwaite, 2002). Restorative justice in Europe was largely abandoned at the time of the Norman Conquest (Van Ness, 1986). However, many indigenous cultures worldwide have never stopped using it (Braithwaite, 2002 and Zehr, 2002).

The general goal of modern restorative justice is to create a process for reconciliation between defendants who accept responsibility for their wrongdoing, their victims, and their community, family and friends, who are affected by the crimes (Zehr, 1990). Usually, restorative justice happens after a defendant has admitted guilt, and if the victim agrees to participate in a restorative process, it brings both parties together. There are many situations, however, where a shared victim and offender process is not possible, but where a restorative response can provide important benefits for the victim or offender, even without the other's presence.

Some complain that a shortcoming of restorative justice is its failure to address the needs of victims when they do not meet with offenders (Roche, 2003). However, there are many reasons why meetings between victims and offenders are not possible. First, in most criminal cases the offenders are unknown. Less than 20 percent of all crime results in an arrest (FBI, 2003). Therefore, even if victims want to meet with offenders in a restorative process, often no offender has been identified and arrested, making such a meeting impossible.

Second, many offenders fail to take responsibility for their crimes. Although over 90 percent of all charged defendants eventually admit that they committed a crime, by means of a plea bargain (Hall,

1996), many maintain that they were not responsible for the crime. Restorative justice meetings between victims and offenders are about potential reconciliation. Meetings with victims and offenders, when offenders deny responsibility, usually create further hardship to victims, although under certain conditions these meetings may have some benefit (Walker, 2002).

Finally, many victims simply do not want to meet with the offenders. Eight restorative

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justice programs collected data on the percentage of victims unwilling to meet with offenders (Kerner, Marks & Schreckling, 1992; Moore & McDonald, 1994; Maxwell & Morris, 1996; McCold & Wachtel, 1996; Strang, 2000; Trimboli, 2000; Braithwaite, 2002; and Hoyle, 2002). Analysis of these studies showed that an average of 47 percent of victims, when offered the opportunity to participate in a restorative process with the offenders, declined the invitation.

Howard Zehr, a recognized leader of the modern restorative justice movement has written:

In a restorative system, services would start immediately after a crime to address victim needs and to involve the victims, regardless of whether an offender is apprehended. Thus victim assistance, while it cannot be seen as fully restorative, is an important component of a restorative system and should be seen at least as partially restorative.

(Zehr, pp. 55-56, 2002)

John Braithwaite, a well-known Australian criminologist and proponent of restorative

justice, agrees that providing a restorative response for victims not meeting with offenders can assist them and should be pursued even without the offender's participation (personal correspondence, November and December 2003). Indeed, "partially restorative" processes can be beneficial for anyone who participates.

PARTIALLY RESTORATIVE PRACTICES

There are ranges of restorative justice practices, from "fully restorative" to "mostly restorative" to "partially restorative" (McCold & Wachtel, 2002). The main criterion for determining where a particular practice fits in the restorative gauge is based on who participates in the process. A fully restorative practice includes the participation of all direct stakeholders: the victim, offender and their family and friends. A restorative practice with only the victim or offender is a "partially restorative" practice. For reconciliation purposes, a partially restorative practice is not as ideal as a fully restorative practice, but still offers important benefits.

While offenders have the opportunity to participate in restorative programs without victim participation, usually victims do not. Although there are counseling, compensation and support-group programs for victims of particular types of crimes, such as sexual abuse, drunk driving and violent crimes, most crime victims are on their own to meet their needs, both materially and psychologically. Ironically, our justice system provides more resources for criminal offenders than for the people they harm.

The National Center for Victims of Crime (NCVC) has undertaken the "Parallel Justice" project, which seeks to "revolutionize our response to crime victims" (NCVC, 2003). Parallel Justice is being conducted at four sites in the United States, with the aim of assisting crime victims in a variety of ways, including "establishing non-adversarial forums where victims have an opportunity to explain what happened to them, what the impact on their lives was, and what resources they need to get their lives on track." The experimental restorative justice program reported in this paper coincides with the goal of the Parallel Justice project.

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INFLUENCES AND RELATED THINKING

The work of many individuals was applied in developing this restorative practice, including Howard Zehr, John Braithwaite, Kay Pranis, Paul McCold, Ted Wachtel and Daniel Van Ness.

Terry O'Connell, an Australian who is largely responsible for introducing restorative conferencing to the American criminal justice system (Pranis, 1998 and Wachtel, 1997), and Insoo Kim Berg, a co-founder of solution-focused brief therapy (Nichols

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& Schwartz, 2001), were consulted in the development of the questions that form the general outline of the practice.

Solution-focused brief therapy (SFBT) was originally developed by Insoo Kim Berg and Steve de Shazer "as a quiet revolt against the prevailing view of what is helpful to people with problems of living" (Berg & Steiner, 2003). SFBT represents a radical departure from traditional psychological therapy. "In SFBT the therapist's role is more like a facilitator than a counselor" (DeJong & Berg, 2002), empowering people to solve their own problems, which is consistent with restorative justice.

In a more general way, others who have dealt with surviving trauma and suffering, and whose thinking is consistent with the goal of restorative justice, have influenced the project. Viktor Frankl, who suffered in Nazi concentration camps, has written, "Life ultimately means taking responsibility to find the right answer to its problems and to fulfill the tasks, which it constantly sets for each individual" (Frankl, 1984, p. 85). The Dalai Lama, Tibet's exiled leader, advises that "our confidence and self-reliance can grow and our courage become strengthened as a result of suffering." This, he says, can be achieved by "examining it, analyzing it, determining its causes, and finding out how to deal with

them" (The Dalai Lama, Ethics for the New Millennium, p. 140).

Finally, Desmond Tutu, the 1984 Nobel Peace Laureate and chairperson of South Africa's Truth and Reconciliation Commission (TRC), says:

It is ultimately in our best interest to be repentant, reconciling and reconciled people because without forgiveness, without reconciliation we have no future. ...

In forgiving, people are not being asked to forget. On the contrary, it is important to remember, so that we should not let such atrocities happen again. Forgiveness does not mean we condone what has been done. It means taking what happened seriously and not minimizing it; drawing out the string in the memory that threatens to poison our entire existence. It involves trying to understand the perpetrators and so have empathy to try to stand in their shoes and appreciate the sort of pressures and influences that might have conditioned them.

(Tutu, 1999, pp. 165 & 206)

Hate is like rust. It eats away at our core. A restorative response can provide crime victims with the opportunity to address the harm they have suffered and let go of their hate. A restorative response can be an effective method for victims to find meaning from their suffering and to move from being a *victim* to becoming a *survivor*. Here is the story of an artist who used the serious harm he suffered to create something beautiful out of garbage.

THE CREATION OF THE SHATTERED HEART

"What are you doing!" the man yelled. He had just returned home and found a stranger in his house rummaging through some desk drawers. The apparent thief turned around and made a wailing sound as he moved his lips. He was deaf and mute. He grabbed a piece of paper on the desk and scribbled out a message: "Can you help me? I was robbed of all my money. I'm hungry. I need a clean shirt." He was disheveled and looked desperate, but he was also young and seemed innocent. The man decided to help him. He gave him clean clothes and some food, and let him sleep on his couch for the night. The intruder told him his name.

It was 1975 and the helpful man was 26 years old. He was an artist who had just received his master's degree in fine arts from the University of Hawaii. He had struggled himself in life and the intruder seemed harmless. It was natural for him to be kind.

Later that night, the artist woke up choking on smoke billowing up from the bottom story of his house. The place was on fire. He rushed downstairs, looking for the intruder, but he was gone. The roar of sirens got louder. As he ran out of his house, two

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fire trucks screeched into his driveway. But it was too late. His house went up in flames. All his artwork was gone, work that he had spent years on. His home and all his belongings were destroyed. The firemen said the fire had been started by arson.

Later that night, wrapped in a blanket, the artist gave a statement to the police. He told them about the intruder, who must have started the fire. But the artist was arrested. A man with the same name as the intruder's had been found dead earlier that day. The artist was no longer an arson victim but a murder suspect. After spending hours at the police station, the artist was able to convince the police that his story was true. The police finally recognized the intruder as the suspect in a string of other crimes. The artist was released.

The artist not only lost his home that night—he lost his job. Some of his employer's property that had been stored in his house was lost in the fire. "How could you be so stupid as to help some criminal? You're too stupid to work for me," said his boss when she fired him.

Losing everything that grim night put the artist on a path that led to a successful career 25 years later. Because he had no money to buy art supplies, he was forced to become creative with what he could find for free to make his art. He found his supplies

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in the garbage. Over the years he developed high-level assemblage art skills. One type of garbage he found, and still works with today, is broken glass.

The artist has a studio in downtown Honolulu. His "shattered hearts" are popular art pieces. These stunning, three-dimensional hearts are made from broken pieces of colored glass glued together. Shattered hearts are in art galleries and museums and are collected by other artists and individuals.

A goal of the pilot program is that the crime victims who participate become facilitators of the practice and benefit from this role.

After meeting for several hours as a participant in this restorative project, the artist said, "Looking back on it, losing everything turned out to be a good thing. It was important for me as an artist. If I hadn't lost my house, my job and all my work that night, I wouldn't have gotten into the work I do now," he said.

DESCRIPTION OF PRACTICE

The restorative practice developed for this project simply gives victims an opportunity to tell their stories in a small group setting. They can talk about how they have been affected by the crime and what might assist them in repairing the harm.

The victim of a violent crime myself 27 years ago, I conceived of the idea for this practice because I recognized the need to provide a forum like this for victims, without an offender's participation. As coordinator of the program, I work with a co-facilitator, another former crime victim who recognized the need for this program. Our combined experience in therapy, public health and the law provided us with the ideal background to develop the practice.

Working as two facilitators together on the cases gave us the opportunity to discuss the practice, its effectiveness for victims and ways to improve it. While two facilitators

are not necessary to conduct restorative practices, in this case having co-facilitators provided a serendipitous effect. Working together and discussing the cases of other victims gave us the opportunity to reaffirm how our own suffering, resulting from the crimes committed against us, made our lives more meaningful.

An eventual goal of the pilot program is that the crime victims who participate in the program become facilitators of the practice and benefit from this service role. Having prior crime victims co-facilitate the practice can provide a positive benefit for them, as well as for the victims they are assisting. Several victims who participated in the pilot have indicated an interest in becoming facilitators themselves in the future.

When the practice includes only the victim and the facilitators, it is called a restorative conversation, and when the victim brings one or more supporters to the meeting, it is called a circle of care.

Before the restorative event, a facilitator talks with victims about what to expect in the meeting, which is held at a place and time convenient for them. The facilitator asks victims if they want to bring supporters with them to the meeting. Most of the victims in this project chose to meet alone with the facilitators. Most meetings were held at the victims' homes.

Victims are asked a series of open-ended questions, presented below. The questions are not followed in every case. The list of questions is still a work in progress. The initial questions address the issue of how the victims have coped with the aftermath of the crime:

- How have you managed to get through this so far?
- Who or what has been most helpful in dealing with this terrible situation?

Subsequent questions facilitators may use to help the victims tell their stories:

- What happened?
- How has the crime or crisis affected you?
- What has been the hardest thing about what happened?
- How have others who are close to you been affected?

- How have they responded?
- What would you want those responsible for what happened to you to know about your experience?
- What is needed to help you deal with some of your hurt and pain?
- How might others help?
- What things can you do that might also help?

One restorative conversation with a victim led to holding a formal conference with the offender and other key stakeholders.

- What can others learn from your experience?
- Can you think of anyone else who also has experienced the same or a similar event?
- How have others dealt with the same or similar crises or crimes?
- What other crises or crimes have you experienced in the past?
- How did you deal with those crimes or crises in the past?

A written plan may be developed as a result of the meeting. The plan states the goal or goals the victim may develop as a result of the meeting. After the initial meeting, the victims are offered the option of additional meetings. Most victims in this project chose to meet only once.

CASES REFERRED

Sixteen crime victims have participated in the program to date, and three are scheduled for future meetings. Four victims received services over the telephone and did not need to meet personally. Crimes included harassment, assault, attempted rape, robbery, arson, negligent homicide, fraud, burglary and car theft. The length of time from the occurrence of the date of the crime to the date of participation in the program varied from a crime that occurred one week earlier to two cases that involved crimes that occurred 20 years before.

Most restorative conversation meetings lasted about 90 minutes. One restorative conversation, with a victim traumatized by a death that occurred the month before, lasted well over three hours.

Another restorative conversation with a victim led to holding a formal restorative conference with the offender and other key stakeholders. A group of ten participants, including supporters for both the victim and offender, met and came to an agreement about how to repair the harm caused by the crime.

In another case where the victim expressed a strong desire to meet with the offender, it was ultimately decided that it was best not to contact the offender, who had denied committing sexual abuse for many years. The victim in that case, however, benefited from two restorative conversations with the facilitators.

Over 500 brochures were distributed by several of the collaborators (MADD and the Crime Compensation Commission) to three hospital emergency rooms and a mental health clinic, but only one of the 16 victims who participated learned of the program this way. Most cases were referred to the program by word-of-mouth through the two facilitators or a collaborating organization. A short newspaper article describing the program provided five victims with information about the program.

PARTICIPANT SATISFACTION WITH PROGRAM

The victims surveyed about their participation indicated high levels of satisfaction with the practice. Many indicated that the practice greatly surpassed their expectations of what it might accomplish. "Thank you so much! I never thought this could have been so helpful!" said one victim as she hugged the facilitator.

Quotes from victims about what they found most useful included:

- "I could tell my story and be listened to and look for positive outcomes."
- "Realizing that my own reactions (or non-reactions) are my strength."
- "Closure. Identifying things that we can do."

FUTURE GOALS

- Continue the pilot program for 12 more months.
- Work to recruit and train victim participants to become facilitators in the program.
- Work with the City and County of Honolulu Prosecutor's Office, which plans to select negligent homicide cases that will not be prosecuted and refer them to MADD, which may then refer them to this program.
- Continue working with the other Honolulu collaborators in distributing the brochures, including the police department, which has resisted referring crime victims to the program for "liability reasons." This is unfortunate because the police are the ideal outlet for informing victims about the program.
- Continue collecting and telling the stories of victims about the benefits of a restorative approach to crime, so that they may share them with others.
- Finally, remember that it took over 2000 years to create our current criminal justice system, and recognize that it may take some time to return to restorative justice. ☉

The views expressed in this article are those of the author and are not necessarily those of the International Institute for Restorative Practices.

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