Restorative Justice: Enhancing Racial Equality and Confidence in Our Courts

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Current Justice System is Mostly Impersonal and Retributive

- Our traditional justice system is retributive

- A retributive system asks…
  - What laws were broken?
  - Who did it?
  - What punishment do they deserve?
Current Justice System is Mostly Impersonal and Retributive (cont.)

● For the offender:
  - Accountability means taking your punishment
  - Focus is on deficits
  - Debt is abstract (do the crime, do the time)

● For the victim:
  - Limited or no say in the process
  - Limited or no restitution
  - Limited or no opportunity to confront the offender
Current Justice System is Mostly Impersonal and Retributive (cont.)

For the community:
- no grasp of nature and extent of crime
- general lack of concern about crime until personally affected
- view criminal justice system in the abstract
- for segments of the community arrested and prosecuted a feeling of not being treated with respect dignity and understanding (i.e., not being treated as a person; treated like just another case)
encouraged the “development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties”. The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000, A/CONF. 184/4/Rev. 3, para. 29.
Restorative justice is different from contemporary criminal justice in several ways.

First, it views criminal acts more comprehensively -- rather than defining crime as simply lawbreaking, it recognizes that offenders harm victims, communities and even themselves.
Restorative justice is different from contemporary criminal justice in several ways. (cont.)

Second, it involves more parties in responding to crime -- rather than giving key roles only to government and the offender, it includes victims and communities as well.

Finally, it measures success differently -- rather than measuring how much punishment is inflicted, it measures how much harm is repaired or prevented.
Restorative justice is different from contemporary criminal justice in several ways. (cont.)

Restorative justice is also seen as means to encourage the peaceful expression of conflict, to promote tolerance and inclusiveness, build respect for diversity and promote responsible community practices.

Through restorative justice practices, the victim, the offender and the community regain some control over the process. Furthermore, the process itself can often transform the relationships between the community and the justice system as a whole.
*Participation and empowerment of participants;
*Respect for all participants;
*Preference for consensual outcomes over imposed ones;
*Commitment of parties to agreement reached through the process;
*Flexibility and responsiveness of process and outcomes;
*Community empowerment.
Restorative Justice
Objectives

* Restore community order and peace and repair damaged relationships;

* Denounce criminal behavior as unacceptable and reaffirm community values;

* Support victims, give them a voice, enable their participation and address their needs;
* Encouraging all concerned parties to take responsibility, particularly by the offenders;

* Identify restorative, forward looking outcomes:

* Prevent recidivism by encouraging change in individual offenders and facilitating their reintegration into the community
Features of Restorative Justice

*A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually;

*A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities;

*A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders;

*An approach that can be used in conjunction with traditional criminal justice processes and sanctions;
*An approach that incorporates problem solving and addressing the underlying causes of conflict;
*An approach that addresses the harms and needs of victims;
*An approach which encourages an offender to gain insight into the causes and effects of his or her behavior and take responsibility in a meaningful way;
*A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems;
Features of Restorative Justice (cont.)

* An approach that is suitable for dealing with many different kinds of offences and offenders, including many very serious offences;
* A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders some new values and skills;
* A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder.
*Restorative programs such as victim-offender mediation and community restorative boards
  - Reduce recidivism
  - Reduce the severity of recidivism when it does occur
  - Increase victim satisfaction
  - Increase offender satisfaction
  - Involves the community
  - Restore confidence in justice
  - Reduce the load on the judicial system
“Expand prosecutor case disposition options by implementing a diversion program that uses community resources and consistently and objectively diverts first time offenders out of the adjudication system.”
As Greene County Prosecuting Attorney Implemented:

a. Pre-charging diversion [no court involvement]
   1. Bad checks [1999]
   2. MIP [1999]
   3. Restorative Justice [2008]

b. Post-charging/conviction diversion
   1. Drug court [1999]
   2. DWI court [2003]
   3. Mental Health Court [2001]
   4. Fast Track and Community Restorative Board [2004]
   5. Mothers Choosing Change [2006]
Why the Prosecuting Attorney Must Take the Lead on Restorative Justice in the Courts

1. It is the right thing to do for the community.

2. The prosecuting/district attorney is the gate keeper for what goes into the court system.

3. NDAA (National District Attorneys) Standards require it.
2-1.4 Community Prosecution

The chief prosecutor should be mindful of opportunities to engage school officials, community youth organizations, social service agencies, neighborhood crime watch groups, and other such organizations with law enforcement agencies, including the prosecutor’s office, in efforts to prevent and detect crime.
16. RELATIONS WITH THE PUBLIC

2-16.1 Community Organizations

The prosecutor should encourage the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

2-16.2 Staff Liaison

With respect to such organizations and to the extent that the prosecutor has the resources to do so, the chief prosecutor should assign an appropriate staff member(s) to act as liaison to such organizations and provide qualified speakers from the prosecutor’s office to address and appear before such groups on matters of common interest.
16. RELATIONS WITH THE PUBLIC

2-16.3 Public Education

The chief prosecutor should use all available resources to encourage citizen involvement in the support of law enforcement and prosecution programs and issues. The chief prosecutor should educate the public about the programs, policies, and goals of his or her office and alert the public to the ways in which the public may be involved and benefit from those programs, policies, and goals.
3. DIVERSION

4-3.1 Prosecutorial Responsibility

The decision to divert cases from the criminal justice system should be the responsibility of the prosecutor. The prosecutor should, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice.

4-3.2 Diversion Alternatives

A prosecutor should be aware and informed of the scope and availability of all alternative diversion programs. The prosecutor’s office should take steps to help ensure that all diversion programs are credible and effective.
3. DIVERSION

4-3.3 Need for Programs

In jurisdictions where diversion programs are deemed insufficient by the chief prosecutor, the prosecutor’s office should urge the establishment, maintenance, and enhancement of such programs as may be necessary.
SOURCE MATERIAL (NOT ALREADY ATTRIBUTED ON A SLIDE)


♦ RESTORATIVE JUSTICE BRIEFING PAPER, CENTRE FOR JUSTICE & RECONCILIATION AT PRISON FELLOWSHIP INTERNATIONAL MAY 2005 PO BOX 17434, WASHINGTON, DC 2004. [Slides 6-8].

♦ Restorative Justice: An Overview, The Center for Dispute Resolution Department of Communication Missouri State University (Some of the material in this overview was adapted with permission from a presentation by Mark Umbreit, Sheryl Wilson, and Annie Roberts of the Center for Restorative Justice & Peacemaking at the University of Minnesota School of Social Work). [slides 2, 3, 15].

All other slides with unattributed content is from Darrell L. Moore.
Thank you!

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