

ACCN: 163863

Restorative Community Justice:
Background, Program Examples, and Research Findings

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US Department of Justice /National Institute of Justice
Washington, DC 20531

c. 1996
15 p

National Institute of Justice/NCJRS
Box 6000 Rockville, MD 20849
National Institute of Justice/NCJRS Paper

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TYPE: Technical assistance reports



RESTORATIVE COMMUNITY JUSTICE

BACKGROUND, PROGRAM EXAMPLES, AND RESEARCH FINDINGS

A WORKING PROGRESS REPORT

Submitted to NOVA

April 26, 1996

Washington D.C.

Comments, Additions, Critique welcome and requested

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Supported by grant 95-IJ-CX-0016

Views do not necessarily reflect those
of the U.S.D.O.J.

TABLE OF CONTENTS

BACKGROUND: 1

RESTORATIVE JUSTICE - THE HISTORY: 2

THE RE-EMERGENCE OF RESTORATIVE JUSTICE 3

 LAW ENFORCEMENT 3

 PROSECUTION 4

 COURT 6

 SENTENCING 7

 VICTIMS 8

CONCLUSION:.....10

BACKGROUND:

Justice officials struggle to balance burgeoning caseloads with demands for offender accountability and victim service in an atmosphere of fiscal limitations, political sensitivity, fear of crime and dissatisfaction with the justice process. Probation has been viewed as too lenient, and prison populations have tripled since 1980. However, with an average of \$20,000/inmate/year and unacceptably high recidivism rates, a growing audience is seeking new solutions.

The restorative justice concept is increasingly providing another path to pursue. Restorative justice differs from the current retributive model in that restorative justice puts the victim and the community at the center of the process, and sets as a primary goal repairing the harm from the crime.

Inertia being what it is, current practice will continue unless forces act on it. Those forces can be found in demographic analyses by Dr. Alfred Blumstein and others who predict the number of 17 and 18 year olds in society - the most active years for criminal activity of the typical criminal - is about to explode. This year presents the lowest number of 18 year olds for the next 15; we can anticipate an increase of cases on our criminal justice doorstep.

This increase will greet us as we are trying to pay to operate the new prison beds constructed over the last decade. According to the National Conference for State Legislatures, the corrections budgets of the states increased an average of 9.7% in FY 94, more than any other category and limiting growth in other areas, such as higher education. This combination of growing caseload and fiscal pressure will combine to foster more creative and constructive solutions to crime and justice. Restorative justice principles offer a foundation for one series of creative paths.

RESTORATIVE JUSTICE - THE HISTORY:

Restorative justice advocate Daniel Van Ness¹ notes that this is actually a return to the justice of old, before the Norman conquest at the Battle of Hastings in 1066. For centuries in England the local villages delivered justice by making the offender repay the victim. This was based on the Laws of Ethelbert (circa 600 A.D.) and continued traditions established by earlier cultures, such as the Germanic Tribal Laws, the Roman Law of the Twelve Tables, and even the first written laws, the Code of Hammurabi 2000 years before Christ.

Furthermore, the Bible supports a restorative justice philosophy. While "an eye for an eye . . ." is often thought of as justification for revenge, some scholars cite its limiting and restorative aspects. There should be some proportionality in punishment, not over sanctioning; and the victim should be made whole. A reading of Leviticus 24 supports this interpretation:

*...he that killeth a beast, shall provide a beast . . .
...eye for an eye, tooth for tooth, shall be restored. . .*

Other cultures, including Muslim, American Indian, and many Pacific rim societies include restoration of the victim and the community as core elements of justice.

Under William the Conqueror, crimes became disruption "of the King's peace" and offenders were fined in the King's Courts. By requiring citizens to come to his courts for justice he gained

¹Van Ness, Daniel et al; Restorative Justice: Theory and Practice published in 1989 by Justice Fellowship, Washington D.C.

power; by taking fines that would have gone to victims he gained wealth.

Unfortunately, much of William's influence can be found today, where the "State versus . . ." is heard daily in our courtrooms, and restitution is not ordered often enough and collected rarely. We are so busy punishing we forget the victim who was directly wronged, and do little to address the community which was disrupted.

THE RE-EMERGENCE OF RESTORATIVE JUSTICE:

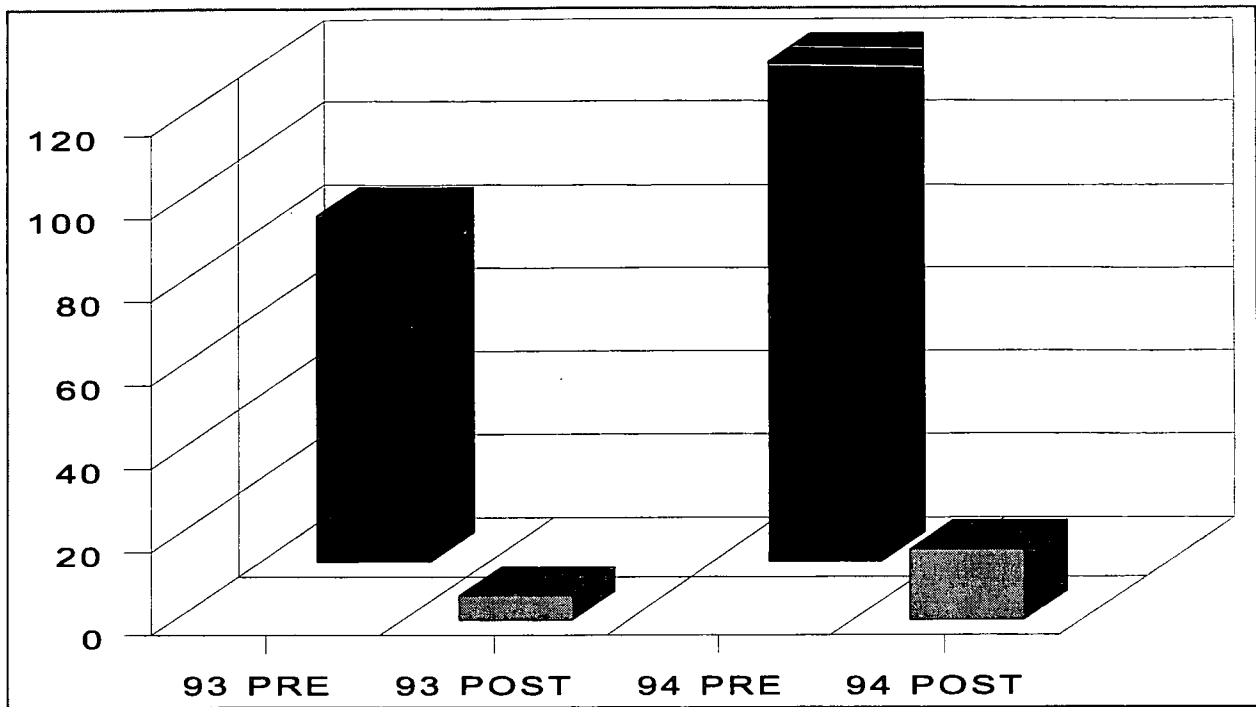
The old version of justice is catching on anew in our society. Started in Elkhart Indiana by Mennonites in 1978, there are now hundreds of programs that provide community-based mediation, one example of a program rooted in the philosophy. And there is increasing evidence that the public greatly supports community service and restitution programs, as long as the offenders are held accountable. John Doble conducted focus groups in Delaware², Oregon³, and Vermont⁴ and found consistent desire on the part of the public for offenders to work to repay the community, instead of just sitting idle in jail. Of course, violent predators are viewed as belonging in prison for public safety reasons. These findings are consistent with those of other surveys.

The appeal of restorative justice depends on one's perspective and the particular application of restorative justice at specific stages of the criminal justice process. There is a limited amount of research available that does demonstrate the value and the limits of restorative justice, which may help define directions a

²Doble, Immerwahr, Richardson; *Punishing Criminals: The People of Delaware Consider the Options* by The Public Agenda Foundation for the Edna McConnell Clark Foundation, NYC, NY 1991

³Doble Research Associates Inc; *Crime and Corrections: The Views of the People of Oregon* Prepared for The Oregon State-Centered Project and The Edna McConnell Clark Foundation; Englewood Cliffs N.J. 1995

⁴*Ibid; Crime and Corrections: The Views of the People of Vermont* ; a report to the Vermont Department of Correction, Englewood Cliffs NJ 1994



given jurisdiction may take.

LAW ENFORCEMENT - There seems to be a natural link between community policing and restorative justice, but there is not much published on it. One study in Harrisburg, Pennsylvania, by Dr. Roosevelt Shepherd of Shippensburg State University⁵. The police referred cases with a history of calls at the same address to a Citizen Dispute Settlement program, which met with the parties and tried to resolve the underlying problem. Countless hours of patrol time were freed up while fewer return calls were needed at the problem addresses in two separate test periods. It seems to provide a better result than the criminal justice process was able to provide, while at the same time putting police officers on the street more quickly with less time in court.

PROSECUTION - There are many programs operating at the prosecution stage. A 1992 evaluation⁶ in North Carolina reviewed 3 of 19

⁵Shepherd, Roosevelt E.; Executive Summary - Neighborhood Dispute Settlement: An Evaluation Report; prepared for Board of Directors, Neighborhood Dispute Settlement of Dauphin County; Harrisburg PA 1995

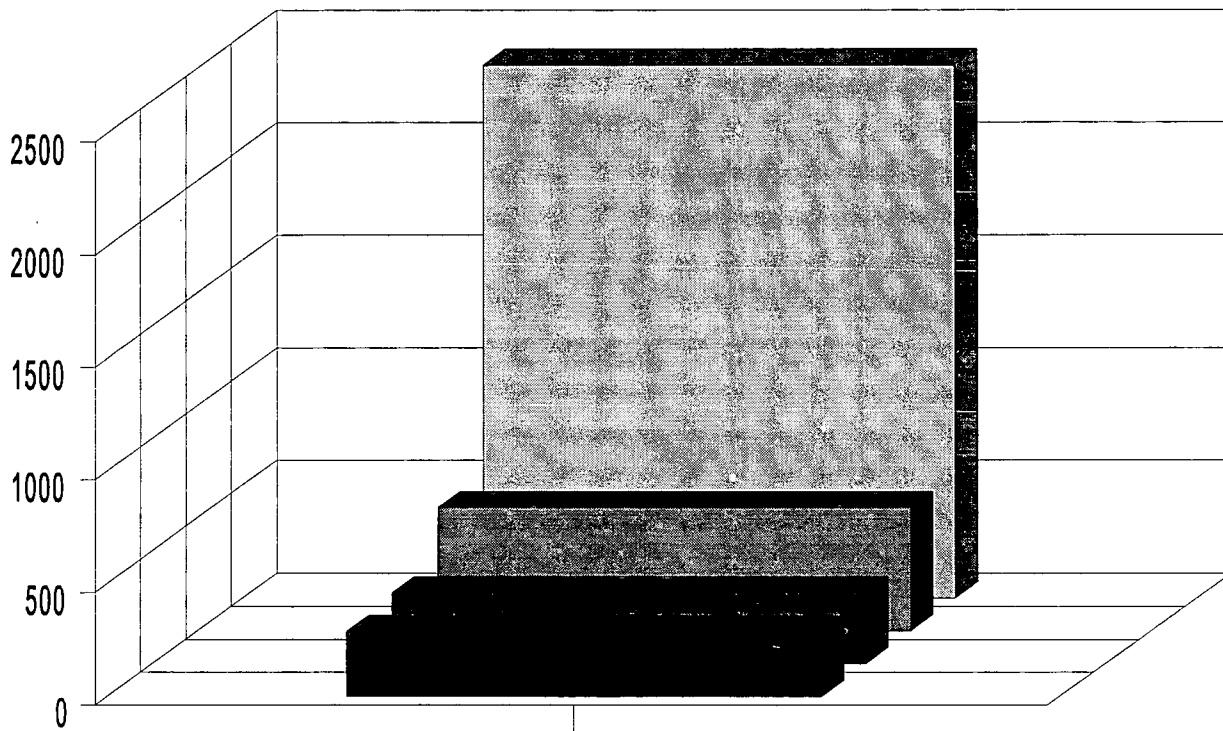
⁶Clarke et.al. Mediation of Interpersonal Disputes: An

counties which had a victim offender mediation program as an alternative to court process. Three similar counties without a mediation option served as a control group. Major findings:

- ◇ Too few eligible cases were referred, although of those referred almost 60% did go to mediation and 92% of those reached a successful conclusion.
- ◇ For those mediated, a high percentage (92%) were satisfied that the problem was solved (compared to 69% in the control).
- ◇ Fewer in the mediated group had new charges, although both were low (2% V. 4%).
- ◇ Compliance with the agreement by the offender was about 95%.
- ◇ Only 1 of the 3 counties reduced trials.

Evaluation of North Carolina's Programs; prepared for the Mediation Network of North Carolina; Chapel Hill NC 1992

NC COURT MEDIATION



ELIGIBLE



REFERRED (23%)



ACTUALLY MEDIATED (58%)



SUCCESSFULLY MEDIATED (92%)

Another example, this one in New Zealand⁷, elicits more dramatic results. For largely fiscal reasons the conservative New Zealand government passed a juvenile justice statute in 1989 intended to insure diversion; accountability; due process; family involvement; delay reduction; victim involvement; consensus decisions; and cultural appropriateness. Evidence is apparent that diversion occurred, as prosecutions of 17-19 year old offenders dropped 27%. In place of formal prosecution was a [family group conference] based on a Maori tradition that involves family of both offenders and victims. The purpose is to shame the deed and explain the full impact of the crime on the victim and the community while allowing the offender to earn their way back into the good graces of the community. Of course if cases are diverted, resources are saved. On the downside, in New Zealand the process took longer than the brief court hearing; supporters claim the extra time is worth it for the impact on the victim and offender.

⁷McElrea, F.W.M.; Restorative Justice - The New Zealand Youth Court: A Model for Development in Other Courts?; Journal of Judicial Administration, Vol. 4; Australian Institute of Judicial Administration, Melbourne Australia 1994

John Braithwaite of Australia refers to this as [reintegrative shaming.]⁸ A number of Australian towns have adopted a version of it, and one reported a 23% drop in juvenile crime; several cities in the U.S. are exploring this approach as well.

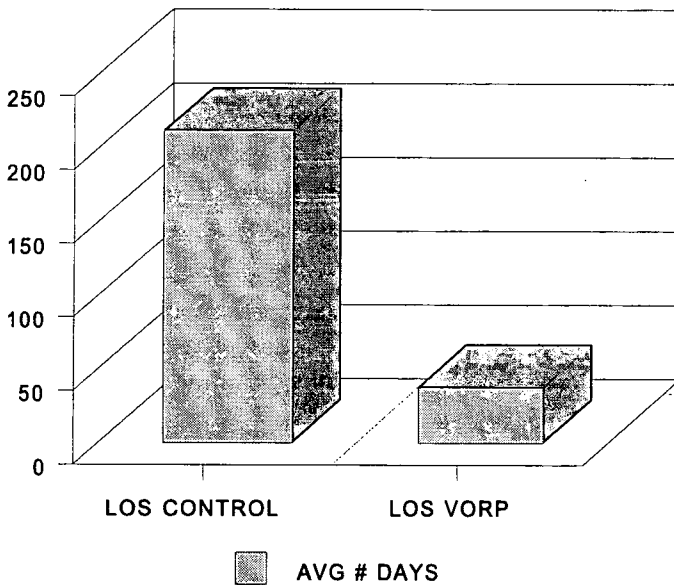
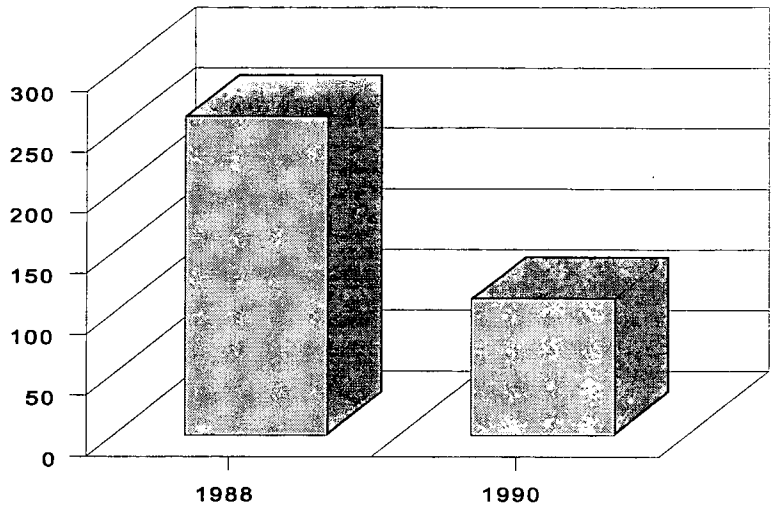
COURT - A number of programs operate from the court. The Midtown Community Court in Manhattan was designed to deal more effectively with nuisance crimes that affected the quality of life in the area, and a review by Sviridoff⁹ in 1994 found a number of beneficial results:

- ◆ More defendants got community service sentences (64% v 26%)
- ◆ Completion rates higher (75% v 50%)
- ◆ Quicker arraignment (18 HRS v 35 HRS)
- ◆ Community satisfaction; demand for expansion
- ◆ Reduction in targeted crimes (prostitution and vending)

⁸Braithwaite, John; *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge 1989

⁹Sviridoff, Michelle *The Midtown Community Court: Dispensing Justice Locally* 1994

SENTENCING - The impact at sentencing can be found in several research reports. Returning to New Zealand, the family group conferencing did more than reduce prosecutions. According to Russ Immarigeon¹⁰ it substantially reduced commitments to youth prison. New Zealand subsequently closed several of its training schools, and the new approach has been touted by the Maori populace who have traditionally been over represented in the institutions.



¹⁰Immarigeon, Russ; Family Conferencing, Juvenile Offenders, and Accountability in THE CHILD ADVOCATE, NYS, Fall 1994

A review of 3 programs in Indiana and Ohio by Coates¹¹ in 1985 found a different but also dramatic effect. Those who went through a victim offender mediation program (VORP) were about as likely to be incarcerated as those in the control group, but the length of stay was substantially shorter. Coates estimated that the combined days saved by the VORP process equated to more than \$84,000. There was also evidence that victims were satisfied with the process, and that it humanized the criminal justice system for all parties. As with most other reviews, subsequent restitution collection was high, and offenders reported fear and tension at having to face the person they victimized.

Available on a widespread scale, this approach can save jail beds for borderline offenders. Genesee County NY, which has an extensive set of programs built around restorative justice concepts, took in \$700,000 from other counties and states by renting out jail cells in 1993.

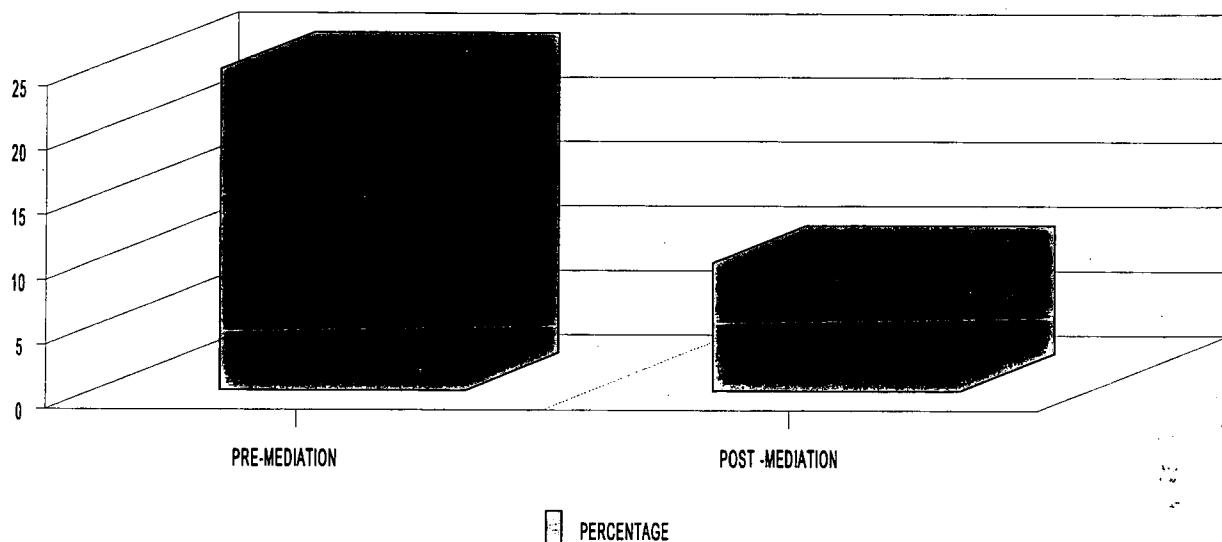
VICTIMS - Perhaps the strongest evidence supporting the restorative justice philosophy relates to victim impact, which is not surprising since victims are the heart of the process. It should be noted here that some victim organizations look with suspicion at proposals that call for restorative justice. They fear that the victim angle is a cover for more rehabilitation services for the offender. At the same time, there is some notable movement in the victim community to push for these programs. For example, Dr. Marlene Young, Executive Director of the National Organization for Victim Assistance, published a paper entitled COMMUNITY RESTORATIVE JUSTICE¹² which recognizes that it is in the interest of victims and the general public alike for offenders who are returning to the community to be better prepared to contribute to society. She calls for victim and community involvement and offender competency development.

¹¹Coates, Robert B.; Victim Meets Offender: an Evaluation of Victim-Offender Reconciliation Programs for the Pact Institute of Justice, Valparaiso IN 1985.

¹²Young, Marlene; Restorative Community Justice: A Call to Action; (Discussion Draft); National Organization for Victim Assistance; Washington DC 1995.

This approach is central to another model known as the [Balanced and Restorative Justice Project] operating in some 20 sites under the sponsorship of the federal Office of Juvenile Justice and Delinquency Prevention. Under this program every sentence must include elements of public safety, accountability to victim and community, and offender competency.

FEAR OF RE-VICTIMIZATION



The benefits to the victim are documented and include restitution; feeling involved; having choices; getting questions answered; and reduction of fear. This latter factor was demonstrated by Dr. Mark Umbreit¹³ in a study of 4 victim offender mediation programs involving juveniles. Before mediation, victims feared re-victimization in 25% of the cases; afterward only 10%.

¹³Umbreit, Mark; Victim Meets Offender: The Impact of Restorative Justice and Mediation; Criminal Justice Press, Willow Tree Press Inc, Monsey, NY 1994.

Canada has a number of restorative programs. One program in British Columbia was evaluated in 1995 by Tim Roberts, and deals with more serious cases including robbery, rape and homicide. Obviously with a very serious case some of the advantages at earlier stages of the process, such as court resource savings, are moot. However, if a system is to be truly restorative, victims of serious crimes have much to gain from such programs. The desire to know [why] is more intense with such cases. These cases take more preparatory time and require a higher level of training for the staff, but the evaluation from British Columbia as well as anecdotal cases from Texas, New York and Minnesota indicate that victims and offenders both feel the process is valuable; for victims a sense of closure and for offenders a feeling of self growth.

An interesting and victim sensitive adaptation to the face to face meeting is in place in the Canada program reviewed. Besides face to face dialogues, they also offer less direct exchanges, such as correspondence and video of victims telling the offender the impact of the crime, or of the offender answering questions posed by victim or the victim's proxy.

CONCLUSION:

It is evident that these restorative justice approaches can humanize the justice process and leave victims more satisfied than the current process. It is also evident that one of the critical elements of any such approach is choice - that some victims are unwilling to confront offenders or prefer not to pursue unanswered questions. Their wishes should be honored. In other cases, the offender may be recalcitrant and non-repentive, and such individuals are not good candidates for these processes.

While we will always need the traditional, formal adversarial process, it is also increasingly clear that justice would be enhanced with more restorative options for our citizens at every stage, and with a restorative element as part of every sanction for offenders. Linking the punishment to the crime in a way that repairs the harm is sound policy, appeals to the public, and provides a better way for the future.

