

Outline for a Restorative Justice Process

What it is:

A process where the stakeholders (parties involved) name the harm caused and collaboratively determine steps to put things as right as possible. It may include a face-to-face meeting, facilitated by trained practitioners, between the persons causing harm and those that are harmed to discuss what happened and its impact on people's lives.

Goals of a Restorative Justice process:

- Provide opportunity for dialogue and to create shared understanding about the harm caused by wrongdoing.
- Collaboratively create a plan for repairing harm and moving forward. This may involve action steps by one or both parties.
- Create a space for people to hold themselves accountable for their actions and resulting harm and therefore accountable for taking the appropriate steps to put things right.

When is a Restorative process appropriate?

- When the goal is healing, accountability, and personal responsibility rather than punishment.

Requirements for a good process:

- Parties agree to participate voluntarily and in good faith
- There can be no threat of further violence
- Person(s) causing harm must be willing to take responsibility for their actions (This does not necessarily mean legal responsibility as restorative spaces are not meant to be used to litigate a case or provide evidence, rather it means taking personal responsibility for harms caused, even ones that have not resulted in charges or formal legal action.)
- Confidentiality--Mediators are bound by confidentiality and cannot disclose specific content or statements made in the meeting or mediation (ADR rules apply). Parties can determine what is shared in terms of agreed outcomes or results. Illegal actions that are acknowledged during a mediated RJ process may not be prosecuted based on the RJ conversation.
- A restorative meeting between the person(s) harmed and the person(s) causing harm will be most productive if they are the active and primary participants. Attorneys will either be absent in the dialogue or will play a background, supportive, and non-adversarial role.

Stages of the process:

- Facilitators determine appropriateness for RJ and gain commitment for participation from parties.
- Parties and attorneys agree on parameters for participation.
- Facilitators meet with parties for individual intakes to hear stories, discuss harm caused, and explore what is needed for healing. This intake meeting would also include discussion of a potential face-to-face meeting between parties.
- Facilitators, along with input from the parties, plan an RJ encounter. Considerations include who should attend, when, where, and what is needed to provide a safe space for dialogue.
- Restorative Justice dialogue is facilitated by trained RJ mediators. There may be one or more meetings. This stage generally results in a written agreement between the parties for steps to move forward.

- Follow-up steps may be determined in the meeting, and follow-through could be monitored by the parties, facilitators, or others.

Benefits of Restorative Justice:

- Restorative justice focuses on the harm caused to individuals and how relationships are broken, and not on laws that were broken. This empowers those involved to have conversations at a deeper and more personal level than in the traditional legal system which puts an emphasis on evidence of laws being broken and therefore has the potential to stop parties from saying what they want to say out of fear of implicating themselves.
- It allows for more direct communication between parties than in the court of law. Instead of people testifying, they can tell their story and ask each other questions that are aimed not at proving guilt or innocence but at clarifying needs and best ways that they can work to meet those needs.
- There is more freedom and therefore more empowerment for participants than in a traditional legal setting because the people most impacted by what happened are the ones controlling the process and giving voice to what needs to happen to repair harm.
- Restorative justice processes are facilitated by third party neutrals who are not advocating on behalf of either party and have no stake in the outcome; this changes the potential for unequal power dynamics that could exist in a court setting when there is potential for jury bias, implicit or explicit, or when one party may have more resources than another to litigate the case.
- Given that the restorative justice process will be confidential, it will not have media attention or an audience in the same way that a public hearing would, and therefore all involved will be under less public scrutiny and the potential stress caused by such a trial.

Mr. Sean Purdy's Restorative Justice Experience

Thinking about everything that happened on July 4th 2020, the situations that took place that day cost me a lot of money and heartache. If I could take back one day of my life it would be that day. What happened that day affected not just me, but my family and friends. Although I did nothing legally wrong and only reacted as any person would when their loved one was being aggressively confronted by a larger man, I now have a much different perspective as to the whole situation and I have taken full responsibility for my actions.

At the time, I viewed the confederate flag as an American symbol of the South like on the Dukes of Hazards, which I watched as a kid. I had no intention of offending anyone. I just liked the hat and I was on private property. The hat didn't even really have the flag, just stripes with the colors. I had purchased it at the Hendrick's County Fair.

Restorative Justice (RJ) has brought to light to me that the confederate flag is a racially charged symbol and I will not participate in racially charged actions. My personality does often refer to younger men as "boy" regardless of race; it is just something some people say. RJ has explained to me that this term can be offensive and I have refrained from referring to African Americans as "Big boy" since RJ has brought this to my attention. RJ has taught me to be more sensitive to what I say to people.

I did not have any ill intentions towards Mr. Booker on the fourth of July, I had actually helped him out and gotten him to his campsite. After he returned I saw his body language towards Caroline and I felt as though she needed my help in the situation. I was not trying to start a fight. I was trying to prevent Booker from getting physical with Caroline which seemed like a real possibility from where I was standing.

My goal would be to try to react differently in situations where people are trying to provoke me. I participated in RJ because I did want to make things right with Mr. Booker and the public perception. I think the situation was misunderstood from my side because I was not trying to hurt Booker, I was trying to protect Caroline, my children, and my friends.

The RJ process has helped me to see the world from a different perspective and I believe it has helped me to be a kinder and more patient person. I think RJ is a great program for many cases and different situations. RJ has also helped me learn how to deal with people who are different from me and see things from a different point of view or different way. I am able to better see the other side of things and look at a situation from other person's perspectives.

My lawyer, Mr. Hennessy has this quote on his e-mail which now has real meaning for me. "Everyone you meet is fighting a battle you know nothing about. Be kind. Always." --
Author Brad Meltzer

Sean M. Purdy

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Lake Monroe Incident and Restorative Justice.

From the outset I believed that the incident between two people of different races was unfortunately, unfairly and irresponsibly turned into a race-based incident during racially charged times. Because of then current events, I believe that incident was blown way out of proportion. The ensuing publicity, with politicians leaping to unfounded conclusions, caused more damage to those involved and to the community as a whole than the incident itself.

I first proposed restorative justice because I felt that was the best resolution for all involved and the greater community. I felt it could be a lesson and the start of development of a model for handling such incidents.

I believed then and still believe there was a near zero chance my client would be convicted at trial. However, a trial only has winners and losers and an equally near zero chance of changing anyone's opinion. Everyone could continue to believe whatever they wanted by making excuses for any verdict and characterizing any result as an anomaly.

That said, there was much about the process that was unnecessarily frustrating and caused unnecessary delay. One party withdrew then rejoined. Purposefully damaging publicity continued unabated. One party publicly disparaged the process and prosecutor. There was an appearance that one party was receiving special treatment and being favored over others. The pandemic didn't help because it prevented some preferable in-person processes and caused difficulty in scheduling. The process was excessively long and drawn out. There was at least one important victim who was left out. Her perspective was never acknowledged. RJ put the truth seeking procedures available through litigation on hold. The goal of having all of those involved join for a shared experience never materialized.

I would suggest that any other attempts to consider: 1. All participants agree to stop public statements and press conferences. 2. All participants agree not to publicly disparage the prosecutor, the process or other participants. 3. Care be taken to include all perceived victims. 4. Get it done as quickly as possible. 5. Be transparent to all participants as to the participation and treatment of all other participants. 6. If it drags on consider joint public statements about the process and progress during the pendency.

Another thought is that all need to consider the respective value of determining the facts versus dealing only with the perceptions. Restorative justice is not about fact finding. If determining the truth about a situation is considered more helpful to any individual or the community, RJ may not be the way to go. Restorative justice is more about understanding different perspectives and empathetic evaluation of one's own behavior and the behavior of others in relation to each other.

One last thought. I think we all thought it would be better for the community but in this case there became no hope of a joint statement that could assist public perception. That should always be a goal. I strongly believe it was helpful to each participant. Ideally, that could be better explained and demonstrated to the community. At a minimum it would be helpful for each

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participant to publicly acknowledge they learned a lot about the incident that changed their initial judgement and learned that things aren't always what they seem.

David R. Hennessy, Attorney for Mr. Sean Purdy

Summary from Jerry Cox

The events of July 4, 2020, will be something that will always stay with me and think about for the rest of my life. My plan that day was to have a fun time with friends and family. I never thought it would result in a national news story. I wish I could go back and change my actions and the actions of others. The result of my actions and others involved have not just caused us to face consequences but also people important to us. Unfortunately, we have all had family and friends who have suffered consequences based on our actions because we could not control ourselves.

On that day I had not interacted at all with Mr. Booker until I ran up to the site where people were. I saw him on the ground and helped him up. After helping him up, he struck me and I hit him back. I felt a lot of anger and rage after that. I could not understand why he would hit me. I then was verbally abusive towards him. I called him "nappy headed." I am ashamed of what I did. That is not something I have ever said to someone. I never had given thought about how hurtful my words could be. The only way I can explain it is that I was angry and wanted to lash out verbally. I have been in verbal arguments with family and friends where because of what they said that hurt me I have said something in return that is a "low blow." Obviously, my anger messed with my judgement.

I found the Restorative Justice to be very eye opening and educational. I have never really given any thought about Mr. Booker's view at the beginning of the case. From my standpoint he had sucker punched me after I was trying to help him off the ground. I had not known about any previous interactions and what happened prior to me going to the site. The process gave me an understanding of where he was coming from and helped me understand his thoughts and actions. I don't think I would have understood this without this process. I was frustrated that it took as much time as it did, but my lawyer explained that this was something new with no set procedures that needed time to work out. I did think it helped with implicit bias also. I looked into it on my own because I wanted to understand why I would lash out verbally with something that I have never said before. I think I wanted to be hurtful because I was mad and that's why, and I wanted to say something hurtful. I would recommend the process, especially if there are parties at a true impasse. I had my doubts this could be resolved mutually, but the process helped. It was a great process to help me understand myself and others.

What I would do differently after going through this is be more aware of my actions. Think and observe before reacting. Put yourself in another person's shoes. It helps to understand the person and the situation. Also, words and actions have consequences. Actions and words that come from anger is not the way to conduct yourself. And it has a long lasting effect on you, the other person, and the people that care about you and the other person. I will be better. Thank you.

Jerry Cox

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I have mixed feelings on how Restorative Justice (RJ) worked to resolve this case, but I believe that RJ is a process that works and would be a beneficial tool for the criminal justice system. I do think that the issues which negatively affected the process in this case are not typically present in the overwhelming majority of cases. Also, this case was the first case that I am aware of that used RJ. The first time is typically the most difficult to navigate because there is no example or model and when all parties are trying to negotiate what the process ought to be like their different interests can be in conflict, making the process drag on. I have been involved as a prosecutor and defense attorney in other problem-solving or evidence-based programs, such as Drug Court, and a problem-solving approach yields better outcomes for all involved. I think for a number of cases RJ would result in better outcomes.

I think the biggest issue that hampered this process was the pretrial and ongoing publicity. Public interest and public opinion in this case was obviously significant. I have had cases as a prosecutor and defense attorney that had some public interest but not to the magnitude of this case. I do believe that because of the publicity in this case, which was fueled by some participants involved and local Monroe County elected officials, the process was significantly hampered. The overwhelming majority of cases would not face this type of publicity, but plenty of cases would receive local coverage. I think that any process for RJ in the future needs to include that no party engage with media.

I think that the other issues I thought hampered the process had more to do with this case being the first to utilize a RJ approach. No party really knew how it should be structured and how it should exactly work. That obviously cause a delay in trying to work on how the process will work and what defined a good result. In established problem-solving courts, counties have a detailed procedures and plans for different possibilities. In this case we had a participant withdraw from the process. I don't think we had an idea on how best to resolve that issue. I also think that who is a participant in the process would need to be clearly defined in the future. It was an issue that was present in this case, causing some conflict. Again, I think this is a good process, but since we were the first there were bumps along the way.

Admittedly, when RJ was suggested I had no idea what it was. I researched it and read articles. One article I read was written by Dr. Shannon Silva who teaches at the University of Denver. I reached out to her, and she referred me to a public defender in Colorado. Colorado utilizes RJ. If RJ is to be effective in the future, I think researching how other states do it is a good start to implementing RJ in Indiana. I think that RJ, like other problem-solving approaches, will have to first start with prosecutors willing to do it. It may be easier in some jurisdictions than others. I practice in multiple counties, and it still amazes me that there are counties who view problem-solving courts as a nuisance. In certain cases RJ can be an avenue to provide better outcomes. The research in RJ show that what most victims want is a genuine apology and for the other party to have an understanding of what they have suffered. The criminal justice system has existing barriers blocking that. For example, as a defense attorney, I would never allow my client to engage with a complaining witness, especially with an apology. RJ can provide victims and all stakeholders in criminal case with better, more effective outcomes.

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Vauhxx Booker

This statement is in regard to my experience with the restorative justice process relation to my attack on July 4th, 2020. For the general public, my attack on the Fourth of July, 2020, was nearly two years ago. However, for my loved ones and myself, our victimization and trauma have continued daily. First and foremost, the decision to engage in a restorative process is about preserving my peace.

I wholeheartedly believe in the power of restorative justice to radically alter how our society encounters crime and genuinely make us all safer. Restorative practices have been proven effective at increasing racial equity in a system that disproportionately criminalizes Black and brown bodies, reducing recidivism, and increasing overall community safety. Most importantly, such practices respect the dignity and sanctity of life.

Make no mistake, restorative justice is merely the roadmap, not a lone solution in itself. Conflict resolution is a perpetual element of the human condition. We must learn to address behaviors rather than merely labeling people by them. We must create spaces where individuals who err can encounter correction without shame or punitive measures. Americans have been successfully conditioned to believe that shame and punishment are more effective tools for behavior modification than affirming human dignity and modeling empathy. This is the root of so many of our society's ills. Suffering rarely yields positive results.

I refuse to be defined by the darkest things done to me. Instead, I choose to believe and labor towards a more just humanity and a brighter tomorrow.

"For the master's tools will never dismantle the master's house. They may allow us to temporarily beat him at his own game, but they will never enable us to bring about genuine change."

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Restorative Justice

Historically, the criminal justice system in the United States has focused on two major goals: punishment and rehabilitation. Thus, attention is solely on the alleged offender. Victims to crime can be persons, property, or even an entire community, and are often left voiceless in traditional criminal justice proceedings. Restorative justice, a relatively new concept in our modern criminal justice system, places emphasis on *all* affected parties, not just the alleged criminal offender. Essentially, restorative justice is an approach to advocacy that encourages healing rather than retribution or punishment. It allows all parties involved in a conflict to safely engage in reflection, with a focus on healing, personal responsibility, and accountability. This process usually involves nonconfrontational conferences between the victim, the offender, and sometimes a representative of their community. The goal of these meetings is not to seek retribution, but rather to make all parties whole again outside of the traditional criminal justice system.

In saving preciously limited judicial resources, the implementation of this process is a recognition that not all conflicts can or should be resolved in the court system. This is not to say that the harm inflicted on a victim is disregarded. Rather, this process gives victim(s) *more* of a voice. Unlike the mechanics of the traditional criminal justice system, restorative justice allows those directly affected by crime to have an opportunity to directly determine what reparations will look like. Further, an alleged offender involved in a restorative justice process is directly involved in the healing of their community. This hands-on approach places emphasis on human dignity, individual voices, and the health of the community as a whole.

I feel privileged to have been involved in the first real test of this process in a criminal case in Indiana. As the goal of a restorative justice process is to encourage community healing and provide a safe space for all parties to be heard and acknowledged, each implementation of restorative justice must be tailored to the circumstances. In our situation, it was clear from the beginning that the presence of attorneys in the restorative justice meetings would only hinder the building of trust between the affected parties. In order to effectively implement this process, it was of paramount importance that parties were given space to participate in a way that made them feel safe, secure, and heard by the facilitators. Therefore, each parties' attorney played a limited role in the substantive proceedings and allowed the alleged offender, the victim(s), and the community to directly resolve their conflicts together. In the spirit of restoration, this limited legal influence helped allow all parties to acknowledge the others' viewpoints and attitudes. Seeing situations from another's perspective is invaluable in building empathy, humility, and understanding.

In Indiana, we are fortunate to have the Center for Community Justice in Elkhart, the first organization in the country to use restorative justice as an alternative approach to crime. I wholeheartedly encourage other communities to search for alternatives such as restorative justice as a way to resolve conflict, and provide a means by which the offender, the victim, and the community can heal. However, it is important to note that the restorative justice process is not a free-for-all. Its implementation cannot allow parties to bully or otherwise unfairly influence the fates of any other party in the proceeding. Rather, in order for restorative justice to be effective,

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it is vital that all parties not only feel safe and heard, but also that all parties participate in the process in good faith. This good faith attitude is essential in achieving a successful and effective resolution.

Our experience was an enlightening experiment that illustrated the potential for restorative justice, if implemented properly. I fully support employing the restorative justice process in other communities and jurisdictions. In doing so, however, it is crucial that all parties enter the process with open minds and a good faith attitude. In other words, as long as the purpose and goals are emphasized and complied with, I believe the restorative justice process has the potential to fill the pitfalls inherent in our traditional criminal justice system.