

THIS WEB CONFERENCE WILL BEGIN SOON

RESTORATIVE JUSTICE

Exploring alternative ways of achieving justice for sexual assault survivors in the criminal justice system, in schools and in the workplace
Tuesday, August 25 | 1-2:30pm PT



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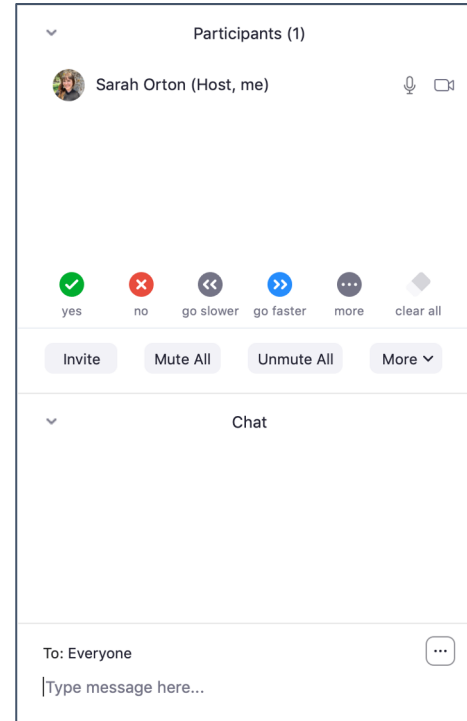
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HOW TO USE ZOOM

- ▶ Text chat
- ▶ PowerPoint Slides
- ▶ Polling Questions
- ▶ Phone
- ▶ Closed Captioning
- ▶ Web Conference Guidelines (hand raising)



Mute



Stop Video



Security



Participants 1



Chat



Share Screen



Polling



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Closed Caption



Reactions



More

End

Meet the CALCASA Team



Meghna Bhat
Project Coordinator
she/her/hers



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Project and Communications
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ON THIS WEB CONFERENCE



Janet Neeley JD

Legal Consultant,

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Learning Objectives

- Learn why restorative justice can be a powerful & wanted option—for both survivors and perpetrators of sexual violence.
- Learn the origins of circle and conferencing practices and their uses today.
- Explore how circle practice works in the campus context.
- Understand how Title IX's new regulations regard restorative justice alternatives.

Legal Disclaimer – Because That’s What Lawyers Do!

- CALCASA cannot give legal advice, but can provide information about legal requirements.
- Persons seeking legal advice about specific situations should consult an attorney about implications for themselves and their own campuses or organizations.



The Problem

Campus sexual misconduct – Prevalence

- Even 5 years ago, campus police chiefs found these hard to believe
- Statistics on false reporting – the myth
- **Longstanding effects of trauma when unaddressed**
 - Social and institutional responses are critical
- Consequences of a Title IX process today – much like a trial, thanks to new Title IX regulations, but without trained professionals

Reporting

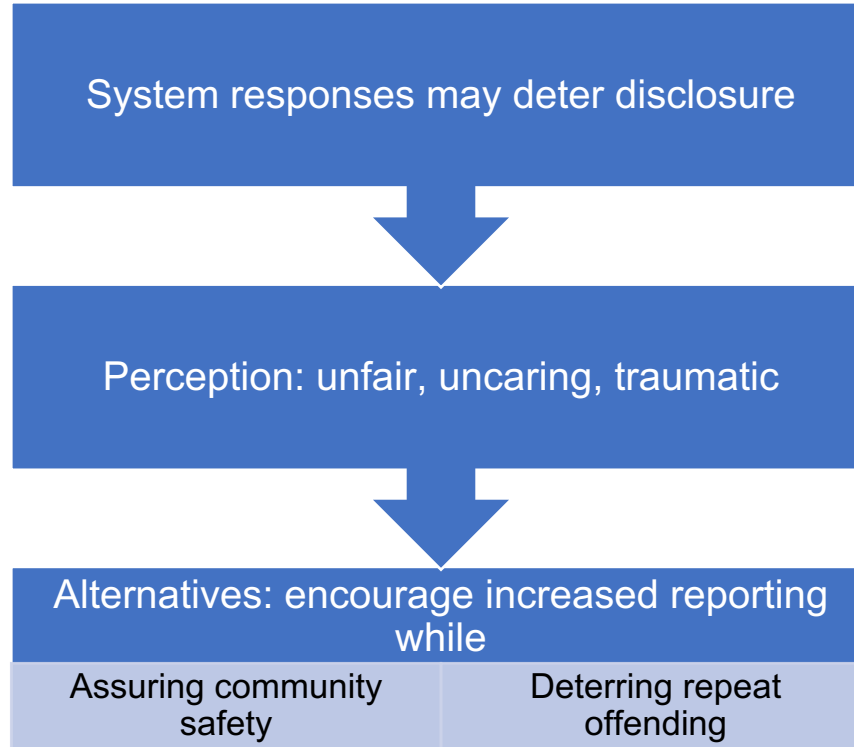
Only 13% of campus rape victims make any kind of report

- to police
- to campus officials, including health services, counseling, and conduct administrators



50% tell no one

Reporting



Criminal Justice System Reinforces Denial, Encourages Rejection of Responsibility

- Set up to be adversarial
- “Not guilty plea” expected regardless of guilt
- Supports cognitive distortions used by SOs to justify their behavior
- Emphasis on punishment, retribution are disincentives for participating in TX?
 - E.g., SVP programs

Confrontational aspect discourages reporting

RJ As a Solution for Failures of Criminal Justice?

- **Vast majority of complaints made to police are closed before trial...**
 - Cutting off search for acknowledgement of harm & response
- **Even cases that go through a trial and result in a guilty finding (13%) focus on the offender's behavior...**
 - Without giving a voice to survivors or according them any input into consequences imposed

Origins of RJ

- Native peoples in Hawai'i, Canada, NZ, Sierra Leone
- Forgiveness, tolerance, mercy, kindness accompanied by acknowledgement of harm

Lessons learned

- When incarceration is the only alternative, may perpetuate intergenerational abuse cycles
- Breaking the silence broke cycles of violence for indigenous peoples in Canada
- Promoted accountability, reduced recidivism

Forgiveness – Not the Goal

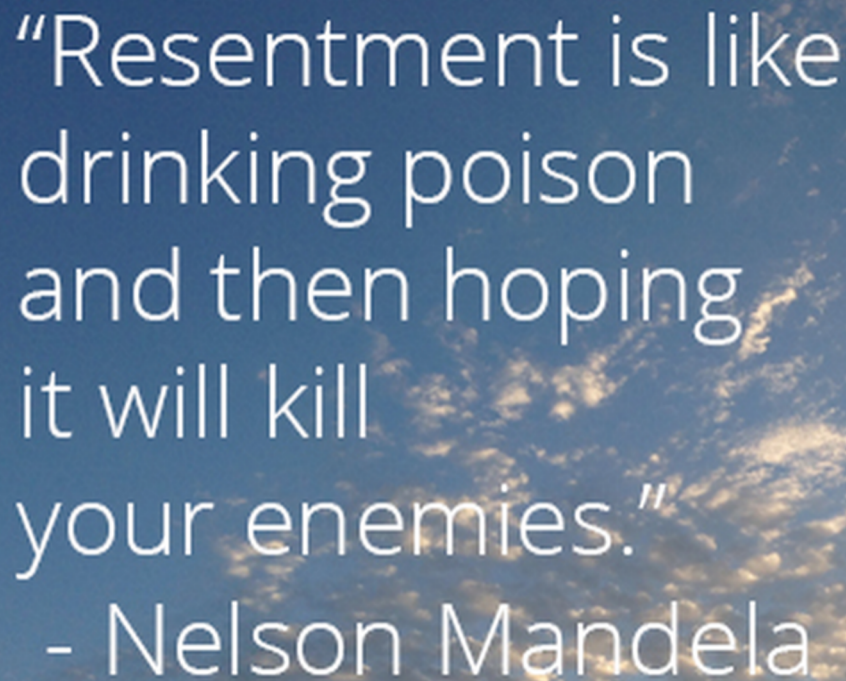
You do it for yourself, not others

You're not important enough to have a stranglehold on me

You don't get to trap me in the past

My future does not depend on your response

Key: a just outcome, regardless of forgiveness



“Resentment is like drinking poison and then hoping it will kill your enemies.”
- Nelson Mandela

Cultural and Social Changes May Lay the Groundwork for RJ



- Experiences of black Americans
- Impact of more women legislators at all levels

....may accelerate trend towards developing alternative solutions to incarceration

Less patriarchal, more egalitarian

What Do Survivors Want?

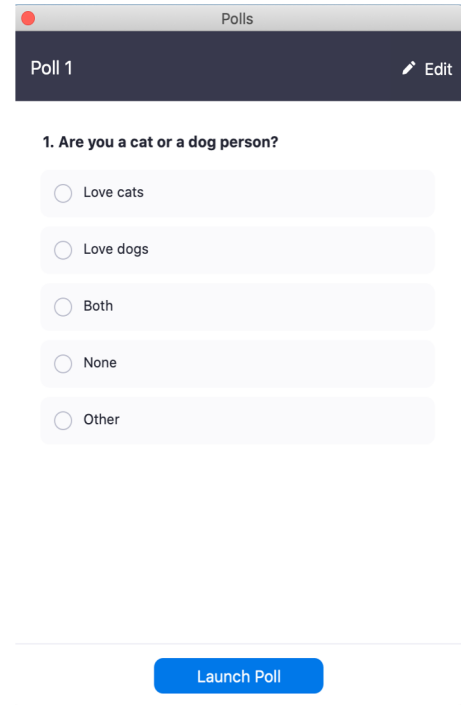
Research says they often want...

- Voice
- Validation
- Vindication
- Offender accountability/taking responsibility
- Consequences

AUDIENCE POLL:

How many survivors will be open to using restorative justice instead of the criminal justice system for sexual assaults?

The Poll will appear on your Zoom window



The screenshot shows a Zoom poll window titled "Polls" with a sub-header "Poll 1" and an "Edit" link. The poll question is "1. Are you a cat or a dog person?". There are five radio button options: "Love cats", "Love dogs", "Both", "None", and "Other". A blue "Launch Poll" button is at the bottom.

Polis

Poll 1 [Edit](#)

1. Are you a cat or a dog person?

Love cats

Love dogs

Both

None

Other

Launch Poll

Uses of RJ

- Criminal justice system alternatives
- Campuses
- Workplaces

Basics of RJ Systems

- Admission/acknowledgement of harm caused
- Agreement to engage in the process by both parties
- May or may not include face to face dialogue
- Requires commitment to follow through with mutually agreed-on sanctions and outcomes

RJ as Alternatives to Criminal Justice System

Alternatives Within the Criminal Justice System

Dual opt-in systems

- Require state's Penal Code to provide criteria for use of alternative therapeutic justice model
- **Both** parties must opt-in
- Requires acknowledgement of responsibility for crime

- **Uses diversion or suspended sentences**
- **Premised on required specific treatment**

California Alternatives

- Diversion - not a dual opt-in system
- Disfavored for sexual offenses
- May be offered for some misdemeanors (e.g., indecent exposure)

Why not used more often?

New Forms of Diversion as Modified RJ

One county in Washington state successfully used this system:

- Selected probation officers trained as “diversion counselors.”
- Pre-sentence evaluation was done by probation
- Treatment professional did a psycho-sexual evaluation, which occurred prior to the filing of charges.
- DA made an offer to those who met the prerequisites:
- Your arrest and fingerprints will remain in the system, but we will defer further processing of the criminal case if you sign a written admission of guilt and agree to sex offense-specific treatment and a contract regarding conduct which will remain in effect for three years. You will be monitored by probation. If you successfully complete the program, the charges will be dropped. If you violate the contract, you will be prosecuted and your signed confession used against you.

RJ Offers Better Chances for Rehabilitation

Prison – unlikely to increase likelihood of rehabilitation

RJ combines accountability with required steps toward change

- **Targeted therapy in partnership with CJ professionals and SO treatment providers**
- **Use requires considering public safety/risk level of the offender**

Empathy/inclusion vs. isolation, shaming

RJ in Practice

- <https://drive.google.com/file/d/1D5W0Bd0ttTL0BrlclhRNVTkEnwaCzx0e/view?fbclid=IwAR3vkjA1omqkiS91XCme1pxL5i4TgcwVmmVJUPVq2dfrGgepmZLPufmkRBk>

RJ and Sexual Violence

Restorative Justice & Sexual Violence

- Extensive training on dynamics for facilitators
- Credible commitment to working w/RCCs and anti-violence groups
- Up-front listening, support, compassion & information
- Options beyond face-to-face dialogue for dealing with the crime committed (no cookie-cutter approaches)

RJ/Diversion & Sex Offending

- Used when conduct was illegal but voluntary, not forced
- Used with families' consent for minors
- In some cultures, statutory rape is not a crime but condoned behavior
- Used in conjunction with family reunification systems

Choice and Control

- If an encounter is desired, providing survivors with choice and control in designing the process
- Including support persons in this process
- Working separately & thoroughly with the offender to determine what responsibility looks like, how to listen & how to take accountability
- <https://www.justoutcomesconsulting.com/restorative-justice-and-sexualized-violence-new-conversations-emerging/>

New Ways of Thinking about Resolving DV Situations

- One possibility is reducing the use of incarceration or creating alternatives to incarceration.
- Another is employing other justice strategies, such as restorative justice, to address intimate partner violence.
- Decreasing the use of the criminal legal system and addressing the unintended consequences of criminalizing domestic violence without abandoning criminalization altogether are potential responses which may enable more survivors to speak up or even to leave, with support through the RJ process.

RJ and Domestic Violence

Current Thinking:

Avoid bringing parties together in DV situations

Unintended consequences with current system:

- Ineffectiveness of current criminal responses
- Unintended effects on survivors, including negative effects on occurring after institution of mandatory arrest policies
- Increase in dual arrests
- Failure to prevent recidivism after criminal justice interventions
- Policies that ignore the right of victims to choose whether or not to participate in the criminal justice system

Survivor Safety

- Joint meetings were thought to threaten safety of survivor--but this can be decided case by case.
- In the 10 most rigorous studies **of the use of RJ** in DV situations, looking at a total of 1,879 arrested or convicted offenders, the result was:

“...a modest but highly cost-effective reduction in the frequency of repeat offending.”

[Goodmark, L., *Should Domestic Violence Be Decriminalized?*, 40 Harv. J.L. & Gender 53, 59 \(Winter 2017\)](#)

RJ in the Juvenile Justice System

RJ in the Juvenile Justice System

More common in teen or youth courts

Community service, apology letters, counseling programs

Alameda County: RJ programs for both F and M juvenile offenses

Much lower recidivism outcomes than formal CJ juvenile adjudications/incarceration

44% less likely to have a new sustained charge w/n 12 mos.

https://www.cga.ct.gov/app/incwg/related/20190102_MYI-YCI%20Subgroup/20190916/CWW_RJreport.pdf

RJ on Campus

Re-thinking options for dealing with sexual violence,
dating/DV and stalking

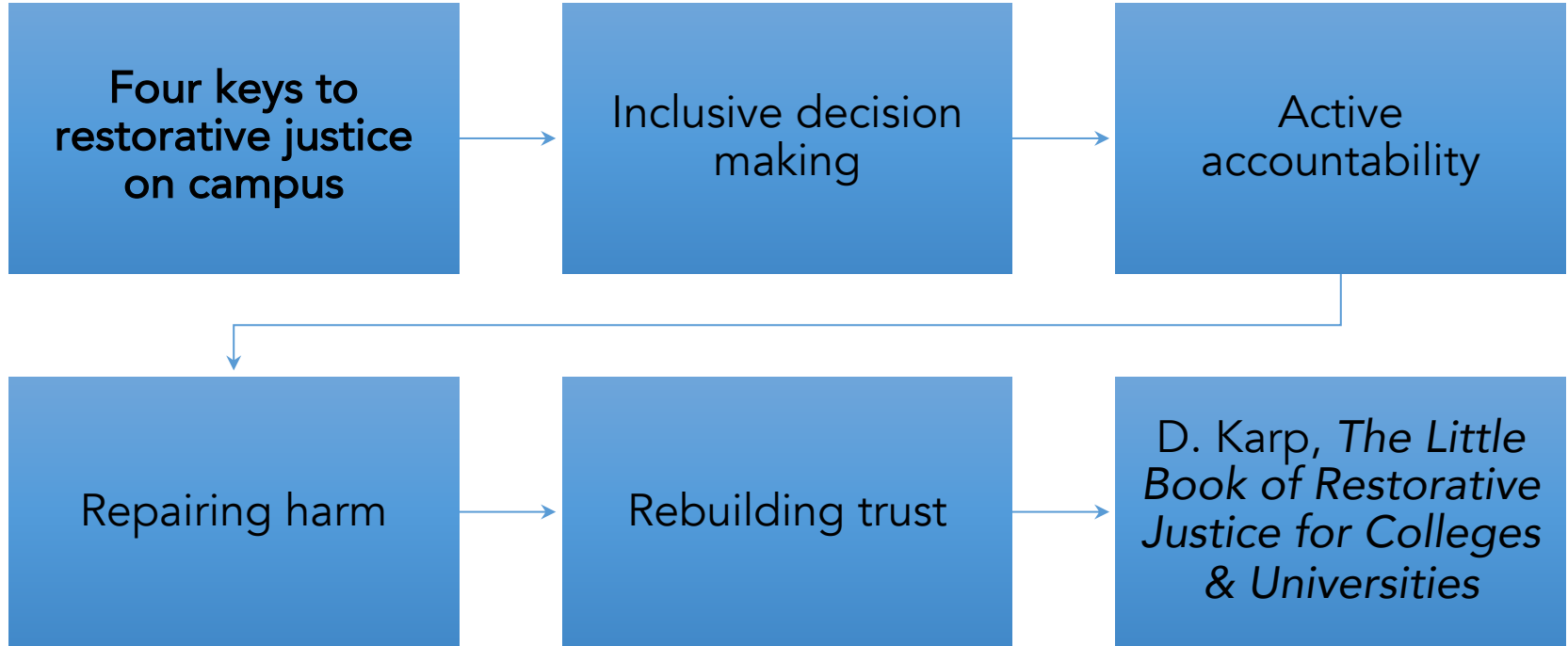
College Student Populations

- Brain development – still occurring
- Risk taking, emotional intensity, problem solving, impulsivity, exploring sexual identity
- Influence of peers
- LGBTQ students – may have already experienced discrimination, other negative experiences
- Need for MH counselors & RJ facilitators to be trained to address diverse social and sexual identities

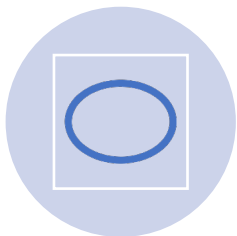


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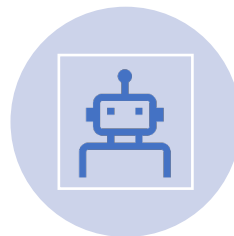
Campus – College and K-12



Campus RJ Systems



The focus is not on the offender.



Focus is on the harm created and what should be done about it.



The survivor is able to articulate the harm he or she experienced & have a voice in the consequences.



The offender would not be a spectator at his or her own trial, relying on an attorney to speak, but a participant in determining his or her own sanction.

Active Responsibility

- Offender must agree to take active responsibility for his or her actions
- Commit to fully engage in the process with aim toward making amends for harms caused
- Sanctions developed with active engagement of offender means more likely that he/she will follow through with requirements imposed as sanctions
- Less likely to be viewed as coercive

BREAKOUT ROOM:

Pros and Cons of RJ versus CJ or Expulsion

Scenario: A drunken student climbs into his girlfriend's car and refuses to get out of it. She drives to the police station where it takes several officers to remove him. He has never been violent or exhibited stalking behavior before now.

Discuss:

- Should charges be filed?
- Should he be expelled?
- Should an RJ process be used that might allow the offender to remain on campus?

What might influence your decision on whether to offer RJ?

RJ Consequences

Real life outcomes

The officers were involved in the restorative justice conference on campus as members of the community harmed by the offender's actions. They were skeptical about letting the offender remain on campus. To meet their concerns, the student agreed to do counseling to address anger, relationship and substance abuse issues. He also agreed to work with the police officers to present a campus workshop on the legal consequences of alcohol abuse.

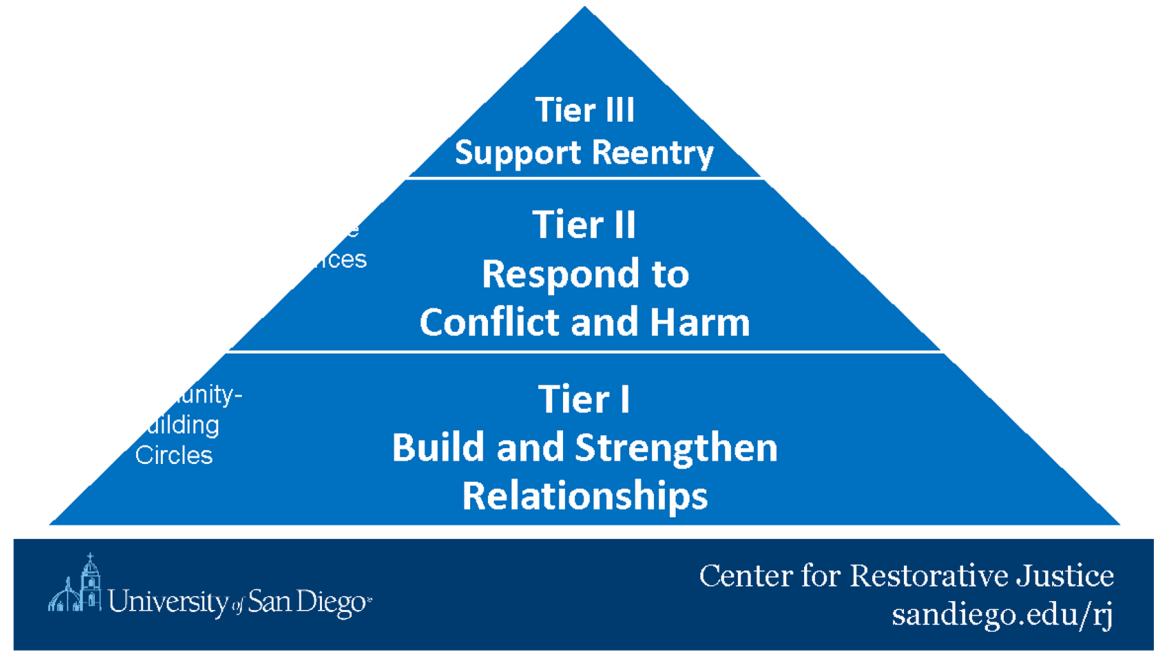
Karp, D. *Little Book of Restorative Justice for Colleges and Universities*

Challenges to Use of RJ on Campus

- Liability
- Confidentiality
- Pressure to expel; lack of resources during suspension periods
- Cost of training facilitators
- Requires MH professionals if counseling is an outcome

USD RJ Approach

Whole Campus Approach



Dealing with Consequences through RJ

Tier 2: Restorative Response to Misconduct



Hypothetical

A student on campus displayed an air gun when he became angry at another student, threatened him

Bystanders thought it was real, including international students

A campus security officer responded to the scene, defused the situation and discovered the gun was not real

The student agreed to participate in a campus RJ process

NEXT SLIDE-DISCUSSION POINTS

BREAKOUT ROOM:

Discuss these components from the hypothetical case in the previous slide



Who should the RJ facilitator talk to about the harm(s) caused?



Whose story needs to be told?



Assume those involved in this incident are given a chance to explain their stories and experience



Brainstorm possible solutions and consequences

Possible Harms and RJ Outcomes

Harms

Individual harm – fear

International students –
community harm

Campus community &
beyond – U.S. gun violence

Needs, Outcomes

Acknowledgement,
connection, safety

Apologies, educational
workshop, gun safety
campaign

K-12 Schools and RJ

K-12 Schools and RJ

- RJ as effective alternative to suspension/expulsion
- Community conferencing as a technique to address conflict between individuals, student groups and/or staff
- Involves those in conflict + family members &/or supporters

- Over 95% of community conferences in Baltimore resulted in a written agreement among the parties, created by all participants

K-12 Community Conferencing

The meeting offers participants the opportunity to discuss

- 1) what occurred
 - 2) how they were affected by it, and
 - 3) ways to repair any harm and move forward so that it does not happen again
- 97% of young offenders diverted from the justice system were minorities in this program, providing youth of color with the same alternatives available to many Caucasian youth

<https://www.restorativejustice.org/restorative-practices/>

Workplace Harassment and Sexual Violence

Workplace Harassment and Sexual Violence

- System discourages acknowledgement of SH/SV
- Hard to persuade employers to agree to RJ if it includes sanctions short of termination
- Civil liability fears – give dates of employment only
- Consequence: pass the harasser game

Sexual Harassment/Violence in the Workplace

Empirical research shows rate of sexual harassment/violence is much higher than reports show, in academia & beyond

Only 1% of Vs pursue remedies for SH in litigation

Less than 5% of cases actually filed reach a verdict

Really egregious cases rarely adjudicated –
Weinstein is the exception that proves the rule



What is Sexual Harassment in the Workplace?

- Need not be motivated by sexual desire to support an inference of discrimination
- More about upholding gendered status and identity than sexual desire
- Provides a way for some men to monopolize prized work roles, maintain a sense of masculine superiority

Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80 (1998)

Addressing Employers' Fears



Beyond civil liability, concerns about reputational harm/harm to business interests:

“Executives and boards are beginning to look at harassment the same way you think about other risks to your organization like security or hacking.”



RJ is not a slap on the wrist but hard accountability



No educational workshop or other sanction can duplicate sitting in front of the person you harmed and hearing how it affected them. This is much more difficult than simply showing up to a workshop.

RJ Reduces the Chance of Being Sued

RJ only operates if chosen by the survivor

Research shows harmed parties “consistently & strongly appreciate the opportunity to use well structured RJ processes

If participants (all sides) believe they have a voice

If offenders take responsibility after the parties talk out what happened

If all believe the process and outcome were fair

THEN survivors feel ready to move on with life, & process is a win-win for ALL involved – not just the survivor

Dalhousie as a Case in Point

- Women dental students discover 13 fellow male classmates had a private FB page with misogynist, sexist & homophobic material about them
- Chose to use dental school's RJ process
- Thorough investigation, regular meetings between facilitators & participants, restorative circles with various groups
- Five-month process ended with no expulsions but an understanding of the harm caused...

Dalhousie RJ Process – Justice Sought by Those Harmed

“We were clear from the beginning, to the people who most needed to hear it, that we were not looking to have our classmates expelled as 13 angry men who understood no more than they did the day the posts were uncovered. Nor did we want simply to forgive and forget. Rather, we were looking for a resolution that would allow us to graduate alongside men who understood the harms they caused, owned these harms, and would carry with them a responsibility and obligation to do better.”

Dalhousie RJ Process – Evolution of Those Causing the Harm

At the outset, the male students noted, "when we realized the hurt and harm our comments caused for our classmates, faculty and staff we wanted to convey our overwhelming regret."

During the restorative process, however, "we learned that saying sorry is too easy. Being sorry, we have come to see, is much harder. It takes a commitment to hear and learn about the effects of your actions and an ongoing and lasting commitment to act differently in the future. We have hurt many of those closest to us. We do not ask for our actions to be excused. They are not excusable."

Dalhousie Epitaph

“[B]y the end of the process, the men involved took responsibility for their actions, understood how their actions created and reinforced gender-based harms and stereotypes, and committed to addressing those issues.”

- The male students went on to present their experiences in a number of forums.
- Learning & change not likely in a more punitive process
- Designed to help men understand the harm caused, not to simply punish

Challenges in the Workplace Context

- Threat of termination, like threat of expulsion from dental school, is a powerful motivator
- But hard to change ingrained attitudes
- Some research shows misogynistic men double down their behavior after traditional workplace trainings on SH, but...
- **Bystander education** may have a better chance of engendering some understanding/insight



Facilitating Workplace Conduct Issues

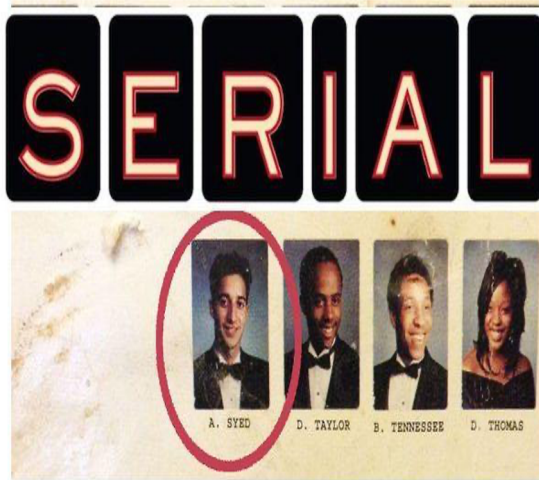
- By training people in the workplace or on campuses to conduct regular dialogue sessions with staff or faculty, Restorative Response Baltimore offers training “to a powerful social technology that helps build team cohesion, and can prevent *minor conflicts* from escalating into formal grievances or legal battles”
- info@restorativeresponse.org

Systemic Barriers

- VAWA – programs that treat both survivors and offenders are ineligible for grant funding
- Funds may only be available for continuation of existing programs
- Federal grants may only fund evaluations, not developing/operating new programs



Serial Sexual Offending



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- The theory behind punishment by **conviction, employment termination or expulsion** is the mere fact of sanctions will result in the cessation of offending
- But may simply move the behavior to another time and place – “pass the harasser” situation
- Moving on - No record of expulsion for SV may appear on the college transcript of a student found responsible for SV

Second Chances

Who should be given a second chance?

RNR – Risk, Needs, Responsivity

- Empirically based risk assessment of individual offender
 - Research shows only small % are high risk
- Consider risk factors, criminogenic needs
- **Treatment** must match needs, responsivity: higher risk level, the more treatment needed
- Education/prevention—unlikely to change high risk students' behaviors
 - Converging factors- hostile masculinity and impersonal sex



Who is Not a Candidate for RJ?

Requires a person

- Capable of understanding the harm caused
- Able to feel remorse

OR

- Rational enough to follow through on commitment to change because understands future similar behavior will negatively impact his/her life



Sex Offender Specific Treatment Programs

- Specialized training
- Structured curriculum following empirically established path
- Not intuitive but research based

- Required for all sex offender registrants in CA*
- Could be modified for youthful or first-time offenders if treatment professionals learn to use research-based curriculum specific to those who commit sexual harm

Treatment



- More likely path to long term behavioral and attitudinal change for those who harm others sexually
- Feelings that will surface (depression, anger, shame, guilt) should be handled by professionals
- Students may resist tx, so motivational enhancement techniques are necessary

STAARSA Project

- Evidence-based treatment and assessment for college students found responsible for sexual assault
 - Two approaches: one for lower risk students w/ protective factors
 - One for higher risk students w/ behavioral/emotional dysregulation, anger management & impulsivity problems or personality pathology
- RNR/CBT options
- Challenges distorted beliefs, manages complex feelings while maintaining respect and rapport
- Assessing risk factors and needs were key to successful tx

National and California RJ Centers

USD Center for Restorative Justice

<https://www.sandiego.edu/soles/restorative-justice/>

CAMPUS PRISM: A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses

https://www.skidmore.edu/campusrj/documents/Campus_PRISM_Report_2016.pdf/

STAARSA Project- Science based accountability and risk reduction for sexual assault treatment program:

--Targeting risk factors (e.g., alcohol use) and relevant treatment needs

<https://www.dropbox.com/sh/cm5n7n38qn2ispl/AACIRS8VxaKwQswX6NqWSN2Wa?dl=0&preview=STAARSA+Project.pdf>

QUESTIONS?

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