

# RESTORATIVE JUSTICE:

## *What We Know and How We Know It*

By

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### **Jerry Lee Program on Randomized Controlled Trials In Restorative Justice**

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### **Working Paper # 1, With Powerpoints.**

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## ABSTRACT

The accumulated findings of randomized controlled trials on the effects of face-to-face restorative justice yield the following conclusions as of August 2004: criminal cases diverted from prosecution to restorative processes featuring face-to-face meetings between victims and offenders, when randomly assigned in comparison to either A) prosecution in court that can result in a criminal record, or B) other forms of diversion from formal prosecution of juvenile offenders that do not involve face-to-face meetings with crime victims, result in

- 1) Statistically significant and substantial benefits for crime victims, as measured by interviews with victims in-person or by telephone;
  - 2) statistically significant and substantial *reductions* in repeat offending in some tests, in some social settings, with some demographic groups, as measured by police arrest or charge data
  - 3) statistically significant a substantial *increases* in repeat offending in other tests, tests, in some social settings, with some demographic groups, as measured by police arrest or charge data
  - 4) consistent and substantial reductions in crime victims' stated desire for physically violent revenge against the offenders
  - 5) several tests and demographic comparisons in which RJ makes no statistically significant difference in repeat offending
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"The cause is hidden. The effect is known".  
Ovid, 43 BC

Since 1993, the authors have been designing and implementing tests of face-to-face restorative justice in Australia, the United States and England. With the support of the Jerry Lee Foundation and many other funders, we have recently amalgamated these tests into a systematic program of integration and comparison of the findings of various tests. This effort, entitled the **Jerry Lee Program in Randomized Controlled Trials of Restorative Justice**, attempts to report new findings as soon as possible in peer-reviewed journals, at criminological and criminal justice conferences, books, and on-line at [http://www.sas.upenn.edu/jerrylee/jlc\\_rct\\_rj.doc](http://www.sas.upenn.edu/jerrylee/jlc_rct_rj.doc) . A list of publications to date is found at the end of this narrative.

The broad aim of this project is to learn whether a new kind of justice can change people's lives for the better, with long-term effects. Can it cure the post-traumatic stress symptoms and improve the health of crime victims? Can it help offenders to stop committing crimes? Can it motivate offenders to accept drug treatment, get jobs, and turn their lives around? And can such effects persist over the life-course, lasting decades rather than a few months or years? These are the major questions the proposed project could answer about the increasingly popular idea known as "restorative justice."

Developed largely in Australia and New Zealand, restorative justice offers new values and processes for society's response to crime (Braithwaite, 2002). New values, endorsed by the United Nations and many religious organizations, stress healing over punishment, reconciliation over anger, and reintegration over rejection. New processes, which have been introduced at a rapid pace by the Blair government (Home Office, 2003), include participation by victims, offenders and all persons affected by a crime in decisions about how offenders should repay their debts to society—and to their victims. The processes also provide a forum for expressing the emotions about a crime that are intentionally suppressed by the fact-finding procedures of conventional criminal justice.

In its best-known form, restorative justice consists of a two-to-three hour conference led by a police officer or other trained facilitator. Since 1995, over 1,000 crime victims and 2,000 offenders in Australia and England have participated in the co-principal investigators' research on such conferences, either as participants or as members of a (randomly assigned) comparison group. The proposed project would allow us to examine the long-term effects of restorative justice on those who experienced it compared to those who did not.

**An Example.** One such conference took place in a London prison for women in late 2002. The conference was about the robbery of a sixty-something woman nurse at the doorstep of the emergency room where she worked. A young woman “crack” cocaine user approached the nurse to grab her purse. When the nurse resisted, the offender hit her over the head with a glass Coca-Cola bottle. The nurse staggered into the nearby Emergency Room, where she was given over sixty stitches to heal the cut on her scalp. The nurse returned home, she remained a recluse for over a year. During that time she refused to buy another handbag, or to leave a room without a member of her family escorting her.

When the young woman robber was caught and pled guilty, a Scotland Yard police officer asked whether she would be willing to meet with the victim to discuss the crime before her sentencing date in Crown Court. When she agreed, the officer asked the nurse whether she would also consent to a meeting. In both cases, the officer explained that there would only be a 50% chance of a meeting even if both parties agreed, because of the experimental nature of the meetings. The officer also said that agreement to meet in principle was just as valuable for the research as an actual meeting, and that both victim and offender would make an important contribution to improving justice by their agreement to participate in the study. With this fully informed consent, both the victim and offender agreed. The London officer called research office in Philadelphia immediately after the victim gave her consent, where a computerized formula selected the case for a restorative justice conference.

After a series of telephone calls to family and friends of the victim and offender, all the parties arrived at a small room in Holloway Prison, where the offender was in custody awaiting sentencing. The police officer-facilitator sat everyone in a circle, introduced all the participants, and outlined the discussion that would take place. He then asked the offender to tell everyone present what she did; she responded with a brief,

shame-faced account of the crime. He then asked the victim to describe the harm caused by the crime to her and others. While the victim said very little, her family members and friends spoke at length. Similar statements were then offered by the offenders' family. Supporters of both offenders and victims expressed a great deal of anger, including the *offender's* grandmother. "How could you do this to somebody's else's granny?" she demanded. "Would you ever want someone to do this to me?"

The offender repeatedly asked the victim to forgive her, but the victim remained silent. When the harmful effects of the crime had been fully aired, the facilitator asked the entire group what the offender might do to repair the harm that the crime has caused. At this stage in the conference, victims often ask for the offenders' commitment to turning their lives around. Offenders often suggest ways in which they might "do something for" the victim, such as donating money to a charity or performing a community service. Only rarely does the group agree on an actual restitution payment in cash to the victim. In this case, the group asked that the offender commit herself to getting off drugs and never going back to them.

Once the agreement was reached, the facilitator called a recess in the proceedings to write up the agreement while the participants stood up to get tea and biscuits from a sideboard. Supporters of the victim and the offender, as usual, talked informally over tea about common concerns, such as raising children. The normal release of tension was interrupted in this case, however, by the victim calling the offender over to her seat, where the victim had remained motionless throughout the two-hour conference. The offender complied. The victim took the offenders hands, pressed them to her forehead, and asked that the girl learn the error of her ways and never repeat the harm she had caused.

The next day, the victim bought a handbag and went back to work. The offender was sentenced to five years in prison. The offender could be released on good behaviour as early as 2.5 years after entering custody. At that point we will be able to learn whether she can avoid repeat offending.

This case shows what RJ can be, in structural terms: a *supplement* to the criminal justice process. Yet RJ can also be an *alternative* to using criminal prosecution altogether. The attached Powerpoint slides, in fact, contain only victim effect data about the use of RJ as a supplement. Most of the data reflect using RJ as an alternative. All of the data reflect a face-to-face meeting between victims and offenders as the intended, if not always delivered, treatment.

Other forms of RJ include meetings to discuss *victimless* crimes, or those crimes that lack a personal victim. This includes drinking-driving and shoplifting from big stores, not operated by their owners on a face-to-face basis with customers. As we reported with Daniel Woods in 2000, the use of RJ in such cases in Canberra had no statistically discernible effect on repeat offending in two respective RCTs.

As the powerpoint slides summarize, there are varieties of restorative justice that vary on three dimensions:

- 1) whether the crime has a personal victim
- 2) whether an offender meets with a victim face to face
- 3) whether the process supplements, or substitutes for, regular criminal prosecution

What we can say about repeat offending effects at this point is limited to face-to-face RJ as a substitute for prosecution. What we can say about victim effects, however, is the same for using RJ both as a substitute and as a supplement—as long as there is a face-to-face meeting. To our knowledge, there have been no RCTs on RJ processes involving victims and offenders without a face-to-face meetings. What effect such “indirect” RJ would have on either victims or offenders remains unknown, but a new study funding by the Home Office for England and Wales may allow us to answer that question within the next three years.

**Victim Effects of Face-to-Face RJ.** While the robbery case discussed above is unusual in the severity of the injury and of the crime victim’s stress symptoms, it is not atypical in the positive effect of RJ on the victim. Telephone interviews with some 200 victims in the London studies by a psychiatric nurse at the University of Pennsylvania show substantially lower levels of Post-Traumatic Stress Symptoms (PTSS) among consenting victims who were randomly assigned to be offered a restorative justice conference compared to victims who were not (Angel, 2004). London victims also report less effect of the PTSD on their daily lives, including the ability to go to work. Interviews of victims in eight separate tests of restorative justice (RJ) conferences in England have also replicated, with stunning consistency, the victim effects found in the first controlled tests of RJ in Canberra at the ANU in 1995-2000 (Strang, 2002): less anxiety, anger, and inclination towards violence to avenge the crime.

**Offender Effects of Face-to-Face RJ.** The consistent benefits of RJ for victims are not matched by a consistent improvement in offender conduct. In the four original tests of RJ in the ACT, the co-principal investigators found that the effect of RJ on repeat offending varied widely by offence type. In the first two years after arrest, offenders charged with *violent* offences had about 50% less repeat offending if they were assigned to RJ than if they were not (Sherman, 2003). Those charged with *property* offences had substantially *more* repeat offences if they were sent to RJ than if they were sent to court. At three years after arrest, the increase in repeat offending by property offenders was statistically significant and large, as the powerpoint shows.

**Race and Gender Effects.** The powerpoints show that among Aboriginals in Canberra, diversion to RJ caused more repeat offending than was found in conventional prosecution. This was true for both violent and property crime arrests, even though diversion to RJ caused white offenders to have far less repeat offending than conventional prosecution. We urge caution in interpreting those results, since the context

for racial minorities varies widely. We simply note the fact that it is not safe to assume that RJ will never cause any harm. It can, and it has.

More important, we must ask the question of what works for whom? In England, girls under 18 showed less repeat offending after an arrest for an assault if they were randomly assigned to an RJ process than if they received a traditional “final warning.” But this effect was not found for boys under 18 arrested for assault. Why? We do not yet know. But we can say that, in that area of England, RJ worked for girls arrested for assault but not for boys. For non-violent and property crimes with personal victims, however, RJ did work better than standard final warnings, both for boys and girls.

How RJ effects may vary by gender, on both offenders and victims, may or may not be consistent from one setting to the next. The point is to be sensitive to the possibility of differential reactions within large groups, and to proceed with care in implementing new RJ programs so that the possibility of adverse reactions can be measured.

**Different Points in the Criminal Process.** All of the Australian results are based on using RJ as an *alternative* to conventional justice, in the form of prosecution and a court sentence. Cases assigned to RJ in Canberra were finalized as a police “caution” that did not comprise a criminal record for purposes of employment, military service or passports. Since 2001, the co-principal investigators have conducted eight other tests of RJ in England as a *supplement* to conventional justice, after the offender had already been convicted of or admitted to a criminal offence. These tests have all been focused on either violent or property offences, at different points in the criminal process: at “final warning” cautions for juvenile offenders (one test for violence, one for property crime), after guilty pleas but before sentencing in Magistrates’ courts (one violence, one property) and in Crown Courts (one test for burglary, one for robbery), and after sentence for violent crime (one for offenders in prison, one for offenders under community supervision). These tests have already produced evidence on victim effects, but they will not yield evidence on offender effects for several more years.

The co-principal investigators have also been commissioned to test RJ as an alternative to prosecution for serious offences in London, with both violence and property crimes. These tests would also compare two different kinds of RJ to standard prosecution: face-to-face meetings (as described above) and third-party communication (“indirect” RJ).

**Related Research.** While the co-principal investigators’ tests of RJ are not the only studies that have been done, they do constitute almost all of the tests that meet the “gold standard” of hypothesis testing in human sciences. That standard refers to a research design that rules out other plausible explanations of the apparent effects of a new program. That research design is called a “randomized controlled trial” (Fisher, 1935; Piantadosi, 1997). While it has been widely used in medical research for the past half-century (Millenson, 1997), it has been used far less often in social research.

The basic logic of the randomized controlled trial (RCT) is to create two (or more) groups that are as similar as possible, in which pre-existing differences in their characteristics have been “controlled” by giving an equal chance to each case of being assigned to each group. This means that, with large enough sample sizes, there should be little difference between two groups of people in the average age, percent female, weight, height, dietary habits, drug abuse or prior criminal histories. In theory, the RCT provides a basis for concluding that any differences between two groups in the future were “caused” by the one difference between the groups in the past—random assignment of a pill, surgery, exercise or a justice process, to one group and not to the other. Whether this works out in practice depends on how large the sample sizes are, and how closely the actual treatment of the groups follows the random assignment plan.

Restorative justice studies tend to have small sample sizes, in part because of the difficulty in establishing enough trust in a new and unfamiliar process to obtain large numbers of consenting victims and offenders. This is just as true for the non-RCT studies (see Meiers, et al, 2001) as for the RCTs. That is also the case for victims or offenders changing their minds after they agree to an RJ process, leaving the group that completes RJ a self-selected, and possibly biased sample. The bias may be that the same kind of people who are committed enough to complete the process may have been, *prior* to the process, the same kind of people who would have better lives in the future. Both victims and offenders who complete the process may have already been destined to show less unemployment, drug abuse, and future offending than those who decide to drop out of the process.

The biggest difference between RCTs and other designs is the preferred method for dealing with this dropout problem. In the non-RCT studies, there is little record kept of who drops out—or even worse, the dropouts are compared to the completers, with the difference between them credited to the RJ process rather than to the self-selection bias (Meiers, et al, 2001). In RCT designs, however, everyone who is randomly assigned is followed up and their outcomes are credited to their assigned group, whether or not they completed the treatment process. That allows the analysis to examine the effect of being given the opportunity for restorative justice, whether or not it is actually carried out (Piantadosi, 1997: 277).

The limits of the RCT design are met when too many people drop out of their assigned treatment to make the comparison of assignments meaningful (Weinstein and Levin, 1989). That is what happened in two RCTs of restorative justice in Bethlehem, PA, where random assignment occurred prior to obtaining victim and offender consent rather than after (McCold and Wachtel, 1998). That is what came very close to happening in the Canberra property experiment, in which one-third of the offenders assigned to RJ never actually met with their victims. But that is not what happened in the English RCTs that provide the majority of the victims and offenders for the proposed project, where the dropout rates for offenders (or victims) are generally no more than 90% (Sherman and Strang, 2004a). Nor is it what happened in the Indianapolis test of RJ

on offenders aged 7 to 14, the only other RCT that has been reported (with positive victim effects and reduced repeat offending) to date (McGarrell, et al, 2001).

Other studies have also been diverse in the ways in which RJ is administered, such as direct or indirect meditation (without family or supporters involved) or court orders of restitution payments to victims by offenders. In addition, the total sample sizes of all these studies do not add up to the total that the proposed project would include. The proposed project therefore relies on the largest collection of samples from tests of a consistently administered form of restorative justice (face-to-face conferences), with or without the RCT design.

One advantage of the consistent method of RJ in the proposed study is that it makes possible the combination and comparison of samples using advanced statistical methods (called “meta-analysis” and “systematic reviews”). These methods may reveal patterns and conclusions that were not evidence from analyzing each test one at a time, and have helped to create a small revolution in medical research (Chalmers, 2003). Their application to criminological questions has only rarely been possible (Lipsey and Wilson, 2001), and never before with a single treatment.

**Specific Aims.** The general aim of this project is answer the largest empirical and theoretical questions ever raised about the effects of justice on human development across the life course. The specific aims are to answer these five questions:

1. **Victim Effects.** What are the long-term effects of restorative justice on crime victims’ health, employment, happiness and lawfulness, and how long do these effects (if any) last?
2. **Repeat Offending.** How, if at all, do the long-term effects of restorative justice on the lawfulness of offenders vary by type of offence, prior offending history, and other offender characteristics, as well as the stage in criminal process at which RJ occurs?
3. **Offenders’ Lives.** What, if any, are the long-term effects of restorative justice on other aspects of offenders’ lives *other than* repeat offending, including health, love, parenting, and work, and do these effects vary by offence or offender characteristics.
4. **Stage in Process.** How do long-term effects of RJ on victims and offenders vary, if at all, by the stage of the criminal process at which they met?
5. **Linked Lives.** How similar or different is the effect of restorative justice on the life course of victims and offenders in each case, with direct comparison of the victims and offenders?

**Findings To Date.** The attached powerpoints portray the findings to date. They are not yet, nor ever will be, “finalized,” since every year we add new data and add more of the life-course of the participants to our understanding of the effects of RJ. We invite anyone who downloads these powerpoint slides to present them to classes and official groups. We make them available in this form in response to many requests from audiences we have spoken to, who would like to tell others what they have heard and seen. We only ask

one thing in return: please show all of the slides, and not just those that relate to a single conclusion. Please do not use this material to make selective use of the evidence in support of, or against, RJ. Without presenting the criminogenic as well as beneficial effects RJ can produce, it would be contrary to the spirit in which we offer the slides, as well as to the entire Enlightenment project of science itself. As Richard Feynman said in 1974,

"The idea is to try to give all of the information to help others to judge the value of your contribution; not just the information that leads to judgment in one particular direction or another."

The data show consistently good results for victims, but not for repeat offending. Discovering the reasons for the latter findings will require much more research, and refinement of criminological theory in response to the research. We do not suggest that what is true for Aboriginals in Canberra would necessarily be true for racial minorities in every nation, nor even for Aboriginals in small rural communities with majority Aboriginal populations. We suspect that social setting, victim-offender social distance, the local context of police relations with different demographic groups, and many other variables may cause different results from RJ in different places and for different offence types. As Ovid observed in the epigraph, "the cause is hidden. The effect is known."

**Note on Significance Levels.** The attached slides represent a small fraction of all the analyses we have done. In some of them, there are significance tests reported for various comparisons. These tests, and others done on different time frames, will be fully reported in later peer-reviewed journal articles. It suffices to say for present purposes that the differences highlighted in bullet points are all statistically significant in two-tailed tests below the 0.1 level, and in most cases below 0.05. Some of them may be significant at the two-year point and not at the three-year point; and in some the opposite is true. Some may only be true for repeat offences involving victims, while others are true only for all repeat offences. We are confident that the main findings are robust, and that the peer-review process will confirm our analytic approaches in reaching these conclusions. Questions about those items should await the submission of more detailed data analysis to peer-reviewed journals. Please email us, however, with any other questions and clarifications about the presentation, and continue to check the website at [http://www.sas.upenn.edu/jerrylee/jlc\\_rct\\_rj.doc](http://www.sas.upenn.edu/jerrylee/jlc_rct_rj.doc) for updates.

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