LAW IS MORE THAN A PROFESSION, IT’S A CALLING
“Making a Difference” Through Restorative Justice

By Michael C. Deering

INTRODUCTION

Before entering law school, a soon-to-be attorney dreams of “making a difference.” He dreams of representing clients as he advocates for truth and justice, as he lends his voice to those who cannot speak, as he defends the innocent and the young, and sets the wrong to right. Then, reality sets in. Dreams of justice and zealous representation give way to stress and the everyday rigors of law school. Reading, briefing, and writing overwhelm the student. After three years of arduous work, the student graduates. Facing bar preparation, job searching in an economy that causes seasoned attorneys to shudder, and a mountain of educational debt, the graduate accepts work wherever he can find it. Under the stress of debt and inexperience, the young attorney buries his head in clients’ case files. He attempts to navigate through practice and pay off his loans. Before long, five years have passed, then ten, then twenty. After twenty years, the attorney reminisces about his dream of “making a difference.” The same dream that law school, debt, and a busy case load placed on the shelf. He still dreams of justice and setting the wrong to right, but as he surveys the legal landscape, he wonders where he can fulfill this dream, this sense of justice, this desire to “make a difference.”

In today’s legal landscape, juvenile justice presents the perfect specialty to “make a difference.” This article seeks to determine whether Colorado’s Restorative Justice satisfies both juvenile and community needs when Colorado District Attorneys continue to charge ten year olds with felony arson? The new Restorative Justice principles sweeping across the nation, and
most particularly in Colorado, enable an attorney to truly set the wrong to right and “make a
difference” in the lives of children. This author believes that Restorative Justice Principles
provide new tools for all attorneys who desire to work with juveniles. This author has chosen to
focus on Colorado as a means to explain Restorative Justice and its impact, provide detailed
illustrations of Restorative Justice at work, highlight Colorado’s statutory codification of
Restorative Justice, and outline the future of Colorado Restorative Justice.

**JACOB’S STORY**

“Call 911!” screamed ten-year-old Jacob Christenson to his mother on May 9th, 2010.

But it was too late, the flames that had at first engulfed the dry pine where Jacob played,
now licked their neighbor’s town home in Parker, Colorado. By the time the fire department
arrived, the fire had already caused severe damage to the physical structure of the town home as
well as to the neighbor’s personal property inside. Jacob Christenson explained what happened
as he and another boy lit a piece of paper on fire with a lighter that they had discovered on the
ground.ii

"We were just walking around, being bored," Jacob says. "[The older boy] told me to
light this piece of paper on fire. I was like, okay, but I wasn't lighting anything else. It burned
him, and he threw it into the bush. And I tried to get it out, and I got burned. Then we started
throwing rocks at it, trying to put it out."iii

"It started catching on the center bush," Jacob recalls. "Then it lit the first bush. And it
went to the third and fourth and then to the house. It just happened. We both started running, and
we were yelling for help. Somebody saw the fire and called the cops, and the fire department
people came up. I'd never seen anything like it except on the news."iv Initial city assessment
valued the damage around $133,000."
For Jacob, this was not the end of an unfortunate accident. Carol Chambers, District Attorney (D.A.) for the 18th Judicial District, charged the ten-year-old with 2nd degree felony arson. Public Defender, Dariel Weaver, who represents Jacob, publicly addressed the incident and the charges.

"That's what boys do. They play with magnifying glasses and matches, they have rock fights. I don't think you can say that Jacob set out with the intention to burn a house down. Yes, these people suffered losses," Weaver says. "But that can be addressed civilly. The criminal justice system is being used to recover civil damages from a ten-year old."

D.A. Chambers responded to the public outcry in an interview with the Denver Post insisting that the judicial system would do nothing other than help Jacob.

"We are treating Jacob Christenson in the same way we would treat any juvenile who allegedly committed a property offense in this judicial district. Charges are based on conduct, not age."

She stated her concern regarding the media’s coverage, "[my concern] is the complete disregard and empathy for the victim whose home was destroyed. I do not think most people can fathom the devastation they would suffer if their home was destroyed. And what if she or someone else, such as a firefighter, had been injured as a result of this fire?"

Notwithstanding D.A. Chambers’s desire to use the judicial system to “help” Jacob even when no one was injured, the case was referred to diversion. Jacob must attend school, but also participates in a work-program that earns minimum wage which allows Jacob to pay for restitution for the individual property damage.

This case sparked much debate regarding Restorative Justice and its use in Colorado’s judicial districts as a counter-balance to prosecutorial overkill and misuse of discretion.
COLORADO RESTORATIVE JUSTICE DEFINED, ENACTED, AND MANDATED

In 2008, then-Governor Bill Ritter signed HB 08-1117 into law, codified throughout Colorado Children’s Code. Restorative Justice Colorado, in partnership with the Colorado Restorative Justice Council, provides one of the best descriptions/definitions of Restorative Justice. “Restorative Justice is an approach to justice that engages victims, offenders and their affected communities. The result: real solutions that provide support and answers for victims, a plan to repair the harm that has been done and requires offenders to take responsibility for their actions.” Restorative Justice efficiently reduces recidivism and “emphasizes the way in which crimes hurt not only people, but also the community in which they live. This is done using processes that preserve the respect and safety of all involved.”


“Restorative justice" means those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.”

Restorative Justice is mentioned numerous times throughout Colorado’s Children’s Code. The definition of “diversion” specifically provides the goal of Restorative Justice programs. Colo. Rev. Stat. Ann. § 19-1-103(44) states that the “goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system.” The definition of diversion further highlights that “services may include restorative justice practices, including where practicable, victim-offender conferences.”
The Colorado Code clearly and unambiguously expresses the legislative intent to create a juvenile system that employs Restorative Justice principles. Col. § 19-2-303(1) states, “In order to more fully implement the stated objectives of this title, the general assembly declares its intent to establish a juvenile diversion program that, when possible, integrates restorative justice practices to provide community-based alternatives to the formal court system that will reduce juvenile crime and recidivism, change juvenile offenders' behavior and attitudes, promote juvenile offenders' accountability, recognize and support the rights of victims, heal the harm to relationships and the community caused by juvenile crime, and reduce the costs within the juvenile justice system” (emphasis added).xvi

The language of the numerous Colorado statutes clearly illustrates the impact that Restorative Justice made and continues to make on the Colorado Legislature. Such cues from the legislature should encourage attorneys to employ all services provided by the Colorado Judicial Districts when dealing with juveniles.

RESTORATIVE JUSTICE IN PRACTICE

H.B. 08-1117 provides a clear mandate as to how judges should procedurally apply the Restorative Justice principles.xvii This bill, which was signed into law in 2008, mandates judges to apply Restorative Justice at three critical stages of the proceedings. First, the bill requires at both that Judges advise both parents and juveniles of the possibility of Restorative Justice both at their advisement and their entry of guilty plea.xviii Judges must also consider ordering the juvenile to an intake conference during the sentencing phase of the proceedings. Such an intake conference evaluates the juvenile’s eligibility for Restorative Justice.xix Finally, the law authorizes all probation departments to consider Restorative Justice at every stage of the probation.xx
Not every single juvenile is eligible for Restorative Justice. Generally, juvenile diversion and restorative justice cannot be ordered if the crime involves unlawful sexual behavior or where the underlying facts involve domestic violence. The Denver District Attorney’s Office publishes a list of criteria for eligibility. A partial list of criterion includes the following:

1. Clients between the ages of 10 and 17 at the time of the offense.
2. Clients admit their guilt, culpability and/or involvement in the offense.
3. Clients have not previously participated in a state level Diversion Program.
4. Clients do not have past or pending state court cases in Denver or other judicial districts.
5. Client and their parent/guardian voluntarily agree to participate in the program.
6. Clients agree to and do comply with the Juvenile Diversion Contract.
7. The services available in Diversion are appropriate and meet the needs of the client.

**INDIVIDUAL JUDICIAL DISTRICTS’ RESTORATIVE JUSTICE PROGRAMS**

Each Judicial District within Colorado maintains its own Restorative Justice programs. A PDF made available from the Office of Adult and Juvenile Justice Assistance, provides succinct summaries of the different programs available throughout Colorado and the funding provided through specific grants and from the Colorado General Fund to each of the Judicial Districts as of 2009/2010. For example, the 3rd District provides a Teen Court in Huerfano County. This Court, made up of student volunteers, allows a teen offender to be tried by a jury of his peers. Such a program teaches “respect for the law” and provides an opportunity for real restitution. “Sentences typically include community service, letters of apology, reparations, drug and alcohol classes and a $25 participation fee. Sometimes the sentence includes mandatory parenting classes.”

In Denver, an art program employs diversion and restorative justice principles. “Acquiring Restitution Through Talent (A.R.T.T.) was created as a way for juvenile offenders to earn money for restitution. They create, market, and sell art in various mediums so they can pay
back the victims of their crime. All proceeds from the sale of art items go directly toward restitution.”

Colorado Judicial District 18 which covers Arapahoe, Douglas, Elbert and Lincoln Counties provides another great example of how juvenile diversion and restorative justice principles are “making a difference.” The Juvenile Diversion Counseling Program’s Mission states the following: “In an atmosphere of professionalism and excellence, we provide counseling and support to juvenile offenders and their families. We create opportunities for change with an emphasis on accountability and personal growth.” Ironically, this District is administered by the same D.A. Carol Chambers who initially charged 10-year-old Jacob Christenson with 2nd Degree Felony Arson before reversing her harsh stance and referring the case to juvenile diversion.

**RESULTS, RECIDIVISM, SUCCESS**

Recidivism is defined as “a tendency to relapse into a previous condition or mode of behavior; especially: relapse into criminal behavior.” This Author prefers the term success rate instead of “recidivism.” While recidivism carries some negative connotations, the term “success” suggests exactly that--the successful restoration of a child using principles and procedures previously identified.

Studies suggest that enactment of Restorative Justice principles successfully restores juveniles. In a world-wide study of Restorative Justice, “research suggests that restorative justice programs can have a positive impact on recidivism. For example, Nugent et al. (1999) reviewed and analyzed the results of fours studies of victim-offender mediation (VOM) programs for juveniles and found that participation in VOM reduced recidivism. Youth participating in VOM recidivated at a rate of 19% compared to 28% for their comparison group counterparts.”
Analysis of twenty-two different studies involving thirty-five Restorative Justice programs suggests that “restorative justice programs are a more effective method of improving victim/offender satisfaction, increasing compliance with restitution, and decreasing recidivism compared to non-restorative approaches. While more rigorous research is needed, particularly for family group conferencing and peacemaking circles, restorative justice programs overall do appear to have a positive impact on reducing recidivism.”

In particular, Colorado’s 9th Judicial District illustrates a high success rate. A recent three year study of their YouthZone Juvenile Diversion Program suggests “that 92% of all children who participate in YouthZone do not repeat another offense.” Such a high number illustrates the apparent success of implementing Restorative Justice Principles.

Judicial District 18 recently published its annual report for its Juvenile Diversion Counseling Program. Under this program, participants answer a twenty-eight specific question survey which gathers information regarding the program. According to these surveys, 87.5% rated the Restorative Justice programs as good or excellent. 70% of the surveys indicated that the participant believed he was less likely to break the law due solely to these programs. 91.7% agreed that the program resulted in an improved family life. In addition, the report states that in 2008 alone, only 3.87% of all clients accepted in the programs will actually face new charges within twelve months. The full report is available online.

The Colorado Juvenile Justice and Delinquency Prevention Council recently published their annual report to the Governor of Colorado. This report accurately describes the success of the Restorative Justice programs employed throughout Colorado. “From July 2009 through June 2010, a total of 2,615 youth were served through 22 state-funded juvenile diversion programs across the state. Of the youth served, 65% were male, 55.2% White/Caucasian, 28.3%
Hispanic/Latino, 3.3% Black/African American, 3.0% Native American, .9% Asian/Pacific Islander and 5.1% other.”

In addition, “[a] total of 1,532 youth exited a diversion program during the reporting period, with 82% being successful, 3.0% unsuccessfully terminating due to an arrest on a new offense, and 11% unsuccessfully terminating due to non-compliance with their diversion contract. A total of 29,526 community service hours were completed by diversion program participants and $229,058 in restitution collected.”

The results of these studies suggest that Restorative Justice Principles work. These principles restore individuals and communities while reducing recidivism. This is a formula for success in Colorado.

This Author recognizes the need for increased state-wide studies to further validate the success of Restorative Justice Principles and encourages all readers to persuade the Colorado Legislature to further study and validate the programs through empirical data and analysis.

**NEW LEGISLATION AND THE FUTURE**

Due to the increased success of Restorative Justice, the Colorado Legislature has drafted H.B. 11-1032 which is currently being considered. This bill makes much of the Restorative Justice principles mandatory in their application. The Colorado Association of Family and Children’s Agencies (CAFCA) provides a good summary of the bill. The bill mandates that juveniles receive a pre-sentence evaluation for restorative justice. The bill also mandates a pre-charge evaluation of the juvenile. Pending such suitability, the D.A. may choose to enter the juvenile in restorative justice programs rather than actually charging the individual. The bill also mandates that the Department of Corrections to oversee victim-offender meetings in “institutions under the control of the Department.” Such meetings would only occur if requested by the victim and agreed to by the offender. The bill also seeks the involvement of public and charters schools
in restorative justice ideals. The bill encourages the schools to implement restorative policies and procedures in their disciplinary proceedings. The involvement of schools may prove difficult as this may interfere in the school’s chosen curriculum. Given the increased success of Restorative Justice in Colorado, schools may choose to implement certain programs since these programs benefit all students as discipline, morale, and respect improves throughout the entire student body.

Representative Pete Lee (Democrat) of Colorado Springs drafted and introduced this bill. Interestingly, the Colorado District Attorney Council is opposing this new bill. The Council has not yet articulated why they oppose the bill. One can only assume that their opposition comes in no small part from the bill’s mandating the use of Restorative Justice when the current law only mandates that it be considered as an option. The bill dissolves District Attorney discretion at certain stages of the proceedings. Given recent prosecutorial overkill as evidenced in Jacob Christenson’s case, this bill appropriately limits the overreaching of prosecutors. This bill seeks to satisfy Restorative Justice Principles while allowing D.A.s to focus on more serious cases which deserve true prosecution.

CONCLUSION

Restorative Justice Principles provide legal mechanisms for an attorney to successfully “make a difference” in the life of a child. One can finally fulfill his life-long, pre-law school dream. The future of our nation and states rests on our children. Restorative Justice Principles break the cycle of recidivism among troubled children and teens. In conjunction with Restorative Justice and good lawyering, an attorney can change lives of children and in turn the future. The studies presented above illustrate this fact. As evidenced by the Governor’s Annual Report, at least 82% of children and teens who participate in Restorative Justice programs successfully
complete the program and do not recidivate. These percentages are persuasive. By applying Restorative Justice Principles, the future is bright. By applying, Restorative Justice Principles, attorneys can “make a difference.” Justice requires no less because law is more than a profession, it’s a calling.
Michael, a native of Colorado with plans of eventually returning, will graduate with his J.D. on May 7, 2011, from Regent University School of Law in Virginia Beach, Virginia. He intends to sit for the Virginia Bar Exam in July 2011 and begin practicing law in a domestic relations setting.


xxi Id.


xxiv Id.

xxv Id.


xxvii Id.

xxviii Id.


xi Id.
