



Training in Restorative Practices & Campus Sexual Harm

*Toni McMurphy and
Kaaren M. Williamsen, Phd*

Training Flow

Format:

- Presentation
- Circle Process
- Small Group Discussion
- Case Study
- Guest Speakers

1/6: Introduction to RJ Philosophy & Practice

1/7: Justice, Restorative Questions, Talking Piece Circle

1/8: Circles continued; Case studies

1/13: Conferences; RJ in sexual misconduct policies

1/14: *Guest Speakers*: Chelsea Jacoby, Title IX Coordinator TCNJ; Carrie Landrum, Assistant Director OSCR, UMich

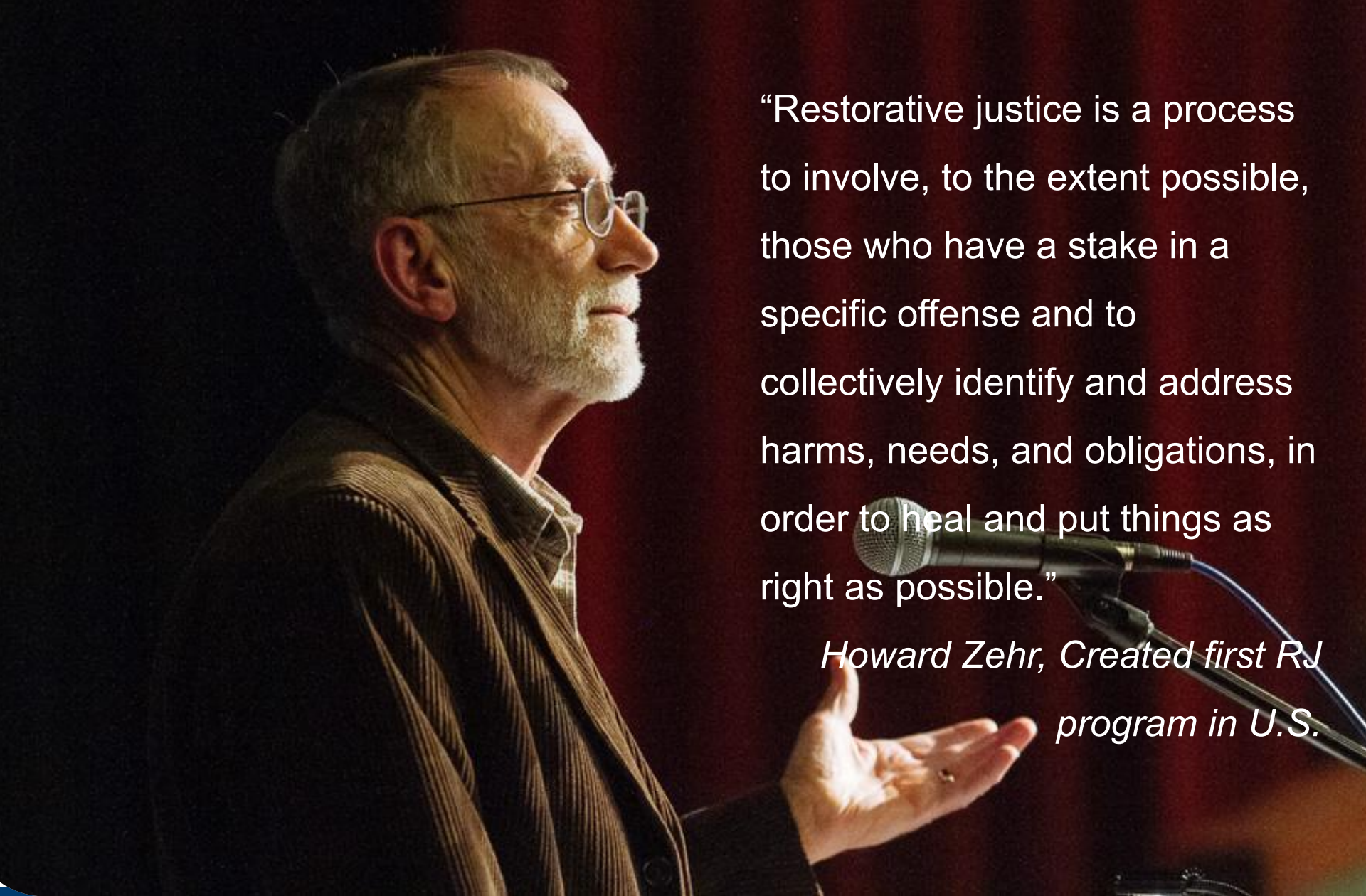
1/15: Restorative Case Management; Role Play

1/21: Role Play Continued; Restorative Agreements

1/22: Additional uses: Reintegration and Healing circles; Closing



What is Restorative Justice?

A photograph of Howard Zehr, a man with glasses and a beard, speaking into a microphone. He is wearing a dark jacket over a light-colored shirt. His right hand is raised in a gesture. The background is dark and out of focus.

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”

Howard Zehr, Created first RJ program in U.S.

Restorative Justice

- **Philosophy and set of practices**
- **Crime is a violation of people and relationships**, not just laws, creating needs and obligations. Restorative justice aims to involve, as much as possible, the parties most impacted by the crime.” (Zehr 2002).
- **Four key principles:** inclusive decision making, active accountability, repairing harm, rebuilding trust (Karp, 2015).
- **Restorative justice for sexual offenses requires adaptation** (Koss, 2010).

Kay Pranis



Origins



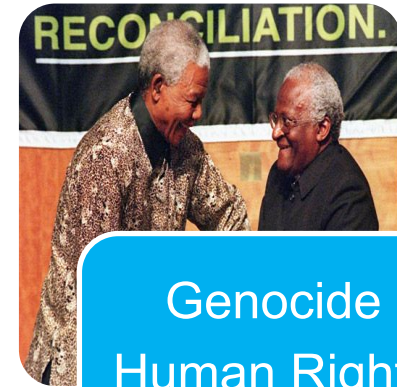
Expanding RJ Movement



Schools
Workplaces
Families



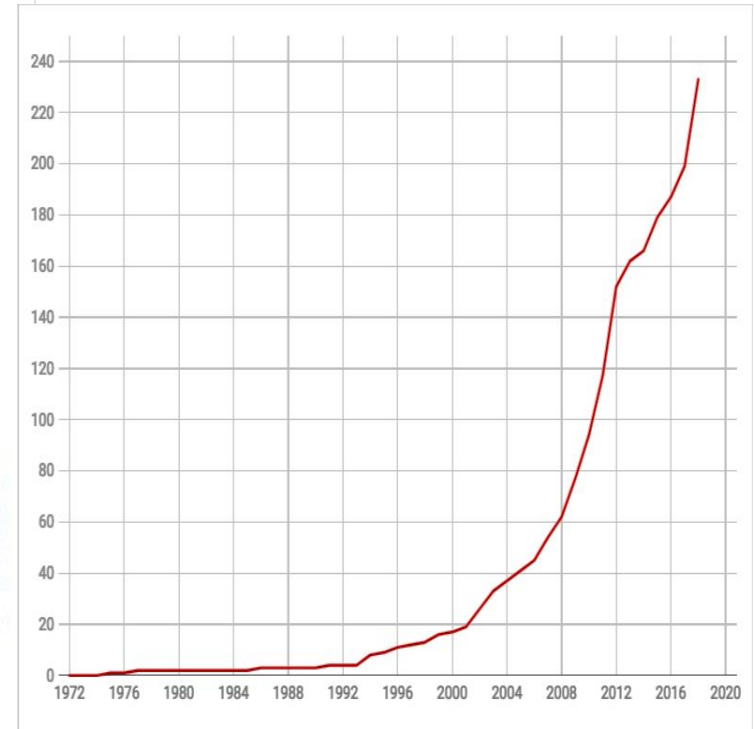
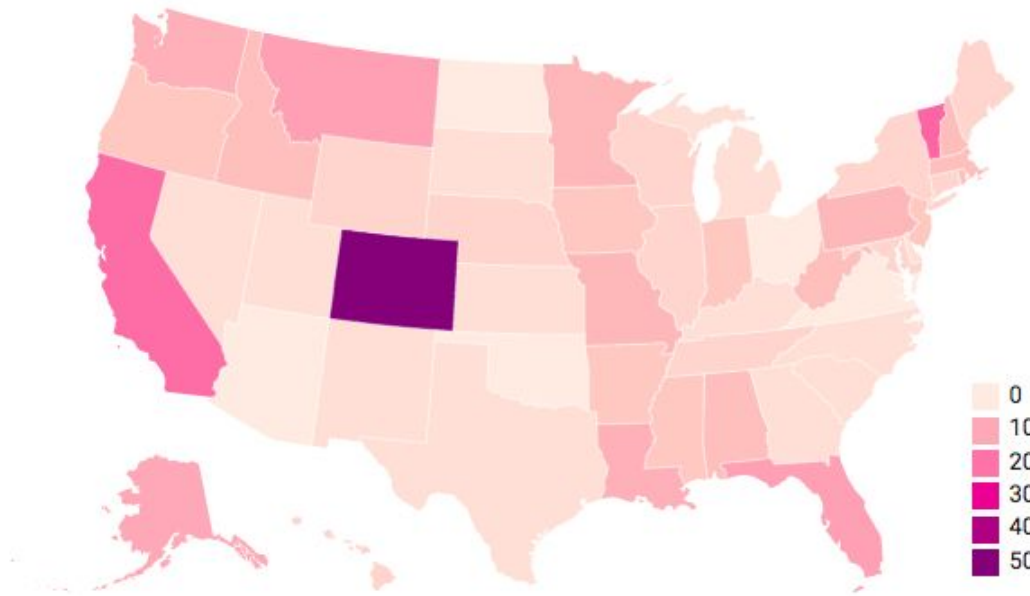
Juvenile
Justice
Criminal
Justice



Genocide
Human Rights
Violations
Historical
Harms

RJ Legislation in the United States

RJ laws by state



González, Thalia (2020) "The Legalization of Restorative Justice: A Fifty-State Empirical Analysis," *Utah Law Review*



Campus PRISM

Promoting Restorative Initiatives for Sexual Misconduct on Campus

21 || A SURVIVOR AND HER PERPETRATOR FIND JUSTICE

12/3/2018



Reckonings

#21 || A survivor and her perpetrator find justice



Cookie policy

THE CHRONICLE
of Higher Education

STUDENTS

Why More Colleges Are Trying Restorative Justice in Sex-Assault Cases

By Katherine Mangan | SEPTEMBER 17, 2018

The New York Times

Sexual Harassment Charges Roil Elite University Department

By Vivian Wang

Sept. 15, 2017

Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance With Title IX Guidance

TRAUMA, VIOLENCE, & ABUSE
2014, Vol. 15(3) 242-257
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tva.sagepub.com



TRAINING

Training in Restorative Conferencing for Cases of Campus Sexual Harm

March 29-30, 2019

Rutgers University - New Brunswick



Online Learning Community

BROWSE COURSES

HOME / CATALOG / SEXUAL AND RELATIONSHIP VIOLENCE EDUCATION

Using a Restorative Justice Approach to Sexual Harm and Misconduct

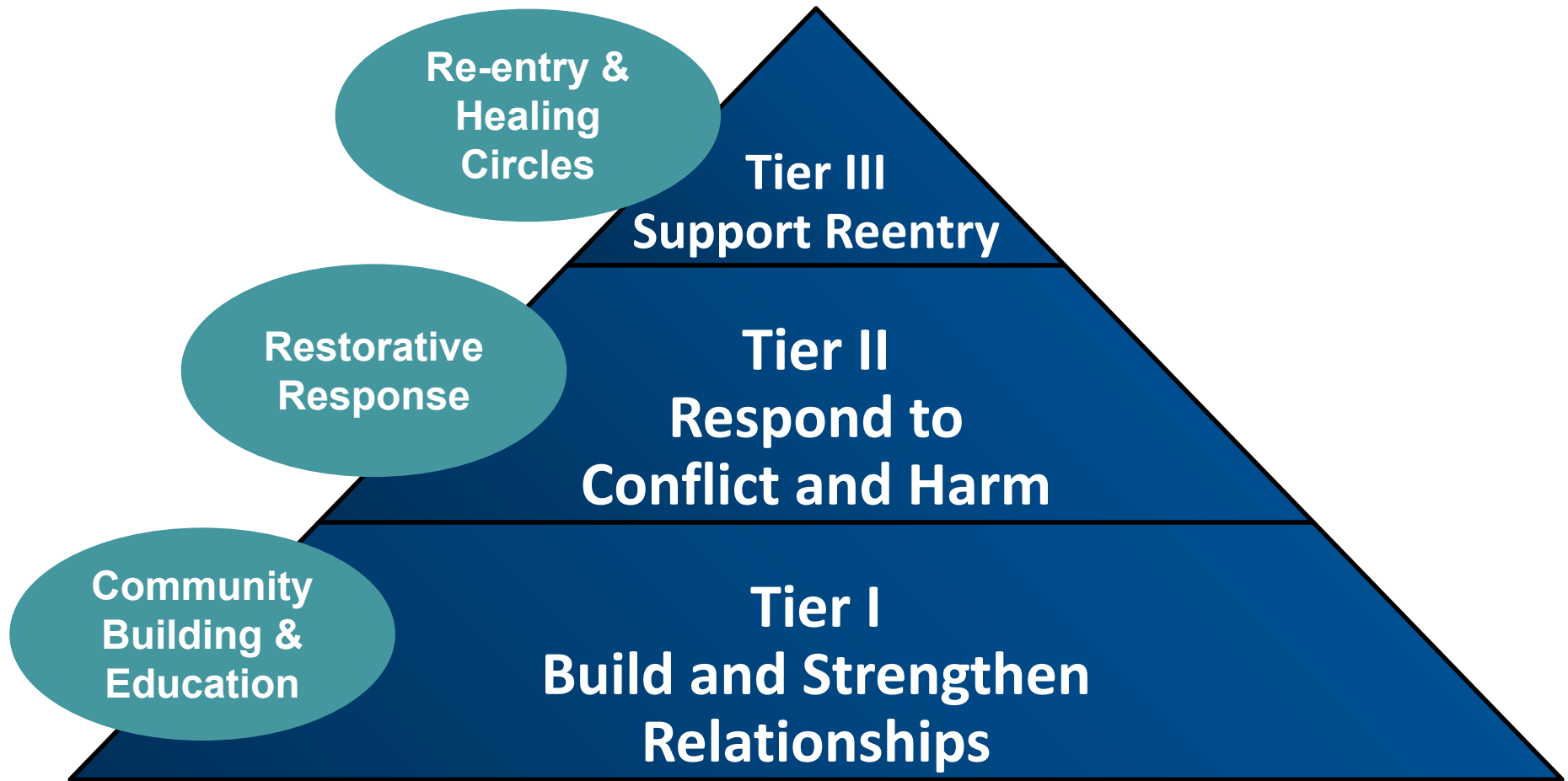
with David Karp, Jasmyne Elise Story, Jordan Draper

JOURNAL OF SEXUAL AGGRESSION
<https://doi.org/10.1080/13552600.2018.1507488>

Addressing individual and community needs in the aftermath of campus sexual misconduct: restorative justice as a way forward in the re-entry process

Sheila M. McMahon^a, David R. Karp^b and Hayley Mulhern^c

Campus PRISM: Whole Campus Restorative Approach



Growing interest in RJ for campus sexual misconduct

Unwanted sexual attention includes sexual coercion, quid pro quo harassment, groping, sexual assault, relentless pressure for dates

Gender harassment includes sexist insults, gender slurs, sexual teasing, graphic sexual images at work, obscene gestures, vulgar name calling, crude comments about bodies, insulting comments about pregnancy

NASEM, 2018



Concerns about traditional criminal justice approach

The wishes and needs of victims are diametrically opposed to the requirements of legal proceedings...Indeed if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law.

J. Herman, 2005, p. 574

Searching for Alternatives

It's hard not to wonder now, from my perch of more than a quarter-century later, staring at the pinched look on my face in the photos from that rainy graduation morning, why there hadn't been a third option besides either pressing charges or doing nothing, neither of which felt like an appropriate reaction to what had happened to me in that bed.

Deborah Copaken Kogan, *The Nation*, 2015



OP-ED CONTRIBUTOR

I'm a Campus Sexual Assault Activist. It's Time to Reimagine How We Punish Sex Crimes.

By Sofie Karasek

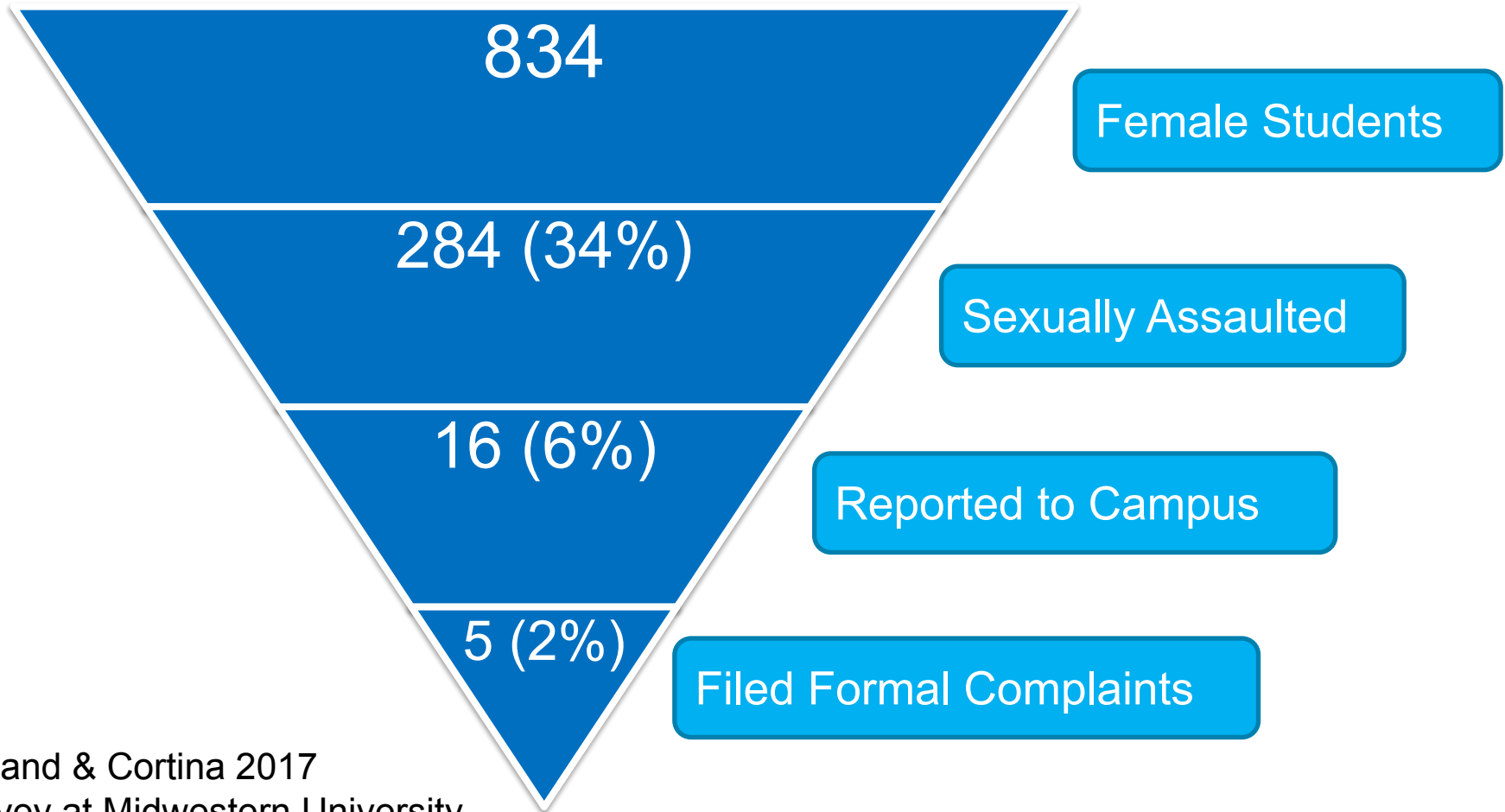
Feb. 22, 2018

“

Over time, many student activists have become disillusioned with an emphasis on punitive justice — firings, expulsions and in some cases, prison sentences. We've seen firsthand how rarely it works for survivors. It's not designed to provide validation, acknowledgment or closure. It also does not guarantee that those who harmed will not act again.

As the campus sexual assault movement, and now #MeToo, has made clear, sexual injustices, from harassment to rape and assault, are deeply ingrained in American society, involving people from all walks of life. We cannot jail, fire or expel our way out of this crisis. We need institutional responses to sexual harm that prioritize both justice and healing, not one at the expense of the other.

Reporting and Adjudication



Holland & Cortina 2017
Survey at Midwestern University

“

- *What are administrators' goals for campus sexual misconduct responses?*

STAFF GOALS FOR THE CAMPUS PROCESS TO ADDRESS SEXUAL MISCONDUCT (Williamsen, 2017)

Qualities of the process

- Educational and distinct from criminal justice
- Fair and balanced
- Transparent
- Trauma informed

Outcomes of the process

- Stop, prevent, and remedy
 - Meaningful accountability
 - Making students whole and healing

To undo 18 years of [socialization]... This stuff is deep-seated. So, unless we're going to get serious about that, the response has to be as comprehensive and as intense and as permeating as the socialization that got them here. (Debbie, Title IX administrator)

Administrator Concerns

Re-traumatizing for the survivor/victim

Is it a forgone conclusion that any process that requires a review of the event and a review of other people's recollections of the event and other people's assessment of your behavior and your credibility in light of this event, is it possible to do that in a way that's not re-traumatizing? My experience is no. Even though that's fair. That's the fairest way to have a fair outcome, right, is everybody has access to all of the information that we're gathering. We're trying to figure out what happened and make sure that both parties have full access to all of the information... and they have a right to rebut and expand and clarify and respond. That in and of itself does damage.

Carol, student conduct administrator

Administrator Concerns

Education for respondent not possible

Okay, we want you [the respondent] to walk on these hot coals, and while you're walking on these hot coals, we want you to reflect on and think about [your behavior]. And both [walking and reflecting] can't happen at the same time. I don't know of many people that have the capacity to do that.

Ruth, advocate/advisor

Administrator Concerns

I see people move from this place of... “I just want this person to understand what they did was wrong” to this place of really being mad because... the other person is saying it is not true and not accepting any responsibility at all. Which is kind of like the opposite of what they had originally wanted.”

Eva, advocate/advisor

Administrator Concerns

In theory, when we think about the outcome of a case, there's a winner and a loser. [But] actually... there aren't winners really.... We've created this oppositional experience [where no one wins].

Ruth, advocate/advisor

RJ – Potential to Meet Needs

In cases where survivors are like, “I just want the person to understand what they did to me...” I would much rather offer RJ to that person than a hearing process. Because if people are like, “I just want the person to accept responsibility and hear what they did was wrong,” that is never the outcome of a hearing process. People dig their heels in. If they are found responsible, they appeal.... They get lawyers involved. It immediately becomes this thing where the very last thing they will ever do is accept responsibility for their behavior or admit they caused any harm....

Eva, advocate/advisor

RJ – Potential to Help Healing

One of the things that survivors are wanting the most is acknowledgement of the fact that they were wronged, that they were harmed. For a respondent to say "I did this and I was wrong, and I am sorry." That would be the most ideal thing for... any almost any survivor to hear.... [Respondents] don't realize – in certain cases they don't know what they did was wrong or they deny or minimize the impact. Once they learn that – and if they are able to articulate that to anybody and the survivor is interested in hearing that – it can be enormously healing and transformative for that survivor to hear that because it's validating and it can be the key to a healing process.

Cindy, student conduct administrator

RJ – Potential for Accountability

I think that [restorative justice] could be really helpful in terms of potentially having a more meaningful outcome for our respondents. Like, we don't even get to the place where respondents could acknowledge that they had committed harm. We don't have a space for that. And I don't know that many of them would, but there's just not even a space for that here.

Isabel, advocate/advisor

What is Justice & RJ Facilitation for Justice

What is Justice?



Fania Davis
Co-founder, Director
Restorative Justice for Oakland Youth (RJOY)

From the film, *Healing Justice*, by Shakti Butler



From the film, *Healing Justice*, by Shakti Butler



Restorative Facilitator Role

- Multi-partiality
 - “All in for everyone.” D. Fisher
- Hold space & trust the process
- Put the incident and the harm in the center
- It is not about you – you are providing a process for the people most connected to an issue to address it
- Goal to clarify harms & needs and turn it over for methods/strategies to meet needs

Harms → Needs → Actions

Identify Harms

- What happened?
- What impact did this have on you?
- What was the hardest thing?

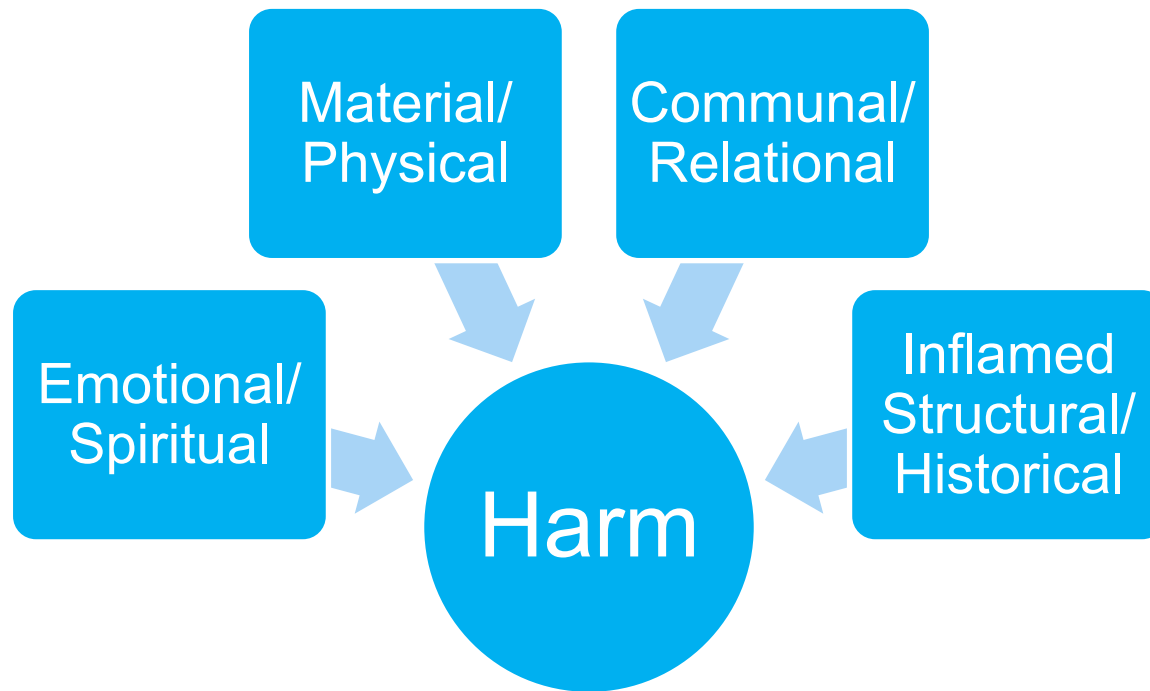
Clarify Needs

- Because of this harm, do you have a need for...?

Action Steps

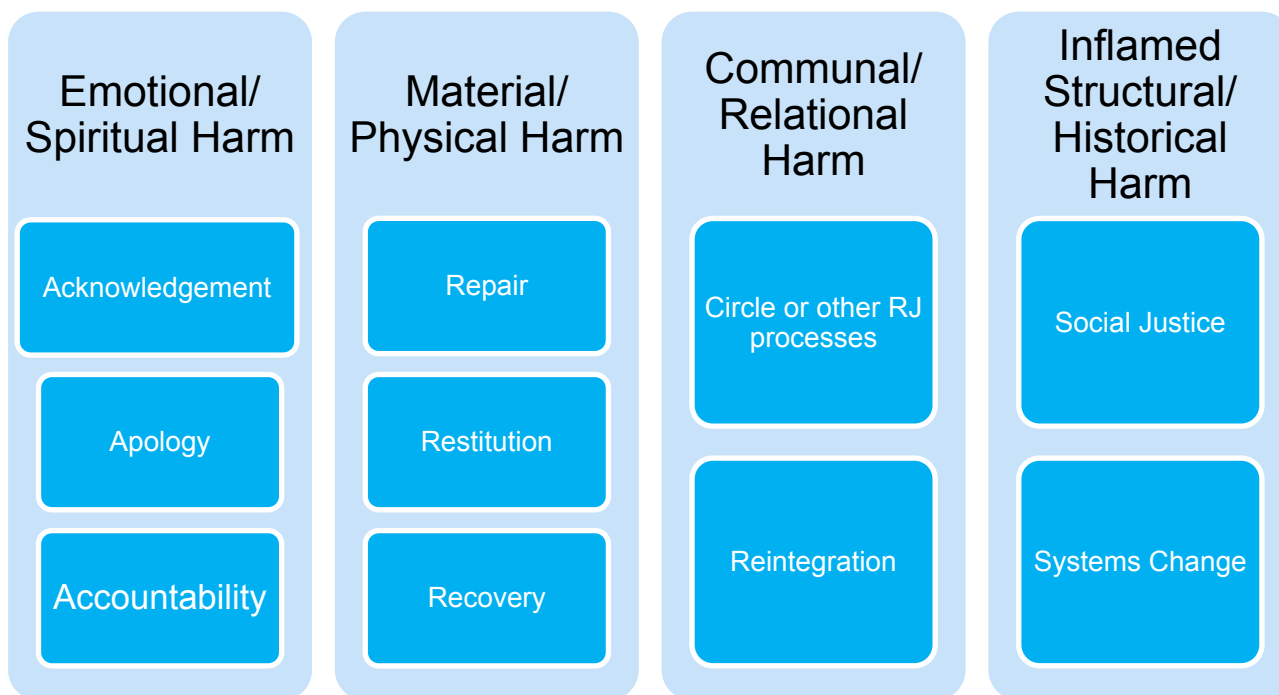
- What can be done to meet this need?
- What else?

Types of Harm



Repairing Harm

What can be done to repair the harm?



Restorative Questions

For person who has been harmed:

- What happened?
- What impact has this incident had on you?
- What has been the hardest thing about this?
- Is there anything that could help meet your needs?
- What could the other person do to repair the harm?

For person who has caused harm:

- What happened?
- At the time, what were you thinking about?
- What have you thought about since?
- Who has been affected by this incident and in what way?
- What can be done to address the harm and rebuild the trust?

DAY 3

The Why of Circles



- To build community and strengthen relationships
- To create a safe container for difficult dialogue
- To address harms and concerns in community
- To collaborate on next steps for response

Essential Elements for Constructing a Circle (K.Pranis)

- Seating
- Opening
- Centerpiece
- Talking Piece
- Guidelines/Values
- Guiding Questions
- Closing
- Facilitator role
- Focus on Dialogue



Circles intentionally create a sacred space that lifts barriers between people, opening fresh possibilities for connection, collaboration, and mutual understanding. The process works because it brings people together in a way that allows them to see one another as human beings and to talk about what matters.

Kay Pranis

*The Little Book of Circle Processes: A New Approach
to Peacemaking*

Balance in the Process

Excerpted from:
*Peacemaking Circles:
From Conflict to
Community* by Kay Pranis,
Barry Stuart, and Mark
Wedge. © Living Justice
Press.

Images available:
http://www.livingjusticepress.org/index.asp?Type=B_BASIC&SEC={B158346E-2E21-48C6-94DC-A71301BE3D0F}

Balancing Relationship-Building and Problem-Solving

Developing
a plan
of action

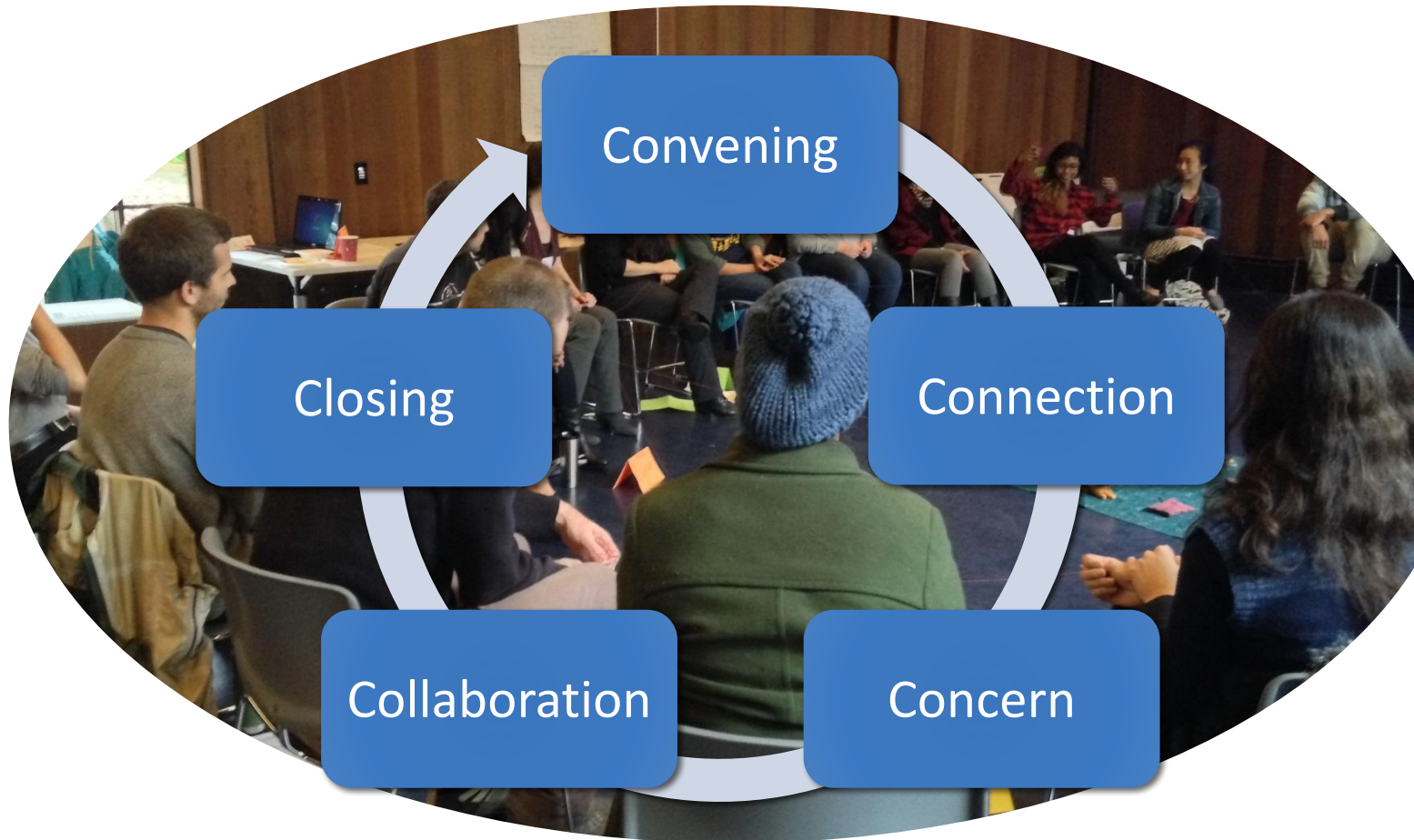
Getting
acquainted

Addressing
issues and
visions

Building
understanding
and trust

Restorative practices, including Circles, are derived from and build on Indigenous teachings and other wisdom traditions. Excerpted from *Peacemaking Circles: From Conflict to Community*, by Kay Pranis, Barry Stuart, and Mark Wedge. © Living Justice Press. Permissions: ljpress@aol.com Photo: Rock cairns, Lake Constance, Germany; in public domain. For educational and training purposes only.

The 5 C's of Circles





Climate Circle



DAY 4

CIRCLES

- Facilitator(s)
- Sit in a circle, usually no table
- Talking piece & centerpiece
- Questions guide process; participants speak in circle
- Can be used for community building or group learning, problem-solving response to harm, or re-entry
- Can be used when participants are both harmed and responsible parties
- Preparation can vary depending on the situation

CONFERENCES

- Facilitator(s)
- Sit in a circle, occasional use of a table
- Script guides the process
- Questions asked per person (per role)
- Used as a response to harm, with clear harmed party/responsible party roles
- Significant preparation for all parties
- Responsible party acknowledges causing harm

Fundamental RJ Conference Process



RJ Conference – The Basics

Key Elements:

- Voluntary
- Diversion or supplement to formal process
- Trained co-facilitators
- Preparation and assessment
- Includes harmed parties, responsible parties, & support people
- Post-conference support and supervision



Preconference

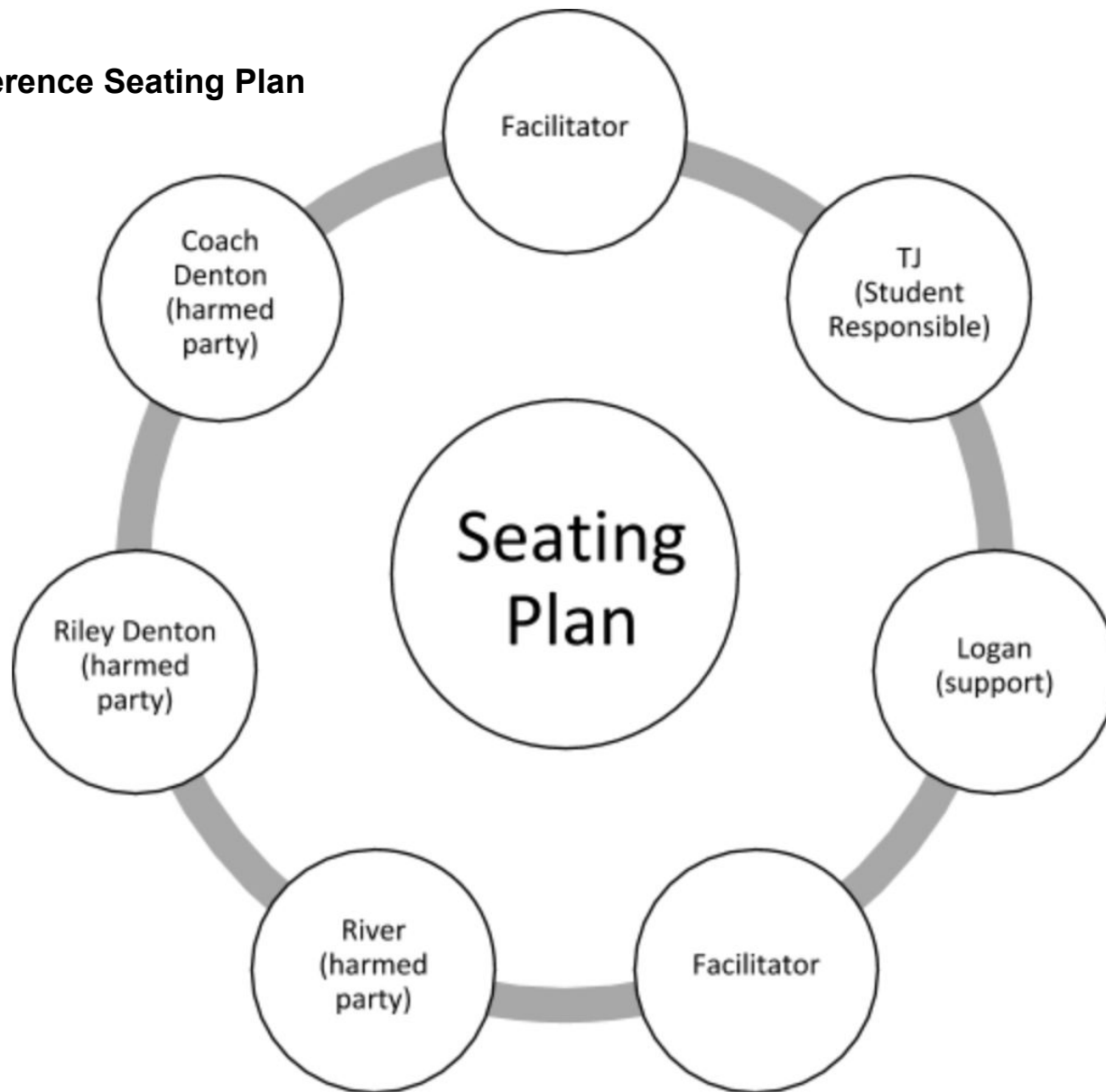


Conference



Agreement
Mentoring

Example: Conference Seating Plan



RESTORE

RESTORE

“The RESTORE Program of Restorative Justice for Sex Crimes”

- Mary Koss 2014 *Journal of Interpersonal Violence*
- 2003-2007
- 22 cases, 109 participants
- 50% of cases, participants were acquaintances
- 46% of cases, responsible party was drinking before offense

Demographics

- Survivor/Victims
 - 73% female
 - 36% aged 18-25
 - 88% white
- Responsible Party
 - 100% male
 - 50% aged 18-25
 - 77% white
 - 14% college students
 - No one with prior history of sex offenses, IPV, or other violence

RESTORE: Adapting RJ

Adaptations of conferencing model for sex offenses:

- Psychosexual forensic evaluation to assess responsible party readiness to participate
- Trauma-informed preconference process for survivor/victims
- Safety protocols for conference
- *Redress Plan* (e.g., apology, restitution, service, treatment, safety planning)
- Post conference supervision of responsible party (12 months)
- *Community Accountability and Reintegration Board* (survivor/victim may attend and/or kept updated)
- *Final Reflection and Clarification Letter* by responsible party

RESTORE: Motivations to Participate

Survivor/Victims

- Consent Rate
 - 63% felonies
 - 70% misdemeanors
- Making offender accountable
- Understand what happened
- Say how I was affected
- Hear an apology
- Prevent reoffending
- Put this behind me
- Take back my power

Person Responsible

- Consent Rate (after survivor/victim consent; must have accepted responsibility)
 - 90% felonies
 - 100% misdemeanors
- Taking responsibility to make things right
- Explain my side
- Apologize
- Participate in an alternative to court

RESTORE: Conference Experience

Agree/Strongly Agree	Survivor/ Victims	Person Responsible
Felt safe	100%	95%
Felt listened to	100%	100%
Felt like I was (NOT) blamed	100%	79%
Was treated with respect	100%	100%
Satisfied with redress plan	100%	100%
The conference was a success	100%	100%
Felt justice was done	83%	94%
Would recommend RESTORE	100%	100%

RESTORE: Post Conference Outcomes



Redress Plan Completion

- 66% felony cases
- 91% misdemeanor cases



Comparison Group

- 75% closed without any consequences
- (13% of reported rape cases lead to court convictions in the U.S.)

Restorative Resolution

- Focus on harms and needs
- Storytelling and listening
- Finding collaborative solutions
- Improving learning climate

Investigative Resolution

- Focus on fact-finding and sanctions
- Determination of responsibility
- Credibility
- Separating students

Harms, needs, and justice

“Harms create needs. Justice is meeting needs. True justice is healing.” (Oudshoorn, 2015)

Needs include:

- Safety and care
- Support and education
- Information and options
- Grieving and expression
- Voice and empowerment
- To be believed, absolved, and vindicated



“

- *Mary Koss argues that after an assault survivor/victims have survival needs and justice needs. Justice needs “involve an innate motivation to right wrongs” (Koss, 2010, p. 221)*

Survivor Needs & Justice

According to SVs [survivor/victims], satisfying their justice needs rests on the extent to which they:

- (1) contribute input into key decisions and remain informed about their case,
- (2) receive response with minimal delay,
- (3) tell their story without interruption by adversarial and sometimes hostile questioning,
- (4) receive validation,
- (5) shape a resolution that meets their material and emotional needs,
- (6) feel safe.

Koss, 2010, p. 221

Beyond Face-to-Face: Still Meeting Needs

Video
Conference

Video
Exchange

Writing
Exchange

Victim
Impact
Statement

Surrogate
Participation

Victim
Support
Circles

Paula's Story: Identifying Harms and Needs



Voluntary and Confidential

People worry that RJ will be required or coerced.

Voluntary participation is a core to RJ.

People worry that RJ will be used to gather evidence for conduct hearing or criminal prosecution.

The process needs to be safeguarded and confidential/private.

Regulations & Policy

OCR Regulations – “Informal Resolution”

The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds: A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

OCR Regulations – Quick Summary

- Voluntary
- Require formal complaint
- Both parties give “written consent”
- May not require participation in informal resolution
- May not offer informal resolution unless a formal complaint is filed
- “Any person who facilitates must be well trained”
- Any time prior to agreeing to a resolution, must be able to withdraw from informal and resume formal process
- Cannot offer informal resolutions in cases with employee respondents and student complainants.

A Restorative Case Management Approach

Restorative Flow

1. First Meeting (Taking Report)

2. RJ Intake and Assessment

3. Preconference/Prep Meetings

4. Restorative Intervention

5. Follow-Up

1. First Meeting with Complainant

- Take Report
- Explain options if complainant wishes to file a Formal Complaint
- Restorative options:
 - Initiated by the complainant
 - Approved by the TIX or designee (explain limitations if there are any)

First Mtg

1. Role Play – How would you explain the options?

2. Debrief



RJ Intake & Assessment Case Study

2. Intake and Assessment

When a case gets to an RJ facilitator, they need to do their own intake and assessment This is a **voluntary** process for all -- including the facilitator.

- If the facilitator feels that the process is not being entered into voluntarily by the parties (ex. coerced) they should pause and check in.
- If the facilitator feels that parties are not entering in good faith, they should pause and check in.
- If the facilitator feels that the process is likely to cause additional harm, they should pause and check in.
- Facilitators can stop the process.
 - These assessment instincts are honed and developed over time;
 - Handouts/checklists here to help you.

Day 7



WHAT ARE OBSTACLES TO ACCOUNTABILITY?

The Compass of Shame

Adapted from D.L. Nathanson, Shame and Pride, 1992

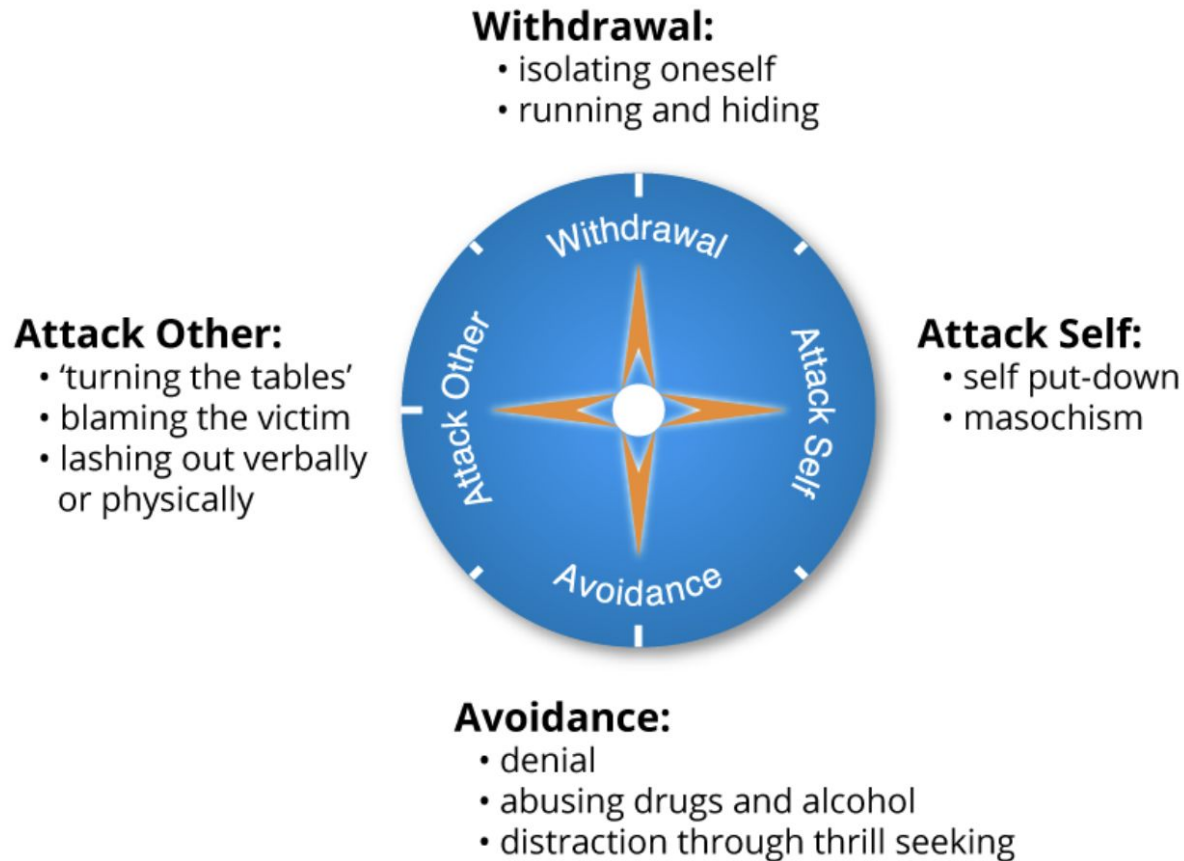


Figure 5. The Compass of Shame (adapted from Nathanson, 1992)

<https://www.iirp.edu/defining-restorative/compass-of-shame>

Restorative Flow

1. First Meeting

2. Intake and Assessment

3. Preconference/Prep Meetings

4. Restorative Intervention

5. Follow-Up