

Campbell Law Review

Volume 30
Issue 2 *Winter* 2008

Article 5

January 2008

"It's Not World Peace, but ..." Restorative Justice: Analysis of Recidivism Rates in Campbell Law School's Juvenile Justice Project

Jennifer L. Kerrigan

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Recommended Citation

Jennifer L. Kerrigan, "*It's Not World Peace, but ...*" *Restorative Justice: Analysis of Recidivism Rates in Campbell Law School's Juvenile Justice Project*, 30 CAMPBELL L. REV. 339 (2008).

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"It's Not World Peace, But. . ."
Restorative Justice: Analysis of Recidivism Rates in
Campbell Law School's Juvenile Justice Project¹

The white middle-aged woman looks at the thirteen year old black juvenile that is sitting across the table. The juvenile she pleads with has had many altercations with her thirteen year-old stepson. He has also turned his aggression on her through verbal insults that range from profanity to the typical juvenile taunts of "fatty." Prior to this aggression, her stepson and the juvenile had been friends, and the woman had made the two children homemade slushies. Those days are in the past. Now, there are three criminal charges pending against the juvenile, which include communicating threats, simple assault, and destruction of personal property.

The woman's eyes well up with tears, and her speech slows. She explains to him that she knows she is overweight; after all she has to look in the mirror every morning. She reviews with him the numerous times she has been there for him. She reminds him how he used to seek refuge in her house when his mother, a single mother, worked late. The juvenile looks her square in the eye and nods his head in agreement. He then openly apologizes to her for calling her names.

To the outside observer who was not present, this apology may seem trivial. However, before this meeting, the juvenile had denied for months that he ever called this woman names or cursed at her. This apology is a breakthrough. The juvenile has taken responsibility for his actions. He has also taken the first step to mending the harm with his apology. Welcome to restorative justice.²

I. INTRODUCTION

The above illustration is a simple example of restorative justice. The facts are based on a victim-offender mediation between two

1. The author would like to acknowledge both Kathy Lawton and Professor Jon Powell for their relentless support in completing this Comment. A special thanks is given to Kathy Lawton who never gets tired of my countless emails and visits to her office seeking just one more piece of information. I am forever grateful to her. In addition, it cannot be forgotten that this Comment would never have come to be if it were not for the vision of Professor Jon Powell. Thanks to his passion, the Juvenile Justice Project was born. Professor Powell reinforced in me that one person can make a difference in another's life and for that I thank him.

2. This scenario is modeled after an actual case mediated with the Juvenile Justice Project. See *E.H. v. E.D.*, 06 JJP 100 (2006).

juveniles at Campbell University's Norman Adrian Wiggins School of Law (Campbell).³ This Comment explores victim-offender mediation and specifically the recidivism rates of the juveniles who participated in Campbell's Juvenile Justice Project (JJP). Part II gives a brief background on the different theories of justice and the move towards restorative justice. Part III explains how the JJP came to be and how it currently functions. Part IV outlines the methods used to determine the recidivism rates of the program. Part V displays the results of the study and illustrates the differences with charts. Part VI discusses the possible explanations for the differences in the recidivism rates. Part VII concludes with closing remarks and recommendations.

II. THE JUSTICE SYSTEM

The criminal justice system embraces thousands of years of history, which are reflected in countless different theories.⁴ Two distinct models are recognized in this Comment, retributive justice and restorative justice. Each model is discussed in a limited fashion to provide a basic framework.

A. *The Traditional Model - Retributive Justice*

The traditional justice system in the United States is rooted in biblical text, particularly in the Jewish Torah.⁵ While the concepts may predate ancient Hebrew Scriptures, the Old Testament outlines the hallmarks of the modern criminal justice system.⁶ The oft misconstrued "eye for an eye" theory in Exodus 21:24 is a reflection of retributive justice.⁷ Although many civilizations dealt with crime differently, the same general premise prevailed; pain and punishment deterred crime and ensured compliance with societal rules.⁸

The idea behind punishment is the criminal needs to have an undeserved benefit removed. By ensuring that one person may not achieve a benefit at the harm of another, a punishment or harm must be inflicted on the wrongdoer.⁹ In this regard, the wrongdoer is paying back a debt which he owes to society and his fellow citizen.¹⁰ Retribu-

3. *Id.*

4. See DAVID J. CORNWELL, CRIMINAL PUNISHMENT AND RESTORATIVE JUSTICE 26-37 (2006).

5. *Id.* at 26.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 42.

10. *Id.*

tive justice stresses that repayment is achieved through harsh and swift punishment.¹¹

Today, retributive justice is defined by uniformity. The United States justice system demonstrates this uniformity concept through the Federal Sentencing Guidelines (Guidelines).¹² When creating these Guidelines, the United States Sentencing Commission (Commission) sought "*uniformity* in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct by similar offenders."¹³ The Commission determines preset ranges of sentencing based on the offense and characteristics of the offender.¹⁴

The Commission openly acknowledges that an empirical approach is used to estimate how sentencing should be determined. This empirical approach involves analyzing certain characteristics relating to the offender and the crime to determine the appropriate sentence.¹⁵ The goal is to administer pain and punishment in order to deter would be or repeat offenders.¹⁶ What is lacking in the Guidelines is any sort of appreciation for an individualized assessment of the victim's needs.

The prosecutor's role is to redress the harm inflicted against the State. The victim is often lost in the shuffle.¹⁷ The victim merely becomes an accessory to an action brought in the name of the State.¹⁸ Whether the offender reaches a plea agreement or proceeds to trial, the victim has little say in how the case progresses. By failing to redress the needs of victims, retributive justice leaves many victims frustrated and wanting more.¹⁹

B. *An Alternative Model - Restorative Justice*

In the 1970s, an alternative model known as restorative justice began to gain momentum.²⁰ Both retributive justice and restorative

11. *Id.*

12. U.S. SENTENCING GUIDELINES MANUAL ch. 1, pt. A(3.), The Basic Approach (2006), available at <http://www.ussc.gov/2006guid/1a1.html>.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Mark S. Umbreit, *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251, 254 (2005).

18. *Id.*

19. *Id.* at 254-55; see also GERRY JOHNSTON & DANIEL W. VAN NESS, HANDBOOK OF RESTORATIVE JUSTICE 5 (2007).

20. Umbreit, *supra* note 17, at 259.

justice share the same primary goal; both seek to “even the playing field” or vindicate the one who has been harmed.²¹ However, where the models differ is the method used to achieve that goal.²² Where retributive justice seeks pain and punishment administered by the state to achieve vindication, restorative justice uses the needs of the victim to mend the harm.²³

The sweeping goal of restorative justice is to change how society responds to crime.²⁴ Restorative justice strives to promote community involvement while deemphasizing the structured and rigid requirements of the existing penal system.²⁵ The underlying theme is that those individuals most affected by the harm should decide how the problem is resolved.²⁶ Advocates of restorative justice claim that not only can this model heal victims, but it can also transform offenders and make them less apt to re-offend.²⁷

Restorative justice programs take various forms but are framed around similar principles.²⁸ Different models include victim-offender mediations,²⁹ family group conferencing,³⁰ circles,³¹ stranger meet-

21. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 58 (2002).

22. *Id.*

23. *Id.* at 59.

24. GERRY JOHNSTON & DANIEL W. VAN NESS, *HANDBOOK OF RESTORATIVE JUSTICE* 5 (2007).

25. *Id.*

26. *Id.* at 1.

27. *Id.*

28. ZEHR, *supra* note 21, at 22.

29. JOHNSTON & VAN NESS, *supra* note 24, at 212-13. Victim-offender mediation was the initial “modern” attempt at restorative justice. The model generally involves bringing the parties together with a third party mediator to resolve a dispute. The Juvenile Justice Project uses victim-offender mediation in this respect. However, even among victim-offender mediation programs, there is a wide discrepancy. One program in Texas uses victim-offender mediation, not to resolve disputes, but instead it is used to help victims obtain answers from the offender. *See, e.g., Meeting with a Killer* (Court TV television broadcast Sept. 19, 2001) (on file with Juvenile Justice Project, Buies Creek, N.C.) (documenting the Texas program where a family prepares to meet with the man who murdered and raped their daughter).

30. *Id.* at 213-15. Family group conferencing was initially used in New Zealand. The major distinction with this model is it specifically seeks to include family members as opposed to just the victim and the offender. Family group conferencing began in child welfare cases, but it has expanded to resolving disputes in schools and the workplace.

31. *Id.* at 215-16. Circles expand the restorative justice concept even further by specifically reaching out to the community. The model is routinely used in presentencing hearings where community members can voice their concerns on the type of sentence an individual should receive.

ings,³² and video letters.³³ All such programs focus on the same three principles: (1) identifying the harms and needs, (2) acknowledging obligations, and (3) seeking engagement.³⁴ Understanding the interconnection of each principle is crucial to any successful restorative justice program.

The first principle of restorative justice focuses on the harms and needs of the victim.³⁵ The victim must first identify the harm inflicted as a result of the offender's actions. The harm may be obvious, such as a broken arm, or it may be more subtle, such as an emotional harm that leaves the victim feeling vulnerable. By taking the time to identify the harm, the victim is creating an outline of what needs to be addressed to repair the harm.

The aim of restorative justice is to repair the harm. Harm may be repaired either "concretely" or "symbolically."³⁶ Concretely repairing the harm means eliminating the harm.³⁷ An example of concretely repairing the harm may include payment of medical bills for a broken arm. In contrast, symbolically repairing the harm does not eliminate the harm, but instead illustrates to the victim that payment is being given for the harm.

Symbolic repair comes into play when concrete repair is impossible or difficult.³⁸ An example may be found in a murder case where concrete repair is not possible. The symbolic repair may be a lifetime prison sentence for the offender. The important distinction is that the repair is catered to the harm suffered by the victim. There are no sentencing guidelines; instead, the victim dictates what he needs the offender to do to repair the harm.³⁹

After identifying the harm, the second principle addresses the obligations caused by the harm.⁴⁰ Restorative justice focuses on accountability; it emphasizes that offenders must know that there are

32. *Id.* at 216. Stranger meetings are when unrelated victims will meet with unrelated offenders and community representatives to discuss the causes and consequences of a crime.

33. *Id.* Video letters are relatively new and are being used in the Balkan states to aid reconciliation. The concept involves filmmakers recording messages to former friends and colleagues who have been driven apart by war and conflict.

34. ZEHR, *supra* note 21, at 22, 59.

35. *Id.* at 22.

36. *Id.* at 23.

37. *Id.* at 28-29.

38. *Id.*

39. *Id.* at 29.

40. ZEHR, *supra* note 21, at 23.

consequences to their actions.⁴¹ The obligations are the counterparts of the repair, and the obligations can be either concrete or symbolic.⁴² For example, a concrete obligation would be the payment of the medical bill for the broken arm. Conversely, a symbolic obligation would be serving the life sentence for murdering the victim. Obligations necessarily flow from the harms and needs of the victim. As such, they will vary based on the victim.

Obligations do not stop with the offender; the community may also have an obligation to the victim.⁴³ What responsibility does the community at large have to help address the harm to the victim?⁴⁴ Are there problems within the current societal structure that led the offender to commit the offense against the victim? For example, is there a high rate of unemployment in the community that led a person to commit a burglary or led an offender to sell drugs? Are there no street lights on a specific street that made the offender more apt to attack his victim? Examining the community's role does not excuse the offender and his actions; the offender is primarily held accountable to the victim for the offense.⁴⁵ However, restorative justice recognizes that the community plays a strong role in promoting the well-being of its citizens.⁴⁶

The final pillar of restorative justice is the "engagement" of the community and its citizens. Restorative justice requires engagement and participation of citizens.⁴⁷ Engagement simply means that individuals impacted by the offender's wrongful actions are involved in the process.⁴⁸ Restorative justice recognizes that the immediate victim may not be the only victim of the offender's actions.⁴⁹ For example, a rapist does not only harm the woman he raped, but he may also have an impact on that woman's family.

The level of participation can vary. Engagement can be either direct or indirect.⁵⁰ Direct participation may include an actual dialogue between the victim and offender in a controlled setting, such as a victim-offender mediation.⁵¹ Indirect participation may include letter

41. *Id.* at 24.

42. *Id.*

43. *Id.*

44. *Id.* at 27-28.

45. *Id.* at 24.

46. ZEHR, *supra* note 21, at 24.

47. *Id.* at 27-28.

48. *Id.* at 44-45.

49. *Id.* at 27.

50. *Id.* at 26.

51. *Id.*

communication between the victim and offender, instead of face-to-face contact.⁵² Participation and engagement, whether direct or indirect, are always controlled.⁵³ Control ensures a safe environment for the victim and safeguards against the victim being re-victimized by the offender.⁵⁴

Through the three guiding principles, restorative justice emphasizes the needs of the victim. Restorative justice seeks to individually address the harm caused by the offender and to hold the offender accountable for his wrongful actions. Implementing restorative justice may sound like a daunting task. However, one such program in North Carolina seeks to do just that and is rapidly expanding across the state.

III. CAMPBELL LAW SCHOOL'S JUVENILE JUSTICE PROJECT

In an effort to address the growing number of juveniles entering the criminal justice system, an innovative program was created by law professors, Professor Jon Powell and Professor Anthony Baker.⁵⁵ Through their combined efforts, they created the Juvenile Justice Project (JJP). The JJP is a victim-offender mediation program at Campbell University's Norman Adrian Wiggins School of Law that utilizes the principles of restorative justice. The purpose of the JJP is "to provide an avenue by which juvenile offenders and their victims can come together around a problem, or a wrong, which has been done and reach a solution agreeable to both parties without the necessity of the juvenile being processed through the juvenile court system."⁵⁶

The JJP embraces the principles of restorative justice and has two distinct phases. The first phase begins with the referral and involves separate preliminary meetings with each party. If the preliminary meetings proceed well, then a "face-to-face" mediation is conducted. The face-to-face mediation involves both parties coming together to resolve the dispute. The JJP works exclusively with juvenile offenders and currently takes referrals from Lee, Johnston, and Harnett Counties.

52. *Id.* at 26-27.

53. *Id.* at 26-27.

54. *Id.* at 45.

55. Interview with Professor Jon Powell, Professor and Founder of Juvenile Justice Project, Norman Adrian Wiggins School of Law, in Buies Creek, N.C. (Nov. 21, 2006) [hereinafter Powell Interview].

56. RULES IMPLEMENTING JUVENILE MEDIATION IN THE ELEVENTH JUDICIAL DISTRICT, PURPOSE AND DESCRIPTION (2004) [hereinafter JUVENILE MEDIATION RULES] (on file with the Juvenile Justice Project, in Buies Creek, N.C.).

A. Referral and Preliminary Meetings

In March 2004, the JJP received its first referral.⁵⁷ A case comes to the JJP by referral only. Until recently, all referrals came after a complaint was filed in the traditional juvenile court system.⁵⁸ In the last year, the JJP began to receive referrals from the local school system prior to the filing of official court proceedings.⁵⁹

However, the majority of the cases referred to the JJP come from the juvenile court system. There are three ways a case is referred to the JJP.⁶⁰ First, the intake counselor who originally receives the file may refer the case for mediation; this is how the majority of referrals are received.⁶¹ However, if the intake counselor refers the case to the prosecutor, the prosecutor may refer the case to mediation as a diversion before trial.⁶² Finally, the judge may refer the case to mediation as part of an offender's disposition.⁶³

Once the referral is received by the JJP, the offender is contacted within five days.⁶⁴ The first contact is by letter, which is followed by a telephone call.⁶⁵ All referrals are voluntary unless sent as part of the judge's order for the offender's disposition.⁶⁶ If the offender agrees to participate, then a mediator will meet with the offender to discuss the program and the dispute.⁶⁷ After the initial meeting with the offender, the mediator will proceed with contacting the victim.⁶⁸ If the victim agrees to participate in the program, then the mediator assesses whether this is an appropriate case for a "face-to-face" mediation.⁶⁹

A mediator looks at many factors to determine if a case is appropriate for mediation.⁷⁰ Such factors may include the age of the partici-

57. Powell Interview, *supra* note 55.

58. *Id.*

59. Interview with Kathy Lawton, Administrative Assistant, Juvenile Justice Project, in Buies Creek, N.C. (Jan. 30, 2008) [hereinafter Interview with Kathy Lawton].

60. JUVENILE MEDIATION RULES, *supra* note 56, Rule 1.

61. *Id.*

62. *Id.*

63. *Id.*; see also Juvenile Justice System Flowchart, available at http://www.ncdjdp.org/court_services/flowchart.html (last visited Mar. 18, 2008) (demonstrating the adjudication process can take many different paths and can be referred to mediation at several points throughout the process).

64. JUVENILE MEDIATION RULES, *supra* note 56, Rule 2.

65. Interview with Kathy Lawton, Administrative Assistant, Juvenile Justice Project, in Buies Creek, N.C. (Nov. 21, 2006).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Powell Interview, *supra* note 55.

pants, the nature of the crime, and the likelihood that the participants will interact with each other in the future.⁷¹ However, the major consideration is the attitude of the participants.⁷² While the juvenile's parents may want the juvenile to participate, the juvenile may not want to and may reveal such through body language or tone. A poor attitude could make the case improper for mediation and serve only to re-victimize the victim.

The mediator is always cognizant of not re-victimizing the victim.⁷³ Re-victimization is when the victim is placed in a situation that causes harm to the victim again.⁷⁴ Re-victimization is especially dangerous when the victim and offender are telling different stories.⁷⁵ If the mediator is not careful, factual disparities can lead to a heated "face-to-face" mediation. While most mediations involve some tension and emotion, the key for the mediator is to maintain control of the environment.⁷⁶ If the victim feels re-victimized, then emotions will likely escalate to an unsafe level.

Mediators also examine whether the juvenile takes responsibility for the charges.⁷⁷ The JJP is a program designed to hold those accountable for their actions and to right the wrong.⁷⁸ If a juvenile is unwilling to admit that he committed the crime, then it is unlikely to be mediated. In addition, should the juvenile claim to be innocent of the charges, then mediation is not appropriate, and the case will be referred back to juvenile court.⁷⁹

Nonetheless, mediation is an imprecise science, and the mediator has discretion to decide whether a case should be mediated. After the preliminary meetings, the mediator will either decide to proceed with a "face-to-face" mediation or will refer the case back to the juvenile court.

B. *The "Face-to-Face" Mediation*

The mediator determines whether the case is appropriate for mediation.⁸⁰ If the mediator moves forward, then a "face-to-face" mediation shall occur within thirty days.⁸¹ A thirty day extension may be

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. JUVENILE MEDIATION RULES, *supra* note 56, Rule 2.

81. *Id.*

sought, but the idea is that the case be resolved as quickly as possible.⁸²

In order to facilitate a successful and safe mediation, the mediator must maintain control.⁸³ The mediator not only designates the meeting place, but he also dictates the layout of the room and who sits where in the room.⁸⁴ For example, a mediator may be cognizant of placing the victim closest to the door or where the victim can see the door to ensure he does not feel trapped. Each mediator is unique and will conduct his mediation differently, but the concept is the same—a controlled environment where each party feels safe.

After each party arrives, the mediator will begin the mediation with generic formalities. First, all persons in the room will introduce themselves.⁸⁵ Obviously the two parties know each other, but for the parties' parents, this may be the first time they have met. In addition, law student observers may be present and should be introduced.

After initial introductions, the mediator takes the time to review the confidentiality policy of the program.⁸⁶ Confidentiality is crucial to the success of the program. To ensure that confidentiality is taken seriously, the mediator also reads the four paragraphs of the confidentiality agreement out loud.⁸⁷ After reading the confidentiality agreement, each individual present must sign the agreement. The discussion of confidentiality also serves to relieve the participants' initial tension and anxiety.

After these formalities, the mediator moves to the next step, which is coined "Humanizing the Monster."⁸⁸ The "monster" refers to how each party views the other. Typically in criminal cases, even at the juvenile level, offenders are viewed as monsters and not as individuals.⁸⁹ The process of humanizing the parties is important because it enables the victim and the offender, as well as their parents, to see and identify common interests.⁹⁰

82. *Id.*

83. *Id.* at Rule 3.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. Class Lecture, Mediation, Norman Adrian Wiggins School of Law, Campbell University, Buies Creek, N.C. (Oct. 24, 2006) [hereinafter Class Lecture (Oct. 24, 2006)].

89. *Id.*

90. *Id.*

By highlighting their similarities, the discussion begins on neutral ground.⁹¹ The mediator will facilitate this discussion by asking each party about their families, where they live, their hobbies, etc.⁹² All of these characteristics are written on a board so everyone can visually see the commonalities.⁹³ The visual display is convenient, and the mediator may refer to these characteristics during the mediation.⁹⁴

After identifying the interests of the parties, the mediator will then discuss what each party expects to gain from the mediation.⁹⁵ The expectations of the parties and parents may include: (1) peace in the neighborhood, (2) to get along, (3) to be left alone, (4) property repaired, or (5) money for damages.⁹⁶ Identifying expectations prior to discussing the dispute is crucial, because the expectations help guide the mediation. These expectations mimic the first principle of restorative justice - identifying the harm and needs of the parties. The expectations are also written on the board and serve to facilitate the discussion.⁹⁷

After expectations are defined, the mediator will then direct the conversation to the dispute. The mediator's goal is to facilitate a discussion to reach a resolution.⁹⁸ Victim-offender mediation is unique, and the flexibility of the program enables the mediator to try new techniques based upon the current dispute. Often, with their parents in the room, children may be reluctant to honestly explain what happened for fear of repercussions.⁹⁹ To help facilitate an open discussion, there may come a point when the mediator asks the parents to step out of the room.¹⁰⁰ In order for such a request to be openly received, the mediator must have gained some trust with the parents.¹⁰¹

This trust can be achieved by suggesting such a proposal to the parents prior to the "face-to-face" mediation. A conversation regarding the parents leaving the room should be addressed at the initial meeting

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. Class Lecture, Mediation, Norman Adrian Wiggins School of Law, Campbell University, Buies Creek, N.C. (Nov. 7, 2006) [hereinafter Class Lecture (Nov. 7, 2006)].

96. *E.H. v. E.D.*, 06 JJP 100 (2006) (outlining the cited expectations during their "face-to-face" mediation).

97. Class Lecture (Nov. 7, 2006), *supra* note 95.

98. *Id.*

99. *Id.*

100. Powell Interview, *supra* note 55.

101. *Id.*

with the minor and his parents.¹⁰² At this initial meeting the mediator can suggest that discussions may be more forthcoming without the parental figure in the room.¹⁰³ The mediator may remind the parent of how reluctant they were to talk in front of their parents when they were a teenager.¹⁰⁴ Obviously, the mediator must respect the decision of the parents, but if approached delicately, most parents are agreeable.

The mediation will either end with a resolution or an impasse. If there is an impasse, then the case is referred back to juvenile court.¹⁰⁵ If there is a resolution, then the mediator completes a resolution form and submits it to the juvenile court.¹⁰⁶

Each resolution is unique. The resolution may include repair to damaged property, or it may outline the need for the parties to attend a function together.¹⁰⁷ The resolution encompasses both the second and third principles of restorative justice—obligations and engagement. By participating in the mediation and committing to a resolution, the parties have engaged in the process of mending the harm. By forming a resolution, the parties have acknowledged that their harm created obligations that must be repaired. Completing the obligations in the resolution repairs the harm and creates a level playing field again.

The JJP monitors the resolution to ensure the parties comply with its terms. The results of the resolution agreement are forwarded to the juvenile court system. The juvenile court makes the assessment as to what to do with the case; typically if the resolution is fulfilled, the file will be closed.¹⁰⁸

IV. METHOD

Sponsored by a grant from the North Carolina Governor's Crime Commission, the JJP began taking referrals in March 2004.¹⁰⁹ This Comment examines referrals to the JJP to determine if any definitive results can be discerned on whether the mediation program, and more broadly, restorative justice, affect recidivism rates in juveniles.

102. *Id.*

103. *Id.*

104. *Id.*

105. Powell Interview, *supra* note 55.

106. *Id.*

107. *E.g., E.H. v. E.D.*, 06 JJP 100 (2006) (outlining the resolution that the mothers had to exchange phone numbers and the parties had to have slushies together in the next two weeks).

108. Powell Interview, *supra* note 55.

109. *Id.*

A. Purpose

The purpose of this study is purely academic, but it may be used for broader purposes such as securing grant funds. Recidivism rates are an important factor in crime prevention and play an integral role in the disbursement of limited tax dollars. By cataloging the success, or lack thereof, of the JJP, the Crime Commission may determine whether funds are well spent.

B. Study Population

The study population is confined to the cases referred to the JJP. The recidivism rates are not compared to the state-wide recidivism rates published by the North Carolina Department of Juvenile Justice & Delinquency Prevention (NCDJJD).¹¹⁰ The reason for limiting the analysis to only referrals to the JJP is to eliminate any inherent biases that may be present in the referral process. An attempt is made to isolate factors that may make a case predisposed to succeed in mediation. In other words, does the referring party refer the case to the JJP because he knows mediation will be successful?

By limiting the comparison to only referred cases, the potential bias in referrals is removed. Presumably all cases referred to the program have the same potential to succeed in mediation. In addition, the NCDJJD calculates its statistics by each individual crime and then subdivides by degree.¹¹¹ There are simply too few cases in the JJP to draw a comparable analysis by this categorization. As such, this study compares those cases referred to the JJP that were mediated against those cases referred to the JJP that were not mediated.

The comparison of recidivism rates is framed around two sides: (1) cases mediated and (2) cases not mediated. For purposes of this Comment, a case is deemed to be mediated if the two parties came together at a "face-to-face" mediation. No requirement exists that the parties reach a resolution during the mediation. Instead, the parties must both attend the "face-to-face" mediation and come willingly to resolve their dispute amicably.

This distinction was chosen for two reasons. First, the number of cases for the two grant years is not large and further delineation could hinder the opportunity to examine any concrete results. Second, restorative justice is not framed around whether a problem is solved in one

110. NORTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, ANNUAL REPORT (2006), <http://www.ncdjdp.org/statistics/annual.html> (last visited Mar. 18, 2008).

111. *Id.*

swift setting. Many times it is a victory to get both sides to sit in a room together and speak amicably about their dispute; it should not be discounted simply because a formal resolution could not be reached. However, as more grant years become available, it may be interesting to examine whether in cases that come to a successful resolution the offender is less apt to re-offend. Nonetheless, for this study, any case where the parties participate in a "face-to-face" mediation qualifies as a mediated case regardless of whether a formal resolution was reached.

C. *Persons Tracked - Offenders and Disputants*

There are two types of mediations: (1) victim-offender mediations and (2) disputant-disputant mediations. Victim-offender cases are the traditional model where there is an aggressor, or culprit, and the other person is merely a victim. However, more common in juvenile cases are the disputant-disputant cases. In disputant-disputant cases, each party contributed to the dispute and both are responsible or accountable in some manner.

This Comment tracks both offenders and disputants for purposes of the recidivism statistics. The reason to track both offenders and disputants is to be certain to track every individual who has committed an offense. Therefore, in disputant-disputant cases, both parties are tracked for purposes of recidivism rates.

D. *People Crimes versus Property Crimes*

The analysis begins by dividing the crimes into two classifications: (1) People crimes and (2) Property crimes. People crimes include communicating a threat, simple assault, assault with a deadly weapon, assault inflicting serious injury, simple affray, rape and disorderly conduct. Property crimes include such crimes as trespass, possession of stolen property, breaking and entering, and larceny.

The reason crimes were lumped into two broad categories is because there are simply not enough cases to make any meaningful classification based on a particular crime. Ideally categorizing by crime would be most helpful, but until there are more cases it will not reveal meaningful results. Considering the similar elements involved with all the People crimes, and likewise with the Property crimes, this classification appears to be a logical manner to organize the limited data.

E. *Time Frame*

Although the JJP began taking referrals from the juvenile court system in March 2004 for the Grant Year of July 1, 2003 to June 30,

2004, it only received eight referrals during that four-month period. In order to pull together meaningful statistics, the analysis will only include two grant years (1) July 1, 2004 to June 30, 2005 and (2) July 1, 2005 to June 30, 2006. While preliminary statistics are available for the next grant year, July 1, 2006 to June 30, 2007, the decision was made not to include those results. The statistics reported in this Comment are current as of January 1, 2007.

F. *Statistical Analysis*

The calculation of the recidivism rate is divided based on the categories described above: (1) Property crimes versus People crimes and (2) Mediated Cases versus Not Mediated Cases. If there were twenty-five offenders and disputants who mediated People crimes in a grant year and five re-offended, then the recidivism rate would be calculated as follows:

$$\text{Recidivism Rate} = \frac{\# \text{ of People Crimes Mediated to Re-offend}}{\# \text{ of People Crimes Mediated}} = \frac{5}{25} = 20\%$$

Occasionally the NCDJJD may not be able to find an individual, and as such, that individual is placed in an "unknown" category; it is unknown whether that individual has re-offended. Using the above example, out of twenty-five offenders and disputants, if five re-offended but two are unknown, the initial calculation suggests the same recidivism rate:

$$\text{Recidivism Rate} = \frac{\# \text{ of People Crimes Mediated to Re-offend}}{\# \text{ of People Crimes Mediated}} = \frac{5}{25} = 20\%$$

On closer examination, however, the recidivism rate does have the potential to be higher if the two unknowns did re-offend, thereby altering the recidivism rate:

$$\text{Recidivism Rate} = \frac{\# \text{ of People Crimes Mediated to Re-offend}}{\# \text{ of People Crimes Mediated}} = \frac{7}{25} = 28\%$$

To account for this unknown factor, the recidivism rate is recorded as 20%-28%. This range permits a more accurate picture of the recidivism rate.

G. *Inherent Weaknesses in the Statistics and Method*

There are several weaknesses in the statistics and methods used that must be recognized prior to analyzing the results. First, the data received from the NCDJJD has limitations. Second, there is a limited time-frame in which to examine the recidivism rates. Third, the unavailability of the offender is not taken into account, nor is the fre-

quency of re-offense. Finally, there may be an accounted-for internal bias in the decision to mediate.

The recidivism rates are received from the NCDJJDP. The NCDJJDP searches its database and informs the JJP whether the named juvenile has re-offended after the date for which the juvenile was referred to the JJP. Therefore, the results are limited to what the NCDJJDP keeps on file.

There are two important limitations to note about the statistics received from the NCDJJDP: (1) the NCDJJDP only keeps information on crimes committed in North Carolina, and (2) the NCDJJDP does not keep statistics on juveniles who have reached the age of majority. As a result, any crimes committed outside of North Carolina will not be reflected in the recidivism rates. Furthermore, once a juvenile reaches the age of majority, which is sixteen in North Carolina,¹¹² the NCDJJDP no longer updates the file, and the file is referred to the adult system. In addition, there are times when the NCDJJDP cannot find a particular juvenile in its system. Although unclear why this happens, the juvenile is still recorded as being referred to the JJP, but he is classified as “unknown” regarding his re-offend status.

Even if the juvenile has not been transferred to the adult system, the recidivism statistics are limited to the study time-frame. The statistics are current as of January 1, 2007. While January 1, 2007 may be a significant frame of time for Grant Year One, the time-frame is less than a year for some juveniles in Grant Year Two. A juvenile may re-offend after January 1, 2007 and not be included in these statistics.

Another factor that may affect the statistics is the unavailability of the juvenile. If the juvenile is placed in a detention center or a rehabilitation facility, then it is unlikely that the juvenile can re-offend. Currently, the statistics at the JJP do not account for this discrepancy. Nor do the current statistics account for the frequency by which certain juveniles re-offend.

Internally the statistics may be skewed as well. There are several reasons why a case may not be mediated. The mediation program is entirely voluntary. As a result, some participants never respond to the JJP's letters or phone calls. Even if the parties do agree to participate, they may change their minds at any time and decide not to attend a “face-to-face” mediation.

More importantly, the mediator may decide that the case is not appropriate for mediation. The mediator evaluates whether the case should be mediated after his initial meeting with the parties. Interest-

112. N.C. GEN. STAT. § 7B-1604 (2005).

ingly, only one case referred to the JJP did not go to mediation based solely on the mediator's refusal to mediate the case.¹¹³ The primary reason a case is not mediated is because one of the parties chooses not to participate. Thus, while a mediator's bias may be a factor to consider, it does not appear to be a large factor at this point in time.

V. RESULTS

The results are summarized below in Tables 1-9. Two grant years are presented for review: (1) July 1, 2004 to June 30, 2005 (Grant Year One)¹¹⁴ and (2) July 1, 2005 to June 30, 2006 (Grant Year Two). The results are first examined by looking at the distinction between People crimes and Property crimes. After examining the results individually, all cases are pooled together and the only remaining distinction is whether the case was or was not mediated.

A. People Crimes

Table 1. Mediated People Crimes: Recidivism Rates

	Cases Mediated	Mediated and Re-offend	Unknown if Re-offend	Percentage
Grant Year One	27	7	0	26%
Grant Year Two	31	0	2	0-6%
Combined Grant Years	58	7	2	12-16%

113. See *J.L. v. A.P.*, 05 JJP 076 (2005). The apathy of the offender in this case made re-victimization of the victim a serious threat. As a result, the case was referred back to the juvenile court system.

114. There are five cases from Grant Year One that are not included in the statistics. Two cases were not included because they did not fit in either the People or Property Crimes category. See *T.T. v. J.B.*, 04 JJP 017 (2004); *P.S. v. A.S.*, 05 JJP 061 (2005). Two other cases were not included because the files were lost, and it is unknown what categories they should be counted under. See *S.A. v. A.W.*, 05 JJP 052 (2005); *C.G. v. L.B.*, 05 JJP 057 (2005). Another case was excluded because the juveniles involved are parties in another case. This avoids the two juveniles from being counted twice. See *I.B. v. J.M.*, 04 JJP 023 (2004).

Table 2. Non-Mediated People Crimes: Recidivism Rates

	Cases Mediated	Mediated and Re-offend	Unknown if Re-offend	Percentage
Grant Year One	19	8	2	42-53%
Grant Year Two	17	2	0	12%
Combined Grant Years	36	10	2	28-33%

Table 3. Comparison of Recidivism Rates for People Crimes

	Mediated and Re-offend	NOT Mediated and Re-offend
Grant Year One	26%	42-53%
Grant Year Two	0-6%	12%
Combined Grant Years	12-16%	28-33%

B. Property Crimes**Table 4. Mediated Property Crimes: Recidivism Rates**

	Cases Mediated	Mediated and Re-offend	Unknown if Re-offend	Percentage
Grant Year One	7	3	1	43-57%
Grant Year Two	5	1	0	20%
Combined Grant Years	12	4	1	33-42%

Table 5. Non-Mediated Property Crimes: Recidivism Rates

	Cases Mediated	Mediated and Re-offend	Unknown if Re-offend	Percentage
Grant Year One	9	5	0	55%
Grant Year Two	2	2	0	100%
Combined Grant Years	11	7	0	64%

Table 6. Comparison of Recidivism Rates for Property Crimes

	Mediated and Re-offend	NOT Mediated and Re-offend
Grant Year One	43-57%	55%
Grant Year Two	20%	100%
Combined Grant Years	33-42%	64%

*C. Cases Combined***Table 7. Mediated Cases: Recidivism Rates**

	Cases Mediated	Mediated and Re-offend	Unknown if Re-offend	Percentage
Grant Year One	34	10	1	29-32%
Grant Year Two	36	1	2	3-8%
Combined Grant Years	70	11	3	16-20%

Table 8. Non-Mediated Cases: Recidivism Rates

	Cases Mediated	Mediated and Re-offend	Unknown if Re-offend	Percentage
Grant Year One	28	13	2	46-54%
Grant Year Two	19	4	0	21%
Combined Grant Years	47	17	2	36-40%

Table 9. Recidivism Rates for Combined Cases

	Mediated and Re-offend	NOT Mediated and Re-offend
Grant Year One	29-32%	46-54%
Grant Year Two	3-8%	21%
Combined Grant Years	16-20%	36-40%

VI. DISCUSSION OF RESULTS

The results of the mediation program are promising. The first two grant years demonstrate that the total recidivism rate is 16-24% less for offenders who participate in a "face-to-face" mediation versus offenders who do not participate in a mediation. However, the results also

demonstrate differences in recidivism rates based on whether a People or Property crime was committed. The differences and possible explanations are discussed below.

A. *People Crimes versus Property Crimes*

There are marked differences between the statistics for Property and People crimes. There may be multiple reasons to account for the different results, such as the lack of Property related cases and the nature of the crime itself.

There are fewer Property crime cases referred to the JJP, and as such, a comparison is difficult to make. The reason for the lack of Property crimes is unknown. The referring party may not consider property related crimes appropriate for mediation. Regardless of the reason, the number of Property related crimes is significantly lower than People crimes. As such, the results may be skewed due to the small numbers.

Property related crimes tend to have a higher recidivism rate, even when mediated. A distinction may be the circumstances in which the crimes occur. People crimes occur mostly in the heat of passion when individuals are involved in disagreements, whether in school or in their neighborhood. In contrast, Property crimes tend to involve some degree of premeditation or at the very least a rough plan. Crimes such as breaking and entering, trespassing, larceny, and possession of stolen property rarely occur in the heat of passion.

In addition, crimes involving theft may also be keenly connected with drug abuse. Theft is routinely associated with the need to obtain money to buy drugs or alcohol. Whether such is prevalent in the age group that the JJP deals with has yet to be explored.

Perhaps mediating a Property crime case does little more than what the juvenile court system can offer. Typically, Property crimes involve a payment of restitution and the return of stolen property or repair of damaged property. The traditional retributive justice system may sufficiently fulfill the victim's *need* and no further benefit is offered to the victim by the mediation process.

The limited data for Property related crimes makes it difficult to draw concrete conclusions, but the higher recidivism rates should be monitored as more data becomes available.

B. *Mediated Cases versus Non-Mediated Cases*

The recidivism rates, despite the category or grant year, tend to be lower for cases mediated versus cases not mediated. The reason may be two-fold: (1) individuals open to mediation are less likely to re-offend,

or (2) restorative justice principles prevent individuals from re-offending. The precise reason is difficult to pinpoint, and both may play an integral role in the lower recidivism rates.

Individuals who choose to mediate may be predisposed to successfully resolving their dispute and thus, less likely to re-offend. Willingness to participate and listen is an integral part of mediation and restorative justice. Those who are open to the idea of mediation are probably more likely to listen and learn from the incident. If an individual is willing to learn from his mistake, then chances are high he will not re-offend. Therefore, individuals who participate in mediation may in general be the type of individuals less likely to re-offend.

Reduced recidivism rates may also be attributed to the restorative justice principles encompassed in the mediation process. Restorative justice focuses on the harms and needs of the parties involved.¹¹⁵ Through the mediation process, the issues leading up to the dispute are discussed. The open discussion often reveals many false assumptions relied upon by each party; assumptions that may have fueled the dispute from the beginning. By eliminating the source of the conflict—false assumptions—the individuals have no desire to re-offend. Restorative justice seeks to address the needs and harms of the parties involved, and mediation may accomplish that goal.

The preliminary recidivism rates of the JJP are promising. Despite the limitations of the available data, the program positively affects recidivism rates; the recidivism rates of mediated cases are lower than those cases not mediated. The outstanding questions are to what extent the recidivism rates are affected and whether the sharp distinction between People and Property crimes will persist. This discrepancy can only be resolved through continued monitoring of the program not only with regards to subsequent grant years, but also by updating past grant years to ensure accurate statistics on re-offenders.

VII. CONCLUSION

This study raises more questions than it answers. As the JJP becomes more established, analysis of recidivism rates can be improved. In addition, there are several areas of the JJP that are ripe for additional examination.

To increase the accuracy of the recidivism statistics, it is imperative to monitor offenders and disputants past the age of sixteen. Currently the JJP only monitors juveniles up to the age of sixteen. By continuing to monitor the juvenile after he reaches age sixteen, the

115. Zehr, *supra* note 21, at 37.

only outstanding variables will be if the individual commits a crime outside North Carolina or is indicted under an alias.

The program should also examine whether there are any underlying trends that make a case more prone to mediate. Are there similar characteristics between the parties that agree to participate in a “face-to-face” mediation as opposed to the individuals that do not? There may be similar factors that make a mediation more likely to happen, such as a solid family network, the race of the parties, the gender of the parties, the length of the relationship between the parties, the type of crime (Property versus People crimes), the age of the parties, and other factors that may start to frequently appear. If certain trends penetrate the surface, then the referring party may have a better idea as to what is an appropriate case to refer to victim-offender mediation. The ultimate goal is to resolve the dispute, and if there are prevalent factors that make a resolution more likely to happen in mediation, then it should be explored.

A cost-benefit analysis of the JJP program should also be considered. While there appears to be an increased benefit from mediation with respect to recidivism rates, it is currently unknown whether the cost of the program diminishes any benefits achieved by the program. For example, does the cost of running the mediation program exceed the benefit to society? If the cost of the program outweighs the benefit of the lower recidivism rates, then the benefits of the program are diluted. As recidivism rates for the program continue to be monitored and updated, a similar study should be conducted to assess whether the benefits are justified by the costs of the program.

The lower recidivism rates are inspiring and suggest that through simple restorative justice principles juveniles take responsibility for their actions and are less prone to re-offend. If the impact on juveniles is carried to adulthood, the ramifications and the benefits of the program could be striking.

In the end, it may be the founders of the JJP who are the real reason the juveniles do not re-offend. The program makes justice an individualized process and reinforces that there are people who are willing to listen. Sometimes that is all some children need—a person to listen and care. The compassion and patience demonstrated by founder Jon Powell is inspiring. Not only does he try to resolve disputes, but he strives to build better lives and communities for those involved. The goal is small, but there is no limit to the impact this can have on one

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child and his family. To borrow the words of co-founder Professor Anthony Baker, "It's not world peace, but"

Jennifer L. Kerrigan