

Sentencing Circles: The Shape of Things to Come

By Thom Allena

With the emergence of drug courts, mental health courts, community courts and a host of other problem-solving and community justice initiatives, defenders are frequently being asked to participate in venues that redefine the parameters of effective advocacy. Under the umbrella of restorative justice a number of collaborative dispositional models are becoming increasingly prevalent in juvenile and adult courts. Restorative justice considers harm to victims and in the community where a crime occurs, and then thoughtfully considers ways to repair that harm. Offenders accept responsibility for their actions and directly face their victims and their community and become part of the solution where they and others impacted by the offense have a direct voice in the outcome.

A sentencing circle is a restorative justice practice that uses a more collaborative approach. While creating an atmosphere of respect and dignity for all involved, these circles use indigenous values and practices to explore the impact of a crime on the victim, offender, family members and the community where the crime occurred. Hence, the focus of sentencing goes well beyond the traditional concern of whether to punish or treat an offender. Originating in the Yukon in Canada, sentencing circles have made their way to the United States and offer new advocacy and problem-solving opportunities for defenders.

Anatomy of a Circle

This article highlights a sentencing circle that took place in Taos, New Mexico, in January 2002. The presenting "concern" involved a drunk driving incident that resulted in the fatality of a young woman who was a passenger in the car driven by the defendant and serious injuries to a second young woman passenger and the defendant's brother, also a passenger. Prior to the circle, a plea was entered to one count of "Homicide by Vehicle" and two

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counts of "Great Bodily Injury." Public Defender Alan Maestas, in concert with Assistant District Attorney, Barbara Martinez, requested that District Court Judge Peggy Nelson consider the use of a sentencing circle prior to a formal sentencing, which is required by statute.

Twenty-five of us gathered on a cold January night in a meeting room made available by the town of Taos. We came together to more fully understand the impact of this crime in a way that a presentence investigation and a traditional sentencing hearing would not likely reveal. There was also a need for healing between families, all of who knew one another before the incident and would continue to interact with one another in the months and years ahead. The first stage of the circle reviewed who was there, what we were to accomplish and what hopes and expectations people were bringing that evening.

We then heard a previously agreed upon version of the offense and a summary of the legal proceedings to date as articulated by Judge Nelson. Two of the investigating police officers gave personal versions of their involvement in the matter. Once the factual and legal aspects of the circle were estab-

lished, we turned our attention to the stories of how individuals had been impacted by this event. We first heard from Chris, the defendant who spoke of his role in this incident and his understanding of the people he had harmed. The storytelling aspect of any circle is often the most compelling. This circle was no exception. As we passed a "talking piece" many stories of pain, understanding and compassion emerged. Many of them were not what we typically hear in a sentencing of this magnitude:

- Chris expressing his remorse for his actions to victims' family members and his own family and accepting responsibility.
- A police officer speaking of his gratitude for a young girl sitting in the circle whom he did not think would survive the crash.
- A community member whose car was struck speaking with pride about being part of a justice process that listened to everyone and was doing something that benefited the whole community.
- A district attorney acknowledging the defendant for his courage in choosing to participate, and wishing him well.
- Support and acknowledgement for the deceased victim and her family.
- A community member indicating that he had never had felt so much a part of the community and requesting that the circle meet again.
- Several community members acknowledging the need to find constructive ways to support the justice system professionals in addressing drunk driving fatalities in our community, where many citizens are lost to drugs and alcohol.

After hearing about the impact of the incident we turned our attention to

ways to directly and symbolically repair some of the harm resulting from this crime. Some suggestions involved community service that would reach youth about the issues of drinking and driving, ideas relating to treatment, community education strategies and having Chris work with the surviving victims to tell their stories in schools and other community venues.

We closed the circle by honoring the victim and her family and with a collective understanding that something good had happened during the past three hours. The following week at a formal sentencing hearing, District Court Judge Peggy Nelson, implemented several of the suggestions as part of the conditions of sentence.

Keys to Success

Below are just a few of the "ah-ha's" mined from a debriefing process several weeks after the circle. Our desire was to better understand the key things we had learned from the sentencing circle process.

1. The Value of Planning, Educating and Clearly Defining Roles

Given the relative novelty of restorative justice in Northern New Mexico, planning and education were essential to the success of our circle. The judge, defender and prosecutor and I were all part of the circle planning process. Together, we shaped roles each would play. It was clear to us going in that this would be a different approach to sentencing and would require different ways of participating on everyone's part. We all agreed: this process was to be nonadversarial. Having clearly defined roles gave each justice system participant a sense of purpose in the circle and would provide some insurance against slipping back into the traditional roles we know so well and that had limited utility in this process. Perhaps the most challenging tasks for all of us were to simply listen and to seek to understand – no small task in a system where listening in order to formulate a better argument, rather than listening to understand, is what is often rewarded.

2. Leveraging the Supportive Capacity of a Community

Most defenders carry palpable experiences of how harsh and punitive a community can be toward an offender. As we debriefed this circle, Public Defender Alan Maestas reported a different dynamic than what he normally encounters. He related that it was "heartwarming" to listen to community members who were genuinely concerned about his client's future who were capable of "understanding, empathy and forgiveness." Needless to say, this is not a typical community response to an offender who had committed a fairly high-profile, violent crime in a small community.

3. Human Benefits of the Process

Maestas observed what he referred to as the "human" benefits to the process for he and his client. He articulated that the circle gave his client a venue where he would be actually listened to and respected by people who would normally not see him as a human being. In addition, it was also the one place where Chris and his family could directly address how the crime had affected their lives. It was clear that the circle brought the whole family closer together. Furthermore, the process gave Maestas an opportunity to know and understand a client and his family in a way that is usually not feasible given caseload sizes and the overall nature of indigent defense work.

4. Legal Benefits of the Process

From a legal perspective, Maestas theorized had they gone directly to sentencing without the sentencing circle it was predictable the parents and family members of the deceased and survivors would have had no place in the justice process to vent their feelings. The only option would have been the formal sentencing hearing where they would have likely spoken from an angry place and would have likely influenced the eventual sentencing outcome. The circle gave everyone a safe place to express his or her concerns and pain without simply blaming and shaming Chris.

5. Tips for Getting Started

With the volumes of cases sitting on

top of most defenders' desks, it's reasonable to wonder just where to start. Maestas offers the following strategy: pick a client who you care about as a person and where you already have a decent working relationship with the prosecutor handling the case. Find someone in your community who is trained in restorative justice facilitation. You may be surprised just how many people in your community are trained in this field, which is growing daily. Consider training your attorneys, social workers and sentencing advocates in restorative justice principles and practices.

Reflections...

For most defenders and their clients, sentencing circles and other restorative practices represent "new ground." In fact, these practices represent change for everyone involved. Restorative justice brings new opportunities and new forms of support for our clients. Finding constructive, nonshaming ways of holding clients "accountable" to their victims and communities can pay future dividends for clients who will likely remain part of the same communities, interacting with many of the same people.

Barbara Martinez, assistant district attorney, summed it up well at a recent bar association meeting where the process was discussed in a public forum, "It was one of the few opportunities I've had to participate in a justice process where an offender was held accountable to his victims and his community and through it all, he was able to maintain his personal dignity." Participating in and supporting a process that builds bridges in the community on a client's behalf may be part of redefining what "effective assistance of counsel" is becoming all about.

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