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Patrick Gerkin

*Grand Valley State University*

John Walsh

*Grand Valley State University*

Joseph Kuilema

*Calvin University*

Ian Borton

*Aquinas College*

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# Implementing Restorative Justice Under the Retributive Paradigm: A Pilot Program Case Study

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Patrick Gerkin<sup>1</sup>, John Walsh<sup>1</sup>, Joseph Kuilema<sup>2</sup>, and Ian Borton<sup>3</sup>

## Abstract

This article explores the implementation of a pilot program in restorative justice in a medium-sized Midwestern city. Through an examination of meeting minutes, interviews, and the personal reflections of the authors, this article examines the implementation of a victim–offender mediation program, referred to throughout the article as the Fast Track Accountability Program (FTAP). Presented as a case study, the authors describe the key stakeholders, the process, the obstacles, as well as lessons learned along the way. Particular attention is given to the essential role of strong leadership and to the challenges faced when implementing such a program within the bureaucracy of the current, retributive, criminal justice system.

## Keywords

restorative justice, implementation, victim–offender mediation, policy

This research captures something rather unique to the literature on restorative justice. What follows is a detailed case study of the implementation of a victim–offender mediation pilot program. The impetus for this project, as well as the sustained effort to achieve the desired outcome was provided by the Restorative Justice Coalition of West Michigan (RJCWM).

As a case study, this research offers an inside look into the process of moving restorative justice theory into practice. The authors describe the implementation process from the early stages of planning through implementation. Presented in a chronological fashion, the authors explore the many challenges faced throughout the process. Major obstacles include a lack of support from key stakeholders within the criminal justice system, misconceptions surrounding the philosophy of restorative justice, securing program funding, and stability of leadership among the implementation team. Although the campaign to implement a pilot program in restorative justice was ultimately successful, the final product was far removed from the original vision of RJCWM.

## Restorative Justice

Restorative justice continues to slowly emerge as an alternative to the more familiar forms of retributive justice in the United States. While restorative justice has roots in antiquity (Braithwaite, 2002), and continues to serve as one of several competing philosophies of crime and justice in numerous countries throughout the world (Van Ness & Strong, 2002), it

has been adopted in the United States in a limited and at best piecemeal fashion. This landscape is largely due to the reality that restorative justice represents a major shift in both philosophy and practice within the United States.

Under the current, retribution-based, criminal justice system, the main focus is on determining guilt and dispensing punishments. A criminal act is, by definition, a crime against the state (Lemley & Russell, 2002). Unlike the retributive model, restorative justice defines crimes by the harms created. The focus of restorative justice is to repair the harm caused by crime, making victims whole, holding offenders accountable, and preventing the occurrence of similar harms in the future (Van Ness, 1996; Van Ness & Strong, 1997; Zehr, 1990).

A popular definition offered by Tony Marshall (1996) states that restorative justice is “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (p. 37). The process begins with the realization that crime signifies injury. One goal, then, of restorative justice is to repair that injury, to

<sup>1</sup>Grand Valley State University, Grand Rapids, MI, USA

<sup>2</sup>Calvin College, Grand Rapids, MI, USA

<sup>3</sup>Aquinas College, Grand Rapids, MI, USA

## Corresponding Author:

Patrick Gerkin, Grand Valley State University, 401 W. Fulton St., Grand Rapids, MI 49506, USA.

Email: gerkinp@gvsu.edu



make the situation right. Victim(s) and offender(s), along with other interested parties take part in a process of healing the injury experienced by the victim (Roche, 2003). Victims and offenders are, ideally, participants. They are given a degree of ownership in deciding an appropriate response to the harm created by the offender's actions. Restorative justice affords victims, offenders, and the community an opportunity to participate in creating justice, allowing them to insert their voice and regain a sense of control in their lives.

### Mediation

The words "restorative justice" are used as an umbrella term to describe a variety of programs that view crime and the response to crime through a restorative lens (Zehr, 1990). Such programs include victim-offender mediation, family group conferencing, community reparative boards, sentencing circles, and sentencing panels.

The first victim-offender mediation program emerged in the 1970s (Van Ness & Strong, 2013). Mediation offered "victims and offenders the opportunity to meet one another with the assistance of a trained mediator to talk about the crime and come to an agreement on steps toward justice" (Van Ness & Strong, 2013, p. 83). Prior to the 1970s, crime victims were largely ignored by the criminal justice system. However, beginning in the 1970s, the victims' rights movement began to push for greater victim participation in the justice process (Daigle & Muftic, 2016). It is no coincidence that restorative practices such as mediation emerged during this period.

Mediation, in accordance with the principles of restorative justice, seeks to maximize victim participation in the process of achieving justice. Through mediation, the parties most directly affected by the harm (victims, offenders, and the community) gather in search of healing, restoration, accountability, and prevention (Zehr & Mika, 1998). The mediation process is guided by a trained facilitator whose job it is to help the participants resolve the situation and to repair the harm experienced by the victim. The mediator is there to assist the parties in making their own decisions about how to repair the harm. He or she is not there to make these decisions for the parties.

One tangible outcome of a victim-offender mediation is a written agreement between the parties about how the harm will be repaired. Victims play a central role in the creation of the agreement, and offenders participate as well (Daigle & Muftic, 2016). Thus, the participants themselves become the owners of the justice process and its outcomes.

This stands in stark contrast to the offender-centric and state-dominated criminal justice system that routinely disempowers both victims and offenders as the state defines what justice should be (Zehr, 2013). This system is the result of a major paradigm shift that moved justice out of the community and into a state-run, rights-based model (Van Ness, 1990). Restorative justice is part of a movement that hopes to

shift some of the ownership in resolving these matters back to the primary stakeholders.

Overall, restorative justice represents a clear shift in philosophy and practice. Restorative justice places victims at the center of the process rather than offenders. Instead of a focus on determining guilt and dispensing punishments to offenders, restorative justice seeks to repair the harm caused by crime and prevent similar harms in the future (Zehr, 2013). These were the philosophical underpinnings that grounded the attempt to design and implement the pilot program in restorative justice described herein.

### The Beginning

Fast Track Accountability Program (FTAP) was a pilot program implemented in 2010 within a Midwestern city of approximately 200,000 residents. The city is situated in a county with a population of approximately 600,000. According to the U.S. Census, the city is composed of 59% non-Hispanic Whites, 20% African American, 15% Hispanic/Latino, and 2% Asian (U.S. Census Bureau, 2015b). The median household income (in 2014 dollars) was US\$39,913, including some 26% living below the poverty line (U.S. Census Bureau, 2015a). During 2010, there were slightly more than 4,000 misdemeanor warrants authorized by the county court (Forsyth & Becker, 2015).

In the case in question, the attempt to integrate restorative principles into a meaningful program came out of a group of community advocates that banded together to form a restorative justice coalition. Ultimately the group settled on the name RJCWM. The organic grassroots beginnings of this group mirrored the philosophical ideal that restorative practices should emerge from the communities, themselves, rather than being imposed from high-powered leaders (Hopkins, 2004). At the same time, the role of strong leadership in the formation and maturation of this coalition cannot be underestimated. Without the benefits afforded by the relationships fostered and developed by its early leaders, FTAP would never have reached the implementation stage.

Although the groundswell for a restorative justice program ideally comes from the community itself, the reality of a bureaucracy instituted to uphold a retributive approach necessitates a pragmatic approach that requires the active assistance of high-powered leaders. In the case in question, that high-powered leader was a City Commissioner.

The early planners included a rather diverse group of people. Among the early members of RJCWM, there was a core group of local-level politicians, neighborhood association leaders, college professors, religious leaders, criminal justice reformers, and interested citizens. Virtually all of them were brought to the table at the request of a City Commissioner who once remarked that he would talk to anyone who would listen and that he intentionally cast a wide net and hoped some people would "stick around" (D. LaGrand, personal communication, December 12, 2012).

In retrospect, the early planners and designers echoed themes identified by O'Conner (1997), who suggested that a key to the success of restorative justice programs is leadership that recognizes the unique environmental and social factors that must be accounted for to facilitate development. The Commissioner's experiences in prosecution and private practice gave him insight into the environmental and social factors at work in the local justice system.

## Program Design

The City Attorney's office was identified as the gatekeeper to the program. This was a strategic decision on behalf of the leadership of RJCWM. Other "diversion" programs had their inception within the state of Michigan's 61st District Court, most notably the Drug and Sobriety Court founded in 1999 by Judge Patrick Bowler. In a similar manner to FTAP, the 61st districts' Drug Court emerged largely as the vision of one man. As 61st Court administrator Josef Soper observed, "[t]he fact of the matter is that programs such as drug courts are created because people in a position to implement them, do" (Soper, 2006). The decision to begin FTAP from outside the Court was guided largely by the fact that the City Attorney shared the Commissioner's vision, and the judges were less enthused.

The lack of enthusiasm on the judges' part was a point of much discussion in early planning meetings. The issue was discussed at numerous board meetings of RJCWM. The general consensus of the board was that this program would never be successful without the court's support. There would be no cases to handle.

Discussion with officials at the 61st District Court indicated that the primary concern from the judges was one of cost. Once a defendant is charged with a crime, an automatic timetable is set in motion with the court. To keep a case on track, the Court had no choice but to route individuals through both the current system and FTAP at the same time. In cases where the offender did not fulfill his or her agreement/contract, traditional court processing was the fallback. When offenders did fulfill his or her contract, charges were dismissed, and the Court had no avenue to assess fees and costs that would normally offset the costs of all the pretrial work. Thus, from the Court's perspective, FTAP represented a cost with no possibility of recoupment. (See section titled "Discussion" for further consideration of this issue.)

Given the less than enthusiastic response from the judges, and the apparent interest of the City Attorney, the City Attorney's office became the obvious choice. Following a police report, the City Attorney's office approves a misdemeanor charge or warrant authorization. This initial step at the City Attorney's office was also selected as an ideal point to screen out individuals who did not meet certain criteria for FTAP.

The City Attorney's office stipulated that all eligible participants would be adults who were arrested for misdemeanors where the maximum possible penalty did not exceed 1

year in jail. The three categories specifically targeted were removing property not your own<sup>1</sup> (commonly referred to as shoplifting), malicious destruction of property<sup>2</sup> (MDOP), and meddling and tampering.<sup>3</sup> Both removing property and MDOP are charged as misdemeanors, when the value of the property or the amount of the destruction or injury, respectively, is less than US\$200.00. Under the current system, persons found guilty of these offenses are punishable by imprisonment for not more than 93 days and/or a fine of not more than US\$500.00 or 3 times the value of the property, whichever is greater. The logic behind selecting these three particular crimes was that they constituted the low hanging fruit for the 61st District. On average, there were approximately 500 such cases each year in the 61st District Court.

There were a few additional stipulations put in place by the City Attorney's office. Those eligible for the program included only those who pleaded *not guilty* at their arraignment. Additional eligibility criteria set forth by the City Attorney included not being charged with an associated felony or violent misdemeanor. However, prior convictions of any kind would not prevent offenders from being eligible to participate.

FTAP allowed offenders to have their charges appear as "dismissed" on their permanent record if they conceded to entering into mediation, negotiating a contract with the victim, and fulfilling that contract. In other words, this program functioned as a diversion for eligible participants. Contracts for the program needed to meet basic criteria established by the City Attorney, including a sincere apology, full restitution, and at least 20 hr of community service.

Program designers, optimistically hoping for room to negotiate, raised several concerns. First, they expressed a desire to cast a wider net, but found little room for negotiations with the City Attorney's office. Second, program designers pushed back against the agreement requirements, explaining that the participants should have the freedom to create the stipulations put forth in the agreement, and noted that although an apology was ideal, a forced or insincere apology can actually lead to revictimization. Finally, program designers pushed back against the not guilty requirement. RJCWM took this as an opportunity to inform/educate the practitioners about restorative principles, but again found little room for negotiations. In the end, the program designers determined these were necessary concessions to keep the pilot program moving forward. (See section titled "Discussion" for further consideration of this issue.)

Eligible individuals (hereafter referred to as offenders) were to be contacted first and the program's nature and requirements would be explained. Offenders were to be contacted for consent to participate before victims. This was done to avoid revictimization by encouraging victims to participate in a process only to find the offender unwilling. Only after offenders agreed to participate were the victims to be approached. They too would receive an explanation of the program and would be invited to participate.

The City Commission approved US\$60,000 for the project from a Federal Justice Assistance Grant (JAG). The US\$60,000 was part of a larger grant received from the Recovery Act Edward Byrne Memorial Justice Assistance Grant Program (Office of Justice Programs, 2009).

FTAP benefitted enormously from the existence and expertise of the Dispute Resolution Center (DRC). The DRC had maintained a community victim–offender mediation program for 23 years prior to the start of the pilot program. This meant that RJCWM did not have to create a program, train mediators, or find money for start-up costs. This enabled FTAP’s design team to focus on expansion and integration within the judicial system rather than inception.

By the time of implementation, FTAP could best be described as the result of a unique collaboration between the City Attorney’s office at the local District Court, the City Commission, a nascent nonprofit organization (RJCWM), and an established restorative justice nonprofit mediation center. The City Attorney’s office functioned as a gatekeeper to the program; the District Court, somewhat reluctantly, allowed it as a diversion program. The City Commission provided the funding, the coalition provided the idea, and the mediation center provided the actual service delivery. The program, at the point of implementation, was dramatically different from the design RJCWM members had initially planned. However, it did present an opportunity for the delivery of restorative justice to the public, and an opportunity for restorative justice to prove that it could bring value to the administration of justice.

## Implementation

### *The First 9 Months*

The first 9 months spent establishing FTAP can be described as a period of education. Compared with the larger partisan State government, the City Commissioner’s position afforded opportunities to affect change with less buy-in from other officials. This was particularly true in the context of a city with a weak mayoral system where more power rests with the nonpartisan City Commission. Within the context of a seven-member commission, the City Commissioner needed only three additional votes to move the restorative practices forward.

At this early stage, several key parameters for a successful program were identified. First, the program would need to be conceptually integrated into the existing judicial framework and it would need to be rigorously evaluated. This would require access to both the City Attorney’s office and the 61st District Court. The benefits of implementing restorative practices would only be realized if the program was both philosophically guided and empirically supported. Satisfying victims, holding offenders accountable, and engaging communities may each contribute to a fairer system of justice, but will likely do little to persuade entrenched criminal justice

personnel to adopt restorative practices (Hayes, 2007). Members of RJCWM felt the most effective way to persuade government officials would be to focus on the potential for positive economic benefits derived from the program. The emphasis on empirical evaluation was driven by a subcommittee of RJCWM that became known as the academic group.

Early on in the formation of RJCWM, participation was elicited from local colleges and universities’ departments of criminal justice, sociology, social work, and communication studies. A core group of faculty from local universities coalesced to mindfully consider how best to develop a program that could be evaluated with regard to the primary outcomes of participant satisfaction, recidivism, and economic impact. These outcomes are commonly found in evaluations of restorative programs (Latimer, Dowden, & Muise, 2001).

The second key to success was that the program should be presented to the community in a way that would encourage the community to see value in the program. Proponents of the restorative alternative are familiar with the need defend restorative justice from the accusations that such programs are soft on crime (London, 2013). London describes this as one of the challenges to restorative justice theory and practice. He argues that proponents of restorative justice must reconcile “its advocacy of a nonpunitive response to crime with the public’s insistence on deterrence and retribution” (London, 2013, p. 7).

Finally, the program needed to be sustainable. This meant securing funding and establishing a service provision structure that would perpetuate the program in the absence of its initial leadership. In fact, this was the impetus for the entire coalition. From his experiences with other victims’ rights or community mediation programs, the Commissioner believed that any program would collapse without strong leadership. Keeping true to the restorative philosophy, the Commissioner set about cultivating interpersonal relationships guided by key restorative values such as respect, individual dignity, inclusion, responsibility, humility, mutual care, reparation, and nondomination (Pranis, 2007). He routinely met with members of various constituencies (i.e., neighborhood associations, police, judges, academics, service providers). It was his hope that these individuals would help to sustain the program after his departure.

In developing relatively high-quality relationships, the program’s leader charted a course guided by restorative values; yet, he remained concerned that his efforts to develop leader–member relationships would devolve after his departure. He hoped that a partnership with the DRC would be a stabilizing factor in the case of his absence. The involvement of the DRC meant that there was a service delivery system in place that was vested in sustaining these efforts.

### *The Second 9 Months: Clearing Obstacles*

The second 9-month period was spent focusing on a few crucial elements of the program, including funding stability and

empirical evaluation. Prudently, these were not separate conversations. Leadership, at this early stage, realized that although funding would hopefully be found to initiate a pilot program, any hope at sustaining that funding would need to be tied to empirical evidence of effectiveness.

In this period, seed funding was secured through a local denomination to pay a coordinator for 10 hr a week. She was compensated to schedule meetings, compose email lists, and organize communications. Programs dependent on volunteers to coordinate efforts have the potential to languish and slide into inaction. After the coordinator moved on, she was replaced by a local attorney working with the DRC who provided the consistency of communication and determination to pull together disparate elements and keep everything moving forward.

Meanwhile, RJCWM began to openly recruit new members and elicit support for the cause of restorative justice. How this initiative would manifest was still unclear. According to RJCWM meeting minutes, it was about this time that meetings between coalition leaders, a retired judge, and the City Attorney and her staff began. Understanding what data were available from these stakeholders was a part of these discussions. With an eye toward the future, members of the academic group were already preparing for the evaluation component.

### *Evaluation*

Early on in stakeholder meetings, it was discovered that the city made almost no effort to obtain victim input data at all. Initially, it was thought that to demonstrate increases in victim satisfaction, baseline data would need to be collected prior to program implementation. Eventually, and at the urging of the academic subcommittee of RJCWM board, this idea was done away with in favor of a pilot program design that included both experimental and control groups.

Examples of surveys were solicited from local dispute resolution organizations, academics, and restorative justice-based programs in nearby cities such as Muskegon, Michigan, which had a well-established victim-offender mediation program. Over the following months, these surveys were revised to include quantitative measures on items such as fairness, restitution, relationships between participants, satisfaction, and accountability. In addition, qualitative measures were included to assess mediator behaviors that facilitated (or frustrated) mediation resolution, satisfaction, participant sincerity, fairness, and motivation for participation. The research instruments were designed not only to demonstrate the success of restorative alternatives in satisfying participants, increasing restitution, and reducing cost but also to begin to articulate clearer understandings of the *how* and *why* questions that plague restorative justice research. Although significant positive results are observed in programs, what is less researched, and therefore less understood, is *how* and *why* restorative programs consistently produce those positive

results (Bazemore & Elis, 2007; Hayes, 2007). This remains an area for further research, and the data currently being collected will hopefully add to this body of scholarship.

### *Education*

It was approximately 3 months into this second 9-month period that RJCWM contacted the local newspaper and an article about the proposed RJ pilot project appeared. Although this exposed a wider audience to the reality that such a program was being considered, reactions were mixed. In an effort to define the scope of the program, RJCWM described the program in several internal documents, and in the article, as a program of the 61st District Court. Reaction from judges within the Court was swift and critical, as the Court itself had little to do with the program's inception and development. (See section titled "Discussion" for further consideration of this issue.)

In addition to some friction with the Court, public reaction focused on common perceptions that such a program would be "soft on crime," a criticism all too familiar to advocates for restorative justice. From these reactions, it was clear that educating the community, something the group had consistently worked at, was going to be a never-ending project. As a result of the reaction from numerous fronts, several changes were made to the pilot program. First, the program was no longer to be described as a 61st District Court program. Second, the pilot program was strategically renamed the "Fast-Track Accountability Program" (FTAP). This was a linguistic shift, designed to communicate the simplest and most politically viable benefits of the pilot. Use of the term accountability (a staple of restorative justice) was chosen quite intentionally because of the more punitive connotation. This, it was believed, might appease some concern, and also demonstrated that the need for education about restorative justice continued to be necessary.

### *Funding*

Nearing the end of the second 9 months, two significant events unfolded. First, an effort was made to acquire a Social Venture Investors grant through a local community foundation. The program made it to the final round of consideration, but ultimately did not receive funding. The potential funders identified the relatively limited scope of the program as a major concern. At the same time, however, RJCWM was making steps to solidify itself as an organization, adopting a constitution, bylaws, and establishing a formal board of directors. The Board's election marks the turning point from an informal grassroots gathering to a codified, hierarchical organization with elected leadership, committees, and more clearly formalized and articulated responsibilities.

In the final 3-month push toward implementation, the newly minted FTAP relied heavily on the clout of its Board (including City Commissioners, a retired judge, dispute

resolution professionals, academics, and several well-known local community members). The relationships built over the preceding 18 months proved invaluable in coordinating the pilot development and implementation. FTAP's first mediation was conducted just short of 2 years after the City Commissioner took office.

## Program Implementation: Continuing Challenges

The actual implementation of FTAP moved rather slowly, both in terms of receiving the first program participant and in the number of participants who successfully completed the process. After little more than a year into the program, a total of 70 cases had been routed into FTAP. Of these, 25 cases cleared the double consent needed to begin the process, and 15 have successfully completed mediations and contracts. Several aspects of the implementation process have contributed to the slow start: the complexities and inflexibilities of the current criminal justice system, and the program design itself.

One of the first major issues with implementation emerged at the point of arraignment. At arraignment, the accused pleads either guilty or not guilty. From a restorative justice perspective, FTAP was particularly interested in those who acknowledged they were at fault and pled guilty. However, these were precisely the people to whom the current system denied access. Individuals who pled guilty at arraignment were routed through a summary system that quickly adjudicated and dismissed them. From the Court's perspective, these were ideal cases, as they represented financial income with minimal associated court costs. Board members of RJCWM and others continue to examine ways to reimagine this process. Instead, FTAP was left with those who pled not guilty at arraignment. Some of these individuals likely believe themselves to be innocent and others are simply unwilling to accept responsibility for their actions. Either way, they are not interested in meeting with a victim to discuss a crime for which they do not feel responsible. In essence, the adversarial structure of the existing system reinforced nonparticipation by offenders.

Unfortunately, the criminal justice system encourages individuals interested in obtaining the best possible outcome, even if they may privately acknowledge guilt, to plead not guilty. Many defense attorneys will counsel their clients to plead not guilty, initially, to plea bargain for a better deal. Admission of guilt is a bargaining chip to be played at the appropriate time in the process.

This status quo continues to be particularly problematic in the context of restorative justice wherein offenders are encouraged to accept responsibility for their actions before participation. In fact, typically, an acceptance of responsibility is required before a case will enter victim-offender mediation, lest an offender shows up and denies participation or

responsibility for his actions, causing the other party (the victim) to feel revictimized.

There did remain one incentive for participation by eligible offenders. By participating, offenders found that they could successfully complete the program and in doing so, keep the charges from appearing on their record. However, participation in restorative justice is less than ideal when coerced or forced. It continues to be essential for the practitioners to screen cases appropriately to determine whether and when an offender is participating for the wrong reason.

In addition to not being able to access individuals who pled guilty, FTAP was also unable to help individuals avoid the mechanisms of the traditional process entirely, thereby taking on the functional approach of an add-on to the existing system, as opposed to an alternative to the existing system. The judges of the 61st District Court are held responsible for their caseloads by the Supreme Court of Michigan. After a case enters the 61st District Court's computer system, the Court has a fixed timeline to process it before an automated notice is sent to the Supreme Court. As a result, the judges were unwilling to exempt FTAP participants from customary court appearances such as the pretrial and settlement conferences. For example, if John Doe went through FTAP, and spent 60 days working on his contract only to renege, the court would be left with precious little time to process the case when it flushed back into the traditional system before being censured by the Supreme Court. Consequently, individuals enrolled in FTAP have been required to concurrently attend all the same court proceedings as someone involved in the traditional system. This had the unfortunate consequence of negating all the possible cost-savings associated with avoiding time in a courtroom in front of a judge, and instead cost more money per case. From the Court's perspective, the only way around this would be to move entrance into the program precharge, an approach that RJCWM is actively advocating.

Even when cases were assigned to FTAP, establishing contact with offenders and victims to offer participation proved difficult. The DRC was frequently unable to make any contact whatsoever, and only occasionally been able to satisfy the double consent needed to even begin the process. Attrition as a result of individuals who do not answer their phones, have lost phone service, have moved, or are otherwise unavailable presented a serious obstacle to FTAP. Sometimes the police records that the DRC relied on to make contacts were inaccurate, due to clerical errors or false information provided. In addition, it was quite possible that some individuals do not return calls because they are, or believed they were, innocent. It was hoped that if/as the program continues, community awareness of the program will make successful contact more likely. As these issues were being discovered, other aspects of the project struggled to prepare for service delivery.

The evaluation of the program faced numerous challenges. FTAP's founders had been very explicit in their desire to

incorporate a rigorous evaluation into the design and implementation of the program. To accomplish this, US\$10,000 of the US\$60,000 total funding from the city for the project was allocated for research. On August 11, 2009, the City Commission approved the research funding. The research monies were to be contracted to the Center for Social Research (CSR) at one of the local colleges. The CSR was to help oversee the research design and data collection in cooperation with the academic committee of RJCWM.

The academic calendar, however, moves differently than that of the City or of politicians interested in results. The program ultimately began before approval to study it had been obtained, with the first participants entering in July 2009. In effect, the program started not only before the research design had been fully delineated but before the program itself had been completely conceptualized. At the center of the entire project was the City Commissioner, with existing relationships to all the spokes of the wheel, but the spokes had little connection to each other except the center. With pressure radiating from the center, the many spokes moved awkwardly out of sync. The research design, and a fully coherent concept of the program itself, lagged behind service delivery, something that continues to cause problems.

Despite having Human Subject Institutional Review Board (HSIRB) approval, data collection only began to catch up with service delivery in December 2009. To address some of the issues that come from attempting to assemble a data set from multiple sources, CSR decided to house all the data in an online QuickBase database. This has enabled the various agencies to input data relevant to their role in the process into one common, real time receptacle.

Even after finalizing the research design, attempts to make changes to FTAP have continued. One that has emerged is a result of difficulties with certain victims. At this point in the program, 75% of the offenders have been individuals charged with removing property not their own (shoplifting). Many victims of shoplifting are small retail chains. They often have neither the desire nor legal ability to engage in mediation with shoplifters. Although this is typical, the response from larger retail chains has been different. In general, the large retail chains have been highly supportive of FTAP, some have even started referring their own cases to the program and asking for the court's willingness to dismiss the charges. As previously mentioned, certain restorative justice programs have addressed similar situations through the use of victim impact panels or accountability boards. RJCWM forwarded the possibility of such options to the City Attorney's office, but the current low volume of cases makes such a move unnecessary.

Given the whittling away of the sample from which data can be drawn, a fully random experimental design is increasingly untenable. Although this was one of the Commissioner's highest hopes for the program, it has proven almost impossible to implement. Data gleaned from the small sample would

struggle to be statistically significant, and even statistical significance would be tarnished from an academic standpoint by some of the structural problems with the program itself, particularly the exclusion of individuals who plead guilty. At this point, there is not sufficient political capital to make the fundamental changes to the program that would allow it to function as it was originally conceptualized.

One of the primary sticking points for the City Attorney's office remains the "Willie Horton" concern. In 1987, Horton was serving a life sentence without parole for murder, when he was released on a weekend furlough program only to commit assault and rape. The City Attorney's office does not want to be responsible for an individual who is admitted into the FTAP program, and while in diversion offends against either their original victim or someone else. Yet, this is the self-preservation of individuals and offices tethered to the adversarial system of justice whereby politics serves to delegitimize alternative justice approaches. The benefit of having offenders simultaneously involved in the traditional system is that a no-contact order between the alleged offender and victim is automatically issued, and while hardly capable of preventing something from occurring, the order at least extends legal protection. Moving the program precharge would mean losing that no-contact order, and accepting the potential political fallout with the community should something occur. Members of RJCWM have forwarded the possibility of offering victims the opportunity to file personal protection orders (PPOs) as an alternative.

Ideally, the community would be equally invested in restorative practices, and agree to accept the possibility of potential isolated incidents in favor of the greater good. For it to succeed, the community must realize they have a stake in restorative justice, that the justice process belongs to the community (Zehr & Mika, 1998).

## Discussion

Several lessons have been learned along that way are easily transferable to other locations and efforts to implement restorative justice. First, program designers and implementers should recognize that the government must be both willing and capable of shifting focus from punishing, to promoting accountability in the effort to repair harms. This shift represents a major philosophical change, one that requires another significant practical change. It requires an alternative forum for the administration of justice. Members of RJCWM took on the role of change agents (Rogers, 1995) and toiled in the challenge to encourage the philosophical and practical shift necessary to implement the restorative practices. Although this may seem like common sense, it is really about the actual assessment of the states' willingness to make these changes that is so important. Program designers and implementers would also do well to be aware that these changes are particularly difficult within a rights-based and adversarial system (Schiff, 2007). The authors would

recommend a thorough review of the diffusion of innovation literature prior to even designing an innovative program.

Restorative justice asks stakeholders to look at crime through a fundamentally different lens, one with which most police officers, judges, and lawyers may have only cursory familiarity, at best. These justice professionals are asked to shift their role from that of expertise problem solver to that of community facilitator. This shift requires not only the reimagining of roles (and the norms for behavior associated with those roles) but also the reordering of priorities and restructuring of power (Gerkin, 2008; Schiff, 2007). Furthermore, within a restorative framework, justice professionals are called not only to support these changes, but also to lead the paradigm shift as supporters and advocates.

Second, those designing and implementing restorative programs should take great care in publicizing and promoting their programs. Without being taught why and how restorative justice benefits the community and holds offenders accountable, program planners are likely to experience various levels of resistance. Program developers would do well to remember that communities likely have no collective memory of a time when they did handle their own problems. Community participation in justice has atrophied as the adversarial system has matured and become more complex. Communities are unfamiliar with restorative justice and are likely neither ready nor willing to participate. They will likely be uncomfortable at even the thought of being asked to do so. Others are likely to perceive restorative justice as soft on crime and consequently of little value. Education is important. That includes the education of the state, as well as the public.

Third, funding and evaluation should be a top priority. These issues are intertwined and any long term hope for the program will likely be tied to one or both of these. The program needs to demonstrate a value. Although saving money is always a benefit and one that is likely to generate continued support, programs that hold offenders accountable, restore victims, and reintegrate offenders will bring the greatest benefits to the participants and the community.

Finally, program designers and implementers should count as one of their own, a major player currently working within the retributive criminal justice system. Although not absolutely necessary, implementing a program from the outside is difficult.

Programs implemented within governmental structures frequently face challenges involving postcharge, postpolice players such as prosecutors. Furthermore, they frequently struggle to foster both community support and support from victim service providers (Clairmont, 2005).

## Conclusion

Flexibility with participants' changing roles continues to be both a strength and a challenge for RJCWM. In looking at the notes from initial meetings, the shift in participants is of

note. In the early planning stage, participants included older, more established researchers and academics. The academics most intimately involved at the point of implementation were all comparatively new to RJCWM, untenured, and young. As with any other grassroots effort, decisions are made, projects are completed, and progress is realized not by the most highly qualified or positioned, but by those that are present.

Members of RJCWM discovered abundant truth in the words of 61st Court Administrator Josef Soper who remarked that programs such as restorative justice are implemented because people who are in a position to implement them, do (Soper, 2006). In the end, there was no one on the board of directors for RJCWM, no one of note among the design team who was realistically in a position to implement the program that was designed. Negotiating the actual details of the program to be delivered were not really negotiations. In several instances, RJCWM pushed back against decisions made by those working in the system. Ultimately RJCWM had little power or authority to impose their will. It would certainly be fair to say that there was some naivety among RJCWM about how difficult this task would be. As advocates of restorative justice, members of the coalition saw the value in implementing restorative practices. However, convincing those on the inside of the system was far more challenging than expected.

Reflecting on the program that was eventually implemented, one board member noted, "At the point of implementation, several of us realized that what was being implemented was so far removed from what we envisioned and what we designed that we were questioning why we were even doing it" (P. Gerkin, personal communication, November 13, 2013). This experience is shared by others who have tried to implement restorative justice (Lemley & Russell, 2002).

Ironically, the City Attorney's office was taking note of the paradigm shift that was taking place. The City Attorney's office made some restorative changes before FTAP had even been fully conceptualized. Up until they were approached, the City Attorney's office had virtually no communication with victims of misdemeanors. The victim-centric vision of FTAP prompted the City Attorney to begin sending out a letter to all victims of misdemeanors expressing regret and offering opportunities for involvement in the traditional system. Furthermore, the City Attorney became interested in the experiences of victims within the traditional system. She began collecting survey data from victims about their satisfaction with the City Attorney's Office and the processing of their case. This co-opting of restorative principles for incorporation into the formal criminal justice system is not new (Johnstone, 2011).

In Wagga Wagga, New South Wales, restorative practices were inserted directly into the formal criminal justice system (Van Ness & Strong, 2002). Police officers, using their discretion, began facilitating conferences with juveniles, adding

to the options of cautioning juveniles or referring them to the juvenile court (Van Ness & Strong, 2002). The officers themselves became the mediators. Others have suggested that trials could become more restorative by holding jury deliberations in front of the victim and defendant or by allowing jury members to ask questions during the trial (Van Ness & Strong, 2002).

It remains to be seen how the program and RJCWM will balance the need of a pilot program to be flexible to craft a quality program while maintaining the academic rigor necessary to demonstrate the program's benefit. It is clear that some very positive steps have been taken in to increase the restorative character of justice in the community. Community stakeholders and politicians came together to begin the difficult task of tackling a complex system, and obtained the necessary political and financial capital to implement an experimental program that has had real benefits for those involved. At the same time, it is clear that better communication between the City Attorney's office and the 61st District Court and DRC is needed to move the program toward financial sustainability, and that a solution for the problem of how to replace a no-contact order must be found if this program is to succeed precharge. Moving forward, RJCWM must find ways to address these issues to maintain the support of the City Commission. The coalition must also be careful to maintain the support and service provision of the DRC, and assist it in expanding its capacities, but substantial progress has been made. The City Commissioner has said that broken systems do not repair themselves overnight.

As a postscript, the authors would like to acknowledge that the political environment, processes, issues, and implications discussed herein are unique and not necessarily replicable across contexts. Despite this declaration, this account is offered to encourage others in their efforts to move restorative justice from vision to reality. Identifying the problems and pitfalls delegitimizing restorative processes is in itself important for egalitarian community building and restoring justice.

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### Notes

1. Michigan Penal Code 9.133(5) Removing Property Not Own.
2. Michigan Penal Code 9.133(4) Malicious Destruction of Property.
3. Michigan Penal Code 9.133(7) Meddle and Tamper With Property.

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### Author Biographies

**Patrick Gerkin** is an associate professor in the School of Criminal Justice at Grand Valley State University. His primary areas of research include restorative justice and white collar crime.

**John Walsh** is an associate professor in the School of Criminal Justice at Grand Valley State University. His research interests include community based corrections alternatives and urban jail systems.

**Joseph Kuilema**, MSW, PhD, is an assistant professor in the Department of Sociology and Social Work at Calvin College in Grand Rapids, MI. His research interests include international social work, social work education, social justice, structural and institutional racism, and restorative justice.

**Ian Borton** is an associate professor of Communication at Aquinas College. In addition to his work with the Humanities Department, he spends his time highly-caffeinated, communication-focused, and frequently-chasing after his wee daughter, Posie.