

Beyond Retribution: Restorative Practices in Federal Criminal Cases

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Today's Topics

- Examples of Restorative Justice Practices in Federal Criminal Cases
 - Victim/Offender Mediation
 - Defense-Initiated Victim Outreach (DIVO)

- How We Can Nurture Restorative Justice Practices in Federal Cases

Repairing Emotional and Spiritual Harm through V/O Mediation

United States v. Gabriel Laskey

Eugene, Oregon

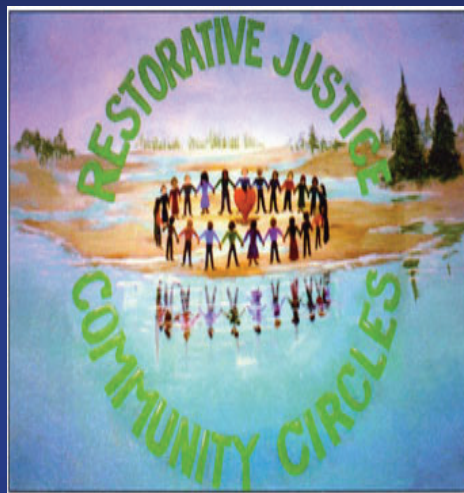
- 2002, 18 yr old Gabriel and four other members of Volksfront, including his older brother, threw swastika engraved rocks through the stained glass windows of Temple Beth Israel, a synagogue in Eugene, Oregon, during Friday evening services
- Terrorized 80 members attending services and a larger community of Holocaust survivors and children of survivors
- Pled guilty to conspiring against rights of citizens and damage to religious property

Building A Bridge



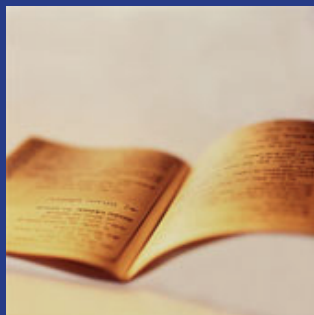
Mediation

- 15 month mediation process between guilty plea and sentencing
 - 9 joint meetings
 - 14 separate meetings



Making Things Right

5 Study Sessions of Jewish Culture and Tradition with Rabbi and His Wife



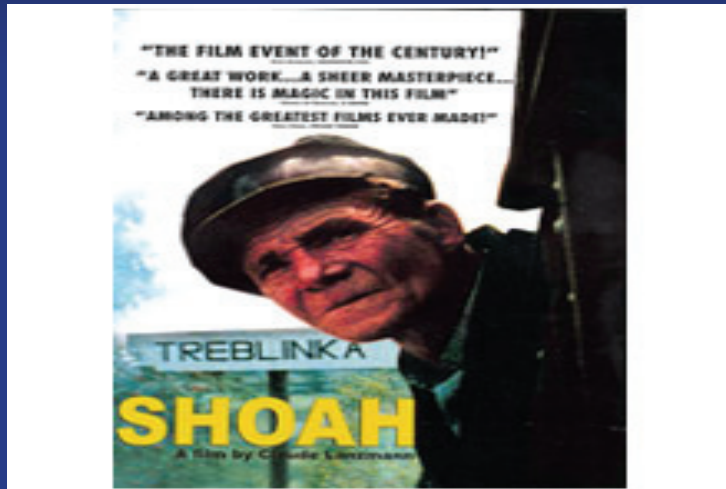
Shared Shabbat with Rabbi and Nine other Participants



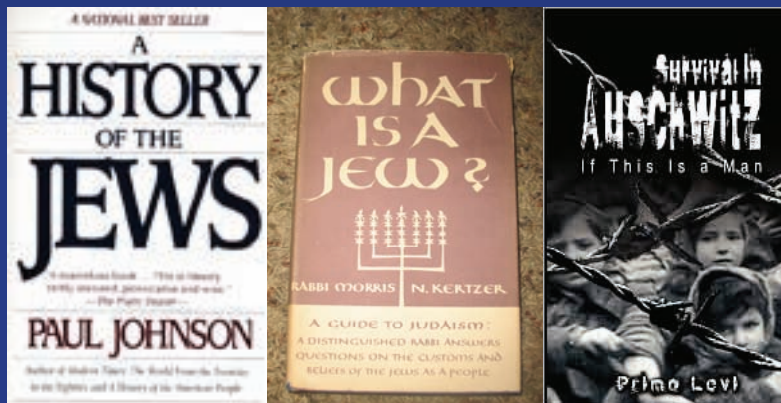
Listened to Accounts of Holocaust Survivor and Children of Auschwitz Survivors



Viewed Shoah – 9 hour documentary that Recounts Horror of the Holocaust



Read 3 Books on Jewish Culture/History



- Renounced Anti-Semitic Beliefs
- Wrote Letters of Apology
- Filmed Apology for those members unable to personally engage with Gabriel

Agreed to use Welding Skills to Create Sculpture for Temple Garden



Why Victim Party Invested Time and Energy

“[The victims] stated more than once that ‘one of the most healing things that could happen for us’ as a Jewish community is to know and see how someone can change a racist mindset and be integrated into the local community as a contributing citizen.”

Ted Lewis, Restorative Justice Program
Manager

Sentencing

Guidelines 12-18 months

Zone D – required sentence of imprisonment

PSR recommendation – 12 months
imprisonment

“It goes without saying that this hope for ongoing change is linked to **concerns about Gabriel going back to a prison environment where skinhead racism is present, posing a challenge for Gabriel either to regress or be at serious risk.** The sentiment has been expressed that enough pain was caused by the initial crime and its aftermath. **The need is not for additional pain and loss, but for ongoing reparation and restoration.**” Ted Lewis, Restorative Justice Program Manager

Sentence Imposed

5 years probation

6 months work release

6 months home detention

restitution for property damage

Skeptical? Studies Show>>>>

- Helps offenders take responsibility for harm caused by their behavior and learn empathy
- Models constructive ways of dealing with conflicts and alters criminal thinking
- Helps motivate offenders toward rehabilitation
- Reinforces ability of offenders to resist criminal thinking

- Correlates with reduced recidivism
 - Ministry of Justice, UK, *Restorative Justice and Reconviction*, (July 2008)
 - Bonta, J., Wallace-Capretta, S., Rooney, J., & McAnoy, K. (2002). An outcome evaluation of a restorative justice alternative to incarceration. *Contemporary Justice Review*, 5, 319-338.

- Helps victims feel more in control
- Lessens feelings of isolation
- Reduces trauma from process

Origins Of DIVO



- Defense lawyer, Dick Burr, realized that it was important to learn what needs of victims might be met within criminal justice process; understood that defense team could not, and should not, ignore victim's needs for information, to have the right person held accountable; to avoid retraumatization
- Howard Zehr and Tammy Krause at Eastern Mennonite University teamed up to teach lawyers how to be sensitive to victim's needs

DIVO asks Two Basic Questions to Victims

- What is most important to you?
- What are your needs within the judicial process?

Meeting Victim Needs – *U.S. v. Cary Stayner* (murder in Yosemite NP)

- Victims wanted to:
 - Avoid retraumatization associated with trial
 - Keep Stayner from profiting from crime, making statements to media, or granting interviews
 - Preserve option of meeting with Stayner and having him answer questions about offense

- Plea agreement provisions addressed victim's needs:
 - Guilty plea to life sentence rather than death penalty trial
 - Anti-profiting; anti-publicity clauses
 - Agreement to participate in a facilitated meeting with family in the future

Reaching out to Victims

U.S. v. Jeffrey Shifler (hate crime)

- Delivered Shifler's apology to victims and community activists

- Listened to victims describe harm caused by Shifler's conduct

- Answered questions about what motivated Shifler's actions

- Made facilitated victim/offender meetings available to willing victims and community stakeholders

- Sought to incorporate facilitated victim/offender meetings into sentencing package

Nurturing Restorative Justice



Change our Thinking

- Rethink our assumptions that victims's needs are not met unless max penalty attained
- Recognize that victims's needs are not uniform
- Shift our focus from adversarial win/lose processes to restorative ones
- Question the assumption that offender accountability = a prison sentence
- Think of accountability as making offenders aware of harm and taking steps to restore victim and community
- Recognize that the needs of victim, offender, and community stakeholders may intersect

Amend the Guidelines

- Build into the guidelines a mechanism to encourage dialogue among victim/offender/community stakeholders through counseling, reparation, mediation, and other RJ processes
- Build into the guidelines the flexibility for judges to decide whether the offender's participation in a RJ process sets him apart from other offenders and warrants a lesser sentence

Recognize that not all disparity is wrong or avoidable

- The needs of victims, their willingness to participate in an RJ process, and the offender's willingness or ability to repair harm may vary
- Individualized case variables may warrant a different sentencing package

Provide \$\$ and Other Incentives

- Provide funding for trained victim outreach workers and mediators
- Set up pilot projects for RJ practices – mediation, sentencing circles, DIVO
- Have judges encourage presentencing victim/offender meetings or other RJ processes

Additional Resources

- <http://www.restorativejustice.org>
- The Georgia Council for Restorative Justice,
 - Pamela Blume Leonard (404-651-3563) or (pleonard@gsu.edu).
- www.voma.org (Victim-Offender Mediation)

- <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/welcome.htm>
 - Compilation of materials from 6 symposia on restorative justice hosted by DOJ in 1997/1998
- Erik Luna and Barton Poulson, *Restorative Justice in Federal Sentencing: An Unexpected Benefit of Booker?*, 37 McGeorge L. Rev. 787 (2006)
- Minnesota Department of Corrections, <http://www.doc.state.mn.us/rj/default.htm>

“It is clear that the way to heal society of its violence...and lack of love is to replace the pyramid of domination with the circle of equality and respect.”

Manintonquat, Elder of the Assonet Band of the Wampanoag Nation