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Restorative Justice in Complex Cases: Sexual Violence

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Practitioner Researcher

- ***Systemic and Forensic psychotherapist*** – always saw people in relationship – never as isolated entity
- ***Victims, Offenders, families and Networks***
- ***Doing RJ before I called it that***
- ***Trained in RJ at UU; Mark Umbreit [Ireland]; Janine Geske, [Ireland and US]*** [max security prison Wisconsin]
- ***Research*** focused on RJ and SV
- ***Teach*** about these subjects
- ***Extern Examiner*** - Uni Ulster for RJ Masters / Diplomas/ Certs Programmes
- ***Facilitate cases***

Distinction: 'Restorative Justice' and 'Restorative Practice'?

- **RJ focused on crime ; RP on everything else involving 'conflict' outside of crime**
- ***Slippage:*** Everything and nothing
- Need to keep **Justice** in the title of what we do in relation to / response to crime
- **Justice:**
- A concept based on **ethics and law** that means people behave in a way that is Fair; Equal and Balanced for Everyone
- Justice is the **legal and philosophical theory** by which fairness is administered
- Justice is an important **moral and political concept**

Restorative Justice and Thinking about 'Crime' as a Public Matter

- **Public matter** - violation of social norms, of penal code
- State on behalf of its citizens has obligations to Detect, Investigate and Prosecute wrongdoing – gather evidence, try the evidence against a 'beyond reasonable doubt' evidential threshold, punish, rehabilitate offenders
- Safer Societies
- Complainants / Victims and Accused/ Offenders have rights: Citizens have rights to have state investigate wrongdoing against them; accused persons entitled to Due Process

Restorative Justice and Thinking about 'Crime' in its Private Dimensions

- Crime is fundamentally a violation of people and interpersonal relationships – ***Private or personal aspects of the problem***
- Violations create obligations and liabilities (offender accountability);
- Restorative justice seeks to heal and put right the wrongs and in some cases offer forms of reparative justice.
- ***Need both Public and Private responses – Formal and Informal-legitimated Justice Responses***
- ***Not Either / Or Both/And***

Distinction: 'Restorative Justice' and 'Mediation'

- May be linguistic
- Process Dialogue Driven
- Outcome Driven

Core Values of Restorative Justice

Truth,

Justice,

Solidarity,

Responsibility taking,

Dignity

Respect

Core Principles of Restorative Justice (RJ) Applied to Sexual Violence

- **Victim-led/ victim initiated** approach
- Offender **responsibility** for the harm caused
- Participation on a **voluntary** basis
- **Safety paramount** [physical, emotional, procedural]
- **Flexible-** context and case specific
- **Preparation, Preparation, Preparation**
- **Process rather than Event** focused
- **Training of facilitators:** (1) Impact of trauma; (2) Dynamics of Power-based Crime/ Sexual Violence; (3) The Law and Due Process (as well as RJ)

Core Methodologies: Restorative Justice after Sexual Crime

1. V-O Dialogues / V-O Mediation [Direct or Indirect]

- Direct Face to Face
- Shuttle Mediation
- Use of Videos

2. RJ Conferences

3. Healing Circles

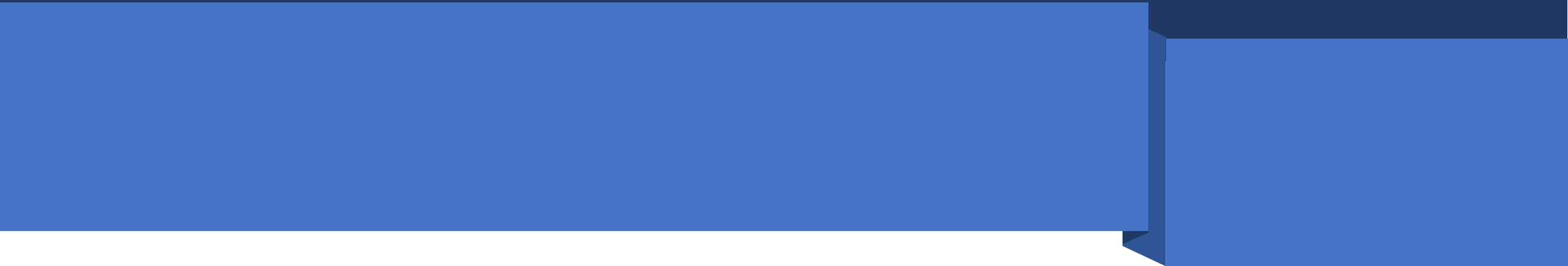
Methodologies

- Participatory
- Flexible
- Addressing the harm caused
- Reparation
- Past, Present and Future Oriented

Methodologies

- Encounter
- Amends
- Reintegration
- Inclusion

RJ after SV: Concerns and Responses



HOW ARE CONCERNS FOR VICTIMS ADDRESSED IN PRACTICE?

Concerns	Solutions in Practice
<ul style="list-style-type: none">• Re-victimisation• Re-traumatisation• Power imbalances• Safety	<ul style="list-style-type: none">• Voluntary participation• Right to withdraw at any time• Preparation• Risk assessments – not to prevent participation but to inform RJ process• Physical, emotional and procedural safeguards• Training of facilitators• Choice of direct (face-to-face) or indirect RJ• Time-out mechanisms

HOW ARE CONCERNS FOR / ABOUT OFFENDERS ADDRESSED IN PRACTICE?

Concerns	Solutions in Practice
<ul style="list-style-type: none">• Suitability of sex offenders for RJ – will they manipulate process for their own ends?• Due process rights:<ul style="list-style-type: none">• Presumption of innocence• Right against self-incrimination• Right to fair trial	<ul style="list-style-type: none">• Risk assessment – not to prevent participation – but to enhance and inform the RJ process• Preparation• Participation is voluntary• Right to withdraw from RJ process any time• Procedural safeguards such as confidentiality safeguards / firewall between criminal justice and restorative justice if happening in parallel

The Inter-relationship between Restorative Justice and the Criminal Justice System

- Should RJ be available within, alongside or outside of the CJS?
- If RJ is used within CJS, at what point should a referral be made (post-charge, pre-sentencing, etc)?
- RJ should be a justice option available within the CJS, alongside it and outside of the CJS – menu of justice options for victims
- RJ should be available at all stages of criminal proceedings

Case 1. Julie and Her Uncle Michael

- Abused by Uncle when Julie aged 4; Maternal Uncle Michael aged 17 years
- Disclosed to her mum who informed Michael's parents
- No reporting to authorities
- 26 years later, Michael aged 43 getting married; Julie aged 30 also getting married
- Michael came to Julie's town to apologize
- Fourteen years later Julie consulted MK– looking for restorative justice

Case 2. Laura and her Dance Teacher's Husband Daniel

- Laura aged 14 babysitting for dance teacher's two children
- Estranged husband Daniel (30 years old) arrived to see his children
- Raped Laura twice that evening
- Laura told her aunt on return home – taken to police station by her mum
- Daniel convicted and served a two-year prison sentence
- Laura travelled to farthest part of the world on graduation from college
- Spent 15 years trying to get away from the memories of offence
- Aged 30 returned home with medical condition
- Consulted MK for Restorative Justice on randomly hearing about RJ at a peace building centre

Benefits and Challenges Victims

Benefits

- Empowerment
- Offender accountability to victim [as distinct from state]
- Exercise voice
- Make statements
- Ask questions
- Hear offender's account from own mouth
- Understand but not excuse Sexual Violence
- Change 'the memory card'
- 'Get out of relationship' with offender
- Apology and Forgiveness

Challenges and Concerns

- Lack of awareness of service availability
- Discouragement / Fear on part of loved ones
- Difficulty of 'facing' fear [but prep process helps with this]
- Too much time had Elapsed – moved on, trauma
- Ownership and Control of Decision-Making
- State Support and Legitimacy – Bottom Up and Top Down

Benefits and Challenges Offenders

Benefits

- Do something honourable after such dishonour/ Repay a moral Debt
- Answer Questions Honestly –for the first time
- Apology and Expression of Sorrow
- For the benefit of victim - to see victim move on with their lives
- Forgiveness
- Family re-unification
- Social reconciliation and re-integration

Challenges

- Too much time had elapsed
- Fear and Shame
- Adversarial Culture of Criminal Justice- not 'allowed' apologise
- Further stigma and exposure after RJ
- Self incrimination/due process
- Court Orders prohibiting contact with Victims
- Lack of awareness of service availability – why would victim want to meet me
- Discouragement / Fear on part of loved ones

Have we the
correct term?

- Justice – we started with Justice
- Restorative – what is restored?
- Victims tell us Power is restored.....
- I think we have the correct term for what we are doing

Conclusions

- No longer deny access to victims who want restorative justice
- Obligation to make practice as safe as humanly possible
- Delivered by agency or agencies with statutory legitimacy
- Well trained facilitators
- Publicity to make services known
- Not a lawyer free zone – but the role of lawyer 'different' to criminal justice



Conclusion

Anything worth doing in the human endeavour always involves risk – we can work to minimise risk with excellent practice, excellent training, excellent preparation

Work with Imagination as well as Evidence

Proceed with Courage as well as Caution



Thank You
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