Challenging Perceptions: Why Victims Often want to Meet their Offender in the Aftermath of Sexual Crime

Email: marie.keeenan@ucd.ie
Outline of Presentation

- Locate My Interest in RJ
- Understand why some victims and offenders of sexual crime want RJ
- Identify some of the key areas of international debate regarding RJ in cases of SV
Locating my Interest:

Justice for Victims
Accountability of Offenders
Healing for Both
Extent of Sexual Violence in Ireland

- 30.3% Irish Females, 23.6% Irish Males - sexual abuse in childhood
- 25.6% Irish Females, 12.4% of Irish Males - sexual assault in adulthood
- 42% females and 28% males sexual violence over life-time (SAVI, 2002: xxxii)
Recent Features of Criminal Justice

- Reporting on Increase [increase by over 50% 2008-2012]

- Attrition rates Increase [decline in sexual violence cases prosecuted e.g. in rape cases 73% in 1977; 19.5% 2007; 15% in 2012 (Lovett and Kelly, 2009; CSO, 2014)]

- Conviction rate low [100 cases of rape, 8 convicted] (Hanley et al, 2010) [Just over 2% rape cases 2007 resulted in conviction]
Victims: Criminal Justice Mechanisms

- Evidential Threshold “Beyond Reasonable Doubt” problem in (a) cases proceeding to trial and (b) in securing convictions

- Secondary Victimization by process itself

- CJS cannot provide therapeutically-sensitive remedy for the trauma and disempowerment experienced by many victims of sexual violence.

- Even when ‘Justice’ achieved in Criminal Proceedings there are unmet needs for Voice…
Victims: Civil Justice Mechanisms

- Civil Justice System [Costly, Lengthy and Adversarial]
- Evidential Threshold “On Balance of Probability”
- Adversarial Nature and Hard to follow up for settlements
- Many victim survivors cannot not take this option
- Justice Gaps for Victims……

- Accountability Gaps for Offenders…..

- Healing Gaps for Both……even where there have been Conventional Justice Responses
Victimization is a process – not a category or identity

Justice is a process – not an event or intervention

Diverse experiences of victimization

Diverse demands for justice

Multiple goals for justice which can change over time… requiring multiple responses (Daly, 2014)
Restorative Justice:

What is it and Why do Victims want it and Why are Offenders willing to Participate
What is RJ

- An approach to crime that focuses on repairing the harm done to people and relationships

- What harm has been done
- What needs have arisen
- Whose obligation is it to meet those needs? (Zehr 1990).
RJ as a Framework

- For thinking about ways of humanizing justice

- Of bringing victims and offenders together … with Community involvement ….sometimes

- Using Various Methodologies… in SV cases…VOM/VOD; Conferencing; Circles
A Victim-led approach to Justice
- Participation is voluntary (Koss 2014);
- Offender must take responsibility... for the harm done (Continuum of responsibility);
- Safety of all is paramount
- Preparation is key
- SV- Facilitators... RJ, Trauma and SV
Sexual Trauma and Abuse: Restorative and Transformative Possibilities (2014)

- Qualitative Study, Oct 2012 - May 2014,
- 149 People interviewed (30 victim – survivors; 23 offenders)
- Interviews on average 2-3 hours [some less]
- Analysis using Atlas ti
Why Victim Survivors want RJ

- Face the Offender …with Statements
- Face the Offender …with Questions
- Healing
- As a mechanism of Accountability
- Understanding but Not Excusing Sexual Violence
- Family Reconciliation
- ‘Getting out of Relationship’ with the Offender
- Apology and Forgiveness
Why Offenders would agree to Participate in RJ

- Debts owed, Moral Obligation
- Opportunity for Victim’s to Confront person who harmed them
- For Victim to ask questions and get ‘Honest’ answers
- Apology and Expression of Sorrow
- Healing for Victim, Offender and families of both
- Desire to see Victim Move on with their Lives
- Forgiveness....
- RJ would fill a gap in the CJS
RESTORATIVE JUSTICE IN CASES OF SEXUAL VIOLENCE

- Victims: RJ not as Alternative to CJS but Additional Justice Mechanism

- Exception: Intra-familial and Young Offenders

- Victims want RJ available for all who require it (even if not for themselves)

- Offenders would take part if requested to do so
Concerns – Victim Survivors

- Too much time hadElapsed – moved on, trauma
- That RJ would be promoted as alternative to CJS
- Ownership and Control of Decision-Making
- State Support and Legitimacy – Bottom Up and Top Down
Concerns - Offenders

- Adversarial Culture of CJS and Relationship between RJ and CJ
- Court Orders prohibiting contact with Victims
- Institutional Inertia
Key Areas of International Debate Regarding RJ in Cases of Sexual Violence
Is RJ Dangerous for Victims?

- Re-victimization
- Re-traumatization
- Power-imbalances
- Safety

- Voluntary Participation
- Preparation (Risk Assessment of Offender? Victim?)
- Physical and Emotional Safeguards
- ‘Time out’
- Training of Facilitators
- Direct vs Indirect Meetings
Are Sex Offenders suitable for RJ

- Could they Manipulate the process?
- Could they further damage the Victim?
- Risk assessment
- Preparation, Preparation, Preparation
- Listen to Victims

Concerns

Practice Responses
Is RJ Suitable for Sex Offenders?

Due process rights:
- Presumption of innocence
- Right against self-incrimination
- Right to fair trial

Practice Responses
- Participation is voluntary
- Right to withdraw from RJ process at any time
- Procedural safeguards such as confidentiality safeguards….
- Lawyer with New Role..

If we constrain ourselves to Therapeutic Jurisprudence – which centres on legal mechanisms and legal actors - are we serving Victims and Offenders well – or are we limiting the range of justice options for victims?

Timing of RJ

Ultimately…. Who decides?
Conclusions

- The Practice is happening ‘Under the Radar’
- Time to consider Innovations in Justice Responses to SV as well as continuing to improve Procedural Justice and Conventional Justice Mechanisms
- Work with Imagination as well as Evidence
- Proceed with Courage as well as Caution
Thank You

marie.keenan@ucd.ie