

Sociology 3395: Criminal Justice & Corrections
Lecture 22: The Dynamics of Restorative Justice Sessions:

For some time, criminal justice professionals in search of an alternative paradigm to that of the traditional punitive approach have been advocating various models of restorative justice (Umbreit, 2001; Braithwaite, 1999; Marshall, 1999; Zehr, 1990; Christie, 1977). This approach draws upon such practices as peacemaking, mediation, negotiation, alternative dispute resolution, conflict management and various forms of constructive engagement, particularly between victims, offenders, and the community at large. Such ideas have spurred initiatives all over the world (Young, 2001; Hoyle and Young, 2002; Masters, 2002). Canada's federal and provincial governments have reflected this broader trend (Law Commission of Canada, 1999; N.S. Department of Justice, 1998).

Since one major drawback of the traditional criminal justice system has been the officially sanctioned lack of victim involvement (Kenney, 1998; 1995), one key advantage proponents of restorative justice point to is its emphasis on involving the victim (Law Commission of Canada, 1999; Christie, 1977). Indeed, it has been asserted that restorative justice is "perhaps the boldest initiative addressing the role of the victim in justice within the modern era (Achilles and Zehr, 2001, 87). Nevertheless, questions have been raised about the difficulty in convincing victims to give restorative justice a chance (Unbreit and Greenwood, 1998), and about the need for better practice in involving victims in these programs (Masters, 2002), all backed up by widely varying levels of victim participation (Masters, 2002; Zedner, 2002). This is ironic, given that surveys have often shown that significant proportions of victims are not only willing to participate, but that those that do are frequently highly satisfied with the process (Karmen, 2001; Zedner, 2002; Masters, 2002; Latimer et. al., 2001; Morris and Maxwell, 1998; Niemeyer and Shichor, 1996; Walgrave, 1995).

Yet, beyond such surface debates, relatively little is presently known about the interpersonal dynamics between victim and offender in restorative justice sessions (Cormier, 2002; Latimer et.al., 2001). Of course, there are Braithwaite's well-known ideas on "reintegrative shaming" (Braithwaite, 1999), in which shame is said to be used by the parties, and guided by the facilitator, to help effect a resolution of the problem, along with healing between the parties and community. In this respect, there are also descriptions of the general itinerary or sequence of events characterizing restorative justice sessions (Karmen, 2001). However, academics have commented on the need for more empirical research on the actual processes involved in restorative justice programs (Latimer et. al., 2001), particularly with regard to "how it works" (Cormier, 2002).

To a limited extent, ex-post facto surveys and follow-up interviews have shed light on restorative justice sessions (Clairmont, 2001; Karmen, 2001; Zedner, 2002; Masters, 2002; Morris and Maxwell, 1998; Niemeyer and Shichor, 1996; Walgrave, 1995). For example, it has been found that victims value their recognition under such approaches, appreciate the opportunity to communicate with the offender, to describe what happened to them, and receive answers about

the motivation of the offence. It has also been noted that victim participation can significantly mitigate levels of anger and fears of further victimization (Strang, 2000, Umbriet, 1994). When contrasted with victims whose cases were only dealt with in court, restorative processes are evaluated far more positively, as more equitable and more satisfying (Strang, 2000). Indeed, most victims would participate on future occasions, and recommend that others in their position do so as well (Hayes et.al, 1998; Strang, 2000).

Yet, the process may be more important than the product. Such theoretical and ex-post facto empirical work needs to be supplemented by other, more directly observational materials to cross-check that what theorists and participants say corresponds to how restorative justice operates in practice. Therefore, the current paper presents results from an observational study of restorative justice sessions in a medium sized Canadian city conducted during 2003.

The general methodological position in qualitative, observational research is to operate inductively, to ground theory in the data (Glaser and Strauss, 1967). Nevertheless, it is permissible to utilize "sensitizing concepts" (Blumer, 1969) that suggest "where to look, not what to see." On this basis, there are a number of interesting theoretical issues that may emerge when considering the potential types of interpersonal dynamics being studied. Aside from evaluating the implementation of Braithwaite's reintegrative shaming, it is important to recognize that several potentially significant interactional matters emerge from the sociological and social-psychological literature.

First, there is the issue of *presentation of self* (Goffman, 1959). How do victims and offenders present themselves in restorative justice sessions in order to put themselves in the most favourable light? This largely surrounds the question of *how they employ the victim role* in relation to both the circumstances of the crime and the situation at hand. For example, Holstein and Miller (1990) argue that the victim role has four practical objectives: (1) deflecting responsibility; (2) assigning causes; (3) specifying responses and remedies; and (4) accounting for failure. Of course, the assignment of victim status to persons is generally associated with the assignment of victimizer status to others. Significantly, since both victim and offender in restorative justice sessions will likely be attempting to present themselves in the most favourable light - both in relation to *what happened*, what was *behind* it, and in the *current interaction* - it is important to carefully note the degree to which these sessions turn into "victim contests" (Holstein and Miller, 1990).

Indeed, given that such self-presentation is political, part of what Foucault (1972) called the "politics of description," a related consideration comes to mind. Candace Clark (1990) emphasizes the manipulative potential in each individual to use emotions as interactional "place claims" to shape definitions of situations and of self. She asserts that individuals can use their own emotions in a variety of "micropolitical strategies" to enhance their "place" both to themselves and to others in an interaction. Of course, if this "place" is a definition of the situation of oneself as victim and another as the victimizer, then observers should carefully consider the degree to which parties use emotions to emphasize their definition of the situation (and thereby buttress their "negotiating position").

The upshot of all this is that victims (or their representatives) may initiate, or even be encouraged to initiate sessions by emotionally presenting graphic details about what the offender did and how it affected their lives, and so on. The offender may counter that s/he was abused, had a poor upbringing, limited coping skills, was under stress, and that the victim provoked the argument that led to the offense. In other research (Kenney, 2002), one of the authors has observed that victims - and others - utilize the victim role both as a "sword" (to achieve goals) and as a "shield" (to deflect criticism), and that they alternate between these depending on the situation at hand (a tactic referred to as "volitional gerrymandering"). Rhetoric surrounding race, class, and gender may play a role on either side of these "victim contests." Ultimately, the belief in the factual status of each victim claim "depends upon such things as credibility, influence, and warrant for honouring one set of claims over another" (Holstein and Miller, 1990:114). Naturally, in such a *potentially* adversarial context (which is ironic considering that restorative justice is supposed to be about getting away from the adversarial model), the party who is most successful in making the victim claim may have a better chance of obtaining, or "negotiating" the restorative outcome they desire. Thus, it is important to carefully note the interplay of parties and the employment of the victim role.

Secondly, while it is crucial to remain cognizant of how these matters of power and influence potentially affect sessions, it is also important to attend to issues surrounding *empathy*. To some extent the restorative justice model, which emphasizes "working things out" and "negotiation," requires both the victim and the offender to at least "take the role of the other" (Mead, 1934), and to develop some degree of understanding of each other - even if it is negatively drawn or to be used simply as material to better manipulate the definition of the situation. We suspect that developing empathy will be difficult in certain offenses, but that building it, or some sort of understanding based on recognizing shared interests, will be necessary for sessions to be successful. Thus, we attempted to remain cognizant of the ability of participants to develop an understanding of each other, or to use empathy to their advantage, and how these evolve over time.

Naturally, since the problem with some habitual offenders is that they either have little empathy for others, or use their ability to understand others as a tool to achieve their own ends, any program premised on empathy and negotiation must take this into account. Thus, observation of apparently empathetic behavior by offenders must be balanced with a questions about self-presentation.

Third, we found it important to examine the behavior and roles of parties other than the victim and offender. For example, what do facilitators do? Do they engage in "reintegrative shaming" (Braithwaite, 1989). How do they encourage the parties to see shared interests? To develop empathy? How do facilitators handle rhetorical (and emotional) victim claims from each side? Deflate an escalating victim contest? Keep the process from becoming adversarial?

Fourth, if both victim and offender have support persons present (such as lawyers, family members and/or agency representatives), how do these interact to either build empathy or buttress alternative victim claims? If victim panels are utilized, how do these impact the victim's

behavior? Do they make the victim bolder in making claims or resisting the need to build common ground, or simply shelter and support the victim when under pressure? Each of these matters had to be addressed.

Finally, all of these matters must be related back to questions of whether the parties' needs appear to be met, and how. On the one hand, are these sessions observed to simply add to individuals' concerns? Indeed, since victim-offender sessions are the centrepiece of this whole criminal justice reform, we felt it important to keep our eyes open for practices or typical encounters that impact on these considerations, and whether they varied by type of offence.

In sum, in addition to the theory and the limited empirical work done to date, there are a number of very important processual issues to examine in evaluating restorative justice in practice. Again, we must reiterate that these merely represent "sensitizing concepts," and that other significant issues emerged from the sessions themselves.

Methodology:

Between April 2003 and May 2004, the authors personally attended, observed, and took detailed field notes at 28 youth restorative justice sessions with potential victim involvement, held in and around a medium-sized Canadian city. The sessions attended were based on lists provided by community justice agencies designated to run the restorative justice program by the provincial Department of Justice. These included times, dates, places and a contact numbers for session facilitators. Facilitators were notified that one of us would be present, and we were in touch with facilitators ahead of time in case of cancellations.

As noted earlier, these observations were not intended to involve rigid, deductive hypothesis-testing in the traditional sense. Rather, we used the above issues as "sensitizing concepts" indicating where to look, not what to see. Given the paucity of information on the dynamics of restorative justice sessions, we followed Glaser and Strauss' (1967) primarily inductive, "grounded theory" approach where the theory largely emerges out of the observations, not the other way around. This enabled us to be more open to matters that we would not be attentive to otherwise, making for a more comprehensive piece of research.

As in much qualitative, observational research, sampling was an ongoing procedure in the data collection process (Berg, 1995). However, attempts were made over time to clarify and validate observations, to resolve anomalies and contradictions, and to fill in parts of the social process that had not yet been observed. Sampling and data collection continued in this fashion until reaching the point of "theoretical saturation" (i.e. the point where incoming data reveals nothing new).

For ethical reasons, our attendance at these sessions was noted to participants, who had the opportunity beforehand to ask questions about our role. Upon their arrival, parties were informed that we were external evaluators of the conduct of these sessions, attempting to find ways to

improve sessions for future participants. They were provided with informed consent by indicating that our role was not to participate directly in what is going on, but merely to observe, take notes, and remain as unobtrusive as possible. It was clearly indicated that their participation was voluntary, that no names would be used, and that confidentiality would be maintained in data collection, storage, reporting and publication. Their permission for us to observe and take notes on the proceedings was obtained before proceeding, and we gave our commitment to destroy these materials following completion of the analysis. In the event that participants did not wish to participate directly, or the victim did not show up, we simply left without observing the session.

Once collected, handwritten field notes were transcribed and entered into the qualitative analysis software Q.S.R. NUD*IST. Using a procedure of open coding, a systematic filing system was developed (Berg, 1995). Coding and analysis initially proceeded according to various common and special classes (e.g. victims' relation to the offender for the former; specific offence for the latter). As the process of "minutely analyzing" the data progressed, these materials were coded and recoded into theoretical categories that emerged from the data as well. Throughout this process, emerging theoretical categories and the various sources of data were continually "cross-checked" and subjected to "negative case testing." If inconsistencies were located, emergent ideas were either discarded or reformulated until "practical certainty" was achieved.

Findings:

Our findings will be discussed under a variety of headings. First, we will describe the general characteristics of the sessions in the sample. Next, the politics of description inherent in the format of restorative justice sessions will be discussed. Third, the rhetorical use of the victim role by those designated as "victims" and "offenders" will be outlined. Fourth, the crucial role of the "victims" and "offenders" supporters will be dealt with. Fifth, the strategic role that facilitators play in these sessions will be delineated. Finally, the impact of all of these factors on the outcome of restorative justice sessions will be considered.

1. Session Characteristics: For a medium sized city (Pop 350,000) making up approximately 37.5% of the provincial population, we were struck that there were relatively few victim-offender sessions scheduled, and even fewer ultimately held. Program officials granted us permission to attend 96 sessions during 12 months.¹ Indeed, while we were aware that more sessions were being scheduled per month than we were permitted to attend, this number is still estimated to be low compared the 2736 youth charged with Criminal Code offences in the province in question

¹ This, of course, raises the issue of the representativeness of our sample. We were aware of the fact that authorities considered certain sessions to be too sensitive for us to attend, and of their concern for the participants if outside observers were present. There was no practical or ethical way around this. While we feel that we have a broad cross section of offences, participants, and demographic characteristics, our conclusions must be qualified on this basis.

during 2001 (Savoie, 2002).²

With particular regard to the sessions we were scheduled to attend, the breakdown is as follows:

Complete Victim-Offender Session:	24	(25.00%) ³
Party Missing/Accountability Session	14	(14.59%)
Cancellation	25	(26.04%)
Objection by Party	1	(1.04%)
<u>Unknown</u> (unable to attend)	<u>32</u>	<u>(33.33%)</u>
	96	(100.00%)

Despite having no information on one third of these sessions, which must be considered in interpreting these numbers, it nevertheless remains clear that there were a relatively high proportion of scheduled sessions cancelled. There were also a significant number of sessions where one of the participants - either the victim or the offender - did not show up.⁴ Indeed, one facilitator is on record as saying “90% of my sessions are up and down...maybe they’ll be cancelled, maybe not.” Again, while complete information on all sessions was not readily available, this preliminary information does at least suggest that, despite its clear potential to revolutionize youth justice, restorative justice is still quite limited in its reach, and that further efforts may be necessary to bring parties to the table. All of this speaks to the sensitivity - and difficulty - of working and conducting research in this area.

Of the 28 sessions we attended, the parties exhibited a number of interesting characteristics. The 37 young offenders represented were overwhelmingly male (81.1%), white (78.4%), and working class. There were only 7 female and 8 non-white offenders (mostly African-Canadian, Aboriginal and mixed race). Of the 34 victims present or represented, 21 (61.7%) were adult individuals (including 6 offenders’ parents), 6 (17.65%) were other teens, 5 (14.71%) were adults representing institutional victims, and 2 (5.88%) were police officers. Offender supporters, present in all but 4 of these sessions, were predominantly parents, though there were small

² Other types of sessions such as accountability sessions (with no victim), special group sessions dealing with drug education or shoplifting, and community service orders make up the remaining cases, in addition to those youth formally processed through the courts.

³ Indeed, when it is considered that 3 of the complete victim-offender sessions took place outside of the municipality, it could be said that there were only 21 completed sessions in that jurisdiction (21.88%).

⁴ Depending on the facilitators instructions from the agency, these could revert to an “accountability session” where the facilitator attempted to shame the offender on behalf of the absent victim or community. In most such instances, researchers did not remain to collect data. However, while not technically providing data on victim-offender dynamics, one of the researchers remained to collect data during 4 of these sessions to provide a point of contrast.

number of grandparents, uncles, aunts, and step-parents.⁵ Victim supporters were comparatively scarce, present in only 10 of the 28 sessions. Of the 12 individuals present in this capacity, 5 were police officers, 3 were parents of the direct victim, 2 were the victim's partner, 1 a friend of the victim and another a victim surrogate.

In the 28 sessions attended, there were 40 different facilitators. 10 of these individuals (25%) were involved in more than one of the sessions attended. 27 (67.5%) of the facilitators were female. 10 (25%) were non-white, almost evenly split between African Canadians and Aboriginals.

The incidents in question covered a wide range of possible charges. Of the 44 possible charges noted in these sessions, the most common involved theft (22.73%) and assault (22.73%). These were followed by break/enter and mischief (both at 9.1%), property damage (6.82%), possession of stolen property and resisting arrest (both at 4.55%). What remained were a series of other charges that appeared only once. These included arson, auto theft, a possible weapons violation, fraud, drug possession, a liquor violation, careless and imprudent driving, and trespassing. One particularly interesting case also involved an offender who, in part, was brought back to restorative justice for lying in a previous session. One thing that should also be noted with regard to these incidents overall is that since the repeal of the Young Offenders Act and the Advent of the Youth Criminal Justice Act, the incidents referred to restorative justice later in our research have tended to be of a potentially more serious nature, due to the fact that the new legislation provides more discretion for less serious, non-violent incidents to be referred away from the official criminal justice process that serves as an entrance point for the restorative justice program.

Finally, the vast majority of the 28 sessions resulted in a written contract being negotiated between the parties to resolve the issue (2 were not resolved, though one of these was postponed due to time constraints). Of the 78 separate terms included in these contracts, the most common terms included a written apology, utilized in 10 of the 28 cases (41.66%). This was followed by restitution (33%), verbal apologies tendered at the session (25%), community service (21.43%), requiring the offender to write an essay (17.86%), and seeking counselling (including anger management) at (17.86%). While other terms appeared far less frequently, some were quite creative. These included participating in bullying programs, going on a ride-along with police officers, visiting burn units, fire stations and palliative care units to enable offenders to become aware of the consequences of their actions, having the offender conduct research on her particular mental health issue, doing household chores for parents, writing down details to assist in an ongoing investigation, and to work at building a relationship with the victim.

Now that the broad descriptive characteristics of the sample have been outlined, it is time to move on to session dynamics.

⁵Interestingly, of the 32 parents represented among offenders' supporters, approximately twice as many mothers as fathers attended (21:11).

2. The Politics of Description: Despite victimization surveys consistently illustrating numerous similarities between victims and offenders (Fattah, 2000), facilitators (and program officials before them) officially presume, even designate, individual parties as either “victims” or “offenders,” thereby placing them at an initial rhetorical and representational advantage or disadvantage in the process (Ashworth, 1993). This aspect of the “politics of description” is particularly notable following the initial introduction, where parties officially designated as “victim” or “offender” are directed by the facilitator to outline what happened, how they felt, etc. on that basis.

In this regard, sessions usually begin with the facilitator opening by introducing everybody, noting that the meeting is both voluntary and confidential. They then discuss procedure: each party has a say, gets to describe the impact of the offence, will discuss the issues that emerge, and will work to come up with an acceptable solution, hopefully to be later written up as a formal contract. Then ground rules are noted: one person speaks at a time; what is said is to remain confidential, that any facilitator notes will later be destroyed; and that it is important to treat others with respect. Facilitators also suggest that their role is to speak as little as possible, merely to help the parties work it out themselves and “keep things on track.” It is indicated that it will be important to establish common ground re: what happened. At this point, either the officially designated “victim” or the “offender” is usually asked to begin by describing the facts of the incident from that particular point of view.

This latter aspect of the “politics of description” places one party at an initial rhetorical advantage, as the “victim” enters the fray as one officially wronged, while the designated “offender” has to overcome, or respond to this characterization at the outset.

3. Rhetorical Use of the Victim Role: Those designated as “victims” and “offenders” quickly attempted to rhetorically assert victim claims - and the implications of the victim role - to their advantage. Beginning with those designated as offenders, it was clear that many attempted to use the victim role as a shield. For example, many admitted the offence, expressed feelings of remorse and guilt, apologized, but quickly went on to assert how the incident “ruined their lives,” listing the consequences and suffering they have gone through since (e.g. losing jobs, losing parental respect, trust, etc.). They often coupled this with claims that they have “changed,” “don’t hang with bad kids anymore,” and have since worked hard to improve themselves. This could be termed the “I’ve already suffered so don’t make it any worse” strategy.

Other offenders, less inclined to throw themselves on the mercy of the designated victim, attempted to somehow downplay their role in the offence, claiming, for example, that they were the victims of one kind of circumstance or another. One of the most common ways in which such offenders attempted to claim that they were victimized (i.e. less responsible) for the incident was by referring to peer pressure (“Haven’t you ever been a teenager? Kids are always asking you to do stuff?”). Others disputed the facts, claiming that they were “in the wrong place at the wrong time,” that they were singled out when others were really more responsible. For example, one young man claimed that he was a bystander who neglected to intervene when an unpredictable

acquaintance roughed up the victim and stole items of clothing, but was later fingered for the crime. Another young man claimed that he was merely the occasional lookout in a spree of break and enters, and wasn't sure if he even did that during the incident in question. Another claimed that what he took was commonly done by other employees, but that he was singled out by management. Such claims were much easier to put over when nobody was there, such as a police officer, to contest the story. Still other designated offenders emphasized dysfunctional family dynamics, abuse, addiction, or a disorder. For example, some pointed to problems in their home life or past victimization; others referred to intimidation, bullying, and consequential emotional problems since the incident, while still others pointed to how addictions or disorders such as ADD lie behind their behavior. In all such cases, offenders were attempting to portray themselves in some sense as victims, as having limited rather than full responsibility, and as suffering consequences from the incident. Whether these claims were true or not, using the victim role as a shield in this way illustrates how designated offenders both attempt to make up for their initial rhetorical disadvantage, and emotionally put themselves in a better "place" to negotiate a solution to the situation.

Before moving on, it should also be pointed out that a common - though frequently unsuccessful - strategy of using the victim role as a shield by the designated offender was stalling. This typically involved the offender sitting quietly and sullenly while others talked, uttering monosyllabic responses when questioned, claiming not to remember what happened, and attempting to give the overall impression that no matter what they did - or do - they will be the "fall guy." In many respects, such crude attempts at altercasting by young offenders inflamed the situation - and the claims of victimization - made against them.

But designated offenders went beyond merely using the victim role as a shield. In some cases they took a more robust stance by using the victim role as a sword. This typically involved attempting to turn the tables on the victim, claiming that the designated victim is really the problem, not them ("I'm not the bad guy here!"). The most common strategy in this regard was for the designated offender to suggest that the victim doesn't come to the table with "clean hands," that they provoked the act in question through questionable conduct of their own. One young man, for example, claimed "self defence," a young woman claimed that her mother's boyfriend didn't have any right to tell her what to do - and that he was "trying to control her." Another young man asserted that he could "pick his own friends." Another angle was to claim that the designated victim "has issues" that lie at the root of their own behavior. Finally, some designated offenders attempt to open the battle on a new front, claiming that, for example, the designated victim "roughed them up" when caught. Such claims at times threw designated victims off guard, prompting defensive posturing - particularly if supported by others in the session such as parents. Other times, they served to escalate the matter and frequently called for facilitator intervention.

Designated victims also rhetorically emphasized the victim role, but focussed much more directly how their victim status related to the actions of the offender. Beginning with their use of the victim role as a sword, the most common claim was with regard to just "how serious" the

designated offenders' actions were, and how things very easily could have been "much worse" (i.e. the "you got lucky so you'd better give me what I want" strategy). For example, one woman whose car was hit by a rock while driving emphasized how she could have had a serious accident, could have had a baby in the car, and then, pointing to a photo of the smashed window, exclaimed "this could have been my mother's head!"). Other common types of claims by designated victims using the role as a sword include references to the costs they have incurred and inconveniences suffered as a result of the offenders' actions (e.g. handling insurance claims), their shock at known offenders' identities and the breach of trust that resulted, the disrespect shown to them by the offender, how the impact of the offenders' actions relate to a previous trauma, special occasion, or items of sentimental value, and the broader impact on those around them (e.g. co-workers, customers). Many also pointed to factors and consequences that the offender may not be aware of, such as medical conditions that rendered the victim particularly vulnerable, their profound feelings of shock and terror (e.g. recurring images of the aftermath of violence, not being able to sleep in a burgled bedroom), their difficulty working and getting on with their lives, and so on. Such assertions, generally using the victim role as a sword, served to both reinforce their designated position as victim, as well as to overcome unwelcome victim claims by the offender during both the "shaming" phase and while negotiating the reparation contract with the offender.

But designated victims also utilized the victim role as a shield when necessary. Most common was the claim that, by being present, the designated offender has already accepted responsibility (a formal condition of the restorative justice program). One man, when confronted, for example, flatly stated "this is supposed to be about accepting responsibility, not shifting blame." Another victim, when the offender started to dispute the facts they discussed on the day he was fired for theft, simply said "you could have trusted me then, but here we are." Others designated victims claimed that impugned actions were necessary. One man, for example, when faced with claims of roughing up the offender when he was held pending the arrival of the police, claimed that he wasn't rough, merely protecting himself "in case he took a swing at me" (quickly backed up by his wife who said "I'm a Mom, I wouldn't let anything happen!"). Some, such as police officers, claimed that their actions weren't personal, that they were simply doing the job they were required to do. Many victims, when it was suggested that they were being too harsh, pointed that the offender had been given chances before, had repeatedly suffered as a result of the offenders' problems, and thus were well justified in their suspicions and distrust ("you've got to earn my trust"). Still others referred to how past incidents had "affected" them. Tears, upset, and obvious emotion also served to shield designated victims in this respect - such as in a case where a mother upset about her son's disputing the facts of his drug abuse shut down her son's claims of exaggeration through tears and the facilitator quickly intervened. In all such cases, victims, in one way or another, attempted to shield themselves from claims of victimization by the designated offender.

But perhaps the most interesting situations in the sessions observed occurred when these competing claims of victimization resulted in victim contests, where each side attempts, in effect, to claim that they're the "real" or the "biggest" victim in the situation - and thereby gain practical

control over both the definition of the situation and the ultimate outcome. When these become heated, they can often test the skills of the facilitator.

Victim contests were evident, to some degree, in all 24 sessions involving both designated “victims” and “offenders,”⁶ whether when discussing the incident or when negotiating a contract to resolve it. A number of possible outcomes were apparent : (1) the victim contest could escalate out of control, identification with the victim role by each side increase, and, as a result, the session was terminated, rescheduled, or sent back to court (3 of 24 victim/offender sessions:12.5%); (2) the facilitator could successfully intervene to get the session back on track and draw it to a successful conclusion (12.5%); (3) the victim contest could not be resolved, but the parties, not wanting to go through the justice system, “papered over” their differences with the aid of the facilitators (12.5%); (4) one party wins the victim contest with support from others such that the result of the session goes in their favour (5 sessions:20.83%); and (5) competing claims of victimization cut common ground and the victim role interactionally expands, such that both sides perceive each other as having been victimized somehow, effectively serving as a vehicle to resolve the issue (10 sessions: 41.66%). We will discuss examples of each scenario.⁷

The situation where the victim contest escalates out of control and the session is terminated in one way or another is relatively rare (only appearing in 3 cases).The best example involved a young offender with reported conduct problems who had reportedly assaulted his mother. Apparently there was a contentious issue over his associations with certain friends, perceived by the parents as the source of his problems, and there had been an argument over this matter immediately prior to the session. The argument quickly heated up again in the “storytelling” part of the session, with the youth asserting that “I can choose my own friends;” his mother and father blaming them for his behavior, what they had suffered, and emphasizing their right to set rules. As the facilitator tried to ask the parties probing questions about the incident, their feelings and perceptions in this regard, the parties continued to argue. The youth eventually asserted that “It doesn’t matter what I say, it will be twisted all against me in the end anyway.” Soon, one after another of the participants simply walked out of the session. The youth left with tears in his eyes, despite his bravado. Essentially, all participants in this session were using the victim role as a sword to such an extent that positions hardened and no common ground could be cut.

The second situation, where skilful intervention by facilitators prevented an escalating victim contest from derailing the session, is best represented by a case in which a young offender,

⁶ In the 4 “accountability sessions” that did not have a victim present, while rhetorical use of the victim role was certainly present, there were no “victim contests” per se. Under such circumstances, it was relatively hard for the facilitator to claim superior victim status when they were not involved in the incident.

⁷I should point out that these are the broadest possible characterizations, and overlap in some respects. It was certainly the case, for example, that successful intervention by the facilitator played a large role in most of these. However, since there were, in many sessions, more than one victim or offender, it might be better to say that these ideal types characterize the *predominant* dynamic between a given victim, offender, and facilitator in any particular session.

allegedly at the urging of another, shot at a moving vehicle, injuring a teenage girl. The injured girl, her mother, and the (unrelated) driver were present, as were the offender and his parents. One victim, the driver, got into an argument with the offenders' mother over taking responsibility instead of shifting blame, and things quickly heated up, particularly when the driver asserted that the boy "smirked" at him - countered by the mother's assertion that the man was "intimidating" the boy. Facilitators called for a break, and, after discussing the issue among themselves, reconvened the session. They stated that the notes indicated that the youth had accepted responsibility, but they would be willing to send the matter back to court if the parties preferred. After a pause, the injured girl's mother, the more symbolically potent victim, spoke up and said that the existing process was "fine," that she "only wanted to hear the offender express what he did was wrong with some conviction." The driver's attack was shut down in the eyes of all present (which was quite evident by his body language, not to mention his quickly dropping the matter). The offenders soon apologized and a contract was successfully negotiated. It was clear that this strategy by the facilitators opened up divisions between the victims and enabled the facilitators to manage the session to a successful conclusion.

The third situation, where the parties competing victim claims are "papered over" in the final contract, is best represented by a session where a teenage girl, allegedly suffering from a variety of psychological problems, behaved violently toward her mother and her mother's partner and damaged her mother's home. Much of the victim contest occurred between the mother's partner and the offender, who obviously did not get on well. The mother was clearly stuck in the middle, and such claims provided an additional dimension to this contest. Despite skilful attempts at seeking common ground by the facilitators (i.e. "you're actually very similar"), both sides continued to blame each other throughout the entire session. For example, the mother's partner claimed that the offender was rude, disrespectful, and violent, while the offender claimed that he had no right to tell her what to do since he wasn't her father, that he was interfering in her relationship with her mother, making the whole situation worse, and that her mother "could do better." In the end, a contract was grudgingly negotiated to write an essay and do a few household chores, largely because the parties saw it in their interest not to go to court so long as the offender continued treatment and medication. Even the facilitators commented afterward that very little had really been resolved - indeed positions had hardened. Nobody was under any illusions.

The fourth situation, where one party wins a victim contest over the objections of another, is illustrated by a case where the parties openly disputed the designated victim and offender characterizations at the outset. Generally, restorative justice sessions don't proceed unless the designated offender has "accepted responsibility." In this case, involving alleged theft from his previous employer, the youth had initially done so, and the victim (who had actually suggested restorative justice) attended on that basis. However, matters quickly degenerated into a "victim contest" between the designated offender and his parents, on one side, and the designated victim, on the other. The offenders camp asserted that the youth was merely following existing payroll practices at work, and that the new manager who fired him was being unduly harsh. They also asserted that "if he had been trained properly, this wouldn't have happened," emotionally claiming that the youth had suffered a great deal as a result. The victim objected that "this isn't

the story I was told,” that the offender “had accepted responsibility,” and emotionally emphasized that “if you had just trusted me, and been open with me about your mistake, we wouldn’t be here.” The facilitator reemphasized that restorative justice was only for those who accepted responsibility, otherwise the only choice was to go back to court. After the victim emphasized other unpleasant consequences in his business (e.g. a suspicious and resentful staff, many of whom were friends of the offender), and, buttressed by the facilitator’s position, the offender and his family grudgingly backed down and negotiated an agreement - largely suggested by the victim - to avoid going back to court. This example clearly shows how facilitators can be instrumental in settling these contests largely in favour of one party’s claims.⁸

The final situation, where the competing claims of victimization may cut common ground, is illustrated by several cases. For example, in one case, two mothers emotionally expressed throughout the session how the “victim” and the “offender” had suffered as a result of the incident, and gradually came to empathize as parents that both they and their children have been victimized, thereby paving the way for a resolution. This was buttressed further by their mutually expressed dismay over not being able to meet and work things out earlier due to contact restrictions imposed by the criminal justice system. In another case, after a very contrite offender articulated that “The same thing (since) happened to me and now I know what it feels like,” an initially critical family of burglary victims, themselves expressing feelings of fear and insecurity, gradually came to show clear empathy for the offender and his mother’s experience. This became particularly evident after the offender’s emotionally distraught description of his ongoing experience of bullying and property violation by former associates, his social isolation and consequent psychiatric care, all accompanied by the quiet tears of his mother. An agreement was reached with terms that were meaningful for all concerned. Indeed, in this latter case the facilitator went so far as to ratify all of this by exclaiming: “it seems like we’ve got 5 victims here tonight!” This shows that it is not just shaming that is reintegrative about restorative justice, but mutual feelings of victimization that permit feelings of empathy.

So, in the end, it was clear that designated victims and offenders each attempt to utilize the victim role as a sword and as a shield, both to portray themselves in the best light and to buttress their negotiating position. Where this was particularly important was when disputes arose, whether over factual elements (e.g. responsibility) or when negotiating the contract to resolve the incident. Such victim contests, when they occurred, were often central to the outcome of the session, as is evident in the five outcome scenarios above.

4. The Role of Supporters: In 12 of the 24 sessions where there was victim-offender participation, much of the interactional dynamic was not driven by the “victim,” “offender,” or facilitator, but by supporters of the parties. These tended to be cases where parents are in attendance and where the victim was not one of the parents themselves. This dynamic was often

⁸ While this situation has much in common with the third category where differences are “papered over,” it was felt that a separate category was necessary for those cases where there was a clear sense of defeat on behalf of one side - something that, for example, was not present in the case above.

furthered by the fact that many of the youth, particularly young offenders, were not very talkative in such instances - frequently sitting sullenly and giving very brief answers to direct questions. As a result, the adults tended to do much of the talking in such sessions. Indeed, even in those sessions where youth victims and offenders took a relatively active role, the role of supporters in buttressing claims, corroborating facts, and so on, could not be underestimated in relation to the outcome of the session. Therefore, it is important to consider the rhetorical use of the victim role by supporters of those designated “victims” and “offenders.”

First with regard to their use of the victim role as a shield, designated offenders’ parents have often gone to great lengths to both excuse their child’s behavior and emphasize how their children have suffered as a result of the incident. In the first respect, it was typical for parents to claim that the designated offender wouldn’t have become involved in the incident were it not for “peer pressure”(“he’s shy and easily lead”), quickly pointing out how they never brought their kids up to behave in such a fashion. The offenders’ behavior is thus portrayed as largely the fault of hanging with a “bad crowd” or living in a “bad area.” Supporters then quickly go on to detail what offenders have suffered, how, for example, their kids have lost jobs, income, respect, have suffered loss of trust and privileges, and so on. Others emphasized how offenders currently suffer ostracism and intimidation by former associates, one claiming that this has hurt her son to the point he now sees a psychiatrist. Many were also quick to emphasize that the offender “has now learned his lesson” and “changed” in a positive, more responsible direction. In the words of one father: “I’ve really seen him change from a snotty nosed little brat to a young man.” Finally, offenders’ parents have been quick to intervene to make sure that the agreement being negotiated is fair, reasonable in relation to their educational obligations, and in their ability to perform without undue hardship. A common claim in this latter respect is that the offender has “already been punished” (the clear implication being that anything beyond minimal obligations in the contract would be overkill).

But some offenders’ supporters go further than simply attempting to shield their charges. Rather than admitting, excusing and minimizing, they instead attempt to use the victim role as a sword to cast aspersions on the designated victims. Not surprisingly, this typically occurred in disputes over the factual details of the incident, responsibility, and so on. Some designated offenders’ supporters, for example, suggested that the designated victims were not coming to the table with clean hands, making claims of provocation, roughly handling the offender, unfairly singling out the offender, “guilt by association,” that someone else was really responsible, or how they were fearful of reprisals. Unlike attempts to use the victim role as a sword, such more aggressive use of the victim role tended to be less successful, quickly running up against the condition of “accepting responsibility” - of which designated victims, the facilitator, or both were usually quick to remind them.

Designated victims’ supporters, on the other hand, used the victim role as a sword by emphasizing, for example, the suffering that their children went through. Others strongly emphasized “what could have happened.” For example, one woman did virtually all of the talking during the session for her obviously reserved son (although though he was nonverbally

encouraging and prompting her in various ways). In perhaps one of the strongest examples of using a victim role as a sword, she exclaimed to the offender and his mother:

“I want to get it through your head and consider - what if he died? How would your Mom feel if that happened to you? Even if it wasn’t intended? He could be hurt even more with his condition...Don’t do something that could hurt someone and not be able to take it back.”

Others, such as victims of burglary, added that their children suffered feelings of fear, violation and insecurity since the crime, buttressing their claim to victim status by again pointing to the unnecessary suffering of “innocent children.” One such victim even pulled out a large photo of her 9 year old son, who had previously “looked up to” the offender as “his hero,” exclaiming “this is who you stole from!”

But designated victims’ supporters also used the victim role as a shield. Perhaps the best example was when an offender’s parent accused the victim of “roughing up” his son while holding him before the police arrived. The victim countered that he was merely “protecting” himself “in case he took a swing at me.” In other cases, there were claims of attempts at “manipulation” by the designated offenders supporters in the session.

However, it is important to note that the role of supporters went beyond these fairly evident rhetorical uses of the victim role. One of the most crucial - and strategic - exceptions involved claims by supporters to themselves having been victimized by a party other than the victim. This occurred in 2 variants: (1) by the designated offenders’ parents in relation to their children’s actions (which bought empathy with the designated victim and could swing the outcome of the session more in the victim’s favour); and (2) in relation to program policies. Each will be discussed in turn.

In the first instance, there were cases where the offender’s supporters actually came down rather hard on the offender, exclaiming, for example, that the offender has violated their trust, “revived bad memories,” embarrassed them, made them feel like “failures” as parents, that they have “tried” but “discipline doesn’t seem to work,” and indicating that the offender should face consequences or they “will never learn.” Frequently such claims were accompanied with various excuses to shield themselves from responsibility, including claims that the offenders’ actions could have resulted from prior “abuse,” “disorders” such as ADHD, that they themselves are on medication, that the incident occurred when they were away at work, that they are single parents or don’t have custody such that “I can’t watch him 24-7.” Such claims served to build empathy with the designated victim and to helped swing the outcome more in that party’s favour.

But there were also instances where supporters of the principal parties - whether of the designated offender or the designated victim - claimed that the nature of the process actually made it hard for them. In two cases, for example, both claimed that the automatic no-contact provision imposed by the criminal justice system made things much harder for them, particularly when they lived and moved in the same circles. They claimed that it prevented them from speaking earlier, apologizing, and working things out. While, of course, there are valid legal and safety reasons for such policies, such claims actually served, in part, as common ground in these

sessions to facilitate resolution. In one, the parties even urged that this policy be reviewed to allow exceptions in certain instances.

Finally, it is important to consider the significant impact of the presence of police officers as victim supporters. In many instances, it was apparent that offenders and their supporters made self serving claims, both in relation to the incident in question and the proposed contract to restore the harm suffered. For example, the offender's claim that "I was just in the wrong place at the wrong time" came up quite often. Similarly, when the question of the contract arose, there were more than a few designated offenders who quickly spoke up and suggested "community service hours." In those three cases where police officers were present, such claims did not go unchallenged, and it was more difficult for offenders to leave with their desired terms of resolution. Facilitators themselves commented on this fact.

Thus, in the end, it is very important to consider the strategic role of victim and offender supporters both in helping drive the rhetorical dynamic of restorative justice sessions, as well as in influencing their ultimate outcome.

5. The Role of Facilitators: Despite the emphasis in the restorative justice literature on "reintegrative shaming" (Braithwaite, 1989), there was a wide variation in the sessions observed as to how active a role the facilitator took in "shaming" the offender. With few exceptions, such as in one session dominated by a relatively interventionist social worker, most sessions involved the facilitator, following introductions and the laying down of ground rules for the session, taking a relatively "hands off" approach to shaming.⁹ With the exception of a few well-placed comments or questions, facilitators, apparently following a therapeutic approach, typically tended to let the parties themselves discuss what happened and describe the impact of the offence, interjecting only to summarize issues or intervening when a problem or contentious issue arose. Shaming thus occurred largely in terms of competing victim claims by designated victims, offenders, and supporters. Indeed, aside from restating positions, asking for clarification, diverting disagreements, seeing that each has an opportunity to speak, or generally moving things along, facilitators appeared most active towards the end of the session, urging or prompting the parties to come up with a contract resolving the situation.

A number of interesting issues arose in relation to facilitators in these sessions that require comment. These include: (1) common procedures; (2) dealings with designated victims; (3) dealings with designated offenders; and (4) strategic interventions. Each will be dealt with in turn.

Beginning with common procedures, the two facilitators in each session typically check the case notes before the session, plan whom is to do what, introduce the parties, and describe the format, procedure, and ground rules for the session (see above). Many of these introductory

⁹ Of course, this differed in "accountability sessions" sessions involving the offender alone, where the facilitator was expected to actively shame the offender.

comments are on cue cards or sample introductory scripts observed in several sessions. In sessions involving a large number of participants, there may be additional “backup” facilitators that may be brought in if things get too complex. Once underway, there are usually two phases to the session: one where the parties discuss the incident and its impact, another where the contract to resolve the matter is worked out. Depending on the seriousness and complexity of the issues at hand, the cooperation of the participants, and the skill level of the facilitator, these phases can vary in length in relation to one another. Within these phases, facilitators commonly intervene to identify and summarize issues, as well as possible solutions. Once completed, facilitators write up and see that the contracts are signed, and handle the paperwork that goes back to the agency - which then monitors the offender’s compliance.

But it is in their dealings with issues arising between the parties that facilitators’ skills are important - and their influence significant - in bringing matters to a successful resolution. In their dealings with designated victims, it was important for facilitators to develop a rapport with the individuals so that they could feel safe in enunciating their experiences. This was particularly so when designated victims were asked to relay their experiences and the impact of what happened to the offender. The facilitator, during the course of identifying issues and summarizing the impact of the offence, ideally attempted to build understanding with the designated victim and relay the impact of the incident to the designated offender. Aside from that, facilitators at times had to intervene to effectively handle victim contests between those designated victims and offenders such that these did not disrupt a successful outcome to the session. It was in this latter respect that facilitator skills were particularly important.

In their dealings with designated offenders, facilitators were often much more direct (a consequence of the politics of description). Whereas with designated victims facilitators typically took a relatively gentle approach unless strong intervention became necessary, they were much quicker to question the claims of designated offenders - and take a more active approach. For example, many facilitators were observed to emphasize the need for offenders to take responsibility for their actions, to question the consequences of their actions, to question the motivation for their actions, even to question the offender’s behavior during the session itself. They questioned the offender’s thoughts and feelings, whether they have learned something, how they can show that they have learned something, and what they might do when faced with a similar situation again. They at times questioned the offender’s forthrightness, sincerity, pushed uncooperative offenders to answer questions, even encouraged offenders to apologize. All of this shows the power of the politics of description when institutionalized in a forum such as restorative justice - in the broader context of the criminal justice system. More significantly, since many of these actions were taken in relation to various rhetorical victim claims by offenders, it is clear that many offenders’ faced an uphill battle when attempting to get involved in confrontational victim contests - evinced again by the fact that facilitators typically intervened on behalf of designated victims when denials of responsibility or the facts in question were vigorously initiated by the designated offender. The designated offender was usually reminded that, as a condition of participation, s/he had already accepted responsibility, and should consider

the many negative consequences of a criminal record.¹⁰

In fact, these sessions do not appear to be mediations in the traditional sense (i.e. where an active agent engages two supposedly equal parties and helps them reach an agreement on a mutually contentious issue). Here, one party is clearly facing a penalty if s/he does not come to an agreement, while the other's interest in being there at all, or in working out a solution, is less well defined.

But, aside from these broad, general patterns, the role - and skill - of facilitators was crucial. Skill at employing two useful strategies stood out in particular: (1) strategies of drawing out the offender through coordination with the designated victim; and (2) preventing the unsuccessful termination of the session by threatening to postpone or cancel it. Each of these will be discussed in turn.

First, facilitators in a number of sessions employed strategies for drawing out initially uncooperative offenders. One involved the strategic use of uncomfortable silence in the face of victim's comments, later emphasized by a pointed question about "how that's landing" with the designated offender. This could be further emphasized by questioning the "atmosphere" in the room. In the words of one facilitator "what needs to be said must be invited into the room." When it comes out, such as in one session where the offender admitted "I don't like cops" (in reference to the officers present), the others coordinate their efforts on that aspect in the remainder of their questioning, ultimately pushing the offender to a resolution. Another interesting strategy is what I refer to as the "velvet fist" approach. This typically involved something like the facilitator and designated victim(s) gradually evolving a strategy something like "good cop/bad cop" when faced with a sullen and minimally verbal offender. They coordinate their lines of action such that victims alternate between claims of "how I've suffered" and "how I care." The facilitators take the opposite tack (i.e. the facilitator can emphasize how profound it is that the victim emphasizes caring for the offender's future despite suffering so much). All of this is peppered with details of what the offender has done. This cuts back and forth, often eventually prompting the designated offender to defensive claims, sometimes even admissions that "they feel bad" (serving as the basis for an apology, perhaps even some type of resolution).

Also significant, there is the common strategy facilitators use when victim contests appear to be spiralling out of control and threaten the outcome of the session. This typically involves the facilitator suggesting as the sole alternative a solution that none present wish to pursue. For example, in disputes over the facts or the offender's part in the incident, it may be suggested that if the offender doesn't want to accept responsibility, the matter can always be referred back to

¹⁰ In only one case was a successful victim claim made by the offender and accepted by the facilitator and others, and it did not involve the aggressive use of the victim role as a sword, but an emotional use of the victim role as a shield. In that case, the designated offender emphasized the profound suffering brought to his life as a result of the offence and empathized with the victim. There was no aggressive attack on the victims' position.

court. The offender and his/her supporters, realizing that the cost, probability of conviction, and consequences of a criminal record outweigh the negative consequences of going through with the session, then backs off. Such an approach also may open up divisions between allies, such as separate victims, enabling the facilitator to divide, conquer, and move on with the session. Similarly, in disputes over contract details, the facilitator can suggest to arguing participants that “we could always have another session” - a strategy observed to quickly prompt greater cooperation when observed in a long session with many tired participants desiring to get things over with.

Finally, it is important to note that it is the facilitator, perhaps more than any other party, that impacts the final outcome of the session. There were cases observed where the facilitator took a very active role when necessary, clearly in charge of the session. There were others where the facilitator was almost dominated by one of the parties - whether the designated victim, offender, or their supporters, such that the outcome appeared to be affected. An agreement is one thing, whose favour its terms are in is quite another. Restorative justice sessions involve the successful assertion, resistance, and moderation of victim claims. It cannot be forgotten that these are ultimately attempts to control the definition of the situation, and, ultimately, the power dynamics of these sessions. Some facilitators appeared well equipped to keep on top of these dynamics, others did not, such that a coalition in favour of one party was easily formed. Recriminations voiced by offenders and their supporters following sessions (e.g. about “intimidation” by victims) underline this concern. It is vitally important that the power dynamics underlying these sessions - as asserted through victim claims - be effectively managed by facilitators for the parties to recognize these sessions as truly restorative.

Discussion and Conclusion:

Despite its growing popularity in criminological circles, and a series of quantitative and self-report evaluations, the interactional dynamics of restorative justice sessions have not received the empirical scrutiny that they deserve. The present paper reports a few preliminary observations in this regard from an ongoing, qualitative study seeking to overcome this deficiency.

In particular, drawing upon both the criminological literature and the interactionist tradition in sociology, a number of potentially significant issues were identified, and did indeed appear to be important in practice. Most important were the politics of description placing parties at initial rhetorical advantages and disadvantages, the rhetorical use of the victim role as a sword and a shield by designated victims, offenders, and supporters to buttress their negotiating positions, the significant impact of supporters on the outcome of restorative justice sessions involving youth, and, perhaps most importantly, the need for skilful intervention and management of these sessions by facilitators in order to prevent victim claims - and power dynamics - from becoming problematic.

These are but preliminary observations, and much work remains to be done. However, we feel that this exercise is clearly positioned to shed new light on encounters between victims and

offenders in a current hot area in criminology.