

## **Are We Serving Victims Well? Considerations on Victim Engagement in Current Restorative Justice Movement Trends**

Ted Lewis and Mark Umbreit

As the restorative justice movement has grown in the North American context over the past four decades, a perennial question continues to surface for both practitioners and stakeholders: Are victim-survivors of crimes and harms being served as well as possible? At the midpoint of this timeframe, in the late 1990s, Howard Zehr and a team of others were prompted to conduct “The Listening Project” to assess how victims were being engaged in the United States through restorative practices. Having already heard some major critiques from victim service workers, the project specifically tuned into that sector of the criminal justice world to hear first-hand how restorative justice was both perceived and implemented with respect to victim engagement. After an initial phase of interviewing 120 victims and victim advocates, a 2-day meeting allowed victims and victim service personnel to name primary areas of concern.

“Overall, participant victims expressed feelings of injustice, disrespect, exclusion, lack of empathy, and irrelevance as a result of the restorative justice process. There was a sense that although victim input and collaboration are touted as central to restorative justice practices, the voices of victims were not heard during the process.”<sup>1</sup>

This qualitative research project confirmed initial speculations that restorative justice

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<sup>1</sup> Mika, etc., *Listening to Victims*, 32-38.

practices, after two decades of growth, had migrated toward offender-centric services, even when the language of victim-orientation or victim-centeredness was present in program literature.

According to the authors of this study, the critiques can be summarized as follows:

- **Lack of Inclusion:** restorative justice programs were being implemented without consulting victim service agencies
- **Lack of Supports:** programs had more ‘talk’ than ‘walk’ regarding actual supports for victims
- **Lack of Sensitivity:** language in initial communications to victims lacked sensitivity to the needs of victims
- **Lack of Flexibility:** dialogue models and services were too limited to constructively serve all referred victims

New recommendations to address these deficiencies included a 10-task action plan that promised more responsiveness to the needs of victims and the concerns of victim advocates.<sup>2</sup> Associated with this plan was the “10 signposts for Victim Involvement” which are posted at the end of this article. These signposts essentially counterbalance the potential neglect of inclusion, supports, sensitivity, etc., stressing, as worded in the 8th signpost, how “victim opportunities for involvement are maximized.”<sup>3</sup>

Canadian studies have also shown how these same trends have not been unique to the United States, revealing inadequate preparation for victims, pressures for victims to be involved,

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<sup>2</sup> Mika, etc., A Listening Project.

<sup>3</sup> Zehr, Achilles, Victim Advocate, Vol. 4, Issue 1 (2000).

and insensitivity regarding the timing of a victim's involvement.<sup>4</sup> Arlene Gaudreault has described restorative justice as a "disaggregated model" which manifests itself with considerable inconsistency.<sup>5</sup> Consequently, services which have been extended to victims are often difficult to evaluate, given the unevenness of casework. "Despite the high level of satisfaction among victims indicated by the research, particularly studies that focused on mediation, we have to be cautious still and refrain from overstating the benefits of restorative justice."<sup>6</sup> Gaudreault raises an important question. If there are major limits in restorative justice programming that fail to serve victims well, and perhaps even do occasional harm to them, how are we to understand the substantial documentation of high rates of satisfaction among victims who go through restorative dialogue processes? Several studies by Mark Umbreit have shown that more than 90% of victims in victim offender mediation or conferencing expressed satisfaction with the process of meeting the offender, and would do it again.<sup>7</sup>

One way to understand this tension is to identify how victim satisfaction may in fact be directly related to factors involving best practices that take victim sensitivity and preparation very seriously. There is no major contradiction between the negative critiques mentioned above and the positive outcomes because the many studies conducted by Umbreit and colleagues have evaluated victim offender mediation programs which implemented best practices that today would be referred to as *trauma-informed restorative practices*, emphasizing the priority of victim safety, victim choice to voluntarily agree to participate or exit at any time, and in-person

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<sup>4</sup> Wemmers, Canuto, *Victims' Experiences*, March 2002.

<sup>5</sup> Gaudreault, *The Limits of Restorative Justice*, 2005.

<sup>6</sup> Gaudreault, *The Limits of Restorative Justice*, 2005.

<sup>7</sup> Umbreit, Bradshaw, *Victim Satisfaction*, 2004; Umbreit, Coates, Vos, *The Impact of Victim*, 2004.

preparation before face-to-face meetings with the offenders.<sup>8</sup>

But even when this seeming contradiction can be reframed in a way that makes good sense, the anecdotal evidence of North American restorative justice programming still persists in showing how victim engagement is lagging in tragic ways. Here are three examples that I (Ted Lewis) became aware of in 2016. An urban restorative justice program for youth offenders that once invited victims to participate in dialogue, has now dropped victim contacts from routine procedures because it is too time-costly. A restorative conference program, after years of operation, assessed victim participation to fall under 25%, and stakeholders were not able to identify the factors that sustained low participation. A mediation program was inviting victims to joint dialogue meetings with minimal preparation, and after mediation meetings (which included written agreements), no communications were maintained with victim parties after the dialogue sessions. And so, 15 years since the Listening Project was documented, the perennial question rings loudly in restorative programming that appear to be very offender-centric: Are we serving victims of crimes and harms as well as possible?

While the Listening Project provided a necessary bellwether to reveal the state of victim engagement in the year 2000, we are now at a similar juncture point to assess the state of the restorative justice movement. Indeed, *movement theory* itself is having a new impact on how leaders and practitioners in restorative justice are defining and even redefining the core foundations and practices. Issues of race, social conditions, historical harm, and community systems are taking center stage in the restorative world. As the Introduction to this very book indicates, the movement is shifting from restorative justice as social service to restorative justice as an agent of social transformation. Are we about helping clients or are we about social change?

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<sup>8</sup> Umbreit, Bradshaw, 2003, 2004; Umbreit, 2001; Umbreit, Armour, 2011.

Meanwhile, broader applications far beyond the realm of criminal justice are informing new conceptions of restorative justice. This is certainly seen in models that focus on prevention and community-building, hence the growth of circle processes in many realms of restorative work. In short, the shift from simply helping clients in need to promoting large-scale transformation in society is raising new opportunities as well as new challenges. This is in addition to the long-standing challenge presented by the dominant offender-centric programming throughout North America. The remainder of this paper will explore what those opportunities and challenges are with respect to victim engagement.

### **New Shifts and New Questions**

While the restorative justice movement is itself a major paradigmatic shift away from conventional Euro-based forms of addressing conflicts and crimes, there are a number of smaller or sub-paradigmatic shifts that can be observed within the more recent evolution of the restorative movement. In other words (to extend the classic example of shifting paradigms), the Copernican revolution has already been set in motion to offset the Earth-centered view of the world, but in the wake of this revolution, other smaller shifts continue to unfold in more recent years. Here are several that can be identified.

**1. Shift from addressing incidents to addressing environments.** The field of conflict transformation has widened the scope of restorative work to address root-causes and sustainable solutions in order to effectively prevent future harms and crimes. The hybridizing of restorative justice and the field of social work is one example which shows this greater attention to broader social conditions.

**2. Shift from helping individuals to helping communities.** As a restorative view of crime (and the resolution of crime) has highlighted webs of relationality, restorative processes have engaged larger circles of participants who play vital roles in sustaining positive outcomes. The rise of “community justice” in neighborhood contexts is one expression of this. Indigenous concepts, such as ‘ubuntu’ serve to sharpen this vision. Restorative models have been designed to help entire communities impacted by oppression or violence.

**3. Shift from criminal realm to all realms of human relationships.** Widening applications of restorative practices in schools, workplaces, faith communities, race relations, etc., along with restorative forums and networks for addressing community concerns have all demonstrated that ‘justice’ applies to *the righting of all relationships in all realms of human interaction.*

**4. Shift from intervention response to interventions *and* prevention.** Concerns for healthy communities and relational networks have expanded dialogue models into the realms of prevention and community-building. Intervention models themselves have been increasingly recognized as having preventative merit. Even correctional work within prisons is geared more toward the prevention of re-offending.

**5. Shift from mediation-based models to circle-based models.** Circle processes have demonstrated an adaptive capacity to promote the values associated with social environment, community, relationships, and prevention. They also teach skills that allow participants to replicate the model in a wide variety of contexts. Moreover, they are ideal in the capacity move

easily between preventive and interventive contexts. At the same time, mediation and conference models have been recognized for their own distinctive strengths which compensate for the limits of circle processes.

**6. Shift from the ‘narrow present’ to the ‘deep past’.** Increased awareness regarding trauma issues and historical harm have revised ways in which offenders are held accountable and victims are supported. Customized models for addressing sexual assaults and domestic violence have also grown. Trans-generational trauma initiatives are opening doors for whole communities to address historical harms and to seek reparations.

**7. Shift from professional partnership to people-empowerment.** Restorative practitioners, while promoting client-empowerment from the earliest years of practice, have largely depended upon strong partnerships with professionals in government positions. Restorative stakeholders, especially among people of color, are finding new ways to empower prevention and intervention work that is primarily dependent on community and grassroots efforts.

**8. Shift from limited victim identities to broad victim identities.** Whereas restorative language initially reserved victim identification with people who were deemed ‘victims’ in a criminal case referral, victimization language now covers everyone in any harming situation, including offenders, as having either backstories of traumatic victimization or direct impacts from a particular incident. This can extend through an entire community of people.

Altogether, these eight shifts within the past couple of decades in the restorative justice

movement demonstrate healthy growth and expansion. It goes without saying that they all share an intersectionality whereby they cannot be separated out from each other. At the broadest level, they indicate the larger shift from restorative justice as programming for individuals to restorative justice as a comprehensive framework for addressing any and all levels of harm and conflict. At the same time, these shifts demonstrate that the primary work of restorative justice has not been co-opted by the main justice system. Indeed, the very expansion of restorative work beyond the realm of criminal justice has allowed the movement to maintain a high degree of autonomy from institutional systems of justice, social work and education. But even with this growing autonomy, major sectors of the restorative justice movement are integrating these very systems with ancient wisdom and community ownership.

One ongoing trend that coincides with the shift in victim identities involves a shift in language. Attention to terminology and its effects has been a defining feature of the movement; from the earliest years on, there have always been lively discussions about the need to replace old language with improved language. For example, the word ‘reconciliation’ was dropped from most of the original VORP (Victim Offender Reconciliation Programs) since it appeared to be too prescriptive. More recently, the very terms ‘victim’ and ‘offender’ have come under scrutiny. For many in today’s restorative world, the fact that this article even uses them freely is problematic. Not only do these words reflect a carry-over from the old paradigm, but they serve to limit a person’s identity in ways that could inhibit their journey toward wholeness. This topic simply highlights how there is a very real tension that exists between older and newer framings during a time of sub-paradigmatic.

As Carl Stauffer rightly asks, “How do we find a new language that does not restrict us to the criminal legal labels of ‘victim’ and ‘offender’ that present an artificial bifurcation and a

political polarization between people who are harmed and who have harmed?”<sup>9</sup> Jonathan Stith recognized this same “criminalizing binary ‘offender-victim’ framework that continues to characterize restorative justice practice within restorative practices in education.<sup>10</sup> Not only does this framing help to perpetuate the school-to-prison pipeline, he notes, but it also serves to maintain greater disparities for students of color. Judge Carol Perry of the Navajo Nation emphasized the interdependent “fluidity of healing for everyone involved” whereby when offenders are working to repair themselves, everyone helping them is able to get better, too.<sup>11</sup> All of these examples break down the dichotomy between harming and harmed persons. We could not agree more on the importance of this shift from traditional western thinking. But we are raising an important question in this context. What are the long-term implications of removing or replacing the term ‘victim’ for people who have been more severely impacted or traumatized by violent crimes? Will shifts in language eventually strengthen or diminish direct services?

A related challenge to the language we use for harming and harmed persons, is the rising attention given to offenders and communities as victimized persons or groups. Again, broadening victimized identities has been a very positive development during the past decade. The documentary film *Healing Justice*, for instance, opens the window toward the way incarcerated men and women have a true need to be healed from their own backstories of victimization while taking responsibility for their own harming choices.<sup>12</sup> The deeper question is that as restorative practitioners increasingly innovate to address these broader dimensions of victimization, how well will those who traditionally have been called ‘victims’ be served? Will they continue to

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<sup>9</sup> Stauffer, Epilogue, *Listening to the Movement*, 3.

<sup>10</sup> Stith, “Bigger Than An RJ Circle: Youth Organizing for Restorative Justice in Education,” *Listening to the Movement*.

<sup>11</sup> Stauffer, Shah, Introduction, *Listening to the Movement*, 12.

<sup>12</sup> *Healing Justice* (World Trust film) 2018.

receive services informed by sensitive, best-practices that have stood the test of time over the past four decades? Another way to pose this question is as follows. Will the increasing attention to social transformation and community well-being result in reduced attention or improved attention to restorative services for those who are harmed by conflicts and crimes? This framing, obviously, is not implying that both cannot happen together. Not only can they operate in parallel; they can thrive interdependently. At stake, however, is if recent shifts toward larger, transformative aspects of restorative justice will diminish the traditional commitment of services that are tailored for victims of harm or crime.

### **Combining New Perspectives with Old Commitments**

It is our belief that restorative justice practitioners, while embracing opportunities created by new trends toward transformative and liberatory expressions of restorative justice, need to simultaneously reconnect and recommit to the founding principles of the movement from the last century that were so clearly grounded in both serving victims and inviting their active participation in the justice process through various restorative and community justice initiatives. This statement needs to be qualified within the growing universe of restorative practices. We are mostly voicing our concern within the limited realm of criminal justice in the North American context. More specifically, we are referencing the context of restorative dialogue services available to both offending and victimized parties. The positive opportunity here, to draw together now both the old and the new, is that the very insights gained within the last decade regarding trauma, historical harm, community supports, root causes, and even prevention, can all contribute to a more holistic set of services that are rooted in the original commitment of the restorative justice movement to assist those who have been victimized by acts of violation.

This recommitment to original principles, therefore, needs to be anchored in a deep understanding and use of trauma-informed restorative practices. One of the emerging lessons from restorative dialogue practitioners is that in asking both offending and victimized parties to prepare for the benefits of joint, dyadic conversation with each other, both parties share much in common with each other. Both have experienced a type of disorientation and disempowerment as a result of an impactful incident leading up to an arrest. Life is no longer normal for either of them. Both certainly have distrust on many levels, and in this vulnerability, they naturally have their guards up. Trauma stems from the incident itself, but may very well reverberate more loudly from earlier traumatic experiences. All of this is compounded when someone comes from a community that bears the marks of deeper, historical trauma. The effects of trauma include 1) estrangement/sense of isolation, 2) feelings of powerlessness or helplessness, 3) changes in one's view of oneself and the world, 4) devastating fear, loss of safety or trust, and 5) feelings of shame, blame, guilt and stigma.<sup>13</sup> In brief, by looking through the lens of trauma, restorative services will necessarily become more humane and holistic.

This perspective on the commonalities between victim and offender experiences is already an important step in countering the bifurcation that was noted earlier. A sensitive and holistic engagement of offending and victimized persons, in the effort to help them reclaim aspects of their own humanity and see their common humanity in the other person, will help them both take the calculated risk of restorative dyadic encounter. As both parties meet with facilitators in initial sessions, they also experience a similar invitation to *find strength in going down the path of chosen vulnerability*. All of this has to do with the creation of a safe container in which hard but healing conversations can happen. Core principles of trauma-informed care

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<sup>13</sup> Blake, M. 2010.

with victims of crime help to ensure the safety of this space. Elements supporting this include:

- Safety: applying “do no harm” to ensure physical and emotional safety
- Trustworthiness: through supportive, empathetic, clear communication
- Choice: prioritizing victim choice and control over participating or exiting
- Collaboration: sharing power with the person who was victimized
- Empowerment: practicing a strength-based perspective in working with those victimized by crimes rather than focusing on their deficits<sup>14</sup>

### **New Recommendations for Victim Engagement**

The question still remains, namely whether we can serve victims of crime well as we move forward in our North American context. On one hand, new measures need to be taken to counterbalance the offender-centric models of restorative dialogue which are mostly rooted in institutional agencies. This issue, as indicated by the Listening Project, is far too perennial if victim service stakeholders (let alone, actual victims of crime) continue to feel alienated. On the other hand, a set of shifting trends within the restorative justice movement provide both opportunities for growth, but possibly some challenges with respect to our capacity to serve victimized people well. What follows now are some recommendations that can help address both sets of challenges while integrating the learnings of recent trends in the movement. These will be split into two main categories, the first pertaining to victims of crimes, and the second related to other realms of harming and victimization. The latter listing is not meant to be comprehensive but only representative of some areas of wider restorative work.

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<sup>14</sup> Beyer, L.L., 2010.

## **As Related to Victims of Crime**

1. Greater attention to serving victims on their *own* terms, hence:

- More authentic initial communications
- More flexibility in support and listening services
- More preparation opportunities that present options
- More invitation for victims to tell their story in other settings
- More response to victims of crimes with offenders identified

2. Greater use of other victim voices in dialogue processes:

- Victim surrogates (with similar crime experience)
- Victim substitutes (with personal impact story)
- Community members (representing impacted communities)
- Victim-Shuttle option (relay of impact statements and reparation requests)
- Use of pre-recorded video for safer encounter

3. Greater use of multi-method approaches to cases:

- Conference, then broader Circle sequence
- Blended Circle-Conference model
- Parallel processes for both victim and offender
- Support Circles for victims only
- Post-process communications and supports

4. Greater collaboration with victim service workers:

- include them in front-end program design
- include them in guiding case timing factors
- integrate their volunteerism with restorative options

- provide brochures on restorative services
- invite victim-initiated case opportunities

5. Great attention to conditions and community:

- effort to address root conditions causing crimes
- effort to include community members in processes
- effort to link up victim supports with community
- effort to address secondary-victimization
- effort to provide meaningful community service

**As Related to Other Realms of Harming and Victimization**

1. Re: Abuse and Bullying Situations: use parallel processes for serving offending and victimized parties as the default model; empowerment of other people (bystanders, friends, family members, etc.); preparation meetings are also routine.
2. Re: Large-scale Trauma on Communities (such as hate crimes, ethical breaches, sudden critical incidents, deaths, etc.): create a team-approach to map out successive, concentric healing and resolution processes; multi-model approach with forecasted follow-up meetings.
3. Re: Incarcerated Offenders (both prison and jails): provide restorative justice learning and restorative dialogue opportunities in both group and individual settings; use of victim surrogates to participate in prison-based circle meetings; open up capacities for safe exchange of communications between offenders and victims of similar or same cases.
4. Communities and Law Enforcement: create frameworks that initially introduce dialogue models to respective groups, then build up trust through small pilot groups, and finally

broaden out participation that is more inclusive; find common ground in experiences.

5. Marginalized or Oppressed Communities: groups with protective-class status with regards to the discrimination of human rights; support the intersectionality of human and social experiences; empower leaders representing these groups to facilitate processes.

In closing, the recommendations related to victims of crime add up to a recommitment to the original restorative principles as articulated in the movement's early years and summarized well in the Ten Signposts for Victim Involvement (see below). At the same time these recommendations reflect a wider menu of options that require a flexible and communal approach as informed by more recent trends in the movement. The best of the Old and the best of the New need to hold hands together. A good example of where these could come together is a community's decision to serve victims of crimes where no offender was arrested or apprehended. Many property crimes, for example, occur in situations where offending parties are never caught. Could not a restorative community create specific services and funding to serve people who were victimized, but whose cases never enter the legal realm because their information simple went no further than a police or sheriff's department? A progressive community would find a way to serve 'offenderless' victims no less than other victims who are 'in' the system.

The main concern of this article, though, is for victims who do enter a system of traditional justice. Chances are that limited resources will make them feel under-served. Forty years of restorative justice dialogue work in North America has certainly established that victims who participate in well-prepared and well-guided conversations with offenders indicate high satisfaction in the justice they experience. Nevertheless, the state of offender-centric restorative programming in North America has severely limited both the quantity and quality of services to

victims of crime. As practitioners attempt to remedy the nature of these services, the newer challenge will be to keep restorative work for victims toward the center of the radar screen as the movement increasingly broadens its vision toward the transformation of social life and institutions. This balanced approach fits well with what Carl Stauffer and Sonya Shah pointed out in the Introduction to this anthology. The main goal is not to become either a reformer or a revolutionary. “The focus of the restorative justice movement is to hold in tension both interpersonal and institutional change while at the same time moving towards a cultural shift or societal transformation of how justice is understood and practiced for the future.”<sup>15</sup> It is in this tension that we will renew our commitment to serving victims of crime as well as possible.

### **The Ten Signposts of Victim Involvement<sup>16</sup>**

We are working toward appropriate victim involvement (in restorative justice) when:

1. Victims and victim advocates are represented on the governing bodies and initial planning committees.
2. Efforts to involve victims originate from a desire to assist in their recovery/reconstruction. Benefits to the offender are not the primary motive of the program for victim involvement. Victims should be free from the burden of rehabilitation or assisting offenders (unless they choose to do so).
3. The safety of the victim is a fundamental element of program design.

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<sup>15</sup> Stauffer, Shah, Introduction, Listening to the Movement, 18 (online version).

<sup>16</sup> Zehr, Achilles, “Ten Signposts for Victims Involvement,” Victim Advocate (1999).

4. Victims are presented with clear understandings of their roles, including potential benefits and risks to themselves and offenders.
5. Confidentiality is provided within clear guidelines.
6. Victims are provided as much information as possible about the case, the offense, and the offender.
7. Victims are able to identify and present their needs, and are provided options and choices.
8. Victim opportunities for involvement are maximized.
9. Program design provides for referrals for additional support and assistance.
10. To the extent possible, program services are made available to victims even when their offender has not been arrested.

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