**Using the Victim Role as both Sword and Shield:**

**The Interactional Dynamics of Restorative Justice Sessions**

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**1. Introduction: The Problem Defined:** For some time, criminal justice professionals in search of an alternative paradigm have been advocating various models of restorative justice (Umbreit, 2001; Braithwaite, 1999; Marshall, 1999; Zehr, 1990; Christie, 1977). These draw upon peace-making, mediation, negotiation, alternative dispute resolution, conflict management and various forms of constructive engagement, particularly between victims and offenders. Such ideas have spurred initiatives all over the world (Hoyle and Young, 2002; Masters, 2002; Young, 2001).

Yet relatively little is presently known about the interpersonal dynamics in restorative justice sessions (Presser, 2004b; Cormier, 2002; Latimer et.al., 2001).This is ironic, since it has recently been argued that process is the heart of restorative justice, that the focus should be on means, not outcomes, and that restorative justice be defined in terms of practice (Presser, 2004b; McCold, 2004). Of course, there are well-known ideas like “reintegrative shaming” (Braithwaite, 1999) in which shaming the act, coupled with acceptance of the offender, is said to be used by the parties to help effect a resolution. There are also descriptions of the general sequence of events during sessions (Karmen,2001). Yet, academics have noted the need for research on the actual processes involved in restorative justice (Latimer et. al., 2001), particularly“how it works” (Cormier, 2002).

To some extent, ex-post facto surveys and follow-up interviews have shed light on restorative justice sessions (Clairmont, 2005; Masters, 2002; Zedner, 2002; Karmen, 2001; Morris and Maxwell, 1998; Niemeyer and Shichor, 1996; Walgrave, 1995). For example, victims often value their recognition, appreciate the opportunity to communicate with the offender, to describe what happened to them, and receive answers about the motivation of the offence. Victim participation can significantly mitigate levels of anger and fear (Strang, 2000, Umbreit, 1994).Compared with participants whose cases were dealt with in court, restorative processes are evaluated more positively, as more equitable and satisfying (Strang, 2000). Indeed, most would participate again, 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. Victims remain the least satisfied participants in restorative justice (Acorn, 2004:70), satisfaction may largely reflect status quo understandings of justice (Presser,2004b), and the combination of prepackaged questions and the demand characteristics of some surveys raise questions about what is missing. Opinions in exit surveys and later follow-up interviews can diverge significantly (Clairmont, 2005).[[1]](#footnote-1)6 months after restorative justice sessions were held, it was discovered that: (1) on the victim and victim supporter side, women were most satisfied with the restorative justice process and session outcomes at the time of the exit interview but not at the followup. There was significant attrition for women, as they tended to become more critical over time; (2) the change in views between exit and followup was greater for victims and victim supporters than for offender and offender supporter, and the change in question was a more critical standpoint on the restorative justice experience and underlying philosophy; and (3) Victim supporters at both exit and followup tended to be more critical than victims, attesting perhaps to how they see the role they are expected to play. Moreover, questions have been raised about whether offender needs and perspectives are adequately addressed in restorative justice (Toews and Katounas, 2004). Earlier work must be supplemented by direct, ethnographic observation of restorative justice as it happens. To this end, we present results from an observational study of restorative justice sessions in a mid- sized Canadian city.

**2. Theoretical Themes:** Methodologically, qualitative, observational research largely operates inductively, grounding theory in data (Glaser and Strauss, 1967). Nevertheless, it is acceptable to consider “sensitizing concepts”(Blumer, 1969) suggesting where to look, not what to see.

First, there is the issue of *presentation of self* (Goffman, 1959).How do parties attempt to put themselves in the most favourable light? Criminal justice institutions, like social agencies, are full of binary opposites like “victims” and “offenders,”[[2]](#footnote-2) and programs like restorative justice are set up to identify and interpret problems in such categorical terms (Presser, 2004a). However, in the micro-level interactions that ensue, active agents do not necessarily accept such definitions (Anderson and Snow, 2001). Instead, they work to complicate such characterizations, give “social problems resistance” by manipulating preferred institutional discourse as official encounters progress (Presser, 2004a; Holstein and Gubrium, 2000; Miller and Holstein, 1989), often engaging in “identity talk” to negotiate acceptable identities in relation to the situation at hand (Snow and Anderson, 1987).Even in the courtroom, witnesses often catch on, use direct questions as interpretive resources, anticipate lines of questioning, and respond to deflect accusatory implications before the fact, either descriptively or by giving “accounts” (Scott and Lyman, 1968; Atkinson and Drew, 1979:187). Hence, restorative justice programs may set the narrative parameters and provide symbolic resources, while participants may ratify, reject, or manipulate these characterizations, the nature of the problem and the implications for identity.

Given the victim/offender designations built into restorative justice sessions, particularly that “the victim is called upon to elaborate the collateral ways in which she has suffered as a result of the crime”(Acorn, 2004: 145), this may involve, in part, the narrative construction of identities by both that encourage labelling as “victim” as opposed to “deviant”(Presser, 2004a), thereby attempting to exert disproportionate, rhetorical control over the definition of the situation. Thus, we must consider how participants may dramaturgically employ the victim role.

Holstein and Miller (1990:108-13) 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. Kenney (2002:259) elaborates that actors may use 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.The assignment of victim status to one is generally associated with the assignment of victimizer status to others. Since both designated victims and offenders in restorative justice may 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* - we must consider the degree to which, ironically, restorative justice sessions turn into adversarial "victim contests" (Holstein and Miller, 1990:113-15). If so, belief in the factual status of victim claims depend upon “credibility, influence, and warrant for honouring one set of claims over another" (Holstein and Miller, 1990:114). Of course, the party most successful in making the victim claim stands a better chance of "negotiating" the outcome they desire.

We must also consider the possibilities for offenders. Maruna (2001) reviewed the life narratives of long term offenders, noting that to desist from crime, they must account for their criminal pasts, develop a coherent, pro-social identity, and justify (to themselves and others) why they are “not like that now”(2001:7-8).“Persisting” offenders’ “condemnation scripts” (2001:74-5) portrayed themselves as “victims of society,” as having few chances for conventional success (2001:9,74). However,“desisting” offenders, constructed more fanciful “redemption narratives,” characterized by:(i) a view of themselves as “intrinsically good,” but, having been “victimized by circumstance,”making bad choices in attempts at empowerment and getting trapped in the criminal life; (ii) the development of an optimistic conception of personal control over their lives, usually with the help of some outside force; and (iii) an expressed desire to give something back to society (2001:87-88). We must consider whether such narratives, and related “techniques of neutralization” (Sykes and Matza, 1957), appear in restorative justice, given recent assertions that offenders’ victim claims are downplayed or ignored (Toews and Katounas, 2004; Lofton, 2004).

Finally in this respect, we must consider emotion. Clark (1990) asserts that actors can use emotions in a variety of "micropolitical strategies" to enhance their "place" both to themselves and others. Hochschild (1983) considers how individuals manage emotions to keep them in line with emotional norms, and, when incongruent, one may be subject to attributions of “emotional deviance”(Thoits, 1990). If these may be may manipulated to foster a definition of oneself as victim and another as the victimizer (Holstein and Miller, 1990:117), we must consider how parties may use emotions to both define the situation and buttress their "negotiating position."

Secondly, we must consider session facilitators. Existing literature suggests that, within help institutions, agency staff subtly attempt to limit clients’ opportunities to tell their own stories, or direct them to certain kinds of narratives (Anderson and Snow, 2001).Inequality is fostered by certain categories of people being given differential attention,“including patterns of staring, touching, interrupting, frowning, crowding, and addressing each other”(Anderson and Snow, 2001:399). Discussion is narrowed through“institutional talk” (Holstein and Gubrium, 2000:154-57), and silence may be used to prompt desired responses (2000:146-48). Atkinson and Drew (1979) note differences between everyday conversations and courtroom exchanges, particularly how procedural rules about responding to specific, pointed questions and turn-taking constitute attempts to deny witnesses conversational power (1979:11). Indeed, Molotch and Boden (1985) argue that access to the interpretive “procedures of talk”can serve as “a significant resource for accomplishing power in face to face interaction”(1985:285). Hence, despite official claims that restorative justice facilitates the parties working things out in their own terms, we must consider attempts at tacit, tactical institutional limitation of free expression, particularly by facilitators.

Issues have also been raised about the competency of facilitators (Wonshe, 2004; Boyack et.al, 2004; Gustafson, 2004; Raye, 2004).Noting a “hierarchy of skill,”given the extensive use of volunteers unrepresentative of the client population (Wonshe, 2004:255, 259; Raye, 2004: 332), some have called for better training and accreditation of facilitators (Boyack et.al., 2004:267; Gustafson, 2004: 311). Fearing that insufficient training or careless practice could put vulnerable people at risk, trigger past trauma, or create new harms (Gustafson, 2004: 305), improved training in “best practices” has been urged (2004:311).For “a process is not restorative if the facilitators do not ensure that power imbalances are managed appropriately and that interactions between the parties are effectively facilitated, or if the facilitators impose opinions or solutions on participants or allow any other party to do so”(Boyack et.al, 2004:272).

Third, it is important to attend to *empathy*. Restorative justice requires the parties to at least appear to develop a degree of understanding.Yet, critics give reasons to doubt truly empathetic orientations will emerge, ranging from social stratification between offender and victim, the accompanying *schadenfreude* at middle-class suffering, to offender perceptions of exaggerated victim claims (Acorn, 2004:145-49). Maxwell and Morris (2004:135-9) question “reintegrative shaming” by noting the negative consequences of shame. Regardless of intent, shaming may not only undermine potential empathetic responses, but encourage further anti-social orientations and behaviors. Thus, developing empathy may be difficult, but building at least some sort of narrative claimbased on shared interests will be necessary for sessions to be brought to a formally acceptable conclusion. The emergence and manipulation of such claims must be considered.

Finally, we must consider the role of supporters (Karp et.al.,2004).If both victim and offender have support persons present, how do they interact to either build empathy, buttress, or perhaps even undermine claims? How do family members complement offenders’ behavior? Does the presence of official support (e.g. police) make it easier for victims to negotiate a contract in their favour? Each of these matters must be addressed.

**3. Data and Methods:** **(a) Research Strategy:** 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 mid-sized Canadian city (24 full sessions / 4 “accountability sessions”).[[3]](#footnote-3) These were based on lists provided by community justice agencies designated to run the program by the provincial Department of Justice, including 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 ahead of time in case of cancellations.

Sampling was an ongoing procedure in the data collection process (Berg,1995). 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. Work continued until reaching the point of "theoretical saturation" (i.e. the point where incoming data revealed nothing new).

For ethical reasons, our attendance was noted to participants, who generally included designated victims, offenders, their supporters (usually family), two program facilitators, and, in three cases, police officers. Upon arrival, parties were informed that we were external evaluators 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, but merely to observe, take notes, and remain as unobtrusive as possible. We indicated that participation was voluntary, that no names would be used, and that confidentiality would be maintained in data collection, storage, reporting and publication. All had the opportunity to ask questions about our role, permission was obtained before proceeding, and we committed to destroy collected material following completion of the study. Without consent, we left without observing the session.

Handwritten field notes were transcribed and entered into N6 software for coding qualitative data. Using a procedure of open coding, a systematic filing system was developed (Berg, 1995).Since we were interested in the process of restorative justice, coding and analysis initially proceeded by sorting the most common verbal actions of designated victims, offenders, supporters, and facilitators. As analysis progressed, narrative interrelations between these base categories became evident, such as defensive rhetoric by one party following offensive claims by another, so data were recoded into theoretical categories representing typical interlocking, strategic, identity claims. Further, since these frequently involved lengthy narrative chains where there was a struggle over the definition of the situation, various outcomes were categorized and the dynamics leading to them probed. As a result, a series of additional contextual factors and strategic actions by parties other than the victim and offender emerged. Theoretical categories were continually cross-checked and subjected to negative case testing. If inconsistencies were noted, ideas were either discarded or reformulated until practical certainty was achieved.

**(b) Session Characteristics:** For a medium sized city (Pop 350,000) making up approximately 37.5% of the provincial population, there were relatively few victim-offender sessions scheduled, and even fewer ultimately held.We were permitted by program officials to attend 64 sessions in 12 months.[[4]](#footnote-4) Indeed, while, on the basis of monthly schedules, we were aware that more sessions were being scheduled than we were permitted to attend, this number is still low compared the 2736 youths charged with Criminal Code offences in the province during 2001 (Savoie, 2002).[[5]](#footnote-5)

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

Complete Victim-Offender Session: 24 (37.50%)[[6]](#footnote-6)

Party Missing/Accountability Session 14 (21.88%)

Cancellation 25 (39.06%)

Objection by Party 1 (1.56%)

64 (100.00%)

It is clear that there were a high proportion of scheduled sessions cancelled. There were also many where one of the participants - either the victim or the offender - did not show up. Indeed, one facilitator is on record as saying “90% of my sessions are up and down...maybe they will be cancelled, maybe not.” This suggests that restorative justice was still limited in its reach in this area, and that further efforts may be necessary to bring parties to the table.

In the 28 sessions attended, the parties exhibited the following characteristics. The 37 young offenders were largely male (30 of 37), white (29 of 37), and working class. There were only 7 female and 8 non-white offenders (mostly African-Canadian, Aboriginal and mixed race). Of the 34 victims, 21 were adult individuals (including 6 offenders’ parents), 6 were other teens, 5 were adults representing institutional victims, and 2 were police officers. Offender supporters, present in all but 4 sessions, were largely parents, though there were small number of grandparents, uncles, aunts, and step-parents.[[7]](#footnote-7) Victim supporters were more scarce, present in only 10 of 28 sessions. Of the 12 present, 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. There were 40 different facilitators, 10 of whom were involved in more than one of the sessions. 27 facilitators were female and10 were non-white, almost evenly split between African Canadians and Aboriginals.

Incidents covered a range of possible charges. Of 44 noted, most common were theft and assault (10 incidents of each), followed by break/enter and mischief (4 incidents each), property damage (3), possession of stolen property and resisting arrest (2 incidents each). The remainder appeared only once, including arson, auto theft, a weapons violation, fraud, drug possession, a liquor violation, careless and imprudent driving, and trespassing.[[8]](#footnote-8) One also involved an offender who, in part, was brought back to restorative justice for lying in a previous session.

All but 3 of the 28 sessions resulted in a written contract being negotiated to resolve the issue. Of 78 separate terms, the most common included a written apology, used in 14 cases, followed by restitution (13 cases), community service (10), verbal apologies tendered at the session (8), requiring the offender to write an essay (5), and seeking counselling (including anger management) (5 cases). Others, appearing far less frequently, were quite creative: participating in bullying programs, “ride-alongs” with police, visiting burn units, fire stations and palliative care units, conducting research on the offender’s mental health issue, doing chores for parents, writing details to assist in an ongoing investigation, and working to build a relationship with the victim.

**(c) Standard Meeting Format:** Prior to each session, two facilitators[[9]](#footnote-9) arrive early at the arranged venue (usually a room in a school, church hall, or community centre), review the case notes, and plan who is to do what (e.g. begin the session, lay out the ground rules).Once all have arrived, and any necessary introductions are made, sessions begin with one facilitator’s formal opening. Often referring to standard points on cue cards, the lead facilitator emphasizes that the session is both voluntary and confidential. Procedure is then discussed: designated victims, offenders and supporters have a say, get to describe what happened, to outline the impact of the offence, will discuss the issues that emerge, and work to come up with an acceptable solution, to be written up as a formal contract. Then ground rules are noted: only one person may speak at a time; what is said is to remain confidential; that any facilitator notes will be destroyed; and to treat others with respect. Facilitators also indicate that their role is to speak as little as possible, merely acting to help the parties work it out themselves and “keep things on track.”Finally, it is indicated that it is important to establish common ground. Such instructions involve the pre-emptive communication of standardized “institutional talk” (Holstein and Gubrium, 2000), an attempt to direct clients to particular types of narratives (Anderson and Snow, 2001), unwittingly providing them with symbolic resources for the encounter to follow.

Once underway, there are two phases: one where the parties discuss the incident and its impact, another where the contract to resolve the matter is worked out. First, either the designated victim or offender is asked to begin by describing the incident and its impact from that particular point of view. After each side has spoken, facilitators prompt participants to move on to the “contract phase.”Depending on the seriousness and complexity of the issues, the cooperation of the participants, and the skill of the facilitator, these phases can vary in length in relation to one another, though generally each takes up about half the approximately two hour session. Throughout, facilitators commonly intervene to identify and summarize issues, as well as possible solutions, and may attempt to move things along if the session is wandering. If an agreed solution is reached, the facilitators then write up a formal contract, get it signed by the parties, and send the agreement back to “the agency,” which then monitors the offender’s compliance.

**4. Findings:** Our findings will be discussed under a variety of headings. First, the “politics of description” (Foucault, 1972) inherent in session format will be briefly discussed. Second, the strategic rhetorical claims by those designated as victims, offenders, and echoed by their supporters, will be outlined. Third, disputes and their modes of resolution will be addressed. Fourth, strategic interventions by supporters and facilitators falling outside these patterns will be delineated. Finally, the implications of these processes for restorative justice will be considered.

**(a) The Politics of Description:** Upon the recommendation of a police officer, prosecutor, or occasionally a judge,[[10]](#footnote-10) an “offender” who has “accepted responsibility” may “choose” to enter this restorative justice program *as such* to avoid criminal court. Hence, despite victimization surveys consistently illustrating numerous similarities between victims and offenders (Fattah, 2000), the fact that this ignores the victimization experiences of offenders (Toews and Katounas, 2004), as well as the structural violence of social inequality (Lofton, 2004), facilitators (and program officials before them) adopt the official, simplistic labels of the criminal justice system (Lofton, 2004: 381, 384-5).On the basis of formal agency documentation, they officially presume, even *designate*, individuals to speak as either “victims” or “offenders,” placing them at an initial rhetorical and representational advantage or disadvantage in the process (Ashworth, 1993). Such “politics of description” (Foucault, 1972) are particularly notable during the introduction, where designated parties are directed by the facilitator to outline what happened and how they felt *on that basis*. This “institutional talk” (Holstein and Gubrium, 2000) enables the “victim” to enter the fray as one officially wronged, while the designated “offender” has to resist, overcome, or micropolitically respond to this characterization of identity (Presser, 2004a).[[11]](#footnote-11)

Beyond this basic inequality, the court alternative hanging over these sessions raises the issue whether, despite the rhetoric, offender involvement in such programs addresses their needs and perspectives (Toews and Katounas, 2004), is truly voluntary (Karp et.al., 2004), or instead is being constructed as a “last resort” before a more serious alternative is invoked (Emerson,1981).

Nevertheless, such program designations do provide participants with a host of symbolic resources from which to engage in “identity talk,” for the construction and negotiation of personal identities (Snow and Anderson, 1987). As we will see, they enable participants to anticipate questions and accusations (Atkinson and Drew, 1979), forge acceptable accounts (Scott and Lyman, 1968), neutralizations (Sykes and Matza, 1957), and narratively construct appropriate “institutional selves” for the purposes at hand (Gubrium and Holstein 2001).

**(b) Rhetorical Claims by Participants:** Those designated as victims and offenders quickly moved to assert various rhetorical claims to their advantage, largely focussing on gaining social approval and improving their position vis a vis others (Daly, 2003; Karp et.al.,2004).The degree of offender remorsefulness was often open to question (Daly, 2003; Karp et. al.,2004), especially if they strongly emphasized“condemnation scripts”(Maruna, 2001) - and designated victims’ sensitivity to these set the stage for competing narratives of victimization and responsibility.

Interestingly, supporters played a significant role. Unlike studies in which parents took a largely passive role due to instructions from staff to “support” instead of “advocate” (Karp et.al., 2004), in 12 of 24 full victim-offender sessions, much of the interaction was driven not by the designated victim, offender, or facilitator, but by supporters. These were usually cases where the victim was not a family member. This dynamic was furthered by the fact that some youth were not as talkative in such instances. Yet, even in those sessions where youth victims and offenders took a relatively active role, the role of their supporters in buttressing claims, corroborating facts, and so on, could not be underestimated. Given such “teamwork” (Goffman, 1959), and the resultant difficulty in separating claims makers, except in those instances where they diverge we consider their rhetorical claims together.

**(i) Victims’ Offensive Claims:** Designated victims were quick to pick up on the institutional politics of description. They assertively underscored their given victim status by direct reference to the alleged actions of the offender. Engaging in an identity talk of “embracement” (Snow and Anderson, 1987), in effect they employed the victim role as a sword (Kenney, 2002). The most common claim was just “how serious” the designated offenders’ actions were, and how things could have been “much worse.”We call this the *“you got lucky so you better give me what I want” strategy*, an elaboration on Clark’s (1990) emotional micropolitics. Consider the following exchange between a young offender, the facilitator and the (physically uninjured) victim attempting to impress upon him the seriousness of throwing rocks from an overpass:

Facilitator: Why were you throwing rocks?

Offender: I had nothing else to do. I was bored.

Facilitator: So, how do you feel about what happened to (victim and her mother)?

Offender: I’m sorry I ruined your afternoon.

Victim: (Suddenly pulls out a photo of her shattered window, points to it and exclaims): This is my *Mom’s head*! It could have caused serious damage. I had glass all down my back. It could have been much, much worse. (Offender), you need to know how serious this could have been. I could have had a baby in the car.

Facilitator: She could have swerved into traffic and killed someone - just because you were bored. What if a child had been in the seat?

Offender: I could have been in worse trouble.

Facilitator: (Shaking his head) Don’t think about your trouble. Think about the people. It’s 6 months later. You’re in the best case scenario - no one was hurt (Case #19).

Other common types of offensive claims by designated victims include references to the costs 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). Some also pointed to factors and consequences that the offender may not be aware of, such as medical conditions that rendered them particularly vulnerable to injury, 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), and difficulties working and getting on with their lives. Such offensive claims attempted 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.

Designated victims’ supporters generally echoed such sentiments, vicariously “embracing” the victim role in their identity talk (Snow and Anderson, 1987). Many noted the suffering that the victims went through, or strongly emphasized “what could have happened.” Either way, they used an emotional tone to micropolitically underline their point (Clark, 1990) For example, two police officers who arrested a young man beating another during a “mob frenzy” exclaimed: “Guys were on the ground being beaten. Fights are one thing, but the head injuries we’ve seen in that type of fighting are bad. Try going to the Rehab Centre and seeing young people who now need to have their diapers changed!” (Case #15). In another case, a woman whose son was assaulted by several youth who robbed him of his clothes, did virtually all of the talking during the session for her obviously reserved son (although he was nonverbally encouraging and prompting her in various ways). Facing a shielding strategy by the offender’s mother in relation to her child-rearing, and a claim by both that another offender was really to blame, a glib comment from the offender prompted the victim’s mother to an offensive strategic outburst:

Facilitator: Unlike the courts, here you get to talk to the victim. What would you have said at the outset?

Offender: I’m sorry – to both of you. If I could have prevented it I would have...I’m a lover not a fighter.

Victim’s mother: (Sternly / emotionally) 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? If you know someone doing something, just get away from it. Don’t do something that could hurt someone and not be able to take it back! Think about your future. Does it help to hang with someone that will bring you down? The only reason I’m here is that I’m hearing positive things about you, and I want you and my son to both have a future. I don’t feel that way about (the principal offender) as he’s been bragging. I hope that things work out. Second chances are good, but not third.

Offender’s mother: (defensively) I don’t understand what happened knowing our family. He has to recognize he’s got a second chance.

Facilitator: What will you do next?

Offender: I’ll try to stop it myself if I see something starting. I’ll consider the impact on their life (Case #2).

Such dramatic uses of the victim role by victim supporters raised the shame level substantially, affecting all present and putting them in a better position for contract negotiations.

(**ii) Offenders’ Defensive Claims:** Designated offenders, facing claims of victimization, attempted to appropriate this language and use the victim role as a shield (Kenney, 2002). First, managing their emotions in line with institutional feeling rules (Hochschild,1983), many admitted the offence, claimed feelings of remorse and guilt, apologized, asserted that the incident “ruined their lives,”and listed the consequences and suffering they went through since (e.g. losing jobs, losing parental respect, trust, etc.).They often coupled this with claims that they have “changed” and have since worked to improve themselves. Consider the following exchange, where the offender accounts for the theft of a laptop computer from his workplace:

Offender: It was a spontaneous act. I didn’t plan it. I saw it in the office and took it. I got caught as who took it was obvious. The police came and arrested me and took me down to the station. I admitted it. I’m really sorry about this. It ruined my life. I lost my job. The worst part is that your parents are upset with you, won’t trust, won’t even let you leave your home.

Facilitator: How do you feel now about stealing?

Offender: A year ago I weighed the pros/cons, the benefits and risks of being caught. But now I’ve gone through the process I feel different. Now, I have a sense of wrong. I won’t risk it.

Facilitator: What about the effect on others?

Offender: Now I think of the effects on others. Ever since the woman (direct victim) talked to me I feel bad. I won’t even drink. I’m afraid to do anything wrong. I’m turning 18 (when adult laws apply), so I don’t want to risk it. My dark side was stronger before, but now I think of consequences and it’s gone (Case #1).

Other supposedly contrite offenders went further, emotionally pointing out their own victimization in an attempt to evoke sympathy, perhaps even empathy. Consider the following interplay between a session facilitator, an offender charged with break and enter, and his mother:

Facilitator: How were you affected since?

Offender’s Mother: I was shocked. I hadn’t had any trouble with him, but he was hanging with a bad crowd. I had no idea. I just feel so sorry for these people (the victims). Just after this our own place was broken into and I lost stuff my father had given me. You have to work hard and never think that someone will come in and take things. I was scared. Since this happened my son doesn’t want to leave the house. He sees a psychiatrist and is on medication. He’s terrified to go anywhere. It’s just a terrible thing. I’m so sorry.

Offender: From then till now I’ve totally changed into a different person. I don’t hang with bad kids anymore. I’m more respectful for my age. I have more feelings for others. I was overwhelmed at the feelings of these people losing things attached to their relatives. I couldn’t understand why I did it. I almost felt so bad I thought of suicide. I got beat up by one of the guys I knew cause they thought I told on them…

Offender’s Mother: He got away from them and they harassed, threw rocks at our windows…

Offender: Now I’m agoraphobic. The second I step outside I feel sick. I got beat up so much for no reason they scared me into my house. I convinced myself those people are everywhere. We often call the superintendent of the building because we get threats. This is still going on.

Facilitator: Is this related to court?

Offender: These guys know their games. I won’t tell. I’d be dead the next day, or badly beat up (Case #3).

We would term this the *“I’ve already suffered so don’t make it any worse” strategy*. Such enactment of contrition with suffering constitutes a micropolitical emotional tactic to put the offender in a better “place”(Clark, 1990), a strategic approach that moves beyond traditional “accounts”(Scott and Lyman, 1968), though it may partake somewhat of the “distancing” strategy and the “embellishment” variety of “fictive storytelling” as recounted in Snow and Anderson’s (1987) study of identity work. It also bears some relation to Maruna’s (2001) redemption scripts.

Of great significance in this strategy were supporters’ emphasis on how their children have suffered as a result of the incident. Many pointed out how their kids have lost jobs, income, respect, and parental trust. Again claims were typically coupled with vicarious redemption narratives (Maruna, 2001), 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” (Case #1). In this respect, supporters were quick to intervene to make sure that the agreement being negotiated is fair, reasonable in relation to the offender’s educational obligations, and their ability to perform without undue hardship.

An interesting variation involved parents and supporters emotionally expressing their *own* suffering, doubts, sympathy for the victims, and arguing that they have *already disciplined* their child, again implying that anything further would be excessive. In an incident of youth throwing stones at passing cars, one mother, father and two victims have the following exchange:

Offender’s father: I’m greatly disappointed in him, but he worked all summer as punishment. He knew the gravity of the situation - that it could have been worse. I apologize too. It’s been hard for me.

Offender’s mother: I apologize for (offender). I knew something was wrong right away. The boys are usually OK sleeping over with friends. He usually spends his time with sports. I spend money on that to keep him off the street. I initially blamed myself. I raised him a lot myself, but always made sure he went where he said he was going. That night his friends were busy and stayed on base. Why they did it I don’t know. I was hard on him and took everything away except hockey Otherwise it would give him excuses and opportunities for trouble. He spent time playing hockey and worked to raise money for ADHD by himself.

Victim 1: I think that’s excellent - to do something positive.

Offender’s mother: I told him ‘what little you have you’re selling to help pay for the damage.’ He’s tried since the beginning. If it had been me I’d have gone off the road. So he’s had a rough year and isn’t allowed to walk the street. He goes where he says. He’s playing sports morning till night so there’s no chance to get into trouble. I really apologize. I would have been furious. This whole thing has gone on far too long.

Victim 2: This is more positive than going to court. It just took too long. I’m glad we were given the opportunity to learn from this (Case #13).

Interestingly, this exchange was the precursor to a more understanding tone and set the stage for successful resolution. As with designated offenders, emotional micropolitics (Clark, 1990), identity talk (Snow and Anderson, 1987) and redemption narratives (Maruna, 2001) may be seen. But there were other offenders and their supporters, less inclined to throw themselves on the mercy of the designated victim, who attempted to downplay their role in the offence, presenting accounts that they were the victims of one kind of circumstance or another, thus less responsible. One common method 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,”or that they were “singled out” when others were really more responsible. For example, one youth claimed he was merely a bystander who neglected to intervene when an unpredictable acquaintance roughed up the victim and stole items of clothing:

Offender: A guy I was with called over (the victim). My girlfriend said to him ‘don’t do that, I know him.’ First thing I knew someone hit him. My friend wanted me to have his stuff. I thought ‘I can give it back tomorrow.’ I was just there in the wrong place at the wrong time. Later, the police called home that they were coming to get me if I didn’t come in. It was all (friend’s) fault. He’s not a friend no more (Case #2).In some cases, designated offenders’ parents backed up such claims, attempting to excuse their child’s behavior by asserting that they would not have become involved were it not for peer pressure (“He’s shy and easily lead”). They were usually quick to add that they never brought their children up to behave in such a fashion. Designated offenders’ behavior was thus portrayed as largely the fault of an external factors such as hanging with a “bad crowd” or living in a “bad area.” The mother of a youth charged with a school break in commented to a critical victim:

He’s a good kid. I taught him right from wrong. It’s the friends he hangs around with and tries to impress. They’re really bad kids and too young to do anything with. He doesn’t say no to them. I’m trying to get him away from the (bad part of town) situation (Case #16).

Still other designated offenders emphasized problems in their home life,dysfunctional family dynamics, abuse, victimization, addictions, or a disorder. For example, one young woman charged with assault and property damage following an argument with her mother and mother’s boyfriend, attempted to excuse her behavior by referring to her condition:

With bipolar disorder, my emotions are very intense. When I’m happy, I am for days. When I’m mad, I’m mad for hours or longer. It’s not easy for me to calm down. My emotions are extreme. I don’t need to be agitated more (Case #14).Given the implications and context of such claims, family were not so inclined to back them up.

In all such cases, offenders were attempting to portray themselves in some sense as victims, as having limited rather than full responsibility (Karp et.al, 2003), and as suffering consequences from the incident. This is in line with Scott and Lyman’s (1968) “excuses,” Sykes and Matza’s (1957) “denial of responsibility,” Snow and Anderson’s (1987) “distancing” and “fictive storytelling,” and Maruna’s (2001) “condemnation scripts.”Such defensive moves illustrate how designated offenders attempt to make up for their initial rhetorical disadvantage and emotionally put themselves in a better micropolitical “place” to negotiate a solution (Clark,1990).

Finally, a common - though unsuccessful - defensive strategy was stalling. Usually occurring where there was already an issue between an offender and their “supporters,” this involved the offender sitting quietly and sullenly while others talked, uttering monosyllabic responses when questioned, claiming not to remember what happened, and giving the overall impression that no matter what they did - or do - they will be blamed. Such crude attempts at altercasting inflamed the situation.Consider the following exchange between a school principal (the victim), the offender’s father, session facilitator, and a youth who stole money collected for a school trip. After the principal expresses being “hurt by her repeated dishonesty,” and her father “frustration” that “despite all I’ve tried, nothing seems to work,” the exchange proceeds:

Facilitator: What is behind this? What do you think you have to do?

Offender: (silent, arms folded)

Principal: Make some good choices? Be honest? Do you really think you’re being honest doing what you’re doing? Does it really help? Or does it hurt you a bit too?

Offender: (sighs, stares at ceiling)

Father: (emphatically) I’d really like an answer to that question.

Principal: And, you know, it’s not always who you’re running with either.

Facilitator: We’re here to get a better understanding. What were you thinking at the time? Can you help me?

Offender: No.

Facilitator: You know that stealing is wrong. Why do you do it?

Offender: (inaudible)

Facilitator: Could it be that you do it first and think about it after?

Offender: (silence)

Father: (angrily) When I was a kid people stole out of necessity, but she has no reason - she has lots of food and doesn’t want for much. She even stole from our 3 year old. She has pretty well everything compared to what I had as a kid. I hate to judge her because I’d also be judging myself. No one else in the family does this. It gets me down. I swore I’d never ignore my kids like my dad. I’ve never hit her like my dad hit me, but I turned out better than this. We punish her but it has no effect. I’ve tried my best beforehand to give you the tools to make the right decisions and then I hear this horror story. I’m not handling this well!

Facilitator: Do you know what could happen if you keep getting into trouble with the law? Do you know about criminal records? How they can affect your life (e.g. not getting a job).

Offender: (Arms folded, gives no answer).

Facilitator: You need to make some good decisions or it will affect you when you’re older (Case #9).

Note how the offender’s silence and failure to take turns (Atkinson and Drew,1979) encourages further questioning, the principal pre-emptively discounts her potential claim of peer pressure, and ultimately prompts her father to a further outburst of victim claims, with the facilitator backing him up. Implicitly reflective of a “condemnation script,” (Maruna, 2001), stalling, when employed by one with little institutional power, was an ineffective way for designated offenders to deflect victim claims. Indeed, it may be seen as a form of “emotional deviance” (Thoits, 1990).

**(iii) Offenders’ Offensive Claims:** Designated offenders went beyond mere defensive claims, in some contexts taking a more robust stance, even using the victim role as a sword (Kenney, 2002).“Identity talk”(Snow and Anderson, 1987) involved attempts to turn the table, emotional claims that the designated victim was really the problem, not them. Implicit were “condemnation scripts” (Maruna, 2001), justifications (Scott and Lyman, 1968), emotional micropolitics (Clark, 1990), and neutralization techniques of denial of the victim and condemnation of the condemners (Sykes and Matza, 1957). Most common was for the designated offender to suggest the victim was not coming to the table with “clean hands,”that they provoked the incident through their own conduct. Consider an exchange between an offender, her mother and boyfriend (the victims):

Facilitator: Do you want to make things better?

Offender: (curtly) I’m dealing with it.

Mother: There have been no more holes in the wall.

Mother’s Boyfriend: But she can be nasty.

Mother: And she’s jealous of (my boyfriend).

Offender: If you grew up with no father figure. He tries to control me! I never accepted her other boyfriends and they never stayed over. He’s the first overnighter. We lived with my grandparents and she couldn’t.

Mother: (Laughing nervously) I didn’t want her affected.

Facilitator: You were alarmed when the relationship started?

Offender: I wasn’t allowed contact with my grandmother!

Mother’s Boyfriend: You were ignorant.

Offender: I’m not comfortable having a man telling me what to do when my whole life it was done by two females. He doesn’t need to stick his neck in. (To Mother’s Boyfriend) There’s *nothing* you can tell me to do that I will do. (Mimicking him) “Don’t fight with your Mom...”

Mother’s Boyfriend: I do it politely.

Facilitator: Do you like (Mother’s boyfriend)?

Offender: I think she can do better (Case #14).

Other examples abound. One offender attempted to open the battle on a new front, claiming that the designated victim “roughed him up,”asserting “self-defence.”Another, whose parents questioned his associations, claimed a right to “pick my own friends.”A third angle was to claim the victim “has issues” that lie behind their own behavior.

In cases where the victim was an outside party rather than a family member, supporters were also inclined to assertively back up offenders. Rather than admitting, excusing and minimizing, they used the victim role assertively to cast aspersions on the victims. This occurred in disputes over the factual details of the incident and responsibility. Some made claims that the victim unfairly “singled out” the offender, judged “guilt by association,”roughly handled the offender, or even that they were fearful of reprisals. In a case where a victim captured one of a group throwing rocks at cars, then held him until police arrived, a father micropolitically intervened:

Offender’s father: I’m angry at (the male victim) for how (the offender) was apprehended. I’m thankful nobody was injured. (Offender) has had a hard time since. One of his teachers confronted him at school. You know, he’s guilty by association. We’ve had many discussions about it.(Case #13).

Such claims have the flavour of “denial of the victim” and “condemning the condemners” (Sykes and Matza, 1957), along with condemnation narratives (Maruna, 2001). At times the forceful assertion of such claims, particularly by a united front, threw designated victims off guard, prompting defensive posturing. More often, their ready perception as “emotional deviance”(Thoits, 1990) escalated matters, calling for facilitator intervention. Offensive claims by offenders and their supporters tended to be unsuccessful, running up against the condition of “accepting responsibility” - of which victims and facilitators were quick to remind them. Such claims raise doubts whether youth should have been referred to the program (Karp et.al., 2004).

**(iv) Victims’ Defensive Claims:** Designated victims also used the victim role defensively. Most common was the claim that, by being present, the designated offender had already accepted responsibility, employing program resources as an “excuse,” denial of responsibility, or means of distancing themselves from the offender’s claims (Scott and Lyman, 1968; Sykes and Matza, 1957; Snow and Anderson,1987). One man, when an offender disputed facts about his firing for theft, stated “this is supposed to be about accepting responsibility, not shifting blame” (Case #4).

Other designated victims claimed that impugned actions were necessary. For example, police officers claimed that their actions were “not personal,” that they were “simply doing their job.”Others, accused of harsh treatment, claimed that they were merely protecting themselves:

Offender: We ran because we were afraid you’d hurt us. When I was caught, I felt scared.

Offender’s father: I heard that you made a comment that if you were in the woods you’d have been rougher. It was quite intimidating.

Victim: I wasn’t rough with him. So many kids have no appreciation for things, but will go after you if you do them wrong. I went after them, caught him, and protected myself in case he took a swing at me. I held hard enough to hold him. You don’t know who you’re coming across. I just held on to him and wasn’t letting go. I never threatened him. The police took an awful long time coming and then didn’t do much when they arrived. You need to take responsibility.

Victim’s wife: He’s a big kid you know.

Offender’s Father: I didn’t appreciate getting a call from the police at 11 PM to pick up my son. It wasn’t very pleasant. This was a big surprise.

Victim’s wife: I saw it. There was no violence. He just held on to him. I’m a Mom. I wouldn’t let anything happen. He’s lucky it was us. Some really rough people could have caught him instead. (Case # 13).

In other cases, when it was suggested that they were being too harsh, victims noted that the offender had been “given chances before,” that they had repeatedly suffered as a result of the offenders’ actions, and thus were justified in their suspicions (“you’ve got to earn my trust”). Tears, upset, and obvious emotion served to micropolitically shield designated victims in this respect (Clark, 1990). Consider a case where a victim, upset about her son disputing his theft for drugs, shut down his claims of exaggeration and the facilitator intervened on her behalf:

Offender: (angrily) It’s not like I spent $2000 on dope!

Victim: (crying) I asked you about this and now you’re saying different. I smell it in your room all the time!

Facilitator: Let’s get back to the original issue. If you two go at it we won’t get anywhere (turning to victim): How are you?

Victim: (through tears) OK.

Facilitator: Do you want to talk from your perspective?

Victim: I looked at my bank account and saw 3 checks went through. When I confronted (offender) he denied it, said I had to prove it. I had to go to the bank, the police station, close my account and do up an affidavit. They had to investigate. It took a couple of months to arrest him. Even then, he wasn’t forthcoming about his actions. I *know* that 90% of the money went to drugs....(sobbing /emotion building) Now he’s moved out of the house!

Offender: (attempts to interrupt / begins to say something)

Facilitator (sternly): You’ll get your turn

Victim: This is his second time in trouble. There were at least 30 other incidents in the past 2 years as bad or worse than this. He’s written checks before. He stole my car and totalled it. He’s done B+E’s. He’s never had to suffer consequences for his actions or take responsibility for them. He’s got a major drug problem and needs counseling big time. He’s way down there somewhere (motions with her hand)...I’d like to see him come out sometime before he ends up in jail for the rest of his life...He’s...

Facilitator: You’re worried about him.

Victim: I’m worried sick about him. Visitors to our house have money stolen out of their purses. You have to hold on to everything or it disappears from the house. It’s all very drug-related. He needs to get off drugs, get some help and counseling. I can’t help him...(crying) I miss my son! I’m sorry to be so emotional!

Offender: (begins to interrupt)

Facilitator (emphatically): You’ll have your turn! (Case #20).

Victims thus shielded themselves from offender claims, emotionally raised implications of deviance, and facilitators intervened through institutional talk (Holstein and Gubrium, 2000).

Supporters often served to reinforce such defensive tactics. Victims’ parents emotionally claimed that their “innocent children” unnecessarily suffered feelings of fear, violation, and insecurity from the crime:“It was just terrifying as a mother seeing your kid that upset and his friend all full of blood” (Case #2). Others countered “manipulation” by the designated offenders supporters. The following victim supporter, whose son had been involved in an altercation at school, faced claims by the designated offender’s mother that the victim had also been at fault:

Offender’s mother: This is the first time (the offender) has done anything like this. He’s quiet and mild-mannered. He must have been pushed

Victim’s mother: We’ve had incidents before and (the victim) has been beaten up every year. Other parents have told me stuff that he wouldn’t, but I’ve seen the effects.

Facilitator: So you’re disappointed that you weren’t told anything by the school?

Offender’s mother: (interjecting) The police and school officials said that this session was being held because both participated in the fight and (the offender) wasn’t being blamed. He’s quite aware that his part in this was wrong.

Victim’s mother: I’ve got no tolerance for fighting. (The victim) has always been picked on at school. I really fear for what kids bring in to school now. They’re there to learn, not to fight.

Facilitator: Does (the victim’s) history make this harder?

Victim’s mother: (emotionally) Yes, I understand that my son was a victim.

Facilitator: Well, a discrepancy exists in what we'’e dealing with, but the paperwork says that this is a pre-charge for (the offender). Instead of going to court, let’s work with what we have.

Offender’s mother: (grudgingly) OK...but I’m not happy (Case #6).

In still other cases, the victim role is used as the contract phase looms. In a theft case, a security officer, acting as victim supporter, replies to a query about the offender’s possible return to work:

Officer: We haven’t formally barred him from the grounds, but cops tend to think ‘once a thief, always a thief.’ Over the years lots of us have been burned twice. I think (the offender) has learned, but he was like a train on its way off the cliff. I’m from the old school, so this is a second chance I’d like to see work. But it was habitual behavior that escalated, so I’m still suspicious.

Facilitator: (to offender) What assurance can you give the company that you’ll ‘stay off the train?’

Offender: A year ago I realized I had to stop when I turned 18.This was bad, so I can’t even imagine what that would be like. As for going back, that’s their opinion. I can’t change that.

Facilitator: Do you believe ‘once a thief, always a thief?’

Offender: Yes, but I think I can control it and change.

Facilitator: What kind of solution can you agree to/ deal with that issue?

Offender: I have no idea. I thought you guys would do that.

As can be seen, using the victim role defensively prompts both forceful questioning from the facilitator, and an openness by the offender to suggested solutions.

When necessary, victims and supporters thus use emotional micropolitics, accounts, techniques of neutralization and identity talk (Clark, 1990; Scott and Lyman, 1968; Sykes and Matza, 1957; Snow and Anderson, 1987), filtered through the victim role, to defensively manage encounters.

**(v) Contests and Outcomes:** Competing rhetoric resulted in disputes, often “victim contests” (Holstein and Miller, 1990), where each side attempted, in effect, to claim that they were the “real” or the “biggest” victim - and thus gain practical control over the definition of the situation and session outcome. These were verbal duels involving claims of victimization, accounts (Scott & Lyman, 1968), techniques of neutralization (Sykes and Matza, 1957), offender “identity talk” (Snow and Anderson, 1987) and offender narratives (Maruna, 2001). Evident, to some degree, in all sessions, whether when discussing the incident or during contract negotiations, some were open, others very subtle. Skilful management by the facilitator was crucial.

Three possible outcomes were apparent : (1) the 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 full victim/offender sessions); (2) the facilitator could successfully intervene to get the session back on track and enable the parties to negotiate a contract (11 of 24 sessions); or (3) competing claims cut common ground such that the victim role pragmatically expanded, both sides officially recognized each other as having been victimized somehow, and this served as a vehicle to resolve the issue (10 of 24 sessions).

The first outcome was relatively rare. The best example involved a youth with reported conduct problems who allegedly assaulted his mother and caused property damage. There was conflict over a certain friend, seen by his parents as the source of his problems, and there had reportedly been an argument just prior to arrival. This quickly heated up again, derailing the session:

Facilitator 1: So what happened in January?

Offender’s mother: I took (offender) from the (group home) to drive him to school. While getting ready to leave, I told him not to hang around \_\_\_ (another boy). He flipped out and started yelling and insulting me in the car. I told him not to treat me like this. Soon I was running down the road and chasing him. Then he hit me with something, went into our garage, started beating at the door with a shovel and broke the glass. Then he took off. My other son wanted to call the police.

Offender: (Disputes some details, then says:) It really doesn’t matter as they’ll twist it all around against me anyway and I’ll be blamed. I guess I’m the bad guy.

Offender’s father: (angrily) But you did swing the shovel at (your brother)!

Facilitator 2: Everybody calm down! (things get quiet, all are scowling). OK, now. One at a time.

(Both boys continue to dispute some of the details above, then the offender’s brother continues).

Offender’s brother: I was holding (the door) and the glass got busted. I started out by saying that he shouldn’t be hanging with (his friend). He shouldn’t have been outside.

Offender: Later I punched him and walked away.

Offender’s brother: Really, anything could get him going.

Facilitator 1: (To offender) what do you have to say?

Offender: Nothing. I might as well go with what he said. It will just turn around on me anyway.

Offender’s mother: I’ve heard enough. I’m leaving (walks out: other participants look shocked).

Offender’s father:(Turns on offender) You’re not coming home if you’re hanging around with him!

Offender: He (the other boy) had nothing to do with it. You’re not supposed to take sides here! It’s all your fault. Why are you always taking up for Mom?

Offender’s father: I’m leaving (walks out).

Facilitator 2 (to offender and his brother): How do you feel about your parents walking out?

Offender: (Walks out, tears in eyes, on the way exclaiming ) I’m not the bad guy here! (Case #7).

Essentially, all participants were using the victim role as a sword (Kenney, 2002) to such an extent that positions hardened and no common ground could be cut. The offender’s “condemnation narrative” (Maruna, 2001), victims’ micropolitical use of the victim role (Clark, 1990), and mutual perceptions of “emotional deviance” (Thoits, 1990) blocked resolution.

The second situation, where facilitator intervention prevented a dispute from derailing the session, is illustrated by a case where a youth, allegedly at the urging of another, shot a pellet gun at a bus, injuring a teenage girl. The girl, her mother, and the bus driver were present, as were both offenders and their parents. The bus driver got into an argument with the first offenders’ mother over taking responsibility instead of shifting blame by claims of “peer pressure.” It escalated when he claimed that the second offender “smirked” at him. The facilitator intervened:

Facilitator 1: Why don’t we take a break – 2 minutes.

(At this point, the first offenders’ mother, the bus driver, the primary victim and her mother remain, while the second offender’s mother goes to the washroom. The facilitators and offenders go outside and close the door. Both facilitators can be seen through a window conversing intently. Meanwhile, the bus driver comments to the first offender’s mom on the need to take responsibility. She replies that her son is 13 years old and has ‘an attitude’ when he is confronted. After this unrelated small talk begins (e.g. schoolwork). Soon the facilitators re-enter the room. All wait for the second offender’s mother to return, during which time it is very quiet. She finally returns and the session resumes).

Facilitator 2: Well, (Facilitator 1) and I talked. Restorative justice involves accepting responsibility. Both the police and the caseworker indicated that (both offenders) had already done so. (To victims) are you willing to keep going, or would you like to stop the process and send the case back to court? It’s your call.

(The bus driver and the primary victim’s mother look at each other, then she says) The process is fine. All I wanted to hear is that they felt what they did was wrong with some conviction. I understand you’re nervous (at this point, the bus driver, clearly deflated, backs off).

First offender’s father: (Emphasizes to first offender): You said you knew what you did was wrong.

Victim’s Mom: Now’s your chance.

Second offender: I’m sorry. I didn’t mean to hurt anyone.

First offender: I want to apologize. It was wrong for me to listen and then go ahead with shooting at a bus.

Victim’s Mom: That’s fine.

Bus driver: (grudgingly) That’s fine. They were nervous (Case #5).

This strategy by the facilitators, grounded in institutional discourse, opened up divisions between the victims and enabled the facilitators to manage the session to a successful conclusion. Faced with the possibility of an unsuccessful session, along with court, the injured girl’s mother, the more symbolically potent victim, spoke up in favour of continuing. The driver’s attack was shut down (evident by his body language and his quickly dropping the matter).The offenders soon apologized and negotiated a contract apparently satisfactory to all. Indeed, even the bus driver, after having restitution for his damages included, showed evident support for the final resolution.

Yet this second category is complicated by the issue of whether resolutions negotiated after facilitator intervention are“meaningful,”whether parties are merely “papering over” their differences, or, indeed, whether facilitator intervention actually enables one side to “win” the contest and “negotiate” a contract on their terms. While meaningfulness is admittedly difficult to pin down in every case, there were clearly cases where the latter possibilities were evident.

As exemplary of 3 cases of papering over, consider the allegedly bipolar youth who behaved violently toward her mother and mother’s partner, damaging the home. As noted, much of the contest occurred between the mother’s partner and offender, who did not get along. Despite attempts at seeking common ground by the facilitators (e.g. “you’re actually very similar”), each side continued to use emotional micropolitics (Clark, 1990), blaming each other throughout the session. A contract was grudgingly negotiated to write an essay and do household chores, largely because all were reminded, and saw it in their interest not to go to court if the offender continued treatment. One facilitator commented afterward that “very little had really been resolved. Really, positions have hardened.” Another added “Nobody is under any illusions here” (Case #14).

There were also 5 cases where facilitator intervention quite evidently enabled one party to “win” a dispute, ultimately putting them in a stronger position to negotiate the contract. In one case, allegedly involving theft from his previous employer, an offender and his parents openly disputed this designation at the outset. However, he had accepted responsibility on agency forms, and the victim claimed to have attended on that basis. Matters quickly degenerated into a “victim contest.” The offender’s camp asserted that he was merely following existing payroll practices, had no intent to steal, and that the new manager who fired him was being unduly harsh by “singling him out.” They claimed that “if he had been trained properly, this wouldn’t have happened,” emotionally adding that he had suffered greatly 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 about your mistake, we wouldn’t be here.” He added that he too had suffered due to a resentful staff that “sided” with the offender. Following these emotional micropolitics (Clark, 1990), the facilitator stepped in. Having his point about accepting responsibility validated, and the potential reactivation of criminal charges raised, the victim then pressed home his strategy and laid out the contract he desired. Despite further objections about responsibility and “excessiveness,” his terms were adopted. The feeling of defeat emanating from the offenders’ camp was palpable (Case #4).

These three examples show that facilitator intervention can serve to *officially* resolve victim contests, but may be more meaningful in some cases than others in resolving the dispute to the satisfaction of all concerned. They also show that limiting clients’ opportunities to tell their own stories by directing them to certain narratives (Anderson and Snow, 2001), particularly by invoking the use of “last resorts” (Emerson, 1981), can result in different interactional outcomes.

The final category, where interacting claims of victimization may cut common ground, is illustrated by a case where, after hearing initially critical burglary victims talk about their feelings of fear and violation, an offender and his mother take a cue from the facilitator and speak about harassment faced from his former criminal associates, who believe he has “ratted”on them. Then mutual feelings of victimization micropolitically pave the way for the enactment of empathy:

Facilitator: Feelings of lack of safety are key tonight.

Offender: I feel exactly the same way as our home was broken into. I’m afraid to go out, even for appointments. We both panic. I even hide my Playstation 2 in the bathroom in case someone comes in.

Facilitator: What can you say to the victims?

Offender: It won’t be me if anyone is going to break into your house.

Victim (father): I just wanted you to understand what we’ve gone through.

Offender: I’m sorry. I’ll make it up to you in any way possible.

Facilitator (to Offender’s mother): What about you?

Offender’s mother: (crying) I just can’t believe today’s kids. They aren’t afraid of adults anymore. They have no respect. They’re vicious. It’s different from how I was brought up. They have no fear, respect, and I don’t feel safe in my home. I have a chain lock on my door, even when I just go outside for a minute.

Facilitator: We’ve talked about feelings and the loss of sentimental items. How does that make you feel?

Offender: I feel terrible. You seem like very nice people that wouldn’t hurt anyone. At the time I didn’t realize. I’m just very sorry it happened.

Victim (mother): His mom is right about kids’ lack of respect for adults. I work in a school. I think everybody should be looking out for kids. It was good hearing from (the offender) and seeing how his life has been altered. I see a lot of bullying myself in the school I work in.

Facilitator: What help are you getting for the threats?

Offender: Not much. I’m thinking of moving away.

Offender’s mother: Actually, the police are constantly in contact, they’re almost friends (e.g. come over, park in front, etc.) I struggle when my son says don’t call the police. We tried that but it didn’t work. Now I do call. But we still have problems being terrorized.

Offender: I see these guys all around the area. I worry if I go on the bus. I worry that they’re everywhere. I know the situation (a recent local news story) where that bullied kid killed himself. I have thoughts about it every day. I don’t know what to do. There’s no solution. You tell the police and there’s a problem. You don’t tell and there’s also a problem.

Victim (daughter): I just don’t understand bullying

Facilitator: Everyone here agrees on a lot. Anything else? (no) OK, let’s start thinking about a contract, about something he can do to make amends. *It seems to me like we have 5 victims tonight*. (Case #3).

In this instance, initially critical victims, themselves expressing feelings of fear and insecurity, came to enact empathy for the offender’s victimization, his social isolation and consequent emotional problems, as accompanied by the tears of his mother. Indeed, the facilitator ratified that all parties shared the experience of victimization. An agreement was soon reached with terms that appeared meaningful to all.Thus, it is not just shaming that is reintegrative, but mutual feelings of victimization that can cut common ground for empathy to be enacted by the parties.

**(c) Strategic Interventions:** Until now, we have considered typical rhetorical claims used by the parties, their supporters, and facilitators to further their interests and move the session along to, from their standpoints, a successful conclusion. However, there were also a number of less common - but highly strategic - interventions, involving: (i) supporters; and (ii) facilitators.

**(i) Supporters:** Beyond the fairly straightforward actions taken by supporters above, two significant variations involved claims by supporters to have been *victimized in a manner different than that set out in the formal complaint*: (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 in the victim’s favor); and (2) in relation to program policies. Relatedly, if present, police officers added a further strategic twist.

In the first situation “supporters”came down rather hard on uncooperative offenders, claiming that they had violated trust, “revived bad memories,” “embarrassed” them, that they have “tried” but “nothing seems to work,”generally indicating that the offender should face the consequences or they “will never learn.” One father went through a litany of his daughter’s repeated theft, lying, drug use and sexual activity, commenting that it was he who called the police because “this has gone far enough.”He claimed that his attempts to “teach her right from wrong” had failed, discipline had been unsuccessful, that he “was at a loss,” and emotionally culminated: “it all makes me feel like a failure as a father” (Case #9). He received strong victim support afterwards, and, given this alliance, the offender became quite compliant to their desired contract terms.

In another such case, an offender’s mother joked at the outset about how a good outcome would be to make her son “clean out porta-potties.” Later in the session, after the victim pointedly responds to the facilitator’s request for suggestions, the following exchange occurs:

Victim supporter: Put him on a ship and send him to Australia. That’s what they used to do.

Offender’s mother: (Laughs) Sounds good!

Victim supporter: I believe in an apology, if it’s sincere, along with a second chance if people are genuinely sorry and are willing to move ahead. I don’t know if you’re really sorry, sincere, or understand what you did. Until I know you, I don’t know what I really want. I have kids coming into my office all the time who are good actors and then go and do the same thing again.

Offender’s mother: You know, the police brought him home. I asked if they were going to charge him, but they didn’t know. They said they’d let me know the next day. It took a month before I was told it would go to RJ. I told them it was a bad idea. He’s 13, he should be charged or he won’t learn his lesson (Case #16).

Frequently such assertions were coupled with various excuses, denials and distancing to shield themselves from responsibility (Scott and Lyman, 1968; Sykes and Matza, 1957; Snow and Anderson, 1987). These included claims that they themselves are on medication, that the incident occurred when they were away at work, they are single parents or do not have custody such that “I can’t watch him 24-7." Taken together, such stances by offender’s supporters were crucial to the outcome of the session, ultimately either building empathy with the victim, or an uneasy alliance of interests that made it hard for the offender to negotiate a contract in his or her favour.

But there were also cases where supporters on both sides claimed that the nature of the *process* made it harder for them. In two cases, each claimed that the no-contact policy imposed by the program made things difficult, particularly when they lived and moved in the same circles. They claimed that it prevented them from speaking earlier, apologizing, and working things out:

Victim: This should have been dealt with long ago. I would have liked closure despite the contact ban. It’s been very awkward. Getting that over with would have helped. It’s also been awkward for (two offenders)

Offender 1's father: It was very embarrassing for me. It reflects on a parent how their kids behave. I don’t like the fact that nobody told me the boys’ teacher was one of the victims, and that he was going to be here. If I knew he was coming I would have been sure that (offender 1) had apologized to his teacher by now.

Facilitator: Whether it’s right or wrong , no contact is a standard police policy under our program.

Victim’s wife: But how can that be when we live in the same community? There need to be exceptions. They were playing hockey on (victim’s) team for heaven’s sake!

Offender 2's father: But we were told to avoid it.

Offender 3's mother: We were told specifically.

Offender 2's father: Give them the opportunity. They should have it.

Offender 3's mother: They had to face this every day.

Facilitator: I see this has been hard on the community (Case #13).

While, of course, there are valid legal and safety reasons for such policies, such claims served, in part, to form common ground in these sessions to facilitate resolution. The above parties even urged facilitators to pass on their wishes for a policy review to allow exceptions in such cases.

Finally, it is important to consider the impact of the presence of police officers. Offenders and their supporters often made self serving claims, both in relation to the incident and the proposed contract. In relation to the former, selective memory loss and the claim that “I was just in the wrong place at the wrong time” came up often. Yet, in those three cases where police were present, such claims did not go unchallenged.[[12]](#footnote-12) Indeed, facilitators commented on this fact. Consider a case involving an assault at a community festival. The offender claimed he was merely standing by a tent, an altercation began, and he defended himself:

Facilitator: What would you have done if the cops weren’t there?

Offender: I don’t know.

Facilitator: I think that you had a lack of an inner policeman. You haven’t said much - only about 8 words.

Offender: It was pretty fast.

Officer 2: We all remember being 16-17.The (festival) draws a lot of people and raises a lot of money. Unfortunately, some youth drink and these things happen. But, that ruins the event for everybody else. Why would the public want to come back again? And, you don’t even know what it’s over! That’s pretty stupid. You have to realize that we’ve got to wade into that mob scene and put ourselves at risk over something stupid. We could get hurt, especially if the mob turns on us. You’re just lucky the victim wasn’t hurt bad or you could be in front of a judge. What if he fell down and cracked his head? You’d have to live with that for the rest of your life. I know you weren’t thinking, but you should look back and think. You lucked out.

Facilitator: So how’s the learning going?

Offender (grudgingly): There are always consequences. I thought that I could throw some punches and then get away. Now, I think about the people.

Facilitator: And?

Offender (to Police): I’m sorry about putting you people in danger over something stupid.

Facilitator: There’s a stiffness in the air. Why?

Offender: I don’t like cops.

Officer 1: Why?

Offender: They catch you for doing something wrong - not that I do things wrong..

Victim: That’s ridiculous.

Officer 1: What if there’s 2 guys just wailing on you? What if we weren’t there?

Victim: I feel the stiffness too. (Offender’s name), you’re not coming across to us as sincere. I think the others feel it too (Case #15).

Similarly, when the contract came up, more than a few designated offenders quickly suggested “community service hours.” In the above case, this didn’t wash, and a police suggestion of having the offender volunteer with brain-injured assault victims at a rehabilitation centre was enthusiastically endorsed by all, *over* his objection that “I don’t like seeing stuff like that.”

Ultimately it is very important to consider such strategic roles taken by victim and offender supporters, both in helping drive rhetorical dynamics and in influencing ultimate outcomes.

**(ii) Facilitators:** Despite their strategic significance, with few exceptions, most sessions involved the facilitator, following standard introductions and laying down ground rules, taking a relatively “hands off” approach to shaming in favour of the parties themselves.[[13]](#footnote-13) While exerting conversational power at the outset by defining the basis for interaction (Molotch and Boden, 1985; Atkinson and Drew, 1979), most largely backed off afterward. With the exception of a few well-placed comments or questions, facilitators tended to let the parties discuss what happened and the impact of the offence, interjecting only to summarize issues or intervene when a problem arose. 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, prompting the parties to come up with a contract.

Yet it was in their dealings with contentious issues that facilitators’ skills were most strategic. They had to provide a safe setting for designated victims to communicate their experiences to the offender. They had to intervene to effectively handle victim contests so that these did not derail the session. It was also necessary for them to be direct with designated offenders, to question their “accounts”(Scott and Lyman, 1968), “techniques of neutralization”(Sykes and Matza, 1957), “identity talk” (Snow and Anderson, 1987), emotional micropolitics (Clark, 1990), victim claims, condemnation or redemption narratives (Maruna, 2001). Finally, given “institutional talk” (Holstein and Gubrium, 2000), facilitators also had to limit offenders’ chances to tell their own stories, directing them to institutionally acceptable narratives (Anderson and Snow, 2001).

In handling such matters, 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 interrupted, questioned the offender’s thoughts and feelings, whether they have learned something, how they could show that they have learned, and what they might do when in a similar situation again. They at times questioned the offender’s forthrightness, sincerity, pushed uncooperative offenders to answer questions, even encouraged offenders to apologize.

Yet, beyond these broad patterns, facilitator skill stood out in relation to two particular strategies: (1) 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.

First, facilitators in a number of sessions employed strategies for drawing out uncooperative offenders. One involved the strategic use of uncomfortable silence (Holstein and Gubrium, 2000:146-48), particularly in the face of victim’s comments, supplemented by pointed questions. Consider a case where an offender lied in a previous session, then was brought back to deal with it in a second. Following his claim that “I don’t remember what happened,” the facilitator begins:

Facilitator 2: What’s the ideal outcome here?

Offender: To get it over.

Facilitator 2: How can we help?...(silence)

Offender (grudgingly): Analyse the situation...talk a little. Why this happened and how to prevent it again..

Facilitator 2: ....(silence) (The original facilitator, now the victim) likely wants to say something.

Original facilitator: I’m a volunteer mediator with the community justice society, and I facilitated (the offender’s) past mediation on assault/disturbing the peace, but later learned that he hadn’t been truthful with me about his involvement. I support your statement about getting this over with/ learning from it. Yet, given the results of the past mediation, you should be required to show that you have learned something.

Facilitator 2: .... (silence) How’s that landing?

Offender: (Sheepishly) Fine. What do you want me to do?

Original facilitator/Victim: We’ll have to talk about the mediation, what happened, and your explanation. I want to express my feelings, but I need to hear from you first....(silence)

Offender: I came and said I didn’t do it. But I told (a volunteer). I thought I could pull a fast one.

Facilitator 2: How’s that plan working now?

Offender: Not so good.

Original facilitator/victim: I volunteered for this program as I believe in it. My work deals with people in conflict. I don’t like that. I prefer to have people talk about their problems. That’s what drew me to this - people getting to the heart of their problems. I’ve taken lots of training, invested lots of time. For the most part I like it and get lots out of it. But that brings us to your session where you said you were “in the wrong place at the wrong time.” I had some doubts about that, but felt that your parents were so supportive that it was hard to be hard on you. What was really bad was that a new observer was there (i.e. a potential volunteer facilitator). When she told me that you had lied I felt that this was disrespectful to a program that has done a lot of good. Then, I thought of the new person, your parents, and felt bad for them. To be honest, I was pretty mad. I wasn’t sure I’d want to participate as I was still mad. But, I’d like to restore the honour of the program. It’s up to you to take us there and demonstrate to us that you’ve learned

Facilitator 2: .... (Silence) So, what do you say?....(Silence)

Offender: I’d like to say sorry for violating trust, and...(fidgeting) I’m kind of embarrassed, ashamed to put people through something unnecessarily (Case #15).

Beyond manipulation of “turn taking” (Atkinson and Drew, 1979), offenders can be drawn out by the facilitator questioning the “atmosphere.” In the words of one facilitator “what needs to be said must be invited into the room.” When it comes out, such as in the case an offender admitted “I don’t like cops,” facilitator and victims coordinate their efforts on this issue, pointing out that officers face many dangers in similar incidents, that they have seen horrific injuries result, and that the offender may need them someday, ultimately pushing them to a resolution.

A third interesting approach we refer to as the “velvet fist.” This typically involved the facilitator, offender supporters, and designated victim(s), when faced with sullen and minimally verbal offenders, gradually evolving a coordinated strategy alternating between claims of the harms caused as a result of the offender’s action, and a “tough” caring for the offender. This cuts back and forth, softening up offenders and laying the foundation to negotiate a resolution.

In one such case where three youth broke into a garage and set a fire, the facilitator initially got vague and self-serving answers, coupled with “selective memory loss.”She asked the victims (a young couple) to describe the impact. They detailed other tragedies they had recently suffered, and that “we didn’t need this in our lives at the time.” They added they had lost private space, sentimental items, suffered financial losses, and, the facilitator then pointedly interjected: “now you’re expecting a baby.”Next, after prompting offender supporters, they emotionally recounted how the incident brought back terrible memories of a childhood fire, “shattered faith” in the offenders, and how they had feared for offenders’ safety when police came to the door. One even claimed that she lost her job, her family recently suffered a fire of their own, and is currently facing a lawsuit, so her daughter must face up to the consequences. Then the facilitator interjects:

Facilitator: Look at all of the grief you’ve caused. Was it worth it?

Offender 2: No.

Offender 3: I don’t even understand how you people (referring to the victims) can be here for this.

Female Victim: I didn’t want to but felt it was my duty. I don’t want you (referring to the offenders) to become statistics. I want you to make something of your lives.

Facilitator: That’s very powerful considering the damage that was caused to you.

Offender 3: Yes.

Facilitator (to victims): Really, I’m amazed at what you just said. At how you can still care for someone who has caused you so much pain.

Female Victim: My husband’s daughter was taken away too young. (To offenders) I realize that you only get 1 chance. Don’t screw it up.

Offender 3: I’m really sorry. I never really understood.”

Offender 2: I just regret doing it.

Facilitator: I hope so. What if a month from now a friend suggests doing something? Are you strong enough? Remember, next time you will go before a court. In fact, I would recommend that you not go through this program again because you’ve already had your chance. The repercussions of what you did were so serious. Remember, especially, these victims who said that they care about you.

Then the facilitator largely turns her attention to Offender 1, who had been the most uncooperative and persisted in making excuses. She continues this “tough love” approach:

Offender 1: But we’re just kids!

Facilitator: Ahhhh! But how does that make you less responsible? How you act affects how people treat you. Your uncle now doesn’t trust you not to do anything again. The relationship has been damaged. Do you have $21,000? What do you have that you’d like to sell? Your snake? What’s it worth?...We wouldn’t do that to you, but want you to see how quickly something you care about can be gone. Also, remember, your actions close doors for yourselves. (To offender 1) I hope you know that, as Blacks, we don’t need to close any more doors. There’s a disproportion of Blacks in prison, and they face harsher sentencing,.While all people do dumb things and can’t seem to get off the path, we always have to do better.

Offender 1: I have friends in (a local youth detention centre), it’s not that bad.

Facilitator: Oh, (Youth detention centre) is just the beginning! It’s a picnic compared to (nearby medium and maximum security prisons). You’re basically standing there on your own facing someone saying, quite literally, ‘your ass is mine.’ You have to do it to keep on living. (To female offender) It’s no better for women. (To all) I want to help turn you around and help you from falling like dominoes like that. It’s very easy to slide down the slippery slope and get in over your head without realizing it.

(At this point, offender 1 becomes much more contrite and all move on to negotiate a contract). (Case #8).

Beyond these joint strategies of drawing out uncooperative offenders, again the most common approach when disputes appear to threaten the session involved reminding the offender’s side that, as a condition of participation, s/he had already accepted responsibility, could go to court, and should consider the negative consequences of a criminal record. Essentially the facilitator suggests as the sole alternative a “last resort” solution that none wish to pursue (Emerson, 1981), a clear attempt to limit offenders’ opportunities to tell their stories and redirect them to more acceptable institutional narratives (Anderson and Snow, 2001). Realizing that the cost, probability of conviction, and consequences of a criminal record likely outweigh the consequences of completing the session, they usually back off. This approach may also open up divisions between allies, enabling the facilitator to divide, conquer, and move on with the session. Similarly, in contract disputes, 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 long sessions with many tired participants desiring to get things over with.

Since many of these actions were taken in relation to rhetorical claims by offenders, the politics of description institutionalized here against the backdrop of the criminal justice system mean that they faced an uphill battle when attempting to get vigorously involved in disputes.These sessions are hardly mediations in the traditional sense (i.e. where an active agent engages two supposedly equal parties and helps them reach agreement). Offenders face a penalty if they do not come to an agreement, while victims’ interest in being there or working out a solution is less well defined.

Finally, it is important to note that it is the skilful facilitator, perhaps more than any other party, that impacts the final outcome of the session. Yet, of the 40 facilitators, there was a wide range of skill exhibited in handling conflict. At one end were two social workers who stood out in their skill at managing session dynamics; at the other were a handful of minimally trained volunteers with little skill or experience.[[14]](#footnote-14) The majority had developed varying degrees of ability on the job. Certainly most could handle overt conflict, and attempts were made to pair up seasoned and novice volunteers, but when open resistance by one of the parties was not evident, this range of skill occasionally left openings for sessions to be subtly dominated by one of the parties.

In this respect, we would note that 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 rhetorical claims. It cannot be forgotten that these are often attempts to control the definition of the situation, and, ultimately, the power dynamics of these sessions. In cases where facilitators did not appear well equipped to handle these dynamics, a coalition in favour of one party was easily formed. Indeed, there were instances where problems appeared to be “papered over,”even sessions where there was an air of defeat, raising doubts how “restorative”they were.

Indeed, this was evinced by recriminations voiced by offenders and their supporters following sessions clearly dominated by one of the parties. For example, in a school theft case where the principal attended and was allowed to be very vocal and persistent about what he felt should be the outcome, the facilitator did little to intervene. After the session was over and the school principal left, the offender’s mother, who at the outset was taking a fairly stern position in relation to her son, was involved in the following exchange with the facilitator:

Offender’s mother: If it had been up to me, I’d have walked out. I don’t like teachers. He was being very intimidating. He was being quite the asshole. Other kids were doing it, but (my son) gets singled out. If I wanted to take it to court and fight it, I would. But (the offender)did it, so I stayed.

Facilitator: But he seems to care, and has offered to help.

Offender’s mother: He doesn’t do his job properly and only cares about his paycheck. The problems at that school would be a lot less without him (Case #16).

Such cases show “a gap in ideals and practice” (Daly, 2003, p.219). It is important that the subtle power dynamics underlying these sessions be effectively managed by facilitators for the parties to recognize them as truly restorative (Boyack et.al., 2004).While restorative justice is portrayed as an “ideal speech situation” comprised of symmetrical, idealized mutuality, critics have noted that the verbal means by which resolution is achieved may not be symmetrical in practice (Presser, 2004b). Facilitators must not get blinded by this ideal, taking a largely reactive,“hands off” approach. Instead, they must be alert to these dynamics, sufficiently trained, and more ready to skilfully intervene in such cases. In some respects, given the unevenness of skill exhibited by facilitators in this study, critics questions about training have been partially borne out by the data (Wonshe, 2004; Boyack et.al, 2004; Gustafson, 2004; Raye, 2004).

**5.** **Discussion and Conclusion:** Our observational study of restorative justice sheds critical light on the black box of session processes (Latimer et. al., 2001;Cormier, 2002). If process is indeed the “heart” of restorative justice, and means - not ends - are regarded as central (Presser, 2004b; McCold, 2004), our study of “how it works”begins to fill this empirical gap.

But our findings also raise a number of important issues. Firstly, observations of restorative justice sessions illustrate gaps between theory and practice, as processes diverge significantly from the “false understanding of utopia” underlying this movement (Acorn, 2004:160-1). Our observations indicate that, far from getting away from the adversarial system, in some respects adversarial dynamics are reproduced in *different forms*. Of course, some sessions are more openly conflictual than others, yet even where there was apparent contrition and a willingness to work things out subtle rhetorical strategies were often at play. More importantly, given that some sessions were grudgingly settled by a combination of dominant institutional discourse, facilitator intervention, and strategic alliances, it is high time to consider that coercion plays a role.

Of particular importance in fueling session dynamics were both dominant program narratives and their employment by the parties. As with other “help institutions,”active agents did not necessarily accept institutional talk, instead acting to complicate such characterizations, giving “social problems resistance” by manipulating preferred institutional discourse (Presser, 2004a; Holstein and Gubrium, 2000; Miller and Holstein, 1989), and engaging in “identity talk” to negotiate acceptable identities (Snow and Anderson, 1987). Parties strategically drew upon these resources to construct narrative claims and identities to portray themselves in the best light.

In particular, parties and their supporters, whether acting offensively or defensively in the shaming process, or attempting to gain the high ground in disputes, drew heavily on the rhetoric - and interactional implications - of the victim role (Holstein and Miller, 1990; Kenney, 2002). Given the politics of description (Foucault, 1972), particularly that the designated victim was asked to speak from that perspective, parties dramaturgically employed this role, along with “emotional micropolitics” (Clark, 1990). Offenders replied with their own victim claims, along with “accounts” (Scott and Lyman, 1968), “techniques of neutralization” (Sykes and Matza, 1957), condemnation or redemption scripts (Maruna, 2001). Indeed, both attempted, in various ways, to exert conversational power (Anderson and Snow, 2001; Holstein and Gubrium, 2000; Molotch and Boden, 1985; Atkinson and Drew, 1979). All served as ingredients while parties constructed the enactment of both “meaningful” resolutions (where the victim role apparently expanded, cut common ground, and facilitated resolution), and those based more on realpolitik

This unevenness in outcomes is a key concern. While all but 3 of 24 victim-offender sessions were officially resolved, all showed some evidence of “victim contests” (Holstein and Miller, 1990).11 required facilitator intervention to bring them to an “official” resolution, and, among these, there were indications of “papering over” differences in 3 cases, and 5 instances of one side effectively “winning” the contest and largely “negotiating” the contract terms they specified. Interpersonal tactics by designated victims, their supporters, even offender supporters, coupled with facilitators’ use of conversational power (Anderson and Snow, 2001; Holstein and Gubrium, 2000; Molotch and Boden, 1985; Atkinson and Drew, 1979), and last resorts (Emerson, 1981), resulted in such “official” successes having more an air of realpolitik than “meaningful” resolution. This may bode well for program statistics, and partially satisfy some designated victims, but diverges significantly from the philosophy of restorative justice.

Finally, our observations highlight the significance of the facilitator, both in exerting the power of institutional discourse, and in skilfully bringing restorative justice sessions to an “acceptable” conclusion. From the above, it appears that, in their enunciation - and, when necessary, enforcement - of the former, their effective role is to accomplish the latter. Unfortunately, this tends, in practice, to render certain offender claims officially beyond the pale, even “emotionally deviant” (Thoits, 1990), lending credence to questions about whether offenders’ needs and perspectives are adequately addressed by restorative justice processes (Toews and Katounas, 2004). Indeed, it raises the question “acceptable for whom?”Despite the idealized images, our observations indicate that restorative justice is hardly a traditional mediation between equals.

But facilitator skills themselves were also highlighted. The range of skill among facilitators at times had an impact on the outcome of sessions. This lends credence to questions recently raised about the competency of facilitators in restorative justice sessions (Wonshe, 2004; Boyack et.al, 2004; Gustafson, 2004; Raye, 2004), particularly the “hierarchy of skill” in such programs, along with the shortcomings resulting from extensive use of volunteers (Wonshe, 2004:255, 259; Raye, 2004: 332). Indeed, while institutional parameters and power imbalances may render meaningful resolutions problematic, this does not mean that better training and accreditation of competent facilitators in “best practices” could not help in some ways (Boyack et.al.,2004;Gustafson, 2004).

In the end, our observations of the process of restorative justice as it happens leads us to a far different picture than portrayed in the frequently idealistic images in the literature (Umbreit, 2001; Braithwaite, 1999; Marshall, 1999; Zehr, 1990; Christie, 1977). Indeed, while it may effect meaningful resolution of offences for some participants, for others restorative justice may merely be “a ritual that we purposefully create with a view to eliciting a performance of the offender’s compassion and remorse”(Acorn, 2004:159). While we will leave it for readers to make the value judgements on the social utility of such programs, we hope that our study encourages both critical reflection and further research in this important area in criminology.

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1. Interestingly, Clairmont (2005), in an analysis of 6000 exit surveys and 1400telephone interviews conducted [↑](#footnote-ref-1)
2. Throughout this paper, we recognize that the terms “victim and “offender” are multifaceted social constructions. These are related to institutional politics of description, used as narrative resources by participants, and constitute pragmatic outcomes of social interaction with powerful implications for the definition of the situation. However, rather than awkwardly enclose these terms in quotation marks throughout to reflect this broader understanding, we either use the terms “designated” victim or offender, or write the terms as they ordinarily appear. Nevertheless, we urge readers to bear these considerations in mind. [↑](#footnote-ref-2)
3. Depending on instructions from the agency, when a party was missing the meeting could revert to an “accountability session” in which the facilitator attempted to shame the offender on behalf of the absent victim or community. In most such instances, we did not remain to collect data. However, while not technically providing data on victim-offender dynamics, one researcher remained during 4 of these sessions to provide a point of contrast. [↑](#footnote-ref-3)
4. This 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. [↑](#footnote-ref-4)
5. 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 many youth formally processed through the courts. [↑](#footnote-ref-5)
6. 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 (32.81%). [↑](#footnote-ref-6)
7. Of the 32 parents among offenders’ supporters, twice as many mothers as fathers attended (21:11). [↑](#footnote-ref-7)
8. One thing that should be noted in this regard is that since the repeal of the Young Offenders Act (R.S.C. 1985, c.Y-1) and the advent of the Youth Criminal Justice Act (S.C. 2002,c.1.), incidents 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 serving as an entrance point for the program. [↑](#footnote-ref-8)
9. When there were a large number of participants, additional “backup” facilitators could be brought in. [↑](#footnote-ref-9)
10. It is occasionally possible to have post-conviction sessions on the recommendation of corrections officials, the consent of the offender, and the practical willingness of the victim to participate. These were very rare under this program, we were unable to attend any, so our paper makes no claims about the dynamics of such sessions. [↑](#footnote-ref-10)
11. Clairmont (2005) found that offenders and offender supporters emphasized the avoidance of court and of a record for the youth, while victims and victim supporters emphasized the opportunity presented in restorative justice to discuss their victimization. [↑](#footnote-ref-11)
12. Indeed, Clairmont (2005) consistently found that where police were present, there was less contested terrain or discounting of responsibility on the part of the offender and offender supporters. This facilitated a smoother restorative justice process where the victims' claim were largely accepted and the issue became one of the appropriate contract terms. Clairmont found that police did not necessarily perceive themselves as victim supporters, and at times supported what some might perceive as relatively “lenient” agreements. He found that police saw themselves more as authorizing the facts, emphasizing the possible results of the offender’s actions, and as suggesting appropriate dispositions in the case at hand. [↑](#footnote-ref-12)
13. This differed in “accountability sessions” involving the offender alone, where the facilitator was expected to actively shame the offender. [↑](#footnote-ref-13)
14. Volunteer training consisted of two days of workshops, study of the policy and procedures manual, followed by several session observations, a period of co-facilitation, and, finally, taking the role of lead facilitator. [↑](#footnote-ref-14)