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RESTORATIVE JUSTICE AND SEXUAL ASSAULT

An Archival Study of Court and Conference Cases

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RESTORATIVE JUSTICE AND SEXUAL ASSAULT: *An Archival Study of Court and Conference Cases*

As restorative justice (RJ) has grown in popularity worldwide, mainly in the response to youth crime, controversy surrounds its use for sexual, partner, and family violence cases. With some exceptions, all jurisdictions have put these offences beyond the reach of RJ for both youth and adult offenders, and thus, empirical evidence is lacking. This paper presents findings from an archival study of nearly 400 cases of youth sexual assault, which were finalized in court and by conference or formal caution over a 6 ½ year period in South Australia, to address these questions: (1) What differentiates a court from a conference case? (2) What happens once a case goes to court, e.g., what share of cases is dismissed and how do penalties vary for court and conference cases? (3) From a victim's point of view, what appears to be the better option, having one's case go to court or conference? Contrary to the concerns raised by critics of conferencing, from a victim's advocacy perspective, the conference process may be less victimizing than the court process and its penalty regime may produce more effective outcomes.

For over a decade, there has been spirited debate on the appropriateness of restorative justice (RJ) in cases partner, family, and sexual violence (hereafter termed *gendered violence*) (see e.g., Braithwaite and Daly 1994; Morris and Gelsthorpe 2000; contributors to Strang and Braithwaite 2002). This paper enters into the debate by analysing one kind of offence, sexual assault; one particular group of offenders, young people; and one form of RJ practice, conferences. Although Brownlie (2003) and McAlinden (2005) have considered the *potential* for RJ in youth sexual violence cases, this article is the first to present empirical evidence on the relative merits of court and conference *practices* in responding to these offences. There are just two jurisdictions in the world today, New Zealand and the Australian state of South Australia, which routinely use conferences in responding to youth sexual assault. In other jurisdictions, sexual offences have been excluded from the RJ agenda: they are understood to be 'too sensitive' or 'too serious' to be handled by an RJ process. Like other RJ practices,

conferences are meetings between offenders, victims, and their supporters, which are set in motion only after an offender has admitted to (or not denied) an offence. Critics of conferences for sexual assault, although less numerous than those for partner violence, assume that victims will suffer more from an informal, face-to-face encounter with an offender. Further, it is assumed that if cases are diverted from court to conference, it will appear that offenders are being treated 'too leniently' and that offences are not being taken seriously enough, what Coker (1999: 85) evocatively terms the 'cheap justice' problem. It is widely known that the criminal justice system is especially inept in prosecuting cases of sexual violence. However, as Hudson (2002: 622) says, it 'remains an open question ... whether restorative justice offers better hope of protection and redress for women and children'.

The primary focus of this article is on the degree to which critiques of RJ, from a victim's advocacy perspective, have merit. I do this *not* by examining what happens within the conference process or victims' experiences with it, but rather by comparing the legal journey of nearly 400 sexual offence cases that were referred to and finalized in court or by a conference, the penalties imposed, and the prevalence of re-offending. My archival study of court and conference cases challenges those victim advocates who assume that the court is a place where 'strong messages are sent' about the wrong of sexual violence, and it shows the court's limits in vindicating victims.

Restorative Justice: Legal Contexts and Core Elements

Rather than attempting to define RJ (see Johnstone 2002; Young and Hoyle 2003 for reviews), I depict its legal contexts and core elements. The four legal contexts of RJ in handling criminal matters are diversion from court; pre-sentence advice to judicial

officers; a component or condition of sentence; and at post-sentence, as a component of pre-prison release or community sentence. Court diversion is largely used for adolescents, not adults, who have admitted to (or not denied) offences; and when used as diversion, no official conviction is recorded. In the relatively few jurisdictions where RJ is used for adults, or when youth justice offences are very serious, the legal context is likely to be pre-sentence advice.

Although RJ practices vary, there are core elements.¹ First, a person has admitted responsibility for offending, either explicitly or implicitly.² Although crucial, this is a commonly overlooked feature. RJ does not adjudicate or mediate facts, but is part of the post-adjudication (or penalty) phase of the criminal process. Second, an offender typically (but not always) has a face-to-face meeting with a victim (or a representative for a victim, say, a parent for a young child victim), along with other supporters or relevant community members. Third, it is an informal process that relies on the knowledge and decision-making capacities of lay actors, but it is linked to and constrained by established criminal justice (CJ) practices. There are ground rules for

¹ I consider RJ practices in the first three contexts; the aims in the post-sentence context would differ.

² In Australia, a young person must admit to the offence to the police or in court before it is referred to a conference; and once in a conference, a youth must generally agree with the police version of events for the conference to continue (Daly and Hayes 2001). In New Zealand, so long as the charge is 'not denied' by the young person, it can be referred to conference (New Zealand Ministry of Justice 2005: 7). In a pilot of youth conferencing in Belgium, a young person must accept some responsibility for the offence for referral to be made, and once in a conference, not deny the police version of events for a conference to continue (Walgrave 2005).

participants' behaviour and what can be said, and there are upper limits on penalties,³ which depend on the legal context. Fourth, the aims of RJ are to hold offenders accountable for their behaviour and to make up for what they did. It is hoped that the process and outcome will deter offenders from further law-breaking and provide some form of reintegration into the community, although neither may be achieved. For victims, the aims are to give voice to the experience of victimization, to participate in fashioning a penalty, and where relevant, to ask why the offence was committed. Some RJ advocates hope that a victim and offender may reconcile and that a victim will recover from the offence. However, reconciliation is not to be expected, and recovery may take a long while. I underscore this last point because the RJ literature is littered with assumptions about the potential for, and the desirability of, 'reconciliation' (see, e.g., Acorn's [2004] discussion of Braithwaite [2002]). When considering the myriad contexts of offending and victim-offender relations, reconciliation may be desirable in some cases, but not at all in many others.

Debates on the Appropriateness of RJ for Gendered Violence

Although this paper compares the conference and court handling of youth sexual assault cases, it must be situated in the broader debates concerning the appropriateness of RJ

³ I use the terms *outcome* and *penalty* interchangeably here and elsewhere, despite the many euphemisms used by RJ advocates or youth court jurisdictions. One reason is that from a youthful offender's point of view, sentencing decisions (or outcomes) in conferences or court are experienced as penalties, and indeed, as punishment (Daly 1999). Moreover, no one term precisely captures the sanctions decided in court or conference, nor those decided in the differing contexts where RJ is used (that is, as court diversion and pre-sentence advice).

for gendered violence,⁴ having both youth and adult offenders and victims. Several problems are immediately apparent in the literature and the character of the debates. First, there is a profound lack of empirical evidence. We know what happens when adult sexual or partner violence cases go to court (see, e.g., Buzawa and Buzawa 2003; Kelly 2001), but except for a few studies (e.g., Braithwaite and Daly 1994; Daly 2002; Pennell and Burford 2002), we do not know what happens when adult or youth cases go to RJ conferences.⁵ Second, most research on RJ is of *youth* offenders in the context of *diversion* from court for property and violence offences, but typically not sexual or family violence, and never for partner violence. Against this profile, critics of RJ typically have in mind *adult* offenders of partner violence, and they assume that RJ is used only as diversion from court (when it is typically used as pre-sentence advice in adult cases). There is thus a clear mismatch between what we have evidence on and what critics are concerned with. Moreover, the critical literature is almost exclusively focused on partner violence, as compared to other forms of violence. Although there is overlap in partner and sexual violence, there are important points of difference. For example, while partner violence is part of an on-going pattern, sexual violence may or may not be; and evidentiary problems loom larger in sexual violence cases. Finally, there is great variation in the contexts and seriousness of youth sexual violence cases, which makes it difficult to address the appropriateness of RJ in the abstract (see Daly

⁴ In Australia, family violence refers to a broader range of offences than partner violence alone, including child sexual abuse and family fights (Blagg 2002). For youth justice cases, family violence includes sibling assaults and assaults on parents by children.

⁵ There is, however, growing evidence from circle sentencing in remote Canadian communities, where sexual and partner violence cases are heard, that community interests may eclipse women's interests and there are insufficient resources to assist victims (see Crnkovich and Addario 2000; Goel 2000; and Stewart *et al.* 2001).

2002: 81-6). Highlighted next are potential problems and benefits of RJ in gendered violence cases. Bear in mind that some problems may be more acute for some offences, and the benefits more likely for others.

Potential problems with RJ

Potential problems with RJ have been identified by Acorn (2004), Busch (2002), Coker (1999, 2002), Koss (2000), Lewis *et al.* (2001), Presser and Gaardner (2000), Shapland (2000), and Stubbs (1997, 2002, 2004). Space limitations preclude a detailed discussion of each item (but see Curtis-Fawley and Daly 2005).

Victim safety As an informal process, RJ may put victims at risk of continued violence; it may permit power imbalances to go unchecked and reinforce abusive behaviour. This critique comes largely from the partner violence literature, which draws on studies of mediation in divorce cases, where there has been a history of partner violence, to show that abusive men control women in ways that others may not recognize.

Manipulation of the process by offenders Offenders may use an informal process to diminish guilt, trivialize the violence, or shift the blame to a victim. The concern here is that offenders may use informal processes to their advantage in ways that would not be possible in a formal (court) process.

Pressure on victims Some victims may not be able to advocate effectively on their behalf. A process based on building group consensus may minimize or overshadow a victim's interests. Victims may be pressured to accept certain outcomes, such as an apology, even if they feel it is inappropriate or insincere. Some victims may want the state to intervene on their behalf and do not want the burdens of RJ. This large category is ultimately about how an offender-centred process has negative effects on victims to

comply or go along with outcomes they do not want. Victims may be used in a process that is centred on helping offenders, and victims may not wish to speak with or see an offender again.

Role of the 'community' Community norms may reinforce, not undermine male dominance and victim blaming. Communities may not be sufficiently resourced to take on these cases. Although the ideal of RJ is that community norms will censure an act, this may be less evident in cases of gendered violence, when community members identify more with an offender than a victim or have out-dated understandings of the appropriate demeanour and dress of wives, women, and girls. Although there is much emphasis placed in RJ on reintegrating offenders into the community, there may be a lack of resources for effective forms of treatment for offenders, as well as support and assistance for victims.

Mixed loyalties Friends and family may support victims, but may also have divided loyalties and collude with the violence, especially in intra-familial cases. Gendered violence cases can involve complex alliances between an offender's and victim's supporters; and in some cases, the supporter may be the same person (e.g., the mother of a son who sexually abused her daughter). An offender's sister may view her brother's abuse of his partner as justified on some occasions, even though she sees his behaviour as wrong.

Impact on offenders The process may do little to change an offender's behaviour. Entrenched patterns of abuse and violence will require more than a face-to-face meeting of two hours' duration. There needs to be effective programs and a threat of further legal intervention if an offender does not change.

Symbolic implications Offenders (or observers) may view RJ processes as too easy, reinforcing a belief that the behaviour is not wrong or can be justified. Outcomes may be too lenient to respond to serious crimes like sexual assault.

Critics typically emphasize victim safety, power imbalances, and the potential for re-victimization in an informal process. However, the symbolic implications are even more important. It is often said that serious offences ought to be treated seriously, and if this does not occur, the wrong message is being sent to offenders (or potential offenders). It is also believed that as an informal process, RJ may re-privatize gendered violence (especially partner violence) after decades of feminist activism to make it a public issue.

Potential benefits of RJ

These potential benefits have been identified by Braithwaite and Daly (1994), Daly (2002), Daly and Curtis-Fawley (2005), Hopkins *et al.* (2004), Hudson (2002), Koss (2000), Martin (1998), Mills (2003), Morris (2002), Morris and Gelsthorpe (2000), and Pennell and Burford (2002).

Victim voice and participation Victims have the opportunity to voice their story and to be heard. They can be empowered by confronting the offender and by participating in decision-making on outcomes. It is well known from studies of victims of gendered violence, and especially sexual violence, that victims want to describe what the offender did and how it affected them. Telling one's story of victimization is often not possible in a court process; and if cases go to trial and defendants elect not to testify, they cannot be confronted.

Victim validation and offender responsibility A victim's account of what happened can be validated, acknowledging that s/he is not to blame. Offenders are required to

take responsibility for their behaviour, and their offending is censured. In the process, the victim is vindicated. Because RJ processes are set in motion only after an admission of some type, the disabling consequences of the adversarial process for victims are avoided. For sexual assault victims, in particular, what is avoided is the experience that the victim, not the defendant, is on trial.

Communicative and flexible environment The process can be tailored to child and adolescent victims' needs and capacities. Because it is flexible and less formal, it may be less threatening and more responsive to the needs of victims. Although legal reforms in adult and youth courts now make the trial process somewhat less onerous for sexual assault and child victims, there remain significant problems of re-victimization and trauma. The courtroom is an intimidating environment for child and adolescent victims (Eastwood 2003; Morgan and Zedner 1992).

Relationship repair (if this is a goal) The process can address violence between those who want to continue the relationship. It can create opportunities for relationships to be repaired, if that is what is desired. Although victims want vindication and validation for wrongs, some may also want to continue the relationship (as partners) or not want to 'break up a family' (as siblings).

The potential problems and benefits of RJ largely centre on the dynamics of face-to-face encounters between victims and offenders or the inability of a court adversarial process to vindicate and validate victims. The archival study focuses largely on the latter set of concerns.

Sexual Assault Archival Study (SAAS): Aims, Method, and Datasets

The Sexual Assault Archival Study (SAAS) is one of several studies in a programme of research on RJ in cases of gendered violence.⁶ Our aim is to examine empirically and sympathetically the many claims and critiques that feminist scholars and victim advocates have lodged toward RJ for these offences. SAAS compares the court and conference handling of youth sexual offence cases.⁷ When examining the entire legal journey of these cases, would we say that the court or conference process was the preferable legal intervention, from a victim's perspective?

The research team gathered the data and documents in the Adelaide Youth Court over three months, October-December 2001. Over the next year and a half, three researchers read the documents, coded them and prepared them for analysis. A detailed *Technical Report* is available (Daly *et al.* 2005), which describes the legal and administrative contexts of case referral, how the research team gathered the data, the legal definitions of and penalties for offences, features of the documents, and how the variables were conceptualized and coded. It gives examples of the many problems the research group faced in deciphering, interpreting, and coding the records.

The study's sampling frame was all youth cases in South Australia, having at least one sexual offence at the start of the criminal process, which were finalized by police formal caution, family conference, or in the Youth Court from 1 January 1995 to 1 July

⁶ Other forthcoming or published studies include interviews of victim advocates or opinion leaders in Australia (Curtis-Fawley and Daly 2005), interviews of Queensland Indigenous and non-Indigenous women (Nancarrow 2005), and a qualitative study of sexual assault cases disposed by conference (Daly and Curtis-Fawley 2005).

⁷ Sexual offences includes assaults and 'no touch' forms of offending (such as indecent exposure). The SAAS dataset is composed largely of sexual assaults (86 per cent); thus, I use the terms interchangeably.

2001. Finalized means the case is finished, having been disposed by formal caution, conference, or in court by a range of possible outcomes (dismissed, withdrawn, proved [with or without conviction]⁸ and found not guilty at trial). After many revisions of the data provided by the Justice Data Warehouse, South Australia's electronic data management system for crime and justice data, the final sample of cases was identified. There were 365 different young people (YPs) associated with 385 cases: 226 court cases (59 per cent), 118 conference cases (31 per cent), and 41 formal cautions (10 per cent). Almost all (95 per cent) of the YPs appeared in the dataset just once; 15 appeared twice; and two, three or more times.

Cases dataset

The cases dataset has over 230 variables: those relating to the youth, the offence, the victim, the seriousness of the charge(s) and case, circumstances of reporting the incident(s) to the police, the legal journey of the court case and how it was finalized, the participants in the conference, the penalties, and other case elements. The dataset was created by coding information contained in the Police Apprehension Report (AP) for each case, the Family Conference file, and the Youth Court Certificate of Record. From the AP was coded the initial legal charges and offence elements (among many other variables) for all the cases, and the date and outcome for the formal cautions. From the Family Conference File was coded the offence(s) admitted to, those present at the conference, the agreement (or penalty) elements, and whether the YP complied with the agreement or not. The Certificate of Record describes the legal history of a case, once it

⁸ In the South Australian Youth Court jurisdiction, 'proved' means that the court has accepted a guilty plea to an offence or found the YP guilty at trial. 'Without conviction' is a legal device whereby the court can accept a YP's plea, but not lodge an official conviction. It is a form of sentencing leniency (see note 20).

is referred to court, listing all scheduled court appearances and related information. From it was coded the court location, whether or not the YP appeared, legal representation, the presiding judge or magistrate, the plea history, the disposition of the case and individual charges, and the penalty imposed.

Several measures of offence seriousness were created. One used legal charges, from which a 'time at risk' variable was created. The variable was calculated from the maximum jail time that could be imposed on the YP, using the statutory penalties for adults,⁹ and it was calculated at different stages of the legal process, from the start of the case, to charges lodged in court, guilty pleas entered or charges proved at trial, and finally to finalization. A second variable coded and itemized offence elements, as these were given in the police report; they included whether or not the offence involved penetration or oral sex, the victim used physical or verbal resistance, the victim was restrained, the YP threatened to harm the victim if s/he reported the incident or did not cooperate, and the degree of injury, among other elements. These items are associated with the likelihood of conviction in adult sexual assault cases (see Lievore 2004).

Criminal histories dataset

A second dataset, comprising over 125 variables, is the YP's criminal histories. The time span starts in early 1994 (when the Justice Data Warehouse began) and ends on 28 November 2001 (the date of our requested extraction), and includes juvenile and adult offending. The research group received these data from the Justice Data Warehouse in the form of a table for each YP, with one row for each offence that showed the finalization date, court or conference file number or police division (for the cautions),

⁹ There is no separate criminal code (or penalty structure) for youth in this jurisdiction. This measure is an indicator of the relative legal severity of the overall case (that is, all alleged, proved, or admitted offences) at different points in the legal process.

the outcome (e.g., proved or dismissed/withdrawn for court cases), the legislative code proscribing the offence, and offence category (e.g., 'indecently assault a person'). The table varied from one row for youth with only the SAAS case, to several pages for those with many previous pre- or post-SAAS cases (see Daly *et al.* 2005). Pre- or post-SAAS offending is defined as an admission to an offence (which is necessary for a formal caution or conference) or a proved court case; it includes all kinds of offences, not just sexual offences. It is a measure of officially recognized offending, not just arrests for offences.

Strengths and weaknesses

The archival study can answer questions about the court and conference handling of sexual offences, i.e., the legal journey of cases, but it is limited to the kinds of information contained in legal documents or retained in the state's electronic archive. It cannot depict what was said in a courtroom or in a conference meeting across the years; nor was it possible to interview victims or YPs about their experiences with the legal process, although qualitative studies of the court (such as what judges said to youth at sentencing) and conference processes are underway.¹⁰

The study's research design centres on documenting a series of decisions taken in the legal process, for example, why some cases were referred to court while others were diverted, and why some court cases were proved while others were not. Some readers of an earlier version of this paper have said that this design is not a legitimate way to compare established CJ and RJ conference processes or outcomes. They suggest that the only legitimate way to do so is by a randomized field experiment, or by a

¹⁰ We have the sentencing remarks for the 55 more serious court cases, which were sentenced by judges, and we have interviewed victims and conference coordinators for a small set of conference cases of sexual and family violence.

comparison of proved court cases and admitted conference cases. My response is that a good deal is learned by taking a wider view of how established CJ responds to complaints of sexual assault. From research in adult courts, we know there are heightened levels of case attrition in sexual assault cases because offences do not fit the 'real rape' template (Kelly 2001: 43)¹¹ or prosecutors believe that 'legal guilt' will be difficult to establish at trial (for adult cases, see Frohmann 1991; Spohn and Holleran 2001; and for youth cases, see Brownlie 2003). For child or youth victims, Eastwood (2003: 2) finds that in two of three Australian states, most young victims whose cases went to court said that they would not make the choice again to report the sexual abuse because 'the process was not worth the trauma'. Morgan and Zedner's (1992: 116-7) study also reveals the problems that child victims of sex abuse face in the prosecution phase of the court process. These results are instructive and suggest the need to take a holistic view of the criminal process.

The court has two major phases, fact-finding and penalty, whereas the conference has no fact-finding, but instead addresses the consequences of admitted behaviour, the penalty phase. There are well-known victimizing effects for victims of the court process, and potentially victimizing effects of the conference process; but in the absence of in-depth interviews of all the relevant victims, the archival study cannot determine whether any such victimizing effects (or potential benefits) are greater in one legal context or the other. It is possible, however, to draw inferences from measures of the processes and outcomes in both sites. Moreover, the design permits us to identify those

¹¹ The real rape template has these elements: committed by a stranger, outdoors, with a weapon, and with victim injury. The major source of case attrition is a complainant's decision to report the incident to the police; but there is more attrition, stemming from decisions by the police and prosecutor, before a case goes forward for prosecution.

factors associated with referral to court, compared to conference or formal caution; the penalty regimes in proved court and admitted conference cases; and patterns of offending post-conference or court. The primary aim of this paper is to provide empirical evidence for those victim advocates who are critical of RJ conferences or diversion from court more generally. Although other questions about the experiences of those accused of sexual assault could be explored (for example, was there coercion to admit to an offence?), this is not the paper's primary aim.

Selected Descriptive Elements of the SAAS dataset

The SAAS dataset has myriad variables to describe the court, conference, and formal caution cases. I selectively highlight the elements that give a flavour of the cases, the demographics of offenders and victims, and their legal journeys.

Case features and demographics

Youth whose cases were finalized in court were more likely to have offended before; they lived in more disadvantaged areas, more often sought legal advice, and were less likely characterized by the police as being cooperative or remorseful. Intra-familial victimization more likely featured in conference (40 per cent) than court (18 per cent) or formal caution (5 per cent) of cases; consequently, the age gap was greater for the conference cases, and the victim's age was the youngest.¹² Along demographic variables, and based upon information given in the police report, the YP's median age at

¹² Problems of terminology can arise in these cases: only those YPs who have admitted to an offence (or are found guilty) can be termed 'offenders'; thus, the term is appropriate for almost all formal caution and conference cases, but not for half of court cases. I use 'YP' when both sets of individuals are discussed. Some argue that a complainant is not a 'victim' unless there is a legal determination that an accused person is an offender, but I use 'victim' for ease of presentation.

the time of the offence was 14.1 to 15.6 years (conference YPs were youngest); and the victim's median age was 8.6 to 13 years (conference victims were youngest). Almost all the YPs were male (97 to 98 per cent across all sites), and most victims were female (66 to 79 per cent, lower for caution cases). Aboriginal Australians were a somewhat higher share of those in court (13 per cent) than conference (8 per cent) or caution (5 per cent) cases. For conferences, a direct victim or representative/supporter¹³ was present in 66 per cent. Of conferences with any victim presence, 21 per cent had only a victim; 45 per cent, only a representative; and in 34 per cent, both were present. The prevalence of pre-SAAS offending was higher for court YPs (53 per cent) than conference (22 per cent) or caution (17 per cent) YPs.

Case disposition and attrition

Of the 41 formal cautions, all were finalized by an admission to the offence, and of the 118 conferences, almost all (94 per cent) were finalized by an admission to a sexual offence.¹⁴ Of the 226 court cases, just half (51 per cent) were finalized with any sexual offence proved.¹⁵ An additional 4 per cent of court cases were proved of a non-sexual offence, but the rest were dismissed or withdrawn. A small number of court cases (18,

¹³ In sexual offence cases, a victim representative is often a family member of the victim, typically a parent, who speaks on behalf of a young son or daughter.

¹⁴ Of 118 conference cases, seven had no admission to a sexual offence. One admitted to a non-sexual offence, one did not admit at the conference, and five conferences were set, but did not go forward.

¹⁵ In an earlier study, drawing on South Australian Office of Crime Statistics (OCS) data, I reported that 33 per cent of sexual offence cases were proved of an original charge (Daly 2002: 78). At the time, it was unclear how to interpret an additional number of cases that were proved of an offence other than the original charge. From the SAAS data, I would now say that the additional cases should be included because they are a sex offence of some kind.

or 8 per cent) was set for trial. Of the 18, four YPs eventually entered guilty pleas; and of the remaining 14 who entered a not guilty plea or no plea, eight were dismissed and three were found not guilty. Three cases were proved at trial. Overall, of 226 court cases, 115 were proved of a sexual offence (almost all by guilty plea), eight were proved of a non-sexual offence, 100 were dismissed or withdrawn, and three were acquitted.

In addition to high rates of attrition, court cases took longer to finalize and shifted jurisdiction more often. The average (median) number of times a court date was set was six, and ranged from one to 29 hearings; 43 per cent of court cases changed jurisdiction one or more times. It took over twice as long to finalize court than conference cases (a median of 5.7 and 2.5 months, respectively, from report to the police to finalization).

Offence seriousness and attrition

Although court cases started out as more serious than conference cases, by the time they were finalized as proved, they were of similar seriousness (see Table 1). Examining the most serious offence at the start of legal proceedings, rape was a substantial share of the court cases (38 per cent) compared to conference cases (7 per cent). Indecent assault was frequent in both sites (about 35 and 60 per cent, respectively, of court and conference cases). (By comparison, and not shown in the table, indecent behaviour was more typical [46 per cent] in the caution cases.) When comparing the proved court cases, the offence distributions change dramatically: rape reduced to 8.5 per cent and indecent assault became a larger share (47 per cent) of court cases. With another measure of seriousness, 'time at risk' for sexual offences (defined above), the court cases started out more serious than the conference cases (384 and 120 months, respectively),

but when comparing proved court cases and admitted conference cases, the 'time at risk' was the same (120 months).

[Table 1 about here.]

The finding of substantial attrition is not surprising in light of research on adults charged with sexual assault (see, e.g., Bryden and Lengnick 1997; Frazier and Haney 1996; Gregory and Lees 1996; Kelly 2001; Lea *et al.* 2003). Relatively less is known about youth charged with sexual assault, but evidence suggests that attrition may be even greater (Brownlie 2003; Crime and Misconduct Commission 2003; Wundersitz 2003). Although some YPs may have been wrongly or unfairly accused, the more frequent reasons are the state's evidentiary burdens, along with the credibility, reliability, and cooperation of victims or witnesses. What is especially striking about the effect of the court's attrition process is that court and conference cases become equivalent, both in the number subject to an outcome (N=115 proved court cases and N=111 admitted conference cases) and in case seriousness. In this jurisdiction, then, RJ is not a sideline justice practice.

Regression Analyses of Case Referral and Court Attrition

To gain a better understanding of the case referral and court attrition process, a binary logistical regression¹⁶ was carried out for three outcomes: case referral to court (or not), the YP's admission to the police (or not), and case proved in court (or not). The

¹⁶ Logistical regression is similar to the linear regression model, but it is preferred when the dependent variable is categorical (or binary); the independent variables may be continuous or categorical or a mixture of both (Tabachnick and Fidell 1996: chapter 12).

dependent variable was coded 1 or 0; and many combinations of independent and control variables were analysed. Reported here are all the variables in the final equations, including those for age and race-ethnicity.

Factors associated with referral to court rather than conference

One question posed by the SAAS project was whether, but for an admission to the police for an offence, court and conference cases differed. The results of the logistical regression show that in addition to an admission to the police, four other factors were significantly associated with case referral to and finalization in court,¹⁷ rather than referral to and finalization by conference or police caution (Table 2a). The five variables were (1) the YP made no admission or refused to comment to the police; (2) the offence was more serious (based on offence elements); (3) the YP had one or more cautions, conferences, or proved court cases before the SAAS case; (4) the offence was extra-familial (boyfriends/girlfriends, friends, casual acquaintances, and others known or unknown); and (5) the YP was older.

Three were expected: an offender has to admit (either in full or in part) for the case to go to conference or caution, and the police are to have regard for the seriousness of an offence and the YP's previous criminal history in making a referral. But in addition, we see unique effects of the victim-YP relationship and the YP's age.

Factors associated with youth not admitting the offence or refusing to talk to the police

The police report indicates that 61 to 67 per cent youth in caution and conference cases made full admissions immediately, compared to 19 per cent of youth in court cases. An additional number of youth initially denied any offending, but then made partial or full admissions (29 per cent of court, 29 per cent of conference, and 39 per cent of caution

¹⁷ Of 118 conference cases, 10 per cent were referred from court.

cases). For the court cases, 27 per cent of youth made no admission at all or completely denied the offence, and an additional 26 per cent refused to comment to the police.

Some number of these youth may not have committed the offence or believed they were not guilty, but the SAAS dataset cannot determine if these elements were present (apart from the youth saying the victim consented to sexual activity). From the data available, four variables were significantly related to youth not admitting the offence or refusing to talk to the police (Table 2b). They are (1) the YP sought legal advice before or during questioning by the police; (2) the offence was more serious (based on offence elements); (3) the YP had one or more cautions, conferences, or proved court cases before the SAAS case; and (4) the offence was extra-familial (boyfriends/girlfriends, friends, casual acquaintances, and others known or unknown).

Again we see that extra-familial relations play a role. Why might this be the case? Extra-familial offences may be easier for youth to deny because unlike the intra-familial cases, there is no other family member or adult to witness the behaviour or to ask questions. It would also be more difficult for youth in the intra-familial cases to say they believed the victim consented to sexual activity. Extra-familial assaults had older victims (median age, 13 years) and a smaller gap in the offender's and victim's age (median of 3.7 years) compared to the intra-familial assaults (median victim age, 7 years; median age gap of 6.7 years).

The contexts of receiving legal advice before or during police questioning vary,¹⁸ but typically a youth will ring legal aid and receive the standard advice to not provide the police with any information except one's name and date of birth. It may not be until two months later that those youth, whose cases were referred to court, will speak to a solicitor, who can provide legal advice in any depth. Thus, the quality of 'legal advice' in the early stages of the legal process is slim.

Factors associated with a case being proved in court of any sexual offence

Recall that 51 per cent of court cases were finalized with a sexual offence proved, and virtually all of these were by guilty plea. Three variables were significantly associated with this outcome (Table 2c). They were (1) the YP made an admission to the police (fully or partly, immediately or later); (2) the offence was less serious (based on offence elements); and (3) the offence was intra-familial (that is, between siblings or other family members, or the YP was caring for the victim).

This result is intriguing. We see that the factors associated with cases being referred to court (non-admission to the police, more serious offence, extra-familial relations) are the opposite of those associated with cases being proved in court (admission to the police, less serious offence, intra-familial relations). Further analyses of the role of victim-offender relations for whether a case was proved or not reveal a complex mix of age, age distance, and specific relationship (i.e., friend or stranger). For example, extra-

¹⁸ For example, most YPs were questioned in the police station only (61 per cent), with relatively fewer in the YP's home only (19 per cent) or in both the police station and home (5 per cent) (for the rest, it could not be determined or it was another location). For those accompanying the YP at the interview, the person was typically one or more adult family members (65 per cent, predominantly parents), but others included institutional representatives such as a youth worker (10 per cent), a legal advocate (3 per cent), or sibling or friend (2 per cent) (the rest could not be determined); across all these categories, non-admission was greater when the YP sought legal advice.

familial court cases involving friends of a similar age were less likely to be proved (24 per cent were) compared to friends for whom the age difference was more than two years (52 per cent proved) or those between strangers (58 per cent proved). However, the intra- or extra-familial character of offending plays a decisive role. Of court cases with victims under 12, there was a higher proved rate for the intra-familial (68 per cent) than the extra-familial (46 per cent) cases.

[Tables 2a-2c about here.]

*Court and Conference Penalties and Outcomes*¹⁹

There are different upper limits for penalties that may be imposed in court and agreed to in conference (see Daly *et al.* 2005: Appendix 1), but two features of the sanctioning process are especially salient. First, a youth's guilty plea in court comes with *the potential* for an officially recorded 'conviction'. However, of the 115 proved court cases, official convictions were recorded in 32 per cent. The remainder were recorded by the judicial officer 'without conviction', a form of sentencing leniency that protects a youth's chances for future employment or international travel (e.g., eligibility to obtain a

¹⁹ The legislation establishing conferencing in South Australia uses the terms 'undertaking' or 'agreement', rather than penalty. The Youth Court uses the term 'obligation'. I use the terms penalty and outcome interchangeably because they reflect how youth experience the sanctioning process and because no one word adequately captures all the sanctions across both sites (see note 3).

passport).²⁰ By contrast, for an admitted conference youth, there is no potential for conviction. Second, the court can impose a maximum detention time of three years, whereas a conference cannot impose this penalty. The court's upper limits are also higher for the maximum number of community hours, amount of compensation, and length of time under a supervision order.

To understand the court and conference outcomes in this jurisdiction, one needs to know about the Mary Street Adolescent Sexual Abuse Prevention Programme. Mary Street has been operating since the mid-1990s in Adelaide, providing an intensive therapeutic-counselling intervention, typically of one year's duration, to address adolescent sex offending by young people aged 12 through 17 years. It is based on the Director, Alan Jenkins' (1990) 'Invitations to Responsibility' model of intervention. Conference and court decisions can include participation in the Mary Street Programme as part of the outcome; some YPs may also participate during the pre-trial (or pre-conference) period.

Table 3 compares outcomes at the two sites. For conference cases, 5 per cent were disposed as formal cautions, with no further outcome. A verbal or written apology was the most frequent element, and it was the sole outcome in 11 per cent of cases. Next in frequency was some kind of counselling (Mary Street, 52 per cent; another kind, 29 per cent); and 23 per cent of YPs were to perform community service. Excluding ten youth who had no undertaking after the conference, the median time of the agreement was one

²⁰ For example, in the sentencing remarks for SAAS case 12, the judge said to the YP, 'I am not going to record a conviction against you for any of these matters. To do so ... would impair your future life by way of affecting any career you might enter into and any prospects you might have of making something of yourself ... That does not mean to say, however, that any further offending would get that sort of leniency ...'

year, the maximum for conference cases. When conference youth were ordered to stay away from victims, for example, almost all were to do so for one year.

For the court cases, 13 per cent were disposed with no penalty. The most typical court outcome was to 'be of good behaviour' (75 per cent), which was often joined with supervision by a Families and Youth Services (FAYS) worker. The median time for those on good behaviour bonds or under supervision was one year, and ranged from three months to three years. Next in frequency was some kind of counselling (Mary Street, 37 per cent; another kind, 15 per cent). The most serious outcome, detention, was relatively infrequent: 18 per cent of YPs received this sentence. In all but two cases, the detention term was suspended, and the youth was typically given a good behaviour bond and placed under the supervision of a FAYS worker. The median time of the court's sentence was one year, excluding the 22 cases where there were no days under state control.

[Table 3 about here.]

These results suggest that the penalty regimes differ in court and conference cases. A higher share of the conference (79 per cent) than court (49 per cent) youth were to participate in some kind of counselling, and apologies to victims were common in conference, but not court cases.²¹ In court, a typical instruction is 'to be of good behaviour', which means the youth is potentially subject to further legal liability. Supervision by a FAYS worker may include meeting twice a month in the office and/or

²¹ There may be more apologies in court cases than the documentary trail reveals, and this can be explored by analysing the sentencing remarks.

being directed to participate in specific programmes. However, the main effect of a bond or supervision is twofold: a not insignificant amount of *time* that a youth is under state control and the *threat* of escalated penalties should the YP get into trouble again. The court's penalty structure is mainly centred on deterring youth from future offending by threatening to be more harsh, and it is secondarily focused on rehabilitation and self-reformation through supervision and counselling. For conferences, the principal focus is rehabilitation and self-reformation, through counselling, together with verbal or written apologies to victims (or their supporters), with secondary attention to community service as a form of punishment.

Post-SAAS Offending

The analysis of post-SAAS offending touches only lightly on the many factors that could be addressed. A more sophisticated analysis is underway, which corrects for the different times that youth are 'at risk' to re-offend and focuses upon many more inter-relationships with care.

Overall, the prevalence of re-offending was higher for court (66 per cent) than conference (48 per cent) youth (Table 4a). Participation in the Mary Street Programme was associated with a significantly lower prevalence of re-offending for court youth (50 per cent). The court's effort to 'scare youth' with threats to further liability (i.e., detention, including suspended sentences) had the highest prevalence of re-offending (81 per cent).

For conference cases, participation in Mary Street Programme was associated with the lowest prevalence of re-offending (43 per cent),²² and community service was associated with higher levels (56 per cent). A puzzling finding is that youth who gave verbal apologies had a significantly higher prevalence of re-offending (52 per cent) than those who did not (32 per cent). These results do not necessarily mean that apologies are worthless. Rather, apologies at one point in time may not be good indicators of official re-offending at a point much later in time; moreover, the degree to which a YP's apology was sincere cannot be known from the archival data. The prevalence of re-offending was significantly lower for both court and conference youth who victimized a child under 12 years, although there were no significant differences for extra- or intra-familial cases.

A logistical regression was carried out to explore these patterns further. The results show that holding constant the prevalence of pre-SAAS offending, the Mary Street Programme remained significantly associated with a reduced prevalence of post-SAAS offending. The site of disposition (court or conference) was unrelated (Table 4b). These preliminary findings suggest that a targeted programme for adolescent sex offending may have a greater impact on reducing re-offending than whether a case is finalized in court or by conference.

[Table 4 about here.]

²² For conference youth who did not participate in Mary Street, the prevalence of re-offending was 53 per cent. This ten percentage point difference was not as large as that for court cases (for which there was a 25 percentage point difference) and was not statistically significant.

Discussion and Implications

Debate on the appropriateness of RJ for cases of gendered violence is polarized, in part, because there is a lack of empirical evidence, and in part, because of the symbolic politics of justice in responding to violence against women and child victims. This study offers the first empirical evidence on what happens when youth sexual offences go to court and conference.

At the start of legal proceedings, court and conference cases differed in three expectable ways: court YPs did not make an admission or talk to the police when questioned, they had a previous history of offending, and the offences were more serious. Cases referred to court (and finalized there) also differed in ways that require some explanation: they had older youth and offences that were more likely to be extra-familial. However, cases finalized in court as proved (almost all by guilty plea) were more likely to be less serious and to involve intra-familial relations. Because of a range of factors associated with court case attrition, when proved court cases are compared with conference cases, the distributions for legal seriousness become similar.

When considering the list of potential problems and benefits of RJ, the SAAS study can address two directly: the symbolic implications of RJ and the effects of conferences (or court) on changing an offender's behaviour. Indirectly, it can address the potentially victimizing effects of the court and conference process for victims.

Symbolic implications of RJ

A major finding from SAAS is that although the court is a place where, in theory, more serious penalties can be imposed, it is also a place where accused youth have the right to deny offending, with the result that half were proved of any sexual offence. To be sure, perhaps some did not commit an offence, but based on adult court attrition

studies, we know that the problem more often lies in the difficulties prosecutors have in proving sexual assault cases in court. The SAAS findings challenge those who believe that the court is a place that sends 'strong messages' that serious offending is treated seriously, or that it holds greater potential to vindicate victims than RJ conferences. Compared to other offences, sexual offences are more serious and associated with a heightened degree of stigma. For these and other reasons, suspects deny them to a greater degree. Strikingly, of the 115 proved court cases, 13 per cent received no penalty at all.

Effects of conferences (or court) on changing behaviour

For those court youth who were sentenced, the court's penalty regime emphasized the threat of escalated penalties, and only secondarily, rehabilitation and behavioural change through counselling for adolescent sex offending (the Mary Street Programme), whereas the conference's penalty regime emphasized the latter. The court's emphasis on 'scaring youth' seems to be less effective for reducing re-offending than rehabilitation through a tailored counselling programme. Both the court and conference youth who participated in the Mary Street Programme had a lower prevalence of re-offending compared to those who did not. If re-offending were used as the sole criterion for judging the merits of outcomes decided in court or conference, the SAAS study finds that the better bet is the site that more often places youth in a well-designed counselling programme. Conference outcomes more often utilized the Mary Street Programme than court, although there is nothing to prevent the court from using the programme more often.

The mechanisms that facilitate reductions in re-offending are highly complex. Although some analysts emphasize the benefits of 'reintegrative shaming' for youth sex

offenders (McAlinden 2005), this term has little salience for South Australian conference coordinators, police officers, or Mary Street Programme staff in these cases. The more meaningful term is a youth's 'journey towards responsibility and respect of self and others' (Jenkins 1998: 163), which structures the therapeutic relationship between Mary Street counsellors and youth. This journey is possible when a youth admits to offending, whether in court or to the police. In fact, I suspect that a youth's decision to embark on the journey may be more consequential for reductions in re-offending than whether a case is sanctioned in court or by conference.

A major difference between court and conference cases is that conference youth have admitted committing the offence to the police at an earlier point in time. It is here that we can identify the potential advantages of diversionary forms of RJ, from the point of view of victims and YPs. For victims, there is an admission to the offence and the likelihood of some outcome, which provides some degree of vindication. For YPs, there are incentives to admitting earlier than later: admission early on (or even later in court) and a referral to conference means there is no potential for a conviction or for a detention sentence, and that the maximum time under state control is one year, not three years. By admitting to an offence (that the youth has committed) at an earlier rather than later point in time (or not at all), the youth trades off the uncertainty of what might happen in court, with a greater degree of certainty of what can occur in a conference. I concur with McAlinden (2005: 384), who suggests that with the option of diversionary forms of RJ, 'more offenders may be willing to come out in the open, admit to their crimes and seek treatment' and more victims would be willing to report offences. The net effect is a greater degree of disclosure of sex offending and victimization, which can

then be addressed in a constructive manner, and at a minimum, by a well-designed treatment intervention.

Several points about youth admissions to the police are especially pertinent. Of the 111 court cases where a sexual offence was not proved, 29 youth (26 per cent) had made full or partial admissions to the police. From a victim's point of view, it may have been preferable for the police to have referred these cases to conference, if only so that an admission to some offending would have been made. In terms of the tradeoffs between admitting earlier to the police or pleading guilty later in court, of the 115 proved court cases, 37 youth (32 per cent) did not admit to or refused to comment to the police. From a YP's point of view, it may have been better to admit early on and have one's case go to a conference, if for no other reason than that no official conviction would have been recorded.

One path towards change is giving attention to what occurs when a youth is questioned by the police. Much flows from this key moment when a young person admits to an offence or not. As long as accused youth are aware that 'not talking' will often mean 'you walk', they will continue to deny that they have done anything wrong. Again, I would emphasize that although some youth may have been wrongly or unfairly accused, surely this cannot be true in about half of cases. A second and related path toward change is the need to reduce the stigma associated with sex offending. Accused youth will not admit earlier to offences and indeed will continue to deny charges against them precisely because they do not want to be called a 'rapist' or 'sex offender' and subject to a variety of legal and extra-legal forms of social exclusion. Thus, to deal effectively with the wider problem of sexual violence, the social response needs to be less punitive and less stigmatizing. For youth cases in particular, the approach taken

should be to find ways to encourage those who have harmed others to admit to that, without suffering long-term ostracism.

Victimizing effects of court and conference

Critics of conferencing emphasize the potentially victimizing effects of an informal legal process for victims, coupled with power imbalances and victim safety in a face-to-face encounter. They neglect to consider the victimizing effects of the formal court process in handling sexual violence cases. Such effects can be inferred from several SAAS measures. Court cases took twice as long to finalize as conference cases, they shifted jurisdiction more often, and victims would have had to attend court an average of six times to learn the outcome of their case. If they appeared in court on the day of finalization, nearly half would find that the case was dismissed or withdrawn. Whereas all the 111 conference victims (or their representatives) would be able to tell their story of how the offence affected them, court victims would have this opportunity in more limited ways.²³ Although the archival records do not show whether victims testified in each of the 14 cases that went to trial, let us assume that all 14 were, in some way, permitted to tell their story. Of the 14, the accounts of just three victims would have been validated by a judicial finding of the offender's guilt.

For the potentially victimizing effects of conference, case studies of two sexual assaults show that the adolescent female victims differed in the degree to which each experienced the conference process as validating and vindicating (Daly and Curtis-Fawley 2005). The girls' memories of the offence and its impact, their reliance and outlook, and their supporters' words and actions were key elements in explaining the

²³ For the proved court cases, victims could submit a victim impact statement. The analysis of the sentencing remarks will investigate how often these are introduced and how they are discussed at sentencing.

differences. Despite their variable experiences, both girls were able to bring forward their account of victimization in a way not possible in court, and they (along with others at the conference) were able to check and challenge the youthful offenders' attempts to minimize their behaviour.

The SAAS results underscore the limits of the formal court process in responding to sexual violence. The limits inhere in an adversarial system in which accused persons have the right to deny offending and the evidentiary hurdles are especially high in establishing legal guilt. I invite critics of conferences, from a victim's advocacy perspective, to take a wider view of what the court process necessarily entails for victims: it is not just about penalty, but also about adjudication. The archival data cannot tell us what conference victims' experiences were, nor how they compare with the experiences of court victims whose cases were proved or not proved. The archival data can tell us that in the legal response to youth sexual violence, victims should be heartened when suspects make admissions,²⁴ when cases are referred to conferences, and when outcomes include effective forms of counselling or treatment. Victims should not assume that the court can vindicate the harms they have suffered.

²⁴ This statement assumes, of course, that suspects are admitting to behaviour they have committed.

REFERENCES

- ACORN, A. (2004), *Compulsory Compassion: A Critique of Restorative Justice*. Vancouver: UBC Press.
- BLAGG, H. (2002), 'Restorative Justice and Aboriginal Family: Opening a Space for Healing', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 191-205. Cambridge: Cambridge University Press.
- BRAITHWAITE, J. (2002), *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.
- BRAITHWAITE, J. and DALY, K. (1994), 'Masculinities, Violence and Communitarian Control', in T. Newburn and E. A. Stanko, eds., *Just Boys Doing Business? Men, Masculinities, and Crime*, 189-213. London: Routledge.
- BROWNLIE, J. (2003), '"An Unsolvable Justice Problem"? Punishing Young People's Sexual Violence', *Journal of Law and Society*, 30: 506-31.
- BRYDEN, D.B. and LENGNICK, S. (1997), 'Rape in the Criminal Justice System', *The Journal of Criminal Law and Criminology*, 87/4: 1194-1384.
- BUSCH, R. (2002), 'Domestic Violence and Restorative Justice Initiatives: Who Pays if We Get It Wrong?', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 223-48. Cambridge: Cambridge University Press.
- BUZAWA, E. S. and BUZAWA, C. G. (2003), *Domestic Violence: The Criminal Justice Response* (3rd ed.). London: Sage.
- COKER, D. (1999), 'Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking', *UCLA Law Review*, 47: 1-111.

- COKER, D. (2002), 'Transformative Justice: Anti-Subordination Processes in Cases of Domestic Violence', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 128-52. Cambridge: Cambridge University Press.
- CRIME AND MISCONDUCT COMMISSION (2003), *Seeking Justice: An Inquiry into the Handling of Sexual Offences by the Criminal Justice System*. Brisbane: Crime and Misconduct Commission, Queensland.
- CRNKOVICH, M. and ADDARIO, L., with ARCHIBALD, L. (2000), *Inuit Women and the Nunavut Justice System*. Ottawa: Research and Statistics Division, Department of Justice.
- CURTIS-FAWLEY, S. and DALY, K. (2005), 'Gendered Violence and Restorative Justice: The Views of Victim Advocates', *Violence Against Women*, 11(5): 603-38.
- DALY, K. (1999), 'Restorative Justice and Punishment: The Views of Young People'. Paper presented to the American Society of Criminology Annual Meeting, Toronto, November. Available at <http://www.griffith.edu.au/school/ccj/kdaly.html>.
- DALY, K. (2002), 'Sexual Assault and Restorative Justice', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 62-88. Cambridge: Cambridge University Press.
- DALY, K. and CURTIS-FAWLEY, S. (2005 forthcoming), 'Restorative Justice for Victims of Sexual Assault', in K. Heimer and C. Kruttschnitt, eds., *Gender and Crime: Patterns of Victimization and Offending*. New York: New York University Press.
- DALY, K., CURTIS-FAWLEY, S., and BOUHOURS, B. (2005), *SAJJ-CJ Technical Report No. 3: Archival Study of Sexual Offence Cases Disposed of in Youth Court and by Conference and Formal Caution* (2nd ed., revised and expanded). Brisbane: School of Criminology and Criminal Justice, Griffith University.

- DALY, K. and HAYES, H. (2001), 'Restorative Justice and Conferencing in Australia', *Trends & Issues in Crime and Criminal Justice* No. 186. Canberra: Australian Institute of Criminology.
- EASTWOOD, C. (2003), 'The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System', *Trends & Issues in Crime and Criminal Justice* No. 250. Canberra: Australian Institute of Criminology.
- FRAZIER, P. A. and HANEY, B. (1996), 'Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives', *Law and Human Behavior*, 20: 607-28.
- FROHMANN, L. (1991), 'Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections', *Social Problems*, 38: 213-26.
- GOEL, R. (2000), 'No Women at the Center: The Use of Canadian Sentencing Circles in Domestic Violence Cases', *Wisconsin Women's Law Journal*, 15: 293-334.
- GREGORY, J. and LEES, S. (1996), 'Attrition in Rape and Sexual Assault Cases', *British Journal of Criminology*, 36: 1-17.
- HOPKINS, C. Q., KOSS, M., and BACHAR, K. J. (2004), 'Applying Restorative Justice to Ongoing Intimate Violence: Problems and Possibilities', *Saint Louis University Public Law Review*, 23: 289-311.
- HUDSON, B. (2002), 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?', *British Journal of Criminology*, 42: 616-34.
- JENKINS, A. (1990), *Invitations to Responsibility: The Therapeutic Engagement of Men Who are Violent and Abusive*. Adelaide: Dulwich Centre Publications.
- JENKINS, A. (1998) 'Invitations to Responsibility: Engaging Adolescents and Young Men who Have Sexually Abused', in W. Marshall, Y. Fernandez, S. Hudson, and T.

- Ward, eds., *Sourcebook of Treatment Programs for Sexual Offenders*, 163-89. New York: Plenum.
- JOHNSTONE, G. (2002), *Restorative Justice: Ideas, Values, Debates*. Cullompton: Willan Publishing.
- KELLY, L. (2001), *Routes to (In)justice: A Research Review on the Reporting, Investigation and Prosecution of Rape Cases*. London: Her Majesty Crown Prosecution Services Inspectorates (HMCPSP).
- KOSS, M. (2000), 'Blame, Shame, and Community: Justice Responses to Violence Against Women', *American Psychologist*, 55: 1332-43.
- LEA, S., LANVERS, U. and SHAW, S. (2003), 'Attrition in Rape Cases', *British Journal of Criminology*, 43: 583-99.
- LEWIS, R., DOBASH, R., DOBASH, R., and CAVANAGH, K. (2001), 'Law's Progressive Potential: The Value of Engagement for the Law for Domestic Violence', *Social and Legal Studies*, 10: 105-30.
- LIEVORE, D. (2004), *Prosecutorial Decisions in Adult Sexual Assault Cases: An Australian Study*. Canberra: Commonwealth of Australia, Office of the Status of Women.
- MARTIN, D. L. (1998), 'Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies', *Osgoode Hall Law Journal*, 36: 151-88.
- MCALINDEN, A.-M. (2005), 'The Use of "Shame" with Sexual Offenders', *British Journal of Criminology*, 45: 373-94.
- MILLS, L. G. (2003), *Insult to Injury: Rethinking our Responses to Intimate Abuse*. Princeton: Princeton University Press.

- MORGAN, J. and ZEDNER, L. (1992), *Child Victims: Crime, Impact, and Criminal Justice*. Oxford: Clarendon Press.
- MORRIS, A. (2002), 'Children and Family Violence: Restorative Message from New Zealand', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 89-107. Cambridge: Cambridge University Press.
- MORRIS, A. and GELSTHORPE, L. (2000), 'Re-Visioning Men's Violence Against Female Partners', *Howard Journal of Criminal Justice*, 39: 412-28.
- NANCARROW, H. (2005 forthcoming), 'In Search of Justice for Domestic and Family Violence: Indigenous and Non-Indigenous Australian Women's Perspectives', *Theoretical Criminology*, 9/4.
- NEW ZEALAND MINISTRY OF JUSTICE (2005), 'Family Group Conference', citing *Children, Young Persons and Their Families Act 1989*, s281B. Available at <http://www.justice.govt.nz/youth/fgc.html>.
- PENNELL, J. and BURFORD, G. (2002), 'Feminist Praxis: Making Family Group Conferencing Work', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 108-27. Cambridge: Cambridge University Press.
- PRESSER, L. and GAARDER, E. (2000), 'Can Restorative Justice Reduce Battering? Some Preliminary Considerations', *Social Justice*, 27: 175-95.
- SHAPLAND, J. (2000), 'Victims and Criminal Justice: Creating Responsible Criminal Justice Agencies', in A. Crawford and J. Goodey, eds., *Integrating a Victim Perspective within Criminal Justice: International Debates*, 147-64. Aldershot: Ashgate.

- SPOHN, C. and HOLLERAN, D. (2001), 'Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances and Intimate Partners', *Justice Quarterly*, 18/3: 651-88.
- STEWART, W., HUNTLEY, A., and BLANEY, F. (2001), *The Implications of Restorative Justice for Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities in British Columbia*. Ottawa: Law Commission of Canada.
- STRANG, H. and BRAITHWAITE, J., eds. (2002), *Restorative Justice and Family Violence*. Cambridge: Cambridge University Press.
- STUBBS, J. (1997), 'Shame, Defiance, and Violence against Women: A Critical Analysis of "Communitarian" Conferencing' in S. Cook and J. Bessant, eds., *Women's Encounters with Violence: Australian Experiences*, 109-26. London: Sage.
- STUBBS, J. (2002), 'Domestic Violence and Women's Safety: Feminist Challenges to Restorative Justice', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, 42-61. Cambridge: Cambridge University Press.
- STUBBS, J. (2004), *Restorative Justice, Domestic Violence and Family Violence*. Issues Paper 9. Sydney: Australian Domestic and Family Violence Clearinghouse.
- TABACHNICK, B. G. and FIDELL, L. S. (1996), *Using Multivariate Statistics* (3rd ed.). New York: HarperCollins.
- WALGRAVE, L. (2005), personal communication (email, 1 May).
- WUNDERSITZ, J. (2003), 'Child Victims of Sexual Offences: Tracking from Police Incident Report to Finalisation in Court – Briefing Paper'. Adelaide: Office of Crime Statistics and Research.

YOUNG, R. and HOYLE, C. (2003), 'Restorative Justice and Punishment', in S.

McConville, ed., *The Use of Punishment*, 199-234. Cullompton: Willan Publishing.

Table 1. Offence distributions at the start* and end of the legal process, most serious offence

Offence distributions at start of legal proceedings and offence distributions of admitted (conference) and proved (court) cases	ALL COURT % of 226	PROVED COURT % of 115	ALL CONF % of 118	ADMIT CONF % of 111
Rape	38.0	8.5	7.0	5.0
Unlawful sexual intercourse with a person under 12	10.0	15.0	10.0	11.0
Attempted rape	2.0	2.0	0.0	0.0
Indecent assault	34.0	47.0	59.5	59.5
Unlawful sexual intercourse	6.0	13.0	8.5	9.0
Incest	0.5	1.0	3.0	3.5
Indecent behaviour	8.0	12.0	9.0	10.0
Other	1.5	1.5	3.0	2.0
Total	100.0	100.0	100.0	100.0

*For court cases, the offence at the start of legal proceedings is the most serious offence charged in the YP's first appearance in court; for conference cases, the offence is the most serious offence recorded on the conference record.

Table 2a. Factors associated with case referral (and disposition) in court (N=385 cases)

<i>Dependent variable</i> 1=court (59 per cent) 0=conference or caution	B	stat. sig. at .05 error level?	error level
In AP, YP made no admission or refused to comment to the police (1=yes)	3.29	yes	.00
Scale of seriousness, from low to high (0-9)	0.53	yes	.00
YP criminal history (dichotomy), with 1=has pre-SAAS offending	1.25	yes	.00
Victim-offenders relations (dichotomy), with 1=extra-familial (victim is friend, casual acquaintance, or known; or is a stranger to the YP)	0.62	yes	.05
YP's age, interval level (younger to older)	0.26	yes	.00
YP is classified Aboriginal (1=yes)	0.71	no	.18

pseudo R square: 0.55

78 per cent of cases correctly classified

Table 2b. Factors associated with a youth's non-admission or not talking to the police (N=385 cases)

<i>Dependent variable</i> 1=the YP made no admission or refused to comment to the police (68 per cent) 0=else, the YP fully or partially admitted the offence	B	stat sig at .05 error level?	error level
In AP, YP had legal advice before or during questioning by the police (1=yes)	2.06	yes	.00
YP criminal history (dichotomy), with 1=has pre-SAAS offending	0.93	yes	.00
Victim-offender relations (dichotomy), with 1=extra-familial (victim is friend, casual acquaintance, or known; or is a stranger to the YP)	0.74	yes	.02
Scale of seriousness (dichotomy), with 1= score of 2 or higher (more serious)	1.00	yes	.00
YP's age, interval level (younger to older)	0.12	neared	.10
YP is classified Aboriginal in the AP (1=yes)	0.70	neared	.11

pseudo R square: 0.31

76 per cent of cases correctly classified

Table 2c. Factors associated with court cases proved of any sexual offence (N=226 court cases)

<i>Dependent variable</i> 1=any sexual offence was proved (51 per cent) 0=no sexual offence was proved	B	stat sig at .05 error level?	error level
In AP, YP made no admission or refused to comment to the police (1=yes)	-1.75	yes	.00
Scale of seriousness (dichotomy), with 1= score of 2 or higher (more serious)	-0.73	yes	.05
Victim-offender relations (dichotomy), with 1=extra-familial (victim is friend, casual acquaintance, or known; or is a stranger to the YP)	-0.87	yes	.03
YP's age, interval level (younger to older)	0.01	no	.94
YP is classified Aboriginal in the AP (1=yes)	-0.06	no	.89

pseudo R square: 0.26

72 per cent of cases correctly classified

Table 3. Outcomes in proved court cases and admitted conference cases

	COURT (N=115)	CONF (N=111)
	% of cases	
No penalty (court) or formal caution only (conf)	13	5
Verbal or written apology only	N/A	11
Verbal apology	0	77
Written apology	1	32
Mary St counselling	37	52
length of time (median, in wks)	52 wks	35 wks
Other counselling	15	29
length of time (median, in wks)	52 wks	52 wks
Any counselling (Mary St and/or other)	49	79
Compensation to victim	0	1
YP work for the victim	0	3
YP to stay away from the victim	10	23
Fine (median amount for court cases is AU \$175)	7	0
Community service	11	23
length of time (median, in hrs)	96 hrs	50 hrs
YP given good behaviour bond	75	6
Supervision by Families and Youth Services (FAYS)*	60	1
Detention imposed	18	0
length of time (median, in wks)	26 wks	N/A
Detention suspended (of those with detention)	91	N/A
Actual detention time to serve (median, in weeks, 2 cases of 4 and 26 weeks)	15 wks	N/A

*One conference had FAYS supervision in the agreement, which is unusual. However, FAYS supervision was in place before the conference, and the FAYS worker was present at the conference.

Table 4a. Prevalence of post-SAAS offending by type of penalty or other element, court and conference

prevalence (in per cent) of post-SAAS offending by presence (yes) or absence (no) of penalty or other element		
Court cases (N=115),		
66 per cent offended post-SAAS		
<i>penalty element</i>	<i>yes</i>	<i>no</i>
Mary St Programme	50	75**
Good behaviour bond	63	76
Community service	77	65
Detention, including suspended	81	63*
<i>other</i>		
Victim under 12 years of age	55	76**
SAAS offence intra-familial	59	68
Conference cases (N=111),		
48 per cent offended post-SAAS		
<i>penalty element</i>	<i>yes</i>	<i>no</i>
Mary St Programme	43	53
Community service	56	45
Written apology	56	44
Verbal apology	52	32*
<i>other</i>		
Victim was under 12 years	39	60**
SAAS offence intra-familial	41	52

Chi-square test (one-sided), statistically significant at

** .05 error level

* .10 error level

Table 4b. Factors associated with the prevalence of offending post-SASS
(N= 115 proved court and 111 admitted conference cases)

<i>Dependent variable</i> 1=any post-SAAS offending (57 per cent) 0=no post-SAAS offending	B	stat sig at .05 error level?	error level
YP criminal history (dichotomy), with 1=has pre-SAAS offending	1.50	yes	.00
Participation in Mary Street Programme (1=yes)	-.58	yes	.05
Site of disposition (1=court)	.19	no	.54
YP's age, interval level (younger to older)	.11	no	.19
YP is classified Aboriginal in the AP (1=yes)	-.11	no	.84

pseudo R square: 0.22

69 per cent of cases correctly classified

Note: Offending is defined as an admission to an offence (for conference or formal caution) or the case was proved in court (pre- or post-SAAS case)