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Restorative justice is one path for seeking justice and accountability for sexual assault survivors. | Javier Zarracina/Vox

A different path for confronting sexual assault

What is restorative justice? A practitioner explains how it works.

By sujatha baliga | Oct 10, 2018, 8:10am EDT

FIRST PERSON

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“When I was crying, that was no,” Sofia yelled. “When I pushed your hands away, that was no! And when I said, ‘I’m not that kind of girl,’ that was *NO!* I want to know what you were thinking. What were you *thinking?”*

I was sitting with Sofia, 15 years old, as she directly addressed Michael, her 18-year-old schoolmate who had sexually assaulted her. This face-to-face dialogue was the conclusion of a month-long process during which I’d been helping these young people practice restorative justice.

Michael's eyes darted between mine and Sofia's. "I don't want to say anything that makes it your fault," he said. "I don't want to say what I was thinking 'cause it was stupid."

He looked at me again. I nodded to encourage him to share what he'd shared with me earlier. He took a deep breath, pulled out the sheet of paper he'd written his notes on, and began.

A solution for justice outside of the legal system

As a survivor of child sexual abuse, sexual assault, and rape, I've often wondered what justice would look like for the sexual violence I've endured. I, like professor Christine Blasey Ford and the vast majority of survivors, never reported any of the men who violated me. Even as a child, and later, as a young woman, I knew what I needed could not be delivered by a school expulsion hearing or a court proceeding.

I wanted what Ana María Archila Gualy, the survivor who **confronted Sen. Jeff Flake** when he stated he planned to vote to confirm Brett Kavanaugh to the Supreme Court, described: "The way that justice works is that you recognize harm, you take responsibility for it, and then you begin to repair it."

But for this to happen, everyone impacted by sexual violence needs to feel they can speak openly. Expulsion hearings, tribunals, or courts of law are not designed to do this; rather, these forums disincentivize truth-telling because those who harmed us know they'll be punished if they admit what really happened. The risks are also high for survivors, who face social stigma for coming forward about their experiences and are often forced to undergo painful questioning.

We are seeing this play out on the national stage today. After Ford testified about the violent sexual assault she remembers enduring as a teenager, she continues to receive death threats against her family and has been forced to leave her home for safety reasons. She also underwent a painful cross-examination-style questioning in front of Congress and the entire country. The president of the United States mocked her testimony at a rally, and his audience cheered and laughed. All of this is surely why her opening remarks before the Judiciary Committee included the words, "I am here today not because I want to be."

Those words made me remember why, 12 years ago, I left the practice of law and its winner-takes-all approach for the field of restorative justice. Restorative justice brings those who have harmed, their victims, and affected families and communities into processes that repair the harm and rebuild relationships. This can take several forms, such

as **peacemaking circles** and **conferencing models**. Restorative justice can help resolve nearly any kind of wrongdoing or conflict, including serious harms such as robbery, burglary, assault — even sexual and intimate partner violence, and even **murder**.

The process invites truth-telling on all sides by replacing punitive approaches to wrongdoing in favor of collective healing and solutions. Rather than asking, "What law was broken, who broke it, and how should they be punished?" restorative justice asks, "Who was harmed? What do they need? Whose obligation is it to meet those needs?" At its best, restorative justice produces consensus-based plans through face-to-face dialogue that meets the needs of everyone impacted, beginning with the crime survivor.

Sexual violence could be addressed through restorative justice in many formats. Some schools have restorative justice alternatives to suspension and expulsion, with restorative justice coordinators on school sites. A handful of district attorneys divert cases to nonprofits who are trained in facilitating restorative justice processes (that's how Michael and Sofia's case came to me). Sometimes rape or sexual assault survivors who hear of my work call me directly and ask me to facilitate a dialogue with the person who harmed them.

What is restorative justice? Here's how it works.

As a restorative justice facilitator, my work begins with asking what survivors want from meeting with the person who harmed them. While their answers vary, in sexual violence cases there is a common thread — they want to hear the person who assaulted them say, "You're telling the truth. I did that to you. It's my fault, not yours." They often want this admission to happen in the presence of both of their families and friends. Most survivors are also looking for some indication that the person who harmed them truly understands what they've done and that they won't do it again. Some request to never have to see that person again.

The length of the process and the number of meetings required to get us there varies from case to case. Sometimes a circle or conference happens within days or weeks of the harm, while others can take months for everyone to feel prepared. Because sexual violence occurs and continues through shame and secrecy, restorative interventions are most effective when family and/or close friends of both parties are included. Given that personal and often humiliating details are often shared, survivors have final say over who can attend.

A quick note: In restorative justice, we avoid defining people by their behaviors and experiences with labels like "victim," "offender," and "perpetrator" because those terms

deny that all people are capable of growth and change. Instead, we use the word “survivor” because it honors that a person is in the process of transcending something painful or unjust. We also use phrases like “the responsible person” or “the person who assaulted the survivor” to show that people are more than the worst thing they have ever done.

At the end of the process, which typically ends with one or more face-to-face sessions with the entire circle, a plan to meet the survivor’s self-identified needs is made by consensus of everyone present. The responsible person is supported by family and community to do right by those they’ve harmed. For example, if joining a sports team is a part of the responsible person’s plan to help them stay out of trouble after school, people in his circle agree to take him to practice, or pay for the enrollment fees.

Ideally, root causes of the harm are also addressed, such as the impact of growing up in a home where people witnessed domestic violence. Many men I’ve met in restorative justice circles in prisons speak about the sexual abuse they endured as children and how that unresolved trauma gave rise to their offending. In those discussions, we are clear about the distinction between explanation and excuse. Some restorative justice practitioners encourage addressing structural inequities that gave rise to the offending behavior as well.

Restorative justice in practice

What does restorative justice look like in practice? Let’s return to Sofia and Michael, a case I facilitated a few years ago (all names and some details have been changed to protect anonymity). Not only was Sofia suffering from the aftermath of the assault itself, but Michael’s friends had posted on social media that Sofia had lied about the assault. Michael was a well-liked kid, and there were no witnesses to the sexual assault, so people were quick to believe his initial denials.

With the help of her friends, Sofia told a teacher, which led to Michael being arrested. The district attorney diverted the case to a nonprofit I’d trained in restorative circles and conferencing, who asked for my guidance. The first step was to reach out to Michael to assess his willingness to work with us. Our first meeting with Michael focused on building trust, answering questions, and, without pressuring him, determining his willingness to participate. He quickly agreed, saying he wanted to “make this right.”

This was possible, in part, because we’d assured Michael that by agreement with the district attorney and the school district, nothing Michael or Sofia said could be used against them in school discipline or juvenile justice processes. Once Michael agreed to

participate, we contacted Sofia and her family to determine her interest. While people were surprised to learn such a program existed, everyone, including parents on both sides, felt like the process would be a good thing for Michael and Sofia.

In advance of the big meeting, my co-facilitator and I met separately several times with Sofia, Michael, and the supporters they planned to bring to the dialogue. First, I helped them both choose who should be part of the meeting. At first, there was resistance — Michael initially didn't want anyone there to support him, but over time he opened up to the idea of his mother and sister being present. Sofia decided that she was too embarrassed to have any men from her or Michael's family present, and both families accepted this. The meeting ended up including Sofia, Michael, both of their mothers, and Michael's younger sister.

In my prep meetings with Sofia and her mother, we discussed what she wanted to say to Michael about the impact of the assault. We worked with Michael to understand the implications of what he did and where that behavior came from. We shared information about when and where the meeting will be held, who will enter the room first, who will sit where, who will speak first, and who will be present. These details are primarily driven by the safety needs of the survivor but can occasionally be impacted by the desires of the person who caused the harm. The key is to set things up so that both parties know what to expect and feel safe to share freely and openly.

Sometimes, it's hard for people to imagine speaking directly to the person who harmed them. While preparing for the meeting, Sofia expressed her desire to stay silent and have her mother speak for her. But the moment Michael entered the room, Sofia's demeanor instantly changed from timid to emboldened, and a powerful dialogue ensued about the impact of the assault on Sofia's life and on her family. Sofia told the group she had lost weight, was sleeping in her mother's bed, woke up with nightmares, and had stopped going to school because of the rumors that she was lying for attention. As they worked through the details of the assault and its aftermath, Michael finally answered Sofia's question about what he was thinking at the time of the assault.

"I know you're a good girl, and I thought all good girls have to fight a little the first time," he said.

Michael's sister gasped, and the room went silent for a little while. Even as the words came out of his own mouth, we could all see Michael realize how wrong this was. He bent over and put his face in hands, and when he looked up, Sofia's mother squinted at him in

disbelief, shaking her head. After what felt like an eternity, Michael's mother finally broke the silence, saying to her own daughter, "See? I brought you so you'd know even nice boys like your brother can think things like this, do things like this."

Upon hearing Michael's mother take Sofia's "side," both Sofia and her mother broke down in tears, and Michael's mother stood up and hugged them. Then she sat back down, placed her hand gently on her son's arm, and shared stories of sexual violence endured in the past by members of her own family.

As the women and girls spoke of the impact of daily street harassment and other sexual harm they've seen or experienced, Michael alternated between silence and occasional thoughtful questions. He also spoke honestly about what he's learned from media representations of consent and how his friends talk about girls they have been intimate with. He confessed his own struggle to understand the line between expressing interest and being creepy. He talked about how his ex-girlfriend broke up with him, in part because, according to her, he didn't "chase her enough."

At that point, Michael confessed that he thought that what he did was okay because he felt that Sofia had expressed interest in him. Sofia looked him directly in the eyes and told him that this had no bearing on his choice to assault her when she said no. When she said this, Michael paused. Everyone could see that her point was sinking in.

Sofia's transformation was breathtaking — she found her voice that day. And by the end of our time together, it felt like Michael had gained an understanding of consent. As we moved into creating a plan to repair the harm, Michael offered to clear up Sofia's reputation by posting on social media a public apology to her, which included the words "she didn't lie." Michael also agreed with Sofia's request for him to spend a month of school at home to give Sofia space. Afterward, everyone except for Michael and Sofia hugged.

In the weeks that followed, Sofia's mother reported that her daughter had even more self-confidence than she'd had before the assault; not only had she moved back into her room and stopped wearing the baggy clothes she'd started wearing after the assault, she also spoke up more about her feelings and opinions, including with the men in the family. And after graduation, Michael sent me a copy of a research paper he'd chosen to write on sexual violence.

Restorative justice in the real world

Restorative justice processes aren't always this satisfying. In other cases, when legal or other punitive consequences have hung over the heads of the young people (i.e., school expulsion, Title IX hearings, immigration consequences, etc.), admissions were couched in exculpatory language and the assault was minimized. The stakes remain too high for the truth to come out, and restorative justice's core work — recognizing harm, taking responsibility for it, and beginning to repair it — cannot happen under these circumstances.

While this is extremely frustrating for survivors, some choose to engage in a dialogue nonetheless. Even without an admission of guilt from the person who harmed them, a survivor may still find some benefit from being able to say, face to face, "I don't care if you deny it; I know you did this to me." This is something that those who give victim impact statements might also experience in a court of law, even though victim impact statements rarely alter the outcome of a case, especially when survivors are asking for sentences that go above or below what the law prescribes. Hopefully, Ford experienced some portion of catharsis by telling her story in a public arena, even though the outcome of this hearing did not validate her bravery.

Restorative justice practices have been primarily applied to youth who've caused harm. In Baltimore, Nashville, Oakland, and several other cities across this nation, people under the age of 18 can be diverted before charges are filed to a nonprofit that is trained to facilitate restorative circles and conferences. School districts in many major cities have adopted some form of it as an alternative to more punitive approaches. Our growing understanding of the changing brains of youth, coupled with our rejection of the "superpredator" myth that there are (primarily African-American) youths predisposed to a life of senseless violence, has made us more open to approaches that give kids "a second chance." But restorative justice offers equal benefits when applied to adults, and when parties are willing, it should be as readily available to them as well.

While restorative justice is nothing new — the theory and practice can be traced to many indigenous communities the world over — it has yet to genuinely circumvent or replace punitive systems in any meaningful way, despite its greater efficacy on several fronts. In a **recent study** of the first 100 felony cases diverted to restorative justice in Alameda County, California — including some sexual violence cases — 91 percent of survivor-participants reported they would participate in another conference, and an equal number (91 percent) stated they would recommend the process to a friend. Moreover, youth who participated in the program were **44 percent** less likely to commit future crimes than

those whose crimes were addressed through the county's juvenile justice system. The cost savings, as compared to adjudicating youth delinquents, are enormous.

Some jurisdictions have thought to make restorative justice an add-on to court proceedings. But for restorative justice to be effective, it must remain outside the purview of the courts or other punitive measures. Restorative justice's beauty and effectiveness flow from people feeling free to tell the truth, and being welcomed to do so.

Another key effective aspect of restorative justice is the way power is rebalanced through dialogue. Crime survivors define their own needs rather than remaining at the mercy of a court's legitimation. Survivors often state that simply being asked questions like, "How do you define the harm? What do you need now? What will make this right?" is the most important part of the process because it allows them to reconnect with their power after experiencing trauma that made them feel powerless.

As I've watched this Supreme Court battle unfold, I've wished I had met Ford and Kavanaugh decades ago when they were teenagers. Restorative justice might have been able to help Kavanaugh and his friends process the impact of the behavior they've been accused of. And it could have provided an opportunity for Ford, Deborah Ramirez, and others to find their voices in more supportive environments. We would all be better off for it.

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