Sibling Sexual Violence and Victims' Justice Interests: A Comparison of Youth Conferencing and Judicial Sentencing

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1. Introduction

A significant challenge in showing the strengths and limits of conferences[1] for sexual violence, from a victim's perspective, is the lack of a credible evidence base. This chapter will consider *how* to build that evidence base: one that can systematically assess any one justice mechanism (such as conferences) or compare it to others (for example, criminal sentencing, victim impact statements, and state-based compensation or financial assistance schemes). Research by Godden (2013) and Wager (2013) has taken a step in this direction. Godden (2013) assessed and compared three mechanisms (criminal prosecution, restorative justice and civil litigation) in responding to sexual violence. Her method was to review research on each mechanism (and for restorative justice, to analyse one case study) to determine whether each achieved five objectives for victims.[2] Wager assessed ten previously published cases of restorative justice and sexual violence with the aim of determining if survivors' experiences in conferences met four 'healing and justice needs' (Wager, 2013: 21).[3] In each case, the approaches were promising, but would have benefitted by more precise definitions and a systematic way of analysing the data.

In this chapter, we introduce and apply a new method to assess and compare conferences with other justice mechanisms, from a victim's perspective: a systematic empirical assessment of multiple cases of sexual victimisation. The method begins with the construct of 'victims' justice interests' and a definition of its five elements: participation, voice, validation, vindication, and offender accountability-taking responsibility (see Daly, 2017). Then, each element is operationalised with a set of variables that are applied to the data. In this analysis, the data are interviews of victims and coordinators (for conferences) and transcripts of sentencing remarks (for court) for cases of sibling sexual abuse, together with police reports and criminal histories for all cases. We recognise at the outset that 'the data' are imperfect: they are not all the evidence we may wish to have on victims' experiences of criminal court proceedings and conferences. Nor are judicial sentencing

[1] We use the term 'conferences' throughout this chapter to include similar mechanisms such as victim-offender mediation.

[2] Excerpting from the longer statements, these were 'recognition of the wrong, respect diverse experiences, tell stories and be heard, wrongdoers held responsible, and symbolic and material reparation' (Godden, 2013: 27, 89).

[3] In identifying these, Wager (2013: 21-2) combines Herman's (2005) justice needs and Draucker et al.'s (2009) healing needs; this results in an analysis that cannot distinguish justice and well-being.

remarks all that is said during the entire sentencing process because the prosecutor and defence counsel often comment on the case. However, the aim of this paper is to *elucidate a method for assessing and comparing differing justice mechanisms* and to show its potential. The overarching problem we address is the need *to compare different justice mechanisms*. If we cannot identify a method of doing this, it will matter little how much empirical evidence is amassed on restorative justice (RJ) (or conferences as an RJ mechanism) and sexual violence. Furthermore, it will matter little that a substantial body of research on victims reaches the predictable conclusion that conventional criminal justice mechanisms often fail them. What victims, victim advocacy groups, and policy makers will be persuaded by (and learn from) are *comparisons of justice mechanisms*.[4]

2. Requirements for and impediments to an evidence base

To build a credible evidence base, a systematic empirical method is required. Movement in this direction began in 2010, when researchers identified a number of 'victims' justice needs' (or interests) in response to sexual violence (e.g., Clark, 2010, 2015; Daly, 2011; Godden, 2013; Jülich, Buttle, Cummins, and Freeborn 2010; Keenan, 2014; Koss, 2010; Wager, 2013) (see Daly, 2017). This work has been important for identifying a normative set of expectations for victims seeking justice. However, one limitation is that the elements comprising victims' justice needs (or interests) vary, depending on the researcher; and more problematically, the elements are not defined or variably defined (Daly, 2017).[5] This has occurred, in part, because researchers are working in isolation from one another, and in part, because few have grasped the significance of what could be a promising and innovative method. To advance a credible evidence base, we require *precision* in defining and operationalising the elements of victims' justice interests, and a *systematic application* of identified variables to the data.

With relatively few jurisdictions in the world using conferences routinely in sexual offence cases, and even fewer, in adult cases, there are major empirical hurdles in developing an evidence base. As Zinsstag, Keenan & Aertsen (2015: 104) say, there are 'few empirical

[4] Each of the many justice mechanisms that could be assessed and compared (victim impact statements, state-based compensation or financial assistance for crime, victim lawyers, among others) has a potential contribution to a victim's overall sense of justice. The empirical question is what, in fact, does each contribute?

[5] One reason for variation in definition is that some have attempted to define and apply 'justice needs' from the perspective of both victims and offenders (Toews, 2006; Bolitho, 2015). In time, such an approach may have merit, but a first step is to determine what is specific to victims and offenders and not assume that justice needs (or interests) are 'universal' as, for example, Toews (2006) does. In addition, in some cases 'justice needs' are identified generically for many offence types and contexts of victimisation; and in others, the focus is on sexual violence.

studies …, small sample sizes and insufficient statistical information'. Thus, artful and innovative research methods are required. A typical approach is to analyse a small number of sexual violence victim-survivors, who have participated in conferences or mediation (e.g. Daly and Curtis-Fawley, 2006; McGlynn, Westmarland & Godden, 2012; Pali & Madsen, 2011). This work provides insight and grounds for debate (e.g. Cossins' 2008 critique of Daly & Curtis-Fawley, 2006; reply by Daly, 2008).[6] However, analysis of a handful of conference cases will not be sufficient alone.

Although it is said that randomised experiments are the gold standard in research, this method of comparison cannot be used (at least not currently) to assess and compare conferences or other justice mechanisms in responding to sexual offences. The reasons are practical and political. For practicality, Sherman et al.'s (2005) randomised experiment of adult supplemental conferences, which ran alongside the pre-sentence (post-plea) criminal process, focused on robbery and burglary. Sexual offences were not included (nor were spousal assault and child abuse offences) because it would have meant additional coordinator training and sensitivity to address the power dynamics of these cases (Shapland, Robinson & Sorsby, 2011: 83, 199, fn. 3). We know that the standard conference model requires modification for gender violence cases and must include access to targeted programs for admitted offenders. Despite the development of a modified model for adult sexual violence by Koss (2010) and Jülich, Buttle, Cummins & Freeborn (2010),[7] it will take some time for conferences to be used routinely for sexual offences (whether in the youth or adult jurisdiction) in large part for political reasons.[8] Thus, faced with these constraints, we need to think differently and more artfully about how to carry out research with the empirical materials we do have. We need to be comfortable working with imperfect data.

3. The data: 17 cases of youth sibling sexual violence

In this chapter, we analyse 17 cases of sibling sexual abuse,[9] six of which were finalised by a diversionary youth justice conference; and 11, sentenced in the Youth Court. Both conference and court proceedings took place in South Australia. For the conferences, five cases were drawn from the In-Depth Study of Sexual and Family Violence (see Daly, Bouhours & Curtis-Fawley, February 2007; Daly & Wade, 2012 for methods and instruments); and the

[6] The senior author is indebted to Cossins' (2008) critique, which led to developing a more robust method of assessing and comparing different justice mechanisms.
[7] Other protocols are reviewed in Zinsstag et al. (2015: 96-99).
[8] The political argument continues to have force because conferences (or other types of innovative justice mechanisms) for sexual violence may attract critique by the media or certain advocacy groups.
[9] Sibling includes biological, half- and step- siblings, and foster relations.

sixth, from the South Australia Juvenile Justice (SAJJ) research project (see Daly, Venables, McKenna, Mumford, & Christie-Johnston, 1998; Daly, 1999). The six conferences varied in the data available: one had interviews of victims or their representatives only (typically parents); for two, interviews of the conference coordinator only; and for three, interviews of both. For court sentencing, the 11 cases were drawn from the Sexual Assault Archival Study (SAAS) (see Daly, Bouhours, Curtis-Fawley, Weber & Scholl, July 2007). The data were transcripts of the judges' remarks at sentencing.[10] In addition, all 17 cases have a police report and follow-up data on re-offending. Appendix 1 gives a brief summary of each case. In light of the differing types of data available, our method of comparing conference and court cases adjusted for the fact that evidence was not always available in the court cases to assess the variables associated with victims' justice interests.

3.1 Why sibling sexual violence?

Some may wonder, why focus on sibling sexual violence?[11] The reasons are data availability and conceptual importance. We wished to test the construct of victims' justice interests with reference to one type of sexual victimisation because in this way, we could 'hold constant' (loosely speaking) the dynamics of offending and victimisation.[12] Of the eight sexual offence conference cases in the In-Depth Study, most (five) were sibling sexual abuse, and all were used in our analysis. Furthermore, we wished to compare conference and court responses to sibling sexual violence from a victim's perspective. The court data at our disposal were sentencing remarks, and there were a sufficient number of sibling cases for analysis. Thus, having high-quality data on a particular form of sexual violence was decisive.

Conceptually, sibling sexual abuse is an important area in its own right. Although prevalence rates are not known, it is believed to be the most common form of intra-familial sexual abuse, occurring three to five times more often than father-to-daughter sexual abuse (Daly & Wade, 2012, 2014). Once viewed as a harmless form of sexual experimentation, researchers have now come to see its negative impact on victims. Termed an 'opportunistic' form of abuse because of the physical proximity of siblings (Stathopoulos, 2012: 1), it can continue for many years and take severe forms. The emotional consequences for abused

[10] Of all SAAS court cases proved of a sexual offence (N =115), 65 were sentenced by judges; and of these, sentencing remarks were available for 55. These were analysed in Bouhours & Daly (2007) and Daly & Bouhours (2008) with a focus on judicial censure and moral communication. The sentencing remarks ranged from just over 100 to about 3,000 words. The average was about 1,000 words, but for sibling sexual violence, it was higher (1,300 words).

[11] We use sibling sexual *violence* and *abuse* interchangeably.

[12] As Appendix 1 shows, however, these cases vary in severity and offence elements.

siblings are their concerns of being blamed for the abuse, not being believed if they disclose, being punished by their parents, and creating further family conflict.

In the SAAS dataset of 385 youth sexual offence cases,[13] about one-fifth of the 'hands-on' offences involved siblings. We compared the sibling cases (which were all hands-on offences) with all the other hands-on offences and found a number of statistically significant differences (see Daly & Wade, 2012: 90-91):

- Sibling perpetrators were more likely to show remorse during the police interview, to make admissions to the police and to be referred to a conference.
- Victims in sibling cases were younger (7.7 years) compared to those for other hands-on offences (12.6 years).
- Sibling offending was more likely to be on-going, with multiple incidents over time (64 per cent) compared to non-sibling offending (23 per cent).
- Sibling cases exhibited a higher share of penetrative sex (68 per cent) than non-sibling cases (55 per cent) and were significantly higher in offence seriousness.
- Sibling cases were more likely to be 'proved' (by admission or guilty plea) than non-sibling cases. In part, this was because a higher share of sibling than non-sibling cases was referred to a conference; but even those sibling cases referred to court were more likely to be proved (72 per cent) than the non-sibling cases (45 per cent).
- Sibling perpetrators were far more likely to be referred to or take part in a specialist program for adolescent sex offenders (the Mary Street program) than non-sibling perpetrators (68 and 23 per cent, respectively).

In sum, the dynamics of sibling sexual assault and justice system responses differ from other types of youth sexual offending in key ways: the offending is, on average, more serious; and yet, a higher share is referred to conference than court.

In a previous analysis of four sibling conference cases (Daly & Wade, 2014), we found that victims were often too young to participate in a conference and that the process centred mainly on ways to prevent youths from further offending. Parents (typically mothers) had an emotionally complex dual role of representing their victim-child and supporting their perpetrator-child. One consequence was that victims' accounts of what happened and of the harm caused were often muted. A previous analysis of the court's sentencing remarks (Bouhours & Daly, 2007; Daly & Bouhours, 2008), which included all sexual offences,

[13] The SAAS dataset contained all the youth sexual offence cases reported to the South Australian police over a 6.5-year period (January 1995 to 30 June 2001). It is a unique dataset in that it contains the universe of reported cases; thus, it does not suffer from sample selection problems associated with clinical samples.

identified three case categories. One of these, the Category 1 cases, involved siblings, relatives and victims under 12. Judicial officers were especially concerned that these perpetrators posed 'a potential threat as sexual offenders in the making' (Daly & Bouhours, 2008: 507).

3.2 Profile of the 17 sibling cases

For the six conference and 11 court cases, offenders were overwhelmingly male (all conference cases and all but one court case), and victims were predominantly female.[14] Offenders' mean ages were 14 to 14.5 years; and victims' mean ages, 7 to 9 years. While all the court cases involved penetrative sex, half of the conference cases did; and while all the conference cases involved on-going abuse, less than half the court cases did. Despite a low number of cases available for analysis, the distributions on key variables were comparable to the wider set of conference and court cases of sibling sexual assault in the SAAS dataset.[15]

4. Defining, operationalising and quantifying victims' justice interests

The definition of each element of victims' justice interests—for participation, voice, validation, vindication, and offender accountability-taking responsibility—is detailed in Daly (2016). In a highly abbreviated form, they are as follows:

- *participation*: being informed of the options and developments in a case; being able to address offending and victimisation in meetings with admitted offenders and others; and being able to questions and receive information about crimes.
- *voice*: telling the story of what happened and its impact in a significant setting.
- *validation*: affirming the victim is believed (acknowledging that offending occurred and the victim was harmed) and is not blamed for the offending.
- *vindication* (of the law and the victim)*:* affirming the act was wrong, morally and legally, and affirming the perpetrator's actions against the victim were wrong.
- *offender accountability-taking responsibility*: requiring that alleged offenders are called to account and held to account; upon admission or conviction, expecting offenders to take active responsibility for their wrongful behaviour.

A set of variables was devised for each element, in the form of questions, and then applied to the data. In creating the variables, we paid careful attention to their wording to ensure they

[14] In conference cases, 83 per cent female only and 17 per cent mixed male and female; in court cases, 73 per cent female only, 18 per cent male only, and 9 per cent mixed male and female.
[15] A detailed analysis is available from the senior author.

were applicable to conference and court sentencing mechanisms. The coding process was iterative and revised many times before we were sure that the relevant variables were identified and measured accurately. Appendix 2 lists the variables, frequencies and a score for each justice interest.

We make several points about coding and scoring the variables. For the court cases, the definitions of participation and voice were widened to include any indication of victim or family member presence in the courtroom, or that a victim impact statement (VIS) was tendered. For both conference and court cases, we took care to distinguish validation and vindication. For validation, we looked for words that acknowledged that the youth had harmed the victim or that the offence impact was serious. For vindication, we looked for words that focused on the wrongfulness of the act or the offender's actions. In practice, it was difficult to distinguish aspects of 'vindication of the law' (denunciation of the offence) and 'vindication of the victim' (censuring the youth for the offence). Thus, if either was said, we coded the variable as a 'yes'. For validation and vindication, we included some negatively coded variables, such as whether the victim was blamed (for validation) and whether or not the youth or others minimised culpability in a variety of ways (for vindication).

We used a simple scoring scheme: 1 (for yes) or 0 (for no), and several with a mid-way (.5) or negative score. Some variables were not scored, but are listed in Appendix 2 because they were relevant to a subsequent item that was scored (e.g. variables 25 and 34). For some variables, the information was not known; this occurred more often for the court cases. To give an accurate score for each justice interest, we reduced the denominator to the number of cases for which there was information. Thus, for validation, the relevant denominator for the conference cases was 26 (four variables times six cases, plus two variables with one case = 26 cases) and for the court cases, 44 (four variables times 11 = 44 cases).

4.1 Quantitative outcomes: scores for conferences and sentencing

Numbers have a seemingly magical quality in their ability to transform the complexity of human intention, motivation, action and interaction into an apparent precision. We recognise the limits of simple counts of complex human activities, but without them, we cannot make claims about frequency. It is here that our systematic method of assessing and comparing conferences with other justice mechanisms departs from all previous efforts. We have endeavoured to compute a 'score' for the degree to which each justice interest was achieved in conferences or sentencing. The results are as follows.

Conference scores were higher than those for court sentencing for participation (58 and 3 per cent, respectively); voice (79 per cent and 23 per cent); validation (83 per cent and 52 per cent); and offender accountability-taking responsibility (67 and 39 per cent). Conferences and court sentencing were more similar for vindication (61 and 51 per cent, respectively). The largest gap was for participation (55 percentage points) and voice (56 percentage points), which is expected in light of the procedural and process differences of the two. Relatively smaller gaps were evident for validation (31 percentage points) and offender accountability-taking responsibility (28 percentage points). Court sentencing does relatively well for justice interests of validation and vindication, but less so for other justice interests. We turn next to showing how these outcomes were determined, with attention to what occurred and what people said, first for the conference cases, and then court sentencing.

5. Conferences and victims' justice interests

5.1 Participation

To assess participation, we identified these subthemes: choice of justice mechanism, opportunity to attend, and the ability to ask questions, receive answers and shape the agreement.

Choice of justice mechanism

During the referral process, no victim (or more typically a person representing them) was explicitly given a choice of justice mechanism. However, in one case (#3), the offender's adopted father (Roger) requested a conference 'to formulise the police response' and to ensure that Liz (his former partner and a victim representative) could describe the effects of the sexual abuse on her son. In a second case (#5), Tanya was 14 years old at the time of the conference, and she was the only victim in the sample to attend a conference. She was asked whether she wanted to attend, but was told that the conference would go forward even if she did not.

Opportunity to attend

In four of six conferences, all the relevant people were invited to attend. However, in two (cases #2 and #3), they were not. In #2, the father of the offender (Jack) was not invited, although for a good reason. Now living separately from a former partner (Joan), Jack's father did not believe that Jack sexually abused his half-sister. Neither Joan nor Jack wanted the father to attend the conference. In #3, victim 2 and her mother were not invited to attend; and

rather than attending the conference, the mother (and representative) for victim 1 (Larry) chose to give a written statement.

Asking questions, receiving answers

In all the conference cases, the victim (or a representative) felt they could ask the offender questions. Less clear is whether they received adequate answers to their questions. In general, the 'full story' of what occurred and why did not come out at the conference. In part, this was because the offender was too ashamed to provide complete information, and in part, family members (victim representatives) were not prepared to hear the full story of abuse within the home.

Shaping the agreement

In all but one conference (#3), the victim (or representative) participated in negotiating the conference agreement. In case #3, the victim representative (Liz) did not attend. Tanya (#5) and to a lesser extent Joan (#2) participated in the negotiations, but they did not feel that their suggestions were fully considered by others. Specifically, Tanya wanted Zac to receive community service, and she thought the Youth Justice Coordinator's (YJC) proposed idea that her offending step-brother buy a gift for her was 'stupid'. She thought the YJC could have controlled the agreement discussion better, saying 'it wasn't really that good. I didn't speak much [when negotiating the agreement]'.

5.2 Voice

To assess voice, we analysed the story of victimisation and whether it was heard.

Story of victimisation

All conference cases displayed some degree of victim voice. However, the form it took was not optimal because in all cases, the story of victimisation was not told by a victim (or representative); instead, the police report was read. The coordinators focused on the *impact of offending*, but not on what had occurred. For example, in case #2, Jack's abuse of Lucy 'didn't come out much at all' at the conference, according to the YJC. He said that 'because … a lot of this was about shame at what [Jack had] done, we didn't actually talk a lot about the offence'. Although the 'what' and 'why' of offending was not brought to light, in four of six cases, victims (or their representatives) felt that they were able to say everything at the

conference that they wanted to (cases #2, #3, #4, #6). However, one victim representative (Sharon, case #1) said she was *unable* to say all she wanted for several reasons:

> … One because of the formality of it and respecting the speaker take-turn type stuff. A lot of the time things come up, and you're thinking about them, and you really need to say it then and there, but it's like, 'OK, no I'll respect the surroundings'. If you don't have a pen and paper to write it down to come back to, it's not always easy to say what you want to say. … If I've got something that's a thought or a memory or that I wanted to say, then it has to be said straight away. Otherwise I'll just forget it.

Being heard

In four cases, the conference participants thought the offending youths were listening to the story of victimisation. However, in two, the victim (or representative) thought that they were not listening. In case #2, Joan was 'worried that it wasn't sinking in to him' because he would often reply to questions by saying, 'I don't give a shit'. In case #5, Tanya thought that Zac was 'not even listening' and that he was lying and 'faking it' throughout the conference.

5.3 Validation

To assess validation, we focused on what people said about the impact of the offence and whether the victim was blamed or believed.

Impact of the offence

In all conferences, there was discussion of the impact of victimisation. In case #4, the YJC thought that what Louise (the mother) said about how the offence affected her and Emma (the victim) had a strong impact on Nathan, who began to cry, with his 'head in his hands'. The YJC noted that Louise was highly effective in describing the offence and its effects on herself and her daughter. She was able to 'draw together a 5-year old's thoughts and put them forward … and to interpret some of the things that … a 5-year old couldn't do …'. In three cases, the youth began to cry (#3 and #4) or was clearly 'fighting back tears' (#1).

Blame and being believed

One victim, Lucy (case #2), blamed herself for the *consequences* of the offending because her brother was no longer able to live in the family home. That Lucy was not to blame was brought forward in the conference (although Lucy, age 6, did not attend), as was the fact that Lucy's mother told her repeatedly that she was not to blame. In case #5, Zac blamed Tanya

by insisting that the sex activity was consensual. We cannot be sure if Zac's claim of consent was explicitly countered during the conference.[16] After the conference Tanya thought her mum believed her, but she was not sure if her stepfather did. She felt believed by the rest of the conference participants, except Zac, who 'was trying to [blame me], but it wouldn't work'.

5.4 Vindication

We used these subthemes to assess vindication: declarations of the wrongfulness of the acts, excuses and minimisation of offending, whether these were countered, and conviction and sanction.

Declarations of wrongfulness

In all but one case, a legal authority (the police officer) made clear statements that the youth's actions were wrong. For example, Sharon (case #1) said that during the conference the police officer

> laid it fully black and white straight down the line … It was like a bomb had been dropped and Ben was in the bomb zone. He was in ground zero. … [The police officer's] purpose was to make him understand how serious this was …

A solid declaration was not made in case #5. In part, this was because the police officer believed that Tanya consented to sex relations with her step-brother Zac. However, when Zac referred to his being the victim during the conference, this was countered by the YJC, who said, 'no, you're not the victim, you're the offender. Tanya is the victim'.

Excuses and minimisation

In all cases, conference participants, other than the youth, said that the offence or the youth's offending was serious; however, some youth minimised offence seriousness, and some conference participants viewed the youth as not fully culpable.

In two cases (#1 and #5) the offender minimised the seriousness of his offending. For example, Ben (case #1) was asked to rate the seriousness of his offending on a scale of 1 to 10, with 1 being stealing a mars bar. He rated his actions a 7.5. When asked to rate the illegal use of a motor vehicle, he rated that a 10. The YJC tried to explain the difference in

[16] However, the YJC said that Zac's father reacted strongly with physical threats to Zac when he made victim blaming comments. The father's reaction was in response to Zac saying that Tanya was not his sister and thus, having sex with her was not wrong. The father's response did not directly counter Zac's claim of consent.

seriousness between harming a person and stealing or damaging an object, but Ben did not understand this line of thought.[17] When youths attempted to minimise the seriousness of their offending, other conference participants countered by saying the offending was serious, speaking directly to the youth and other conference participants.

A common explanation for the youths' behaviour was having been a victim themselves, and this had the effect of reducing the youth's culpability. In case #1, Sharon intimated that her ex-husband's abuse towards her son Ben was partly to blame for his offending against Marie. She was 'more angry with Ben's father' than she was with Ben. In part, this was because Ben's father was

> not being asked to do what Ben's being asked to do. … [Ben] told [his foster carer] that he was angry and he just wanted to hurt somebody … He was angry with his father, but it doesn't excuse him for the way he channelled his anger.

Sharon put into sharp relief a common theme: not knowing why a youth offended. She said, 'what's the point of asking him "why did you do it?" I'll never know … and it will drag up open wounds that are probably best left closed'.

In case #2, the YJC thought that Joan believed that her son Jack's sexually abusive behaviour was in part due to his own victimisation. Jack had been physically abused by Joan's previous partners, had been sexually abused by a family friend (a youth), and was 'hanging out with a known paedophile'.[18]

The youth's culpability can also be reduced when family members blame themselves. This occurred in cases #3 and #4, when the mother and stepmother said they blamed themselves for not taking steps to protect their child-victim. In each case, the conference participants said that they were not to blame for the youths' behaviour.

Conviction and sanction

When a youth completes a conference, no conviction is recorded. However, a conference outcome or 'undertaking' is decided by the group, with the youth's agreement.[19] Outcomes can contain a variety of elements.[20] All the conference cases required some kind of youth

[17] The YJC and Ben's mother Sharon had different explanations for this. The YJC believed that Ben thought that stealing or damaging property *was* more serious than harming a person: it was consistent with other things Ben had said, which were 'absolutely contra to what you'd expect'. Sharon thought that Ben was in 'denial' about 'how deep in trouble he was'.

[18] Although both Joan and the YJC refer to Jack's 'hanging around a "known paedophile"', there was no further information on what happened.

[19] To be precise, at a minimum, the police officer and youth must agree on the elements in an agreement.

[20] A table with detailed outcomes for all the conference and court cases is available from the senior author.

counselling or treatment program, typically the Mary Street program. Three conferences had some type of apology (verbal, written or both), and two specified supervised or limited contact with the victim. An unusual outcome occurred in case #1, when Ben received a good behaviour bond. Although bonds featured in all the court cases, this was rare for conferences. It means that a youth is subject to further legal liability, if the bond is breached.

5.5 Offender accountability-taking responsibility

We used the following subthemes to assess offender accountability-taking responsibility: admissions to and cooperation with the police, giving accounts and answers, taking responsibility for offending, showing remorse and giving a sincere apology.

Admissions and police cooperation

All sibling cases proved in court were by a youth's guilty plea, but conference youth were more likely to make an early admission when questioned for the first time by the police. In one case (#5), the admission was partial: Zac admitted to sexual intercourse with his step-sister, but said it was consensual. The police reports for the conference cases described the youths as cooperative in answering their questions; at the same time, the youths did not readily disclose the details of what occurred.

Accounts and answers

The typical format for the youths to 'give an account' of what they did began with the police officer reading the offence summary in the police report. In two cases (#3 and #4), the youths were then asked 'reflective' questions such as 'what did you learn?' and in case #5, the youth was asked factual questions. However, no youth was asked what they did and why. When the youths were asked questions during the conference, three answered in a responsive manner, and three did not. Ben (#1) and Jack (#2) sometimes responded by saying 'I don't give a shit' and 'I don't know'. Zac (#5) often answered questions in 'really weird voices' and was saying 'really weird stuff'. In her interview, the victim said he was lying.

Taking responsibility

In four out of six conferences, the youth understood that what they did was wrong. The exceptions were cases #2 and #5. In a third case, Ben (#1) brought a written statement to the conference about 'commitments' he was making. The YJC viewed Ben's behaviour as manipulative because he was using the statement for his own benefit. Although asked several

times to read it, Ben refused. During a conference break, his counsellor told him it would be 'useful [to show] that he had changed …' Consideration was then given to who should read the statement. When his mother Sharon offered to read it, Ben said, 'I don't care, go for it'. When interviewed, Sharon said that Ben's allowing her to read the statement showed that he was sorry and 'taking it seriously'.

Remorse and apology

In three cases (#3, #4, #5), the youths apologised at the conference, and in three (#3, #5, #6), they agreed to make a written apology as part of the agreement. Of the conference apologies, two were viewed as sincere by the YJC (#3 and #4), and one, as insincere by the victim (#5). The agreement-promised apologies (#3 and #6) arose, in part, because victims were not present; in addition, in case #6, it was thought that Brett required more time with his counsellor to be able to 'make it clear' to his foster mother that the sexual offending would not occur again.

In two cases (#1 and #2), there was no conference apology or promise of a written apology. For #1, the YJC thought it was 'too early' for Ben to make an apology, and he decided not to make it a conference expectation. Instead, Ben apologised for not being able to make an apology, which was directed to his counsellor rather than his mother.[21] For case #2, Jack did not apologise or agree to write an apology letter, despite its importance to his mother. Rather, according to the YJC, the conference focused more on Jack's current 'behavioural problems' with 'relatively less emphasis on his sexual offending against Lucy'.

In two of the four cases with interviews of the YJC and victim (or victim rep), the YJC had a more optimistic appraisal of the youth's remorse and taking responsibility than did the victim or victim representatives. In #2, Jack's mother thought he was only partly taking responsibility; and in #5, Tanya believed that Zac was not remorseful and took no responsibility for his offending. In a third case (#1), the YJC had a more negative appraisal of Ben than his mother Sharon did. She thought that Ben was scared and was starting to 'take ownership' of what he has done.[22]

Another component of taking responsibility is completing all the elements in the conference agreement. This occurred in four cases, but agreements were not completed in two (#2 and #6). Several days after the conference, Jack (#2) ran away from his foster home

[21] Ben agreed to write an 'acknowledgment letter', but this did not amount to an apology because it was explicitly said that he would *acknowledge* his abuse, rather than *apologise* for it.

[22] These differences of interpretation do not surprise us. They demonstrate the importance of gathering data from multiple conference participants, who may see and interpret what happens or is said differently.

placement. Joan felt she was 'caught between a rock and a hard place' because she did not want her son to get in trouble, but at the same time, she did not 'want to see him get away with what he's done'. About 18 months after the conference, Jack was breached in court for not completing the agreement. Brett (#6) was required to write a letter to his sister, saying that what he did was wrong and apologising. He was also required to write a list to his mother of the things he would do to ensure he did not abuse his sister again. When his mother was interviewed, she had no memory of receiving the apology letter or list. It appears that this failed outcome was not known by or reported to the YJC.

5.6 Conference summary

Distilling the complexity and variability, in all cases, what the offender did and why was not fully disclosed. However, in three conferences, the youth attempted to provide partial information (#3, #4, #5) when confronted by family members and victims (or victim reps). Except for one conference, the actual victim did not participate because they were too young. Victim representatives, who had dual roles in representing their offending and victimised children, faced difficulties in carrying out these roles. All but one case had blended families,[23] whose adult members had different allegiances toward their offending and victimised children.

It is important to bring forward the uncomfortable realities of sibling sexual abuse cases. They test any glib characterisation of what conferences can do in responding to sexual offending, particularly when offenders do not admit fully to what they have done. In turning to the court cases, we assume these realities are also present. However, the judicial remarks are not likely to reveal them like the conference process can. This is because the remarks are a more formal justice mechanism: a public,[24] legal pronouncement, a monologue directed largely to the youth, which may not bring forward the views and experiences of victims or relevant others.

6. Court sentencing and victims' justice interests

[23] In five cases, the victimisation was between half, step, or foster siblings; and in three, the victimisation occurred when mothers were sole heads of the household.

[24] Because the South Australian Youth Court is a closed court, sentencing remarks are not strictly speaking 'public'. However, they are not 'private' either: they are read in the presence of other legal actors (police prosecutors and defence), in addition to victims (or their family members) and admitted offenders.

In analysing court sentencing, similar subthemes and variables were used for each element, except for participation and voice. Here, the coding rules were relaxed, and some variables were not in the denominator counts because the data were not available.

6.1 Participation

Opportunity to attend

We sought to determine whether victims or their family members were present in court for the youth's sentencing. None of the sentencing remarks mentioned this.

Shaping the agreement/sentence

Evidence for this variable was available in one case (#17) in which the judge introduced text from a VIS (#17) that referred to the sentencing concerns of the parents of the offender (Owen) and victim (Isabelle). The judge said to Owen:

> Your parents feel strongly that any penalty, such as a sentence of detention, will have a detrimental effect, not only on you and your life, but also on your sister and hers. You live in a small community. It will hurt all of you if your behaviour and its consequences become a topic of public discussion. [25]

Owen received a good behaviour bond, with stipulations to participate in three programs: Mary Street, a mentorship program, and others advised by the Department of Family and Youth Services.

6.2 Voice

Story of victimisation

Only in the court case with a VIS (#17) was the victim's voice brought forward. An excerpt is given here, and another in the validation element (below). The judge said:

> [Isabelle] felt confused and frightened … [She] has felt scared and shocked at what you did. She has found it hard to sleep at times. She has put on weight. She has lost some friends … Now, she just wants to be left alone.

By including parts of the VIS, the judge gave Isabelle a voice in the process. Owen (and others in court) could hear the physical and emotional impact of the offence, although we cannot determine whether Owen was listening to (or taking in) the judge's words. Case #17 is

[25] On one occasion Owen raped his sister; she became pregnant and had a termination. It is not clear if Isabelle's wishes for sentence were the same as those of her parents.

atypical. In all the others, the judges did not state the harm caused to the victims; or if they did (as occurred in two cases), it was brief.

6.3 Validation

Discussion of impact of offence

Three cases mentioned offence harms (#12, #16, #17),[26] but in two, it was minimal:

> You say that a man put his penis in your mouth when you were 6 or 7 and that you were scared and shaky and angry. Well, that's a perfectly natural reaction. … What I find so hard to understand is why you can't see that Edward [the victim] must surely feel that way too. (case #12)
>
> The [offence] involving your sister is particularly nasty in that it has hurt many people, not only her. Certainly, she is the one first to be considered, but it is not only her that has been very badly hurt. [There are] other members of your family, your parents, your brothers and sisters. It has caused utter turmoil in your family. (case #16)

Case #17 gave a more complete discussion of the harms to the victim and her parents. In addition to the excerpt above, the judge said:

> [Isabelle] did not mention it [the rape] to your parents when they came home. Some weeks later, she found out that she was pregnant. … Your parents have been anxious to keep an eye on her all the time. Isabelle has had some counselling, but she has had to find her own way of dealing with what happened. …Your parents have been very distressed and at a loss to understand.

Blame and being believed

There was insufficient information to assess validation variables 12 to 16. For variable 17 (was the victim believed?), a 'yes' means that the judge did not cast doubt on the act(s) as having occurred.

6.4 Vindication

Declarations and censure

In all the court cases, there were clear pronouncements that the offence and the youth's actions were wrong. For example, the judge said to Ray (case #13), 'what you have to realise

[26] In a fourth case (#10), the judge discussed the harm to a robbery victim (the youth was being sentenced for this and a sexual offence), but did not mention the harm caused by the sexual offence.

… is that what you did to your sister was very wrong and very serious and something which the law and the community takes a very serious view about'. In case #15, the judge said '… you must realise that your crime of rape is terribly serious and that it deserves detention'.

Excuses and minimisation

In three cases the judge's words minimised the seriousness of the youth's offending (#7, #9, #16). In case #7, the judge repeatedly referred to Darren's behaviour as 'misbehaviour'. In case #9, the same judge said to the offender, '… you were simply using her weren't you, for your own purposes, without any regard for her at all, except that you did not do any serious harm to her'. The judge in case #16 minimised Wayne's offending by referring to his actions as analogous to 'stealing lollies':

> [You can't just] do the first thing that comes into your head that appeals to you … I mean, little kids at the age of 5 learn that they can't go and steal lollies out of the lolly jar in the shop, just because 'Gee, that's a nice lolly, I want it, it suits me now so I'll take it'. You have been stealing other sorts of lollies in a sense from a much bigger lolly jar. People cannot do that.

In the sole female offender case (Tara #8) the judge began the sentencing remarks noting two 'good points in [her] favour'. One was having made a 'detailed in full' confession to the police which led to 'more serious charges'. Another was this observation: 'I have before me a young girl of 14 years of age at the time of the offence, and now 15, who has herself been the victim in what seems to be prolonged and numerous sexual assaults herself.' We infer that this past abuse played a role in reducing Tara's culpability in the judge's mind. Despite this, Tara was one of four youth to receive a suspended detention sentence.

Conviction and sanction

Judicial officers have discretion to record a conviction or not. Of the 11 court cases, in three a conviction was recorded.[27] In these cases (#8, #11, #15), the decision was tied to the seriousness of the offending and the sentence imposed. In these three cases and a fourth (#16), the offender received a suspended detention sentence. For example, in case #11, the judge said to Oliver:

[27] For three cases (#7, #10, #16), the judge did not specify that a conviction was not recorded. However, because judges always gave a justification when a conviction was recorded, we interpret an absence of information to mean that no conviction was recorded.

> Your victims have, therefore, suffered at length not only the horror of your original offending, but the delay in your admitting your part in that offending … You were in a position of trust … The very nature of your offending calls for … a substantial period of detention. This was not just one offence, but offences [USI with a person under 12] involving three different victims. … I, therefore, propose to make a significant period of detention, but to suspend it on certain conditions. Therefore, by way of a global result, there will be a conviction in relation to all matters …

In all court cases, the judge imposed a good behaviour bond, and in all, the youths were required to undergo specialist sex offender counselling or treatment, typically the Mary Street program. It is instructive to see the justifications that judges used when sentencing and how this compares with what occurs in a conference (see Appendix 2, V34).

In most court cases (seven of 11), the judicial homily began by saying that the seriousness of the offending warranted detention, but then the judge said the youth would be offered a chance to change by participating in a specialist counselling or treatment program. In six of these cases, the reasons for giving the youth a 'second chance' were to prevent future harm to the victim and the community, and in the seventh, it was to benefit the youth alone. In four other cases, the judge did not say that detention was warranted, but instead moved immediately to rehabilitation-oriented objectives (in two of the four, the rehabilitative focus was to benefit the youth alone).

In conferences, the dominant focus was on rehabilitation-oriented objectives, specifically, participation in specialist counselling or treatment programs. Of all 17 youth, only Zac (#5) was not expected to attend a specialist sex offender program; instead, he was to attend drug and alcohol counselling and see a psychiatrist. Joined with rehabilitation in the conference cases was the youth doing something for the victim, specifically, to apologise, which occurred in three cases. One of these (#5) also required a 'gift' for the victim, and a fourth (#1) required an 'acknowledgement letter'.

Although rehabilitation was emphasised in all 17 cases, for some, the rationale given was limited solely to improving the youth's life, with little or no attention to its impact on victims or the community. This occurred in three court cases (#13, #15, #16) and one conference case (#2). For example, in case #15, after saying to Trevor that his crime 'deserves detention', the judge said:

> But you deserve I think the opportunity to put that behind you and get on with your life in the community and hopefully make a life for yourself away from violence, drugs, other youths who are breaking the law.

6.5 Offender accountability-taking responsibility

Admissions and police cooperation

Six court youth made an early admission to the police (#7, #9, #12, #13, #14, #17). However, of these, three were partial. When the police first interviewed Carl (#12), he admitted to the sexual offence against his brother, but he refused to answer any questions. In cases #13 and #14, Ray and Tyrone admitted to having sexual contact with their sisters, but they disputed key facts (consent, frequency of abuse, type of contact).[28] This is in contrast to the youth who were referred to conference, all of whom made early admissions to the police, only one of which was partial.

Accounts and answers

In three court cases (#12, #14, #15), the judge asked the youth questions. In two, the judge asked rhetorically, 'Do you understand what I am saying?' In case #15, the judge engaged more with Trevor, asking him, 'How are you finding the sessions with [your counsellor]?' and wanting to know more after Trevor said that he was 'getting away from all of them [drug users] … and starting to put my mind to other things, more important stuff'. No court youth was asked to give an account of their offending.

Taking responsibility

In three court cases (#11, #15, #17) evidence suggests that the youth was taking some responsibility for their offending. In case #17, the police report showed that Owen gave a full admission early on, a point acknowledged by the judge, who said: 'when you were spoken to by police, you readily owned up and took responsibility for your actions'. The judge went on to say:

> You pleaded guilty at an early opportunity. Since January this year you have been going to Mary Street Adolescent Program for counselling. You have been committed to acknowledging responsibility for your own behaviour.

Although Oliver (#11) did not make an early admission to the police, the sentencing remarks suggest he was taking some responsibility for his actions. The judge read from a report prepared by a Mary Street counsellor, who said that Oliver 'has shown little tendency to minimise his abusive actions and regards himself as totally responsible for his abusive actions

[28] Ray admitted to vaginal intercourse, but denied anal intercourse; Tyrone denied penetration.

…' Of the 11 court cases, two (#8 Tara and #15 Trevor) were breached for not complying with the conditions of their bond.

Remorse and apology

Little could be inferred from the sentencing remarks about offender remorse, if any, or an apology to the victim(s). In two cases (#11 and #17), the judge said that the youth had shown signs of remorse. We infer in case #17 that Owen had apologised to his sister because the judge said, 'you are very sorry for what you did'. In one case (#8) the judge expressly said that Tara had shown no signs of remorse:

> The further worrying point is the lack of remorse … which is clear in both the Social Background Report and the psychological report. I can accept that the explanation for that is your own status as a victim of this sort of abuse. I can only wonder, however, why your own status as a victim would not bring about more remorse.

6.6 Court summary

Of the 11 cases, the judge in a stand-out case (#17) utilised excerpts from a VIS to bring forward victim's voice and the impact of the offence, justified the sentence with respect to what was best for the youth and the victim, and did not minimise the offence or the seriousness of the harm to the victim. The other cases gave less attention to the victim(s).

What the court can do effectively is strongly censure the act as wrong and emphasise the seriousness of the offence harm. The court also has the ability to 'scare' youth by saying that detention time is warranted, but the judicial bark is stronger than the bite. In seven of 11 cases, the initial threat of detention then shifted to offering the youth a 'second chance' with rehabilitation. In the four other cases, the judge moved directly to rehabilitation. In all the court cases, stipulated rehabilitation activities had coercive reinforcement with a good behaviour bond.

7. Comparing conference and court responses from a victim's perspective

What can conferences and court sentencing offer to victims (and their families) of sibling sexual abuse? As we would expect, with procedural differences between these two mechanisms, conferences had a significantly greater degree of victim participation and voice. Conferences allowed victims and/or their representatives a speaking role in the process, which not only permitted them to tell their story of victimisation, but also to ask questions and propose ideas for the youth's undertaking. In court sentencing, there were limited

opportunities for victim voice, and it was confined to a VIS.[29] In just one case was text from a VIS incorporated into the sentencing remarks. We have no information to determine whether the other cases had a VIS, but the judge elected not to draw upon it; and we do not know how often VIS reports are tendered in this court.

Despite the ability of conferences to provide victims (or representatives) with greater participation in shaping the agreement, disappointment was registered in two cases because the victim's views were not taken into account (#2) and the victim did not accept elements in the agreement (#5).

For validation, in all but one case, the victim was believed, although a more precise interpretation is that no doubt was cast on the victim's story (all but one conference case) or on the act(s) as having occurred (all court cases). Conferences were far better than sentencing in bringing to light the *impact* of the offence and harm on the victim, although for both, legal authorities (police officer and judge) said the offence harm was serious. The dynamics of victims who blamed themselves or of others who blamed the victim could not be known from the sentencing remarks. However, for conferences, such blame was atypical; and if it occurred, it was countered by others. Despite this, validation of victims' experiences was partial for two reasons. First, in both settings, the full story of the abuse was not revealed. Second, for conferences, victims were typically not present in the room to be acknowledged directly; and for court, there was no judicial recognition of victims in the courtroom.

Of the five elements, the court performed best on the validation and vindication elements, and its overall vindication score was close to that for conferences. Largely due to the monologic style of delivery by a legal authority, judicial sentencing offered clear moments of censure and acknowledgement of offence seriousness without giving the youth or others the chance to minimise it. The informal and interactive style of the conference process provided more opportunities for an offender (or others) to minimise the offender's actions or culpability,[30] but it also provided openings to counter such minimisation and diffusion of responsibility. Compared to court, the justification for what should be in a conference agreement lacked a nexus between offence seriousness and the outcome. Instead, the discussion focused on ways to help the offender change and then, if it was believed appropriate, apologising to the victim.

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[29] The prosecutor may comment, but this information is not part of the sentencing remarks transcript.

[30] Of course, during the entire sentencing process, defence counsel may bring forward arguments in mitigation of the offender's actions, whereas the prosecution will emphasise the offender's culpability and impact of the offence on a victim and others.

For accountability, during the early phases of police apprehension and investigation, conference youth were more likely to make full admissions, and more likely to be cooperative with the police. For taking responsibility, this was more difficult to assess in the court cases because information was lacking on youth engagement during sentencing, verbal or written apologies to victims, and others' perceptions about whether the youth was taking responsibility. Four conference youth completed their undertaking, and nine court youth appeared to have fulfilled the conditions of their good behaviour bond.

8. Conclusion: reflections on what we learned

To build evidence on effective justice responses to sexual violence, new variables are required that go beyond thin measures of victim satisfaction and perpetrator re-offending. Moreover, a new method is required to assess and compare conventional and innovative justice mechanisms, which is responsive to the realities of available data and published research on sexual violence and innovative justice mechanisms. Building on Daly (2016, this volume), this paper sought to demonstrate how the construct of 'victims' justice interests'—one of three legs in the Victimisation and Justice Model—can be operationalised and applied in comparing two justice mechanisms. This is the first such effort. Thus, reflection on what was learned is critical, and we do so in four points.

First, to a question raised by Joanna Shapland in 2012,[31] 'but how will you do this?' we can say, it *is* possible to do, and here is *how*. The analysis was not easy or straightforward: it took many readings of the research materials to render judgments, and the set of variables underwent many revisions. Some may wonder if the five elements in victims' justice interests are sufficient and whether other elements could be considered. This was addressed in Daly (2014b), by proposing generic and modified definitions of each element, depending on the victimisation context studied. Another question is whether notions of 'recovery' or 'healing' of victims should be incorporated. Justice interests and therapeutic (well-being) outcomes for victims are separate dimensions (Daly, 2014a; 2016, this volume). Furthermore, we cannot assume that when justice interests are achieved, positive change in a victim's well-being will result. More reflection on the relationship of justice to recovery is required. At a minimum, researchers may need to consider whether measures of victims' psychological or physical well-being should be a research focus or priority.

[31] At the Fourteenth International Symposium of the World Society of Victimology (The Hague, May 2012), when the senior author first introduced the construct of victims' justice interests, Shapland raised this question.

Second, the comparative exercise reveals how justice mechanisms can be improved from a victim's perspective. For example, during sentencing, judicial officers could do more to recognise the presence of victims and their supporters in the courtroom, and sentencing remarks could do more in describing the impact of the offence.[32] Likewise, the conference process (when used as diversion or pre-sentence advice) could be improved by linking the negotiated outcome with the wrong and harm of the offence, and by not moving too quickly to a focus on rehabilitating offenders.

Third, the effectiveness of any justice mechanism needs to consider its relationship to (or the availability of) support programs for victims, and support and change-oriented programs for admitted offenders. Although not a variable used in this study, such programs are salient in understanding why some justice mechanisms may be more effective than others.

Fourth, despite the complexities of comparison, it is important to establish a coding and scoring system to quantify the systematic empirical analysis. When comparing the numbers, conferences performed strongest for the voice and validation elements (about 80 per cent), followed by accountability-taking responsibility (67 percent), and participation and vindication (about 60 per cent). Court sentencing performed strongest for the validation and vindication elements (about 50 per cent); voice and offender accountability-taking responsibility were weaker (about 25 and 40 per cent); and participation, almost nil. The scoring exercise is important to attempt, despite the fact that conferences and judicial sentencing are different post-plea justice mechanisms. Care must be taken to devise variables that can assess different mechanisms reasonably and fairly, with respect to their impact on victims. Otherwise, we will continue to have non-constructive 'debate' on the merits of conferences and court proceedings in responding to sexual violence. This arises when protagonists talk past one another because they do not have a common ground of evidence.[33]

Assessing and comparing justice mechanisms is not a simple exercise of justice 'treatments' and 'effects', as is characterised in experimental designs; nor can it be revealed by comparing a few case studies. The approach proposed here charts a way forward: first with detailed variables to measure the efficacy of a mechanism (the five elements of 'victims' justice interests' operationalised empirically in fine-grained ways); and second, with a more open and flexible interpretation of the strengths and limits of conventional and innovative

[32] Because the analysis was of sentencing in Youth Court for sibling sexual offences that often involved young victims, judicial officers may be more offender-focused in their remarks compared to sentencing sexual violence cases in adult courts.

[33] This is precisely what occurred in the exchange between Cossins (2008) and Daly (2008), which was the impetus for developing the construct of victims' justice interests.

justice mechanisms in responding to crime. The way forward is not to pit innovative mechanisms against conventional ones, nor to trumpet the benefits of one justice mechanism over another. Doing so creates blind spots, not least that conventional and innovative mechanisms can be combined in one case. The research aim should be to identify what some justice mechanisms can do better than others and from this, to re-think and transform a range of activities, both in legal settings and civil society, for 'doing justice' more effectively.

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Appendix 1: The Cases

Appendix 1 summarises the 'offence facts' for the conference and court cases, official re-offending, and interview data for the conference cases. The window of time for re-offending varies by case, but ranges from 5 months to over 7 years. Cross-checking the cases reported in this chapter and those in other publications, #1 to #4 were discussed in Daly and Wade (2012, 2014); #5, in Daly and Curtis-Fawley (2006); but #6 was not reported previously. Bouhours and Daly (2007) and Daly and Bouhours (2008) discussed these cases: #8 (Tara, 2007 and 2008 publications), #10 (Richard, 2008), #12 (Carl, 2007), #15 (Trevor, 2008) and #16 (Wayne, 2008). The same pseudonyms are used in all the publications.

Conference cases

Case #1: Marie and Ben

Ben (14) lived with his two biological sisters, Marie (8, the victim) and Claire (almost 6). Ben placed a blanket over Marie's head while she was in his bedroom closet. He then pulled her trousers and underwear down and pushed his finger into her vagina. She said it hurt and told him to stop, but he didn't. Their mother Sharon came to the room, and Marie told her what happened. Marie told the police that Ben had done it before, since she was 5 (thus, for 3 years), but she could not give dates. The finalised offence was rape. Ben had no further offending over the next 3 years. Data available: interviews of Sharon and the conference coordinator.

Case #2: Lucy and Jack

Lucy (6) lived with her half-brother[1] Jack (12) and her two sisters (10 and 3). Jack's father lived elsewhere. While in Jack's bedroom, he pulled down Lucy's undewear and placed his hand on her vagina and then put his finger in her vagina. The finalised offence was unlawful sexual intercourse with a person under 12. After the conference, Jack did not complete the agreement and was breached. Two years after the conference, Jack had three proved trespass and theft offences, and in the next year, three pending court cases for trespass, theft and assault. Data available: interviews of Joan and the conference coordinator.

[1] Joan is the biological mother of Jack and Lucy, but the children have different fathers.

Case #3: Larry, Rita, and John

At the time of the offence John (13) lived with his uncle Roger (his adopted father), Roger's then partner (Liz), a twin brother, and Liz's two sons from a previous relationship, one of whom was Larry (victim 1, 6 yrs). Roger discovered John with Larry, who had his trousers down, and it looked like John was about to touch or had touched Larry. Roger talked to both boys and went to his doctor. Roger believed it was a single event, and the doctor told him 'to talk to the boys and just let it go'; thus, nothing was done. Several months later, Roger and Liz discovered John simulating sex with Rita (victim 2, 5 yrs), Roger's daughter, who was visiting them for the weekend. They contacted Mary Street to start John in counselling, which began about 5 months after Roger observed the incident with Larry. As suggested by the counsellor, John and his father went to the police station to report what happened. The finalised offences were two counts of indecent assault. A year after the conference, an assault was finalised by a conference. A year after the second conference, John had five pending court cases for violent and non-violent offences. Data available: interview of the conference coordinator.

Case #4: Emma and Nathan

At the time of the offence, Nathan was 14, and Emma, his half-sister, was 5. Nathan lived with his mother (Kate) and his brother. From time to time, Nathan and his brother visited their father (Phil), stepmother (Louise), and their daughter, Emma. There has been a history of conflict between Louise and Kate. Emma said that Nathan had kissed her on the lips and touched her on the genital area when she had no clothes on. The finalised offence was indecent assault. Nathan had no further offending for the next 3 years. Data available: interview of the conference coordinator.

Case #5: Tanya and Zac

When Tanya was 12, her mother Nancy married Nick. He and his sons, Andy (11) and Zac (16), moved into Nancy's house. A year later, Tanya (13) said that her step-brother Zac (now 17) began to touch her sexually, initially over her clothing. Over the next 5 to 6 months, the sexual contact occurred from time to time, but then increased in frequency. One day Zac persuaded her to come to his trailer and had sexual intercourse with her. This occurred several more times over the next 3 months. When interviewed, Tanya said that Zac was 'a very violent person' and would 'throw you against the wall and knock you out …' While Tanya seemed to 'go along' with the sexual activity, it occurred in a context of fear and

intimidation. The finalised offence was unlawful sexual intercourse. About 2 years after the conference, Zac was convicted of trespass. Data available: interviews of Tanya and the conference coordinator.

Case #6: Emilia and Brett

Brett (14) lived with two foster sisters, one of whom is Emilia (9). On several occasions while in a family computer room, Brett touched Emilia's vagina. Despite admitting he did this, he said that Emilia had asked him if he would like to touch her on the second and third occasion. The finalised offences were three counts of indecent assault. About 15 months after the conference, Brett had three proved offences for illegal use of a motor vehicle and property damage. Data available (a SAJJ case): conference observation, interviews of Brett and his foster mother, and surveys of the conference coordinator and police officer.

Court cases

Case #7: Davey and Darren

Davey (11), severely visually impaired, lived with his mother and brother, Darren (16). Over the last year when their mother was not at home, Darren would take his brother into his bedroom and remove his clothes. After putting a plastic sheet on his bed, he would have sex with him. He would clean them up and tell his brother not to tell anyone, to keep it a secret. The proved offences were incest and indecent assault. Davey had no further offending over the next 7 years.

Case #8: Suzie and Tara

Tara (14) and Suzie (8) were foster children in the same home, where they had lived for about 2 years. Tara took her foster sister to a park and locked her in the toilet. She took off Suzie's underwear, inserted her finger into her vagina and threatened her, saying 'if you ever tell anyone, I'll kill you'. She then simulated sex with Suzie. Some days later, Tara again took Suzie to the park, where she inserted her finger into Suzie's vagina, slapped her and held her down, covered her mouth to prevent her screaming and then simulated sex. Offences proved: two counts of rape. Over the next year, Tara breached the conditions of her court case and had 10 proved violent and non-violent offences, but there was no offending for the next 5 years.

Case #9: Olivia and Liam

Liam (14) was visiting his mother and half-sister, Olivia (4). Their mother was not at home, but when she returned, Olivia complained that she was sore in the vagina. She was taken to the hospital and examined; it was concluded there was penetration. The next day, the police interviewed Liam in his home. He admitted to placing his penis twice into Olivia's vagina. The proved offence was unlawful sexual intercourse with a person under 12. About 4 years later, Liam was convicted for carrying an offensive weapon.

Case #10: Hannah and Richard

Richard (13) and his sister Hannah (7) went to a chicken enclosure in their backyard. While there, Richard took his sister's underwear off, undressed himself, and laid on top of her. He then placed his penis in her vagina. The proved offence was indecent assault. Over the next 5.5 years Richard amassed a significant criminal history with 17 proved offences, including a sexual offence, six other violent offences, and ten non-violent ones.

Case #11: Lucas, Heather, and Oliver

Oliver (17) forced his brother, Lucas (victim 1, 10 yrs) to bend over and pull his trousers down. He then anally raped his brother. He threatened to hit Lucas with a strap if he would not let him do this, and told him not to tell anyone or he would 'beat him up'. He also inserted his finger into his sister Heather's vagina (victim 2, 6 yrs) when he was babysitting her one day. The proved offences were three counts of unlawful sexual intercourse with a person under 12. Within 18 months of sentencing, Oliver had four proved offences, including a sexual offence, but no offending for the next 4 years.

Case #12: Edward and Carl

Carl (13) forced his brother Edward (4) to perform fellatio on him. The proved offence was unlawful sexual intercourse with a person under 12. Over the next 5.5 years, Carl had a total of 11 proved offences, all but two of which were non-violent.

Case #13: Katie and Ray

Ray (14) would go into the bedroom of his sister Katie (13) when she was asleep and have vaginal, anal and digital sex with her. The proved offence was incest. Over the next 4 years, Ray had failed to comply with a court order (not in connection with this case) and had a proved larceny offence.

Case #14: Eleanor and Tyrone

When Tyrone (14) and his sister Eleanor (6) were in the cubby house in the family back yard, he would insert his penis into her vagina. This occurred many times. Tyrone admitted to 'experimenting' with his sister, but denied penetrating her. The proved offence was indecent assault. Tyrone had no further offending over the next 4 years.

Case #15: Grace and Trevor

On a number of occasions over 3 months, Trevor (15) would come into bedroom of his sister Grace (9), roll her on to her stomach and force her to have vaginal intercourse with him. When Grace resisted, he pinned her down; and when their brother tried to intervene, Trevor hit him. The proved offence was rape. About a month after sentence, Trevor committed a non-violent offence and breached the conditions of his court case. He had a total of 13 proved offences, mainly for non-violent offences, and a finalised sexual offence (not proved) over the next 3 years.

Case #16: Tegan and Wayne

One day, while Tegan (9) was playing with her brother Wayne (14), he grabbed her by the hair, pulled her into the bathroom, took off her underwear off and made her lie down. While holding her to the floor, he put two of her fingers into her mouth. He then licked her on and inside her vagina several times. The proved offence was indecent assault. Over the next 3 years, Wayne had 11 proved offences, all non-violent; he was also charged with violent offences, but these were not proved.

Case #17: Isabelle and Owen

One evening when their parents were not at home, Isabelle (14) was lying on the couch when her brother, Owen (17) sat next to her. He touched her breasts over her clothing, but Isabelle told him to stop. He touched her breasts a few more times and left the room. Later, he came back and sat next to her. He leaned over and undid her shorts; she told him to stop and pulled her trousers back up. Then, he pushed her down onto the sofa, undid her trousers and took his trousers off. He forced his knee between her legs and forced his penis inside her vagina. After about a minute he stopped and left the room. Isabelle disclosed what happened when she discovered she was pregnant. The proved offence was rape. Over a short window of time after sentence (5 months), Owen had no further offending.

Appendix 2: Variables, codes, frequencies and scores

This appendix lists each variable, associated codes, and frequencies in operationalising the five elements of victims' justice interests. Most variables are coded with a positive number (1 or .5) or zero. However, some had negative numbers because it was more intuitive to do so. A few items were not scored, but shown for information purposes (V's 25, 34, 49). When information for a variable was not known or not applicable, only those known or relevant items were in the total denominator count. A total score and percentage were computed for each element. An asterisk by the variable means there is a clarifying note at the end of the appendix. UNK=information is not known. NS=not scored. NA=the variable could not be scored for the justice mechanism.

	Conf (N=6)	Court (N=11)
Participation		
V1. Was the victim (or vic rep) asked what process they would like?		
yes (1)	0	0
no (0)	6	11
V2. Were relevant people present?*		
yes (1)	4	UNK
no (0)	2	
V3. Was the victim (or vic rep) able to ask the youth about the offending?		
yes (1)	6	0
no (0)	0	11
V4. Was the victim (or vic rep) involved in deciding the sanction (agreement/undertaking)?		
yes (1)	3	1
yes, somewhat (0.5)	2	0
no (0)	1	10
Total score	**14/24**	**1/33**
	58%	**3%**
Voice		
V5. Did the victim (or vic rep) tell their story?		
yes (1)	6	1
no (0)	0	10
V6. If yes, were they able to say everything they wanted to?		
yes (1)	4	1
no (0)	2	0
V7. Did anyone challenge the victim's story?		
yes (0)	1	0
no (1)	5	1
V8. Did the youth listen to the victim's story?		
yes (1)	4	UNK
no (0)	2	
Total score	**19/24**	**3/13**
	79%	**23%**

	Conf (N=6)	Court (N=11)
Validation		
V9. Was the impact of the offence on the victim discussed?*		
yes (1)	6	1
yes, somewhat (0.5)	0	2
no (0)	0	8
V10. Did a legal authority (police officer or judge) say that the offence harm was serious?		
yes (1)	5	10
no (0)	1	1
V11. Did others say that the harm was serious?		
yes (1)	5	0
no (0)	1	11
V12. Did the victim blame themselves for the offending?		
yes (-1)	0	UNK
no (0)	6	
V13. Did the victim blame themselves for the *consequences* of reporting the offence?		UNK
yes (-1)	1	UNK
no (0)	5	
V14. If yes to V12 or V13, were they told they were not to blame?		
yes (1)	1	UNK
no (0)	0	
V15. Did the youth or others blame the victim?		
yes (-1)	1	UNK
no (0)	5	
V16. If yes to V15, were their comments checked or challenged by conference participants?		
yes (1)	1	UNK
no (0)		
V17. Was the victim believed?		
yes (no doubt was cast on the victim's story or on the act as having occurred) (1)	5	11
yes, partially (0.5)	1	0
no (0)	0	0
Total	**21.5/26**	**23/44**
	83%	**52%**
Vindication		
V18. Did a legal authority (police officer or judge) say the act was wrong or the youth's action(s) against the victim(s) were wrong?		
yes (1)	5	11
yes, weak (0.5)	1	0
no (0)	0	0
V19. Did others (not the youth) say the act was wrong or the youth's action(s) against the victim(s) were wrong)?		
yes (1)	5	0
yes, weak (0.5)	1	0
no (0)	0	11

	Conf (N=6)	Court (N=11)
V20. Was it said during the process that the youth had official or familial punishments or restrictions prior to the conference or court process (e.g. removal from the home or time spent in a police cell)?		
yes, both official and familial punishments or restrictions (1)	0	0
yes, official punishment or restriction only (0.5)	0	1
yes, familial punishment or restriction only (0.5)	3	1
no (0)	3	9
V21. Was the act or the offender's actions minimised?		
yes, by a legal authority (police or judge) only (-1)	0	3
yes, by the youth or others (-1)	1	0
yes, by a legal authority and others (-2)	1	0
no (0)	4	8
V22. If yes to V21, was the minimisation checked or challenged during the process?		
yes (legal authority or youth/others) (1)	1	0
yes (both legal authorities and others) (2)	0	0
no (0)	1	3
V23. Did the youth or others blame another person (not the victim) for the offending?		
yes (-1)	0	UNK
no (0)	6	
V24. If yes to V23, were their comments checked or challenged during the process?		
yes (1)	NA	UNK
no (0)		
V25. Was it mentioned that the youth was a victim of sexual abuse or family violence? (not scored)	NS	NS
yes, explicitly	2	3
yes, infer	0	0
no	4	8
V26. If yes to V25, was this used to reduce the youth's culpability?		
yes, high (-1)	1	0
yes, low (-.5)	1	1
no (0)	0	2
V27. Did someone (other than the youth) reduce the youth's culpability (other than by sexual/physical family violence) in other ways, e.g. by saying the youth was on medication or had mental health problems?		
yes, high (-1)	0	0
yes, low (-.5)	1	1
no (0)	5	10
V28. If yes to V27, did anyone check or challenge the reducing of the youth's culpability?		
yes (1 or .5 depending on which cases received -1 or -.5)	0	0
no (0)	1	1

	Conf (N=6)	Court (N=11)
V29. Did family members blame themselves for the youth's offending?		
yes (-1)	2	UNK
no (0)	4	
V30. If yes to V29, did anyone say the family member(s) were not to blame?		UNK
yes (1)	2	
no (0)	0	
V31. Was there an admission, guilty plea, or conviction at trial?		
yes (1)	6	11
no (0)	0	0
V32. If a guilty plea or conviction at trial, was the conviction recorded?*		
yes (1)	NA	3
no (0)		8
V33. Did the youth receive a sanction (agreement, undertaking)?		
yes (1)	6	11
no (0)	0	0
V34. What was the key justification for the sanction? (not scored)	NS	NS
Censure/deserves detention; rehabilitation		
(a) act wrong/deserves detention, but offered chance to change	0	7
Rehabilitation		
(b) offered chance to change	2	4
(c) offered chance to change and give apology	3	0
(d) offered chance to change and other victim-oriented requirements	1	0
V35. Was the rationale for rehabilitation solely youth focussed?		
yes (0)	1	3
no (1)	5	8
Total	**25.5/42**	**41/80.5**
	61%	**51%**
Offender accountability-taking responsibility		
V36. When the offence came to police attention, did the youth make an early admission?		
yes, full (1)	5	3
yes, partial (0.5)	1	3
no (0)	0	5
V37. Did the youth cooperate with the police (e.g. answer questions)?		
yes (1)	5	6
yes, partial (0.5)	1	0
no (0)	0	5
V38. Did the youth give an account of what happened (what they did and why) during the conference or court process?		
yes, full account (1)	0	NA
yes, police report read and then youth asked to explain (1)	3	
no, only police report read (0)	3	

	Conf (N=6)	Court (N=11)
V39. Was the youth asked questions during the process?		
yes (1)	6	3
no (0)	0	8
V40. If yes to V39, did the youth answer the questions in a responsive fashion?		
yes (1)	3	3
no (0)	3	0
V41. Was there evidence that the youth understood that what they did was wrong?		
yes (1)	4	5
no (0)	2	6
V42. According to others, was the youth taking responsibility?		
yes, by all (1)	4	3
by some, but not others (0.5)	2	0
no (0)	0	8
V43. Did the youth actively participate in the process?*		
yes (1)	3	NA
no (0)	3	
V44. Were there indications of remorse or regret by the youth?		
yes (1)	5	2
no info or mention of lack of remorse (0)	0	8
no remorse (-1)	1	1
V45. Did the youth make a verbal apology to the victim (or rep)?		
yes, before, during or after the process (1)	3	1
no (0)	3	UNK
V46. Did the victim (or rep) view the verbal apology as sincere?*		
yes (1)	2	UNK
no (-1)	1	
V47. Did the youth promise to make an apology to the victim?		
yes, part of the sanction (agreement/undertaking) (1)	3	0
yes, informal agreement (0.5)	1	0
no (0)	2	11
V48. Did the youth complete all parts of the sanction (agreement/ undertaking)?		
yes (1)	4	9
no (0)	2	2
V49. Did the youth re-offend post conference or court?* (not scored)	NS	NS
yes, significant re-offending (including sexual)	0	3
yes, significant re-offending (not sexual)	2	3
yes, limited or sporadic (including sexual)	0	0
yes, limited or sporadic (not sexual)	2	2
no offending	2	3
Total	**50.5/75**	**35.5/92**
	67%	**39%**

*Notes:

V2: Conference (were all relevant people invited to attend?)
Court (any indication that the victim or their family was present?)

V9: This may include the impact on a victim's family members.

V32: When a youth pleads guilty in court, the judicial officer has discretion to 'record' a conviction or not. There was a recorded conviction in 32 per cent of 155 proved SAAS court cases, but the rest were '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 passport). To be referred to a conference, a youth must admit to the offence, but no conviction is recorded.

V43: In one court case, the judge remonstrated the youth saying, 'don't keep looking there; listen to me please'.

V46: In two cases (#3 and #4), sincerity of apology was based on what the YJC said in the interview.

V49: By 'significant' is meant four or more proved offences or pending court cases during the window of time. By 'sporadic' is meant one or two proved offences or pending cases. The window of time to assess re-offending varies (see Appendix 1). Court breaches of good behaviour bonds are not included in counting proved offences.