The better way to support rape victims: put their needs first

Restorative justice has been put forward in the US as a new, and in some cases, better approach to dealing with sexual violence

Allison Griner in Gainesville, Florida
Tue 13 Mar 2018 06.00 EDT

Something had snapped inside Gretchen Casey. Maybe it was the way the doctor propped himself up on the side of the exam table, letting his legs swing nonchalantly over the edge. Maybe it was the casual tone he struck when he said: “So I heard you had a rough night.”

But whatever the reason, Casey had come to a decision. This man was not going to touch her.

What had happened was not just a “rough night”. A rough night was stepping out to find your car had been towed, or that your friend had thrown up in the back seat. It was not waking up in the dead of the night to be threatened at knifepoint. It was not the experience of being blindfolded and raped in your apartment, all the while praying not to die.
The last thing Casey wanted now was to be probed and swabbed by some clueless doctor. So she refused to undergo a rape exam. “And I made that decision in a split second. Who did that hurt? It hurt me.”

Looking back on that moment, Casey, doesn’t blame the doctor for her decision. She had been reluctant to report her rape in the first place, afraid that the man would come back and kill her if she did.

But now she recognizes the fears and pressures she faced while reporting her rape as one reason why there need to be alternatives to the criminal justice system. She is exploring one such approach by using a practice called restorative justice to help other sexual assault survivors.

In the wake of the #MeToo movement, restorative justice has been put forward in the US as a new, and in some cases, better approach to dealing with sexual violence - one that puts the victim’s needs first. The concept has received high profile support in recent months, most notably from the American actors Ashley Judd and Laura Dern.

Restorative justice encompasses a variety of actions designed to repair the harm a crime has caused. Sometimes, that means bringing the accuser and the accused together in a dialogue, to discuss the impact of a crime and settle on a plan to make amends.

These dialogues aren’t about debating facts or sifting through evidence. Rather, the wrongdoer has to admit to his or her actions in order to participate.

But as Casey has seen first-hand, the process doesn’t come without risks. “It’s got to be understood that this is not a solution to every case. It is not. But I think it should be an option.”

Before the attack, Casey, then a 23-year-old urban planning student at the University of Florida, knew little about criminal justice.

But afterwards, Casey was flung headlong into a world of prosecutors and defense attorneys, prisons and plea deals. It would ultimately lead her to pursue a career overseeing victim services at the state attorney’s office in Gainesville, Florida.

Her first time in a prosecutor’s office, though, was filled with anxiety. “I’m overwhelmed. I can’t do this,” she remembers thinking. “I don’t want to be here.”
Overcome with nerves, she was sobbing before her testimony even started. “It was so humiliating to have to recount, ‘OK, so what did he say to you?’” Casey, 57, recalled, getting flushed at the thought of it.

At the time, Casey was unaccustomed to swearing, so she had no choice but to spell out the insults: “C-U-N ...”

The whole experience left Casey feeling hurt, even a bit angry. She arrived at the same conclusion she had at the hospital: that she would never, ever talk about her rape again. “My life is going forward,” she thought. “I am not getting stuck on that day.”

‘They wanted to restore their view of themselves as a good person’
Mary Koss, a leading research psychologist in the field of sexual violence, was studying the rape recovery process when she came across restorative justice. She observed a link between the self-blame that led to post-traumatic stress and the “adversarial” courtroom tactics survivors were subject to.

For all the pressures of the legal system, Koss believes its results are meager. One study found that in English-speaking countries such as the US and the UK, only 12.5% of sexual assault reports result in a conviction. Statistics like that left Koss wondering: “Are we just going to turn these people away and say we have no justice for you?”

To find answers, she led the first peer-reviewed, quantitative evaluation of restorative justice, focused on adult sexual assault.

Arizona prosecutors referred 22 cases to Koss’s program, all of which involved misdemeanor or felony sexual assaults. The offenders, Koss said, were motivated to participate because “they wanted to restore their view of themselves as a good person”.

But before the process could begin, both the offenders and the people they harmed had to meet individually with a case manager. It was a chance to manage expectations, as well as establish some basic rules: any bickering, victim-blaming or swearing would be grounds for terminating the conference.

Each victim-offender meeting was tightly choreographed, right down to who arrived first in the parking lot. Victim impact statements were written in advance, and stand-ins were available to read them, in case the process was too emotional or the victim didn’t want to be there.

Offenders, meanwhile, were instructed not to apologize right off the bat. “We said, ‘No, you have to earn the right to do the right thing,’” Koss explained. Each offender left the conference with a plan to make amends, plus a year’s worth of supervision, to make sure they followed through.

All told, participants reported high rates of satisfaction with the process. But Koss points out that restorative justice is no substitute for post-traumatic stress treatment.

“Restorative justice is justice, not therapy,” she said. “I’m not making claims that it made people better.”

Still, Koss noted that a few survivors were so relieved that they laughed during the proceedings. “One of the prosecutors said to me, ‘Do you know, I have never in my entire career seen a rape victim laugh until now?’”

Why had he done it? ‘There was no one else to ask but him’

That sense of relief was something Gretchen Casey desperately craved, even 23 years after the night of her assault. No matter how determined she was to put the whole incident behind her, questions still dogged her: Had he been watching me? How did he know where I lived? And why would he do this to me?

In the aftermath of the attack, Casey remembers jolting awake each morning around 3am, gripped with an unshakeable need to check the doors and windows and make sure everything was bolted shut.

And then there was that nagging need to understand why the assault happened in the first place. “The prosecutor couldn’t answer that question. The detective couldn’t answer that question. They didn’t think to ask those questions,” Casey said. “So there was no one else to ask but him.”

He, of course, was the man who had broken into Casey’s apartment that summer night in 1984, one stop on a string of sexual assaults that would land him back in prison, where he remains to this day.

For her own safety, Casey makes a point of never using the man’s name publicly. Given that she still lives in the same town and goes by the same name, Casey doesn’t want to risk drawing his attention.

But back in 2006, Casey resolved to meet him face-to-face, just as she had read about in her restorative justice literature.

John Howard, Casey’s then husband - and her boyfriend at the time of the assault - supported her decision but harbored concerns. “I thought definitely it could go very badly,” he said. And he wasn’t alone. Casey said her contact at the Florida department of corrections also cautioned against the meeting.

But Casey pushed forward with her plans. This would finally be her chance to explain to her rapist the impact of his crimes - something she had never done in a courtroom.

At least, that was the idea. Casey says three days after he agreed to the meeting, her rapist called it off.
“I was devastated all over again,” Casey said. “I felt like, once again, he was in control.”

The risk of re-traumatization is one reason why Michael Dolce, a Florida lawyer who represents sex crime survivors, remains skeptical of restorative justice.

“I think restorative justice reflects, in the context of sex crimes, a complete misunderstanding of what sex crime victims go through,” he said. “And I think it provides a very dangerous ‘out’ for sex criminals that leaves others at enormous risk.”

A survivor of sexual abuse himself, Dolce says he’s spent nearly $300,000 on his own recovery – but restorative justice is not an option he’d consider personally.

“To be perfectly blunt, I don’t want to be reconciled with somebody who has the pathology of resorting to a sex crime as a way to exert power and control, which is what sex crimes are about – first, last and always,” he said.

Given that the majority of offenders know their victims beforehand, Dolce worries that survivors might be vulnerable to emotional manipulation and feel forced to forgive.

“It basically says to a survivor that you need to accept a process that is going to restore this perpetrator to the point of reconciliation with the community. Where they’re here as if we’re back to normal,” Dolce said. “When inside, I know for the sex crime victim, they’re not back to normal. It’s never normal for them.”

**Grassroots approaches stir tension**

Gretchen Casey wasn’t personally ready to give up on the restorative justice system just yet – even though she had experienced its pitfalls.

She was still grappling with the emotional aftershocks of her victim-offender dialogue falling through when a friend handed her a slender paperback: How to Write a Movie in 21 Days. It proved to be just the inspiration she needed.

Casey decided if she couldn’t have the restorative dialogue she wanted, she would script one. “I got to write every question I would have asked. And I got to figure out what I wanted him to say to me,” she said. “And who was in charge of everything that happened? I was.”

But she didn’t stop there. Another friend encouraged her to take her screenplay to a local film-maker, James Babanikos, who was eager to tackle the project.
The resulting film, Somewhere Beyond, premiered in 2009, and when it did, Babanikos noticed a change come over Casey: “I could almost feel her sigh of relief at this chapter of her life finally being over.”

Casey, meanwhile, felt she had finally achieved success. “I got my meeting vicariously through surrogates, you could say. But I got my meeting,” she said.

Other survivors have also been forced to improvise when formal restorative justice processes were not available. Some have confronted their abusers on their own, or in the company of untrained facilitators.

These improvised approaches have spurred tensions, according to David Karp, director of the Project on Restorative Justice at Skidmore College.

While some practitioners embrace grassroots efforts, others want to professionalize restorative justice to ensure its safety, Karp said. “But that might limit access for people who might not otherwise have the privilege to get the training.”

Karp notes that interest in restorative justice has risen in recent years, but its growth is hampered by misperceptions - namely that restorative justice and mediation, which requires no acknowledgement of wrongdoing, are one and the same.

Still, Karp believes an increasing acceptance of mediation has opened the door for restorative justice to be embraced too. Recently, the Trump administration rolled back Obama-era guidance restricting the use of mediation to address campus sexual assault.

But at the same time, federal funding for research “has kind of dried up”, he said. “Maybe because this is still new and controversial.”

Mary Koss, who worked with Karp on a recent research proposal, suspects a different motive.

“We have a tough-on-crime mentality here, as is well known in the world,” she said. “Restorative justice is viewed as soft because it does not involve incarceration. And therefore it is resisted by a certain portion of the public, and currently by our justice department.”

‘We need to be able to demonstrate that repair is possible’

But Gretchen Casey is optimistic that interest in restorative justice will continue to swell, particularly as the #MeToo dialogue shifts from raising awareness to finding solutions.

Late last fall, she decided to apply restorative practices to the sexual assault cases she encounters as the director of outreach and advocacy at the River Phoenix Center for Peacebuilding, a Gainesville-based not-for-profit group.

One of her first leads came early this year, when a colleague connected her to a thirtysomething named Nick.

Nearly a decade ago, Nick - who asked that his full name be withheld - was convicted of sexual assault, after a fellow college student accused him of forced digital penetration.

When Casey first sat down with Nick, she found a man looking to shed light on events that remain muddled in his memory - “someone,” as she put it, “who is trying to put the pieces of their life back together again”.

As Nick tells it, the night of the assault went by in flashes, brought on by an alcoholic haze. He had already downed two pitchers at a friend’s birthday dinner - “I was pretty much drinking my supper” - before he spotted a woman he knew at a nearby bar.

She was under the legal drinking age, and Nick, being slightly older, bought her a shot. They went back to the dorms together.

“I very much do recall like, being intimate and making advancements toward sex and touching, and then there being a rebuff,” Nick said. Later, after some cuddling on a beanbag chair, Nick claims he blacked out entirely.

The next morning, he woke up alone in his own bed, surrounded by feces, with no recollection of how the night ended. It was only later that he would hear the allegations against him.

“It was just like the floor fell out,” he said. He ultimately spent nearly three years in prison.

But looking back, Nick wonders if that was the fate his victim intended for him. He thinks she might have been trying to initiate a kind of restorative dialogue with him - a dialogue that instead went terribly awry.
A few months after the assault, she had shown up at Nick’s workplace, hoping to talk. But Nick, afraid of violating his restraining order, suggested meeting at the public defender’s office instead.

Once they arrived, however, the lawyer there was determined to keep them apart. Nick claims the lawyer went so far as to berate the victim for stirring up trouble.

As he left, Nick spotted the victim balled up on the sidewalk, crying. It was only later, during his plea hearing, that Nick heard she had been questioning whether to proceed with the case against him. (Due to the sensitive nature of the restorative justice process, the Guardian could not reach out to the victim ahead of publication.)

Nick doesn’t deny that a restorative justice dialogue could help him personally: after a nearly decade on the sex offender registry, he’ll soon be able to petition for review of his status.

But ultimately, Nick hopes a restorative justice conference can help him achieve his “life mission”: He wants to work in education and show others that “your circumstances as a victim or a perpetrator” do not have to “define or limit your life”.

That message resonates with Casey, who struggles with labels like “survivor” and “rape victim”. In a funny way, Casey says she sees herself in Nick’s shoes. She remembers wanting a restorative justice meeting too, not knowing if one would happen.

Eventually, Casey hopes to reach out to the woman Nick sexually assaulted, to see if she’d like to participate in a restorative dialogue. But for now, Nick and Casey are starting slow, meeting once a week to talk through the experiences that changed their lives so many years ago.

Recently, at one of their meet-ups, Casey asked Nick a question: are there any acts too extreme for redemption?

“He only paused for a few seconds,” Casey remembers, sitting pensively on her couch, a pair of tortoise-shell glasses perched on her nose. “And he said: ‘I think that is the opportunity where redeemable behavior occurs.’”

The memory makes her smile. “I really haven’t been able to let that go,” she said. “It’s in some of the most extreme and egregious acts of violence that we need to be able to demonstrate that repair is possible.”

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