Chapter Three

The Offender/Community Encounter

Stakeholder Involvement in the Vermont Community Reparative Boards

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The victim's role in community and restorative justice is a central one and has received much attention in the literature. In particular, studies have examined both the ideal and the reality of interactional dynamics between victims and offenders (Umbreit 1994) as well as victims and community members (Hudson et al. 1996). This is an appropriate focus for community justice. Nevertheless, the relationship of the offender to the community is also central to community justice. It is here that we find the possibility of offender recompense, reintegration, and acceptance.
This case study examines the offender/community relationship and is guided by a very basic question: What happens when community members confront offenders in response to their crimes?

In contemporary criminal justice, relations between community members and offenders are minimized. Indeed, they are severed almost completely when the offender is incarcerated. Typically, community members are given no formal role in the decision-making process following arrest and have little knowledge of the offender’s criminal status even when the offender remains a community resident. The central reasons why community/offender relations are minimized in contemporary justice practice are (1) to protect offenders’ rights to privacy and (2) to prevent community members from taking the law into their own hands either directly through vigilantism or indirectly through ostracism and discrimination (e.g., employers who refuse to hire offenders).

The victims’ movement has lobbied successfully for one significant change in contemporary practice. Arguing that the community has a right to know if offenders have been released into its neighborhoods, victims’ advocates have encouraged state legislatures to enact Megan’s Law, requiring that residents be notified when a sex offender is released from prison. Advocates argue that this knowledge enables residents to better protect themselves from the risks posed by these offenders. Sometimes, however, communities have engaged in vigilantism in order to drive the offender from the community. In Washington state, for example, a sex offender’s house was burned down the week he returned from prison (Associated Press 1993).

With Megan’s Law, the community gains knowledge of the offenders’ whereabouts, and in some local areas, educational forums are created to provide the community with acceptable strategies for risk reduction (Finn 1997). But this change does not create formal settings for offender/community interaction, in which each side gets to voice concerns and listen to the other’s perspective. Criminal offenders are deviants in the sense that they have violated behavioral standards expected of community members. Thus, others in the community are naturally concerned about offenders’ future compliance with these standards. In community justice, these concerns are not dismissed or displaced by the criminal justice apparatus. Instead, forums are created to bring these stakeholders to the table.

Such forums are the defining feature of the Vermont Community Reparative Boards. What, then, do community members and offenders say to one another in such settings? Do they use this forum as an opportunity for shaming and ostracism? Are offenders cooperative or belligerent or with- drawn? How do community members communicate to offenders that their behavior was unacceptable and needs to change? How much do community members agree with one another, and how do they manage disagreement among themselves?

The heart of community justice is in the use of informal social control (Clear and Karp 1999). Community justice relies on the capacity of community residents to address crime problems themselves, without relinquishing this responsibility to the criminal justice system. What we must understand is how such processes of informal control are undertaken. We must examine closely the intuitive strategies of residents when they confront offenders. These are charged interactional encounters, ones that we often wish to avoid. I am struck by a comment made by Erving Goffman 39 years ago:

> When normals and stigmatized do in fact enter one another’s immediate presence, especially when they then attempt to sustain a joint conversational encounter, there occurs one of the primal scenes of sociology; for, in many cases, these moments will be the ones when the causes and effects of stigma must be directly confronted by both sides. (Goffman 1963:13)

So what happens when community members confront norm violators in an informal conversational encounter? What are they compelled to say? What strategies do they use to negotiate their way through these tense, ambiguous, even adversarial moments? As with other community justice programs, such moments have been created by the Vermont Department of Corrections (VDOC). In Vermont’s reparative board program, community volunteers serve on boards that meet with adult offenders to negotiate terms of reparation to victims and to the community.

**Overview of the Vermont Community Reparative Boards**

Vermont is not a high-crime state. It has no large urban centers, and it has a fairly homogeneous population and a violent crime rate that is one-third the national average (Vermont Department of Corrections 1998). Nevertheless, Vermont has followed the trends elsewhere in punishing criminals by giving prison sentences more frequently and for longer durations. In 1991, its prison system was at 191% capacity (Perry and Gorczyk 1997). Because the state budget is relatively small, paying for new prison construc-
tion could not be hidden by creative accounting. It was clear that a larger prison budget would cut directly into the education budget. A creative correctional staff recognized that its choices were limited: “Meet the increased demand with level resources produces continuous decline in quality, resulting in even greater dissatisfaction, or disaster. Or, reinvent the business” (Perry and Gorczyk 1997:27). On that premise, Corrections Commissioner John Gorczyk and his staff began a formal examination of the correctional system and its relationship to the public interest. Their reinvention began with a public survey conducted by John Doble Research Associates, Inc.

The Doble Survey

John Doble’s (1994) report on public beliefs and attitudes about crime and criminal justice in Vermont is extensive, and only a few points will be summarized here. First, a majority of Vermonters did not believe the correctional system was doing a good job, in general, or with regard to rehabilitation. They believed incarcerated offenders were not engaged in activities that were beneficial to the community or to themselves. Instead, they believed “our jails and prisons are schools for prisoners that turn inmates into hardened criminals.” Despite this poor assessment, Vermonters saw little alternative for violent offenders: 93% of Vermonters agreed that violent offenders should be incarcerated. Vermonters were also dissatisfied with the major alternative for offenders: probation and parole. Sixty-one percent believed the probation and parole system was not properly “keeping tabs on offenders to make sure they don’t commit more crimes.” The same percentage believed that probation and parole were not successful in rehabilitating offenders.

Although Vermonters exhibited much consensus about the need to incarcerate violent offenders, this did not extend to nonviolent offenders. For them, 95% favored restitution and community service. Attitudes with regard to drunk drivers were particularly interesting. Vermonters supported three distinct objectives: (1) community service to rectify the harm caused by the offense (93% in favor), (2) alcohol abuse assessment and treatment to rehabilitate problem drinkers (93% in favor), and (3) forums for having “drunk drivers talk to mothers whose children were killed by drunk drivers so they’ll realize how serious their crime is” (87% in favor). Eighty-two percent of Vermonters preferred having drunk drivers do 90 days of community service along with alcohol treatment rather than spend 30 days in jail. From these survey items, we find significant public support for correctional objectives that include (a) restoration of victims and communities and (b) rehabilitation of offenders that includes their acknowledgment of the harm caused by their offenses.

Doble also examined the idea of community reparative boards. From this we learn a third correctional objective from Vermonters: They want significant citizen involvement in the decision-making process with offenders—they want an offender/community relationship. Ninety-two percent of Vermonters supported the idea of having citizen volunteers work with judges “to oversee the sentence of selected nonviolent offenders.” The original vision for these boards was captured in the exact wording of the survey item:

One idea is to set up “Community Reparations Boards” where citizen-volunteers would work with a judge to determine and oversee the sentence of selected nonviolent offenders. Instead of prison, offenders would have to complete activities determined by the Board that might include some, or all, of the following: unpaid community service—work such as cutting brush; restitution or paying back the victim of the crime; house arrest with electronic monitoring; writing a letter of apology to the victim; successfully completing a counseling program about making key decisions in life; and successfully completing a drug or alcohol rehabilitation program. How do you feel about using Community Boards to determine and supervise the unpaid work and other activities of selected offenders instead of sending them to prison?

Although Vermonters were enthusiastic about the idea of community boards, their support was limited to nonviolent offenders. The findings clearly showed that Vermonters believed prison was still appropriate for violent offenders. Almost no one believed a rapist or armed robber should appear before a community board in lieu of incarceration.

At the time of the survey, no community boards existed: nonviolent offenders were sentenced to probation or prison. Reparative boards were designed as part of a larger strategy of programming that would provide the courts with meaningful alternatives to incarceration. The community boards might better address the concerns Vermonters had with traditional probation and to meet the public’s wish for victim and community restoration as well as citizen involvement.
Sentencing Tracks and Reparative Probation

Vermont's reinvention corresponded closely with the results of the Dole survey. Corrections was reorganized along two "sentencing tracks." In so doing, VDOC considerably expanded the repertoire of sentencing options available to judges. Each track has a separate underlying purpose; thus, an offender's sentence would follow along each track. The first track is "risk management." Here, corrections managers were concerned with public safety and the need for incapacitation. Along this track are a range of options from intensive supervision of offenders in the community to incarceration. Insofar as rehabilitation corresponds with public protection, this track also includes treatment options. The second track is "reparative." Here, the concern is for repairing the damage caused by the offense. The options range from orders of restitution and apology to work service by incarcerated offenders. Within this track is "reparative probation," a legal status that requires offenders to appear before Community Reparative Boards and comply with an agreement negotiated in order to be released from this probationary status. Former director of the reparative program, Michael Dooley (1995) summarized the goals of the reparative track:

Specific purposes and goals of the reparative program are to implement the restorative model of criminal justice; to bring Vermonters actively into the criminal justice sanctions process as volunteers; to make Vermont's criminal justice system more responsive to the crime-related needs of victims and communities; and to address broader administrative and systemic needs for economy in the execution of the corrections mission. (p. 31)

A Typical Case

To illustrate the community justice process, I will trace the events for one offender as they proceeded from arrest to appearance before the community board. On the night of May 25, 1998, John Burns (pseudonym) was arrested for driving under the influence of alcohol in the city of Rutland. The arresting officer had observed Burns weaving erratically and pass through a red light. After pulling Burns over, the officer questioned him from outside the driver's side window. At this point, Burns accidentally rolled the vehicle forward twice. The second time took the vehicle forward 25 feet until it hit a utility pole. When the case appeared before the court, the defendant was found guilty of DWI (driving while intoxicated) and sentenced to reparative probation with the condition that he "shall actively participate in and complete the Reparative Probation Program at the discretion of and to the full satisfaction of the Reparative Coordinator."

All reparative cases are first adjudicated in court. This is not a diversionary program. Defendants may refuse to appear before reparative boards, leaving it to the judge to determine the specific conditions of the sentence. Otherwise, judges may impose their own conditions (such as an alcohol assessment or restitution to victims) and the reparative board conditions, in which the community board determines the specific terms of the reparative agreement. When a case is assigned to reparative probation, it is forwarded to the Department of Corrections Court and Reparative Services Unit within the local jurisdiction.

A reparative team (which includes correctional staff and volunteer roles such as a victim liaison and a community service opportunities developer) is responsible for managing the reparative caseload of the local boards. Responsibilities include (a) conducting an intake interview with offenders that orient them to the program, (b) processing paperwork and acting as liaison to the court, attorneys, other interested parties, and community justice centers, (c) scheduling the offender to appear before the board, (d) identifying and contacting victims or other parties who may wish to attend the reparative board hearing, (e) recruiting and coordinating training of volunteers for board membership and other volunteer roles associated with the program, (f) developing reparative resources, such as community service opportunities, family group conferencing, victim impact panels, and other activities relevant to reparative contracts, and (g) monitoring offender compliance with the reparative agreement.

The drunk driving offense of John Burns is one of many types of offenses on the reparative caseload. Other typical offenses include vandalism, retail theft, writing bad checks, furnishing alcohol to minors, possession of alcohol by minors, marijuana possession, and other nonviolent offenses. Determination of the target offender population is based on a risk management protocol, described by VDOC as "the 42-box model." This refers to a 6 x 7 table used to rank an offender according to their supervision needs based on the severity of the offense and the risk for reoffense. Severe offenses, even if a first time, do not qualify for reparative probation. Some moderate offenses, such as simple assault, might qualify if it is a first offense but not if it is a repetition. In general, low-severity offenses are targeted for reparative probation. Sometimes judges will send cases to the boards that fall outside the target population, but in general, the boards handle relatively minor cases and do not see more serious offenders such as violent offenders or sex offenders.
John Burns was arrested on May 24, 1998, sentenced on June 29, and appeared before the local re reparative board on August 25. When offenders appear before a community board, they will come face to face with a small group of volunteers from the local community. In general, between three and five board members will be present for a hearing. Board members are not a perfect representation of the local community. First, because the time commitment is significant both in regard to member training and regular attendance, it is not likely that a perfect representation could ever be realized. Second, although it is currently a goal of VDOC to increase representativeness, the initial recruitment strategy did not select for this. Instead, they used a leader nomination method. Several prominent local leaders were identified by VDOC in each jurisdiction. These leaders were then asked to nominate people they believed would be capable and interested in serving on a reparative board. From this pool, the initial board members were recruited. Subsequently, recruitment has functioned by word of mouth and primarily through active recruitment by the reparative team. The latter have been specifically charged with increasing the representativeness of the boards to include, for example, more low-income community members and ex-offenders who have successfully completed the reparative program.

Prospective board members generally observe board hearings before joining them. When they do become board members, they must participate in 15 hours of training within the first six months. This training includes an introduction to restorative justice principles and various restorative models such as victim-offender mediation, circle sentencing, and family group conferencing. Board members participate in role-playing exercises and other activities designed to develop good communication skills in their interactions with offenders, victims, and other board members. In addition, ongoing board members are expected to participate in seven hours of in-service training each year. Recently, VDOC has developed protocols for board self-evaluation.

On August 25, 1998, John Burns arrived at Rutland’s Department of Corrections’ Court and Reparative Services Unit (CRSU) (Vermont’s version of a local probation office) office to appear before the Tuesday evening panel. The larger towns and cities in Vermont have too many cases for one board to handle, and boards have grown and subdivided into two or more panels with different members. At this particular panel, four board members were present, three women and one man (across the state, board membership is 60% male and 40% female). As of December 1998, there were 41 boards operating in 21 townships, with a pool of 260 board members.

These boards had processed more than 2,800 cases from their inception in November 1995 through 1998.

Boards vary as to how they manage a hearing, how long they will spend discussing the case, and even how they will respond to like cases. Nevertheless, each board is expected to pursue five goals:

1. Victims and affected parties describe the impact of the offenders’ behavior.

2. Offenders make amends to victims and affected parties.

3. Offenders make amends to the community.

4. Offenders demonstrate healthy behaviors and learn ways to avoid re offending.

5. The community offers reintegration.

These goals closely apply to the Karp and Clear (2000) Community Justice Model (see Exhibit 1.3 in Chapter 1 for a full explication of the model). The first three goals follow the reparative pathway, and the latter two follow the reintegrative. Vermont’s board program is generally representative of the integrity model in all four of its six dimensions: a correctional system that has made itself more accessible and garnered significant citizen involvement while pursuing both reparative and reintegrative agendas.

The Rutland panel began its hearing by introducing themselves to John Burns and reviewing the formal documents of the case. They then asked the offender to talk about himself—where he works, where he lives, etc.—and to give a full account of the drunk driving incident. All boards begin with such information gathering, laying the groundwork for negotiating a reparative agreement that is specifically relevant to the case. This board then asked the offender to leave the room while board members discussed the case among themselves. Several boards adhere to this closed door procedure, whereas others proceed directly to a discussion of the contract with the offender present. VDOC had originally recommended this recess discussion but has subsequently decided that the procedure is problematic and runs counter to the restorative philosophy. Some boards have dropped the recess, and others have maintained it. Briefly, some boards like the recess because they want to maintain a united front before an offender (voicing disagreement with each other only behind closed doors), they want to
maintain a sense of authority and confidence before the offender, and they do not want any board members placed at risk because they had advocated more punitive terms than the others. However, other boards have relinquished the recess because they believe it reduced the trust between the board and the offenders and disempowered the offenders by undermining their active role in the decision-making process.

The centerpiece of the board hearing is the negotiation of the agreement. Here, each of the four goals is identified and addressed. The board did not identify a victim in this case, so no terms were established on this point. In other cases, restitution and letters of apology are common. Creatively, some boards have identified the arresting officer as a victim when the offender was rude or resisted arrest. Then they might ask the offender to write an apology to the officer. The Burns board advocated 50 hours of community service but left it to the offender to identify the type of service at a later date. To fulfill the goal of having the offender learn about the consequences of his behavior, the board asked the offender to complete two tasks. The first was to attend a one-hour Encare session, in which emergency room nurses describe horror stories of other drunk driving cases. Second, the offender was asked to write a three-page essay on “the importance of laws in the community—why what you did was wrong and what would happen if everyone did that.” Finally, to fulfill the last requirement of seeking ways to avoid reoffense, the board required that the offender take a one-day defensive driving class and obtain an alcohol assessment.

John Burns agreed to the terms of the reparative contract. This hearing lasted approximately 30 minutes; others times take less but more often run between 40 minutes and one hour. Like all other reparative probationers, he had 90 days to complete the reparative tasks. Otherwise, he would be in violation and would either go back to the board for renegotiation or back to court. Some, but not all, boards ask offenders to return after 30 or 60 days (or both) for a brief check-in on their progress and sometimes also a closure meeting at the end of the 90 days.

The Vermont Video Project

Between August 1998 and July 1999, I videotaped 53 reparative board hearings, covering the various boards across the state. See Karp and Walther (2001) for details on the methodology of this study. From these observations and discussions with VDOC personnel and board members, I provide below some analyses of the board process, each of which is driven by the basic question, What do community members do when meeting face to face with a criminal offender? By no means is this an exhaustive listing of possible encounters. Instead, I examine four common occurrences: (1) attempts to establish common ground, (2) affirmations of normative standards, (3) responses to offender denials of responsibility, and (4) disagreements between board members about ideal contracts.

Common Ground

The relational dynamic between board members and offenders is quite different from those between judges and offenders. The symbolism of the court—the bench, the flag, the robes, the gavel—emphasizes that the judge is a representative of the state: distant, objective, authoritative, powerful. Board members wear casual dress, sit around a table, meet in nondescript community rooms in libraries, town halls, CRSU offices, or police stations. Though some boards are more formal than others, they all seem to prioritize friendliness and civility; the offender is made to feel welcome. Boards introduce themselves by name to the offender and convey to the offender that they are volunteers, rather than paid staff of VDOC. It is clear, however, that there remains much social distance between many of the offenders and the board members. Board members tend to be older (with many retirees serving on them), better educated, and more articulate. Nevertheless, it seems important to board members to find some common ground with the offender, board members stating, for example, that they live on the same road or attended the same school or know a member of the offender’s family. The idea, it seems, is to make the offender feel comfortable and therefore become a more willing participant in the process. More fundamentally, the purpose is to remind one another that each is a member of the same community, linked together in consequential ways.

One illustration of an attempt to establish common ground comes from the same Rutland panel that heard the case of John Burns. Similarly, Neal Gresham (pseudonym) appeared before the board for a DWI conviction. Typically, in such cases, board members will ask how the offender is managing without a license (which is invariably suspended by the judge after such convictions). While pursuing this line of inquiry, one board member found his chance to find common ground:

| Board Member 1: | How do you get to work? |
| Offender: | My friend, we both work up at Middlebury. |
| Board Member 2: | Who are you working for up in Middlebury? |
The suspected person thus shows that he is thoroughly capable of taking the role of the others toward his own activity, ... that the rules of conduct which he appears to have broken are still sacred, real, and unweakened. An offensive act may arouse anxiety about the ritual code; the offender allays this anxiety by showing that both the code and he as an upholder of it are still in working order. (pp. 21-2)

Two consequences seemed to follow from this brief interaction. First, the offender immediately relaxed, smiling for the first time in the hearing, feeling like he could identify with at least one person on the board. Second, there was an implication that his future behavior could be monitored. He might, in fact, see this board member again soon on the job. These points emphasize the two fundamental qualities of informal control: that it is undertaken by members of the community in unregulated settings (informal) and that it may indeed be undertaken (control).

**Norm Affirmation**

I have suggested that board members attempt to establish common ground in part because they want to emphasize that they are, offenders included, all members of the same community. In almost every board I have observed, board members have also tried to make the case to offenders that such membership entails a responsibility to conform to the normative standards of the community, that the offender's violation is not a private matter but one of great concern to a community of interdependent residents.

It appears that board members are deeply motivated to reaffirm the moral order of the community. The offender has violated a community trust, and this trust can only be reestablished when the norms are reaffirmed by board members and the offender. Most important, the board members will try to get the offender to see the offense as they do: as an abrogation of the community code and an aberration of the offenders which they will not repeat. Again, I draw on the ideas of Goffman (1967):
First, the board member establishes that the offender shares the same moral universe by inquiring about his willingness to engage in more significant criminal activity ("You wouldn’t come into my house and steal something"). Clearly, this is a rhetorical question, but he did wait for the offender to reply in order to gain that reassurance. Second, he reminds the offender of his responsibilities as a member of the community, responsibilities that are equally shared by all members. To underscore this point, as part of the contract with the offender, he was asked to write a three-page essay on "Why I should obey the laws of my community."

In a second illustration, the obligation of communal membership is coupled with an articulation of the harm caused by the offender's behavior. In this case, the offender had supplied his two teen-aged sons with a case of beer and wine coolers so they might go drinking with other neighborhood friends.

Board Member: The next thing that we need to talk about is the fact that, being a member of a community, which you are, supported by the rest of us, in terms of all kinds of things, that you have let us all down. Because one of the problems that we have, all of us, is controlling kids who get involved in drugs and alcohol. We spend a lot of money and a lot of time on it. It's very worrisome for us ... when parents who have children the age of yours are talking to them about abstinence and staying in control and so forth, and here you are, an adult down the street who is saying to your kids, "Go ahead, drink all you want." You're working at cross-purposes and I don't think that's very fair of you. And I think you've got to do something to acknowledge that you've failed to hold up your end of the bargain as a member of the community and to do something to make amends for that.

Thus, the norm affirmation process is closely linked with the harm caused by violations of the normative code. Moreover, board members seek acknowledgment from offenders that the codes are respected by them and will be observed in the future. By affirming the norms, the board members allow for the offense to be construed as exceptional, and that once the harmfulness has been fully considered, it will not be repeated.

As a final illustration of the norm affirmation process, an articulation of harm is coupled with an attempt to establish common ground. In this case, a 20-year-old woman was convicted of possession of beer and reckless driving (but not convicted of DWI because she was on medication and the breath test was voided).

Board Member: This group takes alcohol-related crimes pretty seriously. It's a huge problem in this town. It's a huge problem in this state. You've heard about the guy who's arrested 27 times for alcohol, kills two or three people before they finally get him off the road. We're not trying to pick on you. We're trying to get you to understand that it may have sounded like you just squealed your tires, but it was a real bad judgment call. You're a young person. It was a bad judgment call for you to be on the road at all, for you to take either one of those substances [and] be driving. But to add insult to injury, you had to take them both. That's something that the board wants to get you to understand really clearly; I think it was worthy of a DWI. I don't want to retry your case. I want you to really clearly think about the fact that pulling this kind of thing again, you're gonna be [given a DWI]. [Pause] The one thing I did not do at the beginning was introduce ourselves. It probably would have been nice if you had a clue as to who you were talking to. I'm [name] and I've lived in Randolph forever. [Other board members introduce themselves.]

What was interesting in this encounter was the board member's apparent need to reinforce her normative claims by verifying the board's status as local volunteers and by balancing an authoritative judgment with an attempt to reach out and create familiarity and connection. It is these kinds of expressions that are unique to the boards. Judges often make similar normative claims, but they cannot achieve the same level of rapport.

In the cases that I have observed, what is rare is when these norm affirmation strategies do not occur. In one instance, the case involved another 20-year-old found guilty of possessing alcohol. Apparently, he had been walking home with some beer in his backpack when he was stopped and searched by the arresting officer. As the offender pointed out, he "was
stopped seven months too soon." This board did not condone the behavior but was unable to articulate what harm the offender had caused, what norm needed reaffirmation. In a second case, the board was persuaded by the offender's account that the offender, in fact, was the victim and had been acting in self-defense (in a confrontation with a teen-aged stepson). Once again, this board found it difficult to identify the harm caused by the offender. I am not suggesting here that, in reality, a norm was or wasn't violated, but to explain why the typical norm affirmation strategies were not applied in these cases. When boards do not effectively articulate the harm caused by offenders or do not believe the offender to be culpable, they do not seek to affirm the normative order.

Denials of Responsibility

Board hearings are negotiated events in two senses. An agreement must be reached that the offender will sign and comply with. But this practical matter is the pretext for a more subtle negotiation of the burden of responsibility. Offenders, presumably, are motivated to minimize their sense of guilt and obligation. They would rather place the blame elsewhere and also have the board agree with such a version of events. In one case mentioned above, the board, in fact, did come to share the offender's view (quite in contrast to the judge) and consequently negotiated a very "light" agreement. More generally, however, board members are compelled by the need to affirm the moral order and, therefore, wish to hold offenders accountable, maximizing their sense of guilt and obligation.

Clearly, there is a dramatic imbalance of power in these negotiations. The offender is likely to acquiesce on all fronts, passively accepting the terms as devised by the board. They generally do not have the verbal skills to defend themselves well, and often they recognize that any such attempts might be seen as uncooperative, which might lead to a more punitive contract. It is generally in their interest to be polite and agree with board members at every turn. Those boards that deliberate terms during a recess exacerbate this imbalance of power. In the case of John Burns, for example, when he returned to the table, the chairperson declared, "Okay, John, we have come to an agreement." They certainly did not come to that agreement with the offender.

John Burns, you will remember, was the drunk driver who managed to roll his car into a telephone pole when the arresting officer was standing nearby. He is also an example of an offender who tried to persuade the board that he was not culpable.

The Offender/Community Encounter

Offender:
I had three beers that night. . . . I had three beers and I drove straight. If you notice, it doesn't say anything about swerving.

Board Member 1:
[Skimming police report] Yeah it does, absolutely.

Offender:
Probably because I was looking in the rearview mirror.

Board Member 2:
So you think this whole thing—you've been treated unfairly. The cop screwed up the report; you weren't really drunk.

Offender:
I wasn't drunk drunk. I had three beers.

Board Member 2:
Well, actually, we tend to take the policeman's attitude at face value.

Offender:
I understand.

Board Member 2:
And we also take this offense that you were charged with as being the most serious offense that comes before this board. Even if there's no accident, even if there's no injury. It's not a victimless crime.

Board Member 3:
The other thing, too, John, is that you don't want to take responsibility for your actions. You've given us all excuses so far.

Offender:
[Suddenly shame-faced and beet red] No, I've taken responsibility. I know that I drove that night and that was a bad thing to do. I've never done that before, and never will again.

The board refuses to accept John's version of events while reaffirming the normative standard. What was fascinating in this interaction was the immediate reversal undertaken by the offender when he realized the board would not accept his account. He shifts from a claim that he was neither drunk nor swerving to agreeing that he had done a "bad thing." Initially defiant, when confronted directly about his excuses, he blushed in embarrassment and shame. The strategy used by the board to get the offender to take responsibility was straightforward: they did not accept his denial and emphasized their own seriousness with which they treat the incident.
In another incident, a board member uses a strategy that calls attention to the harmfulness of the offense. In this case, a young woman, Melanie Vándergross (pseudonym), was convicted of a simple assault. As the board discovered, she had been arguing with her mother-in-law and punched her in the mouth. The victim did not attend the board hearing. The following interaction took place after one board member suggested that the offender might need to write a letter of apology to the victim. Up until this point, the offender denied responsibility for the assault, claiming that she had been justly provoked.

Offender: It sounds horrible, but I don’t know right now if I am really willing to write her a letter of apology. I mean, I can lie to you and say, “Oh yeah, great.” But honestly, really, I don’t really think I’m ready to do that.

Board Member: Let me ask you a question on a slightly different level—a different approach. Your eldest child was a witness to this.

Offender: Right.

Board Member: Seems to me the child is also a victim. You acted out in anger, rather violent anger, in front of an innocent child against that child’s grandparent.

[Six minutes later]

Offender: What happened was horrible. And I wish we could take it all back. And I would be willing to write them a letter or call them up or have them over for dinner.

The board’s focus had been on articulating the harm caused by the offense. However, its strategy until this exchange had been to get the offender to see the incident from the point of view of the mother-in-law. But the offender’s anger prevented her from being able to engage in this role-taking. The board member then asked her to see the incident from the perspective of her two-year-old daughter. Apparently, this was effective, for a dramatic reversal in her willingness to apologize occurred just a few minutes later. Through this role-taking, the offender saw the incident in a new light, which enabled her to see its harmful effects and accept the obligation to make amends. These incidents illustrate two primary strategies used by board members to offset denials of responsibility: (1) point-blank refusals to accept offenders’ excuses, and (2) finding creative ways to illuminate the harmfulness of the conduct such as through role-taking.

Civil Disagreement and Conflicting Justice Philosophies

Boards vary from one to the next. Some are conservative and formal, emphasizing a strict adherence to rules of order. Others are liberal and informal, rarely referring to official mandates and procedures. Some lean toward punitive, adopting the role of “citizen judges” in order to “sentence” the offender, albeit in a restorative manner. Others are rather therapeutic, adopting a “citizen counselor” role, ready to discuss at length the offender’s difficult past and generate agreements that will be rehabilitative. Some boards believe 10 hours of community service is a norm that should rarely be exceeded. Others happily assign 40 or more.

Of course, such tendencies vary within as well as between the boards, and members have plenty of material about which to disagree. Some distrust the offenders’ account, thinking they are guilty of more than the offenders claim and perhaps more than to what the conviction alludes. Others are more willing to ally themselves with the offenders, distrusting the court conviction, believing, at least, that they will get the more honest account than the police report.

The Vermont boards are predicated on a community justice philosophy. Their mandate is to generate contracts that will, as Commissioner Goreczky likes to assert, “add value” by restoring victims and communities through restitution and community service. The boards are also expected to facilitate the reintegration of offenders by helping them to understand their role as community members (by understanding the consequences of their behavior) and to find better ways to manage their lives (strategies to help them avoid reoffending). Community justice, however, is a new justice philosophy that is distinct from the more familiar models of retribution and rehabilitation. But board members bring these familiar models to the table even as they try to embrace and apply the newer concepts. The restorative component often becomes fused with the retributive: the community service is construed as a punishment. The reintegrative component often becomes fused with the rehabilitative: the focus turns to treatment as the sole vehicle for reintegration.

Rarely do boards have the opportunity to reflect on the various justice models and their implications. They are volunteer practitioners with case loads, and their actions reflect a mixture of traditional and contemporary
justice philosophies. Occasionally, disagreements over what the offender contract should look like are rooted in more fundamental tensions between these different philosophies. In the following discussion, conducted quite civilly and with the offender present, board members became entangled by a seemingly practical matter: How many hours of community service should be assigned?

Board Member 1: I'm on a completely different wavelength. I think what you are talking about is how much we give him [number of hours]. I think what we should be talking about is what he gives us. Therefore, it has nothing to do with time, it has to do with the quality of his time.

Board Member 2: I think time's a factor, too.

Board Member 1: No, I don't think so.

Board Member 3: Well, we have to deal with something concrete in order to write a contract and have an agreement about what is going to be done. Because quality we can't know about or he can't know about it until he does it. And even when he does it, we're not necessarily going to know what the quality was. We may never know that.

Board Member 4: The point is, is his experience going to have some transformational effect? [To offender:] This isn't punishment. This is an attempt to transform your attitude about alcohol and children. [To others:] The quantity of time isn't important, and how he comes back and reports to [us] will indicate the degree to which it is taken.

Board Member 2: Are we saying that 20 hours would have more motivational factor than 30?

Board Member 4: No, not necessarily. We think that 20 will certainly, at least by the time we see him next time, have created enough experience that he can report back to us what it means to him. It will either be persuasive or not.

Board Member 1: Let's set up a hypothetical. The hypothetical is that I suggested that he put in some time—I said 5. I could have said 1, I could have said 20. It doesn't matter. And he comes back and reports that he has become an assistant scout leader working with young kids. And he's absolutely enthralled with it. And we realize that here's a guy who is going to spend a lot of time for the rest of his life invested in community service. What's the point of asking him to do six more hours. He's accomplished what we wanted him to accomplish, which is a sense of responsibility to the community. It has nothing to do with whether he puts in 10 minutes or 10 hours. So I think that if we want to say, "We value your transformation," then we have to do it by what we say. If we say, "We want you to bundle in 20 hours and we don't care what your attitude is, we just want you to put in 20 hours," then we are talking out both sides of our mouth.

Board Member 2: I can't wholly agree with that. What I heard [Board Member 3] say is that in fairness to him, we need to establish in the coming 60 days what the maximum of our expectations will be so that 30 days from now we don't hand him something that is unfair.

Board Member 3: That's true. And I also think we can hope it will be transforming. But it may not be. We can't say, "Well, you weren't transformed, you weren't converted, you weren't this or that, so back to jail or court you go." I don't think we can do that. We can't dictate what the psychological results of their being here [will be]. We can hope to come up with a good contract that will be helpful to you [offender], but there's the other segment of the reparative to the community. There is a give back. People are here to give back to the community. It may be difficult and they may not like everything they do and it may not teach them anything, but they have given something back. Doing community service gives back to the community even if, in the end, the per-
son isn’t changed. I don’t think we can dictate that if they’re not changed and they don’t take some test that proves to us they’ve changed, they fail.

This is an unusually rich and reflective exchange during a board hearing. What began as an attempt to specify the number of work hours evolved into a profound discussion of the purpose of the board. The first board member challenged the board to think about the assignment of hours in a new way. The focus, he suggested, should not be on the number of hours, with the assumption that their determination is directly proportional to offense severity. Instead, he argued that community service is successful only when the offender becomes truly engaged in its performance. This engagement cannot be determined by the number of hours. Instead, he had argued previously, the offender ought to do just a few hours initially but find something rewarding. Then he should come back to the board, persuade the board that the service was transformative, thereby reassuring the board that the moral order has been affirmed—that the offender is a citizen now invested in the quality of community life and not a threat to it. In this interpretation, and I may indeed be inferring too much, the proposal is consistent with both the reparative and reintegrative trajectories of community justice.

There is an element to this proposal, however, that merges the reintegrative with the rehabilitative (“This isn’t punishment. This is an attempt to transform your attitude about alcohol and children.”). And it is this fusion, I suspect, that made other board members resistant to the proposal. With a rehabilitative focus, the board members become charged with treating the offender, and the service work is a treatment modality. This is a distinct shift from using the service work as a means to gain reassurance from the offender that he will abide by the community code to using service as a vehicle for psychological change that board members are little able to assess.

The alternative approach suggested in this exchange is a clear specification of the service work hours, partly in fairness to the offender who might want his tasks clearly enumerated and partly in fairness to the community that is in need of concrete reparations for the harm caused by the offense. In this discussion, no one takes a retributive stance—that the service work ought to be costly to the offender in exact proportion to the benefits he derived from committing the offense. The position taken is reparative—the service work should be in proportion to the deficit created in the community by the offense. Unfortunately, no attempt was made to articulate the size of this deficit or equate it with the type or amount of service work (if such an equation is possible). Even though no one advocated a retributive stance overtly, simple and poorly reasoned assignments of hours must appear to offenders as, at minimum, arbitrary, and more than likely, punitive.

This dialogue thus touched on some fundamental issues confronting the boards. How should they adjudicate disagreements among themselves? What is the purpose of the boards? What is community justice, and are board members’ personal philosophies in conflict with this new justice philosophy? I take an optimistic view of this particular discussion. It was thoughtful and engaging as well as highly civil. Such disagreement is desirable because board members do need to sort out their own beliefs and come to, at least, a working consensus. Moreover, it is possible to conduct such explorations while conducting a hearing, keeping the discussion organized around practicalities (such as the number of hours to assign). There are risks, however. We would want to look for more involvement by the offender in these discussions. Such involvement is likely to invest the offender in the outcome rather than undermine the credibility of the board.

Conclusion

The four issues examined in this case study illustrate the rich interactional dynamics that occur when community members meet with criminal offenders in a justice process. They are rich because when a social norm is violated, community members feel compelled to mend the social fabric. How this is done, of course, varies widely, and Vermont Corrections has encouraged a particular focus that is based on restoration. Along the way, reparative boards try to establish common ground by finding points of connection between themselves and offenders. In effect, the offenders’ social status within the community is in jeopardy. Their criminal actions have demonstrated an antisocial position, and community members must question offenders’ ongoing intentions. A search for common ground is one strategy to lessen this uncertainty. This strategy may reduce the social distance that would otherwise outcast offenders. Instead, it allows for their reintegration and renewed membership in the community.

Norm affirmation processes also speak to the uncertainty that community members feel about offenders. They are also concerned with how the offense creates a more general uncertainty about the status of the community’s moral order. Affirmations of local norms by board members in concert with
offenders help remind all present of the need communities have for social control. In this sense, norm affirmations are a kind of moral education.

One of the biggest challenges to a successful board hearing is offender resistance to engaging in the process, particularly when they deny responsibility for the offense. These hearings are neither diversions nor dispute resolution processes; the offender has been found guilty in court. Nevertheless, offenders have an incentive to minimize their burden of responsibility, both psychologically and materialistically. They may very well have convinced themselves that no harm was done or the act was no fault of their own. Board members then face the task of disclosing the harm and getting offenders to acknowledge their role.

Finally, we have seen that board members sometimes disagree among themselves. This is expected, of course, in any group decision-making process. But it is exacerbated by virtue of the novelty of the boards and ambiguity in our culture’s definition of criminal justice. We often seek multiple goals, and sometimes these are not compatible. I have observed boards that manage disagreement in a variety of ways: by ignoring it, by holding a recess so the offender will not observe it, and, as I illustrated above, by engaging in civil debate with the offender present.

Clearly, the four issues examined here deserve more sustained examination. And clearly, many other issues figure prominently in the offender/community relationship. I have referred several times to the work of Erving Goffman (1967). Another of his insights is that individuals are continuously engaged in “face work,” or actions that save face or protect oneself from the critical judgments of others. This is true, he claimed, of all human encounters, let alone ones in which transgressions are the major focus.

Much of the activity occurring during an encounter can be understood as an effort on everyone’s part to get through the occasion and all the unanticipated and unintentional events that can cast participants in an undesirable light, without disrupting the relationships of the participants. (p. 41)

Board hearings are anxiety-provoking encounters, and everyone involved works hard to get through the occasion without disaster. The classic means to “get through” is avoidance of the tense subject. But the boards are charged with addressing the offense head on, without minimizing it (or exaggerating it). They must talk about exactly that which everyone would like to ignore and wish never happened. Moreover, they are asked to accomplish two difficult tasks: they must try (1) to resolve the injustice by getting the offender to agree with reparations and (2) to elicit the offender’s commitment not through coercion but by reintegrating the offender into the role of socially responsible community member. When they accomplish these tasks, the reparative boards will have succeeded not simply in surviving a difficult encounter but in realizing a new conception of criminal justice based on the community justice ideal.

Notes

1. These five goals are a recent revision of an original set of four offender contract goals: (1) to restore and make whole the victim(s) of the crime, (2) to make amends to the community, (3) to learn about the impact of the crime on victim(s), and (4) to learn ways to avoid reoffending in the future.

2. Judges often impose additional conditions that go beyond the scope of the boards. Boards, for example, are not empowered to suspend licenses or impose other restrictive conditions. The extent to which judges’ conditions are consistent with the board’s restorative justice focus is an important matter for inquiry.

3. In one case that I observed but did not videotape, an offender agreed to pay an additional amount of restitution to that which was ordered by the court (based on what the victim reported during the hearing). Yet minutes after the meeting, the offender told her probation officer that she believed the addition was unfair but was too afraid to speak up during the hearing. The probation officer brought her back before the board to address this, where she immediately acquiesced once again.

References


The following case study is bittersweet. When we first discovered the Southside Restorative Justice Project of the Tallahassee Neighborhood Justice Center in Florida, we believed it to be a program full of promise and an excellent example of restorative community justice. When we asked Evelyn and Joanna to write this case study, the program was flourishing. By the time they completed the chapter, the program was dismantled (although there is current planning for revitalization). What we see in this case study is the challenge, sometimes insurmountable, of bringing theory into practice. We learn about the obstacles to implementation as well as the creative ideas that inspired the program.

Two ideas are central to this case study: restorative justice and the community justice center. The relationship between restorative justice, generally defined as an approach to justice that focuses on the repair of the harm of crime, and community justice is an important issue. In our minds, community justice is not possible without restorative justice, and restorative justice is not possible without the active participation of the community.

Restorative justice is often contrasted with retributive justice. Both are primarily "backward-looking" sanctioning theories—that is, focused on holding offenders accountable for their past behavior, rather than focused on preventing future offending. (Deterrence, incapacitation, and rehabilitation are "forward-looking" punishment philosophies.) Retribution holds offenders accountable for their past behavior by providing a punishment that approximates the pain they inflicted on victims and the community. By punishing the offender, the society expresses its moral outrage and defines clearly the moral order—what is acceptable and unacceptable behavior of its citizenry. In contrast, restorative justice holds offenders accountable by requiring that they make amends to victims and the community. Instead of the state denigrating the offender, the offender restores and repairs. Instead of obligation defined as the suffering of pain in response to pain caused, it is defined as the effort to "make right the wrong." The Southside Restorative Justice Project employed this concept by bringing