

**Paul Kennedy**

Welcome to Ideas. I'm Paul Kennedy, and this is Part Two of "To Hurt or To Heal," a five-hour series by David Cayley exploring the purpose of criminal justice.

**Priscilla de Villiers**

The victim represents the community, and that is what is so critical in regenerating, I think, public confidence in a system that has really become, I really believe, completely denigrated in the eyes of most of Canada.

**Paul Kennedy**

That's the voice of Priscilla de Villiers, speaking for what's come to be called the victims movement. To her, it's a movement which gives voice to epidemic popular dissatisfaction with the criminal justice system and, at the same time, holds the key to its regeneration. In tonight's program, we'll trace the emergence of this movement and examine its possible impacts on how we do justice. Does a better deal for victims inevitably mean harsh treatment for offenders, or is there a more constructive way for victims and the communities they represent to call offenders to account? That's the question in Part Two of "To Hurt or To Heal" by David Cayley.

**David Cayley**

Throughout most of human history, redressing crime was the business of the people involved. Victims demanded satisfaction, offenders offered redress, and community assemblies enforced settlements. "Law," writes legal historian Harold Berman, "was not an instrument to separate people from one another on the basis of a set of principles, but rather a matter of holding people together, a matter of reconciliation." The idea that crime is an offence against the state, a violation of the king's peace, goes back only as far as the Middle Ages, when rulers, for the first time, assumed the power to prosecute crime. Idealistic accounts of this innovation say that it was intended to limit vengeance. Realists stress its usefulness in dramatizing the terrible power of

the emerging states of modern Europe. Either way, crime became an affair of the state. The offender gradually lost his right to initiate a settlement; the victim, any right to make a claim. The community became an audience, and the severity and duration of punishment became the yardstick of justice.

A generation ago, this system was largely taken for granted as a great modern achievement. Today it's subject to radical challenge, and from two sides. Victims and dissatisfied communities have tried to increase public safety by demanding a stricter, more accountable justice system. A second movement promotes restorative justice. People in this movement argue that tightening the existing system will only make things worse. They say justice has to be returned to the community and reoriented towards settlement and reconciliation. Whether these two views can be harmonized is the question I want to raise tonight.

In the second half of the program, you'll meet Lorraine Berzins and Jamie Scott, two members of the Church Council on Justice and Corrections, who both strongly believe that restorative justice can address the suffering of victims.

But first I want to introduce the more skeptical perspective of Priscilla de Villiers. She's been an eloquent voice for victims since the murder of her 19-year-old daughter, Nina, in Burlington, Ontario, in 1991. The story of her crusade for victims rights begins in the hours and days after Nina disappeared, when more than 8,000 people turned out to help search for her.

**Priscilla de Villiers**

When Nina died, the newspapers published her photograph on the next day, and by Sunday it had gone across the country, because we didn't know where she was. She'd disappeared.

I started to get phone calls and letters and

courier parcels — unbelievable — from people across the country. They were not only saying to me, "I'm desperately sorry for you. Our condolences" and so on, "We will look for your child" — because that's what I was asking — but telling me their own concerns, their own fears, their own tragedies, what tragedies had happened in their areas. And over those terrible two weeks, I got such a clear vision of a country in crisis that it became a compelling picture in my mind.

### **David Cayley**

The crisis, as Priscilla de Villiers came to understand it, was that many Canadians lacked confidence in the institutions of criminal justice. Her concern intensified as the events surrounding Nina's death came to light. Nina had been abducted and murdered by a Hamilton man named Jonathon Yeo. At the time, he was free on bail, after being charged with a violent sexual assault. Earlier that evening, he had tried to cross the American border armed with an unregistered rifle and with a suicide note expressing deep self-loathing in his pocket. American border officials turned him back, but Canadian immigration did not detain him. He subsequently killed a second woman and then killed himself. The police closed the case.

### **Priscilla de Villiers**

The rot started when we began to say, three people are dead, and yet we're supposed to go away and say good night, and we accept that. This was a police case. It was closed because the killer had committed suicide.

The press at this time were uncovering more and more and more questions about this man, so we were reading about our daughter's death and the circumstances leading up to our daughter's death in the newspapers. Questions arose: why was a dangerous man who was charged with a violent sexual assault with a weapon on another stranger, a girl jogging, free on bail? Why did he have his weapon? Why did he attempt to leave

the country, and why was he not apprehended? These were the questions that were being raised. But no level of government would answer them. We had no contact.

It got to the point that I spoke to the Attorney General at the time, Howard Hampton, on a radio phone-in show. He knew I was going to phone. I insisted that they tell him so he was prepared. That is how I had to access him. That is the only contact we had.

More and more questions began to arise, and so I saw the confidence of the community diminish. People from my tennis club felt desperately violated. My child had been snatched from the parking lot of the club where all our children had grown up, and her father was 400 yards away. So the sense of violation was acute.

Five of us started a petition, which all it was was a protest, and before we knew where we were, we had 2½-million signatures. The whole country was humming, and that's how CAVEAT grew up.

### **David Cayley**

CAVEAT is an acronym standing for Canadians Against Violence Everywhere Advocating Its Termination. The organization grew out of the wildfire success of the de Villiers' petition and went on to become an influential lobby on criminal justice policy. The petition indicted the justice system for failing to protect the vulnerable and asked for restrictions on bail and parole, stiffer sentences for crimes of violence and greater public accountability. Much of this has subsequently happened. Bail and parole hearings have been tightened, and the most recent sentencing data from Statistics Canada indicate a startling 50 per cent increase in the median sentence for crimes of violence over the last five years. A number of Canadian governments have also enacted victims bills of rights. Some of this legislation was initially pretty toothless, amounting to little more than statements of high-minded principle. But Mrs. de

Villiers says that political commitment to victims continues to strengthen.

**Priscilla de Villiers**

The federal government has just come out with some victim policy in criminal law, and the provincial government in Ontario has just brought about the Office of Victims of Crime. There's the understanding that victims of crime need to have access to information. They need to understand what is happening. They need to be included. They need to be told when the trial is. This was not happening. They need to be told if it is going to be remanded.

One victim came to me. She'd lost 100 days of work trying to go to the hearing of a man who'd been stalking her for three years. He was destroying her life, and she had a very real need to be there. She had to drive 100 kilometres or so, and every time, the case had been remanded for some reason, and she was never informed. That type of thing is just a case of sheer good manners, and there is no reason why this should not happen in every courtroom in the country.

The provincial government in Ontario has recently appointed 57 more Crowns so that they will have more time to at least meet once with the victim and explain what is happening. In Manitoba, they've done some extremely innovative things with their legislation and, in fact, are bringing in an accountability mechanism so that if the victim does not receive just basic common courtesies, there is an accountability, and that would be the Crown to the legislature. This is happening in states across North America. In Europe, they've been way ahead. They've had victims involved in some sentencing, for example, in Germany, for years, and yet they've found no discernible difference in sentencing patterns over — I think it's 25 years.

Victims can be introduced without compromising fair trial for the accused. We're not asking for the

victim to be involved in the actual sentencing, but the federal government has now enacted a law that the victim's impact statement will be heard if the victim so wishes. Because it's your one way of telling the court what the impact has been, and we need to hear it.

**David Cayley**

The victims rights movement has enjoyed dramatic political success during the last few years. But to Priscilla de Villiers, this success remains very partial and incomplete. Many people in the law still see the full inclusion of the victim as a threat to the fairness and impartiality of justice. And court hearings, she says, are still often conducted in terms that neutralize and sterilize the human meaning of what has occurred, thus, protecting offenders from having to face what they have actually done to other people.

**Priscilla de Villiers**

Because we've gone so far towards this idea — and for good reasons but we've gone too far in this idea — that the crime is against the state, I think too few people who would offend can see that this is actually a crime against a person, because from the time they actually commit that crime, it is drummed into them that we must get you off at any price, we'll plea-bargain you a way for any damn thing, and that your enemy is the Crown. Not you've offended against this person in an unimaginable way, and this person is the one that we care about and that we're supporting and that we're trying to protect and so that it personalizes what has happened, instead of making it an impersonal crime against a huge body, which is what the courts do.

**David Cayley**

The idea that crime is primarily a violation of law, rather than of persons, is deeply entrenched in our justice system both as a belief and as a way of doing things. The legislation of victims rights may have put a dent in this view, but it has hardly overturned it. And it is because victims

still often occupy a tenuous, not yet fully legitimate position in criminal justice that Priscilla de Villiers is wary of the current vogue for restorative justice. She worries that making justice a matter of settlement and reconciliation might simply become a new form of pressure on the victims of crime.

### **Priscilla de Villiers**

We want to believe that we can bring about a sense of remorse and a sense of wrong done and a sense of forgiveness. And we want that to happen in the current sense, immediately, in the same way that a patient goes into a doctor's office today, and they want to be cured, and they want to be cured now. That is the modern feeling. There's no sense of years of development, years of emotional growth et cetera. There's none of that. It's got to happen today. And, in the same way, justice has to be done today, according to a justice timetable and a justice court, regardless of where you are in the human process of grieving and resolving your grief and coming to an understanding et cetera. So you get people who are very ardent about this whole idea of the need for forgiveness and the need for remorse, and that the two will come together in this great healing moment. That is what drives a lot of people. It's a wonderful idea. But in human terms, it doesn't happen, and that really worries me. It's this immediacy.

### **David Cayley**

Priscilla de Villiers fears a kind of rush to reconciliation in which the victim's part will be to forgive the offender now. This not only puts the victim on somebody else's timetable, she says, it also overlooks the state of profound insecurity that crime often produces in its victims.

### **Priscilla de Villiers**

The victim is so lacking in confidence, and this is the one thing you can see in victims all across the way, particularly if they've been systematic victims of abuse for a long time, then the effect

is absolutely profound.

You then put them in the situation where they're going to face their offender without the proper advocacy and without the proper preparation and without any supports in place, and you'll just destroy them. So the question is this thing of, oh, no, the victim must forgive. Well, I can tell you, the pressure that I've been put under to forgive was huge, and I kept saying to myself, if Jonathon Yeo were alive, could I forgive him? I consider myself a humane and rational person, but I'm not sure that I could. And I'm not sure that I should be forced to do that.

The story is that a victim has to forgive to move on, and that too is simplistic. Now we get to the point of, how do you understand who needs what in order to move on? And who should say, at what point in my development, I should be required to reach that level? Because one of the worst problems when you're very badly victimized — and even if it's that you're robbed and you lose all sense of confidence and sense of self — is that the rate of recovery changes with each person. It's totally different with each person, and that's why families break up, because people need different supports at different times. There are huge stresses that are going on, and you could be at any point in that when you're called to come and go to court or, in this case, come and meet the offender. Now, is the offender going to be left for years possibly to have this reconciliation? Who is going to be brought to the table before they're ready? In terms of serious crime, I am extremely wary of it.

### **David Cayley**

Priscilla de Villiers limits her reservations about restorative justice to serious crime — an important qualification. As a victims advocate, she has mainly been concerned with others, like herself, who have suffered unspeakable pain and destruction, cases where even the foolhardy would hardly dare to propose restorative justice.



But it is also true that the seriousness of crime is a relative judgment. Even apparently minor incidents can be devastating for the person whose security has been violated. And Priscilla de Villiers also bases her reservations on a sober recognition of the human potential for depravity, a recognition, she says, that was forced on her by unhappy experience.

### **Priscilla de Villiers**

On a human level, we all desperately want to believe that nobody is intrinsically bad, that people can be redeemed and rehabilitated. Much of our religious background brings us to that. I think that we are, in fact, a very innocent society. We always try to find excuses. And I'm one of the prime movers in that. I really don't like to think ill of anybody.

I was forced to start seeing true human evil when Nina was murdered and when I started to see and hear and learn of what's happened to so many others, people who have been grievously injured. Minimal sentences, if anything, have been exacted, and these people are still walking around. You look at it and say, is this a society that is looking after the interests of good, law-abiding, vulnerable people? And you have to say no.

So I'm very concerned about the well-meaning amateur. I've come across so many people who have the best of intentions, the noblest of intentions, almost divine visions of what can be achieved, and that is wonderful. But the problem is, they are as blind as anyone can be when it comes down to what has happened to the victim of this. In fact, when those victims have said, "I don't want this person in my neighbourhood, I don't want this person to have access to me, take him away," you are then accused of being vengeful and vindictive and worse than that by the same people who are trying their best to see the good in the perpetrators. Victims of crime — I don't know — are the forgotten people. And if there's so little interest and so little concern and

so little understanding of what has happened to these people, how are you going to represent them in a situation where you're trying to develop some resolution?

### **David Cayley**

Priscilla de Villiers' skepticism about restorative justice grows from her feeling that Canadian society is not yet prepared to fully face the devastation produced by violent crime, nor willing to accord the victims of this violence the dignity and the support they deserve. And until this happens, she argues, there will remain a danger of victims being railroaded into spurious reconciliations in the name of restorative justice.

**N**ow that you've heard Priscilla de Villiers' cautions about restorative justice, I want to turn, in the balance of tonight's program, to a second view, one that sees restorative justice as a possible answer to the alienation of victims. I'll conclude with a look at a project that tries to incorporate victims in the resolution of serious crimes. But first I want to lay out some of the analysis on which this project is based.

The analyst is Lorraine Berzins, who's been, for many years, a member of the Church Council on Justice and Corrections, an Ottawa-based consortium of Christian churches. Since its founding in 1974, it's been one of the main centres from which restorative justice thinking has spread in Canada. Like Priscilla de Villiers, her views have been shaped by her experience, in Lorraine Berzins' case, by an incident that occurred in 1970, when she was working as a classification officer at Warkworth Institution, a federal penitentiary in Ontario.

### **Lorraine Berzins**

I was working in my office, and this prisoner, whom I barely knew — he wasn't someone that I knew well — came into my office with a letter for me to read. He was very shaky and very jittery, and I read the letter under this kind of duress,

and I saw in the letter that he was saying, I am holding you hostage, and I want you to call the warden of the prison and get us a car and some \$10,000 that I know they have in there. We'll see how much they care about you. If we're able to get onto the 401 safely and I can get away, I will let you go.

Anyway, to make a long story short, he got a car. He was very, very nervous, and I think people were worried that if they didn't give in to his demand, he would use the big knife that he was wielding against me against me.

We got into the car, and we drove to another part of the prison compound, and he was waiting, hoping that they would bring him money. I was thinking all along, I've got to do something about this, I've got to do something about this.

It was a two-door car, and I was in the back seat. I asked him if I could sit in the front seat, and he let me sit in the front seat, and the minute I saw that I had a chance to make a break, I opened the door of the car and ran. The prisoner, in a rage, jumped out of the car behind me and caught me and put me back in the car and started driving quite recklessly out of the prison compound and said, "You really tricked me," which I had, "You really wanted to get me killed."

Then I realized that I couldn't count on other people to save me. I had to not care what other people might think of what I was doing, that I was in this on my own and I needed to muster all my presence of mind, all my sensitivity, to figure out what was going on here, really let go of my stereotypes of hostage-taker and what all this means and just really go from my gut to deal with the situation. What I felt is that because he was so frightened, he was driving recklessly — and that was the No. 1 danger to me — and that he thought I wanted to see him killed, and I had to help him change his perception around that because that wasn't my intention at all.

I really grabbed for something and had the intuition of asking him if he had a sister, and he did. I was lucky that he did. I said, "Now, I want you to realize that I feel the way she would feel if this was happening to her. I don't want to die. I'm scared. And it's not that I wanted you to be killed when I did that. I wanted to save myself." He responded to that, and he began to see me as a person, like his sister, and he began to respond accordingly.

### **David Cayley**

This understanding eased the atmosphere, but Lorraine Berzins remained a hostage for many tense and eventful hours. The car broke down on the 401, and the police, who had formed the impression that Berzins was on the side of the prisoner, caught up with them. After a standoff by the side of the road, they were allowed to continue under police surveillance, and finally the prisoner surrendered. One of the things that helped bring the incident to an end was the fact that the prisoner's mother, unexpectedly and for the first time, showed up at the penitentiary.

### **Lorraine Berzins**

It was a complete fluke. She arrived, to be told that her son had just taken a hostage, and her immediate reaction was, I'm sure that if I can just talk to him, I can talk him out of it, bring him to his senses. So the police arranged for a meeting between his mother and brother, who was with his mother, and him and us on the beach in Port Hope, because that's where we had gotten to.

We pulled up there around 6 pm, and the minute he saw his brother come running towards him, he melted. He handed over his knife. He turned to me and said, "I haven't hurt you, have I?" He gave me a kiss on the cheek and just said to his brother, "Look, I haven't hurt her." And it was over. It was over.

The consequences after that were that the police were angry at me. They felt that I had handled it in a way that had made their job harder. But

because I was someone with some standing and some credibility and lots of supports, I was able to overcome that reputation and go on with my life. But he continued to have lots of difficulty. He got more time for it.

He tried to remain in contact with me. He wrote me a letter and asked if I could be his friend, because I think something had happened in the interaction that made him realize that I did not wish evil on him and did not wish him harm, and he had been able to be who he was and not get completely beaten up for it. I had a really difficult decision to make because I sensed everything that had happened in him, but I also knew that the safety of other people could be in question if it was thought that this was a way you could make friends. I had to tell him that this was not a way to start a friendship.

### **David Cayley**

Shortly after this incident, Lorraine Berzins left Warkworth, but what had happened during this one dramatic day became, for her, the seed of a lifelong preoccupation.

### **Lorraine Berzins**

It shaped my life a lot. It shaped a consciousness in me at a deep level, even the fact that I could not continue that friendship, even though my whole orientation would have been to say yes to that, the fact that I had a perception of what had happened that went so counter to what people expected me to feel. People expected me to just be angry and rejecting of the person who did this to me, to absolutely just want that person to be in jail for life, if not worse. People seemed to give a message that you're a real freak if that's not how you feel, and it took me a long time to have the courage to tell people what it had really been like and what I really felt. I guess it just really opened my eyes — in deep awarenesses that I couldn't put words on for many years — to that chasm between people who have not fallen into being labelled offenders and people who have. With

the labelling and the scapegoating and the claws that get you once you've descended into being a real socially unacceptable person and labelled a criminal, it's just so hard to ever cross over that line again in peoples' perception. And it made me aware of the role of the police and the people who have the power to label other people and to assess situations according to boxes and categories, rather than what's really happening here, what are the people really experiencing. And it's not black and white, and it's not all one-sided, and you can have good things and bad things happening at the same time. I think human reality is to journey with all the ambiguities of all people and try to sort things out so that we can all live together and not just box people into one category or the other. Now, the criminal justice system makes us really box people into one category or the other. So that whole overlay we put on the real human situation, that then distorts what we do from there on, I experienced in one crash course in that hostage taking. And it's just left me with a consciousness and a pain — a thorn, I would say — that I still carry to this day. I can't forget the people who remain in prison and remain complete outcasts from the rest of society.

### **David Cayley**

Lorraine Berzins had been a victim, but she could not accept the part as it was written. She began to seek a way out of what she calls the "boxes," the rigid routines and expectations that shape the monotonous drama of crime and punishment. Her next stop was the Prison for Women in Kingston.

### **Lorraine Berzins**

What we were tangling with and dealing with were human beings in pain, with shame, with guilt — the prisoners — with many, many social problems and previous victimizations of their own in most cases. But the only tools we had to work with were the tools of the system: boxes and categories and classifications and program slots and things that were cost-effective,

programs that could be run for a certain number of inmates at a certain cost. There was just no connection between the important stuff to work on and the tools that we had to work with.

Particularly related to women, I just came to the conclusion that criminology had absolutely nothing to offer that was of help in dealing with their problems and that, in fact, it could be a wonderful opportunity to start from scratch and to start with the person, because you had a very small number. You could easily deal with them in terms of their individual situation and really go searching in each individual situation for what's happened here, who needs what, where's the community, where has this person come from, what guilts does she need to deal with? Because that's the other thing I found in prison, that, in those days, we were so focussed on her or him as a prisoner, we never, ever stopped to consider how we should deal with what they had actually done and what the human consequences were of that for the victim that it had been done to and how their families were... all their unfinished business with the community. So the real issues that needed to be dealt with we weren't touching at all.

### **David Cayley**

Part of the problem, Lorraine Berzins concluded, is an understanding of justice as a set of highly structured oppositions: police versus criminal, prosecutor versus accused, offenders rights versus victims rights, jailer versus prisoner. These contests leave neither respite nor room for those affected to really get to grips with the harm that has been done. The trial process, for her, is typical.

### **Lorraine Berzins**

In the criminal justice system, partly because we're enlightened enough to want to respect human rights, we get an adversarial system that says that, because the punishment will be great, we need to make sure that peoples' rights are really protected before we take it upon ourselves

as a state to remove their liberty. And I think it's just set in motion a process of adversarial technical games, just legal tactics, that have absolutely decimated the integrity of the process as any kind of a moral process that can help us to come to terms with the kind of evil we have seen done here. It's lost all credibility. I don't think anybody believes that the outcome that is there is really the right moral outcome in most cases. I think many, many people realize that it depends on the skill of the lawyer, and sometimes it depends on the ability of a lawyer to play the dirtiest tricks possible in an adversarial system. And it encourages people who are accused to really not feel safe in owning up to any responsibility for anything. It encourages them to play the game as much as they can to get away with it, which inflames the situation for all the other parties who hear about it, the victim and the rest of the community. I just think it's a totally morally bankrupt process.

### **David Cayley**

One of the reasons why Lorraine Berzins thinks that our institutions of criminal justice are bankrupt is because they express what she calls an "obsolete world view." Crime is treated as an isolated act, the offender as an isolated agent. And this, for her, does not accord with a contemporary understanding of the way things actually occur.

### **Lorraine Berzins**

We understand now that individual behaviour is not solely a result of individual decisions and choices, that there's a whole web of organically interconnected forces that are influencing everything and that things in the real world don't work the way the abstractions and categories are telling us they work. Degrees of responsibility, degrees of factors that influenced what happened, degrees of culpability, effects of what happened — they have a completely different substance in the real world, as experienced. And this overlay of abstract categorization and deciding if you meet this and this and this



criterion, the solution is such and such a sentence, it's not connected to the real world at all. And this emphasis on trying to find proportionality between the seriousness of what you have done and the seriousness of the sentence that you should be given, it's completely an abstract concept, and in the real world, that's not the way things are. There's also just the fact that what's happened in the incident itself, which is where the telescope or the microscope gets focussed through the criminal justice system, is just the thin edge of the wedge, the tip of the iceberg, in relation to the whole context for it happening, the divisions and injustices in society that were there already. So just pick out one injustice that happened when one person hit another person is magnifying out of proportion something that belongs in a much bigger context.

### **David Cayley**

Enlarging the context, Lorraine Berzins admits, will not be easy. The criminal justice system may falsify and oversimplify the reality of crime, but it also estranges this reality and keeps it at a safe distance. Someone is to blame. Someone is being punished. Adopting a more ecological view of crime, she recognizes, would demand much more of the citizenry, and this is a prime reason why things tend to stay as they are.

**T**reating crimes as isolated acts warranting only punishment, Lorraine Berzins has been arguing, produces an abstract and unsatisfying justice, a justice which inflicts new wounds, instead of healing old ones. In response to this dilemma, she and several colleagues have created something called The Collaborative Justice Project. Its purpose, in the words of a pamphlet produced by the project, is "to demonstrate how an approach that promotes healing and repair in cases of serious crime can deliver more satisfying justice to victims, the accused and the community." Located at the Ottawa courthouse, the project began in September of 1998 and will run for

two-and-a-half years. The coordinator is Jamie Scott, a longtime colleague of Lorraine Berzins at the Church Council on Justice and Corrections. He says that one of the reasons that they wanted to take on serious crime is because they feared that restorative justice was being typed in criminal justice policy as an approach suitable only for minor cases.

### **Jamie Scott**

We started to hear from the Department of Justice what I would characterize as a two-track policy; that is, that there was more of an openness to the use of alternatives for non-violent or minor offences and a determination to get harsher with serious crime. To me, that's totally nonsensical from a restorative point of view, because if you believe that restorative justice is a paradigm shift, which starts from a different place — it looks at crime differently than the breaking of a law, it looks at crime as harm done between people — then more serious the harm done between people, the more important the need for a healing approach. That's a false dichotomy, it seems to me.

### **David Cayley**

To try to overcome this dichotomy, the Collaborative Justice Project takes cases referred by the provincial court in which a jail sentence is the likely outcome. These cases remain before the court, and a plea is entered, but sentencing is postponed until Jamie Scott and his colleagues have had a chance to work with the concerned parties.

### **Jamie Scott**

This project is based very, very firmly on what I believe is the fundamental principle of restorative justice, and that is that the process has to be equally in the interest of, and invite the equal participation of the three fundamental parties: the accused, the victims and the community. All of them have to have a place at the table, all of them have to be there voluntarily, and all of them have to have an equal say. So we don't take

cases where the victim isn't interested. We don't take cases where the accused isn't going to take responsibility.

By "community," we mean the family members of the accused or the family members of the victim. It can mean neighbours or other people, other store owners, neighbouring store owners, who may have been affected by an incident. Or, thirdly, it can mean representatives of the larger society. And we have some volunteers with the project who do play a role in it as representatives of the larger community.

### **David Cayley**

If both the victim and the offender want to meet, this will be arranged. Friends, family and community members may also be present, along with facilitators from the project. They sit in a circle.

### **Jamie Scott**

Those circles have never taken less than three-and-a-half hours and can take up to six-and-a-half or seven hours. They're very intense. We use a circle process where each person gets to speak for as long as they need to, and we talk about what happened. We go around another time to talk about what was the impact of what happened, and, thirdly, what is it that needs to be done to repair the damage? That takes a long time to work through all that, and there's a lot of emotion, and there's a lot of clearing up of misunderstandings.

Victims often want a number of things from those kinds of meetings. They want answers to their questions because a lot of victims are left with why. Why me? Why did you do what you did? They also want an opportunity to get an apology and to judge for themselves if the person is telling the truth or sincere, and that usually means face-to-face. They often want an opportunity to tell the other person, this is how what you did has impacted my life, what you did to me, will never leave me, this will stay with me

forever, I want you to understand what you did to me. They often want to have a voice in how things are resolved. So there's a number of reasons why people may choose to meet.

If during that circle process they do arrive at a resolution proposal, that is, a package of ideas or things that the accused person could do to repair the damage, then that goes to the court at the time of sentencing for consideration by the judge. If they choose not to develop a resolution proposal, just to talk out what happened and the impacts for understanding but they don't want to say anything to the court — and sometimes victims don't want to influence the court decision or the court sentence — then we don't send anything to the court. The only thing that ever goes to the court is a resolution agreement, if and when there is one.

### **David Cayley**

The cases that the Restorative Justice Project takes on reflect the workaday reality of the criminal courts, a reality quite unlike the diet of sensational crimes that news media feed to the public. Stupidity, desperation and carelessness are more common than active malice. A staple is careless and dangerous driving charges. One case of this kind involved a young man who accidentally ran down and killed a woman on a bicycle.

### **Jamie Scott**

He was able to talk about how he had thought of her since the time it happened and the impact of the death on him. And it was clear to everybody in the room that he was devastated by this, that he felt very, very sorry, that it had been life-changing for him. By the end of the circle, there was an agreement, and there was a sense of forgiveness. Not a forgiveness that means that it didn't matter, but a forgiveness that meant that somehow they had seen each other, the two parties, as human beings, and had come to some kind of understanding with each other, some kind of healing, some kind of closure. Then

when he went to be sentenced in the court, the families sat together.

**David Cayley**

The generosity the bereaved family showed to this young man was made possible by the understanding that was reached in the circle. Each case is singular, but the emergence of understanding and mutual interest is something that Jamie Scott has seen a number of times. Another case involved a young man who had stolen a car, broken into a store and then been chased at high speed by the police.

**Jamie Scott**

He ended up paying significant restitution to the woman whose car he'd stolen. He did work at the store that he had broken into. He put in a number of days of work there. He offered an apology to the police officer. He went on a police ridealong to learn about the dangers that police face when they're having to pull over cars and not know who's inside. He's undertaking a number of hours of community service, and he's seeking some counselling. So these are all things that people felt would actually help him, not only to deal with some of his issues, but also give him a sense that he had repaired the damage in a way that would be reinforcing the sense that, yes, he'd done wrong, but he'd faced it, and he'd dealt with it, and now he had some self-respect, as opposed to simply being stigmatized as a loser.

**David Cayley**

Such opportunities to make amends allow the offender a way out of his disgrace. But he is also required to face the destruction and sometimes terror for which he has been responsible. And this happens in an atmosphere of sincerity, in which this harm is much harder to avoid or deny than it is in the antagonistic setting of the court. One such case involved a bank robber meeting with two tellers he had held up.

**Jamie Scott**

We've heard from bank robbers several times that, well, the tellers are trained for this, and the money is insured, and, therefore, nobody really gets hurt in a bank robbery. This is the thinking that, I guess, allows them to feel they're not really doing anything that serious.

We had a circle one time with two bank tellers, and they were very, very upset by the bank robbery. It had scared them personally, and this was over a year later, and they were still very fearful when strangers came into the bank or people who wore a certain kind of hat or had a certain kind of bag. This teller looked at the offender in the circle and said, When I was counting out the money for you, I was sure that I was going to die. What ran through my head in those seconds was, I was never going to have a child. I was never going to get married. I was never going to see my parents again. All of these things went through my head because I believed you were going to shoot me, either right there in the bank or you were going to follow me later and shoot me because I was able to identify you. And he was just totally blown away because he'd given her a note that said, "I have a gun. Give me the money," but he didn't have a gun. He just wanted the money. He didn't really want to hurt anybody. He thought he had to scare her in order to get the money, but he wasn't really trying to scare her in terms of making her feel threatened.

This is the sensitization process that goes on. All of a sudden for him, he realized that, for her, it had been a near-death experience, it wasn't a simply robbery, and that for weeks after that she had changed her appearance and walked to work in a different way. And for months after that, she'd been having nightmares and been afraid, when she'd come home at night, that he was behind the bushes and that somehow he was going to come back and get her, because she could identify him. She carried that fear for months and months and months. She was able

to tell him that. She said, "You stole my innocence, and I will never get that back." You can just see that, no matter how much preparation I've done with him, his awareness of the impact of what he's done is deepening and deepening and deepening. And I think that's the reason why restorative justice processes are going to lead to less re-offending, because I do think it's an opportunity, not only for people to take responsibility, which is a good thing, but to hear the extent of the damage that they've done, which is something that they often don't understand, and, thirdly, they have an opportunity to repair it, which rebuilds their self-dignity, their self-respect. She was able to say, at the end of the circle, that a huge weight had been lifted off her shoulders.

**David Cayley**

The Collaborative Justice Project has now been in operation for a year and a half, and Jamie Scott has begun to draw some conclusions. They've had some problems, he says, with the machinations of defence lawyers, which have often prevented cases from reaching them in good time. But a few things have emerged very clearly, and one of them is a consistent sense of what victims want.

**Jamie Scott**

One of the things that I find that most victims want, in addition to an apology — and it comes up over and over again — is that they want to know that this isn't going to happen again. It's almost as if their own pain, which can't be totally undone, is redeemed or is given some meaning if they can be assured that somehow their experience and what they do with it can assist this person in such a way as they never victimize someone again.

I rarely find victims who fit the public stereotype of the vengeful people who are only looking for harsher and harsher sentences. There is often an immediate assumption that the person should go to jail. But as people get engaged in the

process, their interest really has been, how can we work together to make sure this doesn't happen again?

**David Cayley**

Jamie Scott finds a striking difference between the stereotype of the angry victim and the actual behaviour of victims in settings where they are cared for and can have influence. The difference can be explained, he thinks, by the fact that his project has offered victims new possibilities, possibilities that don't exist in the prosecute-and-punish model of justice.

**Jamie Scott**

I believe that the victims movement is the product of the fact that our system really has left victims out all these years, has never concerned itself with the variety of needs that people have when they're hurt and traumatized. The only thing we offer them that's any kind of comfort is the severity of the penalty, and, of course, the severity of the penalty is never enough because it doesn't address a whole lot of other needs that people have, needs for support and information and someone to listen to them and needs for accountability and safety and all those kinds of things that people have. As long as we don't give people anything along that line, then all the focus is put on the sentence. Was it severe enough? Was it long enough? Was it harsh enough? Because that's all there is.

**David Cayley**

By expanding the available possibilities, Jamie Scott and his colleagues have shown that restorative justice can be satisfying justice for both victims and offenders. Their finding challenges the conventional idea that one must be either for the victim and, therefore, want to heap torment on the offender or for the offender and, therefore, against the victim — tough on crime or soft on crime. The Collaborative Justice Project has gone beyond this binary logic, and in the process, it has demonstrated that fully incorporating the victim into criminal justice need



not mean more punishment, more hostility or more social polarization.

There remain real differences between the enthusiasm Lorraine Berzins and Jamie Scott have expressed for restorative justice and the skepticism indicated earlier by Priscilla de Villiers. But within this apparent opposition, there are also interesting convergences and overlappings, above all, on the central place of the victim in criminal justice.