

Dialogue-Driven

Victim Offender Mediation Training Manual

A Composite Collection of Training
Resource Materials

by

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Parts of this manual were initially produced as a product of a grant from the Office for Victims of Crime, U.S. Department of Justice to the Center for Restorative Justice & Mediation, and copyrighted in 1998 as *The Victim Sensitive Victim Offender Mediation Training Manual*. Within that edition were some parts written or prepared by William Bradshaw, Ph.D., Marlene Young, and Jean Greenwood, M.Div., and these were also in the updated version of January 2006.

Note: This 2015 manual edition is designed to be a large composite of materials that cover restorative justice and victim offender dialogue work. It is not designed to be a fully reproducible edition for a single training purpose. Secondly, while restorative conferencing and victim offender mediation in the realm of criminal justice are the primary models covered in this manual, much of the content has wider applications for other work involving restorative dialogue.

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What Makes for a Good Trainer

by Ted Lewis

A good trainer...

- **Gives not only information but inspiration.** Not only does the trainer model this head/heart balance, but also helps trainees to learn through both the head and the heart.
- **Draws from a variety of learning styles.** Rather than relying on just one or two mediums for instructing, the trainer can move freely between multiple mediums and styles, knowing that participants learn things in a variety of ways.
- **Moves easily between theory and real life examples.** In the same way a picture is worth a thousand words, illustrations from real life communicate quickly and effectively, and also ground the principles that are being taught.
- **Finds a balance between flexibility and a structured outline.** Too much structure is brittle; too much looseness is like liquid without a container. But within certain limits, trainers can adapt and adjust according to the many variable of training and trainee needs.
- **Communicates the value of participant input.** After inviting input and participation from trainees early on in the training, the trainer follows through well to create space and time for this input, but at the same time also knows when and how to put limits on this.
- **Engages participants and doesn't just wait to be engaged.** For example, time for questions and answers is a two-way street and trainers need to pose good questions to stimulate everyone's thinking, and not just cater to the questions of a few.
- **Knows which questions keep things on track.** A trainer can distinguish questions that further the central themes of learning from questions that move things off track. Hence, trainers need to know the train tracks well and where they lead to. Questions that move off the track get shorter answers.
- **Uses humor throughout the training.** This is like making food taste good. It makes for a lasting impression, and raises the confidence that others can live into the topics.

- **Conveys a relaxed pace that can cover all essentials.** When trainees sense that a trainer is trying to pack in more 'important' content within a limited time, their learning capacities decrease and they feel anxious about not learning enough. One of the most important qualities of a good trainer is to not convey a sense of rushing through the material.

Most importantly, a good trainer know his or her trainees well.

This is not simply a matter of knowing who they are by name, background, interest, etc., and adjusting to their demographics. It is primarily a matter of knowing them *during* the training as learners. It involves reading them well (like a comedian who can read the audience) and responding accordingly. A good trainer knows to some extent what people are learning, how fast they are learning it, and even which trainees are learning at a slower pace. This is because the trainer works with a feedback loop to be in touch with all of the learning dynamics of the trainees, checking in both directly and indirectly. The bottom line is that you can never assume what is given in communication is received in communication. The art of successful training is largely a matter of being in tune with what people are receiving.

RESTORTATIVE JUSTICE THROUGH VICTIM OFFENDER MEDIATION

MARK S. UMBREIT, Ph.D.

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One of the more significant international developments in our current thinking about crime is the growing interest in restorative justice. At a time when the public debate around issues of crime and punishment is largely driven by political leadership embracing the conservative or liberal solutions of the past, restorative justice offers a fundamentally different framework for understanding and responding to crime and victimization within American society. Restorative justice emphasizes the importance of elevating the role of crime victims and community members, holding offenders directly accountable to the people they have violated, restoring the emotional and material losses of victims, and providing a range of opportunities for dialogue, negotiation, and problem solving, whenever possible, which can lead to a greater sense of community safety, conflict resolution and closure for all involved.

In contrast to the offender driven nature of our current systems of justice, restorative justice focuses upon three client groups: crime victims, offenders, and community members. It represents a growing international movement with a relatively clear set of values, principles and guidelines for practice, while at this point in its development lacking a comprehensive plan

for broad implementation as a new paradigm to fully replace our current systems of juvenile and criminal justice.

UNRESOLVED ISSUES FACING THE JUSTICE SYSTEM

The emergence of restorative justice policies and practices is directly in response to numerous unresolved issues facing juvenile and criminal justice systems throughout the free western world. In the United States, these unresolved issues have had an enormous impact on public policy, individual and community attitudes, and the quality of justice experienced by those most directly affected by crime.

With an ever increasing emphasis upon retribution, there still exist contradictory impulses between punishment and rehabilitation among many correctional policy makers and practitioners. A lack of clarity exists about the basic purpose of sentencing. Is it meant to rehabilitate and change offender behavior? Are criminal sentences meant to deter others from committing crimes? Or, should the purpose of sentencing be to simply incapacitate, or remove, the criminal from circulation in society for a set period of time? These and other goals contribute to on-going confusion about what courts are trying to achieve.

Victims of crime feel increasingly frustrated and alienated by our current systems of justice. Even though the justice system exists precisely because individual citizens have been violated by criminal behavior, crime victims have virtually no legal standing in the process of doing justice in American courts. The crime is against "the state" and state interests drive the process of doing justice. Individual crime victims and representatives of victimized communities are left on the sidelines of justice, with little, if any input. Crime victims frequently feel twice victimized: first, by the offender, and second, by the criminal justice system that their tax dollars are paying for. For many crime victims their encounter with the justice system leads to

increasing frustration and anger as they are largely ignored, and are often not even provided with information about the process, court date changes, and the final disposition of the case. Rarely do criminal justice professionals take the time to listen to the fears and concerns of crime victims and then seek their input and invite their participation in holding the offender accountable.

The failure of increasing punishments to change criminal behavior is another problem facing our nation's juvenile and criminal justice systems. If severe punishment and incarceration were effective, America should be one of the safest societies in the world. Despite the common perception among many citizens that the United States is too lenient on criminals, the fact is that more Americans are locked up in prisons, per capita, than in any other developed nation in the world. In a similar vein, sentences in the U.S. are far in excess of those in other democratic western nations. The U.S. is the only developed nation to routinely advocate and use capital punishment.

Finally, the skyrocketing cost of corrections, and incarceration specifically, is driving a growing number of legislatures and policy makers to reconsider the wisdom of the current retributive system of justice which relies so heavily upon incarceration, while largely ignoring the needs of crime victims.

WHAT IS RESTORATIVE JUSTICE?

Restorative justice is a victim-centered response to crime that provides opportunities for those most directly affected by crime - the victim, the offender, their families, and representatives of the community - to be directly involved in responding to the harm caused by the crime. Restorative justice is based upon values which emphasize the importance of providing opportunities for more active involvement in the processes of offering support and assistance to crime victims; holding offenders directly

accountable to the people and communities they have violated; restoring the emotional and material losses of victims (to the degree possible); providing a range of opportunities for dialogue and problem solving among interested crime victims, offenders, families, and other support persons; offering offenders opportunities for competency development and reintegration into productive community life; and strengthening public safety through community building.

Restorative justice provides an entirely different way of thinking about crime and victimization. Rather than the state being viewed as the primary victim in criminal acts and placing victims and offenders in passive roles, as is the case in the prevailing retributive justice paradigm, restorative justice recognizes crime as first and foremost being directed against individual persons. It assumes that those most affected by crime should have the opportunity to become actively involved in resolving the conflict. Restoration of losses, allowing offenders to take direct responsibility for their actions, and assisting victims in their journey of moving beyond their frequent sense of vulnerability by means of achieving some closure, stand in sharp contrast to focusing on past criminal behavior through ever-increasing levels of punishment. Restorative justice attempts to draw upon the strengths of both offenders and victims, rather than focusing upon their deficits. While denouncing criminal behavior, restorative justice emphasizes the need to treat offenders with respect and to reintegrate them into the larger community in ways that can lead to lawful behavior. It represents a truly different paradigm based upon the following values:

1. Restorative justice is far more concerned about restoration of the victim and victimized community than simply the ever more costly punishment of the offender.

2. Restorative justice elevates the importance of the victim in the criminal justice process through increased involvement, input and services.

3. Restorative justice requires that offenders be held directly accountable to the person and/or community that they victimized.

4. Restorative justice encourages the entire community to be involved in holding the offender accountable and promoting a healing response to the needs of victims and offenders.

5. Restorative justice places greater emphasis on having offenders accept responsibility for their behavior and make amends, whenever possible, than on the severity of punishment.

6. Restorative justice recognizes a community responsibility for social conditions which contribute to offender behavior.

In a very real sense, the theory of restorative justice provides a blueprint for moving into the new century by drawing upon much of the wisdom of the past. Dating all the way back to twelfth century England, following the Norman invasion of Britain, a major paradigm shift occurred in which there was a turning away from the well-established understanding of crime as a victim offender conflict within the context of community. William the Conqueror's son, Henry I, issued a decree securing royal jurisdiction over certain offenses (robbery, arson, murder, theft, and other violent crimes) against the King's peace. Prior to this decree crime had always been viewed as conflict between individuals, and an emphasis upon repairing the damage by making amends to the victim was well established.

Restorative justice also draws upon the rich heritage of many recent justice reform movements, including community corrections, victim advocacy, and community policing. The principles of restorative justice are particularly consistent with those of many indigenous traditions, including

Native American, Hawaiian, Canadian First Nation people, and Maori people in Australia and New Zealand. These principles are also consistent with values emphasized by nearly all of the world religions.

Many of these principles can also be seen in the pioneering work of the Australian scholar John Braithwaite who addresses the issues of crime, shame and reintegration. Braithwaite (1989) argues for "reintegrative shaming," a type of social control based upon informal community condemnation of wrongdoing, but with opportunities for the reintegration of the wrongdoer back into the community. He states that the most effective crime control requires active community participation "in shaming offenders, and, having shamed them, through concerted participation in...integrating the offender back into the community." Braithwaite notes that societies with low crime rates consist of people who do not mind their own business, where there exist clear limits to tolerance of deviance and where communities have a preference for handling their own problems. Braithwaite argues for principles of justice which emphasize personal accountability of offenders, active community involvement, and a process of reconciliation and reaffirmation of the offender, principles which are deeply embedded in the restorative justice paradigm with its emphasis upon mediation and dialogue whenever possible.

The distinction between the old paradigm of retributive justice and the new paradigm of restorative justice has been most clearly articulated through the pioneering work of Howard Zehr at the Conflict Transformation Program of Eastern Mennonite University in Virginia, as summarized in the continuum chart below. Whereas retributive justice focuses on punishment, the restorative paradigm emphasizes accountability, healing and closure. (The chart that follows was adapted from a chart by Lorraine Stutzman Amstutz and Howard Zehr, 1998.)

RETRIBUTIVE JUSTICE  RESTORATIVE JUSTICE

Crime defined by violation of rules	Crime defined by harm to people
Crime seen separate from harms / conflicts	Crime seen as related to harms and conflicts
State as victim	People and communities as victim
State and offender as primary parties	Victim and offender as primary parties
Interpersonal dimensions irrelevant	Interpersonal dimensions central
Offense defined in technical/legal terms	Offense seen in full context: relational, moral, social, etc.
Guilt is absolute, either/or	There are degrees of responsibility
Guilt is indelible (permanent)	Guilt is removed thru repentance/reparation
Debt paid by punishment	Debt paid by making things right
Accountability = "taking your medicine"	Accountability = taking responsibility
Blame fixing is central	Problem solving is central
Focus on the past	Focus on the future
Contestual, adversarial models normative	Dialogue and cooperation models normative
Justice tested by intent and process	Justice tested by constructive outcomes
Process alienates people	Process reconciles people
Victims' needs ignored	Victims' needs central
Offender is socially stigmatized	Offender is offered social reintegration
State monopoly on determining resolution	Victim, offender, community roles recognized
Proxy professionals are the key players	Victim and offender key players; professional help is available
Win-lose outcomes assumed	Win-win outcomes encouraged
Restitution is rare	Restitution is normal

Principles and Models for Restorative Justice

The following is excerpted from "Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers," **by Mark S. Umbreit, Ph.D., Director, and Robert B. Coates, Ph.D., Senior Research Associate**, prepared for the Office for Victims of Crime by the Center for Restorative Justice & Peacemaking (formerly Center for Restorative Justice & Mediation) School of Social Work, University of Minnesota St. Paul, Minnesota, April 2000.

Six principles shape the framework of restorative justice: the nature of crime, the goal of justice, the role of victims, the role of offenders, the role of the local community, and the role of the formal criminal/juvenile justice system.

- 1. The nature of crime.** Crime is a human process whereby humans violate both personal relationships and social relationships implied as a consequence of being part of a community. Crime is not merely an act of breaking laws of the State; it is a tearing of the social or community fabric. Crime is the violation of one human being by another.
- 2. The goal of justice.** The proper goal of justice is to repair the damage done and restore relationships, both personal and communal, to their original state to the extent possible.
- 3. The role of victims.** Restoration for victims of crime can happen only if they have the opportunity to choose involvement in a justice process that meets their need for validation as individuals who have been hurt. Victim involvement may include receipt of information, dialogue with the offender, resolution of conflict with the offender, restitution, reduction of fear, heightened sense of safety, partial ownership of the process, resolving the experience, and renewal of hope.

4. The role of offenders. Restoration for offenders who commit criminal or delinquent acts can happen if they have the opportunity to accept their responsibilities and obligations toward individual victims and the community as a whole. Such opportunity may include defining their obligations, participating in safe, mediated face-to-face encounters with victims, understanding the impact of their own actions, providing restitution in creative ways, identifying their needs, having partial ownership of the process, resolving the conflict, and renewing hope.

5. The role of the local community. Restoration for the local community can happen if its resources are brought to bear on the needs of victims and offenders as well as in prevention of delinquent and criminal acts.

6. The role of the formal criminal/juvenile justice system.

Restoration for the formal criminal/juvenile justice system can happen if it continues to work to ensure victim and offender involvement that genuinely engages all participants without coercion. As it seeks to promote justice in the community, this system must continue to monitor accountability, exhausting the least restrictive interventions for offenders before moving toward incarceration alternatives.

Restorative Justice: Program Adaptations

Program models that reflect restorative justice principles to varying degrees include community reparation boards, family group conferences, circle sentencing, and victim-offender mediation (VOM) (Bazemore and Griffiths, 1997). There are many others, but these types are the most frequently used

today.

Community reparation boards, as practiced in Vermont, encourage victim involvement, but the extent of victim participation varies considerably. Community reparation boards in the Vermont Reparative Probation Program are responsible for monitoring contract compliance, whether offenders and victims have worked out mutually acceptable restitution agreements or whether an agreement has been established by the board or some other judicially empowered authority. These boards often refer victims and offenders to mediation, although such referrals are not mandatory.

Family group conferences, developed in Australia and New Zealand and replicated elsewhere, focus heavily on the needs of the offender by shaming the offender and reintegrating him or her back into the community. While some importance is assigned to meeting with victims—not necessarily the specific victims of the offender’s actions—and representatives of the larger community, the emphasis is on educating the offender. The more the victim perspective is developed as a counterbalance to retributive justice by giving attention to reparation, empowerment, and support, the more family group conferencing fits into the restorative justice framework.

Circle sentencing places considerable emphasis on victim needs. The impetus for the program comes from the community. Victims, representatives of the community, and elders meet with the offender. Victims are encouraged to tell their stories to their neighbors, who are present in the circle. Offenders are present and may also have friends and relatives present. The goal of the process is to develop consensus on an appropriate sentencing plan that addresses the concerns of all parties. Maintaining a balance between the needs of both victim and offender is a continuing struggle.

Victim-offender mediation strives to balance the needs of victims and

offenders and is practiced in a variety of ways in many States, provinces, and countries. In VOM programs, the victim meets with the offender after the program's staff has completed preparatory work with each participant. Sharing the stories of the victim's and offender's experiences and working out ways for the offender to repair damages to the victim and the community are emphasized.

Each program, along with many others, pursues restorative justice frameworks in real-world settings. Although the implementation of restorative justice principles has made a considerable impact on the criminal justice process, much more needs to be done to change the system's emphasis from retributive to restorative. Legal, procedural, and attitudinal constraints of the existing formal justice system, expectations of key participants, and inertia in the face of change inhibit progress.

Overview of Restorative Justice

Restorative Justice Basics

Restorative justice is an approach to justice that focuses more on the harm done than the law broken. Legal concerns are important, but relational concerns can often be minimized in a justice system that only addresses the broken law and establishes a punishment to match up to this violation against the state. But when violations to the victim and community are set in the center of the stage, responses to crime require that offenders understand the impacts of their actions and take responsibility to repair the harm done. In this light, restorative justice seeks to give balanced attention to the needs of victims, the needs of offenders, and the needs of the community. It also engages all three of these parties in ways that opens up dialogue and empowers them to be the primary players in determining appropriate resolutions.

Two Key Principles about Restorative Justice:

- Focus is on the HARM done more than the LAW broken
- Process ENGAGES and EMPOWERS main players involved:

VICTIMS

OFFENDERS

COMMUNITIES

"Restorative justice requires, at minimum, that we address victims' harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders, and communities in this process." - Howard Zehr

Since the late 1970s, research on dialogue-based restorative programs has shown higher restitution payback rates and lower recidivism rates for offenders, greater levels of satisfaction with processes and outcomes by both offenders and victims, and reduced fear and emotional strain for victims.

Restorative Justice Practices

When moving from restorative principles to restorative practices, one key feature continues to remain in the center of a restorative justice process:



Unlike justice processes in courtrooms that tend to restrict the flow of information and communication, giving professional stakeholders the primary roles in discussion and decision making processes, restorative models tend to open up conversations between the key players who were involved in the crime, giving them the primary role to discuss things and make decisions for resolving matters. These processes are generally led by third-party helpers who guide safe, constructive communication between victim, offender and community stakeholders. Third-party helpers can be mediators, facilitators, circle keepers, and panel conveners.

Restorative justice has its roots in ancient and tribal traditions, but has risen strong on the worldwide scene since the mid-1970s. As a result of this new growth, many indigenous, community-oriented traditions have been revitalized. At the same time, these centuries-old traditions have informed a number of practices in the restorative movement including the role of elders, the inclusion of family, the reintegration of the offender, and the power of listening in circle processes. In this context of the spreading and sharing of alternative models for resolving crimes and conflicts, **four main dialogue-based models** have stood the test of time:

MEDIATIONS	PANELS
CONFERENCES	CIRCLES

Restorative Justice Dialogue

Common denominators in all four of these restorative dialogue processes include:

- Adequate preparation of parties
- Attention to the web of relationships
- Guidance by third-party helpers / facilitators
- Invitation for support people and family to be present
- The power of storytelling and listening
- The importance of being heard and understood
- Practical agreements that are created by all involved

These core features give greater attention to communication processes more than legal processes. In this light, **restorative justice prefers inclusive, collaborative, dialogue-driven processes that result in consensual outcomes.** Unlike win-lose outcomes that often result from legal processes, restorative justice emphasizes good communication and trust-building that foster win-win outcomes. The primary role of third-party helpers and conveners is not to solve problems for other people but to create the proper space in which parties can meet each other, discuss the issues, come to deeper understandings about the other party, and solve things themselves.

Typical discussion content in restorative dialogue work covers:

1. **What happened?** (the Information)
2. **Who was affected?** (the Impacts)
3. **What repairs can be made?** (the Resolution)

This outline fits well with helping parties to progress from the PAST through the PRESENT to the FUTURE. That is the main goal of restorative justice: helping all parties to reach a better future that is no longer held captive to the hard things of the past. While bringing victims and offenders together for dialogue is often viewed as the most important feature of restorative justice, it is not the main goal. The main goal is to help parties to move forward in life *whether or not they have face-to-face dialogue*. There are many other ways to help victims and offenders to journey forward, and good restorative programming can adapt processes to allow any client to reach a better future. The use of community members, for example, can greatly help with modified models that still ensure good restorative dialogue.

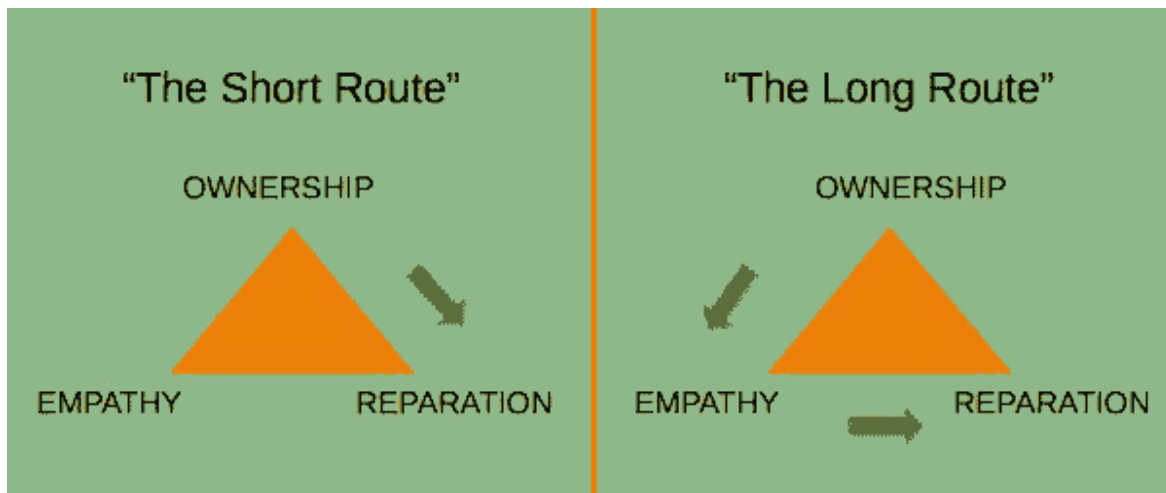
Restorative Justice Building Blocks

One way to sum up the essence of a good restorative process is its capacity to integrate healing and accountability.

GENUINE HEALING + **MEANINGFUL ACCOUNTABILITY**

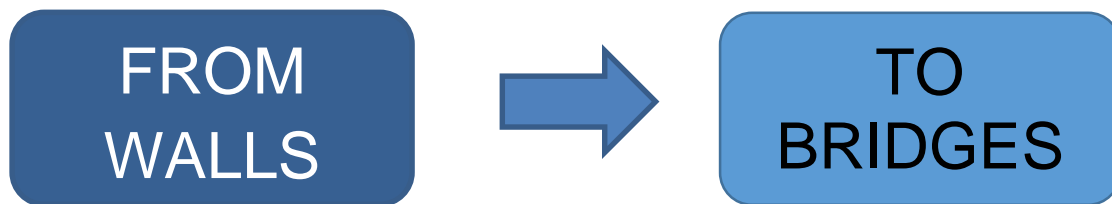
Through open communication, victims experience degrees of healing when their experience is validated. Offenders too, having often been victimized in prior situations, experience a type of healing when they are dignified in a justice process. This support does not diminish their accountability. In fact, respectful engagement of offenders heightens their internal capacity to be accountable, not in the sense of 'taking your medicine', but rather as a giving back of positives to replace the negative damage. This heightened sense of **responsibility is in truth an offender's RESPONSE-ABILITY** to make things right again with their victims. But to get to that responsive point, they have to hear and learn about how the victim was affected. Through this, offenders gain empathy and thus find greater internal motivation to make amends and not repeat violation crimes against others.

Instead of a quick fix, restorative dialogue seeks a longer route through the empathy experience, where victims and offenders see the humanity of the other, and this leads to a richer, longer-lasting reparative outcome.



Restorative Justice Dialogue (continued)

Crime creates walls of distrust between parties, and distrust makes it hard for good communication to happen. Conversely, restorative dialogue processes emphasize good and open communication as a way to rebuild trust and replace walls of negative emotional energy with bridges of trust.

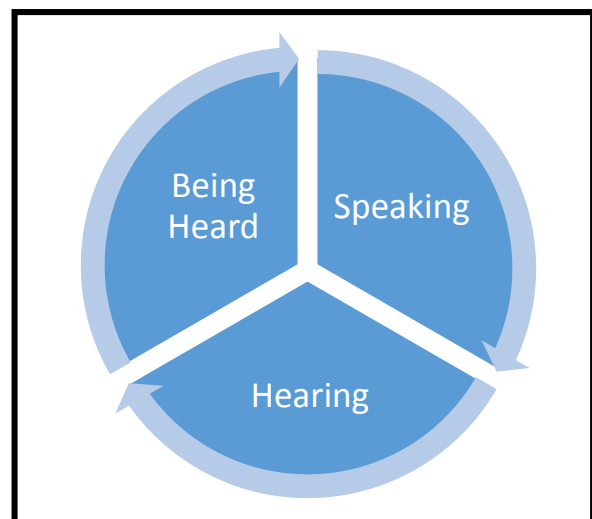


Because people experience lowered trust and the resulting blockage of communication, crimes and conflicts can **disempower people**. Sadly, most conventional processes to resolve crimes and conflicts do little to help people regain trust or to create good bridges of communication. By keeping parties separate, these processes can even disempower people twice-over.

ALTERNATIVE DISPUTE RESOLUTION (ADR) processes, including mediation for victims and offenders, are aimed at **re-empowering people** so that they can have a stronger role in shaping better outcomes and better futures. Effective ADR models seek to raise trust levels between parties facilitating good communication.

The role of mediators, facilitators, and circle keepers is to create safe spaces in which parties can have positive, empowered conversations where they speak, listen and be heard well by the other so that trust can be rebuilt and relationships can be restored.

“Those who facilitate or mediate conflicts need foremost to bear witness rather than get lost in problem solving or advice giving. Bearing witness is about honoring the strength and resilience of people on a healing journey.” – Mark Umbreit



Restorative Justice History and Growth



Centuries-old Indigenous Practices. Most tribal-based cultures worldwide have preserved community oriented practices for resolving crimes and conflicts that share many components with restorative justice. These include the voicing of impacts to the community and the reintegration of the offender back into the community. They also include the power of storytelling and the respected wisdom of elders. Many of these traditions, though lost through the era of colonialization, have been revitalized in recent decades as a result of the restorative justice movement.

The 1974 Elmira Case. An unprecedented justice process in Kitchner, Ontario, served as a significant catalyst for the rise of restorative justice in North America. Two teenagers, under the influence of alcohol, destroyed 22 different properties in a rural town. Mennonite Central Committee workers Mark Yantzi and Dave Worth asked Judge McConnell if the offenders could make direct apology and reparation to the victims, and the judge allowed for them to initiate this process by meeting every victim party at their front door. Out of this case, the Victim Offender Reconciliation Program (VORP) mediation model developed and spread through North American Mennonite networks, starting first in Elkhart, Indiana.

Circles and Conferencing Rise in the 1980's. As the mediation model began to spread, Judge Barry Stuart of the Yukon Territorial Court adapted the Sentencing Circle as a way to honor older indigenous traditions of native communities. Meanwhile, Maori practices in New Zealand developed the facilitated Family Group Conference model to address all levels of crime with the help of family members and support people.

Restorative Justice Growth and Applications

40 Years Later... The restorative justice movement has seen worldwide expansion as well as unforeseen applications on many broad levels.

WITHIN THE REALM OF CRIMINAL JUSTICE:

- **Victim Offender Mediation and Conferencing**
- **Peacemaking and Healing Circles**
- **Restorative Panels and Accountability Boards**
- **Victim Panels and Victim Support Groups**
- **Reparation Crews and Community Service**
- **Victim Empathy Classes for Offenders**
- **Re-entry Circles and Supports for Post-Incarceration**

It is helpful to chart adaptations of these services on a continuum of LEAST RESTORATIVE TO MOST RESTORATIVE (See Appendix, page)

WITHIN THE REALM OF SCHOOL PRACTICES AND DISCIPLINE:

- **Community-Building and Peacemaking Circles**
- **Affective Restorative Statements to Students**
- **Restorative Conferencing / Suspension Alternative Re-entry**
- **Peer mediation models**
- **Truancy prevention and intervention models**

WITHIN THE REALM OF TRANSITIONAL JUSTICE:

- **Truth and Reconciliation Commissions (South Africa)**
- **Indigenous, village-based courts (Rwanda, Sierra Leone)**
- **Revisiting Unresolved Legal Cases (US Civil Rights)**

WITHIN THE REALM OF CONFLICT AND DISPUTE RESOLUTION:

- **Intergroup / Intertribal / Interfaith Dialogue Forums**
- **Integrative Law Adaptations of Restorative Dialogue**
- **Parent-Teen Mediation and Facilitated Family Conferencing**
- **Workplace Setting Resolution Processes**

The Restorative Paradigm

(excerpted from "Restorative Justice Through Victim Offender Mediation" by Mark Umbreit (1998))

Restorative justice is a victim-centered response to crime that provides opportunities for those most directly affected by crime - the victim, the offender, their families, and representatives of the community - to be directly involved in responding to the harm caused by the crime.

Restorative justice provides an entirely different way of thinking about crime and victimization. Rather than the state being viewed as the primary victim in criminal acts and placing victims and offenders in passive roles, restorative justice recognizes crime as first and foremost being directed against individual persons and communities.

Restorative justice attempts to draw upon the strengths of both offenders and victims, rather than focusing upon their deficits. While denouncing criminal behavior, restorative justice emphasizes the need to treat offenders with respect and to reintegrate them into the larger community in ways that can lead to lawful behavior.

Here are six important priorities within the field of restorative justice.

1. Restorative justice is far more concerned about restoration of the victim and victimized community than simply the ever-more costly punishment of the offender.
2. Restorative justice elevates the importance of the victim in the criminal justice process through increased involvement, input and services.
3. Restorative justice requires that offenders be held directly accountable to the person and/or community that they victimized.
4. Restorative justice encourages the entire community to be involved in holding the offender accountable and promoting a healing response to the needs of victims and offenders.
5. Restorative justice places greater emphasis on having offenders accept responsibility for their behavior and make amends, whenever possible, than on the severity of punishment.
6. Restorative justice recognizes a community responsibility for social conditions which contribute to offender behavior.

The chart on the following page is adapted from the paradigm distinction of retributive and restorative justice as formulated by Howard Zehr and Lorraine Stutzman Amstutz in 1998. Emphasis, however, is not on the black and white distinction but rather on a continuum between both pairings.

RETRIBUTIVE JUSTICE  RESTORATIVE JUSTICE

Crime defined by violation of rules	Crime defined by harm to people
Crime seen separate from harms / conflicts	Crime seen as related to harms and conflicts
State as victim	People and communities as victim
State and offender as primary parties	Victim and offender as primary parties
Interpersonal dimensions irrelevant	Interpersonal dimensions central
Offense defined in technical/legal terms	Offense seen in full context: relational, moral, social, etc.
Guilt is absolute, either/or	There are degrees of responsibility
Guilt is indelible (permanent)	Guilt is removed thru repentance/reparation
Debt paid by punishment	Debt paid by making things right
Accountability = "taking your medicine"	Accountability = taking responsibility
Blame fixing is central	Problem solving is central
Focus on the past	Focus on the future
Contestual, adversarial models normative	Dialogue and cooperation models normative
Justice tested by intent and process	Justice tested by constructive outcomes
Process alienates people	Process reconciles people
Victims' needs ignored	Victims' needs central
Offender is socially stigmatized	Offender is offered social reintegration
State monopoly on determining resolution	Victim, offender, community roles recognized
Proxy professionals are the key players	Victim and offender key players; professional help is available
Win-lose outcomes assumed	Win-win outcomes encouraged
Restitution is rare	Restitution is normal

Best Practices Learned From Research for Victim Offender Conferencing (VOC)

1. Impartial role of facilitators in VOC
2. Thorough training of facilitators in VOC
3. Involvement of crime victims in VOC
4. Preparation of victim and offender, and other support people
5. Creating a safe place for dialogue in all pre-joint sessions and in joint sessions
6. The VOC process cannot be rushed; multiple meetings can happen as needed
7. Importance of community-based organizations in providing VOC in partnership with criminal and juvenile justice system agencies
8. Importance of police, prosecutors, and judges supporting VOC and in referring cases
9. VOC can work at any point in the criminal justice system
10. VOC can work with a wide range of cases regarding type and severity

Other best practices that have stood the test of time:

- The importance of confidentiality and non-legal facilitation
- The importance of facilitator/mediator positive presence
- The importance of voluntary consent and self-determination
- The importance of unimpeded direct face-to-face dialogue
- The importance of signed, trackable reparation agreements

Research Supporting Restorative Programming

More than 90 empirical research studies in 7 countries have found positive impact of restorative justice dialogue in juvenile and criminal cases through VOC/VOM (Victim Offender Conferencing/Victim Offender Mediation) and FGC/RCC (Family Group Conferencing/Restorative Community Conferencing)

1. Canadian Meta-Analysis (2001)

- 35 studies (27 VOM, 8 FGC)
- 26 youth, 9 adult
- Positive impact on v/o satisfaction, restitution completion, reduced recidivism

2. US - Nugent/Umbreit Meta-Analysis (2003)

- Total sample of 9,307 juvenile offenders
- Sample came from 19 program sites (15 prior studies)
- 26% reduction in recidivism

3. UK- Sherman/Strang Meta-Analysis (2007)

- *Restorative Justice: The Evidence* -- "Far more evidence on RJ, with positive results, than for most innovations in criminal justice"
- Included randomized controlled studies by S/S
- Reduced recidivism for both violent and property offenders
- RJ reduced costs when used as a diversion
- Suggest RJ may be more effective with adults

4. Minnesota Dept. of Corrections (2012)

CIRCLES of SUPPORT and ACCOUNTABILITY (MNCOSA)

- Participants in MNCOSA had significantly lower recidivism:
- 62% lower re-arrest rates
- 72% lower technical violation rates
- 84% lower return to prison rates
- Cost benefit per MNCOSA participant is \$11,716
- MNCOSA produced savings of \$363,211

6. Baltimore, Maryland, Community Conferencing Center

Community-based Non-Profit Servicing Diversion Juvenile Cases
(from courts, schools, but mostly from police)

- Population: 637,418 (Black: 63%, White: 32%, Hisp: 3%, Asian:2%)
- Youth in community conferences(CC): 604 (Minority: 558)
- Agreements reached in CC: 98%
- Agreements completed in CC: 97%
- Recidivism data: (CC participants 60% less likely to re-offend)

Victim Offender Mediation Continuum: From Least to Most Restorative Impact

Least Restorative Impact <i>Agreement-Driven: Offender Focus</i>	Most Restorative Impact <i>Dialogue-Driven: Victim Sensitive</i>
<ul style="list-style-type: none"> • Entire focus is upon determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime upon the victim and the community, as well as the offender • No separate preparation meetings with the victim and offender prior to bringing the parties together • Victims not given choice of where they would feel the most comfortable and safe to meet, or whom they would like to have present • Victims given only written notice to appear for mediation session at preset time, with no preparation • Mediator or facilitator describes the offense and offender then speaks, with the victim simply asking a few questions or responding to questions of the mediator • Highly directive style of mediation or facilitation with the mediator talking most of the time, continually asking both the victim and offender questions, with little if any direct dialogue between the involved parties • Low tolerance of moments of silence or expression of feelings • Voluntary for victim but required of offender whether or not they even take responsibility • Settlement driven and very brief 	<ul style="list-style-type: none"> • Primary focus is upon providing an opportunity for victims and offenders to talk directly to each other, to allow victims to express the full impact of the crime upon their lives and to receive answers to important questions they have, to allow offenders to learn the real human impact of their behavior and take direct responsibility for seeking to make things right • Restitution is important, but secondary to the dialogue about the impact of the crime • Victims are continually given choices throughout the process: where to meet, who they would like to have present, etc. • Separate preparation meetings with the victim and offender prior to bringing them together, with emphasis upon <u>listening</u> to how the crime has affected them, <u>identifying</u> their needs and <u>preparing</u> them for the mediation or conference session • Nondirective style of mediation or facilitation with the parties talking most of the time, high tolerance for silence and use of a humanistic or transformative mediation model • High tolerance for expression of feelings and full impact of crime • Voluntary for victim and offender • Trained community volunteers serve as mediators or co-mediators along with agency staff • Dialogue driven and typically about an hour in length (or longer)

Restorative Justice Basics

By Mark Umbreit

Restorative Justice is a new way of thinking about crime and criminal justice.

Restorative Justice emphasizes the ways in which crime hurts relationships between people who live in a community. Crime is seen as something done against a victim and the community--not simply as a violation against *the state*. Crime may be any wrong, even a noncriminal offense that weakens relationships between people or harms community living. In Restorative Justice, the offender becomes accountable to those he or she has harmed. Justice is not only given to offenders, but it is done *for* victims.

Expanded role for victims.

Restorative Justice allows the voices of victims to be heard. Crime victims are given more chances to regain their personal power. Many victims say that they tend to feel left out of their own cases in the traditional justice system. Victims often need to speak their feelings. Restorative Justice gives victims more opportunities to be involved to decide how their needs can best be met.

Community participation.

Restorative Justice encourages active participation by the victim, the offender and the community to repair the fabric of community peace. The entire community is responsible for supporting and assisting victims, holding offenders accountable and helping offenders to make amends. Communities have the right to feel safe and secure. Restorative Justice helps communities build their sense of safety by having community members be active in peacemaking.

Offender's involvement.

Restorative Justice has offenders taking personal responsibility for their actions and then actively working to repair the harm that they have caused to victims and community. *Making things right*. For many offenders, going to jail may seem a lot easier than being accountable to their victims. Offenders learn about how they have personally harmed victims and can then work to make *real* amends to the victim and the community.

Basic Principles of Restorative Justice

- ◆ Crime hurts victims, communities and offenders.
- ◆ All parties should be a part of the response to the crime, including the offender, the community, and the victim if he or she wishes.
- ◆ The victim is central to deciding how to repair the harm.
- ◆ Accountability for the offender means accepting responsibility and repairing the harm done.
- ◆ The community makes sure that the laws which guide our behavior are carried out in ways which are responsive to our different cultures and backgrounds, whether racial, ethnic, geographic, religious, economic, age, abilities, family status, sexual orientation and other backgrounds--and all are given equal protection and due process.
- ◆ Crime is seen as an act against another person or the community, rather than an act against the state. The state (or the government) wants to have the problem resolved, but is not the main player in solving it. It is the offender who takes the personal responsibility for making things right with the victim and the community--not the state.
- ◆ Restoration or repairing the harm replaces punishment for its own sake.

Restitution would become the rule--not the exception.

- ◆ Results are measured by how much repair has been done rather than by how much punishment was inflicted.
- ◆ Controlling crime is mainly for the community and its members. The criminal justice system can really only have a small affect on the level of crime because it basically can only respond after a crime occurs.
- ◆ Offenders are definitely accountable for their individual choices, but communities are also accountable for the conditions which may exist that contribute to crime.

How are Victims a Part of Restorative Justice?

It has been asked, "If the problem with the current system is really that an offender has harmed some person and the community, why isn't the healing and restoration of victims and community the main goal for the justice system?"

That's a good question. In order for the healing and restoration of victims to be realized, the current justice system needs to change and victims need to be involved.

How do Victims experience the current criminal justice system?

Often, the current system tries to keep out victims, the community and offenders from deciding how society will respond to crime. If a case goes to trial, there are usually delays and postponements for months or years. Often, victims are barred from the proceedings so as to not "prejudice the jury." Between eighty and ninety percent of guilty findings in this country happen from guilty pleas--not jury determinations. A guilty plea may be for lesser charges than what the victim would like or had expected. The result is that the offender is put in jail, put on probation or eventually parole--or the

sentence may even be suspended. The victim might feel isolated and powerless to do anything about what ends up with his or her case.

In contrast, Restorative Justice seeks to involve victims, the community and the offender in working out how an offender may more directly repair the harm that he or she caused.

Restoring Victims.

Restorative Justice supports the *needs* of victims. The current criminal justice system seems to put the interests of prosecutors, judges, defense attorneys and the correctional system ahead of the needs of victims. An important purpose of Restorative Justice, perhaps the most important, is to devote the most initial attention to the needs of victims. This includes:

- Recognizing and acknowledging how the crime or event affected the victim.
- Allowing and supporting the victim to participate in the justice process.
- Giving the victim a role in making decisions within the process.

It is impossible to truly have safe and secure communities unless victims' needs are met. Offenders may not be seen as really being rehabilitated unless they are able to acknowledge the harm that they caused to victims and communities and to make amends for that harm.

Victims need to be involved.

Victims have rights, including the right to be heard, which aids in their healing. Victims also have the right to have their needs met. When someone becomes a victim of a crime, they may experience strong emotional and physical reactions immediately. They also may experience other emotions and stresses on a continuing basis over time--or their feelings may come and go unexpectedly only to come back again. Victims deserve all of the

help they need both immediately after the crime has occurred and in the long term. Victims have the right to participate in their own healing and in the justice process.

Along with a victim's *right* to participate comes his or her *responsibility* for participation. Victims may not be able to participate in the process immediately, due to the effects of the crime or other circumstances. However, at some point, victims need to be supported in assuming their responsibilities as citizens. This can include reporting violations to the proper authorities, at least when victims believe it is safe to do so. Victims need to support legal change to improve how justice is done in the future--even if that only means voting for candidates and policies which improve the system. Victims should participate in community crime prevention activities. In addition, victims need to participate in the administration of justice as witnesses, jurors and volunteers.

What does Restorative Justice look like?

- ◆ Victims and families of victims receive support and assistance.
- ◆ If they wish, victims have chance to help shape how offenders will repair harm done.
- ◆ Restitution is more important than other financial obligations of the offender.
- ◆ Victim offender mediation is available for victims who want to have a mediation meeting with the offender to discuss how the crime affected them and how the offender can repair the harm. Victim offender mediation sessions are conducted by trained mediators who are sensitive to the needs of victims and their families.
- ◆ Community volunteers are work with offenders.
- ◆ The community provides work for offenders to be able to pay back

victims.

- ◆ Offenders participate in community service projects which are valued by the community.
- ◆ Educational programs for offenders include becoming aware of how victims feel and being able to empathize with victims. Education also helps offenders see their responsibilities as members of a community.
- ◆ Offenders face the personal harm caused by their crime through victim offender mediation, hearing panels or groups of victims or community members talk about their experiences with crime and how crime has affected their lives.
- ◆ Orders for repairing the harm caused by crime are more important than orders imposed just for punishment.
- ◆ The courts and corrections provide annual reports on how reparations are made.
- ◆ Community members advise the courts and corrections by being on advisory boards.
- ◆ Business and community groups work with offenders to bring them back into the community as the offenders make good on their obligations.
- ◆ Faith communities sponsor support groups for offenders trying to change their lives.
- ◆ Offenders end up with greater skills than when they entered the corrections system.

Maintaining Quality in Restorative Interventions

Restorative justice emphasizes the importance of elevating the role of crime victims and communities in the process of holding offenders accountable for

their behavior, while offering offenders the opportunity to directly make amends to the people and community they violated. Financial restitution, community service, victim offender mediation, and the more recent development of family group conferencing are widely understood to be restorative in nature. The manner in which these interventions are implemented, however, is likely to determine the degree to which the interventions are actually experienced by victims and offenders as restorative. It is too simplistic to view interventions as either totally restorative or not, particularly if such an assessment is based upon the description of the program alone. Instead, it is more likely that most of these interventions, as well as others, can be viewed along a continuum from least restorative impact to most restorative impact.

All of this is to say that interventions that appear to be intrinsically restorative may, in fact, not be. Unless any intervention is clearly grounded in restorative justice values and procedures developed to maximize the implementation of those values, it is predictable that many so-called restorative interventions could easily be coopted to meet primarily justice system bureaucratic needs, rather than those most affected by crime: the victim, victimized community, and offender. This could easily lead to the “fast food version” of restorative justice practice that would: provide a “quick-fix;” remain offender focused; use victims as “props” rather than active partners; have little patience to listen to victim’s stories, validate their needs, or invite their participation in the process. The following charts identify key characteristics of four restorative justice interventions that are likely to contribute to them being experienced by victims of crime, and the offender, along a continuum from the least to most restorative.

Victim Offender Mediation and Dialogue

Mark Umbreit

2008

Victim offender mediation and dialogue is a process that provides interested victims of primarily property crimes and minor assaults the opportunity to meet the juvenile or adult offender in a safe and structured setting with the goal of holding the offender directly accountable for his or her behavior while providing important assistance and compensation to the victim. With the assistance of a trained mediator, the victim is able to let the offender know how the crime affected him or her, to receive answers to questions the victim may have, and to be directly involved in developing a restitution plan for the offender to be accountable for the losses the victim incurred. The offender is able to take direct responsibility for his or her behavior, to learn of the full impact of what he or she did, and to develop a plan for making amends to the person(s) he or she violated. Although there exists, certain procedural differences and differences in terminology between implementing victim offender mediation in juvenile versus adult courts, the overall approach and procedure is quite similar in both settings.

Victim offender mediation programs were initially referred to as victim offender reconciliation programs (VORP) in the mid-1970s and 1980s. Some programs still go by the name of VORP. Today, most programs throughout the world identify themselves as victim offender mediation (VOM). In the United States some programs are also called victim offender meetings or victim offender conferences. In recent years, an increasing number of VOM programs are periodically working with cases involving severe violence, including homicide. This change requires advanced training and far more preparation of the parties over many months prior to ever meeting face to

face. This entry, however, focuses on the most widespread application of VOM, in property crimes and minor assaults, in thousands of cases in numerous countries throughout the world.

Humanistic Model

Although many other types of mediation are largely settlement driven, victim offender mediation is primarily dialogue driven, with the emphasis upon victim healing, offender accountability, and restoration of losses. Contrary to many other applications of mediation in which the mediator would first meet the parties during the joint mediation session, in most victim offender mediation programs a very different process is used based upon a humanistic model of mediation. A humanistic model of mediation involves the following: reframing the role of the mediator from being settlement driven to facilitating dialogue and mutual aid; scheduling separate pre-mediation sessions with each party; connecting with the parties through building rapport and trust, while not taking sides; identifying the strengths of each party; using a nondirective style of mediation that creates a safe space for dialogue and for accessing the strengths of participants; and recognizing and using the power of silence.

Impact

Most victim offender mediation sessions do in fact result in a signed restitution agreement. This agreement, however, is secondary to the importance of the initial dialogue between the parties that addresses emotional and informational needs of victims that are central to their healing and to the development of victim empathy in the offender, a development which can lead to less criminal behavior in the future. Several studies have consistently found that the restitution agreement is less important to crime victims than the opportunity to talk directly with the offender about how they felt about the crime.

From its inception in Kitchener, Ontario, when the first victim offender mediation program was established in 1974, many criminal justice officials have been quite skeptical about victim interest in meeting the offender. Victim offender mediation is clearly not appropriate for all crime victims. Practitioners are trained to present it as a voluntary choice to the victim and as voluntary as possible for the offender. With more than 20 years of mediating many thousands of cases throughout North America and Europe, experience has shown that the majority of victims presented with the option of mediation choose to enter the process. A statewide public opinion poll in Minnesota found that 82% of a random sample of citizens from throughout the state would consider participating in a victim offender program if they were the victim of a property crime. A multistate study found that, of 280 victims who participated in victim offender mediation programs in four states, 91% felt their participation was totally voluntary.

Victim offender mediation is the oldest, most widely developed, and empirically grounded expression of restorative justice. Restorative justice is a movement that is promoting more active involvement of individual victims, victimized communities, families, and offenders in the justice system in such ways that offenders are actively involved in repairing the emotional and physical harm they caused; victims receive far more support, assistance, and input; and positive relationships within communities are strengthened. Although restorative justice consists of a wide range of policies and practices and is ultimately a very different way of understanding and responding to the real human impact of crime, the core of restorative justice is anchored in processes that allow for direct dialogue between those affected by crime and those who committed the offense. Examples of the more widely known restorative justice dialogue interventions include victim offender mediation, family group conferencing, and peacemaking circles. After a quarter of a century of practice experience, more than 50 empirical studies in North

America and Europe have consistently found VOM to have a positive impact upon victim and offender satisfaction and perceptions of fairness, higher rates of restitution completion, and significantly lower rates of recidivism.

Victim offender mediation and dialogue programs currently work with many thousands of cases annually through more than 300 programs throughout the United States and more than 1,200 in primarily Europe but also Canada (where it all began), Israel, Japan, Russia, South Korea, South Africa, South America, and the South Pacific. A recent U.S. survey that examined to what degree victim offender mediation was supported by formal public policy found a considerable amount of legislative backing. A total of 29 states had legislation, in one form or another, that addressed victim offender mediation. Of these, 14 states had quite specific legislation that spoke to various issues related to the use and development of victim offender mediation, and 15 states had a more brief reference to victim offender mediation.

Endorsements

The American Bar Association (ABA) has addressed restorative justice through the practice of victim offender mediation, its most widely used and empirically validated practice. The ABA has played a leadership role over many years in promoting the use of mediation and other forms of alternative dispute resolution in civil court-related conflicts, yet for most of that time remained skeptical and often critical of mediation in criminal court settings. That changed in 1994 when, after a year-long study, the ABA fully endorsed the practice of victim offender mediation and dialogue. The association recommended its use in courts throughout the country and also provided guidelines for its use and development.

Restorative justice policies and practices, including VOM, have recently been endorsed by two important international bodies. Both the United

Nations and the Council of Europe have begun to address restorative justice issues. Meeting in 2000, the UN Congress on Crime Prevention considered restorative justice in its plenary sessions and developed a draft proposal for "UN Basic Principles on the Use of Restorative Justice Programs in Criminal Matters." The proposed principles encouraged the use of restorative justice programming by member states at all stages of the criminal justice process, underscored the voluntary nature of participation in restorative justice procedures, and recommended beginning to establish standards and safeguards for the practice of restorative justice. This proposal was adopted by the United Nations in 2002. The Council of Europe was more specifically focused on the restorative use of mediation procedures in criminal matters and adopted a set of recommendations in 1999 to guide member states in using mediation in criminal cases

Process

Careful preparation of participants has been one of the hallmarks of the VOM movement. In a national survey, it was found that 78% of the programs reported that participants received at least one preparation meeting. In general, preparation meetings are understood to consist of personal face-to-face contact with the participants, usually by the actual mediator or occasionally by some other worker from the VOM program.

The primary goal of victim offender mediation is to provide a safe place for dialogue among the involved parties that fosters both offender accountability and growth as well as victim empowerment and assistance. Today, VOM programs frequently involve family members and representatives of the community who frequently serve as volunteer mediators. The mediator facilitates this process by first allowing time to address informational and emotional needs, followed by a discussion of losses and the possibility of developing a mutually agreeable plan to repair

the harm (i.e., money, work for the victim, work for the victim's choice of a charity, etc.). The victim offender mediation process can be summarized by four distinct phases: (1) referral-intake, (2) preparation for mediation, (3) mediation, and (4) follow-up.

Further Readings

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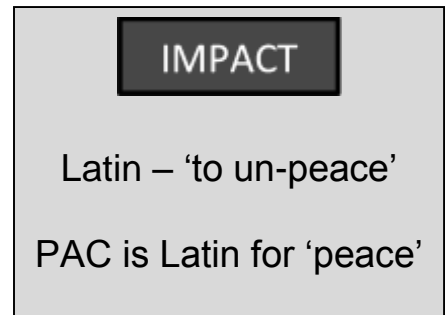
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Section Two

Understanding the Victim Experience

Exercise: If you were to return to your car in a parking lot after shopping, only to see a side-window smashed in and some valuables taken, what would you be feeling 1) in the next few minutes? 2) two hours later?

Sometimes the impact on a victim regarding a crime that may seem like a minor offence to some people can be a very traumatic, impactful event for a person, removing them from a relatively ordered life to a very disordered life. Having experience physical, financial or possession-based loss, it is natural for anyone to thereafter experience stages of emotional trauma that will be different for every person.



The **Trauma of Victimization** can often mean that a person will go through series of stages as follows:

1. **The Chaos Stage:** feelings of shock, numbness and total disbelief are typically what is first felt. Next come feelings of confusion, disorientation and the resulting turmoil and fear that comes when someone experiences a sudden disempowerment.
2. **The Denial Stage:** the Fight-or-Flight impulse will typically set in here where some may feel anger and intensity, while others may feel isolation and vulnerability. Fear and anxiety for one’s safety are natural feelings. Nothing seems to make good sense.
3. **The Suffering Stage:** unpredictable mood swings and depression can set in as the reality of one’s losses becomes more real. At times it seems there is no escape from certain scenarios the repeat often in one’s mind, due to unanswered questions.
4. **The Healing Stage:** As supports and resources give one assurances of safety and moving forward, mood swings and intense feelings begin to subside, and life slowly becomes reordered. A victim also finds a way to make better sense out of the past.

For some victims of trauma, given the severity of impact, life will never be the same. Supporters of victims need to be aware of this.

Victim Disempowerment and Re-empowerment

Because victims are disempowered on numerous levels in the wake of a traumatic, unexpected incident, the journey through stages of feelings can be accompanied by supports that empower victims. These can be internal within an individual or external as social supports. What really matters is that from the start, victims have support resources for empowerment.

A. Internal resources: (strengths within a person)

(name some):

B. External resources: (relationships, services, etc.)

(name some):

Typically, victims who do not get enough empowerment from internal or external resources remain in a sort of roller-coaster ride of feelings and moods which makes it very hard to return to a normal, peaceful, less-weighted-down life. It is essential for restorative justice mediators to become aware of what stage victims are in so that a particular victim is best supported with options they can voluntarily choose at any point in a resolution process.

How do courtroom processes relate to the empowerment issues for victims?

This opens the way to consider what victims are needing most from a justice process.

The Needs of Victims

By balancing the needs of victims and offenders, both parties in a restorative mediation will learn that the process only works well when BOTH parties are seen as having legitimate needs to be met. This is part of the humanizing aspect of the process. Victims come to see offenders as real people with real needs, and offenders come to see victims as people with real needs.

Outlining the Needs of Victims

A. Typical Needs at the Front-End:

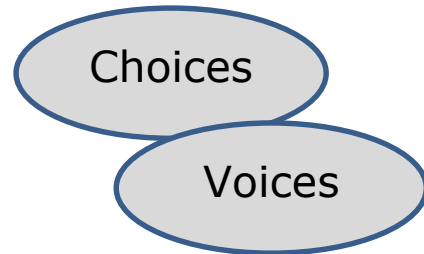
- Safety and Security
- Supports and Caring Presence
- Validation and Ventilation
- Assistance with Daily Tasks

B. Typical Needs During Resolution:

- Information about the offender/case
- Trust in Support People
- Education about Process Options
- A Significant Voice in the Process

C. Typical Needs at the Back-End:

- Compensation of Losses
- Regained Trust in Offender
- Sense-Making out of everything
- Emotional Closure (at any level)



“The experience of being respectfully heard opened the door for me to have resolution. With the relief that comes with being understood, I could not have moved forward. When I look back at an event that would otherwise have been a terrible memory, I have gratitude beyond what any other justice process could provide.”

– victim of a harassment offense

Understanding Crime Victims

(The material in this section was adapted, with permission, from Dr. Marlene Young, Executive Director of the National Organization for Victim Assistance, in the publication *Victim Assistance: Frontiers and Fundamentals*, 1993.)

Psychological Trauma of Crime Victimization

Crime victimization leaves victims, families, and friends - even the community around them in a state of turmoil. There is often significant financial loss and physical injury connected with victimization. But the most devastating part for most victims is the emotional pain caused by crime and the aftermath.

The psychological trauma of victimization can be separated into two phases: the initial crisis reaction to the violation, and the long-term stress reactions it sometimes causes. For the purposes of this training manual, the more common crisis reaction will be highlighted.

The Crisis Reaction

A. Individuals exist in normal state of equilibrium.

1. Each person establishes his or her own boundaries, usually based on a certain order and understanding of the world.
2. Occasional stressors will move individuals out of their state of equilibrium, but most people, most of the time, respond effectively to most stressors that are within or near their familiar range of equilibrium.
3. Trauma throws people so far out of that range that it is difficult for them to restore a sense of balance in life. When they do establish a new sense of balance, it will be a different "graph" of normal highs and lows than described that individual's equilibrium prior to the trauma. It will have new boundaries and a new definition.
4. Trauma may be precipitated by an "acute" stressor or many "chronic" stressors.
 - a) An acute stressor is usually a sudden, arbitrary, often random event. Crimes committed by strangers are key examples of such stressors.
 - b) A chronic stressor is one that occurs over and over again, each

time pushing its victims toward the edge of their state of equilibrium, or beyond. Chronic child, spouse, or elder abuse are examples of such chronic stressors.

- c) "Developmental stressors" come from transitions in life, like adolescence, marriage, parenthood, and retirement. Such stressors are relevant to the crime victim simply because people who are enduring a variety of developmental stressors in their lives are far more susceptible to intense crisis reactions.

B. The crisis reaction: the physical response.

1. Physical shock, disorientation and numbness: "frozen fright" shows a psycho-physiological incapacity to acknowledge a dangerous threat.

"'Your son was murdered last night.' Dorothy's arms and legs went numb. The words hit her face like a brick. She couldn't move; the bench was like stone and offered no comfort. She was out there alone with those words and this detective and the unbelievable thought that her Sheldon was no longer alive." From "The Besses," a chapter in *What Murder Leaves Behind*, D. Magee, 1983, Dodd, Mead & Co.: NY.

[This example, like others that follow, is an illustration of how one common crisis reaction was manifested in one individual. There is a great variety of illustrations which victims and their advocates can use to describe the basic ideas; a review of several of these with any one reaction being discussed is a testament to the individuality of victims, even as they experience some, but rarely all, of the reactions reviewed here.]

2. Adrenaline begins to affect the body's response to the event. One manifestation is the "fight-or-flight" instinct: the psycho-physiological response to feelings of danger that are acknowledged. Physiological reaction to fight-or-flight instinct:

"As other council members ducked behind the U-shaped table, City Attorney William Dowell of Burlington unsuccessfully tried to wrest the gun from Davis. As members of the audience scattered and ran for help, Davis moved behind the table where other members of the council were crouched." Mr. Davis, it seems, both fought and fled, according to this description of the December 12, 1986, murder of the mayor of Mt. Pleasant, Iowa, in *The Des Moines Register*, December 12, 1986.

3. Other manifestations of "danger hormones" affecting the body:

- a) The body may relieve itself of excess materials through regurgitation, defecation, or urination.

"Firefighters still have nightmares about what they saw when they stumbled through smoke into the Happy Land social club on an early Sunday morning one year ago today. There on the dance floor, dozens of partygoers dressed in night-on-the-town clothes lay slumped on the ground, not burned but covered in a fine layer of soot. People still sat at the bar, holding drinks, Couples embraced There was not a life left to be saved.

"Some firefighters vomited, some just wandered, dazed."

("Smoldering Memories: A Year After the Happy Land Fire, Unfulfilled Promises and an Unresolved Case," Laurie Goodstein, *The Washington Post*, March 25, 1991.)

- b) Heart rate increases

- c) People may hyperventilate, perspire, find it difficult to be still

- d) There is usually heightened sensory perception. In the initial reaction, a perception of what is happening will be transmitted through just one of the senses, but as the physical mobilization takes place, other senses may be intensely engaged, one after the other. It is important to recognize that, while some senses may be shut down during this period, each is ready to focus on the threat before it, as the mind's "traffic officer" directs, in the interests of survival. And while certain sights may leave indelible memories. so may things heard, touched, smelled, or tasted.

"Betty Sane spoke into the silent room, >Is anybody alive?' There was no answer. Her ears began to clear and she heard what sounded like running water. The noise came from the floor beside her, She realized it was blood gushing from the boys." She and her four boys had just been shot by four thrill-seekers in their rural Indiana home. From "The Spencers," a chapter in *What Murder Leaves Behind*, D. Magee, 1983, Dodd, Mead & Co.: NY.

4. Heightened physical arousal associated with fight-or-flight cannot be prolonged indefinitely. Eventually the body will collapse in exhaustion.
 - a) Whether the body's reaction to exhaustion is sleep or unconsciousness, the response will be experienced as a break with the traumatic event.
 - b) So long as a person stays awake he or she is in touch with a "present" that preceded the crime. Once sleep overcomes one, that person moves onward to the future. The crime and its consequences become a part of the past. Many victims feel that their first sleep violated a living connection they had with a person or a situation that died in that crisis.
 - c) It is not unusual for people to wake from the state of exhaustion and become overwhelmed with grief and guilt because they have been separated from the immediacy and the intensity of the event.

C. The crisis reaction: the emotional response.

1. The first emotional response to crisis parallels the physical response. It involves shock, disbelief, and/or denial. This stage may last for only a few moments or it may go on for months - even years. Regression accompanies this shock. Victims and survivors often assume a childlike state.
 - a) The shock may be directed as much at the senselessness and randomness of the event as at the event itself.
 - b) Feelings of being a child or wanting to be a child again may be reflected in victim and survivor reactions to helpers or intervenors as Mommy or Daddy.
2. Cataclysm of emotions.
 - a) **Anger or rage.** Anger may be directed at God, human error, the assailant(s), family members, the criminal justice system. and even oneself. Not everyone feels anger, but many people do. It may become confused in the aftermath of a crime with revenge and the desire for vengeance. Just as anger or rage is a normal human response, so is the desire for revenge. But for many that desire subsides even though overwhelming rage may remain. Where extraordinary brutality and human cruelty have occurred, individuals may not only want revenge but want to exact it.

There is another aspect to anger and that is the anger that many feel because someone or something has taught them to hate. Hate involves an emptiness, a bitterness, and a painful dissonance with normal feelings of benevolence towards humanity.

The intensity of anger and its anti-social aspect is often new to victims and survivors of disaster. It is also often disapproved of by society.

"But among the survivors, shock turned to grief and grief to anger, and healing them became a thankless job at best. >People tend to lash out,' says Amy Hahn, director of the Edmond Ministerial Alliance's Hope Center relief office. >They felt hurt, they felt forgotten, they felt wronged.' Hahn said for some victims, anger turned to wrath, and survivors started spitting venom at anything that moves" "Living with the Scars of a Massacre," Tim Madigan, *Fort Worth Star Telegram*, August 9, 1987.

- b) **Fear or terror.** In the aftermath of a catastrophe that involves life threatening injury or death, there is usually a sense of terror. Many people talk; about having seen their own death, and the fear of that death is intense. Robert Litton refers to the "death imprint." Terror is also a residual emotion that emerges from the physical response of panic. It may become the foundation for panic attacks in the future.

"Numerous calls on the 911 tape illustrate the victims' terror.... 'There's a man in our office with a gun,' a man's voice rasped on the 911 tape. 'He has fired at several people.' Asked for details, the man dropped his voice, whispering, 'It's a semi-automatic, definitely. He's still shooting. Yes. .. We're being killed. He's a black male with an AK-47, and he's killing everybody.'" Parker, L. "Jacksonville Gunman Shot 4 Others Before Rampage at Finance Company," *The Washington Post*, June 20, 1990.

- c) **Frustration.** It is a by-product of the feelings of helplessness and powerlessness during the actual impact of the disaster. In the aftermath of the impact, it continues when rescuers or the victims or survivors are unable to successfully obtain needed help.

"Pineda is weary of trying to change all those things in her life that seem so out of control, which is how her life has felt since the fire. She gave birth three months ago to Marvin Doubleday Jr., named for the baby's father. As the city instructed her to, she has tried to petition for help from the state Crime Victims Board in replacing the \$600 a month he brought in as a salesman at a fruit stand. But like many of those killed in the fire, he was paid in cash, under the table. She has no paperwork to prove the lost income. She and Doubleday were never legally married, so her claim is even more tenuous. Based on the criteria used in other cases, her lawyer has advised her to expect nothing.

"At the beginning I was told there was a lot of help from the city,' she said. 'There have been only words.'

"Words, she got.

"Two months after the fire, the city sent her a condolence card."

Laurie Goodstein, "Smoldering Memories: A Year After the Happy Land Fire, Unfulfilled Promises and an Unresolved Case." *The Washington Post*, March 25, 1991.

- d) **Confusion.** Confusion stems from the "why me?" question that plagues most victims. It is a question that usually has no answer, However, we tend to seek order and rationality in the world, and so the unanswered question causes more frustration. Often in the effort to establish an answer, victims turn inward and blame themselves for the crisis.
- e) **Guilt or self-blame** These emotions often have two aspects. The first feelings of guilt or self-blame may result from the mind's effort to understand the event and hence identify behaviors or attitudes through which the victim brought the event upon himself.

Cognitive guilt may be legitimate or illegitimate. Legitimate cognitive guilt is the kind that emerges when a victim or survivor can identify reasonable >contributory behavior that made the disaster worse than it could have been. That type of cognitive guilt should be acknowledged. Illegitimate cognitive guilt is the type of guilt that focuses on the "should've's, could've's, would've's" over which no one has control because they do not have knowledge of the future.

Another type of guilt is known as survivor guilt. Victims often are plagued with internal questions about why they survived while others died. They may think themselves unworthy of survival or may feel guilty because someone chose to save them while another person died.

- f) ***Shame and humiliation.*** Some criminal conduct is designed to degrade its victim, and one frequently finds in victims of rape, for example, an abiding memory of dirtiness that won't wash away. For victims of long-term domestic violence or hostage-taking, the memories are often of the ways in which the victims were brought to a state of self-loathing.
- g) ***Grief or sorrow.*** Intense sadness over losses is not uncommon. Such sadness is often the most powerful reaction to a disaster in the long-term. Grief is compounded in sudden, random, arbitrary crises. It is often associated with phases of denial, protest, despair, and detachment prior to a reconstruction of life after loss. When grief is occasioned by a sudden and brutal crime, the initial reaction will be grief about the crime and the secondary reaction will be grief over the loss.

Margaret Grogran, whose son, John, was murdered on June 10, 1978, wrote "On January 2nd, I wrote in my diary. My well-loved son is dead. and I will never see him again. For the first time since John died, I don't feel like I can stand. it - it's too awful." Margaret had known her son was dead for six months, but the impact of the death itself - in addition to the murder - took that long for her to begin to acknowledge.

3. Reconstruction of equilibrium.

The reconstruction of a new equilibrium is an emotional process that resembles a roller-coaster. It is not a linear process in which victims go from grief to a new life. There are ups & downs.

Eventually a new equilibrium will be established. It will be a different balance in life than before. It will be a difficult process, and for most victims it will take a long time. It includes surviving bad days in order to reach good days. Crisis intervention and supportive help victims move toward a new equilibrium more quickly.

Crisis Intervention

Overview

With the gift of listening comes the gift of healing, because listening to your brothers or sisters until they have said the last words in their hearts is healing and consoling. Someone has said that it is possible "to listen a person's soul into existence." I like that.

■ Catherine de Hueck Doherty

Natural caregivers have known for centuries the value of listening with great care and little judgment to a person's sorrow and pain. Though some people have a natural gift for providing that kind of help, most people need some assistance in learning the basics of crisis intervention, it is, to a degree, "contra-instinctual"-and everyone can, with study, improve their crisis intervention skills.

In the aftermath of a catastrophe, most victims must deal not only with the physical and emotional shock waves of the event but also, in short order, with the sense of helplessness, powerlessness, and a loss of control. These and the other dimensions of "crisis" are described more fully in the earlier "trauma of victimization" chapter.

For many victims, the physical and emotional reactions which describe crisis are not severe, and cede after a few hours or days. For others, the crisis is put on hold while they mobilize their survival skills, and only days, even years, later, are they slapped with a sense of the enormity of the event, now vividly remembered. Even victims who do not develop the symptoms of long-term stress reactions face the risk that certain "triggers" will reproduce the old feelings of panic, helplessness, anger, and the like.

"Crisis intervention" is obviously a humane effort to reduce the severity of a victim's crisis, to help the victim win as much mastery over the crisis experience as possible. To understand the potential benefits of crisis intervention, it is worth emphasizing that these are a battery of skills that victim advocates should possess - but so should others whose professional work brings them into contact with victims in crisis.

A common response in the shock of the moment is for the victim to retreat into a childlike state, and, when the immediate danger is passed, to turn to someone nearby who is perceived as an authority figure for help - a law enforcement officer, teacher, nurse, a friend, anyone who offers a sense of "parental" comfort. Anyone whose job constantly puts them in that role discovers how "accessible" the victim is at that moment. The helper is now invested with extraordinary influence in the life of the victim in crisis. In these circumstances, the helper is a crisis intervenor - perhaps a gifted one, perhaps one whose talents have been forged by experience, or far more likely, a conscientious professional with no training or skills in how to interact with people in crisis, to the detriment of both the victim and the professional.

If it is important for those in the emergency services and criminal justice professions to use crisis intervention techniques in their short encounters with victims, it is all the more essential for victim advocates and counselors to master the ideas and skills that help restore to victims a sense of control over their lives.

As was evident in the chapter on the psychological trauma of crime victimization, "crisis" encompasses a number of intense, tumultuous emotions; it can be a continuing condition or alternatively flare and recede; any stressful, post-crime event, such as going to a battered women's shelter, or to a lineup, or to a trial, may put victims back into crisis. While there are no predictors about who will experience crisis, or when the onset will be, or how severe it will be in intensity or duration, a working

presumption for most crisis bite intervenors is that the sooner the service is offered, the better. Indeed, there is a conviction among many practitioners that on-scene intervention, when the victim is in the early stages of distress, may prove to prevent or greatly reduce the crisis symptoms that might otherwise afflict the victim.

On the premise that the reader has reviewed the section on the trauma of victimization, the following covers the basic techniques of crisis intervention and some hints for helping victims and survivors in the aftermath of trauma.

Techniques of Support for Victims

A. "Safety and Security"

1. The first concern of any crisis intervenor should be for the physical safety of the victim. Until it is clear that the victim is not physically in danger or in need of emergency medical aid, other issues should be put aside. This is not always immediately obvious. Victims who are in physical shock may be unaware of the injuries they have already sustained or the dangers they still face.

For the crisis intervenor who is responding to a telephone crisis call, the question should be posed immediately, "Are you safe now?" Intervenors who are doing on-scene or face-to-face intervention should ask victims if they are physically harmed. The question alone may cause the victim to become aware of a previously undiscovered injury.

2. A parallel concern should be whether the victim feels safe. The victim may not feel safe in the following circumstances;
 - The victim can see or hear the assailant being interviewed by law enforcement officers, or the victim is being interviewed in the same area where an attack took place.
 - The victim is not given time to replace torn clothes.
 - The victim is cold and uncomfortable.
 - The assailant has not been apprehended and he has threatened to return.

Any of these may make the victim feel unsafe even if there are law enforcement officers present. In the aftermath of the Edmond, Oklahoma, post office mass murders in 1986, one of the survivors of the attack said that he would not feel safe until the assailant, Patrick Sherrill, whose final killing was of himself, was physically in his grave.

3. A priority for some victims and survivors is the safety of others as well. If a couple has been robbed in a street crime, each may be more worried for the other person than himself or herself. Parents are often more concerned about the safety of their children than their own.
4. Survivors of victims of homicide may not focus on safety but rather seek a sense of security through the provision of privacy and nurturing. Their anguish and grief can be made more painful if there are unfamiliar and unwanted witnesses to their Sorrow.

They, too, will suffer feelings of helplessness and powerlessness. The shock of the arbitrary death of a loved one is usually not assimilated immediately and survivors may not understand questions or directives given to them. One mother did not realize that she had said yes when she was asked if she wanted to identify the body of her son. When she was taken to the morgue, she became hysterical and distraught because she was not properly prepared.

5. All victims and survivors need to know that their reactions, their comments, and their pain will be kept confidential. If confidentiality is limited by law or policy, those limits should be clearly explained.
6. Security is also promoted when victims and survivors are given opportunities to regain control of events. They cannot undo the crime or the death of loved ones, but there may be opportunities for them to take charge of things that happen in the immediate aftermath.
7. Hints for Helping.
 - a. Make sure the victims/survivors feel safe or secure at this point in time. Sit down to talk. Ask the victims/survivors where they would feel safest when you talk to them, and move to that location. If it is true, reassure them with the words "You are safe now."

Identify yourself and your agency clearly, and explain your standards of confidentiality. You might say; "Our program's standards require me to keep all information that you tell me confidential unless you give your permission to me to release it." If you can't keep all information confidential because you are with a police or prosecutorial agency, there be honest about the limits of confidentiality. You might say, "Our program requires me to report anything you tell me that might help a defendant in this case, but I am not required to report anything else, and I will not do so unless you give permission."

If possible, keep media away from victims/survivors or help them in responding to media questions. If the case involves a sensational crime and there are media representatives approaching the survivors, try to ensure that the victims/survivors understand that they do not have to answer questions unless they want to, and under circumstances of their own choosing; NOVA's Media Code of Ethics may help the advocate and the victim in this situation (see the chapter on the media).

If they have loved ones about whom they are concerned, try to find out as much information as possible about the safety of the loved ones. For instance, a mother who has been a victim on the way home from work might not be as worried about the victimization as the safety of a child who is home alone awaiting her arrival. See if a colleague can be dispatched to the home to provide care for the child until the mother is able to return. Or see if she can identify a relative or neighbor who might assume the caretaking role in her absence.

If victims are to be interviewed by law enforcement officers or others, try to ensure that they understand questions by asking them to repeat the question back to the interviewer.

Provide victims with information that may help to assure them of their safety. For instance, if they have been survivors of a massacre, it may help if they are assured that the gunman is dead, or that he has been apprehended.

If they are not safe, keep them informed about the extent of additional threat. For instance, if the gunman is still at large, try to

get information about his whereabouts. If possible, find them an alternative location at which to stay for a few hours or a few days. In the aftermath of the serial killings of five co-eds in Gainesville, Florida, the victim/witness program and the community arranged for students to sleep together in dormitory-like conditions in a large auditorium surrounded by guards, all to restore a sense of safety. Give victims permission to express any reactions and respond non-judgmentally. Say: You have a right to be upset over this tragedy, so don't be afraid to tell me what you are thinking."

- b. Respond to the need for nurturing - but be wary of becoming a "rescuer" on whom the victim becomes dependent. The "rescuer" who ends up months later making decisions for the victim has subverted the primary goal of crisis intervention; that is, to help the victim restore control over his or her life. The following tips suggest appropriate ways in which the intervenor can step in on a temporary basis.

It is useful to take care of practical things that need to be done but are beyond the victim's ability to accomplish. For example, a victim of a sexual assault may appreciate it if you arrange for a friend to bring her a new set of clothes, after C as with every courtesy C getting permission to do so. In making such offers, don't assume anything. For example, the last person a sexual assault victim may wish to see immediately after a rape is a spouse or partner.

Offer to provide child care, help with transportation, make telephone calls, and so forth. Be specific in making such offers so that the victim can simply respond with a "yes" or a "no."

An apt analogy for the role of the crisis intervenor at this stage is as follows: when a person breaks his leg, a doctor sets it and puts it in a cast. While it heals, the patient uses crutches to get around, and when the cast is removed, the leg still needs exercise and care to become strong again. When someone survives a violent crime or the death of a loved one, they survive with a fractured heart. The crisis intervenor becomes like the doctor. The initial intervention helps the survivor by protecting the heart as much as possible against further harm. Later, the crisis intervenor provides support, understanding, and a few crutches while the survivor begins the long process of healing a broken heart.

- c. Help survivors to re-establish a sense of control over the small things, then the larger ones, in their lives.

While it is important to assist survivors with practical activities, it is also important to allow them to make decisions for themselves and to take an active role in planning their future.

The crisis intervenor initially can offer survivors sense of control by asking them questions involving choices that are easily made. For instance, "What name would you like me to use in talking with your?" "Where would you like to sit while we talk?" "Would you like a glass of water?"

Often the recovery of a physical object that is important to the survivor helps to reestablish a sense of control. For instance, after an arsonist burned down much of one family's home, the entire family was strengthened when a law enforcement officer found their cat in the bushes nearby. The family had thought the cat had died in the fire.

B. "Ventilation and Validation"

1. Ventilation refers to the process of allowing the survivors to "tell their story." While the idea of "telling your story" seems a simple concept, the process is not easy. Victims need to tell their story over and over again. The repetitive process is a way of putting the pieces together and cognitively organizing the event so that it can be integrated into the survivor's life. Their first memory of the event is likely to be narrowly focused on, say, a particular sensory perception or a particular activity that occurred during the event. Victims usually see the criminal attack with tunnel vision. They know intuitively that other things are happening around them, but they may focus on an assailant's knife, their struggle to get away, their first impression of a burglarized room.

As time goes by, memory will reveal other parts of the event. These bits of memory will come back in dreams, intrusive thoughts, and simply during the story-telling process. The victimization story will probably change over time as they learn new things and use the new information to reorganize their memories.

For example, a victim who reported a burglary first told the crisis intervenor that he had heard a noise and he went downstairs to see what was wrong, finding a burglar in his front room. The burglar grabbed something and struck him in the stomach before running out the front door. There was a crash and then everything was silent.

When the man repeated the story the second time, he said that he remembered that it was just a noise, but it sounded like some whispering and rustling. On a later retelling, he remembered that when he came downstairs, he saw a brief flash of light toward the back of the house.

Upon investigation, it was discovered that there had probably been two burglars and one had exited through the kitchen window in the rear of the house.

From a law enforcement perspective, the problem with this process of reconstructing a story is that it sometimes results in inconsistent or contradictory stories, which undermine an investigation or a prosecution. However, from a crisis intervention perspective, it is perfectly normal for the process of ventilation to reveal a more complete story over time. Realistically, a victim will tell his story over and over again, with or without a crisis intervenor, in order to reconstruct the event, so that the story will often change anyway. The difference is that the crisis intervenor will provide a sounding board for the victim's distress as the review process unfolds.

For victims, the replaying of the story over again helps them get control of the real story. The "real" story is not only the recitation of the event itself, but usually includes the story of various incidents in the immediate aftermath; the story of ongoing traumatic incidents related to the crime; the story of families' or friends' involvement in the event; and so forth. Each of these stories must be integrated into the victim's final mental recording of the event

2. A part of ventilation is a process of finding words or other ways that will give expression to experiences and reactions. In this aspect, ventilation is often culturally-specific. Some cultures may express their reactions through physical or various artistic forms rather than words. In most of the United States, words are the most comfortable form of expression.

The power found in putting words to feelings and facts is tremendous. There is often a depth of emotion in telling another person that a loved one has died, even in finding the name of the loved one. The power is also illustrated in the release that many victims find when an intervenor responds to their ventilation with a word that expresses what victims feel. For instance, victims may feel intense anger towards an assailant and find the word "anger" insignificant to express that intensity. When an intervenor offers a word like "outrage" or a "fury" to describe their feelings, victims often feel a sense of liberation - a sense of permission to feel such intense emotions.

The exact words to describe events and experiences are often vital. For example, Mothers Against Drunk Driving (MADD) is adamant about the importance of calling the collision of a car driven by someone drunk a drunk-driving "crash," not an "accident," to emphasize the terrible nature of the event. Similarly, survivors of the Pan Am 103 terrorist bombings are offended when others call the event a "crash," a term often used to describe a mechanical or human error.

3. Validation is a process through which the crisis intervenor makes it clear that most reactions to horrific events are "normal."
 - a. Validation should be content-specific. Example: rather than saying "AI can't imagine how upset you are," it is preferable to say "AI can't imagine how upset you are about your son's death in the car crash."
 - b. Care should be taken in the words that are used to validate. For instance, many survivors do not want to hear that their reactions are "Normal reactions to an abnormal situation" - a common summation of what crisis and trauma produce - because survivors want to have their experience validated as unique. Telling them that their reactions are "not uncommon" seems to be more effective.
 - c. Where possible, repetition of the actual phrases that the survivors use to describe experiences is useful. Example, if someone says, "I can't sleep at night, I am so afraid that someone will break in and kill me and my family," an appropriate response would be, "It's not unusual for you to be afraid after such a terrifying experience. If you can't sleep at night, that only shows how afraid you are."

4. The focus of validation should be that most reactions of anger, fear, frustration, guilt, and grief do not mean that the victim is abnormal, immoral, or a bad person. They reflect a pattern of human distress in reaction to a unique criminal attack.
 - a. While most reactions are normal, there are also some people with pre-existing mental health problems who have harmful reactions. There are also some who react to personal disasters in a dangerous way, to themselves or others. In the aftermath of crisis, the intervenor should always be alert to any words or other signs of suicidal thoughts or threatening behavior towards specific individuals. If these arise, seek immediate professional help - a mental health professional, a suicide hotline, even a law enforcement agency if there is an imminent threat to someone else.
 - b. While most reactions are normal, most people have not experienced such intense feelings, so they may think they are "going crazy." Survivors should be reassured that while this crisis has thrown their lives into chaos, they are not, as a consequence, crazy.
5. Hints for Helping.
 - a. Ask the victim to describe the event.
 - b. Ask the victim to describe where they were at the time of the crime, who they were with, and what they saw, heard, touched, said, or did.

These two introductory questions will help the victim focus on the crime in an objective way. It will help the victim impose an order on the event and begin to take control of the story. It may help to ask the victim to recall that day from the beginning, so that the "Normal" parts become part of the crisis story.

- c. Ask the victim to describe his or her reactions and responses. As the victim begins the description, remember to validate the reactions and responses. If she says: "I remember turning stone cold when I felt the hand on my back and a tug at my purse," say, "Some people have called that a "frozen fright" reaction."

- d. Ask the victim to describe what has happened since the crime, including contact with family members, friends, the criminal justice system, and so on. Responses to this question will help reveal whether the victim has suffered additional indignities as a result of the crime or whether the victim has been treated with dignity and compassion.
- e. Ask the victim to describe other reactions he or she has experienced up to now. Again, validate reactions.
- f. Let the victim talk for as long as you can. If you are running out of time, give the victim at least a fifteen-minute warning, such as, "Mrs. Jones, I really want to hear more about your experience and reactions, but I have to leave in about fifteen minutes. If we don't finish up this part by then, I want to do that tomorrow, at a time that is good for you. If I don't hear from you, I'll give you a call, if that's okay."
- g. Don't assume anything - even the apparent pattern of the crisis reaction is suspect. So, for example, the victim's controlled calm of the moment may yield to tears in a few minutes, or a few weeks. Indeed, if the victim is experiencing crisis, it is safe to bet that his or her reactions will take new form over time.
- h. Don't say things like:
 - "I understand."
 - "It sounds like..."
 - "I'm glad you can share those feelings."
 - "You're lucky that..."
 - "It'll take some time but you'll get over it."
 - "I can imagine how you feel."
 - "Don't worry, it's going to be all right."
 - "Try to be strong for your children."
 - "Calm down and try to relax."

Do say things like:

"You are safe now (if true)."

"I'm glad you're here with me now."

"I'm glad you're talking with me now."

"I am sorry it happened."

"It wasn't your fault (if there was no attributable blame to the victim)."

"Your reaction is not an uncommon response to such a terrible thing."

"It must have been really upsetting to see [hear, feel, smell, touch] that."

"I can't imagine how terrible you are feeling."

"You are not going crazy."

"Things may never be the same, but they can get better."

To improve communication with the victim, avoid words like:

"Feelings" - although this chapter is concerned with victims' feelings, in practice it is better to stick with the word "reaction" to describe "feelings." Many people are uncomfortable with being asked to talk about their feelings or emotions.

"Share" or "sharing" - ask people to tell you about their experiences. Don't ask them to "share" those experiences or thank them for "sharing." No one can literally share another person's experience, even if they have suffered through the same event. Many people resent the presumption implicit in this term, or the "social work" connotation it carries.

"Client" or "Victim" or "Survivor," when talking to or about a person for whom you are providing crisis intervention. Use the victim's preferred name.

“Accident” or “Event,” when referring to the crime or the criminal attack. While such words may be used in other settings, they are inappropriate in talking with the person who has survived such an “event.”

“Alleged,” when referring to a victim. Let the lawyers speak of alleged victims and offenders if they need to. Victim advocates should assume that people who describe themselves that way are what they say - victims of crime.

C. “Prediction and Preparation”

1. One of the potent needs that most victims have is for information about the crime and what will happen next in their lives. Remember, their lives have typically been thrown into chaos and they feel out of control. A way to regain control is to know what has happened and what will happen-when, where, how.
2. The information that is most important to victims is practical information. The following are examples. Note that some topics may raise scary possibilities that the victim has not even considered; the intervenor may tactfully touch on such issues or defer them. However, never duck any unpleasant surprise if there is reason to believe that the victim will find out about it soon.
 - a. Will the victim have to relocate? Many burglary victims need to move temporarily because their home is no longer secure. If relocation is necessary or recommended, what are the victim’s options?
 - b. Does the victim have adequate financial resources to pay for any immediate needs caused by the crime? The robbery victim may not have money to pay for food or rent. The rape victim may not have money for a forensic exam or medical treatment. Even if a compensation program may reimburse a victim at a later date, the need for immediate money is sometimes overwhelming.
 - c. What legal issues confront the victim? Will the case be processed in the criminal justice system? Will there be an investigation? What are the chances that there will be an arrest - and then prosecution,

trial, conviction, and sentencing? Does the victim have civil litigation options? Might it be feasible for the victim to sue the offender or a third party who might be held responsible for factors leading to the attack? Note that honest answers and estimates are essential; to the victim of a "cold" burglary with no immediate suspects, the bad news is that fewer than one such case in fifty results in an arrest in most jurisdictions - and giving a rosier picture will undermine your future credibility. By the same token, there may be many questions that arise which are beyond the intervenor's expertise; note them, and help the victim get expert answers.

- d. What immediate medical concerns face the victim? An injured victim may need information about the extent of those injuries. A sexual assault victim may need information to make informed decisions on testing for pregnancy or sexually-transmitted diseases, including HIV. The survivor of a victim of homicide or catastrophic injury may need detailed information about the cause of death and extent of injuries.
 - e. What will be expected of the survivors of a homicide victim in the immediate future? Will they be asked to identify the body? If so, what is the condition of the body? Is there a need to address immediately funeral considerations? (Some religions call for immediate burial.) Do the survivors know their loved one's body will be given an autopsy?
 - f. What does the victim need to know about the media? As indicated above, if the case is sensational or has a "newsworthy" facet to it, it is likely that there will be media coverage. Does the victim know his or her rights? Is the victim prepared for a full media intrusion? Has the victim been warned that what appears in the media may not have any relation to the truth as he or she has experienced it?
3. The second priority is for information on possible or likely emotional reactions that the victims might face over the next day or two, and over the next six months or so - emphasizing that there is no particular timetable when victims can expect to experience crisis reactions, or which of the intense emotions may surface. In many ways, this review will become as important as anything else they learn. In the initial stages of dealing with the crime, practical issues

arc their priority. Some of the emotional concerns that should be outlined, however, are the following:

- a. Immediate physical and mental reactions to crisis. These reactions may include inability to sleep, lack of appetite, anxiety, numbness, estrangement from the world, a sense of isolation, anger, fear, frustration, grief, and an inability to concentrate.
 - b. Long-term physical and mental reactions. These reactions may include intrusive thoughts, nightmares, terror attacks, continued sense of isolation, inability to communicate with others, sleep disturbances, depression, inability to feel emotion, disturbance of sexual activity, startle reactions, irritability, lack of concentration, and so forth.
 - c. Reactions of significant others. While some friends or family members serve as the most important source of emotional support for victims, many cause as much harm as good. Three common reactions that may cause victims distress are: over protectiveness; excessive anger and blame directed toward the victim; and an unwillingness to talk about or listen to stories of the crime.
 - d. Victims should expect that everyday events may trigger crisis reactions similar to the ones they suffered when the crime occurred. Thus, the birthday of a son who was murdered may trigger overwhelming feelings of grief and anger about the murder. A sunset of a particular shade and color may trigger a panic attack in a victim who has been robbed during such a sunset. The smell of alcohol on the breath of a young man may trigger an outburst of rage in a young woman who had been raped by a man who had been drinking.
4. In addition to needing predictable information, victims need assistance in preparing for ways in which they can deal with the practical and emotional future. The following are some hints for helping.
 - a. Take one day at a time. Suggest that the victim plan each day's activities around needed practical tasks. Help the victim list the tasks that need to be done and set a goal for accomplishing a certain number each day. Victims who have been severely

traumatized may want to check in with you after each day to report their progress and to receive positive feedback on any successes.

- b. Problem-solving. Show the victim how to use problem-solving techniques to address the overwhelming problems that he might face. Suggest that the victim list the three most important problems confronting him for the next day. After he makes his list, have him analyze whether all three really need to be done in the next twenty-four hours. If he thinks so, ask him to sort the list in priority order. Take the first problem he has listed and ask him to think about all the possible ways he might deal with the problem. After he has discussed such ideas, ask him to choose the option that he thinks is most feasible.

Example: Jim is a robbery victim. The robber stole his wallet and the contents of his pockets, which included all of his cash, his bank card, his driver's license, his car and apartment keys, and a pocket watch. Jim is panicky because it's 9 at night and he doesn't have any money and doesn't know how to get home. Even if he is able to get there, he doesn't have keys to get into his apartment or to drive to work in the morning.

You ask Jim to list his three biggest problems. He says: getting home, getting in his apartment, and getting to work in the morning, in that priority order. You ask him to think of all the possible ways he might be able to get home. After some thought, he decides that he can borrow a quarter from you and call a friend to come get him. He then realizes that his friend would probably let him stay at his house overnight, if needed. He also realizes, as he is thinking, that he might be able to call his landlord from his friend's house and arrange to get into his apartment. As he begins to think calmly and carefully about the problem he remembers he has an extra set of keys to both his apartment and his car at home... and so the problem-solving begins and may continue.

- c. Talk and write about the event. Suggest to victims that they use audio tapes or write a journal to tell their unfolding stories. Even if no one else sees or hears these stories, it is a way of expressing oneself and a way of processing thoughts.

- d. Plan time for memories and memorials. It can be predicted that certain things will be trigger events for future crisis reactions. Urge victims to try to think through what those trigger events might be and to allow themselves time to deal with those reactions. For example, a woman who had been sexually assaulted on October 14 routinely took that day off from work to do something nice for herself and to think about her pain.
- e. Encourage victims to identify a friend or family member on whom they can rely for support during times when they must confront practical problems. If they are able to name that person, suggest that they call and explain their need for support and help. If this is done in advance, it makes it easier to request certain help when the time comes.
- f. Good nutrition, adequate sleep, and moderate exercise can significantly help victims survive times of crisis. That underestimated triad is, in fact, the basis for virtually all stress reduction programs. Help victims set up their own regular routine of health. At first it may be difficult, but if they keep trying they will readily realize some benefits.

Conclusion

Crisis intervention is more than a shoulder to cry on, a hand to hold, or an ear with which to listen. It encompasses all of those attributes in a crisis intervenor and more. It involves skill and knowledge, combined in a simple but powerful way. Providing victims with a sense of safety and security; allowing them a chance for ventilation and validation; and giving them accurate prediction and preparation for the future summarizes that combination. The strength of the crisis intervention process can be seen in the tributes that thousands of victims have given their advocates who were at their sides in their times of need. It can be seen in the fact that most of those victims do not need long-term counseling or mental health therapy.

Charles Dickens said, "No one is useless in this world who lightens the burdens of others." It is hoped that this chapter will help crisis intervenors lighten the burdens of the others who are victims of crime.

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Summary of Major Needs of Crime Victims

1. Safety and Security

a. Learn all about types of crime and range of victim reactions.

b. Individualize person/situation:

- Crime
- Victim(s)
- Situation

c. Explain:

- Who you are
- Your role in the case
- Your agency's role and functions.
- Your and your agency's relationship to the offender

d. Give victims as much control and decision making as possible.

- Validate their ability to have control and to make decisions related to their case.

e. Before meeting with victims:

- Explain where you are located ("A safe environment")
- Who can they bring?
- What should they bring related to their case?
- How long will the meeting likely take?
- Clearly define the purpose of the meeting:
 - * PSI information
 - * Victim impact statement
 - * Parole hearing

f. Never assume victims know the offender will not be present for pre-meeting!

g. Recognize you may be a “trigger” for victims:

- You may represent the crime
- You may represent the criminal
- You may represent the victim’s unfair treatment by the criminal justice system

h. Clarify your role in providing safety and security to:

- Victims
- General public

i. Always provide you name and telephone number for follow-up.

j. Explain any victim rights related to safety and security, such as:

- Protective orders
- Protection from intimidation, harassment or harm
- “stalking” laws
- Preventing handgun purchases

2. Ventilation and Validation

a. Always allow victims to talk...ventilate...and express their feelings.

b. Reinforce that victim input is:

- Important to you professionally
- Important to case disposition

c. Acknowledge:

- Past difficulties victim(s) may have had with criminal justice system.
- Possible victim trauma.
- That “The system isn’t perfect.”
- Express your role in working to improve the system.

d. Ask up-front: “How did the crime affect you and your family?”

e. Validate victim’s anger directed at the:

- Offender
- Criminal justice system

- Society

f. Validate that you also understand their anger may be directed at you.

g. Be honest about any feelings you may have speaking to the victim:

- Nervousness
- Anxiety
- Fear

h. Never say: "I understand."

i. Always ask: "Who else have you talked to?"

j. Practice active listening skills:

- Looking
- Nodding
- Summarizing
- Clarification
- Eye contact
- Allowing silence

k. Use basic validation skills.

- Give your name
- Use victim's name (after finding out how the victim wishes to be addressed)
- Say:
 - * I'm sorry.
 - * It's not your fault.
 - * Your input is valued and important.

3. Prediction and Preparation

a. Explain lack of "truth in sentencing."

b. Ask victims: "What do you want to happen?"

c. Ask victims: "What do you think will happen?"

d. Explain parameters of:

- Offender supervision
- Commitment
- When supervision ends
- Any victim's rights related to above

e. Encourage victim input and validate that input.

f. Parole and probation.

- Explain the difference
- Identify who is the probation or parole officer
- Provide victim with officer's:
 - * Name
 - * Address
 - * Telephone number
 - * Where or who to call in cases of emergency
- Explain conditions of probation and parole.
 - * Location of offender
 - * Applicable treatment programs
 - * Restitution (be realistic)
 - * Issues related to victim protection
 - * What happens with violations
 - * Any victims' rights or recourse with probation and parole

g. Restitution (at sentencing through the department of corrections at/after probation or parole).

- Who collects?
- Who disburses?
- Payment schedule
- Non-payment cases
- Remedies: criminal, civil, administrative

h. Encourage and validate victim's short- and long-term concerns!

i. Perhaps most important...

Being realistic is crucial to helping victims predict and prepare for the future!

4. Information and Education

a. Recognize most victims do not understand the criminal justice system and corrections.

b. Provide information about the system:

- Different agencies
- Roles and responsibilities of each agency
- How they interact (or *do* they interact?)
- Key players

c. Always put information in writing:

- Keep it simple
- Keep it in layperson's terms

d. Know exactly what victims need to know!

e. Know victim's rights in your state:

- Statutory rights
- Constitutional rights
- Rights under agency policies

f. Be aware of and educate victims about efforts to strengthen crime victims' rights:

- Locally
- Statewide
- Nationally

g. Always explain what you can and/or will do. Never assume the victim knows this.

h. When possible, provide written educational resources.

i. Inform and involve victims in National Victims Rights Week activities.

Free resources and assistance:

National Criminal Justice Reference Service

(800) 851-3420

Juvenile Justice Clearinghouse

(800) 638-8736

Bureau of Justice Assistance Clearinghouse

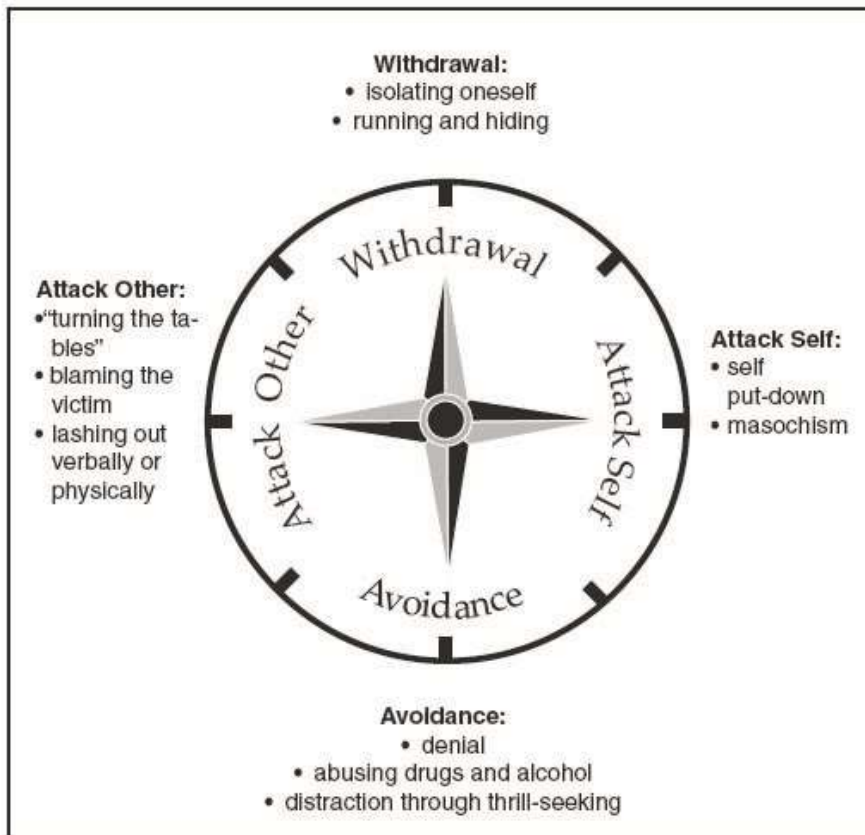
(800) 688-4242

National Victim Resource Center

(800) 628-6872

Understanding the Offender Experience

The Four Defensive Directions of the “Compass of Shame” (Dr. D. L. Nathanson)



A/ Initial Feelings when offenders commit a crime:

- Exhilaration
- Alertness
- Sense of pride
- Reservation
- Duplicity
- Fear

B/ Initial Feelings after offenders are arrested:

- Denial
- Self-Blaming
- Other-Anger
- Confusion
- Anxiety
- Depression

John Braithwaite, in an important study, distinguished between:

Stigmatizing Shame	Denounces offense and the offender	Reintegrating Shame	Denounces the offense, not offender
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Most offenders are already struggling with internal shame for what they **DID**, so the last thing they need is to be in a justice system that denounces, directly or indirectly, **WHO THEY ARE**. In contrast, offenders who are dignified in justice processes tend to step up to the plate better to accept responsibility for what they did and also accept positive responsibility for making things right again.

Understanding the Offender Experience

Just as victims experience the jarring impact of an unexpected situation, offenders too experience a jolt when they are caught and arrested. Their emotions jump from a high intense place of being on high-alert to a dramatic point of low-disgust. (Consider the emotional differential between the A/ emotions and B/ emotions listed in the box on the right side of the page.) This sudden drop can set in motion a series of phases that they too need to journey through in order to come out at a better place. Without this journey, they will stay stuck in a mindset of being a victim of unlucky circumstances and never come to terms with how their actions may have affected other people (let alone, affected themselves).

In the same way a tragic death can emotionally control a person's life if they don't journey through normal stages of grief, a criminal offense can also emotionally control an offender unless the he or she goes through a set of stages. At best these move from...

Denial > Regret (re: self) > **Remorse** (re: others) > **Reparation** (re: self and others)

Offenders, thus, also experience a disempowerment, though for very different reasons than victims would feel disempowered. It has more to do with losing control and thus losing 'face'. This leads to a sense of shame, and every offender will work out their shame in different ways. Some get harder on others; some get harder on themselves. (see Compass of Shame chart above.)

Exercise: How do you build trust with an offender who feels disempowered or who is stuck in one direction in the compass of shame?

Understanding the Needs of Offenders

Typical Needs **Before** a Resolution Process:

- A dignity that distinguishes between the offense and the offender
- Space to feel regret and remorse without judgment
- Forecasts of positive responsibility rather than favors or punishments
- Supports and information about justice processes

Typical Needs **During** Resolution Process:

- Encouragement to take responsibility for the situation
(both past responsibility and future responsibility)
- Opportunity to learn about impacts and express remorse/apology
- Practical and tangible avenues to make things right

Typical Needs **After** a Resolution Process:

- Provision to make practical amends and restitution
- Positive connections with family, friends, support groups
- Job supports, transportation, health, etc.
- Sense of clear completion and having a clean slate to start anew

Working with Offenders

By William Bradshaw, Ph.D.

Defenses are a part of human beings ways of protecting themselves from anxiety and threats to self-image and self-esteem. Offenders frequently respond to their criminal offense with defensive behavior that draws attention to them as problems and limits understanding and relating to them as a persons. Identifying offender defenses and understanding their function of protecting the offender from anxiety and threats to their sense of self can enhance understanding and lessen negative mediator responses.

Principle offender defense mechanisms include:

- 1. Denial:** denial or non-acceptance of important aspects of reality. Failure to accept responsibility. "I didn't do it." Guilty with an explanation.
- 2. Minimization:** lessening the severity of the offense. "It wasn't that big a deal."
- 3. Projection:** the offender attributes to others responsibility. "I didn't want to do it, my friend did it. He made me help."
- 4. Rationalization:** the use of convincing reasons to justify the offense. "I needed it, they are rich, they can afford it."

The Offender's Non-Voluntary Status

Offender referral to mediation and involvement in mediation must take in consideration the reality that the offender is almost always an involuntary client and is pressured into mediation. (This material is adapted from Ronald Rooney (1992) *Strategies for Work with Involuntary Clients.*)

1. The Reality of Pressured Contact

The Mandated Offender: the offender is forced to mediation by court order, legal mandate or program policy.

The Non-voluntary Offender: the offender participates in mediation due to formal or informal pressure

Power Differences: there are significant power differences between the offender and representatives of the justice system and the mediator that impact the choices and freedoms the offender has.

2. Common Responses to the Mediation Process

- a) Genuine agreement and wish to participate
- b) Hostility and aggression toward the mediator, victim or system
- c) Compliance with mediation but lack of real participation and follow-up
- d) Denies wrong doing, sees self as victim, refuses to cooperate in spite of consequences.

3. Understanding Offender Reactions

Common understanding of offenders characteristic negative responses are to label the offender as a "resistant" delinquent or con who refuses to accept responsibility. This focus highlights the offender's deficits, blames, or "demonizes" the offender. These labels stigmatize the offender and can create a self-fulfilling prophecy in working with the offender. In addition, this view of the offender encourages negative worker reactions where the worker is more likely to get their buttons pushed and hooked into unhelpful responses to the negative presentation of the offender.

A very different way of understanding the offender is to consider such reactions as normal and predictable responses to pressured situations that are designed to regain power, freedoms or save face. For example, imagine a situation in which you were in a non-voluntary situation. What were your thoughts, feelings, reactions? These are human reactions to pressured, involuntary situations with significant power differences between people.

4. Self-Presentation Strategies

These are ways the offender may present himself in order to manage the impressions of others in order to save face and meet the offender's goals. The most frequent effect of these presentations is to stimulate negative reactions from mediators and victims and for them to experience the offender as "manipulative." Awareness of these strategies can help mediators work more effectively with offenders.

- a) **Ingratiation:** efforts to make the offender more attractive through flattery, agreement with opinions, sharing positive traits
- b) **Intimidation:** efforts to elicit fear to achieve goals

- c) **Supplication:** throwing self at the mercy of the more powerful person
- d) **Face-work:** justification or selective confession to diffuse anticipated blame
- e) **Self-promotion:** selective emphasis on competence
- f) **Exemplification:** efforts to emphasize moral worthiness

5. Oppressed Groups

There is a disproportionate representation of involuntary clients who are members of oppressed groups that experience prejudice, discrimination and lack of access to resources based on race and class. The experience of oppression by offenders may lead persons to view the justice system and its representatives with mistrust, more reluctance to participate in mediation, more reticence, and greater sense of power differences. Differences in race, culture and class between the mediator and offender may create different self-presentation strategies that are difficult for the mediator to understand and deal with. Differences in class values, language factors, unique and common experiences (oppression) and communication styles can further complicate understanding of the offender in mediation.

In addition, offenders from different cultures and oppressed groups may hold very different world views from the mediator. Sue and Sue (1990) have suggested that differences in world view regarding external or internal locus of control regarding a sense of responsibility and control greatly effect human service situations. For example, the standard white, middle class world view assumes an internal sense of control and responsibility. A person from an oppressed culture may from experience with the majority culture, assume an external sense of control and responsibility. While the mediator from the dominant culture expects self-control and responsibility, the offender from an oppressed group may feel marginalized, experience little real control over their lives, and see the responsibility for events outside himself.

Identifying Offender Strengths

1. Perspective on the Offender

When a person commits a criminal offense the focus of attention naturally turns to the details of the crime and the criminal justice process that generally focused on "the person as the problem." This leads to a deficit orientation, problem based assessments and a negatively focused case construction around the offender's problems.

A very different perspective, essential for effective mediation, is to focus on offender strengths, attributes, abilities, resources and aspirations. This leads to an assessment of competencies that can be helpful in facilitating successful mediated dialogue between victim and offender.

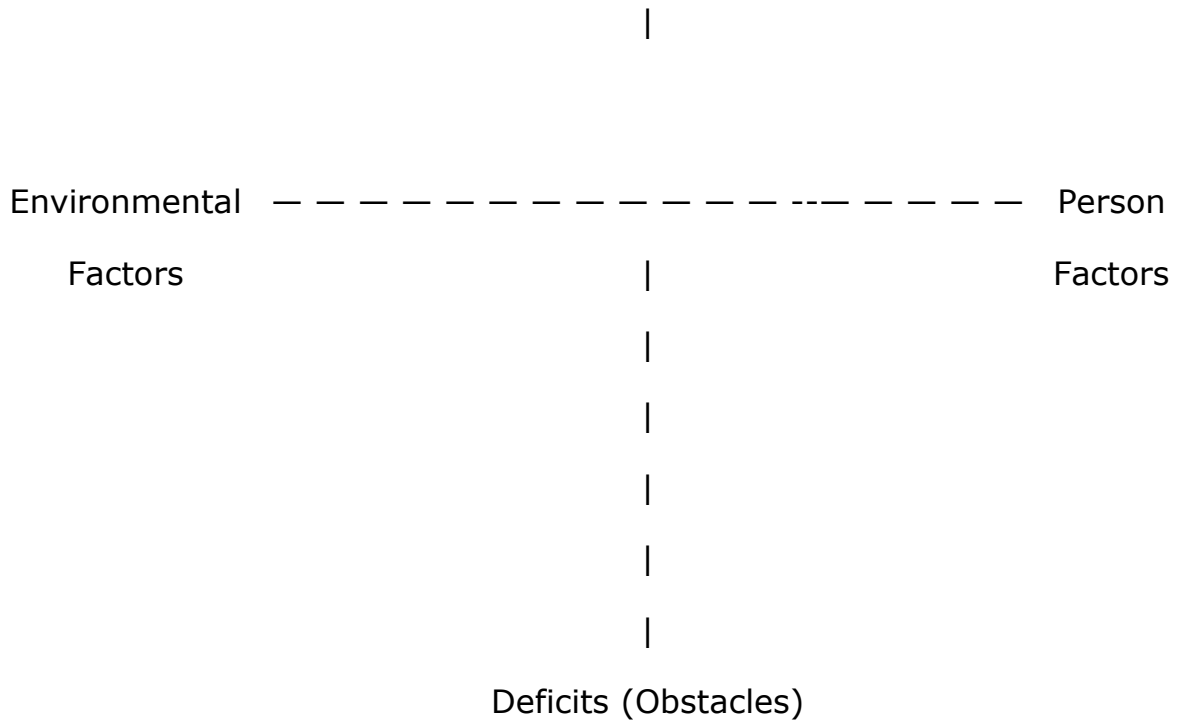
2. Assessment of Offender Strengths

It is important to identify offender strengths and obstacles relevant to mediation in the areas of cognition, emotion, motivation, coping, communication and interpersonal skills (Saleebey, 1992). It is also important to identify environmental strengths and obstacles relevant to mediation. The mediator should emphasize offender strengths and environmental resources that are available or can be developed in order to enhance the mediation process.

Saleebey has developed a simple assessment tool to aid in assessment from a strengths perspective.

Strengths

|
|
|
|



Personal strengths may include, for example, does well in school, keeps a job, or adequate anger control. Environmental strengths may include a key supportive teacher, a local program designed around teenage interest in cars and racing, a very good GED program. Personal deficits may include poor self image, feelings of rejection, history of failure in school. Environmental deficits may include an abusive mother, a vice-principal determined to give no youth a second chance, a community with no alternative educational, work, or recreational programs.

Working With The Offender

This section will highlight some of the critical issues involved in mediation with the offender that are based on the material described in Understanding the Offender. Emphasis is on pre-mediation case development and the use of a task centered approach to preparing the offender for mediation. Chapter 4, The Humanistic Model and chapter 5, The Mediation Process: Phases and Tasks will go into greater detail about mediation. This material is adapted from Rooney, 1992.

Preparing for Initial Contact with the Offender

In preparing for initial contact with the offender for mediation, review of case information and identification of any non-negotiable legal and institutional requirements as well as offender rights in the process is essential. This may include, for example, required restitution or mandatory participation in mediation. It is also important to examine any mediator attitudes to the offender or offense that might interfere with service.

1. Case Development: Explore the Offender Experience

Understanding that the offender in a non-voluntary client provides the basis of exploring the offender experience. Begin by exploring the cause of referral for mediation from the offender's view. It is important to have interest in her story. Discuss and assess the offender's responses to pressured contact. What kind of defensive responses regarding the crime are there? What difficult reactions and self-presentation strategies does the offender present: denial of wrong, considering himself as the victim, hostility to the mediator, passive indifference, deception? Avoid premature labeling of the offender and avoid getting "hooked" and responding in a negative way to the offender. Expect these types of responses and understand they are normal responses to power differences, lack of freedoms and threat to self. Express empathy with pressures experienced regarding referral for mediation.

2. Case Development: Explaining Options

In case development for mediation with a non-voluntary client you need to describe non-negotiable legal mandates, institutional policy and process, and clarify offender rights. Work with the offender to identify options regarding disposition of the case and review advantages and disadvantages of choices.

3. Case Development: Developing Common Ground for Victim-Offender Mediation

Begin by clarifying the purpose of mediation and the potential benefits and limitations of mediation for the offender and victim. Clarify your role as the mediator and discuss issues and concerns you may have especially around

defensiveness and self-presentation and the do-ability of mediation. Get feedback from the offender about issues and concerns, clarify expectations, evaluate willingness to mediate.

4. Case Development: Identifying Obstacles to the Mediation Process

Common obstacles for the offender in mediation include:

- a) lack of understanding how mediation fits into the justice system or can help the offender
- b) the offender has adverse beliefs about mediation
- c) the offender is fearful of open communication with the victims and is reluctant to share thoughts and feelings about the crime with the victim. This may be especially so in more violent and severe offenses.
- d) the offender lacks skills or personal support needed for mediation (e.g. effective communication skills, anger management).

5. Case Development: Working with Obstacles to the Mediation Process

There are three major ways to work with obstacles in mediation with the offender. First, identify personal strengths and available resources that can be used to support a successful mediation experience. Second, identify personal deficits that need to be improved in order for the mediation to be successful. For example, the offender may be minimizing the offense or be unable to express feelings clearly. These are deficits that can be helped in pre-mediation sessions with the offender. Third, identify environmental resources needed to support the offender in mediation. This might involve getting family members, friends to be at the mediation with the offender.

6. Case Development: Influencing Offender Behavior and Attitudes

There are several ways the mediator can influence the offender.

- a) The mediator does not react negatively or get hooked into the offender's problematic self-presentation.
- b) The mediator develops a working alliance with the offender based on mediator empathy, respect, listening, genuineness and concreteness.

These may include:

- identifying and helping offender work with ambivalence and anxiety about meeting with the victim
 - assuring safety of mediation setting for the offender
 - helping offender identify own strengths and deficits that may help or hinder mediation
 - helping offender be realistic about expectations
- c) The mediator can help the offender by providing information about mediation and highlighting the potential benefits to the offender.
- d) The mediator may identify rewards or inducements for behavior change.
- e) The mediator may use coercion and highlight negative consequences.
- f) The mediator may use various means of confrontation regarding problematic attitudes and behavior. These include:
- self-confrontation: the mediator helps the offender see the inconsistencies between his behaviors/attitudes and his goals. This assisted self-assessment may stimulate change.
 - inductive questioning by the mediator focuses attention on the negative consequences of discrepancies between actions and goals
 - assertive confrontation refers to the mediator challenging the offender about these discrepancies and their consequences
 - intensive confrontation: the mediator clearly states the non-negotiable items and the consequences for violation

Contract for Mediation

At the completion of case development for mediation a contract with the offender should be developed that specifies requirements, non-negotiable policies and consequences, offender rights and alternatives. In addition it establishes clear goals to be accomplished in the mediation and any agreed upon pre-mediation offender tasks with accompanying time frames and review dates.

Task Centered Focus

When problems or offender tasks have been identified that need to be done prior to mediation the following task centered approach is useful (Reid, 1978).

- a) Identify the problem anticipated in mediation for the offender.
- b) Explore and brainstorm tasks the offender can do to improve deficits, elicit resources and support or prepare for mediation.
- c) Specify the tasks
- d) Discuss potential obstacles to completion of the tasks by the offender.
- e) Provide incentives, rationale and problem-solving to overcome obstacles.
- f) Help the offender rehearse or role play skills and difficult situations and give feedback on performance until skill and confidence are satisfactory.

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Section Three

The Victim Offender Mediation Process

An Overview of Victim Offender Mediation

(The following is excerpted from *Overview of Victim Offender Mediation: A National Perspective*, by Dr. Mark Umbreit, Center for Restorative Justice & Peacemaking, 19XX.)

Victim offender mediation is a process which provides interested victims of primarily property crimes and minor assaults the opportunity to meet the offender in a safe and structured setting, with the goal of holding the offenders directly accountable while providing important assistance and/or compensation to victims. With the assistance of a trained mediator, the victim is able to let the offender know how the crime affected him or her, to receive answers to questions, and to be directly involved in developing a restitution plan for the offender to be accountable for the losses they caused. The offenders are able to take direct responsibility for their behavior, to learn of the full impact of what they did, and to develop a plan for making amends to the person(s) they violated. Some victim offender mediation programs are called "victim offender meetings," "victim offender reconciliation," or "victim offender conferences."

In some programs, cases are primarily referred to victim offender mediation as a diversion from prosecution, assuming the agreement is successfully completed. In other programs, cases are referred primarily after a formal admission of guilt has been accepted by the court, with the mediation being a condition of probation (if the victim is interested). Some programs receive case referrals at both the diversion and post-adjudication level. Most cases are referred by officials involved in the juvenile justice system, although some programs also receive referrals from the adult criminal justice system. Judges, probation officers, victim advocates, prosecutors, defense attorneys, or police can make referrals to victim offender mediation programs.

Research demonstrates with victim offender mediation that the majority of victims presented with the option of mediation choose to enter the process.

A statewide public opinion poll in Minnesota found that 82% of a random sample of citizens throughout the state would consider participating in a victim offender mediation program if they were the victim of a property crime. Interviews with 280 victims who participated in victim offender mediation programs in four states found that 91% felt their participation was totally voluntary. For those victims in the comparison group for this study, who did not participate in mediation, 70% would have preferred to meet the offender had they been given the choice to do so. Victim offender mediation is not appropriate for all crimes. In all cases, it must be presented as a voluntary choice to the victim.

It is becoming increasingly clear that the victim offender mediation process: humanizes the criminal justice experience for both victim and offender; holds offenders directly accountable to the people they victimized; allows for more active involvement of crime victims and community members (as volunteer mediators and support persons) in the justice process; and reduces further criminal behavior in offenders. During the early 1980s, many questioned whether crime victims would even want to meet face-to-face with their offender. Today it is very clear, from empirical data and practice experience, that the majority of crime victims presented with the opportunity of mediation and dialogue chose to engage in the process, with victim participation rates often ranging from about 60-70% in many programs.

How Is Victim Offender Mediation Different From Other Kinds of Mediation?

Mediation is being used in an increasing number of conflict situations, such as divorce and custody disputes, community disputes, commercial disputes, and other civil court related conflicts. In such settings, the parties are called "disputants," with an assumption being made that they both are contributing to the conflict and therefore need to compromise in order to reach a settlement. Often, mediation in these settings is focused heavily upon reaching a settlement, with a lesser emphasis upon a discussion of the full impact of the conflict upon their lives.

In victim offender mediation, the involved parties are not "disputants." Generally, one has clearly committed a criminal offense and has admitted

doing so, while the other has clearly been victimized. Therefore, the issue of guilt or innocence is not mediated. Nor is there an expectation that crime victims compromise and request less than what they need to address their losses. While many other types of mediation are largely “settlement driven,” victim offender mediation is primarily “dialogue- driven,” with the emphasis upon victim healing, offender accountability, and restoration of losses. Most victim offender mediation sessions (frequently over 95%) do in fact result in a signed restitution agreement. This agreement, however, is secondary to the importance of the initial dialogue between the parties. This dialogue addresses emotional and informational needs of victims that are central both to their healing and to development of victim empathy in the offender, which can lead to less criminal behavior in the future. Research has consistently found that the restitution agreement is less important to crime victims than the opportunity to talk directly with the offender about how they felt about the crime. A restorative impact is strongly correlated to the creation of a safe place for dialogue between the crime victim and offender. The following table identifies key characteristics of victim offender mediation that are likely to result in the greatest or least restorative impact.

Victim Offender Mediation Continuum: From Least to Most Restorative Impact

<p style="text-align: center;">Least Restorative Impact</p> <p style="text-align: center;"><i>Agreement-Driven: Offender Focus</i></p>	<p style="text-align: center;">Most Restorative Impact</p> <p style="text-align: center;"><i>Dialogue-Driven: Victim Sensitive</i></p>
<ul style="list-style-type: none"> • Entire focus is upon determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime upon the victim and the community, as well as the offender • No separate preparation meetings with the victim and offender prior to bringing the parties together • Victims not given choice of where they would feel the most comfortable and safe to meet, or whom they would like to have present • Victims given only written notice to appear for mediation session at preset time, with no preparation • Mediator or facilitator describes the offense and offender then speaks, with the victim simply asking a few questions or responding to questions of the mediator • Highly directive style of mediation or facilitation with the mediator talking most of the time, continually asking both the victim and offender questions, with little if any direct dialogue between the involved parties • Low tolerance of moments of silence or expression of feelings • Voluntary for victim but required of offender whether or not they even take responsibility • Settlement driven and very brief 	<ul style="list-style-type: none"> • Primary focus is upon providing an opportunity for victims and offenders to talk directly to each other, to allow victims to express the full impact of the crime upon their lives and to receive answers to important questions they have, to allow offenders to learn the real human impact of their behavior and take direct responsibility for seeking to make things right • Restitution is important, but secondary to the dialogue about the impact of the crime • Victims are continually given choices throughout the process: where to meet, who they would like to have present, etc. • Separate preparation meetings with the victim and offender prior to bringing them together, with emphasis upon <u>listening</u> to how the crime has affected them, <u>identifying</u> their needs and <u>preparing</u> them for the mediation or conference session • Nondirective style of mediation or facilitation with the parties talking most of the time, high tolerance for silence and use of a humanistic or transformative mediation model • High tolerance for expression of feelings and full impact of crime • Voluntary for victim and offender • Trained community volunteers serve as mediators or co-mediators along with agency staff • Dialogue driven and typically about an hour in length (or longer)

The Victim Offender Mediation Process

Summary of Mediation as Dialogue:

A Humanistic Model

Underlying Values: A Humanistic Mediation Model

1. Belief in our common humanity despite the presence of conflict and many differences.
2. Belief in the importance of the mediator's presence and connectedness with the disputants in facilitating effective conflict resolution.
3. Belief in the healing power of mediation through a process of the disputants helping each other through the sharing of their feelings, concerns and needs (dialogue and mutual aid).
4. Belief in desire of most people to live peacefully.
5. Belief in desire of most people to grow and learn.
6. Belief in the capacity of all people to draw upon inner reservoirs of strength to overcome adversity, to grow, and to help others in similar circumstances.

Basic Practices: A Humanistic Mediation Model

1. **Centering of Mediator** (Clearing the mind of clutter and focusing on the important peacemaking task at hand.)
2. **Re-Framing of the Mediator's Role** (From directing a settlement driven process to facilitating a process of dialogue and mutual aid.)
3. **Pre-Mediation Sessions With Each Party** (Listening to their story, providing information, obtaining voluntary agreement to participate, assessing the case, preparing for the face to face meeting.)
4. **Connecting With the Parties through Building of Rapport and Trust**

(Beginning in pre-mediation phase.)

5. **Identifying and Tapping into Parties' Strengths** (Beginning in pre-mediation phase.)
6. **Coaching on Communication, if Required** (During pre-mediation sessions.)
7. **Non-Directive Style of Mediation** (The mediator facilitating a direct conversation/dialogue between the parties, without dominating the interaction or speaking too frequently)
8. **Face-To-Face Seating of Victim and Offender** (Unless inappropriate because of culture of parties.)
9. **Recognition and Use of Power of Silence in Healing** (The mediator allowing moments of extended silence without interrupting, unless tremendous discomfort of parties is clearly present)
10. **Follow-Up Sessions** (Scheduling follow-up meeting(s) when needed)

Main Purposes: A Humanistic Mediation Model

1. To provide a restorative conflict resolution process which actively involves victim and offender in repairing the emotional and material harm caused by a crime.
2. To provide an opportunity for victim and offender to discuss the offense, get answers, express feelings, and gain a greater sense of closure.
3. To provide an opportunity for victim and offender to develop a plan addressing the harm caused by the crime.

Working With Offenders: Case Development

1. Preparing for Initial Contact: Review Case Information

- a. Identify any non-negotiable legal requirements.
- b. Identify any non-negotiable agency or institutional requirements.
- c. Identify offender rights.
- d. Examine mediator attitudes to offender or offense that might interfere with service.
- e. Arrange initial contact.

2. Initial Contact In-Person

- a. Explore offender experience.
- b. Explore cause of referral for mediation from offender's view.
- c. Assess offender responses to pressured contact.
- d. Avoid premature labeling of difficult responses: denial of wrong, consider self the victim, hostility to mediator, passive indifference, deception.
- e. Avoid getting "hooked" and responding punitively to offender.
- f. Understand offender responses as normal and predictable responses to power differences, lack of freedoms, and self-presentation strategies.
- g. Express empathy with pressures experienced with regards to referral for mediation.

3. Explaining Options

- a. Describe non-negotiable legal mandates.
- b. Explain non-negotiable institutional policies.
- c. Clarify offender rights.
- d. Identify options for offender regarding mediation.

e. Review advantages and disadvantages of choices from the offender's perspective.

4. Developing Common Ground for Victim-Offender Mediation

a. Clarify purpose of mediation and potential benefits to the offender and victim.

b. Clarify role of mediator, victim, offender in mediation.

c. Discuss issues and concerns regarding mediation for the offender; clarify expectations.

d. Get feedback from offender regarding willingness to participate.

5. Identifying Obstacles to the Mediation Process

a. Lack of understanding how mediation fits in justice system or can help offender.

b. Offender has negative feelings about mediation.

c. Offender fears open communication with victims and is reluctant to share thoughts or feelings about the crime to the victim.

d. Offender lacks skills or support for mediation.

6. Working with Obstacles to the Mediation Process

a. Identify offender personal strengths and resources that support successful experience in mediation.

b. Identify offender deficits that could be worked with to facilitate mediation e.g. training in communication skills.

c. Identify environmental resources needed to support the offender in mediation.

7. Influencing Offender Behavior and Attitudes in Mediation

- a. Develop a working alliance by empathy, respect, listening, genuineness, concrete-ness.
- b. Persuasion by providing information, focusing on benefits of mediation.
- c. Inducements for participation:
 - opportunity to make things right
 - opportunity to have input on the restitution agreement
 - opportunity to move on

8. Contract to Participate in Mediation

- a. Specify requirements, non- negotiable policies and consequences regarding mediation.
- b. Specify offender rights, alternatives and choices regarding mediation.
- c. Establish clear goals of mediation and agreed upon offender tasks.
- d. Clarify time limits and review dates.

9. Task Centered Focus

- a. Identify problems anticipated in mediation for the offender.
- b. Explore tasks the offender can do to prepare for mediation.
- c. Specify offender tasks either premeditation or in mediation.
- d. Anticipate obstacles to completion of tasks by offender.
- e. Provide incentives/rationale for task completion.
- f. Provide opportunities for rehearsal and role playing.

Potential Risks & Benefits of Victim Offender Mediation & Dialogue

Potential Risks for the Offender:

1. Re-experiencing anger, frustration, loss of control associated with committing the crime.
2. Reinforcement of shame and despair through learning the effects of the crime on the victim.
3. Unrealistic expectations about the victim's response (ability to work through their feelings, ability to accept offender as human being despite behavior)
4. Feeling vulnerable as a result of expressing some of their true feelings of shame about what they did, or about their life circumstances

Potential Benefits for the Offender:

1. Learning the real impact of their behavior on others and moving beyond denial to taking responsibility.
2. Building self-esteem through taking action to make things right with their victim.
3. Having a chance to tell one's story, to represent oneself, to be heard.
4. Having a say in determining a plan for restitution.
5. Feeling more powerful and in control of one's life.

Potential Risks for the Victim:

1. Bringing up uncomfortable feelings related to the victimization.
2. Re-experiencing the initial anxiety, trauma of related symptoms.
3. Learning painful new information about details related to the crime.

4. Not seeing the degree of desired remorse in the offender.
5. Unrealistic expectations in regard to the offender's rehabilitation.

Potential Benefits for the Victim:

1. Expressing anger and pain directly to person responsible for it.
2. Learning new information about the crime that is needed.
3. Seeing remorse in the offender.
4. Experiencing a greater sense of closure.
5. Feeling more powerful and in control of one's life.

Summary of the Entire VOM Process

Basic Elements of Victim Offender Mediation

- Pre or Post Adjudication Referral
- Requires Admission of Guilt by Offender
- Offender Participation Should be as Non-Coercive as Possible (and voluntary consent is best at end of initial meeting)
- Victim Participation Must be Voluntary!! (also an option for victim shuttle communication)
- Mediator Meets With Each Party Separately Before Date of Mediation to Prepare Parties and Screen for Safety
- Mediation Involves Face-to-Face Meeting (Unless this is not appropriate because of culture of parties)
- Empowers V/O parties to Resolve Conflict Through Dialogue & Mutual Aid
- Involves Neutral Trained Mediators who Abide by Mediation Standards (Usually community volunteers)
- Typical Three Part Agenda:
 - Discuss Facts / Feelings (Storytelling and dialogue)
 - Discuss All Impacts and Consequences (Transition phase)
 - Develop Restitution Plan (Conflict resolution and closure)

The Four Phases of the Victim Offender Mediation Case Development Process

<u>Task</u>	<u>Responsibility</u>
1. Intake Phase	Program Staff
2. Preparation for Mediation Phase	Mediator
3. Mediation Phase	Mediator
4. Follow-Up Phase	Program Staff (with Mediator)

One. Intake Phase (logging and filing case data)

Two. Preparation For Mediation Phase

- **First: Call / Meet With Offender** Listen to their story, explain process, secure consent to participate, and prepare for participation.
- **Then: Call / Meet With Victim** Listen to their story, explain process, secure consent to participate, and prepare for participation.
- **Arrange and Schedule Mediation Session**

Calling the Offender and Victim

(First Contact by Mediator)

- Identify Yourself.
- Refer To The Letter Sent & The Program You Work With.
- Emphasize That This Is A Program To Help The Victim And To Allow The Offender To Make Amends.
- Avoid Use Of The Word "Reconciliation" Or "Forgiveness" (Far Too Presumptuous).
- Primary Goal Is To Schedule A Separate Meeting With Victim Or Offender To Learn More About What Happened & To Explain The Program.
- Emphasize The Decision To Get Involved In The Program Can Be Made Later.
- Use Assertive But Cooperative / Sensitive Communication Style.
- Be Prepared To Provide Information About The Program, If Needed, But Still Emphasize The Need For A Meeting.

(Trust Is Built Through Face-To-Face Interaction!)

Initial Separate Meetings With Offender Party and Victim Party

- Introduce Yourself Again, With Quick Reference to Program.
- Listen to Their Story (Try to get in a listening mode, first) "What actually happened on the night of the burglary?"
- Explain the Program in a Non-Jargon Manner.
- Encourage their Participation, but Do Not Coerce or Pressure.
- Mention that "Many Victims /Offenders Find it Helpful to Meet and Work Things Out, Although it is Not Meant for Everyone - It's Your Choice."

- For the Offender: (If they agree to participate) Assess Their Ability to Pay Restitution and Willingness to Consider Personal Service Work or Community Service Work.
- For the Victim: (If they agree to participate) Assess Their Need for Restitution and Willingness to Consider Personal Service Work or Community Service Work.
- Coach on How to Respond to Questions During Mediation, If Either Victim or Offender are Very Non-Expressive, Express Intense Feelings, or are Highly Aggressive.
- Call Back Later if More Time is Needed to Think About It

Three. The Mediation Phase

- Conduct Mediation Session: Introductions / Explain Role.
- Discuss What Happened & How People Felt About It. (Have each person tell their story, followed by questions and concerns). Discuss Impacts to the victim and to other people.
- Discuss Losses and Need for Restitution.
- Secure Signatures on Restitution Agreement.
- Transmit Agreement to Program Coordinator.

Mediator Functions

- Instilling Ownership and Motivation
- Regulating Interaction
- Aiding Communication
- Monitoring the Process

Suggested Agenda for Victim Offender Mediation Session

- Introduce Everyone
- Explain Role as Mediator
- Explain Procedures
- Explain Ground Rules
- Discuss What Happened and Impact on Parties
- Discuss Losses and Need for Restitution
- Develop Restitution Plan
- Sign Agreement
- Schedule Follow-Up Meeting, If Appropriate
- Close Mediation Session, Thank the Parties for Their Participation

Effective Listening Techniques

- Be Comfortable Physically
- Eliminate Distractions
- Make Eye Contact
- Watch Body Language
- Do Not Be Judgmental
- Ask Questions to Clarify
- Restate What You Understand is Being Said / Paraphrase
- Summarize Basic Viewpoints

Starting the Mediation Session

- Introduce Everyone / Arrange Seating
- Explain Your Role as a Mediator: “To help you talk about what happened and work out a possible restitution agreement’. I am not a court official and will not be requiring you to agree to anything.”
- Explain Ground Rules: No interrupting each other, etc.
- Identify the Agenda:
 - * Discuss What Happened & Impact on Parties
 - * Discuss Losses / Plan for Restitution
- Emphasize that any Restitution agreement Reached Must be Considered Fair to Both
- Initiate Direct Communication Between Victim and Offender: “Mrs. Smith, could you tell John what happened from your perspective and how you felt about the burglary?”

Transition From Talking About Event to Negotiating Restitution

- Has Discussion of What Happened and How People Felt About it Concluded?
- Allow Additional Time / Silence, if Needed
- Ask if There are any Additional Concerns Either Person Would Like to Express Before Moving on to Discussing Losses and Negotiating Restitution. Pause.
- Ask the Victim to Identify Specific Losses
- Ask Offender's Perspective on the Losses
- Be Prepared to Help Identify Options for a Restitution Agreement:
 - * *Financial*
 - * *Personal Service for Victim*
 - * *Community Service*
- Terms of Restitution Agreement Must be Considered Fair to Both Parties

Writing the Restitution Agreement

- Read Back What you Understand to be the Terms of the Agreement, Before Writing
- Use SAM Criteria:
 - * Specific
 - * Attainable
 - * Measurable
- Key Elements of Restitution Agreement: Form (Money, Work, etc.)
 - * Amount (Dollars, Hours, etc.)
 - * Timetable (Weeks, Months, etc.)
- After Writing Agreement, Have Each Party Review it and Sign it, Unless Parent Requested Parental Review Before Signing
- Leave a Copy with Each Party

Forms of Restitution

- Financial Payment to Victim
- Work for the Victim
- Work for the Victim's Choice of Charity
- Offender Enrollment in Intervention Program
- Combination of Above

Characteristics of Victim Offender Follow-Up Meetings

- Usually Brief (15-30 minutes)
- Less Structured / More Informal
- Frequency (Depends on Case) Mid-Contract Review
 - * Renegotiation of Agreement
 - * And / Or Close-Out Meeting
- Formal Agenda: Monitoring of Restitution Agreement
- Informal Agenda: Strengthening of Conflict Resolution Process and Opportunity for Closure
- When to Suggest Follow-Up Meeting: After Restitution Agreement is Signed, but Prior to End of Mediation Meeting
- Discussion of Follow-Up Opportunity:
 - * Purpose to Monitor Completion of Agreement
 - * Be Assertive but, Don't Mandate or Require

Potential Benefits of Victim Offender Follow-Up Meetings:

- Strengthening of Accountability
- Further Humanizing of Process

- Further Breaking Down of Stereotypes
- Monitoring of Contract
- Direct Payment of Restitution, if Allowable
- Re-Negotiation of any Problem Areas in the Restitution Agreement

Summary of Guidelines For Victim Sensitive Mediation and Dialogue

1. Victim safety.
2. Victim choice to participate and throughout entire process.
3. Participation by selected offenders (Do they admit guilt or feel remorse?)
4. Approval of parent(s) for participation of juveniles.
5. Offender choice to participate (established by end of initial preparation meeting)
6. Victim support (i.e., friend, family members) during mediation, if desired.
7. Careful and extensive in-person victim preparation by mediator.
8. Offender support (i.e., family members) during mediation, if desired.
9. Careful and extensive in-person offender preparation by mediator.
10. Use of victim sensitive language (avoid words like forgiveness, reconciliation, "you should").
11. Empowering the victim through:
 - appropriate offender information during pre-mediation session
 - continual presentation of choices in process
 - have victim initiating the initial storytelling phase of mediation session (unless they prefer not to)
 - option to terminate the process at any point

12. Reality testing victim expectations during pre-mediation session with mediator.
13. Use of a humanistic/transformational model of mediation which emphasizes dialogue and separate pre-mediation sessions between the mediator and each party, not the more common settlement-driven civil court model.

Mediation Standards for Victim Offender

Dialogue Meetings (Ted Lewis)

- Careful screening and assessment for mediation
- Voluntary participation with informed consent
- Adequate advance preparation of participants
- Impartiality and recognizing our own biases
- Conflicts of interest disclosed and discussed
- Clear boundaries and expectations respected
- Duty to protect confidentiality and disclose exceptions
- Responsibility of mediator competency and due diligence
- Provide opportunity for participants' full expression of their feelings, needs and interests
- No pressure for reconciliation or forgiveness
- Avoid even the appearance of impropriety

Victim Offender Mediation: Pre-Dialogue Processes

Information to give at the start of a phone call to offender or victim parties:

- Your name
- Your volunteer status
- The agency that you represent
- A brief reference to the specific crime incident (and month)
- A reference to the initial letter sent to them

The main purpose of an initial call is to develop great trust and confidence for the party to take the next step in scheduling an in-person preparation (or intake) meeting. In general, more time can be spent with victims who need greater assurances or the chance to vent. Youth offenders who are under 15 should be talked to *after* you talk to a parent.

Why Are Preparation Meetings Important in Victim Offender Mediation?

- **To establish trust** and rapport between parties and mediators so that victims and offenders will feel safe in proceeding with the mediation process
- **To provide space** for parties to articulate their stories and feelings, and thus be heard, acknowledged and dignified in their experience
- **To personalize** the juvenile/criminal justice process for both victims and offenders and thereby embody the essence of restorative principles
- **To educate** parties about the benefits and risks of mediation, to describe the process and to answer questions, and to empower parties to make a fully informed and voluntary choice about whether to participate
- **To screen** victims and offenders as candidates for mediation, to assess their readiness for mediation as well as the

appropriateness of the case for mediation, thus guarding against any scenario of re-victimization

- **To gather information** that will clarify the issues that need to be addressed in mediation, including other persons in the crime, and restitution requests
- **To assess the needs** of parties and thus determine adjustments to the process that can best meet those needs
- **To determine support people** that could also participate (family members, resource people, community members)
- **To prepare** parties for mediation with a sense of optimism, with 'thinking' homework, and possibly to give them any communication coaching

Victim Offender Mediation: A Humanizing Approach

Elements to Non-Directive Mediation by Dr. Mark Umbreit

1. **Parties, as human beings**, possess untapped inner resources that, under the right circumstances, can be drawn out to help them resolve problems and harms.
2. **The mediator's presence** plays an important role in facilitating a genuine dialogue in which the parties are actively engaged and doing most of the talking. "Presence" is conveyed by a mediator's authentic connection with each party, and is expressed through verbal and non-verbal communication, tone of voice, calm mood, etc.
3. **Deep listening** on the part of the mediator is more important than active listening (with reliance on frequent mediator techniques of response). Deep listening provides greater space for parties to generate their own direct conversation.
4. **Appropriate Structure** (including a neutral third-party facilitation, procedural guidelines, ground rules, formal time

frames, caucus option, etc.) can neutralize differences in status and power and provide safe settings for emotional cases.

5. **The power of storytelling** is central to the opportunity for parties to speak, listen, and to be heard in ways that allow new content to surface, new trust to be built, and new impetus to invest in a better future.
6. **The need for flexibility** is important in addressing individual needs or adapting to unexpected challenges in the flow of a process. Parties need to know they have choices from a menu of options all along the way in order to feel empowered.
7. **A non-directive style** of mediation is by no means a passive style. At any moment a mediator is able to guide conversations, with invitational questions, toward deeper or advancing levels. The most important consideration, though, is allowing parties to have direct conversation with each other, and thus mediators often need to 'get out of the way' in order for meaningful dialogue to unfold.
8. **Listening to the heart language** beneath the actual word content is an important thing for mediators to develop so that they can intuitively sense the real underlying needs and interests and hopes that parties are expressing verbally and non-verbally.
9. **Well-written agreements** are both practical and relational, balancing the need for outward demonstration with inward and relational transformation. It should be remembered though, that in a dialogue-driven model (as opposed to settlement-driven), the agreement is not the main goal of the meeting, but rather resolution *through* dialogue and understanding.
10. **Follow-up meetings** can serve well to affirm the relational dimension of the resolution as well as to create a better framework of accountability for offenders to fulfill agreements.

Victim Offender Mediation – Steps of a Joint Meeting

Note: This is simply a sample of one way to outline a meeting.

Pre-meeting: Meet with co-mediator 30 minutes before meeting to...

- Talk over case details and process options
- Determine who will lead parts of the mediation
- Prepare necessary forms
- Set up room with chairs, water, etc.
- Become centered and focused

(if a party arrives early, do not have them sit and converse in the main meeting room)

Introduction:

- Provide an informal, relaxed atmosphere
- Welcome participants; do introductions by name
- Explain how both parties have had intakes and chose to participate
- Describe RJ program and benefits; mediation and mediator's role
- Review and sign "Agreement to Mediate" form; mention confidentiality
- Remind parents that the victim and offender will do most of the talking, but parents and others will have opportunity to also talk
- Forecast 3-Stage Outline and general timeframe

Stage 1: What Happened? (Information about the harm)

"Now it's time for you to talk to each other about what happened." Invite offender to tell story, unless victim has indicated interest to go first. Invite offender to direct eye contact and words towards the victim.

1. Invite victim party to ask any questions first.
2. At certain points, give offender and victim acknowledgements. "That must have been hard for you." Invite them to go deeper with their story.
3. Ask 'mop up' questions that the victim has not raised, including, "How did you feel at that time?" or "Why did you do..."
4. Invite victim to tell his or her story; invite questions from offender before adding questions.
5. If others are present, invite them to speak, share their experience, or ask questions.

Transition Question A: "We've had good discussion on what happened,

and I think we are ready to move into our next section on the impacts, but before we do that, does anybody want to cover any details of information we haven't covered yet?

Stage 2: Who Was Affected? (Impacts of the harm)

"Now it's time for you (the victim) to fully tell (or review) how you were affected." After this (to offender), "I'll be asking you to repeat back some of the things you have heard."

1. If victim's account is short, ask additional questions to draw out all levels.
2. Invite offender to repeat back what he or she has heard.
3. Name or list the victim's losses, and clarify details (i.e. money amounts).
4. Ask offender to name how the offense impacted other persons and the community; also "How have you (the offender) been affected by this?"
5. Invite comments from parents and other participants who are present to discuss other impacts and consequences of the crime.

Transition Question B: "We've had good discussion on the impacts of the harm, and I think we are ready to move into our next section on the resolution, but before we do that, does anybody have anything more to say about how people have been affected?"

Stage 3: What Repairs Can Be Made? (Resolution for the harm)

"Now that we have identified the harms and the impacts, we can move into our final stage to repair the harms."

1. Invite victim to identify requests.
2. Ask offender to respond to those requests.
3. Ask the offender if there are additional options for repair.
4. Ask all others for their input.
5. Determine which repairs are ones both parties can realistically agree to.
6. Determine fairness and reachability of repair plans.
7. From brief notes, list agreement items verbally and get consent.

WRITING THE AGREEMENT (on form):

First part of agreement can state how the meeting included discussion of crime, impacts, and an apology (if so) was given. "We met today..."

Second part of agreement (optional) can have, "If faced with a similar situation in the future,... (name) will do..."

- Third part:** "As a way to repair the harm, (name) agrees to..." (list all repair plans with specific timeframes and details).
8. Read agreement out loud to get final and mutual consent.

Closing Time:

1. Congratulate participants for the outcome
2. Affirm strengths of character and communication among parties
3. Invite final reflections on meeting from all (while one mediator makes copies)
4. If there is no resolution, speak of the value of meeting
5. Review expectations of offender in the immediate future (give any aid forms)
6. Ask the victim if she or he wants to be contacted about offender's success
7. In some cases it may be helpful to plan for a follow-up meeting
8. Initiate farewells, handshakes, etc., as appropriate

Debrief Time with Co-Mediator: Primary Goals...

- To 'talk out' any negative aspects of the experience that are absorbed
- To review the highlights and challenge spots of the mediation (knowing that through confidentiality, you cannot talk to others about what you heard)
- To affirm positive mediation skills and moments observed in the other mediator
- To coach newer mediators in learning areas (by veteran mediators)
- To determine special information to be passed onto the program manager
- To wind-down from the whole experience and transition back to the day

Victim Offender Mediation – Intro Time

Essential Elements of a Mediator’s Introduction:

After general intros, small talk, logistics, etc., it is helpful to:

- Give a brief synopsis of how the case was referred to the program
- Give a brief review of what parties have already done for preparation
- Give a brief description of what distinguishes restorative justice

Then in conjunction with any front-end form to be signed, cover...

1. What Mediation Is: voluntary, confidential, non-legal, self-determination
2. Who Mediators Are: third-party guides, not judges
3. Why Mediation Works: ground-rules of respectful listening, no interruptions
4. How Mediation Unfolds: storytelling, impacts, resolution and agreement

Covering Introductory Content is important, but one must remember the main purpose of covering this content: TO PUT THE PARTIES AT GREATER EASE.

It may also cover the bureaucratic needs of the agency, but this purpose should never trump the need to serve the parties well in explaining all the preliminaries. The key is to not draw out this time and have an ‘energy drop’ after people arrive. This is especially challenging for teenage offenders. There are several ways to keep them engaged:

- Favor eye contact with teens more than with parents
- Make the preliminaries meaningful and relevant to them
- Don’t just ask ‘yes and no’ questions, but get them to talk a bit

Examples of some questions to ask youth offenders in Introduction Time:

- Did the police have a direct conversation with you? How was that for you?
- How would you define confidentiality?

Examples of making things relevant in Introduction Time:

- “A restorative justice process is letting both of you fix things rather than having other people decide how to fix things for you.”
- “Remember what you learned in your English literature class, how every story has a series of conflicts, a climax and then a resolution? Well that’s similar to what this process is all about.”

Victim Offender Mediation – Main Narrative

“THE MEDIATOR’S JOB IS TO MAKE SURE THAT ALL THAT NEEDS TO BE SAID IS SAID AND ALL THAT NEEDS TO BE HEARD IS HEARD. THERE ARE TWO IMPORTANT KEYS TO THIS JOB. THE FIRST IS TO NOT MAKE THESE COMMUNICATIONS HAPPEN BUT RATHER TO MAKE SPACE FOR THEM TO HAPPEN AND THEN GET OUT OF THE WAY. THE SECOND KEY IS TO KNOW WHEN THE PARTIES HAVE REACHED A FULLNESS OF CONVERSATION BEFORE TRANSITIONING THEM INTO A RESOLUTION DISCUSSION.”

-Ted Lewis

The Dialogue Triad: **SPEAKING, HEARING, BEING HEARD**

1. The Offender’s Narrative

- a. By articulating his or her story, an offender can deepen their sense of ownership and awaken their sense of conscience.
- b. By hearing the offender’s story, a victim can have unanswered questions answered and can experience the humanity of the offender.
- c. By being heard by a victim, a youth offender can experience a common connection of humanity by being understood by the victim.

2. The Victim’s Narrative

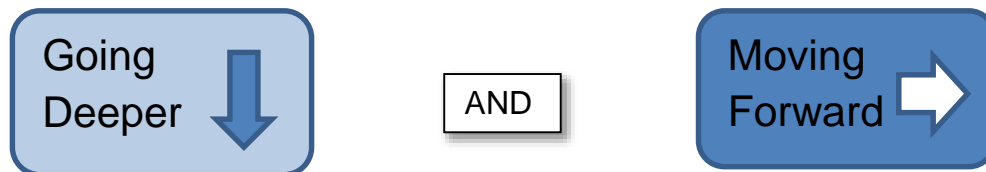
- a. By articulating their experience, victims can release some of the burden within and feel empowered through the telling.
- b. By hearing the victim’s story, an offender can deepen their sense empathy, having experienced the humanity of the victim.
- c. By being heard by the offender, a victim can experience a common connection of humanity by being understood by the offender.

Now we can summarize the main goals for the narrative discussion stage:

- Offenders step up to the plate to honestly tell their experience which is helpful for both the offender and victim parties. This establishes the OWNERSHIP goal.
- Victims give voice to their experience which is helpful for both parties. Offenders learn directly how their actions have impacted others. This establishes the EMPATHY goal.
- Once these narrative based elements have been established, a mediator can help parties forward to accomplish the REPARATION goal.

Victim Offender Mediation – The Art of Asking Questions

While the main goal is to invite parties to have direct and open conversation with each other, GOOD LISTENING also helps mediators to be GOOD RESPONDERS. The following examples are all responses to parties which invite them to either to deeper or move forward.



RESPONSE STATEMENTS TO INVITE DEPTH: (With no follow-up question)

1. Acknowledging: "That must have been really frustrating for you."
2. Validating: "Thanks for being willing to share that with me."
3. Normalizing: "Most people in your situation would feel the same way."
4. Empathizing: "I can understand why that must have been hard for you."
5. Reflecting: "I hear you say that you feel nervous when that happens."

RESPONSE QUESTIONS TO INVITE DEPTH or FORWARD MOTION:

1. Clarifying: "Could you describe in more detail what happened?"
2. Encouraging: "Can you say more about how that affected you?"
3. Summarizing: "What I hear you saying is.... Do I have it right?"
4. Soliciting: "Would you both like to have some discussion on...?"
5. Transitioning: "Is there anything else you'd like to say before we move...?"

HELPING PARTIES RESPOND TO EACH OTHER:

The most important element to help with this is... Good mediators need to honor that open space for parties to think a moment rather than fill that space as if it is an awkward moment. The next course of action is to invite one party to respond to what they just heard.



All good questions are **INVITATIONAL questions**. The purpose is not for the mediator to receive new information but for the party to express new information to the other party. Unlike lawyers who use leading questions, mediators invite empowered conversation without assessing the content.

Victim Offender Mediation – Resolution and Agreement

The final discussion of resolution and reparation allows parties to:

1. Discuss the best RESTITUTION OPTIONS for resolving the situation
2. Agree on a best RESTITUTION PLAN for resolving the situation

A Good Agreement is a S.M.A.R.T. Agreement

- **Specific:** covers all of the bases for Who, What, When and Where
- **Measurable:** provides actual figures for hours and dollars
- **Attainable:** corresponds to what a youth is truly able to do
- **Realistic:** prevents a victim from setting goals that are too high
- **Timely:** clarifies a timeframe that brings closure to both parties

Three Most Common Types of Restitution:

- MONETARY RESTITUTION
- COMMUNITY SERVICE HOURS
- WRITTEN APOLOGY LETTER

OTHER TYPES OF RESTITUTION (and offender-betterment activities)

- Learning Essay (specify # of pages)
- School presentation to younger students
- Fixing bikes for a non-profit
- Outdoor help for the victim (*only* when initiated by the victim)
- School improvement plan (grades, behaviors, projects)
- Anger-management class
- Drug or alcohol program
- Volunteer as community member in justice process
- Parent-Youth mediation program (improve communication)
- Possible follow-up meeting (such as with a school principal)

Victim Offender Mediation – Common Variables

In restorative justice processes, the WHO and the HOW are very important when it comes to tailoring the process to fit the needs of the case. While dialogue models all differ with respect to WHO is involved and HOW the dialogue is guided, there are additional variables within each given model that allow a case-worker or mediator to make sensitive adjustments.

Pre-Dialogue Meeting Variables

1. initial communications (letter, phone, timing considerations)
2. preparation/intake meeting (length, location)
3. additional preparation meeting (to ensure readiness)
4. front-end letter by offender (to build assurances for victim)
5. victim-shuttle assessment and info gathering
6. agency preparation letters for joint meetings (to forecast things)

Joint Dialogue Meeting Variables

1. timing of meeting (proximity to time of offense)
2. number of participants
3. support people present
4. use of community members
5. seating arrangements; use or no use of table
6. double circle for seating (inner circle = primary talkers)
7. caucusing and breaks
8. setting a second meeting for resolution
9. facilitation styles (directive - non-directive continuum)
10. shuttle arrangements (i.e. to relay victim info)
11. use of forms (guidelines for meeting; restitution agreement)
12. inviting casual conversation at the close of a meeting
13. use of food as a bridge-building element

Post-Dialogue Meeting Variables

1. offering debrief times for unsatisfied parties
2. communications to parties during tracking of agreements
3. accountability frameworks for restitution-agreements
4. letter exchange to address unexpected complications
5. follow-up meeting at close of tracking period
6. closure communications (by phone)

Victim Offender Mediation – Community Members and Surrogate Victims

What is a Community Member and a Surrogate Victim?

When an actual victim chooses to not participate in a dialogue process, it is still important to carry things forward with other participants who can ensure that a full restorative conversation can happen.

The role of **community members** and **surrogate victims** is 3-fold:

1. To speak as a representative victim in a similar crime (without representing the actual victim). “Had I been in that situation, I would have experienced...”
2. To speak as a representative of the community that is more widely impacted by crime. “The whole community loses trust when you...”
3. To speak as an advocate for restorative outcomes. Participants in these roles are already vested in non-punitive measures, and therefore they help to determine reparative conditions of an agreement that mend the harms and foster positive responsibility and reintegration.

Mediators are
'PROCESS
PEOPLE'

Community Members
are 'CONTENT
PEOPLE'

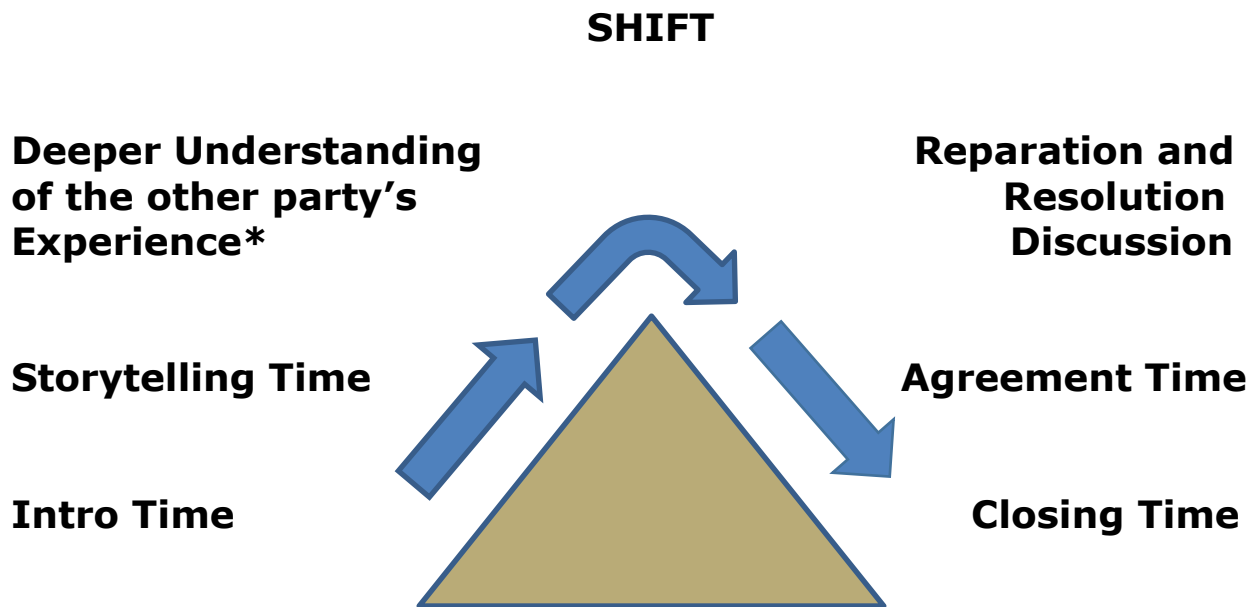
A chief benefit of including community members and/or surrogate victims in mediations with offenders is because they have more liberty than mediators to say whatever they wish to say. They can speak more subjectively (as a subject or party) and fully represent people impacted by the crime. Perhaps they have their own similar story from their past. Altogether, community members have vested interests in the community they share with offenders, and thus they promote outcomes of safety, closure, accountability, and reintegration for all involved. **Community members and surrogate victims can also be asked to support meetings that includes the actual victim of a crime. This would be at the request of the victim who would inform the case worker or mediator.**

Victim Offender Mediation Dynamics

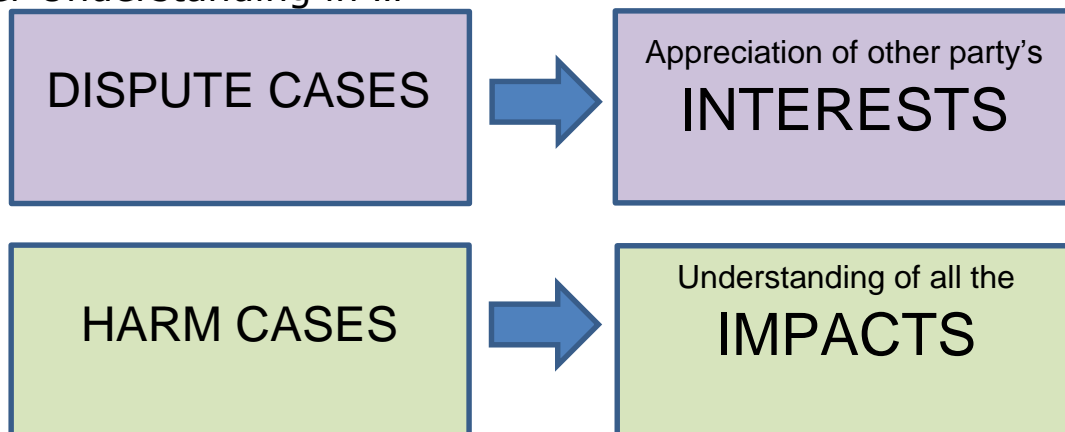
Through storytelling and connecting with the humanity of the other persons involved, a restorative dialogue typically reaches a...

SHIFT POINT

...where enough new content has been shared and heard, and parties experience a more relaxed mood compared to the tense mood at the start.



*Deeper Understanding in ...



Without a SHIFT experience from the weight of the past to the freedom of the future, it is very difficult for parties to move forward to a satisfactory end.

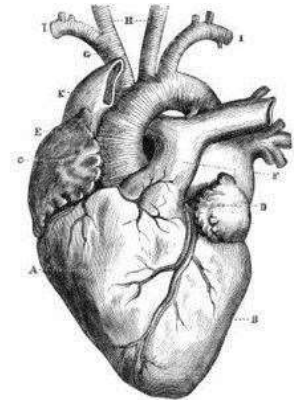
The Heart of the Matter in Restorative Dialogue

Structure is important – like notes on staff lines are a key part of music

Skills are important – like hand coordination is for playing instruments

Standards are important – like rules are necessary in sports games

But the most important part of a conflict resolution process is tuning into the **Human Heart**. Heart-based language is frequently used in the mediation field metaphorically ('heart-to-heart' conversation; or people becoming open- or warm-hearted). New research, though, is showing that the actual human heart is very much engaged in conflict resolution processes. Consider how stress effects the heart, and how the relaxing after a shift-point relaxes the heart and blood pressure.



So while Structure and Skills and Standards are all important in the fields of conflict resolution and restorative justice, and while they are helpful to learn when guiding other people through resolution processes, the foundation of all resolution work is creating safe spaces where people can meet in order to speak from their hearts, listen deeply with their hearts, and connect with each other at a heart-level. Third-party helpers who are tuned into these heart matters and who eventually become fluent in the language of the heart, will grow with any process and learn to be a calm, centered presence for others.

“Active listening, as a skill or technique for mediators is important, but there is a way of serving others in a deeper way. Deep compassionate listening requires us to listen from the heart, to quiet our mind and ego, to allow the healing energy of story to emerge. It requires a conscious effort to not solely rely on understanding the verbal content being expressed, but to be open to looking for the emotional energy underneath the language, which may be quite inconsistent with the words being expressed. Deep listening has everything to do with the energy of one’s presence, and one’s own groundedness in humility and compassion. In this light, mediators need to learn how *to step out of the way* in order to let parties meet each other at the deepest possible level.”

– Mark Umbreit

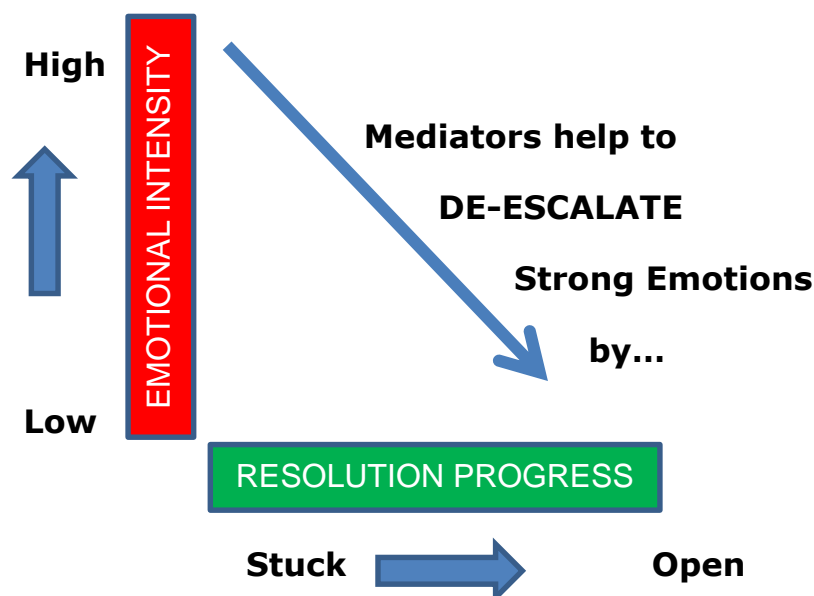
Dealing with Emotions and Impasse in Mediation

The emotions of parties can be very challenging, but this needs to be viewed as a normal part of a mediation process. It all has to do with how and where **emotions** are directed.

One reason for the conflict itself is that **emotions** have escalated between parties without having good communication. Heated **emotions** have themselves become the dominant communication. Mediators need to find ways to de-escalate those **emotions** without suppressing them, because when parties can safely express their **feelings**, it is all part of their own journey toward validation and resolution. Also, an agreement stage needs to have a cooler, calmer atmosphere so that both parties can think clearly about new, creative solutions that satisfy all of their needs.

“The emotional energy behind all of our communications, verbal or non-verbal, influences the manner in which we both respond to severe conflicts or traumatic events and are perceived by those who have harmed us. When resolution processes allow toxic energy to be released in healthy ways, it opens the way to finding peace as we experience transformation and healing, perhaps even forgiveness.”

Dr. Mark Umbreit (from
The Energy of Forgiveness)



... using these
skills:

Acknowledging
emotions

Reframing loaded
phrases

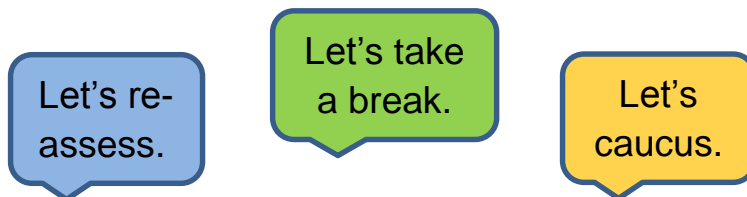
Reassuring parties
of good process
and progress

Sometimes it is good, when things feel stuck, to take a break or caucus (see next page). But short of that, when STORED-UP emotions do seem to be 'front-and-center,' it is best to slow the process down and deepen the discussion around them. By working with the feelings that are being expressed, the very RELEASE of these emotions, like the release of energy in a hydro-electric plant, will lead to the TRANSFORMATION of emotions toward mediation progress and positive, useful outcomes.

What do you do when as a mediator you reach a 'dead end', an impasse where there doesn't seem like there is any place to go?

If you decide not to explore the issues deeper, you have three main options:

STRONG EMOTIONS
tend to be
STUCK EMOTIONS



Either a mediator OR the parties can initiate these options.

In all three of these options, everyone can back up a bit, re-gather their thoughts, and approach things from a fresh direction. Typically, emotions can settle, and thoughts can rise.

CAUCUS: *a separate meeting for one party to privately confide with the mediators, while the other party takes a break. The second party then meets privately with mediators. Thereafter, everyone comes back together with some new resolve to move forward.*

Benefits of Caucusing:

- Lowers emotions and raises confidence in the process
- Reveals deeper reasons for resistance or mistrust
- Identifies hidden agendas that one party may have
- Allows for confidential information to be expressed
- Explores best and worst case scenarios for possible agreements

Note: Caucus Conversations Remain Confidential! (The *only* exception is if the mediator has been given permission to relay something back to the other party in the joint meeting.)

Exercise: In trios, with one person as mediator, practice two mini-caucus with the parties.

Once everyone comes back together to proceed, it is helpful for mediators to do two things:

1. GLANCE BACK and affirm the bridgework and common ground both parties share.
2. LOOK FORWARD and forecast how the discussion will progress toward resolution.

Thereafter, if you are not sure how to proceed with the mediation, one helpful tool is to ask the parties...

“Do either of you have any questions you’d like to ask of the other?”

The POWER of SILENCE

Allowing for silence after a mediator’s question, or especially after a party says something personal or revealing, is not only an important skill in a mediator’s tool box, but an important expression of a mediator’s centered presence among the parties. It communicates several things by virtue of having no words fill into a space in the conversation,...

- 1) that mediators are not controlling or over-directing the process;
- 2) that parties can have time to reflect on their own and then articulate things that surface within their own thoughts;
- 3) that there is no rush to finish, and in due time, all will be said and heard.

As a rule, always give space for a second party to speak first after a first party says something important, especially if the second party is directing their words and eye contact to the second party. After a pause, if the second party does not make a reply, then you can either invite them to make a reply, or pick things up with a new question or thought.

When asking new questions, do not keep rephrasing the same question several times, stacking up question upon question which tends to complicate things in the mind of the hearer. Try to keep it to one question, especially when talking to a teenage participant.

By creating **OPEN SPACE** **in a conversation,** **you will foster...** **OPEN HEARTS**

Discussion Question: For what purpose or to what end do mediators ask questions?

Consider the reason why lawyers ask questions in a courtroom setting. Now consider taking an opposite approach to asking either victims or offenders questions. How is that different? How might that make a difference in their own journey toward resolving things?

Mediator Awareness of Participants

1. Body Language

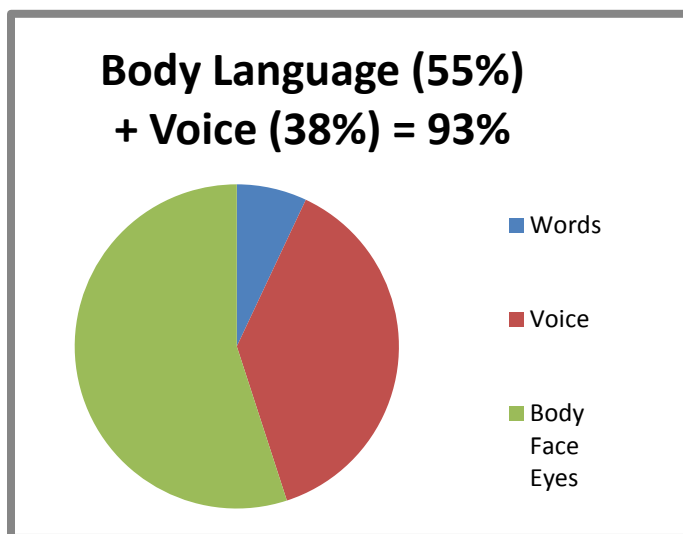
Exercise: (in pairs) Think of 4 different types of Body / Face Language; then demonstrate them to the other person. The other person will then 'interpret' the meaning of the language.

By observing the Body Language of the parties, mediators can help to give, without judgment in their responses, two things that help people to move forward:

- **Recognition**
- **Empowerment**



Essential elements for Transformative Mediation
(Bush and Folger, 1973)



- What's in a VOICE?**
- Tone
 - Pitch
 - Speed
 - Volume
 - Tension
 - Duration
- Demonstrate examples for each.

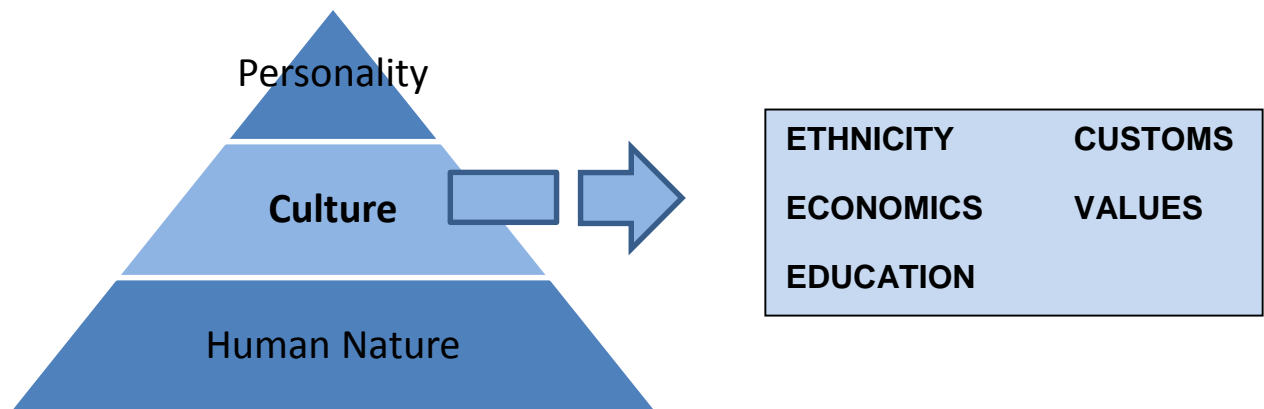
[Note: This percentile study, done in 1964 by Mehrabian, focused on the communication of **feelings and attitudes**, and not all forms of human communication.]

When it seems like someone's body language is expressing some sort of blockage in the mediation, a mediator can ask the following check-in questions:

1. "Are you doing okay?"
2. "I'm noticing that you seem distracted. Could you say how you are feeling right now?"
3. "I'm hearing that this is hard for you to talk about, which is very understandable. Would you be willing to share some more about why it is hard for you?"

In short, these questions are invitations for the other to go deeper, as the participant first experiences some recognition and validation from the mediator. This acceptance of one's expressions gives more empowerment to the party.

2. Awareness of Social/Cultural Aspects



If and when cultural differences are the source of a challenge or barrier in a mediation, it is usually due to the way another person (the other party, or even a mediator) **VIEW**s things. Cultural differences, of course, are very real, but they are only a 'problem' due to another person's **ASSUMPTIONS** and **PERCEPTIONS**.

Exercise: Give examples of how an aspect of one of these six cultural areas could pose a barrier within a mediation process. Secondly, how can a mediator's awareness and response lead to the removal of the barrier.

Exercise: As a mediator, what would you do if...

PARTY ONE

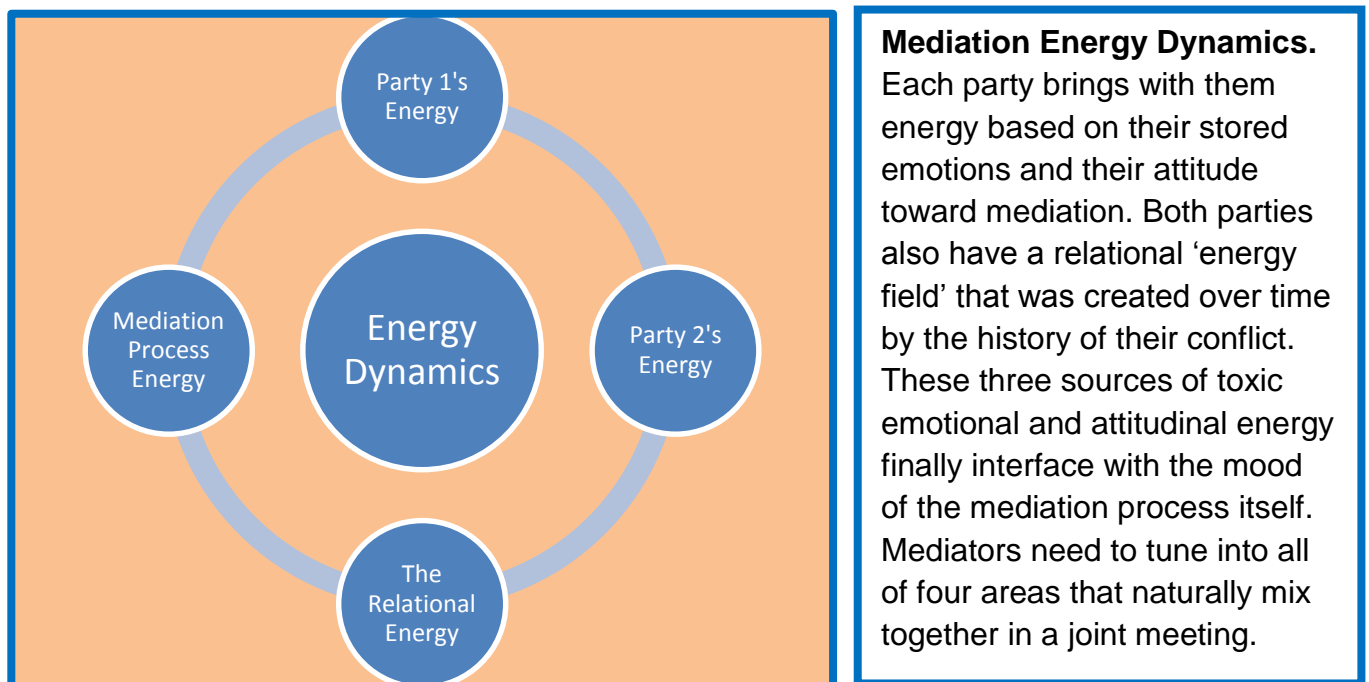
PARTY TWO

Is used to a fast pace to decide things	Is used to a slow pace to decide things
Prefers formal, well-structured meetings	Prefers informal, relaxed meetings
Has no problems with written agreements	Trusts the spoken word over written word
Only knows English	Knows very little English
Has no problem with keeping eye contact	Comfortable with limited eye contact
Sees a table as a protective comfort	Sees a table as a barrier
Is threatened by a loud, forceful voice	Is okay with another's loud, forceful voice
Values self-determination of parties	Used to an elder-figure who decides things

The most important thing is for mediators to **BE AWARE** of points of differences that stem from social and cultural factors. If you make assumptions that 1) they don't matter, or worse, 2) that they are a liability, you will in effect limit the empowerment of one or both parties. The best tool is to simply **ASK** THE PARTICIPANTS WHAT WILL WORK BEST FOR THEM.

3. Awareness of Energy Dynamics

Every mediation has unique 'energy dynamics' that mediators need to be aware of so that they can work with those dynamics rather than work against them. Energy dynamics are the sum of several distinguishable realms of energy.



A typical mediation meeting for resolving either disputes or harms can be charted by the rise and fall of energy intensity, usually from an uphill tenseness to a downhill relaxedness.

Mediators need to know that....



...and then need to be part of 'the dance' that helps parties reach a point where the safe and constructive releasing of their stored energies (the uphill climb) can be transformed into a positive resolve to move forward and see some good come out of a hard situation (the downhill glide).

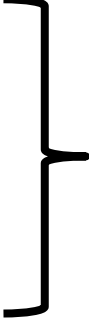
Exercise: Think of a wild animal that you have been fairly close to. What are the energy dynamics when you try to get closer to it? What can you do to increase safe proximity?

Mediator Biases and Baggage

Before you, as a mediator, are ready to sit down with others to help them resolve disputes or harms, it is good to know what you bring 'to the table' by virtue of who you are. As human beings, we all carry some baggage with us wherever we go.

What do you bring with you?

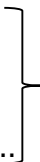
Ideally, we bring knowledge, skills and experience in the work of mediation. But we also bring things that we are typically unmindful of:

- Our PERSONALITY
 - Our PERCEPTIONS
 - Our PAST EXPERIENCES
 - Our PREJUDICES
 - Our PUSH BUTTONS
 - Our PARTIALITY
 - Our PRESENCE
- 
- The Seven 'Ps'

What are some examples of how any of these can be a problem in mediation?

Depending on our awareness of these things, all of them can inhibit our capacity to mediate well. And yet all of them are things we can't get rid of either. What's important is how our mindfulness of the seven 'Ps' can help us to maintain our role as impartial guides, seeking to provide a calm, relaxed presence.

The Overall Role of a Mediator: Mediators...

- Build bridgework of good communication...
 - Maintain a safe, constructive, ethical space...
 - Balance the power differentials...
 - Assist with realistic and reachable agreements...
- 
- ...between parties

A Continuum of Mediation Styles (with respect to guiding parties):



Question: What are some pros and cons of mediating at each end of the spectrum?

A mediation process is like a horse, and if a mediator is the rider, he or she needs to have a full sense of control by holding the reins and not letting the horse do the controlling. At the same time, parties are not horses, and they cannot be controlled the same way. Ironically, it is by being more non-directive that mediators allow parties to be empowered and to flourish in the communication process, even when hard emotions need to be aired. – Ted Lewis

The RJ Facilitator: Priorities, Roles and Skills

"We don't fix problems for people; we build bridges between people so they can fix their own problems."

Restorative Justice facilitators (or mediators) who work with victims, offenders and community members have four priority areas that define what they do. They are...

- 1. Facilitative:** Their *role* is to empower parties to have constructive conversations and to determine their own plans for resolution.
- 2. Connective:** Their *focus* is to create bridgework between parties who have been separated by the consequences of a crime or conflict.
- 3. Adaptive:** The *structure* of a facilitated process is tailored to meet the needs of the parties involved and to include the best support people available.
- 4. Transformative:** The *goal* of a facilitated process is to foster positive change for all parties so they can move forward and benefit the community.

These priority areas inform a special set of three communication skills which describe how you talk *with* people rather than talk *to* them.

RJ Facilitators are...

- 1. Invitational** (without leveraging people or outcomes)
 - a. Skill – the art of **asking questions** (who, what, how, why, etc.)
 - b. Reason – we want to build internal motivation (the 'ah-ha' moment) rather than rely on external motivators or disincentives.

- 2. Supportive** (without being partial to people or outcomes)
 - a. Skill – the art of **acknowledgement** (through validating, empathizing, clarifying, summarizing)
 - a. Reason – people often need to be heard before they are able to hear new things. Acknowledgements build understanding and trust.

- 3. Process-focused** (without being distracted by the details of case content)
 - a. Skill – the art of speech **restraint** and the art of **timing**
 - b. Reason – facilitators can trust the process, slowly guiding people away from a negative past toward a positive future.

Note: Mediator can be substituted for Facilitator. In some circles, mediation is only used for equal parties in dispute resolution processes.

(written by Ted Lewis, May 2010)

The Mediation Process: *Phases and Tasks*

Prepared by: Jean Greenwood, M. Div.

Purpose:

The purpose of Victim Offender Mediation and Dialogue is...

1. to provide a restorative conflict resolution process which actively involves victim and offender in repairing the emotional and material harm caused by a crime;
2. to provide an opportunity for victim and offender to discuss the offense, get answers to their questions, express their feelings, and gain a greater sense of closure;
3. to provide an opportunity for victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

Underlying Principles Of Victim Offender Mediation:

1. Human beings possess untapped inner resources that under the right circumstances can be accessed and utilized to address issues and resolve problems of importance to them.
2. Appropriate structure (e.g. neutral third party facilitation, procedural guidelines, ground rules, intentional seating plan) can neutralize status and power, and provide an environment conducive to meaningful dialogue, even in emotionally intense contexts.
3. The use of specific techniques and strategies by the mediator must serve the larger goals of creating a safe, respectful environment in which a mediated dialogue can occur.
4. The "personal" is powerful - genuine stories of people's experience can be evocative of empathy, insight, and learning. The telling and hearing of these stories can be empowering, healing, and transformative for both storyteller and listener.
5. The mediator's presence (through non-verbal and verbal communication, including tone of voice and connectedness with each party) plays an important role in facilitating a genuine dialogue in which the parties are doing most of the talking.
6. Presenting choices to the parties whenever possible (i.e. when to meet, where to meet, etc.) maximizes their opportunities to feel empowered by the process.
7. The power of a mediated dialogue to be a transformative experience is to be found in the parties speaking directly with each other about issues and concerns of importance to them. It is important for mediators to get out of the way when the parties are respectfully talking to each other.

Mediators should use caution in intervening too frequently.

8. Differences and conflicts can elicit creativity and a sense of possibilities otherwise unknown. When necessary, parts of the mediation process can be adjusted to more effectively meet the needs of the parties so that they feel safe and comfortable enough to engage in a genuine dialogue. Be sensitive to cultural differences in communication style and meaning.
9. Discovering underlying information, needs, and interests can enhance a collaborative effort and produce increasingly satisfying results.
10. Well-written agreements guide and focus behavior, thereby enhancing and producing results. Written agreements, however, are secondary to the importance of the victim and offender being able to talk about the impact of the crime upon their lives. Some mediated dialogue sessions will not require a written agreement.

The Mediation Process

Phase One: Intake

Purpose:

The purpose of the intake phase is to obtain cases from the criminal justice system, appropriate for mediation.

Tasks:

1. Determine criteria to be used in selecting cases appropriate for mediation.

- Criteria need to fit the context of mediation, e.g.. the needs of the program, the nature of the referral source, etc.

NOTE: see Questions & Answers section for a thorough discussion of this issue.

2. Establish an effective referral system

- Some mediation programs use a passive case referral procedure. The program provides the referral source with a list of criteria for referral of cases and then waits for referrals to be made. Often this method

produces few referrals.

- Other mediation programs have found a more pro-active, assertive case referral process is more effective. Rather than waiting for referrals to come, mediation program staff can negotiate with the referral source to arrive at a process by which the staff can visit the office of the referral source on a regular basis and select cases for mediation. Then the referral source does not need to struggle to decide whether or not a given case is suitable for mediation. They simply need to identify a larger pool of cases that are most likely to benefit from mediation. The mediation program staff then review these cases in detail, select those which are most appropriate for mediation, and complete the necessary paper work. Consequently, the referral process becomes much easier and less time-consuming for the referral source.

NOTE: for methods of increasing referrals, see "How to Increase Referrals to Victim Offender Mediation" by Mark Umbreit, published by Fund for Dispute Resolution, CN.

3. Secure the necessary data regarding the crime, the offender, and the victim. The mediator will need background information regarding the offense in order to begin the case. You will also need sufficient data on the parties so they can be contacted by mail and/or by phone.
4. Assign the case to an appropriate mediator. Consider which mediator would be the most effective in a particular case. Sometimes gender, age, racial-ethnic factors impact a mediator's success. Other factors may include mediation style, value orientation, and the level of the mediator's skill.
5. Mail an introductory letter to all parties. NOTE: See sample introductory letter in the Appendix.

The letter should explain the following:

- the case has been referred to the program by what referral source;
- a brief description of mediation should be provided, in simple, non-jargon, non-threatening language, e.g.. "A Mediation is a process that allows participants to talk about what happened and its impact on their lives, and develop a plan to make things right."
- a mediator will be phoning within a week to set up a meeting time to talk with both parties individually about the offense and about mediation;
- both parties will be invited to participate in mediation if they so choose;
- the name and number of a staff person who can answer questions while the parties await contact with the mediator.

Phase Two: Preparation For Mediation

A. First Telephone Contact with Offender and Victim

Purpose:

The purpose of the first telephone contact with offender and victim is to follow up on the letter sent regarding mediation and arrange for separate pre-mediation interviews with victim and offender.

NOTE: The first contact is critical. Mediators need to be assertive and persuasive, yet sensitive and cooperative, in attempting to schedule a visit. Meeting in person is crucial because it encourages victims and offenders to build trust in the mediator and the process. If too much information is given over the phone, clients may feel no need for a visit. If clients feel pressured to make a decision about mediation over the phone, they will be inclined to say "no". If the mediator isn't able to set a time to meet face-to-face for the pre-mediation interview during that first contact, it is less likely that the case will go to mediation.

Tasks:

1. Call all parties within one week of the mediation letter being received.
2. Call the offender first.
 - The general rule is to begin with the offender because victims may feel revictimized if their expectations are raised by the thought of a mediation session and then they learn that the offender has refused to participate in mediation. If you have difficulty contacting the offender within a week, call the victim and let him or her know you are working on the case. The victim will be expecting to hear from you soon.

- If the victim or offender is a juvenile, first speak with a parent or guardian, in order to briefly explain the program, secure approval to talk with the son or daughter, and to arrange a time convenient to all. If the parent or guardian is unavailable, and you must meet with the juvenile alone, do so in a public place rather than at the home.
3. Introduce yourself, your organization, and indicate the source of referral.
 4. Explain the purpose of your call: to set up a time when you can meet with them in order to
 - learn more about the incident;
 - explain mediation in detail.
 5. Explain briefly:
 - mediation allows victims and offenders to meet and talk about what happened, and to work out a resolution to the situation, including restitution;
 - participation in mediation is voluntary for both victim and offender.
- NOTE: Urge them to wait with their decision until you visit in person, when they will have the opportunity to learn more about how mediation works and how it might be beneficial for them.
6. Ask if there is a convenient time to meet. Inquire also about others they may wish to have present at the meeting for support.
 7. Offer additional information as needed to secure an appointment, such as:
 - the mediator's role is neutral and facilitative; mediators do not have decision-making authority;
 - the parties themselves determine how to resolve the situation;
 - in mediation the parties have an opportunity to ask questions, to explain what happened, and describe their feelings about the incident.
 8. Reiterate the date and time of the meeting, and close the conversation. Be sure they have your name and a phone number where you can be reached, in case they have further questions. It is not advisable to give out your home phone number. You may wish to make a reminder call

several days before your scheduled visit.

B. Pre-mediation Interviews with Victim and Offender

Purpose:

The purpose of the individual pre-mediation interviews with victim and offender is to learn their experience of the crime, to explain the mediation process in detail, and to assist the parties in deciding whether or not to participate in mediation.

NOTE: In order to accomplish this, the mediator needs, first of all, to allow adequate time for the interview. Do not rush the visit - plan on at least one hour with each party. Secondly, the mediator needs to shift to a focused listening mode, inquiring about what happened from the perspective of both parties and how it affected them. The interview provides an opportunity for the mediator to gather background information, to assess the client's readiness and appropriateness for mediation, to coach individuals in preparation for the mediation experience (in terms of expectations, process, and communication skills, if necessary), and to develop rapport with clients, by exhibiting genuine interest and concern along with an empathic listening style. If the pre-mediation interview is done well, the participants will understand the mediation process, trust the mediator, and make an informed decision about their own participation.

Tasks:

1. Introduce yourself and the sponsoring organization. Express your appreciation that they have taken time to meet with you.
2. Create a relaxed atmosphere by generating informal conversation. Encourage clients to share a bit about themselves (e.g., ask how long they have lived in the area, where they are from, how old the children are). Share similar information about yourself, as appropriate.
3. Ask victim and offender to tell you what happened, how they felt about it, how they were affected by it. It is vital that the mediator assume a fully attentive listening mode. Assure the parties that what is said will be held in confidence by you. The exception to the confidentiality rule is mandated reporting. If the mediator is told of child abuse, abuse of a

vulnerable adult, intended suicide, or a planned homicide, let them know that it must be reported. Note: for additional information regarding confidentiality, see the Questions & Answers section.

4. Explain briefly how you came to be a mediator and what your experience has been. Using ordinary language, describe the mediation process, in chronological order with sufficient detail. Clients need a clear sense of what happens in mediation and what would be expected of them.

In mediation:

- after participants introduce themselves, an opening statement is made by the mediator that explains the mediation process, the mediator's neutral role and commitment to confidentiality, and possible ground rules, e.g.. allowing each person to speak without interruption, speaking and listening respectfully;
- after ground rules are agreed upon, each person has the opportunity to tell what happened from his or her perspective, without interruption, expressing reactions and feelings about the incident then and now (explain to the victim that he or she will have the chance to speak first if they so choose);
- following the telling of stories, participants have a chance to ask questions of each other and make additional comments;
- after the options are discussed and participants agree on a mutually-acceptable resolution, an agreement form is completed, read aloud, and signed by both parties.

Summarize: in mediation **The Victim** will have the opportunity to:

- meet the person who victimized them
- let the offender know how the crime affected his or her life
- ask questions and get answers
- resolve issues
- have a more direct say about consequences

Summarize: in mediation **The Offender** will have the opportunity to:

- meet with the victim and directly express any thoughts or feelings they might wish to
- respond to questions and concerns, and ask any questions
- make right on a bad situation, make amends
- have a say in determining restitution

5. Discuss in detail with both victim and offender various options they may want to include in an agreement. In cases involving juvenile offenders, explain that the parents will also need to approve the terms of an agreement, affirming the juvenile's ability to meet the obligation. Then describe the kinds of solutions other victims and offenders have found helpful:

- monetary restitution, amount not to exceed victim's out-of-pocket loss;
- community service, site and hours to be determined by both parties, unless the victim chooses to allow the offender choice of site (a value may be established for the unpaid work, e.g.. \$5 per hour, as a way of partially or completely fulfilling what would have been a monetary obligation);
- personal service, e.g.. mowing the lawn, painting a fence, cleaning (unpaid work done by the offender for the victim, which may be similarly valued at \$5 per hour);
- charitable contribution, amount not to exceed victim's out-of-pocket loss;
- apology, verbal or written;
- class, training, counseling, treatment program for offender;
- creative restitution designed by victim and offender, building on the interests of the victim and the abilities and/or interests of the offender, e.g.. creating a work of art, maintaining lines on the Little League field;
- combinations of the above that are mutually agreed upon as fair, safe, reasonable.

6. Ask if they have questions. Provide information about the status of the case relative to the justice system.

7. Remind them that participation in mediation is voluntary. As the client considers participating in mediation, encourage them to reflect on questions such as these (use your judgment as to what is appropriate):

- What would it be like to sit across the table from the other party and hear her or his story?
- How do you think the other party might feel, meeting with you face-to-face?
- (to the offender) - Have you ever experienced being a victim? What was that like?
- What might you like to say to the victim or offender?
- What are the risks and benefits of mediation for you?

Also mention that many victims and offenders find it helpful to meet and work things out, though mediation is not for everyone. It is an individual choice. Encourage their participation but do not pressure or coerce. Avoid using any judgmental language, e.g., “should” or “ought”, and be careful not to oversell the program.

NOTE: As mediator, you need to make an assessment of the parties’ readiness for mediation and the overall suitability of the case. See the Questions & Answers section for a discussion of these issues.

8. Ask if they wish to proceed with mediation, or if they need additional information or time in order to make the decision. Agree on a time to call back if they are not ready to decide.
9. If they decide to proceed with mediation, explore possible dates, times and locations for the mediation. Emphasize the importance of resolving issues quickly, and mention any court-imposed deadlines. Allow the victim to have priority in determining the place. The setting should feel neutral, safe, comfortable. Appropriate venues include public libraries, community centers, churches, a conference room located in the office building of the mediation program, even a home if it is mutually agreeable.

Also ask both parties whom they wish to have present in a support role (e.g., a family member, friend, neighbor, community leader, minister, teacher, probation officer). Support persons must be at least 18 years of age. Explain clearly that the support person is not a participant in the dialogue but will be allowed to make a brief statement after the telling of the stories and to comment on the terms of the agreement prior to signing. If parents are allowed to dominate the discussion, the focus of accountability is shifted away from the youth and the message about taking responsibility for one’s own actions gets diluted.

NOTE: Occasionally an offender or victim may request to have a lawyer present in the mediation session. This rarely occurs, but if it does, the lawyer must agree to a non-participatory role identical to that of support persons. In all cases, participants should be encouraged to inform their attorneys of their decision to proceed with mediation.

10. Ask the offender to consider what he or she would be able to do in terms

of monetary restitution, community service, and personal service. Ask victims to consider what they would like to request of the offender. Have them describe the actual losses they incurred, if that information has not already been given. Documentation on losses should be provided, in so far as possible. Estimates for repair of damages need to be gotten prior to the mediation and brought to the session.

11. Thank the clients for their time and their willingness to talk about their experiences. Reiterate plans for the mediation and encourage them to call if they have questions.

What if Either Party Says “No” to Mediation?

While the mediator’s efforts during the first contact are very important, some cases referred to mediation do not get to the table for reasons that are beyond the control of the mediator. The victim or offender may be too frightened to meet. Occasionally a mediator will be unable to locate one or more of the parties. Sometimes one party may agree to mediate while the other does not. Some victims may believe they were unaffected by the crime, or they may not want or need anything from the offender. The parties may feel that the situation has already been resolved.

Whatever the reasons, it is important to remember that the decision to mediate is in the hands of the clients. It is the mediator’s responsibility to explain mediation clearly and invite each person to decide if it is right for them. While mediators should be persuasive about the benefits of mediation, they should not use undue pressure. Failure to get people to agree to mediation does not mean the mediator has failed. In fact, the pre-mediation interview can often be helpful to victims even if they decide not to participate in mediation, particularly if they were able to vent their feelings and tell their story to an interested and concerned person (the mediator). As the mediator, you are probably the first person in any way connected with the criminal justice system who has taken the time to listen attentively to the victim’s story about the impact of the crime. Leaving a flyer listing other available victim services in the community is a particularly helpful way of ending the pre-mediation interview.

Options:

1. If victims are reluctant to participate, ask if they might want to designate

someone else, e.g., a relative, friend, minister, to represent them at the mediation in their absence. In this case mediation can be done with secondary victims or surrogate victims.

2. Offer indirect mediation as an option. In this case, the mediator serves as a go-between” to reach an agreement that both sides believe is fair and reasonable, even though the parties never meet face-to-face. This type of “shuttle diplomacy” mediation can be done either by phone or through additional in-person meetings with each party. The agreement must be signed by all parties, which can be done by mail. Signed copies of the agreement are then mailed to the victim, the offender, the offender’s parents, and the referral source or other court personnel. The offender may choose to write a letter of apology to be forwarded to the victim.
3. If the parties refuse these options, be sure to inquire about the victim’s losses and ask if they wish to complete a loss claim form, in order to request restitution through the court system or a Board of Reparations, if such services are available. This needs to be clearly coordinated with the local court system’s procedures.

Phase Three: Mediation

Purpose:

The purpose of the mediation session is for victim and offender to have the opportunity to learn from each other the events surrounding the crime and how it affected their lives, to get answers to their questions, express their feelings, gain a greater sense of closure, and to develop a mutually acceptable plan that addresses the harm caused by the crime.

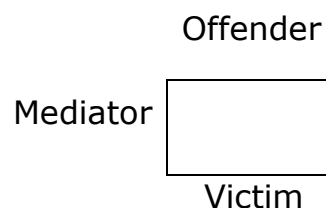
NOTE: A non-directive style of mediated dialogue, in which the victim and offender are doing most of the talking, has been found to be the most effective. Refer to Chapter III. D. which more fully describes a humanistic model of mediation.

Tasks:

1. Preparation

- a) Arrive early in order to arrange the room in a manner most conducive to mediation. The space needs to be quiet and private, small enough to create a feeling of intimacy and facilitate ease of hearing, yet large enough to avoid a sense of confinement. It is possible to use a corner of a large room, set up in such a way so as to define a smaller space.
- b) Seating is very important - it can affect how the session proceeds. The seating arrangement should be determined by the mediator, except in special circumstances when it might make a victim feel more comfortable to have a say in the set-up. If the participants enter and seat themselves, consider moving them. Most people perceive this as an indication that everything is under control, which increases their sense of safety in the mediation. If a particular arrangement isn't working, invite participants to change seating. Sometimes such a change can help reduce tension, suggesting that each person's needs are important and that everyone is working together for mutual benefit.

In general, arrange seating so that victim and offender have the opportunity to face each other directly across the table, unless it seems that such an arrangement would inhibit one of the parties. Be alert to differing cultural values that may discourage direct eye contact, in which case, participants can be seated facing the mediator. However, be sure to seat victim and offender where they will be able to look at one another as they so choose, perhaps becoming more at ease as the mediation proceeds. Parents or support people should be seated behind and to one side of the person they are supporting. This arrangement keeps the focus on the actual victim and offender, rather than on the parent or support person. The following diagram is the preferred seating arrangement which has been found to be the most effective.



Sitting at a table is often helpful and it creates safe boundaries. In many cases it is also possible to sit in a circle, with no table, but with the victim and offender across from each other allowing for direct eye contact, unless

such direct eye contact is inappropriate because of the cultural context of one or both parties.

- c) Prepare yourself. Review the case briefly. Refresh your memory about strategies that may have come to mind during the pre-mediation interviews, as a way to tailor the mediation to the unique factors of the case. Take a few moments of silence to clear your mind and quiet yourself as you prepare to give full attention to the parties.

2. Introduction

NOTE: the introductory statement should be clear and concise. Participants are often tense and may not be able to concentrate on a lengthy introduction.

- a) Welcome everyone to the mediation session.
- b) Introduce yourself and ask the parties to introduce themselves. It is wise to allow individuals to do their own introducing, as some occasionally wish to use only their first names, out of a concern for their own safety. Also invite those present who are not directly involved in the incident to identify their connection.
- c) Set the tone. Use your voice, body language, and affect to communicate calmness, purpose, seriousness, empathy. Build in moments of silence, and indicate your comfort with quiet spaces. Affirm the willingness of all parties to participate in mediation, which is a challenging experience to face. Share your hope and expectation that everyone present will benefit from the mediation experience. Encourage them all to be as open and honest as possible in a spirit of mutual problem-solving.
- d) Describe the purpose of coming together, e.g.. to deal directly with an event that has affected many people, to seek to come to terms with the incident as much as possible, and to try to make things better. The mediator needs to choose language appropriate to the context. In some cases, you may describe the mediation process as a way of resolving issues or of helping the parties be able to move on from the incident. However, in crimes of greater severity or simply cases of more intense emotional involvement, resolving issues and moving on may not be realistic goals, and certainly not ones a mediator should impose on the process. In such cases, the goal may be simply to assist participants in dealing with the crime, to provide one step in a long-term process of coming to terms with a very painful, tragic event. In

cases where the parties had a connection prior to the crime or anticipate future contact, it is important for the mediator to mention both past and future aspects to be considered when identifying desired outcomes.

e) Describe briefly how the mediation session will proceed:

- each person will have the opportunity to tell what happened from his or her perspective, without interruption, expressing reactions and feelings about the incident then and now;
- participants will have a chance to ask questions of each other and make additional comments; support persons will be invited to make a brief statement;
- both parties will then generate options to resolve the situation and repair the damage as much as possible;
- after the options are discussed and participants agree on a mutually-acceptable resolution, an agreement form will be completed and signed by both parties.

NOTE: Make it absolutely clear that the mediated dialogue is between the victim and offender. Support persons need to refrain from participating, except for making a brief statement as indicated above.

f) Explain that anyone can request a short break, not to exceed 2 to 3 minutes, or a brief caucus with the mediator or someone else present. In the event that one party wishes to caucus with you as mediator, make sure you give equal time to the other party. The mediator may also initiate a caucus with each party separately.

g) Define your role as mediator:

- the mediator is neutral, working for the benefit of both parties;
- the mediator maintains confidentiality, except for mandated reporting (any notes the mediator makes during the mediation are for use in developing an agreement);
- the mediator does not make determinations or require the parties to agree to anything, but rather assists the parties in developing their own solution by guiding and facilitating the process.

h) Discuss ground rules. List guidelines that others have found useful. Commonly used guidelines include:

- allow each other to speak without interruption (you may wish to provide paper for the participants, to be used to note thoughts that

- come to mind as the other party is speaking, things they don't want to forget to say);
- listen and speak respectfully to each other.

Also invite participants to suggest any additional ground rules they feel are important. Then ask the parties if they will agree to the ground rules.

- h) Ask both parties individually if they are ready to proceed with the mediation.

3. Storytelling and dialogue

- a) Introduce this step by reviewing instructions given earlier: you will be asking each party, one at a time, to tell you what happened, what was going on at the time, how he or she felt about what happened then and how each feels now, and how the crime impacted each person's life. Remind them that the focus will be on each person's experience - we are not on a fact-finding mission. In cases where the parties do not agree on all the facts, it may be important to acknowledge that reality, e.g.. "Even though we may not find agreement on all the facts of this case, it is still our task to come to terms with this incident and find a way to resolve the issues."
- b) Invite the victim to begin telling the story, unless the victim has indicated a preference for the offender to go first. The danger in having the offender begin is that the offender's story and possible apology may "soften up" the victim, making it difficult for the victim to be as forthright about the impact of the crime. This is particularly true if the offender is young. It is also possible that the offender may not reveal as much after hearing the victim speak, realizing that the victim may not have known the full extent of the crime. At times, however, the victim may insist that the offender go first, desiring to see the offender venture first into vulnerable territory, while the victim then has the opportunity to gauge his or her responses to the tone and content of the offender's words. It is possible that hearing the victim's story may move the offender to greater empathy and remorse.
- c) Initiate direct communication between victim and offender, unless that might inhibit a participant. For example, "Mr. Smith, could you tell Jane what happened from your perspective and how you felt about it?"
- d) Monitor the process. While devoting full attention to the speaker, maintain an awareness of the other participants, assessing their level

of stress or agitation. Be cautious about intervening. Participants will benefit from the opportunity to tell their stories uninterrupted. If one of the parties omits information about feelings or impact, gently coach them, e.g.. "What were some thoughts and feelings that you had at the time?" Be respectful of silences.

- e) When both parties are finished, ask them if they have anything further to add to their stories, any comments, or questions of clarification they would like to ask the other party. Then ask support persons if they wish to speak about what they experienced and its impact on them. Allow enough time, including moments of silence, for additional questions and comments after the initial story telling. Do not move too quickly to discussion of losses and development of a restitution plan.

Transition from storytelling to discussion of losses by:

- summarizing or acknowledging what has been said,
- identifying common ground that may exist.

4. Discussion of losses and generating options

- a) Introduce the task of generating options by asking the parties to consider what it would take for them to feel that

- things had been resolved as best they can be,
- the damage has been repaired,
- things have been made better for them.

- b) Encourage discussion about options by

- identifying what is important to each party (positions) and why it is important (interests),
- summarizing the losses that have been mentioned and asking if there is anything that needs to be added,
- asking both parties for ideas on possible ways of addressing the losses.

- c) Explore the implications of the options generated: is it practical, workable, reasonable? does it address the needs of the parties?

- d) If the parties are finding it difficult to generate options, you may want to remind them of options discussed during the pre-mediation

interview, options other victims and offenders have found appropriate.

- e) Invite support persons to offer any additional ideas they may have.
- f) Ask the victim if there is anything else he or she would like to ask of the offender. Ask the offender to indicate anything he or she would like to ask of the victim.

5. Developing an agreement

NOTE: See sample agreements in the Appendix.

a) General guidelines for writing an agreement:

- Indicate that “both parties have discussed the issue and have decided to resolve it in this manner.”
- Be brief but detailed and clear. Agreements should be specific, attainable, measurable.
 - * an agreement that is too vague: “John agrees to build a fence for Mr. Jones soon”;
 - * a better agreement would be: “John agrees to construct a fence around Mr. Jones’ deck. Mr. Jones will provide the materials and will supervise the work. John will be responsible to call Mr. Jones on May 25th to make final arrangements to do the work. Mr. Jones will give John his phone number. The work is to be done by June 15, 1997.”
- Determine and verify the victim’s losses, in so far as possible (victims are not allowed to recover more than the amount of the actual loss).
- If an apology has been given and accepted, indicate that in the agreement.
- Indicate the final date of completion for the agreement.
- If the agreement resolves the issue satisfactorily for both parties, indicate that in the conclusion to the agreement, e.g.. “Both parties agree that the issue is resolved.”
- Each offender must have his or her own separate agreement with each victim (mediators must not include information about companion offenders in a contract - this would constitute a breach of confidentiality in cases involving juvenile offenders).
- Explain to the parties, prior to signing, who will get copies of the agreement (victim, offender, offender’s parents, the referring agent, probation officer and/or court).

b) Remind the parties that the agreement is written based on mutual consent, that both parties must feel it is fair and workable. Also use

your discretion as a mediator. If you have serious concerns about the appropriateness of the agreement, consult with staff

- c) Begin with the easiest issue. Find a mutually-agreeable solution. Draft the specifics: who does what, when, where. Then proceed to work through the remaining issues.
- d) In a balanced and non-judgmental manner, explore the offender's ability to keep the agreement. Ask the offender's parents if the agreement sounds realistic for their child.
- e) Review your draft of the agreement with both parties, clause by clause, to verify that it reflects their wishes. Encourage them to amend or delete any clauses or words that do not fit, and to add any additional thoughts that seem fitting. Sometimes victims desire to include words of encouragement for the offender, which is very appropriate if both parties agree. You may wish to remind the parties of any additional ideas for restitution that were generated earlier but are not in the agreement. Be sure to read the draft aloud.

NOTE: Occasionally a participant is not able to read very well. Thus, reading the agreement aloud keeps everyone a full participant without embarrassment. Indicate during the pre-mediation interview that the agreement will be read aloud, so that someone who has trouble reading will know they need not decline to participate out of fear of exposure.

- f) If the parties then agree, write up the agreement, read it aloud once more, and have both parties sign it. In the case of juveniles, have parents or guardians initial the agreement as well.

NOTE: Occasionally not all the issues can be dealt with in one session. Participants may become stuck or simply be unable to sustain their attention to the task. Also, parties may need to get estimates for damage done, or wish to consult with family or legal counsel before continuing. Schedule one or more additional sessions if necessary, and notify staff of the status of the case.

- g) Explain what happens from here:
 - Copies of the agreement go to the victim, offender, offender's parents, and court officials. Provide copies at the time of mediation when possible.
 - Inform the parties who will be monitoring compliance with the agreement, e.g.. you as mediator, program staff, probation officer,

restitution worker.

- Reassure them that the offender will be given proper credit for payments and that the correct amount of money will be forwarded to the victim (make sure you have the correct address for the victim, as well as current information for the offender).
- Explain the consequences of non-compliance with the agreement, e.g. the case will be returned and may go to court.

NOTE: When a juvenile court loses jurisdiction over a youth at age 19, if all restitution is paid and other court requirements are met, the court releases the juvenile from probation or diversion at age 18 years and 10 months. If the juvenile has not completed restitution by the time she or he reaches age 18 years and 10 months the court may choose to docket the case in adult court. In this case, the victim may initiate a civil suit. The offender then will have a record in adult court. The age for adult jurisdiction and implications for programming may vary from state to state and in some states from county to county.

6. Closure

- a) Indicate that a brief follow-up meeting is often helpful. Some participants wish to meet again to review progress on the agreement, perhaps at mid-point, to deal with minor issues that may arise, to reinforce the impact of mediation, to make direct payment of restitution, to celebrate completion of the agreement, or simply to achieve greater closure for themselves. Ask if participants desire to schedule a follow-up session.
- b) Ask if anyone has anything additional he or she wishes to say.
- c) Thank the participants for coming and commend them for the good work they have done.
- d) Wish them well and shake hands with them as they leave. Do not suggest that the parties shake hands. This must be genuinely initiated by the parties.
- e) You may wish to check with each party as they leave, e.g.. "How are you doing?" "How was the mediation experience for you?"
- f) Debrief the mediation alone or with a co-mediator:

- * What did you as mediator do that was helpful?
- * What might you have done differently to be more effective?

Debriefing allows mediators to process what happened and then leave the session behind, letting go of feelings and thoughts that may continue to churn inside. Co-mediators can give each other feedback on how well they worked together, how their styles blend or complement. They may also choose to discuss strengths and growth areas of each mediator, thus facilitating the development of new skills. It may also be helpful to debrief with staff.

Phase Four: Follow-Up

Purpose:

The purpose of the follow-up phase is to monitor the agreement, renegotiating the terms as needed, to reinforce and enhance the impact of the mediation, to further humanize the process, and to provide closure.

Tasks:

1. Make sure copies of agreement are mailed out to all parties within one week.
2. Convene follow-up meetings as agreed:
 - * Establish an informal atmosphere;
 - * Plan for a brief meeting, usually no longer than 30 minutes, although sometimes a follow-up meeting may be longer;
 - * Be explicit about the purpose of the meeting, e.g.. to check in with each other and review progress on the agreement, to deal with unresolved issues, to renegotiate the terms of the agreement, to acknowledge completion of the agreement, to make a direct payment of restitution;
 - * Encourage less structured, spontaneous dialogue by participants, which enhances a sense of closure, mutual acceptance, personal accountability, and a spirit of reconciliation.
3. If no follow-up meetings are held, make contact with the offender

while the agreement is being fulfilled to see how things are going, e.g., if there are any problems that might affect completion of the agreement. (If problems do arise, schedule another mediation session to renegotiate terms or renegotiate by phone.) Also call victims to inform them of progress made. When the agreement is fulfilled, contact both parties to notify them of completion, and offer congratulations to the offender.

Tips For Mediators

A. Do's

1. Do Remember That Participation Is Voluntary

Regardless how beneficial the mediator believes mediation will be for the victim and offender, the choice to mediate must be theirs. Resist the "hard sell." It is appropriate to be gently persuasive and encouraging, but mediators must guard against manipulating people to agree to mediate. Laying a guilt trip on a victim to agree to meet with the offender so he or she can be helped is re-victimizing the victim.

2. Do Call a Caucus When Unsure

When the mediation process reaches an impasse, when participants are shutting down, arguing, stuck, belligerent, or the process is simply not moving ahead productively, mediators should caucus with each other, the victim, or the offender as needed. They may also suggest that the participants caucus with their support persons if that seems appropriate. In general, caucuses should be limited in number and should be relatively brief.

3. Do Summarize When Stuck

A brief summary of what has been said, or simple repetition, can help participants think of other things they can say to get the discussion flowing. Don't overdo summarizing. Don't interrupt to summarize if discussion is flowing freely and participants appear to understand each other. Do interrupt to check understanding of what was said if there appears to be a misunderstanding.

4. Do Ask If Participants Would Like Suggestions

If they say yes, refrain from giving a specific solution. Instead, suggest they brainstorm, trade places (if I were you I'd want....I'd offer to....) or make a list of possibilities including pros and cons. If that doesn't help them generate ideas for solutions, you might ask if they'd like you to explain common options again: monetary restitution, community service, personal service, treatment/counseling, donation to charity, school grade improvement, other creative solutions.

5. Do Encourage Participants To Talk Directly To Each Other

Participants will know they need to speak to each other, because of information shared by the mediator at the pre-mediation interview and at the beginning of the session. At first it may be difficult for them to do this. They may be more comfortable looking at the mediator. Mediators can help them overcome their reluctance to look at one another by directing their focus to the listener and away from the speaker. If this fails, the mediator may ask the speaker to direct comments to the other party or may move back from the table slightly and look down at a note pad for an extended time, thus avoiding eye contact with the speaker. Also be alert to and respectful of cultural traditions that may prohibit eye contact in situations such as mediation.

6. Do Clarify When Someone Seems Puzzled

Paraphrasing what has been said in the form of a question to the speaker is a good clarification technique. The mediator might say, "Do you mean....?" or simply ask, "Could you explain further what you meant....?" If by observing body language or intonation the mediator senses a participant is unable to express directly what is being felt or desired, mirroring or reflecting may be a helpful technique, e.g. "I hear that you are agreeing to the plan, but I am sensing that you are having some uneasy feelings about it. Is that correct?"

7. Do Reframe To Temper Heated Discussion

Neutral rephrasing of facts and/or issues helps to remove value-laden language and to balance intense emotions. The mediator restates what one participant has said that may have angered another. The content of the message is repeated without the “attack”. Reframing can help a speaker convey information without the listener getting defensive. For instance, “What I hear you saying is this....Is that correct?” Reframing the statement shifts the focus away from the position toward the underlying needs and interests of the speaker.

8. Do End the Mediation If Ground Rules Aren’t Followed

Give participants a chance when ground rules are broken, but if they continue to be ignored, and it is interfering with the process, remind participants of the ground rules and terminate the session if they continue to be broken. All participants at the table must be treated respectfully and fairly.

9. Do Contact Staff When Stuck

Staff or fellow mediators are vital resources. Mediators are working in difficult situations with people who are themselves in a challenging situation. Each mediation has its own unique set of twists and turns. Mediators may need to get more information before the mediation can continue. It is perfectly acceptable to delay completing the mediation until staff can be contacted. If staff can’t be reached at the time, schedule an additional meeting.

B. Don’ts

1. Don’t Solve Problems For Participants

Both victims and offenders need to be in charge of their discussion and negotiating their agreement. It is their mediation. Mediators can assist with suggestions if they are truly stuck but only with their permission.

2. Don’t Fact Find

While it is important to go over the event during the story telling phase, it is not beneficial to cross examine or re-try” the case. If the victim does not understand mediation they may interrogate the

offender. The mediator needs to call a caucus and explain that interrogation is not a part of mediation. It is also not essential that all the facts agree. Even in cases where there is not consensus about all the details, it may still be the desire of the parties to resolve the situation. Always ask the participants if they wish to proceed.

3. Don't Allow Participants to Argue

Arguing is unproductive and is usually a form of fact finding. Interrupt the process and reiterate the task at hand, e.g. to describe what happened and its impact. If arguing continues, summarize and suggest that to continue arguing is unproductive. Point out that they may need to agree to disagree. Caucus with each party separately and remind them of the process, the purpose of mediation, and the ground rules. Encourage them to be open and proceed in a mutual problem solving mode. If arguing continues, end the mediation, giving participants the option to try again at a later date. If both parties wish to meet again, schedule the next mediation session before you leave the table. If they are undecided, set a time within a day or two for a phone conversation with each party. It may be helpful to ask one party to wait at the table while the other leaves. Instruct both participants not to attempt to resolve the issue in the parking lot. Notify staff of the situation.

4. Don't Philosophize, Patronize, Preach

The mediation is the participants' time. Mediators are there to model mediation techniques and facilitate discussion, not lecture or teach. Mediators must demonstrate the respectful communication skills and behaviors expected of the participants. Avoid being judgmental and using words such as "Should" or "Ought".

5. Don't Allow Non-Participants to Take Over

The mediation is between the victim and the offender. Going over the rules at the beginning of the mediation helps people keep them. Stating each person's role constitutes a promise to the victim and the offender that they are the only ones who will be resolving the problem. Allowing others (e.g., parents) to take over is violating the commitment made with the victim and offender. Neither may feel safe in the mediation session as a result. Non-participants have carefully-

defined times to give input. Beyond those times, they may only speak with the permission of both participants.

6. Don't Use Jargon or Technical Terms

People feel excluded and communication breaks down when jargon is used. Encourage participants to ask questions if anyone uses language they do not understand. The term "restitution," for example, may be unclear, particularly to juveniles. The mediator's task is to explain it.

7. Don't Write An Agreement Compensating For Pain And Suffering

Only out-of-pocket losses may be paid to victims in the context of victim-offender mediation agreements.

8. Don't Fill the Silences

The mediator's most effective skill is listening attentively. Participants often need space to collect their thoughts before speaking or responding to questions. Do not rush the process.

9. Don't Intervene Too Frequently

Be cautious about interrupting speakers. Do so only with good cause. Too much involvement by the mediator will detract from the conversation between victim and offender.

Questions & Answers

1. How do we determine which cases are appropriate for mediation?

The Director of the program will work with the referral source to determine appropriate cases to refer. This typically involves the following criteria: property offense or minor assault; identifiable victim; admission of guilt by the offender; no more than two or three prior convictions; no major mental health problems with the offender; and, no major chemical abuse problems, which must first be addressed before mediation.

2. After the preparation phase, how can we assess whether the parties are appropriate and ready for mediation? An initial

consideration is the stance of the offender. The offender needs to acknowledge guilt, taking personal responsibility for the crime or at least some portion of the crime. It is, of course, desirable for remorse to be present as well. Often remorse is elicited through the mediation process, though that cannot be predicted. A lack of remorse on the part of the offender may be important information for the victim to have in making a decision about proceeding with mediation. Even if the offender does not reach a remorseful state, there still may be benefits to the victim in addressing the offender. That is a decision that the victim needs to make. The mediator's responsibility is to provide accurate information, gaining permission for any sharing of information with the other party. (See Question 3 below.) Other considerations include the capacity of both victim and offender to communicate their perspectives, and to refrain from destructive behavior. Anger per se is not destructive to the mediation process, particularly if it is "owned", using "I" messages. Rage and vindictiveness expressed through attacking language is usually counter-productive.

NOTE: See Assessment Instruments in the Appendix.

3. Are there limits to confidentiality? In addition to mandated reporting discussed earlier, there may be times when it would be helpful to share information between the parties prior to mediation. In such a case, secure permission from the party to share a specific piece of information. Occasionally the parties may base their decision to participate in mediation on the attitude of the other party, and it is important for the participants to have realistic expectations about the process. Always ask if it is OK to let the other party know how he or she is viewing the issues. At the end of the pre-mediation session, it is often good to ask the person for permission to share any information with the other party. This can be done by saying the following. "Sometimes the other party is interested in learning of your general attitude about what happened and even your appearance. Would this be O.K. to share with them? Also, if there is any information from pre-mediation interviews that you wish to bring up in the mediation session, you must caucus and get permission to share it.

4. Should the mediator ask the offender to apologize? Do not suggest that the offender apologize. A forced apology is not helpful to either party. If the victim requests an apology, the mediator may urge the offender to give thought to the request before responding, to make sure what is said is genuine. If the victim has shared his or her perspective and the offender has made no acknowledgment, the mediator may consider respectfully prompting, e.g. "Is there anything you would like to say in response?" Parents often instruct their children to apologize. Mediators may not.

5. What about words like “forgiveness” and “reconciliation”? Are they appropriate?

Avoid using words that pressure, urging a particular outcome. While the mediation process often results in a sense of reconciliation, and forgiveness may occur, no one can predict or prescribe reconciliation and seeking to force it may re-victimize the victim. Victims are entitled to their anger and entitled to receive restitution. Victims may decide to forgive, but it must be on their own initiative.

6. What are the advantages and disadvantages of co-mediating?

Mediating alone makes scheduling much simpler and rapport-building less complex. However, being the only mediator means you may not see or hear everything that takes place during a mediation session. Choosing to co-mediate means another pair of eyes and ears to help facilitate discussion of feelings, needs, and issues. A co-mediator can be an effective resource when confronting an impasse in the process. Mediating alone means missing out on feedback provided by another mediator after the session. The decision to co-mediate or not may depend on the nature of the case.

When preparing to co-mediate a case, determine how much participation each mediator expects of the other. In most cases of co-mediation, one mediator conducts the entire pre-mediation phase and the second mediator participates in the actual mediation session, usually in a secondary role. Is the mediation to be a team effort or a mediator/observer situation? Mediators must decide roles in advance so that expectations are clear, the process runs smoothly, and participants feel confident in the skills and leadership arrangement demonstrated by mediators. There are many ways of dividing responsibilities. For example, one may give the introductory statement, while the other initiates and monitors the telling of the stories. Then during the generating options phase, both mediators may facilitate the discussion. Verbal cues may be helpful, e.g.. “Mary, do you want to take it from here?” or “John, may I suggest something?” Be aware that victims and offenders may look for an alliance with one of the mediators. Both mediators need to be careful to maintain clear neutrality.

Trust in the mediators is a key ingredient for a successful mediation. Lack of cooperation between the mediators will result in lack of trust in the mediation process. If tension develops, the mediators may need to caucus themselves.

Guidelines For Victim Sensitive Mediation & Dialogue With Offenders

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Purpose Of Victim Offender Mediation

The purpose of Victim Offender Mediation and Dialogue is...

1. to provide a restorative conflict resolution process which actively involves victim and offender in repairing the emotional and material harm caused by a crime;
2. to provide an opportunity for victim and offender to discuss the offense, get answers to their questions, express their feelings, and gain a greater sense of closure;
3. to provide an opportunity for victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

Underlying Principles Of Victim Offender Mediation:

1. Human beings possess untapped inner resources that under the right circumstances can be accessed and utilized to address issues and resolve problems of importance to them.
2. Appropriate structure (e.g. neutral third party facilitation, procedural guidelines, ground rules, intentional seating plan) can neutralize status and power, and provide an environment conducive to meaningful dialogue, even in emotionally intense contexts.
3. The use of specific techniques and strategies by the mediator must serve the larger goals of creating a safe, respectful environment in which a mediated dialogue can occur.
4. The "Personal" is powerful - genuine stories of people's experience can be evocative of empathy, insight, and learning. The telling and hearing of these stories can be empowering, healing, and transformative for both storyteller and listener.
5. The mediator's presence (through non-verbal and verbal communication,

including tone of voice and connectedness with each party) plays an important role in facilitating a genuine dialogue in which the parties are doing most of the talking.

6. Presenting choices to the parties whenever possible (i.e. when to meet, where to meet, etc.) maximizes their opportunities to feel empowered by the process.
7. The power of a mediated dialogue to be a transformative experience is to be found in the parties speaking directly with each other about issues and concerns of importance to them. It is important for mediators to get out of the way when the parties are respectfully talking to each other. Mediators should use caution in intervening too frequently.
8. Differences and conflicts can elicit creativity and a sense of possibilities otherwise unknown.
When necessary, parts of the mediation process can be adjusted to more effectively meet the needs of the parties so that they feel safe and comfortable enough to engage in a genuine dialogue. Be sensitive to cultural differences in communication style and meaning.
9. Discovering underlying information, needs, and interests can enhance a collaborative effort and produce increasingly satisfying results.
10. Well-written agreements guide and focus behavior, thereby enhancing and producing results.
Written agreements, however, are secondary to the importance of the victim and offender being able to talk about the impact of the crime upon their lives. Some mediated dialogue sessions will not require a written agreement.

Overview of Criteria For Victim-Sensitive Mediation

1. Victim Safety
2. Victim Choice
 - a) Participation
 - b) Support
 - c) Schedule for Mediation Session
 - d) Mediation Site
 - e) Seating
 - f) First Speaker
 - g) Termination of Session

h) Restitution

3. Pre-Mediation Session with Victim, Conducted in Person by Mediator

a) Listen

b) Provide Information and Answer Questions

-About the mediation program

-About oneself as mediator

-About the mediation process

-About the judicial system

-About victims' rights

-About resources available to them

-About the offender

c) Discuss Risks/Benefits and Assist Victim in Decision-Making

4. Careful, Extensive in Person Victim Preparation by Mediator

a) Reality Testing Victim Expectations

b) Assessment of Losses

c) Restitution Possibilities

5. Careful Screening of Cases

6. Meeting First with Offender

7. Offender Choice to Participate

8. Offender Support

9. Pre-Mediation Session with Offender, Conducted in Person by Mediator

10. Careful, Extensive in Person Offender Preparation by Mediator

- a) Reality Testing Offender Expectations
- b) Assessment of Losses and Restitution Possibilities

11. Use of Victim Sensitive Language

12. Use of Humanistic/Transformative Model of Mediation

- a) Perspective of the Mediator
- b) Relaxed, Positive Atmosphere
- c) Dialogic Focus
- d) Guidelines
- e) Feedback from Participants
- f) Option of Follow-up Session

13. Follow-up after the Mediation Session

- a) Completion of Agreement
- b) Notification of Victim
- c) Scheduling Additional Sessions if Needed
- d) Phone Contact with Parties

14. Training for Mediators in Victim Sensitivity

Description of Guidelines

1. Victim Safety

A fundamental guideline for Victim Offender Mediation programs is the safety of the victim. The mediator must do everything possible to ensure that the victim will not be harmed in any way. At every point in the mediation process, the mediator needs to ask, "Does this pose a threat to the safety and wellbeing of the victim?" Maintaining rapport with the victim is essential for the mediator, as well as attending to verbal and nonverbal communication, and requesting feedback from the victim as the process

unfolds. If the victim feels unsafe, the mediator needs to be prepared to act immediately, to provide options, to terminate a mediation, to provide an escort for the victim leaving mediation.

To ensure the safety of the victim, the mediation should be conducted in a location that feels safe to the victim, and the victim should be encouraged to bring along a support person or two. The mediator may also wish to bring in an additional mediator, if co-mediation is not generally practiced by the program. In addition, victims may find it reassuring to have input on the arrangement of the room and the seating of the parties, and to have the freedom to introduce themselves in the manner they choose, e.g. using first name only.

An important safeguard for victims is knowing the Victim Offender Mediation program has credibility. That credibility needs to be reinforced in writing, with an informative letter of introduction and program brochure. In programs utilizing volunteers, victims need to be assured that staff work closely with volunteers, victims may contact staff if they have questions or concerns, and referrals are screened by staff with safety issues in mind.

2. Victim Choice:

Following a crime, many victims experience vulnerability and feelings of powerlessness. Add to that the victim's experience with the criminal justice system, which is focused clearly on the offender. Victims are excluded from the process, rarely being offered an opportunity to tell of their experiences or express their needs. It is not surprising that in the wake of a crime, victims often express a lack of control in their lives, which can intensify their fear and anxiety. The presence of choices and options for the victim in the mediation process can contribute to a sense of power. Empowerment is conducive to healing, the capacity to move through difficult and painful experiences. The mediator provides information and support for the victim engaged in decision-making, but is careful not to apply any pressure or impose expectations on the victim. It is also important that victims have sufficient time to make decisions, without pressure of arbitrary time constraints. Choices should continually be presented to victims throughout the mediation process, as a variety of decisions need to be made, including the following:

a) Participation

The victim must always have the right to say “No” to mediation, refusing to participate, and to have that decision honored and respected. The victim did not choose to be a victim of a crime. It is crucial then that victims experience the power of choice in deciding to participate in the mediation process. Victims must always be invited to participate, but never pressured. The mediator should give accurate information about mediation, describing the process itself and the range of responses for victims who have participated in mediation, along with research findings on client satisfaction. The mediator then encourages the victim to consider the possible benefits and risks of mediation before a decision is made. Victims may also wish to consult with a respected friend, relative, clergy person, or victim advocate before making a final decision. It is important that the victim participate on the basis of “informed consent.”

b) Support

Another important option for victims is the choice of support persons to accompany them to the mediation session. The presence of a friend or relative can enhance the victim’s sense of comfort and safety, even though the support person will typically have little or no speaking role. It is helpful for the mediator to meet or phone support persons as well, to prepare them for the mediation session.

c) Schedule for Mediation Session

The mediation session should be scheduled at a time that is convenient for the victim. The victim’s schedule needs to be a priority, again, so that the victim can retain a sense of power in the situation and find comfort in the deference extended, even as the needs of others are not ignored.

d) Mediation Site

Site selection is an important ingredient in the mediation process. Victims need to know the range of possibilities available in the situation (e.g. private room in a community center, library, church, office building, city hall) and to be asked what they prefer. What setting would feel safe, neutral, comfortable, and convenient for them? Occasionally a victim chooses a more personal setting, such as a home, or an institutional setting, such as a detention center where the offender is being held. Victims should be encouraged to consider the advantages and

disadvantages of particular settings. The final decision, however, should be the victims.

e) Seating

Generally the parties are seated across from each other, allowing them to establish direct eye contact with each other as dialogue between them develops. The use of a table may increase the victim's sense of safety and enhance an aura of decorum. Mediators then are typically seated at the ends of the table, while support persons sit off to the side of each party. While this arrangement, or a variation of it, is generally thought to be useful, if victims find it uncomfortable, their wishes should be given serious consideration. Occasionally a victim will choose to sit closest to the door, at a greater distance from the offender, or will request that support persons sit on the other side of the table, so as to be visible to the victim. Various cultural traditions may also suggest a different arrangement. Whatever the seating, it should be conducive to dialogue and comfortable for the parties.

f) First Speaker

Victims should have the opportunity to choose whether they speak first during the initial narrative portion of the mediation session, or whether they speak last. This displays a bit of deference to their position as victims of crime, largely ignored by the justice system once the complaint has been filed. Often victims will find it empowering to begin, telling offenders first what they experienced and how it has impacted them. At times, however, victims feel "put on the spot" and request that the offender go first, initiating the story and accepting accountability. Some victims find it healing to hear an offender's spontaneous words of regret or remorse, not elicited by the victim's story. The mediator must make sure, however, that whatever the order, both parties' complete stories are heard, that, for instance, the victim's emotional content is not compromised by any remorse the offender may express, and that the young offender does not retreat into silence in the face of the victim's emotional intensity.

In some cases, a judgment call may be required by the mediator as to who should speak first, based on the age, needs and communication styles of the parties. The mediator may find that it is most helpful to the dialogue process in a particular case if the victim or the offender initiates

the conversation. Creating a safe place where both parties feel comfortable enough to engage in a genuine dialogue to the extent of their ability is ultimately the most important principle, regardless of who speaks first.

g) Termination of Session

An extension of the victim's choice to participate in mediation is the right also to exit the process at any point. The victim should be informed that mediation remains a voluntary process to the end. If the victim feels uncomfortable or unsafe, the mediator may caucus first with both parties and then conclude the mediation session for the time being or terminate the process altogether.

h) Restitution

Victims have the right to select what kind of restitution would most fit their needs. In addition to out-of-pocket expenses, victims may request community service, personal service, a letter of apology, or other creative options. While the final restitution plan will be negotiated with the offender, it is important that victims understand that they can request the compensation they choose, within any legal limitations that may exist.

3. Pre-Mediation Session with Victim, Conducted in Person by Mediator

The mediator makes a face-to-face visit with the victim, at a time and place most convenient to the victim. Mediators will usually offer to come to the home, at the same time offering alternatives if the victim prefers another setting. The purpose of the visit is to establish credibility and rapport with the victim, and to accomplish these tasks: to hear the victim's experiences, offer information and answer questions, and assist the victim in considering mediation as an option. The mediator should ask victims whether they would rather begin by telling their story or whether they would prefer to learn first about the mediation program.

a) Listen

A critical task for the mediator is to attend to the victim, listening carefully, patiently, and empathetically out of a genuine desire to hear the victim's experience. Effective listening will give the victim a chance to

vent and experience the validation of feelings. Attentive listening on the part of the mediator will also help to build trust with the victim and give the message that the victim is a priority. Occasional informal paraphrasing or summarizing by the mediator will assure the victim that the mediator is indeed paying attention and valuing what is being said.

b) Providing Information and Answering Questions

- About the mediation program

The mediator needs to give thorough and accurate information about the program itself, its goals, its history, the population it serves, and any costs involved, if any, for participants.

- About oneself as mediator

Mediators should offer a few brief words about their work as mediator, their training and experience, and about themselves personally, as deemed appropriate. Giving information about oneself helps to build rapport and trust with the victim.

- About the mediation process

The victim will also need to know, in some detail, what the mediation process looks like and the role of participants.

- About the judicial system

Victims will typically want to know what has happened so far to the offender, and what might occur if they proceed with mediation or if they decline. Mediators need to be attentive to ongoing questions that may arise, even following the mediation.

- About victims' rights

Helpful information to leave with the victim is a listing of the rights granted to victims in that state.

- About resources available to them

Mediators must be attentive to needs expressed by victims, and offer resources or make referrals as requested.

-About the offender

As victims begin to consider their decision about mediation, they may find it helpful to know something about the offender's state of mind and circumstances. Mediators must first get permission from the offender before sharing this kind of information.

c) Discuss Risks/Benefits and Assist Victim in Decision-Making

Having given victims the necessary information, the mediator now needs to assist the victim in considering the risks and benefits of mediation in their particular situation.

4. Careful, Extensive in-Person Victim Preparation by Mediator

After victims have made a decision to proceed with mediation, mediators will need to prepare them for what lies ahead. This can be done in the initial meeting or in additional sessions. It is important that the mediation session not be scheduled until victims feel ready.

a) Reality Testing Victim Expectations

At times victims may develop inflated expectations of the mediation process, e.g. reconciliation with the offender, complete healing or peace of mind for themselves, rehabilitation of the offender, and total repair of the damage done. While victims generally experience very positive outcomes, as do offenders, these cannot be guaranteed. Mediators themselves need to be realistic with victims, providing accurate information about the kinds of results that are most typical, with strong caution that each mediation is unique and cannot be predicted.

b) Assessment of Losses

Victims may appreciate assistance in identifying losses experienced in the crime. This can include material and out-of-pocket monetary losses, and less tangible losses, such as a sense of safety, and feelings of connection and community.

c) Restitution Possibilities

Mediators should engage victims in preliminary brainstorming about the ways their losses might be addressed, i.e. what would it take to repair the harm done, as much as possible. This is intended to spark the victim's ideas about possibilities for restitution, which culminates in the victim's decisions during the actual mediation session when an agreement is negotiated.

5. Careful Screening of Cases

Each mediation program will have its set of criteria for case selection, e.g. types of crime, age of offender (juvenile or adult), first time offense or multiple offenses. In addition to program criteria, staff and/or mediators will also exercise discretion as each case is developed and at each step in the process, asking themselves if this case is appropriate and should proceed to mediation.

In general, it is important in the mediation process that offenders take responsibility for their participation in the crime and proceed willingly to mediation. If mediators have any doubts about moving ahead with the process, they should talk with the victim, explaining the situation, sharing information about the offender (with the offender's permission), and inquire about the victim's desire to proceed. Victims may choose to proceed even if the offender is inarticulate or less than remorseful, simply because they wish to be heard, or victims may decide not to mediate in such a situation.

It is important also that mediators consider the readiness of both parties to participate in mediation, noting particularly victims' ability to represent their interests and express their needs.

6. Meeting First with Offender

Mediators will need to meet first with the offender, prior to contacting the victim. Then if the offender is willing to participate in mediation, the victim can be contacted and a meeting arranged. If the mediator meets first with victims, however, gaining their consent to participate, and then later discovers that the offender will not participate, victims may feel revictimized, having gotten their hopes up for some resolution to the crime, only to be denied that opportunity.

7. Offender Choice to Participate

It is important that offenders participate voluntarily in mediation, throughout the entire process. Even when there exist certain pressures from the court system to participate, it must be made clear to offenders that they may, in fact, decline. If offenders mediate involuntarily, victims may experience the mediation as unsatisfactory and even harmful. The offender's attitude or insincerity may constitute an additional offense in the eyes of the victim.

8. Offender Support

Offenders may also choose to have a friend or relative accompany them to the mediation session. The presence of support people can reinforce the seriousness of the mediation process. In addition, these supporters may in the future serve as reminders to the offender of the commitments made and coaches who can encourage the offender in the completion of the agreement. Creating a humane environment for the offender also makes for a better mediation, which benefits victims and offenders, and our communities.

9. Pre-Mediation Session with Offender, Conducted in Person by Mediator

In the initial meeting with the offender, the mediator seeks to establish credibility and rapport, and to accomplish these tasks: to hear the offender's experiences, offer information and answer questions, and assist the offender in considering mediation as an option. As described above (#3), the mediator, as attentive listener, gains an understanding of the offender's experiences and feelings relative to the crime, provides information, and responds to the offender's questions. Offenders need to know about the mediation program and the mediator, about the process itself and its relationship to the judicial system, about their rights, and resources available to them. They may also have questions about the victim. Again the mediator needs to gain permission before reporting what the victim has said. With all the information, the mediator assists the offender in making a decision about participating in mediation. It is important that offenders

consider the risks and benefits of the process in their particular situation. Having a well-informed, willing offender increases the chances that the mediation session will be beneficial for all parties involved.

10. Careful, Extensive in-Person Offender Preparation by Mediator

After the offender has decided to go ahead with mediation, the mediator will need to prepare the offender for the session. It is important that offenders feel ready to proceed before the mediation session is scheduled. They need a chance to reflect on the crime and their feelings about it, a chance to work through the kinds of things they may wish to say to the victim. In order to help offenders understand the victim's experience, the mediator may invite offenders to recall their own experiences of being a victim, and then consider what the victim of their crime might be feeling and might want from them. Mediators may ask offenders what they would like to do for the victim as well as what they wish to accomplish for themselves.

a) Reality Testing Offender Expectations

Offenders may need assistance in maintaining realistic expectations of mediation. Some offenders may expect that an apology will automatically diffuse the intensity of the victim's emotions, or that one mediation session will erase the harm caused by the crime. The offender's disappointment that such expectations were not met can be detrimental to the victim, who may experience guilt or anger as a result.

b) Assessment of Losses and Restitution Possibilities

Mediators should assist offenders in thinking about the possible losses a victim may have experienced, both tangible and intangible, and then engage offenders in preliminary brainstorming about the ways the losses might be addressed, i.e. what would it take to repair the harm done, as much as possible. The mediator should discuss with the offender resources that might be used in addressing the losses, including present income, potential additional jobs that might be available, and other types of skills that might be offered to the victim.

Offenders should be encouraged to continue thinking of restitution ideas and resources, in preparation for the mediation session.

11. Use of Victim Sensitive Language

Mediators need to be careful in their use of language. Certain words and phrases can imply judgment or convey expectation. For example, if a mediator says or implies "You should," neutrality is lost, rapport and credibility may be damaged, and a victim may well feel pressured, and experience a diminished sense of power. The mediator must provide information, present the options, and then encourage victims to make the best decision for themselves. Most people are accustomed to seeing professionals or trained volunteers as experts with answers. Mediators must be vigilant in guarding the choices, i.e. the autonomy, of the parties.

It is also important that mediators avoid the use of words such as "forgiveness" or "reconciliation." Again, such words pressure and prescribe behavior for victims. Some victims may experience something of reconciliation, but it must occur spontaneously, without a directive from the mediator. In fact, it is more likely to occur if the mediator avoids directives. Forgiveness also may be expressed during the mediation session but if the mediator so much as uses the word "Forgiveness" it may be destructive to the victim. Victims may, for instance, feel guilty if they fail to feel very forgiving. They may resent the suggestion and shut down to the point that they miss the opportunity to truly express how the crime has impacted them, typically a healing piece in a victim's journey.

12. Use of Humanistic/Transformative Model of Mediation

The mediation session itself will be guided by a humanistic approach to the process, which includes the following:

a) Perspective of the Mediator

The mediator brings a non-judgmental attitude, a positive, hopeful demeanor, and conveys a sense of personal integrity and sensitivity to the needs of the parties.

b) Relaxed, Positive Atmosphere

The mediator needs to put the parties at ease, as much as possible, renew the connection developed earlier, and establish an informal yet dignified atmosphere that will be conducive to dialogue, constructive problem-solving, and mutual benefit. It is the mediator's responsibility to be present in a calm, centered manner.

c) Dialogue Focus

As the session proceeds, it is important that plenty of time be allowed, not just for personal narratives but for interaction as well. Silence must be honored. Time pressures or a focus on reaching agreement can detract from the benefits of thorough dialogue, questions and answers.

d) Guidelines

The mediator will need to discuss with participants guidelines that will shape the process. These guidelines help to establish a safe, structured setting and respectful conversation that encourages acknowledgment and recognition, and elicits the strengths of the participants. Each party is assured the opportunity to speak without interruption, after which the mediator assumes a more non-directive role as guardian of the process.

e) Feedback from Participants

The mediator needs to maintain continued attentiveness to the parties, watching for nonverbal cues and listening for unacknowledged feelings, as well as directly requesting feedback and caucusing with the parties as needed to get further information in private. It is helpful for the mediator to check in with each party before and after the mediation session.

f) Option of Follow-up Session

The mediator needs to mention the possibility of an additional session. Some parties find it useful to meet again, for example, to conclude the conversation, allowing for additional thoughts, feelings, or questions to arise, to negotiate further details regarding restitution, or to acknowledge fulfillment of the agreement.

13. Follow-up after the Mediation Session

It is vital that the mediator follow through with commitments and details arising out of the mediation session. Dependability is of utmost importance to victims and offenders.

a) Completion of Agreement

The agreement needs to be carefully monitored. It is helpful for the mediator to check-in with the offender periodically to reinforce what was accomplished in the mediation session and to assist with any problems that may arise.

b) Notification of Victim

The victim should be notified when the agreement has been fulfilled, or if circumstances have changed that may suggest alterations in the agreement.

c) Scheduling Additional Sessions if Needed

If another meeting is desired by either victim or offender, the mediator should contact the parties and negotiate an additional session.

d) Phone Contact with Parties

It is helpful if the mediator maintains phone contact with both parties for a period of time following the mediation session, whether or not the agreement has already been completed. A brief check-in is all that may be required. The mediator can serve as a continuing source of information and referral. If the case is not mediated, it may be

beneficial, nonetheless, for the mediator or victim support staff to maintain phone contact with the victim for a period up to six months.

14. Training for Mediators in Victim Sensitivity

The initial training of mediators, as well as continuing education, should contain information on the experiences of victims of crime, referral sources, appropriate communication skills for mediators, victims' rights, and guidelines for victim sensitive mediation. It is helpful for trainees to hear from victim advocates and victims themselves.

The Structure and Content of Victim Offender Dialogue

by Ted Lewis October 2013

Facilitators of restorative justice dialogue processes need to be grounded in a number of areas to succeed as facilitators. They need to be grounded in the knowledge of their role as facilitator to provide safeguards and positive outcomes, and in the knowledge of what victims and offenders generally experience. It is also essential for facilitators to have a centered, non-anxious presence, so that they can model communication dynamics that call forth the best in the other participants, and also so they can make appropriate, often intuitive decisions. Another important area for facilitators is having a familiarity with the general content of discussion that happens when victims and offenders meet together. Without this familiarity, it is difficult to know how to provide more structure to a victim offender dialogue if circumstances require more structuring.

Just as dispute resolution mediators develop an 'ear' for hearing the interests or bedrock needs of parties in conflict, restorative justice facilitators learn how to hear statements about impact, ownership, empathy and reparation. This article will provide some frameworks for how facilitators can tune into the content of joint dialogue conversations in a way that helps them guide processes to a positive outcome. While much of this can apply to circle-keeping processes, it has more direct relevance to conferencing and mediation models. Also, the following material is mostly relevant to processes that include preparatory meetings with victims and offenders prior to their coming together. Finally, as noted below, it will have greater relevance for facilitators dealing with alternative sentencing processes as compared to post-sentencing processes for cases of serious and violent crime.

Becoming Familiar with Discussion Content

When victims and offenders come together to converse with each other after the stage of preparation meetings and front-end communications, it is important for them to know that most of what will be said and heard in the joint meeting is, for the most part, content they are already familiar with. This continuity of content is a vital aspect in what creates a safe, constructive zone for victims and offenders to be together in the same room. Each party needs to have some sort of sense ahead of time of what will be discussed, and a facilitator will assure them that in the same way the preparatory meetings have covered the basic information of the offense, the

impacts of the offense, and the possible reparations for the offense, the joint meeting discussion will cover these exact same topics, commonly in that order. One analogy for this continuity is to tell both parties that much of the preparatory conversations are 'dress rehearsals' for the real performance.

This is not to say that new things will not be said and heard in the joint meeting, nor is it to say that the content in anyway has a script that has to be followed. Most victims, for example, will ask questions that they may not have raised before, and offenders may find themselves explaining things that did not surface earlier. Nevertheless, given the common threads of discussion that happen in nearly all victim offender meetings, the content of spoken communication is quite predictable. (Add citation re: Sarah Nelson's dissertation study based on 26 audio taped VO meetings).

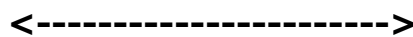
The newest element in the joint meeting, therefore, is not so much what is said and heard, but the fact that both parties are physically present with each other. This coming together itself has a tremendous symbolic value in the realm of communication. For a victim of a crime, the very fact that the offender has agreed to come into the dialogue process communicates volumes about how that offender has shifted within himself or herself into a posture of openness and responsibility. For an offender, the very fact that the victim has agreed to be present communicates more than words about how that victim is not wanting everyone to live in the past or wanting the offender to be punished without end. To bring one's own face into a face-to-face situation communicates to the other a profound message: "By facing you, I am willing to 'face' this hard situation openly and to move forward in a constructive way." In brief, both parties dignify each other by voluntarily choosing to be present.

But clearly, it is not enough for both parties to simply sit with each other for a few minutes and then leave. The entire scenario revolves around the verbal communication they will have in order to bring about greater resolution and relative closure that would not happen otherwise. For justice to "be done" in a restorative context, spoken communication is indispensable to address harms in ways that bring about restoration for all involved. This spoken communication, which includes deep listening, is what I refer to as the content of a dialogue process. Anyone who has facilitated restorative conference meetings for many years will begin to recognize familiar contours and categories. The same could be said for the mapping of apology letters. While each apology letter bears a unique stamp, given its relation to a unique offense, these letters have a highly predictable framework that includes identifiable language with past, present and future verb tenses. (add citation re: Ted Lewis chart and study of VO apology letters).

Different Kinds of Joint Dialogue Meetings

Before moving into how restorative dialogue content maps out in conversations, it is important to acknowledge a continuum of dialogue opportunities in which facilitators can play greater or lesser roles in guiding the discussion. Generally speaking, the greater the seriousness of an offense (and thus, the greater the life-impact to the victim party), the lesser a facilitator will need to be conversant during a dialogue. But this can only happen as a result of greater preparation time for both parties. Hence, it is possible to chart the number of preparation meetings and communications as a third factor that rises with the level of life-impact to the victim party. Nearly all cases of serious and violent crime dialogues happen within a post-sentencing framework, and therefore these opportunities for meeting, often taking place in a prison years after the offense, allow for both parties to meet for the first time and have a heart-to-heart conversation. For example, I facilitated a meeting of this nature for a drunken vehicular homicide, and it lasted five hours in prison. As a facilitator, I did very little talking. Everything that was said and heard issued forth from the deep wells within both parties, and there was no planned outline for the meeting. Altogether, the preparation for most post-sentencing dialogues of a serious and violent crime is primarily a matter of preparing both parties emotionally so that they feel fully supported well when they come together.

**Alternative Sentencing
Dialogue**



**Post-Sentencing
Dialogue**

At the other end of the restorative dialogue continuum would be victim offender dialogues that culminate within a diversion case or in lieu of sentencing. And for convicted offenders who will remain under supervision in the community, a judge may choose to order a restorative dialogue program as part of a sentence, assuming there is partnership with a program to handle this. As these kind of cases involve lesser impacts (but by no means lesser complexity), it is common for facilitators to play a greater role in guiding joint discussions. Whereas preparatory meetings for long-term violent crimes can extend up to an entire year, preparation meetings for pre-court cases typically involve one each for victim and offender parties. And mediation-based programs may only prepare parties by way of phone conversations. A comparison between alternative and post- forms of sentencing can therefore be summed up this way:

A. Post-Sentencing Dialogue

- Greater life-impact to victim
- Greater amount of preparation

- Lesser need for structured discussion
- Lesser need for facilitator's voice in joint meeting

B. Alternative Sentencing Dialogue

- Lesser life-impact to victim (but could be greater)
- Lesser amount of preparation
- Greater need for structured discussion
- Greater need for facilitator's voice in joint meeting

It was mentioned above that alternative sentencing dialogues can have complexity, if not greater complexity, than typical post-sentencing dialogues. This is because there is room for a greater number of variables in cases that are processed closer to the front-end. For example, I assisted with a case involving 4 teenage offenders who caused damages to the vehicles of 10 victim parties. The victims spread across the spectrum of wanting no involvement, wanting help by shuttle-arrangements, and wanting to participate fully in joint meeting dialogue; the boys all had varying degrees of responsibility; and the parents of the offenders were involved, but posed major challenges. In this light, it is clear how facilitators, especially when large numbers of people are in the same room, need to 'hold the reins tighter' to ensure good outcomes for all. Restorative conversations that require more verbal direction by facilitators include:

- disputable elements
- multiple victims and/or multiple offenders
- lack of genuine remorse on the part of an offender
- unrealistic expectations on the part of a victim
- the presence of parents who are 'needy'
- older histories of harm and offending

Given the higher numbers of variables that challenge a restorative dialogue process at the sentencing alternative end of the spectrum, it stands to reason that facilitators need to have the skills to play a more directive role when the values of safety and constructive outcome call for it. Having higher numbers of participants alone notches up the demands for effective facilitation. Again, the ideal is always to prepare victims and offenders to have as much eye-to-eye communication as possible, but for programs receiving caseloads reflecting any of the variables mentioned above, facilitators need to know they can rely on more structured discussion in the best interests of everyone. While the tone and character of a victim offender meeting in a post-sentencing case can be very similar to that of a property theft case involving a teenager and a single victim, it needs to be recognized that the most cases in alternative sentencing dialogue programs reflect

greater variation than the predictable character of post-sentencing dialogues in prisons or during post-incarceration re-entry processes.

The Structure and Content of Restorative Dialogue

For these reasons, and for the sake of introducing newly trained volunteers from the community to help guide facilitated processes, it is helpful to have a three-part outline that structures the content which is very similar in both preparatory meetings and joint resolution meetings. Framed by the essential bookends of introductory comments and closing comments, a three-part outline includes:

1. Discussion of what happened
2. Discussion of who was affected
3. Discussion of how repairs will be made

These traditional topic-areas for restorative dialogue fit well with the three restorative building-blocks that are commonly found in all restorative discussions:

1. Ownership for harm
2. Empathy about harm
3. Reparation of harm

Victims, being on the harmed-side of the equation, receive three corresponding opportunities, always by invitation, as a way to address their self-identified needs:

1. Chance to hear and be heard
2. Chance to be understood and validated
3. Chance to have assurances and have amends made

All of this, so far, corresponds to the three basic questions that define a harm-focused restorative paradigm (add citation re: Zehr) in contrast to the questions posed by a law-focused conventional justice system (What laws have been broken? Who did it? What do they deserve?):

1. Who has been hurt?
2. What are their needs?
3. Whose obligations are they?

In moving through discussions of harms in the past, needs in the present, and reparation opportunities in the future, it is clear that the three-part framework involves a natural progression from:

1. Past
2. Present
3. Future

This sense of time-flow is really an expression of the transformative potential within restorative dialogue. Addressing the past fully and then addressing the present fully gives parties a clear sense that they can move with greater confidence into a future that is no longer determined by the hard parts of the past or present. But how does this transition happen in a dialogue setting? What allows for a genuine shift from past to future? It mostly has to do with the opportunity for parties to have an internalized experience in the context of very real external-based circumstances. This progression shows that real people are involved:

1. External-based information
2. Internal-based awareness
3. External-based restoration

Offenders become aware of how their actions truly affected other persons; victims become aware of the humanity and life-circumstances of the offender. This creates a bridge that connects people at a heart-level. Without this internalization, offenders lack the new motivation to make amends and not repeat offenses, and victims lack the trust that is essential for having a restored peace of mind. The only way for the content of discussion to go that deep within each party is for NEW things to be said and heard that make all the difference:

1. Hear NEW things
2. Acknowledge NEW things
3. Demonstrate NEW things

In the end, real justice is that which allows for the delivery of something NEW for all involved, not only to restore the way things were on an external level, but in making things right between people, it opens the door for new connections in the community and new changes on a personal level.

To summarize this section on the structure of restorative dialogue, it is clear that this three-part framework is foundational because multiple framings can overlap so well with it. Whether a dialogue involves two minutes of a teacher talking to a 3rd grader after class-time about the student's pattern of interrupting the class, or involves six hours of conversation between a felon who killed someone and a member of the deceased's family, these three overlapping content-areas will consistently characterize restorative conversations. The important thing is not so much that they happen in

order. In fact, it is not uncommon for the first two areas to braid together in most joint-dialogue opportunities. The important thing, rather, is that facilitators know how to recognize content for what it is so that they can best ensure a fullness and depth of discussion that will, in turn, greatly influence the outcomes and aftermaths of meetings for all involved. The final section, therefore, provides some more insights on how facilitators can promote this fullness and depth.

The Facilitator's Role with Restorative Content

Given how central all of these components are within a restorative process, a facilitator's main job is to give ample space and time for all of these elements to come into play. The following insights apply best to situations of facilitated dialogue between victims and offenders that might last anywhere from one to two hours. The simplest, yet most effective way to organize everything that could be said, whether in preparatory or joint meetings, is by the three-part outline. It is even good for facilitators to announce this to participants at the start of intakes or joint meetings. They could say something like this:

"We typically talk about three things in these meetings, and these areas can serve to structure our time. First we'll discuss what happened; next we'll discuss who was affected; and finally, we'll discuss what repairs need to be made. My job is to simply make sure that everything that is helpful or necessary to discuss can be said during our time together."

One benefit of this framework is that facilitators can know (and even explain to the parties) that if the discussions of the first two areas are incomplete or half-baked, it is not very easy or satisfying to complete the third discussion on resolving matters. Parties cannot lean into the future if their hearts are still weighted to the past or the present. And so a key skill of the facilitator is the art of transition, identifying to the parties when one area of discussion has truly had a fullness, and inviting the parties to proceed into the next area of discussion.

Having said that these three areas have a natural progression, it is very important for facilitators to know that in the setting of a first joint meeting with victim and offender, the first two areas will nearly always weave together. This is very natural, and not to be hindered, because for the victim party, his or her story includes impacts, and thus a victim's story telling will combine both information and impacts together. This is as it should be. But the reason it is important for the facilitator to be mindful of the distinction is because in joint meetings, it is very important to filter out all of the impacts (to all persons), and let that process of identification take center stage. For

that reason, it is helpful for a facilitator to benchmark a meeting with at least two transition points that might go like this. "We've had some very good discussion about everything that happened, and I think we are ready to move into a time to talk about all of the impacts, but before we do that, does anyone have anything else to say about what happened?" This same sample sentence can substitute in "good discussion about impacts... ready to talk about repairs..." for the transition between the second and third areas.

Another way to think about the content of what is communicated in a joint dialogue is the dance between external and internal dimensions of experience. All restorative processes aim for the internalization of positive, motivating factors on the part of an offender who is then more inclined from within to make amends, personal changes, and not repeat negative behaviors. Just to learn how one's actions have affected another and then give response to impacted parties is part of an internalizing process. Victims also experience an internalizing process of gaining trust which can lead to greater peace of mind and closure. In this light, conversations need to involve the moving in and out of segments that deepen these kind of internalizing dimensions.

There are several ways that facilitators can help to bring about this depth of discussion. But first, it is good to understand a basic principle of good dialogue. *In order to have more depth, you have to slow things down more.* Our modern society has hard-wired all of us to favor the twin values of speed and image. By image, I mean 'thin' communications that seemingly say a lot, but lack depth and context. And we are accustomed to jump quickly from one image to another. A good facilitator will recognize the equivalent temptation within dialogue settings and play a role to help slow things down. The reason for this, in a restorative context, is to honor a second basic principle: *the degree of depth is matched by the degree of internalization.* Only when things sink in deep enough, and sometimes over time, do they have lasting influence on one's thoughts and future choices.

On a practical level, the simplest way for facilitators to slow things down is by *staying with* the last thing said. Rather than jumping ahead to the next thing, 'staying with' something that was just said gives everyone a chance for the words to sink in deeper. This is essential for deep listening to happen. One chief communication skill that fits with this dynamic of 'staying with' is the use of the Acknowledgment. When one party has said something that seems both personal and new to the ear, it is wonderful if the other party speaks next and says something like, "That must have been really hard for you." But if the other party does not offer such a statement, a facilitator can do one of two things, both of which serve the purposes of an acknowledgement. A facilitator could say the same sort of line above, "That must have been..." or a facilitator could invite the other party to make a

response. "Would you care to respond to what you have just heard?" And there is no reason that both of these could not be back-to-back. They both allow the conversation to deepen without moving on to a next topic.

Acknowledgements are vital in the way facilitators foster bridge-building between parties. It makes sense that if the victim and the offender, as individuals, are being built up within themselves through the experience of having their words be taken seriously, that they are more inclined to connect more easily with the other party. This is part of the power of acknowledgements: the speaker feels more validated and honored for sharing, knowing that there is an invitation to go deeper, and the listener feels more understanding for what the other person has gone through, gaining a deeper sense of empathy. Without this deepening within the course of restorative dialogue, the only real value of the discussion is to just "fix the problem", or get to the solution-part. But as deepening creates more internalization, parties begin to experience resolution in the dialogue itself. When this happens, it is not uncommon for victims to say at the close of a meeting. "I'm not that interested in getting restitution money anymore. The main thing was for me to learn that you are taking this whole matter seriously and that you won't do it again."

This article is not complete. STILL TO BE ADDED...

Another section on how and why facilitators ask questions (not primarily for themselves)

Another section on restraint and silence (with non-directive emphasis, yet being very aware of the flow of energy and potential for bridgework)

Complete conclusion on how these communication skills help facilitators be in charge of the PROCESS so that parties can be in charge of the CONTENT. Ultimately, the content of what is discussed is rooted in what the parties have experienced, are experiencing and want to experience after they leave the meeting. In a sense, it is their content. But as there are common denominators to the content of all restorative dialogue processes, facilitators play an essential role, like conductors of an orchestra, to start things well, keeping things rolling well, help guide the rise and fall of energy levels well, and to end things well. Hence they need to know about content as much as a conductor knows how to read music, let alone, read multiple score lines at the same time! But it's the musicians that make the music, not the conductor. Facilitators, therefore, hold things together so that the very process of dialogue, like listening to music, has a richness and depth that resolves well at the end.

What Is A Humanistic Approach to Mediation? An Overview

by Mark Umbreit and Ted Lewis
January 2015

To what extent can the human-element be subtracted from or added to a mediation process? That is the main question revolving around a humanistic approach to mediation and dialogue. By way of analogy, consider how a computer-generated voice could provide an audio bedtime story to a child who turns the pages of a picture book when prompted by a beep. Consider now what is added when a parent's voice resonates near the child's head, when the child can snuggle near the parent's body, and the parent can reply to questions or comments raised by the child. The latter scenario simply has more of the human-element in it.

There is little question as to whether mediation processes according to any approach can have good results. Compared to most litigative processes, a mediation that is strictly settlement-driven or technique-oriented can deliver positive outcomes, no less than an audio tape can deliver good story content and put a child to sleep with inspiring thoughts. The question at hand is whether a mediation process that allows for more of the human-element can have greater results. While more research is needed in this area, anecdotal evidence from post-mediation evaluations and conversations affirms that a humanistic approach does lead to more satisfying outcomes. Central to this evidence is the concept that when parties do more of their own work to solve an issue, they get more out of the process. This article will provide an overview of what this approach actually entails.

A humanistic approach to mediation is fully aligned with a transformative approach as set forth by Bush and Folger, and yet it also adds several new emphases. In *The Promise of Mediation* the authors even use the term "humanize", recognizing the inherent strengths within parties that help them gain greater confidence in themselves and greater empathy for the other party. Developed at the same time in the early 1990s, largely in the context of working with victims and offenders of severe crimes, humanistic mediation has emphasized three things that complement transformative mediation:

- the power of preparation meetings
- the power of mediator presence
- the power of party-to-party conversation

Throughout this article these features will be described more fully; it will be understood that they apply equally well to both dispute resolution and restorative justice realms.

A humanistic approach to mediation and dialogue adds the human-element on all levels of a mediation process: mediators tune into their own human issues and capacities, parties tune into their own deeper humanity and the humanity of the other party, and consequently, the process itself is humanized through deepening, uninterrupted conversation. A humanistic approach is one of being present with people whose very lives have been impacted by conflict or crime. It can also be called a "person-centered" approach to mediation, or perhaps a "heart-centered" approach. While word-content is important, this approach understands how the majority of human communication operates on a deeper level beneath and beyond word content. Non-verbal and emotive communications are majorly considered as having greater weight, and mediators learn how to 'read' these subtexts in order to guide people toward full resolution.

In our culture we all have a default impulse to fix problems as soon as we learn of problems, and this can apply all the same to fixing problems for other people. In a humanistic approach, mediators truly pull back from this normative role. Instead, they create a safe, if not sacred space for parties to converse as deeply as they choose to converse, and out of this conversation parties do their own fixing and mending. This can be a humbling process for mediators for a couple reasons. On one level the mediator has to consciously pull back into a non-directive posture with the parties and assure them that this is truly their process. On another level, it is humbling to bear witness to the depth that parties can go when they have the right opportunity to do so. Here we see how this approach is the ultimate strength-based approach to mediation and how it honors the principle of party self-determination to the highest degree.

This party-empowerment feature highlights a paradox within a humanistic approach: due to their own inherent strengths, parties need mediators far less than most mediators perceive themselves to be needed, and yet, paradoxically, mediators are absolutely needed to be present in order to ensure safe, constructive dialogue. This is where the practice of pre-mediation preparation can make a significant difference. When each party has the chance to build trust and rapport with a mediator before joint dialogue and gain more assurances in themselves and in the process, it leads them into a mediation where both parties can truly have direct, uninterrupted conversation. In short, the deeper the conversation, the deeper the resolution. By being less directive in this joint dialogue, mediators are not passively involved. Their presence (which will be described more below) allows the parties to bring the conversation to where it needs

to go. At any point, mediators are able to jump in, like a life-guard, to redirect the conversation in a good direction. But for the most part, as with the swimming pool analogy, they are not jumping in.

A minimal intervention style of mediation requires that a mediator progresses from active listening to deep listening. Active listening skills, as learned in a mediation training, can be useful but these skills can also get in the way of deeper conversation between parties. It helps to consider how active listening skills are viewed from the client's perspective. Do they experience them as an expression of a warm-hearted connection, or, conversely, do they experience them as an expression of a cold, mechanistic response? When the latter is the case, parties can retract from deeper sharing and lose track of the natural flow of conversation. The most important aspect of party conversation is the flow-factor. Like water running down a stream bed, the flow of telling stories or expressing emotions needs to proceed without interruption, without paraphrasing, without problem-solving. In this light, mediators develop a mindfulness-based presence where deep listening allows them to silence their own ego which would otherwise prefer to intervene. By virtue of their calm and quiet presence, mediators help to create a safe space for the healing power of spoken stories and vented feelings to flow without interruption.

By honoring moments of silence, a mediator is honoring the capacity of the listening party to make the next response. All too often, mediators sense that their first response to something a party has said is important enough to come next in line in the flow of conversation. But when mediators set a pattern of frequent response after either party speaks, it actually impedes the natural flow of dialogue. Not only does it block the general flow of conversation between parties from happening, but it specifically blocks the way for the other party to make a more profound response to what they have heard from the first party. A humanistic approach recognizes that communication is more than the two elements of speaking and hearing. It recognizes the power of a third element in good communication: the element of being heard. This is a distinct element that is critical in the deepening flow of mediation conversation, and when mediators tune into the power of parties 'being heard' by the other, then mediators will nurture the practices of silence and restraint that fit with a non-directive style.

In order for mediators to be a positive presence to the parties, that is, to be present in a calm, compassionate manner to the extent that one's presence calls forth the best strengths within the parties, mediators can cultivate this capacity in the same way that accomplished athletes or musicians can reach higher levels of performance. Some of these aids have to do with what a mediator can do outside the mediation setting and some have to do with what they do (or don't do) during a mediation. A good place to start is by

rewinding one's own experience back to the first role plays done within a mediation training. Typically, a nervousness goes with wanting to do everything just right. There are check-lists to follow, steps and stages to get in order, and response-techniques to practice. In brief, you want to get it right and you sense that if you don't get it right it will affect the quality of the mediation. In this role playing context, it actually helps to know that it is completely fine to mess up. Imagine now a trainer that gives you this freedom to not get it right, and to redirect your attention to the emotional energies communicated by the parties. Imagine being with the parties and conveying a mood-sense that they will be able to work through their issues, hard as it is, and come out at a better place. Imagine letting them having eye-to-eye communication, and that when you do intervene, it is primarily to help them get back on the track of a direct conversation with each other. This all gets to the way a humanistic or humanizing approach to mediation focuses on the real heart of the conflict and the heart of the resolution. Yes, the check-list items and steps and skills all have a place, but these things are not what makes a mediation successful, let alone, satisfying to the parties.

A summary statement of all of this can be as follows: Parties need a mediator's presence far more than a mediator's intervention. Good mediator presence is strengthened by being calm and centered before the start of a mediation, learning how to clear out the extra stuff and distractions within one's head, becoming mindful (which is the same as becoming heartfelt) toward party communications beneath the words, and focusing on the strengths and resiliency that parties carry within themselves. During a mediation, such mediators are flexible with the process, knowing that there is never a one-size-fits-all model for mediation, they are comfortable with silence and can wait for parties to think and make the next response, and finally, mediators invite the fullest of dialogue to resolve past matters and emotions before parties progress toward resolving future matters. When asking questions, the invitational flavor of the question reinforces that the response to the question is never *for* the mediator but for the party speaker and for the party listener.

When a humanistic, dialogue-driven process unfolds, parties typically experience things that they did not expect beforehand. They may say new things that they had not planned to say. They may connect more deeply with the humanity of the other party, gaining an unexpected sense of empathy for what the other person experienced. They may even change their earlier expectations for practical resolution or reparation. All of this is because the fullness of the parties' humanity -- the honesty, the openness, the heartfeltness, etc. -- was given space to inform the conversation, allowing for the quality of relational interaction to be changed for the better. Again,

this is what transformative mediation is geared to do: to transform the quality of the conflict interaction.

This humanizing potential for both the parties and the process is aided in part by a mediator's own capacity to engage the human-elements on multiple levels. Mediators touch their own positive capacities to be centered and present as an authentic 'presence', and they also touch the parties through building positive rapport and trust. Paradoxically, the more mediators get out of the way during a mediated dialogue, the more the parties are able to freely discuss matters with sufficient depth and reach degrees of resolution that can even be independent or prior to settlement agreements. Nevertheless, a mediator's humanizing presence has been shown to have a profound effect on positive outcomes, no less than the profound effect of a parent's bodily presence when a bedtime story is read to a child.

Outlining the Main Components of a Humanistic Approach

All social service practices are undergirded by values. From the description of a humanistic approach above, it is clear that these values draw from a deep reservoir of human strength and goodwill that essentially point to a set of beliefs about human nature, conflict, and the search for healing. Such beliefs include:

- a belief in the connectedness of all things and of our common humanity
- a belief in the desire of most people to live peacefully with each other
- a belief in the healing power of stories and the safe expression of feelings
- a belief in the capacity of all people to draw on their own inner reservoirs of strength to overcome adversity, to grow, and to help others in similar circumstances

Common to all of these beliefs is the notion of a life energy source (what ancient Chinese called 'chi' or 'life-force') that can overcome negative energy sources that build from conflict and crime. While mediators can be aware of the energy dynamics within and between the parties they work with, mediators can also be aware of their own inner energy dynamics, setting aside distracting elements, and drawing upon the strength of a positive life-force to assist resolution processes. This speaks to a belief in the importance of a mediator's presence and connectedness as described above. This value/belief framework resonates well with most non-Western indigenous perspectives about human nature and social life. Understandably, the fields of restorative justice and mediation have benefitted greatly from the wisdom and practices from these community-based traditions.

As certain values and beliefs are emphasized, it stands to reason that certain practices informed by such values and beliefs will be emphasized. What follows now is an outline of practices, most of which was referenced above, that foster good work within a humanistic approach to mediation and dialogue. A starting point for such an outline can return to the three emphasis areas mentioned above where humanistic mediation adds more to a transformative approach to mediation:

- the power of preparation meetings
- the power of mediator presence
- the power of party-to-party conversation

These areas essentially foster greater depth in a resolution process: depth in a party's trust in the mediator and in the process, depth in a mediator's presence, and depth in the communication between parties during a mediation. Another way this can be framed is that in humanistic mediation, there are possibilities or potentialities waiting to be enlivened within a resolution process that can be called forth to foster depth. These potentialities are all tied to the human-element that humanizes both the process and parties, and speaks to the inherent strengths within people that aid good communication and resolution. The follow summary is structured around:

- Potentialities within Communication Processes
- Potentialities within Mediators
- Potentialities within Parties

Each of these areas can be further divided into nine practice components.

RE: Potentialities within Communication Processes:

1. Pre-mediation Preparation Sessions -- Vital time to listen, provide information, build rapport, clarify expectations, prepare for mediation, and offer communication coaching.
2. Mediation Session Dialogue -- Due to good preparation, the non-directive mediator invites direct, party-to-party dialogue and ensures sufficient depth of conversation.
3. Post-mediation Follow-up Sessions -- The offering of follow-up sessions provides a wider safety net for parties to experience the fullest healing and accountability possible.

RE: Potentialities within Mediators:

4. Mediator Centeredness. Clearing the mind of clutter and personal 'stuff' allows mediators to focus well on the task of peacemaking.
5. Connecting with the Parties. Building rapport and trust at the beginning builds up a

bank account of trust that parties can draw upon later.

6. Deep Listening from the Heart. As mediators use their hearts to listen 'beneath' the words they hear, they develop greater capacities to respond from the heart.

RE: Potentialities within Parties:

7. Eliciting Parties' Strengths. Starting in preparation sessions, mediators tune into the innate strengths that each individual can tap into at their own pace and recognition.

8. Face-to-face Seating. While taking cultural and power-dynamic considerations in mind, appropriate seating can promote authentic heart-to-heart sharing. In most cases eye-to-eye communication is vital.

9. The Power of Silence. Mediators recognize how undisturbed silence can elicit inner thinking on the part of parties who have the space to respond as they wish.

1. Pre-mediation Preparation Sessions. Routine use of separate pre-mediation sessions with parties is the standard practice of a humanistic approach, and should occur at least a week or more before the mediation session. In complex cases, additional prep-sessions may be needed. Collection of information, assessment of the conflict or crime, description of the mediation program, and clarification of expectations are important tasks to complete. The main goal, however, is that of establishing trust and rapport with the involved parties. The development of trust and rapport enhances any dialogue process, but is particularly beneficial in intense interpersonal conflicts. For this reason, the mediator needs to get into a listening mode as quickly as possible during the initial meeting, inviting the involved parties to tell their stories and to share their true feelings. Overall, preparing parties for mediation is a way to set them at ease so that they can truly open up during the joint dialogue and engage in direct communication with the other party.

2. Mediation Session Dialogue. From a humanistic perspective, tapping into the full power of a mediation framework necessarily reframes the mediator's role. Instead of actively and efficiently guiding the parties toward a settlement, the mediator assists the parties to enter a dialogue with each other, to experience each other as fellow human beings, to understand and appreciate what the other needs most, and to create mutually chosen solutions. In some cases the resolution is more in the dialogue than it is in

the agreement. Once the parties are engaged in face-to-face conversation, the mediator intentionally gets out of the way. Appropriate places for mediator intervention are points where a mediator can invite greater depth of conversation (to slow down forward motion), or to benchmark the forward progress so that the process reaches a timely end. When mediators set a proper tone at the start of a meeting, explaining how the conversation belongs to the parties, it helps everyone to *lean into* a non-directive experience of mediation. This is by no means a passive form of mediation. With acute awareness, the non-directive mediator can intervene at any moment to assist the parties.

3. Post-mediation Follow-up Sessions. Follow-up joint sessions between the parties in conflict are encouraged in a humanistic approach to mediation and dialogue. Because of the nature of conflict and human behavior, problems are often far too complex to resolve in only one session, particularly when the conflict involves an important relationship. But even when a full agreement has been reached, a follow-up session affirms the relational dimension of the parties and also provides a timeframe for accountability and ongoing healing. Such meetings can be built into written agreements.

4. Mediator Centeredness. A humanistic approach to mediation and dialogue emphasizes the importance of mediators clearing away the clutter in their minds as well as possible biases about the parties so that they can focus on the needs of the involved parties. Prior to initiating contact with people in conflict, mediators are encouraged to take a few moments of silence, through reflection, meditation or prayer, to reflect on the deeper meaning of his or her peacemaking role and the needs of the people in conflict. As this centered presence of the mediator is later felt by the parties, it serves to create a more safe, if not sacred space in which the dialogue can allow for genuine healing. Centeredness is also groundedness, serving to keep the mediator focused well on the present moment and on serving the parties.

5. Connecting with the Parties. While remaining impartial, mediators truly need to establish a human connection with both parties with an attitude of unconditional positive regard. The art of mediation is no different than the art of good nursing or teaching or therapy: when authentic connection is made with those being served, they are able to rise higher in the process. By establishing warm rapport and trust, first in preparation meetings and then at the outset of joint meetings, mediators help parties to build up a bank account of trust to offset the debit of trust they began with. In the mediation session, parties can draw on this account as they gradually rebuild their trust with the other party. This human connection, accompanied by an honest congruence or integrity, is fundamental to any change process. Just

as mediator centeredness deepens a mediator's presence, likewise their caring-based connectedness to the parties informs the quality of their presence.

6. Deep Listening from the Heart. Distinct from active listening techniques which specialize in learned responses to what parties say, deep listening, on the part of the mediator, involves a way of listening from the heart to everything that is being communicated, verbal and nonverbal. Deep listening does not necessarily lead to a response, but it does lead to an awareness, often an awareness of what another person is really saying or trying to say. This orientation fits well with a non-directive style of mediation in that it gives more space for the parties to make responses to what the other has said. In fact, deep listening can have a contagious effect on others, inviting them into deeper zones of listening and understanding which would otherwise not occur for them.

7. Eliciting Parties' Strengths. Intense conflicts typically yield intense emotions which, in turn, decrease people's capacities to communicate their needs and listen well. All of this masks over the true strengths that lie within each person. Mediators tune into the unique strengths of each party, first in preparation meetings and then in joint meetings, and encourage those strengths to be expressed. For example, if a participant struggles with answering broad, abstract questions, but excels at answering concrete-oriented questions, a mediator taps into that strength by focusing on the latter sort of questions. Mediators can also provide 'communication coaching' that helps parties to speak and listen in ways that are higher than their default way of communication in normal life. This may involve the expression of painful, unmet needs that begin with I-statements.

8. Face to Face Seating. Seating arrangements during a mediation session do make a difference. In order to maximize direct dialogue between the parties, a routine use of seating parties across from each other is central to the process. The main reason is that heart-to-heart conversation requires comfortable eye-to-eye positioning. If a table is required, the mediator makes sure that the parties are never sitting next to each other, but across from each other with easy sight access to the mediator(s). Whenever cultural factors suggest a discomfort with a suggested arrangement, always check in for party preferences. As more people may be part of the process, circle arrangements, and even double-circles, are essential to maximize good hearing and eye-contact for all involved.

9. The Power of Silence. While silence can be viewed as an awkward discomfort for many in the West, moments of silence in conflict resolution dialogue processes are inherent to a non-directive, humanistic style of mediation. Recognizing, using and feeling comfortable with the power of

silence is essential. By honoring silence, patiently resisting the urge to interrupt the silence with mediator-driven guidance or questioning, several new things come into play: the parties have open space to think more thoughts and to initiate a heart-felt response, and the mediator also has more time to reflect on the present moment, as silence is always a sign of deeper dynamics. This is where mediators ultimately 'lead' more with their hearts than with their heads.

In summary, all nine practice components of a humanistic approach to mediation and dialogue are geared to draw out the best humanizing potentialities that are inherent within a transformative communication process, within the mediators, and within the parties themselves. These practices ensure depth of conversation, depth of mediator presence, and depth of connection between the parties. In turn, this 'deepening triad' leads to deeper and richer outcomes that satisfy people in conflict or people affected by crime. Deep conflict or deep harm requires a proportional depth to bring people to genuine resolution.

Closing Remarks

The dominant model of settlement-driven mediation in Western culture is clearly beneficial to many people affected by conflict or crime, and superior to the adversarial legal process and court system in most cases. Using a different model -- one that embraces the importance of spirituality, compassionate strength and our common humanity -- holds even far greater potential. As a complement to the transformative power of conflict resolution, a humanistic approach to mediation and dialogue can even lay the foundation for a greater sense of community and social harmony. It is true that models requiring more intuitive capacities and mindfulness among mediators are not as easy to train for and implement; for that reason, there is no sign that mechanistic, efficiency-based models of mediation are going to decline any time soon. Nevertheless, the promise of transformative and humanistic approaches to mediation is that small successes within mediation sessions can be catalysts for large successes in society. This larger vision helps to promote models of mediation that humanize both processes and parties to the fullest extent possible.

It may appear that the humanistic approach to mediation is primarily suited for restorative justice cases involving victims and offenders of crime, and even primarily for cases of severe and violent crime. Indeed, this was the primary realm of practitioner work that served to identify and refine most of the practice components outlined above. Nevertheless, because the main humanizing emphases harmonize so well with transformative mediation used primarily for parties in dispute, it can be said that the humanistic approach to mediation applies equally to all ADR dialogue models that allow for direct

conversation between parties. While the transformative approach transforms the quality of the conflict interaction between parties, the humanistic approach likewise transforms this relational interaction, promising both inner peace to parties and relational peace between parties.

In closing, we have seen how the tapping into the human-element is central to the humanistic approach. The human-element can be identified in communication processes, in mediators, and in the inherent strengths of the parties. In this light, such an approach is the ultimate strength-based model for resolving either conflicts or crimes. A humanistic approach empowers parties through the paradoxical practice of mediators getting out of the way and allowing for the uninterrupted flow of conversation between parties who have been well-prepared before joint dialogue. This non-directive style is not passive, but one of profound presence and deep listening, where the mediator is able to intervene at any point to support either deeper movement or forward movement of conversation. By believing in the inherent human strengths in each party (or by extension, within the community), the mediator elicits, sometimes by positive contagion, the best speaking and listening capacities within the parties so that they can be empowered to take greater charge of their own healing and restoration. In short, as a mediator becomes more mindful of their own authentic human presence with people in conflict, those people are often lifted to a higher level of authentic sharing which fosters greater resolution and satisfaction for all involved. In the end, this is the highest form of party empowerment and self-determination in the world of mediation.

Section Four

Managing a VOM Program

Program Development Issues to be Faced in Starting a Program

A number of important tasks that were critical to the initiation and development of an effective program were successfully completed by each of the four victim-offender mediation programs examined in this study. Other programs in the field have faced similar tasks that have focused on the issues of: goal clarification; community/system support; funding; target population; referral source(s); program design; management information systems; and training of mediators.

As the field of victim-offender mediation continues to expand in North America and Europe, it will be important for local program organizers and advocates to address these key issues that are critical to effective program replication.

Goal Clarification

The victim-offender mediation process offers a variety of potential benefits. Victims can become directly involved in the justice process. They can let the offender know of the impact that the crime has had on their life and can receive answers to any lingering questions. Victims can directly influence the manner in which the offender is held accountable, through negotiation of a mutually acceptable restitution agreement.

Through mediation, offenders are allowed to be held accountable in a very personal fashion. Offenders have the opportunity to repair the damage they are responsible for, accept responsibility for their behavior and portray a more human dimension to their character. The opportunity for offering a direct apology to the person they victimized is provided. Offenders who participate in mediation may also avoid a harsher penalty.

The community-at-large also benefits from the increased practice of nonviolent conflict resolution skills that occurs through the presence of a

local victim-offender mediation program. Many offenders who participate in a mediation session with their victim are less likely to commit additional crimes. Through diversion of certain cases from the court system to mediation, scarce tax dollars can also be saved.

Precisely because the mediation process has clear benefits for both the offender and the victim, as well as the larger community, it is important for local program organizers to be clear about their goal(s). By definition, the victim-offender mediation process is grounded in the primary goal of providing a conflict resolution process that is perceived as fair to both the victim and offender. Each local program, however, needs to identify which secondary goals are important for their community.

There are a number of possible secondary goals of the victim-offender mediation process. For example, is the program concerned about crime prevention, offender rehabilitation, victim assistance, community conflict resolution, victim empowerment, victim offender reconciliation, or serving as an alternative to incarceration? Each of these possible secondary goals are certainly not mutually exclusive. Effective program development, however, will be difficult without local organizers first clarifying which goals are the most important for their specific jurisdiction.

Community Support

The development of community and criminal justice system support for a local victim-offender mediation program is critical. A broad base of support will be required to initiate a new program, particularly because of the predictable initial skepticism that often confronts the concept of allowing crime victims to meet with the person who victimized them.

One of the first tasks that local program advocates and organizers should complete is a thorough analysis of key local actors within the community and justice system. Key actors might include: judges; prosecutors; defense attorneys; correctional staff; victim advocates; probation staff; directors of victim service agencies; city or county political leaders; clergy people; neighborhood leaders; and civic and corporate leaders. All possible stakeholders in the development of a local victim-offender mediation program should be considered.

The analysis of these key actors should focus upon assessing the degree to which each individual could either offer resistance or significantly influence the development of a new program. It might be helpful to develop a chart in which the names of the key actors, and their position, are listed along the left hand margin and the following four columns are to be filled out for each person.

1. Evaluate their influence/power.
2. Evaluate their probable support or non-support.
3. Identify who can influence them.
4. Develop a strategy to either gain their support or neutralize their active opposition.

Building local support for a new victim-offender mediation program will also require the development of a plan for presenting the concept and program to the public in a clear and understandable fashion, what some would call a marketing strategy. Development of such a plan should include the ability to:

1. State the purpose of your program in one sentence.
2. State the human interest aspect of your program in one sentence.
3. State the public policy/criminal justice system relevance of your program in one sentence.
4. State briefly the benefits of your program.
5. Identify briefly any possible self-interest the following key actors might have in your program: judge, prosecutor, defense attorney, probation officer, police or local politicians.
6. Based on the above, develop a general presentation outline for presenting your program to local officials and the public.
7. Identify a strategy for utilizing newspapers, radio stations and television stations.

Effective development of a broad base of community support requires preparation of a clear and brief presentation about the program, scheduling many presentations before a wide range of community organizations and justice system agencies, and inviting the active involvement of key actors and others in the actual process of developing and managing the new victim-offender mediation program. Additional strategies for developing support are addressed in the next chapter.

Funding

Securing sufficient funds to support the operation of a new victim-offender mediation program is one of the most difficult tasks to be faced during the initial program development process. Fortunately, such mediation programs do not require huge budgets.

The annual expenses (1991 figures) for three of the programs described in this report were: Albuquerque, \$31,530; Minneapolis, \$123,366; Oakland, \$127,176. The Albuquerque program budget is actually more representative of many of the programs operated by small non-profit community agencies, some of which have even smaller budgets in the range of \$5,000 to \$10,000 (Fagan and Gehm, 1983). With such a small budget, these programs would obviously have to rely very heavily on the use of volunteers. The larger budgets in the Minneapolis and Oakland programs represent more mature and well-developed programs that have expanded considerably. Even these two programs, however, had a much smaller amount of funding (\$20,000 to \$30,000) during their initial years of development.

Based on a review of 123 victim-offender mediation programs in the U.S., the typical program was found to have a budget of \$47,500, with just under three staff persons, 16 volunteer mediators and an annual caseload of 200 referrals (Fagan and Gehm, 1993). The actual size of program budgets is a function of several important variables: caseload projection; use of volunteer mediators; level of existing administrative support; fundraising ability; and public relations responsibilities.

Many programs have begun with relatively small amounts of money, often from private foundations and churches, and later have secured larger amounts of public funding as the program develops. While a small amount of federal funds is available to support victim-offender mediation and reconciliation programs, the most likely source of funding is to be found within the state and, particularly, local private and public sources. The task of securing local funds should not be postponed until all plans for the new program are finalized. Rather, potential funding sources should be identified and researched during the initial planning phase. When the initial plans for the new program are worked out, including a tentative budget, it is often helpful to develop a brief concept paper that can be distributed to potential

funding sources. A more thorough proposal will eventually need to be prepared.

A strategy of developing a multiple-source funding base is often helpful. Having several different sources provide funding for a program can often be more effective than a single-source funding base, in which the entire project is dependent upon one grant. If that single grant is lost, the existence of the entire project is immediately threatened. Public agencies, such as probation departments, are in a position to even consider reassigning responsibilities and resources so that only a marginal amount of additional funding may be required. On the other hand, departments that are overburdened with high and growing caseloads will certainly not be in a position to develop a new victim-offender mediation program without a significant amount of new resources.

Target Population

In the planning of a new victim-offender mediation program, it is important to identify the target population for case referrals. Will the program focus on juvenile or adult court cases? Will it accept any referrals, regardless of age or type of offense? Will it focus upon only the most minor property offenses, or, will it attempt to receive referrals of more serious property offenses and some violent offenses? These are important questions to address early in the life of the planning process. Depending on the choices made, the program can quickly become stigmatized as another so-called alternative for lightweight cases, many of which would have been essentially ignored by the system, or as an important new effort to deal with more serious offenses.

Within the field of victim-offender mediation and reconciliation, there exist two schools of thought on this important issue. Many would argue that since the primary goal of the mediation process is to resolve the conflict between the victim and the offender, nearly any case referred is appropriate. From this perspective, there is little concern about the seriousness of the offenses, age or circumstances of the offender, or about the possible impact of mediation on the larger justice system (i.e., widening the net of social control versus serving as an actual alternative to court, or even incarceration). Many programs that embrace such a wide open definition of their target population tend to receive a high volume of very minor misdemeanor offenses (i.e., lightweight cases).

Others in the field would argue that given the limited resources available to all programs and the relative needs facing individual victims and offenders, as well as the justice system, a more serious range of case referrals should be identified. It is less likely that the program would be marginalized if it worked with more serious cases. The impact of the mediation program in truly diverting certain cases from the justice system or from a penalty of costly incarceration would likely be greater. Victims and offenders involved in more serious cases usually have greater emotional and material needs that could be resolved through mediation.

While working with any case seems logical-if not desirable-in the abstract, it is simply not possible. Many would argue that focusing primarily upon the least serious offenses results in a tremendous underutilization of the full power and potential of the mediation intervention to create a greater sense of closure and reconciliation among the involved parties. Moreover, it has become increasingly clear that mediation can be very effective in working with cases involving severe trauma and loss, including attempted homicides and homicides (Umbreit, 1989). The number of such cases remains small, but it is continuing to expand. The mediation process in such cases also requires a number of modifications, advanced training for the mediator and a far more intense case-management process. The fact the mediation can be effective in such severely violent offenses bodes well for the targeting of more serious offenses and the need to limit the negative effects of increased social control through "net widening" (i.e., placing more, not fewer, offenders under the control and influence of the justice system) and "net strengthening" (i.e., providing mediation as an add-on to existing sanctions-usually involving more cost- rather than as a substitute for an existing sanction).

Identifying an appropriate target population for case referrals ultimately involves a balance between the desires of the program advocates and the willingness of the criminal justice system to support the new program and experiment by taking some risks. A negotiated process is required between representatives of the referral sources and program staff. Keeping the expressed goals of the program in the forefront of such negotiations is critical. Without such focus, it will become far too easy for the new program to be seduced into taking cases that have little relationship to the ultimate goals of the program.

Identifying an appropriate target population also requires open recognition of the tremendous resilience of the criminal justice system in coopting true reforms. Many "diversion" programs and "alternatives" that were developed over the past two decades were found to have little real impact in either truly diverting cases from the courts or reducing the use of incarceration. The good intentions of reformers did not often lead to the desired changes. The more local organizers are committed to avoiding the creation of "wider and stronger nets of social control" (Austin and Krisberg, 1981), through not repeating the errors of the past, the more difficult the task of identifying an appropriate target population will be.

Program Design

The most crucial, yet difficult, task of initiating a new victim-offender mediation program is the need to design the local program in such a way that it will maximize the achievement of its primary goal, with direct impact on the desired target population. Clarification of goals and identification of a target population can easily become an abstract and irrelevant exercise if they are not directly formulated as clear strategies for how a local program will actually operate. For this reason, the task of effective program design is the most demanding and critical step in any local replication effort. Experience in the field of victim-offender mediation has taught that many local organizers underestimate the importance of program design and are often too quick to initiate training of mediators.

While there is certainly no simple or perfect way of designing a local victim-offender mediation program, there are a number of key issues that need to be addressed. These include: program sponsorship; staffing; use of volunteers; point of referral in system; referral criteria and procedures; and use of co-mediators.

Program Sponsorship

Identifying the appropriate agency to sponsor a new victim-offender mediation is extremely important. Agencies that are already identified as strong advocates for either victims or offenders are unlikely to be able to offer a mediation service that requires the use of neutral, impartial third parties. In some communities, the establishment of an entirely new non-

profit organization may be appropriate. In other communities, a collaborative effort between a local probation department and a victim services agency may be selected. The victim-offender mediation programs in Albuquerque and Austin are particularly good examples of collaborative efforts between private and public agencies. In Albuquerque, the juvenile probation department and the New Mexico Center for Dispute Resolution sponsor the program. In Austin, the juvenile probation department directly sponsors the program but relies on the local dispute resolution center to provide the volunteer mediators to handle cases.

Staffing

The number of staff required to manage a new victim-offender mediation program can vary a great deal based on the nature of the organization sponsoring the program, the level of new funding secured and the projected caseload. In existing well-established, non-profit community agencies or in some probation departments, it may be possible to initiate a program with a very limited number of staff members. Some programs have begun with essentially a half-time staff person and a pool of volunteers; having at least one and one-half full-time equivalent staff members to initiate the program and coordinate volunteers is far more desirable. Others programs that are not able to receive supportive services from a larger organization (including free office space, telephone, secretarial support, etc.) are likely to need more staff. As programs expand over time, more staff will be required to effectively manage the program.

Use of Volunteers

The use of trained community volunteers needs to be addressed early in the planning process since it has a direct impact on the budget and staff required to initiate the program. The benefits of using volunteers include increased citizen participation in the justice process, broader community exposure to nonviolent conflict resolution skills and reduced costs for the program. Further, volunteers often add a level of enthusiasm and commitment to a program that is a valuable asset.

However, using volunteers in a new mediation program requires a good deal of planning and effort in recruitment, training, and monitoring. Periodic in-service training is important, along with various events to provide recognition and support. The benefits must be examined in the context of the energy and resources that must be expended. Most victim-offender mediation programs have chosen to use community volunteers as mediators.

Point of Referral

The point at which cases are referred to mediation by the justice system is a critical strategic issue to consider. There are at least four possible referral points: directly from the police before a formal charge is filed; after the police have filed a report but prior to a trial, as a diversion from prosecution; after an admission or finding of guilt, but prior to the sentencing or disposition hearing; and after the sentencing hearing. Some programs would accept referrals at any of the above points.

There are benefits and limitations related to using any of these referral points. While mediation is more likely to be an alternative to the court process if cases are received at a pretrial level, it is also more likely that only relatively minor offenses will be referred. If more serious cases, including some violent offenses, are meant to be referred to mediation, it is more likely that the point of referral would be post-conviction or post-adjudication. Some programs find it desirable to have cases referred after an admission of guilt but prior to sentencing. This allows victims to have direct input into the penalty required of their offender and represents a time of high motivation for the offender to make amends.

Referral Criteria and Procedures

The importance of developing clear referral criteria and effective referral procedures cannot be overstated. Failure to address these issues will likely result in few referrals as well as inappropriate cases, both of which can marginalize the program. The experience of many programs shows that clear referral criteria and very pro-active referral procedures are the most effective. Rather than providing the referral source with a list of criteria and then waiting for referrals to be made, having program staff directly review

and select cases at the offices of the referral source is far more effective. An example of clear and concise criteria and procedures would be:

Referral Criteria

- * Adult felony offenders convicted of burglary or theft, regardless of prior offenses
- * Identifiable loss by victim and need for restitution
- * Absence of intense hostility which could lead to violence
- * Admission by the offender of complicity in the offense

Referral/Case Management Procedures

- * Immediately following convictions, probation staff temporarily place all burglary and theft case files in the VOM (victim offender mediation) in-basket at the probation office
- * Program staff visit the probation office daily to review all burglary and theft cases within 24 hours of conviction
- * Program staff select appropriate cases to be referred to mediation, subject to final review by probation staff
- * Program staff transfer case information from the file to the VOMP case referral form

The above abbreviated criteria and procedures are offered to emphasize the need for clarity. Actual referral criteria and procedures are likely to be more detailed. Time frames for completing certain procedures can be helpful if they are understood as targets and not rigid goals.

Use of Co-Mediators

In designing the program and preparing for mediation of cases, it will be important to determine if single mediators or co-mediators will be used. There are advantages to both. On the one hand, it is easier to schedule actual mediation sessions when single mediators are used, and a smaller pool of volunteers is required. On the other hand, co-mediators can: increase quality control through peer support and critiquing; provide additional support and help to mediators during the mediation session and through de-briefing after it ends; allow for more flexibility in addressing cross-cultural issues that may be present in the conflict (assuming one of the co-mediators is from the minority culture); and promote broader

citizen/volunteer involvement in mediation. Co- mediation can involve having one person serve as the lead mediator, with the other in a secondary role of helping clarify issues or assisting with difficult issues that may arise. It can also involve having the mediators both take the lead in different parts of the session. For example, one mediator could handle the initial opening of the session, and the discussion of the facts and feelings related to the case. The other mediator could then take the lead in reviewing the losses and helping the parties negotiate a mutually acceptable restitution agreement.

Management Information System

The development of a management information system in the planning of a new victim-offender mediation program can provide an effective mechanism for the collecting, storing and retrieving of important information.

Management information systems have several uses. These include:

1. Assisting in the delivery of mediation services,
2. Documenting accurately what is done,
3. Facilitating supervision of staff and volunteers,
4. Providing a basis for program evaluation that can inform planning, program development, and policy formulation, and
5. Providing a basis for presenting the program to potential users, funders, and other interested groups.

The concept of a management information system may immediately suggest an endless amount of paperwork and hassle. A good system should, however, actually increase efficiency, streamline paperwork, and systematically provide helpful information to both supervisors and line staff. In order to develop a management information system, the program staff need to determine: what data is needed in order to meet the desired uses of the system; how and in what form the data will be collected; how the data will be managed; and how the system can be used for evaluation, feedback, and reporting purposes.

An example of sample forms used in the management information system of many victim-offender mediation programs includes the following items:

1. VOMP case record form
2. VOMP case referral form
3. letter to victim

4. letter to offender
5. mediator narrative report form
6. progress report form
7. agreement form
8. case referral input log
9. case referral output log
10. monthly statistical summary form

Some programs have streamlined the number of forms used, while others might have additional forms. A growing number of programs are using computer software for their management information system in order to significantly reduce the volume of paperwork.

Training of Mediators

A final issue that needs to be addressed as local communities replicate the victim offender-mediation model is that of recruiting and training volunteer mediators. A number of basic characteristics are important to keep in mind as individuals are considered to serve as mediators. These include: good communication skills, particularly reflective listening and assertion; problem solving and negotiation skills; ability to exercise appropriate leadership; good organizational skills; commitment to the philosophy and techniques of nonviolent conflict resolution; and the ability to understand and work within the criminal justice system.

The length of mediation training provided in the victim- offender mediation field can vary from 12 to 40 hours. Training should introduce volunteers to the victim-offender mediation and reconciliation concept, how it operates within the local justice system, and the procedures of the local program. A major portion of the training should focus on communication skills, problem solving and negotiation, and conducting the various elements of the process, including calling the victim/offender, meeting with the victim/offender separately, and then conducting the joint mediation session. Maximum time should be allowed for small group practice of skills and processing. New programs do not have to "reinvent the wheel" of mediation training. A number of excellent training curriculums and video tapes are available. For more information about training resources, contact The Center for Restorative Justice.

(NOTE: The material in this previous section is taken from Chapter 10 of *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, by Mark S. Umbreit. Permission has been granted from Criminal Justice Press in Monsey, NY for use in this training manual.)

Recommendations For Program Development

1. Create an advisory board

The establishment of an advisory board can contribute significantly to the effectiveness of a victim offender mediation program. Its role may be consultative, without decision-making authority. The board can assist in program development, in maintaining quality in program procedures and practices, in fund-raising, and in building support for the program within the judicial system and the community at large.

The composition of the advisory board may vary, depending on the nature of the context and the needs of the program. The board may include the following:

- a) a victim who has participated in victim offender mediation
- b) an offender who has participated in victim offender mediation
- c) youth workers from the community
- d) representatives from the judiciary or court administration
- e) representatives from probation or parole
- f) police officers or diversion workers
- g) representatives from victim services
- h) social workers, counselors
- i) health care workers
- j) other community representatives from the media, schools, churches

2. Cultivate quality control through program evaluation

Procedures for program evaluation need to be established from the outset. Such information is critical to quality control. Evaluations provide the program staff with general feedback relative to the mediation process itself, and the effectiveness of program procedures. Evaluations also offer information about specific cases and the competence of the mediator. As a result, staff may suggest further training or consultation for the mediator or follow-up work with the participants in a particular case.

In general, evaluations should be anonymous to encourage honest responses. A coding system can be used, so that staff can identify the particular case and mediator involved.

One model for participant evaluation has two phases. The first phase gathers information at the time of the mediation session. A simple evaluation instrument is distributed to all participants, including parents, with a self-addressed, stamped envelope. The participants are asked to complete the evaluation as soon as possible and mail it back, or they may complete the form at the time of the mediation session, if they prefer.

The second phase of this evaluation process occurs at a later time, between three and six months following the mediation session. This may be conducted in several ways. Another instrument may be mailed out to all participants with a self-addressed, stamped envelope or a telephone survey or face-to-face interview may be used to gather the information. The person conducting the survey or interview may be a volunteer or a staff person, but not the person who actually mediated the case.

An additional method for gathering information from victims is to sponsor focus groups comprised of victims who are willing to discuss their experiences in mediation and offer input regarding the program and its practices.

Mediators also need to be asked to evaluate the mediation. A feedback instrument can be completed immediately following the mediation session. Such a procedure can enhance learning for the mediator, encouraging skill development through observation, analysis, and self-reflection. It can also alert program staff to any issues or problems that may need further attention, or suggest revisions in program procedures.

In addition, feedback needs to be gathered from probation officers or victim service personnel who work with the parties following mediation. This may be accomplished through formal evaluation or informal feedback.

3. Develop and maintain an extensive and effective network

A crucial component of any victim offender mediation program is the cultivation of connections with stakeholders in the community. Stakeholders include judges and referees who may make referrals to the program, victim

service personnel who may refer cases or work with clients prior to or after mediation, prosecuting attorneys and public defenders who have an interest in the outcome of the case and the status of the parties, and probation officers who may follow-up with offenders. Establishing these relationships is vital to the continuing flow of appropriate referrals and the overall success of the program.

Because mediation represents a serious departure from the way crimes are traditionally handled, a concerted effort needs to be made to educate court-related personnel on the victim offender mediation process. They need information on the benefits and risks of mediation, the types of cases suitable for referral, specific outcomes of cases, research done on the short- and long-term impact of mediation, safeguards and quality control procedures. Stakeholders will also want assurance about the credibility of the program itself, and the training and competence of the mediators.

Staff play a vital role in establishing and maintaining these networks as ongoing relationships, involving frequent personal contact. In addition to providing information to stakeholders, program personnel may seek to strengthen the partnership by exploring avenues for collaboration. The training of mediators is a natural opportunity for collaboration. Victim service providers can present a training segment on the experience of victims. Portions of the training can be held on site in the office of victim services. Probation officers can provide a parallel segment on the experience of offenders. A judge can describe what happens to victims and offenders in the courtroom and offer information about what typically may happen to a case that is not mediated. The presence of representatives of the judicial system also informs trainees that the system appreciates and supports mediation, and values their contributions as volunteer mediators. A variety of service providers may role play how a case progresses through the system from beginning to end. Such collaboration not only provides trainees with needed information but it also builds relationships within the system that can help insure the success of a mediation program.

Another opportunity for collaboration emerges out of the necessity of seeking resources and support for victims and offenders. A victim service worker may, for instance, provide the victim with support throughout the entire mediation process and beyond, even attending the mediation session with the victim, if requested, in the role of a support person rather than an active participant. Such support may assist the victim in understanding and

articulating his or her experiences and needs. Similarly, a social worker or probation officer may be helpful to the offender, encouraging the development of understanding and empathy for the victim, and assisting the offender in preparing for dialogue with the victim.

Building connections within the larger community is also essential. The community is a stakeholder in the victim offender mediation process. Crime has an impact that reaches far beyond the immediate parties involved. The community is also a potential source of financial support for a mediation program. Many programs are also dependent on the community as a source of volunteers to serve as mediators. When the public is educated about victim offender mediation, becoming invested in it, victims and offenders, as well as support persons, may be more willing to participate in the process, and other community members more likely to volunteer to be mediators. In addition to general public education about mediation, specific ties should be made to community agencies, churches, ecumenical bodies, business organizations, and local and state government, including those who influence and determine legislation and public policy. Program leadership, in particular, need to have a thorough understanding of the community's structure and resources.

Volunteers may serve as a bridge to the wider community. They can be highly effective in representing or promoting a mediation program, both within the community and the court system. Volunteers may at times be more convincing about the positive impact of mediation than a staff person may be. Community members who serve as volunteer mediators, for instance, may speak enthusiastically about their experiences with the process, and victims and offenders who have found the mediation experience to be useful can serve as eloquent promoters of the program.

It is also critical for victim offender mediation programs to maintain close ties with other VOM programs, and other agencies providing mediation services to the community. These connections can offer much needed ongoing support, resourcing, and consultation. In addition, programs may wish to share materials and trainers, and to collaborate in areas of common concern, such as legislative initiatives.

4. Maintain high quality standards for mediators

- a) Screen applicants seeking training as a mediator.

The first step in creating a team of effective, competent mediators is an effective application process. Prospective mediators should complete a form that elicits, among other things, data, professional and volunteer history, reasons for choosing to become a mediator, and something of personal style and value system. Upon completion of the form, an interview may be conducted to further screen for appropriate applicants. Because attitude and perspective are vital to effectiveness as a mediator, the interview serves as a natural tool for assessing suitability.

b) Utilize mediation training as an additional tool for screening mediators.

Be intentional about observing all trainees during role plays. Note the nature of their skills and their styles as mediators. Follow-up with any concerns that arise, by co-mediating cases with trainees and discussing pertinent issues. Also solicit input from coaches.

c) Maintain quality control through a meaningful staff/mediator relationship.

In order to insure the effectiveness of mediators it is important to consider not only the quality of training but also the ongoing relationship between staff and mediators. Program staff need to be in close contact with mediators actively involved in cases. Procedures need to be established that provide for this supervisory and consultative relationship. Relatively inexperienced mediators, in particular, may be expected to contact staff after each client contact, and to meet with staff both prior to and immediately following the mediation session.

Staff also need to be available for consultation on any case, as requested by the mediator. With more complex cases, it is helpful to arrange at the outset for brainstorming/consultation sessions involving the mediator(s), program staff, and, perhaps, other experienced mediators. In order to provide adequate supervision and support, it is advisable for program staff to co-mediate a case annually with each mediator.

In the interests of quality, it is helpful for training size to be limited to a group of nine to twelve. This gives the trainees more individual attention and provides critical information to the trainer about the learning process for each individual. It is also important to provide

trainees with ample and excellent opportunities for apprenticeship, co-mediating with experienced mediators and staff. Following apprenticeship, trainees will gain the most by having frequent opportunities to mediate cases. Much that is gained through training and apprenticeship can be lost if it is not reinforced by repeated experience with actual cases. Also, mediators who are not utilized may lose interest. It is generally a better strategy to train fewer mediators, utilize them more, maintain closer contact with them, provide them with all the resources they need, and to establish firm expectations about communication and collaboration with staff, evaluation and reporting requirements, timely case management, quality procedures, continuing education, and time commitment (cases done carefully may typically take 10 to 15 hours or more). Some programs find that a smaller cohort of mediators working more cases is likely to increase commitment and promptness among the mediators.

- d) Establish regular continuing education as a mechanism for strengthening skills.

Continuing education for mediators should be built around issues in the field, advanced skill development, needs expressed by mediators, and staff assessment of needs. Case review can be a vital component in skill development and quality control. Mediators may meet quarterly, for example, along with staff, prepared to present to the group a case scenario, along with questions and concerns that emerged from the case.

5. Explore opportunities for broadening the scope of services provided

- a) Develop a course for offenders and their parents, covering topics such as conflict management skills, victimization/empathy development, communication, life skills, esteem-building, anger management, developing skills for building peer support.
- b) Train mediators to maintain a connection with victims and/or offenders for a period of time following the mediation, as mentor to the offender, support for the victim. Mediators may monitor agreements, accompany offenders on job search excursions, offer encouragement and reminders about restitution obligations.
- c) Train ex-offenders to be mediators who co-facilitate actual cases or to

be trainers, providing conflict resolution training in detention centers or correctional facilities.

- d) Establish a public works program, which can serve as an arena for community service responsibilities, and provide opportunities for staff to develop relationships with offenders, as well as monitor restitution.
- e) Provide offenders with job search assistance and actual job training. Establish a work-study program for offenders.
- f) Develop victim impact panels for use in cases where the victim chooses not to participate in mediation.
- g) Use mediation with parent(s) and child as a juvenile offender leaves a correctional facility, returning home, or in the case of a runaway.

The following section is by Ted Lewis, adapted from the VORS Manual for CYS re: VOM Program Implementation

Red Flags for Cases That Should Not Proceed to Mediation

WHAT ARE THE OPTIONS FOR CASES THAT SHOULD NOT MEDIATE?

There are certain indicators or 'red flags' that occasionally come up that would lead a program manager to rightly prevent a face-to-face mediation between certain parties. This is an important part of screening cases at the front end as every restorative dialogue program seeks to ensure safe, constructive conversations between parties that mediate. Such red flags can lead to three options:

- 1. No Mediation and the Case is Closed**
- 2. Alternative Mediation (non-face-to-face options)**
- 3. More Preparation that leads to safer face-to-face mediation**

The degree of the 'red flag' issue or issues will usually determine which of the three options is chosen. Note that all of the following indicators are grounds for not bringing parties together on a case. Options 2 and 3 simply open up new doors to address or overcome the obstacles that by themselves (and with no improvements) suggest that no mediation is the best route.

WHAT ARE THE INDICATORS FOR CASES THAT SHOULD NOT

MEDIATE? The following is not a comprehensive list, but are possible within a program that serves youth offenders. Each indicator can be charted on a continuum of high to low. Nevertheless, they all present a risk of bring people together:

- Offender refuses to accept ownership for the crime
- Offender's anger issues appear to be uncontrollable
- Offender's parent dominates the case energy
- Victim's negative emotions appear to be unpredictable
- Either party expresses a hint of harm or revenge toward the other
- A domestic violence or sexual assault incident links the parties

HOW DOES A PROGRAM MANAGER MAKE A FINAL DECISION ON MEDIATION?

All of the above could be diminished to a better level if there was time and supports to do this. And in some cases, some 'communication coaching' can assist parties to shift out of more negative emotional zones into a better place for mediating. Preparation meetings alone are designed to

absorb front-end negativity and ensure more predictively positive dynamics in a joint mediation meeting. One good way for a program manager to assess if they can shift from Option 1 (above) to either Option 2 or 3, is to ***monitor improvements of the red-flag issue after some supports and coaching is offered***. The bottom line is that if YOU have mistrust about allowing certain parties to come together, then it is essential that the respective parties have gained YOUR trust in order to proceed. Ultimately, this is a very intuitive decision on the part of the program manager; there is no formula that can be followed.

OPTION TWO CAN ALLOW FOR CERTAIN CASES TO PROCEED.

Fortunately, the Alternative Mediation option allows for a case to proceed without the same high risks of bringing parties into the same room. For example, if it is not good to bring three male teens together who all took part in an assault crime, there are ways to work with them to address issues short of face-to-face encounters. The following are simply modifications of basic elements within any normal mediation process:

1. Extended Caucusing (co-mediators go back and forth between two rooms)
2. Victim-Shuttle (victim party is not present, but has relayed information)
3. Shuttle of Written Communications (offender can write a statement that builds trust with victim; victim can write a letter that builds a bridge to the offender)
4. Delayed Sequencing of Mediation (offender can meet with community members, start a restitution plan, and the results are communicated with the victim. Thereafter, there is the option of a back-end mediation with both parties)
5. Victim Surrogate Mediation (offender mediates with a person who stands in for the victim in situations where the real victim chooses not to have a face-to-face meeting. In rare occasions, the real victim can be joined by a victim surrogate to have greater support and confidence in a joint meeting.

(Note: The next section below covers details about Victim-Shuttle and Victim Surrogate options.)

OVERVIEW OF RED FLAGS ISSUE. It is inevitable when coordinating mediations for resolving crimes and conflicts that certain cases will not be ideal or even suitable for mediation. If it appears that there is no changing, shifting, cooling, etc., on the main issue at hand, it is best to close the case or to select a safe alternative plan. When efforts are made to support clients toward either an alternative mediation process, or a joint mediation that requires some in-person preparation work, then it is essential to track the improvements on the presenting issues. The guiding compass has to point

toward a predictably safe and constructive process. While it is impossible to predict how any given mediation meeting will go, program managers need to have a 90% assurance level for knowing that greater good will come out of a face-to-face meeting between parties who are at risk with being with each other. This is all the more important for programs where volunteers are not part of the initial screening and preparation of cases. Volunteer mediators need to have the confidence that any joint-dialogue case they are handling is one that shows all indications for a positive process.

I. Using Victim-Shuttle and Surrogate Victim Options

WHAT IS A VICTIM-SHUTTLE OPTION? If a victim party wants to participate but cannot attend the mediation (but has given permission to relay impact statements or restitution requests), then after the mediation process (which would include a surrogate victim and/or a community member), that victim would have a "Victim Shuttle" status. This option is simply an extension of a basic restorative justice mediation model allows the real victim to participate at a more remote level.

HOW DOES A VICTIM-SHUTTLE PROCESS WORK? The following steps present a scenario for shuttling victim information in the case of a victim not being present at a mediation.

1. Program Manager, by phone, determines that the victim wants to participate in program but not through face-to-face mediation
2. Program Manager asks for Impact Statements and records them in written form
3. Program Manager asks for Restitution Requests and records them in written form
4. Program Manager confirms permission to relay this information with confidentiality
5. Statements and Requests are added to the case file
6. Program Manager informs the volunteer mediator(s) of the information to relay
7. Program Manager assigns a Surrogate Victim to the mediation (but explains that the mediators and NOT the surrogate will relay the victims information)
8. Mediators relay the information at the appropriate times in the mediation
9. Actual Victim does not have to sign the restitution agreement, but Surrogate Victim can sign
10. Program Manager informs victim of restitution plan, tracking progress, and completion

Note: The most important part of this sequence is stated in #7 above. Surrogate Victims are not the ones to be the go-between for the actual

victim who is not present. They simply speak according to what they hear and learn in the mediation meeting. Mediators are empowered to convey actual content that is formerly passed on by the actual victim, typically through the program manager.

WHAT IS A VICTIM SURROGATE OPTION? If a victim party chooses to not participate either by regular mediation or victim-shuttle (or is not available to be present), the next best option to ensure a restorative dialogue with an offender party is to arrange for a Victim Surrogate to attend the mediation meeting. This allows an offender to experience the fullest restorative dialogue possible, and thus to go full-circle through the program. Sometimes, two surrogates may be assigned.

There are two situations when a Victim Surrogate is used:

- 1. For all Victim-Shuttle Mediations**
- 2. For all mediations where the victim is not participating at any level**

Some programs make use of "Community Members" which can play the same role as surrogate victims, but generally represent the community at large which is affected by crime, and not only the victim who is not present.

HOW DOES A VICTIM SURROGATE PROCESS WORK? Volunteers in this role should have some level of restorative justice training, without requiring full mediation training. The important thing is that they are oriented toward the main goals of a restorative framework. In the same way volunteer mediators are assigned to take a case, surrogate victims (and community members) are lined up by the program manager to attend scheduled meetings. Surrogate Victims, unlike mediators, have the full freedom to speak *as an actual victim would be empowered to speak* in a mediation setting.

As substitutes, Surrogate Victims can be included in a mediation process to:

- Ensure the best possible restorative dialogue process for the offender
- Represent the impacted community
- Speak as one who could be impacted
- Help determine fair restitution plans with the offender

HOW ELSE CAN COMMUNITY MEMBERS BE USED IN MEDIATION? In addition to serving as Surrogate Victims, Community Members who attend mediation meetings with offenders can offer more supports to the process. The following list shows how wide these supports can be. Community Members can...

- Give participating victims additional dialogue support during a mediation meeting

- Be a resource person for a field related to an offense (Public Works Manager for a graffiti case)
- Allow youth peers to be present for dialogue who may know the offender/victim
- Be a possible mentor or helper for an offender during the post-mediation period
- Round out discussions to ensure a variety of perspective and opinion

SURROGATE VICTIMS AND COMMUNITY MEMBERS PROVIDE MORE OPPORTUNITY FOR COMMUNITY INVOLVEMENT. The bottom line is that restorative dialogue processes empower the community to be more engaged in resolution processes, and it rarely hurts to involve more people than less. Both offenders and victims need to be supported by a network of people to move forward in life. Also, there is no reason that 2 or 3 such volunteers could be included in a single meeting.

COLLECTING DATA ON ALTERNATIVE MEDIATION OPTIONS. It is very important to collect and organize data regarding the use of surrogate victims and community members for many reasons, as well as the use of victim-shuttle processes. Overall, it helps to show greater victim participation, greater volunteerism, and, hopefully, greater offender successes. Some programs will monitor Mediation Types within their case-closing data systems to track the outcome of their annual cases.

2. Mediation Logistics and Best Practices

- a. Meeting Location Preparations and Amenities
- b. Expectations for Volunteer Mediators

THE FOCUS OF THIS SECTION. The previous section is about Pre-Mediation Case Development, and the following section is about Post-Mediation Case Development. That pretty much covers all of the case development process. Nevertheless, while a mediation takes place, a program manager has to be aware of everything that can and will take place at a mediation site and within the mediation itself. This section, therefore, is simply an extension of basic program management. It focuses on the knowledge that any program manager has to have *while* volunteer mediators are in the activity of guiding mediations. The bottom line is that PROGRAM MANAGERS NEED TO KNOW EVERYTHING A MEDIATOR SHOULD KNOW ABOUT MEDIATION (AND MORE).

a. Meeting Location Preparations and Amenities

ON-SITE AND OFF-SITE LOCATIONS FOR MEDIATION MEETINGS.

Most restorative justice dialogue programs have meeting rooms next to their main office area, and thus it is easy to have everything set up for mediations, and have files and copy machines near by. To serve people in wider geographic areas, many programs also make use of other meeting spaces to hold mediations, typically in community centers, libraries and churches. Cases involving businesses and schools as victim parties will frequently have mediation meetings in the buildings of those respective places as a convenience to managers and school administrators who need to remain at their work-sites.

BUILDING A LIST OF OFF-SITE LOCATIONS. As it was mentioned above in the first section about the importance of building community partnerships, program managers will need to build a list of meeting spaces that are evenly spread over the area the program serves. Such a list would include the following information that could be banked in an Excel spreadsheet:

- Building Name or Organization
- Address
- Contact Person
- Phone(s)
- Email
- Directions for clients and volunteers
- Days and hours available
- Room size and capacity
- Building entry information
- Key arrangements (if applicable)

When scheduling meetings at off-site locations, the program manager or those assisting would add this information into case notes and calendar scheduling data systems

WHAT ARE THE REQUIREMENTS FOR A GOOD MEETING SPACE? The following are important features that any mediation meeting sight should have.

1. Sufficient Privacy

- a. Visual Privacy: no open glass for others to look in; enclosed walls and closable doors
- b. Sound Privacy: no outside noise that intrudes, nor inside conversation moving out
- c. People Privacy: no other people entering the space for other purposes

2. Sufficient Comfort

- a. Seating: comfortable chairs and enough chairs for all who attend

- b. Table surface: many clients are more comfortable with a table in place for mediation
(however, restorative circle processes do not use a table)
- c. Walls: should be uncluttered without distracting or disturbing wall hangings
- d. Air: comfortable temperature is important for conflict resolution dialogue

3. Sufficient Time

- a. No pressure to leave the room within designated time
- b. Capacity to park cars without worries of tickets or towing

It is wise for program managers to either visit meeting sites ahead of time to ensure for these room requirements or to co-mediate in meetings first held at a new site.

WHAT ARE THE AMENITIES THAT EVERY MEDIATION SHOULD HAVE?

Every meeting space should include items that can either be brought in or used from the facility. These include:

1. Note pads and pens for clients
2. Pitcher of water and cups, or water bottles
3. Simple snacks for long meetings or meetings lasting over supper time
4. Flip chart or whiteboard with markers (for dispute cases)
5. Restrooms that are nearby

Program managers may need to coordinate with volunteer mediators to make sure certain amenities are provided at an off-site location.

b. Expectations for Volunteer Mediators

WHAT ARE THE EXPECTATIONS THAT PROGRAM MANAGERS SHOULD HAVE OF THEIR MEDIATORS?

When volunteer mediators are trained, they should be learning about all that is expected of them when they are in a mediation setting. This even includes when they should show up and when they should leave. The following is a list of expectations congruent with the VORS Mediation Training manual. These are divided into expectations prior, during and after a mediation.

EXPECTATIONS FOR MEDIATORS *PRIOR* TO A MEDIATION:

1. Good communications regarding mediator time availability
2. Good representation of the agency out in the community
3. Willingness to cooperate well in co-mediation and to learn over time
4. Arriving no later than 20 minutes before mediation time
5. Awareness of how waiting clients should not be at mediation table
6. Awareness of logistic issues to aid parties (parking, bathrooms, water, etc.)

7. Knowledge of all mediation forms and how to use them properly
8. Knowledge of police report, yet not visible or referenced during mediation
9. Adherence to all mediator ethics and standards (see below)
10. Full and open communications with program manager about the case

Re: #4 above....Arriving early before mediation and not at the time of mediation. There are 4 very good reasons for this:

1. One or both of the parties may arrive early and they need to be supported
2. Mediators need some time to calm down from their own busy day
3. Mediators need time to set the room up and anticipate seating
4. Mediators need time to prepare paperwork and discuss co-mediation sharing

Program Managers need to find a way to learn about when volunteer mediators are arriving at off-site locations in order to address any patterns that fail to meet expectations regarding this timing issue.

EXPECTATIONS FOR MEDIATORS *DURING* A MEDIATION. These expectations are based on the Four Stages of mediation for the VORS program and correspond to the mediation evaluations.

1. The Introduction Stage:

- Sets a tone that helps to put people at ease.
- Able to explain the mediation process and role of the mediator
- Guides parties through the Agreement to Mediate
- Transitions well into Narrative Discussion

2. The Narrative Discussion Stage:

- Encourages parties to tell their stories
- Addresses key issues and concerns that arise
- Demonstrates capacity to listen well to parties
- Handles emotions and intensity well

3. The Agreement Stage:

- Transitions well (and not too soon) into Agreement Stage
- Helps parties to determine their own agreement
- Helps to frame a SMART agreement
- Ensures mutuality of the agreement

4. The Closing Time Stage:

- Thanks all parties for sharing
- Invites all parties to reflect on their experience of mediation

- Congratulates all parties for being honest and working out their issues
- Informs parties to call CYS Mediation Unit with any questions or concerns

Monitoring the performance level of each mediator will be discussed in the Volunteer Management section below. For now, the emphasis is on the content that program mediators need to be familiar with during the mediation meeting setting.

EXPECTATIONS FOR ETHICAL STANDARDS OF MEDIATION. These are the 6 standards presented in the VORS Mediation Training, aligning with the national standards for ADR mediation. Mediators commit to...

- Self-determination of Parties
- Impartiality to Parties
- No Conflict of Interest
- Mediator Competency
- Confidentiality of Mediator
- Quality of Process

EXPECTATIONS FOR COMMUNICATION SKILLS AND PERSONAL PRESENCE. The following communication skills are the basic elements for good facilitative mediation:

- Commitment to genuine listening
- Use of invitational language
- Empowerment of parties for dialogue
- Allowance for party responses
- Knowledge of caucus structures
- Capacity to reframe and work with emotion

The following presence-based expectations emphasize what mediators grow into:

- Calm, non-anxious presence
- Appreciation for heart-based dialogue
- Care and compassion for parties

EXPECTATIONS FOR MEDIATORS *AFTER* A MEDIATION:

- To make sure clients leave the room with supports and sense of safety
- To organize all paperwork in case folder and return it to the office
- To spend time debriefing the meeting with co-mediator before leaving
- To reset the room according to building expectations
- To communicate with program manager about any important or sensitive elements of the case, including mandatory reporting

Again, monitoring the performance of volunteer mediators will be covered in a later section. All of the above expectations constitute areas of mediator

evaluation, and program managers are ultimately responsible for knowing how mediators are improving or not improving in any of these areas. On-site mediations allow for the program manager to observe whether these expectations are being met; off-site mediations require periodic check-in methods to determine if volunteers are maintaining the standards expected of them. Reviewing the expectations in in-services or advanced trainings for volunteers is a good way to reinforce the positive.

UNDERSTANDING THE PURPOSE OF THE AGREEMENT TO MEDIATE FORM. Program managers need to convey to volunteer mediators the main function of the Agreement to Mediate form so that mediators have a good, internal sense of why it is important. The following covers the primary points.

The Agreement to Mediate...

1. Protects clients and the program from subsequent legal proceedings
2. Provides clients with knowledge about formal mediation structure
3. Pronounces to clients of voluntary and good faith commitment to process

Certain states will also have mediation statutes that protect mediation from being used against people in legal settings, and having the agreement prior to mediation is recognized as a best practice to inform clients of this well-established framework. There is always the question about how much of the technical language about confidentiality statutes have to be covered when the form is reviewed by the clients. This will vary from program to program. The important thing is that program managers make sure that all volunteer mediators are on the same page for dealing with that content. The best way to determine the level of coverage is to imagine yourself as a party in mediation, and to think about how much information you would either want to hear or need to hear.

a. Working with Difficult Clients in Pre-Mediation

WHAT ARE THE TYPICAL DIFFICULT CLIENT SITUATIONS AT THE FRONT-END? Some of this was already addressed in the section above on "When to Have Preparation Meetings and Additional Phone Time." Either the case itself presents difficulties that need to be addressed (such as multiple parties or disputed elements) or the parties themselves are difficult to work with. The following list presents they type of difficult client cases that can arise within restorative programs over time.

RE: PARENTS

- Dismissive parent: protects offender child from taking responsibility
- Over-protective parent: protects victim child from participation
- Angry parent: larger anger issues spill into any conversation
- Apprehensive parent: has many questions and hesitations about the process
- Blaming other party parent: projects problems onto others involved
- Needy parent: draws most of the attention to their own concerns
- Distant parent: prefers to not be involved or engaged in the process
- Mentally imbalanced parent: has a mental illness diagnosis

RE: YOUTH OFFENDERS

- Minimizing offender: denies taking responsibility for actions
- Passive offender: always follows and won't speak up around others
- Fearful offender: afraid to 'step up to the plate' and move forward
- Angry offender: feels like he or she is the real victim
- Addicted offender: relies on lying and deceptions to cope with life
- Mentally imbalanced offender: has a mental illness diagnosis

RE: VICTIMS

- Angry victim: prior pent up anger notches up current experience
- Fearful victim: prior woundedness notches up current experience
- Distant victim: chooses to remain at a 'safe' distance from the process
- Unpredictable victim: communicates conflicting voices regarding process
- Mentally imbalanced victim: has a mental illness diagnosis

RESPONDING TO DIFFICULT PARENTS. This is not the place to unfold every possible type of difficult client. The following responses provide general strategies that can be applied to several situations. The art of responding to people is not to have formulas for each type of person, but a set of responses that can be modified for any situation.

- **Dismissive parent who protects offender child from taking responsibility.** In some cases the youth will exhibit more ownership than the parent supports; in other cases the youth will mirror what the parent models. In either case the best scenario is to emphasize that the program is primarily engaging the youth and not the parent, and communication dynamics in mediation need to major on interaction with the youth more than the parent. This includes eye contact, youth empowerment, direct dialogue, etc., not that the parent is ignored, but that they get the message that their perspective on the matter simply doesn't carry much weight.

- **Protective parent who protects victim child from participation.** These parents may have good reasons to block their child from participating in a dialogue process. They genuinely don't want their child to be hurt again or re-victimized. In some cases, the youth victim may be more open than the parent. The main ingredient lacking on the part of the parent is trust. The most practical option is to have a pre-mediation meeting with the victim party where there is no obligation on their part to commit to a later mediation. The parent needs to learn first-hand that this is a process that will serve their family, and the parent will only gain this learning through a trust-building process prior to mediation. Never ask them if they want to mediate. That should never be a front-end question; for untrusting victims it is a back-end question.
- **Emotional or intense parent who absorbs a lot of time and conversational energy.** Several of the parent types listed above can fit into this larger category. The bottom line is that they are used to being center-stage in any conflict situation, and they will draw the communication dynamics toward them. First, they do need genuine acknowledgement and validation as mediators are trained to give. This will calm them and open them up to letting go of their control. Second, assure them that in due time their concerns will be addressed, but state that the current priority is to help the youth hear and learn things for their own good. Typically, toward the end of meetings or preparation times, when parents see the benefits of the process, their neediness or intensity will often subside. Finally, steer parents toward the future and toward being part of the solution. Over-emotional parents are used to being weighted to the past. By helping them lean into the future, it takes them out of their default mode of reactivity.

RESPONDING TO DIFFICULT YOUTH OFFENDERS. Here are three examples of dealing with youth offenders who have default patterns of dealing with hard situations. In all of them, they are trying to protect themselves, and good responses involve ways to lead them into new zones of thinking where they no longer have to rely on their protective patterns of behavior.

- **Minimizing offender who avoids taking responsibility.** This can be a common issue for any restorative program to face. The approach to take is that this youth simply has not had enough socialization in his or her past to have empathy for others. Since empathy-building is so central and unique to a restorative process, the best thing to do is to keep that learning center-stage until the youth shows any new level of accepting ownership and expressing remorse. It is also good to know

that you can only go so far with this, and hope that seeds are planted for greater empathy and remorse in future times for the offender.

- **Angry offender who is stuck on the past.** Some youth offenders carry cognitive patterns from their past so that being angry about anything unpleasant in their lives is a default reaction on their part. In coping with a current offense where there is a muddle of shame, frustration, anger, etc., it is typical for them to be stuck on past details, and at worst, for them to blame others and feel like they are the victim of circumstances. A good response is to help them narrow down their vision to just one or two *choices that they alone made* and then encourage them to make amends and repairs for just those actions. This helps them shift out of emotions into the realm of clearer thinking and clear action.
- **Lying offender who is used to manipulating stories.** When a youth offender appears to have a default manner of lying about details or lying about the level of their own responsibility, it can be difficult to have them participate in an open dialogue process. This is because the nature of restorative dialogue is to take people at their word and not move into investigative efforts. There are limits to working with a lying offender, but it does help to simply treat them with dignity and convey an unspoken assumption that they are telling the truth. It also helps to back off of disputable details and to redirect conversations on the 'heart' of the matter: how people's choices have ripple effects. Lying can be problematic when there are multiple offenders with different stories, but at the same time, this very clash can serve to bring a 'shared' truth to the surface by the end of a process.

RESPONDING TO DIFFICULT VICTIMS. While there are many different kinds of victims, here are two scenarios that give some basic responses to difficult situations. Remember that victims are disempowered by crimes and re-empowered by the help of inner and outer resources. The more a victim lacks those inner and outer (social) resources of support, the more they will need special responses to help them journey through a constructive process.

- **Victims who carry an older history of woundedness.** Now and then, an adult victim will participate who brings an older, layered history of being hurt. In short, the recent harm resonates with a series of former harms that have never been healed or resolved well. Consequently, the emotions that they express are stemming out of a deeper well than the incident at hand. Responses should be caring and sensitive, where all feelings are validated, and perhaps the offender learns how they have touched a very sensitive place in another person. But the reparation plans need to be scaled to the one incident

and not be based on what the victim needs for longer-term resolution. Additional time with the victim alone, may be necessary.

- **Victims who are unpredictable in what they say.** Some victims, given their personalities and experiences, can be unpredictable in what they say or also in how they attend. They may convey contradictory statements or confusing messages that don't match up. Again, care and sensitivity is the primary response to dignify them and build trust. They often need to know that the process itself can be trusted and that they can be 'carried' toward a better end. This involves mediators and the program manager communicating lots of messages of hope and optimism and support. This is better than trying to point out their conflicting messages. In mediation meetings, it is okay to do lots of checking in so that in the end they themselves don't feel like they have gone 'back and forth'.

RESPONDING TO BUSINESS VICTIM PARTIES. Occasionally, a business manager or loss prevention manager for a shoplifting case will participate but may offer very little to the restorative dialogue or may not 'get' the whole restorative approach.

- **Business victims who seem aloof from the process.** For a variety of reasons, some managers can seem distant or can offer little to a restorative dialogue process. They may be too busy, too distracted, or they may be ignorant of or even resistant to a restorative framework. A restorative response in these situations is to find ways to both inform and inspire them about the merits of restorative dialogue. This can be done in preparation times, and pre-caucusing with a business victim party is a good way to 'prime the pump' for them to have more interest and more engagement. While many may be motivated to participate for the sake of the youth, it is important that they experience direct benefits for the store and for themselves by participating. Also, the hope is that future opportunities will deepen their interest and support. If it seems as though a manager has little substance to offer a mediation dialogue, a community member can be added to the meeting to ensure deeper dialogue.

b. Troubleshooting Difficult Post-Mediation Issues and Unintended Consequences

NO CASE IS A SMOOTH CASE. It is very important for program managers and mediators to remind themselves often that there is no resolution process to crimes and conflicts that is perfectly smooth. This is because the

very nature of reversing the impacts of hard situations involves the awkward rubs of addressing the past so that a transition can be made to the future. It's a bit like sailing in the ocean. There are days when there is smoother sailing when the wind is calmer, but there are days when there is rough sailing. And everything in between. Case management has to anticipate the roughness as par for the course and find ways to maintain positive supports and structures to keep the program rolling well.

DEALING WITH UNINTENDED CONSEQUENCES. One of the classic ten 'signposts' of good restorative justice work is to "address unintended consequences" that stem out of mediation or any part of client casework. Given the nature of serving human beings affected by conflict and crime, it is inevitable that our best services (with our best intentions) will still produce situations that are unsatisfying for some clients. This is to be expected. Sometimes this is more of a reflection of one or both of the parties; sometimes it happens because the program itself is responsible for how things were structured. Because of this, program managers need to anticipate occasional consequences for clients where things don't go well, and be prepared to address them honestly and wisely.

EXAMPLES OF UNINTENDED CONSEQUENCES...

1. That Happen During Mediation Stage:

- Victim shows up for two scheduled meetings and the offender fails to show up both times
- During mediation, one party says, "I'm done with this!" and walks out
- Offender ends up taking less ownership and offers no apology and victim regrets their own participation
- A major dispute between both parties takes center stage and derails the restorative conversation to mend the harms of an offence

2. That Happen During the Post-Mediation Stage:

- After a mediation, a victim party learns from others that the offender is "not taking things seriously" and regrets having participated
- Offender fails to do the restitution agreement and shows little to no intent to do anything
- One of the participants breaks confidentiality and the other party hears of this through another person and feels betrayed
- Many months after mediation and case closure, the victim, who never experienced any closure, still feels unsafe and fears to run into the offender

Unintended Consequences are usually communicated to a mediator or program manager by one party that is feeling unsatisfied with the process or grieved about a particular matter that blocks good resolution and closure.

Sometimes you can sense when something is wrong, and it is helpful to check in with a client to have them be more open about what they are experiencing.

STRATEGIES FOR DEALING WITH UNINTENDED CONSEQUENCES. (General Scenarios)

1. Acknowledge the situation openly and honestly
2. Apologize if the agency truly bears some responsibility
3. Check-in with client to see what the core concern or interest is
4. Ask client what efforts could help to improve the situation
5. Use a collaborative style to identify and implement solutions

The two most important things about dealing with unintended consequences from a restorative perspective are...

- **To address the issue and not ignore it or 'wish it away'**
- **To dignify the concerned party by walking with them**

By being with clients who are grieved by a process, by dignifying them without being able to solve things for them, you communicate a profound humanizing of justice processes that are not typical in most justice frameworks. While it is important to help rectify any unintended consequence for which the agency bears some responsibility, the primary response is to build up the humanity of the other person. This comes by listening well, collaborating together on any remedies, and checking back later to make sure the best possible follow-up has happened.

STRATEGIES FOR DEALING WITH UNINTENDED CONSEQUENCES. (Specific Scenarios)

1. A client shows a lack of satisfaction at the end of mediation. When any client at the end of mediation conveys or exudes a lack of satisfaction by the end of a mediation, it means that they have not experienced good resolution with the process. Most mediators will sense this ahead of time, and hopefully acknowledge the status of un-resolution toward the end of mediation. Good mediators will have likely caucused earlier with both parties to try to unpack things. But sometimes the lack of satisfaction spills out strong at the very end. Options for responding to this client are:

- Validating what they are feeling
- Identifying the core interest that is not being met
- Asking what would give greater resolution
- Suggesting a possible follow-up meeting
- Ensuring that the program manager will call or meet with the client

2. The offender is not taking things seriously after mediation. When the offender demonstrates that they are not inwardly motivated to fulfill the

restitution agreement, this can make victim parties angry for their time investment and lead to regrets about participating. The matter of assessing intent to complete agreements was already addressed above in the section on Determining Case Closure and Agreement Completion; this included strategies for communicating with the offender. The issue to address here is how a program manager *supports a victim party* who has learned about this lack of will to fulfill the agreement and is troubled. The key is to convey that the program will do its part to help the youth get on track and provide expectations and boundaries that can be monitored. Let the victim know that the program is not passive after mediation, but pro-active. But also convey that the offender makes his own choices too, and will be held responsible if they don't successfully complete the program. Assure the victim that most offenders do follow through.

3. One party has broken confidentiality and the other party is aggrieved by it. When one party takes sensitive information learned at a mediation meeting and tells another person within the social orbit of the other party, the latter party can feel betrayed and hurt by this. This can also threaten to unravel any of the goodness coming out of the mediation. A program manager can do the following to address this situation

- Validate the feelings of the aggrieved party
- Emphasize that a key ground-rule was broken
- Check-in with the other party to explore the allegation
- Assess whether a remedy or apology is appropriate
- Shuttle-communicate a re-commitment to confidentiality

4. The offender can't finish the agreement for logistical reasons and the victim needs to be contacted. It can often happen that the offender has the positive intent to complete his or her agreement, but is not able to based on the legitimate lack of family money, lack of transportation, or even lack of parental support. This is a hard situation for two reasons. The offender is torn because he or she doesn't have the means to complete the agreement but wants to complete it; the victim, when learning of the situation, is torn because he or she wants the offender to succeed, and is also disappointed to not receive full restitution. How then does a program manager deal with this unintended consequence?

a. Acknowledge the limits to the offender party and affirm the offender's will to succeed.

b. Communicate openly and honestly to the victim party about the situation. Do this sooner than later, and secondly, communicate how the program has offered any supports.

c. Suggest that both parties come together for a check-in meeting to discuss the limits and to

possibly amend the agreement. This maintains the relational trust and bridgework between

both parties. The offender can also write a progress or status report letter to the victim.

d. If a line is drawn to end the case with the “partial completion” status, have extra phone

time to help both parties have a sense of closure with their involvement in the program.

How to Handle Special Cases with a VOM Model

1. Special Cases Involving Businesses and Stores

A. Re: The Victim Party / Store Representative

Be mindful that you will be working with either a store manager or a loss prevention manager, and that they are **VERY BUSY**. For that reason, you will want to be sensitive to:

- How long you spend time with them on the phone
- Forecasting the length of the mediation to fit their schedules well
- Their probable familiarity with shoplift crimes
- Their possible emotional indifference to a particular incident
- Their possible jaded attitude toward youth who shoplift
- Their support for the process (you don't have to sell the program)

When **engaging the business store representative in mediation**, be mindful to:

- Ask how they are personally affected (in addition to general store impacts)
- Ask how else the store is affected (if they give minimal impact descriptions)
- Invite them to share about the store's reputation in the community and the virtues of the corporation in relation to community enhancement work
- Invite them to explain why the store is open to meeting with offenders
- Keep the discussion new without showing that you have familiarity with store staff; if you do have a history at a particular store, make it new and positive each time.

With respect to **creating restitution agreements**, make sure that you:

- Find out if the store has restrictions on youth returning to the property. Once they are clarified, you can also help determine when the youth can return to the store.
- Find out if civil demands are involved (sometimes called "Civil Recovery"). If so, they can be negotiated in the agreement if the store rep chooses to do so. But most often it is treated as a separate matter, and a parent can be told how to contact a law firm.

If the store will not negotiate civil recovery in the mediation, but will be billing the youth for this separately, explain the following to the youth after mediation:

“When you complete this mediation agreement, you will have taken care of your criminal obligation in this matter. In cases of petty theft, you still have a civil obligation to take care of. If you do not pay the civil demand fine requested by the store, they can sue you in Civil Court for that fine. And if they have to take you to court for it, they will often ask for the full \$500 allotted amount. So, it is best to take care of that as soon as possible.”

B. Re: The Offender Party

Be mindful that the youth offender you are working with will likely...

- Feel embarrassed about meeting back at the store. The last time they were there was when they were caught, and returning will surface many awkward feelings.
- Need to share the deeper reasons for shoplifting – not just the need for the stolen items, but the deeper social and psychological needs that are unmet in their lives.

2. Special Cases Involving Schools

Bear in mind that a school is an impacted community:

1. Since school administrators and teachers do not invite students to call them on a first-name basis, it is best to stay with the school etiquette on this matter.
2. Since principals are used to facilitating meetings, it is helpful to remind them that they are a party to the case, representing the interests of the school community, and thus you, as mediator, will be leading the meeting.
3. In preparing for mediation, always ask “Who else should (or could) participate in this meeting in order to benefit the entire process?” (a coach, a teacher, a counselor, etc.)

4. If major tensions or emotions are present, have parties initially address their comments to you, the mediator, and then as things strengthen, they can talk directly to each other.
5. Balancing the Power in school mediations between a youth and a school staff member is more important than in most mediations. Pay close attention to seating. For example, do not allow a school administrator remain in his or her chair behind a desk. Create atmospheres of neutrality. Students need to be empowered to share openly without fear of consequence, and yet they also need to show respect for school authority. The bottom line is to make sure everyone present has experience being heard and understood well.
6. Do not let the mediation turn into a counseling session to solve all of the problems in the student's personal and family life. Other related problem issues can certainly surface and be acknowledged, but the key is to not let those discussions detract from the purpose of resolving a particular incident with a practical agreement. Affirmations of a student's performance and positive behaviors is certainly appropriate in a mediation context.
7. Regarding written restitution agreements, make sure that it is clear to both the student and the school representative on how the accountability will have periodic check-ins to ensure good progress. The student needs to know exactly WHO to go to for reporting progress, and WHEN to go.
8. Consider the merits of building in a final Closure Meeting at the end of a designated period to either celebrate the completion or to reassess why the agreement was not completed. This book-ending of the resolution process is very helpful to motivate the student to follow-through with the agreement since he or she knows it will not simply fade away from people's memory.

3. Special Cases Involving Assaults and Fights

One of the most important things in starting out with cases involving assaults or fights is to not assume anything based on what you have already learned. While on the surface it may be very clear that Youth A knocked out a tooth of Youth B, and the resolution seems plain and simple (just apologize and pay the deductible), it is possible that an entire 12 months of escalating drama led up to the event, let alone, a complex and confusing verbal exchange of 15 minutes may have preceded the 'knock out'.

Given how these potential complexities and tensions are NOT EVIDENT at the front-end of case work, and often not fully or clearly represented in police reports, it is very important that mediators do not form judgments about either party. The best way to show that you are not making assumptions about the entire situation is to **drop the usage** of

'VICTIM' and 'OFFENDER' as identifying titles

This should be done in early case development stages. As a case developer learns more about the case from CYS staff and prepares parties for a meeting, it is very important to:

- Discern the appropriateness of parties coming together
- Discern the voluntary-ness and readiness of parties coming together
- Discern the degrees of ownership by one or both parties
- Discern the degrees of impact and hurt by one or both parties

To discern these matters, it may be necessary to have more phone time with one or both parties to ensure that a mediation will be safe and constructive. If a case developer or mediator does not have high confidence that a meeting will be safe and constructive, there is the option of having an in-person preparation meeting with each party individually. Sometimes this can be done as pre-caucusing prior to a joint meeting, which helps to build trust with the mediation process, and prepares parties better to come face-to-face.

Once parties have come together for joint-mediation, these are helpful points:

- Acknowledge that the justice system has identified parties as victim and offender, but that you as mediators recognize that those labels may not apply well to this process.
- Always give a victim (or most impacted party) the choice to talk first or not to talk first

- If the offender goes first to talk, but the victim is nervous or upset, create moments sooner than later for the victim to speak at times and experience being heard.
- If rumors or third-party students at school played a key role to escalate a conflict, help both parties to clarify what they know to create a shared narrative between them.
- Help one or both parties to OWN their choices that were part of the rising conflict
- If parties agree to “stay out of each other’s way”, invite them to think about how new trust in the future could help them transcend an agreement of avoidance.

4. Special Cases Involving Drugs or Alcohol

In cases where a youth was charged with a drug or alcohol specific offense, or perhaps drugs or alcohol played a significant role in causing another charge (such as vandalism, criminal mischief, etc.), it is important that:

- The mediation meeting includes a community member or resources person who can speak to drug and alcohol issues, and provide encouragement to make changes
- Agreements include a plan for addressing negative drug or alcohol habits. Ask CYS staff about other programming that can be accessed.
- Youth understand that while there may not be any actual victims in their case, that real people and real communities are still impacted by negative behaviors that put youth and others at greater risk
- Be aware if drug-testing is already part of a youth’s plan with a probation officer. If not, it is best to NOT include it in a mediation agreement; however, discussion with the youth and parents can lead to how they can access options for testing and accountability.
- When marijuana is involved in the offense, invite discussion on how this drug still has strong long-term effects on behaviors, social life, communities, motivation, and while the consequences are not as severe as other drugs, marijuana can be a common gateway to other

drug use. This is where a community member can have a significant voice in the process.

5. Cases Involving Vandalism and Destruction to Property

These offenses can range greatly from minor tagging to the destruction of property costing in the thousands of dollars. Important points in these cases include:

- Exploration of deeper patterns and motivations for the offender to do such things.
- If victim is not present, bring in a surrogate victim (or two) who may have similar experiences of having property damaged.
- Invitation of restitution discussion for offender to do actual repairs or clean up, and if that is not possible, comparable work in the community to rebuild something. Creative work can be seen as a reversal of destructive work.

6. Special Cases Involving a Victim as a Minor Youth

At times, a primary victim could be a minor. For instance, a 15-year old youth offender has stolen a bike from a 12-year old boy. When there is a voluntary interest on the part of a youth victim to participate in a mediation, the following points are important:

- A parent must be present
- Make sure the victim signs on the Victim line of the form, and a parent signs under that
- If it seems best, a parent of the victim can fill out the evaluation form

The key thing to remember is to help a younger victim (assuming he or she is younger than the offender), to **feel empowered and safe** so that they can share freely and end up being satisfied for having come to the meeting. The key is to see the meeting as **SERVING THEIR NEEDS** as much as the meeting is designed to **SERVE THE NEEDS** of the offender.

To balance the needs of both victim and offender, the main thing is to ensure good **discussion about the impacts** of the crime. Create all the space necessary for a youth victim to describe how the incident has impacted their lives, and then ask the offender to repeat back what he or she has heard. This is a common way to help victims feel heard and validated.

7. Special Cases Where Both Parties are Victims and Offenders

This typically is the case in some, but certainly not all, assault or battery cases. Most of the information provided in that earlier section will be appropriate for this section, reinforcing here even more the need to drop the Victim and Offender labels to identify the parties.

Mediators will do well in this kind of complex case if they have the same skill set as mediators who can handle normal dispute resolution work between parties in conflict or can handle teen – parent mediation processes.

It is inevitable that in the story telling time, one party will emphasize their 'victim-story' more than their 'offender-story'. That's to be expected. Knowing there is enough time to sort things out, let both sides major on their impacted-narratives, and invite the other to echo back what they have heard. Once both sides have felt heard and respected for the hard things they experienced, it is a lot easier for them to open up about their impacting-narrative, that is, their offender-story. Again, let each side tell their part, encouraging them to own the **specific choices they made**, rather than vaguely take responsibility for the whole tangled mess.

Agreements for such cases are typically two-way streets and should all be unified on one form to demonstrate to each other that there is mutual impact and mutual responsibility.

8. Special Cases Involving Multiple Victims and/or Offenders

It's not unusual for youth cases to involve either multiple offender or multiple victims (or both!) For instance, if three youth slash the tires of seven cars in a neighborhood, that case could potentially bring together over a dozen people for resolution, including parents.

- Mediators should brief with CYS staff on preparing forms for a larger mediation to keep all the forms straight. Forms can also be filled out in part ahead of time.
- Mediators should plan seating well and make sure the room is comfortable for all. Consider the dynamics of the offender(s) and the victim(s) having good eye contact and can hear each other well.
- When there are several offenders, it may help to begin with the less-talkative ones first to help them draw things out, knowing that the more talkative ones will say more later.
- It's very important for EACH OFFENDER TO HAVE THE CHANCE TO SAY "I DID THIS..." and not hide behind "we did this" language.
- Make sure each victim has time to describe what they experienced, and also make sure that each offender is asked to respond to what they heard (at least once or twice)

What to do if an offender in the case is not included in the program?

If an offender is not included in the process, victims can often be frustrated, especially if the offender not present seemingly played a greater role in the offense than the one present. In this situation, the most important thing is to frame things in terms of the present offender taking responsibility and making reparations for HIS or HER PART ONLY. Typically, monetary restitution payments are divided equally among offenders, but parties must decide.

9. Cases Involving a Challenging Parent (or Guardian)

This is not uncommon. If and when a parent seems to be needy with an unresolved issue, the first thing is for a mediator to give ACKNOWLEDGEMENT to that parent for what they are experiencing. "I'm hearing from you that finding a way to deal with the other parents on the block is really important to you. That must be frustrating to see things not

change.” From there the mediator needs to STEER things in a fruitful way. This usually involves a framing of the process. “We are here today to resolve the incident that happened last October. I’m wondering if we can aim to finish that process, and then see how much time there is for returning to this issue you’ve raised. Will that work for you?”

Sometimes a major problem issue raised by parents that is not central to the resolution of the offence points toward the need of a subsequent mediation meeting with just adults present. Check in with CYS staff on whether the agency can recommend such a follow-up meeting to bring further resolution that is beyond the orbit of the criminal charge.

10. Special Cases / Disputes Between Parties

This scenario can take two forms:

- A. A clear criminal offense case involves disputes over either the facts of who is responsible or over proposed restitution plans
- B. A case that is less clear as a crime turns out to be primarily a dispute conflict over clashing interests

In either case, mediators will need to have stronger skill sets to settle disputes through interest-based mediation steps to help parties move forward, or they will tend to be stuck in one place. Mediators also need to know how to bracket HARM-RESOLVING conversations from DISPUTE-RESOLVING conversations.

There are three basic options for addressing unexpected dispute elements in a victim-offender mediation context.

1. Take the time in the meeting to address those disputes (provided that you as mediators have the skills to do so)
2. Recommend a follow-up mediation to specifically address the dispute, and aim to reach as much agreement as possible to address the crime and its impacts. If the dispute is making parties stuck and not able to proceed toward a normal agreement, then a second mediation is necessary. Always be in communication with CYS staff about such a situation, and be open to seeking other mediation assistance for complex conflicts.

3. Bracket off the dispute discussion and tell parties that the program is not equipped to handle those kinds of issues.

11. Cases Involving Surrogate Victims and Community Members

While every victim to a youth case is invited to participate, there are a number of reasons why a victim may not be present at a mediation meeting.

1. They may decline the opportunity to participate
2. They may not be reachable or have moved out of town
3. They may be open to the program, but too busy to participate
4. They may want to participate, but can only do so by shuttling:
 - a. Impact Statements
 - b. Restitution Requests

When any of the above situations happens, the VORS program will ask a Surrogate Victim to participate in the mediation as a way to:

- Ensure the best possible restorative dialogue process for the offender
- Represent the impacted community at large
- Speak as one who could be impacted
- Help determine fair restitution plans with the offender

As you have learned, it is not the place of mediators to talk freely about how they feel about a crime or suggest solutions to make things right. But a surrogate victim does have this full freedom to speak AS ANY ACTUAL VICTIM WOULD BE EMPOWERED TO SPEAK.

DOES THE DIALOGUE CHANGE MUCH WITH A SURROGATE VICTIM?

Basically, no, it doesn't. The exact same outline represented by the Sample Script can be used by mediators, and surrogate victims are invited to speak at all of the same sort of spots that a normal victim would have to speak. The main difference, of course, is that the surrogate victim is speaking more out of the context of "If I had been in that situation, here's what I would have experienced." It is important to know that the surrogate victim is never aiming to represent the needs and concerns of the actual victim.

What about cases where the victim is not present but has relayed impact statements and/or restitution requests?

In the case of Victim-Shuttle arrangements, surrogate victims still play the same role as if there is no input from the actual victim. Mediators, having had consultation with the VORS program manager, would alone be the one's to convey the intended content in the meeting, and the surrogate victim is simply listening during those times, and allowing that content, with the offender, to inform the Narrative Discussion and the Reaching Agreement time.

How does one become a Surrogate Victim for the VORS program?

A CYS staff person typically provides orientation and preparation for every volunteer that becomes a surrogate victim in meetings. This can apply to business and store managers too.

