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# Victim Offender Conferencing

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**IN PENNSYLVANIA'S  
JUVENILE JUSTICE SYSTEM**

*Lorraine Stutzman Amstutz  
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# Introduction

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## What is happening in Pennsylvania?

Pennsylvania's juvenile justice system is now guided by the following purpose clause, in the Juvenile Act:

“Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.”

Act 33 of Special Session No. 1 of 1995, established a new mission for Pennsylvania's juvenile justice system that has its roots in the concepts of restorative justice, which gives priority to repairing the harm done to victims and communities, and which defines offender accountability in terms of assuming responsibility and taking action to repair harm. The new purpose clause is premised on the concept that the clients of the juvenile justice system include the victim, community and the offender, and that each should receive “balanced attention” and gain tangible benefits from their interactions with the system. Our Juvenile Act now provides a framework for restorative justice within Pennsylvania's juvenile justice system.

Since the passage of Act 33, an unprecedented number of juvenile justice system professionals, victim services providers and citizens throughout Pennsylvania have been engaged in a dialogue about the fundamental purpose of the juvenile justice system, and the respective roles of the crime victim, the juvenile offender and the communities, in this process.

This dialogue and the extraordinary effort that is occurring to implement balanced and restorative justice throughout our juvenile justice system has created a

number of new partnerships. These partnerships have, in turn, created new and innovative opportunities for both crime victims and offenders in the juvenile justice system. One of the most significant partnerships that has developed has been between the juvenile justice system and the victims' services community in Pennsylvania.

Through our efforts to understand, and ultimately achieve balanced and restorative justice throughout our system, we have been enlightened by the realization that there are many ways in which both crime victims and offenders can actively participate in the process of justice.

This curriculum was developed specifically in response to the increased focus on victim offender conferencing as a potential tool to assist victims and offenders in their quest for justice. The development of this curriculum is a testament to the newly forged partnership between the traditional juvenile justice system and the victims' services community, and to the commitment of both the Victims' Services Advisory Committee and the Juvenile Advisory Committee of the Pennsylvania Commission on Crime and Delinquency to this effort.

This curriculum focuses specifically on victim offender conferencing and its application in Pennsylvania's juvenile justice system. It is our hope that this document will assist in the design, implementation and operation of victim offender conferencing, and we encourage you to continue dialogue within your respective jurisdictions to ensure the most successful implementation possible of victim offender conferencing within the juvenile justice system.

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## The Authors

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She currently serves as Co-Chair of the Victim Offender Mediation Association (VOMA), an international association for victim offender mediation programs. She has worked in the field of victim offender mediation since 1984 when she began in Elkhart, Indiana which is the site of the first Victim Offender Reconciliation Program (VORP) in the U.S. While in Elkhart Lorraine worked at refining a comprehensive case management system that has been replicated in many programs throughout the country. She also provided oversight to revisions of the VORP Volunteer Handbook which was designed for use in teaching methods of victim offender mediation.

Stutzman Amstutz received her B.S. in Social Work from Eastern Mennonite University in Harrisonburg, Virginia and her Master's in Social Work from Marywood

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*Howard Zehr* joined the Conflict Transformation Program at Eastern Mennonite University in 1996 as Professor of Sociology and Restorative Justice. However, he also continues to work with Mennonite Central Committee, for whom he has worked for the past 17 years, in the crime and justice area both in the U.S. and internationally.

Zehr's book, *Changing Lenses: A New Focus for Crime and Justice*, has been a foundational work in the growing "restorative justice" movement; in their recent book, *Restoring Justice*, Dand VanNess and Karen Heederks Strong cite him as the "grandfather of restorative justice." As a result, he lectures and consults internationally on restorative justice and the Victim Offender Reconciliation Program (VORP) which he helped pioneer. His other publications include *Crime and the Development of Modern Society* (1976) and *Doing Life: Reflections of Men and Women Serving Life Sentences* (1996).

He has also worked professionally as a photographer and photojournalist, both in North America and internationally. His primary interest currently is in the use of photography and interviews for documentary work.

Zehr received his B.A. from Morehouse College in Atlanta, GA, his M.A. from the University of Chicago and his Ph.D. from Rutgers University. From 1971–78 he taught humanities and history at Talladega College in Alabama.

## What is Victim Offender Mediation or Conferencing?

The current restorative justice movement can be traced in large part to the experience of victim offender mediation. While many new restorative approaches are now emerging, victim offender mediation remains the most common application of restorative justice.

While there is no blueprint for how a program has to operate, hundreds of programs are operating under a variety of names but often using the same basic approach as the first Victim Offender Reconciliation Programs (VORPs). In addition, there are a number of other related approaches which are fundamentally similar but with some significant variations.

Victim offender mediation or "conferencing" (we will explain this terminology shortly) aims to meet a variety of victim needs including the need for answers and the need for restitution, it aims to bring victims into the process instead of leaving them in the passive position they often find themselves in within the current system. It aims to hold offenders accountable for their behavior, helping them to understand the consequences of their crime by being confronted with a person, and encouraging their reintegration into society.

Victim offender conferencing reflects principles of *restorative justice*. These principles focus on the harm that has been done and the resulting implications. They also emphasize the collaboration of key stakeholders: victim, offender and community.

While the curriculum will go into greater detail, briefly *the process* consists of a voluntary face-to-face encounter between a victim and offender (as well as others to

be determined by the parties involved) when the offender has admitted involvement in the offense. Referrals usually come from within the criminal justice system. The process is facilitated by a trained mediator and is intended to be fair to both the victim and the offender.

After a case is referred to the program, an opportunity is provided through individual meetings with the victim and offender to explain the program, gather information, both factual and emotional, and to discuss the losses of the victim as well as the possibilities for making things as right as possible.

After the individual meetings have been conducted and all parties concerned have agreed to a joint conference, the mediator will bring them all together. In this meeting, the parties are introduced to each other and agree to specific ground rules. They tell their stories to each other and take time for clarification and sharing their feelings, then review the losses before looking at options for restitution. Once everyone has agreed, a written contract is developed by the mediator and signed by all parties. This contract is then returned to the referral source and closely monitored. A follow-up meeting may be conducted after the terms of the contract have been met, or sooner, depending on the wishes of the participants.

The victim offender conferencing process is receiving increasing attention among criminal justice officials as well as other community members as they come to the realization that our approach to justice often neglects important dimensions of healing and accountability. Victim offender conferencing provides a way to involve victims, offenders and the community in a search for resolutions to the problems caused by crime.

***Victim offender conferencing reflects principles of restorative justice. These principles focus on the harm that has been done and the resulting implications. They also emphasize the collaboration of key stakeholders: victim, offender and community. The process consists of a voluntary face-to-face encounter between a victim and offender (as well as others to be determined by the parties involved) when the offender has admitted involvement in the offense.***

## Introduction to Manual

The Victim Offender Conferencing (VOC) curriculum is designed to be used along with training workshops for programs implementing a Victim Offender Conferencing project within the Commonwealth of Pennsylvania. Victim offender conferencing is being used in both the juvenile and adult systems and is applicable to a wide variety of cases ranging from misdemeanors to serious felony cases. However, this curriculum is designed specifically for use within the juvenile justice system for crimes specified by the Pennsylvania Commission on Crime and Delinquency. This project was supported by PCCD subgrant #95-DS-16T-6344, awarded by the Commission on Crime and Delinquency (PCCD). The awarded funds originate with the Office of Justice Programs, U.S. Department of Justice. Points of view or opinions contained within this document are those of the author(s) and do not necessarily represent any official position, policy or view of PCCD or the U.S. Department of Justice.

The curriculum will include an overview of victim and offender issues as well as a description of victim offender conferencing and a brief history of the victim offender mediation movement. A restorative justice conceptual framework is also provided. There will be a step-by-step process for conducting a Victim Offender Conference, a discussion of issues to consider in setting up a program and a description



of what the training curriculum for volunteer mediators might look like. This curriculum has been written with the understanding that certain serious crimes will be excluded from the conferencing process as mandated by PCCD. These crimes include rape, robbery, aggravated assault, murder, DUI homicide, and sexual offenses.

This manual's appendix contains a number of lists and summaries which can be reproduced as handouts or transparencies.

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Because the issue of *mediator training* is a controversial one, a few observations are in order here. There is much diversity in the field about what constitutes training for mediators who will be conducting mediations. Currently no certified training exists within the movement. The Victim Offender Mediation Association (VOMA) is currently testing a 24-hour training model to be recommended to members as a minimum training curriculum for programs developing victim offender conferencing projects. Programs currently train their mediators using anywhere from nine to forty hours of training. Trainings can (and should) be tailored to the needs of the community as well as to the experience/expertise of those being trained. The challenge, of course, is training a group of mediators with varied levels of experience within the general field of mediation along with those who have no experience.

This issue is undoubtedly one that will continue to arise as more and more community mediators are trained specifically in victim offender conferencing. Victim offender conferencing is not just a more specialized form of community mediation. While there are overlapping issues and training techniques which work within both contexts, the language used when working with issues of crime differs significantly from those used in community mediations. Victim Offender Conferencing is also more focused on a specific incident, a crime, whereas in community mediation conflicts are often ongoing and there are more issues of positions and interests between the disputants. We are sure this is an issue that will generate much more discussion as programs develop.

It has been exciting to see the enthusiasm garnered throughout the state for victim offender conferencing projects. We are grateful for the opportunity to be part of this growing movement within Pennsylvania.

Lorraine Stutzman Amstutz  
Howard Zehr  
March, 1998

## Victim Offender Conferencing Terminology

In the late 1970's when the first U.S. Victim Offender Reconciliation Program was initiated in Elkhart, Indiana, there was much discussion about terminology to be used for the process. The term "mediation" was initially disregarded because it brought to mind parties who were on somewhat equal moral ground as in "two disputing parties seeking a settlement." That is not the case with victims and offenders where one party usually has clearly wronged another. The basic identification of who is responsible is essentially decided by the court.

In the Elkhart case, it became evident that the primary focus was to assist in healing the injury of crime and to deal with the relational aspects of crime. Reconcil-

iation therefore became the primary goal of the program, with considerable energy also put into making restitution happen as a way of furthering reconciliation. Programs modeled after Elkhart then became known as Victim Offender Reconciliation Programs (VORPs).

As programs continued to develop the question raised evolved into whether “reconciliation” was too difficult for victims. Reconciliation is often interpreted and misused to avoid the conflict that exists or to shield offenders from consequences of their actions through a hasty process of reconciling with the victim. Some programs were beginning to feel that the language would hinder victims’ participation because

*We have chosen to use “Victim Offender Conferencing” as a generic term for approaches which bring together victims, offenders and possibly other stakeholders in a process led by one or more facilitators.*

victims are not usually concerned at that point about reconciling feelings. It seemed difficult to explain that no one is forced into reconciliation but that the process simply allows for that to happen. Many programs at that time began using Victim Offender Mediation (VOM) rather than VORP.

In recent years some programs have begun using the term “Victim Offender Conferencing” rather than “mediation” or “reconciliation.” Conferencing addresses victims’ discomfort with reconciliation and avoids the connotation that victims will be negotiating away their losses when they hear the term mediation. Conferencing suggests the participatory nature of the process. It gives flexibility as to who is included, making room for community people if appropriate. Mediation is sometimes viewed as a culturally-bound technique and the term conferencing avoids that as well. The term was first used by those in the field of victim offender mediation with the introduction of Family Group Conferences which include a more varied group of participants within their conferences. For these reasons, we have chosen to use “Victim Offender Conferencing” as a generic term for approaches which bring together victims, offenders and possibly other stakeholders in a process led by one or more facilitators.

# Why Victim Offender Conferencing?

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**V**ictim Offender Conferencing has grown out of an attempt to take seriously some of the ways the traditional criminal justice process fails to address important needs of both victims and offenders; we want to review some of those needs here. Given the way victims are usually neglected or even harmed by the justice process, however, it is particularly important to ground ourselves in their experiences and that is where we will start.

## Victims

The inarticulable extremity of experience . . .  
Let's listen to some victims' voices:

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### 2.

If the perpetrator of the crime came into this room right now  
I . . . would want to kill him for what he did to me.  
I would shake him until I could kill him with all my strength—  
how dare he take away from me what I have worked for,  
struggled for?  
How dare he destroy my library card, union drug card?  
What did he do with my personal possessions that mean so much to  
me?  
I would want him to pay for his crime.  
I feel his potential can be rape, robbery,  
that he is a dangerous, noncaring, an animal let loose in society.<sup>2</sup>

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### 1.

This is crazy  
I am crying  
screaming  
hiding my face in shame  
I am weak  
and can't rest.  
My stomach is like a stone and  
my fingers ache from clenching.  
I suffer.  
You!  
You walk calmly  
among people, relatives.  
They don't know you  
as I do.  
You smile  
and feel no guilt  
no shame.  
You walk away from my pain.  
This is crazy.  
I carry the weight of the sentence  
but you are the killer.<sup>1</sup>

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3.

Set up a prosecutor against this criminal,  
 someone to bring my accusations against him.  
 Let him have a trial, but find him guilty,  
 for even his prayers are a crime.  
 I hope he doesn't live long, that someone else  
 gets his job, that his family is left without him.  
 I'd like to see his creditors take everything he has.  
 I hope he is left alone, without love, with no  
 descendants, cut off even from God.

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Who are these voices? The first, as you may have surmised, is the voice of an abused woman. The second you might assume is from a victim of a "serious" crime, perhaps a deadly assault; in fact, it is from the victim of a theft or robbery. The third is from the Bible: those of you who are from Judeo-Christian traditions will be interested to know that it is from Psalm 109: 6–15, translated into modern language. These are anguished and angry voices. They are words we do not often hear in polite company.

Yet, as these voices remind us, victimization is a devastating experience that affects many areas of a person's life. Seemingly minor offenses can be deeply traumatic, even life-altering. The similarities in response patterns for so-called "minor crimes" and those commonly termed "serious" crimes are often more important than the differences. Many result in a form of traumatic stress, even post-traumatic stress disorder.

Bruce Shapiro, editor of *The Nation* magazine, was victim of a brutal knife attack and describes this in a 1995 editorial as "a profoundly political state in which the world has gone wrong, in which you feel isolated from the broader community by *the inarticulable extremity of experience*" (emphasis added). This captures well the sense of disorder, the sense of isolation, the feeling of being out of control and cut off from others who have not shared the experience.

Victims experience a range of reactions. These include fear, often intense fear. That fear may taper off but often is associated with people or events—strangers, men, people of other races—for years to come. Victims also have to face their vulnerability, their helplessness. Anger is usually part of the experience: anger at the one who did this, anger at oneself (self-blame is a normal response), anger at the "system," anger at friends who refuse to listen or who blame victims for what happened, anger at God who "allowed" this to happen. In fact, many victims experience a religious crisis as they try to reassess their assumptions about a God who could allow or even cause this to happen. Questions are important: Who did this? Why? Will they try it again?

***Seemingly minor offenses can be deeply traumatic, even life-altering.***

Frightening, unsettling dreams are common. Victims may relive the crime in their sleep. Or they may take awful revenge on the offender. As Judith Lewis Herman has noted in her important book *Trauma and Recovery*, victims may experience unpredictable mood swings: between rage and the intolerance of aggression; between intimacy and the fear of it; between the repression of feelings and being overwhelmed by them. There is no escape, awake or asleep, from the memories and feelings.

The quote from Bruce Shapiro illustrates the intense sense of isolation that often occurs: basic human relationships are called into question. Along with that come many doubts: about faith, about relationships, about oneself. When victims' trauma is not acknowledged by others, the doubts may extend to the validity of their feelings and their interpretations of the events which have affected them. (Figure 1)

In short, the crisis of victimization is *comprehensive*. It can be described as three overlapping circles: a crisis of self-image (who am I really?), a crisis of meaning (what do I believe?) and a crisis of relationship (who can I trust?). (Figure 2) The crisis of victimization is *fundamental* because it undermines these three underlying assumptions or pillars upon which we build our sense of safety and wholeness: autonomy, order and relatedness. (Figure 3)

All of us need to feel that we control our own lives. This need for *autonomy* reveals the reason for the dehumanizing nature of slavery: some people were in the control of others and this lack of personal power undermined their sense of wholeness. Likewise, when a crime occurs, someone has taken control over the life of another. In fact, victims may feel that their feelings and memories are out of their control for years afterward. Such loss of control is deeply dehumanizing and demoralizing.

Each of us also needs the sense of safety that is rooted in a feeling of *order*: we need to believe that our world is basically orderly and that events can be explained. Cancer victims want to know why they have this disease just as crime victims want to know why they were victimized. Answers restore order, and order is one of the pillars on which we base our lives.

Parenthetically, these two pillars help explain why victims so often blame themselves for what happened. Victims need to know why the crime happened. Blaming themselves is one way of providing these often-elusive answers. Also, blaming oneself is a way to achieve a sense of autonomy; if we attribute the crime to something we did, we feel some control because we can avoid that behavior in the future.

The third pillar is *relatedness*. Healthy relationships with other people are essential; indeed, it is through interaction with others that we form and affirm our sense of identity. We all need to be accepted by others. We need to know who we can trust, where we fit in. Crime undercuts this sense of relatedness. Crime victims often become suspicious of strangers, even neighbors. When family and friends do not respond as helpfully as they might—and many times we do not—victims often become alienated from them as well.

Crime is deeply traumatic because it undercuts assumptions of autonomy, order and relatedness. Crime depersonalizes, making people feel less than human. Victimization represents a profound crisis of identity and meaning, an attack on oneself as an autonomous but related individual in an orderly world. Herman points out that it may force us to struggle with the same developmental issues that we struggled with in childhood: identity, autonomy, self-control, aggression, social relationships. That in turn occasions a deep grief process, not only for the person or things that

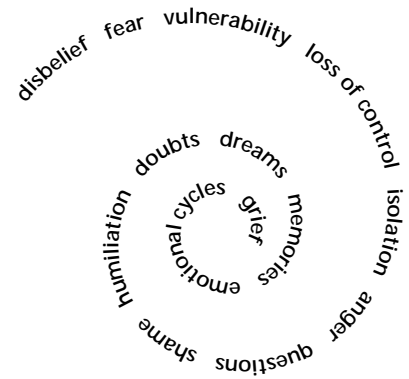


Figure 1. Responses to victimization include . . .

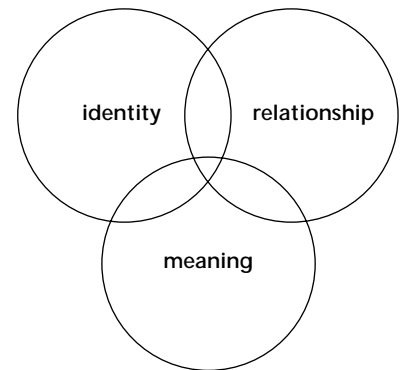


Figure 2. Traumatic crises.

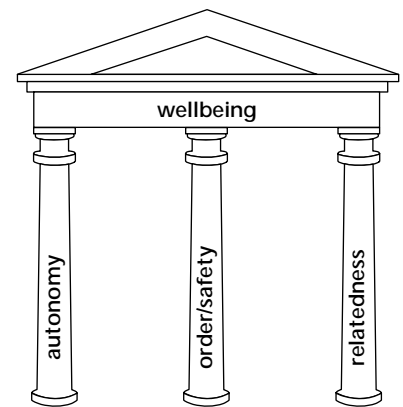


Figure 3. Three pillars of personal wholeness.

actually may have been lost in the crime but also for the part of our self that has died, our trust in God and the world, our sense of place and identity. The sense of loss may be profound and that in turn requires mourning. The descent into mourning, warns Herman, is both dreaded and essential to reconstruction.

### **Victimization and meaning**

Another way to understand the violation of crime is that it represents an attack on meaning. As Robert Schreiter has written in *Reconciliation: Mission and Ministry in a Changing Social Order*, we construct our sense of identity and safety to keep from feeling vulnerable. We do this by creating symbols of people, objects and events and preserving them in narratives, stories, about who and what we are. These are our truths.

Suffering—whether through victimization or oppression—is essentially an attack on these narratives, an erosion of meaning. To heal we have to recover our stories, creating new narratives that take into account the awful things that have happened. The suffering must become part of our stories.

*Violation of crime is that it represents an attack on meaning.*

*We construct our sense of identity and safety to keep from feeling vulnerable.*

To recover this sense of meaning it is often important to express our pain. For many, it is essential to retell the “narrative of violence” repeatedly. This allows us to ease the trauma and to begin to reconstruct a new narrative, to put boundaries around the story of suffering, to be victorious over it. Victimization is essentially an erosion of

meaning and identity so we must recover a redeeming narrative. According to Schreiter, this often means retelling our stories so that we can reconstruct our identities.

Through these processes, we learn that we can face the pain without going insane. We make it part of our own story, a painful but distant episode in the larger narrative of our lives. This is why forgiving and forgetting do not belong in the same equation; if anything, it is “remember and forgive,” as the Truth and Reconciliation Commission of South Africa has repeatedly emphasized.

### **What does justice for victims require?**

On their journey toward justice and healing, victims have many needs. While only they themselves can define and address some areas of need, the larger community—including the justice process—has a major role to play in creating a context where healing is facilitated. As Shappiro reminds us in the quote above, victims often feel utterly isolated and alone. In Herman’s terms, disempowerment and disconnection from others are the core of the trauma of victimization. Recovery, therefore, is based on empowerment and new connections, and this can only happen in relationship to others. Neither the community nor the justice process can do for the victims work that each individual victim must do, but both can dramatically facilitate or impede the process of healing. Let us look first at what victims need and deserve from a justice process, then make some suggestions about what we as friends and community people can do.

Victims feel profoundly disrespected by crime. A respectful justice response to victims should therefore be organized around their needs. These include the following five areas.

Most urgent, at least initially, is the creation of a *safe space*, emotionally as well as physically. Victims want to know that steps are being taken to prevent the recurrence of this experience, for them as well as for others. This includes a place to express, without judgment or blame, their anger and fears. It includes a place to mourn; again, as Herman notes, mourning and reconstruction go together.

Crime victims also want *restitution*. In part this is because they need repayment for losses but more important is the symbolic statement involved. Restitution symbolizes a restoration of equity and implicitly states that someone else, not the victim, is responsible. It is a way of denouncing the wrong, absolving the victim and saying who is responsible. Restitution then is about responsibility and meaning as much as or more than actual repayment of losses. Restitution serves as *validation* and *vindication*, both of which are extremely important to most victims.

Often it is claimed that victims need vengeance. Various studies suggest, however, that this may not be inevitable. Victims do want vindication but vengeance is not the only or even the most satisfying form of vindication. In fact, Herman warns that revenge is the mirror image of the offense. It may seem that it would be satisfying but in fact it often retraumatizes. The demand for vengeance may often be the result of justice denied, a failure to find vindication in more healing forms.

More important than restitution, surveys tell us, are *answers* to questions. Victims want to know what happened and why because, as noted above, answers restore the sense of order that is essential to health. They want answers that, to the extent possible, are real and not conjectured; they want answers that are as multi-layered as real life, not the simplistic, binary answers that emerge from the legal process. Some of these answers are interpretive and have to be discovered by victims themselves, e.g. "Why did I react as I did? Why have I acted as I have since that time?" Others, however, are factual and most come from others: "What happened? Why did it happen? What is being done about it?"

A third area of need has to do with what people who work with victims of domestic violence call "*truth-telling*." Victims often need to tell their story, their "truth," perhaps over and over, to people who matter; it is in telling and retelling that they redefine their identities. This includes the opportunity to vent their feelings of anger, betrayal, grief; these are natural parts of the healing journey. Herman uses the term *testimony* because it acknowledges that truth-telling has both individual and social, public and private, dimensions.

(It should be noted, however, that victims' needs to and methods of retelling their story may vary. Gender patterns have sometimes been suggested: women may be more likely than men to openly tell their story as a way of coming to terms with it. Sometimes, too, encouraging people to retell their story can be detrimental; this may be particularly true with children who are asked to serve as witnesses, for example. Victims need opportunities to tell their truth, to testify to what happened to them, but they should be the "gatekeepers" about how and in what circumstances they wish to do so.)

Victims deserve from justice . . .

- safe space
- restitution
- answers
- truth-telling, testimony
- empowerment

They seek . . .

- validation
  - vindication
  - meaning
  - a new story
-

Finally, victims need to feel *empowered*. Power has been taken away from them. They need activities and experiences of involvement and empowerment.

Unfortunately, the criminal justice process often addresses few if any of these needs. In fact, victims often talk about being twice victimized—first by the offender, then by the criminal justice system. Victims often feel that the criminal justice process not only leaves them out but steals their experience, reinterpreting it in foreign, legal terms. Often the offense is actually named something else when an offender pleads guilty in a plea bargain. If victims are involved at all it is often only in the role of witness. In that role, what they can contribute to the process is tightly circumscribed and emotionally very unsatisfying. Indeed, victims and survivors who were asked to be witnesses in the Timothy McVeigh Oklahoma City bombing trial had to go to Congress to get permission to be in the trial court when they were not testifying.

Judith Lewis Herman observes that the adversarial setting of the court is a hostile environment, an organized battlefield in which the strategies of aggressive argument and psychological attack replace the physical force of the medieval duel. “If you set out to design a system for provoking intrusive post-traumatic symptoms,” she writes, “one could not do better than a court of law.” Is it any wonder that healing is so elusive?

In short, crime represents a profound expression of disrespect for the victim as a person. Disrespect is depersonalizing. Crime is a denial of the personhood of the victim, a failure to value her or him as an individual. When we as friends or family members or care givers fail to respect their needs, we perpetuate this disrespect for victims. When the legal system ignores victims, the cycle of disrespect is again perpetuated.

Victim offender conferencing attempts to meet some of these needs by providing an experience of empowerment and respect. Research findings so far have suggested that the process is often successful: victims are more likely to be satisfied with justice, less fearful, more likely to feel they have been treated fairly when they are offered the opportunity to participate in victim-offender conferencing or dialogue.

In the following section, Jane Reise, a former victim advocate now working with VOC in York County, presents some of the realities of and suggestions for working with victims.

## Working with Victims

*by Jane Reise<sup>3</sup>*

Until about 25 years ago, the crime victim’s experience has been a carefully avoided topic in our society. It is difficult for many of us to imagine what it must be like to personally endure some of the painful stories that we hear from victims. How would it really feel to find the contents of your refrigerator emptied onto your belongings throughout your home or your grandmother’s diamond ring missing? How would we conduct our daily lives if our car was stolen? How does it feel to know the terror

*Victims often talk about being twice victimized—first by the offender, then by the criminal justice system.*

*Victim offender conferencing attempts to meet some of these needs by providing an experience of empowerment and respect. Research findings so far have suggested that the process is often successful.*



and pain of a random assault? The truth is not easy to imagine; yet to deny the real victim experience is to omit the heart and soul of the justice system's existence. Victims can teach all of us, professionals, offenders, and the community alike, so much useful information in helping our justice system do a better, more thorough and fairer job.

We really need to listen to and understand the meaning of their crime to them, in their own lives. Even attempted crimes can have a substantial impact; the victims may be left with the possibility of what might have been rather than with the sense of having survived the worst.

Sometimes it feels like the bruised body of a victim is being jumped over so that an offender may be read his or her rights. The imbalance is realized from the start with the very structure of a case: "The Commonwealth vs. Joe-Offender." As mentioned earlier, the victim has already been grossly disrespected by another human being; now immediately she or he begins to be left out, a "bit player," disrespected by a system that would not exist were it not for his or her experience and pain. Many refer to this as the "secondary" victimization of victims by the justice system. Deborah Spungen, founder of Families of Murder Victims, says that this should more appropriately be termed the "second" victimization as there is nothing diminished about it. The justice system's treatment of crime victims can elicit a similar or even more devastating response than that of the original criminal act. Some of the reasons are as follows:

• Strangers, all types of justice players whose roles may be foreign, now enter their lives.

• The lack of knowledge and familiarity with the system, particularly the juvenile justice system, is unnerving. Victim service resources may be lacking, greatly limiting the education victims may receive. They will often hear that the offender received "placement," or "probation," not understanding the implications of either. Victims need an opportunity to learn the "language."

• Court is inconvenient. Victims may lose time and wages from their jobs, not to mention the disapproval of angry, unsympathetic supervisors. Moreover, victims are routinely devastated by court delays, riding the roller coaster of emotional preparation and then let down. In juvenile cases, the turnaround time may be so fast that victims are likely to be much closer to the initial crisis. They are quickly required to have restitution and "victim impact" information and may not yet know the full extent of their injuries or losses, let alone any future need they may have for counseling.

• In juvenile cases, the age of the offender and the involvement of the parents add complications. It is difficult for many victims to understand how a young person could get involved in crime. Many wonder about the role of the parents in the child's life and speculate about why the youth "turned out" the way they did. The victim perceives the parent's presence as support for the offender and yet they as victims may have no source of support for themselves. At times, the juvenile's parents can be intimidating, justifying the child's behavior and even blaming the victim for the "mess" their son or daughter is in.

One of the first things we learn when working with crime victims is never to say, "I know how you feel," or "I know what you're going through." We can never assume that we know how the individuals feel following their personal encounter with crime. Don't make the mistake of categorizing the victim's reactions, as follows:

- burglary victims feel . . . x
  - assault victims feels . . . y
  - theft victims feel . . . z
- 

***We really need to listen to and understand the meaning of their crime to them, in their own lives.***

- The “fear factor” is important. Many victims are reluctant to testify against or meet with offenders, afraid they will be impulsive, intimidating, or even violent, sometimes with good reason. Often, however, actually seeing the offender is better than fearing the unknown, particularly in juvenile cases.<sup>4</sup>

**Some Do’s and Don’t when working with victims**

A “safe space” is a critical need for crime victims. Remember, when meeting with a victim to assist in the creation of this space, be clear and specific about the following:

- Who you are and your role in their case.
- Your organization’s role and function.
- Your involvement or relationship with the offender.

Before a face-to-face meeting, explain where you will meet, who they can bring, who will be there and the purpose of the meeting.

Often, crisis reactions following a victimization can be triggered by any number of events which “take the victim back” to the painful time of the crime: the anniversary date or month that the crime occurred, particular music associated with that time, coming upon a person who reminds them of the offender, holidays, etc. Each individual will experience his or her own type of “land mines,” hidden and unexpected. Your meeting with the victim could also be one of these triggers due to its direct association with the offender, the system and the crime. Don’t be surprised if there are tears or if you have to repeat some of the information more than once. Be sure to provide your name and phone number in case they have follow-up questions. Know your local victim service resources for referral purposes. Keep their brochures nearby so you can give victims accurate information about the types of services available.

DON’T SAY:	DO SAY:
I understand how you feel . . .	I’m sorry it happened . . .
You’re lucky it wasn’t worse . . .	I’m glad you’re talking with me . . .
Don’t worry. It’ll be ok . . .	It wasn’t your fault . . .
Calm down. Relax . . .	I can’t imagine how terrible you’re feeling . . .
Try to be strong . . .	You’re not going crazy . . .

Try to get away from the language like, “Thank you for sharing this with me . . .” The victim may wish they could “share” this experience with someone but it simply can’t be done. Such a suggestion could seem insulting or condescending.

For victims, restoration may begin with having a *choice*, as well as attention, courtesy and respect from those they encounter in the aftermath of crime.

*See page 101 in Appendix for a summary of Do’s and Don’ts.*

## Offenders

### What does it mean to be accountable?

Contrary to much conventional wisdom, the United States as a whole is not lax on crime: compared to the rest of the world, we punish a larger number of people, resulting in the highest rate of incarceration in the world. In recent years, these rates of incarceration have been rising rapidly, with some serious consequences for all of us.

Statistics show, for example, that the burden of punishment falls hardest on minorities, on people of color. This is not because they commit more crimes but because criminal justice responses tend to have unintended consequences. Another unintended consequence is court overload, which many jurisdictions are today experiencing.

The economic costs too are already beginning to become apparent as funds are shifted from health care, social benefits and education to pay for police and prisons. The *Chronicle of Higher Education* (1995) reported that spending in California for corrections had increased 25% from fiscal year 1990/91 to 1993/4 at the same time that funds for higher education declined by precisely the same percentage. Former Pennsylvania Commissioner of Corrections Joseph Lehman used to observe that corrections was the fastest growing budget item in the state, second only to health care.

*Criminal justice has very little to do with real accountability.*

Much of what we do for and to offenders is justified in the language of offender “accountability.” Ironically, though, criminal justice has very little to do with real accountability. What does it mean to have your house burglarized, to be assaulted, to have a loved one murdered? Little in the justice process encourages offenders to understand the consequences of their actions or to empathize with victims. On the contrary, the adversarial game requires offenders to look out for themselves. Offenders are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways. The “neutralizing strategies”—the stereotypes and rationalizations that offenders use to distance themselves from the people they hurt—are never challenged.

The sense of alienation from society felt by many offenders is only heightened by the legal process and the prison experience. For many young men in urban America, in fact, the prison experience is a rite of passage, an important credential for life on the streets. Is there any wonder that the system’s “client loyalty” is so high?

Wrongful acts must, of course, be denounced. Society must draw lines between acceptable and unacceptable behavior and punishment is often justified in these terms. Unfortunately, though, punishment is a poor teacher and often teaches the wrong lesson. Just why this punishment fails is beyond the scope of this forum but here are two suggestions.

One has to do with the way we stigmatize those who offend, making it difficult for them to rejoin (or join!) society. The destructive role of stigmatizing *shame*, and the positive power of reintegrative shame, have been described well by Australian criminologist John Braithwaite.

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#### NEUTRALIZING STRATEGIES

In 1957, sociologists Sykes and Matza identified 5 types of justifications used by young offenders to maintain their self-images while violating the law:

- Denial of responsibility (e.g. I couldn’t help myself).
- Denial of injury (e.g. they had insurance).
- Denial of the victim (e.g. he asked for it or caused it).
- Condemnation of the condemners (e.g. they are in the wrong or are unjust).
- Appeal to a higher loyalty (e.g. it was for a good cause).

VOC focuses on responsibility. It encourages offenders to . . .

- understand the harm they have done and its consequences for others, thus undermining the rationalizations and stereotypes that they use to justify these behaviors,
  - take action to make things right insofar as it is possible for them to do so, and
  - take part in determining what is required to make things right.
- 

In his pioneering book, Braithwaite notes that one of the most powerful forms of social control is shame, but there are two kinds of shame: stigmatizing shame and reintegrative shame.

The traditional criminal justice approach embodies stigmatizing shame. It sends the message that not only are your behaviors bad, but you are bad and there is really nothing that you can do which will make up for it. It becomes very difficult, therefore, to be reintegrated into society. So people who offend feel permanently labeled as offenders and begin to seek out other deviant people. Delinquent subcultures, differential association theory, labeling theory—many criminological perspectives begin to come together through the concept of stigmatizing shame.

Reintegrative shame, on the other hand, denounces the offense but not the offender and in addition offers a way back. Through steps such as acknowledgment of the wrong and actions to make things right, self-respect and acceptance into the community becomes possible. Such shame uses wrongdoing as an opportunity to build character and community.

VOC in its various forms provides a forum where offenders can be helped to understand the wrongfulness of their actions. Through VOC they also are offered an opportunity to gain or regain a sense of self-respect by taking responsibility for their actions.

Another reason why punishment often backfires, according to Canadian criminologist Ezzat Fattah, is the oft-overlooked reality that most violence is an expression of grievance, a reaction to some sort of victimization; he calls this “*transformation of victims into victimizers*.” Most victimizers have been victims or at least believe themselves to be victims, Fattah suggests, and their crime is a result of this perceived victimization. Consequently, it is easy to understand why punishment fails. For offenders who have been victimized or at least see themselves as victims, punishment can only be seen as an added victimization. What punishment models is not that victimizing others is wrong, but that it is acceptable to victimize those who victimize you.

Judge Dennis Challeen has summarized what we do to offenders like this (*also included on page 99 in the Appendix*):

**We want them to have self worth . . .**

*So we destroy their self-worth.*

**We want them to be responsible . . .**

*So we take away all responsibilities.*

**We want them to be part of our community . . .**

*So we isolate them from our community.*

**We want them to be positive and constructive**

*So we degrade them and make them useless.*

**We want them to be trustworthy . . .**

*So we put them where there is no trust.*

**We want them to be nonviolent . . .**

*So we put them where there is violence all around them.*

**We want them to be kind and loving people . . .**

*So we subject them to hatred and cruelty.*

**We want them to quit being the tough guy . . .**

*So we put them where the tough guy is respected.*

**We want them to quit hanging around losers . . .**

*So we put all the losers in the state under one roof.*

**We want them to quit exploiting us . . .**

*So we put them where they exploit each other.*

**We want them to take control of their lives, own their problems,  
and quit being a parasite . . .**

*So we make them totally dependent on us.<sup>5</sup>*

Offenders *must* be held accountable. Victim Offender Conferencing, therefore, takes seriously the concept of accountability. Instead of defining this accountability as accepting suffering for the suffering you caused, however, accountability is defined by the *obligations* that have been created by the offense. Accountability is understanding and taking responsibility for what you have done.

Judge Dennis Challeen has pointed out that many of the offenders who stand before his bench are there because they have been irresponsible in some way. If he tells them what is going to happen to them, Challeen observes, it simply reinforces their irresponsibility. To encourage responsibility, they need to be part of the process.

## **The Offenders Journey**

*by Janet P. Schmidt<sup>6</sup>*

Following a conflict situation, both victims and offenders have a need to find some way of putting the incident in the past. Victims seek healing from the violence they have experienced, while offenders often wish to change old patterns of behavior. For many offenders, their crime continues to control them, whether that be in the form of guilt, self-hatred, emotional turmoil or a predisposition to re-offend. Only as offenders journey through a change process, can the event lose its power to control them. It is important for mediators to recognize this journey to more adequately assist in it.

The journey of healing for the offender has several stages. The first stage offenders experience is *denial*. At this point there are many excuses and little, if any, acknowledgment of wrongdoing.

The second stage offenders experience is *remorse*. Offenders have some feeling of wrong doing. Nonetheless they qualify their actions with any number of excuses,

including “yet, but . . .” comments. Impending criminal charges may also add to their expressions of regret. At this stage offenders are able to acknowledge their deeds, yet are focused on the circumstances that “lead” them to behave in this way. Offenders are looking for a “quick fix”, which will allow them to forget the incident.

The third stage is called *repentance*. It is here that offenders seriously confront the consequences of their behavior and voluntarily take full responsibility of their offense without making excuses. During this stage, offenders experience significant personal pain, as they realize the pain they have inflicted on another person. Offenders not only need to pay restitution, they also seek help to change their behavior in spite of the cost. True repentance is displayed when offenders take steps to ensure that they are equipped to change.

*Only as offenders journey through a change process, can the event lose its power to control them.*

The fourth stage is authentically asking for *forgiveness*. Though offenders may experience relief through quick expressions of regret at the remorse stage, at the fourth stage they wish to apologize with no strings attached. Offenders recognize their wrong doing and need to express this regret to the person they have injured.

### Healing Journey

I will now try to relate how I believe the offenders’ healing (change) journey interacts with the mediation process. If the offender is in denial a mediation is rarely safe for the victim, and should not be arranged as the offender has not taken meaningful responsibility. Should mediators find themselves in this situation, separate meetings should be utilized as soon as possible. If the offender does not take responsibility for his or her actions the mediation should be discontinued.

Many offenders enter into mediation at the *remorse* stage. Mediators have a number of responsibilities when an offender is at this stage. The victim will interpret the offender’s justifications as an attempt, on the part of the offender, to avoid taking responsibility for their offense. If the victim accepts a quickly given apology without allowing the offender to hear their pain the offender will not complete the healing journey and is likely to re-offend. For the sake of both victim and offender the mediator must encourage the victim to speak about the emotional impact of their experience, as well as assist the offender to hear the victims’ story.

Mediators need to encourage the offender to enter the *repentance* stage. It is not likely than an offender entering into a mediation in remorse will experience the profoundness of this stage in a two hour mediation session. It is possible, however, to bring the offender to the threshold of stage three, encouraging them to explore this stage. A mediator not only needs to be able to ask good questions, they must also feel comfortable entering the realm of strong emotions. It is very difficult to journey through repentance. It is also difficult for many mediators to resist the desire of rescuing the offender because of the intensity of the emotion and the offender’s complete focus on their inappropriate behavior.

Mediation greatly gives the offender the opportunity to hear the experience of the victim. Mediators need to take advantage of the moments where the offender begins to come to terms with what he or she has done and experiences regret, before the offender prematurely puts closure to the incident and in doing so

increases the likelihood of repeating it. Some mediators may be tempted to minimize the negative repercussions of the offender's behavior. This is often not helpful early in the repentance stage and can encourage the offender to not complete their journey of change. Unfortunately many offenders skip stage three entirely and will likely reoffend, even though a part of them wishes to change. Out of repentance there is a need to ask for forgiveness.

While awareness of these stages can be helpful, it can be difficult to assess whether the offender is at the remorse stage or further along their journey. This is particularly true when remorse is accompanied with gifts and emotional promises to do better. Mediators must recognize that this is not repentance. During the remorse stage, the offender is often willing to pay restitution but is generally reticent to do anything, outside of making promises, to ensure that the behavior does not happen again. Furthermore, the offender will have difficulty answering questions like, "What have you learned from this experience?", "How has your life been affected by this incident?" or "What steps have you taken to make sure this doesn't happen again?"

I was able to witness a case which appears to involve true repentance recently. A 19 year old offender had been charged with assault causing bodily harm. It had been a particularly vicious and unprovoked assault. The offender shared how he had awoke in jail after the initial effects of alcohol had worn off. As he recalled the previous evening's events he was horrified at what he had done the night before. He never dreamed that he was capable of such violence. Three months later he met his victim in mediation and heard his story. He not only came with a check to pay restitution, he had also enrolled in an alcohol treatment program to ensure that he would not repeat this event. He was filled with regret and had a difficult time controlling his emotions as the victim shared his story and he was again faced with what he had done. The offender wanted to do whatever was necessary to correct the situation and to ensure he would never again repeat his behavior.

*It is only as we understand this healing process that we will be able to facilitate the change that takes place in the journey. Many of us need to learn to recognize the difference between remorse and repentance.*

We as mediators want to help people move toward healing. It is only as we understand this healing process that we will be able to facilitate the change that takes place in the journey. Many of us need to learn to recognize the difference between remorse and repentance as well as become more comfortable with allowing offenders to experience the intensity of regret so that they change.

## Research

The overall track record for juvenile VOM/VORP/VOC over twenty years is encouraging. Various research efforts report very high degrees of satisfaction by victims and offenders who participate. Repayment rates are very high, usually in the upper 80% range, as opposed to simple court-ordered restitution which, in both North America and New Zealand, tends to have fulfillment rates in the 50–60% range. Studies suggest reduced fear on the part of victims, reduced stereotypes by both victims and offenders, improved understanding by offenders of the effects of their actions. An overall humanizing of justice seems a clear outcome.

Offenders find it a tough option, but both victims and offenders say they experienced justice through the process. In one study, for example, almost 80% of victims and offenders who participated in VOC believed justice had been served in their case. This represents a stunning contrast to the experience of victims and offenders who are limited to the traditional justice system. In one small study of burglary victims, in fact, victims who went through VOC were twice as likely to say they had experienced justice as were those who only went through the normal process. Recidivism studies are still too small to be conclusive but all suggest lower rates of repeated crime.

## Notes

1. Martha Janssen, "Crazy," in *Silent Scream* (Minneapolis, MN: Augsburg, 1983).
2. Quoted in Shelley Neiderback, *Invisible Wounds: Crime Victims Speak* (New York: NY; Haworth Press, 1986), 57.
3. Jane Riese is the Director of Victim Offender Mediation for Mediation Services for Conflict Resolution, Inc, York, PA. Prior to this position, Jane served for eight years as the Director of Victim Witness for the York County Prosecutor's Office.
4. With thanks to Laurie Reilly Snell and Valerie Bender for their input and ideas about unique circumstances for the victim of the juvenile offender.
5. Reprinted from *Making it right: a common sense approach to criminal justice* by Dennis A. Challeen. Melius & Peterson Publishing Corporation, 1986, pp. 37-39.
6. Reprinted from *Interaction*, Fall 1994. At the time this was written, Janet Schmidt was working with Mediation Services in Winnipeg, Manitoba, Canada.



# Victim Offender Conferencing

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## History of the Victim Offender Conferencing Process

The Victim Offender Mediation (VOM) concept originated in Kitchener, Ontario, Canada, as a joint program of the Waterloo Region probation department's volunteer program and Mennonite Central Committee Canada. The program used the original name of VORP (Victim Offender Reconciliation Program, although they originally used the term "project") and began in 1974 when two young men caused a total of \$2,200 damage to 22 victims in a night of drunken vandalism. Windows were broken, tires slashed and churches, stores and cars damaged. Both pleaded guilty to all 22 charges. The judge agreed that the two young men, along with their probation officer and the volunteer coordinator from MCC who had come up with this idea, would meet face-to-face with the victims to work out restitution agreements. The originators today agree that the approach used was very simplistic. They had the boys walk up to the door of the victims and knock, telling them who they were and why they were there. They talked to all but two victims who had moved. Restitution was established and within months repayment had been made.

In the U.S., VORP was first introduced in 1978 in Elkhart, Indiana, after a probation officer, having ideas similar to those of his colleague in Canada, visited the Kitchener program. This initial program was at first operated by the probation department. They soon concluded, however, that it might be better operated by a nonprofit community organization. Consequently, the program was developed by Elkhart County PACT, a community corrections organization, and today continues under the non-profit, community-based Center for Community Justice. The program and philosophy of victim offender mediation or conferencing have continued to be refined since that time but the basic outlines of the model have remained surprisingly unchanged, at least until recently.

A number of programs developed over the next two decades relying heavily on the Kitchener and Elkhart models. Although the Elkhart model included adult offenders from the start, many early programs developed within the juvenile system. The concept of accountability knew no age barrier, however, and face-to-face meetings were just as effective with adult offenders as with juveniles. The types of cases referred by the courts also began to change. While initial caseloads were primarily theft and burglary cases, programs began to work at taking on cases of “personal” as opposed to property crimes.

Some programs, with additional training, have begun to work with cases of severe violence. Those within the VOC field have come to realize that the basic victim offender model must be adapted to deal with the more intense needs of victims and offenders (who are most likely incarcerated) in these cases. This involves significant changes in the process and advanced training. *In fact, the implications for advanced training in working with crimes of severe violence cannot be overstated.*

Advanced training in these types of cases focuses not so much on the mediation process (since the assumption is that mediators already have a working knowledge of Victim Offender Conferencing) but rather on the special skills related to working with victims who have been severely traumatized and the journey of healing involved for all parties. While the traditional VOC process is one that may move fairly quickly (and is, in fact, encouraged to do so), working with crimes of severe violence is quite the opposite. Learning to work and walk with victims in their grief becomes a critical part of the process and is beyond the scope of this curriculum.

***The implications for advanced training in working with crimes of severe violence cannot be overstated.***

As the term “conferencing” implies, new forms of “mediation” are also emerging. Most of these enlarge the circle of participants in a mediation or conference. Many also expand the scope of what is addressed beyond restitution to other parts of the sentence. These will be described briefly later, along with some of the possible learnings that might be applicable to the “classic” VOM/VORP model.

While we do not know exactly how many programs are in operation today, there are hundreds within North America and an even larger number in Europe. There are over 200 agencies and individuals currently listed as members of the Victim Offender Mediation Association (VOMA), the international association of Victim Offender Mediation and Victim Offender Reconciliation Programs.

## Overview of the VOC Process

Steve and Mike were both 16-year-old young men who lived in the same neighborhood and attended the same school. While they knew each other by name they did not hang out in the same crowd. One afternoon while Steve was playing basketball at the local playground, Mike came out onto the court and told Steve he wanted to play. Steve assumed they could play together but when he did not move off the court, Mike proceeded to punch him in the mouth, knocking out his four front teeth.

Steve was terrified of leaving his house, uncertain about whether Mike would attack him once again. His medical bills were partially covered by his parents' insurance but the real pain was the physical and emotional consequences of Mike's unprovoked attack. He was frightened of the thought of meeting with Mike to discuss this incident but was even more afraid of meeting him on the street or in school, something he had managed to avoid since the incident.

Mike acknowledged that his attack was unprovoked and that he realized he took out his anger at his parents' pending divorce on Steve. He agreed to meet with Steve, hoping that providing some explanation of his actions would allay Steve's fears of a future attack.

Through participation in the victim offender mediation program, the boys and their parents were able to sit together with a trained community mediator to discuss what happened on that day, what led up to the incident and the subsequent consequences for each of them and their families. They were able to come up with a restitution agreement that felt fair to the victim and workable for the offender. Steve stated that he finally felt that he would be able to walk around the neighborhood and the school without fear for the first time in months. Mike, too, felt that by making things right between himself and Steve, he no longer carried the guilt because of the harm he had caused to both families.

Victim Offender Conferencing is a unique form of problem-solving which focuses specifically on the victim-offender conflict. While there are many dispute resolution programs throughout the country which attempt to resolve a variety of conflicts, victim offender conferencing may be seen as a more specialized form of mediation (*see Introduction*).

The thought of victims and offenders sitting together to discuss the harm committed is not a natural concept for many of us. Our criminal justice system is designed to keep victims and offenders separate. It is a system organized around what should happen to and for the offender, not the victim, and as a consequence focuses more on the offender than the victim. It encourages non-communication and removes each of them from participation in the determination of needs as well as possible solutions. Victims have many questions about the crime: Why did this happen to me? Why did the person pick my house? Was I being watched? They are questions that can often only be answered by the offender, yet victims are discouraged from asking those questions and offenders are discouraged from providing any answers.

### SUMMARY OF THE PROCESS

The essence of a victim offender conference process is a face-to-face encounter between the victim and the person or persons considered to be the offender(s). In that meeting, which is arranged and chaired by a volunteer mediator, opportunity is given for each party to describe how they experienced the offense (both facts and feelings), agree that the injustice/violation has been recognized and work at restoring

equity (restitution). Future intentions are discussed in order to rebuild the level of trust that has been shaken as a result of this offense. But the victim offender meeting is not all there is to it; like all constructive interactions, both advance preparation and follow-through are absolutely essential and make the difference between a successful discussion and a hostile encounter.

### STEPS IN THE PROCESS

The steps in the usual VOC process are outlined below and in Figure 4.

#### Step 1: Referral

*Step 1a: Referral to VOC.* Cases are referred to the victim offender conferencing program through a pre-determined referral source. In many jurisdictions, most cases are referred by the court but referral sources may include the police, youth aid panels, district justices or other community agencies/individuals (See page 121 in Appendix).

*Step 1b: Logging/screening.* The referral is then assigned a case number and a file opened for the referral form as well as other information to be given to the mediator. Many programs use software developed specifically for victim offender mediation programs. In some programs, letters are sent initially to the offender in order to introduce the victim offender mediation concept (which may have already happened through the referral source) and to inform him or her that a mediator will be contacting them shortly. A victim letter can be prepared but is not sent until the offender has agreed to participate (See page 149 in Appendix).

*Step 1c: Assignment to mediator.* The case is assigned to a mediator and arrangements made to have the mediator come in to pick up the case and discuss details. Once mediators have conducted a number of mediations they (as well as the staff person) will have some idea of which kind of cases mediators feel most comfortable facilitating and that should be taken into account when assigning cases.

#### Step 2: Initial meetings

*Step 2a–d: Initial meetings.* This phase consists of initial contacts and then individual meetings with offenders and victims separately. The mediator contacts the offender first by phone (Step 2a), then in person (Step 2b). If he or she agrees to participate, the victim is contacted by letter and phone, (Step 2c), then in person (Step 2d).

The first phone calls are used to set up individual meetings with the offender (Step 2a) and victim (Step 2c). These calls are very important. Participants can be lost during the first phone call. The goal of the call is to obtain their consent to meet with the mediator to hear more about the program and decide whether they will participate; the phone call is not the place to fully explain the program or obtain their consent.

The mediator makes phone contact and sets up an initial individual meeting first with the offender, then, if she or he agrees, with the victim. During this meeting the mediator explains the program, the process and the purpose of a meeting with the victim and listens to the offender tell his or her story. If the offender is not willing to proceed at this point, the case is returned to the referral source stat-

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In victim offender conferencing opportunity is given to:

- recognize the violation
- restore equity
- address future intentions

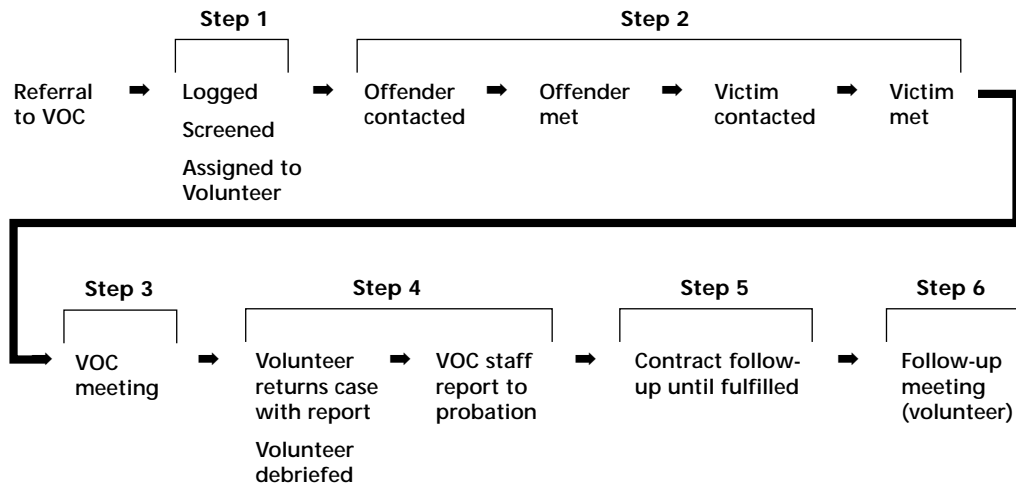


Figure 4. The VOC process.

ing the reasons the offender has chosen not to participate. If the offender agrees to meet, the victim introduction letter is mailed and then phone contact made with the victim. The process of explanation is repeated with the victim with time provided for the victim to also tell his or her story. If the victim is unwilling to meet with the offender, the case is returned to the referral source with an explanation. If the victim is willing to proceed, the mediator begins the process of selecting a time and place for the joint meeting.

### Step 3: Victim Offender Conference

*Step 3: The Conference.* After all parties have been contacted and have agreed to meet, the actual victim offender conference is held. In this meeting, care is taken to discuss and agree to the ground rules and to allow both the offender and victim to describe their experiences (tell their story) and to allow for questions by the other party. The parties then review the losses by the victim and look at options for restoring the equity and discussing future intentions. The agreement is recorded and read by the mediator and signed by all parties. If appropriate, a follow-up meeting time is scheduled to be held once restitution has been completed.

Without a follow-up meeting, victims and offenders as well as volunteers have acknowledged a lack of closure once restitution has been completed. The victim and the offender may never see one another again to talk about the sense of accomplishment on the part of the offender or the appreciation on the part of the victim that the contract was completed. A short final meeting may bring a sense of closure to this process. One option may be to simply plan for the final meeting when the last restitution payment is due so that it can be brought to the meeting then.

### Step 4: Reporting and monitoring

*Step 4a: Report to program.* Evaluation forms are completed by the mediator who returns the case, along with notes, to the victim offender program. It is important for mediators to have a time to debrief with a staff person once they have completed the case. There may be questions that arose for the mediator that need to be addressed.

*Step 4b: Report to referral source.* The agreement data is entered into the case management system so that follow-up can be conducted. Copies of the agreement, along with an evaluation form, should be sent to the victim and the offender. The agreement form should also be sent to the referral agency.

*Step 4c: Monitoring.* Restitution monitoring, if not done adequately, can be another form of revictimization. Once victims have signed an agreement, they need to know that it is being followed through and if it is not, they need to be kept informed about what steps are being taken. Regular contact should be made with the victim and the offender to assure that the contract is being completed. If not, it would be appropriate to hold a follow-up meeting to check in and, if necessary, renegotiate the terms of the contract and to discuss what has happened. It is important that both the victim and the offender feel they are part of this process.

### **Step 5: Closing the case**

*Step 5: Closing the case.* Once the agreement has been completed, the mediator should be informed in order to set up a follow-up meeting if that has not already been done. A final report should be sent to the referral agency once that has been completed and the case closed.

Ideally, the process Steps 1–4b, that is from the time of referral until the referral source receives the agreement and report, would take a total of two-three weeks. However, while the total time involved in an actual mediation may be minimal (perhaps an hour or hour and a half, for example) the case can drag out as people are located, missing information found, and a suitable time and place pinned down. Still, the goal is to complete the case as quickly as possible.

## **Potential Benefits and Risks of Victim Offender Conferencing**

The following is a listing of potential risks and benefits of Victim Offender Conferencing. *A short summary of these risks and benefits is provided on page 103 in the Appendix.*

### **BENEFITS FOR VICTIMS . . .**

- Victims are able to meet offenders and, in doing so, to vent their feelings and to get answers to questions. Victims often grow angry and frustrated by their inability to get answers to questions or to find ways to deal with fears and stereotypes. Demands for vengeance may result from the inability to get answers and to put an actual face and personality to the offender. Why was my house burglarized? Did the offender have something against me personally? What if I had been home? Was my house watched for weeks prior to the burglary? Such questions are very real and important to a victim. By such an encounter, frustrations may be relieved and the level of anxiety about crime may be reduced.
- Victims receive the possibility of restitution for wrongs committed.

- Victims are able to enter into the process of setting an amount and payment schedule. This opportunity to participate in the settlement provides a sense of empowerment.
- Changed attitudes about punishment and offenders, increased understanding of offenders and the nature and causes of crime and a reduced sense of alienation often result from this process.

#### **RISKS FOR VICTIMS . . .**

- Victims sometimes feel that they would rather simply move on with their life and the thought of participating in this process brings up many painful feelings relating to the incident. This may lead to a re-experience of the trauma as they learn new information related to the crime that only the offender can tell them.
- Victims may have unrealistic expectations of how the offender will respond to their story. The VOC process is not a therapy session (although it may be therapeutic) for the victim or the offender and victims may be disappointed if the offender does not seem to have an understanding of the level of pain and anguish they have suffered.
- Victims may be disappointed if offenders are unwilling or unable to provide adequate restitution or to follow through with agreements.

#### **BENEFITS FOR OFFENDERS . . .**

- Offenders rarely face the real human costs of their actions. A confrontation with the person they have victimized often provides a better understanding of the meaning and implications of their offense to the victim as well as a better understanding of the victim's situation. Thus offenders are provided an opportunity to see victims as real people. For example, an adult burglar expressed new understanding for the fears that were induced in the victims and their children by his invasion of their privacy. A juvenile offender found that the victims he had assumed to be wealthy in fact had needs very much like his own.
- Encountering a victim and making restitution allows offenders the opportunity to "make things right." Some criminologists point out that much crime arises from feelings of rejection. Further rejection through imprisonment and labeling only increases the problem. Rarely is the opportunity afforded an offender to be truly reintegrated to society. In Braithwaite's language (explained earlier), VOC provides an opportunity for reintegrative shame.
- Offenders are encouraged to have some role in their future instead of passively responding to decisions made elsewhere. Thus their sense of ownership in, and commitment to fulfilling, restitution is often heightened.

#### **RISKS FOR OFFENDERS . . .**

- Offenders are often very frightened at the thought of actually having to face their victims, even in a controlled setting. For many, it is by denying the

humanity of their victims that they are able to commit such crimes. To have to sit and listen to the pain experienced by the victim as a result of one's actions is to put a human face to the victim and to the crime; this is much different—and usually more difficult—than having to sit in a courtroom without ever having to have a conversation with their victims.

- Offenders are frightened that this will be the opportunity the victim has been waiting for to get his or her revenge. They are afraid the victim will either ask an exorbitant amount of restitution or even physically threaten the offender once they sit down together in a room.

#### **BENEFITS FOR THE COMMUNITY . . .**

- A community-based program empowers a community to solve its own problems, helping to reverse our tendency to look to others for solutions. Most VOC programs rely on volunteer involvement from the community to serve as mediators in this process, and increasingly they are involving community members as participants in the conferences as well.
- The level of fear can be reduced if community members feel they are assisting in reducing various types of conflict. Skills learned by trained mediators can be used not only to resolve conflict which causes crime but may carry over into many other aspects of life together as a community. This may be particularly true in small communities where victims and offenders are likely to meet again. The more the community is involved in the solution, the greater the likelihood they will also have an investment in continuing to work at maintaining the relationship.
- Recidivism rates may be reduced in two ways: 1) offenders can avoid the damaging effects of incarceration which often lead to further crime, and 2) offenders' increased understanding of victims as persons and of the costs of their offenses can act as a deterrent to further crime.
- Public opinion polls consistently show that the public prefers sanctions that encourage offenders to make restitution and be accountable to victims and the community.

#### **RISKS FOR COMMUNITY . . .**

- Victim offender conferencing may be misused as a diversion technique, to be a “quicker, cheaper” method of disposing of cases and as such, not a service to victims but a service to the system.
- Victim offender conferencing may be viewed by members of the community as too soft on crime because it lets the offender off the hook. If the community is not offered an understanding of its benefits and principles, if it is not engaged in the process of designing and operating the program, VOC may be seen as an easy way out.
- Victim offender conferencing is not a cure-all. There are no guarantees that offenders will not repeat this crime or others. Statistics have suggested, how-



ever, that the rate of recidivism is less and perhaps more importantly, if there is recidivism the crimes committed are less serious than crimes committed by offenders who have been incarcerated and who have not participated in the conferencing process.

#### **BENEFITS FOR THE CRIMINAL JUSTICE SYSTEM . . .**

- It provides a mechanism for establishing restitution amounts and agreements, thus lessening the burden on courts and probation departments and making the option of restitution more attractive.
- An avenue is provided for working with certain types of cases that are often insoluble within the criminal justice process (for example, offenses which arise out of neighborhood disputes).
- The attention to victim needs, offender accountability and community involvement which is part of VOC can result in increased understanding about and support for criminal justice personnel.

#### **RISKS FOR THE CRIMINAL JUSTICE SYSTEM . . .**

- There is danger that this process may become one more program to implement if 1) it is done by the system rather than through ownership from within the community, and 2) it is not part of a larger re-examination of the principles and practice of justice within that community.
- Without adequate monitoring of agreements and of victims' needs, the potential for revictimization becomes very real.

## **Other Models of Victim Offender Conferencing**

### **Lessons from Sentencing Circles and Family Group Conferences**

So far we have introduced you to the predominant model of Victim Offender Conferencing in North America, often called Victim Offender Mediation (VOM) or the Victim Offender Reconciliation Program (VORP). However, a variety of other, related, approaches have recently emerged which suggest some important lessons and ideas for expanding our model.

In the early days of VORP, Dutch law professor Herman Bianchi visited and chided us that the approach was too individualized and private. Many cultures are accustomed to addressing their conflicts and problems within larger family and community contexts, he said, and would find the simple one-on-one diads of a victim-offender encounter too isolated.

We filed this away as an idea that seemed sensible but hard to apply within our model. The theory of VORP and restorative justice did recognize a role for the community; indeed, many of us saw it as a way to return conflicts to the community. We consoled ourselves with the assurance that the community was involved through volunteer mediators and the community-based organizations which housed many of the programs.

In the case of juveniles, families have always been a factor to consider although their role has been seen as somewhat problematic. Some programs see families of offenders as a potential nuisance; they must be informed but should be kept out of the actual encounter for fear that they will take responsibility away from the offender. Others encourage their attendance but try to insure that the essential dialogue is between young offender and victim. In this situation the parents have a role but it is supportive rather than central.

Family and community have been recognized to have some role, in other words, but in practice it has been ambiguous and often episodic or marginal rather than integral.

Now two restorative approaches are forcing us to radically reconsider these assumptions. They suggest some ways to implement the role of community acknowledged in the concept of restorative justice. Interestingly, both represent ways of implementing principles from indigenous cultures within western legal frameworks.

### **Family Group Conferences**

Family Group Conferences (FGCs) emerged in New Zealand (and soon were adapted in Australia) in the late 1980s as a response, in part, to the concerns and traditions of the indigenous Maori population. The western-style juvenile justice system was widely

recognized to be working poorly and many Maori argued that it was antithetical to their traditions; it was oriented toward punishment rather than solutions, was imposed rather than negotiated, and left family and community out of the process.

In the new juvenile system which was adopted in 1989, all juvenile cases with the exception of a few very violent crimes are diverted from police or court into Family Group Conferences (FGCs). As a result, judges report drops in case loads as high as 80%. New Zealand Judge Fred McElrea has called it the first truly restorative approach to be institutionalized within a western legal framework.

Instead of a court hearing, a youth justice coordinator (a social worker) facilitates a meeting which is similar to VORP/VOM in that it provides a forum for feelings to be expressed, facts to be explored, and settlements to be negotiated. Offenders are held accountable and victims are provided opportunities to have some of their needs met. But there are significant differences from VORP/VOM in the makeup of the meeting and the scope of the discussions.

Compared to VORP/VOM, the meetings are large. Families of the offender are an essential ingredient. This may include both immediate and extended family members. In broken or dysfunctional families, more distant relatives or other significant people may be involved. Caregivers involved with the family may be invited and a youth advocate—a special attorney—is included to look out for the legal concerns of the offender. Victims too may bring family or supporters. Moreover, the police (who are the prosecutors in this legal system) take part in the meeting. So the meetings are not only large but include parties with divergent interests and perspectives.

That in itself may seem radical, but there is more: this group is expected to come up with a recommendation for the entire outcome of the case, not just restitution,

*Compared to VORP/VOM, the meetings are large. Families of the offender are an essential ingredient. Victims too may bring family or supporters.*

and they must do this by a consensus of the group! Even more startling, they manage to do so in most cases.

Family Group Conferences are working well enough that some judges and other practitioners are calling for their adaptation to the adult system in New Zealand and pilot projects are underway. Similarly, conferences were developed in Australia to be operated by police and school officials. Today, a variety of family or community group conferences are being adapted in many American and Canadian communities. The police-based model, for example, originally promoted by the police in Australia, is being adapted and taught by a community group known as Real Justice and a substantial pilot project is underway in the Bethlehem, Pennsylvania, police department.

The involvement of families in FGCs, many argue, maximizes opportunities for shame to operate in a positive or “reintegrative” way. To reiterate the point we made earlier, criminologist John Braithwaite points out that one of the most powerful forms of social control is shame, but there are two kinds of shame: stigmatizing shame, and reintegrative shame.

Our usual justice approach embodies stigmatizing shame. It sends the message that not only are your behaviors bad, but you are bad and there is really nothing that you can do which will make up for it. It becomes very difficult, therefore, to be reintegrated into society. So people who offend feel permanently labeled as offenders and begin to seek out other deviant people. Delinquent subcultures, differential association theory, labeling theory: many criminological perspectives begin to come together through the concept of stigmatizing shame.

Reintegrative shame, on the other hand, denounces the offense but not the offender and in addition offers a way back. Through steps such as acknowledgment of the wrong and actions to make things right, self-respect and acceptance into the community becomes possible. Such shame uses wrongdoing as an opportunity to build character and community.

FGCs provide a forum for this positive application of shame. The potential for denouncing the wrong is tremendous within the circle of the family. It is bad enough to be shamed in front of the victim, but imagine facing your grandmother or grandfather! Since the offender is part of the family, however, FGCs also provide encouragement for affirming the worth of the offender. Family members reportedly often articulate their dismay and anger at the behavior, yet affirm the essential value and gifts of the young person who has offended. Working together as a family, collaborative strategies emerge from the discussion which allow offenders to take responsibility to make things right and to feel supported in the process.

In addition, family involvement in determining the outcome of the case gives them a sense of ownership in its success, making it more likely that they will provide encouragement and support as the agreement is carried out.

*The involvement of families in FGCs, many argue, maximizes opportunities for shame to operate in a positive or “reintegrative” way.*

*Reintegrative shame, denounces the offense but not the offender and in addition offers a way back.*

**SUGGESTIONS FOR THE EFFECTIVE USE OF SHAME IN CONFERENCES:**

Researchers have made some suggestions about how to encourage the positive operation of shame in conferences:

- Have the same person facilitate the meeting and make initial contacts with victims and offenders. In this way, she or he is able to establish a bond with each participant before the conference.
  - *Maximize* the number of participants. The larger the number, the more likely at least one of them will be emotionally open and able to express emotions. More people also means more possibilities for mutual identification and for making up for possible errors that the facilitator may make.
  - If victims and/or supporters seem locked in anger, question them about the very first feelings they had when they discovered the crime. These feelings are often covered by later anger and indignation. By getting them to go back to earlier emotions, they can be vented and given release instead of going into what researchers have called a shame/rage cycle or loop.
  - Hold conferences as soon as possible after the offense.
  - Recognize that *no intentional shame is necessary*. The conference itself automatically leads to a sense of shame—it is an “automatic shaming machine.” Since the shame is implicit rather than explicit, it is less likely to trigger offenders’ defense mechanisms.
  - Match silence with silence—don’t think you have to step in and say something or take control when there are periods of silence.
  - Build in automatic “delays” after the conference—e.g. while the contract is prepared for signing, while people are getting ready to leave. Often, spontaneous acts of contrition and forgiveness occur in the hall or while people are doing other things rather than during the meeting itself.<sup>7</sup>
- 

you take away a fundamental building block of community and of crime prevention.

Judge Stuart argues that this is not a radical idea but draws on the traditions of aboriginal cultures as well as western societies “before becoming dependent upon professional ‘healers’ and ‘conflict resolvers.’”

In the Yukon territories where he lives, several different kinds of circles are used. Healing circles are used to address individual and community needs, including victim-offender relationships. Several forms of Sentencing Circles provide forums for developing sentencing plans while at the same time addressing community-wide causes and problems. Sentencing Circles bring together offenders, victims (or their representatives), support groups, and interested community people to discuss what happened, why it happened, and what should be done about it. Discussions are reportedly wide-ranging and encompass not only specific sentencing plans but causes, community responsibilities and needs for healing. Stuart lists these objectives:

**Circle Sentencing**

Another set of lessons is emerging from the Sentencing Circle (SC) approach which has been developed in Native Canadian communities. Like FGCs, Sentencing Circles provide a way to incorporate some traditional problem-solving approaches within the overall context of a western legal system. Here too case outcomes—including court-based sentencing plans—are developed through discussion and consensus. Compared to FGCs, however, more emphasis is placed on community involvement and meetings or “circles” may be quite large, with many community members attending.

Judge Barry Stuart, in whose Yukon jurisdiction such circles often function, emphasizes that the community-building and community problem-solving dimension of this may be one of the most important outcomes of Circle Sentencing.<sup>8</sup> When the community is left out, as it is in the traditional criminal justice process, important opportunities for growth and community-building are missed. When conflicts are processed right, however, they provide the means to build relationships between people and communities; take this away, and

1. to address causes, not symptoms;
2. to personally involve the parties, providing an opportunity to air their emotions and work toward solutions,
3. to reduce dependency upon experts, and
4. to build a sense of community.

He argues that the approach is as workable in the inner city as in more rural aboriginal communities.

Sentencing Circles like FGCs widen the scope of the problem-solving and provide for reintegrative shame to happen. Judge Stuart reports:

“The community will [often] tell the offender that they have done something ‘bad’ yet also they are not a ‘bad’ person, but have many good qualities that can be developed . . . Bringing love, concern, support and a willingness to forgive into the sentencing process, profoundly influences the attitude and actions of many offenders. As one offender stated, ‘I never heard that before—not that people cared for me. I didn’t know that—for me it was always you know a bad guy doing bad stuff, so I became good at doing bad stuff. Why not, eh? I was angry about how they acted towards me, now I find out they really do care—want to help. I feel different—makes me want to be different.’”

Sentencing Circles too are now being adapted in various parts of the U.S. Minnesota in particular is introducing the concept in some communities, including urbanized areas.

In some ways, the stories emerging from Family Group Conferences and Sentencing Circles sound very familiar to those of us involved in victim offender reconciliation. However, the inclusion of family and community suggest important directions that we must take seriously as we move to develop further the theory and practice of a justice that restores.

The following is an illustration of how one of the older VORPs in the United States—in Fresno, California—has recently adapted lessons from conferencing:

## Case Study

### **VORP’s Community Justice Conferencing Expands Restorative Justice in Fresno County**

*by Ron Claassen (from VORP News, RJP Edition, June 1997)*

The first VORP Community Justice Conference was convened on April 28 in a pilot program developed collaboratively by the Court, District Attorney, Public Defender, Probation, and VORP.

The Community Justice Conference (CJC) is similar to our usual VORP case, but there are two important differences.

The first difference is in the number and mix of people present in the meeting. Although there are exceptions, the joint meeting in most VORP cases includes the

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#### **JUDGE STUART SAYS IT LIKE THIS:**

“The principal value of Community Sentencing Circles cannot be measured by what happens to offenders, but rather by what happens to communities. In reinforcing and building a sense of community, Circle Sentencing improve[s] the capacity of communities to heal individuals and families and ultimately to prevent crime. Sentencing Circles provide significant opportunities for people to enhance their self image by participating in a meaningful way in helping others to heal.”

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offender, offender's parent(s), victim and mediator(s). In a CJC case, however, we invite offender, parent(s), extended family members, teacher, pastor or other faith representative, victim and support people, police officer, probation officer, and some general community representatives.

The second difference is the referral point and authority of the group. The usual VORP case is referred by probation in lieu of a formal court process or by the court as part of a formal probation order, usually to help work on restitution issues. In the CJC pilot program it was agreed that 10 non-violent felony cases per month would be referred to VORP to convene a Community Justice Conference (CJC) in lieu of the traditional adjudication and disposition hearings. If a consensus agreement is reached by the convened group, a presentation of the agreement is made to the court and unless there are special circumstances, the agreement is accepted by the court as a restorative justice "sentence."

The process of a CJC meeting is similar to our usual VORP process. It differs in that more are present, more contribute to the discussion, and more get involved in the follow-up accountability. After introductions and agreement to process and ground rules, the three major steps are:

1. recognize the injustice and accept appropriate responsibility for the offense;
2. decide on constructive steps to repair the damages as much as possible; and
3. enter into an agreement outlining behavior changes, commitments and intentions for a better future.

While primary responsibility is placed on the offender accepting responsibility for his/her choices, it is recognized that the offender lives within a family, community and other social structures that have influenced what happened and have the potential to encourage and assist constructive change. Part of the CJC agenda is to examine what "community" support and changes might be appropriate to gain maximum constructive changes, safety and repair of injuries to individuals and relationships.

Authority is transferred to the group only if it arrives at a consensus. Authority is not transferred to a few persons in the group who in turn have authority over others. The group includes a large mix of people all searching for a constructive resolution. Anyone in the group could prevent the group from arriving at an agreement. If it does not arrive at a consensus agreement, the group finally has no authority and the case is returned to the court.

A CJC is not intended to replace the court or other systems entrusted with authority and coercive power. In a Restorative Justice System, those officials encourage people to consider using the CJC option. They also serve as a backup when people are unwilling or unable to reach a fair cooperative agreement. We recognize that a delicate balance must be maintained so that those who participate in a CJC do so voluntarily and in a spirit of seeking a constructive resolution for all who have been negatively impacted by the crime, including victim, community and offender.

*While primary responsibility is placed on the offender accepting responsibility for his/her choices, it is recognized that the offender lives within a family, community and other social structures.*

*The process is never soft on crime and does not mean overlooking offenses. It means facing them directly.*

The process is never soft on crime and does not mean overlooking offenses. It means facing them directly, with a depth that has the potential to facilitate healing and create longer-term solutions that contribute to the development of safe, just and peaceful communities. VORP has been moving in this direction for years. The usual VORP referrals and process will continue to increase. Restoration and reconciliation are still the goals.

## The VOC Spectrum

In addition to the above models, other adaptations of Victim Offender Conferencing are emerging. For example:

- Some programs are bringing together offenders with people who were victimized by other offenders, sometimes in groups. This includes victim impact panels.
- Prison-based programs, like the one at SCI Graterford, offer an intensive seminar to offenders which encourages them to understand and take responsibility for their offense. They meet victims who are not their own and also write letters to their own victims or survivors who, in turn, can choose whether or not to receive these letters.
- Some programs (e.g. in Langley, British Columbia, Canada) which work with extremely traumatic cases such as murder and rape are primarily therapeutic in nature. Extensive support and attention is given to both victim and offender before any dialogue is attempted. This dialogue may involve a letter and/or video exchanges in place of, or before, any direct dialogue. Mark Umbreit has argued that it is more appropriate to think of this as “facilitated dialogue” than as mediation.
- Another innovative program in Genesee County, New York, concentrates on intensive victim assistance in major cases but also, through victim-offender dialogue, works out a “diversion” track which allows alternative approaches to be tried with offenders before final sentencing.

These are just some examples of how Victim Offender Conferencing is being utilized. As this suggests, there is much variety in how victim offender conferencing or dialogue is being approached. VOC characteristics that can be compared/contrasted include the following:

- Who is included in the conference?
- How intense is the dialogue likely to be?
- What is the scope of the resolutions (only restitution? the whole sanction?)?
- Who facilitates the meeting?
- What is the connection with the formal criminal justice system?
- Where is the program housed (public, private, non-profit?)?

Victim Offender Conferencing is probably best envisioned as a spectrum or continuum of approaches. However, the nature of the spectrum varies depending on what determining variables are involved. Here are two suggestions:

### VOC spectrum: Who is included?

One way to differentiate among different approaches to victim offender conferencing is the number and types of people who are included in the conference. VOM/VORP typically involves victim, offender and possibly a family member or two. On the other end of the scale, Sentencing Circles include members and a variety of community members.



Figure 5. The VOC Spectrum Based on Who is Included.

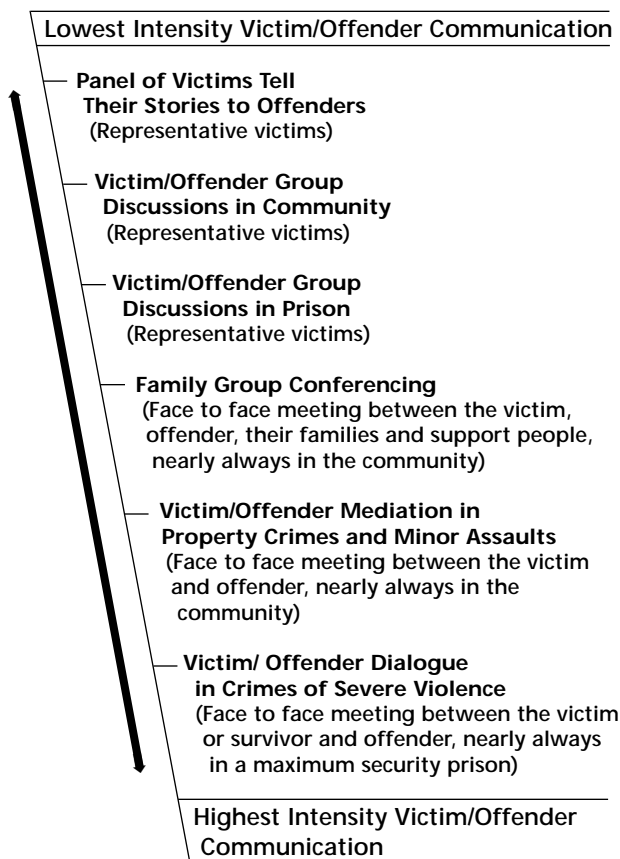


Figure 6. The VOC Spectrum Based on Intensity of communication.

### VOC spectrum: Intensity of communication

Mark Umbreit suggests the following continuum based on how intense the communication is likely to be (Figure 6). Note, however, that the placement of the approaches in the middle is somewhat arbitrary; an FGC can be extremely intense, and a VORP/VOM can be quite relaxed. Also, so-called “minor” crimes can generate very intense feelings, depending on the circumstances and personalities, and “serious” crimes can result in less intense interaction.

### Notes

7. Retzinger, S. and Scheff, T., “Strategy for community conferences: Emotions and social bonds,” in *Restorative Justice: International Perspectives*. Edited by Burt Galaway and Joe Hudson, Criminal Justice Press, 1996.
8. “Alternative Dispute Resolutions in Action in Canada: Community Justice Circles” (Unpublished paper. Yukon Territorial Court, Whitehorse, Yukon).

Used with permission by Mark Umbreit, Center for Restorative Justice and Mediation, St. Paul, Minnesota.



# Restorative Justice: A Framework

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*by Howard Zehr*

Behind the practice of Victim Offender Conferencing is a set of values or concepts which has come to be called “restorative justice.” Although you may have seen one formulation of restorative justice in the Balanced and Restorative Justice (BARJ) Project literature, there is no universally-accepted definition of the term. Yet there is substantial agreement in the way the concept is used in various forums such as those sponsored recently by the National Institute of Justice and National Institute of Corrections Academy.

Restorative justice is probably best viewed not as a fully-developed theory but as a “lens” or framework for thinking about justice. Restorative justice advocates argue that a basic “paradigm” or set of assumptions—a particular lens—determines how we usually think about justice; that this lens or paradigm is not inevitable; and that the current lens or paradigm is responsible for some of the most important gaps in our criminal justice system. Restorative justice, they argue, provides an alternate lens through which to focus on some of those gaps.

*Restorative justice is a “lens” or framework for thinking about justice.*

As one of the early formulators of the restorative justice concept, I am one of those advocates. What follows, then, is my own “take” on restorative justice; while substantially similar to many other formulations of the concept, if you want to read further you will find suggestions at the end of this section.

## **Justice: A Choice and a Continuum**

Faced with wrongdoing, society must choose between what might be called somewhat simplistically the three “R’s” of justice. If society does not respond adequately, people take justice into their own hands—the justice of *Revenge*. As we have seen in Rwanda and the former Yugoslavia, revenge is a deadly spiral, incompatible with organized society. Two other “R’s” of justice offer themselves to the world today.

**3 R'S OF JUSTICE:**

- Revenge
- Retribution
- Restorative

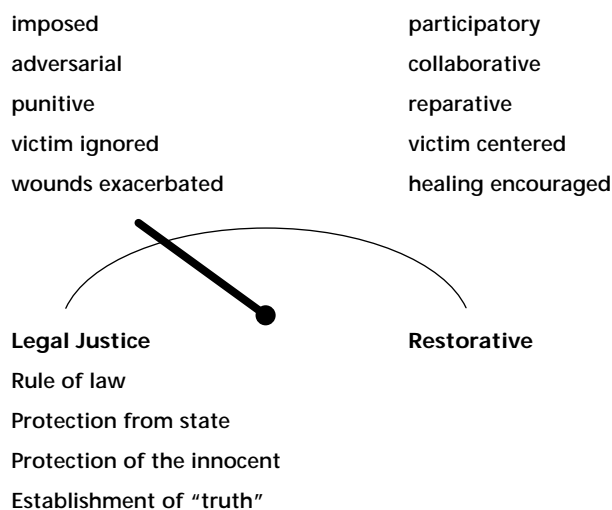
One is the justice of the western legal system. Its strengths—such as the encouragement of human rights and the rule of law—are substantial. Yet it has important weaknesses. Criminal justice tends to be punitive, conflictual, impersonal and state-centered. It encourages the denial of responsibility and empathy on the part of offenders. It leaves victims out, ignoring their needs. Instead of discouraging wrongdoing, it often encourages it. It exacerbates rather than heals wounds. In fact, “*Retributive justice*” often assumes that justice and healing are separate issues, perhaps even incompatible.

An alternative approach to justice has a much longer history. It is more reparative in focus, emphasizing harms and the obligations that result. Victims’ needs and rights are central, not peripheral. Offenders are encouraged to understand the harm they have caused and to take responsibility for it. Dialogue—direct or indirect—is encouraged and communities play important roles. “*Restorative justice*” assumes that justice can and should promote healing, both individual and societal.

“Retributive justice” and “restorative justice” are sometimes presented as two polar opposites. Realistically, though, they are perhaps best viewed as “ideal types” on the opposite ends of a continuum. (Figure 7) On one end is “pure” retributive justice; on the other end is “pure” restorative justice. In practice, justice rarely falls at either of the two ends of the scale; justice is rarely purely retributive nor can it often attain purely restorative outcomes. Restorative justice advocates argue that our goal should be to build upon the strengths of the criminal law process but to move it as far as possible toward the restorative end. VOC provides one model for doing that.

**Core principles**

In a recent discussion sponsored by the National Institute of Corrections Academy, those of us who participated identified two fundamental principles of restorative justice on which most advocates agree: 1. harm-focused and 2. engagement. These principles seem a good place to start.



**Figure 7.** Retributive/Restorative Justice continuum.

## HARM-FOCUSED

Restorative justice is concerned first and foremost with the harm involved in wrongdoing. The key principles of restorative justice flow from this emphasis on harm.

What is important in crime is less that laws have been broken than that people have been harmed. This leads to several central principles:

- As the primary ones harmed, *victims* and their needs become central to the process of justice.
- Harm results in *obligations*, so offender accountability is defined as understanding the harm and taking responsibility to make it right as much as possible.
- *Reparation* of harm is a central concern of justice.
- Both harm and obligations have *community* dimensions as well, so the community role is also important.

***“Retributive justice” and “restorative justice” are best viewed as “ideal types” on the opposite ends of a continuum.***

***Our goal should be to build upon the strengths of the criminal law process but to move it as far as possible toward the restorative end.***

***Restorative justice is concerned first and foremost with the harm involved. Restorative justice assumes that victims, offenders and communities must be involved in the process of justice.***

## ENGAGEMENT

Restorative justice assumes that victims, offenders and communities must be involved in the process of justice insofar as that is possible. While they may or may not be the final authority, they must be engaged participants, not bystanders or passive recipients of justice. In fact, Tony Marshall, a researcher for the British Home Office who has been researching restorative justice program for many years, has offered this definition of restorative justice:

“Restorative justice is a process whereby all the parties with a stake in a particular offence [sic] come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

So far there has been no consensus that Marshall’s definition adequately embraces all that is restorative. It does, however, illustrate the centrality of these two concepts: harm and engagement.

## Contrasting “lenses”

Another way to explore the meaning of restorative justice is by contrasting it with “retributive justice.” These two characterizations are very simplistic and, Marshall has argued, too polarized. However, if we understand them as over-simplified “ideal types” they may help to illustrate the differences between our standard criminal justice model and the restorative justice approach.

The current model or lens of justice might be characterized like this:

### **Crime**

*is essentially a violation of the law,  
and the state is the victim.*

### **The aim of justice**

*is to establish blame (guilt)  
and administer pain (punishment).*

**The process of justice**

*is a conflict between adversaries  
in which offender is pitted against state,  
and rules and intentions outweigh outcomes.*

It can be put more simply: Crime is breaking the rules. The state, not the individual, is the primary victim. Justice is establishing blame and giving out pain through a contest between the offender and the state.

In fact, justice can almost be reduced to three questions:

- What laws were broken?
- Who done it?
- What do they deserve?

This lens or paradigm helps to explain why victims are so neglected: they are not part of the definition at all! Preoccupied with blame and pain, retributive justice is

*This lens or paradigm helps to explain why victims are so neglected: they are not part of the definition at all!*

primarily negative and backward looking rather than forward-looking and problem-solving in orientation. Moreover, the process of administering blame and pain is so technical that victims and offenders are forced to rely on experts and to redefine their perceptions and experiences in terms that are foreign to them. This helps to explain the alienation that victims and the community often feel.

Some observers have pointed out that as a value system, this understanding of justice is primarily negative and contains no inherent reasons to treat people in caring ways. There is no built-in motive, within this ethical system, to be humane. If the goal is to deliver pain, there are no inherent self-limits on how much pain we deliver. So we have to impose limits and guidelines from outside the ethical system. Not surprisingly, such outside guidelines are often ineffective.

In contrast, restorative justice might be summarized like this:

**Crime**

*is essentially a violation of (harm to) people and relationships.  
Such violations result in obligations.*

**The aim of justice**

*is to identify obligations,  
and to promote restoration or healing.*

**The process of justice**

*involves victims, offenders and community in an effort to identify obligations and solutions,  
maximizing the exchange of information (dialogue, mutual agreement)  
between them.*

In other words, crime violates people. Violations always create obligations, especially on the part of those who have offended. Justice should involve victims, offend-

ers and the community in a search to identify needs and obligations so that things can be made right as much as possible.

The three central questions of a restorative approach might look like this:

- Who has been hurt by this event?
- What are their needs?
- What are the obligations, and whose are they?

The restorative approach emphasizes the existential reality of crime: that it represents a violation of people and their relationships. Violations create obligations. The proper response, then, should seek first of all to heal and restore.

The differences between the two paradigms might be summarized by asking four questions:

- How is the *problem* defined?
- Who are the primary *actors* or participants?
- What does a solution or *outcome* look like?
- What is the *process* to get to an outcome?

The prevailing retributive approach defines the *problem* narrowly, as a legal infraction. Only legally-relevant factors are considered. A restorative approach defines the problem in relational terms, as a violation of people and relationships, and in its broader context.

In the retributive model, the state is the victim so the state is the primary actor. Offenders are placed in a passive or self-defensive mode, encouraged to look out for themselves and not think about the harm they have done. Victims are barely in the picture at all. A restorative approach, in contrast, gives important roles to the victim and community but also involves the offender. The state continues to have an important role in facilitating and overseeing the process, but it is no longer the only main actor.

***The restorative approach emphasizes the existential reality of crime: that it represents a violation of people and their relationships. Violations create obligations. The proper response, then, should seek first of all to heal and restore.***

Retributive justice defines the normal *outcome* as punishment of the offender. It is predominately backward-looking. Restorative justice encourages responsibility for past behavior by focusing on the future, on problem-solving, on the needs and obligations resulting from the offense. Reparation and restoration thus take precedence over punishment.

The *process* of justice in the prevailing paradigm is hierarchical and authoritarian. Having evolved from a battle model, it assumes and heightens conflict and impersonality. Moreover, the process is so technical that in reality, the primary actors are professional stand-ins in the form of prosecutor and defense attorney, as we in the U.S. saw so dramatically in the O.J. Simpson trial. A restorative approach, however, seeks as far as possible to encourage participation, dialogue, mutual agreement, the exchange of information.

**VICTIM OFFENDER CONFERENCING**

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<b>RETRIBUTIVE JUSTICE</b>	<b>RESTORATIVE JUSTICE</b>
<b>Problem</b>	
defined narrowly, abstractly, a legal infraction,	defined relationally as violation of people,
only legal variables relevant	overall context relevant
state as victim	people as victims
<b>Actors</b>	
State (active) & offender (passive)	victim & offender primary along with state & community
<b>Process</b>	
adversarial, authoritarian, technical, impersonal	participatory, maximizing information, dialogue and mutual agreement
focus = guilt/blame	focus = needs & obligations
"neutralizing strategies" encouraged	empathy and responsibility encouraged
<b>Outcomes</b>	
pain, suffering	making things right by identifying needs & obligations; healing, problem-solving
harm by offender balanced by harm to offender	harm by offender balanced by making right
oriented to past	oriented to future

*(See page 131 in the Appendix.)*

## Restorative Justice Principles

The appendix to this section contains a full statement of restorative justice principles and their key implications in outline form. Restorative justice, however, may be summarized as a series of ten values or “signposts.” (See pages 133 and 137 in Appendix.)

## Victim Offender Conferencing and Restorative Justice

Victim Offender Conferencing fits within this larger framework of restorative justice concepts. In fact, in many ways VOC came first: restorative justice as a movement and as a concept in large part grew out of the experience of VOC or victim offender reconciliation.

VOC focuses essentially on the harms and obligations that result from crime. It also provides an opportunity for victim and offender to be engaged in addressing the harm and what ought to happen as a result. However, as we have noted above, the practice of VOC has expanded since the original programs in the 1970s and there are other forms of restorative justice in addition to VOC.

*Some frequently-asked questions about how restorative justice is being implemented are addressed by Mark Umbreit in “Responding to Important Questions Related to Restorative Justice,” included on page 139 in the Appendix. Additional readings are suggested on page 149.*

## RESTORATIVE JUSTICE SIGNPOSTS

We are working toward restorative justice when we . . .

- focus on the *harms* of wrongdoing more than the rules that have been broken,
- show equal concern and commitment to *victims and offenders*, involving both in the process of justice,
- work toward the restoration of *victims*, empowering them and responding to their needs as they see them,
- support *offenders* while encouraging them to understand, accept and carry out their *obligations*,
- recognize that while *obligations* may be difficult for offenders, they should not be intended as harms and they must be achievable,
- provide opportunities for *dialogue*, direct or indirect, between victims and offenders as appropriate,
- involve and empower the affected *community* through the justice process, and increase its capacity to recognize and respond to community bases of crime.
- encourage *collaboration and reintegration* rather than coercion and isolation,
- give attention to the *unintended consequences* of our actions and programs,
- show *respect* to all parties including victims, offenders, justice colleagues.

Crime wounds . . . justice heals

—Harry Mika and Howard Zehr

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# Program Development Issues

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**W**ithin Pennsylvania, counties receiving PCCD grants have been asked to complete a set of key questions which include issues of *program models and goals*, *types of cases*, *organizational base and oversight*, and *operational issues*. As preparation for answering those questions, we conducted a three-day training for those counties to provide input and initiate discussion on the issues involved in implementing a program. We will discuss those issues in this section using the following outline based on the training.

## Key issues and questions

### Program models and goals

- What is your basic program model?
- What is your primary goal? Secondary goals?

### Cases and clients

- What types of cases do you want to receive?
- What will be your criteria for accepting or rejecting cases?
- Where in the system will you receive cases?
- Are all offenders who participate guilty?
- Why might cases be turned down?
- What special issues are involved with juvenile cases?
- What special problems do businesses present?
- Is this a voluntary process on the part of the victim and offender?



- What are the other dispositional elements in addition to victim offender conferencing?
- Who are the “clients?”

### **Organizational base and oversight**

- Where will the program be housed organizationally (e.g. private, non-profit or public sector)
- Who will provide oversight (Board of directors/advisory board? separate start-up board?)

### **Operational issues**

- Who will facilitate meetings and how will facilitators be trained and supervised?
- What are the advantages and disadvantages of co-mediating?
- Who contacts victims and offenders?
- Should the facilitator remain neutral?
- How will confidentiality be addressed?
- What happens when there is no meeting or when agreements are unfulfilled?
- What forms will be used for agreements?
- How will agreements be monitored?
- How will restitution payments be made by offenders and disbursed to victims?
- What kind of reports will be made and to whom?
- How will voluntariness be ensured for victims; how will it be maximized for offenders?

### **Evaluation**

See Chapter 9 (page 87) for program evaluation issues.

### **Program models and goals**

This curriculum is intended for those implementing VOC within the juvenile system so the program model (juvenile, adult or both) is already decided. It is important to clarify, however, that VOC is being implemented throughout the country for both adults and juveniles using varied models such as system-based (prosecutor or probation), community-based (non-profit organizations), faith-based (church-supported) as well as combinations of all of the above.

There are also decisions about program goals. As the saying goes, if you don't know where you are going, any old road will do. It is critical to ask yourself to clarify your motives and goals in operating a Victim Offender Conferencing project. Many questions can be asked but the following raise some important issues:

### **What is your motivation?**

Is there a core organizational group of people who have come together that can articulate a reason for implementing this program? Is it out of their faith perspective? Are they interested in saving the community money? Reducing crime? Have victims, offenders and the community be more involved in the criminal justice process? Money is available and this seems like a good project to use it on? Clarity about why you are doing this will be helpful as you look at where you want to go and how you will get there.

### **Who is the primary focus?**

Is it the victim, the offender or the community? Perhaps all three. Are you interested in meeting needs of victims or working toward the rehabilitation of offenders? Do you want the community more involved in the criminal justice system? Do you only want to be a resource for establishing restitution? These do not necessarily have to be mutually exclusive. VOC is unique in that it can meet more than one of these goals without excluding the others but it is also possible to focus on one goal which may have the unintended consequence of causing harm to another. In a restorative justice model, representatives from victim, offender and community perspectives need to determine together what the focus will be.

### **Is your program intended to be an “alternative?”**

Victim offender programs were initially promoted as an alternative to incarceration but it appears that most alternative programs have simply been added on to other sanctions rather than to serve alone as intended. As we look, however, at models of Family Group Conferencing and Sentencing Circles you will see that there are programs being implemented as an alternative to the current model of justice. Now that the victim offender movement has also moved into areas of working with cases of severe violence, there is also the realization that it may not be an alternative to incarceration since offenders in those cases will most likely already be incarcerated.

## **Cases and clients**

### **What types of cases do you want to receive?**

In many programs, the majority of cases involve property offenses, usually committed by people who have not served substantial prison terms previously. Programs vary, however, and some do work with selected cases of violence. Selection of cases will be done by program staff in conjunction with the referral source. While one jurisdiction may find it makes perfect sense to refer all burglary cases, another may decide not to until the program has established a track record through working with only theft cases. There may be times when a program feels more confident and ready to take additional cases that the system may not be ready to give. At this point, additional discussion should be taking place with the referral source to determine and address points of resistance.

## **What will be your criteria for accepting or rejecting cases?**

Cases are screened initially by the referral source which may be any number of different points including, but not limited to, the probation department, prosecutor, police or other diversion agency. Program staff then look at the cases as they come in and occasionally reject cases they may determine to be inappropriate given their selection criteria. In addition, both staff and mediators are encouraged to keep open the possibility that this is not a good case to proceed with and need to continually screen for inappropriateness throughout the process.

The VOC process can be applied to almost any kind of case. On the whole, programs have screened cases on a case-by-case basis rather than establishing a strict eligibility criteria except in certain cases (domestic violence cases for example). Generally, there should be something to negotiate or feelings that need to be dealt with. Both parties must agree to proceed in a constructive manner. Cases are not accepted when there are high levels of hostility and there is a threat of violence. It should be noted, however, that experience has shown that cases rarely come out worse than expected, and often come out better. The preparation work and screening procedures built in make it highly unlikely that the meeting will turn into a highly conflictual situation. They may certainly be tense, as strong feelings are involved and the level of apprehension high, but participants will often act rationally and sensitively when they face a real person as opposed to an unknown abstraction, in a safe, controlled setting.

## **Where in the system will you receive cases?**

Victim Offender Conferencing could happen anywhere in the system. (Figure 9) We would like to see it happen as early as possible, however, and possibly even before arrest in some cases. Often, though, referrals are made after someone has entered the criminal justice process. For adults, the referral usually comes after guilt has been established (often after a guilty plea) prior to or after sentencing. With juveniles, however, the process is much more discretionary and referrals can come at any point. Some come immediately upon intake (possibly in conjunction with “informal probation” or “diversion”). Others come after “adjudication”, that is a hearing has taken place and the offender may be on probation. Victim Offender Conferencing may be recommended by the judge or probation officer, or it may be ordered by the court as part of a sentence. In all cases, however, we try to make participation as voluntary as possible.

## **Are all offenders who participate guilty?**

Normally this process works only with offenders who have admitted their involvement. Occasionally, though, an offender is involved who does not admit to the offense in the form it was reported and admits to only limited involvement. Sometimes the victim offender meeting can be a useful place to explore this between victim and offender. Still, the offender will have admitted some degree of involvement to have been accepted into the program. It is important that the victim be made aware of the fact that the offender may not be accepting responsibility for the harm before agreeing to go forward with the meeting.

## **Why might cases be turned down?**

There are a number of reasons why a case might be inappropriate. Victim or offender might be unwilling to participate or we may be unable to locate one or the other. There may be a threat of violence either on the part of the victim or the offender (which has been determined at the individual meetings). There may not be an identifiable victim in order to conduct the meeting.

## **What special issues are involved with juvenile cases?**

Comments about dealing with specifically with juvenile cases should be made:

Many young people lack confidence and/or withdraw when dealing with adults, particularly adults in positions of power. This means that mediators may need to take particular care to draw out a young offender, and may even need to specifically articulate his/her position (which is why the individual meetings are so critical). This can be particularly true when the victim is a person such as a school principal. You may want to consider training young people as co-mediators to assist in such cases.

Parents are a factor when dealing with young people and each program has guidelines about how they should be involved. Parents have the right and are encouraged to attend if they wish. In the case of an older juvenile, contact is usually made with the young person directly but parents are kept informed about what is happening. Often offenders will have been informed briefly about the program through probation. In the case of a very young person, contact is often made directly with parents first. Either way, parents should be informed and involved to the extent they choose.

Parents can be both an asset and a liability in a meeting. Some parents may dominate the meeting; we often tell the parents initially that this issue is really between their son or daughter and the victim and that while they may enter in at some points, basically the dialogue ought to be between victim and offender. Normally, then, they should not be allowed to dominate the meeting and an attempt should be made to draw out the young person when they do. If parents are assuming the financial responsibility for their son or daughter, we often encourage an agreement between parent and child for some sort of restitution. For example, in the case of an eight year-old who had been involved in vandalism, the parents repaid the victim but their son then agreed to wash dishes for a specified number of days in order to encourage his sense of responsibility and accountability.

Within Pennsylvania there are monetary limits of liability on the part of parents. Liability is limited to \$1,000 per person and \$2,500 total regardless of the number of persons who suffer injury as the result of a criminal act. Keep in mind, however, that these amounts are not enforceable unless the judge so orders.

For ideas about how to incorporate families more fully into the process, you may want to explore Family Group Conferencing models.

## **What special problems do businesses present?**

The two biggest problems in dealing with companies are (a) finding an appropriate person to represent the company, and (b) developing enough interest so that the com-

pany will participate. Dealing with companies often can be impersonal. The differences in situational power between an executive and an offender is another problem which must be dealt with by the mediator. This does not mean that cases involving businesses cannot work, however; many do go through the process very successfully.

### **Is this a voluntary process on the part of the victim and offender?**

The decision to mediate is always voluntary on the part of the victim. While we may use language such as “selling” the program there is a distinction between a “soft” sell and a “hard” sell. Victims should never feel coerced into participation. They, of course, may be hesitant and perhaps frightened at the prospect of sitting down face-to-face with the person who has harmed them. In this case the mediator must explain the process, talk about the risks and benefits and be able to truly hear the victim’s needs.

While most programs state that the process is always voluntary for the offender as well, there is an element of coercion that is not present for the victim. When an offender is court-ordered or diverted from prosecution if they participate in the process, the issue of coercion is an obvious one. Again, offenders normally do not jump at the opportunity to meet face-to-face with their victim and while it is best to also use “soft” sell language, offenders do not always perceive the process to be a voluntary one. If offenders are adamantly opposed to the process, and it seems inappropriate to proceed, the case should be returned the referral source while telling the offender that it will be the referring source’s decision about how to proceed.

*The decision to mediate is always voluntary on the part of the victim.*

The decision about whether or not to mediate belongs to the participants, not the mediator. If victims are reluctant to participate, it may be appropriate for them to designate someone else (perhaps a relative or friend) as a surrogate victim to represent them at the conference. It may also be appropriate at times to offer “indirect mediation” as an option. In this case the mediator serves as the go-between to reach an agreement between parties who are unable or unwilling to meet face-to-face.

## **Organizational base and oversight**

### **Where will the program be housed organizationally?**

Once goals have been clarified, you need to consider possibilities for an organizational base. There are a number of different models which include a criminal justice system base or a community base. Some of the advantages and disadvantages of the two models are:

#### **CRIMINAL JUSTICE-BASED PROGRAM**

In this type of program the victim offender program would be operated by a criminal justice agency such as the probation department; perhaps in cooperation with local community groups/churches.

### Advantages

- In some communities, criminal justice-based programs are the easiest to get started. There is no need to establish a non-profit organization, set up bookkeeping, etc. Thus administrative and possibly financial needs may be minimized.
- Probation departments or other criminal justice agencies which use volunteers might easily adapt to such a program, providing a reservoir of volunteers and a volunteer-training program. Departments may also use their own probation officers to conduct mediations.
- Such programs are likely to have the confidence of the courts and this avoids some of the problems of credibility in the early stages.

### Disadvantages

- It is difficult for such programs to maintain independence. Cases which violate guidelines often cannot be refused; the programs may be easily misused.
- The criminal justice process may have a different agenda than those implementing the program. Often the emphasis will be upon restitution or punishment. While restitution is an important object, the emphasis on understanding the needs of the victim is very important and an outside agency or organization may do better at maintaining this focus.
- The criminal justice process has a stake in the outcome. Thus it can hardly be considered neutral. The ideal is to have persons conducting the mediations who have no power over the lives of the victim or offender. Furthermore, the idea is for volunteers to represent the community in a community problem-solving process. This is better accomplished with an independent organization.

### COMMUNITY-BASED AND/OR FAITH-BASED PROGRAM

In this model, the VOC program is operated by a separate, not-for-profit organization. It is often an ecumenical, community-based program which, although strongly church-supported, is not exclusively so. Other variations might include programs operated by a particular church (receiving only church funds) or by a social service agency which does not have criminal justice issues as its primary focus.

### Advantages

- It is easier for such programs to maintain independence and integrity; they have the power to set criteria, to refuse cases and to retain certain information as confidential.
- Community-based programs may have more credibility with the public and with both victims and offenders. Both victims and offenders are often alienated by the criminal justice process and a community organization may avoid such identification.

- Because the agency holds no real power over the life of victim and offender, it can represent itself as more truly neutral.
- It is more likely that such programs will involve the community in a fundamental way.

#### **Disadvantages**

- Unless established organizations can be used, the problems of organizing, establishing bookkeeping and not-for-profit status, developing administrative policy and fundraising, as well as other organizational duties, can be formidable.
- Criminal justice personnel may be skeptical initially; depending on the community, it may be difficult to obtain referrals.

#### **Who will provide oversight?**

During the early stages it is important to have a group of people to meet periodically who will provide an organizational base for initial efforts. It usefully demonstrates some community support for the idea of developing a program. In addition, it should serve as a sounding board to test ideas and strategies.

Within Pennsylvania, programs which were recipients of the Balanced and Restorative Justice Approach (BARJ) grants through PCCD were required to meet to determine a plan for their program with a team that consisted of a number of persons from the community and the criminal justice system. Those persons included (but were not limited to): the community-based Victim Services Program Director, the prosecution-based Victim Services Program Coordinator; Director of the Rape Crisis Center, Domestic Violence Center Director, Chief Juvenile Probation Officer, Juvenile Court Judge/Master, District Attorney, Public Defender, Law Enforcement Official, as well as the mediator or project coordinator hired under the BARJ program. While these persons may not, and more importantly probably should not, be the ones to provide the direct program oversight, they were initially part of the organizing committee to determine the direction of the program.

It is advisable to begin with a group formed to begin a program and then later establish a formal advisory or governing board with a different group of people; there are a number of reasons in doing this. In the initial stages, some persons may be concerned about making a long-term commitment but may be willing to serve on an initial task force. Also, people can be utilized who would not necessarily be appropriate for the more formal committee; some of the skills and interests needed to begin a program are different than those necessary to maintain a program and garner real grassroots support.

If a program's aim is to be community-based, it is important that community persons predominate. Community persons might well include persons from social service agencies as well as someone with fund-raising experience. Ministers and other interested community persons are helpful. In general, enthusiasm and interest are as important as specific expertise.

Do not expect everyone on the committee to have equal energy and enthusiasm. In fact, you may find that a handful will have major responsibility for the committee.

Others will be able to do some particular task, but most of the members will only be able to give a limited amount of time to the committee and will want to consider broad policy issues and not the nitty-gritty problems of implementation, staff selection, evaluation techniques and the like.

## **Operational issues**

### **Who will facilitate meetings and how will facilitators be trained and supervised?**

Meetings are often conducted by trained community volunteers although there are programs who only utilize paid staff to conduct the victim offender meetings. There are many advantages of utilizing trained volunteers. The volunteer represents the community, thus empowering the community to become involved in a process which allows people previously alienated from one another to come together to discuss the harm and solve the problems involved.

Secondly, a volunteer is someone without a stake in the outcome. A staff person from within the system may be viewed as a key stakeholder in the process and viewed with suspicion by either the victim or offender. This is not to say, however, that those persons cannot be effective facilitators. They need to be aware that the dynamics may be different than if they were a community volunteer and need to address that issue in an honest manner.

### **What are the advantages and disadvantages of co-mediation?**

Co-mediation means that there will be another set of eyes and ears to help facilitate the conference. Co-mediation is especially helpful when there are cases involving issues of diversity within race, ethnicity, gender, class or age.

While one person may take the lead, a co-mediator can be an effective resource for picking up feelings or issues that may go undetected by one mediator. A co-mediator provides helpful feedback after the conference which serves as a learning tool for each of the mediators. Co-mediation also provides the opportunity for a less-experienced mediator to work with a more-experienced mediator.

Mediating alone, however, makes scheduling much easier since you are not working around yet another person in the process. It also involves less work in preparation as co-mediators need to decide how to divide their roles. Will one conduct the individual meetings with the co-mediator observing or will they share responsibilities? These roles must be decided in advance so that expectations are clear and in order not to interfere with the process, thus making it more frustrating for the mediators as well as the participants.

### **Should the facilitator remain neutral?**

The term “neutral third party” has often been used in this context. The notion of neutrality assumes that the mediator does not take sides, treating each equally and fairly. Unlike community mediation, however, VOC mediation does involve an “imbalance



of blame;” that is, one side in the conflict has admitted to or been determined to have done wrong. That “moral imbalance” is inherent in the process—this is not mediation between “moral equals.” At the same time, however, blaming should be minimized and the mediator should seek to connect with both parties, building a level of trust in order to empower both sides to participate honestly and openly in this process.

*Unlike community mediation, however, VOC mediation does involve an “imbalance of blame;” that is, one side in the conflict has admitted to or been determined to have done wrong.*

Implicit in this model, too, is the assumption that the mediator or facilitator has not been personally involved with the parties prior to the case. But be aware also that this “neutral third party” model of facilitation has some cultural biases. In Latino or Native American/Canadian contexts, for example, it may be important for the facilitator to be known and respected by the parties and even to take a more active role in the settlement. Depending upon the ethnicity of the communities in which you plan to work, you may want to explore the models of facilitation practiced in those communities.

### **Who contacts victims and offenders?**

In the summary of the process we have made the assumption that the mediator will be the person making the initial contacts with the offender and the victim (although letters are sent from the victim offender program alerting both parties that they will be contacted by a mediator). There are mediators who are uncomfortable with making that initial phone call to victims and offenders. In those cases, it is appropriate for a staff person to initiate that first contact and simply secure an agreement to meet with the mediator (not securing an agreement to meet with the other party at this point) to discuss the process.

### **How will confidentiality be addressed?**

While this is an issue of much debate, there is not yet a “standard” in terms of confidentiality. There are two issues within the confidentiality debate. One relates to the conference participants. Many programs have participants sign a pre-mediation agreement whereby they agree that whatever happens within the conference remains confidential. While that agreement is not legally binding, it at least raises the issue and may alleviate one of the natural concerns that may arise. Regarding the facilitator, it should be noted that normally confidentiality will be maintained except under specific circumstances provided by law. (Mediators are mandated by law to report knowledge of child abuse or if the person is making threats to themselves or others). *Senate Bill 619 speaks to the issue of confidentiality in mediation and is included on page 167 in the Appendix.*

### **How will agreements be monitored?**

This may be done in a number of ways. The most critical point is to be sure that this is decided before any cases are received by the program. Without the proper monitoring of restitution agreements, victims are often left feeling revictimized by the process designed to empower them. Our feeling is that the best option is to have the VOC program monitor the agreement rather than leaving it up to the referring agency.

Since the agreement has originated as a result of the process facilitated by VOC, it makes sense to have the program continue to follow-up especially if problems arise and the agreement needs to be revisited. Mediators are instructed to write agreements that are specific so that they can be monitored in an efficient manner by the program. This usually means making phone calls to the victim to ensure that payment (if it was a monetary agreement) was received as scheduled and if not, to make contact with the offender to determine what happened and decide about next steps.

### **What happens when agreements are unfulfilled?**

A first step is to determine why the agreement is not being fulfilled. If the offender has temporarily lost his/her employment, it may mean a second meeting or at least a phone contact with the victim to renegotiate the terms of the agreement in terms of payment dates (assuming the agreement included monetary restitution). If the offender is unwilling to fulfill the agreement for other reasons, it may be necessary to return the case to the referral source for determination of next steps (which may include a violation of probation hearing). In any case, the victim needs to be kept apprised of the situation and be able to participate in each step of the process.

### **How will monetary restitution payments be made by offenders and disbursed to victims?**

This varies from program to program and can be done as creatively as each program allows. In our experience, payment choices covered a wide spectrum. Some victims chose to have the offender bring payments directly to them and supply them with a receipt to return to our office. Other options include having the money disbursed through the county clerk's office to the victim. In this case it is again critical that the process be outlined up front. For example, if the agreement states that \$10 payments will be made weekly to the victim (through the county court office) but payments to victims are only sent monthly by the clerk, then the victim needs to be informed of that schedule). Monetary payment may also be brought to the victim offender program and checks sent to victims by the program.

### **Does all restitution have to be monetary?**

Restitution can be as creative as the participants. Restitution should be viewed as symbolic. No amount of money or work can repay the victim for the harm caused in their lives by crime. Many victims recognize that and look at other ways to have the offender work at making things right. It can involve work for the victim (mowing the lawn, painting or other yard work) or for the community. It may involve speaking to a group of juveniles at a local high school or issuing some kind of apology in a public forum. It may involve a behavioral contract if the offense resulted from problematic behavior on the part of one or both parties.

# The Victim Offender Conferencing Process

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## Process Summary

*(See Figure 4 on page 25.)*

### Step 1a. The Referral

- a. Referral source fills out referral form
- b. Referral is mailed to victim offender program or picked up by staff
- c. Case is reviewed to determine whether it meets program criteria

### Step 1b. Case Management

- a. Assign case number
- b. Make and file new case referral in hard file
- c. Enter above information in case management system
- d. Send offender introduction letter
- e. Print victim introduction letter and attach to referral

### Step 1c. Assign Mediators

- a. Call volunteer mediators to notify of cases
- b. Prepare case packet for volunteer mediator to pick up
- c. Case manager briefly reviews process with mediator
- d. Assign case in case management system

## **Step 2. Individual Contacts and Meetings\***

- a. Mediator makes phone contact with offender
- b. Mediator meets with offender to explain program, process and purpose
- d. Offender is willing to proceed with joint meeting
- e. Mediator mails victim introduction letter
- f. Mediator makes phone contact with victim
- g. Mediator meets with victim to explain program, process and purpose
- h. Victim is willing to proceed with joint meeting
- i. Victim is unwilling, mediator notifies case manager; returns case to office

## **Step 3. Joint Meeting**

- a. Mediator schedules joint meeting and makes preparations
- b. Mediator explains purpose and ground rules
- c. Offender and victim agree to purpose and ground rules; if not, discuss reasons; caucus or postpone meeting
- d. Offender describes experience
- e. Victim describes experience
- f. Time allowed for questions posed by either victim or offender
- g. Victim and offender search for ways to restore equity
- h. Future intentions are discussed
- i. Follow-up meeting scheduled if appropriate
- j. Mediator completes agreement form and reads to all parties
- k. All sign

## **Step 4a. Mediator Returns Case**

- a. Mediator fills out evaluation form
- b. Mediator returns all file information and notes to office
- c. Mediator debriefed by staff person

## **Step 4b. Post-meeting Staff Processing**

- a. Enter appropriate data in case management system
- b. Send copies of agreement to victim and offender, along with evaluation form/letter
- c. Send agreement form to referral agency

\* These steps should be viewed as a guideline . . . there may be times for example, when the victim will be contacted first.

### **Step 4c. Restitution Monitoring**

- a. Appropriate staff person monitors restitution
- b. Staff person maintains regular contact with offender (depending on terms of agreement)
- c. Staff person maintains regular contact with victim

### **Step 5: Closing the Case**

- a. Staff person notifies mediator when it is time for the follow-up meeting
- b. Mediator arranges and facilitates follow-up meeting
- c. Restitution completed or referred back to referral source for non-compliance
- d. Report back to referral source

Adapted and used with permission by Ron Claassen, Restorative Justice Project, Fresno, CA.

## **The Process**

*The following step numbers correspond to those in the summary above and in the flowchart in Figure 4 on page 25.*

### **Step 1a. The Referral**

A referral form is included in the Training section to provide programs with an idea of what information needs to be conveyed to the mediator assigned to the case. Our experience has shown that more (information) is not always better. While it may seem best to have access to the police report, court decrees, etc., we have found that having just the basic information (charges, victim and offender information, sentencing information if applicable) is most of what is necessary. Some of the information gathered in the police report (especially regarding restitution) was requested from the victim immediately after the offense occurred when she or he was still in a state of shock and may not be accurate; for example, the victim may not have known all that was taken from his or her house or how this has truly affected him or her. It is most helpful for the mediator to hear the story directly from the participants involved rather than depend on information gathered at the time of the incident. It is critical, however, to determine if there were other offenders involved and where they are at in the process. If there are two offenders and one has gone through a different process and not been referred to the program, it is important for the mediator to have that information to pass on to the participants. If, on the other hand, the second offender will be going through the program but has not yet been referred, it would be critical to wait until that offender has come through before proceeding with the case.

### **Step 1b. Case Management**

Development of a case and information management system is a critical tool for collecting important data which will ensure the accurate and efficient delivery of services. This information will also provide the data necessary for program evaluation that can

impact funding, program development and future planning. Computer programs are available for this. Basic case management means assigning a number to each case (a victim offender combination can be treated as separate cases rather than three victims and two offenders as one case). Some of the case management forms necessary may include:

- VOC case referral forms
- VOC case record forms
- Letters to victims and offenders
- Mediator narrative forms
- Agreement forms
- Case input logs (to track incoming referrals)
- Case output logs (to track conferenced cases)
- Statistical forms

### **Step 1c. Assign Mediator(s)**

Once you have a pool of mediators to choose from you will have the benefit of knowing which cases are best suited to a particular mediator. Mediators will soon discover which cases they feel most comfortable with and it is in the program's best interest to try to match those appropriately. Whereas dealing with the juvenile offender with a juvenile victim may be comfortable for one mediator, another may find he or she simply cannot relate and may be much more comfortable dealing with a juvenile offender in a business-related offense.

### **Step 2. Individual Contacts and Meetings**

The purpose of the initial phone call is to *arrange a meeting time* to explain the victim offender process. As stated earlier, it is best not to try to answer all of the questions and give detailed information until you can sit face-to-face with each participant.

*The purpose of the initial phone call is to arrange a meeting time.*

When you realize that only a small percentage of everything we communicate is done through language, the benefits of a face-to-face meeting become obvious (*see page 125 in the Appendix*).

We have come to recognize that initial meetings with the victim and offender require effective listening and communication skills. Building trust and rapport with anyone is difficult enough and is even more difficult to do by phone.

There are several reasons for such individual meetings with the victim and offender:

- In some cases, to help determine the suitability of the case for a meeting; that is, to assist in the ongoing screening process.
- To explain the program. While participants may have been informed briefly about the program, they need to know more.
- To find out something about each person's version of what happened and how they feel about things. This gives each person a chance to vent feelings as well as provide information for the mediator.

- To explore with the participants their thoughts on what it would take to make things right. This may include restitution in the form of monetary payments, work done by the offender or another creative solution acceptable to the victim and the offender.
- To secure the agreement of both victim and offender to participate in a joint meeting.
- To encourage participants to come to the meeting with a commitment to be constructive and to accept some basic ground rules for the meeting.
- To discuss the process of a joint meeting and the expectations of all parties. Assuming that both agree to proceed, preliminary arrangements are made to meet at a time and place that feels comfortable for both the victim and the offender.

*Who to contact first.* While there is no pat rule about who should be contacted first, victim or offender, it is preferable to talk first with the offender and, if they agree to participate, to contact the victim. If the offender does not agree or, if after talking to the offender it is decided the case should not proceed for some reason, the victim's expectations do not have to be dashed. In the case of juveniles, first ask to speak with a parent or guardian in order to explain who you are and to secure their approval to talk with their son or daughter.

***While there is no pat rule about who should be contacted first, victim or offender, it is preferable to talk first with the offender and, if they agree to participate, to contact the victim.***

Occasionally there are cases in which the victim may be contacted first. When estimated damages are very high or in some way doubtful, we sometimes talk with the victim first simply to help decide whether the case is an appropriate one. If there is more than one offender and there is a delay in the criminal justice system resulting in delayed referrals, it is helpful to contact the victim to give an update on the status of the case.

*First phone call—offender and victim.* Remember that the purpose of the call is to arrange a meeting time to explain the program. Do not try to do so over the phone. When introducing yourself and the program in the initial phone contact, you should do the following:

- Immediately ask to speak with the person on the referral form (either the victim or the offender). When working with juveniles, ask to speak first to the parent or guardian to secure approval to talk with the son/daughter.
- State that you are a volunteer or staff person with the program
- Make an immediate reference to the case and that it was referred by probation or other referral source.
- Briefly state the program's function: to help establish restitution or determine how an offender can "make it right".
- Suggest a date and time for the meeting.
- Verify the address if you are meeting at the person's house.

**SAMPLE DIALOGUE**

Your first few sentences might go something like this: "Hi, may I speak to Mike? This is Lorraine with the Victim Offender Conferencing program. I am calling regarding the assault which occurred on May 7."

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If the people involved do not have a phone it may be necessary to have a letter sent from the program asking them to contact the office (or the mediator directly if appropriate) to determine a suitable time and place to meet with them. In general we feel that you are more likely to have people participate in the process, and also to get a more accurate reading of the people and situation, with a face-to-face contact. Thus it helps to reduce surprises when you actually get to a meeting. There are exceptions, though, and we have had volunteers and programs that operate effectively by phone.

*Individual meetings with victim and offender.* It is important to be on time for the appointment. Remember that a victim may feel angry and frustrated—victims are usually angry about the offense and often frustrated about their dealings with the criminal justice process. Don't be surprised if they are not eager to cooperate initially. Many will be frustrated about their lack of information about what is happening on the case. The mediator may volunteer to find answers for them and should contact staff to do the leg work. In fact, staff members should be the ones to make contact with the referring agency—probation officers, judges, etc.—rather than having mediators do it directly since staff has an established relationship with criminal justice personnel.

Offenders may have similar feelings. They may also feel, along with their parents, that they have been given quite a run-around. This is a particular concern when the parents are responsible for transportation, etc. VOC may be one of several programs/services that the court has ordered for the offender. It is important to be aware of this as meetings are scheduled.

There is no one right order to proceed in this discussion. However, do attempt to accomplish the following:

*Explain the program.* Give a general overview of how it works. There is no need to be exhaustive in your explanation of the program and don't make it sound too idealistic. When talking with victims especially, point out that a major aim is to work at restoring equity. Note that this includes establishing the nature and amount of restitution, a payment schedule and the like. You should also point out that some of the goals are to allow each party to describe how they experienced the offense, agree that the injustice/violation has been recognized and discuss future intentions.

Talk about the mechanics of the meeting, including how it will be conducted and who will be present. This may be brief, but the participants should know who will be there, hear what the mediator role will be and what the agenda will be (e.g., a review of what happened, a chance to ask questions and express feelings and, finally, a discussion of restitution). This should also include information about ground rules for the joint meeting which you will be discussing later. Try to find the best times and places for a meeting, with the convenience of the victim being foremost.

At some point—either at the beginning or perhaps at the end—explore with the participants their version of what happened and their feelings about it. This will help



the mediator know how to proceed with the meeting, it often helps people feel better and also helps to determine whether any of the participants have any “hidden agenda”—some ulterior motive that they may not wish to reveal, some past grudge growing out of a previous conflict or some feelings growing out of past incidents between victim and offender. It is important for a mediator to also use his or her intuition here; don’t cross-examine or probe deeply but if the participant will talk, the information will be helpful.

Attempt to secure their consent to participate. It is important at this stage that victims not be unintentionally revictimized by being coerced into the process. While victims should not be given a “hard” sell that makes them feel coerced into meeting with the offender, mediators need to be able to provide encouragement to alleviate the fears victims may have about the process. Nevertheless, many people will be skeptical at first. After all, this is an unusual program and can be a bit frightening. There are a number of points which may help to stir their interest. Perhaps the possibility of having some voice in the restitution contract is the most important point for many; both victim and offender rarely have a real opportunity to be involved in setting the amount and method of repayment and thus both may be attracted by this prospect. For victims who appear to have some community concern, it is helpful to point out the possible value of having offenders realize the actual cost of what they have done, of hearing a victim say what it has meant as only a victim can. Also, the chance to express feelings and to get answers to questions is attractive to many.

Explain any basic ground rules that apply to both sides and obtain their agreement. *An example of these is provided in the sample “opening monologue” included on page 129 in the Appendix.*

If there is a damage estimate or some other estimate of restitution, explore this a bit with both participants to see how they feel about it. Most of the estimates will be very rough; it is important to get a better idea of the amount and also some idea of whether or not the estimate seems valid. Be careful about this, though. Don’t act skeptical or put the victim on the defensive. It is appropriate to ask for some kind of written documentation (receipts or estimates), which most people will understand is necessary. In some cases, of course, an outside estimate is impossible.

It is also critical to find out, either from the victim or reports, whether insurance is involved and how much they may have been paid. Normally the offender pays the difference between what the victim lost (possibly including non-tangibles such as work time lost, if they ask for it) and what the insurance company paid or will pay. The victim should not be paid twice, of course, and programs do not usually get involved in repayment to the insurance company. This issue will be discussed further under issues of restitution.

Be sure to let the parties know how to contact you in case questions or problems arise. It is appropriate to have blank business cards available with only the program name so mediators can leave his or her name and phone number.

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**AGENDA FOR INDIVIDUALS  
MEETING WITH VICTIM  
AND OFFENDER:**

- explanation of program
  - format of meeting
  - story-telling
  - consent to participate
  - restitution issues
  - joint meeting time
-

Remember that both victim and offender are likely to be somewhat tense about this meeting. Some tension may be good, but too much can be harmful. It may be best, therefore, to arrange for the actual meeting to take place as soon as possible after your initial contact so that participants do not have too long to worry about it. However, if there are details that need to be worked out such as damage estimates, lost property, etc., it probably is best to delay the meeting until these can be resolved.

### **Step 3. Joint Meeting**

A mediator's overall function in the Victim Offender Conferencing process has been discussed under standards of conduct. This discussion will focus on the specifics of how to proceed in the face-to-face meeting. *A sample of some of the "Do's and Don'ts for Mediators" is included on page 101 in the Appendix.*

*Preparation.* Try to arrive early in order to assure that the physical space is conducive to the mediation process. If the room is too large, set up a smaller area in one part of the room to create a safe yet smaller space. The seating arrangement should be such that the victim and offender have the opportunity to face one another unless that seems inappropriate. If there are support persons present, they may be included around the table or seated behind the victim and offender with the understanding that they will have an opportunity to speak at a specified time. Sitting at a table is also appropriate because it helps to create safe boundaries. It is also effective to sit in a circle so participants can choose to look at one another and allow for direct eye contact. Be aware, however, of the cultural context of the participants which may mean, for example, that direct eye contact is inappropriate.

*Introductions.* Introduce everyone as soon as they get there. Provide relaxed, informal introductions. If it seems to fit, it is appropriate to say something briefly about each person (occupation, special interest, etc.) as a means of personalizing the process. Remember that one purpose is to break down stereotypes, causing victim and offender to see each other as real people. The question of what titles of address to use is discussed later. Acknowledge that you have discussed ground rules with each of them individually but would like to go over them together, discuss additional items and secure their verbal agreement to these ground rules.

*Atmosphere.* The tone that is set depends largely on the mediator's style. As a rule of thumb, a mixture of formality and informality seems advisable; we don't usually want highly formal meetings, but we do want a sense that this is a serious, purposeful meeting and that someone is in charge. An important consideration is that of seating. This will, of course, be limited depending on your physical space but it will be helpful if the facilitator has thought through the issue before people have arrived. It is appropriate for the facilitator to assign seats as people arrive in order to create a safe environment for everyone.

*Agenda.* It is important to have a plan and direction in mind. We recommend the following:

- Introductory comments;
- Allow each party to describe how they experienced the offense (both facts and feelings) and to acknowledge the injustice/violation that has occurred;
- Work at restoring equity (restitution);
- Discussion of future intentions;
- Signing of contract; and
- Closing comments, including the option of a final meeting once restitution is complete.

### INTRODUCTORY COMMENTS

Some introductory comments at the beginning of the meeting seem essential. A sample monologue is included on page 129 in the Appendix. Comments might include the following:

1. An explanation of the order and purpose of the meeting—e.g. “We are here to review what happened in the case and to give everyone a chance to ask tell his or her story, to ask questions and then to discuss options that will help to make things as right as possible”. Ground rules are important. An example “Out of respect for one another it would be helpful if only one person speaks at a time.” The facilitator can also mention that if either party has a question and it is not their turn to speak, they should feel free to jot the question on a piece of paper so that it is not forgotten. Be sure to secure agreement from all parties regarding ground rules.

*Some introductory comments at the beginning of the meeting seem essential.*

2. If your program utilizes volunteers, let parties know you are a volunteer representing a community group and, therefore, do not represent the probation department or the court. Your role is to facilitate the meeting, not to direct the outcome. If you are doing this as a staff person of the mediation program it will still be important for them to hear your motivation for being involved in this process.

3. You should note that you will not try to force or impose an agreement and, if agreement is impossible, will try to outline the existing options. Also, that any contract decided upon will have to be approved by the referring agency (though failure to approve is rare).

You may wish to save this point until later in the process but it is important to make this clear somewhere during the meeting.

Again, the purpose of these comments is both to provide information about the victim offender conferencing process and to set the tone for the meeting.

### RECOGNIZE THE INJUSTICE/VIOLATION

A key element of the process is a review of what happened and how participants feel about it, as well as acknowledging the injustice and violation that occurred. This includes going over what actually happened, giving both a chance to ask any questions that they may have about the case and to air their feelings. Again, there is no right way or order to proceed, and the following are only suggestions.

*A key element of the process is a review of what happened and how participants feel about it.*

1. It is often helpful to begin reviewing what happened. This does not need to be in great detail, but there needs to be a basic agreement on what happened during the offense, and both victim and offender need to know what happened to the other after that. This will probably lead to a variety of questions: victims usually want to know why they or their property were singled out, how the offense was committed, etc. Such questions should be encouraged. It is generally helpful to begin with concrete, factual issues before moving to emotional issues. Offenders should be encouraged to report on their experience with the court, including their sentence.

2. From there, you can move to a discussion of feelings. Both offender and victim should be encouraged to recall his or her initial feelings at the time of the offense, as well as any feelings and frustrations since then. If he/she does not offer any, ask about them. This venting of feelings is critical and has several purposes:

- Part of the healing process is allowing victims the opportunity to express their sense of injustice. Feelings of anger and frustration usually build as the victim sees his or her case getting “lost” or dragged out in the criminal justice process. These feelings need to be released. One helpful question may be to ask the victim might be “Can you tell us what happened?” and then follow up with “How did you feel at the time?” A second and third question could be “How have you felt since the incident” and “What has happened since that time?”
- It is often helpful for offenders to realize the feelings that their action caused; it helps to personalize the process and helps the offenders realize the consequences and costs of their actions.
- In some cases, several issues may be involved. If so, start with the easiest and move to the more complex as the parties become more comfortable with the process.

### RESTORE EQUITY

The question of restoring equity (including, but not limited to, restitution) is best left until facts and feelings have been dealt with. There may be times when the victim or offender will want to discuss restitution earlier in spite of your agenda. However, putting this issue off until later, after facts are clarified and feelings vented, usually makes negotiation easier.

*The question of restoring equity (including, but not limited to, restitution) is best left until facts and feelings have been dealt with.*

Discussing how to restore equity includes reviewing the actual damages, agreeing, if possible, on what was actually damaged, looking at any damage estimates that may be available and then discussing a fair settlement.

1. Begin by suggesting that it is time to discuss what should be done to repair the harm, then perhaps ask the victim to explain the damages and to describe what might help to make things right. If the victim provides a figure or some other idea of a fair settlement, the mediator should then ask the offender how she or he feels about that. He or she may agree that it sounds fair. However, the offender may raise some questions, in which case the mediator should turn it back to the victim for a

response. The mediator's role is to encourage them to express their feelings and reactions and to make sure that they are understanding each other.

2. The victim and offender should negotiate this contract themselves, with minimum input from the mediator. There may be times, however, when it will be necessary for the mediator to suggest a compromise or, in a few instances, to make some comment on what is fair or likely to be accepted by the referring agency. And if they can reach no agreement, it may be necessary to point out the consequences of non-agreement. For instance, the victim may need to file in small claims court and/or the court may simply impose a settlement. At any rate, the mediators should make sure that comments are stated in such a way that neither victim nor offender feels that a particular settlement is being imposed upon them. It is important to remember that the victim and offender do not have to reach a settlement—some cases simply can't be resolved in such a meeting. However, statistics show that once a case does come to a meeting an agreement is reached 98% of the time.

3. Make sure that victim and offender are perfectly clear about what they are agreeing to. Restate the agreement, and then ask both victim and offender individually whether they are comfortable with this or whether this reflects their understanding. Make sure the agreement specifies clearly and exactly what the settlement is, and when and how it is to be repaid. Fill out a contract (included in your case packet) specifying all of the terms as clearly as possible (including how and when payment is due) and then have each sign it. If they wish a copy of it, a copy can be sent to them or you can fill out another copy.

Remember that in certain instances there are other court-ordered costs and fines to be paid by the offender before the victim's restitution can be paid. Sometimes there are even other victims. Be clear before the meeting about the dollar amount of fines, court costs or other expenses which would need to be paid before the victim. Take this into account when writing the terms of the agreement on the contract.

4. In some programs, payments are made to the Victim Offender Conferencing program, which forwards the money to victims. In many programs, however, payment on restitution contracts is made through the county clerk or a court office. If so, the victim should be informed that there may be some delay between the time the county receives the money and the time that it sends it out. If he or she becomes concerned about the delay, they should be able to call the program to have it checked out. The victim should understand that the deadline on the contract for final payment is the date the money is to be paid to the county, not the date that he or she will receive it. If the offender has the money on the spot, however, it is normally acceptable for him or her to pay the victim immediately. In that event, make sure that you write on the contract clearly that this has been paid and the date. On the contract write the amount paid, then write "paid" and the date and sign it.

5. Programs do not aim to duplicate insurance payments. Normally agreements attempt to make up the difference between what the insurance company pays (if insurance is involved) and what the victim has lost. It is possible, however, that the court may require the offender to reimburse the insurance company as well. Victims should contact the probation office if they wish to pursue that. In most cases payment by the offender will go to the victim(s) first so this will not interfere with the

victim-offender contract. However, depending on state law there may be cases where insurance policies contain a subrogation clause whereby insurance companies can claim money before payment to the victim. In practice, this has not been a serious problem, and particular programs will likely have their own policy in dealing with insurance companies.

The offender cannot, of course, repay all the emotional drain and inconvenience involved, although the victim may feel he or she needs some compensation for that.

Try to subtly steer the dialogue toward an agreement that fair, but keep in mind that if an unfair agreement is signed, the referring agency still has the right to invalidate the contract (and remember to inform both parties that the referring agency does have to approve the contract). There is a back-up, in other words, in the event of an unfair settlement.

6. Keep in mind that restoring equity may take a number of forms; it may take the form of a money payment and/or might involve a service to either the victim or the community. In a few cases, contracts may involve certain specified behavior—a juvenile offender may be asked to agree that he or she will not climb a tree, or will stay off certain property, and that is an acceptable contract. On occasion the victim may ask for no restitution at all. An apology may be an important part of this restoration process. In any case, make sure that the contract reflects what was agreed upon.

7. If no agreement is reached, have the victim and offender sign the contract form stating no agreement possible at this time (see contract). The mediator should inform the victim that he or she may wish to file in small claims court. If the case has been referred by the courts or the probation department, it should be noted that the case will go back to this referring agency, where restitution may be set.

#### ADDRESS FUTURE INTENTIONS

It is important for victims to feel a sense of security about their future. Although this contract provides no guarantees, it is helpful for the offender and victim to bring the process to closure by talking about what happens next. In order to restore a sense of

*It is important for victims to feel a sense of security about their future.*

trust, both victim and offender are asked to acknowledge the importance of the contract and for the offender to assure the victim verbally and in writing (found on the contract) that the offense will not re-occur.

#### CLOSING COMMENTS

Again, there is no right way to end. If agreement has been reached, it may be well to restate briefly what has been decided. Explain what happens now (you will turn the contract and a final report in to the program office which will forward it immediately to the referring agency responsible for supervising it, together with a staff person from the program). However, let them know that if either of them have any problems with it, they should feel free to call the program office.

The mediator may also want to congratulate them for the progress made, ask them how they feel about the meeting at this point or summarize any reconciliation that has occurred. At this point, the suggestion of a follow-up meeting once the contract has been fulfilled can be suggested. It may not be appropriate to set an actual date

at this time since contracts are not always completed on schedule for one reason or another. However, provide the opportunity, stating that they will be contacted when the contract has been fulfilled to check in and perhaps schedule a meeting at that time.

If no agreement has been reached, explain that the case will go back to the referring agency and that it will be the agency's responsibility to decide what happens next. Thank them for coming.

As soon as possible after the meeting the mediator will need to do three things:

1. Write explicit notes summarizing the process.
2. Fill out the quick evaluation form provided.
3. Return case packet, report (including evaluation form), contract and all referral papers, to the victim offender program office.

Cases should be returned to the victim offender office as quickly as possible, especially since a person on probation may be meeting shortly with a probation officer and it is good if they can have a final report of the meeting when that occurs. Some persons may actually get off probation as soon as such a report is received.

Traditionally, programs have requested a written report from the mediator which is passed on to the referral source. There is no one "right" form for this report. *A sample is provided on page 151 in the Appendix.* Again, keep in mind that program staff will actually be writing the final report. Because of the issue of confidentiality (and because of already feeling overburdened) referral sources are requesting that they be sent only a copy of the agreement be sent instead of the entire final report. This decision needs to be made by each program. If programs choose to use a final report, this is typically what has been included in each section:

1. One section for preliminaries or initial meetings. In this section describe any particular problems occurred prior to the meeting such as difficulty contacting the victim or obtaining consent to proceed, problems about amounts involved or difficulties establishing a date to meet.
2. A second section describes the meeting, including the atmosphere and key aspects of what went on. If forgiveness or reconciliation occurs, that should be highlighted here. If the atmosphere is negative, that should be noted but not dwelt on excessively.
3. A third section deals with restitution and simply summarizes the agreement established and a bit about the process that preceded it. If there are any special procedures for repayment, they should be noted, as well as any repayment schedule. This is the place to clarify any special arrangements for restitution that might not be clear in the contract.
4. Finally, end with a sentence or even a paragraph summarizing the meeting and its outcome.

#### **Step 4a. Mediator Returns Case**

Programs should request that mediators make an appointment with the Victim Offender Conference staff person when a case is being returned for a debriefing and evaluation session. It is critical to provide an opportunity for mediators to talk over

the details of each case and ask questions about stumbling blocks which arose or other concerns they may have. During that time the staff person and mediator should discuss the evaluation form completed by the mediator. The evaluation form provided is intended for program use, and does not go to the referring agency. It can be filled out simply by checking the appropriate spaces, and represents the mediator's evaluation of the process.

#### **Step 4b. Staff Processing**

Once the case is returned by the mediator, the data needs to be documented in your case management system. The agreement should be entered so that follow-through on restitution can occur efficiently and accurately. Follow-up letters to the victim and offender should be sent, along with an evaluation form. The agreement should then be sent to the referral agency.

#### **Step 4c. Restitution Monitoring**

This is a particularly critical aspect of the entire process. If proper monitoring is not done, the victim often feels revictimized by a process they have put their trust in. Since mediators are carefully instructed to make the agreement very specific, it is important that monitoring occurs when that agreement specifies payments (or other form of restitution) are to be made. It will mean a staff person (or volunteer) makes phone calls to victims and offenders to ensure that the process is proceeding according to the agreement and to intervene if it is not. There are also times when problems arise and need to be worked out. Occasionally a new contract may need to be negotiated (perhaps the offender loses his job and can't keep up the payments, for example). Sometimes the staff negotiates problems themselves, but other times they may get back in touch with the mediator to see if he or she is willing to do it.

#### **Step 5. Closing the Case**

When the restitution has been paid—or if you have determined that it will not be paid—it is time for the case to be closed. The forms are brought up to date and a final report is sent to the referral agency.

It may be well to arrange a follow-up meeting between victims and offenders, if they are interested, in order to bring closure to a successfully-completed agreement. The mediator is often contacted (if arrangements were not made at the joint meeting) to determine if the parties are willing to come together to discuss the completion of the agreement.

This meeting should be one where they can discuss how they feel about the contract now fulfilled. It will also provide a time for them to be congratulated on their successful participation in the Victim Offender Conferencing process.



# Role of the Mediator

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This section provides a variety of information about the role of mediators.

## Standards of Conduct

A “Model Standards of Conduct for Mediators” was prepared from 1992–1994 by a joint committee composed of delegates from the American Arbitration Association (AAA), the American Bar Association (ABA) and the Society of Professionals in Dispute Resolution (SPIDR). The model standards have been approved by the AAA, the Litigation Section and the Dispute Resolution Section of the ABA and SPIDR.

The following are excerpts from the “Model Standards of Conduct for Mediators” with some comments specifically on Victim Offender Conferencing where appropriate.

The purpose of the initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners—a beginning, not an end. The model standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.

The model standards of conduct for mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice.

*A summary of the standards are included on page 123 in the Appendix.*

**Self-determination: A mediator shall recognize that mediation is based on the principle of self-determination by the parties.**

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

- A mediator may provide information about the process, raise issues, and help parties explore options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement.

**Impartiality: A mediator shall conduct the mediation in an impartial manner.**

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and even-handed. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

- As stated above, impartiality is key. Mediators must be aware of their own personal agenda that they bring to the table. When working with victims and offenders it will be difficult not to have feelings regarding one side or another. The key will be learning to recognize personal issues and decide whether you, as the mediator, can remain evenhanded throughout the process. If, for example, the mediator meets with the victim and realizes that his or her victimization is similar to an experience of the mediator which has never been resolved, the mediator must decide whether he or she needs to deal with those unresolved feelings before proceeding.
- The mediator should guard against partiality based on the parties' personal characteristics, background or performance at the mediation.

**Conflict of interest: A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to have the mediator present. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.**

- A mediator shall avoid conflicts of interest in recommending the services of other professionals.
- The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should not influence the mediator to coerce parties to settle.
- An example of conflict of interest would be a case in which either the victim or offender is known to the mediator. The issues are twofold; whether the mediator believes he/she can remain impartial and secondly, whether all parties have been informed of the conflict of interest and agree that the mediator can proceed. In one case where the mediator was known to the victim, all par-

ties agreed to proceed and they were fortunate to find a co-mediator who was known to the offender which seemed to even up the process.

**Competence: A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.**

- Mediators should have information regarding their relevant training, education, and experience available for the parties.

**Confidentiality: A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.**

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

- The parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, to observe live mediations and interview participants.

**Quality of the process: A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.**

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice.

**Advertising and solicitation: A mediator shall be truthful in advertising and solicitation for mediation.**

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

**Fees: A mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties.**

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of the mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

- This issue is especially relevant to victim offender conferencing when the parties are referred, in most cases, by a third party. Given the dilemma of who to charge, most Victim Offender Conferencing programs do not charge a fee for mediations. When the offender is charged there is the issue not only of ability to pay, but also whether the offender would choose to participate in a process where not only does he/she know they will be confronting their victim but must also pay to do so. Further, charging a victim seems to perpetuate further victimization. This issue, however, changes as mediators begin working on cases of severe violence where the mediation is often initiated by the victim rather than referred by a third party. In those cases, the person initiating the services has been charged for services. This is an ongoing debate within the field of victim offender conferencing.
- This issue is relevant to victim offender conferencing when there is a question about whether the offender is, in fact, a voluntary participant and allowed to withdraw from the mediation even though he/she has been court mandated if they do not want to pay a fee.

**Obligations to the mediation process: Mediators have a duty to improve the practice of mediation.**

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

## Standards for Mediators

An important issue that has not been fully addressed and developed within the field of victim offender mediation is that of qualifications for mediators. A taskforce for credentialing mediators (convened by the PA Council of Mediators) has been assigned the duty of putting together such qualifications which would include performance criteria for those mediators specifically conducting victim offender conferences. Below is a draft of the standards of practice developed by members of the task force.\*

### **Skills necessary for competent performance as a mediator include:**

1. Ability to listen actively to both sides of a crime experience;
2. Ability to identify and separate issues related specifically to the crime as well as screen out non-mediatable issues;
3. Ability to use clear language in speaking and in writing;
4. Awareness and sensitivity to strongly felt values of the parties, including gender, ethnic and cultural and lifestyle differences;
5. Ability to explore complex and sometimes contradictory factual and emotional information;
6. Ability to be a non-anxious presence;
7. Ability to be persistent in a process that may require multiple contacts over an extended period of time;
8. Ability to identify and to separate the mediator's personal values from issues under consideration;
9. Ability to understand power imbalances and to recognize the unique circumstances regarding power imbalances between victims and offenders;
10. Ability to facilitate the process so participants can determine their own appropriate resolutions, including creative options;
11. Ability to show respect for all participants;
12. Ability to maintain confidentiality;
13. Ability to invite participants into a constructive process and to guide them in a process of decision-making;
14. Ability to assist parties in assessing whether their agreement can be implemented;
15. Commitment to Victim Offender Conferencing as one practical application of restorative justice.

### **Knowledge of the Victim Offender Conferencing process:**

1. Familiarity with existing methods of practice covering the Victim Offender Conferencing process;
2. Familiarity with commonly encountered ethical dilemmas;

\* Compiled by taskforce members Lorraine Stutzman Amstutz, Trish Charo, Jane Riese and Barb Toews.

3. Awareness and sensitivity to the specific needs and issues of both victims and offenders;
4. Knowledge of available community resources;
5. Basic knowledge of the justice system;
6. Demonstrated adherence to ethical standards.

## Assuring Mediator Competency

While proponents of Victim Offender Conferencing have not come up with a set of standard guidelines to assure mediator quality, it is an issue that is discussed not only in the victim offender arena, but in the general field of dispute resolution. Some of the questions being raised are about the most effective ways to develop and measure competency for mediators. Should mediators be certified? Key questions that programs should be asking may include:

1. What are the life skills, experience, education and training that each mediator brings to your program? How can the combination of the above be measured to ensure competency for all mediators?
2. Does each program adhere to a standard training, which includes theoretical as well as practical skills, recognized within the victim offender field that all mediators must take part in before conducting any mediations?
3. What kind of supervision is provided for mediators before they are able to take their first solo case?
4. Do programs provide in-service trainings to their mediators to ensure that they are continuing to upgrade their skills and knowledge?
5. How are mediators and programs evaluated for competency by the participants of the mediation process?

## Self-Assessment for Victim Offender Mediation and Dialogue Facilitators

*by Rachel S. Lipkin, MSW, LGSW*

When facilitating meetings between victims of crime and the offenders who commit them, the mediator or facilitator may be exposed to intense emotions in the course of victims “telling their stories.” In addition, the mediator may come in contact with participants who are of other cultures or ethnicities or who have personal values which are different from those of him or herself. Because one of the mediator’s primary roles is to guide open and safe discussion of sensitive issues, it is imperative that the mediator possess a self-awareness about his or her own attitudes, assumptions and feelings which may be culturally or experientially based and which might serve as obstacles to the process of mediation or dialogue. The mediator is ultimately involved to serve the needs of victims and offenders in dialogue—not to meet his or her personal needs or motivations.

This is not to say that a mediator or dialogue facilitator is “value-less.” On the contrary, these meetings are not simply the coming together of equal parties. Clearly, a victim did not choose to be a victim of crime and an offender made the choice to commit a crime. The victim’s needs are central to the process. However, an offender needs to be treated with respect. For the process to be restorative, the offender is *given* the opportunity to take responsibility for his or her behavior. The mediator or facilitator’s role is not to pass judgment—but to facilitate open communication.

As a mediator or facilitator, it is helpful to reflect on the following questions in order to create a safe and helpful environment for dialogue:

Are there things that were said or actions taken by either the victim or offender which cause you to have an emotional reaction? If yes, does that reaction cause you to act in a particular way? Is your reaction harmful to the process? Does it get in the way—or is it helpful? Why do you think you react the way you do?

Is your view and reaction based on *your* own assumptions and issues? Are those assumptions valid?

Do you need to educate yourself regarding a cultural context or value you do not understand?

Do you have a particular bias? Does it create any obstacles? Can you set it aside?

Does the issue both the victim in the same way? Is that okay?

Does the issue both the offender the same way? Is that okay?

Is it *your* issue, or is it the victim or offender’s issue?

Does the action or belief of a participant which you react to contribute directly to the offense? (If you do not know, ask).

Does it bother any of the parties?

Is it an obstacle to the mediation? (If it is or if it contributes to the offense, you might consider asking whether the parties would want to focus on it).

Are you willing to learn more about the lives and experiences of people you might be uncomfortable with? Where does this discomfort come from? Is it reality-based?

Are you culturally and professionally competent?

Do you know enough about the experiences of victims of crime?

Do you know about the experiences of offenders?

Do you know about the cultural context each party is coming from?

Is it beyond your knowledge, training, skill or experience?

Would it be beneficial or workable to co-facilitate with someone more appropriately skilled or knowledgeable?

***It is imperative that the mediator possess a self-awareness about his or her own attitudes, assumptions and feelings which may be culturally or experientially based and which might serve as obstacles to the process of mediation or dialogue.***

***The mediator or facilitator’s role is not to pass judgment—but to facilitate open communication.***

Are any of the parties using objectional language or characterizations which are based in racism, sexism, heterosexism, ablism, ageism, or classism?

Do their actions or beliefs contribute to the offense?

Do their actions or beliefs prevent a meaningful dialogue?

Is there anything you could do to facilitate an open dialogue?

Are you able to assess the power differentials between the victim and the offender?

Is there abuse, chemical dependency or family violence which may affect the dialogue?

Do you have the resources to receive consultation or supervision regarding how to deal with issues as they arise? Are you willing to seek consultation?

Used with permission by Mark Umbreit, Center for Restorative Justice and Mediation, Si. Paul, Minnesota.

## Functions of the Mediator

Basically there are four functions for a facilitator/mediator:

### Keep it going

It is the mediator's responsibility to develop and maintain interest in and commitment to the encounter. Following are some suggestions:

1. Be supportive, reassuring and encouraging. This helps to develop a commitment to the discussion and to avoid dependence on you as a facilitator.
2. Build trust by:
  - being a good listener,
  - encouraging both sides to share their perspectives and feelings,
  - avoiding taking sides, and
  - always doing what you say you will do.

A mediator may at first be a bridge or channel through which the two sides communicate until they are comfortable talking directly to one another, but the aim is to have them talk to each other, not to the mediator.

3. Provide hope of a positive outcome in order to keep motivation up.
4. Help to equalize situational power. Such meetings may involve participants who have radically different positions of power. The stronger party will tend to feel "Why should I elaborate my views?" and may withdraw. The mediator can help to equalize the situation by:

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Basically there are four functions for a facilitator/mediator:

- Keep it going
- Monitor the process
- Diagnose the relationship
- Regulate the interaction

- giving both sides equal time,
- making points which may have been missed,
- being careful to address both sides equally, and
- choosing a seating arrangement and/or a place of meeting that does not emphasize differences in power.

This is discussed again later in the question-answer section.



5. Attempt to encourage a commitment on the part of all participants to be constructive. Discourage tendencies toward blame-fixing. Provide a balance where both sides see themselves as interdependent and willing to accept responsibility for their respective roles in the dispute.

### **Monitor the process**

It is the mediator's job to monitor and improve communication. Communication problems often are present or develop in such situations, but they may be a particular issue if the two parties have had a prior relationship and communication previously has broken down or has developed a certain pattern. Here are some suggestions for assisting this process of communication:

1. Be aware of the special meanings of certain words, especially if participants come from different cultural or age groups. You may need to probe for elaboration and further information to ensure that real communication is taking place and to restate things in other language.
2. Summarize often what each person says for accuracy (for example, "Do I hear you saying that . . . ?", "You are saying that . . ."). This ensures accuracy of communication and helps to make sure that ideas are heard and understood. Moreover, by restating things in your own language, you may be able to clarify ideas. You may also want to ask each of the participants to restate or summarize what the other has said. This clarification and feedback function is one of your most important roles!
3. Encourage expression of feelings. Emotions are often guarded and hidden; sometimes participants may not even realize that these feelings are present. Hidden emotions are one of the greatest obstacles to real communication and to reconciliation. Thus getting them into the open is often helpful, even though it may be painful and cause some conflict. Emphasize the importance of the candid expression of feelings early on in the discussion and, where necessary, remind the parties to express their feelings. Feelings that need to be expressed are both past emotions (for example, "How did you feel when this happened?" or "I imagine that you must have been pretty angry") and present emotions (for example, "How do you feel about Mr. X now?" or "You sound frustrated—are you?", "You seemed pretty angry when we started; how do you feel now?").

### **Diagnose the relationship**

You need to diagnose the relationship, both for yourself and perhaps for participants. Here are some ideas:

1. Try to remain sensitive to what is going on—how participants are acting, feeling, etc. Take clues from facial expressions, body language, comments.
2. Try to separate in your mind factual and emotional issues. Factual and emotional issues are often mixed, and it is helpful to sort them out. Draw out of each person details and feelings about the events.

3. Perhaps offer occasional observations about the discussion (for example, “I noticed that you both seem more relaxed now”). This serves both to help persons be aware of what is going on (and perhaps stimulate self-diagnosis) and provides an example of someone communicating openly.
4. It may be necessary to confront one or both parties if you notice that they are undermining the process or seem insincere. Be careful about this, though.

### **Regulate the interaction**

It is your responsibility as facilitator to regulate the interaction. You have to act as referee, encouraging or discouraging expression, and preventing monopolization by one side. Some ideas have already been suggested, but several other points may be noted:

1. There is bound to be tension. Some tension is good, but if it is too high, the participants’ ability to see each other objectively may be reduced. Try, therefore, to establish a relaxed but purposeful atmosphere. Don’t try to head off all conflict, though; feelings may need to be expressed and any hidden feelings or agenda need to be brought out. In fact, some argue that the more emotions that are expressed, the greater the likelihood of real reconciliation.
2. It is your job to determine the length, time and setting of the meeting. You may need to suggest termination or postponement under some circumstances. You may also need to regulate the pace, keeping it from moving too fast or too slowly or suggesting that you move from one topic to another. You will need to help to direct the issues discussed, keeping discussion on relevant points.

Adapted and used with permission by Ron Claassen, Restorative Justice project, Fresno, CA.

## **Do’s for the Mediator**

### **Do remember that participation is voluntary**

Regardless of 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.

### **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.

### **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 you might

ask if they'd like you to explain common options again: monetary restitution, community service, personal service, donation to charity, school grade improvement, other creative solutions.

### **Do encourage participants to talk directly to each other**

Participants will know they need to speak to each other, from information shared by the mediator at the pre-conference interview (again, assuming this is within their cultural context). At first it may be difficult for them to do this. They may be more comfortable looking at the facilitator. Facilitators can help them overcome their reluctance to look at one another by directing their own focus to the listener and away from the speaker.

### **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 facilitator 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. For example, "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?"

### **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 facilitator 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. Reframing the statement shifts the focus away from the position toward the underlying needs and interests of the speaker.

### **Do remind participants of the ground rules**

Give participants a chance when ground rules are broken by reminding them of what they verbally agreed to in the beginning of the conference (e.g. no name calling, no interrupting, being respectful). Let them know that if one or the other continues to interfere with the process that the conference will terminate.

*Adapted from VOM Training Manual. Dr. Mark S. Umbreit, Center for Restorative Justice & Mediation, School of Social Work, University of Minnesota. Used with Permission.*

## **Don'ts for the Mediator**

### **Don't solve problems for the participants**

Both victims and offenders need to be in charge of their discussion since it is their mediation. Mediators can assist with suggestions if participants are truly stuck but only with their permission.

### **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. A victim who does not understand mediation may interrogate the offender. The mediator needs to remind all participants about the purpose of the conference. 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 participants to resolve the situation.

### **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. Encourage each of the participants to be open and proceed in a mutual problem-solving mode, using caucus if necessary. If arguing continues, end the conference, giving participants the option to try again at a later date.

### **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".

### **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.

### **Don't write an agreement compensating for pain and suffering**

Only out-of-pocket losses may be paid to victims. The courts do not allow payment for pain and suffering.

### **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.

### **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.

Adapted from *VOM Training Manual*. Dr. Mark S. Umbreit, Center for Restorative Justice & Mediation, School of Social Work, University of Minnesota. Used with Permission.

## Sample Mediator Job Description

### Time involved

Normally one case referral/month, or about three to four hours

### Skills necessary

- Ability to express oneself orally
- Ability to listen and to put people at ease
- Patience for detail work, toleration of delay and frustration
- Willingness to explore feelings
- Tendency toward non-aggression
- Concern for peace and problem-solving in the community
- Access to telephone and transportation

### Duties

- Assist VOC staff in the screening process
- Make separate contacts with victims and offenders to explain Victim Offender Conferencing and solicit participation
- Arrange and facilitate a meeting between victim and offender
- Supply a summary of the meeting and complete a brief evaluation form
- Return all material regarding the referral to the VOC office
- Refer any questions of victim or offender that you can't answer to the Victim Offender Conferencing office

### Accountability

The Victim Offender Conferencing volunteer works directly with the volunteer coordinator and case manager

### Confidentiality

In order that the volunteer will keep all information regarding a referral confidential, he/she will agree to the following:

- Any information read or received by me in regard to cases filed in court or in regard to any victim or offender will be held strictly confidential and will not be mentioned in conversation or communication with anyone not connected with the courts or the VOC program.
- I understand the tasks of the volunteer mediator and will carry out those tasks to the best of my ability.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## Mediator Agreement and Release

As a mediator with the Victim Offender Conferencing Program, I agree that any information read or received by me in regard to cases filed in Court or in regard to any victim or offender will be held strictly confidential and will not be mentioned in conversation or communications with anyone not connected with the Courts or the Victim Offender Program.

I understand that the Victim Offender Conferencing Program carries no insurance of any kind which would cover me while I am a mediator. I agree to use only an insured vehicle or public transportation while traveling on a case and will carry any health/accident/disability/liability insurance I feel necessary. I specifically release the Victim Offender Conferencing Program, its directors, employees and volunteers from any liability for injuries to me while serving as a volunteer.

I understand that in working with the cases I am assigned, I am to use my own judgment in setting up and handling the cases in a safe manner. I further understand that conferencing is a voluntary process and that if someone does not wish to participate they do not have to. It is never my responsibility to attempt to force or coerce either a victim or offender.

I understand that if I feel more comfortable having someone accompany me for mediations, that can be arranged with the program staff.

If during the individual meetings with the victims and offenders or at anytime during the process, I believe the participants in the process may become physically or verbally abusive to myself or to the other participants, I agree to terminate the process and immediately contact the Victim Offender Conferencing Program staff.

I understand that if the location, time or other conditions of the process become a safety concern, at any time during the process, I can to cease the activity and/or leave the location immediately and contact program staff.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Adapted and used with permission from Barb Toews, LAVORP, Lancaster, PA.

# Training Outline

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**T**here is ongoing debate within victim offender circles about two issues: what needs to be included in training and how long VOC training should be.

The Victim Offender Mediation Association (VOMA) has, for the past two years, conducted a basic victim offender mediation training at their annual conference which includes 24 hours of basic skills. While there is no certification for victim offender mediators, VOMA plans to offer this as a “training standard” that can be used by other Victim Offender Conferencing programs. The VOMA training has not yet been voted on by the membership and is therefore not an official standardized training.

Many programs are also utilizing mediators trained in the basic community mediation model. While there are similarities in some of the training there is clearly a different language used between the two models. In the community mediation model the parties are referred to as “disputants” which is clearly inappropriate in the victim offender mediations. There is often a past as well as ongoing relationship among disputants in the community mediation model and the mediator must facilitate a process involving many interests and issues. In the victim offender model, the issues are much more focused; a wrong has been committed and the issue is one of acknowledging and repairing the harm.

The length of mediation training provided by programs in the field range from 9 to 40 hours. Training needs to introduce facilitators to the concept of Victim Offender Conferencing and its historical context within the criminal justice system. Each local program must explain how their program operates within its jurisdiction as well as the nature of the referrals. The training agenda also reflects the need to focus on skill-building in terms of communication skills, styles of responding to conflict, problem solving, role of the mediator. Training also needs to include the varied elements of the overall process such as initial phone calls, individual meetings with victims and offenders, components of the joint meeting. Time for role playing is an essential part of the training in order to have potential mediators “test the waters”

in terms of serving in the role of facilitator as well as experiencing in some small way how it feels to play the role of victim or offender or a parent of either participant.

The following is a same agenda used as a guideline for Victim Offender Conference trainings we conduct, along with the handouts (*located in Appendix*) we use as supplements to the trainings.

## Sample Training Schedule

Handouts/Overheads for the training are located in the Appendix, unless noted. Any training should reflect the needs of the program. For example, programs working with more serious cases would have more time devoted to the issue of victim and offender sensitivity and needs. For the purpose of this curriculum, we have chosen an agenda which we believe reflect the needs for the cases being conferenced.

### Day 1

8:30–9:00	Introductions/overview of agenda
9:00–10:30	Restorative Justice/History and overview of Victim Offender Conferencing
10:30–12:00	Juvenile justice system and offender awareness issues
12:00–12:30	Lunch
12:30–2:00	Offender awareness issues continued
2:00–5:00	Victim awareness and sensitivity

### Day 2

8:30–9:30	Benefits and risks of Victim Offender Conferencing
9:30–12:00	Communication skills and conflict resolution skills
12:00–12:30	Lunch
12:30–1:30	Communication skills continued
1:30–2:00	Review victim offender conferencing process
2:00–3:00	Role of the mediator/models of mediation (see Chapter 7)
3:00–4:00	Offender phone call and initial meeting role play
4:00–5:00	Victim phone call and initial meeting role play

### Day 3

9:00–9:45	Review joint meeting information
9:45–10:45	Story telling role play
10:45–11:15	Restitution issues
11:15–12:30	Restitution role play
12:30–1:00	Lunch
1:00–3:15	Role play (entire meeting)
3:15–4:00	Quick Decisions
4:00–4:30	Wrap-up



# Program Evaluation Issues

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**H**ow to evaluate the program you are starting may seem like a very distant concern. If you are like most organizers, it is all you can do to figure out how to put the pieces together to get the program started. Even after the program is up and running, program staff and boards often consider evaluation a bother—or even a threat.

But evaluation can be extremely valuable and, at any rate, will probably be required at some point by funding sources. By proactively planning for evaluation, you can help to ensure that you are collecting the right data and developing the necessary documents so that evaluation can take place with a minimum of complication.

Evaluation can play a variety of roles. It can help you know—and demonstrate to referring agencies and funding sources—that you are delivering the service you claim to be. It can also help you to determine whether your practice is consistent with your stated goals and whether the actual goals in practice are the same as what they are claimed to be. It can help you determine whether all the key actors in the program in fact have the same goals and, if not, whether contradictory goals are at work.

Evaluation can also be used as a problem-solving or even conflict-resolution approach. One VOC in which we were involved developed a great deal of conflict and suspicion among the board and supporting agency. An evaluation by an outside evaluator helped us to identify problem areas and to develop policies and procedures to address those problems. Without this evaluation, the program probably could not have continued.

Two basic types of evaluation are likely to be most relevant to your program. What we usually think of as program evaluation is called *summative evaluation* by researchers. This is designed to evaluate and improve your services. Through interviews, observation and the collection and analysis of program statistics summative

*Summative evaluation is designed to evaluate and improve your services.*

*Formative evaluation is intended to help in developing, or further developing, the program overall.*

evaluation helps determine the effects and effectiveness of the program. How many referrals are not resulting in meetings, for example, and why? To what extent are attitudes changed? Are victims needs being met? Reports on such questions can be used to gain support for the program as well to improve service delivery. Summative research is what usually comes to mind when we think of program evaluation.

But a second basic form of evaluation can be equally helpful. *Formative evaluation* is intended to help in developing, or further developing, the program overall. For example, one important form of formative evaluation is conducted by interviewing as many key actors (staff, volunteers, board members, referring agencies, etc.) as possible. Interviews focus on what each of these actors see to be the goals as well as the strengths and weaknesses of the program. This not only generates information that is extremely helpful to the program, but also helps these actors to feel that they are being consulted; it helps to develop awareness of and support for the program.

***For this kind of evaluation to take place, it is important to have developed a clear mission statement as well as a brief statement of philosophy.***

***To evaluate whether the program is in fact consistent with restorative principles, the “restorative justice signposts” included earlier in this curriculum may be helpful.***

In several victim offender conferences the evaluator interviewed approximately 50 people from the staff, volunteers, board, referring agencies and the community. A report was then prepared which helped to identify strengths and weaknesses of the program and made recommendations for changes. In addition to preparing a written report, the evaluator met with the staff and board to report his findings and lead them in a discussion about how to implement them. Out of this process came improved programs and stronger relationships with the various individuals and groups which are part of the program network.

This evaluation helped to identify the variety of goals—some of them conflicting—that various actors brought to the program. It also identified ways in which the program in practice was not consistent with the expressed mission and goals, nor with the principles of restorative justice.

For this kind of evaluation to take place, it is important to have developed a clear mission statement as well as a brief statement of philosophy. The importance of this is developed further in the article, “Justice Paradigm Shift? Values and Visions in the Reform Process” (see *Other Resources*, page 89; and page 159 in the Appendix).

To evaluate whether the program is in fact consistent with restorative principles, the “restorative justice signposts” included earlier in this curriculum may be helpful.

Again, at this stage programs are probably preoccupied with the complexities of getting started. While programs do not need to develop the evaluation details now, it is important that you make explicit plans for evaluation points along the way and that you take into consideration now the kind of information you will need: a mission statement, explicit program goals and the categories of statistics that you will need.

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# Other Resources

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## Chapter 2

### Victims

Herman, J. L. *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror*. (Basic Books, 1997). (The best book on the victim experience.)

Ogawa, Brian. *Color of Justice: Culturally Sensitive Treatment of Minority Crime Victims*. (Calif. Office of Criminal Justice Planning, 1990). (Excellent on how people of various ethnicities experience crime and justice.)

Young, Marlene. *Victim Assistance: Frontiers and Fundamentals* (Kendel Hunt). (For service providers; has good introduction to victims' crisis responses.)

Zehr, Howard. *Changing Lenses: a New Focus for Crime and Justice* (Herald Press, 1995). (Includes chapters on victim and offender experiences.)

Zehr, Howard. *Who is My Neighbor? Learning to Care for Victims of Crime* (Mennonite Central Committee). (Small booklet; overview of victim experiences and needs.)

### Offenders

Johnson, Robert. *Hard Time: Understanding and Reforming the Prison* (Wadsworth, 1996, 2nd ed.). (Good on the experience of prison.)

Braithwaite, John. *Crime, Shame and Reintegration* (Cambridge, 1989). (Criminological perspective centered on forms of shame.)

Donzinger, Stephen (ed). *The Real War on Crime: The Report of the National Criminal Justice Commission* (Harper/Perennial, 1996). (Top-notch look at myths and realities of crime and justice today.)

Zehr, Howard. *Changing Lenses*. Herald Press

## Research

- McCold, Paul. *Restorative Justice: An Annotated Bibliography 1997* (Criminal Justice Press, 1997). (See for other sources.)
- Mika, Harry (ed). *Victim and Offender Mediation: International Perspectives on Theory, Research, and Practice*; Spring 1995 Special Issue of *Mediation Quarterly*, Vol. 12, No. 3. (Includes summary of research in North America and England.)
- Umbreit, Mark S. *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Criminal Justice Press, 1994). (Recent research on victim-offender mediation.)

## Chapter 3

- Corrections Today*, December 1997. (American Correctional Association). (This issue focused on restorative justice.)
- Immarigeon, Russ. *Reconciliation between victim and imprisoned offenders: Program models and issues* (Mennonite Central Committee).
- Galaway, Burt et. al. (eds). *Family Group Conferences: Perspectives on Policy and Practice* (Criminal Justice Press, 1995).
- Galaway, Burt and Hudson, Joe (eds). *Restorative Justice: International Perspectives* (Criminal Justice Press, 1996).
- Mika, Harry (ed). *Victim and Offender Mediation: International Perspectives on Theory, Research, and Practice*; Spring 1995 Special Issue of *Mediation Quarterly*, Vol. 12, No. 3.
- “Prison and Its Alternatives.” Transcript of CBC *Ideas* series aired June 17–28, 1996. (Best short account of restorative justice.) Canadian Broadcasting Corporation Radio, PO Box 500, Station A, Toronto, Ontario M5W 1EP.
- Satisfying Justice: Safe Community Options*. (Best sampling of program models, case studies and discussion of pros and cons.) Church Council on Justice and Corrections, 507 Bank St., Ottawa K2P 1Z5, 1996).
- Stuart, Barry. *Building Community Justice Partnerships: Community Peacemaking Circles* (A how-to guide) (Aboriginal Justice Section, Dept of Justice Canada, Ottawa K1A 0H8, 613-94-4105, 1997).
- Umbreit, Mark. *Mediating Interpersonal Conflicts: A Pathway to Peace* (CPI Publishing, 1995). (Includes VORP and mediation in serious violence.)
- Umbreit, Mark S. *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Criminal Justice Press, 1994).
- Umbreit, Mark S. and Zehr, Howard. “Restorative Family Group Conferences: Differing Models and Guidelines for Practice,” *Federal Probation*, September 1996. (Compares VORP and FGC—though some of the problems in FGCs have been addressed since this was published.)
- Van Ness, Dan and Strong, Karen Heetderks. *Restoring Justice* (Anderson, 1997).

## Chapter 4

- Consedine, Jim. *Restorative Justice: Healing the Effects of Crime* (Plowshares, New Zealand, 1995; new edition forthcoming). (Good overview of restorative justice, including international/historical examples.)\*
- Corrections Today*, December 1997. (American Correctional Association). (This issue focused on restorative justice.)
- Galaway, Burt and Hudson, Joe (eds). *Restorative Justice: International Perspectives* (Criminal Justice Press, 1996). (Important collection of state-of-the-art writing on restorative justice.)
- McCold, Paul. *Restorative Justice: An Annotated Bibliography 1997* (Criminal Justice Press, 1997).
- Mackey, Virginia. *Restorative Justice: Toward Nonviolence* (Presbyterian Criminal Justice, 1992; 800-524-2612). (Study and discussion guide.)\*
- "Prison and Its Alternatives." Transcript of CBC *Ideas* radio series aired June 17–28, 1996. (Canadian Broadcasting Corporation Radio, PO Box 500, Station A, Toronto, Ontario M5W 1EP). (Best short account of restorative justice theory and practice.)
- Ross, Rupert. *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin, 1996). (For those interested in indigenous justice values.)
- Satisfying Justice: Safe Community Options* (Church Council on Justice and Corrections, 507 Bank St., Ottawa K2P 1Z5, 1996).
- Van Ness, Dan and Strong, Karen Heetderks. *Restoring Justice* (Anderson, 1997). (Includes not only the theory but an attempt to address implementation issues.)
- Wright, Martin. *Justice for Victims and Offenders* (Waterside Press, U.K., 1996, 2nd ed.). (Overview and summary of restorative theory and practice.)
- Zehr, Howard. *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 1990, revised 1995). (Critique of justice and outline of restorative theory and practice.)\*
- Zehr, Howard; Van Ness, Dan; Harris, M. Kay. *Justice: The Restorative Vision* (Mennonite Central Committee, 1989). (Booklet containing three papers.)\*

### Videos:

- Restoring Justice*. Produced by Presbyterian Church (U.S.A.), 100 Witherspoon St., Louisville, KY 40202-1396; 50 minutes; available for purchase at \$5.00 plus shipping and handling (800-524-2612).
- Restorative Justice: Making Things Right*. Produced by Mennonite Central Committee U.S.; 22 minutes; available for purchase or free loan.\*

\* Materials with an asterisk available from Mennonite Central Committee, 21 S. 12th St., Akron, PA 17501. A "Crime and Justice Resource List" and an Audiovisual Catalogue are available free. Phone 717-859-1151.

## Chapter 9

Robson, Colin. *Real World Research* (Blackwell Publishers, 1993).

Stringer, Ernest. *Action Research: A Handbook for Practitioners* (Sage, 1996).

Zehr, Howard. *Justice Paradigm Shift? Values and Visions in the Reform Process*, in *Mediation Quarterly*, Special Issue: *Victim Offender Mediation: International Perspectives*, Spring, 1995 (Vol. 12, No. 3), 207–216.

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# Appendix

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## **To Experience Justice**

### **Crime victims need . . .**

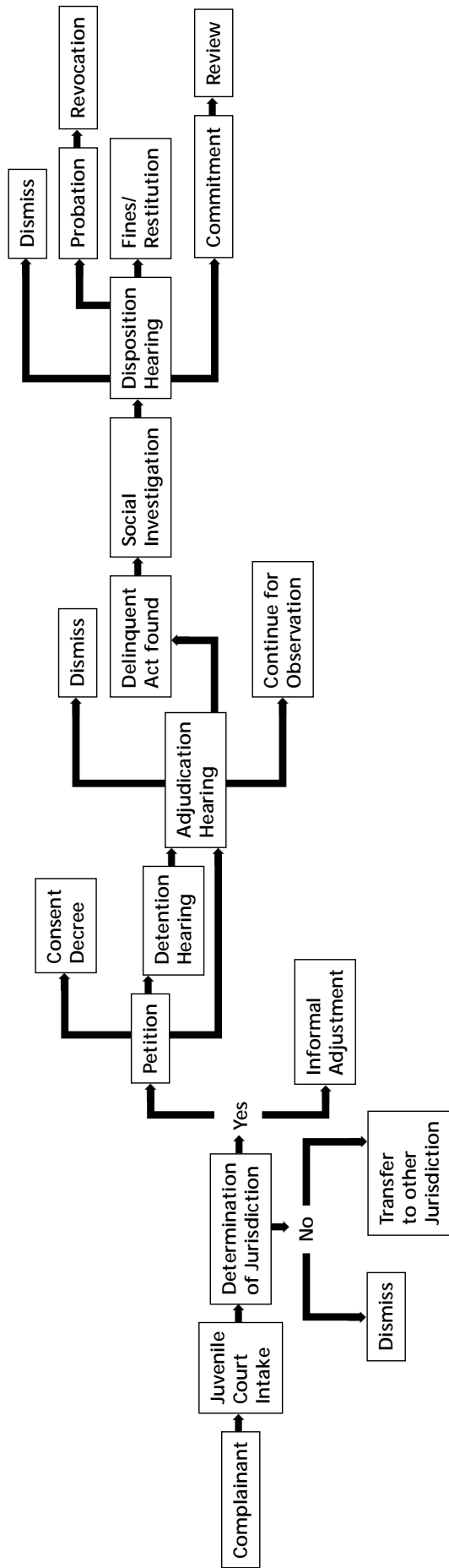
1. Compensation for losses
2. Answers:
  - What happened?
  - Why did it happen to me?
  - Why did I act the way I did at the the time?
  - Why have I acted as I have since that time?
  - What if it happens again?
  - What does this mean for me and for my outlook?  
(my faith, vision of the world, my future?)
3. An opportunity for the expression of feelings
4. Empowerment
5. Safety

### **Offenders need to . . .**

1. Be accountable and responsible
2. Understand human consequences of what happened
3. Face up to what one has done and to whom
4. Be part of the process and take steps to repair damage



### Juvenile Court Flow Chart



Reprinted from Pennsylvania Juvenile Delinquency Practice & Procedure by Francis Barry McCarthy.

## Prisoners

**We want them to have self worth . . .**

*So we destroy their self-worth.*

**We want them to be responsible . . .**

*So we take away all responsibilities.*

**We want them to be part of our community . . .**

*So we isolate them from our community.*

**We want them to be positive and constructive**

*So we degrade them and make them useless.*

**We want them to be trustworthy . . .**

*So we put them where there is no trust.*

**We want them to be nonviolent . . .**

*So we put them where there is violence all around them.*

**We want them to be kind and loving people . . .**

*So we subject them to hatred and cruelty.*

**We want them to quit being the tough guy . . .**

*So we put them where the tough guy is respected.*

**We want them to quit hanging around losers . . .**

*So we put all the losers in the state under one roof.*

**We want them to quit exploiting us . . .**

*So we put them where they exploit each other.*

**We want them to take control of their lives, own their problems, and quit being a parasite . . .**

*So we make them totally dependent on us.*

Reprinted from *Making it right: A common sense approach to criminal justice* by Dennis A. Challeen. Melius & Peterson Publishing Corporation, 1986, pp. 37–39.

## Some Do's and Don'ts when working with victims

DON'T SAY:	DO SAY:
I understand how you feel . . .	I'm sorry it happened . . .
You're lucky it wasn't worse . . .	I'm glad you're talking with me . . .
Don't worry. It'll be ok . . .	It wasn't your fault . . .
Calm down. Relax . . .	I can't imagine how terrible you're feeling . . .
Try to be strong . . .	You're not going crazy . . .

**The justice system's treatment of crime victims can elicit a response similar to that of the criminal act. This is referred to as "secondary victimization." Some of the reasons may be:**

- Strangers, all types of justice players who haven't explained the rules of the game, now enter their lives
- Lack of knowledge and understanding of the system
- Court is inconvenient
- "Fear Factor" of having to meet with, or testify against, an offender

**Victims are suddenly thrust into the "criminal's" justice system and have complaints that:**

- "The scales of justice are not balanced"
- "The system is not fair"
- "Offenders have all the rights"
- "The accused call all the shots"
- "What about me? Don't I have rights? I'm the innocent one!"

Used with permission by Jane Riese

## Benefits and Risks of Victim Offender Conferencing

### Benefits for victims

- Express anger and pain directly to the person responsible
- Learn new information that is needed about the crime
- Gives answers to their questions about the crime
- Put a face to the person who committed the crime
- Decreases level of fear by personalizing the offender
- Opportunity to tell their story
- Seeing remorse in the offender
- Experience a greater sense of closure
- Feel more powerful and in control of one's life
- Opportunity to receive restitution for damages and losses
- Change attitudes/perceptions about the offender

### Risks for victims

- Brings up painful feelings related to victimization
- Re-experience the trauma and related symptoms
- Learn painful new information about details related to the crime
- May not see the desired degree of remorse in the offender
- Unrealistic expectations in regard to the offender's rehabilitation

### Benefits for offenders

- Opportunity to take responsibility, giving him/her sense of power
- See human costs of his/her crime
- Relieve fear of retaliation
- Opportunity to have a say in making things right
- Opportunity for repentance
- Experience a greater sense of closure

### Risks for offenders

- Unknown risks associated with facing person they have wronged
- Unable to simply "do their time" and forget about the offense
- Unrealistic expectations on the part of victim regarding restitution
- Victim unsympathetic to offender's pain/guilt
- Participation may not be fully voluntary

### **Benefits for community**

- Greater sense of connectedness between people
- Community-building as members participate in conferences as mediators or participants
- Opportunity to be involved in problem solving instead of relying on the state for solutions
- Long-term health of the community is strengthened
- Decreased fear of crime

### **Risks for community**

- May be viewed as too soft on crime
- Needs commitment from community members to be involved
- Not a cure-all
- May be misused as a diversion technique serving the system rather than victims and offenders

### **Benefits for criminal justice system**

- Provides practical alternative to incarceration
- Provides mechanism for establishing restitution
- Lessens burden on probation officers/courts
- Provides potential for decreasing court/probation costs
- Provides forum for dealing with difficult cases
- Increases understanding of system within community

### **Risks for criminal justice system**

- Can become one more program in overburdened system
- Potential for revictimization without adequate monitoring

## How do I respond to conflict?

### Inventory of personal conflict management styles

*Instructions.* Consider your response in situations where your wishes differ from those of another person. Note that statements A–J (Part One) deal with your *initial* response to disagreement; statements K–T (Part Two) deal with your response *after the disagreement has gotten stronger*. If you find it easier, you may choose one particular conflict setting and use it as a background for all the questions.

*Please Note.* The reflection this inventory can create is more important—and reliable—than the numbers the tally sheet yields. There are no “right” or “wrong” answers, nor have we “standardized” this instrument. Some takers agree with the results; others disagree. Whether you like the results or not, you should rely on them for an accurate picture of yourself only after further self-scrutiny and discussion with others. The inventory is merely a tool to enable these larger tasks.

### Part One

Circle one number on the line below each statement.

#### A. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,

I make sure that all views are out in the open and treated with equal consideration, even if there seems to be substantial disagreement.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

#### B. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,

I devote more attention to making sure others understand the logic and benefits of my position than I do to pleasing them.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

#### C. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,

I make my needs known, but I tone them down a bit and look for solutions somewhere in the middle.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

#### D. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,

I pull back from discussion for a time to avoid tension.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

#### E. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,

I devote more attention to feelings of others than to my personal goals.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**F. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,**

I make sure my agenda doesn't get in the way of our relationship.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**G. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,**

I actively explain my ideas and just as actively take steps to understand others.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**H. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,**

I am more concerned with goals I believe to be important than with how others feel about things.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**I. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,**

I decide the differences aren't worth worrying about.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**J. WHEN I FIRST DISCOVER THAT DIFFERENCES EXIST,**

I give up some points in exchange for others.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**Part Two**

**K. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I enter more actively into discussion and hold out for ways to meet the needs of others as well as my own.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**L. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I put forth greater effort to make sure that the truth as I see it is recognized and less on pleasing others.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**M. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I try to be reasonable by not asking for my full preferences, but I make sure I get some of what I want.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**N. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I don't push for things to be done my way, and I pull back somewhat from the demands of others.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**O. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I set aside my own preferences and become more concerned with keeping the relationship comfortable.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**P. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I interact less with others and look for ways to find a safe distance.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**Q. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I do what needs to be done and hope we can mend feelings later.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**R. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I do what is necessary to soothe the other's feelings.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**S. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I pay close attention to the desires of others but remain firm that they need to pay equal attention to my desires.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic

**T. IF DIFFERENCES PERSIST AND FEELINGS ESCALATE,**

I press for moderation and compromise so we can make a decision and move on with things.

Not at all Characteristic ← 1 = 2 = 3 = 4 = 5 = 6 → Very Characteristic



### Scoring and interpretation

Transfer the number from each item to the tally sheet. For example, on item A, if you selected number 6, write 6 on the line designated for A on the tally sheet. Then add the numbers. Sample: B 1 + H 4 = 5.

This exercise gives you two sets of scores. Calm scores apply to your response when disagreement first arises. Storm scores apply to your response if things are not easily resolved and emotions get stronger.

The scores indicate your inclination to use each style. The higher your score in a given style, the more likely you are to use this style in responding to conflict.

### Styles of conflict management

**COLLABORATING**

A \_\_\_\_\_ + G \_\_\_\_\_ = \_\_\_\_\_ *Calm*

K \_\_\_\_\_ + S \_\_\_\_\_ = \_\_\_\_\_ *Storm*

Assert your views while also inviting other views. Welcome differences; identify all main concerns; generate options; search for solution which meets as many concerns as possible; search for mutual agreement.

*Perspective on Conflict.* Conflict is natural, neutral. So affirm differences, prize each person's uniqueness. Recognize tensions in relationships and contrasts in viewpoint. Work through conflicts of closeness.

### Preferred and backup styles

**CALM**

**STORM**

Response when issues/conflict first arise.

Response after the issues/conflict have been unresolved for a time and have grown in intensity.

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Designed by Ron Claassen to accompany Kraybill/MCS Styles Assessment. Used with permission.

## Styles of Conflict Management

<p><b>FORCING</b> <b>Win/Lose</b> “We’re doing it my way . . .”</p> <p><i>Strategies:</i> Discourage disagreement, persuade, set limits and consequences, cite policy, insist, repeat, control, be inaccessible.</p> <p><i>Source of Power:</i> From position.</p> <p><i>Benefits:</i> Speed, decisiveness, protection of innocents, preservation of important values, stability.</p> <p><i>Costs when over-used:</i> Destroyed or hierarchical relationships, loss of cooperation, atrophy of gifts in others; anger, depression, diminished self-respect in others; stagnation.</p>	<p>High Concern Personal Goals</p> <p>9</p> <p>8</p> <p>7</p> <p>6</p>	<p><b>COLLABORATING</b> <b>Win/Win</b> “My preference is . . . I’m also interested in your views.”</p> <p><i>Strategies:</i> Assert self while also inviting other views: welcome differences, jointly list strengths and weaknesses of all views; cooperate in seeking additional information.</p> <p><i>Source of Power:</i> From trust, skill, ability, good will, creativity.</p> <p><i>Benefits:</i> Trust and mutuality in relationships, High cooperation; creativity, growth; others blossom and develop new gifts; energy; joy.</p> <p><i>Costs when over-used:</i> Fatigue and time-loss; Distraction from more important tasks, analysis paralysis.</p>
<p>1      2      3      4</p> <p>Low Concern Relationship</p>	<p><b>COMPROMISING</b> <b>Win Some/Lose Some</b> “I’ll meet you halfway.”</p> <p><i>Strategies:</i> Urge moderation, bargain, split the difference, find a little something for everyone, meet them halfway.</p> <p><i>Source of Power:</i> From moderation and reasonableness.</p> <p><i>Benefits:</i> Relatively fast, enables the show to go on; provides a way out of stalemate; readily understood by most people; builds atmosphere of calmness and reason.</p> <p><i>Costs when over-used:</i> mediocrity and blandness; possibly unprincipled agreements; likelihood of patching symptoms and ignoring causes.</p>	<p>6      7      8      9</p> <p>High Concern Relationship</p>

**AVOIDING**

**Lose/Lose**

“Let’s not make a big deal out of this.” 4

*Strategies:* Withdraw, delay or avoid response, divert attention, suppress personal emotions, be inaccessible, be inscrutable. 3

*Source of Power:* From calmness, silence, non-cooperation; being above-it-all. 2

*Benefits:* Freedom from entanglement in trivial issues or insignificant relationships; stability; preservation of status quo; ability to influence others. 1

*Costs when over-used:* Periodic explosions of pent-up anger; freeze-out—slow death of relationships; residue of negative feelings; stagnation and dullness; loss of accountability; sapped energy. Low Concern Personal Goals

**ACCOMMODATING**

**Lose/Win**

“OK, whatever you say . . .”

*Strategies:* Agree, support, acknowledge error, give in, convince self it’s no big deal, placate.

*Source of Power:* From relationships or approval of others.

*Benefits:* Approval/appreciation of others; freedom from hassle, on the short-run at least; self-discipline of ego.

*Costs when over-used:* Frustration for others who wish to collaborate; resentment and depression; stunted growth of personal gifts; overdependence on others.

Adapted from Thomas-Kilmann Conflict Mode Instrument by Kenneth W. Thomas and Ralph H. Kilmann, XICOM, Inc., 1974. Used with permission from Mennonite Conciliation Service, Akron, Pa.

## Centered Communication—Speaking

### Definition

Centered speaking comes from the heart, the center of ourselves. By providing information about what is happening at the center of ourselves we invite others to also share from their “center.”

### How to recognize uncentered speaking

Uncentered speaking is easily recognized because the word “you” appears continually. My attention blurs away from my personal center and fastens on you in negative ways, usually by blaming, mind-reading (claiming to know your intention), or demanding. This is also called “you messages.”

#### EXAMPLES OF UNCENTERED SPEAKING

- “When are you going to start showing a little respect for me? You think you’re the only one with a busy schedule.” (Demanding, blaming, mind-reading, conveys little information about me)
- “You’re just trying to make things difficult for the rest of us.” (Blaming, mind-reading)

### How to make speaking centered

The focus of centered speaking is on giving information about myself: my emotions, my needs, the impact of a situation on me, my preferences. This is also called “I messages.”

#### EXAMPLES OF CENTERED SPEAKING

- “I feel so angry when I think about the fact that you just walked right into my house without permission.” (Information about my feelings)
- “It’s very frustrating for me that we’ve had to reschedule this meeting two times already” (Information about my feelings). “It means I’ve had to take additional time off work again.” (Information about impact on me).
- A useful way to formulate centered speaking is to say: “I feel . . . when you . . . because . . .”

### How can I talk only about myself if the situation involves another person?

Of course there will be reference to the other person. But centered speaking returns quickly to providing information about self: describing my emotions and vulnerabilities, the impact of others’ actions on me, my regrets and preferences for the situation.

### Talking about myself is difficult!

Centered speaking is hard, especially with people closest to us. It requires self-awareness (what exactly do I feel), vulnerability (am I willing to reveal what is in my heart), careful thought and self-discipline.

## Other characteristics of centered speaking

- Speaks only for self, does not pretend to speak for others
- Most powerful when rooted in here-and-now, the feelings I have at this moment
- Talks about events at specific times and places, not “general problems”
- Takes responsibility for self first of all. My first job is to stay centered and change me, not to change you. Even if another person is not centered, I can grow if I stay centered
- Helps others get centered by listening deeply

Adapted from Ron Kraybill in Mennonite Conciliation Service Mediation Training Manual.  
Used with permission.

## Typical Listening Responses

### Advising

“Why don’t you just . . .”

“I’d just try to relax and not take it so seriously . . .”

### Judging

“Don’t get so up-tight about it . . .”

“That’s not a very constructive attitude . . .”

### Analyzing

“Your insecurities are coming through. That’s why you’re so sensitive . . .”

“You’ve got him in a box and that’s preventing you from really hearing him . . .”

### Questioning

“Why did you do that?”

“Are you being as kind and considerate as you can?”

### Supporting

“Don’t worry about it. Just trust yourself. You’ll do fine.”

“You did the best you could, so stop fretting about it.”

## Active Listening Steps

1. Decide if you really want to hear what the other has to say.  
If yes, proceed
2. Give the other party 100% of your attention.
3. Suspend judgement
4. Show understanding and acceptance by nonverbal behavior:
  - tone of voice
  - facial expressions
  - gestures
  - eye contact
  - posture
5. Put yourself in the other person's place to understand what the person is saying and how he or she feels.
6. Restate the person's most important thoughts and feelings.
7. Do not interrupt, offer advice, or give suggestions. Do not bring up similar feelings or problems from your own experience.

David Augsburger, adapted by Ron Claassen. Used with permission.

## Active Listening Skills

Below each statement write how you might respond if you were the listener:

1. "I'm not sure I want to discuss this anymore . . . I have too many other things to think about with my meeting rescheduled for tomorrow, my son being sick, the basketball game to coach and no gas in the car!"

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2. "It's ridiculous to think that all he has to do is go through this program . . . he should be sitting in jail . . . that would teach him a thing or two."

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3. "Why do you always think it's so stupid when I suggest a solution?"

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4. "Listen, just because you got home and decided you didn't like the way couch looked, doesn't mean you can just bring it back a week later and expect a full refund."

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5. "I don't care what he says I have to do to pay him back, I'll just do it to get this over with and get everyone off my back."

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## I-Messages

Design "I messages" for each of the following situations using the formula "I feel . . . when you . . . because":

1. The victim and offender continues to interrupt one another during their story-telling. You have reminded them of the ground rules which they each agreed to. Give them an I-message.

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2. You have met with each of the three offenders separately and have heard three different stories about what happened . . . you are now meeting with the three of them together and are ready to address this issue.

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3. You have co-mediated this session with a mediator you have not previously worked with and felt that you were not given an opportunity to really participate in the process.

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4. The victim becomes angry during the session and accuses you of talking him into this process and now taking the offender's side.

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5. After an obviously difficult conference, all participants seem much more relaxed and are talking to one another and discussing possibilities for the future. What I-message can you provide?

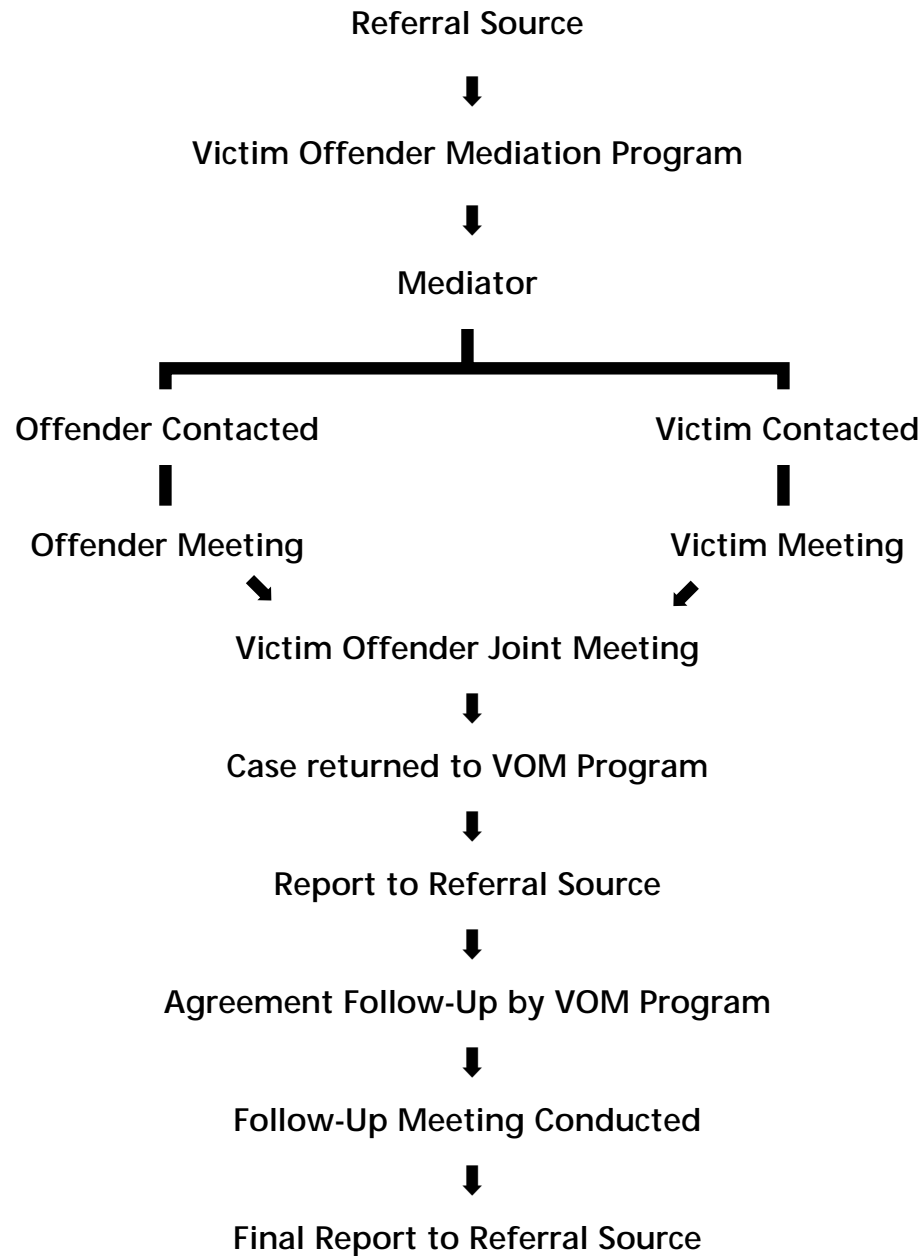
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## The Process



## **Standards of Conduct for Mediators**

### **Self-determination**

A mediator shall recognize that mediation is based on the principle of self-determination by the parties

### **Impartiality**

A mediator shall conduct the mediation in an impartial manner

### **Conflicts of interest**

A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

### **Competence**

A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.

### **Confidentiality**

A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

### **Quality of the process**

A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

### **Advertising and Solicitation**

A mediator shall be truthful in advertising and solicitation for mediation.

### **Fees**

A mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties.

### **Obligations to the mediation process**

Mediators have a duty to improve the practice of mediation.

Proposed and approved in 1994 by the American Arbitration Association (AAA), the Litigation Section and the Dispute Resolution Section of the American Bar Association (ABA), and the Society of Professionals in Dispute Resolution (SPIDR).

## First Phone Call

*In most, but not all, cases you will call the offender first. You will call the victim after meeting with the offender. Purpose of the phone call is to arrange a meeting day and time to briefly explain Victim Offender Conferencing. Do not explain entire program over the phone since that is the purpose of the initial meeting. Adapt the following depending on whether you're talking with the victim or offender.*

1. Give your name
2. Ask to speak with a parent of the juvenile
3. Refer to the offense and where the referral came from (e.g. probation)
4. Briefly state VOC functions—to help with restitution or determine how an offender can begin to make things right with the victim. You do not necessarily need to mention the face-to-face at this point
5. Suggest a date and time for a meeting to them more about the program
6. Make certain that the time is convenient for both the juvenile and their parent(s)
7. Check to be sure you have the correct address if you are meeting at their home
8. Record comments in the case file

## Individual Meeting

1. Explain program—emphasizing opportunity for “making things right”. Talk about the possibility of a face-to-face meeting
2. Listen to their story
3. Explain mechanics of joint meeting
4. Discuss damages/loss estimates (out of pocket costs)
5. Discuss restitution possibilities
6. Personalize victim/offender as appropriate (remember confidentiality regarding names and other identification)
7. Invite participation
8. Discuss dates, time and location for meeting (ensuring all parties feel the location is a “safe place”)
9. Leave victim/offender brochure

Adapted and used with permission from LAVORP, Lancaster, PA.

## Mediator Checklist

### Set-up

- Room arrangement, temperature check should be done before participants arrive

### Introductions

- Double check how participants would like to be addressed if you haven't done so previously
- Thank participants for coming
- Establish ground rules
- Discuss time constraints

### Storytelling and Questions/Answers

- Let victim and offender tell their story—ask about what has happened since the incident
- Allow time for other to ask questions
- Provide opportunity for other supporters to talk

### Restoring Equity

- Discuss restitution
- Explore options
- Discuss issues
- Look carefully at what options meet both parties' needs
- Reality testing/clarification

### Agreement

- Be specific on terms of agreement
- Write it out and read out loud
- Serve refreshments while you write out contract
- Copy of agreement and evaluation will be sent to each participant (or done at meeting)
- Discussion of follow-up meeting if appropriate

### Closing

- Congratulations

### Final Steps

- Case returned to program/debriefing
- Agreement sent to referral source
- Agreement monitored by victim offender conferencing program
- Follow-up meeting scheduled

## Sample Opening Monologue

(After Introductions)

“I have met with each of you separately and appreciate the fact that you have each agreed to come together to this meeting for the purpose of working at ways to make things as right as possible”.

“The VOC program is a community-based, non-profit organization. While we work cooperatively with the courts and the probation department and have a great deal of trust and respect between us, we are not part of the formal criminal justice system”.

“Our purpose is to help victims and offenders deal directly with each other and to work towards making things right.

“I am a trained volunteer mediator. My role up to this point has been to meet separately with each of you in preparation for this meeting and to make arrangements for this meeting.

“My role now in this meeting is to be the facilitator or mediator. I am not a judge or arbitrator deciding for you what you should do. My job is to facilitate this meeting in such a way that you each have an opportunity to express the things you need to and to hear the things you need to in order to resolve the situation. I am here to help you come to your own agreement.

“If you can't come to agreement, we might have to send it back to the probation department, but from my perspective it will be best if we can resolve things here.

“In order to have a constructive meeting, we always ask that all parties present agree to a few ground rules. I will need your approval of these before we proceed.

1. No interruptions when the other is talking.
2. Allow me to lead the meeting.
3. Listen to each other and be willing to summarize what the other has said when I request it.
4. Tell the truth.
5. No profanity.

“Can you agree to these ground rules? Are there others that anyone would like to add?”

“Okay, are we ready to start now?”

“As I mentioned in our individual meetings one of you will start by describing what happened and what his/her part was in the incident? After that, the other person may ask questions and then describe how he/she experienced the incident. When we have finished talking about what happened and how you felt about it, we will move to talking about what can be done now to make it as right as possible, to pay back the damages. When we come to an agreement, we will write it on a contract form. Finally, we will talk about the future.

“Are there any questions about procedure?”

“Who would like to start? A second option in this scenario is that the facilitator may already have an idea about who they would like to start and may check this out before coming to the meeting. In that case the scenario might go like this:

“Okay, we are ready to start. X (offender), why don’t you start by describing what happened and how you were involved.” (You might have to help get started by asking what day, what time, where, how things got started, etc.)

Reminder to the mediator: Help both keep their focus on “describing” and not judging or ascribing motivations to each other.

Adapted and used with permission from Ron Claassen

<b>Retributive justice</b>	<b>Restorative Justice</b>
<b>Problem</b>	
defined narrowly, abstractly, a legal infraction,	defined relationally as violation of people,
only legal variables relevant	overall context relevant
state as victim	people as victims
<b>Actors</b>	
State (active) & offender (passive)	victim & offender primary along with state & community
<b>Process</b>	
adversarial, authoritarian, technical, impersonal	participatory, maximizing information, dialogue and mutual agreement
focus = guilt/blame	focus = needs & obligations
"neutralizing strategies" encouraged	empathy and responsibility encouraged
<b>Outcomes</b>	
pain, suffering	making things right by identifying needs & obligations; healing, problem-solving
harm by offender balanced by harm to offender	harm by offender balanced by by making right
oriented to past	oriented to future



## Fundamental concepts of restorative justice

### Crime is fundamentally a violation of people and interpersonal relationships.

1. Victims and the community have been harmed and need restoration.
  - The primary victims are those most directly affected by the offense but others, such as family members of victims and offenders, witnesses and members of the affected community, are also victims.
  - The relationships affected (and reflected) by crime must be addressed.
2. Victims, offenders and the affected communities are the key stakeholders in justice.
  - A restorative justice process maximizes the input and participation of these parties—but especially primary victims as well as offenders- in the search for restoration, healing, responsibility and prevention.
  - The roles of these parties will vary according to the nature of the offense as well as the capacities and preferences of the parties.
  - The state has circumscribed roles, such as investigating facts, facilitating processes and ensuring safety, but the state is not a primary victim.

### Violations create obligations and liabilities.

1. Offenders' obligations are to make things right as much as possible.
  - Since the primary obligation is to victims, a restorative justice process empowers victims to effectively participate in defining obligations.
  - Offenders are provided ongoing opportunities and encouragement to understand the harm they have caused to victims and the community and to develop plans for taking appropriate responsibility.
  - Voluntary participation by offenders is maximized; coercion and exclusion are minimized. However, offenders may be required to accept their obligations if they do not do so voluntarily.
  - Obligations that follow from the harm inflicted by crime should be related to making things right.
  - Obligations may be experienced as difficult, even painful, but are not intended as pain, vengeance or revenge.
  - Obligations to victims such as restitution take priority over other sanctions and obligations to the state such as fines.
  - Offenders have an obligation to be active participants in addressing their own needs.

2. The community's obligations are to victims and to offenders and for the general welfare of its members.
  - The community has a responsibility to support and help victims of crime to meet their needs.
  - The community bears a responsibility for the welfare of its members and the social conditions and relationships which promote both crime and community peace.
  - The community has responsibilities to support efforts to integrate offenders into the community, to be actively involved in the definitions of offender obligations and to ensure opportunities for offenders to make amends.

**Restorative justice seeks to heal and put right the wrongs.**

1. The needs of victims for information, validation, vindication, restitution, testimony, safety and support are the starting points of justice.
  - The safety of victims is an immediate priority.
  - The justice process provides a framework that promotes the work of recovery and healing that is ultimately the domain of the individual victim.
  - Victims are empowered by maximizing their input and participation in determining needs and outcomes.
  - Offenders are involved in repair of the harm insofar as possible.
2. The process of justice maximizes opportunities for exchange of information, participation, dialogue and mutual consent between victim and offender.
  - Face-to-face encounters are appropriate for some instances while alternative forms of exchange are more appropriate in others.
  - Victims have the principal role in defining and directing the terms and conditions of the exchange.
  - Mutual agreement takes precedence over imposed outcomes.
  - Opportunities are provided for remorse, forgiveness and reconciliation.
3. Offenders' needs and competencies are addressed.
  - Recognizing that offenders themselves have often been harmed, healing and integration of offenders into the community are emphasized.
  - Offenders are supported and treated respectfully in the justice process.
  - Removal from the community and severe restriction of offenders is limited to the minimum necessary.
  - Justice values personal change above compliant behavior.

4. The justice process belongs to the community.
  - Community members are actively involved in doing justice.
  - The justice process draws from community resources and, in turn, contributes to the building and strengthening of community.
  - The justice process attempts to promote changes in the community to prevent similar harms from happening to others.
5. Justice is mindful of the outcomes, intended and unintended, of its responses to crime and victimization.
  - Justice monitors and encourages follow-through since healing, recovery, accountability and change are maximized when agreements are kept.
  - Fairness is assured, not by uniformity of outcomes, but through provision of necessary support and opportunities to all parties and avoidance of discrimination based on ethnicity, class and sex.
  - Outcomes which are predominately deterrent or incapacitative should be implemented as a last resort, involving the least restrictive intervention while seeking restoration of the parties involved.
  - Unintended consequences such as the cooptation of restorative processes for coercive or punitive ends, undue offender orientation or the expansion of social control are resisted.

## Restorative Justice Signposts

**You are doing justice restoratively when you . . .**

- focus on the harms of crime rather than the rules that have been broken,
- show equal concern and commitment to victims and offenders, involving both in the process of justice,
- work toward the restoration of victims, empowering them and responding to their needs as they see them,
- support offenders while encouraging them to understand, accept and carry out their obligations,
- recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable,
- provide opportunities for dialogue, direct or indirect, between victim and offender as appropriate,
- find meaningful ways to involve the community and to respond to community bases of crime,
- encourage collaboration and reintegration rather than coercion and isolation,
- give attention to the unintended consequences of your actions and programs,
- show respect to all parties—victims, offenders, justice colleagues.

*Crime wounds . . . justice heals*

Harry Mika and Howard Zehr

## Responding To Important Questions Related To Restorative Justice

by Mark S. Umbreit, Ph.d.

### 1. How widespread is interest in restorative justice?

The initial conceptualization of restorative justice began in the late 1970's and was most clearly articulated by Howard Zehr. At that time, the discussion of this new paradigm was based largely in North America and with a small network of academicians and practitioners in Europe. Restorative justice was not, in the late 1970's, being considered seriously by the mainstream of criminal and juvenile justice policy makers and practitioners.

### International Development of Victim Offender Mediation Programs

COUNTRY	NUMBER OF VICTIM OFFENDER MEDIATION PROGRAMS
Australia	5
Austria	17
Belgium	31
Canada	26
Denmark	5
England	19
Finland	130
France	73
Germany	293
Italy	4
New Zealand	Available in all jurisdictions
Norway	44
South Africa	1
Scotland	2
Sweden	10
United States	282

Note: Data in the table above is taken from *Victim Meets Offender: The Impact of Restorative Justice & Mediation* (Umbreit, 1994), *Justice for Victims and Offenders* (Wright, 1996), and the *National Survey of Victim Offender Mediation Programs in the U.S.* (Umbreit and Greenwood, 1996).

By 1990, an international conference supported by NATO funds was convened in Italy to examine the growing interest in restorative justice throughout the world. Academicians and practitioners from a wide range of countries (Australia, Belgium, Canada, England, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Scotland, Turkey) presented papers related to the development and impact of restorative justice for serious consideration as a federal policy. In 1997, a group of scholars and practitioners in North America and Europe interested in restorative justice met in Belgium to further examine this emerging practice theory at an international restorative justice conference. A second international book on restorative justice (following the initial book about the NATO conference in Italy) was published in 1996 and a third book will be out in 1998. Finally, a working sub-committee of the United Nations is currently examining the concept of restorative justice and will be preparing a draft resolution for presentation at a U.N. conference in the year 2000.

Interest in the United States has grown the most extensively during the last five years. Representing one of the oldest and most visible expressions of restorative justice, the practice of victim offender mediation, which began in the late 1970's, is now occurring in more than 280 communities throughout the U.S. and a considerably larger number in Europe as noted in the table at the left.

The American Bar Association has played a major leadership role in the area of civil court mediation for over two decades. After many years of little interest in criminal mediation, if not skepticism, the A.B.A. in the summer of 1994 fully endorsed the practice of victim offender mediation and recommended its development in courts throughout the country.

Hundreds of restorative justice information packets have been sent out by the Center for Restorative Justice & Mediation at the University of Minnesota to correctional officials, policy makers, and practitioners throughout the country and abroad. In January of 1996, the U.S. Department of Justice convened their first national conference on restorative justice, bringing together policy makers and practitioners from throughout the country. Perhaps one of the clearest expressions of the growing support for restorative justice is seen in the National Organization for Victim Assistance's monograph endorsing "restorative community justice." During the early years of this movement, most victim advocacy groups were quite skeptical. Many still are, however, there is a growing number of victim support organizations actively participating in the restorative justice movement.

## **2. Have restorative justice practices been implemented?**

In contrast to many previous reform movements, the restorative justice movement has major implications for system-wide change in how justice is done in American society. While initiating restorative justice interventions such as victim offender mediation, family group conferencing, restorative community justice, victim panels, and other forms of victim offender dialogue or neighborhood dispute resolution is important, restorative justice places a heavy emphasis upon systemic change. As a result of the BARJ (Balanced and Restorative Justice) project supported by the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice, numerous county and state jurisdictions throughout the country are examining the merits of restorative justice. Already there are 15 states that have drafted and/or introduced legislation promoting a more balanced and restorative juvenile system. The BARJ Project has been working extensively with six juvenile justice systems (Deschutes and Lane counties in Oregon, Travis county in Texas, Dakota county in Minnesota, Allegheny county in Pennsylvania and Palm Beach county in Florida) which are actively involved in implementing restorative justice policies and practices. Mission statements are being reexamined and rewritten, job descriptions changed, policies revised to include more victim and community involvement, resources are being redeployed, new restorative interventions are being initiated and a far greater awareness of victim needs for involvement and services is being developed.

In 1994, the Vermont Department of Corrections embarked on one of the most ambitious system-wide restorative justice initiatives. Following a public opinion poll which indicated broad dissatisfaction with the criminal justice system and openness to more restorative and community based responses to non-violent crime, the Department "took a wrecking ball" and demolished a one-hundred year-old correctional system built upon the options of either prison or probation. They were able to identify up to 50% of the current probation caseload which they believed could be held accountable by Reparative Probation Community Boards made up of citizen volunteers. Instead of traditional probation supervision, a wide range of property offenders would be referred directly to a Reparative Community Board which they would have to appear before. In dialogue with the offender, the Board determines a community-based restorative sanction, oftentimes including victim offender mediation, commu-

nity service or meeting with a victim panel. The Department is now encouraging crime victims to be represented on each Reparative Probation Community Board. No other known current restorative justice initiative represent such a major structural change which clearly elevates the role of community volunteers and crime victims in the process of holding offenders accountable to the community they violated.

Individual restorative program initiatives, rather than system-wide initiatives, are much more widely dispersed throughout the country. In addition to the more than 280 victim offender mediation programs throughout the U.S. there are numerous other programs (such as creative community service, neighborhood dispute resolution, financial restitution with victim input, victim/offender dialogue groups or panels) incorporating many or all of the principles of restorative justice. While hard figures are difficult to obtain, a conservative estimate would suggest at least 200-300 of these programs are developing in urban and rural communities throughout the country.

### **3. Is there public support for restorative justice?**

Even in view of the growing interest and support of restorative justice theory and practice, the question remains “Is the larger public really interested?” Certainly the data that have emerged from the examination of a number of individual programs, as noted below, are rather persuasive. Yet is there evidence of public support for the principles of restorative justice? The strong “law-and-order” and “get-tough” rhetoric that dominates most political campaigns would suggest not. After all, how often have we heard ambitious politicians or criminal justice officials state that “the public demands that we get tougher with criminals”? This perception—or some would argue, mis-perception—fuels the engine that drives our nation toward ever increasing and costly criminal punishments, as seen in the lengthy sentences and the highest per capita incarceration in the world (Mauer, 1991).

There is, however, a growing body of evidence to suggest that the general public is far less vindictive than often portrayed and far more supportive of the basic principles of restorative justice than many might think., particularly when applied to property offenders. Studies in Alabama, Delaware, Maryland, Michigan, Minnesota, North Carolina, Oregon, and Vermont have consistently found a public deeply concerned with holding offenders accountable while being quite supportive of community-based sanctions which allow for more restorative outcomes.

A recent study in Minnesota is particularly illustrative. A statewide public opinion survey, conducted by the University of Minnesota (Pranis and Umbreit, 1992) using a large probability sample, challenges conventional wisdom about public feelings related to crime and punishment.

A sample of 825 Minnesota adults, demographically and geographically balanced to reflect the state’s total population, were asked three questions with implications for restorative justice as part of a larger omnibus survey. A sampling of this size has a sampling error of plus or minus 3.5 percentage points. The first question was: “Suppose that while you were away, your home is burglarized and \$1,200 worth of property is stolen. The burglar has one previous conviction for a similar offense. In addition to 4 years probation, would you prefer the sentence include repayment of

\$1,200 to you or 4 months in jail?” Nearly three out of four Minnesotans indicated that having the offender pay restitution was more important than a jail sentence for a burglary of their home.

To examine public support for policies that address some of the underlying social problems that often cause crime, a concern that is closely related to restorative justice, the following question was asked: “For the greatest impact on reducing crime, should additional money be spent on more prisons, or spent on education, job training and community programs?” Spending in education, job training and community programs rather than on prisons to reduce crime was favored by four out of five Minnesotans.

The third and final question related to restorative justice addressed the issue of interest in victim-offender mediation. This question was presented in the following manner: “Minnesota has several programs which allow crime victims to meet with the person who committed the crime, in the presence of a trained mediator, to let this person know how the crime affected them, and to work out a plan for repayment of losses. Suppose you were the victim of a non-violent property crime committed by a juvenile or young adult. How likely would you be to participate in a program like this?”

More than four of five Minnesotans expressed an interest in participating in a face-to-face mediation session with the offender. This finding is particularly significant in that criminal justice officials and program staff who are unfamiliar with mediation often make such comments as “there is no way in the world that victims in my community would ever want to confront the offender” or “only a small portion of victims would ever be interested.” The finding is particularly important since the vast majority of crime is committed by either juveniles or young adults. Some would suggest that the victim-offender mediation process is likely to be supported only for crimes involving juvenile offenders. This is certainly not the case in Minnesota. Eighty-two percent (82%) of respondents indicated they would be likely to participate in a program that would allow them to meet the juvenile or young adult who victimized them.

A picture of a far less vindictive public than often portrayed emerges from this statewide survey. Respondents indicated greater concern for restitution and prevention strategies that address underlying issues of social injustice than for costly retribution. Holding offenders personally accountable to their victim is more important than incarceration in jail. Public safety is understood to be more directly related to investing in job training, education and other community programs than incarceration.

While it might be tempting to suggest that this public opinion survey simply reflects the rather unique liberal social policy tradition of Minnesota, its findings are consistent with a growing body of public opinion research across the U.S. (Bae, 1991; Gottfredson, Warner and Taylor, 1988; Clark 1985; Public Agenda Foundation, 1987, 1989, 1991; Public Opinion Research, 1986). These previous studies have found broad public support for payment of restitution by the offender to their victim instead of incarceration for property crimes, and support for crime prevention strategies instead of prison strategies to control crime. The studies did not explicitly ask respondents if they supported “restorative justice.” The questions asked, however,



addressed important underlying principles that are fundamental to the theory of restorative justice, which places far more value on crime prevention and restoration of physical and emotional loss than on retribution and blame for past behavior.

#### **4. Is restorative justice a public or private responsibility?**

Restorative justice requires an active partnership between the public and private sectors. While many of the early restorative justice interventions, such as victim offender mediation and reconciliation, were initiated by private community-based agencies, increasingly, local and statewide correctional and law enforcement departments, including victim service units, are developing new programs. They are becoming active stake holders in the restorative justice movement.

#### **5. Can restorative justice apply within correctional institutions and residential programs?**

Some of the most creative restorative justice interventions have occurred in correctional institutions. Structured and facilitated dialogue sessions between a small group of inmates and crime victims (not their own victims) have periodically been conducted in prisons in the United States and England. Two of the more well known programs were developed in the maximum security prisons in Vaccaville, California and Graterford, Pennsylvania. Several prisons in different states (including Alaska, California, Minnesota, New York, Ohio, Pennsylvania, Texas, and Wisconsin) have allowed parents of murdered children or other victims of severe violence to meet with the offender/inmate in the presence of a highly trained and skilled mediator and following lengthy and intensive preparation of both parties over a period of many months. While such prison-based restorative justice programs are few in number, the potential for wider implementation in the future is large.

Only a few residential programs are known to have initiated a restorative justice program involving some form of direct victim offender communication and problem solving. The Minnesota Restitution Center, a nationally recognized residential program in the early 1970's, was a pioneer in experimenting with direct victim and offender communication, long before the theory of restorative justice was formally conceptualized. As with prison-based restorative justice programs, residential community correctional facilities hold a great deal of potential for further implementation of restorative justice practices in the future. It is important to note that community-based residential programs have nearly always offered services that are restorative in nature for the offender and their reintegration into the community. Restorative justice, however, moves beyond just the offender focus and requires more active involvement of crime victims and citizen volunteers in the process of holding offenders accountable through maximizing opportunities for the offender to restore the emotional and material losses that resulted from their behavior.

#### **6. Is restorative justice meant for only minor property offenses?**

The vast majority of current restorative justice programs, representing primarily community service, restitution, and victim offender mediation programs, work with first or second time property offenders, particularly juvenile offenders. On the other

hand, many programs have worked with minor assaults and with adult offenders for many years. A small number of programs are beginning to offer restorative justice intervention such as mediation, or family group conferencing or victim offender dialogue groups in prisons for persons involved in severely violent crime, often at the request of victims.

There are few instruments that have been developed specifically for restorative justice interventions to identify appropriate participants. Existing correctional assessment instruments are typically used for offenders, whether or not in the context of restorative justice.

Several programs have developed brief assessment check lists for staff or mediators to use with crime victims or offenders. The best example has been developed by a victim offender mediation program in Leeds, England. While not a thoroughly developed and validated instrument, these brief assessment forms developed by the program in Leeds provide some helpful guidance. Far more work is needed in the area of client assessment, particularly when dealing with more serious and violent offenses that may be appropriate for a restorative justice intervention. Precisely because of the intense emotional trauma experienced by victims of violence, as well as the impact (or lack of impact) on the offender, the potential benefits of restorative interventions in violent offenses is significant for those interested victims. A level of healing and closure may be possible that is unlikely to occur through any other intervention. Far greater risk, however, is also present when providing a restorative justice intervention such as victim offender mediation to parties involved in severely violent crime, such as attempted homicide or murder. Almost by definition, interventions in such offenses are prison-based, while interventions with property offenders and minor assaults are nearly always community-based.

## **7. What policies and practices are uniquely restorative?**

### **RESTORATIVE POLICIES**

Criminal and juvenile system policies that hold the greatest promise for restorative justice practice include those that allow for: greater participation of crime victims in the criminal justice process; enhanced and systematic training of correctional staff related to victims needs; greater involvement of citizen volunteers and community agencies in the process of holding offenders accountable and building safer communities; provision of a range of opportunities for appropriate crime victims and offenders to engage in dialogue, problem solving, and restoration of victim losses; competency development opportunities for offenders that emphasize their strengths and obligation to make things right with their victims and communities; provision of victim awareness and empathy development training for all offenders; major emphasis and investment in crime prevention and community safety; and, reduced and selective use of incarceration for only the most violent and predatory offenders. While many other policies may also emphasize restorative outcomes, the policies noted above highlight the distinctive qualities of a truly restorative justice based system as opposed to simply enhancing our current systems of justice with a few marginal policies that may be restorative.

## RESTORATIVE PRACTICES

Programs that provide a safe and structured setting for victim sensitive communication between appropriate offenders and their victims that can lead to restorative outcomes (often utilizing trained citizen volunteers) are particularly restorative interventions. Victim offender mediation is the best known guided communication between victims and offenders, however, there are other similar interventions that have also been found to be very effective. While not always described as mediation or using the specific techniques of mediation, these forms of communication can be very positive for both victims and offenders. The full range of victim offender communication should be recognized as related because otherwise they will continue to be disconnected from each other and from the broader principles of restorative justice.

The different types of restorative victim offender communication can easily be placed on a continuum ranging from low intensity meetings involving victim representatives and limited communication in a community setting (victim panels), to high intensity meetings involving victims or survivors directly and offenders convicted of first degree murder, with the meeting taking place in high security correctional institutions. Other types of communication between victims and offenders can also be placed along this continuum between those two extremes. Examples would include victim offender mediation and family group conferencing in property offenses. It should be noted that these high intensity meetings involving violent crimes require extensive preparation and highly trained mediators.

### **8. What about drug offenses where there is no specific individual victim?**

Restorative interventions in so-called “victimless crimes” are not common but certainly can be developed. A case involving a juvenile selling drugs in a school or a neighborhood provides a good example. While no individual victim can easily be identified, the entire school or neighborhood has been victimized by this offense. Sale of drugs reduces the quality of life and increases the threat to public safety within schools and neighborhoods. The juvenile whose guilt was determined by the court could be required to appear before a panel of students/teachers or neighborhood residents who have been affected negatively by the presence of drug sales and use. This could even involve parents whose children have been killed from drug overdoses or drug related violence who would want to share their pain and offer their concerns to juveniles involved in such activity. Having certain juvenile offenders convicted of so-called victimless crimes face “secondary victims” could be an important restorative intervention, particularly if such an encounter provided an opportunity for dialogue rather than simply lecturing at or shaming the offenders.

### **9. Have studies been conducted to assess the impact of restorative justice?**

While the restorative justice movement emphasizes broad systemic change that redefines the purpose of criminal justice, the key players and the desired outcomes, virtually no research is yet available to assess the impact of this movement upon criminal and juvenile justice systems. Given the fact that a small but growing number of justice systems are either examining or implementing major changes in how they oper-

ate, such research is likely to occur in the coming years. In fact, the Reparative Probation Community Boards initiative of the Vermont Department of Corrections is currently being evaluated to determine its statewide impact. Similarly, the development of a Family Group Conferencing program by police in Bethlehem, Pennsylvania is being evaluated through support of the National Institute of Justice. In addition, a proposal to evaluate the system-wide changes initiated by the three primary BARJ pilot sites in Dakota county (MN), Palm Beach county (FL), and Allegheny county (PA) has already been submitted to the National Institute of Justice by the School of Social Work at Indiana University. Nonetheless, no studies on system-wide impact of restorative justice have yet been completed.

Several important studies, however, have been conducted on specific restorative justice interventions such as victim offender mediation (Coates & Gehm, 1989; Duignan, 1990; Marshal & Merry, 1990; Umbreit & Coates, 1992; Umbreit, 1989, 1991, 1994, 1995, 1996) and family group conferencing (Wundersitz and Hetzel, 1996; Maxwell & Morris, 1993), both here and abroad. A number of other studies have examined interventions that are likely to be restorative, such as financial restitution (Butts and Snyder, 1991; Galaway & Hudson, 1990; Schneider, 1986), community work service (Bazemore & Maloney, 1994). While clearly restorative in nature, these interventions, however, are not by definition consistent with the core principles of restorative justice. For example, most financial restitution and community service programs have little direct involvement of crime victims or citizen volunteers (other than work supervisors). Similarly, most of these programs were not intentionally developed or evaluated within the conceptual framework of restorative justice.

Particularly because financial restitution and community service have intrinsically restorative elements, it would be tempting to include studies of these interventions in this monograph. To do so would come dangerously close to simply renaming interventions of the past while ignoring foundational values of restorative justice which would lead to far more active and direct involvement of crime victims, citizen volunteers, and community groups in the process of holding offenders accountable through restitution and community service. Moreover, both of these interventions can also be, and probably are in many jurisdictions, administered in a highly retributive offender driven juvenile or criminal justice system. Therefore, we would suggest that interventions that are clearly restorative in nature would include the following criteria:

1. The Offender Is Held Directly Accountable to the Victim.
2. Restoration of Victim Losses by the Offender Is Emphasized.
3. Both the Victim and Offender Play Active Roles in the Process.
4. Citizen Volunteers And/or Community Groups Play Facilitative And/or Supportive Roles.
5. Opportunities for Communication and Dialogue Between the Victim and Offender Are Present in One Form or Another.

The interventions of victim offender mediation, family group conferencing, circle sentencing and talking circles (in Native American and Canadian First Nation

communities), victim offender dialogue groups in prisons and related programs all meet the criteria of uniquely restorative justice grounded initiatives. Empirical data, however, is only currently available on victim offender mediation and family group conferencing. While anecdotal data from these other interventions appears to be quite favorable and research is likely to emerge in these areas in the coming years, for the purposes of this monograph only studies related to victim offender mediation and family group conferencing will be reported.

**10. Is restorative justice truly a new paradigm meant to replace our current systems of justice, or is it a movement promoting a set of values which can influence but not replace the current systems of juvenile and criminal justice?**

Is it a blueprint for major systemic change or is it a cluster of program interventions and policies that can operate side by side with the dominant retributive nature of justice in American society?

While restorative justice represents a very different paradigm, or “lens,” to view, understand and respond to crime and victimization, it is not clear whether the current far more costly retributive system of justice, which largely ignores victim input and services and citizen involvement, will ever be replaced since it is so deeply entrenched. Some jurisdictions are engaged in entirely redesigning their justice system to be far more balanced and restorative, while many others are simply adopting certain restorative policies and practices to operate along side the more traditional juvenile justice system.

The experience of the restorative justice movement to date has been that of operating along with policies and practices that are not restorative in nature. While this more fragmented application of restorative justice values is not desirable, it is probably inevitable in most jurisdictions. The process of long term major social/cultural change is messy and is rarely seen in clear, quick, and comprehensive forms.

**11. Without controlling the costly incarceration in the U.S., will there ever be enough resources available to broadly implement restorative justice interventions to more effectively serve crime victims and victimized communities?**

This is perhaps one of the most politically sensitive yet crucial questions facing the restorative justice movement and its collaborative efforts between juvenile justice professionals, police, community leaders and victim advocates. The use of incarceration in American society is so heavily driven by the strategies of ambitious politicians, with little examination of its cost/benefit impact or even empirical data from a growing number of public opinion surveys that indicate caution in using incarceration as the preferred sanction, particularly in property offenses. With the growing number of mandatory sentences, even for relatively less serious offenses in terms of impact upon the innocent public, the rate and cost of prison and institutional expansion continues to expand tremendously in many, if not most, jurisdictions. This reality continues to not only mean that the vast majority of all correctional dollars are allocated to institutional costs, in many states it means that other important public

needs are receiving less support. In this context, there are few resources available to victim services, crime prevention strategies or increased involvement of citizens and community groups. In fact, in most states victim service agencies struggle year to year to maintain even the most minimal amount of financial support often receiving no “hard money” from the juvenile or criminal justice system.

Until there is a more fiscally responsible use of prisons and other institutions that is based upon empirical data on the comparable public safety cost/effectiveness of a range of sanctions, rather than political expediency, it is probably unlikely that there will ever be enough resources to implement a truly victim centered balanced and restorative justice system.

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## Offender Letter

Dear *(name)*,

The Victim Offender Conferencing program is a community based program which attempts to facilitate restitution agreements between offenders and victims of crime.

Your name has been referred to us by the Probation Department regarding the offense of *(crime)* that occurred on *(date)*.

One of our trained community volunteer mediators will be contacting you within the next weeks for the purpose of arranging a meeting with you. At the time of the meeting, the program will be explained in detail, and it will be possible to talk about the offense and about restitution possibilities.

In the meantime, if you have any immediate questions or concerns, you may reach us at *(phone)*.

Sincerely,

*(name)*

Victim Offender Conferencing Staff

## Victim Letter

Dear *(name)*,

The Victim Offender Conferencing program is a community based program which attempts to facilitate restitution agreements between offenders and victims of crime.

Your name, as a victim, has been referred to us by the Probation Department regarding the offense of *(crime)* that occurred on *(date)*.

One of our trained community volunteer mediators will be contacting you within the next weeks for the purpose of arranging a meeting with you. At the time of the meeting, the program will be explained in detail, and it will be possible to talk about the offense, your losses as well as restitution issues.

In the meantime, if you have any immediate questions or concerns, you may reach us at *(phone)*.

Sincerely,

*(name)*

Victim Offender Conferencing Staff

# Sample Referral Form

Case Number: \_\_\_\_\_ Date Referred: \_\_\_\_\_  
Referral Source: \_\_\_\_\_ Referral Point: \_\_\_\_\_  
Offense: \_\_\_\_\_ Date occurred: \_\_\_\_\_

Name of offender: \_\_\_\_\_ Age: \_\_\_\_\_  
Address: \_\_\_\_\_ Gender: \_\_\_\_\_  
Phone: \_\_\_\_\_ School: \_\_\_\_\_ Grade: \_\_\_\_\_  
Parent/Guardian: \_\_\_\_\_  
Address/Phone (if different): \_\_\_\_\_

Name of victim: \_\_\_\_\_ Age: \_\_\_\_\_  
Address: \_\_\_\_\_ Gender: \_\_\_\_\_  
Phone: \_\_\_\_\_ School: \_\_\_\_\_ Grade: \_\_\_\_\_  
Parent/Guardian (if juvenile): \_\_\_\_\_  
Address/Phone (if different): \_\_\_\_\_

Details of Offense/Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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Status of other offenders if not referred: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## Sample Victim Offender Conferencing Agreement

Name of offender: \_\_\_\_\_

Name of victim: \_\_\_\_\_

Offense: \_\_\_\_\_ Date of offense: \_\_\_\_\_

We have met and discussed the offense and have agreed on the following as our way of making things as right as possible between us:

### Recognize Injustice/Violation

\_\_\_\_\_ We listened to each other describe how we experienced the offense (both facts and feelings) and agree that the injustice/violation has been recognized

\_\_\_\_\_ Other \_\_\_\_\_

### Restore Equity

\_\_\_\_\_ We have agreed \_\_\_\_\_ will pay \$ \_\_\_\_\_  
in full by \_\_\_\_\_. Conditions/Payment Schedule:

\_\_\_\_\_ \_\_\_\_\_ will work for \_\_\_\_\_ Hours, to be  
completed by (date) \_\_\_\_\_

Name of person who will outline work to be done and be the contact person for the  
victim offender program is \_\_\_\_\_.

Description/schedule of work \_\_\_\_\_

\_\_\_\_\_ Other (describe in detail) \_\_\_\_\_

\_\_\_\_\_ No restitution is necessary. Explain \_\_\_\_\_

\_\_\_\_\_ No agreement on how to restore the equity (restitution) is possible at this time.  
Please refer case back to referral agency.

**Future Intentions**

\_\_\_\_\_ We talked about the importance of completing this agreement and how completing it will help build trust.

\_\_\_\_\_ We talked about the future. \_\_\_\_\_ assured \_\_\_\_\_ that the offense will not happen again.

\_\_\_\_\_ Other \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ has asked for help with the following concerns \_\_\_\_\_

We understand that this agreement will be reviewed by the referring agency and is subject to their approval.

We further understand that failure to abide by the terms of this contract will first of all violate our agreement and further may result in court action, either criminal or civil against the offender or the offender's parents.

**Signatures**

Participant: \_\_\_\_\_ Participant: \_\_\_\_\_

Parent/Guardian: \_\_\_\_\_ Parent/Guardian: \_\_\_\_\_

Mediator: \_\_\_\_\_ Mediator: \_\_\_\_\_

Other Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

## Role plays—1

### Offender: Mike

You were in the living room watching TV and could hear your parents arguing in the kitchen again. Soon they came out, turned off the TV and told you they had finally decided to go through with the divorce they had been talking about for so long. You were angry and hurt. You had hoped it wouldn't come to this and you felt partly to blame because you knew they sometimes fought over you.

You grabbed your basketball and ran out of the house to the playground down the street. There was another kid playing ball and you pushed him out of the way. He said something to you about both of you playing and you punched him in the mouth and ran off.

You had seen this guy around the neighborhood and at school but didn't really know him. You didn't realize how badly you hurt him until the police came to the house looking for you later that night.

Things have settled down at your house now—your parents are separated and you've living with your dad. It's going better than you thought it would and it's nice not to have them fighting anymore. You feel really bad about what you did to this guy.

## Role plays—1

### Victim: Steve

You were playing basketball a few blocks from your house one evening when this other person that you recognized from your high school came out of nowhere and pushed you off the court. You told him there was enough room for both of you to play and he just came up and punched you in the face. You lost your four front teeth and had to be taken to the emergency room. Since the incident you've been terrified to leave your house and afraid to go to school.

You try to avoid him at all costs at school since you don't know what he'll do to you if he sees you again. You have also had a lot of pain plus the embarrassment of having to go without your front teeth until your partial was made.

While insurance covered most of the costs, your parents had a \$500 deductible that wasn't covered.

## Role plays—2

### Offender: Clare Sherman

You burglarized a small machine shop by breaking the lock on the door and taking about \$25.00 from a cash box. As you were leaving the shop you also took a compass but threw it away not knowing what else to do with it. A friend who used to work in the shop had told you about the cash box. You were only after the money and had not intended to do any damage.

You are anxious to get this over with because as soon as restitution is settled you will get off probation. You want to cooperate and you will go along with whatever the victim says. You have already spent the \$25.00.

## Role plays—2

### Victim: Harry Snow

You own a small machine shop that was burglarized. The door and lock were damaged and the repairs cost you \$85.00 but you cannot find your receipt. You had at least \$35.00 in your cash box and all the money was gone. A compass from a precision tool set was also missing and since you were unable to replace the compass separately you had to buy a complete new set for \$49.95.

You suspected a neighbor boy who used to work for you but later learned that a teenage girl, whom you did not know, had admitted to the offense. You will come to the meeting feeling angry and frustrated. You want to make the offender aware of the inconvenience she has caused you. There have been previous times when you were victimized and not reimbursed and you also want to discuss that at the meeting.

## Quick Decisions

1. The 13-year-old offender comes from a low-income family and has no money for restitution. What do you say in your initial meeting with the victim when he or she shows receipts for their \$300.00 loss?

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2. The offender agrees to what the victim is asking but you know the offender cannot keep that contract. What do you say?

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3. You have made four or five attempts at different times of the day to contact the victim by phone without success. What do you do?

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4. At the separate meeting the victim and/or offender says they want to bring their attorney to the joint meeting. How do you respond?

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5. The victim wants to know what happened to the other two offenders who are not participating in the victim offender mediation? What do you say?

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6. The offender's mother keeps saying that it is not really her child who is responsible for this incident but other kids who weren't charged? What do you say?

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7. The victim can't stop talking about how rotten the offender is and keeps making derogatory comments about things they've heard about the offender. How do you respond?

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8. The victim has no proof of the value of his or her losses. What should you do?

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9. When you phone the victim, she or he says all thieves should be sent to jail, everybody is soft on crime these days. How do you respond?

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10. The victim is very nice at the individual meeting and denies that the burglary has caused any problems in her life. What do you say?

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## Justice Paradigm Shift? Values and Visions in the Reform Process

by Howard Zehr

*Governed by a retributive paradigm, the criminal justice process threatens to co-opt and subvert alternative processes such as mediation. Only a grounding in alternative values—indeed, an alternative, restorative understanding of justice—can reduce such co-optation. Change advocates must be aware that their reforms may go astray and should be careful about imposing their visions and values on others.*

The modern prison, born just over two centuries ago as an alternative to corporal and capital punishment, contains an important lesson for those of us who advocate social change. The Quakers and others who championed the first modern prisons did so with the best of motives but, in reality, created a monster. This history warns us that no matter how lofty our motives and theories, alternative processes intended as reforms may be co-opted and diverted from their original purposes.

Perhaps the processes of co-optation and diversion are unavoidable; perhaps in the long run, all reforms need reforming. Nevertheless, those who advocate alternative processes have a responsibility to resist subversion of their ideals. The key to resisting this subversion, it is argued here, may lie in alternative processes that are consciously and explicitly built upon alternative values. Unless underlying traditional assumptions and values are transformed to alternative assumptions and values, alternative processes will rarely end up as real alternatives.

### Subversion of Reform

In *Justice Without Law?* Jerold Auerbach (1983) chronicles the impressive reform efforts throughout U.S. history that sought to find justice outside the framework of law by encouraging less formal processes such as mediation. He is pessimistic about the prospects for avoiding co-optation of these alternative processes by the legal system, however, concluding that frequently the “search for justice without law has deteriorated beyond recognition into a stunted offshoot of the legal system” (p. 146). In the end, informal processes became part of the formal legal system instead of alternatives to it.

Things could be worse. Auerbach warns that although justice without law has all too often been co-opted into a new form of legalism, becoming law without justice, injustice without law would be even more disastrous. Nevertheless, although mediation efforts may be perverted and co-opted into strengthening the adversarial system they were designed to avoid or replace, it can be argued that they are relatively benign and noncoercive, and so the everyday world may not be much worse off as a result of the effort.

In the criminal justice arena, though, the co-optation of alternative processes is more ominous. The work of David Rothman among others (1980; see also Feeley, 1983) suggests that within the hierarchical and coercive structures of criminal justice,

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alternative sanctions may result in something not only different than intended but also worse than what they were designed to fix. Determinate sentences, in the name of “just desserts,” were instituted as an alternative to abusive and debilitating indeterminate sentences justified as rehabilitation. In practice, determinate sentences have made the system more punitive; prison sentences have become longer and more frequent, and since prisons are now explicitly intended to punish, there is no longer an inherent rationale for treating prisoners humanely. Today many observers worry that so-called intermediate punishments, such as house arrest, electronic monitoring, and even community service, offer new technologies of punishment that will widen, deepen, and strengthen the net of social control. This could also be the fact of such mediation efforts as victim-offender reconciliation programs that operate within the framework of criminal law: they could not only become so perverted as to be meaningless but could also offer new forms of punishment and control (Matthews, 1988).

### **Alternative Values and the Retributive Paradigm**

In a 1987 report on British mediation and reparation programs, researchers warn that co-optation by the current criminal justice system may already be under way (Davis, Boucherat, and Watson, 1987). They identify the primary source of subversion as a conflict between values, in which retributive goals overwhelm and pervert reparative programs that attempt to operate within criminal justice parameters. A major variable determining whether and how reforms are perverted, in other words, is the value context in which they function. To become true alternatives, programs cannot simply promise to better achieve traditional goals or to fulfill unmet needs. Instead, they must consciously embody alternative values while attempting to change the larger value context in which they operate. Alternative values, not alternative processes or sanctions, hold the key (Harris, 1983–1984).

This change does not mean supplying minor glosses or a few isolated alternative values or processes; it means questioning and altering the underlying paradigm—the matrix of assumptions, language, and metaphors—that frames our pursuit of justice. In a criminal justice context, it will not do to promote alternative punishments; the concept of punishment itself must be questioned. What is required is a clear understanding of how alternative values differ from prevailing ones.

The criminal justice system claims a number of goals, but the essential of the current criminal justice paradigm, that is, *retributive justice*, can be summarized quite simply: (1) crime violates the state and its laws; justice focuses on (2) establishing blame (guilt) and (3) administering pain (punishment); justice is sought through (4) a conflict between adversaries in which (5) offender is pitted against state, (6) rules and intentions outweigh outcomes, and (7) one side wins while the other loses.

As I have argued elsewhere, many of the failures of criminal justice—its punitiveness, its neglect of victims, its lack of true offender accountability, to name but a few—can be traced to the implications of this paradigm (Zehr, 1990; see also Wright, 1991). Its punitive and hierarchical values tend to overwhelm the alternative programs such as victim-offender reconciliation that claim to embody some experiential and participant-oriented values, especially if the alternative programs are not guided by carefully articulated visions.



## A New Paradigm

Victim-offender reconciliation programs (VORPs) were developed in the 1970's as a blend of mediation and restitution concepts (Zehr and Umbreit, 1982). Using trained volunteers as mediators, they are designed to bring victims and offenders together to talk about what happened and develop agreements to "make things right."

VORPs usually claim to incorporate equally the needs and perspectives of both offenders and victims (Wright and Galaway, 1989; Galaway and Hudson, 1990). While restitution is a common outcome, a mediated encounter between victim and offender is the crux of the concept. However, the criminal justice process defines cases, problems, and job roles as they relate to offenders. Since VORPs must function within this framework, they are easily subverted into offender-oriented programs. Consequently, VORPs may come to be used primarily to help reform offenders, to keep them from incarceration, or to punish them by forcing them to pay for their crimes or to take verbal abuse from victims. Either way, victims are used for others' purposes and the empowering and interpersonal dimensions of VORPs are muted or lost.

When the restitution component of a VORP comes to be viewed as punishment or as a way to reduce imprisonment for offenders rather than as an opportunity to make things right for victims, mediation's focus may be transformed from empowerment and personalization into a means to get restitution or a confrontation to teach offenders a lesson. An actual encounter may be replaced by shuttle diplomacy by the mediator. Success may be measured by restitution statistics or cases deferred from jail. All of these represent subtle perversions of the VORP concept, encouraged by a retributive understanding of crime and justice.

This retributive paradigm that undergirds criminal law often seems so natural and inevitable that it is rarely questioned. In fact, however, it can be viewed as relatively recent and unique, since other models have dominated many other cultures and even most of Western history. Other paradigms are indeed conceivable.

One possible justice paradigm, restorative justice, draws upon history as well as the experience of crime and the needs it generates. In point-by-point contrast with the retributive justice paradigm, the restorative justice paradigm can be summarized this way: (1) crime violates people and relationships; justice focuses on (2) identifying needs and obligations and (3) making things right; justice is sought through (4) dialogue and mutual agreement in which (5) victims and offenders are given central roles; and justice is judged by the extent to which (6) responsibilities are assumed and needs are met and (7) healing (of individuals and relationships) is encouraged. This restorative paradigm emphasizes the existential reality of crime: this it represents a violation of people and their relationships. The proper response, then, should heal and restore (Zehr, 1990).

Table 1 compares some dimensions of the retributive and restorative paradigms and highlights significant differences. For example, the prevailing retributive paradigm identifies the state as victim, thus placing the state at the center of both problem and solution. It leaves out the individual victim and denies the interpersonal character of the offense. Accountability is stated in terms of punishment. The restorative paradigm, however, defines crime in interpersonal terms as harm. It puts the

**Table 1. Comparison of Retributive and Restorative Paradigms**

<b>RETRIBUTIVE JUSTICE</b>	<b>RESTORATIVE JUSTICE</b>
Crime defined by violation of rules and relationships.	Crime defined by harm to people.
Crime seen as categorically different from other harms and conflicts.	Crime recognized as related to other harms and conflicts.
State as victim.	People and relationships as victims.
State and offender are primary parties.	Victim and offender are primary parties.
Interpersonal dimensions irrelevant.	Interpersonal dimensions central.
Offense defined in technical, legal terms.	Offense understood in full context: moral, social, economic, political.
Wrongs create guilt.	Wrongs create liabilities and obligations.
Guilt is absolute, either/or.	There are degrees of responsibility.
Guilt is indelible.	Guilt is removable through repentance and reparation.
Debt is abstract.	Debt is concrete.
Debt paid by taking punishment.	Debt paid by making right.
Accountability = taking one's "medicine."	Accountability = taking responsibility.
Blame fixing central.	Problem solving central.
Focus on past.	Focus on future.
Needs secondary.	Needs primary.
Battle, adversarial model normative.	Dialogue normative.
Imposition of pain normative.	Restoration/reparation normative.
One social injury added to another.	Emphasis on repair of social injuries.
Harm by offender balanced by harm to offender.	Harm by offender balanced by making right.
Victims' needs ignored.	Victims' needs central.
Restitution rare.	Restitution normal.
Sense of balance through retribution.	Sense of balance through restitution.
State monopoly on response to wrongdoing.	Victim, offender, community roles recognized.
Offender has no responsibility for resolution.	Offender has responsibility in resolution.
Outcome encourages offender irresponsibility.	Responsible behavior encouraged.
Offender denounced.	Harmful act denounced.
Offender stigmatized	Reintegration offered to offender.
Justice tested by intent and process.	Justice tested by its outcome.
Process alienates.	Process aims at reconciliation.
Proxy professionals are the key actors.	Victim and offender central; professional help available.
Win-lose outcomes assumed.	Win-win outcome encouraged.

individuals, their needs, and their relationships center stage. Accountability is defined as taking responsibility to make things right.

The prevailing retributive paradigm makes a conflictual, adversarial model normative. It defines the primary parties to the conflict as the state and the individual offender, then utilizes an approach that heightens the conflict. The new paradigm recognizes that the essential conflict is between individuals and that conflict-resolution process are important. It encourages victim and offender to see one another as individuals rather than as stereotypes. The retributive paradigm focuses on the past, on blame fixing. While a restorative paradigm encourages responsibility for past behavior, its focus is on the future, on problem solving, and on the obligations created by the offense. In the new model, restoration or transformation (that is, making things right) replaces the imposition of pain as the primary outcome. Restitution is normative, not exceptional.

My purpose here is not to explore the dimensions of a specific paradigm, however. Indeed, we are probably far from formulating a true alternative paradigm. A paradigm requires a well-articulated theory, for which there is some consensus, combined with a physics of application (see Leshan and Margenau, 1982). It need not solve all problems, but it must solve the most pressing ones, on both theoretical and practical levels. At our present stage, our discussions are more on the level of “sensitizing theory” (Scheerer, 1986, p. 9) and approximate experimental programs rather than a full paradigm. Nevertheless, such discussions help us clarify the importance of alternative values and visions in the process of change.

The dialogue must center on ascertaining what should be normative, not on realistic solutions in all cases. The current paradigm builds upon the extra-ordinary and the bizarre, assuming an adversarial process based on a battle model. If we operated under a restorative set of values; a negotiation-based model would become the norm, reserving the more hierarchical and adversarial processes for the unusual. Even in the latter case, however, restorative values should provide the overall context.

## **Making Values Explicit**

Regardless of the shape of our understanding of justice, the point here is that choice of society’s value perspective is crucial. The processes of co-optation and diversion are complex and multifaceted (Zehr, 1990, pp. 232ff.). While alternative values will not in themselves halt these processes, they are an important ingredient for creating true alternative processes. We must clearly identify alternative values and set them within a larger concept of justice, then develop new measuring sticks to judge how we are doing and whether we are remaining on track.

One common way that both service and advocacy organizations can embody values is the mission statement. A short, specific statement of purpose and philosophy can clarify organizational goals and values and provide a benchmark for testing services and trends. Unfortunately, many small organizations, both public and private, have only rudimentary mission statements if they have any, and these statements contain few value commitments. Rarely are such elementary mission statements taken seriously. Mission statements are most effective when they are grounded in a larger vision that incorporates value commitments. A mission based

on vision or philosophy can provide important guidelines for program design or evaluation. An organization involved in advocating change or offering alternatives should articulate a clear and specific statement of mission and consult it often. Co-optation may then be reduced by testing design and application against the yardstick of the values contained in the mission statement.

As an example, the Center for Community Justice (CCJ), which operates the oldest active victim-offender reconciliation program in North America, recently adopted a “correctional philosophy” that articulates that the alternatives the CCJ advocates “are built on the assumption that, where possible, it is more constructive for offenders and victims to be directly involved in sanctions and solutions than to simply have them imposed by an outside authority. Victims need opportunities to be heard, to regain a sense of control over their situations, and to receive restitution. Offenders need to be held accountable for their behavior, sanctioned without losing self-worth, and given encouragement and opportunity to make things right with their victims and community” (Center for Community Justice, 1990).

This commitment to participatory solutions that repair and restore guides not only CCJ’s programming but also its internal responses to conflict and problem solving. Further, the statement of philosophy highlights several specific value commitments, including victim and offender empowerment, offender accountability, victim concerns, and the centrality of reparative solutions. Such commitments can serve as important benchmarks for program design and evaluation. The statement goes on to note that the same participatory principles should guide the organization’s working relationships. More recently, the Center for Community Justice also adopted the following “vision statement”: “We are committed to becoming an agency where: Restorative justice principles shape our decisions, actions and goals. A collaborative style marks our relationships with other agencies and officials in the community and in the justice system. Victims, offenders, criminal justice colleagues and staff are treated as persons of worth. Community well-being is sought through community involvement in working toward preventing and resolving conflicts. Creativity and innovation characterize CCJ programming. We ask of ourselves and the justice system, ‘Is this the best we can do?’” (1992).

In short, a soundly organized change organization should carefully and explicitly articulate its values and mission. I suggest that this is best done with three types of statements, not just one.

*A vision statement* articulating a basic understanding of justice.

*A mission statement* that clearly and succinctly summarizes the purposes of the organization.

*An aspiration statement* that suggests guidelines for implementing the organization’s purposes and for the relationships among staff, board members, and clients that will support these purposes.

By spelling out purposes, values, and intended working relationships in this way, values are emphasized and clarified. Such sets of statements are considerably more useful to practice and evaluation than the vague, cryptic statements that are commonly buried in the files of nonprofit organizations.

## Putting Value Statements to Work: An Example

Some years ago the Center for Community Justice operated a “juvenile reparations” project that did not seem to be providing the kind of alternative envisioned when it was initiated. Several of the staff and board members (of whom I was then one) began a review of the program, testing it against the organization’s mission and understanding of justice. “What would a program look like that took seriously a restorative understanding of justice?” they asked. What emerged was the Juvenile Reparations Project (JRP), designed as a last-chance alternative to the juvenile reformatory.

Juveniles who are referred to the program by juvenile judges are expected to take the responsibility to design, with the help of JRP staff, their own sentencing proposal, which they then present to the judge. Since according to restorative theory crime is essentially harm, each person’s sentencing proposal must address the “three levels of harm” involved in his or her offense: the harm to the victim, the harm to the community, and the harm to himself or herself. The staff work with the juveniles to help them understand the implications of their actions and take responsibility for addressing the three levels of harm. Sentencing proposals typically include an encounter with victims through a VORP, some volunteer work through which the juveniles can give back to the community, and some kind of activity designed to help the juveniles themselves, such as tutoring, a group camping trip, or other activities to enhance their competence in living skills.

The program is designed to hold offenders accountable, to take seriously the harm done and to put central “making right.” So far, the results are encouraging. The county reports actual reductions in the cost of juvenile incarceration. Moreover, an unpublished study (Mika and Wengerd, 1994) tracks the first ten juveniles to have successfully completed the program. These ten had been referred to JRP for a total of thirty-seven felonies, and they had been out of the program for a year or more. A record check showed that their only involvement with law enforcement during those twelve months was for two traffic tickets. The point here is this, however: the mission and philosophy of restorative justice of the CCJ were clear enough that they could be utilized for program design and evaluation and perhaps can serve as one tool to resist the program’s diversion from its goals (see Mika and Wengerd, 1994).

## A Final Warning

Visions and values are crucial in the process of change. As we explore alternate visions of justice, however, we must remember another lesson from the birth of modern prisons: *What is good for me is not necessarily good for others.* Recent research into the social circumstances of early prison advocates has revealed that some of the Quaker promoters of penitentiaries had themselves been imprisoned for conscience’s sake (Cromwell, 1986). Because they were men of substance, they were not treated as badly as they would have been otherwise. Because they were men of reflection, they found their incarceration to be a time for contemplation. Consequently, they advocated prison as a place to reflect on the Bible and become penitent.

Unfortunately, what was liberating to them became oppressive to others. This is an important warning for those of us who seek to implement processes that are humanizing and community building. We must remain open and humble about what we “know” and what we seek to implement.

## Act 3 of 1996

Below is a portion of the final version of the legislation which became an Act when it was signed into law. Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

### 5949. Confidential mediation communications and documents

#### A) GENERAL RULE

Except as provided in subsection (B), all mediation communication and mediation documents are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding.

#### B) EXCEPTIONS

- 1) A settlement document may be introduced in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states it is unenforceable or not intended to be legally binding.
- 2) To the extent that the communication or conduct is relevant evidence in a criminal matter, the privilege and limitations set forth in subsection (A) does not apply to:
  - (i) a communication of a threat that bodily injury may be inflicted on a person;
  - (ii) a communication of a threat that damage may be inflicted on real or personal property under circumstances constituting a felony; or
  - (iii) conduct during a mediation session causing direct bodily injury to a person.
- 3) The privilege and limitation set forth under subsection (A) does not apply to a fraudulent communication during mediation that is relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.
- 4) Any document which otherwise exists, or existed independent of the mediation and is not otherwise covered by this section, is not subject to this privilege.

#### C) DEFINITIONS

As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

*“Mediation.”* The deliberate and knowing use of a third person by disputing parties to help them reach a resolution of their dispute. For purposes of this section, mediation commences at the time of initial contact with a mediator or mediation program.

*“Mediation communication.”* A communication, verbal or nonverbal, oral or written, made by, between or among a party, mediator, mediation program or any other person present to further the mediation process when the communication occurs

during a mediation session or outside a session when made to or by the mediator or mediation program.

*“Mediation document.”* Written material, including copies, prepared for the purpose of, in the course of or pursuant to mediation. The term includes, but is not limited to, memoranda, notes, files, records and work product of a mediator, mediation program or party.

*“Mediation program.”* A plan or organization through which mediators or mediation may be provided.

*“Mediator.”* A person who performs mediation.

*“Settlement document.”* A written agreement signed by the parties to the agreement.