



Center for Restorative Justice & Peacemaking

An International Resource Center in Support of Restorative Justice Dialogue, Research and Training

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Victim Sensitive Victim Offender Mediation Training Manual

Prepared for:
Office for Victims of Crime
U.S. Department of Justice

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Section I

Overview Of Victim Offender Mediation: *A National Perspective*

I. A. What Is It?

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

Victim offender mediation is one of the clearest expressions of restorative justice, a movement that is receiving a great deal of attention throughout North America and Europe. Our current juvenile and criminal justice systems are entirely offender driven, with a “trail em, nail em, and jail em” focus that views crime as an offense against the state and offers little help to crime victims. Restorative justice, however, provides a very different framework for understanding and responding to crime and victimization. Moving beyond the offender driven focus, restorative justice identifies three clients: individual victims, victimized communities and offenders. Crime is understood primarily as an offense against people within communities, as opposed to the more abstract definition of crime as a violation against the state. Those most directly affected by crime are allowed to play an active role in restoring peace between individuals and within communities. Restoration of the emotional and material losses resulting from crime is far more important than imposing ever increasing levels of costly punishment on the offender. The debt owed by offenders is very concrete. Rather than passively “taking your punishment,” offenders are encouraged to actively restore losses to victims and communities. The use of dialogue and negotiation among victims, victimized communities, and offenders is emphasized. In truth, the essence of what now is being called restorative justice is deeply rooted in the traditional practices of many indigenous people throughout the world, such as Native Americans, Pacific Islanders, Maori in New Zealand, and First Nation people in Canada.

I. B. When Are Cases Referred?

In some programs, cases are primarily referred to victim offender mediation as a diversion from prosecution, assuming the agreement is successfully completed. In other programs, cases are

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

The national survey of victim offender mediation programs conducted as part of this project found that of the 117 programs responding out of a total of 293, 33% indicated that their primary referral was at a diversion level, 28% at a post-adjudication but pre-disposition level, and 28% at a post-disposition level of referral.

I. C. How Is It Different From Other Mediation?

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

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

Table 1

**Victim Offender Mediation Continuum:
From Least to Most Restorative Impact**

<p>Least Restorative Impact <i>Agreement-Driven: Offender Focus</i></p>	<p>Most Restorative Impact <i>Dialogue-Driven: Victim Sensitive</i></p>
<ul style="list-style-type: none"> • Entire focus is upon determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime upon the victim and the community, as well as the offender • No separate preparation meetings with the victim and offender prior to bringing the parties together • Victims not given choice of where they would feel the most comfortable and safe to meet, or whom they would like to have present • Victims given only written notice to appear for mediation session at preset time, with no preparation • Mediator or facilitator describes the offense and offender then speaks, with the victim simply asking a few questions or responding to questions of the mediator • Highly directive style of mediation or facilitation with the mediator talking most of the time, continually asking both the victim and offender questions, with little if any direct dialogue between the involved parties • Low tolerance of moments of silence or expression of feelings • Voluntary for victim but required of offender whether or not they even take responsibility • Settlement driven and very brief (1015 minutes) 	<ul style="list-style-type: none"> • Primary focus is upon providing an opportunity for victims and offenders to talk directly to each other, to allow victims to express the full impact of the crime upon their lives and to receive answers to important questions they have, to allow offenders to learn the real human impact of their behavior and take direct responsibility for seeking to make things right • Restitution is important, but secondary to the dialogue about the impact of the crime • Victims are continually given choices throughout the process: where to meet, who they would like to have present, etc. • Separate preparation meetings with the victim and offender prior to bringing them together, with emphasis upon <u>listening</u> to how the crime has affected them, <u>identifying</u> their needs and <u>preparing</u> them for the mediation or conference session • Nondirective style of mediation or facilitation with the parties talking most of the time, high tolerance for silence and use of a humanistic or transformative mediation model • High tolerance for expression of feelings and full impact of crime • Voluntary for victim and offender • Trained community volunteers serve as mediators or co-mediators along with agency staff • Dialogue driven and typically about an hour in length (or longer)

I. D. Are Crime Victims Interested?

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

I. E. How Many Programs Exist?

A national survey of the field summarized in the appendix of this monograph found a total of 293 victim offender mediation programs throughout the United States. Community-based agencies operated 44% of the 117 programs interviewed, 11% were sponsored by probation departments, 10% were church-based programs, 4% were based in victim services agencies, and 3% were operated by prosecuting attorney's offices. Within these 117 programs, 74% of the cases handled were in the juvenile court and 26% were criminal court cases involving adult offenders.

After 20 years of development and in many thousands of cases (primarily property crimes and minor assaults) in more than 1,000 communities throughout North America (more than 300) and Europe (more than 700), victim offender mediation is finally beginning to move from the margins toward the mainstream of criminal justice. Some programs are still quite small, with a very limited number of case referrals. Many other programs are receiving several hundred referrals a year. A few programs in recent years have been asked to divert a thousand or more cases a year from the court system and county governments have provided hundreds of thousands of dollars to fund these victim offender mediation programs. While there remains a continuing need for more research in this field, there already exists far more empirical data, based on multi-site assessments in Canada, the U.S., and England, than one could find on many other correctional interventions.

It is clear that the field of victim offender mediation has grown extensively since the first Victim Offender Reconciliation Project was initiated in Kitchener, Ontario, and later replicated in Elkhart, Indiana. Perhaps the clearest expression of how the field has continually developed and received great recognition for its work is seen in the 1994 endorsement of victim offender mediation by the American Bar Association. After many years of supporting civil court mediation, with limited interest in criminal mediation, the A.B.A. now endorses the process and recommends the use of "victim offender mediation and dialogue" in courts throughout the United States. Similarly, a recent statewide survey of victim service providers in Minnesota found that 91% believed victim offender mediation should be in every judicial district, since it represents an important service, offered as an option for crime victims.

Table 2
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	348
New Zealand	Available in all jurisdictions
Norway	44
South Africa	1
Scotland	2
Sweden	10
United States	293

I. F. What Have We Learned From Research?

During the past several years, a small but growing amount of empirical data has emerged from studies in the U.S., Canada, and England. Studies conducted over the past 12 years throughout Europe and North America report high levels of satisfaction with the mediation process and outcome on the part of victims and offenders (Coates and Gehm, 1989; Collins, 1984; Dignan, 1990; Fischer and Jeune; Galaway, 1988; Galaway and Hudson, 1990; Gehm, 1990; Marshal and Merry, 1990; Perry, Lajeunesse and Woods, 1987; Umbreit, 1989, 1991, 1993; 1994; 1995; Umbreit and Coates, 1993; Wright and Galaway, 1989). Some studies found higher restitution completion rates (Umbreit, 1994), reduced fear among victims (Umbreit and Coates, 1993; Umbreit, 1994), and reduced future criminal behavior (Butts and Snyder, 1991; Nugent and Paddock, 1995; Schneider, 1986; Umbreit, 1994). Multi-site studies within England (Marshal and Merry, 1990; Umbreit and Roberts, 1996), the United States (Coates and Gehm, 1989; Umbreit, 1994) and Canada (Umbreit, 1995) have confirmed most of these findings. A large multi-site study in the U.S. (Umbreit, 1994) found that victims of crime who meet with their offender are far more likely to be satisfied with the justice system response to their case than similar victims who go through the normal court process.

It is becoming increasingly clear that the victim offender mediation process: humanizes the criminal justice experience for both victim and offender; holds offenders directly accountable to the people they victimized; allows for more active involvement of crime victims and community

members (as volunteer mediators and support persons) in the justice process; and reduces further criminal behavior in offenders. During the early 1980s, many questioned whether crime victims would even want to meet face-to-face with their offender. Today it is very clear, from empirical data and practice experience, that the majority of crime victims presented with the opportunity of mediation and dialogue chose to engage in the process, with victim participation rates often ranging from about 60-70% in many programs.

I. G. How to use training manual

This manual is divided into three sections, along with attachments. Section I (Overview of Victim Offender Mediation) is a brief overview of the field and should be read by all participants in the training on the first day of training, or before. Section II (Key Points) provides an outline of the entire training presentation. Overheads can be made from these charts and participants in training should actively follow Section II and make notes on the pages during the training session. Section III (Background Information) consists of far more description narrative on the key points and topics presented in the training in Section II. Section III should be read within a week following the training and should be used as a reference throughout the practice of mediation. Finally, a number of additional helpful items are presented as attachments. These should be referred to as needed.

Section II

Key Points Outline For Entire Training

II. A. Retributive Justice

- Crime is a violation of the state
- Crime is defined as law breaking
- Justice determines blame and administers pain
- Justice is a contest between the offender and the state

Restorative Justice

- Crime is a violation of people and relationships
- Crime creates obligations to make things right
- Justice involves the victim, the offender, and the community
- Justice seeks solutions which promote repair, reconciliation, and reassurance

(Zehr, 1990)

Current System: Holding Offenders Accountable

Accountability Means Taking Your Punishment

- Victim and offender in passive roles
- Focus on Deficits
- Debt is abstract
- Little, if any, victim restitution

Restorative Justice: Holding Offenders Accountable

*Accountability Means Taking Responsibility
and Taking Action to Repair the Harm to Victim(s)*

- Victim and offender in active roles
- Focus on strengths
- Debt is concrete
- Victim restitution/restoration is norm

Accountability Interventions Within A Restorative Justice Paradigm

- Restitution with direct input from victim
- Community service selected by victim
- Personal service for the victim
- Victim offender mediation and conferencing with trained community volunteers
- Victim panels
- Victim offender groups in correctional facilities
- Victim offender groups in the community
- Neighborhood dispute resolution
- School mediation - Gang mediation
- Conflict resolution training in correctional facilities

Engaging & Involving Crime Victims

"A Balanced & Restorative Justice System"

- Victim members on advisory committees
- Victim members on special task forces
- Victim awareness staff training
- Victim awareness training for offenders
- Victim panels/dialogue with offenders
- Victim offender dialogue groups (in facility and/or in community)
- Victim offender mediation
- Victims as mentors for offenders
- Victims as supervisors of community service

Transforming the System

Retributive

Restorative

Services available for victims
Low ▶▶▶▶▶▶▶▶▶▶ High

Victim opportunity for involvement/input
Low ▶▶▶▶▶▶▶▶▶▶ High

Offender opportunity/encouragement to take responsibility
Low ▶▶▶▶▶▶▶▶▶▶ High

Offender involved in repair of harm
Low ▶▶▶▶▶▶▶▶▶▶ High

Increase in offender competency
Low ▶▶▶▶▶▶▶▶▶▶ High

Community members actively involved in decision making and implementation
Low ▶▶▶▶▶▶▶▶▶▶ High

Processes build connections among community members
Low ▶▶▶▶▶▶▶▶▶▶ High

II. B. Understanding Crime Victims: Initial Contact

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

Major Needs of Crime Victims Education and Information

1. Safety and Security

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

b. Individualize person/situation:

- Crime
- Victim(s)
- Situation

c. Explain:

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

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

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

e. Before meeting with victims:

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

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

g. Recognize you may be a "trigger" for victims:

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

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

- Victims
- General public

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

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

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

2. Ventilation and Validation

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

b. Reinforce that victim input is:

- Important to you professionally.
- Important to case disposition.

c. Acknowledge:

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

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

e. Validate victim’s anger directed at the:

- Offender
- Criminal justice system
- Society

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

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

- Nervousness
- Anxiety
- Fear

h. Never say: “I understand.”

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

j. Practice active listening skills:

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

k. Use basic validation skills.

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

3. Prediction and Preparation

a. Explain lack of "truth in sentencing."

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

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

d. Explain parameters of:

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

e. Encourage victim input and validate that input.

f. Parole and probation.

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

- * What happens with violations
- * Any victims' rights or recourse with probation and parole

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

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

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

i. Perhaps most important..

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

4. Information and Education

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

b. Provide information about the system:

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

c. Always put information in writing:

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

d. Know exactly what victims need to know!

e. Know victim's rights in your state:

- Statutory rights
- Constitutional rights
- Rights under agency policies

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

- Locally
- Statewide
- Nationally

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

h. When possible, provide written educational resources.

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

j. Free resources and assistance:

National Criminal Justice Reference Service
(800) 851-3420

Juvenile Justice Clearinghouse
(800) 638-8736

Bureau of Justice Assistance Clearinghouse
(800) 688-4242

National Victim
Resource Center
(800) 628-6872

II. C. Working With Offenders: Case Development

1. Preparing for Initial Contact: Review Case Information

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

2. Initial Contact

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

3. Explaining Options

- a. Describe non-negotiable legal mandates.
- b. Explain non-negotiable institutional policies.
- c. Clarify offender rights.
- d. Identify options for offender regarding mediation.
- e. Review advantages and disadvantages of choices from the offender's perspective.

4. Developing Common Ground for Victim-Offender Mediation

- a. Clarify purpose of mediation and potential benefits to the offender and victim.
- b. Clarify role of mediator, victim, offender in mediation.
- c. Discuss issues and concerns regarding mediation for the offender; clarify expectations.
- d. Get feedback from offender regarding willingness to participate.

5. Identifying Obstacles to the Mediation Process

- a. Lack of understanding how mediation fits in justice system or can help offender.
- b. Offender has negative feelings about mediation.
- c. Offender fears open communication with victims and is reluctant to share thoughts or feelings about the crime to the victim.
- d. Offender lacks skills or support for mediation.

6. Working with Obstacles to the Mediation Process

- a. Identify offender personal strengths and resources that support successful experience in mediation.
- b. Identify offender deficits that could be worked with to facilitate mediation e.g. training in communication skills.
- c. Identify environmental resources needed to support the offender in mediation.

7. Influencing Offender Behavior and Attitudes in Mediation

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

8. Contract to Participate in Mediation

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

9. Task Centered Focus

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

II. D. Mediation as Dialogue: *A Humanistic Model*

Underlying Values: Humanistic Mediation Model

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

Implications for Practice: Humanistic Mediation Model

1. **Centering of Mediator** (Clearing the mind of clutter and focusing on the important peacemaking task at hand.)
2. **Re-Framing of the Mediator's Role** (From directing a settlement driven process to facilitating a process of dialogue and mutual aid.)
3. **Pre-Mediation Sessions With Each Party** (Listening to their story, providing information, obtaining voluntary agreement to participate, assessing the case, preparing for the face to face meeting.)
4. **Connecting With the Parties through Building of Rapport and Trust** (Beginning in pre-mediation phase.)
5. **Identifying and Tapping into Parties' Strengths** (Beginning in pre-mediation phase.)
6. **Coaching on Communication, if Required** (During pre-mediation sessions.)
7. **Non-Directive Style of Mediation** (The mediator facilitating a direct conversation/dialogue between the parties, without dominating the interaction or speaking too frequently)
8. **Face-To-Face Seating of Victim and Offender** (Unless inappropriate because of culture of parties.)

9. **Recognition and Use of Power of Silence in Healing** (The mediator allowing moments of extended silence without interrupting, unless tremendous discomfort of parties is clearly present)

10. **Follow-Up Sessions** (Scheduling follow-up meeting(s) when needed)

I. E. The Mediation Process: *Phases & Tasks*

Purposes of Victim Offender Mediation & Dialogue

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

Potential Risks & Benefits:
VICTIM OFFENDER MEDIATION & DIALOGUE

VICTIM
POTENTIAL RISKS

1. **Bringing up uncomfortable feelings related to the victimization.**
2. **Re-experiencing the initial anxiety, trauma of related symptoms.**
3. **Learning painful new information about details related to the crime.**
4. **Not seeing the degree of desired remorse in the offender.**
5. **Unrealistic expectations in regard to the offender's rehabilitation.**

VICTIM
POTENTIAL BENEFITS

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

Potential Risks & Benefits:
Victim Offender Mediation & Dialogue

Offender
Potential Risks

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

Offender
Potential Benefits

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

Basic Elements of *Victim Offender Mediation & Dialogue*

- Pre or Post Adjudication Referral
- Requires Admission of Guilt by Offender
- Offender Participation Should be as Non-Coercive as Possible
- Victim Participation Must be Voluntary!!
- Mediator Meets With Each Party Separately Before Date of Mediation
- Involves Face to Face Meeting
(Unless this is not appropriate because of culture of parties)
- Empowers V/O to Resolve Conflict Through Dialogue & Mutual Aid
- Involves Neutral Trained Mediators
(Usually community volunteers)
- Two Part Agenda:
 - Discuss Facts / Feelings
(Storytelling and dialogue)
 - Develop Restitution Plan
(Conflict resolution and closure)

Effective Listening Techniques

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

Four Phases of Victim Offender Mediation Process

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

Preparation For Mediation Phase

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

Calling the Victim/Offender (First Contact by Mediator)

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

Initial Separate Meetings With Victim & Offender

- Introduce Yourself Again, With Quick Reference to Program.
- Listen to Their Story (Try to get in a listening mode, first) “What actually happened on the night of the burglary?”
- Explain the Program in a Non-Jargon Manner.

- Encourage their Participation, but Do Not Coerce or Pressure.
- Mention that “Many Victims /Offenders Find it Helpful to Meet and Work Things Out, Although it is Not Meant for Everyone - It’s Your Choice.”
- For the Offender: (If they agree to participate) Assess Their Ability to Pay Restitution and Willingness to Consider Personal Service Work or Community Service Work.
- For the Victim: (If they agree to participate) Assess Their Need for Restitution and Willingness to Consider Personal Service Work or Community Service Work.
- Coach on How to Respond to Questions During Mediation, If Either Victim or Offender are Very Non-Expressive, Express Intense Feelings, or are Highly Aggressive.
- Call Back Later if More Time is Needed to Think About It

Mediation Phase

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

Mediator Functions

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

Suggested Agenda for Victim Offender Mediation Session

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

Starting the Mediation Session

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

Transition From Talking About Event to Negotiating Restitution

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

Writing the Restitution Agreement

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

Forms of Restitution

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

Characteristics of Victim Offender Follow-Up Meetings

- Usually Brief (15-30 minutes)
- Less Structured / More Informal
- Frequency (Depends on Case) Mid-Contract Review
 - * Renegotiation of Agreement
 - * And / Or Close-Out Meeting
- Formal Agenda: Monitoring of Restitution Agreement
- Informal Agenda: Strengthening of Conflict Resolution Process and Opportunity for Closure

Potential Benefits of Victim Offender Follow-Up Meetings

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

Key Strategic Issues Of Offering Victim Offender Follow-Up Meetings

- When to Suggest Follow-Up Meeting

After Restitution Agreement is Signed, but Prior to End of Mediation Meeting

- Discussion of Follow-Up Opportunity:

- * Purpose to Monitor Completion of Agreement
- * Be Assertive
- * But, Don't Mandate or Require

II. F. Guidelines For Victim Sensitive Mediation and Dialogue with Offenders

1. Victim safety.
2. Victim choice to participate and throughout entire process.
3. Participation by selected offenders (Do they admit guilt or feel remorse?)
4. Approval of parent(s) for participation of juveniles.
5. Offender choice to participate.
6. Victim support (i.e., friend, family members) during mediation, if desired.
7. Careful and extensive in person victim preparation by mediator.
8. Offender support (i.e., family members) during mediation, if desired.
9. Careful and extensive in-person offender preparation by mediator.
10. Use of victim sensitive language (avoid words like forgiveness, reconciliation, "you should").
11. Empowering the victim through:
 - offender information during pre-mediation session
 - continual presentation of choices in process
 - have victim initiating the initial storytelling phase of mediation session (unless they

prefer not to)

- option to terminate the process at any point

12. Reality testing victim expectations during pre- mediation session with mediator.

13. Use of a humanistic/transformational model of mediation which emphasizes dialogue and separate pre-mediation sessions between the mediator and each party, not the more common settlement driven civil court model.

Section III

Background Narratives

III. A. Restorative Justice

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

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

Expanded role for victims.

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

Community participation.

Restorative Justice encourages active participation by the victim, the offender and the community to repair the fabric of community peace. The entire community is responsible for supporting and assisting victims, holding offenders accountable and helping offenders to make amends.

Communities have the right to feel safe and secure. Restorative Justice helps communities build their sense of safety by having community members be active in peacemaking.

Offender's involvement.

Restorative Justice has offenders taking personal responsibility for their actions and then actively working to repair the harm that they have caused to victims and community. *Making things right.*

For many offenders, going to jail may seem a lot easier than being accountable to their victims. Offenders learn about how they have personally harmed victims and can then work to make *real* amends to the victim and the community.

Principles of Restorative Justice

- ◆ Crime hurts victims, communities and offenders.
- ◆ All parties should be a part of the response to the crime, including the offender, the community, and the victim if he or she wishes.
- ◆ The victim is central to deciding how to repair the harm.
- ◆ Accountability for the offender means accepting responsibility and repairing the harm done.
- ◆ The community makes sure that the laws which guide our behavior are carried out in ways which are responsive to our different cultures and backgrounds, whether racial, ethnic, geographic, religious, economic, age, abilities, family status, sexual orientation and other backgrounds--and all are given equal protection and due process.
- ◆ Crime is seen as an act against another person or the community, rather than an act against the state. The state (or the government) wants to have the problem resolved, but is not the main player in solving it. It is the offender who takes the personal responsibility for making things right with the victim and the community--not the state.
- ◆ Restoration or repairing the harm replaces punishment for its own sake. Restitution would become the rule--not the exception.
- ◆ Results are measured by how much repair has been done rather than by how much punishment was inflicted.
- ◆ Controlling crime is mainly for the community and its members. The criminal justice system can really only have a small affect on the level of crime because it basically can only respond after a crime occurs.
- ◆ Offenders are definitely accountable for their individual choices, but communities are also accountable for the conditions which may exist that contribute to crime.

How are Victims a Part of Restorative Justice?

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

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

How do Victims experience the current criminal justice system?

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

In contrast, Restorative Justice seeks to involve victims, the community and the offender in

working out how an offender may more directly repair the harm that he or she caused.

Restoring Victims.

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

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

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

Victims need to be involved.

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

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

What does Restorative Justice look like?

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

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

Maintaining Quality in Restorative Justice Interventions

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

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

QUALITY RESTORATIVE JUSTICE PRACTICE CONTINUUM

Intervention	Least Restorative Impact	Most Restorative Impact
Financial Restitution	<ul style="list-style-type: none"> • No phone or in-person contact with victim to receive their input • Written input only • Offender makes payment to court, has no sense of making amends to the victim • Restitution viewed as punishment rather than reparation 	<ul style="list-style-type: none"> • In-person or phone contact to first take time to listen to the victim’s story of how the crime affected them and to identify their need for restitution or other concerns (this could be followed up with written documentation) • Restitution requirement presented to offender as way to repair harm • Restitution used as a way to increase offender’s understanding of the concrete nature of victim loss
Community Service	<ul style="list-style-type: none"> • Court orders a specific number of hours of community service with no victim or community input • Service projects are demeaning • Community service viewed by the community and offender as punishment 	<ul style="list-style-type: none"> • In person or phone contact to first take time to listen to the victim’s story of how the crime affected them and to ask if there is a particularly meaningful type of community service or a specific agency that they would like to see the offender serve • Involvement of community in identifying projects valued by community • Projects involve offenders and community members working side by side • The contribution of offenders is acknowledged in public • Service includes a reflection component which helps community and offender understand community service as process for giving back to the community

<p>Victim Offender Mediation</p> <p>or</p> <p>Family Group Conferencing</p>	<p><i>Agreement Driven: Offender Focus</i></p> <ul style="list-style-type: none"> • Entire focus is upon determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime upon the victim and the community, as well as the offender • No separate preparation meetings with the victim and offender prior to bringing the parties together • Victims not given choice of where they would feel the most comfortable and safe to meet, or whom they would like to be present • Victims given only written notice to appear for mediation session at preset time, with no preparation • Mediator or facilitator describes the offense and offender then speaks, with the victim simply asking a few questions or simply responding to questions of the mediator • Highly directive style of mediation or facilitation with the mediator talking most of the time, continually asking both the victim and offender questions, but little if any direct dialogue between the involved parties • Low tolerance of moments of silence or expression of feelings • Voluntary for victim but required of offender whether or not they even take responsibility • Settlement driven and very brief (1015 minutes) 	<p><i>Dialogue Driven: Victim Sensitive</i></p> <ul style="list-style-type: none"> • Primary focus is upon providing an opportunity for victims and offenders to directly talk to each other, to allow victims to express the full impact of the crime upon their life and to receive answers to important questions they have, to allow offenders to learn the real human impact of their behavior and take direct responsibility for making things right • Restitution is important, but secondary to the talking about the impact of the crime • Victims are continually given choices throughout the process: where to meet, who they would like to be present, etc. • Separate preparation meetings with the victim and offender prior to bringing them together, with emphasis upon <u>listening</u> to how the crime has affected them, <u>identifying</u> their needs and <u>preparing</u> them for the mediation or conference session • Nondirective style of mediation or facilitation with mediator not talking most of the time, high tolerance of silence and use of a humanistic or transformative mediation model • High tolerance for expression of feelings and full impact of crime • Voluntary for victim and offender • Trained community volunteers serve as mediators or co-mediators along with agency staff • Dialogue driven and typically about an hour in length (or longer)
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III. B. Understanding Crime Victims

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

Psychological Trauma of Crime Victimization

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

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

The Crisis Reaction

A. Individuals exist in normal state of equilibrium.

1. Each person establishes his or her own boundaries, usually based on a certain order and understanding of the world.
2. Occasional stressors will move individuals out of their state of equilibrium, but most people, most of the time, respond effectively to most stressors that are within or near their familiar range of equilibrium.
3. Trauma throws people so far out of that range that it is difficult for them to restore a sense of balance in life. When they do establish a new sense of balance, it will be a different “graph” of normal highs and lows than described that individual’s equilibrium prior to the trauma. It will have new boundaries and a new definition.
4. Trauma may be precipitated by an “acute” stressor or many “chronic” stressors.
 - a) An acute stressor is usually a sudden, arbitrary, often random event. Crimes committed by strangers are key examples of such stressors.
 - b) A chronic stressor is one that occurs over and over again, each time pushing its victims toward the edge of their state of equilibrium, or beyond. Chronic child, spouse, or elder abuse are examples of such chronic stressors.
 - c) “Developmental stressors” come from transitions in life, like adolescence, marriage, parenthood. and retirement. Such stressors are relevant to the crime victim simply because people who are enduring a variety of developmental stressors in their lives are far more susceptible to intense crisis reactions.

B. The crisis reaction: the physical response.

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

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

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

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

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

3. Other manifestations of “danger hormones” affecting the body:

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

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

“Some firefighters vomited, Some just wandered, dazed.”

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

- b) Heart rate increases,
- c) People may hyperventilate, perspire, find it difficult to be still.
- d) There is usually heightened sensory perception. In the initial reaction, a perception of what is happening will be transmitted through just one of the senses, but as the physical mobilization takes place, other senses may be intensely engaged, one after the other. It is important to recognize that, while some senses may be shut down

during this period, each is ready to focus on the threat before it, as the mind's "traffic officer" directs, in the interests of survival. And while certain sights may leave indelible memories. so may things heard, touched, smelled, or tasted.

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

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

C. The crisis reaction: the emotional response.

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

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

humanity.

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

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

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

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

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

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

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

“Words, she got.

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

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

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

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

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

- f) **Shame and humiliation.** Some criminal conduct is designed to degrade its victim, and one frequently finds in victims of rape, for example, an abiding memory of dirtiness that won’t wash away. For victims of long-term domestic violence or hostage-taking, the memories are often of the ways in which the victims were brought to a state of self-loathing.
- g) **Grief or sorrow.** Intense sadness over losses is not uncommon. Such sadness is often the most powerful reaction to a disaster in the long-term.

Grief is compounded in sudden, random, arbitrary crises. It is often associated with phases of denial, protest, despair, and detachment prior to a reconstruction of life after loss. When grief is occasioned by a sudden and brutal crime, the initial reaction will be grief about the crime and the secondary reaction will be grief over the loss.

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

acknowledge.

3. Reconstruction of equilibrium.

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

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

Crisis Intervention

Overview

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

Catherine de Hueck Doherty

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

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

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

"Crisis intervention" is obviously a humane effort to reduce the severity of a victim's crisis, to help the victim win as much mastery over the crisis experience as possible. To understand the potential benefits of crisis intervention, it is worth emphasizing that these are a battery of skills

that victim advocates should possess - but so should others whose professional work brings them into contact with victims in crisis.

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

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

As was evident in the chapter on the psychological trauma of crime victimization, “crisis” encompasses a number of intense, tumultuous emotions; it can be a continuing condition or alternatively flare and recede; any stressful, post-crime event, such as going to a battered women’s shelter, or to a lineup, or to a trial, may put victims back into crisis. While there are no predictors about who will experience crisis, or when the onset will be, or how severe it will be in intensity or duration, a working presumption for most crisis bite intervenors is that the sooner the service is offered, the better. Indeed, there is a conviction among many practitioners that on-scene intervention, when the victim is in the early stages of distress, may prove to prevent or greatly reduce the crisis symptoms that might otherwise afflict the victim.

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

Techniques

A. “Safety and Security”

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

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

2. A parallel concern should be whether the victim feels safe. The victim may not feel safe in the following circumstances;

The victim can see and hear the assailant being interviewed by law enforcement officers

- The victim is being interviewed in the same area where an attack took place.
- The victim is not given time to replace torn clothes.
- The victim is cold and uncomfortable.
- The assailant has not been apprehended and he has threatened to return.

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

3. A priority for some victims and survivors is the safety of others as well. If a couple has been robbed in a street crime, each may be more worried for the other person than himself or herself. Parents are often more concerned about the safety of their children than their own.

4. Survivors of victims of homicide may not focus on safety but rather seek a sense of security through the provision of privacy and nurturing. Their anguish and grief can be made more painful if there are unfamiliar and unwanted witnesses to their Sorrow.

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

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

Sit down to talk.

Ask the victims/survivors where they would feel safest when you talk to them, and move to that location.

If it is true, reassure them with the words “You are safe now.”

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

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

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

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

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

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

- b. Respond to the need for nurturing - but be wary of becoming a “rescuer” on whom the victim becomes dependent The “rescuer” who ends up months later making decisions

for the victim has subverted the primary goal of crisis intervention; that is, to help the victim restore control over his or her life. The following tips suggest appropriate ways in which the intervenor can step in on a temporary basis.

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

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

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

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

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

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

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

B. "Ventilation and Validation"

1. Ventilation refers to the process of allowing the survivors to tell their story." While the

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

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

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

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

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

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

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

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

words. In most of the United States, words are the most comfortable form of expression.

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

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

3. Validation is a process through which the crisis intervenor makes it clear that most reactions to horrific events are “normal.”
 - a. Validation should be content-specific. Example: rather than saying “AI can’t imagine how upset you are,” it is preferable to say “AI can’t imagine how upset you are about your son’s death in the car crash.”
 - b. Care should be taken in the words that are used to validate. For instance, many survivors do not want to hear that their reactions are “Normal reactions to an abnormal situation” - a common summation of what crisis and trauma produce - because survivors want to have their experience validated as unique. Telling them that their reactions are “not uncommon” seems to be more effective.
 - c. Where possible, repetition of the actual phrases that the survivors use to describe experiences is useful. Example, if someone says, “AI can’t sleep at night, I am so afraid that someone will break in and kill me and my family,” an appropriate response would be, “It’s not unusual for you to be afraid after such a terrifying experience. If you can’t sleep at night, that only shows how afraid you are.”
4. The focus of validation should be that most reactions of anger, fear, frustration, guilt, and grief do not mean that the victim is abnormal, immoral, or a bad person. They reflect a pattern of human distress in reaction to a unique criminal attack.
 - a. While most reactions are normal, there are also some people with pre-existing mental health problems who have harmful reactions. There are also some who react to personal disasters in a dangerous way - to themselves or others. In the aftermath of crisis, the intervenor should always be alert to any words or other signs of suicidal thoughts or threatening behavior towards specific individuals. If these arise, seek

immediate professional help - a mental health professional, a suicide hotline, even a law enforcement agency if there is an imminent threat to someone else.

- b. While most reactions are normal, most people have not experienced such intense feelings, so they may think they are “going crazy.” Survivors should be reassured that while this crisis has thrown their lives into chaos, they are not, as a consequence, crazy.

5. Hints for Helping.

- a. Ask the victim to describe the event.
- b. Ask the victim to describe where they were at the time of the crime, who they were with, and what they saw, heard, touched, said, or did.

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

- c. Ask the victim to describe his or her reactions and responses. As the victim begins the description, remember to validate the reactions and responses. If she says: “I remember turning stone cold when I felt the hand on my back and a tug at my purse,” say, “Some people have called that a “frozen fright” reaction.
- d. Ask the victim to describe what has happened since the crime, including contact with family members, friends, the criminal justice system, and so on. Responses to this question will help reveal whether the victim has suffered additional indignities as a result of the crime or whether the victim has been treated with dignity and compassion.
- e. Ask the victim to describe other reactions he or she has experienced up to now. Again, validate reactions.
- f. Let the victim talk for as long as you can. if you are running out of time, give the victim at least a fifteen-minute warning, such as, “Mrs. Jones, I really want to hear more about your experience and reactions, but I have to leave in about fifteen minutes. If we don’t finish up this part by then, I want to do that tomorrow, at a time that is good for you. If I don’t hear from you, I’ll give you a call, if that’s okay.”
- g. Don’t assume anything - even the apparent pattern of the crisis reaction is suspect. So, for example, the victim’s controlled calm of the moment may yield to tears in a few minutes, or a few weeks. Indeed, if the victim is experiencing crisis, it is safe to bet that his or her reactions will take new form over time.

h. Don't say things like:

- "I understand."
- "It sounds like..."
- "I'm glad you can share those feelings."
- "You're lucky that..."
- "It'll take some time but you'll get over it."
- "I can imagine how you feel."
- "Don't worry, it's going to be all right."
- "Try to be strong for your children."
- "Calm down and try to relax."

Do say things like:

- "You are safe now (if true)."
- "I'm glad you're here with me now."
- "I'm glad you're talking with me now."
- "I am sorry it happened."
- "It wasn't your fault (if there was no attributable blame to the victim)."
- "Your reaction is not an uncommon response to such a terrible thing."
- "It must have been really upsetting to see [hear, feel, smell, touch] that."
- "I can't imagine how terrible you are feeling."
- "You are not going crazy."
- "Things may never be the same, but they can get better."

To improve communication with the victim, avoid words like:

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

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

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

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

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

C. "Prediction and Preparation"

1. One of the potent needs that most victims have is for information about the crime and what will happen next in their lives. Remember, their lives have typically been thrown into chaos and they feel out of control. A way to regain control is to know what has happened and what will happen-when, where, how.
2. The information that is most important to victims is practical information. The following are examples. Note that some topics may raise scary possibilities that the victim has not even considered; the intervenor may tactfully touch on such issues or defer them. However, never duck any unpleasant surprise if there is reason to believe that the victim will find out about it soon.
 - a. Will the victim have to relocate? Many burglary victims need to move temporarily because their home is no longer secure. If relocation is necessary or recommended, what are the victim's options?
 - b. Does the victim have adequate financial resources to pay for any immediate needs caused by the crime? The robbery victim may not have money to pay for food or rent. The rape victim may not have money for a forensic exam or medical treatment. Even if a compensation program may reimburse a victim at a later date, the need for immediate money is sometimes overwhelming.
 - c. What legal issues confront the victim? Will the case be processed in the criminal justice system? Will there be an investigation? What are the chances that there will be an arrest - and then prosecution, trial, conviction, and sentencing? Does the victim have civil litigation options? Might it be feasible for the victim to sue the offender or a third party who might be held responsible for factors leading to the attack? Note that honest answers and estimates are essential; to the victim of a "cold" burglary with no immediate suspects, the bad news is that fewer than one such case in fifty results in an arrest in most jurisdictions - and giving a rosier picture will undermine your future credibility. By the same token, there may be many questions that arise which are beyond the intervenor's expertise; note them, and help the victim get expert answers.
 - d. What immediate medical concerns face the victim? An injured victim may need information about the extent of those injuries. A sexual assault victim may need information to make informed decisions on testing for pregnancy or sexually-transmitted diseases, including HIV. The survivor of a victim of homicide or catastrophic injury may need detailed information about the cause of death and extent of injuries.
 - e. What will be expected of the survivors of a homicide victim in the immediate future? Will they be asked to identify the body? If so, what is the condition of the body? Is there a need to address immediately funeral considerations? (Some religions call for immediate burial.) Do the survivors know their loved one's body will be given an

autopsy?

- f. What does the victim need to know about the media? As indicated above, if the case is sensational or has a “newsworthy” facet to it, it is likely that there will be media coverage. Does the victim know his or her rights? Is the victim prepared for a full media intrusion? Has the victim been warned that what appears in the media may not have any relation to the truth as he or she has experienced it?
3. The second priority is for information on possible or likely emotional reactions that the victims might face over the next day or two, and over the next six months or so - emphasizing that there is no particular timetable when victims can expect to experience crisis reactions, or which of the intense emotions may surface. In many ways, this review will become as important as anything else they learn. In the initial stages of dealing with the crime, practical issues are their priority. Some of the emotional concerns that should be outlined, however, are the following:
 - a. Immediate physical and mental reactions to crisis. These reactions may include inability to sleep, lack of appetite, anxiety, numbness, estrangement from the world, a sense of isolation, anger, fear, frustration, grief, and an inability to concentrate.
 - b. Long-term physical and mental reactions. These reactions may include intrusive thoughts, nightmares, terror attacks, continued sense of isolation, inability to communicate with others, sleep disturbances, depression, inability to feel emotion, disturbance of sexual activity, startle reactions, irritability, lack of concentration, and so forth.
 - c. Reactions of significant others. While some friends or family members serve as the most important source of emotional support for victims, many cause as much harm as good. Three common reactions that may cause victims distress are: over protectiveness; excessive anger and blame directed toward the victim; and an unwillingness to talk about or listen to stories of the crime.
 - d. Victims should expect that everyday events may trigger crisis reactions similar to the ones they suffered when the crime occurred. Thus, the birthday of a son who was murdered may trigger overwhelming feelings of grief and anger about the murder. A sunset of a particular shade and color may trigger a panic attack in a victim who has been robbed during such a sunset. The smell of alcohol on the breath of a young man may trigger an outburst of rage in a young woman who had been raped by a man who had been drinking.
 4. In addition to needing predictable information, victims need assistance in preparing for ways in which they can deal with the practical and emotional future. The following are some hints for helping.
 - a. Take one day at a time. Suggest that the victim plan each day's activities around needed practical tasks. Help the victim list the tasks that need to be done and set a

goal for accomplishing a certain number each day. Victims who have been severely traumatized may want to check in with you after each day to report their progress and to receive positive feedback on any successes.

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

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

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

- c. Talk and write about the event. Suggest to victims that they use audio tapes or write a journal to tell their unfolding stories. Even if no one else sees or hears these stories, it is a way of expressing oneself and a way of processing thoughts.
- d. Plan time for memories and memorials. It can be predicted that certain things will be trigger events for future crisis reactions. Urge victims to try to think through what those trigger events might be and to allow themselves time to deal with those reactions. For example, a woman who had been sexually assaulted on October 14 routinely took that day off from work to do something nice for herself and to think about her pain.
- e. Encourage victims to identify a friend or family member on whom they can rely for support during times when they must confront practical problems. If they are able to name that person, suggest that they call and explain their need for support and help. If this is done in advance, it makes it easier to request certain help when the time comes.

- f. Good nutrition, adequate sleep, and moderate exercise can significantly help victims survive times of crisis. That underestimated triad is, in fact, the basis for virtually all stress reduction programs. Help victims set up their own regular routine of health. At first it may be difficult, but if they keep trying they will readily realize some benefits.

Conclusion

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

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

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III. C. Working with Offenders

By William Bradshaw, Ph.D.

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

Principle offender defense mechanisms include:

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

The Offender's Non-Voluntary Status

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

1. The Reality of Pressured Contact

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

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

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

2. Common Responses to the Mediation Process

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

3. Understanding Offender Reactions

Common understanding of offenders characteristic negative responses are to label the offender as a "resistant" delinquent or con who refuses to accept responsibility. This focus highlights the offender's deficits, blames, or "demonizes" the offender. These labels stigmatize the offender and can create a self-fulfilling prophecy in working with the offender. In addition, this view of the offender encourages negative worker reactions where the worker is more likely to get their buttons pushed and hooked into unhelpful responses to the negative presentation of the offender. A very different way of understanding the offender is to consider such reactions as normal and predictable responses to pressured situations that are designed to regain power, freedoms or save face. For example, imagine a situation in which you were in a non-voluntary situation. What were your thoughts, feelings, reactions? These are human reactions to pressured, involuntary situations with significant power differences between people.

4. Self-Presentation Strategies

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

- a) **Ingratiation:** efforts to make the offender more attractive through flattery, agreement with opinions, sharing positive traits
- b) **Intimidation:** efforts to elicit fear to achieve goals
- c) **Supplication:** throwing self at the mercy of the more powerful person
- d) **Face-work:** justification or selective confession to diffuse anticipated blame
- e) **Self-promotion:** selective emphasis on competence
- f) **Exemplification:** efforts to emphasize moral worthiness

5. Oppressed Groups

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

In addition, offenders from different cultures and oppressed groups may hold very different world views from the mediator. Sue and Sue (1990) have suggested that differences in world view regarding external or internal locus of control regarding a sense of responsibility and control greatly effect human service situations. For example, the standard white, middle class

world view assumes an internal sense of control and responsibility. A person from an oppressed culture may from experience with the majority culture, assume an external sense of control and responsibility. While the mediator from the dominant culture expects self-control and responsibility, the offender from an oppressed group may feel marginalized, experience little real control over their lives, and see the responsibility for events outside himself.

Identifying Offender Strengths

1. Perspective on the Offender

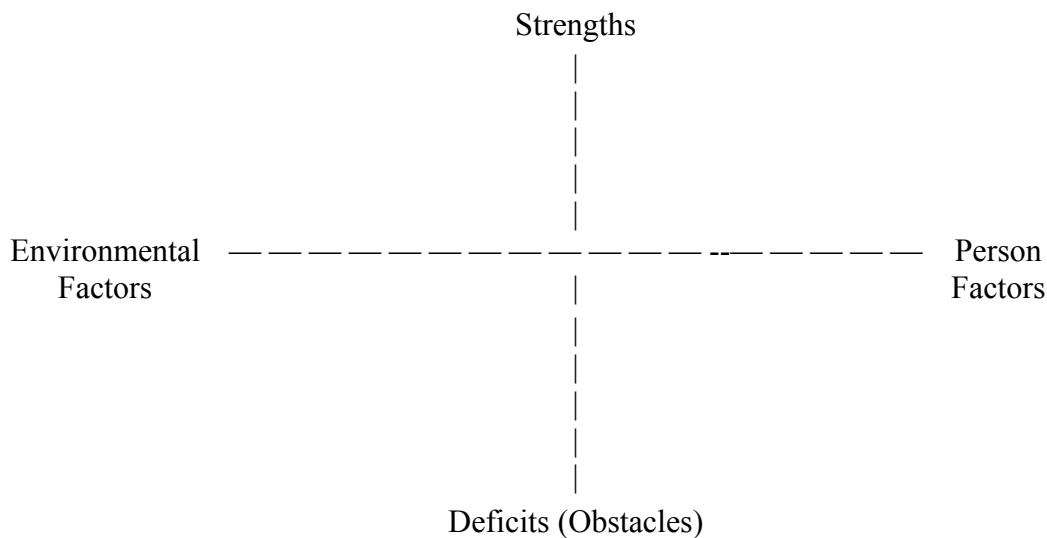
When a person commits a criminal offense the focus of attention naturally turns to the details of the crime and the criminal justice process that generally focused on "the person as the problem." This leads to a deficit orientation, problem based assessments and a negatively focused case construction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

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

2. Assessment of Offender Strengths

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

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



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

Working With The Offender

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

Preparing for Initial Contact with the Offender

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

1. Case Development: Explore the Offender Experience

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

2. Case Development: Explaining Options

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

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

Begin by clarifying the purpose of mediation and the potential benefits and limitations of

mediation for the offender and victim. Clarify your role as the mediator and discuss issues and concerns you may have especially around defensiveness and self-presentation and the do-ability of mediation. Get feedback from the offender about issues and concerns, clarify expectations, evaluate willingness to mediate.

4. Case Development: Identifying Obstacles to the Mediation Process

Common obstacles for the offender in mediation include:

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

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

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

6. Case Development: Influencing Offender Behavior and Attitudes

There are several ways the mediator can influence the offender.

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

These may include:

- identifying and helping offender work with ambivalence and anxiety about meeting with the victim
 - assuring safety of mediation setting for the offender
 - helping offender identify own strengths and deficits that may help or hinder mediation
 - helping offender be realistic about expectations
- c) The mediator can help the offender by providing information about mediation and highlighting the potential benefits to the offender.

- d) The mediator may identify rewards or inducements for behavior change.
- e) The mediator may use coercion and highlight negative consequences.
- f) The mediator may use various means of confrontation regarding problematic attitudes and behavior. These include:
 - self-confrontation: the mediator helps the offender see the inconsistencies between his behaviors/attitudes and his goals. This assisted self-assessment may stimulate change.
 - inductive questioning by the mediator focuses attention on the negative consequences of discrepancies between actions and goals
 - assertive confrontation refers to the mediator challenging the offender about these discrepancies and their consequences
 - intensive confrontation: the mediator clearly states the non-negotiable items and the consequences for violation

Contract for Mediation

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

Task Centered Focus

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

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

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III. D. Mediation as Dialogue: A *Humanistic Model*

The impact of mediation in resolving a wide range of interpersonal conflicts is well documented. The application of mediation consistently results in high levels of client satisfaction and perceptions of fairness, within families (Emery & Jackson, 1989; Depner, Cannata & Simon, 1992; Duryee, 1992; Kelly, 1989, 1990; Slater, Shaw & Duquesnel, 1992), among co-workers (Umbreit, 1995c), in neighborhoods (Clark, Valiant, & Mace, 1992; Cook, Roehl, & Shepard, 1980; Davis, Tichane, & Grayson, 1980; Kolb & Rubin, 1989) and schools (Araki, 1990; Moore & Whipple, 1988; Stern, Van Slyck & Valvo, 1986.), and in the criminal justice system (Coates & Gehm, 1989; Umbreit, 1991, 1993, 1994, 1995a, 1995b; Umbreit & Roberts, 1996). The achievement in mediation of a written, mutually agreed upon settlement between the involved parties is often an important outcome. However, if the field of mediation becomes driven by the desire to reach settlements in the quickest way possible, at the expense of understanding and addressing the emotional and relational context of the conflict, it may evolve into little more than another impersonal, mechanical and routine social service. This article will present a model of mediation that intentionally taps into the full potential of mediation to offer a genuine transformative journey of peacemaking that is grounded in compassion, strength and our common humanity.

Although some conflicts, such as complex commercial disputes, clearly require a primary focus on reaching an acceptable settlement, most conflicts develop within a larger emotional and relational context characterized by powerful feelings of disrespect, betrayal, and abuse. When these feelings about the past and current state of the relationship are not allowed to be expressed and heard in a healthy manner, an agreement might be reached but the underlying emotional conflict remains. Little healing of the emotional wound is likely to occur without an opening of the heart through genuine dialogue, empowerment, and a recognition of each other's humanity despite the conflict. This requires moving far beyond the well-known techniques of "active listening" or "reflective listening" with their emphasis on paraphrasing, summarizing, and related skills. Clearly, these techniques when used by disputants and/or mediators can often be very helpful in the resolution of conflict. The "techniques" of listening skills, however, can also get in the way of genuine dialogue, particularly when their use leads to the inability to honor and feel comfortable with silence, to deeply reflect upon what is being said, and to reflect upon what you (the mediator) are feeling and experiencing in the present moment. The clearest example of technically accurate application of reflective listening skills that can inhibit genuine communication is when a mediator paraphrases every bite-size chunk of verbal conversation in such a way that the disputant experiences it as intrusive and insensitive, if not obnoxious.

Genuine dialogue in which people feel safe enough to speak and listen in a non-defensive manner requires skills and a life perspective that many indigenous cultures are far more comfortable with than we in the West...that of speaking and listening from the heart, as well as feeling comfortable with and honoring silence. The basic elements of dialogue as promoted in Western culture (Teurfs and Gerard, 1993) consist of: suspension of judgement; listening as the key to perception; identification of assumptions; maintaining an attitude of learning and a spirit of inquiry; looking within one's self; keeping the focus on context and meaning; and releasing the need for outcomes.

After many years of being applied in diverse settings, the field of mediation now faces a wonderful opportunity to build upon the many anecdotal stories of how mediation periodically has often been far more than simply working out a settlement. By moving from a “Settlement driven” to a “Dialogue driven” approach to mediation, the practice of mediation can intentionally and more consistently tap into its transformative and healing powers. These healing powers are intrinsic to the process of mediating conflict between individuals but need to be consciously drawn out and utilized.

The potential of effective conflict resolution to promote healing of relationships within communities, rather than just immediate resolution of problems between individuals is particularly well grounded in the traditions of many indigenous people throughout the world. The practice of ho’oponopono by native Hawaiians (Shook, 1989), family group conferencing by Maori people in Australia (Alder & Wundersitz, 1994), and healing circles and other practices among aboriginal/First Nation people in Canada (Griffiths & Belleau, 1993) and Native Americans (LaResche, 1993) all provide beautiful examples of spiritually grounded forms of resolving conflicts through a journey of healing and peacemaking. As Diane LaResche (1993) points out, “at it’s core, Native American peacemaking is inherently spiritual; it speaks to the connectedness of all things; it focuses on unity, on harmony, on balancing the spiritual, intellectual, emotional and physical dimensions of a community of people.” These principles of balance have also been adapted by tribal leadership in Canada (Huber, 1993) for use within urban tribal settings, using the traditional symbol of the medicine wheel.

Within Western culture, the transformative dimensions of mediation have been eloquently described by Bush and Folger (1994) in their widely acclaimed book The Promise of Mediation. They emphasize the importance of genuine empowerment and mutual recognition of each others humanity, in addition to the value of compassionate strength among parties in conflict. Bush and Folger emphasize that through empowerment “The parties grow calmer, clearer, more confident, more organized, more decisive, regaining a sense of strength, being able to act and handle life’s problems.” Through recognition, “The parties voluntarily choose to become more open, attentive, responsive to the situation of another, thereby expanding their perspective to include an appreciation for another’s situation.” Whether an actual settlement occurs is quite secondary to the process of transformation and healing that occurs in their relationship. One of the most powerful, yet controversial to some, expressions of the transformative qualities of empowerment and recognition has been consistently observed in the small but growing application of mediation and dialogue between parents of murdered children and the offender (Molhan, 1996; Umbreit, 1995c). After lengthy preparation by the mediator, involving multiple individual meetings, the parties frequently experience each other’s humanity (despite the evil and traumatic event that has occurred, as well as the inconsistency of some facts) and gain a greater sense of closure through a genuine dialogue about what actually happened and its impact on all involved.

A specific application of transformative mediation practice, which is particularly suited to family, community, workplace and victim offender mediation is the humanistic model of mediation (Umbreit, 1995c). In fact, the elements of a humanistic model are grounded in the experience of many mediators over the years and have been applied in areas ranging from family conflict to criminal conflict involving such offenses as burglary, theft and minor assaults. Instead

of the highly directive “Settlement driven” model practiced widely in civil court settings, a humanistic mediation model is very non-directive and “Dialogue driven.” It prepares the parties, through separate pre-mediation sessions with the mediator, so that they feel safe enough to have an opportunity to engage in a genuine conversation about the conflict, to experience their own sense of empowerment and to express what Bush and Folger call “compassionate strength,” including empathy for the other party in the conflict. The emphasis is upon the mediator facilitating a dialogue which allows the parties to discuss the full impact of the conflict, to assist each other in determining the most suitable resolution, which may or may not include a written agreement, and to recognize each other’s common humanity, despite the conflict.

A humanistic model of mediation, in some respects, parallels a humanistic style of psychotherapy or teaching which emphasizes the importance of the relationship between the therapist and client or teacher and student, while embracing a strong belief in each person's capacity for growth, change and transformation. Carl Rogers (1961), a pioneer in humanistic psychology, emphasized the importance of empathetic understanding, unconditional positive regard, and genuineness. While his theories were developed in the context of psychotherapy, they have enormous implications for mediation practice and life in general.

Parties in conflict may be more likely to experience emotional benefits from the practice of humanistic mediation, through healing that often occurs in the relationship encounter in the present. It is important to note, however, that such a process is not psychotherapy, nor does it require a mediator to have training in psychotherapy. Acknowledgment of brokenness or hurt is intrinsic to humanistic mediation. Working on that brokenness and dealing with past emotional issues contributing to these feelings, however, is the domain of therapists, not mediators (Bradshaw, 1995; Kelly, 1983).

Underlying Values

A humanistic mediation model is grounded in underlying values and beliefs about the nature of human existence, conflict, and the search for healing, as noted in Figure 1.

Figure 1 Underlying Values & Beliefs: Humanistic Mediation Model

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

Practice Implications

In order to consistently embrace a more humanistic model of mediation, a number of significant changes in the dominant Western European model of mediation are required. While clearly not capturing the full spiritual richness of many traditional practices of indigenous people, these changes in the dominant Western European model of mediation will lead to a more transformative and healing experience of mediation. Each change in the practice of mediation to more closely follow the humanistic model will be discussed in greater detail but are outlined in Figure 2:

Figure 2 **Practice Implications: Humanistic Mediation Model**

- 1. Centering Of Mediator** (Clearing the mind of clutter and focusing on the important peacemaking task at hand.)
- 2. Re-Framing Of The Mediator's Role** (From directing a settlement driven process to facilitating a process of dialogue and mutual aid.)
- 3. Pre-Mediation Sessions With Each Party** (Listening to their story, providing information, obtaining voluntary participation, assessing the case, clarifying expectations, preparing for the mediation)
- 4. Connecting With The Parties Through Building Of Rapport And Trust** (Beginning in pre-mediation phase.)
- 5. Identifying & Tapping Into Parties' Strengths** (Beginning in pre-mediation phase).
- 6. Coaching On Communication, If Required** (During pre-mediation sessions.)
- 7. Non-Directive Style Of Mediation**
- 8. Face-To-Face Seating Of Victim And Offender** (Unless inappropriate because of culture of parties or individual request.)
- 9. Recognition And Use Of Power Of Silence**
- 10. Follow-Up Sessions**

Centering of Mediator

A humanistic mediation model emphasizes the importance of the mediator clearing away the clutter in his or her own life so that he or she can focus intensely on the needs of the involved parties. Prior to initiating contact between people in conflict, the mediator(s) is encouraged to take a few moments of silence, through reflection, meditation or prayer, to reflect on the deeper

meaning of his or her peacemaking work and the needs of the people in conflict. The centering of the mediator throughout the entire process of preparation and mediation also helps the parties in conflict to experience it as a safe, if not sacred, journey toward genuine dialogue and healing. Through the practice of being centered, the humanistic mediator is more likely to stay grounded in a deeper sense of spirituality that recognizes the interconnectedness of all people (regardless of our many differences), as well as the sacred gift of human existence.

Re-framing of the Mediator's Role

Tapping into the full power of mediation in resolving important interpersonal conflict re-frames the mediator's role. Instead of actively and efficiently guiding the parties toward a settlement, the mediator assists the parties to enter a dialogue with each other, to experience each other as fellow human beings, despite their conflict, and to seek ways to help them come to understand and respect their differences and to arrive at a mutually acceptable way to deal with those differences. This may or may not involve a formal written settlement agreement. Once the parties are engaged in a face to face conversation, the mediator intentionally gets out of the way. For example, the mediator might pull their chair back further away from the table and cross their legs, displaying a more informal posture. It should be noted that rarely does the mediator totally get out of the way, never saying anything or intervening to re-direct communication. This is especially true during the later stages of mediation when the parties in conflict may need assistance to construct a formal settlement agreement if one is needed. In all cases, it is important for the mediator to provide a brief closing statement which thanks the parties for their work and schedules a follow-up meeting if necessary.

Pre-mediation Sessions

Routine use of pre-mediation separate sessions with the involved parties would become a standard practice. These individual sessions would occur at least a week or more before the mediation session. Collection of information, assessment of the conflict, description of the mediation program, and clarification of expectations are important tasks to complete. The first and most important task, however, is that of establishing trust and rapport with the involved parties. The development of trust and rapport enhances any dialogue process but is particularly beneficial in intense interpersonal conflicts. For this reason, the mediator would need to get into a listening mode as quickly as possible during the initial meeting, inviting the involved parties to tell their stories of the conflict and how it affects them. Clearly explaining how the mediation process works and what they might expect to experience will likely put the involved parties at ease.

Connecting With the Parties

A far greater emphasis needs to be placed on the mediator establishing a connection with the parties in the conflict. Instead of viewing mediators as technicians who are emotionally distant and uninvolved with no prior contact with the involved parties, emphasis would be placed on mediators establishing trust and rapport with the involved parties before bringing them to a joint session. A mediator does not need to lose his or her impartiality in order to effectively connect

with the involved parties before bringing them together. The art of mediation, as well as teaching, nursing, therapy and social work, is found in connecting with people at a human level through the expression of empathy, warmth and authenticity. The late Virginia Satir, a world renown family therapist, teacher and trainer, recognized the supreme importance of the "presence" of the therapist. Authentic human connection was regarded by Satir as being fundamental to change processes (Gold, 1993). Making contact with people on a basic human level requires "congruence," a condition of being emotionally honest with yourself in which there is consistency in your words, feelings, body and facial expressions and your actions. Authentic connection with others, through therapy or mediation, first requires looking inward. According to Satir (1976), there are four key questions.

1. How do I feel about myself? (self- esteem)
2. How do I get my meaning across to others? (communication)
3. How do I treat my feelings? (rules)
 - Do I own them or put them on someone else?
 - Do I act as though I have feeling's that I do not or that I don't have feelings that I really do?
4. How do I react to doing things that are new and different? (taking risks)

The process of connecting with those involved in mediation takes energy. As Satir points out, "making real contact means that we make ourselves responsible for what comes out of us." Although Satir developed her concepts of making contact and congruence within the context of family therapy, her material is highly relevant to a humanistic model of mediation. Humanistic mediators can have a powerful presence with their clients, as Virginia Satir did, through a more spiritual understanding of life which embraces the connectedness of all people along with the connectedness of the mediator's actions and belief system with the core of his or her being.

Building upon the earlier work of Virginia Satir, Lois Gold (former chair of the Academy of Family Mediators) identifies four specific elements of presence which can increase the effectiveness of mediators: (1) being centered, (2) being connected to one's governing values and beliefs and highest purpose, (3) making contact with the humanity of the clients, and (4) being congruent (Gold, 1993).

Tapping Into Individual Strengths

When people become engaged in conflict, it is common for them to communicate and interact in highly dysfunctional ways. The careless expression of intense anger and bitterness, along with the inability to listen to the other party or effectively communicate their own needs, can mask many strengths that they may have. It is the mediators task, during separate pre-mediation sessions, to learn the communication style of each party and identify specific strengths which may directly assist in the mediation/dialogue process and to encourage the expression of those strengths in mediation. An example would be a mediator discovering that an individual has a difficult time responding to questions of a global, if not abstract, nature, such as "How are you feeling about all of this?" When asked more concrete questions related to the individual's specific experience, however, he or she may feel quite comfortable responding. Tapping into the strengths of individuals and coaching them in how to effectively communicate their feelings can

contribute greatly to the mediator's ability to use a nondirective style of mediation as noted below.

Coaching of Communication

The open expression of feelings related to the conflict is central to a humanistic mediation model. Because of the extreme intensity of those feelings, it may become necessary during the separate pre-mediation session for the mediator to coach the disputant on helpful ways of communicating those feelings so that they can be heard by the other party. Coaching one or both parties on the communication of intense and potentially hurtful feelings may be required. This coaching focuses on how to own one's feelings rather than projecting them upon the other party. Projecting intense feelings through aggressive communications often will trigger defensiveness in one or both parties and shut down honest dialogue. To avoid this, the speaker needs to own their feelings and communicate them as an "I" statement, rather than attacking the other party. Furthermore, through coaching, the mediator works to help identify and tap into the strengths of each of the parties in conflict, despite any emotional baggage that is present. In the process of coaching, however, the mediator is careful not to suggest what specifically should be said.

Nondirective Style of Mediation

The practice of humanistic mediation requires a nondirective style of mediation in which the mediator assists the involved parties in a process of dialogue and mutual aid, of helping each other through the direct sharing of feelings and information about the conflict with little interruption by the mediator. The mediator opens the session and sets a tone that will encourage the parties in conflict to feel safe, understand the process and talk directly to each other. The mediator's ability to fade into the background is directly related to connecting with the parties before the joint session and having secured their trust. Without routine use of one or more separate pre-mediation meetings with the parties in conflict, it is unlikely that a truly nondirective style of mediation can be employed. The parties' ability to participate in a process of dialogue and mutual aid will be unlikely unless they trust the mediator, are prepared for the process with clear expectations, feel safe and reasonably comfortable, and the mediator fades into the background until he or she is needed.

A nondirective style of mediation is not meant to be confused with a passive style in which the mediator provides little direction, leadership, or assistance. Instead, a mediator remains in control of the process and, although saying little, is actively involved nonverbally in the encounter and is able to respond or intervene at any point required, particularly when people get stuck and indicate a need for assistance. By setting a clear and comfortable tone, the parties are put at ease so that they can talk directly to each other and a far more empowering and mutually expressive form of mediation can then be experienced by the involved parties. This style of mediation, which can only be used effectively if the mediator conducts separate pre-mediation sessions, will frequently result in the mediator saying very little after the opening statement.

Face To Face Seating of Involved Parties

Seating arrangements during a mediation session are important. Routine use of a seating arrangement in which the involved parties are sitting across from each other, allowing for natural eye contact, is central to the process of direct communications and dialogue. If a table is required, the mediator(s) would be at the end and the parties in conflict would sit across from each other. A major blockage to mediator assisted dialogue and mutual aid occurs when the involved parties are seated next to each other behind a table, facing the mediator who is on the other side of the table. A clear exception to this arrangement is when because of the culture of one or both parties or personal preference, such seating would create discomfort, if not offensiveness, and therefore would be inappropriate.

Recognition and Use of the Power of Silence

Moments of silence in the process of dialogue and conflict resolution is inherent to a nondirective style of mediation. Recognizing, using and feeling comfortable with the power of silence (qualities that are often more commonly found in other non-Western cultures as noted previously) is important to the humanistic mediation process. By honoring silence, patiently resisting the urge to interrupt silence with guidance or questions (i.e. slowly counting to ten before speaking), the mediator is more consistently able to assist the involved parties in experiencing mediation as a process of dialogue and mutual aid—a journey of the heart in harmony with the head.

Follow-up Sessions

The importance of follow-up joint sessions between the parties in conflict is recognized as central to a humanistic mediation model. Because of the nature of conflict and human behavior, problems are often far too complex to resolve in only one session, particularly when the conflict involves an important relationship. Oftentimes, the full range of issues and concerns cannot be addressed in only one session. Even in those cases when the conflict is largely resolved in one session, conducting a follow-up session several months later to assess how the agreement is holding or to resolve any issues that may have emerged can be important in the overall process of healing and closure.

The Paradigm Of Healing

A humanistic dialogue driven model of mediation is grounded in what Lois Gold (1993) describes as a paradigm of healing. She identifies twelve characteristics that differentiate the paradigm of healing from the more well entrenched paradigm of problem solving with its settlement driven emphasis.

1. Caring, non-judgmental acceptance of the person's humanity
2. Building rapport and emotional connection... "being there"
3. Helping people listen to their innate wisdom, their preference for peace
4. Generating hope ... "with support, you can do it"
5. Tapping into the universal desire for wellness

6. Speaking from the heart
7. Thinking of clients in their woundedness, not their defensive posture
8. Being real and congruent
9. Creating safe space for dialogue
10. Creating a sacred space
11. Recognizing that a healing presence does not "fix it"
12. Understanding that a healing presence acknowledges brokenness and shares the journey

Table 1
Comparison Of Problem Solving And Humanistic Mediation

	Classic Problem Solving Mediation	Humanistic/Transformative Mediation
Primary focus	Settlement driven and problem focused.	Dialogue driven and relationship focused.
Preparation of parties in conflict	Mediator has no separate contact with involved parties, prior to mediation. Intake staff person collects information.	Mediator conducts at least one face-to-face meeting with each party prior to later bringing them together in joint mediation session. Focus is on listening to their story, building rapport, explaining the process, and clarifying expectations.
Role of mediator	Direct and guide the communication of the involved parties toward a mutually acceptable settlement of the conflict.	Prepare the involved parties prior to bringing them together so that they have realistic expectations and feel safe enough to later engage in a direct conversation/dialogue with each other facilitated by the mediator.
Style of mediation	Active and often very directive, speaking frequently during the mediation session and asking many questions.	Very non-directive during the mediation session. After opening statement by mediator the mediator fades into the background and is reluctant to interrupt direct conversation between parties. Mediator is not, however, passive and will intervene if parties indicate a need.
Dealing with emotional context of conflict	Low tolerance for expression of feelings and the parties "storytelling" related to the history and context of the conflict.	Encouragement of open expression of feelings and discussion of the context and history of the conflict. Recognition of the intrinsic healing quality of "Storytelling" when speaking and listening from the heart.
Moments of silence	Few moments of silence. Mediator uncomfortable with silence and feeling the need to speak or ask questions of the parties.	Many prolonged moments of silence. Mediator reluctant to interrupt silence and honors silence as integral to genuine empowerment and healing.
Written agreements	Primary goal and most likely outcome of mediation. Agreements focus on clear tangible elements.	Frequently occur but secondary to the primary goal of dialogue and mutual aid (the parties helping each other through the sharing of information and expression of feelings). Agreements may often focus on symbolic gestures, personal growth tasks, or affirmations of the new relationship between the parties.

While this conceptual framework has grown out of her extensive experience as a family therapist and mediator, the paradigm of healing presented by Gold (1993) has enormous implications for humanistic mediation

practice in any context in which the nature of the conflict relates to broken relationships. This is particularly so in those cases in which one or both parties are grieving the loss of the relationship that once existed, whether this was among colleagues at work, friends, spouses, partners, parents and children, or neighbors. It is also highly relevant in response to the needs of many crime victims and offenders who, while most often have no prior relationship, are now in a type of situationally induced relationship (certainly not by the victim's choice) because of the nature of the criminal act and its effect on their lives. For crime victims, particularly in more serious offenses, they often are grieving the loss of a sense of safety, if not invulnerability, that has now been shattered because of what has occurred. Understanding and practicing humanistic mediation in the context of the paradigm of healing offered by Gold (1993) is ultimately grounded in a profound recognition of the precious gift of human existence, relationships, community, and the deeper spiritual connectedness among all of us in our collective journey through this life, regardless of our many religious, cultural, political, and life style differences. As Lois Gold so eloquently states, "The language of healing is the language of the soul, not the language of problem solving."

Conclusion

The dominant model of settlement driven mediation in western culture is clearly beneficial to many people in conflict and superior to the adversarial legal process and court system in most cases. Moving to a higher plane, which embraces the importance of spirituality, compassionate strength and our common humanity, holds even far greater potential. As an expression of the transformative power of conflict resolution, a humanistic mediation model can lay the foundation for a greater sense of community and social harmony. With its focus on the intrinsic healing power of mediation and dialogue, this model can bring a more complete resolution to the conflict. Through a process of dialogue and mutual aid between the involved parties, humanistic mediation practice facilitates the achievement of outer peace through addressing, and often resolving, the presenting conflict, while also facilitating a journey of the heart to find inner peace, which brings forth the true goal of humanistic mediation-real peace.

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III. E. The Mediation Process: *Phases and Tasks*

Prepared by: Jean Greenwood, M. Div.

Purpose:

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

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

Underlying Principles Of Victim Offender Mediation:

1. Human beings possess untapped inner resources that under the right circumstances can be accessed and utilized to address issues and resolve problems of importance to them.
2. Appropriate structure (e.g. neutral third party facilitation, procedural guidelines, ground rules, intentional seating plan) can neutralize status and power, and provide an environment conducive to meaningful dialogue, even in emotionally intense contexts.
3. The use of specific techniques and strategies by the mediator must serve the larger goals of creating a safe, respectful environment in which a mediated dialogue can occur.
4. The “personal” is powerful - genuine stories of people’s experience can be evocative of empathy, insight, and learning. The telling and hearing of these stories can be empowering, healing, and transformative for both storyteller and listener.
5. The mediator’s presence (through non-verbal and verbal communication, including tone of voice and connectedness with each party) plays an important role in facilitating a genuine dialogue in which the parties are doing most of the talking.
6. Presenting choices to the parties whenever possible (i.e. when to meet, where to meet, etc.) maximizes their opportunities to feel empowered by the process.
7. The power of a mediated dialogue to be a transformative experience is to be found in the parties speaking directly with each other about issues and concerns of importance to them. It is important for mediators to get out of the way when the parties are respectfully talking to each other. Mediators should use caution in intervening too frequently.
8. Differences and conflicts can elicit creativity and a sense of possibilities otherwise unknown. When necessary, parts of the mediation process can be adjusted to more effectively meet the needs of the parties so that they feel safe and comfortable enough to engage in a genuine dialogue. Be sensitive to cultural differences in communication style and meaning.
9. Discovering underlying information, needs, interests can enhance a collaborative effort and produce increasingly satisfying results.
10. Well-written agreements guide and focus behavior, thereby enhancing and producing results. Written agreements, however, are secondary to the importance of the victim and offender being able to talk about the impact of the crime upon their lives. Some mediated dialogue sessions will not require a written agreement.

The Mediation Process

Phase One: Intake

Purpose:

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

Tasks:

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

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

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

2. Establish an effective referral system

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

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

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

NOTE: See sample introductory letter in the Appendix.

The letter should explain the following:

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

Phase Two: Preparation For Mediation

A. First Telephone Contact with Offender and Victim

Purpose:

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

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

Tasks:

1. Call all parties within one week of the mediation letter being received.
2. Call the offender first.
 - The general rule is to begin with the offender because victims may feel revictimized if their expectations are raised by the thought of a mediation session and then they learn that the offender has refused to participate in mediation. If you have difficulty contacting the offender within a week, call the victim and let him or her know you are working on the case. The victim will be expecting to hear from you soon.
 - If the victim or offender is a juvenile, first speak with a parent or guardian, in order to briefly explain the program, secure approval to talk with the son or daughter, and to arrange a time convenient to all. If the parent or guardian is unavailable, and you must meet with the juvenile alone, do so in a public place rather than at the home.

3. Introduce yourself, your organization, and indicate the source of referral.
4. Explain the purpose of your call: to set up a time when you can meet with them in order to
 - learn more about the incident;
 - explain mediation in detail.

5. Explain briefly:

- mediation allows victims and offenders to meet and talk about what happened, and to work out a resolution to the situation, including restitution;
- participation in mediation is voluntary for both victim and offender.

NOTE: Urge them to wait with their decision until you visit in person, when they will have the opportunity to learn more about how mediation works and how it might be beneficial for them.

6. Ask if there is a convenient time to meet. Inquire also about others they may wish to have present at the meeting for support.
7. Offer additional information as needed to secure an appointment, such as:
 - the mediator's role is neutral and facilitative; mediators do not have decision-making authority;
 - the parties themselves determine how to resolve the situation;
 - in mediation the parties have an opportunity to ask questions, to explain what happened, and describe their feelings about the incident.
8. Reiterate the date and time of the meeting, and close the conversation. Be sure they have your name and a phone number where you can be reached, in case they have further questions. It is not advisable to give out your home phone number. You may wish to make a reminder call several days before your scheduled visit.

B. Pre-mediation Interviews with Victim and Offender

Purpose:

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

NOTE: In order to accomplish this, the mediator needs, first of all, to allow adequate time for the interview. Do not rush the visit - plan on at least one hour with each party. Secondly, the mediator needs to shift to a focused listening mode, inquiring about what happened from the perspective of both parties and how it affected them. The interview provides an opportunity for

the mediator to gather background information, to assess the client's readiness and appropriateness for mediation, to coach individuals in preparation for the mediation experience (in terms of expectations, process, and communication skills, if necessary), and to develop rapport with clients, by exhibiting genuine interest and concern along with an empathic listening style. If the pre-mediation interview is done well, the participants will understand the mediation process, trust the mediator, and make an informed decision about their own participation.

Tasks:

1. Introduce yourself and the sponsoring organization. Express your appreciation that they have taken time to meet with you.
2. Create a relaxed atmosphere by generating informal conversation. Encourage clients to share a bit about themselves (e.g.. ask how long they have lived in the area, where they are from, how old the children are). Share similar information about yourself, as appropriate.
3. Ask victim and offender to tell you what happened, how they felt about it, how they were affected by it. It is vital that the mediator assume a fully attentive listening mode. Assure the parties that what is said will be held in confidence by you. The exception to the confidentiality rule is mandated reporting. If the mediator is told of child abuse, abuse of a vulnerable adult, intended suicide, or a planned homicide, let them know that it must be reported. Note: for additional information regarding confidentiality, see the Questions & Answers section.
4. Explain briefly how you came to be a mediator and what your experience has been. Using ordinary language, describe the mediation process, in chronological order with sufficient detail. Clients need a clear sense of what happens in mediation and what would be expected of them.

In mediation:

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

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

- meet the person who victimized them
- let the offender know how the crime affected his or her life
- ask questions and get answers

- resolve issues
- have a more direct say about consequences

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

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

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

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

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

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

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

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

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

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

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

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

10. Ask the offender to consider what he or she would be able to do in terms of monetary restitution, community service, personal service. Ask victims to consider what they would like to request of the offender. Have them describe the actual losses they incurred, if that information has not already been given. Documentation on losses should be provided, in so far as possible. Estimates for repair of damages need to be gotten prior to the mediation and brought to the session.
11. Thank the clients for their time and their willingness to talk about their experiences. Reiterate plans for the mediation and encourage them to call if they have questions.

What if Either Party Says "No" to Mediation?

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

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

Options:

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

Phase Three: Mediation

Purpose:

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

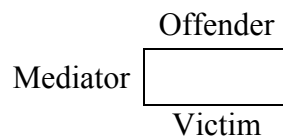
NOTE: A non-directive style of mediated dialogue, in which the victim and offender are doing most of the talking, has been found to be the most effective. Refer to Chapter III. D. which more fully describes a humanistic model of mediation.

Tasks:

1. Preparation

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

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



Sitting at a table is often helpful and it creates safe boundaries. In many cases it is also possible to sit in a circle, with no table, but with the victim and offender across from each other allowing for direct eye contact, unless such direct eye contact is inappropriate because of the cultural context of one or both parties.

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

2. Introduction

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

- a) Welcome everyone to the mediation session.
- b) Introduce yourself and ask the parties to introduce themselves. It is wise to allow individuals to do their own introducing, as some occasionally wish to use only their first names, out of a concern for their own safety. Also invite those present who are not directly involved in the incident to identify their connection.
- c) Set the tone. Use your voice, body language, and affect to communicate calmness, purpose, seriousness, empathy. Build in moments of silence, and indicate your comfort with quiet spaces. Affirm the willingness of all parties to participate in mediation, which is a challenging experience to face. Share your hope and expectation that everyone present will benefit from the mediation experience. Encourage them all to be as open and honest as possible in a spirit of mutual problem-solving.
- d) Describe the purpose of coming together, e.g.. to deal directly with an event that has affected many people, to seek to come to terms with the incident as much as possible, and to try to make things better. The mediator needs to choose language appropriate to the context. In some cases, you may describe the mediation process as a way of resolving issues or of helping the parties be able to move on from the incident. However, in crimes of greater severity or simply cases of more intense emotional involvement, resolving issues and moving on may not be realistic goals, and certainly not ones a mediator should impose on the process. In such cases, the goal may be simply to assist participants in dealing with the crime, to provide one step in a long-term process of coming to terms with a very painful, tragic event. In cases where the parties had a connection prior to the crime or anticipate future contact, it is important for the mediator to mention both past and future aspects to be considered when identifying desired outcomes.
- e) Describe briefly how the mediation session will proceed:
 - each person will have the opportunity to tell what happened from his or her perspective, without interruption, expressing reactions and feelings about the incident then and now;
 - participants will have a chance to ask questions of each other and make additional comments; support persons will be invited to make a brief statement;
 - both parties will then generate options to resolve the situation and repair the damage as much as possible;
 - after the options are discussed and participants agree on a mutually-acceptable resolution, an agreement form will be completed and signed by both parties.

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

- f) Explain that anyone can request a short break, not to exceed 2 to 3 minutes, or a brief

caucus with the mediator or someone else present. In the event that one party wishes to caucus with you as mediator, make sure you give equal time to the other party. The mediator may also initiate a caucus with each party separately.

g) Define your role as mediator:

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

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

- allow each other to speak without interruption (you may wish to provide paper for the participants, to be used to note thoughts that come to mind as the other party is speaking, things they don't want to forget to say);
- listen and speak respectfully to each other.

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

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

3. Storytelling and dialogue

a) Introduce this step by reviewing instructions given earlier: you will be asking each party, one at a time, to tell you what happened, what was going on at the time, how he or she felt about what happened then and how each feels now, and how the crime impacted each person's life. Remind them that the focus will be on each person's experience - we are not on a fact-finding mission. In cases where the parties do not agree on all the facts, it may be important to acknowledge that reality, e.g.. "Even though we may not find agreement on all the facts of this case, it is still our task to come to terms with this incident and find a way to resolve the issues."

b) Invite the victim to begin telling the story, unless the victim has indicated a preference for the offender to go first. The danger in having the offender begin is that the offender's story and possible apology may "soften up" the victim, making it difficult for the victim to be as forthright about the impact of the crime. This is particularly true if the offender is young. It is also possible that the offender may not reveal as much after hearing the victim speak, realizing that the victim may not have known the full extent of the crime. At times, however, the victim may insist that the offender go first, desiring to see the offender venture first into vulnerable territory, while the victim then has the opportunity

to gauge his or her responses to the tone and content of the offender's words. It is possible that hearing the victim's story may move the offender to greater empathy and remorse.

- c) Initiate direct communication between victim and offender, unless that might inhibit a participant. For example, "Mr. Smith, could you tell Jane what happened from your perspective and how you felt about it?"
- d) Monitor the process. While devoting full attention to the speaker, maintain an awareness of the other participants, assessing their level of stress or agitation. Be cautious about intervening. Participants will benefit from the opportunity to tell their stories uninterrupted. If one of the parties omits information about feelings or impact, gently coach them, e.g.. "What were some thoughts and feelings that you had at the time?" Be respectful of silences.
- e) When both parties are finished, ask them if they have anything further to add to their stories, any comments, or questions of clarification they would like to ask the other party. Then ask support persons if they wish to speak about what they experienced and its impact on them. Allow enough time, including moments of silence, for additional questions and comments after the initial story telling. Do not move too quickly to discussion of losses and development of a restitution plan.

Transition from storytelling to discussion of losses by:

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

4. Discussion of losses and generating options

- a) Introduce the task of generating options by asking the parties to consider what it would take for them to feel that
 - things had been resolved as best they can be,
 - the damage has been repaired,
 - things have been made better for them.
- b) Encourage discussion about options by
 - identifying what is important to each party (positions) and why it is important (interests),
 - summarizing the losses that have been mentioned and asking if there is anything that needs to be added,
 - asking both parties for ideas on possible ways of addressing the losses.
- c) Explore the implications of the options generated: is it practical, workable, reasonable? does it address the needs of the parties?
- d) If the parties are finding it difficult to generate options, you may want to remind them of

options discussed during the pre-mediation interview, options other victims and offenders have found appropriate.

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

5. Developing an agreement

NOTE: See sample agreements in the Appendix.

a) General guidelines for writing an agreement:

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

b) Remind the parties that the agreement is written based on mutual consent, that both parties must feel it is fair and workable. Also use your discretion as a mediator. If you have serious concerns about the appropriateness of the agreement, consult with staff

c) Begin with the easiest issue. Find a mutually-agreeable solution. Draft the specifics: who does what, when, where. Then proceed to work through the remaining issues.

d) In a balanced and non-judgmental manner, explore the offender’s ability to keep the agreement. Ask the offender’s parents if the agreement sounds realistic for their child.

e) Review your draft of the agreement with both parties, clause by clause, to verify that it reflects their wishes. Encourage them to amend or delete any clauses or words that do

not fit, and to add any additional thoughts that seem fitting. Sometimes victims desire to include words of encouragement for the offender, which is very appropriate if both parties agree. You may wish to remind the parties of any additional ideas for restitution that were generated earlier but are not in the agreement. Be sure to read the draft aloud.

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

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

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

- g) Explain what happens from here:

- Copies of the agreement go to the victim, offender, offender's parents, and court officials. Provide copies at the time of mediation when possible.
- Inform the parties who will be monitoring compliance with the agreement, e.g.. you as mediator, program staff, probation officer, restitution worker.
- Reassure them that the offender will be given proper credit for payments and that the correct amount of money will be forwarded to the victim (make sure you have the correct address for the victim, as well as current information for the offender).
- Explain the consequences of non-compliance with the agreement, e.g. the case will be returned and may go to court.

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

6. Closure

- a) Indicate that a brief follow-up meeting is often helpful. Some participants wish to meet again to review progress on the agreement, perhaps at mid-point, to deal with minor issues that may arise, to reinforce the impact of mediation, to make direct payment of restitution, to celebrate completion of the agreement, or simply to achieve greater

closure for themselves. Ask if participants desire to schedule a follow-up session.

- b) Ask if anyone has anything additional he or she wishes to say.
- c) Thank the participants for coming and commend them for the good work they have done.
- d) Wish them well and shake hands with them as they leave. Do not suggest that the parties shake hands. This must be genuinely initiated by the parties.
- e) You may wish to check with each party as they leave, e.g.. “How are you doing?” “How was the mediation experience for you?”
- f) Debrief the mediation alone or with a co-mediator:
 - * What did you as mediator do that was helpful?
 - * What might you have done differently to be more effective?

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

Phase Four: Follow-Up

Purpose:

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

Tasks:

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

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

Tips For Mediators

A. Do's

1. Do Remember Participation Is Voluntary

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

2. Do Call A Caucus When Unsure

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

3. Do Summarize When Stuck

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

4. Do Ask If Participants Would Like Suggestions

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

5. Do Encourage Participants To Talk Directly To Each Other

Participants will know they need to speak to each other, because of information shared by the mediator at the pre-mediation interview and at the beginning of the session. At first it may be difficult for them to do this. They may be more comfortable looking at the mediator. Mediators can help them overcome their reluctance to look at one another by directing their focus to the listener and away from the speaker. If this fails, the mediator

may ask the speaker to direct comments to the other party or may move back from the table slightly and look down at a note pad for an extended time, thus avoiding eye contact with the speaker. Also be alert to and respectful of cultural traditions that may prohibit eye contact in situations such as mediation.

6. Do Clarify When Someone Seems Puzzled

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

7. Do Reframe To Temper Heated Discussion

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

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

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

9. Do Contact Staff When Stuck

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

B. Don’ts

1. Don’t Solve Problems For Participants

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

2. Don’t Fact Find

While it is important to go over the event during the story telling phase, it is not

beneficial to cross examine or re-try” the case. If the victim does not understand mediation they may interrogate the offender. The mediator needs to call a caucus and explain that interrogation is not a part of mediation. It is also not essential that all the facts agree. Even in cases where there is not consensus about all the details, it may still be the desire of the parties to resolve the situation. Always ask the participants if they wish to proceed.

3. Don't Allow Participants To Argue

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

4. Don't Philosophize, Patronize, Preach

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

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

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

6. Don't Use Jargon Or Technical Terms

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

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

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

8. Don't Fill The Silences

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

9. Don't Intervene Too Frequently

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

Questions & Answers

- 1. How do we determine which cases are appropriate for mediation?** The Director of the program will work with the referral source to determine appropriate cases to refer. This typically involves the following criteria: property offense or minor assault; identifiable victim; admission of guilt by the offender; no more than two or three prior convictions; no major mental health problems with the offender; and, no major chemical abuse problems, which must first be addressed before mediation.
- 2. After the preparation phase, how can we assess whether the parties are appropriate and ready for mediation?** An initial consideration is the stance of the offender. The offender needs to acknowledge guilt, taking personal responsibility for the crime or at least some portion of the crime. It is, of course, desirable for remorse to be present as well. Often remorse is elicited through the mediation process, though that cannot be predicted. A lack of remorse on the part of the offender may be important information for the victim to have in making a decision about proceeding with mediation. Even if the offender does not reach a remorseful state, there still may be benefits to the victim in addressing the offender. That is a decision that the victim needs to make. The mediator's responsibility is to provide accurate information, gaining permission for any sharing of information with the other party. (See Question 3 below.) Other considerations include the capacity of both victim and offender to communicate their perspectives, and to refrain from destructive behavior. Anger per se is not destructive to the mediation process, particularly if it is "owned", using "I" messages. Rage and vindictiveness expressed through attacking language is usually counter-productive.
NOTE: See Assessment Instruments in the Appendix.
- 3. Are there limits to confidentiality?** In addition to mandated reporting discussed earlier, there may be times when it would be helpful to share information between the parties prior to mediation. In such a case, secure permission from the party to share a specific piece of information. Occasionally the parties may base their decision to participate in mediation on the attitude of the other party, and it is important for the participants to have realistic expectations about the process. Always ask if it is OK to let the other party know how he or she is viewing the issues. At the end of the pre-mediation session, it is often good to ask the person for permission to share any information with the other party. This can be done by saying the following. "Sometimes the other party is interested in learning of your general attitude about what happened and even your appearance. Would this be O.K. to share with them? Also, if there is any information from pre-mediation interviews that you wish to bring

up in the mediation session, you must caucus and get permission to share it.

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

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

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

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

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

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

III. F. Guidelines For Victim Sensitive Mediation & Dialogue With Offenders

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Purpose Of Victim Offender Mediation

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

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

Underlying Principles Of Victim Offender Mediation:

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

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

Overview Of Criteria For Victim-Sensitive Mediation

1. Victim Safety
2. Victim Choice
 - a) Participation
 - b) Support
 - c) Schedule for Mediation Session
 - d) Mediation Site
 - e) Seating
 - f) First Speaker
 - g) Termination of Session
 - h) Restitution
3. Pre-Mediation Session with Victim, Conducted in Person by Mediator
 - a) Listen
 - b) Provide Information and Answer Questions
 - About the mediation program
 - About oneself as mediator
 - About the mediation process
 - About the judicial system
 - About victims' rights
 - About resources available to them
 - About the offender
 - c) Discuss Risks/Benefits and Assist Victim in Decision-Making
4. Careful, Extensive in Person Victim Preparation by Mediator
 - a) Reality Testing Victim Expectations
 - b) Assessment of Losses
 - c) Restitution Possibilities

5. Careful Screening of Cases
6. Meeting First with Offender
7. Offender Choice to Participate
8. Offender Support
9. Pre-Mediation Session with Offender, Conducted in Person by Mediator
10. Careful, Extensive in Person Offender Preparation by Mediator
 - a) Reality Testing Offender Expectations
 - b) Assessment of Losses and Restitution Possibilities
11. Use of Victim Sensitive Language
12. Use of Humanistic/Transformative Model of Mediation
 - a) Perspective of the Mediator
 - b) Relaxed, Positive Atmosphere
 - c) Dialogic Focus
 - d) Guidelines
 - e) Feedback from Participants
 - f) Option of Follow-up Session
13. Follow-up after the Mediation Session
 - a) Completion of Agreement
 - b) Notification of Victim
 - c) Scheduling Additional Sessions if Needed
 - d) Phone Contact with Parties
14. Training for Mediators in Victim Sensitivity

Description Of Guidelines

1. Victim Safety

A fundamental guideline for Victim Offender Mediation programs is the safety of the victim. The mediator must do everything possible to ensure that the victim will not be harmed in any way. At every point in the mediation process, the mediator needs to ask, “does this pose a threat to the safety and wellbeing of the victim?” Maintaining rapport with the victim is essential for the mediator, as well as attending to verbal and nonverbal communication, and requesting feedback from the victim as the process unfolds. If the victim feels unsafe, the mediator needs to be prepared to act immediately, to provide options, to terminate a mediation, to provide an escort for the victim leaving mediation.

To ensure the safety of the victim, the mediation should be conducted in a location that feels safe

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

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

2. Victim Choice:

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

a) Participation

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

b) Support

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

c) Schedule for Mediation Session

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

d) Mediation Site

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

e) Seating

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

f) First Speaker

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

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

to engage in a genuine dialogue to the extent of their ability is ultimately the most important principle, regardless of who speaks first.

g) Termination of Session

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

h) Restitution

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

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

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

a) Listen

A critical task for the mediator is to attend to the victim, listening carefully, patiently, and empathetically out of a genuine desire to hear the victim's experience. Effective listening will give the victim a chance to vent and experience the validation of feelings. Attentive listening on the part of the mediator will also help to build trust with the victim and give the message that the victim is a priority. Occasional informal paraphrasing or summarizing by the mediator will assure the victim that the mediator is indeed paying attention and valuing what is being said.

b) Providing Information and Answering Questions

- About the mediation program

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

- About oneself as mediator

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

- About the mediation process

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

- About the judicial system

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

- About victims' rights

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

- About resources available to them

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

-About the offender

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

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

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

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

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

a) Reality Testing Victim Expectations

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

b) Assessment of Losses

Victims may appreciate assistance in identifying losses experienced in the crime. This

can include material and out-of-pocket monetary losses, and less tangible losses, such as a sense of safety, and feelings of connection and community.

c) Restitution Possibilities

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

5. Careful Screening of Cases

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

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

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

6. Meeting First with Offender

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

7. Offender Choice to Participate

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

8. Offender Support

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

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

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

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

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

a) Reality Testing Offender Expectations

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

b) Assessment of Losses and Restitution Possibilities

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

11. Use of Victim Sensitive Language

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

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

12. Use of Humanistic/Transformative Model of Mediation

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

a) Perspective of the Mediator

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

b) Relaxed, Positive Atmosphere

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

c) Dialogue Focus

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

d) Guidelines

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

e) Feedback from Participants

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

f) Option of Follow-up Session

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

13. Follow-up after the Mediation Session

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

a) Completion of Agreement

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

b) Notification of Victim

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

c) Scheduling Additional Sessions if Needed

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

d) Phone Contact with Parties

It is helpful if the mediator maintains phone contact with both parties for a period of time

following the mediation session, whether or not the agreement has already been completed. A brief check-in is all that may be required. The mediator can serve as a continuing source of information and referral. If the case is not mediated, it may be beneficial, nonetheless, for the mediator or victim support staff to maintain phone contact with the victim for a period up to six months.

14. Training for Mediators in Victim Sensitivity

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

Program Development Issues to be Faced in Starting a Program

A number of important tasks that were critical to the initiation and development of an effective program were successfully completed by each of the four victim-offender mediation programs examined in this study. Other programs in the field have faced similar tasks that have focused on the issues of: goal clarification; community/system support; funding; target population; referral source(s); program design; management information systems; and training of mediators.

As the field of victim-offender mediation continues to expand in North America and Europe, it will be important for local program organizers and advocates to address these key issues that are critical to effective program replication.

Goal Clarification

The victim-offender mediation process offers a variety of potential benefits. Victims can become directly involved in the justice process. They can let the offender know of the impact that the crime has had on their life and can receive answers to any lingering questions. Victims can directly influence the manner in which the offender is held accountable, through negotiation of a mutually acceptable restitution agreement.

Through mediation, offenders are allowed to be held accountable in a very personal fashion. Offenders have the opportunity to repair the damage they are responsible for, accept responsibility for their behavior and portray a more human dimension to their character. The opportunity for offering a direct apology to the person they victimized is provided. Offenders who participate in mediation may also avoid a harsher penalty.

The community-at-large also benefits from the increased practice of nonviolent conflict resolution skills that occurs through the presence of a local victim-offender mediation program. Many offenders who participate in a mediation session with their victim are less likely to commit additional crimes. Through diversion of certain cases from the court system to mediation, scarce tax dollars can also be saved.

Precisely because the mediation process has clear benefits for both the offender and the victim, as well as the larger community, it is important for local program organizers to be clear about their goal(s). By definition, the victim-offender mediation process is grounded in the primary goal of providing a conflict resolution process that is perceived as fair to both the victim and offender. Each local program, however, needs to identify which secondary goals are important for their community.

There are a number of possible secondary goals of the victim-offender mediation process. For example, is the program concerned about crime prevention, offender rehabilitation, victim assistance, community conflict resolution, victim empowerment, victim offender reconciliation, or serving as an alternative to incarceration? Each of these possible secondary goals are certainly not mutually exclusive. Effective program development, however, will be difficult without local organizers first clarifying which goals are the most important for their specific jurisdiction.

Community Support

The development of community and criminal justice system support for a local victim-offender mediation program is critical. A broad base of support will be required to initiate a new program, particularly because of the predictable initial skepticism that often confronts the concept of allowing crime victims to meet with the person who victimized them.

One of the first tasks that local program advocates and organizers should complete is a thorough analysis of key local actors within the community and justice system. Key actors might include: judges; prosecutors; defense attorneys; correctional staff; victim advocates; probation staff; directors of victim service agencies; city or county political leaders; clergy people; neighborhood leaders; and civic and corporate leaders. All possible stakeholders in the development of a local victim-offender mediation program should be considered.

The analysis of these key actors should focus upon assessing the degree to which each individual could either offer resistance or significantly influence the development of a new program. It might be helpful to develop a chart in which the names of the key actors, and their position, are listed along the left hand margin and the following four columns are to be filled out for each person.

1. Evaluate their influence/power.
2. Evaluate their probable support or non-support.
3. Identify who can influence them.
4. Develop a strategy to either gain their support or neutralize their active opposition.

Building local support for a new victim-offender mediation program will also require the development of a plan for presenting the concept and program to the public in a clear and understandable fashion, what some would call a marketing strategy. Development of such a plan should include the ability to:

1. State the purpose of your program in one sentence.

2. State the human interest aspect of your program in one sentence.
3. State the public policy/criminal justice system relevance of your program in one sentence.
4. State briefly the benefits of your program.
5. Identify briefly any possible self-interest the following key actors might have in your program: judge, prosecutor, defense attorney, probation officer, police or local politicians.
6. Based on the above, develop a general presentation outline for presenting your program to local officials and the public.
7. Identify a strategy for utilizing newspapers, radio stations and television stations.

Effective development of a broad base of community support requires preparation of a clear and brief presentation about the program, scheduling many presentations before a wide range of community organizations and justice system agencies, and inviting the active involvement of key actors and others in the actual process of developing and managing the new victim-offender mediation program. Additional strategies for developing support are addressed in the next chapter.

Funding

Securing sufficient funds to support the operation of a new victim-offender mediation program is one of the most difficult tasks to be faced during the initial program development process. Fortunately, such mediation programs do not require huge budgets.

The annual expenses (1991 figures) for three of the programs described in this report were: Albuquerque, \$31,530; Minneapolis, \$123,366; Oakland, \$127,176. The Albuquerque program budget is actually more representative of many of the programs operated by small non-profit community agencies, some of which have even smaller budgets in the range of \$5,000 to \$10,000 (Fagan and Gehm, 1983). With such a small budget, these programs would obviously have to rely very heavily on the use of volunteers. The larger budgets in the Minneapolis and Oakland programs represent more mature and well-developed programs that have expanded considerably. Even these two programs, however, had a much smaller amount of funding (\$20,000 to \$30,000) during their initial years of development.

Based on a review of 123 victim-offender mediation programs in the U.S., the typical program was found to have a budget of \$47,500, with just under three staff persons, 16 volunteer mediators and an annual caseload of 200 referrals (Fagan and Gehm, 1993). The actual size of program budgets is a function of several important variables: caseload projection; use of volunteer mediators; level of existing administrative support; fundraising ability; and public relations responsibilities.

Many programs have begun with relatively small amounts of money, often from private foundations and churches, and later have secured larger amounts of public funding as the program develops. While a small amount of federal funds is available to support victim-offender mediation and reconciliation programs, the most likely source of funding is to be found within the state and, particularly, local private and public sources. The task of securing local funds

should not be postponed until all plans for the new program are finalized. Rather, potential funding sources should be identified and researched during the initial planning phase. When the initial plans for the new program are worked out, including a tentative budget, it is often helpful to develop a brief concept paper that can be distributed to potential funding sources. A more thorough proposal will eventually need to be prepared.

A strategy of developing a multiple-source funding base is often helpful. Having several different sources provide funding for a program can often be more effective than a single-source funding base, in which the entire project is dependent upon one grant. If that single grant is lost, the existence of the entire project is immediately threatened. Public agencies, such as probation departments, are in a position to even consider reassigning responsibilities and resources so that only a marginal amount of additional funding may be required. On the other hand, departments that are overburdened with high and growing caseloads will certainly not be in a position to develop a new victim-offender mediation program without a significant amount of new resources.

Target Population

In the planning of a new victim-offender mediation program, it is important to identify the target population for case referrals. Will the program focus on juvenile or adult court cases? Will it accept any referrals, regardless of age or type of offense? Will it focus upon only the most minor property offenses, or, will it attempt to receive referrals of more serious property offenses and some violent offenses? These are important questions to address early in the life of the planning process. Depending on the choices made, the program can quickly become stigmatized as another so-called alternative for lightweight cases, many of which would have been essentially ignored by the system, or as an important new effort to deal with more serious offenses.

Within the field of victim-offender mediation and reconciliation, there exist two schools of thought on this important issue. Many would argue that since the primary goal of the mediation process is to resolve the conflict between the victim and the offender, nearly any case referred is appropriate. From this perspective, there is little concern about the seriousness of the offenses, age or circumstances of the offender, or about the possible impact of mediation on the larger justice system (i.e., widening the net of social control versus serving as an actual alternative to court, or even incarceration). Many programs that embrace such a wide open definition of their target population tend to receive a high volume of very minor misdemeanor offenses (i.e., lightweight cases).

Others in the field would argue that given the limited resources available to all programs and the relative needs facing individual victims and offenders, as well as the justice system, a more serious range of case referrals should be identified. It is less likely that the program would be marginalized if it worked with more serious cases. The impact of the mediation program in truly diverting certain cases from the justice system or from a penalty of costly incarceration would likely be greater. Victims and offenders involved in more serious cases usually have greater emotional and material needs that could be resolved through mediation.

While working with any case seems logical-if not desirable-in the abstract, it is simply not

possible. Many would argue that focusing primarily upon the least serious offenses results in a tremendous underutilization of the full power and potential of the mediation intervention to create a greater sense of closure and reconciliation among the involved parties. Moreover, it has become increasingly clear that mediation can be very effective in working with cases involving severe trauma and loss, including attempted homicides and homicides (Umbreit, 1989). The number of such cases remains small, but it is continuing to expand. The mediation process in such cases also requires a number of modifications, advanced training for the mediator and a far more intense case-management process. The fact the mediation can be effective in such severely violent offenses bodes well for the targeting of more serious offenses and the need to limit the negative effects of increased social control through "net widening" (i.e., placing more, not fewer, offenders under the control and influence of the justice system) and "net strengthening" (i.e., providing mediation as an add-on to existing sanctions-usually involving more cost- rather than as a substitute for an existing sanction).

Identifying an appropriate target population for case referrals ultimately involves a balance between the desires of the program advocates and the willingness of the criminal justice system to support the new program and experiment by taking some risks. A negotiated process is required between representatives of the referral sources and program staff. Keeping the expressed goals of the program in the forefront of such negotiations is critical. Without such focus, it will become far too easy for the new program to be seduced into taking cases that have little relationship to the ultimate goals of the program.

Identifying an appropriate target population also requires open recognition of the tremendous resilience of the criminal justice system in coopting true reforms. Many "diversion" programs and "alternatives" that were developed over the past two decades were found to have little real impact in either truly diverting cases from the courts or reducing the use of incarceration. The good intentions of reformers did not often lead to the desired changes. The more local organizers are committed to avoiding the creation of "wider and stronger nets of social control" (Austin and Krisberg, 1981), through not repeating the errors of the past, the more difficult the task of identifying an appropriate target population will be.

Program Design

The most crucial, yet difficult, task of initiating a new victim-offender mediation program is the need to design the local program in such a way that it will maximize the achievement of its primary goal, with direct impact on the desired target population. Clarification of goals and identification of a target population can easily become an abstract and irrelevant exercise if they are not directly formulated as clear strategies for how a local program will actually operate. For this reason, the task of effective program design is the most demanding and critical step in any local replication effort. Experience in the field of victim-offender mediation has taught that many local organizers underestimate the importance of program design and are often too quick to initiate training of mediators.

While there is certainly no simple or perfect way of designing a local victim-offender mediation program, there are a number of key issues that need to be addressed. These include: program sponsorship; staffing; use of volunteers; point of referral in system; referral criteria and

procedures; and use of co-mediators.

Program Sponsorship

Identifying the appropriate agency to sponsor a new victim-offender mediation is extremely important. Agencies that are already identified as strong advocates for either victims or offenders are unlikely to be able to offer a mediation service that requires the use of neutral, impartial third parties. In some communities, the establishment of an entirely new non-profit organization may be appropriate. In other communities, a collaborative effort between a local probation department and a victim services agency may be selected. The victim-offender mediation programs in Albuquerque and Austin are particularly good examples of collaborative efforts between private and public agencies. In Albuquerque, the juvenile probation department and the New Mexico Center for Dispute Resolution sponsor the program. In Austin, the juvenile probation department directly sponsors the program but relies on the local dispute resolution center to provide the volunteer mediators to handle cases.

Staffing

The number of staff required to manage a new victim-offender mediation program can vary a great deal based on the nature of the organization sponsoring the program, the level of new funding secured and the projected caseload. In existing well-established, non-profit community agencies or in some probation departments, it may be possible to initiate a program with a very limited number of staff members. Some programs have begun with essentially a half-time staff person and a pool of volunteers; having at least one and one-half full-time equivalent staff members to initiate the program and coordinate volunteers is far more desirable. Others programs that are not able to receive supportive services from a larger organization (including free office space, telephone, secretarial support, etc.) are likely to need more staff. As programs expand over time, more staff will be required to effectively manage the program.

Use of Volunteers

The use of trained community volunteers needs to be addressed early in the planning process since it has a direct impact on the budget and staff required to initiate the program. The benefits of using volunteers include increased citizen participation in the justice process, broader community exposure to nonviolent conflict resolution skills and reduced costs for the program. Further, volunteers often add a level of enthusiasm and commitment to a program that is a valuable asset.

However, using volunteers in a new mediation program requires a good deal of planning and effort in recruitment, training, and monitoring. Periodic in-service training is important, along with various events to provide recognition and support. The benefits must be examined in the context of the energy and resources that must be expended. Most victim-offender mediation programs have chosen to use community volunteers as mediators.

Point of Referral

The point at which cases are referred to mediation by the justice system is a critical strategic issue to consider. There are at least four possible referral points: directly from the police before a formal charge is filed; after the police have filed a report but prior to a trial, as a diversion from prosecution; after an admission or finding of guilt, but prior to the sentencing or disposition hearing; and after the sentencing hearing. Some programs would accept referrals at any of the above points.

There are benefits and limitations related to using any of these referral points. While mediation is more likely to be an alternative to the court process if cases are received at a pretrial level, it is also more likely that only relatively minor offenses will be referred. If more serious cases, including some violent offenses, are meant to be referred to mediation, it is more likely that the point of referral would be post-conviction or post-adjudication. Some programs find it desirable to have cases referred after an admission of guilt but prior to sentencing. This allows victims to have direct input into the penalty required of their offender and represents a time of high motivation for the offender to make amends.

Referral Criteria and Procedures

The importance of developing clear referral criteria and effective referral procedures cannot be overstated. Failure to address these issues will likely result in few referrals as well as inappropriate cases, both of which can marginalize the program. The experience of many programs shows that clear referral criteria and very pro-active referral procedures are the most effective. Rather than providing the referral source with a list of criteria and then waiting for referrals to be made, having program staff directly review and select cases at the offices of the referral source is far more effective. An example of clear and concise criteria and procedures would be:

Referral Criteria

- * Adult felony offenders convicted of burglary or theft, regardless of prior offenses
- * Identifiable loss by victim and need for restitution
- * Absence of intense hostility which could lead to violence
- * Admission by the offender of complicity in the offense

Referral/Case Management Procedures

- * Immediately following convictions, probation staff temporarily place all burglary and theft case files in the VOM (victim offender mediation) in-basket at the probation office
- * Program staff visit the probation office daily to review all burglary and theft cases within 24 hours of conviction
- * Program staff select appropriate cases to be referred to mediation, subject to final review by probation staff
- * Program staff transfer case information from the file to the VOMP case referral form

The above abbreviated criteria and procedures are offered to emphasize the need for clarity. Actual referral criteria and procedures are likely to be more detailed. Time frames for completing certain procedures can be helpful if they are understood as targets and not rigid goals.

Use of Co-Mediators

In designing the program and preparing for mediation of cases, it will be important to determine if single mediators or co-mediators will be used. There are advantages to both. On the one hand, it is easier to schedule actual mediation sessions when single mediators are used, and a smaller pool of volunteers is required. On the other hand, co-mediators can: increase quality control through peer support and critiquing; provide additional support and help to mediators during the mediation session and through de-briefing after it ends; allow for more flexibility in addressing cross-cultural issues that may be present in the conflict (assuming one of the co-mediators is from the minority culture); and promote broader citizen/volunteer involvement in mediation. Co-mediation can involve having one person serve as the lead mediator, with the other in a secondary role of helping clarify issues or assisting with difficult issues that may arise. It can also involve having the mediators both take the lead in different parts of the session. For example, one mediator could handle the initial opening of the session, and the discussion of the facts and feelings related to the case. The other mediator could then take the lead in reviewing the losses and helping the parties negotiate a mutually acceptable restitution agreement.

Management Information System

The development of a management information system in the planning of a new victim-offender mediation program can provide an effective mechanism for the collecting, storing and retrieving of important information. Management information systems have several uses. These include:

1. Assisting in the delivery of mediation services,
2. Documenting accurately what is done,
3. Facilitating supervision of staff and volunteers,
4. Providing a basis for program evaluation that can inform planning, program development, and policy formulation, and
5. Providing a basis for presenting the program to potential users, funders, and other interested groups.

The concept of a management information system may immediately suggest an endless amount of paperwork and hassle. A good system should, however, actually increase efficiency, streamline paperwork, and systematically provide helpful information to both supervisors and line staff. In order to develop a management information system, the program staff need to determine: what data is needed in order to meet the desired uses of the system; how and in what form the data will be collected; how the data will be managed; and how the system can be used for evaluation, feedback, and reporting purposes.

An example of sample forms used in the management information system of many victim-offender mediation programs includes the following items:

1. VOMP case record form
2. VOMP case referral form
3. letter to victim
4. letter to offender
5. mediator narrative report form
6. progress report form
7. agreement form
8. case referral input log
9. case referral output log
10. monthly statistical summary form

Some programs have streamlined the number of forms used, while others might have additional forms. A growing number of programs are using computer software for their management information system in order to significantly reduce the volume of paperwork.

Training of Mediators

A final issue that needs to be addressed as local communities replicate the victim offender-mediation model is that of recruiting and training volunteer mediators. A number of basic characteristics are important to keep in mind as individuals are considered to serve as mediators. These include: good communication skills, particularly reflective listening and assertion; problem solving and negotiation skills; ability to exercise appropriate leadership; good organizational skills; commitment to the philosophy and techniques of nonviolent conflict resolution; and the ability to understand and work within the criminal justice system.

The length of mediation training provided in the victim- offender mediation field can vary from 12 to 40 hours. Training should introduce volunteers to the victim-offender mediation and reconciliation concept, how it operates within the local justice system, and the procedures of the local program. A major portion of the training should focus on communication skills, problem solving and negotiation, and conducting the various elements of the process, including calling the victim/offender, meeting with the victim/offender separately, and then conducting the joint mediation session. Maximum time should be allowed for small group practice of skills and processing. New programs do not have to "reinvent the wheel" of mediation training. A number of excellent training curriculums and video tapes are available. For more information about training resources, contact The Center for Restorative Justice.

NOTE: The material in this section is taken from Chapter 10 of *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, by Mark S. Umbreit. Permission has been granted from Criminal Justice Press in Monsey, NY for use in this training manual.

Recommendations For Program Development

1. Create an advisory board

The establishment of an advisory board can contribute significantly to the effectiveness of a victim offender mediation program. Its role may be consultative, without decision-making authority. The board can assist in program development, in maintaining quality in program procedures and practices, in fund-raising, and in building support for the program within the judicial system and the community at large.

The composition of the advisory board may vary, depending on the nature of the context and the needs of the program. The board may include the following:

- a) a victim who has participated in victim offender mediation
- b) an offender who has participated in victim offender mediation
- c) youth workers from the community
- d) representatives from the judiciary or court administration
- e) representatives from probation or parole
- f) police officers or diversion workers
- g) representatives from victim services
- h) social workers, counselors
- i) health care workers
- j) other community representatives from the media, schools, churches

2. Cultivate quality control through program evaluation

Procedures for program evaluation need to be established from the outset. Such information is critical to quality control. Evaluations provide the program staff with general feedback relative to the mediation process itself, and the effectiveness of program procedures. Evaluations also offer information about specific cases and the competence of the mediator. As a result, staff may suggest further training or consultation for the mediator or follow-up work with the participants in a particular case.

In general, evaluations should be anonymous to encourage honest responses. A coding system can be used, so that staff can identify the particular case and mediator involved.

One model for participant evaluation has two phases. The first phase gathers information at the time of the mediation session. A simple evaluation instrument is distributed to all participants, including parents, with a self-addressed, stamped envelope. The participants are asked to complete the evaluation as soon as possible and mail it back, or they may complete the form at the time of the mediation session, if they prefer.

The second phase of this evaluation process occurs at a later time, between three and six months following the mediation session. This may be conducted in several ways. Another instrument may be mailed out to all participants with a self-addressed, stamped envelope or a telephone survey or face-to-face interview may be used to gather the information. The person conducting

the survey or interview may be a volunteer or a staff person, but not the person who actually mediated the case.

An additional method for gathering information from victims is to sponsor focus groups comprised of victims who are willing to discuss their experiences in mediation and offer input regarding the program and its practices.

Mediators also need to be asked to evaluate the mediation. A feedback instrument can be completed immediately following the mediation session. Such a procedure can enhance learning for the mediator, encouraging skill development through observation, analysis, and self-reflection. It can also alert program staff to any issues or problems that may need further attention, or suggest revisions in program procedures.

In addition, feedback needs to be gathered from probation officers or victim service personnel who work with the parties following mediation. This may be accomplished through formal evaluation or informal feedback.

3. Develop and maintain an extensive and effective network

A crucial component of any victim offender mediation program is the cultivation of connections with stakeholders in the community. Stakeholders include judges and referees who may make referrals to the program, victim service personnel who may refer cases or work with clients prior to or after mediation, prosecuting attorneys and public defenders who have an interest in the outcome of the case and the status of the parties, and probation officers who may follow-up with offenders. Establishing these relationships is vital to the continuing flow of appropriate referrals and the overall success of the program.

Because mediation represents a serious departure from the way crimes are traditionally handled, a concerted effort needs to be made to educate court-related personnel on the victim offender mediation process. They need information on the benefits and risks of mediation, the types of cases suitable for referral, specific outcomes of cases, research done on the short- and long-term impact of mediation, safeguards and quality control procedures. Stakeholders will also want assurance about the credibility of the program itself, and the training and competence of the mediators.

Staff play a vital role in establishing and maintaining these networks as ongoing relationships, involving frequent personal contact. In addition to providing information to stakeholders, program personnel may seek to strengthen the partnership by exploring avenues for collaboration. The training of mediators is a natural opportunity for collaboration. Victim service providers can present a training segment on the experience of victims. Portions of the training can be held on site in the office of victim services. Probation officers can provide a parallel segment on the experience of offenders. A judge can describe what happens to victims and offenders in the courtroom and offer information about what typically may happen to a case that is not mediated. The presence of representatives of the judicial system also informs trainees that the system appreciates and supports mediation, and values their contributions as volunteer mediators. A variety of service providers may role play how a case progresses through the

system from beginning to end. Such collaboration not only provides trainees with needed information but it also builds relationships within the system that can help insure the success of a mediation program.

Another opportunity for collaboration emerges out of the necessity of seeking resources and support for victims and offenders. A victim service worker may, for instance, provide the victim with support throughout the entire mediation process and beyond, even attending the mediation session with the victim, if requested, in the role of a support person rather than an active participant. Such support may assist the victim in understanding and articulating his or her experiences and needs. Similarly, a social worker or probation officer may be helpful to the offender, encouraging the development of understanding and empathy for the victim, and assisting the offender in preparing for dialogue with the victim.

Building connections within the larger community is also essential. The community is a stakeholder in the victim offender mediation process. Crime has an impact that reaches far beyond the immediate parties involved. The community is also a potential source of financial support for a mediation program. Many programs are also dependent on the community as a source of volunteers to serve as mediators. When the public is educated about victim offender mediation, becoming invested in it, victims and offenders, as well as support persons, may be more willing to participate in the process, and other community members more likely to volunteer to be mediators. In addition to general public education about mediation, specific ties should be made to community agencies, churches, ecumenical bodies, business organizations, and local and state government, including those who influence and determine legislation and public policy. Program leadership, in particular, need to have a thorough understanding of the community's structure and resources.

Volunteers may serve as a bridge to the wider community. They can be highly effective in representing or promoting a mediation program, both within the community and the court system. Volunteers may at times be more convincing about the positive impact of mediation than a staff person may be. Community members who serve as volunteer mediators, for instance, may speak enthusiastically about their experiences with the process, and victims and offenders who have found the mediation experience to be useful can serve as eloquent promoters of the program.

It is also critical for victim offender mediation programs to maintain close ties with other VOM programs, and other agencies providing mediation services to the community. These connections can offer much needed ongoing support, resourcing, and consultation. In addition, programs may wish to share materials and trainers, and to collaborate in areas of common concern, such as legislative initiatives.

4. Maintain high quality standards for mediators

- a) Screen applicants seeking training as a mediator.

The first step in creating a team of effective, competent mediators is an effective application process. Prospective mediators should complete a form that elicits, among

other things, data, professional and volunteer history, reasons for choosing to become a mediator, and something of personal style and value system. Upon completion of the form, an interview may be conducted to further screen for appropriate applicants. Because attitude and perspective are vital to effectiveness as a mediator, the interview serves as a natural tool for assessing suitability.

b) Utilize mediation training as an additional tool for screening mediators.

Be intentional about observing all trainees during role plays. Note the nature of their skills and their styles as mediators. Follow-up with any concerns that arise, by co-mediating cases with trainees and discussing pertinent issues. Also solicit input from coaches.

c) Maintain quality control through a meaningful staff/mediator relationship.

In order to insure the effectiveness of mediators it is important to consider not only the quality of training but also the ongoing relationship between staff and mediators. Program staff need to be in close contact with mediators actively involved in cases. Procedures need to be established that provide for this supervisory and consultative relationship. Relatively inexperienced mediators, in particular, may be expected to contact staff after each client contact, and to meet with staff both prior to and immediately following the mediation session.

Staff also need to be available for consultation on any case, as requested by the mediator. With more complex cases, it is helpful to arrange at the outset for brainstorming/consultation sessions involving the mediator(s), program staff, and, perhaps, other experienced mediators. In order to provide adequate supervision and support, it is advisable for program staff to co-mediate a case annually with each mediator.

In the interests of quality, it is helpful for training size to be limited to a group of nine to twelve. This gives the trainees more individual attention and provides critical information to the trainer about the learning process for each individual. It is also important to provide trainees with ample and excellent opportunities for apprenticeship, co-mediating with experienced mediators and staff. Following apprenticeship, trainees will gain the most by having frequent opportunities to mediate cases. Much that is gained through training and apprenticeship can be lost if it is not reinforced by repeated experience with actual cases. Also, mediators who are not utilized may lose interest. It is generally a better strategy to train fewer mediators, utilize them more, maintain closer contact with them, provide them with all the resources they need, and to establish firm expectations about communication and collaboration with staff, evaluation and reporting requirements, timely case management, quality procedures, continuing education, and time commitment (cases done carefully may typically take 10 to 15 hours or more). Some programs find that a smaller cohort of mediators working more cases is likely to increase commitment and promptness among the mediators.

- d) Establish regular continuing education as a mechanism for strengthening skills.

Continuing education for mediators should be built around issues in the field, advanced skill development, needs expressed by mediators, and staff assessment of needs. Case review can be a vital component in skill development and quality control. Mediators may meet quarterly, for example, along with staff, prepared to present to the group a case scenario, along with questions and concerns that emerged from the case.

5. Explore opportunities for broadening the scope of services provided

- a) Develop a course for offenders and their parents, covering topics such as conflict management skills, victimization/empathy development, communication, life skills, esteem-building, anger management, developing skills for building peer support.
- b) Train mediators to maintain a connection with victims and/or offenders for a period of time following the mediation, as mentor to the offender, support for the victim. Mediators may monitor agreements, accompany offenders on job search excursions, offer encouragement and reminders about restitution obligations.
- c) Train ex-offenders to be mediators who co-facilitate actual cases or to be trainers, providing conflict resolution training in detention centers or correctional facilities.
- d) Establish a public works program, which can serve as an arena for community service responsibilities, and provide opportunities for staff to develop relationships with offenders, as well as monitor restitution.
- e) Provide offenders with job search assistance and actual job training. Establish a work-study program for offenders.
- f) Develop victim impact panels for use in cases where the victim chooses not to participate in mediation.
- g) Use mediation with parent(s) and child as a juvenile offender leaves a correctional facility, returning home, or in the case of a runaway.

Sample Introductory Letter to Victim Example 1

November 16, 1995

Burglary victim
1234 Dakota Avenue
Apple valley, MN 55124

Dear Mr. and Mrs. Victim:

As the victim of the offense of theft which occurred on August 15, 1995, Dakota County Community Corrections is offering you the opportunity to participate in our victim offender program. Enclosed is a brochure describing this process.

The process can provide you a unique opportunity to:

- * Receive answers to questions about the offense that only the offender can provide.
- * Express your frustration and concerns directly to the person who should hear them.
- * Determine the amount and payment schedule for restitution with the offender directly.
- * Have an opportunity to be directly involved with how the offender is held accountable.

While the victim-offender program is not appropriate for all cases nor is it a cure-all for crime in our communities, many victims have found it worthwhile. As a victim, participation is up to you.

We encourage you to take a few minutes to learn more about the program by talking to a volunteer facilitator. You will be receiving a call from our volunteer, _ within the next week or two.

We have also enclosed a damage/loss statement. If you have incurred out of pocket losses as a result of this offense please complete the form and return along with documentation if available, to the volunteer. This form will help in preparing for the meeting with the offender. Even if you choose not to meet with the offender, the form must be completed and returned either to the volunteer or to the address listed on the form so that the staff at Community Corrections can decide the amount of restitution that will be paid to you.

If you have any questions, please feel free to contact me by phone at 123-4567. Thank you for your cooperation with this process.

Sincerely,

Probation Officer

Sample Short Introductory Letter to Victim Example 2

Dear _____,

As the victim of the offense of burglary which occurred on January 12, 1996, Allen County Community Corrections would like to offer you the opportunity to participate in our victim offender mediation program. Your involvement is entirely voluntary. If you chose to participate, you will have direct involvement in holding the offender accountable and developing a plan for covering your losses.

One of our trained volunteers, _____, will be contacting you within the next ten days to arrange a meeting with you to learn more about how the crime affected you, to explain the program, and to determine whether you would want to participate in it. We would encourage you to meet with the volunteer so that you can learn about the possible benefits it offers. Meeting with the volunteer does not obligate you to actually get involved in the services this program offers.

In the meantime, if you have any immediate questions or concerns, please feel free to contact me at XXX-ZZZZ. We hope that we can be of assistance to you.

Sincerely,

Joe Smith
Program Director

Sample Victim Offender Restitution Agreement Example 2

Name of Victim: _____

Name of Offender: _____

Offense: _____

Date of offense: _____

The following individuals have met and discussed the above offense and have agreed to the following:

The terms of this agreement are to be fully complete by: _____

We further understand that failure to abide by the terms of this agreement may result in further legal action against the offender.

Signed:

Victim _____

Offender _____

Mediator _____

Date _____

Addendum I

THE CIRCLE PROCESS: A Path for Restorative Dialogue*

Jean Greenwood
October 2005

“Everything the Power of the World does, it does in a circle. The sky is round, and I have heard that the earth is round like a ball, and so are all the stars. The wind, in its greatest power, whirls. Birds make their nests in circles, for theirs is the same religion as ours. The sun comes forth and goes down again in a circle. The moon does the same, and both are round. Even the seasons form a great circle in their changing, and always come back again to where they were. The life of a man is a circle from childhood to childhood, and so it is in everything where power moves.” the Lakota holy man in Black Elk Speaks,
John Neihardt

THE CIRCLE IS:

A WAY OF TALKING TOGETHER IN WHICH ALL OF US...

- **are respected and treated equally**
- **have the opportunity to speak without interruption**
- **tell our own stories**
- **speak and listen in a deeper, more heartfelt way**

VALUES UNDERLYING CIRCLES:

- **mutual concern & respect**
- **consensual decision-making**
- **appreciation of differences**
- **voluntary direct participation**
- **interconnectedness**
- **focus on interests & meaning**
- **shared responsibility**
- **personal accountability**
- **equal opportunity**
- **personal & community values**
- **wholistic approach**
- **flexibility**

CIRCLES CAN BE USED TO:

- **achieve greater mutual understanding**
- **develop a spirit of cooperation and collaborative skills**
- **work through differences, difficult issues, painful experiences**
- **make decisions together, building consensus**
- **repair, heal, and build relationships and a sense of community**
- **develop agreements that bring resolution and closure**
- **plan for the future**
- **ritualize or symbolize connections, transitions, significant change**

THE CIRCLE PROCESS: AN OVERVIEW

The circle process creates a distinctive kind of space for restorative dialogue. Circles are fashioned in such a way that interconnectedness, interdependence, and equality within the community are highlighted. Participants are encouraged to share a sense of mutual responsibility for the well being of the community and the individuals within it, and an understanding that what happens to one person affects all.

In the circle, all participants, regardless of role or status, age or experience, are considered of equal importance, with equal voice. Everyone in the circle is invited to speak and listen from the heart, or to initiate silence. No one sits above or below others, or outside of the circle. The circle is inclusive. Even the circle keeper participates in the circle, in addition to facilitating the process. A circular seating arrangement and the use of a talking piece help define the process. While circles vary somewhat in style and structure, they all seek to cultivate a climate of mutual respect and caring that is value-oriented and heart-based, that engages the emotions as well as the mind. Circles are inclusive also in content, designed to allow space for all dimensions of human life, including the spiritual values and traditions of the participants.

The contemporary circle process draws upon an historic indigenous tradition practiced commonly in North America, the talking circle, which utilizes a talking piece that is passed from person to person around the circle, signaling the opportunity to speak. When you receive the talking piece, you may speak without interruption, hold the talking piece in silence, or simply pass it in silence to the next person. The use of a talking piece, in essence, slows the pace of dialogue, encourages quieter people to have an equal voice, assists participants in modulating and shaping the expression of strong emotions, and allows for deeper conversation, more careful listening and thoughtful expression.

In indigenous practice, ritual is typically used both to open and close a circle. These symbolic gestures mark a transition in time and space, setting apart the circle process as a sacred place where participants may experience themselves and others in a significant way that moves beyond the ordinary. Such rituals help to weave the fabric of community, by creating commonality of meaning through shared experience. Some of the most powerful rituals actually grow out of people's experiences, as well, rising out a need in the community or a defining event.

In addition to indigenous traditions, the circle process resonates with other conceptual frameworks and experiential practices that seek to give voice to participants, equalize power, integrate wholistic perspectives, build toward consensus and cooperation, and draw upon innate wisdom and experience.

THE CIRCLE PROCESS: PHASES & TASKS

The following is an overview of phases and tasks for circle facilitators, and for mediators who may choose to utilize the circle process for a particular case, adapting common procedures from victim offender mediation to another dialogue process. While this framework describes the steps involved in planning for a circle, one must experience the circle oneself in order to fully understand its essence, to get a feel for it and a sense of whether it is a process that would be applicable to a particular case or not. When it comes to dialogue processes, there is no substitute for experiential learning. To be able to apply a model with integrity requires facilitators to have a knowledge of that process from the inside out, because a model for dialogue is always greater than the sum of its parts, and rigidly and arbitrarily applying the structure may not produce the desired results.

For additional detailed information on the circle process, see Resources, below.

I. THE INITIATION PHASE: contacting potential participants

The initiation phase begins when the circle process is chosen as the most appropriate vehicle for restorative dialogue to offer to the participants in a particular case. The purpose of this phase is to begin the process of working with potential participants, making plans for face-to-face individual meetings, if people are interested and willing. Community representatives will be contacted later, after the victim and offender have expressed a desire to move forward with the circle. The circle facilitator proceeds with the following tasks:

A) Make contact with potential participants, providing basic information.

Initiate contact with the victim and offender by means of an introductory letter mailed to them, followed by a phone call. Introduce yourself and your program, indicating the source of referral, i.e. how you received their names.

B) Schedule individual meetings.

Indicate your desire to schedule, at their convenience, separate meetings with each of them and any family or support people they choose to include, in order to:

- 1) learn about their experience of the crime,
- 2) describe the circle process and answer any questions they may have,
- 3) explore how the circle might address their needs, and assist them in making a decision about participating.

II. THE PLANNING & PREPARATION PHASE: meeting with potential participants, preparing the participants who choose to proceed, planning for the circle

The circle facilitator proceeds with the following tasks:

A) Meet with potential participants, separately, as scheduled.

- 1) Create a welcoming space in the conversation.
- 2) Explain your purpose: to hear about their experience of the crime (what happened, how they experienced it and felt about it then, how it is for them now), to tell them about the circle process, and to explore with them the possibility of their participating.
- 3) Invite them to tell about their experiences and then describe the circle process:
 - Purpose of the circle (in your own words): e.g. to bring people together to work through and try to resolve a difficult situation, to come to terms with and bring closure to a crime that has happened, to gain greater understanding of a problem, to make peace with the past.... In your description, introduce the basic concepts of restorative dialogue.

- Process, including the use of a talking piece: (*See III. The Circle Gathering, for further detail*):

Welcome & Introductions
 Opening & Orientation
 Narratives/Storytelling
 Exploring Options & Creating Agreements
 Closing

4) Discuss with them possible benefits and risks of circles, eliciting their thoughts and feelings. Then, ask if they would like to proceed. Offer them more time to consider their decision, if needed. And if there are concerns about the process, explore ways of adapting the circle or offer them another process, for their consideration. The goal is to shape the process to the needs of the participants.

5) If they make a decision to participate in a circle, prepare them for that experience:

- Logistics: discuss possible dates and sites for the circle, and ascertain which support people they would like to include. (Support participants also need to be prepared.)
- Explore with participants how they may feel sitting in the circle in the presence of the others, what their hopes and concerns are, what they might wish to share in the circle and how they might choose to express it so that others may be able to hear it, what questions they might wish to ask others, etc.
- Discuss possibilities for resolution and restitution: what is the harm and how can it be repaired, and relationships restored, as much as possible? What will be helpful, workable, and appropriate for the situation?

B) Schedule and convene separate support circles for the victim and for the offender, as needed.

The circle facilitator may offer or even recommend that participants attend a circle of support, along with their friends and family. Such circles may provide encouragement and promote healing for the offender and the victim, as well as assist participants in preparing to come together in the larger circle gathering. This can be a time for more in depth exploration of their experiences of the crime, what may have led up to it or happened subsequently. It can also assist victims and offenders in processing their feelings and their concerns about meeting together in the circle gathering. Support people, who may or may not be involved in the final circle gathering, offer words of wisdom and caring, and brainstorm together any needs or concerns that have arisen. Support circles also provide an opportunity to share resources. If needed, there can be multiple sessions.

C) Make plans for the circle gathering.

1) Complete logistics such as time and place, making sure you have allowed adequate time and space. Three or more hours may be needed if there are more than 12 participants or the case is complex, and you must be able to seat all participants in a single circle, with some space around the perimeter. Make plans also for food to be shared before, during, and/or after the circle. Food helps to create a warm and welcoming, informal and nurturing space.

2) Finalize participant list and prepare any additional people for the process. You may decide to include community representatives, in addition to the support people chosen by the participants, e.g. local residents, community center director, pastor, YMCA worker, council member. Such representatives need to be chosen carefully, in consultation with victim and offender, so they can embrace the larger needs of the community, including both victim and offender.

3) Consider how you might arrange the room and create a focal point in the center of the circle that will support and enhance the process. You may choose, for instance, a patchwork quilt as a reminder to the circle that diverse elements can coexist beautifully, enhancing each other. A vase of flowers or conch shell may offer a note of simple beauty, serenity, and nurture. An object that has meaning to the whole community may also be used. You might invite participants to bring an object that has meaning for them, as long as it affirms the process and respects participants, and plan then to use circle time so that each person can explain the importance of the object they brought. The centerpiece then becomes a focus, and a reminder to all participants of the space they have entered.

4) Design the process:

- Consider how you will welcome people, do introductions, and describe why you are all gathered.
- Choose an opening and a closing that will enhance the spirit of the circle. Alternatively, you may wish to invite others to share in the leadership, making sure you maintain the sense of equality and balance in the circle. It can be a reading, a reflection or meditation, an exercise, sharing the meaning of a centerpiece.

A thoughtful question can be used in combination with a reading, for example, inviting participants to offer responses, going around the circle. Sample opening questions might be:

“How long have you lived in this community and what is one thing that you appreciate about it?”

“What are your hopes and desires for this circle gathering?”

A closing question might be:

“What will you take with you from this circle, that has meant something to you, that will be useful?”

Here are sample readings that can be used either as an opening or closing:

“Ultimately, we have just one moral duty: to reclaim large areas of peace in ourselves, more and more peace and to reflect it towards others. And the more peace there is in us, the more peace there will also be in our troubled world.... All I wanted to say is this: the misery here is quite terrible and yet, late at night when the day has slunk away into the depths behind me, I often walk with a spring in my step along the barbed wire and then time and again it soars straight from my heart ...like some elementary force - the feeling that life is glorious and magnificent, and that one day we shall be building a whole new world. Against every new outrage and every fresh horror we shall put up one more piece of love and goodness, drawing strength from within ourselves.”
An Interrupted Life: The Diaries of Ety Hillesum 1941-43

“This we know: all things are connected, Like the blood that unites us. We did not weave the web of life. We are merely a strand in it. Whatever we do to the web, we do to ourselves.” Chief Seattle

“To live in the present moment is a miracle. The miracle is not to walk on water. The miracle is to walk on the green earth in the present moment, to appreciate the peace and beauty that are available now. Peace is all around us - in the world, in nature and within us, in our bodies and

our spirits. Once we learn to touch this peace, we will be healed and transformed.” Thich Nhat Hanh

*“In a real sense all life is interrelated. All persons are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be. This is the interrelated structure of reality.”
Martin Luther King, Jr.*

- Consider what you might use as a talking piece, much as you carefully chose a centerpiece, being mindful of the participants and what might best serve the needs of the circle. You may wish to select a piece that reflects a story, tradition, or value from that community, a natural object such as a shell, stick, or rock, an art object, or a symbol of peace, hope, community. And again, you may engage the participants in the selection of a talking piece.
- Consider how you will introduce the issue of conversational guidelines to be used by the circle. A focal question can be this: How do we want to have this conversation together? You may offer for their consideration guidelines that other circles have chosen to use, in which case it is helpful to share those with participants prior to the circle gathering, e.g. “Speak and listen from the heart; speak and listen with respect.” Alternatively, you may ask participants to generate their own set of guidelines, to be worked out prior to the circle if possible, or in the circle gathering itself. The guidelines then become their first experience of consensus.

If circle participants are friends, family, or members of an organization, you may suggest that they consider broadening the scope of the guidelines by focusing on this question: How do we want to be together, during this conversation and beyond? Any agreement they make can then serve an ongoing purpose in future interactions.

- Select possible questions to be used in shaping and guiding the dialogue, while remaining open to new questions that emerge during the process, e.g.

1) “How would you like to feel when you leave this circle? What would it take to you to get you there?”

2) “What was your experience like - what did you see and hear and feel? How has that experience affected you?”

3) “Is there anything you’d like to say to others in this room that would help you and others make peace with the past and move forward in a good way?”

D) Prepare yourself for the circle.

Draw upon your own personal and spiritual resources, seeking to clear your mind and heart of your own issues and distractions, and become as centered and peaceful as you can, so that you will be fully present to the participants and their needs, and attuned to the process.

III. THE CIRCLE GATHERING

Before the gathering begins, work to create a welcoming, honoring space.

Arrive early, so there is plenty of time to prepare the space and yourself for the circle experience. Pay attention to the multiple dimensions that help to foster a warm and inviting, comfortable and safe environment for a difficult conversation, including potential noise or interruption, room temperature and

ambiance. Arrange the circle of chairs and the centerpiece. Consider warming up the space with music, flowers, plants, art, pillows. Food is a must, however simple it may be. Make it easy for people to find the room, provide name tags, let them know they may sit anywhere in the circle, and be prepared to welcome each person warmly by name. Consider how it would feel to walk into this particular space for a circle gathering.

A) Welcome & Introductions: establishing a welcoming, safe, respectful space

- 1) Offer words of welcome: express your appreciation for their willingness to participate and your hope that the conversation will generate something good for all of them.
- 2) Cultivate the larger purpose and spirit of the circle by offering reflections on why the group has gathered: frame the gathering in a positive, constructive way that highlights common values and cultivates a climate of hopefulness, respectful cooperation and collaboration, e.g.
 - *“We have gathered here today to respond to a problem that has arisen in our community, that is affecting our people; by speaking and listening to each other, we hope to find a way to address this issue, to bring resolution in a difficult situation and healing to what is fractured and broken....”*
 - *“We have come to work together because we care about our communities, about the well-being of our families, our young people, our elderly; we are concerned about the safety of our neighborhoods and the connection we have with each other....”*
- 3) Address logistics: location of restrooms, any concerns about the space, time constraints, needs that have not been considered.
- 4) Invite participants to introduce themselves in a way that is comfortable to them, going around the circle.
- 5) Remember that your frame of mind and everything you do, your tone of voice, your body language, your words, can help to create a good space.

B) Opening & Orientation: laying the foundation for restorative dialogue

- 1) Share an opening, as suggested above, that invites participants to reflect, focus their thoughts and feelings, and center themselves, in order to bring their best and most authentic self forward. If you or the participants have brought objects of special meaning to be used in the center, take time to share the significance with the circle.
- 2) Explain that you have sought to create a welcoming, safe, respectful space for the circle, describing, as you see fit, the particulars you have addressed in order to accomplish that.
- 3) Discuss roles and responsibilities.
 - a) The circle facilitator: serves as a neutral guide, facilitates and participates in the circle, not in a primary decision-making role.
 - b) All participants: maintain confidentiality (what is shared in circle, stays in circle, unless otherwise agreed upon), offer thoughts and feelings as openly and honestly as is helpful, share responsibility for any decisions that are made.
- 4) Explain the use of the talking piece.
 - a) Purpose: to structure the conversation in a way that slows the pace and gives everyone a chance to speak thoughtfully and to listen deeply.

b) Practice: the talking piece is passed consecutively around the circle, typically in a clockwise manner, allowing each person to hold the talking piece and speak, mindful also of the needs of others, to hold it in silence, or pass it along in silence. The circle facilitator may decide to place the talking piece in the center of the circle and allow free conversation, particularly later on in the circle process, after each person has had ample opportunity to speak. In that case, participants who find it difficult to break into the conversation may fetch the talking piece, as a way of signaling others of their desire to speak.

5) Initiate a discussion of guidelines, for example:

“I invite you to consider how you want to have this conversation together, and what you need in order to feel safe enough to express the thoughts and feelings that are important to you to share. Some circles find it helpful to have guidelines, such as,

‘We will speak and listen with respect.’

‘We will speak and listen from the heart.’

Let’s go around the circle now and see what works for you - you may choose not to have guidelines, use those mentioned, as they are or adapted, or suggest other guidelines for the circle.”

Guidelines may be written on a flip chart. Other guidelines circles have used include:

- we will weigh our words before speaking;
- we will listen carefully to each other;
- we will focus on the topic at hand;
- we will respect one another’s time and space;
- we will consider our ancestors, future relatives, and those unable to join us;
- we will be attentive to ourselves and notice the feelings of others;
- we will remember that we are all learners and teachers.

6) Review the stages of the circle process, encouraging participants to express any needs that arise during the process, e.g. taking a break.

7) Ask if there are any questions before you proceed.

C) Narratives/Storytelling: describing experiences, concerns, and interests

1) Initiate the first round of conversation by asking a question or offering an invitation that encourages participants to speak about their experiences, both the facts and the feelings, for example

“I invite each of you to share with the circle what happened, what your experience was, how you felt about it, how it affects you now.”

Then begin the round by passing the talking piece to the person next to you, typically to your left or you may ask who would like to begin, bring them the talking piece, and then move around the circle from there.

2) When the talking piece returns to you, or the first round is completed, acknowledge and honor what you have heard and feelings that have been expressed. Continue this practice after every subsequent round, adding a summary of content as needed.

3) You will need to reflect about the process as you go, inquiring and making suggestions or decisions in the moment, based on what you have heard. You may continue going around, inviting participants to add more to their stories and to respond to each other by asking questions, clarifying particular thoughts, expressing empathy, etc. You may also offer another question to help shape the conversation.

- 4) After several go rounds, when you sense that everyone has had a chance to say what is most important to them, you may place the talking piece in the center and allow people to respond directly to each other.
- 5) Bear in mind that you, along with all participants, need to safeguard the process, remembering any guidelines they may have chosen, and refreshing participants' memories, as needed.

D) Exploring Options & Creating Agreements: responding to the needs of the situation, repairing the harm, working towards resolution and healing through consensus-building

- 1) Pass the talking piece around, inviting circle participants to share their ideas and feelings about moving forward, e.g.

“How would you like to respond to what you have heard? What ideas do you have for helping our community, and all of us, move forward? How can the harm be repaired?”

- 2) Track ideas and concerns on your own paper, or use a flip chart or board, so that everyone can see. Keep in mind that stepping outside the circle to use a flip chart may break the flow of the conversation, and compromise the space you have cultivated. You might invite a community representative to do the flip chart recording.
- 3) When the talking piece returns to you, acknowledge and summarize what you have heard, both ideas and feelings, seeking to draw out the underlying needs, interests, and concerns, as well as any common ground that has emerged.
- 4) In order to work through the options to find consensus, as well as honor feelings expressed, continue sending the talking piece around, or place it in the center of the circle to open the discussion to the whole group in an interactive fashion.
- 5) Note any mutual agreements that emerge, and invite the circle to reflect on them: are they realistic and achievable, specific and measurable, or less measurable but meaningful and relevant to circle participants, e.g. We agree to greet one another in a friendly manner, when we meet on the street?
- 6) Discuss the possibility of a follow-up circle, in order to:
 - a) get an update on the progress that has been made regarding agreements,
 - b) address any further concerns,
 - c) celebrate what has been achieved,
 - d) bring closure.
- 7) Record agreements on paper, and invite participants to sign the agreement. Provide everyone with a copy.

E) Closing: honoring the dialogue, the participation, the efforts put forth

- 1) Acknowledge and express appreciation for the efforts and accomplishments of the circle, including any expressions of support and caring.
- 2) Invite participants to share any final thoughts, feelings, questions, sending the talking piece around one final time:

“Is there anything else you would like to say?”

3) Close with a brief reading, quote, poem, exercise, question.

4) Wish them well and invite them to stay around for further conversation and refreshments.

IV. FOLLOW-UP

A) Oversee the completion of agreements.

B) Convene follow-up circles as agreed upon or needed.

C) If additional circles are not planned, check-in with primary participants after some time has elapsed.

1) Invite them to talk about their experience of circle, what they found helpful, and any suggestions they might have about the process.

2) Offer referrals as needed.

3) Answer any questions.

4) Use this conversation to provide informal closure to the case.

VARIATIONS IN THE USE OF THE CIRCLE

A) Alternative Designs for the Circle Gathering :

As with any dialogue process, it may be useful at times to adapt the circle process in order to address particular needs. The design of processes must be driven by the needs of the participants and the situation. Potential participants may express concerns about the model, or you may have a sense that the model has limitations in a specific case. Here are a few examples of needs-based variations:

1) Need: to provide the victim and offender an opportunity for a more intimate, direct conversation than a large circle provides, while still incorporating the larger community.

Design: Schedule a circle for victim and offender and one or two family members first, to be followed by a larger circle involving the community, in addition to victim and offender.

2) Need: to address the needs of a large number of circle participants, including multiple victims and offenders, and a limited amount of time.

Design: Arrange the chairs in two concentric circles, a speakers' circle in the center, surrounded by a support circle. Focus the initial conversation on the inner circle of victims and offenders, and then invite the support circle to offer brief comments or questions.

3) Need: to minimize an "us and them" feeling and physical distance between multiple victims and offenders, where victims and offenders might sit separately in their own groups.

Design: Intersperse victims and offenders around the circle, using colored paper on chairs to suggest the seating arrangement. Also, invite them to meet together in small groups, comprised of both victims and offenders, in order to brainstorm possible agreements and restitution. The groups then report back on their ideas.

B) Programmatic Design:

The model presented above uses a framework common to victim offender mediation, in which a case is initiated, preparation is completed, and then the participants meet for a conversation, the primary difference being that the circle process is used instead of mediation. An alternative to this design is to use the circle in all phases. So, for instance, the initial meetings with prospective participants are convened using a circle process, followed by healing or support circles with victim or offender and chosen support people. Any follow-up is also done in circle.

THE ROLE OF THE CIRCLE FACILITATOR

The circle facilitator or circle keeper, much as a mediator, is responsible for setting the tone for the circle and facilitating the process. A facilitator seeks to create a supportive climate based on openness, hope, and a respect that honors all participants. It is the facilitator's responsibility then to guide the process, by offering questions to focus the circle's work, deciding how to use the talking piece throughout the gathering, summarizing what has been said, and noting and reflecting to the circle any common ground or progress that has been made.

A significant difference between the role of mediator and that of facilitator/keeper is that the keeper also participates in the circle as a community member who may share concerns, stories, ideas. While joining in the conversation, the facilitator still needs to maintain the climate, honor the interests of all participants in the circle, and guard the process, and so typically will not make pivotal statements designed to alter radically the course of the conversation.

The skills required for circle facilitation include those typically used by mediators. In the circle, though, there may be an even greater need for patience, rigorous attention, and deep listening, as well as a comfort with silence. Circle facilitation also requires a delicate balance between guiding the process and encouraging the autonomy of participants, more so than in mediation. It is much easier to intervene in mediation than in a circle, interjecting a question or summarizing concerns, for instance. In the circle, because of the use of the talking piece, conversation is prescribed in a certain order. The facilitator has the opportunity to speak once every round, unless the process is so seriously jeopardized and guidelines ignored, that an interruption is warranted. Creating an atmosphere that is open to spiritual and philosophical values requires a facilitator to be centered and grounded, and comfortable with that territory.

As with mediation, circles facilitation may be shared. A cofacilitation model has both strengths and limitations. With larger numbers of participants, it may be particularly useful, which requires significantly more preparation in order to coordinate your leadership styles.

RESOURCES

For a more detailed discussion of the circle process, see:

Pranis, K., B. Stuart, and M. Wedge (2003). *Peacemaking Circles, From Crime to Community*. St. Paul, MN: Living Justice Press.

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\* Some material adapted from:

Greenwood, J. (2005). Conflict resolution and mediation techniques. In M. Arnold, L. Heyne, & J. Busser, *Problem solving: Tools and techniques for the park and recreation administrator* (4th ed., pp. 111-127). Champaign, IL: Sagamore Publishing.