

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice- Victim Offender Mediation

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## **1. Key Themes (to be explored)**

Although still unfamiliar to many criminal justice audiences and marginal to the court process in some jurisdictions where they do operate, victim-offender mediation programs—referred to in some communities as “victim offender reconciliation programs” and, increasingly, as “victim offender dialog programs”—have a 20-year track record in the United States, Canada, and Europe.

Currently, there are approximately 320 victim-offender mediation programs in the United States and Canada and more than 700 in Europe.

Several programs in North America currently receive nearly 1,000 case referrals annually from local courts.

Although the greatest proportion of cases involve less serious property crimes committed by young people, the process is used increasingly in response to serious and violent crimes committed by both juveniles and adults.

## 2. Research Questions

<p><b>2.1. Definitions</b></p> <p>How is victim-offender mediation called in the community?</p> <ul style="list-style-type: none"> <li>• Victim-offender meeting (VOM)</li> <li>• Victim-offender conferencing</li> <li>• Victim-offender dialog</li> <li>• Victim-offender reconciliation (VOR)</li> <li>• Victim-offender mediation (VOM)</li> </ul> <p><i>For the purposes of this Guide the acronym VOM will be used...it may however, be adapted depending on community circumstances.</i></p> <p>How many VOM cases conducted over the last five years?</p>
<p><b>2.2. Guidelines</b></p> <p>Are there guidelines for VOM? <i>If so, the questions in the questionnaire could be adapted to meet the circumstances of the community?</i></p> <p>Are they used by the community justice project?</p>
<p><b>2.3. Acceptance into VOM</b></p> <p>Who advanced the idea of having a VOM? Offender? victim? courtworker? defence counsel? Crown? Other?</p> <p>Did the offender indicate his/her:</p> <ul style="list-style-type: none"> <li>- Offence</li> <li>- Reasons for wishing to participate in the VOM</li> <li>- Goals/plans</li> </ul>
<p>What considerations were taken into account for making the decision to accept the offender into VOM?</p> <ul style="list-style-type: none"> <li>- <b>Offender's Input/Actions:</b> accepts responsibility and enters a guilty plea; genuine commitment to changing his/her life; sincerity of remorse; acknowledge hurt caused to others; demonstrate serious commitment to accounting for their harm to others; commit to healing/self-care; be prepared to compensate victims and community; meet as often as required with the local justice project; develop a plan to take responsibility for the offence, reconcile with and compensate the victim; carry out all the steps required by the facilitator/justice project; what offender has done rather than said</li> <li>- <b>Nature/type of the Offence;</b> minor/serious offence</li> <li>- Circumstances of the offender</li> <li>- Experience/Skills of the Community Justice Project/Facilitator</li> <li>- Impact on/Views of the Victim</li> <li>- Views of offender's support group/family</li> <li>- Views of victim's support group/family</li> <li>- Views of the Court</li> <li>- Views of the Crown</li> <li>- Views/Participation of Elders</li> <li>- Views of the RCMP</li> <li>- Views of the Defence Counsel</li> <li>- Impact on /Community readiness</li> <li>- Potential benefits to the offender, victim and community</li> </ul>
<p>Who authorized the VOM? Community rep? Community justice project? Court? Justice Officials? Other?</p>

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<p>In deciding whether to accept the offender application, did the community justice project/facilitator:</p> <ul style="list-style-type: none"><li>- Consult with Elders</li><li>- Meet with the offender, several times in most cases</li><li>- Assess the realistic objective of the offender's proposed plan</li><li>- Meet with the victim</li><li>- Review the criminal record and any previous pre-sentence reports</li><li>- Contact reference sources about the offender and offence (police, family, friends, employers and anyone else who could provide information)</li><li>- Review the capabilities of the community justice project/facilitator</li></ul>
<p>Did the community justice project/facilitator reject the application?</p> <ul style="list-style-type: none"><li>- If so, did the case continue with the mainstream justice process? What was the reason for non-acceptance? or</li><li>- If so, did the committee seek additional information - adjourning to enable the offender to demonstrate commitment? Was more information obtained? Was the case subsequently accepted or rejected?</li></ul>
<p>Did the community justice project accept the application?</p> <ul style="list-style-type: none"><li>- If so, were conditions imposed for the offender to follow in preparing for VOM?</li><li>- If the offender failed to achieve the conditions imposed by the community justice project/facilitator, was the decision to accept the offender reviewed?</li></ul>
<p>What criteria were used in deciding when to hold VOM?</p> <ul style="list-style-type: none"><li>- Until the offender completed several conditions, including substance abuse residential treatment, or anger management courses</li><li>- Immediately because of tensions in the community</li><li>- Until the victim was ready to participate</li></ul>
<p>How much time was involved in making the decision to accept the offender to VOM?</p>
<p><b>2.3.1. Nature of the Offence</b></p> <p>What was the nature of the offence? If the case involved sexual assault/abuse/domestic violence was there prior counseling for the victim, offender, community members – were power issues handled/discussed?</p>
<p><b>2.3.2. Offender Profile</b></p> <p>Did the offender have a connection the community – deep roots? relationship with victim, family, others</p> <ul style="list-style-type: none"><li>• Gender</li><li>• Ethnicity</li><li>• Age</li><li>• Disabled</li><li>• Group Home/Mission School</li><li>• Socio/Economic/Educational/Health status</li><li>• Faith/Spiritual Roots</li><li>• Previous criminal records</li><li>• Pre-victimization factors – previous experience/satisfaction with the justice system</li><li>• Previous participation in community justice processes</li></ul>
<p><b>2.3.3. Victim Profile</b></p> <p>Did the victim have a connection the community – deep roots? relationship with offender, family, others?</p> <ul style="list-style-type: none"><li>- Gender</li><li>- Ethnicity</li><li>- Age</li><li>- Disabled</li><li>- Group Home/Mission School</li><li>- Socio/Economic/Educational/Health status</li><li>- Faith/Spiritual Roots</li><li>- Pre-victimization factors – previous experience/satisfaction with the justice system</li><li>- Previous participation/satisfaction with community justice processes</li></ul>

**2.3.4. Other Participant Profile**

Does the community/other participants have a connection to the offender and the victim?

- Gender
- Ethnicity
- Age
- Disabled
- Socio/Economic/Educational status
- Faith/Spiritual Roots
- Previous participation/satisfaction with community justice processes
- Previous participation/satisfaction with the mainstream criminal justice system

**2.4. Pre-VOM**

**2.4.1. Offender Preparation**

Was the offender provided at the outset with a clear outline of what was expected from him/her and the steps in the VOM? E.g. information sheets

Did the offender voluntarily agree to be referred to the VOM?

Was the offender willing to face his/her victim and to do whatever was necessary for the victim to reconcile the negative relationship created between them?

Was the offender willing to make whatever legal amends may be necessary?

Was the offender willing to face other participants and to do whatever was necessary to reconcile the negative relationship created between them?

Did the offender identify support people within the community? What was their relationship to the offender?

Was the offender willing to participate in traditional ceremonies to initiate the healing process?

Did the offender consult an Elder?

Was the offender willing to spend time with an Elder AND participate in any preparations the Elder recommends at his/her home reserve or his/her choice?

Did the offender meet regularly as required with the justice project/facilitator or his/her support group?

Did the offender draft a plan for rehabilitation/restitution/reconciliation? If not, what were the reasons?

To what extent did the offender complete the support group plan?

Did the offender prepare himself/herself to speak in the VOM?

**2.4.2. Victim Preparation**

Was the victim's safety issues addressed?

Was the victim provided at the outset with a clear outline of what was expected from him/her and the steps in the VOM? E.g. information sheets

Did the victim voluntarily agree to be referred to the VOM?

Was the victim willing to face the offender in the VOM?

Was the victim willing to face other participants?

Did the victim identify support people within the community? What was their relationship to the victim?

Did the victim meet regularly as required with the justice project/facilitator or his/her support group?

Did the victim draft a plan for the offender's rehabilitation/restitution/reconciliation? If not, what were the reasons?

Did the victim prepare himself/herself to speak in the VOM?

If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited to provide additional support?

**2.4.3. Other Participant Preparation**

Are community members/participants willing to assist in the VOM e.g. organizing? providing translation services if necessary? other ways?

Was a broad-section of community members/participants willing and able to participate and provide follow-up to the VOMs?

Are community members/participants willing and able to: mobilize community resources so as to assist the offender and his/her family process of rehabilitation  
assist victim and his/her family in the process of recovery if necessary;

Did community members/participants have previous experience/training in the VOM process?

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If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited to train/educate the participants?
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How much time was involved in preparing for the VOM?
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## **2.5. During VOM**

### **2.5.1. Logistics**

**Place:** Where was the VOM held? community facility?

Were the offender and/or victim consulted about what place would be comfortable for them?

**Seating:** Was seating pre-arranged? Offender/Victim/Facilitator

**Time:** At what time was the VOM scheduled to be held? (e.g. Evening after working hours)

**Safety:** Was consideration given to how the victim and offender would be scheduled to arrive/leave at different times, so that offender did not have the opportunity to harass, threaten or coerce the victim?

Was consideration given to how escorts could be provided for victims arriving and departing the venue?

What safety procedures were followed when both victim and offender were present in the same venue?

What steps are taken when safety measures are violated during the VOM process?

**Record:** Was a record kept of the discussion in the VOM?

### **2.5.2. Participants**

Was anyone entitled to attend and participate in the VOM?

Who played a role in determining who would attend the VOM?

Was there a balance of interested groups?

Who was included and present at the VOM?

Who facilitated the VOM? What kind of experience/training did this person have in mediation?

Had any of the participants had experience/training in the VOM process?

If the offence was a serious crime (sexual or spousal assault) were specialized resource people invited?

### **2.5.3. Opening the VOM**

Did the VOM consist of any ceremonies/prayers by the Elders?

Was appreciation expressed for those who had come a long way or for those who had to overcome significant difficulties to attend?

Did the participants:

- introduce themselves – who they are and what they do,
- explain their relationship with the offender or victim or others
- express how they feel
- their interest in the offence/circle – what they hope to achieve

Who explained

- the role of the VOM
- the methods of proceeding in VOM
- the rule of conduct within the VOM

Were questions raised – additional guidelines suggested?

What was the duration of the ‘opening of the VOM’?

### **2.5.4. Rules of Conduct within the VOM**

What kind of rules governed the conduct of the VOM? What, if any rules apply to perjury or slander?

- Speaking from the heart – honesty/compassion
- Speaking in a ‘good way’ – respect feelings, interests, inputs from others, strive to share openly in a kind, honest way
- Respect right of others to speak – to give everyone an equal opportunity to speak;
- Respect others when they speak - there are no interruptions while a person is speaking; body language
- The laws of the Creator shall govern the person speaking: those laws are honesty, sharing, kindness, and respect;
- All participants are equal: there were so special powers or privileges for anyone in the VOM; everyone was respected and treated equally.
- Confidentiality – what comes up in the VOM stayed in the VOM
- In the VOM decisions are made on the basis of consensus;

### **2.5.5. Facts**

Were the facts of the case presented?

By whom?

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Were the facts discussed and accepted?
<p style="text-align: center;"><b>2.5.6. General Discussion</b></p> <p>In what order, did participants speak? decided by the facilitator: random; pre-arranged</p> <p>What was the VOM discussion – who said what? The offender? Support group? Family? The victim? Support group? Family? Community members? Community justice project members? Other?</p>
<p>Did the VOM discussion cover:</p> <ul style="list-style-type: none"><li>• the offence;</li><li>• its impact on the victim, families and the community; Did the offender get the clear message, "What you did was solely your responsibility and it was not okay to do that"?</li><li>• what needed to be done to the right the wrong – for the victim, families, community and offender? – what options?</li><li>• what support may be available for the offender and victim?</li></ul> <p>Was there also a discussion about:</p> <ul style="list-style-type: none"><li>• extent of similar crimes in the community,</li><li>• underlying causes of such crime</li><li>• victims of similar offences describing how they and their families were affected</li><li>• an analysis of what life was like in the community before the increase in crime</li><li>• what can be done in community to prevent this type of behaviour</li></ul>

**2.5.7. Offender**

Did the offender acknowledge that the facts were true?  
Did the offender formally accept responsibility in the VOM?  
What procedures were in place to ensure that there was an appropriate environment for offender to express his/her feelings about the offence – a chance to tell his/her story?  
Was the offender able to express the impact of the offence to the victim?  
Did everyone present provide assurance that would support her/him during and after the testimony? Eg. Provide words of encouragement  
Were participants interested in the offender's story and try not to cut her/him off?  
Did participants express the how they valued the offender's acceptance of responsibility and participation in the VOM?  
Was there an opportunity for the offender to contribute his/her views about what is required to put things right?

**2.5.8. Victim**

Was victim asked if s/he felt safe and what (if anything) would make s/he feel safer?  
Did the victim acknowledge that the facts were true?  
What procedures were in place to ensure that there was an appropriate environment for victim to express their feelings about the offence – a chance to tell his/her story?  
Was victim able to express the impact of the offence on him/her to the offender?  
Did everyone present provide assurance that they were "on the side" of the victim and would support her/him during and after the testimony? E.g. Provide words of encouragement ("Take your time; focus on someone safe; take deep breaths;" etc.)?  
Were participants interested in the victim's story and try not to cut her/him off?  
Did participants express the how they valued the victim's input?  
Did the participants express gratitude for the victim's participation?  
How did victim know that s/he only need tell as much as s/he felt comfortable?  
Who intervened immediately if the focus of the circle became uncomfortable for the victim?  
Was anyone able (trained) to deal with the emotional reactions that can result from this type of interaction?  
Was there an opportunity for the victim to ask questions of the offender?  
Was there an opportunity for the victim to contribute his/her views about what is required to put things right?  
Did the offender and others validate the victim's testimony? If not, what happened?  
Did the victim get the clear message, "What was done to you was wrong; it was not your fault; you are justified in feeling afraid, angry and unforgiving"? (NOTE: In a domestic violence situation, it is important for both the victim and the perpetrator to hear that the responsibility for the violence rests solely with the perpetrator, and not at all with the victim. This must be stated up front; nods and body language are not enough.)

**2.5.9. Others**

Did the others present support the offender? The victim?

**2.6. Closing VOM**

Did the facilitator provide a summary of the VOM discussion and decisions reached?  
What were the terms of the offender's restitution/compensation plan?  
How was the victim's safety issues relating to restitution addressed?  
Was date for review set?  
How long did the discussion take place?  
Did the VOM take place in one session or several ones?  
If the VOM took place over a few sessions, was the offender given a set of interim goals?  
Were there closing remarks and a closing of the VOM?

**2.7. Post –VOM– Follow Up**

How was information provided to victim with information about the offender's reparation/restitution schedule, amounts that will be paid, etc.?  
Did the offender meet regularly with his/her support group?  
If not, what were the reasons?  
Did the offender's support group report back to the justice project on the offender's progress?  
If the offender had shown no willingness to meet the conditions, was the VOM abandoned and the offender returned to the criminal justice system processes?  
Was the VOM or meeting reconvened later to determine how the offender was progressing?  
When? Who attended? What was the outcome?  
Did the support group or offender request additional support at the post-VOM review?

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If the offender had shown no willingness to meet the conditions, was the VOM abandoned and the offender returned to the mainstream system?  
Was the victim provided with information about civil remedies in cases where the offender did not fulfill his/her restitution obligation, and provided with assistance in seeking such remedies?  
Did community members/participants celebrate or show appreciation of the progress of the offender made?

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<b>2.8. Potential VOM Outcomes</b>
<p><b>2.8.1. Progress of the Offender</b></p> <p>To what extent did the offender meet the commitments to which s/he had agreed to in the VOM process?          If yes, why?          Were there any breaches? If so, why?          Were the conditions extended or modified?</p>
<p><b>2.8.2. Recidivism</b></p> <p>Subsequent to the VOM process, did the offender re-offend?          If so, when?          If so, what type of offence was committed?</p>
<p><b>2.8.3. Victim Satisfaction Questionnaire</b></p> <p>Did you feel safe before/during/after the VOM?          Sought/received help for self and family          Sought/received necessary medical treatments          Safety to disclose (confidentiality)          What went well? What suggestion do you have to improve safety measures?</p> <p>Were you provided with information/explanation that outlined options regarding your involvement in the VOM – the possible benefits/cautions – referrals to community resources?          Did you believe you received answers to your questions – were your needs met?          What went well? What suggestion do you have to improve information measures?</p> <p>Were you informed about the voluntary nature of your participation in the VOM?          What went well? What suggestion do you have to improve participation/choices?</p> <p>Do you think you had an opportunity to express your feelings about the offence and its impact on you to the offender?          Did you believe you had a chance to tell your story?          Do you believe you had a better understanding of why you were victimized?          Do you believe you received proper apologies for the injustice against you?          Did you believe you contributed to decisions about the restitution agreement for the offender?          Did you believe the offender complied with the restitution agreement?          If so, did the victim believe this contributed to his/her ‘healing’?          If so, did the victim believe this contributed to his/her ‘reconciliation’ with the offender?          What went well? What suggestion do you have to improve the testimony/validation?</p> <p>Do you believe you received adequate support – before, during and after VOM?          Do you believe you had been treated fairly?          Did you feel less fearful – regain a sense of security?          Do you believe you were a full and equal participant in the VOM process?</p> <p>Is there anything else you would like to say about how the VOM was handled, or how it could be improved?</p> <p>Given your experience in the community justice approach – the VOM - would you choose the VOM process, another community justice approach or the court process?</p>
<p><b>2.8.4. Offender Satisfaction Questionnaire</b></p> <p>Did the offender believe s/he was supported through the VOM process?          Was the outcome of the VOM process relevant and meaningful for the offender?          What kind of changes occurred in the offender’s life due to his/her participation in the VOM process?          Were the chances of rehabilitation improved?</p>
<p><b>2.8.5. Other Participant Satisfaction Questionnaire</b></p> <p>This would be completed by any VOM participant other than the victim and offender.</p> <p>What was your overall level of satisfaction with the process of the VOM?          What was your overall level of satisfaction with the outcomes of VOM?</p>

Were you involved in ongoing supervision? re-integration of the offender into the community? evaluation of the offender's progress on a regular basis?

What was your overall level of satisfaction for the support and involvement of offenders in the VOM?

Were you involved in ongoing support/assistance/re-integration of the victim into the community?

What was your overall level of satisfaction for the support and involvement of victims in the VOM?

Do you believe the VOM mobilized resources? Improved relationships?

### **2.9. Potential Cost of VOMs**

– see chapter on “Costs”

**3. Relevant Documents, Studies and Practices – Yukon**

#### **4. Relevant Documents, Studies and Practices – Other Northern Territories**

##### **4.1. Inuit Women and the Nunavut Justice System – 2000 <sup>1</sup>**

Where the victim-offender mediation model is used, the victim and offender meet face to face. The role of the committee is to act as a mediator and to focus attention on problem solving. The committee moves through the same four-stage process described below.

The offender accepts responsibility for the offence;

The offender voluntarily agrees to work with the Community Justice Committee;

The victim can have a role in the proceedings, and in any case, is consulted to determine what needs to be done to “make things right.” If the victim is not actually present during the Justice Committee meeting, the victim’s statement will be used.

At the meeting(s), the Community Justice Committee serves to take the offender through the following process:

- 1) the offender is required to take responsibility for the behaviour;
- 2) the offender is assisted to explore the consequences of his actions;
- 3) the offender commits to repair the harm through an agreement; and
- 4) the offender looks for guidance to turn towards a healthier life style;

At any time the offender can have the matter referred back to the RCMP;

A Community Justice Committee can reject a referral from an RCMP officer.

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<sup>1</sup> Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.



## 5. Relevant Documents, Studies and Practices – Other Canadian

### 5.1. Developing a Restorative Justice Programme - 2000<sup>2</sup>

#### Mediation

- Mediation is an alternative process to either a civil or criminal trial.
  - o While it shares many characteristics with diversion initiatives, a significant difference lies in the juncture at which mediation takes place as opposed to diversion.
  - o Mediation occurs before either the criminal or civil court proceedings are initiated.
  - o Mediation is not a process that sees someone impose a solution upon parties; quite the opposite.
  - o It is a facilitator helping the parties reach an acceptable agreement among themselves.
  - o As noted earlier, mediation is more common in civil disputes, but, it may also be possible for some criminal offences.
  - o The community would have to decide whether they wish to pursue the possibility of mediating criminal offences, for example property offences, fraud, or perhaps some offences against the person.<sup>3</sup>
  - o The idea of mediation is that the parties directly involved (the victim and the transgressor) agree that a dispute exists, or a transgression has occurred, and they agree to settle the matter *without* reference to the courts.
  - o One such programme in the BC Lower Mainland has recorded more than a 90% success rate of mediations ending in a settlement that has been honoured by the required party.<sup>4</sup>
- An important element of mediation programmes is common to other restorative justice initiatives—the presence of trained facilitators.
  - o While the subject of resources is discussed later, one consideration bears mention now.
  - o In the provision of any RJ programme, the community needs to accept that resources are essential in setting up and successfully operating such programmes.
  - o One of the key components of this is capable participants.
  - o The province may insist that mediators, counsellors, therapists and other key participants undergo standardized training and certification programmes prior to practising in the field.
  - o However, to perhaps state the obvious, this should *not* be interpreted as a co-opting of the community's initiatives.
  - o Significant and authoritative knowledge of the community and traditional dispute resolution methods will always *inform the application* of the skills taught at these training courses.
  - o Realistically, key participants may not be able to perform their duties the best they can without both of these preparatory backgrounds.

#### Mediation Criteria

- Mediation programmes typically start with a vetting process to determine which disputes are appropriate for mediation.
- Examples of the characteristics that would need to be present could include:
  - o An identifiable victim- someone who has suffered a wrong or a loss,
  - o An identifiable wrongdoer- someone who accepts responsibility for the harm or the loss suffered,
  - o Voluntary participation by victim and wrongdoer,
  - o A wrongdoer who is willing to participate in a process that will result in an agreement to offer amends, and who is willing to meet that obligation in a timely manner.<sup>5</sup>
- As has been emphasized throughout this workshop, a community RJ programme is not a community programme at all if it follows someone else's methods.

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<sup>2</sup> Michael R. Peterson, Developing a Restorative Justice Programme, Part One, Justice As Healing Newsletter, Vol. 5, No.3 (Fall 2000) <http://www.jahvol5no3.pdf>

<sup>3</sup> Refer to Parts 2 and 3 regarding government views on the use of mediation in criminal matters.

<sup>4</sup> See the Fraser Region Community Justice Initiatives Association, as reviewed in Promising Models in Restorative Justice: A report for the Ministry of Attorney General of B.C., by Dave Gustafson and Sandi Bergen, from the Fraser Region Community Justice Initiatives Association, 1998, at pp.25-31

<sup>5</sup> This list has been influenced by the Gustafson and Bergen report, *ibid.*, p.28, and R. v. *Moses*.

- A community must refer to its own ideas of justice when devising and developing an initiative of this kind.
- However, equally true is the ability of people to learn from each other.
- What follows is an example of how mediation could work in an individual case. Please note: the similarities between diversion and mediation will be obvious. That is because the two share very similar characteristics.
  - 1. Someone (either one of the parties, or even a concerned individual) contacts the mediation office to refer a possible case for mediation.
  - 2. If referred by a third-party, the wrongdoer is contacted to determine if he or she would be interested in participating in a mediated settlement.
    - If not, that ends the process.
    - If so, a contact number is given and a commitment to speak again is made by the office.
  - 3. The victim is contacted, the process is introduced to them, questions are answered, and the victim is asked if she or he would like to participate in a mediated settlement.
  - 4. If yes, both parties are reminded of some basic rules and principles of mediation,
    - a. confidentiality,
    - b. respect for each other and for the mediator and the process is essential,
    - c. facts about the dispute are agreed upon by the parties,
    - d. If the victim will be seeking some level of restitution, the mediator may wish to ask the victim to describe how that figure was arrived at.
  - 5. A mediation is scheduled in a neutral place at a convenient time.
    - The facilitator moves the parties through discussions to arrive at a settlement acceptable to both.
  - 6. The mediation office makes the agreement official through whatever means has been accepted (a written contract is common, but not the only way of making a binding commitment) and is responsible to ensure enforcement of the agreement.<sup>6</sup>
- Another process of mediation has been proposed in this way:
  - 1. Once mediation is accepted by the parties, the party who initiated the mediation states the issue.
  - 2. Elders or other guiding facilitator states the laws under which the community functions.
  - 3. The other party speaks to the issues stated.
  - 4. Others who feel affected by the dispute contribute to the discussion of it, and possible resolutions.
  - 5. The parties are questioned by the Elders or guiding facilitator.
  - 6. The Elders or other facilitator guides the parties to a resolution.<sup>7</sup>
  - As will be discussed more in Part 3, the mediation group should keep accurate records relating to the cases they have accepted and completed.
  - If funding for mediation is provided by an outside agency, evaluations may be conducted into the volume of cases and the success rates, however, any number of statistical requests may be made.

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## 5.2. Planning/Evaluating Community Projects - 1998 <sup>8</sup>

**Victim-offender reconciliation** was a program devised in Elmira, Ontario in 1974 as an initiative by two individuals to persuade a judge to deal in a positive fashion with two youths who had vandalized property belonging to twenty-two different victims. Rather than a normal court disposition that may well have involved incarceration, the offense was handled in the community. After a process of victim-offender reconciliation, the

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<sup>6</sup> This example has been influenced by the Gustafson and Bergen report, supra, note 9, p.28-31

<sup>7</sup> This model has been suggested by Larissa Behrendt, and appeared as an excerpt from her book, in Justice as Healing, Vol 3, No. 3 (Fall 1998).

<sup>8</sup> Solicitor General Canada, Rick Linden University of Manitoba and Don Clairmont Dalhousie University, Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998

<http://www.sgc.gc.ca/epub/Abocor/e199805b/e199805b.htm>

boys had to deal personally with each of their victims and to make restitution for the damage they had caused. The matter was resolved successfully and reconciliation programs are now in common use in many countries.

Victim-offender reconciliation programs use a mediation process to make things right between victim and offender. This program represents a dramatic shift from the conventional justice system in which control of the process lies in the hands of police, lawyers, and judges. Victim-offender reconciliation programs return control of the process to those involved and shift attention from the legalities of the crime to the harm that has been done. A facilitator or mediator arranges a meeting between the victim and the offender to identify the injustice, to make things right, and to consider future actions (Van Ness and Strong, 1997). Both victim and offender tell their stories about the circumstances of the event. The victim describes the impact of the crime and the offender is given the opportunity to express remorse. The nature and extent of the victim's loss is considered, and the parties determine how the offender might repair the harm. An agreement between the parties specifies the nature of the restorative actions to be made to the victim. This might include such actions as restitution, a formal apology, or services to the victim. This agreement is usually made in writing and includes time schedules for the restorative actions and a means for monitoring the agreement. The mediation process might also address problems such as alcohol and drugs that might have contributed to the offender's behaviour and specify how the offender might change his/her behaviour to help ensure problems do not recur in the future. This process gives victims a chance to have a say in what happens, and gives offenders the chance to make amends.

The reconciliation process can be used with a wide range of offenses. It is most often used to resolve property offenses but can also help with more serious cases. For example, Mediation Services in Winnipeg successfully mediated a case involving a dispute among several teenagers at a drinking party that resulted in four teenagers being charged with offenses ranging from assault to attempted murder (The Church Council on Justice and Corrections, 1996). Each of the offenders agreed to compensate the victim for the costs of his injury and the most serious offender received a conditional discharge with two years of supervised probation. The mediation was part of the healing process for the victim and ensured that the offenders were accountable while remaining out of prison. Later in this report, we will describe serious offense mediation that shows how mediation can be used along with, or following, a prison term. In such cases, mediation has the potential for reducing the time spent in prison and also helps to provide the healing that is not a part of the mainstream system.

## Relevant Documents, Studies and Practices – USA

### 5.3. What We Are Learning from Research: Victim Offender Mediation & Dialogue in Crimes of Severe Violence -2001<sup>9</sup>

Fact Sheet:  
*What We Are Learning from Research:*  
**Victim Offender Mediation & Dialogue  
in Crimes of Severe Violence**

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(3/16/01)

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There exist many anecdotal stories from victims and offenders who often speak of their participation in a mediated dialogue as a powerful and transformative experience which helped them in their healing process. Parents of murdered children have expressed their sense of relief after meeting the offender/inmate and sharing their pain as well as being able to reconstruct what actually happened and why. One such mother whose son was murdered stated *I just needed to let him see the pain he has caused in my life and to find out why he pulled the trigger.* A school teacher who was assaulted and nearly killed commented after meeting the young man in prison, *It helped me end this ordeal...for me, it has made a difference in my life, though this type of meeting is not for everyone.* An offender/inmate who met with the mother of the man he killed stated *It felt good to be able to bring her some relief and to express my remorse to her.* A doctor in California whose sister was killed by a drunk driver and who was initially very skeptical about meeting the offender, following the mediation session, stated *I couldn't begin to heal until I let go of my hatred...after the mediation I felt a great sense of relief...I was now ready to find enjoyment in life again.*

Only three studies of victim offender mediation in crimes of severe violence have been conducted in the U.S. Two were small exploratory initiatives that each examined 4 case studies. The third study has just recently begun and represents the first major initiative in the U.S., involving multiple sites

The first study (Umbreit, 1989) found that offering a mediated dialogue session in several very violent cases, including a sniper shooting case, was very beneficial to the victims, offenders and community members or family members that were involved in the process. Three of these four cases (all adult offenders) were handled by a police department in upstate New York (Genesee County) that operates a comprehensive restorative justice program. The second study (Flaten, 1996) involving four cases of severely violent crime committed by juvenile offenders found very high levels of satisfaction with the process and outcomes, from both victims and offenders. The offenders were inmates in a juvenile correctional facility in Alaska.

A third study initiated in 1998 (Umbreit, Coates, & Vos) is a multi-site, multi-year study that represents the largest initiative in the United States to examine the impact of victim offender mediation and dialogue in crimes of severe violence. Programs in Texas and Ohio are being examined, along with a number of cases in other states. A total of 58 interviews with victims and offenders have been completed, with a total of 80 interviews to be completed by the end of the study. Preliminary data from 30 completed post-mediation victim interviews indicated: in Texas (N=13), 92% were very satisfied and 8% somewhat satisfied with the case preparation; 100% felt the meeting with the offender was very helpful; 100% were very satisfied with

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<sup>9</sup> What We Are Learning from Research: Victim Offender Mediation & Dialogue in Crimes of Severe Violence, Fact Sheet, Umbreit, M.S. & Coates, R.B., Vol, B, 2001 <http://ssw.che.umn.edu/rip/Resources/Documents/VSOD-RESSHT.pdf>

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their overall involvement in program. In Ohio (N=17), 88% were very satisfied and 12% somewhat satisfied with the case preparation; 65% felt the meeting with the offender was very helpful and 35% felt it was somewhat helpful; 100% were very satisfied with their overall involvement in program.

Preliminary data from 28 completed post-mediation offender interviews indicated: in Texas (N=10), 100% were very satisfied with the case preparation; 100% felt the meeting with the victim was very helpful; 100% were very satisfied with their overall involvement in program. In Ohio (N=18), 88% were very satisfied and 12% somewhat satisfied with the case preparation; 89% felt the meeting with the victim was very helpful and 11% felt it was somewhat helpful; 71% were very satisfied with their overall involvement in program and 29% were somewhat satisfied.

A qualitative analysis of the first five cases involved in the Victim Offender Mediation/Dialogue Program of the Victim Services Unit, Texas Department of Criminal Justice found that in virtually all of the cases, these victims expressed a very high level of satisfaction with the program and found the meeting with the offender to be very helpful to their healing. Offenders/inmates also expressed the positive effect that meeting the victim/survivor had on their lives. Four of the cases involved parents of murdered children and the fifth case involved a parent of a sexually abused daughter.

The only completed study (Roberts, 1995) that has examined a larger number of cases examined the Victim Offender Mediation Project in Langley, British Columbia. This community-based Canadian program, after having pioneered the early development of victim offender mediation and reconciliation with property offenses and minor assaults many years ago, initiated in 1991 a new project to apply the mediation process with crimes of severe violence involving incarcerated inmates. Prior to initiating this project, a small study (Gustafson & Smidstra, 1989) had been conducted by the program to assess whether victims and offenders involved in severely violent crime would be interested in meeting with each other in a safe and structured manner, after intensive preparation, if such a service was available. A very high level of interest in such meetings was found.

In the study conducted by Roberts (1995), virtually all of the 22 offenders and 24 victims who participated indicated support for the program. This support included their belief that they found considerable specific and overall value in the program, felt it was ethically and professionally run, and would not hesitate to recommend it to others. The overall effects of the mediation session expressed by victims included: they had finally been heard; the offender now no longer exercised control over them; they could see the offender as a person rather than a monster; they felt more trusting in their relationships with others; they felt less fear; they weren't preoccupied with the offender any more; they felt peace; they would not feel suicidal again; they had no more anger.

For offenders, the overall effects of a mediated dialogue with the victim included: discovering emotions; feelings of empathy; increasing awareness of impacts of their acts; increasing self-awareness; opening eyes to the outside world, rather than closed institutional thinking; feeling good about having tried the process; achieving peace of mind in knowing one has helped a former victim.

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For copies of research reports, monographs, articles and training materials related to restorative justice and victim offender mediation and conferencing, contact the web-site of the Center for Restorative Justice & Peacemaking, University of Minnesota, School of Social Work.

#### 5.4. A Comparison of Four Restorative Conferencing Models - 2001<sup>10</sup>

**Victim-offender mediation.** Mediation programs stress the importance of extensive victim and offender preparation prior to the mediation session. The most widely accepted model encourages mediators to hold at least one separate, face-to-face discussion with the offender and the victim. During these discussions, the mediator listens to each person describe how the crime affected him or her, gives an over-view of the mediation process, identifies its potential benefits, and invites each person to participate. If the offender and victim agree to participate, the mediator introduces them to the process in a way that minimizes anxiety and maximizes the likelihood that the two parties will engage in direct dialog with minimal intervention by the mediator (Umbreit, 1994, 1997). Many practitioners argue that upfront preparation is often more important than the session itself in bringing about a successful result (Umbreit and Stacy, 1996).

Victim-offender mediation programs vary in their approach to monitoring and enforcement. In many programs, mediators usually help session participants devise a reparation schedule and may even ask them to

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<sup>10</sup> Gordon Bazemore and Mark Umbreit "A Comparison of Four Restorative Conferencing Models" in *Juvenile Justice Bulletin* February 2001 [http://www.ncjrs.org/html/ojdp/2001\\_2\\_1/contents.html](http://www.ncjrs.org/html/ojdp/2001_2_1/contents.html)

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agree to a followup meeting to re-view progress (Umbreit, 1994). In some programs, followup may be the responsibility of probation or diversion staff (depending on the offender's court status), other paid staff, community volunteers, or student interns; in others, victim-offender mediation may be one part of a larger restitution program responsible for development and enforcement of reparation agreements (Belgrave, 1995; Schneider, 1985).

### **Background and Concept**

Although still unfamiliar to many mainstream juvenile and criminal justice audiences and marginal to the court process in some jurisdictions where they do operate, victim-offender mediation programs—referred to in some communities as “victim offender reconciliation programs” and, increasingly, as “victim offender dialog programs”—have a respectable 20-year track record in the United States, Canada, and Europe. Currently, there are approximately 320 victim-offender mediation programs in the United States and Canada and more than 700 in Europe. Several programs in North America currently receive nearly 1,000 case referrals annually from local courts. Although the greatest proportion of cases involve less serious property crimes committed by young people, the process is used increasingly in response to serious and violent crimes committed by both juveniles and adults (Umbreit, 1997).

### **An Example of a Victim-Offender Mediation Session**

The victim was a middle-aged woman. The offender, a 14-year-old neighbor of the victim, had broken into the victim's home and stolen a VCR. The mediation session took place in the basement of the victim's church.

In the presence of a mediator, the victim and offender talked for 2 hours. At times, their conversation was heated and emotional. When they finished, the mediator felt that they had heard each other's stories and learned something important about the impact of the crime and about each other.

The participants agreed that the offender would pay \$200 in restitution to cover the cost of damages to the victim's home resulting from the break-in and would also reimburse the victim for the cost of the stolen VCR (estimated at \$150). They also worked out a payment schedule.

During the session, the offender made several apologies to the victim and agreed to complete community service hours working in a food bank sponsored by the victim's church. The victim said that she felt less angry and fearful after learning more about the offender and the details of the crime. She also thanked the mediator for allowing the session to be held at her church.

The victim-offender mediation process offers victims an opportunity to meet offenders in a safe, structured setting and engage in a mediated discussion of the crime.<sup>2</sup> With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; receive answers to lingering questions about the crime and the offender; and be directly involved in developing a restitution plan for the offender to pay back any financial debt to the victim. The process is different from mediation as practiced in civil or commercial disputes, because the involved parties are in agreement about their respective roles in the crime. Also, the process should not be primarily focused on reaching a settlement, although most sessions do, in fact, result in a signed restitution agreement.<sup>3</sup> Because of these fundamental differences, the terms “victim-offender meeting,” “conferencing,” and “dialog” are becoming increasingly popular to describe variations from standard mediation practices (Umbreit, 1997).

### **Procedures and Goals**

Cases may be referred to victim-offender mediation programs by judges, probation officers, victim advocates, prosecutors, defense attorneys, and law enforcement. In some programs, cases are primarily referred as a diversion from prosecution (assuming that any agreement reached during the mediation session is successfully completed). In other programs, cases are usually referred after a formal admission of guilt has been accepted by the court, with mediation being a condition of probation or other disposition (if the victim has volunteered to participate). Some programs receive case referrals at both stages.

During mediation sessions, victims explain how the crime affected them and are given the opportunity to ask questions about the incident and help develop a plan for restoring losses. Offenders are given the opportunity to tell their stories and take direct responsibility through making amends in some form (Umbreit, 1994).

The goals of victim-offender mediation include the following:

- Supporting the healing process of victims by providing a safe, controlled setting for them to meet and speak with offenders on a strictly voluntary basis.
- Allowing offenders to learn about the impact of their crimes on the victims and take direct responsibility for their behavior.
- Providing an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.

### **Considerations in Implementation**

In implementing any victim-offender mediation program, it is critically important to maintain sensitivity to the needs of the victim. First and foremost, the mediator must do everything possible to ensure that the victim will not be harmed in any way. Additionally, the victim's participation must be completely voluntary. The offender's participation should also be voluntary. Offenders are typically given the option of participating in mediation or dialog as one of several dispositional choices. Although offenders almost never have absolute choice (e.g., the option of no juvenile justice intervention), they should never be coerced into meetings with victims. The victim should also be given choices, whenever possible, about procedures, such as when and where the mediation session will take place, who will be present, and who will speak first. Cases should be carefully screened regarding the readiness of both victim and offender to participate. The mediator should conduct in-person premediation sessions with both parties to clarify the issues to be resolved. The mediator should also make followup contacts and monitor any agreement reached.

### **Lessons Learned**

A large multisite study of victim-offender mediation programs with juvenile offenders (Umbreit, 1994) found the following:

- In cases referred to the four study-site programs during a 2-year period, 95 percent of mediation sessions resulted in a successfully negotiated restitution agreement to restore the victim's financial losses.
- Victims who met with offenders in the presence of a trained mediator were more likely to be satisfied with the justice system than were similar victims who went through the standard court process (79 percent versus 57 percent).
- After meeting offenders, victims were significantly less fearful of being revictimized.
- Offenders who met with victims were far more likely to successfully complete their restitution obligation than were similar offenders who did not participate in mediation (81 percent versus 58 percent).
- Recidivism rates were lower among offenders who participated in mediation than among offenders who did not participate (18 percent versus 27 percent); furthermore, participating offenders' subsequent crimes tended to be less serious.<sup>4</sup>

Multisite studies (Coates and Gehm, 1989; Umbreit, 1994) also found that although restitution was an important motivator for victim participation in mediation sessions, victims consistently viewed actual receipt of

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restitution as secondary to the opportunity to talk about the impact of the crime, meet the offender, and learn the offender's circumstances. The studies also found that offenders appreciated the opportunity to talk to the victim and felt better after doing so.

A recent statewide survey of victim service providers in Minnesota found that 91 percent believed that victim-offender mediation should be available in every judicial district because it represents an important victim service. The American Bar Association recently endorsed victim-offender mediation and recommends its use throughout the United States. As of 1997, victim-offender mediation programs have been identified in nearly every State (Umbreit and Schug, 1997).

**Victim Role – see also chapter on ‘Circles’, ‘Conferencing’ ‘Victims’,**

**Victim-offender mediation.** Mediation programs offer victims an opportunity to tell offenders how the crime has affected them, give victims maximum input into plans for holding offenders responsible, and ensure that victims are compensated for their losses to the greatest extent possible. The programs also provide victims with referrals for needed services and assistance.

Victims frequently are given the opportunity to speak first in mediation sessions, which helps them feel empowered or at least not overwhelmed or abused by the process. Mediation programs give the needs of victims and offenders priority over the needs of other participants in the process (e.g., parents and other relatives), but victims receive extra attention to ensure that they are not revictimized by the process itself. Victim participation in the mediation process is voluntary. Most programs also are voluntary for offenders and attempt to engage their participation in the least coercive manner possible (Umbreit and Greenwood, 1998); in some jurisdictions, however, offenders are often less-than-willing participants (Belgrave, 1995).

Increasingly, mediation programs seek to offer their services in a victim-sensitive manner (Umbreit, 1994; Umbreit and Greenwood, 1998). In contrast to other models, most research studies report that victim satisfaction with victim-offender mediation has been uniformly high (Belgrave, 1995; Umbreit and Coates, 1993).

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2 In some programs, parents of the offender are also often part of the mediation session.

3 Not all mediation sessions lead to financial restitution.

4 In the absence of pure control groups, selection bias cannot be ruled out for the comparisons drawn in this study.

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**5.5. Multicultural Implications of Restorative Justice: Potential Pitfalls/Dangers -2000<sup>11</sup>**  
**Cross-Cultural Issues**

<http://www.igc.apc.org/voma/docs/vomaq96.html#Victim-Offender>

**5.6. Guidelines for Victim-Sensitive Victim-Offender Mediation-2000<sup>12</sup>**  
**Executive Summary**

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<sup>11</sup> Mark S. Umbreit and Robert B. Coates, Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers, Center for Restorative Justice & Peacemaking (formerly Center for Restorative Justice & Mediation) School of Social Work University of Minnesota, St. Paul, Minnesota April 2000, [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/96522-multicultural/multi6.html](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/96522-multicultural/multi6.html)

<sup>12</sup> Mark S. Umbreit, Ph.D., Director, Jean Greenwood, M.Div., Former Training Coordinator Center for Restorative Justice & Peacemaking (formerly Center for Restorative Justice & Mediation) School of Social Work, University of Minnesota St. Paul, Minnesota Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, April 2000, [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/96517-gdlines\\_victims-sens/welcome.html](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/96517-gdlines_victims-sens/welcome.html)



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The process of allowing interested crime victims to meet offenders in the presence of trained mediators now occurs in nearly 300 communities in the United States and more than 700 communities in Europe. When victim-offender mediation originated in Canada in 1974 and in the United States in 1978, there were only a handful of programs. With the growing interest in restorative justice and the rapid expansion of victim-offender mediation programs, it is important to gain a clear understanding of how the field is developing and becoming highly responsive and sensitive to the needs of crime victims. Every effort must be made to ensure that victims are not used simply as tools for offender rehabilitation, as they are in the dominant offender-driven juvenile and criminal justice systems. At the same time, the needs of offenders must also be considered.

This monograph presents specific criteria and recommendations to enhance the overall quality of victim-offender mediation programs and promote far more victim-sensitive practices in the field. The material presented is grounded in a yearlong assessment of the most current practices in the field, based on a nationwide survey. The material focuses on the practice of victim-offender mediation and dialogue regarding property crimes and minor assaults, the kinds of offenses typically addressed through mediation. A small but growing number of victims of severe violence are requesting to meet with their offenders. This is, however, an intensive and lengthy process that requires advanced training for the mediator. Fully addressing the multitude of issues related to working with severely violent victimizations such as sexual assault, attempted homicide, or murder is beyond the scope of this monograph.

The growing interest in victim-offender mediation arises from its capability to facilitate a real and understandable sense of justice for those most directly affected by crime: victims, victimized communities, and offenders. Victim-offender mediation breathes life into the emerging concept of restorative justice by asking, *who was harmed, how can the harm be addressed, and who is held accountable* for what happened. It seeks more balanced and effective juvenile and criminal justice systems that recognize the need to involve and serve victims and victimized communities. At the same time, it seeks to hold offenders more directly accountable to those they have harmed without overreliance upon costly incarceration.

Along with identifying specific recommendations for program development, the monograph sets forth guidelines for victim-sensitive victim-offender mediation. The guidelines address victim safety, screening of cases, the victim's and offender's choices, the mediator's obligations and responsibilities, victim and offender support, the use of victim-sensitive language, and training for mediators in victim sensitivity.

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## 5.7. Overview of mediation, conferencing, and circles – 2000 <sup>13</sup>

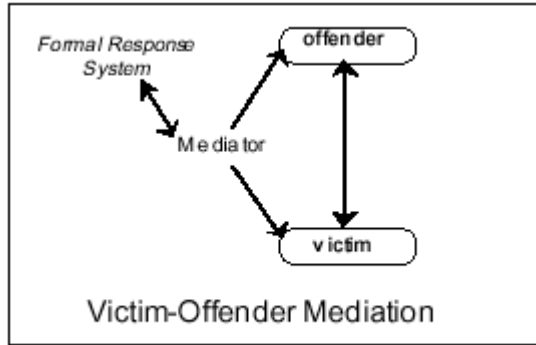
### Mediation Models

In criminal mediation, a neutral third party provides the bridge for a dialogue between victim and offender. The mediator guides a process where victim and offender:

- 1) talk about how the crime affected them,
- 2) share information,
- 3) develop a mutually satisfactory written restitution agreement, and
- 4) develop a follow-up plan, thus enabling the victim and offender to complete the core restorative process.

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<sup>13</sup> McCold, Paul. (2000). "Overview of mediation, conferencing, and circles." Paper presented at the United Nations Crime Congress, Ancillary Meeting on Implementing Restorative Justice in the International Context. Vienna, Austria, 10-17 April 2000. <http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/Overview.pdf>



### 5.8. Crime/Punishment: Can Mediation Produce Restorative Justice for Victims/Offenders? -1998<sup>14</sup>

In our society's criminal justice system, justice equals punishment. An eye for an eye. You do the crime, you do the time. You do the time, you've paid your debt to society and *justice has been done. But justice for whom? Certainly not the victim.*

Because our society defines justice in this manner, the victims of crimes often seek the most severe possible punishment for their offenders. Society tells them this will bring justice, but it often leaves them feeling empty and unsatisfied after getting what they sought. Punishment does not address the other important needs of victims. It cannot restore their losses, answer their questions, relieve their fears, help them make sense of their tragedy or heal their wounds.

Regardless of their particular point-of-view, most people agree that crime and violence are exploding out-of-control in the streets of our towns and cities. Most also agree that what we are doing about it is not working. We are fearful and we have good reason. We know our criminal justice system is broken and we don't know how to fix it.

Victim-offender mediation, with its focus on *restorative justice*, cannot provide all of the answers to our crime problem, but it is an essential part of the solution. Some background about the author and a description of victim-offender mediation will be helpful before proceeding with a discussion about crime, punishment and *restorative justice*.

#### **About the author...**

I am one of the small minority of victim-offender mediators who work primarily with cases of severe violence, including homicides. I also provide training and consulting for victim-offender mediation programs. My qualifications for this work include training and experience as a social worker and as a lawyer, over fifteen years as a mediator and trainer, founding and directing a juvenile court-based victim-offender mediation program, training in victim's assistance and last, but not least, my own victimization.

#### **About victim-offender mediation...**

Victim-Offender Mediation Programs (VOMPs), also known as Victim-Offender Reconciliation Programs (VORPs) bring offenders face-to-face with the victims of their crimes, with the assistance of a trained mediator, usually a community volunteer. Crime is personalized as offenders learn the

<sup>14</sup> Marty Price, J.D. Online Journal of Peace and Conflict Resolution Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders? 1.2 -- May 1998 [http://members.aol.com/peacejnl/1\\_2price1.htm](http://members.aol.com/peacejnl/1_2price1.htm)

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human consequences of their actions, and victims (who are largely ignored by the justice system) have the opportunity to speak their minds and their feelings to the one who most ought to hear them, contributing to the healing process of the victim.

Victims get answers to the often haunting questions that only the offender can answer. The most commonly asked questions are, "Why did you do this to me? Was this my fault? Could I have prevented this? Were you stalking or watching me?" With their questions answered, victims commonly report a new feeling of peace of mind, even when the answers to their questions were even worse than they had feared or imagined. It seems to be better than not knowing the answers.

Offenders take meaningful responsibility for their actions by mediating a restitution agreement with the victim, to restore the victims' losses, in whatever ways that may be possible. Restitution may be monetary or symbolic; it may consist of work for the victim, community service or anything else that creates a sense of justice between the victim and the offender.

Victim-Offender Mediation Programs have been mediating meaningful justice between crime victims and offenders for over twenty years; there are now over 300 such programs in the U.S. and Canada and about 500 in England, Germany, Scandinavia, Eastern Europe, Australia and New Zealand. Remarkably consistent statistics from a cross-section of the North American programs show that about two-thirds of the cases referred resulted in a face-to-face mediation meeting; over 95% of the cases mediated resulted in a written restitution agreement; over 90% of those restitution agreements are completed within one year. On the other hand, the actual rate of payment of court-ordered restitution (nationally) is typically only from 20-30%.

Why is there such a huge difference in restitution compliance? Offenders seldom experience court-ordered restitution as a moral obligation. It seems like just one more fine being levied against them by an impersonal court system. When the restitution obligation is reached voluntarily and face-to-face, offenders experience it in a very different way. Perhaps most important, after facing the victims of their crimes, offenders commit fewer and less serious offenses than similar offenders who are processed by the traditional juvenile or criminal justice system.

When a case is referred to a VOMP, a mediator contacts both the victim and the offender to arrange appointments for separate meetings with each. At the individual meetings, the mediator explains the program, answers questions and screens the case for its appropriateness for mediation. If the case is a suitable one and the victim and offender both agree to participate, they are prepared for a mediation session. The preparation may include homework assignments and sometimes there are additional preliminary meetings.

Mediation sessions, at their best, focus upon dialogue rather than upon reaching a restitution agreement, facilitating empathy and understanding between victim and offender. Before beginning the session, the mediator provides ground rules to assure safety and respect. The victim usually speaks first, telling the offender how the crime affected him/her and may ask questions of the offender. The offender may offer an explanation and/or an apology. The victim's losses are discussed.

Whatever agreements the victim and offender make will reflect justice that is meaningful to them, rather than being limited to the narrow definitions of the law. In cross-state and cross-national studies, the overwhelming majority of participants, both victims and offenders, have reported in post mediation interviews and questionnaires that they obtained a just and satisfying result. Victims who have feared revictimization by the offender whom they have met in mediation typically report this fear is now gone.

The victim-offender mediation process may be useful at any stage of the criminal justice process. With young offenders and first-time offenders, mediation may be a "diversion" from prosecution and an opportunity to avoid getting a juvenile or criminal record. In these cases, charges may be dismissed if the offender mediates an agreement with the victim and then completes the requirements of the agreement. After a guilty plea or a conviction, a judge may refer an offender to a victim-offender mediation program as a part of the court's sentence or as a term of probation. Victim-offender

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mediations have taken place in prisons; some have occurred after an offender has been released from prison. The impending release of an offender may motivate the victims to seek mediation.

**About mediation in cases of severely violent crimes...**

Most victim-offender mediation programs do their work only with juvenile offenders and only with nonviolent offenses. The mediation of severely violent crimes is not commonplace. However, in a growing number of victim-offender programs, victims and survivors of severely violent crimes, including murders and sexual assaults, are finding that confronting their offender in a safe and controlled setting, with the assistance of a mediator, returns their stolen sense of safety and control in their lives. Increasingly, mediation is helping to repair the lives of surviving family members and offenders devastated by drunk-driving fatalities.

Such violent offenses are usually mediated upon the initiation of the victim, and only after many months (sometimes even years) of work with a specially trained and qualified mediator, collaborating with the victim's therapist and/or other helping professionals. Participation must be completely voluntary, for both victim and offender. Mediators carefully screen cases and every aspect of the mediation process has the safety of the victim as its foremost concern. Only offenders who admit their guilt, express remorse and want to make amends are candidates for mediation.

There may be restitution agreements for funeral expenses, psychotherapy and other financial losses, but there is obviously no way to restore the lost life of a loved one. The primary focus is upon healing and closure. It is the healing power of the victim-offender mediation process that draws me and many others to become involved in this work. Heartfelt apologies are usually offered and the victim and offender may discuss the issue of forgiveness. Forgiveness is not a focus of the mediation process, but the process provides an "open space" in which forgiveness may occur, for victims who wish to consider it at that time. Forgiveness is a process, not a goal. It must occur according to the victim's own timing, if at all. For some victims, forgiveness may never be appropriate.

In cases of severely violent crime, victim-offender mediation is not a substitute for punishment. In such cases, judges seldom reduce prison sentences as a result of mediation.

**What about the need for punishment?**

*I am not talking about the need to incapacitate* the most violent of felons—those who appear to be intractably hazardous to our health and safety. Incapacitation, unfortunately, must continue until we can learn how to generate change in such individuals. However, it is important to understand the need to incapacitate dangerous offenders as separate and distinct from punishment. When we focus on punishment and incarcerate offenders who are not dangerous (including those who have committed victimless crimes), we consume precious correctional system resources that should be reserved for those offenders whom we must incapacitate for our protection.

*I am not talking about punishment as a deterrent to crime.* The punitive approach to justice has resulted in the United States becoming the largest jailer (per capita) in the industrialized world, with a violent crime rate that is also second to no other industrialized nation. (Until just a few years ago, the U. S. was the number three jailer in the world, falling behind the former Soviet Union and the Union of South Africa.) If punishment deters crime, we should be the safest nation in the world. If punishment deters crime, then the answer to our out-of-control crime problem must be that we need to lock up more people still. How far should we go with this approach?

(Prisons have become one of our fastest growing industries and some states now have a punishment budget that is larger than their education budget. Unless we stem this monumental draining of the public coffers, it is unlikely that there will ever be stable and adequate resources for the human services needed to address the societal roots of crime-poverty, injustice, illiteracy and unemployment.)

*I'm not talking about punishment for the purpose of rehabilitation.* Our criminal justice system abandoned that theory for punishment in the 1970s and 1980s. Prisons rehabilitate relatively few offenders. The vast majority pass through the "revolving doors" repeatedly. We "warehouse" offenders in institutions

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where the culture within rewards violence, meanness, deceit, manipulation and denial. Most offenders return to the community as individuals who are then even more antisocial than before they were incarcerated.

**Then why punishment?**

If punishment is not really about incapacitation, deterrence or rehabilitation, *then what is it about?* Punishment is primarily for revenge (or *retribution*). Victims of heinous crimes commonly demand revenge. It seems like a natural response. Some may argue that the desire for revenge in response to victimization is "hardwired" into the human animal. History suggests this may be true.

Our criminal justice system is a system of *retributive justice*. Our policy of inflicting pain (i.e., punishment or *retribution*) upon those who harm others often leaves offenders feeling like they are victims. Those "victims" may then seek their own revenge. Unless we execute them or put them away for life without the possibility of parole, we must remember that they will eventually come back to us, often with their need for revenge screaming for satisfaction.

So punishment does not work as deterrence or as rehabilitation and it often exacerbates the problems we are trying to correct. Still the public (sometimes) and the politicians (more often) cry out that we must "get tougher on crime," demanding more punishment and more prisons. A well-known anthropologist once said that human beings are the only species on earth that recognizes what is not working and then does more of the same. Our society must find more creative, more effective solutions.

**If not punishment, then what?**

As I stated above, I think the desire for revenge may be a natural reaction to victimization. But, should we act on all of our natural impulses? I submit that when our criminal justice system begins to take the healing needs of victims seriously and does a good job of meeting those needs-when it meaningfully addresses the victims' losses and injuries, victims may no longer be so concerned with how much punishment an offender receives. Currently, victims receive little else that feels like justice. Our society tells us that justice equals punishment. But justice for whom? Certainly not the victim.

I have asked many crime victims' rights advocates, "How many victims or families of victims do you know who have felt satisfied, justified and healed after the offender was put to death or put away for a life sentence without the possibility of parole?" The typical answer is that it helped a little. The victims felt like they got *something*. But overall, they still felt like they had been revictimized by the workings of a criminal justice system that did not care about them. They needed much more than this punitive kind of justice. The system told them they should feel satisfied, even lucky, if they got this much.

I'm thinking about a victim advocate (I shall call him John) whose parents were murdered in his presence when he was a teen-ager. John and his sister were shot and left for dead. Some years later, after witnessing the execution of one of the murderers, John experienced no relief from the hate and bitterness that had been burning inside him for so many years. This disappointment led him to seek a mediated confrontation with the other murderer (I shall call him Ralph), who was serving two consecutive life sentences.

After months of preparation with the mediator, John came face-to-face with Ralph (who also received months of preparation), behind prison walls. In a three-hour mediation session, Ralph learned from the lips of his victim of the terrible devastation he had brought upon a family. He told John of his daily shame and pain, and his wish that he could have been executed along with the other murderer. John learned of the brutal victimizations Ralph had suffered throughout his childhood and teen-age years. They cried together. John reported that the mediation and the months he spent preparing for it changed his life. It brought him a release from the thoughts and feelings that had seemed inescapable and it freed him to move on with his life. Punishment is not for the benefit of victims. Our society exacts punishment in response to the notion that crime is a violation against the state and it creates a debt to the state. The case is called "the People of the State of Oregon vs. John Jones." The prosecutor represents the state, not the victim. The system is offender-focused; its attention is upon

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punishing the offender, while protecting the legal rights of the offender. Victims of the crime receive little attention. Crime Victims' Bills of Rights, now law in most states, seem to affect the balance somewhat. A currently proposed Victims' Rights Amendment to the U.S. Constitution could make a greater impact.

**What is restorative justice?**

If our system of *retributive justice* is not working and not meeting our needs, then what is more effective? Victim-offender mediation is but one of many approaches to *restorative justice*. *Restorative justice* sees crime as a violation of human relationships rather than the breaking of laws. Crimes are committed against victims and communities, rather than against a government.

Our offender-focused system of *retributive justice* is designed to answer the questions of, "what laws were broken, who broke them and how should the law-breaker be punished?" Focusing on obtaining the answers to these questions has not produced satisfying results in our society. Instead, restorative justice asks, "who has been harmed, what losses did they suffer, and how can we make them whole again?" *Restorative justice* recognizes that, to heal the effects of crime, we must attend to the needs of the individual victims and communities that have been harmed. In addition, we must give offenders the opportunity to become meaningfully accountable to their victims and to become responsible for repairing the harm they have caused. Merely receiving punishment is a passive act and does not require offenders to take responsibility.

By focusing on punishment, our criminal justice system treats offenders as "throwaway people." *Restorative justice* recognizes that we must give offenders the opportunities to right their wrongs and to redeem themselves, in their own eyes and in the eyes of the community. If we do not provide those opportunities, the offenders, their next victims and the community will all pay the price.

*Restorative justice* is not just victim-offender mediation. It is not any one program or process. It is a different paradigm or frame of reference for our understanding of crime and justice. Some other *restorative justice* responses to crime include family group conferencing, community sentencing circles, neighborhood accountability boards, reparative probation, restitution programs and community service programs.

**About victims' rights and victim-offender mediation...**

Over the years, there has sometimes been an uneasy relationship between victims' rights advocates and the growing restorative justice/victim-offender mediation movement. Victim advocates objected loudly (and rightly so!) when early victim-offender programs were overly persuasive or even coercive, in their well-meaning but misguided efforts to enlist the participation of victims. Victims' assistance programs are now co-training with victim-offender mediation programs, teaching mediators how to work more sensitively and respectfully with victims.

Victim advocates have sometimes viewed mediation as "soft on crime" and therefore, not in the best interests of victims. Those victim advocates who have observed or participated in mediation sessions, taking note of the trepidation seen in offenders as they face their victims, know that mediation is not soft on crime. Notable is the choice made by many offenders to face the judge rather than to face the victim. Many victims' rights advocates are now asserting that a mediated confrontation ought to be a victim's right, available for all victims who want such an opportunity.

The recognition of common ground between victim advocates and restorative justice advocates has led to recent alliances, partnerships and collaborations to support or promote restorative justice reform of the criminal justice system. Some of the organizations which have contributed to these efforts include, at the federal government level, the U.S. Department of Justice Office for Victims of Crime, the National Victim Center, the National Institute of Justice, the National Institute of Corrections, and the Office for Juvenile Justice and Delinquency Prevention's "Balanced and Restorative Justice Project." Outside the government, other national organizations contributing to this work include the National Organization for Victim Assistance (NOVA), Mothers Against Drunk

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Driving (MADD), the Victim-Offender Mediation Association (VOMA) and the Center for Restorative Justice and Mediation, at the University of Minnesota School of Social Work.

**About getting tougher on crime...**

Understandably feeling deprived of justice in so many ways, crime victims and their advocates have often sparked and championed the recent flood of "get tough" legislation and ballot initiatives for longer prison terms and increased mandatory minimum sentences. At the same time, many other victims, victim advocates and criminal justice experts are re-thinking the value of more punishment.

Social research is suggesting that for many crimes, sentences of from one to two years are the most likely to be effective, while longer sentences may be counter-productive to rehabilitating offenders. Such relatively moderate sentences serve the dual purposes of denouncing the crime and punishing the offender, while reducing the likelihood that the offender's bonds with family and community support systems will be permanently destroyed and replaced with allegiances to other criminals. The fracturing of family and community bonds and the long-term imprinting of prison culture and values are the two factors which are the most predictive of an offender's prompt return to crime after being released from prison.

**A call to action for criminal justice reform...**

While actively supporting the work of victims' rights organizations, including the Victims' Rights Amendment to the U.S. Constitution, I also suggest to crime victims and victim advocates that they are being revictimized by our criminal justice system when they let the system sell them its "party line"--selling them punishment as the cure for what ails them. In our mainstream criminal justice system, punishment is the "bone" that the system throws to victims, while offering little else. Victims, their advocates and others would do better to let go of their demands for more prisons and more punishment. Those demands are not serving the needs of victims or society. They are instead helping to perpetuate a system of *retributive justice* that is failing us all.

Let us work together to implement *restorative* approaches to justice that focus the attention of offenders upon the victims of their crimes and upon their communities, instead of upon the law and the legal system. A *restorative justice* approach concerned with righting the wrongs to victims and making amends, repairing the harm done (in whatever ways possible, including victim compensation) and restoring the lives affected by crime, offers us a much more hopeful vision for the future.

**5.9. Some Observations/Principles for Victim Offender Mediation in Cases of Seriously Violent Crimes -1998<sup>15</sup>**

Victim offender mediation programs are coming of age in a time of increasing violence in virtually every segment of society. Most victim offender programs limit their service to juvenile and/or property crimes. But as a growing number of programs are finding that a face-to-face encounter can be invaluable in even the most heinous of crimes, many are gradually broadening their scope to include the mediation of carefully screened incidents of more serious crimes and crimes committed by adults.

Usually at the request of the victims, a number of programs have now mediated rapes and other violent assaults, and mediations have taken place between murderers and the families of their victims. Increasingly, mediation is being used to help repair the lives of victims and offenders devastated by drunk-driving fatalities. It should be emphasized that, in cases of such serious, violent or catastrophic losses, the use of the victim offender mediation process would not be recommended for all, or

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<sup>15</sup> Marty Price, J. D., Online Journal of Peace and Conflict Resolution, Some Observations and Principles for Victim Offender Mediation in Cases of Seriously Violent Crimes 1.2 -- May 1998 [http://members.aol.com/peacejnl/1\\_2price3.htm](http://members.aol.com/peacejnl/1_2price3.htm)

perhaps even for most victims and offenders. Such cases must be carefully assessed for their appropriateness for mediation, and participation must be absolutely voluntary for both the victim and the offender. Extensive preparation of the participants is essential, often requiring months or even years of work with mediators and mental health professionals, before victim and offender are ready to face each other. Such preparation is needed, particularly, to assure that no re-victimization of any kind will take place at the mediation meeting.

In some models of victim offender mediation, and often in cases of less serious crimes, the primary purpose of the initial meetings with the participants is to get them to the mediation table, where the work of conflict resolution and reconciliation will be done. But in cases of serious or violent crime, the structured mediation meeting is the culmination of a process in which the work that may be the most intense has already been done. By the time the participants get to the table, ideally, they will be clear about what they think and feel about the crime and its effects, they will know what they want to communicate at the meeting and they will know what results they want to achieve there. Mediating conflict will probably not be the primary focus of the meeting. *In fact, there may be little or no conflict to mediate and restitution, especially in cases of a lost life, may be impossible or meaningless.* The models of mediation and negotiation to which we have become accustomed may have little applicability.

Mediation meetings in these kinds of cases will likely have somewhat different goals than those of the typical victim offender mediation; the skills and training required are somewhat different, too. In these cases, the primary focus of the mediation meeting will be to provide an opportunity for the victim and the offender to contribute to each other's healing by sharing their pain and regrets. In these kinds of cases, the lack of emphasis on conflict resolution and restitution leads this author to question whether it is even appropriate to refer to the process as "mediation." Indeed, a pioneer in the field, Mark S. Umbreit, Ph.D., of the University of Minnesota, has reframed (and perhaps even renamed) the process in his recent article, entitled, "Mediating Homicide Cases: A Journey of the Heart Through Dialogue and Mutual Aid."

In his article, Dr. Umbreit delineates some other distinguishing characteristics of the emotionally intense process of mediating severely violent crimes, including the coaching of the participants in the communication of intense feelings. Mediators or "facilitators" need special skills and knowledge. From the perspective of working with the victim, the mediator needs:

- an understanding of the victimization experience and its phases,
- experience in dealing with grief and loss (our own and others),
- an understanding of post-traumatic stress and its impact and
- the ability to collaborate with psychotherapists.

From the perspective of working with the offender, the mediator needs:

- an understanding of the criminal justice and corrections systems,
- an understanding of the experience of offenders and prisoners,
- the ability to relate in an extremely non-judgmental manner to offenders who have committed heinous crimes and
- the ability to negotiate with high-level corrections officials to gain access to the offender and to conduct mediation in prison.

A study of the mediation process which this author (Price) "shepherded" in a drunk driving death case offers many examples of the critical importance of thorough case development. Some of the most illustrative of those examples follow.

#### **Case Development with the Family of the Victim**

Peter and Kathleen Serrell are the "eighty-something" elderly parents of Elaine Serrell Myers, who was killed by a drunk driver in April 1993, in rural southwestern Washington state. The driver, Sally, (not her real name) is a 25 year-old single mother with two young children. When Peter first contacted the author about the possibility of mediation, Peter anticipated facing the offender alone. His wife, his three surviving daughters and his son-in-law all felt unable or disinclined to participate. The author recommended that Peter would be ill-advised to mediate without the participation of his wife, because



of the risk that their 50-year marriage might be jeopardized as a result. (Marital breakdown all too frequently follows the violent death of a child.) Peter agreed to work with the author in the preliminary case assessment, with an understanding that he would not proceed to mediation unless and until Kathleen was ready to join him. We gathered information about the offense and the offender and we explored his thoughts and feelings.

As we worked together, Peter shared his process and progress with his wife and family. Over a period of months, family members joined the developing case. Ultimately, the family members participating in the mediation included Peter and Kathleen, their son-in-law, David (Elaine's widower), their daughter, Barbara and her husband, Dave; their daughter, Betty, and her 10 year-old daughter, Aileen. (Elaine had been Aileen's favorite aunt and the two were close. Aileen asked to be allowed to participate.) The development of the case included a family meeting in which Betty, who resides in another state, participated by way of speaker-phone.

At the family meeting, family members in turn shared their pain and discussed the impact of their loss of Elaine. They "brainstormed" what they wanted from the offender--what requests they might make of her that could in any way meaningfully address their loss. No one was interested in monetary compensation from Sally. Their goals fell within two main themes. First, they wanted Sally to be rehabilitated and to use her experience to help keep drunk drivers off the road. It was important that Sally take responsibility to make the world a better place for her having survived the crash. Second, there was great concern for the welfare of her young children. What could be done so that they would do better in the world than their mother had? Could the mediation process produce agreements that would help break the cycle of tragedy? The participants shared their thoughts and feelings about what they wanted from Sally. Individual and joint conclusions were reached.

David Lee Myers, Elaine's widower, had for many months remained steadfast in his belief that he would be unable to contain his hate and anger sufficiently to be able to face the woman who had killed his wife of twenty-seven years. The family meeting led David to conclude that he wanted to participate in the mediation. As he and others who had not planned on participating reached the same decision, David moved from hate to compassion. It was David who observed that, with the growing number of family members who would be at the mediation, the offender would need to have someone there for her support. He proposed that she be invited to bring "someone who cares about her to sit next to her and hold her hand."

The author proposed, and the family discussed, the desirability of providing Sally with copies of their victim impact statements, in advance of the mediation. (The victim impact statements might help Sally grasp the nature and depth of their losses.) Some family members were opposed. It was agreed that Sally would be sent only the victim impact statements of those who wished their statements to be sent.

The offender suffered devastating injuries in the crash and there was initial doubt as to whether she would survive. After about three months of hospitalization and recovery in a nursing home, Sally was arraigned and charged with Vehicular Homicide. An attorney was appointed by the Court to represent her. Serrell family members attended the arraignment and experienced the anger often felt by crime victims when the offender pleads "not guilty."

### **Case Development with the Offender**

The development of the offender's side of the case began with a letter to her defense attorney, explaining the potential benefits of a face-to-face meeting. In a candid telephone conversation which followed, the attorney made himself vulnerable and became an invaluable supporter of the ensuing process. He openly acknowledged that he found the letter of introduction intimidating. He continued to explain that, as a criminal defense lawyer, he often feels as if he is, in a way, an extension of his client. He said, because of that, he had always used his "professional detachment" to distance and protect himself from the pain caused by the misdeeds of his clients. As such, he found the idea of facing Elaine's family, along with his client, to be very threatening. Nonetheless, he believed that the victim offender mediation process would be valuable for his client. But first, they would have to

decide whether she would enter a guilty plea. If she decided to plead guilty, he would recommend that she mediate. Once that decision was made, the attorney became an active supporter of the mediation process.

The defense attorney is an influential and powerful figure in the life of a person who is accused of a serious crime. The attorney is the only official who is on the side of the offender, in a criminal justice system where all of the power of the State is marshalled against the offender, i.e., "People vs. Jane Doe." Individuals in the role of an accused criminal have a strong tendency to hand their decision-making power over to their attorney; many attorneys are accustomed to accepting or even encouraging such a deferral. So the defense attorney's support or lack thereof is likely to be pivotal to the success of the mediation in cases where the offender has not yet been convicted.

In this case, the defense attorney attended the mediation with the understanding that his role was that of observer, adviser and supporter of his client. He never spoke for her, as attorneys commonly do. Finding that balance with the attorney is both sensitive and critical. In the face-to-face and heart-to-heart confrontation between victim and offender, where body language is at least as important as the words spoken, it does not work to have a representative doing the communicating for one of the participants.

(At the sentencing in this case, the defense attorney told the judge that the mediation, "was a very satisfying experience for everyone involved and a significant event for me as an attorney. It produced a kind of 'procedural satisfaction' that is often lacking--people often leave the criminal justice process feeling that the process has passed them by.")

In the initial interview at her attorney's office, the 25 year-old offender appeared pale and gaunt and she walked with the help of a cane. At the outset, Sally expressed her fear that Elaine's family would be as angry and hateful as she would feel if someone whom she loved had been killed by a drunk driver. Sally described the events leading to the collision, her nearly-fatal injuries and continuing recovery, and her horror at learning that she had killed someone. She sobbed through much of the 2-hour interview.

Although, at one point in the meeting, Sally said that she "had not only killed someone, but had destroyed the lives of two families," Sally's concerns focused mostly upon the extent of her own suffering and that of her family. At this time, her ability to empathize with the family of the victim seemed to be limited. She was given a pre-mediation "homework assignment" which asked her to do some thinking and writing about how Elaine's family members might be affected. The assignment also asked her to consider what she would want to say to them and what she thought they might want from her.

Sally revealed that she had been convicted of drunk driving 4 years earlier and also that her father "drinks too much." She said that she had consumed no alcohol since the accident. However, she denied that she was an alcoholic or had a drinking problem. The author explained to her that one of Elaine's family's strongest motivations in wanting to mediate with her came from their interest in assuring themselves that she would never again endanger other lives. They hoped that confronting her might make a difference. It was suggested to her that the family probably would not find her denial of a drinking problem to be credible or acceptable. For that reason, it was strongly recommended that Sally obtain an alcohol abuse evaluation, so that she could come to the mediation with more information about her use of alcohol. She said she would consider it.

We agreed to talk again in a few weeks. By that time, Sally had read the victim impact statements and had obtained an alcohol abuse evaluation. When we spoke, Sally seemed to be a changed person--the victim impact statements had opened her heart and broken through her defensiveness and self-pity. She was overwhelmed by the enormity of the loss and pain that she had caused. Further, the alcohol evaluation had broken through her denial of an alcohol problem. The alcohol counselor had concluded that she was a "beginning to intermediate alcoholic." Sally explained that, "It's normal to get drunk in my town. That's all there is to do. I thought it was normal to go out with my girlfriends and drink. We went out almost every weekend and some week nights. Now I know that it's not

normal. I wish that what happened to me would wake up those people, but it hasn't. They don't think it can happen to them."

Sally said that, once "her eyes had been opened" she began to speak to her friends and acquaintances about their drinking and driving and telling them of the horror of what she had done. She said she wanted to find a way to have her experience make a difference for others and perhaps save lives.

It was becoming apparent that Sally was ready to meet Elaine's family. For support at the mediation, she would be accompanied by her best friend. Her fiancée was willing to be there with her, but, "he would want to defend me and that's not what I'm going there for." That seemed like another indicator of Sally's readiness to mediate. She "got it." She was going to the mediation, remorseful and repentant, with empathy for the victims and without denial, defensiveness or self-pity, to face the Serrells and accept responsibility for what she had done. A positive outcome from the mediation would be very likely. There was little likelihood that the victims in this case would experience the kind of emotional re-victimization that can occur if the offender makes excuses or attempts to blame the victim or someone else.

For the victims, the benefits of the case development process may be illustrated by a quote from a letter that Peter sent to this author, just a few days prior to the scheduled mediation.

"Kathleen and I have decided that the peace of mind, the healing and the ending of our sense of powerlessness that have already taken place for us have been more than worth what has gone into preparing ourselves for the mediation. We are both prepared for the mediation to turn out however it will."

### **The Mediation**

The events and results of the four-and-a-half-hour mediation meeting were, in the view of this author, essentially predictable from what had gone before it. Many tears were shed, many eloquent words were said, and the victims and offender each became allies in the healing of the other. The meeting resulted in a mediation agreement in which Sally agreed to attend AA meetings and victim impact panels while in prison. She agreed to find ways to work against drunk driving in her community, such as speaking to high school drivers' education classes when she is released. The agreement also included items to help give her the tools to make good on her promises. She will further her education, complete her G.E.D., write at least weekly to each of her children, attend church each week, improve her parenting skills, and give 10% of her income to charity. She will write a quarterly letter to Peter to report on her progress on each of these items. The participants consented that the agreement, which would have been confidential otherwise, could be submitted to the prosecutor and the judge for consideration in mitigation of Sally's sentence.

### **The Sentencing**

The sentencing was attended by all of the participants in the mediation. Betty Menkin read from her victim impact statement, written months earlier, speaking of what would be necessary to earn her forgiveness:

"Forgiveness is not something which I believe is my obligation to bestow unilaterally, but it can be earned. The perpetrator must show the five R's: recognition, remorse, repentance, restitution and reform. **Recognition** means admitting that what she did was wrong, and that she is responsible for the wrongdoing and all of the negative consequences that follow from it. (If she is in jail, she recognizes that it is because she drove drunk, not because the prosecutor or the judge was mean or unfair to her. If she is in pain, she recognizes it is because she drove drunk, not blaming it on the lack of pain medicine or a lack of medical science's ability to fix her as good as new.) **Remorse** means that each time she thinks of the wrong she did, she regrets that she did not make a better choice. It is a repeated rehearsal of how she wishes she had done it differently, how she would do it differently if given another chance. **Repentance** is when a deep remorse leads to a firm resolve to do better in the future. **Restitution** cannot be direct in this case--there is no way that she can provide a wife for David or a sister for me. The only restitution she can make is a lifelong commitment to a daily effort

toward making the world a better place for her having survived the crash. She is not required to complete the job of repairing the world, but she must not be excused from starting and continually working at the job. **Reform** means that she must create a new form of herself--to emerge as a sober person, a thoughtful and considerate person, a contributor. If she can do all of these, I can forgive."

The prosecutor, as well as Sally's attorney, pointed to the mediation agreement as evidence of Sally's voluntary and courageous contribution to the healing of the victims, as well as to her own rehabilitation. Nonetheless, because of her previous drunk driving conviction, the judge sentenced Sally to the maximum term that she could receive under the state's mandatory sentencing guidelines.

### **Epilogue**

Now about fifteen months into her thirty four month prison sentence, Sally has maintained regular and frequent correspondence with all of the family members and they have visited her twice in prison. According to her reports, she has (as much as is possible so far) complied with all of her mediated agreements, including having completed her General Education Diploma (G.E.D.) In addition, she has become the leader of her Alcoholics Anonymous group.

Family members have reported a seemingly miraculous new freedom to focus on the present and the future rather than continuing to dwell in the painful past. On the anniversary of Elaine's death, the family gathered to place the headstone on her grave. At the ceremony, they formed a "sharing circle" (much as had been done at that first family meeting with the author.) But a year later, they focused not upon how Elaine died but upon how she lived and how they could carry her legacy forward. Members of the Serrell family are petitioning the governor of the state of Washington for a pardon or an early parole for Sally.

### **Summary**

In summary, some basic principles and guidelines may be gleaned from this case. Some of them are equally applicable to the mediation of less serious crimes.

- A violent crime typically impacts many more people than just the immediate victim. The "getting ready" time required for each who could benefit from meeting with the offender will differ. Each victim will move through the stages of grief and loss at a different pace. The case development process must allow for those time differences.
- A case must "ripen" for mediation. The passing of time will allow for necessary healing and emerging clarity about what the participants want and need from the mediation process. This "ripening" may be encouraged with "homework assignments" that assist the participants in exploring feelings, developing empathy or getting clear about what they want and need. The mediator must have an ability to sense what is "missing" and craft appropriate tasks.
- The mediator must be able to work effectively with, and enlist the cooperation of the defense attorney, as well as prosecutors, judges, probation and corrections officials and mental health professionals.
- There is a delicate balance to be ascertained between the prerequisites for a successful mediation (such as a certain level of victim empathy on the part of the offender) and the recognition that some level of the same attributes, i.e., victim empathy, may need to emerge from the offender as a result of the face-to-face experience of the victim's pain and loss. The importance of protecting victims from the possibility of a re-victimization must be carefully weighed. Sensible, calculated risks may need to be taken, but only with the fully informed consent of the victim.
- A patiently and sensitively shepherded case that is appropriate for mediation will almost certainly produce a positive experience for the participants. If the process of case development is not going well and a positive outcome does not seem likely, it will be

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essential to slow down and reassess. It may be appropriate to abandon the prospect of mediation and refer participants to other kinds of resources.

- When employed skillfully and in appropriate situations, the power of this process to facilitate healing, closure, reconciliation and rehabilitation is enormous. For many participants, the experience has been life-transforming.

### **Serrell/Cooper Case Update**

The Serrell family's petition for clemency was denied. Sally served her last three months in custody at a work release center. While there, she began speaking on Mothers Against Drunk Driving (MADD) panels, telling drunk-driving offenders how she had killed someone. She told her story to a number of high school driver education classes and worked as a cashier in a no-alcohol night club.

After serving 21 months of her sentence, Sally was paroled for good behavior on December 29, 1995. On December 31, the day of New Year's Eve, a story about this case appeared on the front page of *The Sunday Oregonian* (the largest daily newspaper in Oregon.) For this interview, "Sally" chose to give up her anonymity. For the first time, she told her story as Susanna Cooper and a photograph of her appeared. Members of the Serrell family and Susanna explained that they came forward at this time, in the hope that this news story might save some lives on the highway that evening. The national wire services picked up the story and it appeared throughout the United States.

The following April, 1996, the community radio station where Elaine had been a volunteer broadcaster as "The Rainforest Gardener" dedicated a community garden in Elaine's memory. Susanna attended the dedication. The Serrells and Susanna met each other with hugs.

That weekend, the Serrells, Susanna and I gave interviews to "Save Our Streets," a nationally syndicated network TV show about new and hopeful responses to crime. The episode, called "Making Amends," has aired four times.

In October, 1996, at the opening session of the annual conference of the international Victim-Offender Mediation Association, Susanna and Betty Menkin told their story together. Then they, along with Peter and Kathleen, who were in the audience, were honored with a standing ovation.

Susanna and the Serrell family remain in regular contact, in a unique healing alliance between victims and offender. Susanna remains clean and sober and is attending community college classes, with the Serrell family providing her tuition and books. Susanna continues to tell her story to drunk-driving offenders and high school driving students.

This story, which has touched the hearts of people around the world, is now in the process of becoming a made-for-TV movie. It will be broadcast in late 1998.

(Paper originally presented June 7, 1994 at the International Conference of the Victim-Offender Mediation Association, Winnipeg, Manitoba, Canada)

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### **5.10. Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment-1998<sup>16</sup>**

#### **Abstract**

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<sup>16</sup> Umbreit, Mark S. 1998. "Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment." *Western Criminology Review* 1(1). [Online]. Available: <http://wcr.sonoma.edu/v1n1/umbreit.html>

The relatively new and emerging practice theory of restorative justice emphasizes the need to provide opportunities for those most directly affected by crime (victims, communities, and offenders) to be directly involved in responding to the impact of crime and restoring the losses incurred by victims. Victim-offender mediation, a process which allows crime victims to meet fact-to-face with the offender to talk about the impact of the crime and to develop a restitution plan, is the oldest and most empirically grounded restorative justice intervention. This article reports on a study of victim-offender mediation in four sites with juvenile offenders and their victims, along with related studies. High levels of victim and offender satisfaction with the mediation process have been found, along with high successful restitution completion rates and reduced fear among crime victims.

#### **5.11. Victim Meets Offender: The Impact of Restorative Justice and Mediation -1994<sup>17</sup>**

This study evaluates voluntary victim-offender mediation programs operating in 4 juvenile courts in Oakland, CA, Minneapolis, MN, Albuquerque, NM and Austin, TX. Data were obtained from interviews with 1,153 victims and offenders. Victim-offender programs resulted in very high levels of satisfaction among both victims and offenders. More than 90% of mediation sessions produced a negotiated restitution plan to compensate the victim, and more than 80% of offenders complied with their restitution obligations. Victim-offender mediation helped reduce fear and anxiety among crime victims. Recidivism differences were not statistically significant.

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<sup>17</sup> Umbreit, M. (1994b). *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Monsey, NY: Criminal Justice Press, 256p.

## 6. Relevant Documents, Studies and Practices – International

### Victim-offender reconciliation with adult offenders in Germany (PDF file size: 28Kb)

Ute I Hartmann

Criminologists and politicians in Germany have accepted victim offender reconciliation as a means of resolving crime and consequently determining sentence. The "WAAGE Hannover" described in this paper is an example of a pilot victim offender reconciliation program for adult perpetrators which has been integrated into the criminal justice system. Hartmann warns, however, that an intransigent prosecutorial attitude can impede efforts to resolve conflict and stabilise the victim offender circumstance. She asserts that criminal justice practitioners as well as the participants must want the process to work if restorative justice is to occur.

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#### 6.1. How Is VOM Different From Other Kinds of Mediation? 2000<sup>18</sup>

Mediation is being used in an increasing number of conflict situations, such as divorce and child custody cases, community disputes, commercial disputes, and other civil court-related conflicts. In such settings, the parties are called "disputants," and the assumption is that both are contributing to the conflict and, therefore, need to compromise to reach a settlement. Often, mediation in these cases focuses heavily upon reaching a settlement, with less emphasis upon discussing the full impact of the conflict on the disputants' lives.

In victim-offender mediation, the involved parties are not "disputants." Generally, one party has clearly committed a criminal offense and has admitted doing so, whereas 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 or request less than what they need to manage their losses.

Although many other types of mediation are largely "settlement driven," VOM is primarily "dialogue driven," with emphasis upon the victim's needs, offender accountability, and some restoration of losses. Most VOM sessions (more than 95 percent) result in a signed restitution agreement. This agreement, however, is secondary to the importance of the initial dialogue between the parties. The dialogue addresses emotional and informational needs of victims and the development of victim empathy in the offenders, which can help to prevent criminal behavior in the future. Research has consistently found that the restitution agreement is less important to crime victims than the opportunity to express their feelings about the offense directly to the offenders.

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#### 6.2. Victim-offender mediation in domestic violence cases-a research report- 2000<sup>19</sup>

- In this paper, Pelikan examines the results of empirical research into the issue of victim-offender mediation in domestic violence cases, with emphasis on the situation in Austria.
  - She begins by summarizing the critique of mediation in such cases.
  - After a careful explanation of the nature and method of her research, she analyzes the results of the research.
  - This includes a typology of various effects of victim-offender mediation in domestic violence cases (e.g., victim-offender mediation as a reinforcement of change; or as the beginning of reformation; or as supporting separation).
  - Based on her research, Pelikan concludes with recommendations on victim-offender mediation in such cases.

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<sup>18</sup>Office for the Victims of Crime, How is VOM Different From Other Kinds of Mediation? July 2000  
[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#how](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#how)

<sup>19</sup> Pelikan, Christa. "Victim-offender mediation in domestic violence cases-a research report." Paper presented at the United Nations Crime Congress, Ancillary Meeting on Implementing Restorative Justice in the International Context. Vienna, Austria, 10-17 April 2000,  
[http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ\\_UN\\_CPelikan.htm](http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ_UN_CPelikan.htm)

### 6.3. Restorative Justice – 1996<sup>20</sup>

#### History

- The term restorative justice appears to have developed out of the victim-offender mediation or reconciliation movement which began in Canada and North America in the early 1970s.
- Many restorative justice writers use the terms restorative justice and victim-offender mediation interchangeably (Marshall, 1992 ; Umbreit and Coates, 1992).

#### Victim-offender mediation

- Victim-offender mediation is the model used in initiatives such as the Victim-Offender Reconciliation Program (VORP) in the United States and Canada and in Victim-Offender Reparation Programmes operating in the United Kingdom (Marshall & Merry, 1990; Zehr, 1990).
- In this model, the victim and offender are actively involved in seeking a resolution of the issues that concern them.
  - Both must have agreed to mediate, and the process cannot be applied if there is no victim, for instance if the offender has been charged with possession of drugs or driving while disqualified.
  - The role of the mediator is to provide a safe context for mediation but not to actively influence the outcome.
  - While the victim and offender may have supporters or family attending, these others are not actively involved in the mediation.
  - On occasions, victims may be represented by a friend or family member instead of attending in person.
  - Where businesses or local authorities are the victims of the offending, the manager or some other staff member attends the meeting and represents the victim's interests.
- It appears to be accepted generally that victims should have the right to decline to be involved in restorative processes.
  - Since victim involvement is a prerequisite in victim-offender mediation programmes, the victim's decision not to participate effectively acts to deny the offender access to restorative justice, but it cannot be otherwise given the nature of the programme.
- Most programmes also envisage the voluntary participation of the offender since attendance under compulsion is likely to limit the value of the meeting and could result in further trauma for the victim.
  - The VORP Volunteer Handbook (Stutzman Amstutz & Zehr, 1990) recommends that mediators should first ascertain whether the offender is willing and suitable to mediate before contacting the victim, in order to protect them from false hope and pointless inconvenience.
- Some New Zealand public opinion has it that offenders should be compelled to attend since they have waived their right to choose as a result of their offending.
  - There is also the view that they might benefit from being required to face the damage they have caused.

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<sup>20</sup> New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>



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- However, the need for voluntary participation tends to be accepted as the reality if the potential negative implications for the victim are to be avoided (MRL, 1995).
- The parties themselves are responsible for achieving an agreed outcome from mediation.
  - In victim-offender mediation programmes, either party can refuse to come to a final agreement and the mediator must accept the parties' decision.
  - However, where agreement is reached, some programmes allow for mediators to report to the court or referral source on agreements which are considered ill-founded (Stutzman Amstutz & Zehr, 1990).
- Victim-offender mediation is oriented to the issues of concern to the victim and offender, often focusing on reparation.
  - However, in victim-offender mediation programmes which seek to influence criminal justice proceedings, any agreement between the victim and offender must compete with other sentencing considerations.
  - Consequently, it may be ignored in sentencing or incorporated in an amended form in any sentence imposed.

#### Impact on Conviction and Sentencing 21

Zehr (1990: 5) reported one of the implications of victim-offender reconciliation programmes is that

*offenders may be diverted from the harmful effects of imprisonment, for VORP is seen as an alternative solution, not to be used in addition to a normal prison sentence.*

In line with this, McElrea (1994:17) suggested that

*The immediate consequences of the introduction of the new Youth Court model in New Zealand were a dramatic reduction in the number of young people appearing in court, because of the diversionary nature of the system, and the closure of most of the social welfare homes to which young people had been remanded in the past, because of the community based nature of most outcomes of FGCs.*

The introduction of the Children, Young Persons and Their Families Act with its emphasis on diversion from the court process certainly affected the total number of cases involving young persons which came before the courts.

The number of cases involving young persons was decreasing slowly anyway but the introduction of the Act saw the total numbers drop sharply from 7,236 in 1989 to 1,887 in 1990. In 1993, there were 2,574 cases involving young people which came before the courts. This was 77% less than in 1986, but the highest number of cases since the new Act was introduced (Spier, 1994).

While the community-based focus of family group conference outcomes may have contributed to reducing the institutionalisation of young people, this focus was not the primary reason for the closure of most social welfare homes. There had been a marked downturn in the use of Department of Social Welfare residences throughout the 1980s and the reduction in the numbers of children and young persons brought into care was attributed to a number of factors. These included a deliberate shift in emphasis and policy by the Department of Social Welfare from 1986 which sought to minimise interventions and use residential care only as a last resort (Department of Social Welfare, 1987 & 1990). This policy was matched by a closure of residences. In

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<sup>21</sup> New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

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1994, there were only five Department of Social Welfare residences compared to 10 in 1989 and 21 in 1984 (Department of Social Welfare, 1995).

In relation to conferencing for adults, McElrea (1994: 18) went on to state that "the proportion of custodial sentences is also likely to drop sharply if Youth Court experience is relevant." The number of cases involving a young offender which resulted in a full-time custodial sentence certainly decreased considerably when the Children, Young Persons and Their Families Act was introduced. For instance, 193 custodial sentences were imposed in 1989 compared to 74 in 1990, and the numbers have remained at the lower level in the intervening years (Spier, 1994). However, as earlier discussion in this paragraph revealed, the Department of Social Welfare made a significant policy change in terms of its reliance on residential options for young people from the mid 1980s. It is difficult to estimate the relative influence of this policy framework on family group conference outcomes and on the reduced use of custodial sanctions but at the least it seems likely to have been a contributing factor.

The extent to which restorative practices can reduce the number of convictions and the use of imprisonment for adult offenders depends on whether such practices are integrated with the criminal justice system and how and at what stage of the criminal justice process they are used. Restorative programmes which are parallel to the criminal justice system may achieve other objectives but generally cannot affect the processing of cases in that system. However, if such schemes created public confidence in their ability to resolve offending incidents, citizens might be willing to pursue this avenue in lieu of making formal complaints. Any reduction in complaints might reduce the number of criminal charges laid by the police and this could ultimately reduce convictions. This might provide the opportunity for a small-scale impact on the number of convictions.

Where restorative practices are integrated with the criminal justice system, the framework for their operation will determine the extent to which they might influence conviction and imprisonment rates. For instance, the application of victim-offender meetings in the police adult pre-trial diversion scheme (described in paragraph 3.3.1) would have no impact on conviction or imprisonment rates since these offenders feature in neither.

#### **6.4. Victim/Offender Mediation? 2000<sup>22</sup>**

##### **What is it?**

Victim-offender mediation is a process that provides interested victims (primarily those of property crimes and minor assaults) the opportunity to meet their offenders in a safe and structured setting. The goal is to hold offenders directly accountable for their behavior while providing important support and assistance to victims. With the assistance of trained mediators, victims are able to express the full impact the crimes have had on their lives and to be directly involved in developing restitution plans that holds offenders financially accountable for the losses they have caused. Offenders are able to take responsibility for their behavior, learn the full impact of their actions, and develop plans for making amends to the persons they violated. Some VOM programs are called "victim-offender meetings" or "victim-offender conferences."

The first VOM program in the United States was developed in Elkhart, Indiana, in 1978 and modeled after a similar program in Kitchener, Ontario, Canada, that began in 1974. These initial programs were called Victim-Offender Reconciliation Programs (VORPs). Today, some VOM programs are identified as VORPs, although as the field has become increasingly victim-sensitive most programs have dropped any reference to "reconciliation." The intent is to provide a safe place for dialogue, negotiation, and problem solving to foster a sense of victim empowerment and to clarify future expectations rather than place blame for past behavior. Major emphasis is placed on having the mediator conduct in-person, separate premediation sessions with the victim and offender prior to bringing them together. Thorough preparation of the parties is central to creating a safe place for dialogue.<sup>23</sup>

##### **How Many Programs Exist?**

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<sup>22</sup> Office for the Victims of Crime, What is it?, July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#how2](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#how2)

<sup>23</sup> Office for the Victims of Crime, What is it?, July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#how2](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#how2)

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There are more than 300 VOM programs throughout the United States and more than 700 in Europe. The American Bar Association recently endorsed the practice of VOM and recommends its development in all courts throughout the country. A recent statewide survey of victim service providers in Minnesota found that 91 percent believed that VOM should be available in every judicial district since it represents an important opportunity for crime victims to resolve the impact of crime on their lives.<sup>24</sup>

Note: the term "**victim/offender reconciliation**" implies that there was a conciliatory relationship in the first place. While this may be true in some cases--particularly those involving interfamilial offenses--it is not true for many others. As such, caution should be utilized with this word<sup>25</sup>

*Guidelines for Victim-Sensitive Victim-Offender Mediation* is meant to provide a flexible outline that can be adjusted to fit the cultural context of each community and the specific needs of the participating victims, offenders, and support people. The ultimate goal of VOM is to offer a safe place for dialogue between victims and offenders that can offer an opportunity to resolve the impact of crime on their lives.

- Has information been provided to the offender about his/her rights?<sup>26</sup>
- Has the offender been encouraged to carefully reflect on the crime, prepare what he/she wishes to say about it, and reflect on the victim's experience with the crime?<sup>27</sup>
  - Verify that the offender wants to participate in mediation before contacting the victim, to avoid possible re-victimization of the victim; allow the offender to choose whether to participate in the mediation process.<sup>28</sup>
  - Offenders who meet with their victims are far more likely to be held directly accountable for their behavior and to successfully complete their restitution obligations (Umbreit, 1994a and 1994b).<sup>29</sup>

As a candidate for mediation, has the offender admitted his/her guilt and expressed remorse and a desire to make amends?<sup>30</sup>

Is participation voluntary for the victim?<sup>31</sup>

- Has a pre-VOM session been held with the victim?<sup>32</sup>
- Has information and answer questions about the VOM program been provided?<sup>33</sup>
- Have the risks and benefits of mediation been discussed to assist the victim in making an informed decision about whether to participate?<sup>34</sup>
  - Victims of crime who meet with their offenders are far more likely to be satisfied with the justice system response to their cases than victims of similar crimes who go through the traditional court process (Umbreit, 1994a and 1994b).<sup>35</sup>

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<sup>24</sup> Office for the Victims of Crime, How Many Programs Exist?, July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#how2](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#how2)

<sup>25</sup> Alabama Crime Victims Compensation Commission, What Next? The Language Of Restorative Justice

<http://agencies.state.al.us/crimevictims/asads/justiceandtrauma.htm>

<sup>26</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>27</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>28</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>29</sup> Office for the Victims of Crime, What Have We Learned From Research? July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#what2](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#what2)

<sup>30</sup> Price, Marty, Punishment-What's in it for the Victim?, A Restorative Justice Discussion for Crime Victims and their Advocates

[http://www.wave.org/DataBase/PUNISHMENT\\_Victims\\_of\\_Crim.htm](http://www.wave.org/DataBase/PUNISHMENT_Victims_of_Crim.htm)

<sup>31</sup> Price, Marty, Punishment-What's in it for the Victim?, A Restorative Justice Discussion for Crime Victims and their Advocates

[http://www.wave.org/DataBase/PUNISHMENT\\_Victims\\_of\\_Crim.htm](http://www.wave.org/DataBase/PUNISHMENT_Victims_of_Crim.htm)

<sup>32</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>33</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>34</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

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- Interest in victim-offender mediation has grown since the late 1970s, but VOM is not appropriate for all crimes. In all cases, it must be presented as a voluntary choice to the victim. Over the past 20 years and in thousands of cases throughout North America, experience has shown that the majority of victims presented with the option of mediation chose to participate in the process. A recent statewide public opinion poll in Minnesota found that 82 percent of a random sample of citizens from throughout the State would consider participating in a victim-offender mediation program if they were victims of property crime. Interviews with 280 victims who participated in victim-offender mediation programs in 4 States found that 91 percent of victims felt their participation was totally voluntary.<sup>36</sup>

*Has the case been screened for suitability in the mediation process? By an advisory board?*<sup>37</sup>

Have the mediators been trained?

- in victim sensitivity?<sup>38</sup>

Has careful extensive victim preparation been completed?<sup>39</sup>

- Is safety of the victim the foremost concern?<sup>40</sup>
- Are the victim's expectations realistic?<sup>42</sup>
- Have the victim's losses and needs been assessed?<sup>43</sup>
- Have restitution possibilities been estimated?<sup>44</sup>
- Has a friend or relative as a support person been selected for the session?<sup>45</sup>

Has careful, extensive offender preparation been completed?<sup>46</sup>

- Are the offender's expectations realistic—that he or she knows an apology is not enough to repair the harm caused by the crime?<sup>47</sup>
- Has the offender's ability to fulfill restitution agreements been assessed?<sup>48</sup>
- Has a friend or relative as a support person been selected for the session?<sup>49</sup>

### **DURING-SESSION**

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<sup>35</sup> Office for the Victims of Crime, What Have We Learned From Research? July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#what2](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#what2)

<sup>36</sup> Office for the Victims of Crime, Are Crime Victims Interested?, July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#when](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#when)

<sup>37</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>38</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>39</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>40</sup> Price, Marty, Punishment-What's in it for the Victim?, A Restorative Justice Discussion for Crime Victims and their Advocates

[http://www.wave.org/DataBase/PUNISHMENT\\_Victims\\_of\\_Crim.htm](http://www.wave.org/DataBase/PUNISHMENT_Victims_of_Crim.htm)

<sup>41</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>42</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>43</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>44</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>45</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>46</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>47</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>48</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

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Was the mediation session scheduled at a convenient time? Was a suitable mediation site selected? Was suitable seating arranged?<sup>50</sup>

Were participant guidelines discussed?<sup>51</sup>

Was victim-sensitive language that avoids implying judgment or pressuring the victim in any way used?<sup>52</sup>

Was a safe, relaxed and positive atmosphere established?<sup>53</sup>

Was the focus on the dialogue between the victim and the offender?<sup>54</sup>

Was feedback encouraged from participants?<sup>55</sup>

What was the duration of the session?<sup>56</sup>

Did the victim get the answers she/he was seeking from the offender?<sup>57</sup>

- victims get answers to the often haunting questions that only the offender can answer. (The most common questions are, "why did you do this to me?" and, "was this my fault or could I have prevented this?") With their questions answered, victims commonly report a new peace of mind, even when the answers to their questions were even worse than they had imagined or feared.<sup>58</sup>

Has the offender learned the real human consequences of his/her actions?<sup>59</sup>

Has the offender been held meaningfully and personally accountable to the victim?<sup>60</sup>

Has the mediated session resulted in a restitution agreement in some way, make amends or restore the victim's losses? What was the type of restitution?<sup>61 62</sup>

- Obviously, there is no way to restore the lost life of a loved one. Restitution may be monetary or symbolic; it may consist of work for the victim, community service or anything else that creates a sense of justice between the victim and the offender. Sincere apologies are often made and words of forgiveness are sometimes spoken. Forgiveness is not "prompted," in recognition that

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<sup>50</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>51</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>52</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

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<sup>57</sup> Price, Marty, Punishment-What's in it for the Victim?, A Restorative Justice Discussion for Crime Victims and their Advocates [http://www.wave.org/DataBase/PUNISHMENT\\_Victims\\_of\\_Crim.htm](http://www.wave.org/DataBase/PUNISHMENT_Victims_of_Crim.htm)

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forgiveness is a process that must occur spontaneously and according to the victim's own timing, if at all. For some victims, forgiveness may never be appropriate.<sup>63</sup>

Was an option for a follow-up session provided?<sup>64</sup>

**POST-SESSION**

Was follow up action taken after the mediation session?<sup>65</sup>

- Was the agreement monitored until completion?<sup>66</sup>
- Was the victim notified of agreement alteration or completion?<sup>67</sup>
- Were additional sessions scheduled, if needed?<sup>68</sup>
- Was contact maintained with both parties?<sup>69</sup>
- Were all mediations and participants evaluated for satisfaction with the process and its outcome?<sup>70</sup>
- Has the mediator provided a self-evaluation?<sup>71</sup>
- Has feedback been gathered from probation officers or victim services personnel who work with the parties involved in mediation?<sup>72</sup>
- After meeting with offenders, victims are significantly less fearful of being revictimized (Umbreit and Coates, 1993; and Umbreit, 1994a and 1994b).<sup>73</sup>
- Considerably fewer and less serious crimes are subsequently committed by offenders who met with their victims (Nugent and Paddock, 1995; Schneider, 1986; and Umbreit, 1994a and 1994b).<sup>74</sup>
- Multisite studies in Canada (Umbreit, 1995a and 1995c), England (Marshall and Merry, 1990; and Umbreit and Roberts, 1996), and the United States (Coates and Gehm, 1998; and Umbreit 1994a and 1994b) have confirmed the above findings.<sup>75</sup>
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Does a relationship exist between victim advocates and those that carry out VOM?<sup>76</sup>

- Over the years, there has sometimes been an uneasy relationship between victim advocates and the growing restorative justice/victim-offender mediation movement. Victim advocates objected loudly (and rightly so!) when early victim-offender programs were overly persuasive or even coercive, in their well-meaning but misguided efforts to enlist the participation of victims. Victims' assistance programs are now co-training with victim-offender mediation programs, teaching mediators how to work sensitively and respectfully with victims. Victim advocates have

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<sup>64</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>65</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

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<sup>67</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

<sup>68</sup> Office for the Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue, July 2000 [http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_3.html#guidelines](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_3.html#guidelines)

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<sup>73</sup> Office for the Victims of Crime, What Have We Learned From Research? July 2000

[http://www.ojp.usdoj.gov/ovc/publications/infores/restorative\\_justice/bulletin1/rjmc\\_2.html#what2](http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/rjmc_2.html#what2)

<sup>74</sup> Office for the Victims of Crime, What Have We Learned From Research? July 2000

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<sup>75</sup> Office for the Victims of Crime, What Have We Learned From Research? July 2000

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## *Research Framework for a Review of Community Justice in Yukon*

### Community Justice- Victim Offender Mediation

sometimes seen mediation as "soft on crime" and therefore, not in the best interests of victims. Those victim advocates, who have observed mediation sessions, taking note of the trepidation of offenders as they face their victims, know that mediation is not soft on crime.<sup>77</sup>

- The recognition of common ground between victim advocates and restorative community justice advocates has led to alliances and partnerships. For example:<sup>78</sup>
  - in 1995, the National Organization for Victim Assistance (NOVA) published a monograph entitled, *Restorative Community Justice: A Call to Action*
  - in 1996, NOVA and the Center for Restorative Justice and Mediation jointly published a thorough, comprehensible and extremely accessible educational document called, "Restorative Justice for Victims, Communities and Offenders"
  - in 1995 and 1996, NOVA collaborated with the Center for Restorative Justice and Mediation at the University of Minnesota, to produce nationally-focused, advanced training programs for the mediation of seriously violent crimes.
  - in 1996, NOVA, along with the U.S. Department of Justice Office for Victims of Crime convened a Restorative Justice Summit Conference in Washington, D.C., gathering leaders of the field to develop national restorative justice policy.
  - in the fall of 1996, Mothers Against Drunk Driving (MADD) published in its quarterly, *The MADDvocate*, an article by restorative justice experts, Mark Umbreit and Gordon Bazemore (of the Balanced and Restorative Justice Project). The Winter 1996 *MADDvocate* published an article by a victim, who along with her family, chose to mediate with the drunk-driving offender who killed her sister
  - MADD's National Director of Victims' Services, Janice Harris Lord, a recognized authority who has written numerous books on working with victims, spoke at the 1996 Conference of the Victim Offender Mediation Association (VOMA) and presented workshops on working sensitively with crime victims. She also co-presented (with me) a workshop on the mediation of drunk-driving fatality cases.

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<sup>78</sup> Price, Marty, Punishment-What's in it for the Victim?, A Restorative Justice Discussion for Crime Victims and their Advocates [http://www.wave.org/DataBase/PUNISHMENT\\_Victims\\_of\\_Crim.htm](http://www.wave.org/DataBase/PUNISHMENT_Victims_of_Crim.htm)