

Mature Justice: Developing Restorative Practices for Serious Young Offenders

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INTRODUCTION & OVERVIEW OF THE PROJECT

Someone asked me last week why I do this work, and without thinking, I answered: because this is an emergency. When I said that, I had in mind the dire consequences we are facing both for those who are harmed by crime and for those who harm them. The former are not healing and the latter are spending their lives in jail, where they are not, to say the very, very least, being rehabilitated.

But I think there is a positive aspect to this emergency diagnosis as well. In an emergency, we are less insistent about what are the commonly practiced and accepted means of acting. We are more willing risk-takers not because we are necessarily more courageous or less cautious, but because the stakes have made risk-taking the prudent thing to do. For example: on an average day, no one believes you when you say the second floor window is an exit. They think you're unreasonable, careless, strange. But then there's a fire, and suddenly people begin looking out that same window, thinking seriously about the height of it, seeing that nice patch of grass below. They feel the heat. They say “That's really not so far after all. You know, that might just work.”

At the Vera Institute of Justice, I am currently designing a Restorative Justice project that aims to target 16-19-year-olds in the adult Criminal system who are facing a range of

offenses, including serious and violent ones. If and only if their ‘victims’ welcome the process, they and the offenders will be diverted into a Victim-Offender Mediation and/or Conferencing program with intensive preparatory and follow-up components. I’ll talk about those components and what they’ll look like as we go on. The project will be conducted in partnership with the courts and will include an intensive research and evaluation component. This project, particularly the inclusion of serious and violent offenses, is a leap for New York. But our house is very much on fire.

So we are turning to Restorative Justice. Initiating a program to address serious and violent offenses committed by young people involves at least three different types of work that are present in any restorative work, but are perhaps a bit more demanding for the more serious cases: (1) identifying the challenges, (2) making the case, and (3) managing the risks. Let’s talk first about challenges.

IDENTIFYING THE CHALLENGES

First, let’s acknowledge the challenges to hearing serious cases with youth: that includes challenges based on the age of the offenders, the seriousness of the case, the needs of the victims, challenges to getting support as well as challenges to doing the work well. To name just a few more specifically: There’s the challenge of the timing of the victim’s healing process as it relates to the pressures of the court docket. In serious/violent cases, there’s the massive problem of handling detention, since the vast majority of our participants are ones who would have otherwise been detained in secure facilities. There’s age bias—on the part of the system, the victim, and even ourselves (though this

sometimes goes both ways—sometimes their youth leads to greater openness). There's resistance from various system partners, including potentially the Defense Bar. There are more I'm sure come to mind for you right now.

I want us to keep these challenges in mind as we go forward, and to test what I'm advocating against each of them, because I do believe it'll hold up under scrutiny. I'm going to talk today about everything except the victim-offender mediation or conference itself. I do this in part because this is humbling and expert company. But the other reason is more substantive, and that's that all too often Restorative Justice & Mediation are conflated, and I want to shift our focus from the actual mediation or conference and look closely instead at the accompanying programming that's necessary to make the restorative intervention transformative, the methods of diversion that are likely to work and to last, and the supporting research that makes Restorative Justice sustainable as a system diversion.

I also want to highlight another set of challenges here, which are the circumstances facing our young offenders. To paint the picture: We are currently incarcerating more people than ever before in our history.¹ At least two thirds of the young people released from jail or prison in New York City will go back within three years.² The annual cost of incarcerating a young person in this age group ranges from \$60,000 at Rikers Island to as

¹ The Sentencing Project 2006, data available online at: http://sentencingproject.org/issues_01.cfm. See also U.S. Bureau of Justice Statistics.

² New York City Department of Corrections, 2004.

much as \$171,000 Upstate³—and that’s excluding any special programs or uniquely equipped facilities. That’s an enormous sum of money. Former convicts’ chances for employment drop dramatically once they’ve been incarcerated, and nearly half of the people in this age group can’t read above the fifth grade level when they’re released.⁴ For some of you, my talking about 16-19-year-olds in adult court sounds incongruous. If it does, you either live in another country, or in one of the 47 states that believes 16 year-olds are still children and tries them accordingly. In New York, when you’re 15 and 366 days old, you’re an adult. The good news is this situation makes us in some ways uniquely positioned to create a project grounded in the extensive evidence gathered from experience with Restorative Justice for this age group in juvenile courts and to pilot that project in the adult system, which is often far more resistant to this type of diversion or intervention. The bad news is, the presence of young people in adult courts is not unique to these three states alone. More and more jurisdictions are regularly choosing to try kids as adults. And the consequences of those choices, we are beginning to see more often and more clearly, are daunting.

This year, the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice conducted a study in New York and New Jersey to determine whether trying and punishing youth as adults resulted in a reduction in crime and recidivism. It didn’t. The researchers found that youth in adult courts were in fact 85% more likely to be rearrested for more serious crimes, especially violent crimes, and were 26% more

³ High end figures reflect cost of OCFS facilities for juveniles. Available at the Correctional Association online: http://correctionalassociation.org/JJP/publications/detention_fact_2006.pdf.

⁴ Frank Dody, Rikers Island Academy principal, 2004, based on his own review of inmate data; confirmed by Adolescent Reentry Initiative program intake data, 2006.

likely to be re-incarcerated than comparable youth facing comparable charges in juvenile courts.⁵ Each of those arrests for violent crime, we have to remember, represents a victim, too—an instance of harm the study suggests may be a product not so much of the young person him or herself, but of the nature of his or her system contact. We need to take that very, very seriously. What’s more, youth in adult correctional facilities who suffer from mental health problems share many of the same symptoms of soldiers who have returned from war and survivors of national disasters according to the research—symptoms we recognize all too well from our experience caring for another group of people: victims of crime.⁶ And last, but very, very far from least, it’s important to add to this picture that as many as 95% of young people incarcerated in New York City are Black or Latino. 95%.⁷ We need to hear that number with all the seriousness and gravity it demands, and to commit to responding accordingly.

The adverse consequences of an excessive reliance on incarceration are themselves enough to constitute an emergency. But they are only half the story. The experience of victims in the Criminal Justice system is all too often alienating, disempowering, disappointing, and even re-traumatizing. And these are, at least in the public discourse if not in law, supposed to be the beneficiaries of the process. It is with their needs most firmly in mind that we proceed to making the case.

⁵ MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, “The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court: Issue Brief 5.” Available online at: http://www.adjj.org/downloads/3582issue_brief_5.pdf.

⁶ Ibid. See also Judith Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror*. New York: BasicBooks, 1992.

⁷ Correctional Association, statistics on *juveniles* entering detention. Available online at: http://correctionalassociation.org/JJP/publications/detention_fact_2006.pdf.

MAKING THE CASE

It may be helpful to understand this as a facet of risk management, particularly for system partners. One thing we have to be able to do to secure their ongoing support, meet their needs, and protect their complex interests is *to prove it works*. First, that means we need them at the table. That means building relationships early in the process with the District Attorney's office, the Defense Bar, the judges, possibly the police, and anyone involved in intake and diversion, and allowing the parties to contribute to and shape the program design. Making the case to them for Restorative Justice with serious and violent offenders begins with looking to our mentors and predecessors in the field, of which I thankfully have many, and extends through managing information effectively and developing a comprehensive research agenda about the work as it proceeds.

I'd like to take a minute to look at some of the evaluative research in the field. First, Restorative Justice's capacity for meeting victims' and offenders' needs, including those for safety, fairness, and inclusion, is evidenced by the high levels of satisfaction reported by all parties. Expression of satisfaction with Victim-Offender Mediation is consistently high for both victims and offenders across sites, cultures, and seriousness of offense: typically, 8 or 9 out of 10 participants report being satisfied with the VOM process and with the resulting agreement.⁸ A key aspect of this satisfaction on the victim's end has to do with safety: one study found that victims who participated in mediation reported feeling safer than they had—not only before the mediation, but even before the offense. On the other hand, the same study found that victims who went through court processes

⁸ Davis, 1980; Coates and Gehm, 1985; Perry, Lajeunesse, and Woods 1987; Marshall, 1990; Umbreit 1991, 1994, 1995, 1998, 2001, 2005; Umbreit and Coates, 1993; Umbreit, Vos, Coates & Lightfoot, 2005.

reported that the experience had substantially lessened their sense of safety.⁹ In terms of fairness, a study of burglary victims in Minneapolis found that 80% of victims who went through victim-offender mediation indicated that they experienced the criminal justice system as fair compared with only 38% who had participated in standard court processes.¹⁰ And finally, on the inclusion front, two notable trends emerge: first, for any given mediation, the victim and offender are likely to report the same level of satisfaction as one another, regardless of the type of offense or the agreed upon sanction/restitution; and second, victims' satisfaction tends to correlate far more directly to their satisfaction with the process than to their satisfaction with the outcome.¹¹ That means we are not faced with a zero sum game. Quite the opposite.

So we know the process is meaningful. But let's move on to where our system partners are likely to begin, especially as we challenge them to divert a more serious set of cases: the big, bad question of recidivism. While the quality of existing research varies, a great deal of investigation into the impact of Restorative Justice processes on recidivism has yielded some promising results. First, a great many studies show lower recidivism rates overall,¹² and importantly, at least two showed that young adults who did re-offend tended to incur less serious charges than did their counterparts in the control groups.¹³ The range of impact varies, though the more sophisticated studies measuring the efficacy

⁹ Beven & Hall.

¹⁰ Umbreit 1992.

¹¹ Beven & Hall, supported by other studies that gathered the relevant data but did not draw this comparison.

¹² Schneider 1986; Nugent & Paddock 1995; Nugent, Umbreit, Wiinamaki & Paddock 200; Umbreit 1991, 1994, 1995, 1998, 2001, 2005; Umbreit and Coates, 1993; Vos, Coates & Lightfoot 2005; several show no or negligible impact, including Roy 1993.

¹³ Umbreit, Vos, Coates & Lightfoot 2005; Evje & Cushman; Umbreit & Coates; Nugent & Paddock.

of established programs often yield results in the 30-35% range for reduction of recidivism.

One well-conducted meta-analysis drawing from a substantial pool (1,298 juvenile offenders) determined that youth recidivated at a statistically significant 32% lower rate than the control population.¹⁴ A more recent & rigorous meta-analysis with a sample of 11,950 juveniles who received service at 25 different sites found victim-offender-based restorative justice programs generated a 34% reduction in recidivism.¹⁵

Unlike participants' satisfaction, which does not tend to vary across offense type, of crucial interest to our discussion today, the research suggests that Restorative Justice may yield better results for the more serious cases. One high-caliber Canadian study demonstrated no significant results for low-level offenders (they found a 6% increase, in fact, for property crime cases), but did report reductions in recidivism for violent offenses (a full 38% reduction in crimes per year).¹⁶ Similarly, another study found the long-term success of the model correlated directly to the seriousness of the offense.¹⁷ That is to say, more serious = more effective. Since victim-offender mediations bring offenders face to face with the human harm they have caused, it seems logical that when that human harm is more substantial, so too is the offender's response.

All that said, Umbreit and Coates, among the very best and treasured researchers in the Restorative Justice field and sources of some of the data above, themselves observe that

¹⁴ Nugent, Umbreit, Wiinamaki and Paddock 2001.

¹⁵ Bradshaw & Roseborough, 2005.

¹⁶ Sherman, Strang & Woods.

¹⁷ McCold & Wachtel.

“policies and supporting dollars outdistance the needed empirical research to determine impact and help shape programming.”¹⁸ Gaps or inadequacies in the current research that we would aim to repair include: lack of or nonequivalent control groups, self-selection bias, inconsistent or inappropriate definition of re-offense, lack of clarity and consistency regarding process, merging of multiple types of mediation, lack of distinction between participant and/or offense type, lack of clarity regarding nature of re-offence (i.e. violent or non-violent), failure to account for prior records, and/or insufficient data and participation.

I also want to highlight at least briefly about another, very serious, hole in the body of research in the field: as the restorative justice researcher Herman noted in 2003, “No systemic, data-based studies have yet been conducted to document the mental health effects (healing or otherwise) of victim’s participation in restorative justice programs.”¹⁹

The lack of research regarding the impact of these processes on victims has several adverse effects: it exacerbates many victims’ advocates’ objections to Restorative Justice as imbalanced and excessively offender-driven; it fails to capture a full half of the benefit and impact of Restorative Justice processes; and it limits our ability to redesign programs to better serve in the interests of victims’ recovery and healing.

Herman’s observation, though accurate when he made it in 2003, is no longer entirely true. Caroline Angel conducted the first significant research study tracking the impact of Restorative Justice conferencing on manifestations of symptoms of Post Traumatic

¹⁸ Umbreit, Coates & Vos 2001.

¹⁹ Herman 2003, cited in Beven & Hall.

Stress, both immediately following the intervention and again six months later. The results indicate that restorative justice practices reduce the traumatic impact of crime. Participants in restorative conferences reported a more than 40% reduction in PTSS symptoms. That's the result of a single two hour intervention. That's very, very striking, and should remain a signpost for us as we move forward.

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The other crucial aspect of making the case has to do with sentencing. I'll talk briefly about two aspects of this--the Diversion model and alternatives to incarceration— both of which will have to figure prominently in any early conversations with stake-holders.

While the follow-up component carries the greatest burden of ensuring compliance, a good Diversion model will both guard against non-compliance and provide a framework for response when it occurs. Designing such a model requires not only determining the degree of possible flexibility regarding the point of diversion and the conditions for release from detention, which are significant challenges, but also (a) the definitions and measures of compliance with agreement and consequences for non-compliance, (b) provisions for graduated sanctions, (c) clear agreement regarding the conditions for dismissal and/or reduction of charges upon successful completion, and (d) coordination with supervisory bodies and the court.

Though it is impossible to predict our exact protocol in advance of reaching agreement with our government partners, our initial exploration at Vera has uncovered nearly universal consensus that victim-offender proceedings for serious cases aiming to impact sentencing are best conducted either (a) through deferred prosecution, the model originally used, for instance, by DTAP (Drug Treatment Alternatives to Prison) in Brooklyn or (b) by having the defendant enter a guilty plea, participate in mediation, and withdraw that plea upon completion of the agreed upon restoration/sentence.

All these aspects are crucial, but perhaps more than others, building in provisions for graduated sanctions and internal programmatic responses to non-compliance in particular can help minimize our reliance on coercive bodies for “enforcement” of the agreements, and will demonstrate our good will and competence to those partners.

If our chosen diversion model works, and if we get appropriate cases and hear them successfully, a majority of these young people are likely to be diverted into alternatives to incarceration. That means that one of the first and least negotiable needs is a network of Alternatives to Incarceration(ATIs), or at least of agencies prepared to act as such. That belongs in all caps on what I’d call your readiness checklist--a list of components that need to be in place for your Restorative Justice program to take on these kinds of case.

The broader the range of ATIs available, the more likely we are to find one suitable to the individual case at hand. And the stronger our relationship with those ATIs, the more likely they are to grow to meet the complex and evolving needs generated by a truly

Restorative process. Cultivating collaborative relationships with ATIs has to be a priority, I would argue, of any Restorative Justice project looking to accommodate more serious cases.

It's also crucial that we understand and can articulate concretely the efficacy of the ATIs we rely on so heavily to support a very, very important facet of our work. A 2004 Vera-conducted evaluation²⁰ demonstrated that ATIs pose no greater risk to public safety as compared with incarceration, even when offered to more serious and/or violent offenders. For instance: over the course of the four-year study, 58% of the youth participating had been convicted on robbery charges, the kinds of charges we hope to take on, and the recidivism rate remained equivalent or better as compared with incarceration.

What's most interesting for us today is that a 2002 Vera-conducted study of ATIs found that participants who *completed* the program were likely to recidivate at a substantially lower rate. So one of the questions, then, isn't just, how do we get them into the program, but also: how do we get participants to complete? In addition to improvements in the programs themselves, there is reason to believe a Restorative Justice process in and of itself will help. Early research in the Procedural Justice field suggests that participatory processes (such as Restorative Justice) are likely to contribute to higher rates of compliance. It's very intuitive: it means that if someone has involvement in identifying a sanction, he or she is more likely to follow through on it. Or in other words,

²⁰ Rachel Porter, Sophia Lee, and Mary Lutz. *Balancing Punishment and Treatment: Alternatives to Incarceration in New York City*. New York, NY: Vera Institute of Justice, 2002. Available online at: http://www.vera.org/publication_pdf/164_251.pdf

our hope (or hypothesis, rather) is that engaging in a meaningful and consensual process with the victim is likely to increase an offender's commitment to the agreed-upon sanction, and thereby to reduce the likelihood of his/her future re-offense. Related indicators are promising: in one large-scale meta-analysis, researchers found that of those cases that reached a mediation, typically 90% or more resulted in agreements, and 80-90% of those agreements were later completed.²¹ What's more, another study found that young adults who felt their sentence was arrived at by a genuine consensus had 25% fewer subsequent offenses than those who did not.²² This means the burden of improving outcomes doesn't fall on the ATIs alone—we as Restorative Justice practitioners are in a position to contribute meaningfully to their success.

Once all these mechanisms are in place and the case is made and the partners are willing, the hope is that we get to do our work. And if we do, for the well-being of the participants and for the Restorative Justice community, we are charged with managing the risks.

MANAGING THE RISKS

When we talk about managing risks, we are talking about risks to at least four overlapping groups of people: the offenders, the victims, the system players, and the community. I say “managing” risks because the risks cannot be fully eliminated, and it does a disservice to everyone involved to pretend otherwise, particularly when dealing with serious and violent offenses. That said, they can be managed in such a way not only

²¹ Umbreit, Vos, Coates & Lightfoot 2005.

²² Hayes & Daly 2003.

as to limit damage, but also to bring about real and meaningful change for everyone involved—including even the system players.

There are of course a variety of aspects to the support programming for a Restorative Justice project. I'm going to talk about just two today, because I think they meet a set of needs that arises more urgently from serious and violent cases involving young offenders. I want to talk about the preparatory component, and certain aspects of the follow-up. These components are in addition to any case management, staff training, referrals to services, compliance monitoring, and even mandated sentences or alternative to incarceration involvement. These are components our staff will be responsible for conducting.

PREPARATION

Managing the risks begins with preparation. One way of assessing your program's capacity for hearing serious cases is by assessing its capacity for preparatory work, which certainly belongs high on the "readiness checklist."

There are a variety of things we know a preparatory component has to do, ranging from introducing Restorative Justice to outlining guidelines and expectations to initiating a participatory and healing process. Some of that work can be carried out by outreach staff and case managers. But what I want to do today is to talk more specifically about one portion of the work that might benefit from being conducted in groups, and to frame this

preparatory work in terms of skill development. Because in Restorative Justice, and perhaps most urgently when it involves youth and/or serious and violent cases, we also have to equip the parties to participate in the first place. We have to understand participation in Restorative processes as a *skill* – one that is all-too-often under-developed or when it is developed, that atrophies at an astonishing rate in the current system, and one that we are capable of cultivating with the right programming. We have to be willing to think of ourselves not just as mediators or program administrators or case managers or even Restorative Justice practitioners, but also as *teachers*.

So if that's the case, then what are the aspects of participation we need to teach most urgently in cases involving youth and serious/violent offenses? I think they can be broken down into three components: Right Speech, Listening, and Responsibility. We'll talk about them in order.

RIGHT SPEECH

The phrase “Right Speech” comes from the Buddhist tradition, where it is considered the first principle of ethical conduct. Right Speech can be understood as refraining from (1) false speech, which means lies or misrepresentations of the truth, (2) divisive speech, or words that create rifts between people, (3) harsh speech, which is speech that offends or hurts others, and (4) idle chatter, which is speech that has no purpose or intent at all.

Speaking like this, speaking rightly, is something that we can and should practice—just as we would practice playing an instrument or a game. In working with young offenders

in particular, one of the things we encounter is the need for new vocabulary to enable them to speak rightly. I actually came back to the Buddhist formulation of this concept, which I'd been familiar with but hadn't fully integrated into my understanding of Restorative Justice, after a young man I worked with in Harlem refused to participate in a mediation because, as he said, "It ain't even worth it—I can't talk right."

The language of responsibility, accountability, remorse, even of love, is not often a language our offenders speak fluently. Even a word like "remorse" unifies a broad range of feelings and intentions into a single concept, and the ability to understand those feelings and intentions as part and parcel of the same thing is a powerful step toward speaking, and acting, right in the aftermath of harm.

Our young adults in the criminal justice system in New York City are all too often terribly, even criminally, undereducated. As part of the Restorative Justice process, we have to do what their schools haven't. We have to give them ways of articulating themselves, ways of communicating and commanding respect, ways of saying what they mean. Our intervention has to start with giving them language so that they can, as that young man from Harlem believed he couldn't, "talk right." Then we have to hear what it is they say.

Which brings us to the second principle:

LISTENING

John Forester, the innovative city planner, writes in a wonderful essay called “Listening: the Social Policy of Everyday Life”:

“Hearing is easy. Listening seems, mistakenly, not to be. We can hear words, but miss what is meant. We can hear what is intended, but miss what is important. We can hear what is important, but neglect the person speaking.”²³

I would argue that Restorative Justice is first and foremost a practice of listening, and that if we can create a space in which two parties can really hear each other, the vast majority of the transformative work takes care of itself. If that’s true, then it stands as one of the most scathing indictments of the criminal justice system as we know it, which offers very little space for the parties closest to the harm to hear one another speak. When we understand how crucial listening is to Restorative Justice, we have to then make it a priority of our preparatory work. In a world of television, video games, racism and bias against the young, we have to cultivate the skill of listening so that our participants are able to hear what is meant, to catch what is important, and not to neglect the person speaking.

²³ Forster, John. “Listening: The Social Policy of Everyday Life.” In *Planning in the Face of Power*. Berkeley : University of California Press, 1989.

RESPONSIBILITY

That last piece of not neglecting the person speaking is the heart of cultivating the third skill: responsibility. I like to put responsibility in this triad with Right Speech and Listening, because it enables us to understand responsibility as what it is etymologically: an ability to respond. The dictionary gives us a few key aspects of what it means to be responsible: one is to be “liable to be called on to answer, liable to be called to account.” But the next in line is to be “able to answer for one’s conduct.” So responsibility includes both the call and the ability to answer. Notice how it doesn’t mean taking blame, or admitting wrong-doing, or accepting guilt. It means listening to the call and being capable of offering the right speech in response.

So when we speak of these three components—listening, right speech, and responsibility, we begin to see that these are not only the components for the offenders, but for the victims as well. We need our victims to act out of responsibility—first and foremost to themselves and their healing, but also to the process. And we need them to cultivate the ability to speak and hear and answer from a place of love and safety. Moreover, in speaking about these unifying components for all parties, we begin to break down the notion that our victims and offenders are somehow fundamentally different—as people, in this process, in their communities. . . . Breaking down that divide does not in any way absolve us of any part of our responsibility to victims in what is for many the immediate aftermath of a serious trauma: it only gives us a less oppositional lens through which to see the situation and begin more effectively and compassionately our search for repair

That search for repair leads us to the next item on my proposed readiness check-list: follow-through. It is worth noting that while the entire process benefits the victims and offenders, it is primarily in follow-through that the system players and community have their needs met. I've mentioned the need for case management, staff training, referrals to services, compliance monitoring, and sentencing options, which are necessary components of any Restorative process. What I want to focus on today, though, is an aspect we're developing at Vera with the particular demands of serious and violent cases in mind.

If the guiding principles of the preparatory component were listening, right speech, and responsibility, then the corresponding principles for the follow-up component, embodied, I hope, in this model I'll describe, are intention & follow-through.

INTENTION

Particularly when it is part of a thorough Restorative Justice process, Mediation is not only about better understanding and settling the past, but equally, if not more so, about setting intention for the future. What we have in place of a sentence imposed by a judge or jury is a set of commitments or promises arrived at between people. The offender should leave the process with both a list of actions he or she is expected to take *and* the intention to take those actions. The follow-up process is charged with nurturing—or, if it is not quite there yet, cultivating—that intention.

And this process is equally charged with cultivating the intention of victims. In their case, that usually means making a conscious choice to initiate a healing process, and soliciting support for it. That healing process may well involve accessing appropriate therapeutic services, which we should always be prepared to offer swiftly and confidently, but it may also include community involvement, job training, education, improving physical health, solidifying or repairing family or friendship bonds. . . any number of things that the individuals who have been harmed deem necessary for them to recover and to thrive. A narrow vision of what constitutes or facilitates healing is antithetical to the aims and principles of Restorative Justice. We have to remember this. We have to let our victims set our course, to set their own intentions and to let those intentions shape our own. They can, and, I would argue, *must* be trusted with that task.

And one aspect of attending to those needs has to do with understanding who these victims are, and who our offenders are. We never want to undervalue the specificity and seriousness of the impact on the victim, but we also want to give him or her tools to respond to that experience in a way that is healing, forward-looking, and culturally appropriate. Our victims may well look just like our offenders. And regardless of how they look, statistics and experience tell us over and over again that the vast majority of violent offenders were themselves once—or repeatedly—victims of violence. What’s more, what we know about violence alerts us to the fact that most victims after a violent incident are now “at risk” themselves of initiating or perpetuating a cycle of violence—in the short or long term, in their communities or in their families. So we benefit from approaching both the victim and the offender as individuals at a moment in a cycle that

we are determined to intervene in and to break. That means taking a contextual, a realistic, and an empowering approach to violence, and to cultivating intentions from that standpoint.

SUPPORT & COMMUNITY

The next step, of course, is supporting those intentions. In the model we hope to create in New York City, we're looking to implement a rather uncommon hybrid. The mediations will be relatively standard victim-offender mediations or conferences, but our follow-up will look quite different. We intend to learn from the Circle practices that are practiced in some form in a variety of Native American communities and described and practiced so thoroughly and generously by Kay Pranis, among others. For those of you unfamiliar with them, circle processes typically involve many more participants or "stake-holders" than standard Victim-Offender Mediation, including interested community members, elders, and what might be regarded as more peripherally affected parties. They are "led," and I use that term loosely, by a circle-keeper, and utilize a "talking stick," often a meaningful object to the participants, to facilitate the discussion. Circle processes bring to bear the moral weight of the community and are a uniquely supportive and healing format, though they seem to have met with the greatest success as the primary means of intervention in small, close-knit, geographically limited communities with shared values that bear very little semblance to the broad, diverse, and disparate areas where we will be working. That said, I contend quite strongly that there is still a place for them in New York City.

Our plan is to include what I'm calling Commitment or Confirmation Circles—a space where the participants will confirm their commitments in a community of support persons and care-givers who will bear witness to their promises and support them in upholding them. The circles will likely take place weekly, will include a presentation of the resultant commitments from any “cases” that have been heard that week. So there may be one case in a given Circle, or there may be five. There may be just a few support persons present, or there may be a crowd. These Circles will be open to the victims and offenders, their immediate family and friends, interested members in the community, mediators and staff in the project, even court and partner agency staff, as well as—and this is perhaps the most important aspect to my mind—to “graduate” victims and offenders who have completed or are engaged in a comparable process. Our hope is to create a network of support, reinforcement, and engaged community-building to solidify the achievements of the mediation portion of the process.

The Circles will also provide an opportunity for recommitment or reconciliation for offenders who initially fail to uphold the promises they make there, and will therefore play a key role in the graduated sanctioning I mentioned earlier as a risk management strategy. At the stage of an infraction or non-compliance, we will of course welcome, but will not require the participation of the victims in the ongoing work of supporting offenders in reaffirming and acting upon their commitments. The idea is that the community, because it bore witness to the agreement, is now positioned to “hold the space” and to play a role in advocating for the completion of the sanction. This structure also means that we do not have to place excessive demands on victims, for whom

ongoing involvement may or may not correspond to their own healing trajectory, and that victims whose own offenders do or don't follow through can contribute to the success of other cases.

These Circles are a powerful tool because they recognize the variety of people who are impacted by and able to affect the outcome of harm, but they do not confine anyone to specific roles in relationship to that harm. In the Criminal Justice system, balance is achieved by assignation of adversarial roles, whose interplay is meant to assure fairness and proper outcomes. In Restorative Justice, every party is charged with cultivating balance—and that includes the victims & offenders themselves. That doesn't mean anyone has to be "neutral"; few people are. Rather, each party is asked to listen to the right speech of the others, and to respond as best they are able. Among the lessons we learn from the profound efficacy of these processes for victims, which I touched on a bit in the research at the beginning, is that none of this is about what victims owe—one can argue persuasively they owe nothing at all— but about what they deserve, need, and, when given the opportunity, sometimes even demand. All too often, victims find that the same system that assures them they owe nothing ends up treating them as though there is nothing owed to them. Responsibility turns out, in the end, to be a mutual thing—it's both a question and an answer.

CONCLUSION

So as we wrap up, I want to go back to this idea of emergency I spoke about at the beginning, and to think about what it means about our commitment to this work. I was

recently training to become a lifeguard, and one of the things I learned is that if an average person is standing at the shore and sees someone drowning, that person has no legal obligation to help whatsoever. Even if there is a flotation device right at their feet, they can stand there and watch or turn and walk away with no consequence. But once you've learned to lifeguard, the moment you've acquired that knowledge and that skill set, then suddenly you *are* obligated to act, you incur that responsibility by virtue of what you've learned.

I think at this stage it's indisputable that We as a community of practitioners have learned what need to know to respond to this emergency. The weight of that obligation is no doubt heavy, but I share the disposition of the lifeguard who trained me, who said: "It actually makes it easier because the hardest part of all of it is deciding whether or not to jump in, and now you know you don't have to stress that ever again. Now you just *go*." I think he was exactly right.

REFERENCES

- Bazemore, Gordon. *Balanced and Restorative Justice for Juveniles: a Framework for Juvenile Justice in the 21st Century*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1997.
- Bazemore, Gordon. "A Comparison of Four Restorative Conferencing Models." *Juvenile Justice Bulletin*. Washington, DC: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2001.
- Bazemore, Gordon and Mara Schiff. *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*. Portland, OR: Willan Publishing, 2005.
- Bazemore, Gordon and Mara Schiff. *Restorative Community Justice: Repairing Harm and Transforming Communities*. Cincinnati, OH: Anderson Publishing, 2001.
- Bazemore, Gordon and Mark Umbreit. *Conferences, Circles, Boards, and Mediations: Restorative Justice and Citizen Involvement in the Response to Youth Crime*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1998; prepared under grant number 95-JN-FX-0024.
- Bazemore, Gordon, Jay G. Zaslav, and Danielle Riester. "Behind the Walls and Beyond: Restorative Justice, Instrumental Communities, and Effective Residential Treatment." *Juvenile and Family Court Journal* 56, no. 1 (Winter 2005): 53-73.
- Beven, Jaimie P. and Guy Hall, "Restoration or renovation? Evaluating restorative justice outcomes." Research paper presented at *Restorative Justice Consortium Members Forum*, 13 April 2005. Available online: <http://www.restorativejustice.org.uk/About_us/pdf/Restoration_or_renovation.pdf>.
- Bradshaw, William & David Roseborough. *Federal Probation* 69.2: 2005. Available online at: http://www.uscourts.gov/fedprob/December_2005/restorative.html.
- Bradshaw, William and Mark S. Umbreit. "Crime Victims Meet Juvenile Offenders: Contributing Factors to Victim Satisfaction with Mediated Dialogue." *Juvenile and Family Court Journal* 49 (Summer 1998): 17-25.
- Braithwaite, John and Heather Strang, eds. *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press, 2002.
- Coates, Robert and John Gehm. "An Empirical Assessment." In *Mediation and Criminal Justice*, edited by M. Wright and B. Galaway. London: Sage, 1989.
- Coates, Robert and John Gehm. *Victim Meets Offender: An Evaluation of Victim-Offender Reconciliation Programs*. Valparaiso, IN: PACT Institute of Justice, 1985.

Daly, Kathleen. "Mind the Gap: Restorative Justice in Theory and Practice." In *Restorative and Criminal Justice: Competing or Reconcilable Paradigms?* Edited by Andrew von Hirsch, et. al. (Oxford: Hart Publishing, 2003): pp. 219-236.

Daly, Kathleen. "A Tale of Two Studies: Restorative Justice from a Victim's Perspective." Chapter prepared for E. Elliot and R. Gordon (eds.) *Restorative Justice: Emerging Issues in Practice and Evaluation* (Cullompton, UK: Willan Publishing, August 2004). Available online: <http://www.gu.edu.au/school/ccj/kdaly_docs/kdaly_part2_paper7.pdf>.

Davis, Robert C., Frances Kunreuther, and Elizabeth Connick. "Expanding the Victim's Role in the Criminal Court Dispositional Process: The Results of an Experiment." *Journal of Criminal Law & Criminology* 75, no. 2 (1984): 491-505.

Davis, Robert C., Arthur J. Lurigio, and Wesley G. Skogan, eds. *Victims Of Crime (2nd Edition)*. London: Sage Publications, 1997.

Davis, Robert C., Victor Russell, and Frances Kunreuther. *The Role of the Complaining Witness in an Urban Criminal Court*. New York: Vera Institute of Justice, 1980.

Davis, Robert C., Martha Tichane, and Deborah Grayson. *Mediation and Arbitration as Alternatives to Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center (First Year)*. New York: Vera Institute of Justice, 1980.

Evje, Audrey and Robert Cushman. *A Summary of the Evaluations of Six California Victim Offender Reconciliation Programs 3*, 2000. Available online: <<http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/vorp.pdf>>.

Forster, John. "Listening: The Social Policy of Everyday Life." In *Planning in the Face of Power*. Berkeley : University of California Press, 1989.

Gehm, John R. "Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks." *Western Criminology Review* 1, no. 1 (1998). Available online: <<http://wcr.sonoma.edu/v1n1/gehm.html>>.

Hayes, Hennessey and Kathleen Daly, "Youth Justice Conferencing and Reoffending." *Justice Quarterly* 20, no.4 (December 2003): 725-764.

Herman, Judith. *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror*. New York: Basic Books, 1992.

Hillian, Doug, Marge Reitsma-Street, and Jim Hackler. "Conferencing in the Youth Criminal Justice Act of Canada: Policy Developments in British Columbia." *Revue Canadienne de criminology et de justice pénale* 46, no. 3 (April 2004): 343-366.

Kramer, Rachel and Rachel Porter. *Alternative-to-Incarceration Programs for Felony Offenders: Progress Report and Preliminary Findings From a Recidivism Analysis*. New York: Vera Institute of Justice, 2000.

Levrant, Sharon, Francis T. Cullen, Betsy Fulton, and John F. Wozniak. "Reconsidering Restorative Justice: The Corruption of Benevolence Revisited?" *Crime and Delinquency* 45, no. 1 (January 1999): 3-27.

MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, "The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court: Issue Brief 5." Available online at: http://www.adjj.org/downloads/3582issue_brief_5.pdf.

Marhsall, T. "Results of Research from British Experiments in Restorative Justice." In *Criminal Justice, Restitution, and Reconciliation*, edited by B. Galaway and J. Hudson. London: Sage, 1990.

McCold, Paul. *Restorative Justice: An Annotated Bibliography*. Monsey, NY: Criminal Justice Press, 1997.

McCold, Paul and Benjamin Wachtel. *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project 3-4*, 51 (1998).

Nugent, W. and J. Paddock. "The Effect of Victim-Offender Mediation on Severity of Reoffense." *Mediation Quarterly* 12 (Summer 1995): 353-367.

Nugent, W., Mark S. Umbreit, L. Winamaki, and J. Paddock. "Evaluation of the Effects of a Victim-Offender Mediation in Practice." *Research on Social Work Practice* 6, no. 2 (1996): 155-178.

Nugent, W., M. Umbreit, L. Wiinamaki, and J. Paddock. "Participation in Victim-Offender Mediation and Severity of Subsequent Delinquent Behavior: Successful Replications?" *Journal of Research in Social Work Practice*, 2001.

Perry, L., T. Lageunesse, and A. Woods. *Mediation Services: An Evaluation*. Manitoba Attorney General: Research, Planning, and Evaluation, 1987, cited in Umbreit, Mark S., Robert B. Coates, and Betty Vos, "The Impact of Victim-Offender Mediation: Two Decades of Research," *Federal Probation* 65, no. 3 (December 2001).

Porter, Rachel, Sophia Lee and Mary Lutz. *Balancing Punishment and Treatment: Alternatives to Incarceration in New York City*. New York: Vera Institute of Justice, 2002.

Pranis, Kay. "Conferencing and the Community." Presented at the First North American Conference on Conferencing, Minneapolis, Minnesota, August 6-8, 1998. Available online: < http://www.iirp.org/library/nacc/nacc_pra.html>.

Pranis, Kay. *Engaging the Community in the Response to Youth Crime: A Restorative Justice Approach*. Washington, DC: US Dept of Justice Office of Juvenile Justice and Delinquency Prevention United States, 1999.

Pranis, Kay. "Restorative Justice in Minnesota and the USA: Development and Current Practice." Visiting Experts' Papers, 123rd International Senior Seminar, Resource Material Series No. 63, pp. 111-123. Tokyo: United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders, 2004. Available online: <http://www.unafei.or.jp/english/pdf/PDF_rms/no63/ch12.pdf>.

Pranis, Kay. "Restorative Justice in Minnesota and the USA: Implementation and Outcomes." Visiting Experts' Papers, 123rd International Senior Seminar, Resource Material Series No. 63, pp. 124-135. Tokyo: United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders, 2004. Available online: <www.unafei.or.jp/english/pdf/PDF_rms/no63/ch13.pdf>.

Pranis, Kay, Barry Stuart, and Mark Wedge. *Peacemaking Circles: From Crime to Community*. St. Paul, MN: Living Justice Press, 2003.

Presser, Lois and Patricia Van Voorhis. "Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs." *Crime and Delinquency* 48, no. 1 (January 2002): 162-188.

Roy, S. "Two Types of Juvenile Restitution Programs in Two Midwestern Counties: A Comparative Study." *Federal Probation* 57 (1993): 48-53.

Schiff, Mara. "Restorative Justice Interventions for Juvenile Offenders: A Research Agenda for the Next Decade." *Western Criminology Review* 1, no. 1 (1998). Available online: <<http://wcr.sonoma.edu/v1n1/schiff.html>>.

Schmid, Donald J. *Restorative Justice in New Zealand: A Model for U.S. Criminal Justice*. Fulbright New Zealand, Ian Axford Fellowship Report, US Department of Justice in the Northern State of Indiana, 2001. Available online: <<http://www.fulbright.org.nz/voices/axford/docs/schmidd.pdf>>.

Schneider, A. "Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies." *Criminology* 24 (1986): 533-552.

Sherman, Lawrence W., Heather Strang, and Daniel Woods. *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE) 12* (2000). Cited in Mark Umbreit, Betty Vos, Robert B. Coates, and Elizabeth Lightfoot, "Symposium: Restorative Justice In Action: Restorative Justice in the Twenty-First Century," *Marquette Law Review* 89, no. 2 (Winter 2005), pp 286-87.

Sherman, L.W., Strang, H. and Woods, D. "Captains of restorative justice: experience, legitimacy and recidivism by type of offence." In G.M. Weitekamp and H-J. Kerner

(eds), *Restorative Justice in Context: International Practice and Directions*. Willan Publishing, Devon. 229-256.

Strang, Heather. *Repair or Revenge: Victims and Restorative Justice*. Oxford: Clarendon Press, 2002.

Strang, Heather and John Braithwaite. *Restorative Justice: Philosophy to Practice*. Aldershot, Hants, England: Ashgate/Dartmouth, 2000.

Sullivan, Dennis and Larry Tifft. *Restorative Justice: Healing the Foundations of our Everyday Lives*. Monsey, NY: Willow Tree Press, 2001.

Umbreit, Mark S. "Victim Empowerment Through Mediation: The Impact of Victim Offender Mediation in Four Cities." *Perspectives* Special Issue (1994): 25-30.

Umbreit, Mark S. "Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment." *Western Criminology Review* 1, no. 1 (1998). Available online: <<http://wcr.sonoma.edu/v1n1/umbreit.html>>.

Umbreit, Mark S., William Bradshaw, and Robert B. Coates. "Victims of Severe Violence Meet the Offender: Restorative Justice Through Dialogue." *International Review of Criminology* 6, no. 4 (Winter 1999): 321-343.

Umbreit, Mark S., Robert B. Coates, and Boris Kalanj. *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Monsey, NY: Criminal Justice Press, 1994.

Umbreit, Mark S., Robert B. Coates, and Betty Vos. "The Impact of Victim-Offender Mediation: Two Decades of Research." *Federal Probation* 65, no. 3 (December 2001).

Umbreit, Mark S. and Jean Greenwood. *Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue*. Washington, DC: Office for Victims of Crime, 2000.

Umbreit, Mark S. and Jean Greenwood. *National Survey of Victim-Offender Mediation Programs in the United States*. Washington, DC: Office for the Victims of Crime, 2000; prepared under grant number 96-VF-GX-K006.

Umbreit, Mark S., Betty Vos, Robert B. Coates, and Elizabeth Lightfoot. "Symposium: Restorative Justice In Action: Restorative Justice in the Twenty-First Century." *Marquette Law Review* 89, no. 2 (Winter 2005): 251-304.

Van Ness, Daniel W. and Karen Heetderks Strong. *Restoring Justice* (2nd edition). Cincinnati, Ohio: Anderson Publishing, 2002.

Vera Institute of Justice. *The Unintended Consequences of Incarceration: Papers From a Conference Organized by Vera Institute*. New York: Vera Institute of Justice, 1996.

Walker, Loren. "Western Application of Indigenous Conflict Resolution Practices." Presented at Fifth National Conference on Family and Community Violence Prevention, Angels, CA, April 9, 2001. Available online: <<http://www.restorativejustice.org/articlesdb/articles/5402>>.

Wemmers, Jo-Anne and Katie Cyr. "Can Mediation Be Therapeutic for Crime Victims? An Evaluation of Victims' Experiences in Mediation with Young Offenders." *Revue Canadienne de criminology et de justice pénale* 47, no. 3 (July 2005): 527-544.

Young, Douglas, Rachel Porter, and Gail A. Caputo. *Community Alternatives for Felony Offenders : A Preliminary Assessment*. New York: Vera Institute of Justice, 1998.

Young, Douglas, Timothy Ireland, and Sharon Morris. *Diverting Drug Offenders to Treatment: Year Three Report on DTAP Expansion*. New York: Vera Institute of Justice, 1995.

Zehr, Howard. *Changing Lenses: A New Focus for Criminal Justice*. Scottsdale, PA: Herald Press, 1990.