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## Seeking Justice for Victims and Offenders: A Needs-Based Approach to Justice

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SEEKING JUSTICE FOR VICTIMS AND OFFENDERS: A NEEDS-BASED  
APPROACH TO JUSTICE

by

Patrick M. Gerkin

A Dissertation  
Submitted to the  
Faculty of The Graduate College  
in partial fulfillment of the  
requirements for the  
Degree of Doctor of Philosophy  
Department of Sociology

Western Michigan University  
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# SEEKING JUSTICE FOR VICTIMS AND OFFENDERS: A NEEDS-BASED APPROACH TO JUSTICE

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Western Michigan University, 2006

This dissertation is a case study investigation of a victim-offender mediation program in a mid-western state. Victim-offender mediation is one form of a much greater movement currently emerging within the criminal justice system known as restorative justice. The focus of this dissertation is to examine the connections between theory and practice with regards to mediation as a form of restorative justice.

This research fills a void in the restorative justice literature. It offers findings based on empirical research about the issues that are central to restorative justice theory and practice. There is a wealth of theory claiming that restorative justice can deliver a peaceful justice that makes the situation right while empowering the participants, meeting their needs, taking steps towards reintegration, and establishing awareness between the participants about the reality of the other. These claims have been rarely evaluated although they represent the driving theoretical force behind the restorative justice movement.

The data for this dissertation were collected through observations of the mediation process, a post-mediation survey for both victims and offenders, post-mediation interviews with participants, and analysis of the agreements produced in the mediation.

The findings produced herein represent the amalgamation of all of this data. These findings identify both successes and failures with regard to the ability of these mediations to deliver the restorative vision of justice. My findings indicate relative success in the mediations observed about the ability of restorative justice to make the situation right without creating further harm for the participants, to identify and address needs of victims, to foster recognition for victims, and to empower the victims. There was much less success in these mediations regarding the involvement of both the micro and macro communities from which victims and offenders emerge and consequently about the notion of reintegration. Similarly, I found that although the input of victims was solicited throughout the mediations, the role of offenders was much more limited. Consequently, the potential for offenders to be empowered or to have their needs identified or met by the mediation was reduced.

Several findings emerged within this research as well, including the impact of power dynamics in the process of mediation and the general lack of awareness about the restorative vision of justice demonstrated by victims and offenders who participated, both of which have implications for their participation and consequently the outcomes of restorative practices.

A discussion of the findings presented, the implications of these findings for practitioners of restorative justice, the limitations of this research, and suggestions for the direction of future research regarding restorative justice are presented.

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## CHAPTER I

### WHAT IS RESTORATIVE JUSTICE?

It is undeniable that our criminal justice system, as it operates today, is a system designed to fight fire with fire. It is a system that responds to violence with violence and harm with harm (Caulfield, 1996; Quinney, 2000). Retribution and incapacitation are key elements to today's criminal justice system. From the continued use of the death penalty to the ever-growing prison population, it would seem as though the United States is content to fight crime in this manner. Today, according to the U.S. Bureau of Justice Statistics (2004), there are roughly 2.1 million prisoners behind bars, a figure that places the United States at the top of the list in terms of the number of incarcerated offenders. While in prison, inmates are forced to deal with all of the elements of a total institution: a lack of privacy and private property and violence, including assault and rape, which are not uncommon. Prisoners surrender nearly all control of their lives including the most mundane tasks like showering, eating, and exercising. This experience is not only dehumanizing, but also degrading and often leaves prisoners feeling worthless (Bartollas, 2002).

It is simply a fact that a vast majority of persons sentenced to prison will one day return to communities outside of the prison walls (Philip, 2001. p. 509). However, escaping the prison itself does not mean that harsh treatment will end. Prisoners are forced to carry a heavy stigma that closes many of the doors open to others in society. As a result, criminologists have been aware that our system works much like a revolving door. Prisoners emerge from the prison walls to face a society that has essentially

stacked the deck so as to insure that prisoners will fail. Eventually the offender finds himself or herself walking right back through the door and into prison.

This is the reality that has fueled the movement, albeit a small one in this country, to put a lock on the so-called revolving door of criminal justice. Restorative justice represents an effort to take a step towards a peaceful resolution to the harm caused by crime. Victim Offender Mediation Programs (VOMP) such as the one that is the focus of this research represent a form of restorative justice that has as a central goal a desire to make things right for the victim and offender, as well as for the larger community. In doing so they offer a form of justice that is based on the needs of the participants.

Restorative justice is not a new development in the field of criminal justice. In fact, restorative justice has been practiced by many groups of people throughout history. John Braithwaite (2002) reports that evidence of restorative techniques date back to 6000-2000 B.C. A popular definition provided by Tony Marshall states that restorative justice is “a process whereby all the parties with a stake in a particular offence [sic] come together to resolve collectively how to deal with the aftermath of the offence [sic] and its implications for the future” (1996: p. 37). The process begins with the realization that crime signifies injury. One goal, then, of restorative justice is to repair that injury, to make the situation right. Victim(s) and offender(s), as well as all interested parties, take part in a process of healing the injury experienced by the victim.

Dennis Sullivan and Larry Tifft liken restorative justice to needs-based justice. In needs-based justice "we seek to create and apply restorative values and meet needs in a harm situation" (Sullivan and Tifft, 2001. p. 101). Meeting the needs of the parties involved is how the situation is made right. This includes meeting the needs of not only



the victims, but also the offenders and the community. Throughout the process an atmosphere of respect is maintained for all participants. The offender accepts responsibility for the harm caused and the victim and offender work together to repair the harm.

Restorative justice represents a shift from a rights-based or deserts-based justice system to a needs-based justice system. Sullivan and Tifft (2001) state

When we examine what is required to embrace a restorative approach to justice, we see a political economy in which the needs of all are met, but met as they are defined by each person. Such an approach towards justice puts a great premium on the participation of everyone, and on the expression of the voice of each. In other words, the well-being of everyone involved in a given social situation is taken into account: that is, everyone involved is listened to, interacted with, or responded to on the basis of her or his present needs (pp.112-113).

Thus, justice begins with identifying the needs of the persons involved.

This dissertation involves a case study of a restorative justice program in a mid-western state designed to explore the larger issues of restorative justice and to offer possible insights into the ability of victim offender mediation programs to live up to the principles of restorative justice. I observed 14 mediations, including the pre-mediation meetings for both victims and offenders. I collected a total of 17 agreements produced by the 14 mediations and I collected post-mediation survey data from 119 victims and 130 offenders. I have also collected post-mediation interviews with two adult victims from the mediations observed. I have utilized these data to evaluate the Balanced and Restorative Justice Center with regards to the effectiveness of their victim offender mediation program and its outcomes. Together, my observations, the survey data, the agreements, and the interviews have been designed to evaluate the process with regards to several crucial aspects of justice that is restorative. These characteristics include the

ability of restorative justice to make the situation right, to empower victims and offenders, to meet the needs of the victims, offenders, and the community, and to reintegrate victims and offenders back into their respective communities. In the following brief discussion I introduce the significant concepts that compose the focus of this dissertation.

### **Restorative Justice as Needs-based Justice**

A needs-based justice response represents an attempt to achieve justice by addressing the needs of the persons involved (Sullivan and Tift 2001). This concept can be difficult to grasp because it lies outside of the retributive paradigm that reigns supreme in the field of criminal justice. In a needs-based system the thoughts and feelings of all people are vital. One challenging aspect of a needs-based justice response is to keep in mind that offenders have needs too. M. Kay Harris (2004) states:

Equality refers to the basic, yet radical, idea that all persons have equal value as persons. Once we develop a true comprehension of the basic sameness that flows from equality, we find it impossible to justify doing to others what we do not want done to ourselves. A commitment to equality thus carries with it a commitment to mutual care for the growth and welfare of all (p. 132).

That includes offenders. To deny that offenders also have needs would be to deny offenders their opportunity to heal and to have their harms repaired. As such it would cease to be a true needs-based justice. Howard Zehr (1990) states, “In the aftermath of crime, victims' needs form the starting point for restorative justice. But one must not neglect offender and community needs” (p. 200). The process of achieving justice begins with the needs of the parties involved, including victims, offenders and the community. What follows is a discussion of some common needs identified by victims, followed by a discussion of offender needs and community needs.

## **Victim Needs**

The psychological and emotional needs of victims are going to vary from person to person, which is part of the reason why participation in the restorative process is so significant. The only way to uncover the various needs of victims is provide them with opportunities to communicate just exactly what those needs are. One psychological hurdle that victims often face is fear. Victims often have questions about how or why they were chosen to be victimized. Similarly, many victims struggle with the fear of re-victimization. Restorative justice creates an opportunity for the victim to seek answers to the many questions that they have and to gain assurance that the behaviors will not be repeated.

Daniel Van Ness and Karen Strong note that even in cases where serious trauma is not likely, victims often experience a crisis reaction for which they should seek a source of support. Frequent symptoms of this crisis reaction include isolation and disorientation. Van Ness and Strong go on to note that negative self identity is another common reaction to victimization. They point out that victims are commonly viewed as having failed in some way to protect themselves. This leaves the victims in a state of limbo in which they have to fight to preserve their sense of self control and dignity.

Furthermore, Van Ness and Strong (2002) also suggest that Post-Traumatic Stress Disorder (PTSD) and depression are frequent symptoms of individuals victimized by violent personal crimes.

Dealing with these personal issues is one of the significant tasks of restorative justice. Zehr (1990) suggests that in order to find healing, victims must find answers to six basic questions. Those questions include:

1. What happened?
2. Why did it happen to me?
3. Why did I act as I did at the time?
4. Why have I acted as I have since that time?
5. What if it happens again?
6. What does this mean for me and for my outlook (my faith, my vision of the world, my future)? (p. 26-27)

These questions represent just some of the many questions which victims have in the wake of their victimization at the hands of another. Finding answers to these questions and others that arise are part of the healing process and are something that victims both desire and deserve.

Acknowledgement can take a variety of forms from acknowledging responsibility and admitting an act was wrong, to acknowledging the feelings of those who were harmed. Our current system encourages offenders to use rationalizations that are counterproductive to the achievement of true justice. Lois Pressler (2003) in citing Minow (1998), Wagatsuma and Rosett (1986), and Herman (1997) states:

Apology confirms that one did, in fact, perpetrate the objectionable deed. That is, it has the offender taking responsibility for the deed. It also assigns negative value to the deed. In doing so, it validates the victim's experience and acknowledges that the victim is a person of worth who should not have been treated as he or she was (p. 803).

The restorative process encourages offenders to acknowledge the harms caused by their actions. Through the restorative process offenders learn firsthand of the harms that their actions have caused. This in turn encourages the offender to take responsibility and promotes feelings of remorse. This is important for victims as well as their loved ones and the community who desire acknowledgement from the offender that what was done to them was wrong and undeserved (Harris, 2003; Presser and Van Voorhis, 2002; Zehr, 1990).

Once victims receive acknowledgement from the offender and the community that a harm has occurred, the healing can begin. One key element to the healing can come in the form of empowerment. To some extent empowerment can come from the acknowledgement that the actions of the offender(s) were wrong. Presser and Van Voorhis (2002) states, "...an affirmation by community members that the crime was unjustified is important for the victim to feel himself or herself to be a person of worth and social esteem" (p. 170). The empowerment felt by victims created through the restorative process is paramount in the process of healing. Zehr (1995) agrees. He states:

Denial of victims' autonomy by offenders is in large part what makes being a victim so traumatic. To be whole we need some sense of being in control of our own lives and destinies. To have that taken away suddenly, arbitrarily, frighteningly, is intensely dehumanizing. Offenders turn victims into objects, into "things," robbing them of power over their own lives. This is deeply degrading (p. 52).

Zehr goes on to note that victims are denied any real power throughout the retributive criminal justice process. They are ignored and left out of the process thus deepening their sense of powerlessness and victimization. Fulfilling this need for victims is one way that restorative justice can help victims heal.

A vital piece of the empowering process is restoring to victims their voice. This can be done by involving victims in the process of achieving justice. Their voice must be part of this process (Harris, 2003). Victims have a need to tell their story and for others to listen. Providing an opportunity for victims to speak about their experiences in a non-threatening supportive atmosphere allows victims to reclaim their voice and become empowered by the justice process. This communication between victims and the restorative justice system is the only true way to achieve a needs-based justice.

Practitioners of restorative justice cannot expect to be successful in addressing the needs

of victims without their participation (Sullivan and Tifft 1990). Our current criminal justice system fails victims miserably in this regard. Victims often have no voice in the process and very little voice in the outcome of their “case.”

### **Offender Needs**

Offenders have needs as well and their needs cannot be neglected if we are to achieve a true needs-based justice. Sullivan and Tifft (2001) have noted that victim and offender needs exist on two separate levels. We pay close attention to the psychological and emotional needs of victims and yet we do not recognize the psychological and emotional needs of the offenders. Instead we focus on needs such as employment, housing, and education. There is little doubt that these needs are significant, however, as Sullivan and Tifft note,

...by focusing on this level of needs alone we do not show the same level of concern for them as those who have been harmed. This is true even when the former might also be suffering from isolation and disorientation, and require the same psychological care and emotional support that those they harmed require” (2001 p. 83).

By addressing offender needs in this fashion the retributive justice system often neglects the other needs of offenders and as a result, does little to address the issues that may cause one to engage in the harm producing behavior in the first place. Often we find that offenders are victims themselves in many ways. They are victims of violence, aggression, neglect, and many lack emotional support and care networks, which create psychological and emotional needs of their own. Other needs for offenders include the need for empowerment and the need to have their behaviors challenged.

Offenders too share in the need for emotional and psychological needs to be addressed. Many offenders desire someone to listen to their truth. They too have a need

for emotional support and care. They may desire forgiveness, acceptance, and to know that they are not bad people, but simply made bad decisions.

Offenders also share with their victims the need to become empowered and the need to have their voices heard. As Harris (2004) points out, the current criminal justice system denies offenders their voice. The state controls the process and overpowers the offender every step of the way. Offender input is minimal and the offender has no power to help determine the outcome or sentence of the “case.” Furthermore, offenders have no power after sentencing. A sentence to jail, prison, or even probation represents a removal of any personal power that offenders might have had. These actions represent the removal of dignity for offenders as well. People have a need to be in control of their lives. When these feelings are gone one can cease to feel whole or to maintain a positive self image. Harris states:

Everyone needs to feel that they are in control of their own lives. Only then can they give to others, participate in intimate relationships, make contributions to community life, engage in cooperative activities, and exercise leadership. These capacities are to be valued and nurtured in everyone. Learning to exercise self-control is critical for all of us and we learn to accept responsibility for ourselves and our actions only when we have opportunities for choice and occasions to find and use our power (p. 134).

Yet we know that the criminal justice system operates in a fashion which denies offenders a chance to participate. Instead, it overpowers offenders at every stage of the process making them spectators of the process and helpless to make decisions or gain any sense of power.

Following the logic of Sykes and Matza's (1964) theory regarding the techniques of neutralization it becomes apparent that offenders need to have their actions challenged. Many offenders utilize techniques of neutralization to reduce the guilt and to deny the

harm that they have caused. (Matza 1964) Offenders need to have these techniques challenged. By denying offenders the use of the techniques of neutralization it is hoped that the offenders will become aware of the harms created by their actions. Challenging offenders in this fashion is somewhat difficult because the restorative process requires that all persons are respected throughout the process. Challenging offenders about the techniques of neutralization sometimes requires a confrontation or questioning of the offenders beliefs and ideals. Doing so in a manner in which the offender feels respected, not attacked, can be a difficult task. In restorative justice it is the offender's action that is viewed as bad while the offender him/herself must be able to retain or begin steps towards a positive self identity.

### **The Community in Restorative Justice**

As Sullivan and Tifft point out, the community has a stake in restorative justice as well. This includes not only the small communities of care that surround the participants, but also the larger communities from which the victims and offenders emerge. In the past and even today disputes have been handled within the community by members who share an interest in the well-being of the community. Neighborhood quarrels and sometimes even juvenile delinquency are handled by interested community members or the micro-community (McCold 2004). As the state garnered control over crime and responses to crime the community lost its ability to contribute in the justice process and with this their needs became lost as well. Zehr states:

Part of the tragedy of modern society is our tendency to turn over our problems to experts. ... In doing that, we lose the power and ability to solve our own problems. Even worse, we give up opportunities to learn and grow from these situations. Restorative responses must recognize that the community has a role to play in the search for justice (1990. p. 204).



McCold (2004) notes that the micro-community composed of the victims, offenders, and their respective families and friends are the primary stakeholders. McCold (2004) states:

The best way for individuals directly affected by a crime to reliably meet their needs is to participate in deciding what will happen. The very act of participating in a restorative process is what brings the most healing. So victims, offenders and their respective communities of care need to 'own their conflicts' and stop the courts' professional advocates and magistrates from stealing the resolution of the conflict from them (p. 168).

McCold also acknowledges a macro-community that is delineated more by geography, such as one's neighborhood or town. According to McCold, the macro-community's ultimate responsibility is to develop and support micro-community restorative processes involving all direct stakeholders.

Restorative justice represents one attempt to get the community involved in dealing with the aftermath of crime and harmful behavior and to get its communities involved to prevent future crime. Zehr and Mika (1998) argue that the justice process belongs to the community. As part of their article dedicated to the fundamentals of restorative justice, Zehr and Mika note that under restorative justice, the community and its members have an active role in doing justice. They state, "the justice process draws from community resources and, in turn, contributes to the building and strengthening of community" (p. 53). In their conclusion Zehr and Mika suggest that there are several indicators of justice that are restorative. They note that restorative justice involves and empowers the affected community through the justice process and this increases its capacity to recognize and respond to community bases of crime. Furthermore, restorative justice encourages collaboration and reintegration rather than coercion and isolation.

This final point raises awareness of another crucial aspect of the role communities must play in restorative justice. John Braithwaite (2002) states:

Reintegrative shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant. Shaming and reintegration do not occur simultaneously but sequentially, with reintegration occurring before deviance becomes a master status (p. 101).

Shaming is part of the restorative justice process. Upon completion of this process, the time begins for reintegration. This role is split between the micro- and macro-communities. Each community has a role to play in the successful reintegration of the harm- producers back into society.

Restorative justice represents a shift in thinking. Instead of a focus on determining guilt and dispensing punishments to offenders, the focus of the restorative justice system becomes to repair the harm caused by crime and preventing similar harms. As noted, this process involves meeting the needs of victims and offenders and the larger communities. If the restorative process creates further harm then the process has failed.

In chapter II, I discuss the theoretical aspects of my research. I begin the theoretical discussion with the overarching theoretical theme proposed in this research, peacemaking criminology. Peacemaking criminology is a broad theoretical umbrella that encompasses many theories that share as a theme a desire to find peace rooted in justice. More specifically, I discuss labeling theory, learning/differential association theory, and reintegrative shaming. Finally, I include a discussion of the defiance theory offered by Sherman. Sherman draws on the work of deterrence theorists to argue that we need to be examining the ways that we punish. Sherman explains that under certain conditions offenders are more likely to perceive their punishment as fair and justifiable.

Accordingly, when this occurs offenders are less likely to engage in subsequent violations of the law. Following each specific theory is a discussion that serves to tie each theory to the umbrella theme of peacemaking criminology and also to the practice of restorative justice.

Chapter III is the Literature Review. In this chapter I review the now substantial collection of empirical research regarding restorative justice. This review is broken up into two parts. First, I review the research with regards to restorative justice and participant satisfaction, perceptions of fairness, apologies, reduction of fear, reaching agreements, impact on recidivism, cost effectiveness, participant characteristics, and finally I address the impediments to the success of restorative justice.

Second, I explore the concepts of empowerment, recognition, reparation, needs, and accountability. I also explore the role of the community in restorative justice. These concepts have been the focus of few evaluations yet they are the driving force behind the movement of restorative justice. Failing to evaluate restorative justice in these terms sends the message that these aspects are of less importance. In reality, these concepts constitute the basic fabric of restorative justice.

Chapter IV delineates the research methods of this project. This includes not only a discussion of the methods themselves, but also an overview of the research design and a plan for analysis of the data collected.

My research design follows an outline provided by Robert Yin (1993). The design is composed of five main components. In the first piece of my research design I offer the study's questions. I begin with a discussion of the more broad and theoretical questions that are embedded in this research. From here I move to the more concrete

questions that I have addressed. This includes a copy of the survey questions asked of the participants, as well as a copy of the interview protocol I utilized for both of the victims interviewed.

The second part of my research design contains the study's propositions. Each proposition directs attention to the main foci of this study. The propositions focus on both notions of justice, from broad to specific, and impediments to justice within the process.

The third part of the research design is to identify the unit of analysis. The unit of analysis for this work is mediations processed by a BARJ center in a mid-western state. I observed a total of 14 mediations starting with the pre-mediation meetings of both victims and offenders and ending with the mediation itself. Included within this unit to be analyzed are the agreements produced, post-mediation survey data for victims and offenders and two interviews with victims following their mediation.

The fourth step in completing my research design is to provide the logic linking the data to the propositions. I make this connection using a method known as pattern matching. Analyzing the data has revealed a variety of patterns regarding the restorative process and its outcomes. Identifying these patterns has allowed me to comment on the propositions of my research as described in fifth and final step.

The fifth and final step in the research design is to identify the criteria for interpreting the findings. Because this case study involves researching multiple mediations, I have utilized a method known as replication logic. When analyzing any data, patterns often emerge. These patterns constitute replication. If similar results are obtained in the multiple mediations, then replication is said to have taken place. In some

instances the patterns that emerged demonstrate support for my study's propositions. In other instances, the patterns revealed that the mediations observed did not satisfy my study's propositions.

Chapter V is dedicated to analysis of the findings. My findings revolve largely around the experiences of victims and offenders with the restorative justice process. With regards to my research, I have proposed that restorative justice can be viewed as a needs-based justice response where victims and offenders can become empowered and the situation can be made right between the parties without causing further harm. I have also acknowledged that the community has an essential role in the restorative justice process. The questions that I have utilized for my interview protocol revolve around these central issues in restorative justice.

The findings presented in chapter five follow the outline created by my study's original propositions. The data is organized around the indicators I have identified for each proposition in subheadings, including a section dedicated to themes which emerged as the data were collected. The subheadings were developed to capture the central themes behind the final propositions of the study: making things right, community, needs, recognition, and empowerment. The emergent themes have their own segment and I present the data under the subheadings of agreements, accountability and participation.

Chapter VI is dedicated to discussion and conclusions. This chapter follows the outline of the previous chapter discussing the data presented. Each of the study's propositions is discussed under the headings provided in Chapter V. This discussion is followed by the policy implications which I have organized into three sections. These

sections include the community, needs, and participation. Finally, I discuss the limitations of my research.

## CHAPTER II

### THEORY

#### Introduction

“Justice isn’t about abstract standards of legality but about serving human well-being and making our relationships work well—effortlessly, peacefully, even joyfully in calling forth the growth of which we’re capable” (Breton & Lehman, 2001. pp. 13-14).

To understand restorative justice one must focus on relationships and growth. One must also address the concept of peacemaking as a way to achieve justice. Peacemaking criminology is the overarching foundation that informs this research. Several theories can be applied to restorative justice practices, as they address fundamental concepts of a peacemaking perspective. In this theory section I review several such theories and demonstrate their application to an understanding and evaluation of restorative justice practices. The major theories to be discussed include labeling theory, learning/differential association theories, defiance theory, and reintegrative shaming. Each of these theories is discussed independently followed by a brief discussion linking these theories to the theoretical framework of peacemaking criminology.

According to Caulfield and Evans (1997), “Peacemaking, as an approach to ‘doing’ criminology, has been most formally recognized since the publication of Pepinsky and Quinney’s (1991) *Criminology as Peacemaking*” (p. 103). Caulfield (1996) notes, however, that it is really only the label that is new. Peacemaking criminology has long been a vein running through the field of criminology, influencing theory, policy, and practice.

Quinney (1991) states, “A criminology of peacemaking, the nonviolent criminology of compassion and service, seeks to end suffering and thereby eliminate crime” (p.4). He elaborates with four themes that provide the basic foundation of peacemaking criminology: awareness of human suffering, right understanding, compassion and service, and the way of peace and social justice.

The first theme discussed by Quinney is that crime is a result of human suffering. In order to end crime we must work to end human suffering, but this first requires an awareness of the human suffering all around us. Quinney (1991) states, “whenever our actions are motivated by greed, hatred, or delusion, the inevitable result is suffering” (p.6-7). Furthermore, he argues that suffering has arisen out of disunity and separation from the embracing totality and it can be ended only with the return of all sentient beings to a condition of wholeness. Thus, he argues that the healing of separation is necessary if there is to be an end to the suffering.

The second theme is right understanding. Quinney (1991) states, “Being on a simple path of right understanding we create thought, words, and deeds that will end our suffering” (p. 7). He goes on to cite the forest monk Achaan Chah, who writes: “Only when our words and deeds come from kindness can we quiet the mind and open the heart” (p. 7). Each of us has the potential to transform our being, to gain right understanding. Quinney argues that in order to do so we must rid ourselves of the presumed objectivity and rationality of modern science. Quinney (1991) states:

Our mode of thinking affects the way we live, and in the meantime we have not gotten any closer to understanding. We seek a mind that, instead of producing conflict and violence, heals—a compassionate mind rather than an objective mind. The compassionate mind is found beyond the boundaries of Western scientific rationality (p. 7).



Along the path to achieving right understanding one gains wisdom and develops feelings of compassion. These are necessary to create an awareness of the suffering and the willingness to help those who suffer.

Thus Quinney's third theme of compassion and service is explicitly tied to the first two. Individuals must first be aware of human suffering. It is through this awareness that they can begin to develop right understanding. Along the pathway to right understanding one develops compassion. Quinney cites the Tibetan Buddhist master, Rinpoche Kalu who says that the suffering we experience in the world, "is caused by the six afflictions—ignorance, desire, pride, anger, jealousy and greed" (p.9). The most hopeful way to attain world peace, to end global suffering, he adds, is by developing within ourselves compassion and loving-kindness towards others. The path to ending suffering is through compassion.

Finally, Quinney offers the way of peace and social justice. Peace and social justice are achieved through the personal transformation described above. Quinney (1991) states:

All of this is to say, to us as criminologists, that crime is suffering and that the ending of crime is possible only with the ending of suffering. And the ending both of suffering and of crime, which is the establishing of justice, can come only out of peace, out of a peace that is spiritually grounded in our very being. To eliminate crime—to end the construction and perpetuation of an existence that makes crime possible—requires a transformation of our human being. We as humans must be peace if we are to live in a world free of crime, in a world of peace (p.11).

What Quinney describes is a pathway to the ending of suffering and to the ending of crime. It is a pathway that begins with each person.

Caulfield (1996) expands upon this when she states, "The way of peacemaking, then, begins at the intrapersonal level and must be integrated interpersonally, within

institutions, within society, and within the global context” (p. 97). If there is not peace at the individual level, how can we expect peace at the societal level? If, on the other hand, there is peace at the individual level, we could expect that peace to infiltrate the society’s institutions. As Caulfield notes, “Using harmful techniques as a way to bring about peace is not possible; the actors themselves must live peace if they are to bring peace to the larger social setting” (p. 96).

However, as Caulfield (1996) points out, the criminal justice system in the United States is based in violence. The victims as well as those who have perpetrated the harm are denied a voice in the process. There is no attempt to meet their needs. Instead the system is designed to punish. Violence is such a part of our system that the system cannot achieve non-harmful outcomes. She states, “Peaceful outcomes and social justice, to be achieved, require a process that stresses them, not a process that is antithetical to them” (p. 96). Quinney (2000) agrees. He states,

Responses to crime that are fueled by hate, rather than generated by love, are necessarily punitive. Such responses are a form of violence that can only beget further violence. Much of what is called “criminal justice” is a violent reaction to, or anticipation of, crime. The criminal justice system, with all of its procedures, is a form of negative peace, its purpose being to deter or process acts of crime through the threat and application of force (p. 205).

This is the current state of affairs. It is from here that we must move towards a more peaceful society. According to Quinney, it must begin with each and every one of us. We must develop an awareness of the human suffering in our world to become a society of compassionate people willing to help end that suffering. For it is only through the ending of suffering that we can finally see the ending of crime.

Caulfield and Evans (1997) liken peacemaking criminology to an “overarching umbrella of a perspective or as the core of a perspective” (p.103). Peacemaking criminology is about a journey in human transformation. It is about making relationships right. It is about justice, not for the state, but for victims and offenders. It resounds with peace, love, support and compassion. It resounds in each of the theories reviewed here.

### **Labeling Theory**

The beginning of the labeling/societal reaction perspective is most often traced back to the work of George Herbert Mead. Mead likened the criminal labeling process to, “that of an angel with a fiery sword at the gate who can cut one off from the world to which he belongs” (Pfohl, 1994. p. 347). Mead was a symbolic interactionist who was concerned with human interaction. Interactionists theorize that one’s mind and self-consciousness are not part of one’s inborn capacities. Instead, they are developed throughout one’s life in a never-ending process of socialization. They are not stable, but instead transformed through a process of social interaction. Thus interactionists believe that significant others in one’s life have a role in developing how one views one's self.

Mead’s work opened the door for others, such as Frank Tannenbaum, who many believe to have produced the first labeling theory. It is not that Tannenbaum coined the idea of labeling; rather he was the first to not overlook the significance of the concept in a theory of deviance. Tannenbaum, similar to other interactionists, felt that a person’s self image was constructed primarily through interactions with others. This meant that those others had a certain role in creating one’s self-image. Tannenbaum addresses this process in his 1938 book titled *Crime and the Community*. He states:

The process of making the criminal, therefore, is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing, and evoking the very traits that are complained of (p. 19-20).

Tannenbaum explores this process in the lives of delinquent youths. He notes that initial delinquency on the part of youths might lead to the belief that they are simply good kids doing bad things. However, persistent deviancy may lead adults to define the kids themselves as bad. Tannenbaum states:

Explanation lies in the focusing of attention upon the delinquent child in a way that sets him off in his own mind from the other children and makes him 'know' and 'feel' bad. What was play and fun and mischief and robbin' has become crime and evil (p. 71).

Thus, through interaction with adults, the youths form a new self-image. They may begin to define themselves as bad and begin acting the part. Tannenbaum states, "The person becomes the thing he is described as being" (p. 20), in this case a criminal. According to Tannenbaum, the stigma accompanying the deviant label may drive people further into the realm of nonconformity.

Edwin Lemert utilized Tannenbaum's labeling process in his own general theory of deviance that he spells out in *Social Pathology* (1951). Lemert was able to clarify and further conceptualize the basic idea that reacting in a certain fashion to deviant behavior may cause the individual to engage in secondary deviance and may lead to the adoption of a deviant identity. He accomplished this through his conceptualization of primary and secondary deviance. Cullen and Agnew cite Lemert in stating that primary deviance is "polygenic, arising out of a variety of social, cultural, psychological, and physiological factors" (p. 304). Labeling theorists were not concerned with explaining primary deviance. They were largely concerned with secondary deviance. For example, Lemert

believed that individuals were pushed into secondary deviance as a result of social interaction with others. In essence it was the reaction of the criminal justice system and the community to the primary deviance that leads to secondary deviance.

According to Lemert (1951) the sequence of interaction leading to secondary deviation is as follows:

- (1) primary deviation;
- (2) social penalties;
- (3) further primary deviation;
- (4) stronger penalties and rejections;
- (5) further deviation, perhaps with hostilities and resentment beginning to focus upon those doing the penalizing;
- (6) crisis reached in the tolerance quotient, expressed in formal action by the community stigmatizing of the deviant;
- (7) strengthening of the deviant conduct as a reaction to the stigmatizing and penalties;
- (8) ultimate acceptance of deviant social status and efforts at adjustment on the basis of the associated role (p. 77).

Thus, secondary deviance emerges through interaction with others. Stigmatizing the person strengthens his/her deviant conduct and eventually leads to his/her acceptance of the deviant social status.

It would be a mistake to overlook Howard Becker's contributions to labeling theory. It was Becker who in the 1960's popularized the notion of labeling theory and actually coined the term, labeling, in his work. In his book, *Outsiders: Studies In The Sociology Of Deviance* (1973), Becker remarks that one of the goals of the labeling theorists was to "enlarge the area taken into consideration in the study of deviant phenomena by including in it activities of others than the allegedly deviant actor" (p. 179).

What Becker meant by enlarging the area taken into consideration in the study of deviant phenomena was that we need to examine the source of deviant labels and the labeling process itself. Furthermore, it would be significant to study the effects of labeling on those labeled and others in society. For example, Becker would argue that by

condemning the person as well as the behavior and pointing out how the person is radically different might lead to the adoption of a deviant identity. Becker (1973) goes on to note that while we cannot use labeling as the sole explanation for why people act as they do, we can “focus attention on the way labeling places the actor in circumstances that make it harder for him [sic] to continue the normal routines of everyday life” (p. 179). He cites examples of this such as when a prison record makes it harder to earn a living at a conventional occupation and so pushes one towards illegal activities.

The growth of the labeling theory created an alternative view about the notion of a “criminal,” and raised new questions about previously taken for granted assumptions. One of the core aspects of the labeling theory was the notion of power. For example, who has the power to create laws and to enforce the law? Furthermore, labeling theorists were concerned with the consequences of the applications of labels such as criminal to individuals. Labeling theorists also began to ask questions about the motives and intentions of those creating the laws. Labeling theorists identified legal power as a key element in the creation and enforcement of laws and consequently labeling theorists turned their gaze upon the state, particularly those with the power to create and apply labels.

The logic behind the labeling theory is clearly manifested in restorative practices. The practice of restorative justice is particularly informed by the belief of labeling theorists that by labeling an individual as a criminal, one may actually be reinforcing the delinquent label and pushing one further into a life of crime. It is further informed by a basic assumption of the symbolic interactionists, the idea that significant others in one's life can influence one's own view of his/herself. These beliefs are manifested in

restorative justice in so far as there is an effort within the practice to acknowledge that while the individual's actions were harmful to another, the individual him/herself is not a bad person. Furthermore, the individual's social network including family, friends, and others close to the individual demonstrate support for the individual's efforts to live without causing further harm to others. In so doing, they treat the individual as a person of social worth rather than as an offender. Because of their relationship to the individual as significant others, these individuals help the individual to define him/herself as a good person rather than as a criminal and consequently, they are less likely to act in further harmful/criminal fashion.

### **Learning/Differential Association Theory**

A major assumption of this group of theories is that criminal behavior is learned. It is learned in much the same way that one learns how to ride a bicycle, jump rope, or to speak. It is learned through human interaction. Pfohl (1994) states, "Rather than look at the social system as a whole, the learning perspective views deviance as arising in the diverse ways in which people learn through interacting with each other in everyday life" (p. 298). Thus, what is learned, as well as the process through which one learns is an important aspect in the study of criminal behavior for learning theorists.

Gabriel Tarde (1834-1904) was one of the earliest learning theorists. Tarde was interested in the social processes whereby forms of behavior and ways of thinking and feeling are passed on from group to group and person to person, specifically through imitation and suggestion. Tarde (1968) states:

Men imitate one another in proportion as they are in close contact. The superior is imitated by the inferior to a greater extent than the inferior by the superior. Propagation from the higher to the lower in every sort of fact: language, dogma, furniture, ideas, needs. The great fields of

imitation; formerly aristocracies, today capitals. Similarity of the former and the latter (p. 326)

Tarde's three laws of imitation included (1) the law of close contact, (2) the law of imitation of superiors by inferiors, and (3) the law of insertion. The law of close contact refers to the idea that individuals will tend to imitate the behavior of those with whom they are closest. Tarde's second proposition suggests that the actions of individuals with superior status are more likely to be imitated. The final proposition, the law of insertion, suggests that as new trends emerge they will replace old trends. It was these ideas about the imitative origins of deviance that opened the door for an interpretation of deviance as learned behavior.

In the 1947 edition of *Principles of Criminology*, Sutherland presented his theory of differential association, delineated by nine propositions (Sutherland and Cressey, 1978. pp. 80-82).

1. Criminal behavior is learned.
2. Criminal behavior is learned in interaction with other persons in a process of communication.
3. The principal part of the learning of criminal behavior occurs within intimate personal groups.
4. When criminal behavior is learned, the learning includes (a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; (b) the specific direction of motives, drives, rationalizations, and attitudes.
5. The specific direction of motives and drives is learned from definitions of the legal codes as favorable or unfavorable.
6. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.
7. Differential association may vary in frequency, duration, priority and intensity.
8. The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.
9. While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values since non-



criminal behavior is an expression of the same needs and values.

Proposition six is the hallmark of Sutherland's theory, noting that a person may become delinquent because of an excess of definitions favorable to law violation. In other words, Sutherland is claiming that one is more likely to engage in crime if one learns to define violations of the law as acceptable. Specifically, Sutherland argues that the learning of criminal behaviors and how to view such behaviors occurs within intimate personal groups.

Sykes and Matza agreed with Sutherland that criminal behavior was learned. However, Sykes and Matza felt something was missing. In Sutherland's fourth proposition, he mentions that techniques, as well as motives, drives, and rationalizations are part of what some persons who are labeled as criminal learn. Sykes and Matza (2003) state,

The classic statement of this position is found in Sutherland's theory of differential association, which asserts that criminal or delinquent behavior involves the learning of (a) techniques of committing crimes and (b) motives, drives, rationalizations, and attitudes favorable to the violation of law. Unfortunately the specific content of what is learned—as opposed to the process by which it is learned—has received relatively little attention in either theory or research (p. 231).

Sykes and Matza note that perhaps the strongest work concerning the content of what is learned by delinquents comes from Albert Cohen. In his book *Delinquent Boys* (1955), Cohen argues that delinquents often hold a system of values that stand in opposition to the norms and values of law-abiding citizens. As Sykes and Matza (2003) note, Cohen views the process of developing a delinquent subculture as a matter of building, maintaining, and reinforcing a code of behavior that stands in point by point contradiction to dominant values, particularly those of the middle class.

For Sykes and Matza, to view the delinquent sub-culture as standing in opposition to the mainstream culture of law abiding citizens, in particular to the values of the middle class was a mistake. Sykes and Matza (2003) state:

In the first place, if there existed in fact a delinquent subculture such that the delinquent viewed his illegal behavior as morally correct, we could reasonably suppose that he would exhibit no feelings of guilt or shame at detection or confinement. Instead, the major reaction would tend in the direction of indignation or a sense of martyrdom (p. 232).

Some persons labeled as delinquents do in fact act in this manner, but many others demonstrate shame and guilt upon being caught. Furthermore, Sykes and Matza go on to note that some persons labeled as delinquents engage in other behaviors that would lead us to believe that they are not so far removed from the conformist's culture. They note, for example, that some of these persons often have role models and show respect for members of law-abiding society. Furthermore, they demonstrate some respect for that society's rules. Sykes and Matza (2003) state:

... there is much evidence that juvenile delinquents often draw a sharp line between those who can be victimized and those who cannot. Certain social groups are not to be viewed as 'fair game' in the performance of supposedly approved delinquent acts while others warrant a variety of attacks (p.232).

Thus, for Sykes and Matza, it is quite possible that some of those labeled as delinquents are in fact members of law-abiding society and they do share at least in some of the beliefs of that society.

The question then becomes, what allows them to engage in deviance? How are they able to break the laws and norms of certain groups when they share in those beliefs?

Sykes and Matza (1964) state:

Norms may be violated without surrendering allegiance to them. The directives to action implicit in norms may be avoided intermittently rather

than frontally assaulted. They may be evaded rather than radically rejected. Norms, especially legal norms, may be neutralized (p.60).

Since Sykes and Matza believe that those labeled delinquents themselves do not generally approve of the delinquent acts they commit, there must be some way to neutralize the feelings of guilt and shame associated with the commission of those acts. This is accomplished through certain techniques of neutralization.

The first of these techniques is known as the denial of responsibility. To the extent that one can effectively deny responsibility, one can effectively neutralize one's own feelings of guilt and the disapproval of others. The second technique is the denial of harm. One such example is demonstrated when one labeled a delinquent views their acts of vandalism as nothing more than mischief. The third technique is the denial of the victim. Sykes and Matza (2003) state, "The injury, it may be claimed, is not really an injury; rather, it is a form of rightful retaliation or punishment. By a subtle alchemy the delinquent moves himself into the position of an avenger and the victim is transformed into a wrong-doer" (p. 235). They go on to provide examples such as attacks on homosexuals, or members of minority groups who have gotten out of line, attacks against unfair teachers, and thefts from a crooked store owner. They paint the victim as the wrongdoer and consequently deserving of the treatment they receive.

The fourth technique of neutralization is the condemnation of the condemners. Again in this situation one labeled as a delinquent attempts to avert the focus of attention away from one's self. Those labeled delinquent often claim that their victims are hypocrites or deviants in disguise and are thus deserving of their victimization. (Sykes & Matza, 2003. p. 236)

Lastly, we have the appeal to higher loyalties. Sykes and Matza (2003. p.236) liken this situation to a deviation from certain norms, that may occur not because the norms are rejected but because other norms are held to be more pressing or involving a higher loyalty, for example to gangs, family members, or other friends are accorded precedence. By appealing to higher loyalties those labeled delinquent can dismiss their behavior as trying to help others. It is through these techniques of neutralization that one is able to reduce the guilt and shame associated with their harmful acts, which make it easier to continue to act in harmful ways.

Unfortunately, in today's society, these techniques are all too common. They are used to justify war, impoverishment, and imprisonment. They avert the attention of our actions to that of others, and they are used to conceal our addiction to the six afflictions spoken of by the Tibetan Buddhist master, Rinpoche Kalu, the afflictions of ignorance, desire, pride, anger, jealousy and greed.

In restorative practices, offenders are encouraged to accept responsibility for the harm they have created. Many restorative programs in fact have made this a requirement before the harm can be addressed by restorative practices. Furthermore, it is theorized that when presented face to face with the victims, as in the practice of mediation or conferencing, offenders are less likely to employ such tactics to minimize the guilt they experience. Hearing firsthand from the victim how they were harmed by the individual's actions makes it rather difficult to deny the harm, or to deny that there was a victim. When rationalizations such as these are challenged and the individual who created the harm becomes aware of the harmfulness of his or her actions, it personalizes their actions, which according to Matza and Sykes means that these individuals are less likely to repeat

their harmful actions in the future. They can no longer employ the rationalizations which make creating harm for others acceptable because they are familiar with the harm that their actions create.

### **Defiance Theory**

According to Sherman (1993), we have spent years asking the wrong question about punishment, asking if punishment controls crime. Attempts to answer this question have produced widely varying results depending on the methods and the sanctions being studied. As a result, Sherman suggests that research be conducted to answer the question: Under what conditions does each type of criminal sanction reduce, increase, or have no effect on future crime rates? In doing so, Sherman has developed his own integrated theory of defiance.

Sherman agrees with Braithwaite (1989) that criminal sanctions can be delivered in either 'reintegrative' or 'stigmatizing' ways. Reintegrative shaming involves shaming the act, but preserving the actor himself as "good." Shaming in this fashion demonstrates to the actor that the act is unacceptable and must be responded to. This demonstration of support for the rules regarding social relations is significant. It confirms the rightness of the social order and lends institutional support for the rules regarding social relations. In this way, Sherman's theory is also much different than several of the other theorists cited. Sherman's theory suggests a consensual view of the law. His theory, furthermore suggests that not only the law, but also the legal power to enforce the law are legitimate. It does not question the source of the laws or the motive of those who create the laws. The key for Sherman and what makes this theory relevant to restorative justice is in the

way that the individual being sanctioned perceives the legitimacy of the sanctioning agent.

Sherman also agrees with Tyler (1990) that we need to distinguish between the sanctions citizens perceive as fair versus unfair. Fair sanctions increase compliance of the law by affirming the legitimacy of law enforcement or of some specific arrangement, but unfair sanctions reduce compliance by reducing legitimacy. Last, Sherman cites Scheff and Retzinger (1991) who suggest that one's relationship with the sanctioning agent can affect one's emotional response to the sanctions themselves. In short, if one's attachment to the sanctioning agent is strong, then the emotional response to the sanctions or shaming is likely to be strong, producing a more positive result. Sherman (1993, pp. 448-449) expands on this work by offering his defiance theory that has three basic propositions.

1. Sanctions provoke future defiance of the law (persistence, more frequent or more serious violations) to the extent that offenders experience sanctioning conduct as illegitimate, that offenders have weak bonds to the sanctioning agent and community, and that offenders deny their shame and become proud of their isolation from the sanctioning community.
2. Sanctions produce future deterrence of law-breaking (desistence, less frequent or less serious violations) to the extent that offenders experience sanctioning conduct as legitimate, that offenders have strong bonds to the sanctioning agent and the community, and that offenders accept their shame and remain proud of solidarity with the community.
3. Sanctions become irrelevant to future law breaking (no effect) to the extent that the factors encouraging defiance or deterrence are fairly evenly counterbalanced.

Essentially Sherman is attempting to explain the conditions under which criminal sanctions will reduce, increase, or have no effect on future criminality. What must be done now, according to Sherman, is develop sanctions that will lead to less future law breaking.

One suggestion that Sherman might offer is to utilize more informal rather than formal sanctions. Using informal sanctions may increase the perception of the individual being labeled that the sanctioning agent is legitimate. Furthermore, offenders are more likely to have strong bonds to those with the power to extend informal sanctions. In each of these cases the likely result according to Sherman would be less frequent or serious violations of the law.

The current criminal justice system is an excellent example of proposition number one in Sherman's theory. Those individuals arrested have little if any bond to the courts as agents of enforcement of the law. Furthermore, many of those labeled as deviants may not acknowledge the laws themselves as legitimate. They may instead view the laws themselves as a tool utilized by the wealthy to maintain the status quo and further legitimize the system of inequality that exists between the classes. Finally, those labeled as deviants often experience shaming that is stigmatizing. As a result they are further isolated from the sanctioning community. What we have constructed is a criminal justice machine that is more likely to disconnect the harm producers from society than it is to repair the relationships and allow the participants to grow and heal.

In restorative justice however, there is an attempt to do that which Sherman suggests will reduce the likelihood of future law-breaking. Specifically, restorative justice attempts to involve the offender in determining his or her own sanction. The belief in doing so is that the individual is more likely to recognize the authority of the decisions made if they have a hand in making those decisions. This legitimizes the decisions made and thus makes the individual more likely to follow through with the plan to repair the harm. There is also an expressed interest in restorative justice to reconnect

or perhaps connect the individual with his or her community. In creating strong bonds with the community, restorative practices make future violations of the law less likely. Finally, within the practice of restorative justice the individual who creates the harm is encouraged to accept the responsibility for and the shame associated with the harms produced. The micro community is there to support the individual and to offer forgiveness, rejoining or perhaps joining the offender in the solidarity of the larger community. Each of these components of restorative practices is informed by Sherman's theory and each according to Sherman is likely to influence the individual in a way that makes him or her less likely to engage in future violations of the law.

### **Reintegrative Shaming**

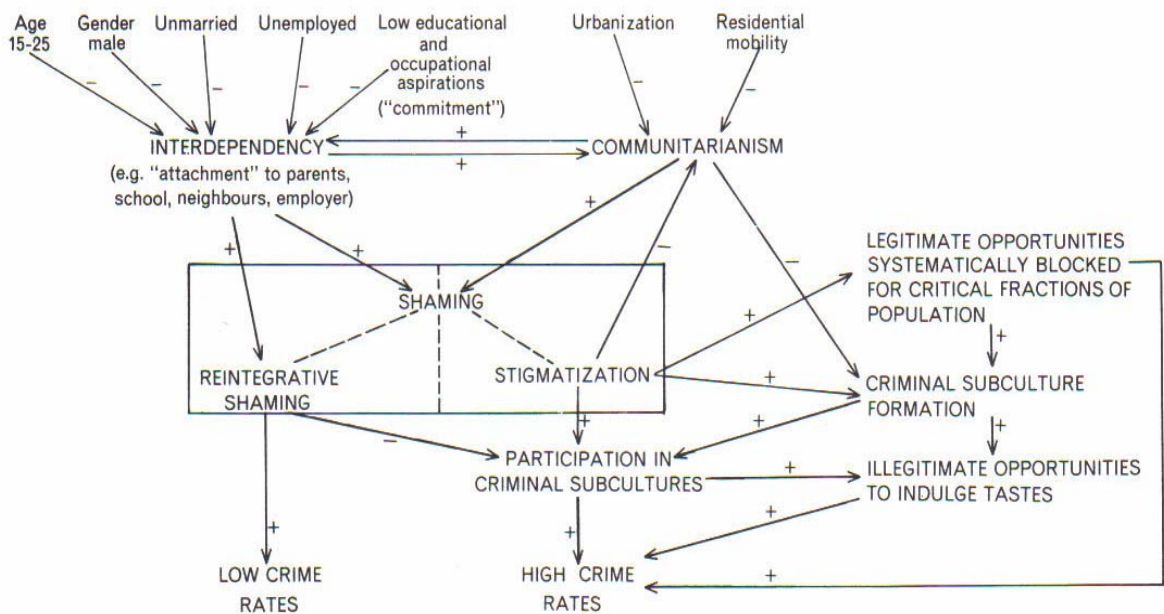
In 1989 John Braithwaite published his first edition of *Crime, Shame, and Reintegration* in which he took the labeling perspective a step further, by suggesting an integrated theory. Braithwaite borrows the notion of close conventional bonds from control theorists. He speaks of criminal subcultures, which mark the influence of Albert Cohen and other learning theorists, and he also includes that as a result of stigmatization individuals experience goal blockage. This indicates an influence of the anomie/strain tradition. Braithwaite integrates pieces from these numerous theories as well as labeling theory to offer his own explanation of crime.

Braithwaite agrees that stigmatizing persons who have acted unacceptably could lead to a life of further criminality. However, Braithwaite also notes that this is not always the case. Braithwaite (1999) states, “The labeling perspective has failed to distinguish the crime-producing consequences of stigma that is open-ended, outcasting and person— rather than offense-centered from the crime reducing consequences of



shaming that is reintegrative” (p. 4). Thus stigmatizing shaming is not the only option. The goal then becomes to discover which type of interactions lead to stigmatization and which lead to reintegration.

A central thesis of Braithwaite’s theory is that reoffending will be higher when shaming is stigmatizing and lower when shaming is reintegrative. Figure 1, taken from Braithwaite (1999) offers a summary of the theory of reintegrative shaming. As Braithwaite’s flow chart demonstrates, his theory can be used to make predictions at both the micro and macro levels. It can be used to predict both high-risk individuals as well as high-risk communities.



**Figure 1: Summary of Theory of Reintegrative Shaming**

Source: Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

Braithwaite uses the concepts of interdependency and communitarianism to make predictions about which societies are likely to shame in a stigmatizing fashion and

consequently reinforce negative behavior patterns. Braithwaite states, “*Interdependency* is a condition of individuals. It means the extent to which individuals participate in networks wherein they are dependent on others to achieve valued ends and others are dependent on them” (p. 100). Interdependency is measured among individuals using such variables as age, gender, marital status, employment, and education. Communities that feature high levels of interdependency are more likely to shame in a reintegrative fashion. As a result, the shamed individuals are more likely to be reintegrated into the law abiding community and to be able to resist the temptations of crime.

Furthermore, Braithwaite suggests that societies which lack communitarianism will tend to engage in shaming that is stigmatizing. The less communitarian societies are said to resemble the disorganized societies in social disorganization theory. They feature, for example, high residential mobility and urbanization. Braithwaite (1999) states:

*Communitariansim* is a condition of societies. In communitarian societies individuals are densely enmeshed in interdependencies which have the special qualities of mutual help and trust. The interdependencies have symbolic significance in the culture of group loyalties which take precedence over individual interests (Pp. 99-100).

Thus it could be stated that a community is communitarian when the community members are highly interdependent (e.g. they are attached to one another, involved with one another and committed to one another). Communities that have high levels of communitarianism feature trust, helpfulness, loyalty, and support. These characteristics make reintegration into these communities more likely. Moreover, communities that feature communitarianism make the needs of all in the community visible, and because these communities feature trust,

helpfulness, loyalty, and support these needs are more likely to be addressed. The end result is less human suffering and a decrease in the motive to harm others.

At the micro level Braithwaite's theory addresses the effects of shaming that are stigmatizing to individuals. He states:

Stigmatization is disintegrative shaming in which no effort is made to reconcile the offender with the community. The offender is outcast, her deviance is allowed to become a master status, degradation ceremonies are not followed by ceremonies to decertify deviance (p. 101).

The result of shaming that is stigmatizing is that future criminality is more likely. As the number of stigmatized individuals grows in the less communitarian societies they come together to develop criminal subcultures that provide a learning environment for crime. Braithwaite (1999) states, "Participation in subcultural groups supplies criminal role models, training in techniques of crime, and techniques of neutralizing crime (or other forms of social support) that make choices to engage in crime more attractive" (p. 102). Furthermore according to Cullen and Agnew (2003. p. 316) "the process of stigmatization has a feedback effect that erodes communitarianism."

Braithwaite notes that stigmatizing shaming is not the only option. He states, "*Reintegrative* shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words, or gestures of forgiveness or ceremonies to decertify the offender as deviant" (1999, p.100-101). Through reintegrative shaming the individual is able to retain or perhaps gain for the first time a positive identity. The deviant label is applied to the deviant act itself, all the while preserving the individual's identity as good. As a result, one is less likely to take on a deviant master status. This only works, however, in so far as the law

abiding community is not structurally violent and disregarding of the needs of the persons involved.

Reintegration is accomplished by calling on family, friends, and other supporters of the person who has harmed another to offer their love and support. While many people fail to recognize any punishments short of incarceration as punitive, this is not to say that the shaming experienced isn't punitive. The strength of a society's ability to punish through shame is often overlooked. We have surely all experienced shame, the fear of shame, or felt the pressure to conform to society's rules. These feelings can be very strong, powerful, and punitive. Braithwaite (2002) states, "It is not the shame of police or judges or newspapers that is most able to get through to us; it is the shame in the eyes of those we respect and trust" (p. 74). The difference is that through reintegrative shaming, as proposed by Braithwaite, the offender experiences the love and support of his family and friends. He also experiences the shame, but rather than being forced away, he is reintegrated by this support network. He can receive forgiveness by those for whom he has respect. According to Braithwaite, reintegrative shaming is not distinguished from stigmatization by its potency, but rather by "(a) a finite rather than open ended duration which is terminated by forgiveness; and by (b) efforts to maintain bonds of love or respect throughout the finite period of suffering shame."

Braithwaite's theory is one of the major theories from which restorative practices emerge. His theory of reintegrative shaming has implications for not only the individuals involved, but for the larger communities as well. Regarding the individuals, Braithwaite's theory emerges within restorative practices through the use of reintegrative shaming. That is, shaming which is not open-ended but rather finite and followed by

forgiveness and an effort to either reintegrate or integrate the offender into conventional society. Through reintegrative shaming, attempts are made to preserve a positive identity for the individual, thus allowing one to avoid the stigmatization experienced by those labeled criminals.

On a much larger scale, Braithwaite suggests that societies which feature communitarianism are more likely to shame in a reintegrative fashion, thus reducing the likelihood of future law violations. In restorative justice there is an attempt to reinsert the community into the justice process. The community has a role to play and that includes the concept of reintegration. To the extent possible however, restorative justice must concern itself with creating communities with high levels of what Braithwaite refers to as communitarianism. That is they must create communities in which the residents trust one another, support one another, are bonded together and seek to meet the needs of all members. If this is not accomplished, reintegration into the community is likely to be for naught as the individuals will likely to return to non communitarian communities in which they are not having their needs met.

### **Summary of Theory**

Each of the theories discussed contains an inclination towards peacemaking. Peacemaking criminology suggests that a peaceful society can be achieved only through the ending of suffering. The ending of suffering can come only through a spiritual revolution that begins at the individual level, a revolution that with time can infiltrate society's institutions. In a peaceful society there is recognition of human suffering in this world. People have compassion, and a willingness to help serve. Richard Quinney (1991) states, "To eliminate crime—to end the constructions and perpetuation of an

existence that makes crime possible—requires a transformation of our human being. We as humans must be peace if we are to live in a world free of crime, in a world of peace” (p.11).

As Sherman observes, a more peaceful approach to criminal justice is likely to reduce future law violations. What Sherman describes as a criminal justice system likely to produce future deterrence of law-breaking reads like a recipe for success written by a peacemaking criminologist. Sherman, in proposition number two, describes a criminal justice system in which the offenders experience the sanctioning agent as legitimate. Furthermore, they have strong bonds to the sanctioning agent and the community, and offenders accept their shame and remain proud of their solidarity with the law-abiding community.

With regards to the learning theories, it is primarily the work of Sykes and Matza on the subject of techniques of neutralization that is of note here. Sykes and Matza believed that offenders do in fact feel guilty for their harmful behaviors. It is only by denying the harms they create, through the use of the techniques of neutralization that offenders are able to avoid the feelings of guilt. The implications of their theory are rather straight forward. If we can deny offenders the use of the techniques of neutralization, we can rely on offenders' moral strength to effectively shield them from making decisions to bring harm to others. This situation is akin to being on the pathway towards right understanding. Because offenders can no longer deny the harm created by their actions, they become aware of the human suffering caused by their actions. The guilt brought upon the offender by the recognition of this suffering is likely to create compassion. According to Quinney, the only way to stop crime is to end human

suffering. This is accomplished through personal transformation which begins with an awareness of human suffering. This awareness is created by denying offenders the techniques of neutralization and encouraging offenders to recognize the harms they create. On a similar note, the implications of Quinney's theory must be applied to those with the power to implement sanctions as well. That is, those with the power to apply harmful sanctions that create further suffering must achieve this awareness as well. This puts them on the path towards right understanding, which is the only way to stop crime.

Labeling theorists are quick to point out that our responses to crime are often the cause of further criminal behavior. This is in part due to the violence with which we deal with offenders and the harm created by labeling the individual as a criminal. This stigmatization is a form of out-casting, making the individual more likely to take on the stigma as a master status, and consequently more likely to act the part. It is in this way that labeling theory represents an explanation of crime that is rooted in our violent response to initial harmful actions which is further imbedded in the violent organization of society. Braithwaite (1989) states:

Once a person is stigmatized, with a deviant label, a self-fulfilling prophecy unfolds as others respond to the offender as a deviant. She experiences marginality, she is attracted to subcultures which provide social support for deviance, she internalizes a deviant identity, she experiences marginality, she is attracted to subcultures which provide social support for deviance, and she internalizes a deviant identity. ... Deviance then becomes a way of life... (p. 18)

Braithwaite goes on to note that while the exact etiology sequence of the events described is debatable, "The important point for our work is that every version of the labeling perspective holds that social control makes the deviant worse" (p. 18). This idea became

a major assumption around which Braithwaite created his challenging theory of reintegrative shaming.

Restorative justice is about making relationships right. If we can do so peacefully, it only makes sense to do so. Braithwaite's theory of reintegrative shaming is a theory steeped in peacemaking criminology, and many of its qualities have been extracted in the process. Reintegrative shaming represents a peaceful response to harmful actions. It has the potentiality to successfully transform the relationship between victim and offender into a right relationship. Reintegrative shaming brings an awareness of the suffering and demonstrates compassion with forgiveness. The more harmful form of stigmatizing shaming is avoided. Instead, the offender is, ideally, treated with respect and dignity. He or she is supported and encouraged to maintain ties to the greater law-abiding society. Finally, the offender accepts the shame with the support of others. This final component ensures that the offender has an awareness of the harm he or she has produced. It can not be denied. The person is treated with respect and in turn treats others with respect.

The result is a justice that restores both victims and offenders and makes their relationship right. This is a justice that requires compassion, respect, forgiveness, and acceptance. A justice such as that which is described must begin within each of us.

Quinney (2000) quotes Erik Erikson who, in a reading of Gandhi and a commentary on punishment writes:

Gandhi reminds us that since we can not possibly know the absolute truth, we are 'therefore not competent to punish'—a most essential reminder, since man when tempted to violence always parades as another's policeman, convincing himself that whatever he is doing to another, that other 'has it coming to him.' Whoever acts on such righteousness, however, implicates himself in a mixture of pride and guilt which



undermines his position psychologically and ethically. Against this typical cycle, Gandhi claimed that only the voluntary acceptance of self-suffering can reveal the truth latent in a conflict—and in the opponent (p. 205)

Thus we are reminded that the journey towards a peaceful tomorrow begins at the individual level. It begins within each of us.

As a final comment, I do not wish to ignore the harm and suffering created by the social arrangements in the United States. Class-based inequality, racism, and sexism are all barriers which stand in the way of a peaceful society. They stand in the way of an end to the human suffering that exists in our society. The vision of a peacemaking criminologist encompasses more than simply the interaction between the state and those labeled as criminals. The implications go well beyond the criminal justice system to the social arrangements which perpetuate human suffering. About 1.35 million children—nearly 2% of the nations total—are homeless, and 16% of the children under the age of 18 are living in poverty (Kornblum & Julian, 2004). In today's economy, even a full time job does not guarantee people that they and their families can stay out of poverty (Coleman & Kerbo, 2006). Institutional discrimination based on race continues to exist in the realms of education, housing, employment, income, and criminal justice.

Sex-based discrimination continues as well. In 2000 the median earnings of women who worked full time were about 76% of those of men (Kornblum & Julian, 2004). In 2001, women accounted for only 13% of the members of the U.S. senate and the House of Representatives respectively, and very few women have ever held a key position of power in the U.S. Congress. Furthermore, rape and sexual harassment persist as social problems and they continue to be a source of significant harm and suffering for women (Coleman & Kerbo, 2006).

Richard Quinney for one is very aware of the suffering created by these social arrangements. Quinney (2003) states,

And there can be no peace without justice. This is the biblical command. A good social life—one based on equality, with the elimination of poverty, racism, sexism, and violence of all kinds—is a peaceful existence. Peace, the result of all the benefits of the covenant, is granted to those who fulfill the covenant by living in justice (p. 394).

Quinney makes note of the fact that the criminal justice system in this country is founded on violence. Criminal justice at home, he states, and warfare abroad are of the same principle of violence (p. 394).

What Quinney and others are suggesting is that we need to create just communities that feature equality and just social arrangements, where opportunities exist for all. Communities where the people can trust and care for one another. We need to create communities featuring high levels of civility and communitarianism (Braithwaite 1999). It is into these communities that those who bring harm to others must be reintegrated, instead of returning to the suffering and harm created by the social arrangements that exist in this world. What have we changed for offenders when we place them back into the harm and social injustice that prevails in their daily lives? We put them back into suffering, and human suffering is what causes crime. Reality dictates that this issue be considered. In theory, restorative justice works to reintegrate offenders, but the question remains, reintegrate into what? (Sullivan and Tifft 2001) If we are reintegrating offenders into harmful, unjust communities then further harm is the probable outcome.

The big picture is now complete. The theoretical framework now presents itself as a clear image. Each theory representing a piece of the puzzle has been put into place

revealing the overarching theme of peacemaking criminology. Each of these theories maintains a foundation in peacemaking criminology. Together, they represent a new direction for criminal justice practitioners. They represent a new form of justice, a justice based in peace.

## **CHAPTER III**

### **WHAT WE ALREADY KNOW**

#### **Introduction**

Although the specific approaches and names may vary, there is now a substantial collection of empirical research regarding restorative justice. With this collection, researchers have begun the enormous task of creating the big picture. Do restorative practices work? What are the benefits and shortcomings? There are many questions to be answered, and much work lies ahead. Nevertheless, these early evaluations do lend some promise to the future of restorative justice. In this chapter I explore this literature.

Part One consists of non-empirical literature focusing on concepts and issues that are essential to restorative justice. The apparent lack of empirical research about these topics is a significant finding in and of itself. Concepts such as empowerment, recognition, accountability, and needs abound in the literature, yet little research has been collected to evaluate restorative practices with regards to their ability to deliver on these critical outcomes. These concepts represent the driving force behind restorative practices, but appear to have lost their significance within the practices themselves. In Part One I introduce these concepts and discuss the consequences of the lack of emphasis about these concepts within research and practice.

In Part Two, I turn my attention to empirical evaluations of restorative justice outcomes. These evaluations point to concepts and issues that researchers and practitioners feel are significant to the process. If a restorative program gathers research about participant satisfaction, it is rather clear that the practitioners define their success or failure, at least in part, in terms of delivering a process that is satisfactory to its

participants. In this way, an extensive examination of evaluations of restorative practices allows one to gather awareness about issues that researchers and practitioners feel are significant to the process.

Part Two is organized thematically. Those themes discussed include: participant satisfaction, perceptions of fairness, reduction of fear, apologies, reaching agreements, impact on recidivism rates, cost effectiveness, and impediments to success.

Before I begin, it is important to address the types of restorative programs evaluated here. There are many different types of programs that claim to be part of the restorative justice movement, and even more names to denote these different varieties. Some of the programs take similar approaches, while others do not. The term restorative justice is used as an umbrella term to describe any number of programs which view crime and the response to crime through a restorative lens. Victim Offender Mediation Programs, Victim Offender Reconciliation Programs, Family Group Conferencing, Community Reparative Boards, Sentencing Circles, and Sentencing Panels are just a few of the names now used to denote restorative programs. In addition to these, there are a number of multi-form programs that might include bits and pieces from some or all of the programs previously listed. Declan Roche (2003) states, "Although this range illustrates confusion about the meaning and application of restorative justice, there remain four fundamental ideals: personalism, reparation, reintegration, and participation" (p. 60). Roche goes on to note that those programs that attempt to integrate all four basic ideals represent the driving force of restorative justice.

The literature review compiled here is primarily focused on victim offender mediation programs and conferencing models of restorative justice. Needless to say,

even within the many programs which go by these names, there is no single model that they all follow. Variation amongst restorative programs in terms of the types of harms they handle, the individuals allowed to participate, and even about the process itself are not uncommon.

Let me begin here with a basic description of mediation and conferencing models of restorative justice. This will serve to familiarize the reader with the programs which may help one to better interpret the literature review that follows.

### **Mediation and Conferencing Models**

Cases may be referred to victim offender mediation programs from a variety of sources including judges, law enforcement officers, probation officers, victim advocates, prosecutors, and defense attorneys. Noting these various sources, one should recognize that mediation can take the form of diversion from court proceedings, as a sentence imposed by a judge, or as part of a sentence including probation, or even incarceration.

Participation in mediation is most often voluntary. This includes participation for both victim and offender, although some may question the voluntary nature of participation for offenders if the mediation is ordered by a judge, even when used as a diversion. Nonetheless, most programs claim to be voluntary for both parties. The goals of mediation as reported by Bazemore and Umbreit (2001. pp. 2-3) include:

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.

I would suggest that this list is far from an exhaustive list of the goals of mediation, in part because of the scope of the statements made, which clearly do not suggest how for example the participants address the harm inflicted by the offender. The list compiled does not speak to the restorative nature of the intended outcomes of mediation like respect, meeting needs, empowering victim(s) and offender(s), recognition, and reintegration. These are the outcomes that make justice restorative. Theoretically at least, they are achieved through the process outlined by Bazemore and Umbreit.

Victims and offenders often have pre-mediation meetings with the mediator to discuss what will happen in the mediation and to discuss desired outcomes of the mediation. During the mediation victims and offenders engage in dialogue in the presence of a trained mediator. Bazemore and Umbreit (2001) state, "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" (p. 2). They go on to state,

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 (p. 2).

The restitution plan as alluded to by Bazemore and Umbreit is often one of the desired outcomes of the mediation process. The restitution plan is ideally created with the input of both victims and offenders and need not always be financial. These decisions are left up to the victim and offender to work out on their own. The restitution agreement will

spells out how, exactly, the offender can make the situation right between him/herself and the victim.

The victim's needs are of the utmost importance throughout the mediation process. This is not to say that offenders' needs are not considered, however the goal of mediation is to hold offenders accountable for their actions and to repair the harm created by the offense. In order to do so, the needs of the victims must be placed at the forefront of the process. Additionally, as Bazemore and Umbreit note, the mediator must do all that he/she can to ensure that the victim will not be harmed in any way, and the victim should be given choices, whenever possible, throughout the process. For example, to decide where the meeting will be held, who will speak first, and so on.

Both parties can be joined in the mediation by a group of supporters including family, friends, and others who may have also experienced harm and/or who wish to show their support, forgiveness, and love for the participants involved. With the love, support and forgiveness of this group, the participants can be reintegrated into their immediate circles and eventually into their larger communities.

Keep in mind that this is the ideal case being presented. Theoretically speaking this is what restorative justice looks like. This is what restorative programs strive for. Reality can certainly throw a wrench into the restorative justice machine causing a complete meltdown of the principles previously discussed. Take the issue just presented for example. I have already suggested that perhaps the communities to which the participants are returning are not restorative or peaceful communities. Instead they are coercive, violent, criminogenic, and fraught with suffering. In this case, it is quite likely that the offender is not the recipient of love, support, forgiveness, but rather is exposed to



the harsh reality, and unmet needs which produce human suffering and crime. This is the purpose of evaluations of restorative justice. Can the practice of restorative justice live up to the theory when placed into the context of the real world.

In the literature review that follows, much of the data presented comes from the evaluation of mediation programs. This includes several Victim Offender Mediation Programs (VOMP) and at least one Victim Offender Reconciliation Program (VORP). Despite these different names, VOMP and VORP are both mediation-based programs.

Conferencing, sometimes referred to as Family Group Conferencing, is another popular form of restorative justice. Family group conferencing is based on centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand (Bazemore & Umbreit 2001). Referrals for conferencing, like mediation, can come from a variety of sources. Similarly, conferences can be used as a form of diversion from court proceedings, as a sentence imposed by a judge, or as part of a sentence including probation, or incarceration.

Participation in the conferences is voluntary for both victims and offenders, as well as their supporters. The goals of the conferencing model of restorative justice include:

Providing an opportunity for the victim to be directly involved in the discussion of the offense and the decisions regarding appropriate sanctions to be placed on the offender.

Increasing the offender's awareness of the human impact of his or her behavior and providing the offender an opportunity to take full responsibility for it.

Engaging the collective responsibility of the offender's support system for making amends and shaping the offender's future behavior (Bazemore and Umbreit, 2001. p. 5).

Conferences are managed by a trained facilitator who leads the participants in a discussion of the harm produced and potential resolutions for repairing the harm. The initial contact occurs via the facilitator or another caseworker, who speaks with the victim and offender to explain the process and desired outcomes, and to invite their participation. Involved in the conferences are not only the victim and offender, but also a support group for each participant. These supporters include family, friends, teachers, spiritual leaders, or others who have an expressed interest in the well being of either the victim or the offender, or who have witnessed the harm inflicted on the victim, or experienced harm themselves. Bazemore and Umbreit (2003) state, "The affected parties are brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired" (p. 5).

As with their description of the mediation process, Bazemore and Umbreit appear to be focused on the procedural side of the conference process, and not the outcomes. The goals in terms of the outcomes remain the same as those goals suggested for mediation including: respect, meeting needs of victim(s) and offender(s), empowering victim(s) and offender(s), recognition, and reintegration of victim(s) and offender(s).

One final comment on the nature of the research regarding restorative justice is that many of the research projects described herein failed to utilize random samples in their study. As a result, one must acknowledge the potential that selection bias may be a factor in some of the research results presented. Another concern with much of the research has to do with sample sizes. Several of the research projects described herein utilized rather small samples. This being said, Strang's RISE project and Daly's Southern Australia Juvenile Justice project are two exceptions to these criticisms. Each of these

research projects are described and summarized in more detail throughout this literature review. Each project utilized a completely randomized design to select a sufficiently sized sample of the population.

### **Part One**

According to the framework and fundamental concepts of restorative justice as offered by Howard Zehr and Harry Mika (1998), there are three basic principles that create the basic foundation of the practice of restorative justice. The first major premise requires that we change the way we define crime. Zehr and Mika state, "Crime is fundamentally a violation of people and interpersonal relationships" (p. 51). Thus, it requires that we see crime not as a violation of some written set of rules, but a violation of a relationship. This leads to the second principle that states, "violations create obligations and liabilities" (p. 51). Finally, Zehr and Mika state that "restorative justice seeks to heal and put right the wrongs" (p. 51). In their conclusion, they propose a number of simple tests or principles that can direct restorative practices along the lines of these fundamental guidelines.

- focus on the harms of wrongdoing more than the rules that have been broken;
- show equal concern and commitment to victims and offenders, involving both in the process of justice;
- work toward the restoration of victims, empowering them and responding to their needs as they see them.
- support offenders while encouraging them to understand, accept and carry out their obligations
- recognize what while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable;
- provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate;
- involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime;

- encourage collaboration and reintegration rather than coercion and isolation;
- give attention to the unintended consequences of our action and programs; and
- show respect to all parties, including victims, offenders and justice colleagues (p. 54-55).

Their framework creates a vantage point from which to evaluate restorative practices. It is often believed that restorative practices receive such high marks in terms of satisfaction from its participants because in theory, restorative justice provides so much more in terms of empowerment and recognition. Furthermore, it holds offenders accountable, meets needs, repairs harm, and provides an emotional resolution while treating the participants with respect and making efforts to support and reintegrate both parties back into their immediate, and larger communities. Yet these concepts have been scarcely evaluated to determine whether such goals are accomplished. What follows here is a discussion about these issues and the apparent lack of research aimed at their evaluation.

### **Empowerment**

According to Nathan Harris (2003), "One of the strongest themes in the development of conferencing is the importance of empowering those people who are directly affected by an offence" (p. 124). Harris notes that this is in part achieved by the way conferences attempt to involve all those who are connected to the offense, including offenders, victims, and those who are close to them. This stands in contrast to that which is experienced in the more traditional forms of justice in the United States. Traditional forms of justice often have the very opposite affect. The persons in these cases more often experience disempowerment. Victims are rarely given an opportunity to express their needs and when asked to contribute, their participation is often limited to an offering

of the facts of the case. Furthermore, the parties are given little to no involvement in the resolution created in the wake of the harm inflicted. Howard Zehr (1990) states:

Justice has to be lived, not simply done by others and reported to us. When someone simply informs us that justice has been done and that we should now go home (as victims) or to jail (as offenders), we do not experience that as justice. Justice which is actually lived, experienced, may not always be pleasant, but we will know that it has happened because we have lived it rather than having it done for us. Not simply justice, but the experience of justice must occur" (p. 203).

Restorative justice offers this opportunity for victims and offenders. Taking part in the process means living and experiencing justice. Mediation offers both victims and offenders an opportunity to tell their own stories, in their own words. It allows them a chance to contribute to an agreement that can put right the harm created by the offender's action. Nathan Harris (2003) goes on to note that empowerment in the case of offenders has often been conceptualized as the opportunity to understand the effects of their actions, as well as to take responsibility acknowledging the harm caused (p. 124). This is accomplished in mediation because the offender gets to hear first hand from the victim how they were harmed and the consequences of the harm inflicted by their actions. Giving the parties a say in the decisions about how to repair the harm that was created by the offender's actions allows the parties to have some control over the events in their lives. In addition to participants' involvement in decisions about how the harm can be repaired, general participation in other ways can be empowering as well. Simply having a voice in the process and having an opportunity to share one's truth is part of giving the participants a voice. Allowing the victims, offenders and perhaps others an opportunity to vent their feelings, whatever they may be and to know that others are listening and validating their stories are all elements of restorative justice that can restore dignity to

victims and offenders and provide a sense of control over the events that make up their lives (Zehr 1995). Sullivan and Tifft agree that participation in the process can empower victims and offenders. About the case of the offender, Sullivan and Tifft (2001) note that while it may not be easy, participation can lead to empowerment. They state:

Clearly, we are talking about very painful processes for anyone to go through. However, by being encouraged to fully participate in ways that are appropriate to the situation, those of us who have harmed another can begin to put the offense behind us and start anew, regain or perhaps develop for the first time a modicum of self-esteem and, in the process, feel personally more integrated (pp. 47-48).

Finally, as Presser and VanVoorhis (2002) point out, an affirmation by the community that the crime was unjustified and erroneous is important to the victim to feel him or herself to be a person of worth and social esteem.

### **Recognition**

Another measure of social well-being according to Presser and VanVoorhis is "change in victim and offender attitudes toward a less stereotypical and more humane view of the other" (p. 175). This phenomenon is known in the literature regarding restorative justice as recognition. Recognition is another theorized benefit of restorative justice that has been frequently ignored by evaluations of restorative practices. As Bush and Folger (1994) point out, victims and offenders often begin the mediation with their guard up. Victims may be fearful of offenders and most likely feel threatened, attacked, and even angry towards the offender. Similarly, the offender enters mediation prepared to be attacked and punished for their harm-causing actions. As a result, the victims, offenders and even their supporters most often enter the mediation in a defensive mode. They are suspicious and even hostile to the other. This makes it rather difficult for the participants to think beyond their own self preservation. Bush and Folger state:

From this starting point of relative self-absorption, parties achieve recognition in mediation when they voluntarily choose to become more open, attentive, sympathetic, and responsive to the situation of the other party, thereby expanding their perspective to include an appreciation for another's situation (p. 89).

Nathan Harris (2003) describes the process of recognition as a sequence of events involving core emotions. Harris argues that anger, indignation and resentment which are common emotions expressed prior to the mediation by victims can be reduced by the offender's acceptance of responsibility and his or her acknowledgement of the harm that his or her actions caused. At the same time, the victim's story of the harm and how the events have affected them and others significant to them leads to empathy and remorse in the offender. Harris states, "The increased understanding of each other produced by this interaction increases the possibility of meaningful apology and forgiveness" (p. 128).

For Bush and Folger (1994) the concepts of recognition and empowerment go hand in hand. They state that "Recognition is achieved when, given some degree of empowerment, disputing parties experience an expanded willingness to acknowledge and be responsive to other parties' situations and common human qualities" (p. 84-5). In Table 1 created by Bush and Folger (1994, pp. 206-07) the authors propose several signposts or events that occur in the mediation that provide opportunities for empowerment and recognition. The table identifies opportunities in the early, mid and late stages of a mediation to encourage empowerment and recognition. In doing so the authors also suggest particular responses that are likely to help the participants to create their own solutions and lead to empowerment and recognition.

**Table 1**

**Opportunities for Empowerment and Recognition**

Stage of process	"Signpost" Event	Mediator Response
Early Opportunities	<p>Parties interpret mediation as an adjudicative process and expect mediators to give solutions to problems.</p> <p>Parties disagree about who should participate in the process (such as whether friends or relatives should speak on behalf of disputants).</p> <p>Parties challenge ground rules of the process.</p> <p>A disputant says that he or she does not want to talk to the other party at all, but just wants to take the case to a hearing or judge.</p>	<p>Clarifies non-adjudicative role of the mediator; emphasizes parties' responsibility in decision making.</p> <p>Holds discussion with the parties to decide who should participate and why. If no agreement, session may end.</p> <p>Explains why ground rules are important to process; probes whether parties are willing to commit to each ground rule. If no commitment, session may end.</p> <p>In joint session or caucus, discusses why the disputant does not want to participate; encourages party to make a clear choice about why he or she will or will not open discussion.</p>



Table 1-- Continued

Stage of process	"Signpost" Event	Mediator Response
Midstage Opportunities	<p>A party indicates that something the other has said is news to him or her.</p> <p>A party's comments suggest that some way in which he or she sees himself or herself is important and that this image of self has not been fully considered by the other party.</p> <p>A party "rambles" from point to point in statement of concerns/goals, not clearly focusing.</p> <p>A party asks mediator, "What do you think I should do?" about a particular solution option.</p> <p>A party speaks very emotionally, passionately.</p> <p>One or more issues that were raised by the parties early in the discussion are no longer mentioned as the session progresses.</p> <p>A party offers an explanation or account for past events that assumes "the worst" about the other party and his or her motives.</p>	<p>Explores what this news is and how it might change the party's understanding of past events or the other disputants.</p> <p>Explores what is important about this image of self, discusses how this concern might be important in understanding the dispute</p> <p>"Follows" party's lead, mirroring concerns and asking questions, allowing and helping party to define his or her own priorities.</p> <p>Declines to offer advice/judgment; reminds party of his or her decision- making power, asks questions to help party evaluate option.</p> <p>Discusses what prompts the strong reaction; encourages party to state the basis for the strong views, to surface opportunity for recognition.</p> <p>Asks whether these issues have been forgotten, or whether parties want to discuss them further.</p> <p>Offers possible reinterpretation of the past event that avoids negative judgment of the other; asks whether this or other interpretations are possible.</p>

Table 1- Continued

Stage of process	"Signpost" Event	Mediator Response
Late-stage Opportunities	<p>When parties cannot think of any acceptable option for how to deal with situation, mediator offers a suggestion as a "last resort," but one party reacts sharply and negatively and rejects it.</p> <p>After an agreement appears to be reached, one or both of the parties indicate that they have doubts about whether the terms are going to work.</p> <p>The parties become angry and frustrated because they do not settle on terms that substantially alleviate their concerns and tensions.</p>	<p>Confirms party's power to decide to reject suggestions, then asks questions about reasons for rejection to help further clarify party's goals and surface perceptions of self and others.</p> <p>Indicates that the parties can rethink the agreement at this point; asks them about their concerns.</p> <p>Explores the basis for parties' frustration; summarizes understandings, points out recognition that may have been achieved; encourages parties to build on these in their own discussion after the session ends.</p>

**Accountability**

Another professed strength of restorative practices that has been the focus of few evaluations is the concept of accountability. Offenders have a need to be held accountable for their actions (Zehr, 1990). Understanding and acknowledging the harm produced by their actions, along with accepting the responsibility for their decisions and harm causing behavior, while difficult, can be very poignant. Denying responsibility for their actions or denying the harm that was produced becomes much more difficult when presented face-to-face with the victim(s) and listening firsthand to how they have been affected by the offender's harmful behavior (Matza, 1964) . Restorative practices attempt to gently persuade offenders to own their harm causing actions, and accept responsibility

for the harm that it caused. This includes admitting that their behavior was wrong and offering an apology to the victim for the harm they caused. However, holding offenders accountable is no easy task. Accountability cannot be forced. Instead, restorative practices attempt to guide offenders towards an understanding of the harm they have caused to people and their communities. When offenders recognize that harm has occurred and they take ownership of those actions which produced the harm, they have been held accountable.

Declan Roche offers another meaning of accountability in restorative justice. Roche demonstrates a difference between what he calls formal and informal accountability. He states, “for instance, if a company fails to keep proper accounting records, its officers face possible fines or imprisonment” (p. 44). This is an example of formal accountability. Roche goes on to note that formal accountability is not the only type, nor necessarily the preferred form of accountability. For example, one is often accountable to his or her family, even though there is no formal mechanism of enforcement like a court. Roche points out that “the vast body of criminological and regulatory literature on the relative effectiveness of informal versus formal sanctions” (p. 44), should indicate the potential that informal accountability holds. Roche believes that informal accountability, driven by praise, censure, and appeals to common morality are common within the deliberative process of a meeting.

Still, this does not imply that which informal accountability requires of victims and offenders. What Roche suggests is that accountability is “the obligation to explain or justify behavior or decisions” (p 43). If one is not required to explain or justify their behaviors then they are not accountable. To hold one accountable then is to require them

to provide an account of their actions to those who have been affected by the decisions they have made. When individuals are held accountable for their actions, they are more likely to make the right choices because they know that they are going to have to explain their decisions to others whether through formal or informal mechanisms.

Roche notes that this raises some interesting questions about the power held by the individuals present who scrutinize the offender's account. In particular, to what extent do the scrutinizers have the power to punish or to compel the offender to further action? Roche's study concluded that restorative practices vary in terms of the type of accountability and in the power that scrutinizers hold. He describes a situation in which some scrutinizers possessed enough power to direct offenders to take further action. He described this as "directive accountability" (p. 45). Others who were unhappy with the accounts of the offender did not possess the power to direct the offender to take further action, but instead were forced to persuade the offender by sharing their viewpoint. Roche calls this "persuasive accountability" (p. 45).

### **Restorative Justice as Needs-based**

Dennis Sullivan and Larry Tifft (2001) conceive of restorative justice as a needs-based justice. In this view of justice, they argue that the needs of all persons involved, including the offenders, must be acknowledged and addressed. This view of justice is difficult to imagine because our lives, and even the criminal justice system, have operated under the guise of a rights-based system for so long. Sullivan and Tifft state,

Grasping the value of a restorative, needs-based approach to justice is extremely difficult for many people today because the reward/punishment ideas and structures of our hierarchical and globalizing political economy that influence how we relate with one another and live our lives are not based on meeting people's needs. Rather than need, our relationships and

daily lives are predominately organized on one or the other of two different justice ideas and arrangements-- rights or deserts (p. 99).

Under a rights-based system, it is believed that a person should receive benefits, privileges and burdens, hold rights, and have access to resources solely on the basis of his or her position within the social arrangement or hierarchy. Similarly, a deserts-based arrangement is organized such that a person receives privileges and burdens, and has access to resources on the basis of merit or desert according to the efforts he or she has put forth (Sullivan and Tifft, p. 99). Yet, as Sullivan and Tifft point out, such arrangements ignore the influence of particular ascribed statuses such as sex, race and economic position into which people are born and that influence the resources and opportunities that are presented in one's life. Sullivan and Tifft note that with our great exposure to the deserts- and rights-based arrangements, it is perhaps unreasonable for us to expect that the public to have much competence in bringing about reconciliation between victims and offenders in the wake of a relationship in which one person harms another (p. 101). With no real experience in working within a needs-based framework, we struggle to apply restorative values or to repair harm by meeting needs. Sullivan and Tifft state, "Doing this is, to a considerable degree, counter cultural, counter relational and, in the eyes of some, madness" (p. 101). In the following discussion about needs I examine the specific needs of three groups that have a stake in the process of mediation. First I address the needs of victims, followed by offenders and finally the needs of the community.

### **Victim Needs**

Some of the needs for victims recognized by Zehr (1990) include concepts such as empowerment and having the offender held accountable. Zehr notes that the first

question we should ask following a harm is "Who has been harmed?" "How have they been harmed?" and "What are their needs?" (p. 191). This is far from the standard procedure taken under the retributive justice paradigm. Under the retributive paradigm of justice the focus is immediately drawn to the offender. We first ask, who did it? We then proceed to ask how should he/she be punished?

Other needs identified by Zehr (1990) include the need for support, for someone to listen, for questions to be answered, to know that what happened to them was wrong, to be reassured that it won't happen again to them or anyone else, to share their story, and to vent feelings of anger, confusion, and frustration. Another significant need for some victims may come in the form of restitution, or the opportunity to receive compensation for the damage or loss of property. Restitution is one form of reparation however it is not the only form. Other forms of reparation less acknowledged include an apology, forgiveness, dialogue, and assurance the harm won't be repeated, having questions answered. These forms of reparation are often equally if not more valuable to victims. It is hoped that the restorative process can afford victims the opportunity to share their individual needs and to have these needs met, as they are rarely met under the retributive paradigm where victims fall to the wayside in the pursuit of a conviction and decisions regarding the consequent punishment.

### **Offender Needs**

Of course we must not neglect the needs of the offender. Thus while the victim's needs form the starting point for restorative justice, the offender's needs must be addressed as well. Zehr states:

Biblically, justice is done not because it is deserved but because it is needed. Although in a retributive or just deserts model offenders may not

'deserve' to have their own needs given priority, society's self interest dictates that these needs be part of a just response. Identifying and addressing offenders' needs is a key element of restorative justice (p. 200).

Often the causes of an offender's harmful behavior can be a result of a need or needs that are not met in his or her life. Any hope for deterring similar harm-producing behavior and reducing the risk of recidivism may lie in our ability to address the needs of the offender. Zehr (1990, p. 200) notes several needs of offenders including the need to have their stereotypes and rationalizations about the victim and the event challenged.

Furthermore, Zehr notes the need to learn to be more responsible, to develop employment and interpersonal skills, for emotional support, for anger and frustration management, the need to develop a positive and healthy self-image, and finally the need for help in dealing with guilt. What is interesting to note here is that many of the needs identified here are stated as offender inadequacies rather than acknowledged as deficiencies in the communities for providing these needs to be met in the first place.

A true needs-based justice works diligently to expose the needs of the victims, offenders, and communities involved and to strive to fulfill the needs that may have caused the harm, or were created in the wake of the harmful behavior.

If restorative justice is to be viewed as a justice based on needs, then evaluation of the needs-meeting ability of restorative practices must be undertaken. We cannot simply assume that the high marks in terms of participant satisfaction are a result of victim and offender needs being met. We must address this variable head on. We must examine whether or not participants are able to express their needs and furthermore, if these needs are being met.

## **Community Needs**

There are also needs to be addressed beyond those of the victim and offender.

There is some consensus in the idea that the community also has a role to play, and that community needs are important (McCold, 2004; Sullivan & Tifft, 2001; Zehr & Mika, 1998). McCold (2004) believes questions such as these will pose the greatest challenges to face restorative justice as it matures. He states, "Community, difficult to define, may range from a local area or neighborhood to the world or international community, or from a geographic place to a group whose members have a common interest or occupation" (p. 155). McCold identifies two communities that have a stake in and a role to play in restorative practices. The first of these communities is what McCold refers to as the micro-community or "community of care." Members of this community include our families, friends and significant others in our individual lives. The micro-community provides us with personal, emotional and material care that is utilized in dealing with problems and in times of need for support and survival. Although Umbreit et al. (2004) prefer the term "social network," each of these researchers agree that this group has a role to play in restorative justice.

Often when a harm has been produced we find that members of the micro-community/social network surrounding both victim and offender experience some harm as well. As such, we must address this harm, the needs produced by it, and the possibilities for repairing it. Another need identified by the communities is the need to prevent future harms. This point raises some interesting implications, as perhaps this need is best met by ending the human suffering within the community in the first place. Often, one creates harm in part as a result of unmet needs in his or her life. In meeting



these needs in the first place, communities are effectively reducing the likelihood of future harms.

Macro-communities are affected by crime as well. According to McCold, macro-communities are groups not defined by personal relationships, but by geography or membership. Examples of the macro-community include the neighborhood in which one lives, church groups, the state, county, town, or other clubs or associations to which one might belong. For these members there is little or no significant emotional connection to any specific crime. However, macro-communities do experience what McCold refers to as aggregate harm (p. 157). McCold states:

The macro-community view is more concerned with the cumulative effect of crime on neighborhoods or society, and the resulting loss of a sense of public safety. From a neighborhood perspective, crime results in public fear of certain places which, in turn, reduces the public guardianship of those areas. This situation, then, further encourages crime and eventually leads to general neighborhood decay (156).

Offenders need to recognize that their actions had an affect on the wider community, and steps should be taken to repair these harms as well.

Both of these communities, the micro and macro, have another role to play in restorative justice. In order for the process to be truly restorative, both the victims and the offenders must be reintegrated into their respective communities. In restorative justice, shaming is used to demonstrate to the offender that his or her actions were both harmful and wrong. However, in order for the process to be restorative, this act of shaming must be followed by an attempt to reintegrate the offender and victim back into their micro and macro-communities. This is what John Braithwaite (1989) refers to as reintegrative shaming. He states, "Reintegrative shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or

respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant" (p. 100-101). Thus, through the restorative process we brand the offender's action as bad, but attempt to preserve the view of the offender as someone who is good. When there is no attempt to reconcile the offender with the community, he/she is said to be stigmatized (Braithwaite, p. 101). When this occurs, the offender becomes an outcast and his/her deviance is allowed to become a master status. When this happens, the restorative justice response has failed to be restorative.

The point here is that the participant's active communities must fulfill this role in order to make the process truly restorative. Both victims and offenders must experience the support of, and the services offered within their communities to recover from the harmful situation and to meet their needs along the pathway to healing, forgiveness, and repairing the harm.

### **Reparation**

Earlier in this literature review, I cited Zehr and Mika (1998) in providing the three basic principles that create the foundation of the practice of restorative justice. They proposed that we must change our view of crime to one in which we define the action of the offender not as some violation of rules, but as a violation of interpersonal relationships. In doing so we recognize that the harmful actions create an obligation on the part of the offender and the community to help repair that harm. This is what is meant by reparation, to repair the situation. This can be done in many ways. One often recognized form of reparation is restitution. This includes not only financial payback to victims to cover the costs of financial damages, but might also include labor for the victim, or labor for a charitable organization named by the victim. The point is simply

that the victim feels as though he or she has been repaid in some way or another. Other forms of reparation might include symbolic reparations such as an apology, or dialogue. Reparation is going to be different for each person. Other common forms of reparation include answers to questions, assurance that the harm will not be repeated to anyone in the future, and even to see the offender having needs met.

This is what restorative justice is all about. Zehr and Mika state, "restorative justice seeks to heal and put right the wrongs" (p. 51). It seems logical, then, to evaluate restorative justice in terms of its ability to accomplish this in the eyes of those involved in the harm produced. One could argue, as I have, that one measure of the ability of restorative justice to repair the harm is the participants' satisfaction. After all, it seems likely that only those who feel as though the harm has been repaired are likely to report being satisfied with the restorative process. While this is very true, the generalization seems to be far from valid. To assume that because the participants report satisfaction with the process, they feel that the harm has been repaired would be a stretch.

In reality, their general satisfaction could have come from some other aspect of the process like the chance to participate, to have needs met, to meet the other persons, or to have their questions answered. While I do believe that participant's satisfaction can speak to the ability of restorative justice to repair the harm produced, it is not sufficient to draw that conclusion based solely on the participant's level of satisfaction. We must do more in order to claim that restorative justice succeeds in repairing the harm produced in the wake of a violated interpersonal relationship.

Evaluations of restorative justice must include both those variables and concepts identified in parts one and two of this literature review. Failing to acknowledge concepts

such as empowerment, recognition, community, reparation, and needs in our evaluation is akin to failing to acknowledge the basic principles that guide the movement. In choosing not to evaluate these concepts, we send the message that these concepts are not important to restorative justice; but they are. They form the very foundation upon which the practice of restorative justice operates.

### **Emphasis on Satisfaction**

Despite the many volumes written concerning the reparative nature of restorative justice, there has been relatively little research conducted to date on whether or not these results are actually accomplished. Goals of restorative justice such as empowerment, holding the person accountable, meeting needs, community involvement, repairing the harm, making the situation right, emotional resolution, and recognition are prevalent in the literature, yet very little research has been gathered on these notions of restorative justice. The research conducted to date is more concerned with what Bush and Folger (1994) refer to as the satisfaction story. Bush and Folger state:

The broader picture suggested by the research literature is similar, if we point not only to what is studied but to what is not. With rare exception, evaluative research looks only at settlement and satisfaction; almost no studies attempt to assess mediation's transformative impacts or measure effects such as empowerment or recognition (p. 46).

They go on to note that the work of Deutsch (1993) and that of Pearson & Thoennes (1984) as two exceptions. Thus the satisfaction story has become the principle that guides both practice and evaluations. This has come at a cost however. As the satisfaction story emerged as the all important narrative guiding the practice of restorative justice, other narratives have been pushed aside. According to Bush and Folger, two such narratives include the social justice story and the transformation story. They state that

according to the social justice story, "Mediation offers an effective means of organizing individuals around common interests and thereby building stronger community ties and structures" (p. 18). Mediation as told by the social justice story offers an opportunity for communities to organize, and reclaim a voice in the justice process that serves its members. It encourages parties to solve their own problems and encourages self help and compassion towards others, all of which creates stronger communities that can lead to more social justice (Bush & Folger 1994).

Furthermore, Bush and Folger note how unaffiliated individuals are especially vulnerable to exploitation. This stands in direct contrast to the social justice story that depicts mediation as a process whereby the communities are drawn together in support of one another.

The transformation story has also been pushed aside as the satisfaction story has taken center stage. According to Bush and Folger, "The unique promise of mediation lies in its capacity to transform the character of both individual disputants and society as a whole" (p. 20). This story emphasizes the empowerment and recognition dimensions of the mediation process. It is about transforming human character, toward both greater strength and greater compassion. According to Bush and Folger, when these two dimensions are achieved in the wake of a conflict, the ultimate goal of moral development has been reached. Participants who have experienced a greater sense of self respect, self-reliance, and self-confidence are said to be empowered. These qualities are said to emerge through mediation when persons are allowed to define their own problems and solutions to those problems. Furthermore, they exercise self-determination throughout the process and take an active role in determining the outcome of their

dispute. Again, these are reported strengths in the literature regarding restorative justice, yet they continue to be ignored by many practitioners and have been the focus of little evaluation. Bush and Folger (1994) state:

The Satisfaction Story claims to depict what has generally occurred in the use of mediation thus far, while the other two describe something that has admittedly occurred only in part thus far. In effect, these are 'minor' stories of the movement, but each is still seen by its adherents as representing the movement's most important potential (p. 18).

Thus while we have a grand vision for the potential that mediation holds it would appear as though we have settled for the watered down version. The practice of mediation has become a tool designed for problem solving and making agreements. Because of the growth of the satisfaction story, mediation is now evaluated in terms of the goals put forth therein. Namely, rates of settlements, levels of party satisfaction, and quality of substantive outcomes. This view of mediation overlooks the many other potential benefits that restorative justice has to offer, including those aspects of the transformation and social justice stories. Bush and Folger state:

...the expectations people held for the movement at the start were based in large part on the assumption that mediation practice would emphasize the transformative dimensions of the process-- empowerment and recognition. In effect, then, the early expectations of the movement were shaped to a great extent by the Transformation Story. The gradual abandonment of those expectations as unrealistic has thus meant a move away from the story itself as a guiding vision for the movement (p. 51).

This is an issue that must be revisited by researchers and practitioners alike. Have restorative processes truly moved away from these values that clearly continue to capture the attention of researchers and proponents of restorative justice? Are these values truly unrealistic, or can they be achieved if we only strive to realize the full potential of restorative justice?

## **Part Two**

Even though there are many aspects of restorative justice that are not centrally addressed in evaluations of these programs, there is still much to learn from what has been examined. In Part Two of this literature review the following topics are examined: satisfaction, fairness, apologies, fear reduction, agreements, recidivism rates, cost effectiveness, and finally one section dedicated addressing impediments to success.

### **Participant Satisfaction**

A consistent theme in evaluations of restorative justice practices is that of satisfaction. Bearing in mind the often limited definition of this concept, there still exists an emerging pattern of high victim and offender satisfaction.

Mark Umbreit (1992), for example, conducted an evaluation of victim offender mediation programs in four states. His study was based upon analysis of both quantitative and qualitative data, involving multiple data sets, research questions, and comparison groups. Umbreit's study conducted interviews with 948 mediation participants, including 304 pre-mediation interviews and 432 post mediation interviews. He also collected interviews with two different comparison groups. Group one consisted of victims and offenders who were referred to the mediation program but did not participate in the mediation. The second comparison group included victims and offenders from the same jurisdiction who had been matched (with the mediation sample) along offender variables of age, race, sex and offense but who were never referred to the mediation program. Umbreit separated the crimes into offenses against property and offenses against people. The most frequent crime against property in all four sites was either burglary or vandalism. The most frequent offense against a person in all four sites

was assault. Overall, property offenses accounted for 87% of the referrals to mediation in the four sites combined.

Umbreit reported that the average age in each of the four program sites was 15. Participants ranged in age from 7-19, although at three of the four sites the youngest offenders processed were 10 years of age. The oldest offenders involved in the study seemed to be consistent over the four sites ranging from 17-19. Most of the offenders who participated were male. The figures ranged from a low of 82% male at two of the sites to a high of 90% at one of the sites.

Overall, 54% of the participants were white. The overall representation of blacks was 14% ranging from a low of 2% in one site to a high of 25% in another. Hispanics accounted for 27% of those in the study, including a figure of 65% at one site and 42% at another. There was a total of 1,087 participants in Austin, 658 in Minneapolis, 604 in Albuquerque, and 310 in Oakland. The total number of participants for all sites combined was 2,659.

Utilizing both likert scales and post-mediation interviews, Umbreit found 79% of victims and 87% of offenders, for all of the sites combined, were satisfied with the outcome of their case. A statistically significant difference is found, however, only for victims. The figure of 79% of victims who reported satisfaction with the mediation was statistically significant at the .05 level when compared to the 57% who reported satisfaction in comparison group 1 and 57% in comparison group 2. Offenders, as the data demonstrate, expressed satisfaction with the mediation process as well. However, no individual site indicated that mediation had a significant impact upon increasing offender satisfaction with the justice system.



Similarly, Strang (2002) studied victim and offender satisfaction extensively in her evaluation of restorative practices in Canberra. Strang's RISE experiment actually consisted of four separate experiments. In each experiment, Strang utilized a computer program to randomly assign participants to one of two groups. The first group had their cases processed by the courts. The second group of individuals was sent to have their case processed through conferencing. Strang (2002) states:

Each of the experiments was structured in the most rigorous scientific method possible-- the randomized controlled trial. Separate randomized controlled trials, with separate random number sequences, were conducted for separate offence [sic] types and offender groups, so as to identify possible differential effectiveness of conferences and court (p. 65).

The four experiments were: 1. Drink-driving (a distinct offense different than drunk driving) with blood alcohol content above 0.08 by offenders of all ages; 2. Shoplifting from stores employing security personnel by offenders aged less than 18 years; 3. Property crimes involving personal victims by offenders aged less than 18 years; and 4. Violent crimes by offenders aged under 30 years. All references to Strang's RISE experiment in this dissertation relate only to experiments 3 and 4. In experiment 3, Strang included the offenses of burglary, theft, shoplifting, receiving and possession of stolen goods, criminal damage, fraud, car theft, vehicle break-in and/or attempts at any of the above. Offenses included under experiment 4 were assault occasioning actual bodily harm, common assault, acts endangering life, fighting, possession of an offensive weapon, arson, or attempts at any of the above.

Strang's RISE experiment utilized three principal methods of data collection. The first of these methods involved observations collected by trained research staff of court and conference treatments to which cases had been randomly assigned. The second

method involved self-completion of questionnaires completed by the police officer facilitating each conference and the apprehending police officer in each case. Finally, Strang conducted interviews with victims, offenders and their supporters.

Strang's reintegrative shaming experiment (RISE) has documented victim satisfaction with restorative justice at many levels. Strang found that 70% of the victims in the property experiment and 68% of the victims in the violence experiment (conference victims only) respectively agreed that the government should use conferencing as an alternative to court more often. Furthermore, 78% of property victims and 69% of violence victims said that if they were victimized again, they would choose a conference again.

Strang (2002) puts these results in perspective by comparing victim satisfaction with restorative justice to victim satisfaction among those who had their cases processed by the courts. Strang measured victim satisfaction by asking all victims whether they were satisfied with the way their case was dealt with by the justice system. For those victims who actually experienced a conference, 70% were satisfied. The reported satisfaction of those victims who went to court was 42% ( $p < 0.001$ ).

Coates and Gehm (1985) found similar satisfaction rates with restorative justice. Their project consisted of evaluations of several Victim Offender Reconciliation Programs (VORP). One piece to this project included interviews with victims (N=37) and offenders (N=23) who participated in VORP face-to-face meetings in 1984. The results led Coates and Gehm to conclude that 83% of offenders and 59% of victims were satisfied with their VORP experience. Another 30% of the victims agreed that they were somewhat satisfied with their experience. Perhaps even more importantly, all but one of

the victims stated that if given the chance to do it all over again, they would choose to participate in VORP. Similarly, all of the offenders would choose VORP again if given the chance. Coates and Gehm asked victims what they found most and least satisfying about the process. The most satisfaction came from: 1) the opportunity to meet the offender to obtain a better understanding of the crime and the offender's situation; 2) the opportunity to receive payback for loss; 3) the expression of remorse on the part of the offender; and 4) the care and concern of the mediator. Initially, according to Coates and Gehm (1985), victims were most interested in monetary restitution. However, after the mediation, they found the chance to meet the offender and to better understand the crime and the offender's situation as most satisfying.

Results published from Kathleen Daly's Southern Australia Juvenile Justice project (SAJJ) provides somewhat lower figures for satisfaction. Daly (2001) summarizes the results from her SAJJ study that was aimed at assessing whether conference participants experience elements of procedural and restorative justice. This project, Daly claims, is similar to Heather Strang's RISE project, but different in some very fundamental ways. Daly's SAJJ project did not use a randomized experimental design to compare outcomes of court and conferences. SAJJ was also different in that the conferences studied were not facilitated by the police. SAJJ was designed to examine "specific movements between an offender and victim during and after a conference" (p. 74).

SAJJ had two waves of data collection, 1998 and 1999. Researchers monitored 89 conferences in 1998 over a twelve week period in the Adelaide area and in two large-sized country towns. Conferences were selected according to offense categories. Daly

states, "SAJJ-eligible offences were personal crimes of violence and property offences that involved personal victims or 'community victims' (such as schools, churches or housing trusts). Excluded were shoplifting cases, drug cases and public order offences" (p. 74). A SAJJ researcher completed a detailed observational instrument for each conference and the project aimed to interview all the young offenders (N=107) and the primary victim associated with each offense (N=89) in 1998 and a year later in 1999. Of those 196 victims and offenders, the SAJJ researchers completed interviews with 88% in the first year and 94% of that group again in 1999. The interviews conducted had both open- and closed-ended questions. All of the interviews were conducted face-to-face, except those with victims who did not attend the conference. Those interviews were conducted over the phone. The interviews conducted in 1998 were focused on the offenders' and victims' judgments of whether elements of procedural and restorative justice were present in the conference. In 1999 the SAJJ researchers were interested in how the passage of time affected offenders' and victims' judgments of the process and the promises made.

In general, Daly's SAJJ project found that offenders were more likely to be satisfied than victims with how their case was handled. Specifically, she found that 90% of offenders were satisfied or very satisfied, compared to only 73% of victims. One way Daly (2001) explains this disparity is by looking at offender and victim perception of the severity of the outcome. In a subset of cases (N=53) that contained only the pairs of offenders and victims, Daly found that 17% of offenders thought that the agreement was "too easy" and 68% thought it was about right. The remaining 15% thought that it was

too harsh. Victims on the other hand were twice as likely to feel as though the outcome was too easy, 36% to be exact. 62% said it was about right, and 2% said it was too harsh.

Including all victims interviewed at the one year mark, 12-20% registered negative reactions to the conference. 13% said they felt pushed into things while another 13% reported that the conference made them angry. 16% thought that the conference was a waste of time and 17% reported being not at all satisfied with how their case was handled (Daly, 2001. p. 79).

For all offenders interviewed at the one year mark 14-22% registered negative reactions to the conference. 22% said they felt pushed into things, and 14% said that the conference made them angry. 15% said that they felt the conference was a waste of time (Daly, p. 79). Despite these results, Daly found that "74% of victims were satisfied with how *their case* was handled and 77% said they would go to a conference again" (p. 79). A somewhat higher 87% recommended that the government keep conferencing. Daly attributes this to the ability of the victims to separate their conference experience, and the degree of satisfaction that they had with it, from the general idea of conferences.

These research projects suggest a pattern of rather high rates of satisfaction amongst the participants in the respective studies. What exactly causes the high marks in terms of satisfaction for restorative practices is unclear. However, Coates and Gehm (1985) found that victims found the most satisfaction in meeting and gaining an understanding of the offender's life, more so in fact than in punishing him or her. These results reflect a justice rooted in peace.

## **Perception of Fairness**

Similarly, implicit within victim and offender satisfaction is the idea of fairness. Both victims and offenders are less likely to report satisfaction if they have been treated unfairly by the process. Thus it should come as no surprise to learn that victims and offenders who have their cases processed by restorative justice report high levels of fairness with regards to their experiences. Zehr (1990) cites a Midwestern study in which victims and offenders were asked what justice meant and whether they had experienced it. Almost 80% of both victims and offenders who had gone through a Victim Offender Reconciliation Program (VORP) believed that justice had been served in their cases. The definitions of justice varied from case to case, but some general themes did develop. Zehr notes that “making things right” was the leading theme expressed. Another significant theme expressed by the participants was “fairness and equity in settling disputes.” He went on to note “punishment through imprisonment was the least frequent concern expressed by victims who participated” (p. 166).

Mark Umbreit (1992) found further support in his analysis of programs in four states. Umbreit concludes that, “Victims who participate in a mediation session with their offender are significantly more likely to have experienced fairness in the justice system, than similar victims who were not in mediation” (p. 114). He demonstrates this point using aggregated data including both offenses against property and offenses against people. Using this data, Umbreit found that 83% of the victims in the mediation group indicated that they experienced fairness in the processing of their case. This compared to only 53% of those cases referred to mediation, but eventually being handled by the courts and 62% of those in the non-referral to mediation group.

Umbreit (1992) even measured perceptions of fairness with regards to restitution agreements, with rather shocking results. He notes that while nine out of ten victims thought that the restitution agreement was fair to them, 93% of offenders agreed that the restitution agreement was fair to the victim. What is more astonishing is that nine out of ten victims felt that the restitution agreement was fair to the offender as well, and 88% of the offenders felt that the agreement was fair to them.

Strang's (1992) report of her RISE experiment supports this claim as well. In her study she found that 83% of the male and 92% of the female victims either agreed or strongly agreed with the statement, "The conference was fair to me". Strang did not ask offenders about their perceptions of fairness in this experiment.

Kathleen Daly's SAJJ research, described more fully earlier, also found rather high reports for victims and offenders for the notion of fairness. Daly states:

Like previous studies, the SAJJ project finds very high levels of procedural justice registered by offenders and victims at conferences. To items such as, 'were you treated fairly' and 'were you treated with respect', among others, 80-95% of victims and offenders said that they were treated fairly and had a say. Victims' responses were even higher on the procedural justice items than offenders' (p. 76).

The research presented here shows consensus amongst participants that a majority of the case outcomes were fair to all parties. These studies present strong evidence that participants perceive the restorative justice process to be fair, and that positive solutions to harmful behaviors can be achieved through peaceful means.

### **Apologies**

According to authors Suzanne Retzinger and Thomas Scheff (1996), one of the reasons that the level of satisfaction of victims is so high in processes that so often give

them so little material reparation is that they get symbolic reparation, which is more important to them. Some examples of symbolic reparation might be answers to questions, acknowledgement that the actions that caused them harm were wrong, respect, an apology, and even forgiveness. Retzinger and Scheff (1996) believe so strongly in the power of symbolic reparation they state:

... it is crucially important to give symbolic reparation at least parity with material settlement. Unless this is done, conferences may turn out, in the long run, to be only marginally better than traditional court practices. Symbolic reparation is the vital element that differentiates conferences from all other forms of crime control (p. 317).

One form of symbolic reparation that has been examined in numerous evaluations of restorative practices is the apology. According to Retzinger and Scheff, the first step regarding symbolic reparation is that the offender clearly expresses genuine shame and remorse over his or her actions. The expression of remorse often manifests itself in the mediation through an apology which can be very meaningful to the victims.

Strang's RISE experiment in Canberra for example shows that almost three quarters of those randomly assigned to a conference received an apology. This figure jumped to 86% for those who actually attended a conference. In fact, 91% of the conference victims said that it was part of the conference outcome. Compare this with the fact that only 19% of those randomly assigned to the court reported having received an apology. Perhaps even more important is that conference victims were far more likely to report that the apologies received were sincere. Over three quarters of the conference victims, 77% to be exact, believed that the apologies they received were 'sincere' or



‘somewhat sincere’, compared with only 41% of those randomly assigned to court.

(Strang 2002) These results led Strang to state:

Conference victims, it seems, not only received more apologies but also higher quality apologies (if sincerity is a measure of quality). This may be due to the circumstances in which they were offered: most of the apologies received by victims whose cases went to court seem to have been coerced, while apologies forthcoming at a conference usually emerged spontaneously as the discussion evolved (p. 115).

Thus, not only were victims more likely to receive an apology, they were more likely to perceive the apology as sincere.

However, not all studies have produced the same positive results. Daly's (2001) SAJJ data paint an entirely different picture. The SAJJ researchers observed 89 conferences in 1998 and followed these conferences with interviews in both 1998 and again in 1999. During the 1998 interviews, the offenders were asked to recall their feelings before the conference. Daly and her research team found that 31% of the offenders said that the conference was not important to them, and 53% replied that they had not thought about what they would want to do or to say to the victim. Only half of the offenders stated that the victim's or the victim representative's account of the event had any effect on them. Over 40% said that they were still not sorry or they were less sorry for the victim after the conference.

Similarly, the victims' data collected in 1998 found that just 38% of the victims said that the offender's story had an effect on them, and just 53% said they had a better understanding of why the offender committed the offence. When interviewed in 1999, Daly found that 28% of victims believed that the main reason the offender apologized was because she/he was really sorry. 31% thought that the offender wasn't sorry, but thought she/he would get off easier if she/he said sorry. 26% felt that the offender was

pushed into saying sorry, and 15% felt that the offender apologized to make his or her family feel better (Daly 2001).

### **Reduction of Fear**

There has been some evidence that suggests that a face-to-face mediation can reduce a victim's fears of revictimization. Umbreit and Warner-Roberts (1996) took a sample of 68 victims and 51 offenders who participated in direct mediation, indirect mediation (no face-to-face contact), or court in Coventry and Leeds (UK). One of the most significant results of the study was with regard to fear of revictimization. The victims whose cases were processed by the courts were far more likely to report a fear of revictimization (33%). Victims whose cases were processed through conciliation or indirect mediation reported less fear of revictimization (21%). Finally those whose cases were processed through direct mediation were less likely to fear revictimization after meeting with their offender (11%).

In a separate study, elaborated upon earlier, Umbreit (1992) found a significant contribution to reducing fear and anxiety among victims as a result of victim offender mediation. He found that prior to mediation, nearly 25% of victims were afraid of being victimized again by the same offender. After mediation, only 10% were afraid of being revictimized.

Elsewhere, Umbreit (2001) presented a summary of his own research regarding the reduction of fear in *Victim Impact of Meeting with Young Offenders*. He states:

The percentage of victims reporting fear of revictimisation ranged from 6 per cent to 16 per cent in studies across US, Canadian, and English sites (Umbreit 1991; Umbreit 1994; Umbreit 1995; Umbreit and Roberts 1996). In the latter two countries, victims who went through mediation were over 50 per cent less likely to express fear of revictimisation than a sample of victims who did not go through mediation (p. 135).

Specifically, in his U.S. study, reduction in fear was looked at by interviewing victims both before and after mediation. Prior to mediation, 23% of victims reported being fearful of further revictimization by the offender; after mediation, the portion expressing such fears was cut by more than half to a figure of 10%. Umbreit states, "Personal contact with the offender through mediation was often cited as a factor in the reduction of fear" (p. 135).

Similarly, Strang (2002) concluded in the RISE experiment that after mediation, both property and violence conference victims feel safer and less fearful of their offenders than do court victims. Daly's SAJJ project also investigated victims' fears both prior to and following their mediation. With regards to fear reduction, Daly's team found that the victims in the conferences classified as highly restorative were significantly less likely to report that they were frightened of the offender after the conference, and less likely (nearing statistical significance) to say that they felt angry towards the offender. Both results, according to Daly, suggest an enhanced effect of reductions in victim's fear and anger in conferences that rated high in restorativeness, procedural justice and coordinator skill. Daly did go on to note however that the high restorativeness conferences were also associated with victims who felt positive or neutral toward the offender both before and after the conference. This suggests that the victims' attitudes toward the offender, before the conference is likely to have an affect on how the victim and offender perceive the outcomes of the conference.

Not all studies produced the same positive results. Daly's SAJJ project found that not all conferences scored high on her measures of restorativeness, procedural justice and skill of coordinator. Under these conditions, less significant reductions in fear were

produced. Similarly, Strang (2002) discovered that many variables can affect the level to which victims report any reductions in fear. Specifically, Strang found that the skill level of conference facilitators, insufficient preparation of victims, and poor conference organization, were all likely to influence the variable of fear reduction.

### **Reaching Agreements**

The literature here revolves around restitution agreements, and is addressed in two sections. The first section addresses the success of restorative justice in reaching acceptable agreements for victims and offenders. The second section discusses the issue of agreement completion or fulfillment.

Coates and Gehm (1985) found very promising results in their assessment of VORP programs in seven counties in Indiana, and one in Ohio. Using data collected in the 1984 interviews described earlier, they concluded that 92% of victims interviewed had worked out restitution contracts with the offenders. The remaining 8% did not because the stolen items had been returned. Essentially this means that the issue of restitution was addressed in 100% of the cases.

Umbreit's (1992) evaluation for the Center for Victim Offender Mediation (CVOM) in Minneapolis reports that a restitution agreement was reached in 96% of the cases where victim offender mediation was conducted. Elsewhere, Umbreit (1994) cites his own research with Robert Coates, in which restitution agreements were produced in over 90% of the mediation sessions. Furthermore, Umbreit's (1992) evaluation of four programs in the United States found that for the combined sites, 95% of mediations resulted in a successfully negotiated restitution agreement that was considered fair to both victims and offenders.

Finally, Tony Marshall (1990) cites a wealth of information from studies both in the United States and abroad.

In Galaway's (1986) study of the Minnesota VORP, 45 of 47 mediations ended in an agreement (96%). Scandinavian projects also have high rates of agreement- 90% in both Norway (Hovden, 1987) and Finland (Iivari, 1987). Mackay's (1986) Scottish experiment also [sic] failed to achieve an agreement in relation to only four out of 18 victims (78% agreement) (p. 116).

Thus, it would appear that reaching agreements between victims and offenders is one of the strengths of restorative justice.

Clearly the issue of agreement completion is another story. The high percentage of cases reaching an acceptable agreement under restorative justice means very little if those agreements do not get fulfilled. It is in this regard that restorative justice proves that it can deliver that which it promises. This becomes rather apparent when compared to restitution agreements that are ordered by the court, without mediation. Umbreit (1992) found that mediation had a significant effect on the likelihood of offenders completing their restitution agreements. Umbreit found that fully 81% of those offenders who went through mediation completed their restitution agreements. This was compared to 58% of those who completed their agreements after a court administered program without mediation. The most drastic comparison came from Albuquerque where 93% of juvenile offenders from the mediation group and only 69% of similar offenders from the court administered program involving no mediation successfully completed their restitution agreements.

Coates and Gehm (1985) similarly found that at the time of their interviews with the victims, 82% of the financial contracts had been completed fully. In only four instances was there no record of progress toward completion of the restitution agreement.

Regarding restitution agreements, it should be noted that these agreements do more than provide financial reparations for victims. The agreements under restorative justice are also more likely to include other arrangements between victims and offenders. Coates and Gehm (1985), for example, found that in 32% of the mediated cases, there was some sort of service agreement between victim and offender. Yet another option reported by Strang (2002) included service agreements in which offenders were required to complete community service hours at organizations nominated by the victim(s). At the time of interviews, Coates and Gehm (1985) report that 90% of the service restitution agreements had been completed. The average number of hours of service for the victim was 31. These service hours were part of the agreement produced by both parties and consisted of various work activities completed by the harm producers working directly for their victims.

The ability of restorative justice to not only successfully negotiate, but also to fulfill restitution agreements is no small success. These agreements signify the reparation of harm for victims and offenders. Successful completion of the agreements is a step forward in making the situation right. The fact that agreements are reached through peaceful dialogue and in an atmosphere of respect for all parties represents a phenomenal accomplishment. It stands in clear opposition to the confrontational, non-participatory option presented by the court system.

As a caveat to this point however, it must be acknowledged that the agreements produced must be in fact created by both parties and be restorative in nature for this accomplishment to be celebrated. If the agreements are viewed as punishments in the eyes of the offender, or if they are created solely by the victims, they are less likely to hold the same value as if they are acknowledged as a step in making the situation right and created through the efforts and input of both the victim and the offender.

### **Impact on Recidivism Rates**

The jury is still out on whether or not restorative justice can effectively produce lower recidivism rates than assignment to the courts. However, it is not for lack of effort. As previously noted, issues with the randomization of assignment to court, mediation, or other options and with regards to sample size abound in the literature. Furthermore, controlling for all of the variables that have the potential to effect a case outcome is no easy task. Despite these challenges the empirical research regarding restorative justice and recidivism is beginning to amass, but the results are as of yet unclear.

Schneider (1986) describes her own Washington, D.C. experiment, which was designed to provide a comparison of victim-offender mediation restitution against probation for a group of serious offenders. Following a pre-sentence investigation, probation officers recommended the youths to either incarceration or probation. Those assigned to probation were then randomly chosen for either probation or for victim offender mediation and the restitution program. Schneider's research was somewhat complicated by a rather high number of crossovers. Crossover refers to those individuals who were randomly assigned to the mediation group, but for a variety of reasons chose not to participate, and went to probation instead.

Schneider's experiment concluded that the restitution group (including all of those randomly assigned to the mediation group, including the crossovers) had reoffense prevalence rates considerably lower than the probation group: 53% for those in the mediation group, and 63% for those in the probation group respectively. This was a statistically significant difference. The mediation group also had an overall annual reoffense rate lower than the control group (54 to 65). Schneider's multiple regression analysis also showed that the youths assigned to mediation had lower overall contact with the criminal justice system in the future, both in terms of frequency and rates, after controlling for the number of priors, age, race, school status, and sex. The results of her study led Schneider to conclude:

Three major findings stand out. First, youths who were randomly assigned into restitution—whether they actually participated in it or not—had lower recidivism rates than youths randomly assigned probation. Second, those who actually participated in restitution generally had lower recidivism levels than those in probation. And, third, those who participated in restitution never had higher rates than those who participated in probation (p.547).

In this particular case, the group Schneider refers to as the “restitution” group went through a victim offender mediation and restitution program.

McGarrell et al. (2000) implemented "an experiment on the use of restorative justice conferences as an alternative response to early law breaking by young offenders" (p. viii). In their research project, conferences were being utilized as one of many potential diversion programs for youthful offenders. Several criteria were reported to assess a youth's eligibility for diversion.

1. The arrested youth must be a first-time offender (no prior adjudications).
2. The youth must not have been arrested for a serious violent offense.
3. There must be no other pending charges.

As for admission into restorative justice, two additional criteria must be met.



The youth must (1) be no older than 14 years of age, and (2) admit responsibility for the offense (McGarrell et al. p. 30).

If the offender was eligible, he/she was diverted from the court and charges were not filed if the participant completed the diversion program. The experiment involved a random assignment to either the restorative justice program or to other types of diversionary programs. It included both violent and property offenses, but did not distinguish between the two. Included in the study were property offenses such as conversion, theft, trespass, disorderly conduct, larceny, forgery, and also violent offenses such as battery, aggravated assault, non-aggravated assault and intimidation.

There were a total of 458 youth offenders involved in the experiment. 232 of them were assigned to the restorative justice conference model and the remaining 226 were part of the control group and took part in a variety of other diversionary programs including a shoplifting program, a garden project, volunteer services, Operations Kids Can, Teen Court, community service and victim offender mediation programs.

McGarrell notes that the use of both restorative justice conferences and victim offender mediation is interesting as the two have many similarities. The key distinction he notes is that mediations utilize a trained mediator and they typically do not involve support networks for victims and offenders. Despite the difference, victim offender mediation is commonly regarded a restorative practice. McGarrell identifies this connection and states, "...some of the differences between the RJ and control group may be less than would be expected with comparisons to other types of court-ordered programs" (p. 34). Despite this recognition, no comparisons were made between the restorative justice group and the mediation group.

Part of this research project involved a recidivism analyses conducted after both six and twelve months. After six months, an analysis of the total number of cases indicated that the restorative justice group had a lower recidivism rate than the control group by a margin of 13.5%. This was a statistically significant margin. Even more impressive is the evaluation regarding those who fully completed their respective programs after six months. Because juveniles who participated in restorative justice are more likely to complete their assigned programs, this particular study examined a larger portion of the youths who participated in the restorative justice program over those in the control group. The re-arrest rates were 12.3% for the youths who participated in restorative justice, and 22.7% for those youths in the control group. This represents a 46% reduction in the recidivism rate and is statistically significant.

After twelve months, McGarrell et al. (2000) report that the disparity between the groups was lessened, but still those who participated in the restorative justice group had lower re-arrest rates. Just over 30% of the youths participating in the restorative justice conferences were re-arrested at twelve months. This compares to 41.2 percent of the youths in the control group who were re-arrested.

Maxwell, Kingi, Morris, Robertson and Anderson published results of their study that examined the differences in how girls and boys respond to family group conferences. These preliminary results are part of a large undertaking by the researchers to examine the files of 1,000 family group conferences and interview as many of the young people involved as possible. The figures reported here are preliminary findings from an analysis of some of the interview and file data that had been collected by the end of July 2001.

All participants took part in family group conferences in New Zealand in 1998. Maxwell, et al. (2003) state:

The most potentially interesting and novel findings in this study are to be found by comparing the responses of girls and boys to family group conferences. The young people were asked about their memory of the conference, the extent to which they were prepared for it and consulted about it, and their participation and involvement during the conference. They were also asked about their responses to the victims and to their own offending, the responses of others to them and for their views on the outcomes (p. 140).

For example, Maxwell et al. (2003) asked the participants if the impact of what had happened at the family group conference had helped them stop, or reduce, their offending. As a whole, a third of those interviewed reported that having a family group conference helped them to stop or reduce their re-offending. However, girls were only half as likely to report this as boys. This was a statistically significant difference. However, a recidivism study found the re-offending rates were significantly lower for girls at both 12 months and 18 months. These results are interesting because girls reportedly were less responsive to the family group conference, yet their recidivism rates were significantly lower. Maxwell, et al., offer some explanations for these results (p. 144). First, they believe that perhaps the boys are only reporting on that which they believe one would like to hear, or the social desirability effect. Another explanation is simply that boys and girls report differently about similar experiences, and finally they point out that when other factors are held constant, males are more likely in general to offend than females.

Umbreit's (1992) study fell just short of reaching statistical significance, but nonetheless produced some promising results. Umbreit measured recidivism rates after one year for both offenders who went through mediation and for offenders in a

comparison group who went to court. The one year mark was established from the date of mediation, or the date of disposition for those who went to court. Status offenses, probation violations, and charges that were dropped were not included as recidivism. The comparison group at each site in Umbreit's study consisted of similar offenders from the same jurisdiction who were matched with offenders in mediation, along the variables of age, sex, race, offense and restitution amount. From his data, Umbreit concluded that the offenders in the mediation program committed noticeably fewer offenses within a one year follow up of their program. Furthermore, when they did commit further crime it was of a less serious nature. As stated, however, these results fell just short of reaching statistical significance. Umbreit states:

While it is important to know that the victim offender mediation process appears to have had an effect on suppressing further criminal behavior, the finding is not, however, statistically significant. Even though the difference between the mediation samples and the comparison group samples was approaching significance, and missed by very little, the possibility that this apparent effect of mediation upon reducing recidivism occurred by chance cannot be ruled out (p.134).

Similarly, Umbreit states his research is consistent with Dignan's (1991) and Marshall and Merry's (1990) English studies, that found marginal, but non-significant, reductions in recidivism for offenders who participate in mediation programs. These results are consistent with numerous other assessments of victim offender mediation programs with regards to participant recidivism rates (Nugent & Paddock 1995;; Pate 1990; Stead 1986; & Wynne 1996).

Finally, after reviewing numerous studies concerning mediation and conferencing, McCold (2003) states:

Reoffending rates for offenders is no higher for restorative justice than it is for court adjudication. The effects of the programme on reoffending

depend upon crime type and are related to participation rates. While there appears to be a strong self-selection effect for the voluntary programmes, reoffending following restorative justice processing seems to be reduced more among offences against the persons than property offences or victimless offences (p. 107).

Why exactly these results are produced with restorative justice is yet undetermined. However, one could surely point out that restorative justice has as central goals, the idea of making offenders accountable, and stopping future harms. Placing the offender in face to face contact with those whom they have harmed makes it difficult to deny the harm. Holding the offender accountable can also foster remorse, and the offender has the opportunity to make things right and receive forgiveness from their victims and those who are significant in their lives, and to have their needs met, all of which could be factors in the lower recidivism rates reported by participants of restorative justice.

### **Cost Effectiveness**

While the research is mixed on the impact of restorative justice on recidivism rates, there is obvious potential to reduce the costs associated with processing and incarcerating offenders. To the extent that restorative justice represents an alternative to incarceration it has astronomical saving potential. Siegel and Senna (2004) report that the current cost associated with the construction of one prison cell is somewhere in the neighborhood of \$70,000. The cost of housing one adult inmate in prison for one year costs around \$22,000. Housing juveniles is even more costly. The costs associated with holding one juvenile for a year are around \$30,000.

One of the main goals of Coates and Gehm's empirical assessment of VORPs in Indiana and Ohio (1985) was to assess the extent to which VORP is an alternative to

incarceration. Seventy-three VORP offender referrals were drawn from Porter, Elkhart and Hoosier Hills. This group was then matched with 73 offenders who were not referred to VORP. The offenders were matched according to: 1) female/male; 2) juvenile/adult; 3) race; 4) prior conviction yes/no; 5) prior incarceration yes/no; 6) most serious current charge for which convicted.

Coates and Gehm then conducted a comparative analysis of VORP and non-VORP offender samples to assess whether or not VORP represented a significant alternative to incarceration. Overall, they found little difference between the two samples in terms of the number of offenders incarcerated. Including both prior and post conviction incarceration, they found that 32 VORP offenders and 26 non-VORP offenders spent at least some time in jail. This difference was not statistically significant.

However, when examining post conviction incarceration alone, they found that the 16 VORP offenders serving time all did so in local jails. Of the 15 non-VORP offenders, eight served their time in local jails, and seven went to state institutions (four juveniles and three adults) This resulted in a statistically significant difference in terms of where time was served between the two samples.

When Coates and Gehm computed a difference of means *t* test for comparing the total time served post-conviction between both samples a significant difference was also found. They compared the total time served post-conviction for the two samples who were actually incarcerated. A Mann-Whitney U of 43 is significant at the .001 level. The test showed that the non-VORP offenders were confined for significantly longer periods of time. Non-VORP offenders served an average of 3,175 days, while the VORP offenders served an average of only 613 days.

These results indicate that while VORP offenders are just as likely to serve time post-conviction, they are less likely to serve time in a state institution and are incarcerated for shorter periods. Coates and Gehm state:

The cost savings represented by the difference in the number of days served between the samples are substantial. A conservative estimate is \$84,500. ... VORP seems to be used as part of a sentencing package, sometimes including local jail time, resulting in fewer days of incarceration (p. 259).

Coates and Gehm do, however, note that even though their matched offender sample is particularly robust for this purpose, as the matched variables include those legal and extra-legal factors most often thought to influence sentencing, clearly they cannot control for all possible influences, such as offender's demeanor in court or the mood of the judge.

Of course this raises some interesting questions. For example, when used as part of a larger sentencing package, including jail/prison time, does the inclusion of restorative justice make the sentence a restorative one? The answer is no. However, if used as part of a sentencing package which reduces the length of time spent behind bars, it does represent a reduction in the costs associated with the sentence. More research will be needed to discover whether restorative justice can be effective as only part of a sentence including less restorative alternatives.

### **Impediments to Success**

There are several issues that have been identified to be hindering the success and development of further restorative justice programs. These issues include victim and offender dissatisfaction, revictimization, a lack of referrals, a lack of follow-up services, lack of staffing to complete follow-ups, and the criticism of net widening.

Strang (2002) provides several lessons learned from failed conferences. These lessons speak directly to victim and offender satisfaction with restorative justice. Some common causes of reduced satisfaction for victims and offender include poor investigative police work, insufficient preparation of victims, poor conference organization, inadequately trained facilitators, and an excessive focus on the offender. Yet another source of dissatisfaction for victims reported by Umbreit (1994) was the belief that the offenders got off too easy. According to Coates and Gehm (1985), victim dissatisfaction resulted from: a lack of adequate follow-up and leverage on the offender to fulfill the agreed upon contract; the time delay from offense to actual resolution through the VORP process; and the amount of time required to participate in VORP.

Another major source of dissatisfaction among victims found by Braithwaite (2002) came when conferences were scheduled but for a variety of reasons never came to fruition. Instead, the case ended up in the courts. This was a major letdown for many victims. While these individuals are not expressing dissatisfaction with restorative justice, this does speak to the way in which restorative justice programs should be organized.

Another potential pitfall of restorative justice is the possibility of revictimization. As Umbreit (1994) notes, the failure of offenders to meet their restitution agreements is one way in which victims experience further harm.

Kathleen Daly (1996) cautions on the potential for re-victimization as well. In her small study of 24 conferences including 30 victims who attended conferences in Australia, Daly found that 25% of victims were treated with disrespect, or “revictimized” in some way. She states, “In the cases that I observed, the main problem was the



offender's denial of responsibility for the act; this was likely to happen when victims did not have supporters or were outnumbered by offenders and their supporters" (p.13). Daly also cites a study by Maxwell and Morris who found that 25% of victims "felt worse" as a result of attending the conference.

Strang emphasizes that the negative conferences do not necessarily reflect a failure of restorative justice. She states,

When this fails and victims are left feeling worse after a conference than they did before, it is most often because of the poor quality of the conference rather than a result of their objection to the principles of restorative justice (p. 204).

Another impediment standing in the way of the development of restorative justice within the United States is a lack of referrals. Restorative justice represents a new way of administering justice. In order for restorative justice to get referrals, those who have the power to make referrals have to believe in the ideology of the program. This type of support has yet to develop for restorative justice. Tony Marshall (1990) states:

Obtaining referrals was a common problem. Much time-consuming work had to be invested into publicity among relevant agencies and into the day-by-day process of persuading solicitors, police, courts, and probation officers that particular cases might be pertinent (p. 240).

Marshall goes on to note that several programs actually went under due to a lack of referrals. In essence, the failure of these programs was not due to the failure of restorative justice, but rather to a lack of support for these programs from agents in the criminal justice system. Coates and Gehm (1985) suggest that restorative justice staff may need to become more proactive in working out agreements and understandings with court officials in order to receive more referrals. However, this in turn creates a problem

for assessment of these programs. It makes obtaining a random sample very difficult, if not impossible.

Yet another issue is a lack of follow-up services. According to Coates and Gehm (1985) “Many victims were particularly concerned about what they perceived to be a lack of monitoring of restitution agreements. In some sites this is the task of VORP staff; in others it is the task of probation” (p. 23). Either way, the issue needs to be resolved. This has rather obvious implications for victim satisfaction with the restorative justice process. Tony Marshall (1990) expresses his concern as well:

A major failing of all the schemes examined was the omission of any procedure for keeping in touch with the parties after mediation. There was a strong tendency for the mediators to regard responsibilities as having ended with the facilitation of an agreement and the report back to the court or juvenile liaison panel. Their responsibility cannot end so abruptly, however (p.243).

There is a need for case management. Having negotiated an agreement with both the victim and offender means very little, in particular to the victims, if the agreement is not kept. This may require some follow-up work to get the job done. Coates and Gehm (1985) report that Porter County staff are now experimenting with facilitating follow-up meetings with victims and offenders both midway and at the conclusion of the contract agreements. These follow-up meetings help to monitor the progress and also provide closure and help meet the goal of reconciling individuals.

Net widening is another criticism aimed at the practice of restorative justice. The extent to which restorative justice is widening the net appears to be undecided. Nonetheless, restorative justice is being criticized on the basis of the potential harm that could be caused if these accusations prove to be true. Kathleen Daly (1996) expresses the concern that cases that would have received formal cautions in the past are now being

conferenced. She cites a study conducted in southern Australia by Wundersitz (1996: 10) that found “a definite increase in the [overall] number of young people coming to official notice” from 1993-1994. The question of whether or not restorative justice is widening the net of the criminal justice system is not an easy one to answer. Coates and Gehm cite Dittenhoffer and Ericson (1983) who note that questions about net widening will most likely increase as VORP is used as a diversion program. To the extent that VORP brings offenders into the system that would normally have had their charges dropped, or leads to further offender penetration into the criminal justice system than otherwise expected, some observers will question its merit and promise. On the other hand, to the extent that restorative justice represents an alternative to incarceration, it simply opens the door to new resources for judges to repair the harm created in the wake of crime. Only time and further investigations will tell.

In conclusion, it would appear at least from the results of the evaluations covered in part two of this literature review that restorative practices have demonstrated success about several of the concepts evaluated. Combine the high victim and offender satisfaction rates with the ability of restorative justice to create agreements with the disputing parties and the high marks in terms of participant perceptions of fairness and you have a strong foundation upon which to build a criminal justice system that not only satisfies, but can repair the harm caused by crime and lower recidivism rates. By pursuing justice through peaceful means we can restore victims and reduce the chances of recidivism for offenders. With restorative justice, offenders are not stigmatized or labeled deviant, instead they are treated with respect and support. The deviant lifestyle/actions are viewed as harmful. This allows the individual to maintain both a

positive social and self worth, which can reduce secondary deviance or the likelihood of the person taking on the a deviant identity. Restorative justice has the potential to become a new road for the criminal justice system, a new and peaceful pathway to justice, a justice that satisfies and repairs without causing further damage to both victims and offenders. Paul McCold (2003) states:

There is no intrinsic limitation to the type of dispute or disputants for which restorative justice can bring a reparative response and no empirical limitation reported in the evaluation research. Mediation and conferencing have reported successful resolution in violent and property cases, adult felony and first-time juvenile cases, and between strangers or among family members. For everything from consumer complaints to domestic violence, programme evaluations have documented the positive outcomes of restorative justice ( p. 105-6).

This is not to say that more evaluations are unnecessary, but that there is potential in the ideas and practices of restorative justice. We must continue to study programs that claim to be restorative in nature. We must learn from and continue to keep a watchful eye on the impediments to success reported here, and others we have yet to discover, as we continue to unearth more knowledge about restorative practices and the potential they hold.

More specifically, the evaluations must be concerned with the transformative potential of restorative practices. The wealth of theory that supports the movement towards restorative justice makes many claims about the potential of restorative practices to include victims and offenders in the restorative process, to make the situation right, to empower participants, to meet the needs of the participants, to encourage recognition, and to reintegrate offenders and victims into their communities. These principles define the restorative justice movement, and yet they have been scarcely evaluated. As such, we

may be doing little more than fooling ourselves about the transformative potential these practices actually hold.

Finally, a comment is in order about recidivism rates with restorative practices. Theoretically, restorative practices can deliver on the promise of lower recidivism rates to the extent that the practices can effectively reintegrate offenders into communitarian societies. However, to the extent that the communities into which the participants are returning feature communitarianism is perhaps the biggest factor. If the communities to which the offenders are returning are unjust and fraught with harm and despair then the chances of reintegration are unlikely and consequently the promise of lower recidivism rates is also unlikely to be achieved. A major goal of restorative justice must then become to create just communities which feature communitarianism if they wish to lower recidivism rates. If the life circumstances of the offenders are not changed when they return to the community, then we should not expect much of an effect on recidivism rates.

## **CHAPTER IV**

### **METHODS**

#### **Introduction**

The primary purpose of this chapter is to introduce the research methods and to present the research design. Yin (1994) likens a research design to a “blueprint of research, dealing with at least four problems: what questions to study, what data are relevant, what data to collect, and how to analyze the results” (p. 20). A research design is used to focus the researcher and to ensure that the original questions of the research get addressed. The research method that I have chosen is the case study. Hamel (1993) states:

The case study is an in-depth investigation. It accordingly uses different methods to collect various kinds of information and to make observations. These are the empirical materials through which the object of study will be understood. The case study is thus based on a great wealth of empirical materials, notably because of their variety (p. 45).

The data that has been collected for this dissertation includes observations of 14 victim offender mediations at a Balanced and Restorative Justice center in a mid-western state, copies of the 17 agreements produced by the 14 mediations, post-mediation survey data from a total of 119 juvenile and adult victims, and 130 juvenile and adult offenders, and interviews collected with two adult victims following their mediation. The first victim interview occurred on the same day as their mediation, and the second interview occurred on the following day.

The BARJ center serves four counties although a vast majority of the cases come from the county where the BARJ program is located. The following data provides a snapshot of the demographic information from the county in which the BARJ program is

located. This county has a population of approximately 175,000. The U.S Bureau of Census data from the year 2000 indicate that the population was 81.% white, 14.% African American, 2% were of two or more races, and the remaining population was composed of less than 1% American Indian or Alaska native, Asian Indian, Chinese, Filipino, and Korean or some other race respectively. The population in the year 2000 was 49.6% males and 50.4% female. The median age in years was 36, with those 18 and over constituting 72.5% of the population. The median household income in the year 2000 was \$38,088, with some 18,752 individuals living in poverty. According to this states Department of Labor and Economic Growth/Employment Service Agency, the unemployment rate was 10.1% in 2003. According to the Regional Economic Information System, the largest employers in 2002 were in manufacturing (13,617), retail trade (12,947), and Health Care and Social Assistance (10,048).

In the year 2000, the U.S. Bureau of Census reported that 4% of the residents in this county had less than a 9th grade education, 11% completed 9th- part of 12th grades, 33% had earned a High School diploma, 23% had some college experience, 8% earned an Associate degree, 16% had earned a Bachelors degree, and 4% had received a graduate or professional degree.

According to the Uniform Crime Report, there was an estimated 9,116 Index crimes in this county in the year 2000. This total includes 3 murders, 114 rapes, 159 robberies, 614 aggravated assaults, 1,320 burglaries, 5862 larceny-thefts, and 992 motor vehicle thefts. Table 2 is a summary of the arrests in this county from the year 2000. The data is summarized from the Uniform Crime Report. The BARJ center currently processes 400+ cases per year; 409 to be exact in 2003 and 405 in 2004.

**Table 2**  
**Arrests in (2000)**

CRIME	ARRESTS
Murder	2
Rape	8
Robbery	21
Aggravated Assault	374
Burglary	64
Larceny-thefts	253
Arson	2
Other assaults	515
Forgery & counterfeiting	10
Fraud	69
Embezzlement	12
Having Stolen Property	40
Vandalism	58
Weapons violations	73
Prostitution and commercial vice	7
Sex offenses	18
Total drug violations	411
Gambling	1
Offenses against family & child	7
Driving under the influence	794
Liquor law violations	347
Drunkenness	6
Disorderly conduct	191
Vagrancy	3
All other offenses except traffic	1,305
<b>Total</b>	<b>4,788</b>

These figures include both juvenile and adult cases although a large majority, over 90 percent, involved juvenile offenders. The juveniles range in age from 6-17. In order to participate in the juvenile program the offense in question must have been committed before the participant's 17<sup>th</sup> birthday. Those who do not meet these qualifications participate in the adult program.

Participants are referred in one of two ways. The first way participants get referred is by the court system. The BARJ center is not aware of specific criteria for



referral to their programs. The second source of referrals comes directly from city police officers. These types of referrals are on the rise, accounting for approximately 25% of all cases processed by the BARJ center. The process is voluntary for both victim and offender. However, the voluntary nature of this program for offenders is questionable. Often offenders are ordered by a judge or referred from the police to attend mediation. They do retain the right to refuse, but to what extent this represents voluntary participation is certainly questionable. If an offender is unwilling to participate, their case is sent to the appropriate court for processing. For many offenders, this means that their case will be processed by the judge who ordered mediation in the first place.

The BARJ center receives referrals for a wide array of criminal behavior. A majority of the cases processed come from property crimes and assaults between persons including young children and siblings. The BARJ center does not handle retail fraud cases, domestic violence cases between partners, or child abuse cases. They have and do however handle cases in which a child is abusive towards his or her parent(s) or other siblings.

Referrals come into the BARJ center where they are assigned to either victim offender mediation or a family group conferencing. Assignment into one of these two categories is made by the BARJ center staff that screen the cases utilizing the police reports, comments from the Juvenile Court or the arresting officer, and discussion with the victims over the phone. Cases involving a large amount of restitution being requested or a case with many victims are usually assigned to a Family Group Conference.

Despite the names designated to these two programs, mediation and family group conference, these programs are similar procedurally and mostly resemble victim offender

mediations. The differences between these two programs have more to do with the harms produced and the preparation of the participants. The harms sent to victim offender mediation involve less serious harms or are more cut and dried cases as evaluated by the BARJ center staff. The harms assigned to family group conferences are more severe in nature. Another reason that a case may get assigned to a family group conference is because the victim or offender needs more preparation. Some examples include situations where the victim is either emotionally distraught or hostile, or because the offender needs to be prepared and to make sure that he or she is willing to take responsibility and that he or she will not be disrespectful.

This extra preparation is what makes the family group conferences different from the victim offender mediation. In the case of a family group conference, the staff of the BARJ center meets with all offenders and some victims on a day prior to their scheduled mediation. On the day of the mediation, the victim and offender start the mediation together, as they have already been briefed about the mediation. In the case of victim offender mediations, the victim and offender will meet with the BARJ center staff on the same day as their mediation. Offenders are typically asked to arrive one-half hour earlier than the victims for their pre-mediation meeting. Then, if necessary, victims have a pre-mediation meeting as well. In each of the mediations and conferences observed, both victims and offenders had pre-mediation meetings.

Within the actual mediations themselves there were no differences procedurally or otherwise. Five of the fourteen mediations observed were considered family group conferences and the remaining nine were considered victim offender mediations. There were no differences in terms of the number of participants, who participated, or the

procedures followed. Each case was processed as victim-offender mediation. Both cases involving multiple offenders were processed as family group conferences as well as both cases involving family members. In terms of numbers, three of the five mediations classified as family group conferences had no supporters present for either victim or offender. Thus the distinction between what the BARJ center considers a victim offender mediation or a family group conference is more concerned with the nature of the harm and the preparation of the victim and offender involved. It is for this reason that I consider all of the encounters observed, mediations.

Whether designated a family group conference or mediation, the offenders are required to at least acknowledge that they were the one(s) who committed the act. This is ensured in the pre-mediation meetings where the individuals are asked, by the mediators, about their involvement in the harm produced. The goal then of the process is to repair the harm caused by their actions. This is achieved in numerous ways, including the cooperation between the parties to create an agreement. The mediation is regarded as a failure by the staff at the BARJ center if the individuals fail to reach an agreement. Previous experience has demonstrated that this is a rare occasion occurring approximately 1-2 times per 400 mediated cases.

The BARJ center currently has 73 active mediators. All 73 have completed a 40 hour mediator training module following the BADGER model of mediation and approximately half of them have additional victim-offender mediation training. BADGER is an acronym that suggests an outline for the mediation process. According to the 1999 BADGER training manual (Appendix I), the suggested outline is as follows:

**B- BEGIN THE MEDIATION DISCUSSION**

- Case Intake
- Room Preparation
- Who Participates
- Opening Statement

**A- ACCUMULATE THE INFORMATION**

- Assumptions
- Bias Awareness
- Listening/Questioning/Note taking Skills

**D- DEVELOP THE AGENDA**

- Identify the Issues
- Frame in Neutral Language
- Order for Discussion

**G- GENERATE MOVEMENT**

- Process the Issues
- Persuasive Techniques

**E- ESCAPE TO CAUCUS (If Necessary)**

- Purpose
- Order
- Closing

**R- RESOLVE THE CONFLICT**

- Writing the Agreement
- Non-Agreement
- Closing the Mediation

The 73 mediators come from six counties in this mid-western state although a large majority of them reside in the home county of the BARJ center. There are 35 male mediators and 38 females with a median age of approximately 55. The ages range from 32-80 although each of these is extreme and most are between the ages of 40-65. The vast majority of the mediators are white with less than 10% of the mediators being are of a racial or ethnic minority, mostly African Americans. With this brief summary of the programs evaluated here completed, I turn my attention to the research design.

According to Yin (1994), a research design for case studies has five main components. These are: 1) a study's questions, 2) its propositions, if any, 3) its unit of analysis, 4) the logic linking the data to the propositions, and 5) the criteria for interpreting the findings (p. 20). What follows is the research design of this study. It blends elements of Yin's approach, as well as elements specific to the research conducted.

### **The Study's Questions**

The questions to be addressed in this research revolve around the concept of justice. However, the type of justice that I am concerned with goes beyond the notions of incapacitation and retribution, which are so apparently central to the criminal justice system in the United States. As Zehr has pointed out, the retributive paradigm that dominates the practices of criminal justice today has the ability to shape how we view crime, criminals, and the duties of the criminal justice system.

It is only when we shift our focus and examine the criminal justice system through a new lens that our philosophy can begin to change. This new perspective is essential to open the possibilities of a new type of justice, a needs-based justice (Sullivan and Tifft, 2001). Restorative justice, including victim offender mediation, is just one of the many forms of restorative justice concerned with making the situation right. It represents an attempt at a needs-based justice, one concerned with meeting the needs of all individuals involved in the process. Empowering victims and offenders as well as meeting their emotional, psychological, and physical needs is only the beginning. If we ignore the larger structures and conditions that may have contributed to the offenders' behavior then we have done little to solve the problem. Communities play a role in

restorative justice as well and if practitioners fail to account for the role of the community then they fail to deliver a true needs-based justice. In doing so, they also fail to meet the needs of the victim(s) and offender(s) who must now return to the same community that contributed to the harmful actions in the first place.

Restorative justice is about an acknowledgement of harm and an attempt to repair that harm. The acknowledgement of harm is important for victims. As Presser and Van Voorhis (2002) note, the affirmation by the community members that the crime was unjustified is important to the victim. It empowers victims. It can restore a sense of self worth and social esteem (p. 170).

The restorative process is designed to involve both the offender and the victim in a respectful atmosphere working together to repair harm and meet needs. A truly peaceful justice repairs the harm created by the offense and causes no further injury to either victim or offender. These are the broad dimensions of restorative justice that this dissertation investigates.

### **The Propositions**

Yin (1994) states, “each proposition directs attention to something that should be examined within the scope of the study. ... Only if you are forced to state some propositions will you move in the right direction” (p. 21). Yin argues that creating propositions leads one to reflect on the important theoretical issues. Stating the propositions begins to tell you where to look for relevant evidence. The following propositions guided my research and reflect that which I have investigated.

1. Restorative justice, in particular victim-offender mediation, can produce a peaceful justice in which the participants believe that the situation has been made right and neither party has been subject to further harm.

2. The community, as defined narrowly by the participants' close-knit community including family, friends, and other individuals close to the participants, as well as the larger communities in which the participants reside have a role to play in restorative justice.
3. Victim-offender mediation represents needs-based justice. Needs-based justice works to make the situation right by addressing the needs of victims and offenders with no preference.
4. Restorative justice leads to awareness for each party that the other is human. The events become personalized, and this changes how the participants perceive one another. Both victims and offenders gain empathy for the situation of one another and it makes it difficult for the offender(s) to deny the harm caused by his/her actions. This is commonly referred as recognition.
5. The victim-offender mediation process can empower victims and offenders. Empowerment is a key element in the healing process. Empowering victims and offenders means restoring their sense of self worth and dignity. It means helping them to develop or regain a sense of power over the experiences in their lives.

These propositions serve only as a starting point for the investigation. They require further elaboration so that I can demonstrate how I have measured the ability of restorative justice to effectively accomplish these propositions. It is for this reason that I have broken each of these propositions up into several subparts, which I investigated in this research.

In the following discussion I have offered further insight into the focus of this research. Each of the propositions has been extended, noting specific areas of interest that I have investigated in order to determine whether each proposition has been accomplished.

1. Restorative justice, in particular victim-offender mediation, can produce a peaceful justice in which the participants believe that the situation has been made right, and neither party has been subject to further harm.
  - a. The situation was made right. The harm created by the offender's actions was repaired.
  - b. An agreement was created as part of the mediation process.
  - c. All participants were treated with respect.

- d. No further harm, to either victim or offender, was created by the mediation process.
  - e. Victims and offenders experience the support of their family and community.
2. The community, as defined narrowly by the participants' close-knit community including family, friends, and other individuals close to the participants, as well as the larger communities in which the participants reside have a role to play in restorative justice.
    - a. Victims and offenders experience the support of their family, friends and others with whom they have close connections
    - b. Victims and offenders experience the support of their larger communities.
    - c. Participants become aware of the assistance available in their communities to help them meet their needs.
  3. Victim-offender mediation represents needs-based justice. Needs-based justice works to make the situation right by addressing the needs of victims and offenders with no preference.
    - a. All participants were given the opportunity to contribute to the mediation process.
    - b. Victims and offenders were able to express their needs, and to have those needs addressed.
    - c. An agreement was created as part of the mediation process.
    - d. Victims and offenders experienced the support of their family and community.
  4. Restorative justice leads to awareness for each party that the other is human. The events become personalized, and this changes how the participants perceive one another. Both victims and offenders gain empathy for the situation of one another and it makes it difficult for the offender(s) to deny the harm caused by his/her actions. This is commonly referred as recognition.
    - a. All participants were given the opportunity to contribute to the mediation process.
    - b. Each party had the opportunity to tell their story.
    - c. The process leads to awareness on the part of the offender of the harm caused by their actions, that leads to remorse.
  5. The victim-offender mediation process can empower victims and offenders. Empowerment is a key element in the healing process. Empowering victims and offenders means restoring their sense of self worth and dignity. It means helping them to develop or regain a sense of power over the experiences in their lives.
    - a. All participants were given the opportunity to contribute to the mediation process.
    - b. Each party had the opportunity to tell their story.
    - c. Victims and offenders are empowered by the mediation process.
    - d. Both parties were involved in the creation of the agreement produced by the mediation.



### **Unit of Analysis**

The unit of analysis for this research includes mediations processed by the BARJ center in a mid-western state. The data collected about this unit includes observations of 14 mediations, the 17 agreements produced by the 14 mediations, post- mediation survey data from a total of 119 juvenile and adult victims, and 130 juvenile and adult offenders, and interviews collected with two adult victims following their mediation. My observations begin with the pre-mediation meetings. They extend into the mediations themselves and end with the conclusion of the mediation. Other individuals such as mediators and supporters of victims/offenders were involved in these cases however no interview or survey data was collected from these participants.

### **Sources of Data**

This section is designed to provide a more in-depth look at the data collected. The data that I have collected here, to be certain, is not that which I set out to collect and analyze. Initial reservations on the part of the BARJ center about time commitments, priming, and participant trepidation required that the pre-mediation interviews be eliminated. Particularly, they were worried about my interviews creating expectations and/or adding to the reservations experienced by many participants who are coming face-to-face with either those they harmed, or were harmed by. Instead, I was able to negotiate access to pre-mediation meetings that were conducted by the staff at the BARJ center. I gained consent from all participants to attend both the pre-mediation meeting with the staff and the victim offender mediation itself, gathering observations at each. My intent was to observe these meetings and to collect post-mediation interview data from both victims and offenders. My efforts to collect interview data were met with a

series of obstacles. I was encouraged by the Human Subjects Institutional Review Board of Western Michigan University to set 16 years as a lower age limit for participation in the interview process which meant that many of the participants who would have otherwise been eligible to participate were eliminated. This eliminated many but not all of the potential pool of participants, particularly in the case of offenders. Of those members who did meet the eligibility requirements, very few agreed to participate.

In the end, I was able to attend 16 mediations. I attended two mediations prior to the beginning of data collection, as an observer, but recorded no observations. I then attended 14 mediations collecting observational data. Two other forms of data that were collected and analyzed include the agreements produced by the mediation, when accomplished, and post-mediation surveys completed by victims and offenders. The survey data was collected by the BARJ center in the previous year and continued as I collected my other research. One fourth and final source of data analyzed includes interview data from two of the adult victims following the mediation of their cases by the BARJ center.

As previously noted, a significant portion of my data is composed of my personal observations. Thus it becomes important to situate myself in relation to the observations that I have collected. Elizabeth Anderson (2004) "conceives of knowers as situated in particular relations to what is known and to other knowers. What is known and the way that it is known, thereby reflects the situation or perspective of the knower." Thus, Anderson would claim that my various statuses, such as an observer or as a male, are likely to shape my observations of the mediations. Anderson likens this situation to the way that people understand the same object in different ways according to the

different manner in which they are situated around that object. Most certainly the participants in these mediations have a much larger stake in the mediation than do I as an observer. They are likely to be emotionally tied to the events that brought them to mediation, as I am not. As a result, the participants are likely to have knowledge, feelings, and emotions the likes of which I will not share because I am approaching the events from a view that is somewhat removed. I am not claiming that my position is problematic for gathering observations. My purpose here is rather simple and that is to distinguish my observations as my own. They emerge in part from my situational relationship to the mediations that I viewed, from my standpoint.

In short, I do not presume to view these mediations in a Cartesian sense, from nowhere. I recognize my position and realize that it has likely influenced the observations that I have recorded. As a result I have done my best when possible to provide the reader with the insight or logic that I have used to make my observations. This includes whenever possible the spoken words of the participants, descriptions of their body language, their demeanor, and their tone.

My findings represent the amalgamation of all of the data that I have collected. The presentation of the findings for my research is organized around the original propositions of my research. Within each of these themes, I present data from my observations, the written agreements produced, the survey data, and the interview data where applicable, thus relying on as much data as possible to corroborate my findings.

### **Background on the Process Observed**

Upon receiving a referral to the mediation program, a caseworker begins the process. The first step involves making contact with the participants and inviting them to

schedule a date and time for the mediation. The mediation is voluntary for all participants, however in some instances the mediation can be court-ordered, thus creating questions about the voluntary nature of the mediation for offenders.

Once contact has been made the participants are notified of the date and time for their mediation. On the day of the mediation the two mediators typically arrive anywhere from one half to one hour early to examine the case file or prepare for the case by learning the names of the participants. Each of the cases observed was facilitated by two mediators and this is the standard operating procedure at this particular BARJ center. All of the mediators are community volunteers who have been trained in the process of mediation. The training module is a 40 hour program that follows the BADGER model of dispute resolution.

The mediation process itself is broken up into three basic parts. The first and second parts of the mediation involve pre-mediation meetings with the participants. Typically the offender is scheduled to arrive first and will be the first to meet with the mediators for his or her pre-mediation meeting. The pre-mediation meetings follow a general outline in which the mediators identify the harm produced, ways for it to be repaired, and who exactly is responsible. The mediators typically work from a series of questions provided by the mediation center to help the offender come to some conclusions about his or her actions and the harm that he or she produced. Regarding the mediations designated victim-offender mediations by the BARJ center, the same mediators conduct the pre-mediation meetings and then the mediation. In those mediations categorized as family group conferences, the mediators who perform the pre-mediation meeting may not be the same mediators as those who actually mediate their

encounter. The following list was prepared by the BARJ center to guide mediators through pre-mediation meetings with the offender.

#### QUESTIONS FOR THE OFFENDER(S):

1. Tell us what happened, when it happened and whom you harmed.
2. How do you feel about what you have done?
3. Do you accept responsibility for your actions?
4. What have you already done to repair the harm you caused?  
(I.e. apologies, court, community service, detention)
5. Do you understand how your actions have harmed the victim, your community and your family?
6. Are you willing to make things right with the victim(s)?  
(I.e. restitution, repairs, service)
7. How do you plan to repair the harm to:
  - A. The victim
  - B. The community
  - C. Your family
  - D. Yourself

These questions are used merely as a guide and a reminder to the staff about what is important in the mediation. They guide the process, but are not used as strict guidelines to be followed in each case. The purpose of the pre-mediation meeting is to prepare the offender for his or her participation in the mediation and to get him/her thinking about the harm they caused to the victims and their communities. This part of the process also ensures that the offender is willing to accept responsibility for his or her actions and is willing to try to make amends.

The victim is typically scheduled to arrive during the offender's pre-mediation meeting and upon the conclusion of the offender's pre-mediation, the victim's pre-mediation begins. A similar set of questions is provided by the staff of the BARJ center to guide the meeting with the victim(s).

#### QUESTIONS FOR THE VICTIM(S):

1. What happened:

- A. Type of damage or harm was caused?
- B. What has changed for you since this happened?
- 2. Is there any financial loss for you due to this situation?
- 3. How do you feel this has affected your family and/or community?
- 4. What would you like to see happen here today?
- 5. What would you like to say to the offender(s)?
- 6. Is there anything you would like to hear from the offender(s)?

Again, this outline is used as a general reference guide to help mediators prepare victims to participate in the mediation process. The pre-mediation meetings range anywhere from 15-40 minutes long, depending on the case and the participants. The typical pre-mediation was closer to the 15-minute estimate, with a few exceptions that went longer and one that approached the 40-minute mark. (In the case of a family group conference, the pre-mediation meetings occur on a day prior to the scheduled mediation, but the content and outline of the meeting previously noted remains the same.)

At this point, the mediators bring the participants together for the purpose of mediation. The participants are welcomed and everyone is introduced. The mediators briefly explain their role in the process and tell the participants that they are non-judgmental and that they do not take sides on any of the issues. The mediators then turn to the issue of confidentiality. After explaining confidentiality to the participants, everyone present signs a confidentiality agreement. They are even informed that any and all notes recorded by the participants and the mediators are shredded upon the completion of the mediation process.

The participants are then informed of a few basic rules that must be followed in the mediation. The rules of mediation are very simple. No interruptions. Each participant is provided with a notepad and asked to make notes until it is their turn to speak. The only other rule is to maintain civility and respect for one another at all times.

Finally, the participants are informed that they may call for a break at any point if they so desire, and the mediators may do so as well. Furthermore, the mediators may desire a caucus, to meet privately with either one or both parties individually.

I was introduced to the participants at the outset of the pre-mediation meeting as a graduate student from Western Michigan University. At this point I briefly explained my research and obtained consent from the participants to observe the mediation process. I dressed in a manner consistent with the mediators and was seated in a chair, but not at the table with the participants and the mediators.

The mediation typically begins with the victim explaining what happened, how they were harmed, and how they have been affected. The floor is then turned over to the offender to elaborate upon the situation from his or her perspective and to respond to the victim's account of the events. At this point the floor becomes open and the exchange of information begins. Victims and offenders speak with one another and learn about each other and the events that brought them to mediation from their respective viewpoints.

From this point forward there is no typical format followed. During this time the role of the mediator will be determined largely by the roles that the participants choose to take. Some participants are very active, contributing at length and frequently while others can be virtually non-participatory at times or even throughout the mediation. At some point the mediators perceive that enough interaction has occurred and they begin the process of creating an agreement. Upon completion of the agreement, the participants sit and listen as the agreement is read aloud to them. If acceptable, each person signs the agreement and the case is considered complete. A copy of the agreement is provided to

each participant and one copy is sent to the referral source to signify completion of the mediation.

Despite the fact that I was unable to collect pre-mediation interviews and that I only conducted post-mediation interviews with two victims, I have attached a copy of both pre- and post-mediation interview schedules for both victim and offender to address variables of interest for each participant specifically. I have included these interview protocols because they were designed to provide insight towards the broad theoretical questions that this dissertation explores.

The focus of these questions revolves around the restorative nature of this program. More specifically, I am concerned with the ability of the mediation process to deliver a peaceful justice in which the participants' needs are the foremost concern, the participants perceive that the situation has been made right, the participants become empowered by the mediation, and neither party has experienced further harm. The interview protocols utilized in this research can be found in Appendices II, III, IV and V.

In addition to the interview data, I accumulated a collection of survey data to be analyzed. The BARJ center, in an attempt to evaluate their program, has been collecting survey data from victims and offenders following their individual mediations. I have compiled this data and used it to corroborate my findings where applicable. The survey instruments used for both victim and offender can be found in Appendices VI and VII. In addition, the survey items have been structured into the analysis plan which explains how the items are to be analyzed and relate to the general propositions of my study (See Appendix IX).



## **Data Interpretation Strategy**

The final section of this research design is the criteria for interpreting the findings. The data collected in this research project provides a snapshot of the Balanced and Restorative Justice Program. These results have much to offer. I am using this particular restorative program as a case study to discuss the larger issues and to offer possible insights into the ability of victim-offender mediation programs to live up to the principles of restorative justice.

I have utilized an approach similar to one describe by Yin (1994) known as “pattern matching” (p. 25). With regards to my research, I have proposed that restorative justice can be viewed as a needs-based justice response to harm, that victims and offenders can become empowered by restorative justice, and the situation can be made right between the victims and offender without causing further harm. (For a full description of that which I have proposed see the research propositions. Pages 113-115) The foundations of my interview protocol revolve around these central issues. If my case study reveals support for these propositions within the practice of mediation then I have matched individual experiences with the process to the propositions which I claim to be a feature of restorative practices. If on the other hand, my propositions lack support then the mediation process has failed to deliver on that which I propose it can.

Because I am examining each of these cases independently of one another, I have also utilized an approach known as replication logic. According to Yin (1994), replication logic is analogous to that used in multiple experiments. If similar results are obtained in all of the mediations studied, replication is said to have taken place. This is important because my research may suggest that the propositions were in fact achieved,

but only in a small handful of cases. This would suggest that while restorative justice can deliver on that which I propose, often times it does not. Yin goes on to state, “In each of these situations, an individual case or subject is considered akin to a single experiment, and the analysis must follow cross-experiment rather than within-experiment design and logic” (p. 46). The pattern that I am attempting to match is indicated by the propositions of my research. If the mediations studied feature the propositions that I have created, consistently, this suggests that the practice of mediation is delivering on that which I suggest it can in my propositions. The word consistently is most significant to the previous statement. I cannot claim that what I have proposed is being matched unless I find that mediation practices are achieving those propositions time and again.

### **Analysis Plan**

An analysis plan has been created to link the interview data and survey questions to the key propositions of my study. This plan includes the propositions and uncovers the strategy for determining whether the experiences of the participants match the propositions, which is the essence of pattern matching. For a full examination of the analysis plan for this research, see Appendix IX.

A logical question would be how close does a match have to be so as to be considered a match? There is no answer to this question. A researcher must rely on one’s own investigative abilities to uncover the patterns or lack thereof and to interpret the results accordingly.

### **Emergent Themes**

Finally, I wish to comment on the development of emergent themes. As with any

research, there is subject matter that presents itself in the data gathering stages. Those themes that have emerged will be discussed along with the other findings of my research.

### **Summary**

I have chosen to investigate this Balanced and Restorative Justice Program because I believe that we must work towards a new paradigm in the field of criminal justice. However, I do not think we ought to hastily move forward with restorative justice if it is nothing more than a wolf in sheep's clothes. Theory, when put into practice, does not always maintain its shape. Integral elements can be lost in the haze of reality. Issues like funding, latent functions, and training of staff can bring difficulty to implementing even the simplest of theories. As a result, we must move forward with evaluations of restorative programs.

These evaluations must include the more traditional evaluations like the ones discussed in the Part Two of Chapter II. They must also include evaluations of the theory behind restorative justice. Does it truly represent needs-based justice? Can it help to empower victims and offenders and contribute to healing the harm caused by the offender's actions? Furthermore, we need to examine the role played by the community in restorative justice. As Sullivan and Tifft note (p. 76), one of the key goals espoused by restorative justice programs is that of reintegration. If reintegration is to be achieved, the community has to play a role in restorative justice. They go on to ask:

...how are we going to reintegrate 'offenders' and 'victims' into a community when a sense of community is absent or when the nature of the community is such that almost everyone in that community is not having his or her needs met (p. 76)?

If the community is not involved, reintegration is not possible. If we are failing to reintegrate victims and offenders into their communities, we are not meeting their needs

and we are failing to have a truly restorative process. It would be foolish to deceive the public and ourselves that we are moving towards a new, more effective and kind form of justice when we have done nothing more than change to a more gentle name for a similarly ineffective process.

If my research propositions prove to have support there will be a wealth of practical policy implications for the criminal justice system. It will demonstrate that justice can come through peace and harm can be repaired without causing further harm. Likewise if my data finds a pattern of failure about the propositions created, then the policy implications will pertain more to the practice of restorative justice. A further discussion of policy implications will be included in Chapter VI: Discussion and Conclusions.

# **CHAPTER V**

## **MAKING THINGS RIGHT**

### **Findings**

Chapters V-X are dedicated to the findings of this research regarding each of the propositions that comprise the focus of this research. In each chapter I state and label each of the propositions according to the analysis plan presented in Appendix VIII. Each proposition is followed by a discussion of the specific sub-parts which are also labeled and included in the analysis plan. These subheadings constitute the basis of the propositions created for this research. Each of the propositions has been given an abbreviated name as follows: making things right, community, needs, recognition, and empowerment. Within each of these sections I discuss the patterns which emerged within the data presented and I comment on the ability of these mediations to satisfy the study's propositions regarding restorative justice. Chapter X includes a discussion of three additional themes that emerged as I gathered my research. These themes are agreements, accountability, and participation.

A few of the subheadings appear in more than one chapter. This is because some of the subheadings have relevance to more than one proposition. Each time a subheading is repeated, the data presented will be specifically linked with the proposition being discussed. Under each subheading I present the data, where applicable, from my observations, followed by the survey data, the written agreements produced and the interview data.

### **Information on the Participants**

This section provides demographic information about the participants in this study and their respective mediations. I collected observations at a total of 14 mediations. These 14 mediations produced a total of 17 agreements, which were also collected. Furthermore, I accumulated post-mediation survey data from 119 victims and 130 offenders. The survey data are matched by case numbers for the victims and offenders of each mediated case. In some cases there were multiple offenders and only one victim. In others, there were several victims and only one offender. Still, in other cases either victim or offender chose not to respond. This reflects the different totals for the number of surveys collected for victims and offenders. A copy of the actual surveys used to collect this data can be found in Appendices V and VI.

There were a total of 20 offenders and 16 victims in the 14 mediations observed. Eighteen of the 20 offenders were juveniles and 14 of the 16 victims were adults. Three of the cases observed had multiple offenders, and two of the cases had multiple victims. In Table 3, I present the demographic information of the participants, both victims and offenders.

For further information including a case by case breakdown of demographic information regarding both victim and offender including race, sex, age, and relationship see Appendix IX.

The crimes committed by the participants in the 14 mediations range from property crimes to violent personal crimes, and one offender was referred to mediation for a status offense. Table 4 is a summary list of the crimes committed by the participants.

**Table 3**

**Demographics of Mediation Participants**

	Female	Male	White	Black	Interracial	Adult	Juvenile
Victim	9	7	11	3	2	14	2
Offender	2	18	9	10	1	2	18

**Table 4**

**Crimes Committed by Mediation Participants**

Breaking and entering .....	7
Mail fraud .....	1
Assault .....	3
Arson .....	5
Trespass .....	1
Receiving stolen property .....	1
Larceny .....	2
Truancy .....	1
Malicious destruction of property .....	2

The five cases of arson, and five of the seven cases of breaking and entering were the result of one case involving multiple offenders. Similarly, the two cases of malicious destruction were also part of one case involving multiple offenders. Also, there was one offender who was charged with two offenses, trespass and assault.

**Making Things Right (Proposition 1)**

Restorative justice, in particular victim-offender mediation, can produce a peaceful justice in which the participants believe that the situation has been made right, and neither party has been subject to further harm. Restorative justice takes the approach that crime signifies an injury, a violation of a personal relationship. The goal of restorative justice is to repair this injury to make the relationship right. There is no judge or authority figure to make decisions about how this goal is to be accomplished. This

objective is left up to the participants to cooperate, to define their needs, and to make an agreement that repairs the harm experienced by the victim.

The situation was made right. The harm created by the offender's actions was repaired

(1. a.).

Per the analysis plan identified for my research, I discuss findings for this proposition based on my observations, the survey data, the written agreements, and the interview data collected.

Regarding my observations, 12 of the 14 mediations I attended ended with an agreement produced and signed by both the victim and offender. This means that two mediations failed to produce an agreement. I discuss these two mediations first, followed by the others.

While one might assume that those mediations that failed to produce an agreement can not be defined as a success in terms of making the situation right, this suggests that success in mediation is determined solely by the ability to create agreements. However, these mediations may have been beneficial to the participants in other ways. For example, in one of these mediations which failed to produce an agreement, the main issue preventing the participants from creating an agreement was the issue of restitution. The victim wanted more money than the offenders and their parents felt acceptable. However, the mediation itself appeared successful up until the point at which the mediators began to facilitate the mediation into the agreement writing stage. The offenders had accepted responsibility, apologized, and their apology was accepted through verbal recognition by the victim. The victim received answers to many questions regarding how, why, and when the events occurred. The victim also received assurance



that the behavior would not be repeated. These accomplishments represent some successes. They represent part of what it means to make the situation right. However, the question remains, has the situation been made right in the eyes of the participants?

The victim identified financial needs which would amount to reparation according to his best estimates. A failure to receive that which he requested in terms of restitution, and his leaving the mediation without an agreement in place to award him anything, amounts to a failure to restore his financial losses. It was very clear in this case that the participants disagreed on the value of the items damaged. This was made evident throughout the process by comments made by each person as to their estimated value of the items in question. None of the participants were willing to relinquish their position and the mediation failed to produce an agreement. The victim did note prior to his departure that he would be willing to return at a future date, after consulting witnesses. It would be hard to argue that this harm has been repaired, that the situation has been made right, because although the victim did receive some of what he was asking for, he did not receive anything in the form of financial restitution, which he desired.

In the second mediation that failed to produce an agreement, there is no question that the situation was not repaired. These individuals could not agree on a single point. They disputed the facts of the case including the restitution figures. There was no apology offered, and the mediation ended well before anything was accomplished. The victim and offender did not demonstrate respect to one another, and the participants resorted to name calling before the mediation was brought to an early close.

Within the 12 mediations in which an agreement was produced, my observations suggest mixed results regarding the ability of these mediations to repair the harms

produced by the offenders' actions. In all, there were a total of 17 agreements produced in the 12 mediations I attended. I noted that an apology occurred in all 17 mediations. According to my observation notes, I have categorized the apologies into one of two categories: full and partial. Those apologies considered full apologies featured eye contact made with the participants involved and an elaboration about why the offender was sorry. Those classified in the partial category offered little more than the statement "I am sorry" and they lacked eye contact with the victim to whom they were apologizing. In all, I found that 9 of the offenders offered full apologies and 8 of the offenders offered partial apologies.

Regarding the issue of accountability, my observations suggest mixed results once again. According to my observation notes, I found that 10 of the 17 offenders, in the mediations in which an agreement was produced, took full responsibility for the harms produced by their actions. This means that 10 of the offenders explained their involvement in the harm produced and acknowledged that their actions were wrong. I found that 3 of the 17 offenders took partial responsibility for their offense. This means that in these three cases the offenders denied a portion of the responsibility for the harm produced. This is not to suggest that these offenders were being untruthful. However, specific statements made by the offenders were clear attempts to limit the responsibility that each held in their offense. One juvenile offender in a case involving an adult victim claimed, "I didn't know it was stolen." Two other juveniles involved with adult victims specifically stated that although they were in possession of the stolen items, they had not taken the items themselves, although each acknowledged that they knew the items were stolen. In 4 other cases, my observations led me to conclude that a lack of participation

by the offenders made it difficult for them to accept responsibility. Two of these cases involved both juvenile offenders and juvenile victims, while the other two cases involved juvenile offenders with adult victims. I came to this conclusion in each of these cases because the persons involved, the offenders in these cases, were virtually non-participatory. They spoke little throughout the mediation and often failed to answer questions or participate in any fashion in the mediation. (I discuss more about the notion of accountability in this chapter under the subheading of emergent themes.)

Another way in which offenders can help to make the situation right is by providing information to their victims. I observed that many of the victims had questions for their offenders about a variety of issues. In 9 of the 14 mediations (including one case that failed to produce an agreement) the victims were provided with answers to many questions about their case. Victims were given the opportunity to ask questions in each of the mediations I attended, with the exception of the one mediation involving an adult offender and adult victims that failed to reach an agreement. Questions posed by the victims included:

"How did you do it?"

"How many times did you do it?"

"What all did you take?"

"How could you do this to me/us?"

"Why did you pick my place/me?"

"Did you stake out the place?"

"Why did you do this to me?"

"Are you going to do it again, to me/others?"

"What would you do next time you are put in this situation?"

"What did you learn from this?"

"How can you assure me you won't do this again?"

"What were you going to do if you did not get caught?"

"Who was involved?"

"What are you doing to get your life straight?"

"What were you going to do with (items)?"

While most of these questions were answered, they were answered with varying levels of detail, and a few of the questions were answered with the phrase "I don't know."

Nonetheless, each of the 9 victims who had questions did receive some answers to their questions.

Turning to the survey data, my analysis plan suggests that the results from numerous questions be utilized to offer evidence to the notion of reparation. Tables 5 and 6 provide a summary of the survey data collected from the victims and offenders.

Regarding the notion of reparation, I suggest that the victim survey items 2, 5, and 6 are all relevant to this objective. Although my initial analysis plan also included items 7, 9, and 10, subsequent reflection about these items has led me to conclude that these items are less relevant. It is quite possible that one is happy that the Restorative Justice center offered the program, but this item sheds little light upon the issue of one's beliefs about whether the harms they experienced have been repaired. Similarly, one's satisfaction with the process does not necessarily hinge on the specific outcome of one's case in terms of reparation, and whether one participated to get justice bears little on whether or not justice was actually achieved.

Item 2 indicates that 78.6% of the victims surveyed either strongly agreed or agreed that the offender(s) took full responsibility for their offense. 13.7% were unsure, 5.1% disagreed and 2.6% strongly disagreed with that same statement. Thus, a strong majority of the victims felt that the offender(s) took responsibility for the offense.

**Table 5****Results of Post-Mediation Survey for Victims**

Question # (n)	Question	% Strongly Agree	% Agree	% Unsure	% Disagree	% Strongly Disagree
1 (115)	I am glad that I had the opportunity to meet with the offender(s).	50.4	41.7	5.2	.9	1.7
2 (117)	I feel the offender(s) took full responsibility for their offense.	35.9	42.7	13.7	5.1	2.6
3 (118)	I feel the offender(s) listened to me.	28.8	54.2	15.3	1.7	0
4 (119)	I feel that this process has helped the relationship between the offender(s) and myself.	23.5	44.5	25.2	5.9	.8
5 (104)	The offender(s) offered to repay my losses.	26	46.2	15.4	3.8	8.7
6 (119)	I feel that the staff at the Restorative Justice Center treated me fairly.	59.7	37.8	2.5	0	0
7 (119)	I am happy that the RJC offered this program.	52.1	40.3	5.9	1.7	0
8 (119)	I feel this program helped me feel better.	33.6	42.9	19.3	2.5	1.7
9 (113)	I participated in this program to get justice	32.7	41.6	14.2	9.7	1.8
10 (119)	I am satisfied with the program in general	37	51.3	11.8	0	0
11 (116)	I was given the opportunity to ask for what I wanted.	47.4	50	1.7	.9	0

**Table 6****Results of Post-Mediation Survey for Offenders**

Question # (n)	Question	% Strongly Agree	% Agree	% Unsure	% Disagree	% Strongly Disagree
1 (127)	I was prepared to meet the victim(s).	47.2	41.7	7.9	1.6	1.6
2 (127)	I feel good about apologizing to the victim(s).	73.2	22	3.1	.8	.8
3 (119)	I took full responsibility for my offense.	63.6	33.3	3.1	0	0
4 (122)	I agreed to repay the victim(s) for their loss.	48.4	39.3	9	3.3	0
5 (122)	I feel the victim(s) listened to my side of the story.	51.2	38.4	7.2	.8	2.4
6 (129)	The victim said what they wanted to make things right.	46.5	45.7	6.2	.8	.8
7 (129)	I feel that this process has helped the relationship between the victim(s) and my self.	35.7	48.1	13.2	2.3	.8
8 (127)	I know the community was affected by my actions.	36.9	37.7	15.4	3.8	3.8
9 (128)	I feel that the staff and volunteers at the Restorative Justice Center treated me fairly.	59.4	38.3	1.6	.8	0
10 (128)	I intend on fulfilling my part of the contract.	58.6	41.4	0	0	0
11 (128)	This meeting has been helpful to me.	50.8	40.6	7.8	.8	0
12 (128)	I am satisfied with the Program in general.	44.5	48.4	5.5	.8	.8

A somewhat similar picture emerges regarding item #5 on the survey. A total of 72.2% of the victims felt that the offenders offered to repay their losses. 15.4% were unsure, 3.8% disagreed and 8.7% strongly disagreed. These results demonstrate again that a majority of the victims felt as though the offenders offered to repay their losses. However, just over one quarter of the victims, 27.9% to be exact, were either unsure or disagreed.

Item 6 from the victim survey asked the victims to respond to the following statement, "I feel that the staff at the Restorative Justice Center treated me fairly." An astounding 97.5% of the victims either agreed or strongly agreed. 2.5% were unsure and not one of the 119 victims surveyed disagreed.

Several of the items on the offender survey are relevant to this issue as well, yet again, one of the items initially identified in the analysis plan now appears less pertinent. Items 2, 3, 4, 6, 7, and 10 represent relevant findings for the notion of reparation. As with the victim survey, there is one item (item 11) pertaining to the offender's perception of whether the meeting was helpful that now appears less relevant. It is quite possible that the offender found the meeting helpful, yet he or she does not feel that the situation has been made right.

Item two asks the offenders to respond to the following statement, "I feel good about apologizing to the victim(s)." 95.4% of the offenders either strongly agreed or agreed, 3.1% were unsure and only 1.6% either disagreed or strongly disagreed with the statement.

Regarding items 3 and 4 on the offender survey, 96.9% of the offenders either strongly agreed or agreed that they took full responsibility for their offense and 87.7%

felt as though they had agreed to repay the victims for their loss, 9% were unsure as to whether they agreed to repay the victims and 3.3% disagreed. Not one offender disagreed or strongly disagreed that they had taken full responsibility for their offense.

It is interesting to compare the results from the offender and the victim surveys about the coinciding issues. While 96.9% of the offenders felt as though they took full responsibility for their offense, only 78.6% of the victims felt as though those who had offended them had taken full responsibility for their offense. These figures represent a clear difference of opinion regarding the notion of responsibility between the victims and offenders.

Item 6 indicates that 92.2% of the offenders believed that the victim had stated what they wanted to make things right. On this issue we see much more agreement between the two parties, in that 97.4% of the victims felt as though they had the opportunity to ask for what they wanted.

In item 7 the offenders were asked to respond to the following statement, "I feel that this process has helped the relationship between the victim(s) and myself." 83.8% of the offenders either agreed or strongly agreed, 13.2% were unsure, 2.3% disagreed and .8% strongly disagreed.

Finally, item 10 asks the offenders about their intention to fulfill their part of the agreement created in the mediation. An astounding 100% of the offenders reported that they intended to fulfill their part of the contract. 58.6% strongly agreed and 41.4% agreed with the statement, "I intend on fulfilling my part of the contract." Of course the intention to fulfill the contract and actually doing so are two very different things. A point that was not lost on the two victims interviewed.



The written agreements themselves pose some interesting findings as well. Restitution was ordered as a part of three agreements. In one of those cases the offender was required to pay restitution if, and only if, he failed to achieve other aspects of the agreement produced. This case involved an offender who had broken into a store at night and stolen numerous items. The victim acknowledged that the offense had caused him some financial harm, but he stated that he wanted the offender to learn from his mistake and to experience the sense of achievement that comes from working to earn that which one desires. Thus the victim expressed his desire for the offender to seek employment and maintain a job for six months. Restitution was to be paid only in the event of a failure to achieve this and other aspects of the agreement created.

In one of the other cases involving a juvenile offender, the restitution was paid by the juvenile's mother on the day of the mediation. The agreement produced stipulated that the youth will complete chores around the house to pay his mother back. In the third case, the agreement stipulated that the juvenile offender was ordered to get a job and that 1/2 of her wages will be garnished to pay back the victim. In this case, the victim was the girl's mother. None of the other victims expressed a desire for restitution during the mediation, although both victims were seeking restitution in the two cases which failed to produce an agreement.

It was noted in five of the agreements produced that the offender will cease to engage in the behavior that created the harm. In each of these cases, this was an expressed desire on the part of the victim. This was a point discussed in a handful of other mediations, agreed upon by both parties, yet it was written into only five of the 17 agreements produced. This is more a reflection of the mediator's decision about whether

to include the item in the written agreement than of the desires of the victims. This is clear to me as many of the victims said that they did not want the offender to continue with the harmful behavior, yet it was included in only the five agreements. This is a very important finding as it demonstrates the power held by mediators in the creation of agreements. In this instance, it was not so much the mediator creating stipulations as it was the mediator making a determination about what is important, or significant enough to include within the agreements. This still represents an enormous power that is held by the mediators and should not be ignored.

An apology was noted in 15 of the 17 agreements, although an apology was offered in all 17 of the mediations which reached agreement. This again is a reflection of the mediator's decision to include the apology as part of the agreement.

Several of the interview questions address the notion of reparation as well. The first set of questions revolves around one significant form of symbolic reparation, an apology.

Victim #1 6/20/05

Researcher: Was an apology important to you?

Victim: An apology was important. I think it helps whomever is causing the problem to understand that there was an issue there and you have to sometimes come out and say you're sorry, you know, instead of getting a punishment. I think if it comes from the heart, it's understood a little bit more. He'll remember he apologized.

Researcher: Did you perceive his apology to be sincere?

Victim: For his age, yes.

Researcher: What exactly did it mean, to you, to hear him apologize?

Victim: It meant... I think it meant to me that he actually knew that he didn't do something right. So I think uh, no one actually.... I think someone pushed him into saying it, um but I think that in the long run, by the end of the meeting, he would have done it anyway.

Victim #2 6/30/05

Researcher: Was an apology important to you?

Victim: Yes an apology was very important to me... I think... I think the apology to me was important to me just because of my own personal reasons.

Researcher: What exactly does an apology do for you, or mean to you?

Victim: What did it mean to me?

Researcher: Yeah.

Victim: I guess what it meant was... It meant our first step in starting our process. ... I think it starts with a sincere apology from them, and that's on their shoulders. I'm just giving them a chance.

In each of these cases, an apology held significant meaning for the victims. It meant that the offender(s) was being held accountable, that he/she had to face those they harmed, admit to the harm, and to acknowledge that it was wrong.

Another question speaks directly to the notion of reparation.

Victim #1 6/20/05

Researcher: Do you feel you have been restored by the mediation?

Victim: That situation yeah... I think that...it's fine.

The answers provided here indicate that the victim is satisfied with the agreement produced however he is also curious to know what the follow up will be. This same victim later recognizes that he would have liked to see if the offender follows through with the agreement. He indicates that follow-up is the only way to know if the process really works. This indicates that the agreement is a start to the reparation process, but if it is not followed, the victim may feel as though the situation is unresolved.

Victim #2 6/30/05

Researcher: Do you feel you have been restored by the mediation?

Victim: Um... I am satisfied with the agreement that we made. I don't know.... I guess it will take time to see if the boys can live up to their end of the bargain, but I can say that I am happy with the agreement that we made.

These comments suggest that this victim is satisfied as well. However, she too suggests that further time is needed to see if the agreement is actually followed. She is not willing to suggest that she is satisfied with the agreement without knowing that the participants are going to follow through with items contained in the agreement.

One other set of questions was intended to get the participants to compare their experiences with mediation to that which they believe would have happened in court.

Victim #1 6/20/05

Researcher: How do you think that your experiences with the mediation process are different than that which you would have experienced if you went to court?

Victim: Court would have cost me money... Um and in a sense, I don't know how the court system deals with so much at one time, you know. Um, some of the courts or the attorneys would have said hey its just... I feel they would have said hey its just (item) you got it back. You know, I don't think they would have actually done much to him as well, so other than costing me money and time.

Researcher: Knowing what you know now, if you could go back, would you choose to participate in mediation again?

Victim: Yes.

Victim #2 6/30/05

Researcher: How do you think that your experiences with the mediation process are different than that which you would have experienced if you went to court?

Victim: Um... I guess, maybe a judge would have been more hard on the boys. There is lot of people in this town that want to see the boys go to jail, or you know. I don't think that would be good for them. I think that what we agreed....or what the agreement says is better for the boys than what they would have gotten in court.

The answers provided offer some interesting results. In one sense, victim #1 notes that he believes the court process would not have taken his case as seriously as it was in mediation. The harm he experienced in his estimation would have been downplayed by the courts, so that more emphasis could be placed on more serious crimes. Victim #2 noted that the outcomes of the case would have been different. Specifically, she felt that the courts might have been more harsh in their punishment for the offenders in her case.

One final question I asked these victims is if they felt safer as a result of their mediation with the victim. Neither victim reported that the mediation made them feel safer. However, each victim noted that they did not feel threatened by the offense or the offender(s).

One other theme emerged in each of the two post mediation interviews, regarding the notion of reparation. Both victims interviewed suggested that only time will tell if these offenders are willing to actually follow through with the agreements produced within the mediations. Victim #1 in particular made it rather clear that he would like to be updated about the offender's progress towards the completion of the agreement created in the mediation.

Victim #1 6/20/05

Researcher: Is there anything else that you would like to share about the process, or any of the outcomes of the mediation?

Victim: The only thing I would like to share is that, adding to it, I would like to see what is resolved from something like this and how is that even mentioned in the scenario. Um.. How is that brought up in this, they should have a form that says and ... you will be informed of how these matters were taken care of.

Researcher: So you are interested in follow up?

Victim: That tells you if this works. You know if this system works, if the system doesn't work, you know, if he goes and blows his whole summer away then the system didn't work. You know, then the ideas that we tried to instill in his mind weren't good at all, and you know, what do you do for the next child or next 12 year old, you know that comes in and has a similar situation and says hey, I'll get my grades up.

Victim number two expressed the same concern. She noted specifically that only time will tell whether the mediation has actually worked. For many of these relationships to be restored, it will take more than the time invested by these participants in the mediation. The mediation itself can be the beginning of the process, but for many the issue will not be resolved until the completion of the agreement, particularly if restitution is ordered. Certainly, for victims who express a need to be financially restored from the harms created, the harm cannot be repaired until they receive the restitution ordered within the agreement.

An agreement was created as part of the mediation/conference process (1. b.).

The purpose of this discussion is to determine whether the agreements produced within the mediations contributed to repairing the harm, making the situation right, or not creating further harm. To address this, I present the data from the agreements and my observations, followed by the interview items which pertain to this issue. I have not identified any survey items that pertain to this issue.

While an agreement was reached in 12 of the 14 mediations I observed, a total of 17 agreements were produced, reflecting the fact that several mediations had more than one offender. While these agreements varied widely in their stipulations, several themes did develop. These themes included restitution, education, the promise of behavioral changes, apologies, chores/work, and community service. In Table 7 I have summarized the 17 agreements produced. While these items do not represent an exhaustive list of what the agreements produced, they are a good indication of commonalities found within the agreements.

**Table 7**

**Summary of Agreement Stipulations**

Total number of agreements produced .....	17
Apology (noted in agreement) .....	15
Restitution .....	3*
Emphasis on Education .....	4
Promise to cease harmful behavior .....	6
Chores/work to be completed for parents .....	5
Community service .....	6

\* In one of these cases, restitution is ordered only if the offender fails to complete other aspects of the agreement.

Fourteen of the 17 mediation agreements were rather similar. Eight of the 17 agreements involved little more than an apology, educational goals (including reading

books, striving for good grades, and getting involved in extra curricular activities), and assurance that the harm will not be repeated, including a plan for changes in behavior. Five of the 17 agreements included some combination of the above-mentioned items along with other stipulations including restitution, household chores to pay debts, and community service. In one other agreement, the victim, an adult female, requested nothing beyond an apology. This was the case involving one juvenile offender who continually denied responsibility claiming, "I did not know it was stolen." Believing that the offender was not responsible, the victim requested nothing. These findings are rather apparent per the agreement produced. The agreement states, "Victim is asking for nothing from Offender because Offender did not steal my (item), he doesn't owe me anything." Nearing the end of the mediation, the victim stated "this hasn't accomplished anything for (offender) or me." The offender did apologize and stated in the agreement that he probably "owes something."

Three other agreements included somewhat more specific requirements of the offenders. One victim designed his own plan to help the offender "learn the value of work" and to learn how to earn something that one really wants. This agreement stipulated that the offender was to fill out five applications a day until employment was secured. The job must be maintained for six months with no disciplinary problems. If this plan is achieved, the offender is free of debt. If the offender fails to achieve these results he is mandated to pay \$427.00 to the victim within 30 days. In this case, the victim acknowledged that he had suffered financial losses, but his foremost concern was that the offender learn from this experience and that he experience the gratitude that one feels upon earning what one desires.

In yet another case, the agreement created a system of rewards to be offered for completed chores, demonstrations of respect for family, peers, and educators, and an agreement to walk away from trouble when possible. In this case, the offender expressed a desire to become involved in athletic activities. This desire was utilized as a motivator for the offender in the agreement produced. The offender was rewarded for success with the stipulations put forth in the agreement with opportunities for extracurricular activities, including opportunities in athletics. In this instance, the desire of the offender was utilized to offer an incentive for the offender to address the areas of concern expressed by the victim. The agreement was designed to reward the offender with something that he wanted, but only if he was able to achieve the other aspects of the agreement, suggested by the victim.

Finally, the last agreement included a laundry list of requirements, all of which had been put into the agreement at the request of the victim:

1. Attend school (no un-excused absences)
2. Get a job
3. 1/2 of wages taken to pay restitution
4. \$1,305 restitution
5. No phone calls after 9:00 p.m.
6. Written apology
7. Counseling sessions
8. Written summary of counseling sessions
9. No associations with members of a criminal element
10. Completion of court ordered community service hours
11. No visitors to the home unless supervision is available
12. Household chores
13. Assurance the harm will not be committed again
14. Curfew will be respected

This mediation involved a parent as the victim and a child as the offender, and is significant for another reason as well. This case represents the best example of a theme identified in many of the mediations that I observed. In this particular case the offender



identified needs as well. The offender stated that his or her parent was abusive. The abusive behaviors included hitting and kicking. This was a point acknowledged by the parent who said that court officials and probation staff have indicated that such behaviors are alright, "as long as there are not bruises." Despite the fact that the offender expressed a need to not be hit or kicked, the agreement did little to address this issue. In fact the agreement does not say anything about stopping such behaviors. Instead this agreement was created by the victim as a response to the harm inflicted by the offender's actions.

This example speaks to a theme that I identified in each of the mediated cases that I observed. What I found was that the agreement writing stage of the mediation process gave preference to the voice of the victim. As such it was a rare occasion that the offender identified needs in the mediation. (I return to this issue in further detail under proposition #3 regarding needs.)

As a sociologist, the agreements produced have more findings to offer than just their content. Doing sociology involves a process known as debunking. This means to look behind the facades of everyday life to examine the issues in detail, taking them apart and examining the issues that go on behind the scenes. One thing that I noticed about these agreements was that despite what appear on the surface to be attempts by victims to help offenders and to change the problematic behaviors, there is another underlying theme within the agreements produced. That is the notion of control. Many of the stipulations put forth within these agreements go well beyond any harm produced by the offenders' actions. Some in fact do not address any need identified by the victims. While I feel it is important to introduce this notion here, I shall return to this issue later on in this chapter under the subheading "control" in the section devoted to emergent themes.

It is my contention that a failure to reach an agreement, as was the case in two mediations I observed, implies that the situation has not been repaired, or made right within these cases. This is not to suggest that the success of a mediation is inherently tied to creating agreements. However, failure to reach an agreement, at least within each of these cases, meant that one party wanted something to make the situation right that the other was unwilling to provide. In one of the cases involving two juvenile offenders, their supporters, and one adult victim, the issue of restitution caused the parties to disagree and to be unable to reach an agreement. In the other case involving one adult offender and two adult victims the parties could not agree on anything, including the facts of the case and the amount of restitution. Again, this caused the parties to fail in their attempt to reach an agreement. When the participants fail to reach an agreement a notification is sent to the referral source who then decides about an alternative source for the resolution of the participants case.

Aside from the obvious failure regarding the mediations which did not produce an agreement, the remaining 15 victim-offender pairs were able to construct an agreement. Yet, the question remains, do these agreements make the situation right? Has the harm been repaired?

Several of the questions posed in the interviews address this issue.

Victim #1 6/20/05

Researcher: With regards to the agreement produced in the mediation, are you satisfied with it?

Victim: I am.

Researcher: Why?

Victim: Because I think he gets a big overall picture that you can't do something negative, you know and it sounds like he is going to give it a shot, so that was fine with me.

Researcher: Did you feel that you were able to contribute to the decisions made about the agreement?

Victim: Yes

Researcher: Is there anything else that you would have liked to have included in the agreement?

Victim: I probably would have liked to see his grades at the end of the year.

Researcher: Yeah?

Victim: Now that I think about it, sitting here now... which didn't come across at that time.

Researcher: For what purpose if you don't mind me asking?

Victim: To see if he actually accomplished what he wanted to do. ... You know he says he can, and I guess I'll never see it. So... I guess I would have liked to see that. You know if he turned around and I saw the paper at the end of the season and you know it shows that there was some positive there, I would probably feel pretty comfortable about what happened.

Victim #2 6/30/05

Researcher: With regards to the agreement produced in the mediation, are you satisfied with it?

Victim: Yes, um... I didn't know what was going to happen in the mediation. The mediators helped me a lot to create the agreement.

Researcher: What about the agreement is satisfying?

Victim: Um... I guess because the boys are going to have to work to repay what they did. I don't think locking the boys up would have helped anyone. I hope that this can be a learning experience for the boys.

Researcher: Did you feel that you were able to contribute to the decisions made about the agreement?

Victim: Yes, definitely. The mediators helped me, but they wanted me to make the decisions.

Researcher: Is there anything else that you would have liked to have included in the agreement?

Victim: No, I don't think so.

Each of these victims reported satisfaction with the outcomes of their case in terms of the agreements produced. They both acknowledged that they were able to contribute to the decisions about the agreement. Victim #2 also acknowledged that the mediators helped her to make decisions about the agreement.

All participants were treated with respect (1. c.).

The issue of respect is one that is covered by the mediators during the introductions. A copy of the BARJ document which guides mediators through the introductions is provided in Appendix VII. Within this document the mediators cover

three rules for the mediation. Rules one and two pertain specifically to the notion of respect. Rule one states that there will be no interruptions. Rule two states only one word, civility. With regards to each of these rules, I noticed that the mediators would often elaborate upon these issues. Almost without fail, the mediators explained to the participants and reminded them throughout that if they have something to say while the other person is speaking, they are to make a note to remind one's self. They are instructed not to interrupt. Sometimes the mediators would ask the juveniles in particular if they know what civility means. They would then take the time to explain it to them. In each of the mediations that I attended, a very clear message was sent about respect during the mediation. Following the discussion on rules, the participants are asked if they accept the rules. In each and every case, the participants accepted the rules, and the mediation began.

With that said, this creates no guarantee that the rules will be followed. In fact, I found the participants to be disrespectful of one another in two mediations. Not surprisingly, these mediations were the ones described in the previous section that failed to produce an agreement. In the mediation involving one adult offender and the two adult victims, the participants did in fact interrupt one another. Anger and disagreement led to name calling, with the one victim stating, "He is the guilty one, not me." In the other mediation, the parents of the juvenile offenders showed disrespect when questioning the amount of restitution being asked for by the victim. They remarked that the victim's possessions were not antiques. One participant stated, "They are junk in my opinion." Thus, despite the efforts of the two mediators to create and maintain a respectful atmosphere, there is the potential that one or both parties will be disrespectful.

Perhaps the most noteworthy data with regards to the issue of respect comes from the survey data collected. Again, following the analysis plan, one can see that items 3 and 6 from the victim survey and items 5, 6, 9, and 11 from the offender survey address the issue of respect. (see tables 5 & 6). In retrospect item 10 from the victim survey does not really address the issue at hand, but speaks in a more general term about the victim's satisfaction with the mediation.

Item 3 asked the victims to respond to the statement, "I feel the offenders listened to me." 28.8% strongly agreed, 54.2% agreed, and 15.3% were unsure. Only 1.7% disagreed and none of the victims surveyed strongly disagreed. Thus, 83% of the victims felt as though the offenders listened to them. Item #6 indicates that 97.5% of the victims felt as though they had been treated fairly by the staff at the BARJ center. The other 2.5% were unsure.

Items from the offender survey are relevant to this issue as well, as both parties should feel respected throughout the mediation process. According to my analysis plan, items 5, 6, 9, and 11 are relevant here. However, item 6 speaks to the offender's perception of the victim's ability to ask for what they wanted. As such, this item is not relevant to whether the participants felt respected. Item 11 from the offender survey is not relevant either, as it speaks to whether the meeting was helpful to the offenders, but not to the notion of respect.

Item 5 asked the offenders to respond to the statement, "I feel the victim(s) listened to my side of the story." 51.2% strongly agreed, 38.4% agreed, 7.2% were unsure, .8% disagreed, and the remaining 2.4% strongly disagreed. These figures are somewhat similar to those reported by the victims, although the figures for the offenders

were even higher. Some 6.6% more offenders, a total of 89.6%, agreed that the other parties listened to them. However, about 1% more offenders disagreed as well. Item 9 demonstrates that offenders felt as though the staff and volunteers treated them fairly as well. An astounding total of 97.7% of the offenders either strongly agreed or agreed that the volunteers and staff had treated them fairly. 1.6% were unsure and the remaining .8% disagreed.

Other support for the general pattern of respect I found to be a part of these mediations came from the interview data collected from two of the victims.

Victim #1 6/30/05

Researcher: Did you feel respected during the mediation?

Victim: Um, yeah. I think I was definitely.

Researcher: By whom?

Victim: Uh, I think, you know... right at the beginning of course the offender, both him and his father, I don't think respected me because they didn't really know the issues, but I think by the end they were respectful, and of course the two parties that were there... the mediators.

Victim #2 6/30/05

Researcher: Did you feel respected during the mediation process?

Victim: Very much so.

Researcher: How?

Victim: How? Um, I felt like the people in charge, the mediators did a really good job in asking me... um, first of all knowing my name and saying she is gonna do this now and she is gonna do that now, and always referring to me... um asking the kids questions and asking me questions... um and putting me at the head of the table... um, making it feel like, making me feel like that whole meeting was for me, and that whatever was going on there was to um... for me to talk about how I felt and that everything that took place there was to um... repay me and my organization. That's what I felt like, I felt very respected.

Researcher: By whom did you feel respected by?

Victim: Um, everybody.

Researcher: O.K. so aside from the mediators...

Victim: I felt like the mediators headed it.

Researcher: Set the tone?

Victim: Yeah. That's a good word. Yeah, they set the tone for... I don't think the boys and their family would have done it on their own, I think they put the fire underneath the boys to do it, but I think the boys did a really good job of respecting. Yeah.

These experiences speak more to the general atmosphere of respect that I found in 12 of the 14 mediations. It is interesting to note however, that the first victim felt as though the parties did not respect him initially, because they "didn't know the issues." He did feel that the parties grew to respect him as the mediation unfolded. With regards to the second victim, she too believed that the parties would not have respected her initially, if the mediators had not "put a fire underneath the boys to do it." and set the tone by demonstrating respect themselves. This participant also noted that the mediators showed respect to her in the way they addressed her and showed concern for her needs. She also noted that she felt important because of her placement at the head of the table. It should be noted that this was not the standard arrangement. In the typical arrangement observed, the victims and supporters when present sat along one side of a rectangular table, across from the offender and his or her supporters, with the mediators seated at each end. This configuration simply worked best for the room and table provided and the large number of participants involved in this case. It is still interesting to note that the victim made note of such an arrangement and that it made her feel important.

It was interesting to note that both parties, without solicitation, agreed that the mediators were respectful in the mediation. In doing so, victim two suggested that this set the tone for the other parties involved.

No further harm, to either victim or offender, is created by the mediation process (1. d).

A fundamental aspect of restorative justice is the desire to create justice through peaceful means and to deliver peaceful outcomes. If participants emerge from the process having experienced further harm then the process has failed to deliver on the promise of justice based in peace. I present the data from my observations followed by

several items from both the victim and offender surveys that address this issue, all of which are reported here (see tables 5 & 6). This data will be followed by the interview data collected from the two victims following their mediations.

Regarding my observations, I found there to be further harm extended to the participants in only one instance. This case involved the adult victims and offender. In this case the individuals failed to reach an agreement, one of the victims reported being scared and asked to leave the mediation, and both victim and offender showed disrespect and called each other names. In each of the other mediations, I witnessed nothing that would be construed as inflicting further harm, including the other case which failed to produce an agreement. By and large the victims, offenders, and their supporters were respectful and at least some progress was made towards repairing the harm created by the offender's actions.

Regarding the survey data, item 6 from the victim survey and item 9 from the offender survey indicate that an overwhelming majority of both victims and offenders reported that they had been treated fairly by the staff and volunteers at the BARJ center, 97.5% of victims and 97.7% of the offenders to be exact.

Two other items on the victim survey were relevant as well. Item 1 asked the victims to respond to the following statement, "I am glad that I had the opportunity to meet with the offenders." 92.1% of the victims either strongly agreed or agreed, 5.2% were unsure, .9% disagreed and the remaining 1.7% strongly disagreed. Item 10 from the victim survey speaks more to the general satisfaction with the mediation process. A total of 88.3% of the victims polled were satisfied with the program in general. The remaining



11.8% were unsure, and none of the victims surveyed reported dissatisfaction with the process in general.

There were also a few other questions on the offender survey that are relevant. Item #1 on the offender survey indicates that 88.9% of the offenders were prepared to meet with their victims, 7.9% were unsure and 1.6% either strongly disagreed or disagreed, respectively with the statement, "I was prepared to meet the victims." Finally, item 11 indicates that 90.4% of the offenders felt that the meeting was helpful to them, 7.8% were unsure and .8% found that the meeting was not helpful.

Further data accumulated in the post mediation interviews suggest that the two victims interviewed experienced no further harm. Both victims responded no to the questions, "Did you experience any further harm as a result of the mediation?"

Victims and offenders experience the support of their family and community (1.e.).

The items discussed within this proposition speak to the original proposition, in this case to the notion of reparation. Thus what is relevant here is the support from family and community, if observed or reported, regarding the ability of the participants to repair the harm created, to make the situation right, and to incur no additional harm.

First some basic information regarding the presence of supporters at the mediations observed. Of the 20 offenders involved in the 14 cases I observed, 12 had one supporter present. Four other offenders had two members of their social networks present. The remaining four offenders had no members of their social networks present. Of the 17 victims involved in the mediations only two victims had members of their social networks present. While the offenders were far more likely to have supporters from their social networks present during mediation, neither victim nor offender were

likely to feel support from their larger community as these respective communities were non-existent at the mediations observed. In all of the mediations observed there was not a single member of the larger community in attendance. It should be noted that the BARJ center does not go out of its way to invite members of the community. This is not out of the ordinary, although some centers do extend invitations to members of the community for just such a purpose.

These findings alone suggest that the victims had virtually no chance of receiving support from their social networks or the community by virtue of the fact that only two of the 16 victims had any type of support network present.

Interestingly enough, the victims do experience support from another unlikely member, the mediator. The mediators in these cases often facilitated the agreement writing stage of the mediation toward the victims, giving preference to their input and often ignoring the other party. (I return to this issue in further detail under proposition #3 regarding needs.)

Offenders experienced more demonstrations of support from their social networks, although with only a few exceptions I found that offenders were left to their own devices to make decisions about how to repair the situation. One of the few exceptions came in a case where the parents of two juvenile offenders became very involved in their children's case. In this instance the offenders' parents disputed the amount of financial restitution that the victim was requesting. Their efforts to support their children are a demonstration of support and protection against what they believed would have been an unfair agreement. Their comments throughout the mediation affirm this fact. They noted on numerous occasions that the restitution figure requested by the

victim was too high. Their beliefs about this issue were made apparently clear when on numerous occasions they stated that the victim's possessions were not worth the amount requested.

In one other case, a mother did offer support to her 7 year old son as he found it difficult to apologize for his actions and the subsequent harm produced. This particular offender was very young and his mother provided support throughout the mediation. My notes about the mediation indicate that the boy's mother did demonstrate support in terms of encouraging words and physically touching her son.

Despite the presence of supporters for offenders in many of the cases, the offenders were largely left on their own concerning the decisions and actions to make the situation right. Their supporters typically refrained from participating throughout the mediation, including the agreement writing process. They left the responsibility for this issue to the offenders.

As the analysis plan indicates, there is one item from the offender survey which pertains to this issue. Item 8 indicates that despite the non-existence of community involvement in the mediation process, many offenders do recognize the harm inflicted upon these communities by their actions. 74.6% of the offenders surveyed either strongly agreed or agreed with the statement, "I know the community was affected by my actions." A further 15.4% were unsure and 3.8% respectively disagreed or strongly disagreed.

There were no supporters present for either of the victims interviewed, a point acknowledged by each in the post-mediation interviews.

Victim #1

Researcher: Did you have any supporters attending the mediation with you?

Victim: No

Victim #2

Researcher: Did you have any supporters attending the mediation with you?

Victim: Um... no.

Researcher: Did you feel supported during the mediation?

Victim: Yeah. I felt as though the mediators were supportive.

Researcher: How?

Victim: Um... I guess because they knew my name, and they asked me lots of questions about what I wanted.

In each of these cases the victims did not have any supporters present. Despite this fact, victim #2 indicated that she felt supported by the mediators, but no members of the victim's social network or community attended or provided support, despite the fact the supporters are welcome to attend.

### **Summary of Proposition 1**

The point within this discussion is to determine whether the patterns revealed by the data suggest support for the propositions. My findings here tend to be somewhat mixed about the ability of these mediations to achieve the outcomes put forth in proposition one. Moreover, the lack of interview data makes these findings somewhat questionable.

Regarding the first two parts of proposition one, the data reveal considerable success with the issues discussed. My observations, the survey data, and the interview data suggest that agreements are produced in a large proportion of the cases brought to mediation. Of the mediations observed, 12 of the 14 produced agreements. These figures are below estimates from the mediation center, which suggest that agreements are created and signed by both participants in over 90% of the cases brought to mediation.

According to the figures from 2005, there were 108 cases brought to mediation. Only 8

of those mediations failed to produce an agreement. Aside from the agreements created my data suggest that large portions of the participants, both victim and offender, feel as though they were treated fairly. Apologies were offered in 13 of the 14 cases observed and the survey data provide evidence of the more moderate success with these mediations regarding the notion of offender responsibility. A total of 78.6% of the victims felt as though the offenders took full responsibility for their offense, and 72.2% believed that the offenders offered to repay them for their losses.

All of the data suggested that by and large these mediations provide an atmosphere of respect and that participants did not experience any further harm caused by the mediation. According to two similar items posed to victims (survey item 3) and offenders (survey item 5), 83% of victims and 89.6% of offenders believed that the other party listened to them.

The general pattern of success found in the first four subparts of proposition one changed as I began to examine the fifth and final part. By and large I found very little support from the community regarding the ability of the participants to make the situation right, particularly to victims, where only 2 of the 17 victims had even one supporter present for their mediation. Perhaps even more troubling was the fact that not a single mediation was attended by any member of the larger community which has been identified to have both a role to play and needs to be addressed within restorative practices.

I pointed out in the introduction to this chapter that these data are very limited regarding the issues addressed within this proposition. The best way to determine whether these situations have been made right would have been to speak with the participants. With

only two interviews, my findings provide some circumstantial evidence about the issue of reparation that comprises the central focus of this proposition.

## CHAPTER VI

### COMMUNITY (Proposition 2)

The community, as defined both by the participants' close knit community of family, friends, and other individuals, as well as the larger communities in which the participants reside, have a role to play in restorative justice. Perhaps one of the biggest challenges facing the development of restorative justice is to determine the role played by and needs of the communities from which the individuals emerge.

My observations of these cases provided me the opportunity to examine the role communities play in this process. Furthermore, I was able to examine whether community needs are expressed or attempts made to meet their needs. My findings with regards to this proposition will focus around three subheadings. The first subheading is concerned with victims and their immediate communities of care. The second and third subheadings speak to issues surrounding the larger community. I have not identified any survey items regarding the involvement of the community in these mediations. Instead I present my findings here based on my observations, the agreements produced (where applicable), and the interview data.

Victims and offenders experience the support of their family, friends and others with whom they have close connections (2. a.).

As described in chapter three, social networks include family, friends and significant others in one's life. It is common practice in mediation for members of one's social network to attend, provide support, offer forgiveness, and make the first step towards reintegration. This practice follows the logic of John Braithwaite's (1989) theory of reintegrative shaming. I discuss the extent of support for offenders first, followed by a

discussion of the support extended to victims. The data presented regarding proposition (2.a.) come from my observations and the interview data.

In the mediations that I observed, some of the participants did in fact have supporters in attendance. Most often, the offenders had supporters, and quite less frequently, the victims did. Of the 20 offenders involved in the 14 cases I observed, 12 had one supporter present. In 10 of those 12 cases the supporter present was their mother. Supporters of the other two offenders included a brother and a father. All of these offenders were juveniles.

Four of the offenders had two members of their social network present. In each of these cases those members present were the offender's mother and grandmother. All of these offenders were juvenile.

The remaining four offenders had no members of their respective social networks present. This includes two mediations involving family members as both victim and offender and two other cases in which the offenders had no supporters present. In the latter two cases, both of the offenders were adults.

In one case, a young juvenile received much support from his mother. She placed her hand on the child and also offered verbal support throughout the mediation. In a few other cases I witnessed members of the offender's social network offering words of support throughout the mediations. In one case in particular, there were several comments made that were supportive of the two offenders involved. These comments included:

“These are good kids who made a bad decision.”

“He is a good kid.”

“These are both good kids.”

“He helps us out a lot.”



The supporters in this particular case repeated these comments on numerous occasions throughout the mediation, stressing that the kids were good kids who made some bad decisions.

In one other cases, an offender received support from his victim. In this case, the offender had become emotional and the victim stated, "It's O.K. ... You are going to learn from this." In this particular case the offender's mother attended, but offered little in the way of support. Instead she remained a silent witness to the events unfolding before her. The participants in this mediation were a juvenile offender who was a friend of the victim's son and a prior relationship existed between the victim and offender, including time spent by the juvenile at the victim's home, under her supervision.

This last case represents one theme that was identified in a handful of other cases. The offender's supporters, while present, offered little in the way of verbal or nonverbal gestures of support. In many of the cases I observed, the offenders' support networks attended and were seated at the table, adjacent to the offender, but remained a silent party in the mediation.

Victims on the other hand were far less likely to have supporters present. This came as a surprise to me, as one might speculate that victims would need supporters in place to face offenders, to lend support as they deal with the aftermath of the harm produced, and to reintegrate them into their social networks. Of the 17 victims involved in the mediations only two victims had members of their social networks present. In both of these cases the victim was a juvenile, and the supporter present was the victim's mother. In three other cases there were two victims present, thus creating an opportunity for the victims to support one another, but no other supporters were present.

Within the mediations themselves I did observe support being extended to the victims, when supporters were present. The argument could be made that the mere presence of supporters in the mediations for both victims and offenders is a demonstration of support that was likely recognized by the participants, however without asking them, there is virtually no way to know. The offers of support I observed being extended to victims included physically touching the participants and/or verbal comments made that offered support for the participants.

In one of the two cases involving victims who had members of their support network present, the supporter offered significant encouragement. In this particular case the victim's mother placed her hand on her child's leg and arm throughout the mediation offering verbal support as well, remarking, "It's O.K." or other statements of this nature.

Regarding the interviews, both victims acknowledged that they had no members of their support networks present. This acknowledgement is significant because it has implications about the central issue being discussed. Without members of their social networks present, there is no way for these victims to be supported during the mediation. This was a pattern identified in the mediations I attended. Only two of the 17 victims had members of their social networks present for their mediation.

Social networks did become involved in the mediations in other ways. Many of the offenders were persuaded through mediator questioning to recognize the harmfulness of their actions on their social networks. In several of the cases, the mediators posed questions to the offenders about who was affected by their actions. Many of the offenders acknowledged that they had harmed members of their social networks. When

they failed to do so, the mediators then pointed out that extent of their harm on their social networks utilizing questions like:

What about your mother/father, was he/she harmed by this?

Did he/she have to take any time off of work?

Did he/she have to pay any fines or restitution?

Do you think that your parents are worried about you?

Do you think this has brought added stress to your parent's life?

I noted verbal recognitions made by 11 of the 20 offenders about the harms produced to their respective networks. The statements made by offenders recognized many types of harm including monetary, emotional, violations of trust, added stress, and disappointment. One offender in particular who appeared at mediation without supporters stated that he had made both his mother and grandmother cry, and that he was really hurt by this. He stated that he believes that it will be difficult to make it up to them, and he wants to "work as hard as he can" to get his life back together and to regain their trust.

The examples provided should not lead one to the conclusion that these mediations were overflowing with support. Keep in mind that only two victims had supporters present at their mediations. Each of these cases involved a mother offering support to a juvenile son in one case and a daughter in another. I have described each of these cases above, but the much larger pattern which emerged regarding victim support suggests that victims receive little to nothing in the way of support from their social networks during mediation. The offenders fared much better as 16 of 20 offenders had supporters present thus making them more likely to be the recipients of gestures of support from their social networks.

Perhaps a bigger question is whether the victims and offenders experienced support at all. I have collected no data and there is no indication that the participants experienced support or lack thereof from their social networks, or the larger community outside of the mediation setting. Thus I cannot comment on whether these participants experienced support at home or otherwise prior to, and/or following the handling of their case by the BARJ center. In the much larger picture, the realities of the participants' lives, these events are significant. Support from one's community and social network, while not present at the mediation may be present outside of the BARJ center. Support in general, whether present during the mediation or not, is important the success and social well-being of the participants.

Victims and offenders experience the support of their larger communities (2. b.).

As McCold (2004) suggests, the larger community has a role to play in restorative justice as well. I present the data here from my observations, the survey data, the agreements, and the interviews. Although the analysis plan does not indicate any survey items pertaining to this issue, I believe that offender survey item #8 which asks the offenders to respond to the statement "I know the community was affected by my actions," does speak to this issue.

My observations regarding this issue found very little in the way of community involvement in any of the mediations that I observed, with one exception. In this particular case which involved five offenders, the harm produced affected many community members and some of these members wrote letters expressing sadness, anger and disappointment in the harm experienced. These letters were presented to the offenders, and by their own accord, helped many of them to realize the extent of the harm

produced by their actions. The following statements were summarized from comments made during the mediation.

Offender #1 I recognize how people have been harmed and how many people.

Offender #2 I wasn't thinking about how this would affect the community. I did it because it was fun. Now I realize that I shouldn't have done it.

Offender #3 We weren't thinking about how people would be affected.

Offender #4 I felt sad after hearing what the victim(s) said.

Each of these offenders recognized the harm inflicted upon both their social networks and their respective macro communities, and made apologies to all. The community will be further involved in this case as each of the offenders have been required to complete many hours of community service directly related the harm inflicted upon their community. There was one other case that involved community service as part of the agreement. However, in each of these two cases I hesitate to acknowledge the order to complete community service hours as community involvement in the mediation.

Aside from a couple of other cases in which the participants acknowledged that some community services were already in use, and one other case in which the participants expressed a desire to volunteer together within their communities, although this was not ordered in the agreement, by and large there was very little community involvement in any of these cases. Thus, despite the belief of many that the community has a role to play in restorative justice, (McCold, 2004; Sullivan & Tifft, 2001; Zehr & Mika, 1998) it is yet unclear whether they do or not and if so, just what exactly that role is.

Although these mediations tended to feature little in the way of community involvement, the offenders often recognized that the community was affected by their actions. Survey item #8 from the offender survey indicates that 76.4% of the offenders

either agree or strongly agree with the statement, "I know the community was affected by my actions." A further 15.7% were unsure and the remaining 7.8% either disagreed or strongly disagreed (see Table 6).

Regarding the agreements themselves, I have indicated that community service was ordered as part of six agreements. One case involved five offenders and another involved only one offender. Aside from these cases which required community service there was very little mention of the community, or community service required as part of the agreements produced. One case in particular acknowledged that community services were already being utilized per a court order and another made note of several community services available to the two teens involved in the case but did not require participation in any. Another agreement required a juvenile boy to get involved with extra-curricular activities at school, and one other agreement used community and school activities as a reward for a juvenile to perform other aspects of his agreement. Thus, in several of these instances, community services were ordered, or utilized more as a form of punishment than to meet needs of the participants involved. This is a characteristic that is more in line with the retributive criminal justice system.

The findings from the interview questions indicate that neither victim had members present to support them.

Victim #1

Researcher: Did you have any supporters attending the mediation with you?

Victim: No

Victim #2

Researcher: Did you have any supporters attending the mediation with you?

Victim: Um... no.

Researcher: Did you feel supported during the mediation?

Victim: Yeah. I felt as though the mediators were supportive.

Researcher: How?

Victim: Um... I guess because they knew my name, and they asked lots of questions and made sure the boys showed respect to me.

Participants become aware of the assistance available in their communities to help them meet their needs (2. c.).

The findings under this subheading create an excellent lead into the next proposition. They effectively tie the community into the notion of needs which will be discussed next, and the implications of this section bear significantly on the ability of mediations to meet participant needs. I indicate that there is a general lack of macro-community involvement in the mediation process

Even if no significant community involvement was present in the mediations, connections to the community can be created through dialogue and perhaps through stipulations provided in the agreement. In doing so, the community would become involved despite non-existence at the mediations themselves. However, the agreements produced in the mediations that I attended only created stipulations for the offenders, thus the potential for victim involvement with the community is not affected by the agreements. This may be due to the nature of the harm inflicted, although not necessarily.

An examination of the agreements produced leads me to conclude that there was very little recommendation for community services. I do not include community service hours ordered, because that is not the focus of this issue. The following are three exceptions I have identified, but even these agreements have little to offer in the way of community involvement in the mediation response observed.

One of the agreements produced stated, "Both girls are encouraged to seek community resources if needed for any personal reasons." The statement "both girls"

referred to both the victim and the offender. In this case, there was, in fact, much dialogue about community resources and the names of several community services were provided to each of the participants and their parents.

Another agreement produced contained stipulations for attendance in a community program named PRIDE. PRIDE is a mentoring and tutoring program for elementary, middle, and high school students and their parents. Mentors work with youth on academic excellence, drug and alcohol prevention, leadership skills, life skills, and service learning projects. Mentors also help the parents with self-esteem building, communication, disciplinary skills and homework skills. It is noted specifically in the agreement, however, that attendance is necessary because of a court ordered provision requiring an Adult Supervised Structured Activity.

One final agreement included the opportunity to get involved in community programs as well. In this particular case a juvenile offender expressed a desire to get involved in athletics. This case involved the juvenile boy as the offender and his mother as the victim. In this particular case the agreement created opportunities for the boy to participate in activities at the YMCA and the school, but only if he was able to fulfill the other aspects of his agreement. Thus in spite of these three agreements which at least make a nominal mention of community need meeting organizations, the general pattern identified was that the communities are missing from the process, nor do they emerge within the agreements.

One set of questions from the post-mediation interviews addresses this subpart as well.



Victim #1 6/20/05

Researcher: Did the mediation make you aware of any support services that your community has to offer for victims like yourself?

Victim: No.

Researcher: No?

Researcher: Was the community involved in your mediation in any way?

Victim: I don't think so. No.

Victim #2 6/30/05

Researcher: Did the mediation make you aware of any support services that your community has to offer for victims like yourself?

Victim: Um... not really. I don't think so.

Researcher: Was the community involved in your mediation in any way?

Victim: Some of the community members wrote letters to the boys, but none of them were here, or participated in the mediation if that's what you mean.

These statements appear to corroborate my findings that the communities are not involved in the mediations observed. Victim #2 did make note of the fact that community members did write letters to the offenders indicating how they felt about the harm. This was the extent of their involvement, and this was the most involvement by the community in any of the cases observed.

### **Summary of Proposition 2**

In conclusions, I found very little support for proposition two, regarding involvement from the communities in the mediations observed. Offenders were far more likely to have supporters from their social networks present, and consequently were also more likely to be the recipients of offers of support during the mediation process. Despite this fact, both offenders and victims lacked substantial support from their social networks during the mediation process. Furthermore, all of the data collected suggests that the larger communities were mainly absent from the mediations, and the mediations did little to create connections between the victims, offenders, and their respective communities.

## CHAPTER VII

### NEEDS (Proposition 3)

Victim-offender mediation represents needs-based justice. Needs-based justice works to make the situation right by addressing the needs of all individuals with no preference, including both victims, offenders, and the larger community.

Dennis Sullivan and Larry Tifft (2001) conceive of restorative justice as a needs-based justice response. What this means is that in order for justice to be restorative it must expose and address the needs of the participants involved. According to Sullivan and Tifft, this task is a difficult one in that many of us do not conceive of justice in this fashion. Rather, we have internalized the predominant justice systems of our society that have a tendency to be either deserts- or rights-based. Zehr (1990) makes a rather similar argument in that one must choose to examine the notion of crime in a new context before one can envisage the concept of restorative justice. One must examine crime not in terms of the law or rule that has been broken, but rather in terms of the relationship that has been ruptured. Once we recognize crime as harm produced within a relationship, we can begin to conceive of a justice that aims to repair that harm.

Victim-offender mediation programs are one form of restorative justice that takes this approach to harms that have been created within relationships. However, as Sullivan and Tifft note, this approach towards justice "puts a great premium on the participation of everyone" (p. 113). How can restorative justice live up to its full potential, to be conceived of as needs-based if the participants are not willing to share in the process? If victims and offenders are not willing to participate, then one cannot address the needs that have resulted from the crime, or perhaps those needs of the offenders that caused

them to engage in the harmful actions in the first place. This represents a significant challenge to practitioners of restorative justice. I present the data here, where applicable, from my observations, survey data, the agreements, and the interviews.

All participants were given the opportunity to contribute to the mediation/conference

(3. a.).

Per the analysis plan, I present the data regarding proposition (3.a.) from my observations, the survey data, and the interviews. I discuss the victims first followed by the offenders. The data here will be directly linked with not only the ability to contribute, but more specifically to contribute regarding one's needs, and the prospect of having those needs addressed.

My observations present clear evidence of the opportunities for victims to participate in the mediations, to identify needs and to have those needs addressed. I noticed that regarding opportunities to identify needs, contribute to the agreement, and consequently to have one's needs addressed, the process was dominated by the victims. One reason for this is that the mediators engaged in selective facilitation, giving preference to the contribution of the victims in the agreement producing stages of the mediation. Questions posed to the victims during the agreement writing stage include:

What can we do to make this right?  
What would you like to see done in this situation?  
What needs to be done to repair this situation?  
What needs have been created by this harm?  
What would you like to see done here?

These questions are indicative of the value placed on the input of the victims in the mediation process.

In accordance with the analysis plan I discuss item #3 and #11 from the victim survey regarding participation and needs (see Table 5). Item #3 indicates that 83% of the victims either strongly agreed or agreed that the offenders listened to them. 15% were unsure, and 1.7% disagreed. Item #11 asked victims to respond to the following statement, "I was given the opportunity to ask for what I wanted." A total of 97.4% of the victims either strongly agreed or agreed, 1.7% were unsure and .9% disagreed. This particular item indicates very clearly that victims are given opportunities to participate and to identify their needs in mediation.

Several questions from the interview data are appropriate here as well.

Victim #1 6/20/05

Researcher: Did you have an opportunity to tell your story?

Victim: Yes

Researcher: To explain how the crime affected you?

Victim: Yeah definitely.

Researcher: How do you think the offender responded to this?

Victim: For his age, I think he responded, uh... not so much in a positive form but I think he understood it. So I, you know, I don't think he responded in any sort of way other than leaving his head down on the table. You know, so the response was a positive response I think. You know, knowing that uh... he knew that he didn't do right.

Researcher: How did participating in the entire mediation and everything, how did that make you feel?

Victim: I think it seemed to be uh.. maybe a good learning for him. It made me feel comfortable with what, you know, will take place, so I was comfortable with it.

Researcher: Were you apprehensive at any point about participating?

Victim: No

Researcher: Not even initially coming in?

Victim: No.

These comments indicate that the victim in this case did participate and felt comfortable doing so. He was able to explain how the crime affected him, and he was not apprehensive about participating.

Victim # 2 6/30/05

Researcher: Did you have the opportunity to tell your story?

Victim: Yes.

Researcher: Did you explain how the crime affected you?

Victim: Yes

Researcher: How did the offenders respond?

Victim: I think they responded as good as they could providing their age and immaturity level. I think they did a really good job.

Researcher: How did they do a really good job?

Victim: Um, I think it was hard for them to say what they had to say. I don't think, providing for their age, their maturity level, their background, them being... um, what they did, for them to say what they had to say, I think it was hard for them to do, but I think they did... they did pretty good.

Researcher: How did participating in the mediation make you feel?

Victim: Um, important. It made me feel important. It made me feel like I am doing something for the boys, like I am going to be a part of rehabilitating for the boys.

Researcher: Were you apprehensive about participating at any point?

Victim: No, not at all.

These comments indicate two important findings. First, participation in the mediation made the victim feel important, and second the interview notes that the victim recognized that she was involved in this process. Both of these interviews suggest that the victims felt as though they had been able to contribute to the mediation.

Another question posed to both victims was, "Did you contribute to the decisions made about the agreement?" Both victims acknowledged in their interviews that they were a part of the decisions made about the agreements.

A rather different pattern emerged regarding offenders. Observing that the agreement producing stages of the mediations were dominated by victims has rather obvious implications for the offenders involved. The emphasis placed on the victims meant that the needs of the offenders and the input contributed by the offenders did not appear to have equal value. As such, the offenders contributed only minimally, if at all, in this stage of the mediation.

My observation notes regarding this issue are very clear. In particular I noticed that offenders rarely expressed their needs in their own words, or from their own perspective. Others, including parents and victims, seemed to think they know what the offenders need. At another point in my observation notes I remark that an offender's agreement to the stipulations put forth in the agreement hardly amounts to participation. I watched in mediation after mediation that the agreement writing stages were dominated almost without exception by the victims. Recall the list of questions that I noted being asked of victims in the mediation process. No such questions were asked of the offenders, and certainly there were no questions about any harm experienced by the offenders. A rather different line of questioning was utilized to address the offender regarding the agreements produced. Questions addressed to the offender included:

Can you do this?  
Does this sound fair to you?  
Do you think you can do this?

These questions hardly amount to participation, and certainly do not allow offenders to identify needs of their own. They simply ask the offenders to acquiesce to the needs of the victim. Consequently offender needs go unacknowledged and unaddressed.

Very few of the offenders were asked what they felt they could do to make things up to the victims. Furthermore, in those instances, the suggestions were frequently dismissed. In one instance, a boy had wanted to do work for a local boat storage shop, where he and his co-conspirators were caught by the police after stealing items from another victim. In this instance, there was no damage done at the boat storage shop and nobody was present as a representative of the shop to field such a request. In another instance, two offenders had requested that they work off their restitution for the victim at

his business. The business owner denied their request noting that such an arrangement would violate state labor laws. He further noted that it would be too dangerous. The eventual result of this case was that it was unresolved. The parties could not agree on the amount of restitution to be paid, and the parties failed to reach an agreement. Aside from these few instances where offenders were involved, in a rather limited way, my observations of the process indicate that by and large the opportunities for the offenders to participate in identifying their needs were few and far between.

I have identified two items from the offender survey that are relevant to this issue as well (see Table 6). Item # 5 indicates that 89.6% of the offenders felt that the victim(s) listened to their side of the story, 7.2% were unsure, .8% disagreed, and 2.4% strongly disagreed. I feel this item is important, but it does not address my concern about the lack of opportunities for participation in the mediation. For example, the victims were asked whether they felt they were given the opportunity to ask for what they wanted. No such item was asked of the offenders. Instead, the offenders were asked to respond to the following statement (Item # 6), "The victim said what they wanted to make things right." A total of 92.2% either strongly agreed or agreed, 6.2% were unsure, .8% either disagreed or strongly disagreed respectively.

These questions alone, presented to the victims and offenders, indicate that in identifying needs there is an emphasis on the victims. The Restorative Justice center is concerned about opportunities for victims, but not offenders to ask for what they want.

Victims and offenders are able to express their needs, and to have those needs addressed

(3. b.).

There is considerable overlap here between subparts (3.a.) and (3.b.). These two subparts embody the essence of proposition 3. I will follow the previous outline for this discussion as well, examining the case of the victims first, followed by the offenders.

The data I present for the victims includes my observations, with a link to the agreements produced, survey data, and the interviews. Regarding my observations, the case has already been made that when it comes to the case of the victims, there is considerable evidence to suggest that victims are presented with opportunities to contribute to the mediations. Particularly when it comes to expressing needs and implementing a plan to have those needs addressed. My observations led me to conclude that victims dominate the discussion on needs and the agreement writing stage where they can identify options for having those needs addressed. This is made easy however for the victims as the mediators help in this effort by focusing on their needs and input in this stage of the mediation process.

My observations are rather clear on this topic and the agreements produced reflect consensus about my assertion regarding the needs of the individuals and the agreements produced. I watched as agreement after agreement was produced by the victims. The agreements produced are a clear result of this process. They typically contain a list of items that the offender agrees to complete. The list of activities varies from mediation to mediation, with one major similarity. The lists are compiled by the victims. The contribution of the offenders were very minimal in many instances, involving no more



than an agreement to follow the stipulations or requirements put forth in the agreements and in this way is very similar to a dispositional hearing before a judge.

At some point in each of the mediations I observed, there came a time when the mediators began to selectively facilitate the meeting towards the production of an agreement. In doing so, they began to quiz the victims about what it is they would like to see emerge from the mediation, what they need to have the situation repaired. This is good in that it demonstrates an effort to expose and to hopefully address those needs in the production of an agreement. However, the same respect was not shown to the offenders. A list of needs that I observed being identified by the victims include:

The need for restitution.

The need to know that this behavior will not be repeated.

The need to confront their offenders.

The need to know that the offender learned something from the mediation.

The need to know the offender is doing something to better him/herself.

The need for an apology.

The need to put the events behind them.

The need to see the offender reintegrated back into the community.

Victims were presented with opportunities to address these needs by contributing to the agreements produced and putting stipulations in the agreements which, in their opinion, will accomplish these goals.

In accordance with the analysis plan, survey item #11 from the victims' survey is a clear demonstration that the victims agree that they are presented with opportunities to identify needs within the mediation. These results demonstrate the 97.4% of victims either agreed or strongly agreed with the statement, "I was given the opportunity to ask for what I wanted" (see Table 5).

There are several questions from the victim interviews which address this subpart in a very specific manner.

Victim #1 6/20/05

Researcher: In thinking back to the needs that you had expressed prior to the mediation, or your expectations of what you would like to see, were you able to express these needs in the conference?

Victim: Uh... Yeah, and I did. You know when it first happened, I thought maybe he should wear a sign around saying, you know, that I stole, or I did something. The more I thought about it, I think it had to be a positive image more than a negative image.

Researcher: Was that as a result of the mediation, or was that something that you came to grips with in the time since the offense...

Victim: Prior to that.

Researcher: So, even prior to the mediation you came to the conclusion that maybe a sign wouldn't be an appropriate thing.

Victim: Exactly. Something more positive. Uh... you know when... I think when a child does something it affects everybody, and I think in order to maybe help that kid turn around or... is to do something positive and teach him that positive things create more positive things. You know, at first I was ticked off, and after that I came to the conclusion, you know, alright, this kid just needs a little positive reinforcement.

Victim #1 6/20/05

Researcher: In thinking back to the needs that you had expressed prior to the mediation, were you able to express these needs in the conference?

Victim: Um... Yes, I wasn't sure how the mediation was going to go, but I had a lot of chances to talk about what I wanted the boys to do.

Both of the victims interviewed indicated that they were able to express their needs in the mediation. Furthermore, their comments indicate that they were able to address their needs in the agreements produced in their mediations.

Another question I had posed to the victims was, "How do you think that your experiences with the mediation process are different than that which you would have experienced in going to court?" This question had multiple purposes, one of which was to find out if the victims would suggest that they were involved in their case with mediation. I had wondered if this question would lead the victims to acknowledge this significant difference between court and mediation. Neither victim interviewed indicated that their involvement in the case was a difference.

The offenders' experience within these mediations was quite different. I present data regarding the offenders' needs from my observations of both the surveys and the mediations.

One of the first things I noticed about the victim and offender post-mediation surveys was that the surveys contained similar items, yet some items were asked particularly of either the victims or the offenders. For example the victims were asked to respond to the statement, "I was given the opportunity to ask for what I wanted." Yet, this question was not part of the post-mediation survey given to the offenders. Instead, they were asked to respond to an entirely different set of questions regarding the agreements. One statement posed to offenders was, "I agreed to repay the victim(s) for their loss." Another statement presented was, "I intend on fulfilling my part of the contract." Still another statement offenders were asked to respond to was, "The victim said what they wanted to make things right."

These questions in and of themselves are very telling. They offer a glimpse into how the BARJ center conceives of the restorative process. They demonstrate what the BARJ center staff feel is important, and how they choose to measure their own success. Particularly, the post-mediation surveys for victims and offenders indicate that the BARJ center was interested in evaluating the mediations in terms of the opportunities for the victims to ask for what they wanted, or to identify their needs, but not the offenders.

This was a conclusion that was clear to me in observing these mediations as well. I witnessed time and time again, the offenders being asked, "Why did you do this?" The typical response, almost without exception, was "I don't know." This was often followed by something along the lines of "It was stupid" or "I wasn't thinking." This is an

important question, that deserves to be answered, but the mediators did not push through the attempts by the offenders to ignore the causes of their harm, whether for the sake of embarrassment, fear, or as an attempt to move the mediation along. This in effect denied the offender an opportunity to address their own needs, to examine the cause of their harmful behavior.

My observations of the agreement writing stages of mediation support this claim as well. Participation on the part of the offender in the production of the agreement was virtually non-existent. The questions posed to the offender include:

"Is this acceptable?"  
Can you do this?  
Can you agree to this?  
Do you think this is fair?

Providing answers to questions like these hardly amounts to participation. Thus another opportunity to expose and address the needs of the offenders is missed.

An agreement was created as part of the mediation/conference (3. c.).

The issue discussed here is in regards to the ability of the agreements produced to address the needs of the individuals involved. As such it is inherently linked with the first two subheadings under proposition three, for if the parties do not identify or are restricted from identifying needs then the agreements produced are not likely to address needs. I present the data here from my observations for victims and offenders as well as one of the interview questions from the victims' post-mediation interview. I address the case of the victims first followed by the offenders.

My observations regarding the victims suggest that victims are indeed given opportunities to contribute to the agreement in such a way that their needs will be addressed. The questions that are posed to victims in the agreement writing stages

specifically ask the victims to identify needs that have been created by the harm they experienced and furthermore what needs to be done to make the situation right.

Questions asked of the victims include:

What can we do to make this right?  
What would you like to see done in this situation?  
What needs to be done to repair this situation?  
What needs have been created by this harm?  
What would you like to see done here?

These questions represent opportunities to identify needs and opportunities to have those needs addressed by contributing to the agreement produced. Victims identified needs in the mediation and set about addressing those needs by creating the agreement to their specifications.

The interview data corroborate this finding completely.

Victim #1 6/20/05

Researcher: With regards to the agreement produced in the mediation, are you satisfied with it?

Victim: I am.

Researcher: Why?

Victim: Cause I think he gets a big overall picture of um... that you can't do something negative. You know, and it sounds like he is going to try.. you know, just by his response it sounds like he is going to give it a shot so that was fine with me.

Researcher: Did you feel that you were able to contribute to the decisions made about the agreements.

Victim: Yes

Researcher: Is there anything else that you would have liked to have included in the agreement.

Victim: I probably would have liked to see his grades at the end of the year.

Researcher: Yeah..?

Victim: Now that I think about it sitting here. Now, which didn't come across at that time.

Researcher: For what purpose if you don't mind me asking?

Victim: To see if he actually accomplished what he wanted to do.

Researcher: So to see if there was any uh.. to see if he actually.

Victim: Yeah. Right. You know he says he can and I guess I'll never see it, so I guess I would have liked to see that. You know, if he turned around and I saw the paper at the end of the season, and you know it showed that there was some positive there, I would probably feel pretty comfortable about what happened.

The statements made by this victim suggest that he was not only happy with the agreement produced, but felt as though he was able to contribute to the decisions made about the agreements. His desire to include more in the agreement in this case is not a reflection of an inability to have this issue addressed. As his remarks suggest, he simply did not address the issue in the mediation. It did not occur to him until the mediation was complete.

Victim #2 6/30/05

Researcher: With regards to the agreement produced in the mediation, are you satisfied with it?

Victim: Yes, um... I didn't know what was going to happen in the mediation. The mediators helped me a lot to create the agreement.

Researcher: What about the agreement is satisfying?

Victim: Um... I guess because the boys are going to have to work to repay what they did. I don't think locking the boys up would have helped anyone. I hope that this can be a learning experience for the boys.

Researcher: Did you feel that you were able to contribute to the decisions made about the agreement?

Victim: Yes, definitely. The mediators helped me, but they wanted me to make the decisions.

Researcher: Is there anything else that you would have liked to have included in the agreement?

Victim: No, I don't think so.

The comments here too suggest that the victim was satisfied with the agreement. She was able to contribute to the agreement, and as a result she believes the agreement reflects her desire to see the boys learn from their mistake and to be held accountable for the harms they created.

My observations regarding the offenders were much different. Offender contributions to the agreements produced were almost without exception absent. Offenders were simply not afforded the opportunities to contribute to the agreements. Offenders were only questioned in terms of their ability to complete the requirements put

forth in the agreements by the victims. As a result of the lack of opportunities to contribute, offenders' needs were not identified in the mediations, let alone addressed in the agreements produced. The agreements reflect the desires of the victim, but not the offenders.

A true needs-based justice does not give preference to one party's needs over another. Yet this is exactly what I witnessed in the mediations observed. In this instance I am concerned with not only the opportunities of offenders to be able to express their needs, but also for them to have those needs met by the mediation. This may come through identifying community resources to help them meet needs, being included in the agreement writing stages of the mediation, and even having needs addressed by the agreements produced. My observations, however, led me to conclude that offender needs are not addressed in the agreements created within the mediations observed.

Victims and offenders experience the support of their family and community (3. d.).

This final subheading under proposition number three is somewhat different. Here, the issue at hand is community support for victims and offenders in the mediation in regards to their ability to identify needs and to have those needs met. I present data from my observations for both victims and offenders, as well as the post mediation interview with the victims. While I suggest in the analysis plan that one item from the offenders' post mediation survey (Item #8) be included here as well, upon further reflection this item does not pertain to the specific issue at hand. Item #8 addresses the offenders' awareness of how the community was affected by his/her actions. While this issue does speak to community involvement, it does not suggest whether the offender

experienced any support from the community regarding his/her ability to identify needs, or to have those needs addressed.

My observations regarding community support for victims and offenders in regards to their ability to identify needs and to have those needs addressed are rather similar. In the case of victims, there were only two victims who had supporters present for their mediation. In one of these cases, the victim's mother did in fact offer assistance to her son in creating the agreement. The victim, a juvenile boy, was virtually non-participatory and his mother contributed to the agreement which included an apology and an assurance that the harm will not be repeated. The offender in this case was a juvenile as well.

The one supporter present for the other victim did not participate at all in the mediation. She remained a silent witness throughout, including the agreement writing stage. This case involved a juvenile female as both victim and offender. The remaining 14 victims did not have any supporters present.

The offenders were far more likely to have supporters present, but they did little to extend support regarding the offenders' ability to identify needs, or to contribute to the agreement being produced. One exception to this conclusion involved two juvenile offenders and their supporters in mediation with one adult victim. In this case, the parents of both of the juvenile offenders objected to the restitution figure offered by the victim. All supporters present, including a mother of one offender and the mother and father of the other offender, agreed that the victim's restitution figure was too high. The result in this case was that an agreement was not produced.



Aside from this example the supporters present for offenders were more often silent observers of the process. Thus offenders experienced virtually no support from their respective social networks regarding their ability to identify needs and to have those needs met. Bear in mind that offenders were given little opportunity themselves to identify needs, thus making support for such efforts less likely.

Regarding the larger community my observations for both victims and offenders were also the same. The data here are clear because of the lack of community involvement in the cases observed. As a result, this lack of community involvement translates into the fact that both victims and offenders did not receive support from their community by virtue of the fact that no members of the community were present. Without members of the macro-community present to offer support there was very little data to collect. This should not take away from the significance of this finding. Community involvement, as I have suggested, is part of restorative processes. Without their involvement, restoration and forgiveness by the community is not likely.

Regarding the interview data, both victims recognized that they had no supporters present for their mediation. This, in turn, makes support from one's social network an impossibility.

### **Summary of Proposition 3**

With regard to my study's original proposition, my observations have led me to conclude that the qualities described in proposition #3 have not been satisfied. Instead, the process has given preference to victims in the mediation, in particular within the agreement writing stage. Thus, while agreements are being produced, the agreements feature contributions of primarily one individual. Furthermore, offenders have been less

able to express their needs resulting in an inability of mediation to meet those needs. Offenders must be asked about their needs. Furthermore, they need to be involved in creating the agreement. Offenders must be asked what they think needs to be done to make the situation right. Being involved in these decisions is not only empowering, but can also serve to legitimize the process, the outcome, and the agreement in the eyes of the offender. Furthermore, the absolute lack of a presence from the larger communities from which these parties emerge is an important finding of its own, for without these members present there can be no support extended to the parties brought together for the mediation.

## CHAPTER VIII

### RECOGNITION (Proposition 4)

Restorative justice leads to awareness for each person that the other is human, the events become personalized, and this changes how the participants perceive one another. Victim(s) gain empathy for the offender(s) and it makes it difficult for the offender(s) to deny the harm caused by his/her actions. One of the often theorized benefits of restorative justice is that it personalizes the "other." Specifically, this makes it rather difficult for offenders to utilize techniques of neutralization to deny the harm in their actions and to rebuff the guilt that comes with creating harm for others. Similarly, the victims are presented with the reality of those who have harmed them creating awareness about the offender's life that they were lacking prior to the mediation.

All participants were given the opportunity to contribute to the mediation/conference

(4. a.).

The issue here remains the participation of both victims and offenders; however, the focus of this proposition puts a new spin on the outcome of interest. Within this proposition I determine whether the participants have contributed enough to the mediation to cause the other to gain an awareness about them which ceased to exist prior to the mediation. This is commonly referred to as recognition. I address the case of the victims first, followed by the offenders.

Regarding the victims' opportunities to contribute in the mediation leading to awareness by the offender, I discuss my observations, survey data, and the interviews. My observations of the opportunities for victims to participate in this process in general, leading to awareness on the part of the offender, acknowledge the success of the

mediations observed in this regard. Following the introductions, the victims in most cases opened the mediation with an opportunity to explain how they have been harmed and how they are dealing with the harm they experienced. My observations note that 14 of the 16 victims actually shared their story. The remaining two did not. In one of these cases, there was one juvenile victim who was virtually non-participatory throughout the entire mediation. His mother did most of the talking and she did explain how he (the victim) was harmed by the two juvenile offenders. In the other case, the victim was an adult who expressed a desire for restitution, and my observation notes recall that the entire mediation was completed in approximately 10 minutes. I should point out that although these two participants did not contribute, it was not for lack of opportunity. In both cases I observed an opportunity to contribute, these victims simply did not.

The remaining 14 victims shared their experiences about the harm produced with their offenders. The contributions of these victims ranged from long drawn out narratives about the harms experienced by both the victims themselves as well as their families in great detail to much shorter versions recounting the harm in less specificity. The point here is that victims were given this chance and many took full advantage of the opportunity to contribute, thus creating the potential for the offenders to recognize the full extent of the harm produced by their actions.

Victims' survey item #3 corroborates this finding. Item #3 asks the victims to respond to the following statement, "I feel the offenders listened to me" (see table 5). A total of 83% of the victims either strongly agreed or agreed, 15.3% were unsure, and the remaining 1.7% disagreed. These data suggest that the victims did contribute and that many felt as though the offenders listened to them.

Several questions from the post-mediation interviews with the victims have been identified to pertain to this issue as well. The data presented within the interviews corroborates my finding that the participants in the mediations observed were provided with opportunities to contribute to the mediations.

Victim #1 6/20/05

Researcher: Did you have an opportunity to tell your story?

Victim: Yes

Researcher: To explain how the crime affected you?

Victim: Yeah definitely.

Researcher: How do you think the offender responded to this?

Victim: For his age, I think he responded, uh... not so much in a positive form but I think he understood it. So I, you know, I don't think he responded in any sort of way other than leaving his head down on the table. You know, so the response was a positive response I think. You know, knowing that uh... he knew that he didn't do right.

Researcher: How did participating in the entire mediation and everything, how did that make you feel?

Victim: I think it seemed to be uh.. maybe a good learning for him. It made me feel comfortable with what, you know, will take place, so I was comfortable with it.

Victim # 2 6/30/05

Researcher: Did you have the opportunity to tell your story?

Victim: Yes.

Researcher: Did you explain how the crime affected you?

Victim: Yes

Researcher: How did the offenders respond?

Victim: I think they responded as good as they could providing their age and immaturity level. I think they did a really good job.

Researcher: How did they do a really good job?

Victim: Um, I think it was hard for them to say what they had to say. I don't think, providing for their age, their maturity level, their background, them being... um, what they did, for them to say what they had to say, I think it was hard for them to do, but I think they did... they did pretty good.

Researcher: How did participating in the mediation make you feel?

Victim: Um, important. It made me feel important. It made me feel like I am doing something for the boys, like I am going to be a part of rehabilitating for the boys.

The data presented in these interviews are very telling about the central issue in

Proposition 4. While these data cannot tell whether recognition has occurred, they do

suggest that recognition, at least for the offenders, is perhaps likely. Recognition is achieved by learning about the other in the mediation process; for example, in learning about how the harm has affected the victim. When victims participate and recount for their offenders the harm experienced, this creates the potential for the offender to recognize the extent of the harm created by their actions and it personalizes the harm because they are sitting face to face with the victim.

This was another issue about which I had intended to use question #11 from the victims' post-mediation interview. The question asks, "How do you think your experiences with the mediation process are different than that which you would have experienced in going to court?" One of the purposes of this question was to allow the victims to acknowledge the differences about court and mediation. For example, I had hoped to discover whether the victims would acknowledge that learning about or having contact with the other was a significant difference between their experiences with mediation versus court. However, neither victim interviewed acknowledged this difference.

I present the data pertaining to the offenders from my observations and the survey data. My observations of offenders suggest that they too were provided opportunities to share their stories; however, offenders were less likely than their counterparts to take advantage of the opportunities when presented.

Following the lead of David R. Karp et al. (2004) I have categorized offender participation into three groups: high, medium, and low. My classifications into one of these three categories were based on my observations of the mediations, specifically with regards to the contributions of the offenders. Those individuals placed in the high

category contributed not only often, but at length, including detail and substance to the mediation process. Those participants in the medium category responded with limited detail and were less likely to initiate dialogue. They did respond to questions and contributed at least some substance to the mediation. Those offenders categorized as low were non-participatory. These were the offenders who responded only to questions, and failed at times to even do this. Their eyes remained fixed on the table for most of the mediation, they doodled on the pads of paper provided, looked out the window, and generally showed a lack of interest in the mediation. When these offenders did contribute it was often with one or two word answers and they offered very little detail and substance to the mediation.

According to my observations, seven offenders, from four mediations, were placed in the high category. Agreements were produced in three of the four. In the one mediation where the individuals were unable to reach an agreement, it was not for lack of participation.

In one of these mediations I witnessed a juvenile offender completely transformed by the mediation process. In the pre-mediation meeting the offender appeared to be going through the motions, responding only to questions and providing simple answers. When the participants were brought together for the mediation, the victim began by explaining how the events had affected her life. As the exchange of information continued, I witnessed the offender transformed from a virtual non-participant to a well-mannered and articulate individual. Both participants disclosed very personal information. I witnessed for the first time an offender who contributed fully to the mediation process, actually explaining at length the cause of the harmful actions and her

personal needs that resulted in the harm produced. The offender apologized and assured the victim the behavior will not be repeated.

Another case involved a juvenile offender and an adult victim. Each member contributed significantly to the process. The victim had many questions and the offender spoke at length and in detail when providing answers. In this case the offender initiated numerous conversations, and contributed at length to the mediation.

In one other mediation, involving five juvenile offenders, four of the offenders were placed in the high participation category. Each of the offenders apologized and offered an account of their involvement in the harm. Furthermore, they answered questions and contributed significantly to the substance of the mediation. An agreement was produced in this mediation. In each of these mediations, I noted very little parental involvement in the mediation process.

It should be noted here, however, that despite significant contribution on the part of the offenders in these mediations, the agreements produced were still almost exclusively created by victims. This is a very important finding and I want to be certain that these results do not contradict my earlier findings about the agreement writing stages of the mediation.

In five other mediations, the six offenders were placed in the medium category. These offenders contributed, but largely they responded to questions and rarely initiated conversation. When these offenders did respond to questions, they often provided very little detail. Significant parental involvement was noted in one of these mediations. This particular parent was answering questions and offering information about their child, the offense, and the believed causes of his/her actions.



Finally, seven other offenders from five mediations were placed in the low category. These offenders were virtually non-participatory. These offenders often responded to questions with one or two word answers if at all. They spent most of the time staring at the table, the floor, looking out the window, and doodling on the scraps of paper provided by the BARJ staff. This lack of participation reduces the transformative potential that mediation holds and it makes recognition less likely. Recognition comes when the participants learn about one another. For example when an offender learns about the harm produced by his or her actions, or when a victim learns about the situation of the offender. This simply doesn't happen if the individuals involved do not participate. Significant parental involvement in the mediation process was noted in three of the five mediations.

Regarding the survey items, I include a summary of both items #5 and #6 (see Table 6). Item number five is similar to that which was posed to the victims. It states, "I feel the victim(s) listened to my side of the story." A total of 89.6% of the offenders either strongly agreed or agreed, 7.2% were unsure, .8% disagreed, and 2.4% strongly disagreed. Survey item #6 indicated that 92.2% of the offenders felt as though the victims had said what they wanted to make things right, 6.2% were unsure, and .8% respectively disagreed or strongly disagreed. These data do represent some success in this area, noting that a large majority of the offenders felt as though the victims listened to their side of the story. This is great, but what this survey item does not measure is the extent to which these offenders actually participated. While it is good that the other person listened, if the offenders do not have much to share, recognition is unlikely for their victims.

Each party has the opportunity to tell their story (4. b.).

Subparts (4.a) and (4.b) both speak to opportunities for victims and offenders to participate in the hopes that the parties will experience some form of recognition. As such, my observation and survey data are similar to those presented under subpart 4.a. In fact, per my analysis plan, both the interview data collected from the victims as well as the survey items to be addressed for both victims and offenders are the exact same. I summarize these data again, relating it specifically to the issue at hand, opportunity to tell one's story.

Regarding opportunities for victims to share their story, my observations indicate that the mediations observed accomplish this goal. In fact each of the victims who participated in the mediations I observed was given the opportunity to tell their story. Most did so with varying degrees of detail, but this was more a reflection of personal choice or a reflection of the participants' hesitation. This is an important part of mediation, because it is assumed that the way in which participants experience recognition is by listening to the accounts of the other. If participants are not being permitted to share their story, or are not willing to do so, recognition is unlikely. Fortunately the victims in the mediations I observed were afforded this opportunity, and most took advantage, sharing their story with the offender.

Perhaps equally important for them as victims was that a vast majority felt the offenders listened when they spoke. The data collected from victim survey item #3 indicate not only that the victims participated but that they perceived that the offenders listened to them when they did so. Item #3 asks the victims to respond to the following

statement, "I feel the offender listened to me" (see table 5). A total of 83% of the victims either strongly agreed or agreed, 15.3% were unsure, and the remaining 1.7% disagreed.

The interview data to be discussed here is an exact replication of those items discussed under subpart 4.a. The implications of the data are the same as well by virtue of the fact that they are part of the same proposition. For this reason, I do not repeat the interview data here. For a review, please consult victim interviews #1 and #2 under subpart 4.a.

My observations of the process indicate that offenders were given an opportunity to participate in the mediations. Offenders were, in fact, encouraged to share their stories about the harm. However, just because they were afforded the opportunity does not mean that they did. This is a key distinction because, in fact, the offenders were less likely to actually do so. Only 7 of the 20 offenders observed were categorized as high participation offenders. This means that these offenders did in fact share their stories. They participated in the mediation offering detail and initiating conversations. Six other offenders were categorized as medium level participants. These offenders responded with limited detail and were less likely to initiate dialogue. They did respond to questions and contributed at least some substance to the mediation. These offenders, although presented with the opportunity, did very little in the way of sharing their story. The remaining 7 offenders were categorized as low participants. These offenders were very non-participatory. They often responded only to questions and failed at times to even do this. They often failed to make eye contact and generally showed a lack of interest in the mediation. When these offenders did contribute it was often with one or two word answers and they offered very little detail and substance to the mediation. Needless to

say, these offenders did not share their stories at all, and thus recognition for the victims was a rather unlikely outcome of their mediation.

The survey items to be discussed address both the offenders' participation and the offenders' perception of the victims' participation as well. Item #5 from the offender survey indicates that 89.6% of the offenders strongly agreed or agreed that the victims listened to their side of the story, 7.2% were unsure, .8 disagreed and the remaining 2.4% strongly disagreed. Survey item #6 indicates that the offenders recognized the input of the victims. A total of 92.2% of the offenders felt as though the victim(s) had said what they wanted to make things right, 6.2% were unsure, and .8% respectively disagreed or strongly disagreed. This point is important here because it affirms the finding that victims do in fact participate, because 92.2% of the offenders recognize that the victims had asked for what they wanted.

Each party gains an awareness of the other that failed to exist prior to mediation/conferencing (4. c.).

This statement really gets to the heart of the fourth proposition. I will present the data from my observations first regarding both victims and offenders, followed by the survey items and the interview data provided by the victims.

Concerning my observations about the issue of recognition in the mediations observed, I found this concept rather difficult to identify and account for. There was one exception to this, where the participant's actions made it clear that each had gained a sort of recognition of the other. In the late stages of this mediation, the victim stated, "Did you think that all of this would end like this?" The offender responded, "No." To which the victim replied, "Me either." The recognition in this mediation was clear.

In the pre-mediation meeting, of this case, the juvenile offender was simply going through the motions, answering questions, but with little substance. I noted that this offender, like others I had seen was, "playing the game," a phrase that I used to describe a participant who was simply going through the motions of the mediation, answering questions when asked, but providing little substance, providing answers that were likely to move the mediation along and not bring further inquiries.

In the pre-mediation meeting with the juvenile victim, it was clear that this young girl had come prepared to participate. She was articulate and spoke with great detail about the harm experienced and the way her life has been affected by the harm. When the two were brought together for the mediation, following the introductions, the victim began recounting her story for the offender. She actually began by stating that she was sorry that they had to meet like this, and that she did not wish for the offender to get into trouble as a result of what had happened. She explained in detail how she felt about the situation, and how she was hurt.

When it came time for the offender to speak she began by saying, "It made me feel good to listen to the offender speak." She really opened up and offered what appeared to be a sincere apology for her actions. She responded to questions about why she had done what she did in detail and explaining the causes of her actions. I was astonished that this was the same girl who was virtually non-responsive and showed little care for her situation only moments ago in the pre-mediation. The two girls continued sharing information, including very personal information about their lives, feelings and emotions. I could see these two participants coming closer and closer together. They

found that they had much in common and the offender even offered advice to the victim about personal problems that they shared.

By the end of the mediation the two participants were talking as though they were good friends, discussing school and mutual friends. The victim suggested that the two actually do some volunteer work in their communities together and the offender agreed. They were encouraged to do so however it was not required in the agreement. It was clear from what had transpired that both individuals gained an awareness of the other that failed to exist prior to the mediation.

This was not however, the typical mediation. In fact, I struggled to identify recognition in any of the other mediations. I made specific notes about the concept of recognition and I was often left wondering if it had occurred. In some instances I was somewhat convinced that it had not, but I could not say for certain. For example, in one of the mediations which lasted no longer than 15 minutes, I was rather certain that neither party had any recognition about the other. There was hardly time to do so and the participants' comments in the pre-mediation meeting were enough to lead me to believe that these parties were not likely to have changed their minds in the short period that they were in the same room. An agreement was created including restitution, but the parties did not appear to have experienced any recognition of the other. In several other mediations, my notes reflect my own curiosity as to whether these participants had in fact experienced any recognition.

According to my analysis plan, I had identified several items from the victim survey and one item from the offender survey to address the issue of recognition. I now find that these survey items are insufficiently focused to offer substance to the findings

on the notion of recognition. While both items #4 and #8 from the victim survey (see Table 5) do speak to the ability of these mediations to repair the harm and to transform how the participants feel, they do not address the notion of recognition. Furthermore, item #9 addresses only the reason for entering the mediation, not any outcome of the mediation.

Similarly, item #7 from the offender survey (see Table 6) is also indicative of the ability of these mediations to repair harm and transform relationships, but this item is not sufficiently focused on the topic of recognition to be included here. I do include one other item from the offender survey, not identified in the analysis plan, because I feel that it does indicate recognition on the part of many offenders. Item #2 indicates that 95.3% of offenders felt good about apologizing to their victims. I believe this data indicates that in mediation, many offenders recognize the harm in their actions and are happy about taking steps towards repairing that harm.

The real substance for this proposition comes from the two interviews conducted with the victims.

Victim #1 6/20/05

Researcher: Did the mediation help you understand the offender in any way?

Victim: Yeah, I learned a lot about him actually.

Researcher: How exactly?

Victim: Well, I think part of it is uh... that I could understand why he might want to rebel, or do something wrong, because of his situation that he has grown up with.

Researcher: Did the mediation make you feel differently and if so how?

Victim: Differently as in a respect that he's got a tough road ahead of him. He's got other issues that may cause him to do what he did to me. You know, I think in his family life.

Researcher: So it would be safe to say that there was sort of a recognition on your part about his life, about his situation, where he is coming from, and why he...

Victim: Right, why he may be looking for an outlet.

Researcher: What do you think could have been done to stop the harm brought upon you?

Victim: I think it all revolves back into a family setting. So ...I think that's his main issue, after sitting there and listening to his father. I think there is serious issues there.

The concept of recognition emerged later on in the interview as well, at which point the victim suggested that the mediation was likely to have little affect on the offender because, as the victim suggests, he believes that conditions in the offender's life are likely to override any affect mediation may have had.

Victim #1 6/20/05

Researcher: Do you think the mediation between you and the offender has had an affect on the offender?

Victim: I would hope so.

Researcher: Do you think so?

Victim: ... No...

Researcher: No..?

Victim: No, I think my affect... I think he has too many outside problems, or too many inside the home problems, that what I have said today probably will be gone two weeks from now.

Researcher: Do you feel as though he is likely to re-offend?

Victim: Definitely.

The second victim provided significant data regarding the notion of recognition as well.

Victim#2 6/30/05

Researcher: Has the mediation helped you to understand these offenders as people?

Victim: Um, I don't think the mediation did that.

Researcher: No..?

Victim: No

Researcher: What did that?

Victim: Probably my outside time through the courts, like I said.

Researcher: You actually had contact with these kids before the mediation?

Victim: Yes

Researcher: And you actually had one on one time with these kids before the mediation?

Victim: Yes. Yes. I had more contact outside of mediation where I got to talk to them, talk to their parents, I've learned a lot more about their lives, what they have to go through.

Researcher: So there has been some recognition I guess would be the word.

Victim: Yeah. These are... they really aren't kids. These boys are not boys. They are living adults for what they have to go through. I feel so horrible the more and more I hear about their stories.

Researcher: But, it was more your time... one on one time that you got to spend with them...



Victim: From the arraignment up until this mediation what I have learned about them... Yeah. I didn't really learn anything about them at the mediation, their personal stories.

Researcher: Well, do you feel differently about the offenders, um... having, I would say having experienced the mediation because usually recognition is something that might occur at the mediation, but...do you feel differently about the offenders having that recognition, whether it came prior to the mediation?

Victim: Yes, yes

Researcher: How so?

Victim: I feel differently about them because... um I don't know, everybody says I'm too nice to them. Maybe I am, but I think because I've gotten to know them more, and maybe I'm giving them too much of a chance. ... The more I learn about them, they have no adult supervision whatsoever, and you know the more I learn about them, that's what they need. You know, and I don't...I want to make something out of them. Whether or not I'm gonna be the person that helps out them, whatever, like I said if I can help give them a chance, so be it.

Researcher: Were all of your questions about the crime, or questions about the offender answered.

Victim: Yes, and again, because a lot of my questions and a lot of everything that I wanted to know has been answered prior to everything... and I think, not knowing about what the mediation was, I think I know more about what the whole purpose was for it now, but I think if I had no contact with any of the offenders before this then everything would have been answered yesterday [referring to the mediation]. Now I understand what the mediation is for, but I got most of it answered prior to that.

In each of these cases the victims did gain an awareness of the offender and each explained that it helped them to understand the offender and the actions which created harm for them. The second case is rather rare in that the victim had significant contact with the offenders prior to mediation. Nonetheless the awareness came from learning about the offenders and their lives. It helped the victim to explain what she defined in terms of the causes of their behaviors. In each case the victims articulated an empathy which emerged from the knowledge gained about the participants.

#### **Summary of Proposition 4**

Regarding Proposition 4 as a whole, the data I have presented indicate mixed results with the mediation process. Specifically, the data pertaining to subparts 4.a and 4.b the data indicate that both victims and offenders are in fact offered opportunities to

contribute. This is a positive quality of these mediations and this suggests some success regarding the goal of participant recognition. The problem lies in the fact that many of them are not making use of these opportunities. Specifically this problem was recognized with the offenders. Being given opportunities to contribute is really only a part of what it takes to accomplish recognition. Without victim and offender participation in the process, recognition is not likely. Thus whatever can be identified as standing in the way of participation by either victim or offender has to be addressed before this goal can be achieved. I address this issue in the next chapter where I offer an explanation of this finding under the headings of awareness and power dynamics.

Finally, regarding subpart 4.c the data I present are rather limited, but they do suggest that offenders and victims who participate are experiencing some recognition. Offenders overwhelmingly feel good about apologizing and the interview data collected with the two victims suggest that each of these participants made recognitions about their respective offenders. These recognitions led to empathy for those offender and the situation of their lives.

## CHAPTER IX

### EMPOWERMENT (Proposition 5)

The victim offender mediation process can empower victims and offenders. Empowerment is a key element in the healing process. Empowering victims and offenders means restoring their sense of self worth and dignity. It means restoring to them a sense of power over the experiences in their lives. Empowerment is said to be one of the greatest advantages of restorative justice. Restorative justice designates the responsibility for repairing the harm created by the offense to the role of the victim and offender. Restorative justice defines the crime as a violation of a relationship, and encourages the participants involved to create their own solutions. It encourages offenders to own their behavior, and provides an opportunity for them to make the situation right.

Part of empowering victims and offenders comes through restoring to them their voice. These voices have disappeared within the confines of the retributive criminal justice system. The offender becomes the focus of the system, but he/she has essentially no voice in the process from beginning to end. The victim finds him or herself in a similar situation. The victim's voice is missing from the retributive criminal justice process and, much like the offender, the ability to make decisions regarding the outcome is usually denied to victims as well. In this way the criminal justice system removes all power from victims and offenders to make decisions about events which are likely to affect them the most. Restorative justice is about restoring victims and offenders their voice in the criminal justice process. It is about encouraging those involved to make the decisions for themselves and giving them the power to define their own problems and

solutions to those problems. As proposition #5 suggests, this is likely to empower victims and offenders.

All participants were given the opportunity to contribute to the mediation process (5. a.).

The opportunity to contribute here is specifically related to opportunities for one to make decisions about issues that are going to have implications within their personal lives. This is the foundation of proposition five which states that empowerment means restoring to the participants a sense of power over the experiences in their lives. Specifically, here I am concerned with the ability of the participants to be part of solving their own problems, that they are able to contribute to the decisions about how to make the situation right again. I summarize the data pertaining to the victims first, followed by the offenders from my observations, the survey data, and the interviews.

As my observations suggest, victims are presented with many opportunities to contribute within the mediations I observed. Most victims participated throughout their mediation, recounting their story for the offenders and being involved in the decisions about what needs to be done to make the situation right. Being able to contribute, specifically being able to contribute to the decisions about the agreement, is a good indicator that these victims are likely to be empowered by the mediation process. These victims not only experience the justice process, but are part of it. They were asked to make decisions for themselves about how the situation could be repaired. Questions posed to these victims include:

What can we do to make this right?  
What would you like to see done in this situation?  
What needs to be done to repair this situation?  
What needs have been created by this harm?  
What would you like to see done here?

These questions represent opportunities for victims to participate in the justice process, to insert their voice in the process, and to restore their sense of self worth. This is what it means to be empowered. Through their participation in such matters, victims learn that their input is valued and they experience empowerment by virtue of their ability to bring resolution to the problems they face.

In accordance with the analysis plan I present the data from survey item #3, and I also include survey item #11 as it has great significance to this issue (see Table 5). Item #11 asked victims to respond to the following statement, "I was given the opportunity to ask for what I wanted." A total of 97.4% of the victims either strongly agreed or agreed, 1.7% were unsure and .9% disagreed. This particular survey item indicates that victims are in fact presented with opportunities to create their own solutions and to offer input about how to repair the harm. This translates into opportunities to become empowered by the mediation process. Item #3 indicates that 83% of the victims either strongly agreed or agreed that the offenders listened to them. 15% were unsure, and 1.7% disagreed. Item #3 has implications for empowerment as well, as this data indicates that when victims participate, 83% feel as though their offenders are listening. This again contributes to empowerment as victims are likely to feel as though their contributions are being heard.

There were several items from the victim interviews which address this issue as well. These interview items were presented under the previous subpart, but I present them again to relate the data specifically to the issue at hand.

Victim #1 6/20/05

Researcher: Did you have an opportunity to tell your story?

Victim: Yes

Researcher: To explain how the crime affected you?

Victim: Yeah definitely.

Researcher: How do you think the offender responded to this?

Victim: For his age, I think he responded, uh... not so much in a positive form but I think he understood it. So I, you know, I don't think he responded in any sort of way other than leaving his head down on the table. You know, so the response was a positive response I think. You know, knowing that uh... he knew that he didn't do right.

Researcher: How did participating in the entire mediation and everything, how did that make you feel?

Victim: I think it seemed to be uh.. maybe a good learning for him. It made me feel comfortable with what, you know, will take place, so I was comfortable with it.

Researcher: Were you apprehensive at any point about participating?

Victim: No

Researcher: Not even initially coming in?

Victim: No.

Victim # 2 6/30/05

Researcher: Did you have the opportunity to tell your story?

Victim: Yes.

Researcher: Did you explain how the crime affected you?

Victim: Yes

Researcher: How did the offenders respond?

Victim: I think they responded as good as they could providing their age and immaturity level. I think they did a really good job.

Researcher: How did they do a really good job?

Victim: Um, I think it was hard for them to say what they had to say. I don't think, providing for their age, their maturity level, their background, them being... um, what they did, for them to say what they had to say, I think it was hard for them to do, but I think they did... they did pretty good.

Researcher: How did participating in the mediation make you feel?

Victim: Um, important. It made me feel important. It made me feel like I am doing something for the boys, like I am going to be a part of rehabilitating for the boys.

Researcher: Were you apprehensive about participating at any point?

Victim: No, not at all.

Furthermore, both victims interviewed acknowledged that they had contributed to the decisions made about the agreement. The implications here corroborate my finding about the case of the victims. I have suggested that the victims are given opportunities to contribute to the mediation. This suggests that empowerment is a likely outcome of these mediations for victims. They are afforded the opportunities to participate, identify needs,

and to be part of constructing an agreement to make the situation right. This ability to contribute provides the victims with opportunities to make their own decisions about events which affect them personally. This I have suggested leads to empowerment.

As my analysis plan indicates, this was another place in which I had hoped that responses to question #11 from the victims' post mediation survey would provide data about the issue of empowerment. This question gave the victims a chance to identify differences between the courts and mediation. I was curious to discover if the parties would recognize their ability to influence the outcome of the case as a significant difference between mediation and court. Neither party made note of this difference.

In the case of offenders, a rather different pattern emerged within my observations. I did find that offenders were given opportunities to tell their stories and to contribute within the mediations. Many of them however did not. Furthermore, in regards to opportunities for offenders to contribute to the solution of the problem before them, specifically decisions about how to repair the harm they created, the opportunities to contribute simply were not observed. Questions that were posed to the offenders in the agreement writing stages of the mediations observed were along the lines of:

Can you do this?  
Does this sound fair to you?  
Do you think you can do this?

These questions are not likely to lead to empowerment for the offenders involved. These questions suggest only passive involvement. This type of involvement is less likely to lead to empowerment for offenders. These questions do not represent involvement in creating the solution to their problems. This line of questioning is also less likely to provide opportunities for offenders to identify their own needs and have those needs

addressed. These opportunities are important for offenders to feel as though they are actually involved in the process and like the victims, that their input is meaningful to the process. These opportunities for empowerment with regards to the offenders appear to be missing.

Despite my observations, the survey data indicate at least some success within these mediations for offenders about the topic of empowerment. Item #5 indicates that 89.6% of the offenders report that the victims listened to their side of the story, 7.2% were unsure, .8% disagreed, and 2.4% of the offenders strongly disagreed. This data indicates that offenders were given opportunities to contribute and furthermore, victims listened to their side of the story. This is an indication that offenders did perceive that they were involved in the process, and that their contribution was meaningful. It also suggests that perhaps some offenders did experience empowerment as a result of their mediation.

Survey item #6 from the offender survey presents further support for notion of victim empowerment. It indicates that 92.2% of the offenders felt as though the victims had asked for what they wanted. This backs up the victim data and further supports the notion of victim empowerment within these mediations. Perhaps equally important is the fact that no similar item was posed to the offenders. Thus we do not know if offenders believe they were presented with opportunities to ask for what they wanted, to help solve their problems and consequently to become empowered.

Each party has the opportunity to tell their story (5. b.).

Subparts 5.a and 5.b like are explicitly tied together. Each of these subparts speaks to opportunities for the participants to be involved in and participate in the



process, creating opportunities in this case for empowerment. I summarize the data here as well, relating the data to the notion of empowerment. I present the case of the victim first, followed by the offenders, utilizing data from my observations, survey data and the interviews in the case of the victims.

My observations of the mediation process suggest that victims are presented with opportunities to share their stories. Perhaps even more importantly, many take advantage of these opportunities recounting the harm that was experienced and how that harm has affected their lives. Their involvement represents the accomplishment of one goal, participation, which leads to empowerment. By giving victims a voice in the process, mediation works to restore control and a feeling of self worth to the victims.

This finding is further supported by the survey data. Per the analysis plan, I present data from the victim survey, item #3. These data indicate that 83% of the victims felt that their offenders listened to them, 15.3% were unsure and 1.7% disagreed. As these data indicate, many of the victims did participate and furthermore acknowledged that the offenders listened. Thus, these victims inserted their voices into the process. They contributed to the mediation and were given opportunities to utilize their own voice and recount their stories to those present. This accomplishment represents an opportunity for empowerment to occur.

The interview data here is an exact replication of the data presented in subpart 5.a. I do not repeat the responses here, as the implications of the findings remain the same. For a review of these findings, see the interview data provided in the previous subheading.

My observations of offender opportunities to share their stories reflect success in this regard as well. In fact, both victims and offenders in each of the mediations I observed were given a chance to tell their story uninterrupted by the other party. In only one instance did this fail, as the parties disagreed on nearly every aspect of the case. This case was ended early and no agreement was produced. Aside from this case, I noticed that all participants were given a chance to share their story. This means that offenders too were afforded opportunities to insert their voice into the mediation and become empowered as well. Unfortunately, many offenders did not seize their opportunity to contribute and consequently missed out on their chance to use their voice and to be a part of the justice process, rather than the subject of it.

The survey data here dispute my observations, to some extent. They suggest that offenders were afforded opportunities to contribute, and many felt as though they had. In fact, offenders felt even more strongly that their voice was heard. Nearly 90% of the offenders agreed or strongly agreed that the victims listened to their side of the story. 7.2% were unsure, and the remaining 3.2% disagreed or strongly disagreed (see Table 6, item #5). Following the analysis plan I also present the data from item #6 which further supports the fact that victims were afforded opportunities to contribute. The offenders' perception of victim involvement indicated in item #6 demonstrates that 92.2% of the offenders strongly agreed or agreed that the victims had said what they wanted to make things right (see Table 6).

Victims and offenders are empowered by the mediation process (5. c).

This subpart of proposition 5 speaks right to the heart of this proposition. The concept of empowerment, like recognition, is not an easy concept to identify through

observation. The data presented under the previous subheadings can speak to the notion of empowerment. In theory, victims and offenders are empowered by the restorative process through the opportunities to participate, and contribute in the mediation process. I intended for the real substance of the data regarding empowerment to come from participant interviews. As a result of poor participation, I was unable to gather a substantial collection of data to analyze. I do however discuss empowerment for both victims and offenders relying on my observations, and the interviews collected from the victims. I present the case of the victims first.

Before I begin, however, I comment on the survey items identified in the analysis plan. I had suggested that item #4 from the victim survey was relevant to this topic. Upon further reflection, I think that this item cannot speak directly to the notion of empowerment. It does address the victims' perceptions of the outcome of the mediation, but is not specific enough to be included within this proposition (see Table 5). Similarly, further reflection about items #8 and #11 from the offender survey have led me to exclude these items from the finding presented here because they are not sufficiently focused on the notion of empowerment (see Table 6).

My observations regarding empowerment suggest that victims are in fact empowered by the mediation process. Their participation throughout the process, including opportunities to share their stories, ask questions of offenders, identify and articulate needs and to contribute to the stipulations put into agreements, all represent opportunities to contribute that lead to empowerment. My observations of this process found that all victims were in fact provided an opportunity to share their story, an opportunity many took full advantage of. Furthermore, all victims were provided an

opportunity to ask questions. Many of the victims did ask questions of their offenders.

Questions asked by victims include:

"How did you do it?"

"How many times did you do it?"

"What all did you take?"

"How could you do this to me/us?"

"Why did you pick my place/me?"

"Did you stake out the place?"

"Why did you do this to me?"

"Are you going to do it again, to me/others?"

"What would you do next time you are put in this situation?"

"What did you learn from this?"

"How can you assure me you won't do this again?"

"Why did you do it?"

"What were you going to do if you did not get caught?"

"Who was involved?"

"What are you doing to get your life straight?"

"What were you going to do with (items)?"

Having the opportunity to ask questions, and doing so, represent one opportunity for the victims to insert their voice into the restorative justice process.

Further encouragement for victims to participate came in the agreement writing stages of these mediations. Many questions were asked of victims to help them identify needs including:

What can we do to make this right?

What would you like to see done in this situation?

What needs to be done to repair this situation?

What needs have been created by this harm?

What would you like to see done here?

Questions such as these provided the victims with further opportunities to insert their voice into the process and experience empowerment. These questions call upon victims to identify needs. These needs were then utilized to create the agreements produced, further empowering the victims by allowing them to solve their own problems and restoring to these victims a sense of power.

The interview data collected corroborate this finding as well. Both victims interviewed indicated that they were in fact given opportunities to participate in the process, and further they speak directly to the notion of empowerment.

Victim #1 6/20/05

Researcher: Did you have an opportunity to tell your story?

Victim: Yes

Researcher: To explain how the crime affected you?

Victim: Yeah definitely.

Researcher: How do you think the offender responded to this?

Victim: For his age, I think he responded, uh... not so much in a positive form but I think he understood it. So I, you know, I don't think he responded in any sort of way other than leaving his head down on the table. You know, so the response was a positive response I think. You know, knowing that uh... he knew that he didn't do right.

Researcher: How did participating in the entire mediation and everything, how did that make you feel?

Victim: I think it seemed to be uh.. maybe a good learning for him. It made me feel comfortable with what, you know, will take place, so I was comfortable with it.

Researcher: Were you apprehensive at any point about participating?

Victim: No

Researcher: Not even initially coming in?

Victim: No.

These comments indicate that the victim in this case did participate and felt comfortable doing so. He was able to explain how the crime affected him, and he was not apprehensive about participating.

Victim # 2 6/30/05

Researcher: Did you have the opportunity to tell your story?

Victim: Yes.

Researcher: Did you explain how the crime affected you?

Victim: Yes

Researcher: How did the offenders respond?

Victim: I think they responded as good as they could providing their age and immaturity level. I think they did a really good job.

Researcher: How did they do a really good job?

Victim: Um, I think it was hard for them to say what they had to say. I don't think, providing for their age, their maturity level, their background, them being... um, what

they did, for them to say what they had to say, I think it was hard for them to do, but I think they did... they did pretty good.

Researcher: How did participating in the mediation make you feel?

Victim: Um, important. It made me feel important. It made me feel like I am doing something for the boys, like I am going to be a part of rehabilitating for the boys.

Researcher: Were you apprehensive about participating at any point?

Victim: No, not at all.

These comments indicate that first, participation in the mediation made the victim feel important and second, the interview notes that the victim recognized that she was involved in this process. As this proposition indicates, participation is a key to empowerment. Both of the subjects interviewed suggest that at least in their cases, they were able to participate and that participation can be an empowering experience.

One other set of questions has been identified to be relevant here as well.

Victim #1 6/20/05

Researcher: Did the mediation make you change the way that you feel about yourself in any way?

Victim: No, not at all.

My purpose within this question was to determine whether the victims would identify any feelings of empowerment as a result of their mediation. Neither of the victims interviewed felt that the mediation made them feel any different about themselves.

A much different pattern emerged regarding offenders and opportunities for participation and consequently their likelihood of empowerment. My observations indicate that while offenders were given opportunities to tell their story, their opportunities to help solve the problem, or contribute in the creation of the agreement were limited.

Each of the offenders was given a chance in the mediation to tell their story. The pattern that emerged regarding offender participation, however, was that the offenders were encouraged to participate early in the process, but it appeared to become less of a

concern in the later stages of the mediation. All of the offenders were offered an opportunity to share their story, uninterrupted by the victims. This represents a great first step towards empowerment. Their contributions were further encouraged in the open dialogue, especially when their victims had specific questions that they wanted answered.

In the latter stages of the mediations, the pattern regarding offenders changed. Offenders became more observers than participants. It is in these latter stages that both victims and offenders are likely to gain empowerment from their participation, particularly in the agreement writing stage where victims and offenders get to make decisions about how to repair the harm. It is these decisions that may affect them the most and it is these decisions that the participants need to make to regain a sense of power over the events in their lives. It is at this point in the mediations that preference was given to the contributions of the victims over the offenders. Offender participation was far more limited. Offenders were not asked so much to participate as they were to agree to what the victim was requesting. Typical questions posed to the offenders in this stage include:

Can you do this?  
Does this sound fair to you?  
Do you think you can do this?

Answering questions such as these does not signify participation in the process. These questions do not give offenders a role in solving their own problems. I found that almost without exception offenders' contributions to this important part of the mediation process were missing.

### **Summary of Proposition 5**

The data I present here offer mixed results about the concept of empowerment. Certainly the case can be made that regarding victims, the mediation process can be an empowering experience. Victims participated throughout the mediation process, including the agreement writing stage which gives the participants an opportunity to create solutions to their problems and to restore a sense of power to the individual over the events in their lives. All three forms of data suggest that victims participate in the process and that they are able to make decisions regarding the agreements created to repair the harm they experienced. The interview data goes beyond my observations and the survey data by letting the participants speak for themselves about participating and these results as well suggest that empowerment is a likely product of these mediations for the victims.

For offenders, however, my observations tell a rather different story. Offenders while involved in the early stages of the mediation, appear to disappear from the picture in the latter stages of mediation. It is these latter stages that are integral to the concept of empowerment. Offenders are encouraged to share their story and to share information with their victims about the harm, but it is the offenders' ability to make decisions about the events that affect him/her that are likely to lead to empowerment. This makes the offenders' participation in the agreement writing stage essential to their empowerment. If offenders are not involved in this part of the process, then empowerment is not a likely outcome. The survey data does indicate some success in this area as 89.6% of the offenders either strongly agreed or agreed that the victims listened to their side of the story. This indicates participation and furthermore it shows that offenders believed that



the other parties listened to their contributions. However, my observations of the latter stages of these mediations would suggest that empowerment is not a likely outcome in the case of offenders.

## **CHAPTER X**

### **EMERGENT THEMES**

As I began to accumulate my data, I recognized numerous emerging themes within my research not identified within the study's original propositions. I have organized these findings thematically into three additional subheadings: agreements, accountability, and participation. The topic of agreements is broken up into two parts to address the patterns which emerged in the observed mediations. Specifically, I will discuss findings under the subheadings of significance and control.

The second theme which emerged in this research is accountability. These findings are evidenced by the participants' perceptions of their respective mediations, and it is further corroborated by my observations of the mediations observed.

The final emergent theme of participation is broken up into two parts as well. As this theme emerged, I noticed that there were two impediments to victim and offender participation. Within this emergent theme I discuss the lack of awareness about restorative principles and power dynamics within the mediation. I make the case that each of these obstacles represent a significant roadblock to victim and offender participation, which are essential to the restorative process.

#### **Agreements**

Within this discussion I focus on two themes regarding the topic of agreements that emerged as I collected my data. I present data from my observations under both subheadings, and I include data from the agreements themselves when discussing control.

## **Significance**

Within this section I discuss the significance of the agreement to the mediation process. Is the process driven simply by the potential agreement and party satisfaction? This can be problematic, as Bush and Folger (1994) suggest in their discussion of the satisfaction story. If the agreement becomes the central focus of mediation, several other aspects integral to the restorative process seem to get lost in the pursuit of a quality agreement.

Identifying an agreement as a foremost goal in the mediation process signifies a commitment to what Bush and Folger (1994) refer to as the problem-solving approach to mediation. They go on to state that this approach to mediation:

...emphasizes mediation's capacity for finding solutions and generating mutually acceptable settlements. Mediators make moves that influence and direct parties- toward settlements in general, and even toward specific terms of settlement. As the mediation movement has developed, the problem-solving potential of mediation has been emphasized more and more, so that this kind of directive, settlement-oriented mediation has become the dominant form of practice today (p. 12).

The effect produced is that restorative practices become less restorative and more driven by satisfaction of participants and producing quality agreements.

Of the fourteen mediations I attended, one failed to produce an agreement and one remains open, with the potential for the participants to return for further mediation. A few words are necessary about those mediations that failed to produce agreements, before I discuss the content of those mediations that did. The mediations which failed to produce an agreement have much to offer on this issue. They demonstrate how the BARJ center defines success and failure in mediation and they reveal the approach to mediation taken by the mediators.

In the first case that failed to produce an agreement, the two parties signed papers for the BARJ staff and the court acknowledging two items. 1.) They agreed that they had the opportunity to share their views about what happened, and 2.) They attempted to resolve the issue, but could not.

Deciphering what actually occurred in this case was rather difficult, as both individuals had contradictory descriptions of the events in question. All of the participants, including one male offender and both a male and female victim, were adults. Although this case was a scheduled Family Group Conference and previous contact had been made with both parties, the offender claimed to be unaware that he was to be meeting with the victims on this day. The offender in this case acknowledged that it was all right to meet with the victims, but felt unprepared.

As the parties described the events in question, it was clear that the parties had different accounts of the harm they were there to discuss. The conversation quickly escalated and the parties attempted to restrain themselves from interrupting one another. At one point, one of the victims was visibly shaken and asked to leave. There was a break in the mediation, at which point, both of the victims left the room, as one exclaimed, "He's the guilty one, not me." Fifteen minutes later, the mediation resumed with only one victim present. Again, the parties began to dispute the events in question. The offender, in particular, was clearly on edge as he shifted in his seat and made comments to himself continually under his breath as the victim spoke. Before the mediation was ended prematurely by the mediators, the participants had resorted to name-calling and it became clear to the mediators that no agreement was likely to be created.

In the second case that failed to produce an agreement, the main issue that kept the parties from an agreement was restitution. The offender(s) admitted responsibility, and apologized. The apology was accepted, but the central topic of the entire mediation became the issue of restitution. There was an attempt to turn this mediation into a court proceeding, as the two sides wanted to call witnesses and the parents of the offenders took over the mediation, at times instructing the offenders to remain silent. For the last half (approximately 45 minutes) of the mediation, the offenders did not speak. Only the parents did in an attempt to come to an agreement about restitution. The case had even the mediators questioning, “what would a judge do?” In the end, the mediation was left unresolved with the victim willing to return after consulting witnesses. At this point, only the offenders and their parents remained, and the conversation with the mediators continued for another half-hour without the victim. During this time, the offender’s parents constructed an offer for the victim, stating something to the effect of, if this is not accepted, we will go to court.

Perhaps nowhere were the mediator's efforts to create an agreement more visible than in these two mediations. In the first case that failed to produce an agreement, there was significant selective facilitation occurring. Selective facilitation refers to the idea that the mediators can steer the mediation towards one aspect or another, in effect avoiding other issues that may be keeping the participants apart. (Bush and Folger, 1994) The two parties in this instance disagreed about the facts of the case, a point that caused serious tension between the parties. The mere fact that these parties could not agree on the events that brought them to mediation did not mean that an agreement could not be created. An apology was unlikely since the two parties disagreed about the facts of the

case and the damage that occurred. Nonetheless, the mediators pushed forward, selectively facilitating the discussion towards the issue of restitution, and away from the events surrounding a separate charge that the participants were heatedly disputing.

In doing so, it appeared to me that the mediators were in effect trying to allow each party to effectively keep their story intact, yet to bring a resolution to the matter in the form of an agreement about restitution. They were able to do so with a very direct line of questioning, “Mr. (name) what exactly are you looking for in terms of restitution?” Despite numerous references by the participants to the other charge, the mediators continued to push the mediation into the agreement writing stage. In the end their efforts were all for naught, and the participants failed to reach an agreement.

What followed the mediation was perhaps the most telling. The first question asked by the mediators in the post-mediation debriefing was, “What more could we have done?” This question alone indicates that a failure to produce an agreement means the mediation itself was a failure in their eyes. Never mind how the participants feel, or whether it was useful or helpful to them. The mediators emerged from the proceedings with the idea that no agreement meant that the mediation was a failure.

No survey data was collected from the participants, although this is not the standard procedure. Once the typical procedure had been interrupted, the typical routine for signing the agreement and then filling out the post-mediation survey was disrupted and the mediators simply forgot to administer the survey. This happened in one other case in which the participants had created an agreement. In each case, the mediators realized their mistake and acknowledged that they simply forgot.

In the second mediation, the desire of both mediators for an agreement manifested itself within the mediation as well. In this instance, the issue that the individuals could not agree on was the issue of restitution. As previously noted the offenders took responsibility for the acts and offered an apology that was accepted. Where the parties could not come together was on the amount of restitution to be paid. What was clear to me and was proven to be correct in the post-mediation debriefing was that the mediators both felt as though the victim was requesting too much in the form of restitution. This became clear to me in the mediation as the mediators questioned the man with regards to his estimates of value for the items damaged. At one point, one of the mediators went so far as to calculate a figure using her own formula to estimate the damage and offering this to the disputing parties. Needless to say the figure was significantly less than that which the victim was requesting. She explained her logic to the parties, and came up with a figure acceptable to the offender's parents, but the victim did not relinquish his position.

About 45 minutes into the mediation, the mediators called for a caucus with the victim. With the victim alone, the mediators again questioned the victim with regard to the figures, in an attempt to get the victim to reduce the request. The mediators were not outright confrontational, but did question the victim in a manner that would suggest that the figure proposed was perhaps too high. Again, the mediators tried to reason with the man, professing the logic they were using, but the victim was resistant to the mediator's suggestions. The victim never relented. Following the caucus, the victim left the mediation center but agreed to return if necessary. He also expressed a desire to consult witnesses. The mediators continued the meeting with only the offenders and their

supporters present. During this time, an offer was created for the victim and the session ended.

Once again, this mediation had the mediators wondering aloud, "What more could we have done?" They confirmed what was obvious to me, that they believed the victim's restitution figure was too high. The fact that the offenders were held accountable, had faced their victim, apologized and received an acceptance from the victim was lost in the pursuit of the agreement. The mediators considered this mediation a failure.

Yet another indicator of the importance of the agreement in the mediation process comes from an internal document given to mediators to help organize and structure the mediation process and its goals (see Appendix VII, titled VOM and FGC Introduction). Mediators use this document as a script for introductions and explanations to the participants about what will occur. Following the welcome and introductions, there is a brief piece about the mediators and their role in mediation. This includes the statement, "We assist you in coming to an agreement." Thus the participants are informed, before the process even begins, that an agreement is one of the desired outcomes, and from this point forward, one of the foremost goals of the process is to produce a satisfactory agreement. The mediator's desire for a satisfactory agreement manifested itself in numerous behaviors that ranged in terms of their significance on the outcome, from what Bush and Folger (1994) refer to as "selective facilitation" (p. 66), to outright suggestion and contributing their own judgment.

To the extent that a mediation is driven by an agreement, it can still hold positive value for the participants. The point here is that when mediations are so intently focused on producing agreements, other outcomes that are fundamental to restorative practices



lose their significance within the process. Outcomes such as holding the offender accountable, empowering the participants, and recognition are just a few of the outcomes that get pushed by the wayside when mediations are driven by the sole purpose of agreement production.

### **Control**

One theme that I noticed emerging within the agreements being produced is that many contained items that were much broader than the scope of the harm or the circumstances of the case. Restorative justice is about making the situation right. It is about identifying needs of the participants and then meeting those needs. I ignore the participation factor that is implicit within this discussion for a moment, to address the concern identified above. I return to the notion of participation in the agreement stages of the mediations in the next chapter. For now, I address the scope of the agreements produced by the mediations observed.

What I noticed as an emerging pattern within the agreements that I witnessed being produced was that the victims were often overstepping their boundaries when it came to the construction of the agreement. They often acted as the victim and judge. This is not to say that they imposed guilt, but many relished in the opportunity to perform one of the more important roles of the judge, that is the power to make decisions about sentencing. What I mean is that many of the victims created stipulations within the agreements that appear to go well beyond making the situation right, or meeting their needs. In this way they were acting as judges, handing out decisions and essentially imposing sentences.

Take for example one case involving a mother and her juvenile daughter and some stolen property. Contained in the agreement was a laundry list of items including the following:

(Offender's name) agrees that her friends will not call after 9:00 p.m.

(Offender's name) will respect the curfew hour established by her mother.

(Offender's name) agrees that she will perform chores in a timely manner when requested to do so by her mother.

(Offender's name) agrees that there will be no visitors in the home unless (Mother's name) is present.

These stipulations were in addition to finding a job, and paying restitution, and a host of other items as well. The point here is that the scope of this agreement goes well beyond the harm that the parties came together to discuss.

Examples of stipulations put forth in other agreements include:

(Offender's name) will fill out five (5) applications for a job daily until he gets a job. At the end of the week, (Offender's name) will send (Victim's name) copies of these applications. (By way of parole officer) Once a full time job is obtained, (Victim's name) would like to see (Offender's name) maintain that job for at least a period of six months without any absence or tardiness.

In this case, if the offender was able to accomplish these tasks he does not have to pay restitution to the victim. If he failed to do so, the offender was expected to pay the restitution in full.

Items included as part of numerous other agreements included the agreement to maintain a certain grade point average, to enroll in the school band, to perform various chores whenever asked by one's parents, to read (20) books, to flush the toilet, to provide food and water to the dog daily, and to keep one's room clean. All in all, I found the agreements to go beyond the scope of the harm created in 7 of the 17 agreements produced.

The point here is not whether these stipulations are good or bad for the offenders. In fact, most of these stipulations I would argue were suggested and written into the agreement with the offenders' best interest in mind. However, restorative justice does not seek to push the juvenile justice system back into the *parens patriae* philosophy of justice (Del Carmen 2000) wherein the best interest of the juvenile is the foremost concern. Restorative justice rather is concerned with making the situation right and repairing the harm created by the offenders' actions. Many of these stipulations go well beyond the harm created by the offenders' actions. They do not stem from any need identified by the victims but rather out of the victims' personal feelings about what the offender needs, or what would be an appropriate response to the harm they have experienced. What these data suggests is that victims hold too much power in the agreement writing stages and they can effectively overstep the boundaries of the case imposing their will upon the offenders.

### **Accountability**

Offender accountability in some senses is built right into the restorative justice process. For example, with the program I observed, it is a requirement before entering into mediation that the offender is willing to admit responsibility for the acts that he/she is accused of. Many programs operate in this fashion. It is one way of ensuring accountability into the mediation, and giving the victim an opportunity to confront the individual(s) responsible. One might argue that the court process holds offenders accountable. However, admitting guilt in front of a judge, which is all too often the experience of the offenders, is rather weak on a scale of accountability when compared to that which is experienced in mediation.

Although this concept was not part of my study's original propositions, I did pay particular attention to the notion of accountability in the mediations observed. I present the data under this emergent theme from both my observations and survey items collected from both victims and offenders about the notion of accountability.

It takes a lot of courage for an offender to face their victim and to give an account of how they brought harm to another individual. This is part of being held accountable for one's actions. Sitting face-to-face with a victim and hearing how their life and families were affected by the harm is another part. In each of the 14 mediations I attended the victims were given an opportunity to share their story, explaining how their lives have been affected by the harm. The offenders were given equal opportunity in each of the mediations as well. While I did find that participation did vary from mediation to mediation, there was only one case in which the offender simply would not participate with the victim present. In this case the victim and offender were related, the offender was the daughter of the victim.

In 13 of the 14 mediations there was an admission of at least partial guilt on the part of the offender. In each of these cases the offenders explained their role in creating the harm to one degree or another and all but one case offered an apology.

I noted that in some cases the offenders offered what appeared to be only partial admissions of guilt. This may be because these individuals were utilizing techniques of neutralization to defray at least some of the guilt associated with their actions. In three mediations in particular, the offenders downplayed their role in the events, claiming ignorance to the harm created by their actions thus limiting their role in the harm produced. Interestingly, in each of these cases there were multiple offenders, but only

one present for mediation, making the situation ripe for this type of behavior. All three cases involved property crimes. In each of these cases, the offenders utilized techniques of neutralization throughout the mediation. Statements made include:

"I didn't know it was stolen."

"I was there, but I didn't actually steal or take (item). They just gave me (item) so I wouldn't tell."

"I got (item) from someone else. I didn't steal it."

The use of techniques of neutralization such as these are common and help the offenders to reduce their portion of the guilt associated with the harm. In order to be held accountable, these techniques need to be challenged. The mediators did a good job of challenging these individuals and not letting them escape responsibility for their actions. They did so through a line of questioning that led the participants to realize that their actions were wrong and harmful. Questions posed by the mediators in these mediations included:

"You knew that (item) was stolen, didn't you?"

"What would have been the right thing to do?"

"What will you do next time you are in this situation?"

In two of the three cases this line of questioning led the participants to an admission of their responsibility and guilt. In one case the participant continued to claim no knowledge that the item(s) were stolen.

Yet another part of being held accountable includes having to face questions that the victim(s) might have. In each of the 12 cases that produced an agreement the victims were given the chance to ask questions of the offenders and many did. In 8 of the 12 mediations completed to agreement, and one of those in which no agreement was created, the victims received answers to numerous questions that they posed to the offenders.

Questions posed include:

"How did you do it?"  
"How many times did you do it?"  
"What all did you take?"  
"How could you do this to me/us?"  
"Why did you pick my place/me?"  
"Did you stake out the place?"  
"Why did you do this to me?"  
"Are you going to do it again, to me/others?"  
"What would you do next time you are put in this situation?"  
"What did you learn from this?"  
"How can you assure me you won't do this again?"  
"Why did you do it?"  
"What were you going to do if you did not get caught?"  
"Who was involved?"  
"What are you doing to get your life straight?"  
"What were you going to do with (items)?"

While most of these questions were answered, they were answered with varying levels of detail, and frequently questions were answered with the phrase "I don't know."

The survey data provides some interesting findings as well. Victim survey item # 2 and offender survey item # 3 are particularly relevant (see tables 5 & 6). Victim survey item # 2 demonstrates that 78.6% of the victims either strongly agreed or agreed that the offender(s) took full responsibility for their offense, 13.7% were unsure, 5.1% disagreed and the remaining 2.6% strongly disagreed. The offender survey suggests that offenders felt even stronger about being held accountable for their actions. A total of 96.9% either strongly agreed or agreed that they had taken full responsibility for their offense, the remaining 3.1% were unsure.

These results suggest a general consensus between victims and offenders about the concept of accountability. However, it is interesting to note that offenders tended to feel as though they were held accountable more so than their counterparts. 96.9% of offenders either strongly agreed or agreed with the statement, "I took full responsibility

for my offense,” but only 78.6% of the victims strongly agreed or agreed with the statement, “I feel the offender(s) took full responsibility for their offense.” I cannot account for the differences here, but only suggest that offender use of techniques of neutralization such as the ones I witnessed do not go unnoticed by the victims. I come to this conclusion largely because the mediation staff do not allow a case to enter into mediation without an offender willing to admit to the harm caused, and each offender that I witnessed did so, even if only in part. Another reason may be that the offenders were allowed to slide by in the mediation with little to no participation in the mediation.

In conclusion, I found that the mediation process is relatively successful at holding offenders accountable. I say relatively because although by and large my observations of these mediations about this issue were positive, I do suggest that a few problems exist, such as the use of techniques of neutralization, and a lack of participation on the part of some offenders. These actions on the part of some offenders do work to effectively limit the responsibility the offenders take in the mediation.

### **Participation**

Because restorative justice is so reliant on the participation of those involved, any obstacle to participation constitutes a significant problem for restorative justice practitioners. In fact, not only is participation essential as I have noted in order to uncover and address individual's needs, other research has concluded that participation or involvement in the process have significant impacts on how participants respond to mediation. One study completed by Maxwell and Morris (1993) and another by Hayes and Daly (2003) indicate that both remorse and level of involvement in the outcome of restorative justice are predictors of recidivism. Hayes and Daly (2003) noted that

recidivism rates were lower for those individuals who demonstrated remorse and who were involved in conferences in "that outcomes were achieved by genuine consensus" (p. 76).

My research indicates that despite opportunities to participate, participation is lacking in the mediations observed. In the following discussion I present two emergent themes that I feel can account for this pattern of lack of participation that I observed. The two themes discussed include awareness of restorative principles and power dynamics.

### **Awareness**

Let me begin by drawing upon an illustration that Zehr utilizes in his (1990) book titled "*Changing Lenses*". The title of this book is significant, because Zehr argues that in order for us to envision the use of restorative justice, we must examine the issue of crime through a restorative lens. This requires that we "change lenses" so that we see the issue of crime defined in a new light, and hence can begin to see alternative mechanisms for dealing with the issue. The problem, however, lies in the fact that many people are not even aware that such a lens exists, thus making it virtually impossible for those people to view crime and responses like restorative justice in this fashion.

I noted on many occasions that both juvenile and adult participants were relatively unclear about what the mediation had to offer. Juveniles in particular were skeptical of participation and often expressed an interest in the notes that mediators made throughout the mediation. They appeared to perceive the mediators as an authority figure, similar to a judge, able to make decisions and hand out judgments. One participant, when asked what the worst possible outcome of the mediation would be stated, "to go to juvie" (juvenile detention). Her answer is very telling about her knowledge of the restorative



vision of justice. Had she known what restorative justice was, what the guiding principles were, this potential outcome would not have been a concern. Sending someone to juvenile detention is not a restorative outcome. Furthermore, the mediators do not have the power to order someone to juvenile detention even if they wanted to. However, not knowing about the restorative process the answer she provided indicates that the offender considered the mediators to be the authority for the processing of her "case." She was waiting for justice to be done to her. She was totally unprepared to be part of creating the justice herself and her attitude and actions demonstrated this. She was virtually non-participatory throughout the entire mediation. David R. Karp et al. (2004) reports a similar experience with parents of the children who participated in restorative justice:

In sum, parents endorsed the program. Although they were not familiar with the philosophy of restorative justice, they were supportive of the sanctions imposed, believing them to be fair, appropriate, and beneficial to their child and to the parties harmed. However, they knew very little about the restorative philosophy and do not seem very well briefed for participation (p. 213).

This assertion seemed to match my observation as well. However, not only was it the parents who were unprepared, but also their children, those who were often the offenders.

What complicates the issue even more is the confusion that is created by situating restorative justice within the field of criminal justice. Restorative justice to be certain shares very little with traditional forms of criminal justice, yet all the participants know is that restorative justice is criminal justice. They do have knowledge about criminal justice and thus believe this knowledge to be accurate of restorative justice as well, and in some ways they are right. After all, are they not appearing for mediation because of state intervention in their lives, for a crime as defined by the state? It does not matter how

restorative justice practitioners choose to define their actions. Offenders are still referred to mediation because they have violated a rule/law and hence the state has intervened in their lives. Would these people be in mediation if not for the order of the state, or a referral from the police? How can restorative justice stand in opposition to a system that it is a part of and in some ways strengthens?

This is what Pavlich (2005) describes as one of the "governing paradoxes" of restorative justice. He states:

Because restorative justice processes are directed to the 'aftermath of crime', they thereby do not actually contest the law's right to define crime, but merely broaden it. For all intents and purposes, restorative justice's claimed opposition to criminal justice, and its claims to offer an alternative, are parasitic upon legally defined crimes. Restorative justice thus conceptually and practically subordinates itself to the very criminal justice system it claims to escape (p. 35).

This appears to be a point not lost upon those who get caught committing a crime or producing a harm. Restorative justice is criminal justice. Thus we should not be surprised when they retain their retributive notions of criminal justice that have been internalized by years of living within a society that chooses to deal with crime in this fashion. As such they are not prepared to participate. They expect to be a spectator as someone, usually a judge, hands out a verdict. Furthermore, they are certainly wary of an outcome that is supposed to help them. After all, are they not supposed to be punished?

Thus what we have are offenders who are largely unprepared and wary of participation in a process that necessitates their participation for success. The situation is akin to placing someone into a foreign culture in which the common practices stand very much outside what is normal within their own culture, the likes of which they know very little about, and asking them to participate. It simply is not going to happen. It would

take weeks if not months for the individual to learn about the culture, to de-socialize from their own culture and to be re-socialized before they would be willing to participate. Yet there is an expectation within the practice of restorative justice for people to be prepared to examine the situation through a restorative lens, when they simply do not possess one. Perhaps this expectation is rather unreasonable.

In fact, of the 20 offenders involved in the 14 mediations only 7 were considered to have provided a high level of participation, 6 others were placed in the medium category, and the remaining 7 offenders were considered to have provided little participation. What causes such minimal participation in a process that is designed for and encourages offender participation? I argue that one cause is the fact that they are not aware of the principles of restorative justice and not aware that they are supposed to be actively involved in creating the outcome of their case.

Victims too are unprepared and unaware of what the restorative process is all about. They too, often consider the mediator to be the administrator of justice. They commonly ask questions of the mediators, or look to them for guidance about decisions regarding the agreement. In two of the three cases involving community service, the victims asked the mediators to help them provide a number of hours to be completed.

In conclusion, both victims and offenders lack a restorative vision of justice. We can not assume that one pre-mediation meeting is going to be enough to overcome years of experience with retributive forms of justice. Justice in the retributive form has been internalized and it may take more than one day or one meeting to provide victims and offenders with a restorative vision that is so essential to their participation in restorative justice.

## **Power Dynamics**

Mediation functions both in opposition to and within the criminal justice system. As such, it makes use of many of the concepts utilized by criminal justice practitioners. For example, the terms victim and offender are used to describe the two parties that meet for mediation. Herein lies one of the problems associated with offender participation. These titles alone have deep implications upon the ways in which the participants arrange themselves. The use of these terms alone creates a social hierarchy in which power differentials are expressed. Dennis Sullivan and Larry Tifft (2001) recognize this point as well. They state:

We are suggesting that to conceive and speak of others in terms of identity-fixing and identity separating categories such as offender and victim is itself a source of harm because these designations are personally deconstructive and non-integrative. By using them, we force upon the person harmed and the person responsible of the harm a fixed, false identity (p. 80).

These designation can affect both the victim and the offender. In some ways the individual harmed is forced to take on the identity of the victim, which can lead to further disempowerment.

These titles have other implications as well. The individual harmed enters the mediation as the “victim” resting secure in the fact that he/she has done nothing wrong. The offender on the other hand enters the mediation as the “offender.” Their behavior has already been defined as harmful. Defining the situation in this way creates power relations that must be acknowledged, and that shape the behaviors of the parties involved. M. Kay Harris (1989) agrees. She argues that perhaps restorative justice is more coercive than conventional justice. She states, "a far worse imbalance will emerge with the offender finding himself or herself not only lined up in defense against the state but also

against the victims and perhaps some new entity or presence put there to represent the 'community'" (p. 34).

The offenders in many of the cases I observed were further disempowered by their status as juveniles. All but 2 of the 20 offenders were juveniles and all but 2 of the 16 victims were adults. There was not one case involving an adult offender and a juvenile victim. The implications for the power dynamics in these mediations are rather obvious. The situation is further complicated by pre-existing relationships within 7 of the 14 mediations. This includes two mothers in mediation with their juvenile children and one case involving a school administrator and a student. Two other cases involved juveniles who lived in the same neighborhood as their adult victims and knew who they were. In one of these cases the offender was actually a friend of the victim's son, and he had spent much time at the victim's home, under her supervision. In the other two cases, the juvenile offenders were frequent visitors to business run by their victims. The participants were familiar enough to know each others names.

Even worse is the fact that in 4 of these 7 cases the victims addressed their offenders in a lecturing manner. The school administrator lectured his former student as though he was in his own office. Another victim of a breaking and entering lectured for several minutes to his juvenile offender. One of the parents involved with her child spent a significant portion of the mediation lecturing. If we allow the victims to address their offenders in this fashion, it should come as no surprise to us when the offenders do not feel as though they are on a level playing field with the victim.

This is a particularly relevant issue in the case of offenders. Because the actions of the offender are defined as crimes, and because they find themselves in mediation as a

result of state intervention, much has already been communicated to the offender about his or her actions and the fact that he or she is responsible for making the situation right. As previously noted, this forces the individual into the role of offender, and in doing so arranges the participants hierarchically. By arranging the participants in this fashion, we are creating a situation in that the offenders are less likely to contribute, but rather are asked to repair the harm created. Thus, mediation provides an opportunity for victims to ask for what they need to repair the situation, and offenders are obliged to make it happen. This is largely what I observed in mediation. I have concluded that almost without exception the agreements produced in mediation were created solely by the victims. Furthermore, I watched offenders agree to complete the stipulations within the agreements. I am moved to note that acknowledgement that an agreement is fair, or that they can complete that tasks does not amount to participation.

As previously discussed, restorative justice communicates to offenders that they are responsible for their harms. They have already admitted guilt and taken the first step towards taking responsibility. This puts the offender in a difficult situation. They are not asked to contribute to the agreement and having accepted responsibility for the harm, they are pushed into a corner with little viable options, except to agree. The domination is rather tacit.

Recent critical examinations have examined the designations of victim and offender and have begun to focus on the ways in which participants are encouraged to play particular roles in restorative justice and the ways in which their responses to the harm produced are governed by the process. Pavlich (2005) states:

Victims do not exist *sui generis*, in and of themselves; that is, they do not exist in any absolute abstract sense, but are produced through rituals, rules

and techniques of power embedded in such social practices as restorative justice techniques. One is not, in essence, a victim; more contentiously, one becomes a victim by participating in contexts designed to create particular forms of the victim identity (p. 52).

Pavlich notes, for example the rules of mediation that require victims to be respectful towards the offenders and mediators and to recognize their role as a voluntary one. Furthermore, victims are to be able to identify and articulate needs created by the harm, and offer solutions that repair the harm created. By forcing those harmed by another into the role of victim, restorative justice is essentially creating for those harmed individuals the very posture that restorative justice hopes to erase. This leaves Pavlich querying, "What purpose lies behind attempts to empower subjects through an identity that is by definition, disempowered" (p. 59)? In their attempts towards justice that require those harmed into the role of victim, restorative justice places limits on the role that victims play in the process, and it further encapsulates restorative practices within the confines of the dominant criminal justice system that it claims to oppose.

Much the same criticism can be leveled at the designation of the offender as the offender. In doing so, restorative justice is creating an identity for those responsible for the harm. This identity is incredibly value-laden. Additionally, this label assumes that criminal definitions are themselves objective and that those who violate these objective definitions are susceptible to prosecution by the state, which further cements restorative practices within criminal justice institutions. Thus, we find that despite the restorative vision of justice, the process begins with a crime as defined by the state, and state action taken to initiate the process. Furthermore, as Pavlich (2005) points out, focusing in on the offender as an individual responsible for righting the harm created by their actions, defined as a crime, "locks one into a political logic that hold individuals responsible for

the harms surrounding a 'criminal' events" (p. 74). Pavlich goes on to note that this replicates the criminal justice view that criminal harm is largely an offender's responsibility.

In each of these instances, for both victims and offenders, these governmentalities create roles for both victims and offenders. These roles dictate not only what is expected of them as participants, but also what is not acceptable. Consequently, we find that participants are limited in terms of the types of participation that is acceptable. Aside from the general rules explained during the meditation, their appears to be unwritten governmentalities that create roles for the participants, and restrict participants to behaviors that are deemed acceptable.

On a similar note, Arrigo et al. (2005) notes the ways in that master signifiers in the restorative process like reconciliation, healing, restitution, community, responsibility and so forth force victims to explain their experiences within this master discourse. They state, "For victims and offenders, VOM discursive practices only offer the opportunity to locate experiences of pain, hurt, confusion, regret, retribution, and the like, within a *master* discourse" (p. 105). By forcing the participants to utilize this master discourse, victims and offenders are robbed of the opportunity to fully articulate their experiences with the harm produced. They go on to state, "Lost in this more scripted process is the opportunity for more genuine self-disclosure, more authentic healing; occasions that would otherwise facilitate the subject to speak his or her own 'true' words" (p. 106).

The power dynamics are not as readily apparent in each of the cases I observed. However, one can assume that power dynamics can be established along the lines of age, race, sex, status as offender, or victim, and most certainly when a previous relationship



exists between the parties and one party holds a dominant position within the relationship. The difficulty comes in observing such power dynamics. These dynamics are not always visible within mediations, although they may in fact have a strong presence. However, when for example the victim is permitted to lecture as was the case in several of the mediations observed, or when the participants have a prior relationship, the power dynamics become apparent within the mediation process

## CHAPTER XI

### WHERE TO FROM HERE

#### Introduction

To be certain, this evaluation and many others that have taken up the task of evaluating restorative practices have before them a difficult task. These evaluations are in essence evaluating practices that have yet to be truly defined. Restorative practices continue to emerge and evolve out of the restorative justice movement. As such evaluations are often forced to examine a work in progress. This is also part of what makes research like this valuable. As the restorative justice movement continues to both emerge and evolve research can be utilized to help shape the future of restorative practices.

At the same time, the lack of consensus amongst restorative justice practitioners in terms of principles and practices make generalizing about restorative practices a difficult task. Despite this obstacle a considerable amount of research has been gathered about restorative practices including mediations, sentencing circles, community boards, family group conferences, victim offender reconciliation programs, and others. Evaluation of each and every program that claims to have a restorative foundation is essential. As Mark Umbreit et al. (2004) states, "We certainly concur that calling a process or program restorative does not make it necessarily so. There is nothing inherent about good intentions to implement restorative justice principles that leads naturally to results that are restorative" (p. 87). Furthermore, the use of restorative principles does not in and of itself guarantee restorative results. We must continue to evaluate programs that have restorative claims and that utilize restorative principles in order to uncover

those practices that work and obstacles that stand in the way of achieving the restorative vision of justice.

The findings in this research, that I now discuss, revolve around the propositions discussed in chapter five, including peaceful justice, community, needs, recognition, empowerment, accountability, awareness, and power dynamics. I also discuss the implications of this research for restorative justice practitioners, implications for future research, and the limitations of my research. This research demonstrates both great successes, and obstacles that seem to stand in the way of accomplishing restorative goals and achieving justice that is restorative.

## **Discussion and Conclusions**

### **Making Things Right**

My findings with regards to the ability of restorative justice to create a peaceful justice indicate that mediation provides a starting point, but that the process must go beyond the mediation. Within the mediation itself the participants experience respect and feel as though the others listen when they speak. A large portion of the victims reported feeling better as a result of their mediations and a large portion of offenders agreed that the mediation helped the relationship between them and the victim. Much of the data presented indicate that both victims' and offenders' experiences with the mediation process are positive and helpful. All of this data contributes to the conclusion that restorative justice is peaceful, that victims and offenders are not harmed by the process, and that mediation represents a good start towards making the situation right.

This final point is a significant finding. Both victims interviewed suggested that further time is needed to determine whether their case was a success. If the offenders fail

to live up to their end of the agreement, victims are likely to be disappointed and if restitution is part of the agreement, victims will surely not feel as though justice has been served if that restitution goes unpaid. This finding suggests that simply producing the agreement is not paramount to making the situation right. It further suggests that researchers can not attempt to ascertain whether the harm has been repaired, that the situation has been made right until the agreements are either fulfilled or the offenders fail to fulfill them as this is likely to affect victim's perception of whether the harm has been repaired.

When it comes to the issue of reparation, the offender's opinions are important as well. Some offenders may perceive the agreement to be too harsh or perhaps even not harsh enough. If the former is true, this may represent one reason why the offenders choose to not fulfill the agreement produced. They may consider the harm repaired, the situation made right, well before they ever complete the agreement. For this reason, it is not fair to assess whether they feel the harm has been repaired until some time later.

### **Community**

With regard to the community, the findings of this research offer significant substance to discuss. These findings are discussed on two levels. These include the micro-communities, including a discussion for both victims and offenders, and the macro-community.

I begin with a discussion of the micro-communities or personal social networks of the offenders. As these findings suggest there is at least some support to the notion of offenders being supported by their social networks. All but two of the offenders had at least one member of their social network present during the mediation. Two other

offenders attended mediations in which the harms produced were against family members. Thus, those members of one's social network who normally offer support were in attendance, but to the extent they are able to provide support as perceived by the offender, I cannot say. The goal of providing support for offenders is to suggest that while their loved one's actions were bad, the offender his/herself is still good. This follows the logic of John Braithwaite's theory of reintegrative shaming. Mediations follow this logic in so far as they are able to express a disapproval with the offender's actions, that is the point of mediation, but also effectively work to support and accept the offender back into their communities. Having members of ones social network in place and experiencing their support is a great first step towards the reintegration of those offenders into their immediate communities.

What is perhaps more important would be to examine the offenders' perceptions of the mediation process and whether these individuals felt any demonstrations of support. This was a focus within my research. However, due to a lack of participation by offenders in the post-mediation interview there is insufficient data to comment on this issue. What I am suggesting is that while my findings do suggest a presence of support for offenders, there is no way of telling whether the offenders felt supported or not. Furthermore, in order to substantiate the claims of labeling theorists and those of John Braithwaite, recidivism studies are needed to examine whether mediation leads to any significant reduction in recidivism amongst offenders who participated, with particular attention being paid to whether or not the offender felt supported.

With regard to the victims who attended mediation, I was in fact surprised by the apparent lack of support present for these individuals. Only two out of the 17 victims had

any supporters present for their mediations. Each of these cases involved a juvenile and the supporter was the victim's mother. These results suggest a clear lack of support demonstrated for victims during the mediation. For many victims this is a rather difficult time in their lives. They are brought face to face with the individuals responsible for bringing them harm. This apparent lack of support for victims is a significant finding. There seems to be consensus that victims need supporters as well. They too need to be reintegrated. They have a need for others to listen to them and to offer support as well, yet this appears to be lacking in the restorative process.

My observations have led to similar results about the involvement of the larger communities. Again, there appears to be consensus that the larger community has a role to play in restorative justice. There may be debate about just what exactly that role is, however, Sullivan and Tift (2001) suggest reintegration is one word that appears to dominate the literature surrounding restorative justice. My observations have led me to conclude that the larger community is by and large missing from the mediation process observed. In fact, my observations have led me to conclude that this particular BARJ program is isolated from the larger community and the justice issues within. Thus, despite recognition by many offenders that their actions were harmful to their communities, there is no community presence involved in the mediation process. Mediation is supposed to represent a safe place for offenders, a place where the first step towards reintegration can occur. However without community involvement this important first step cannot occur.

Mark Umbreit et al. (2004) noted that some peacemaking circles invite participants from the community to get involved, specifically to discuss how the

offender's actions have affected the community. He states, "A community participant might talk about how the crime has affected safety fears, purchase of locks, sadness for the loss of a safe community, pride in being part of a community that attempts to respond to offenders as human beings-- the responses are limitless" (p. 85). This is a great idea. Aside from demonstrating the affects of the offender's behavior upon the community, these members can also express forgiveness and lend support to an offender who will be re-entering their community. They have a vested interest in the successful reintegration of this member in so far as it will likely create a safer community for all.

Because of the lack of consensus within theory and practice concerning the role of community in mediation, several recent attempts have been made to address this issue. Pavlich (2002) suggests an approach to community involvement that avoids the creation of fixed identities such as victim and offender. Pavlich states:

Appeals to homogenous, consensual and unified images of community harbour serious dangers marked by identity through exclusion. For instance, the assumption of harm to be restored is always issued from within a given community, and responsibility for that definition is mostly placed upon self-defined members - not to 'others' at the margins of (and so constituting) that identity formation (p. 99).

In creating communities marked by identity through exclusion restorative justice communities are just that, created. As such, limitations can be created about what constitutes a community. Pavlich, in citing Derrida (1999, 2000) suggests the concept of hospitality. Pavlich suggests that utilizing the concept hospitality in place of community will direct the responsibilities of the participants without creating fixed identities or roles to be played by the participants. In doing so, the concept of hospitality creates opportunities for participants to create, live, and experience justice through their own personal identities (Pavlich 2002). He states,

"Out of undecidable spaces that release 'the impossible' one might hospitably replenish restorative justice's promise to face up to, and beyond, present calculations of the just" (p. 104).

In *Governing Paradoxes of Restorative Justice* (2005) Pavlich notes that this debate over defining communities is far from settled. He states that "despite a lack of definitional clarity, restorative justice governmentalities hold firm to their assumption that the community does actually exist and that its contours are amenable to discovery" (p. 90). Thus, the debate that has been a feature of the restorative justice movement since its inception has yet to be settled and despite the consensus that communities have a role to play in restorative justice, theoreticians and practitioners alike appear to be at a loss for just what constitutes a community.

One final comment about communities is in order here. The question that has yet to be answered is, into what type of communities are victims and perhaps more importantly offenders being reintegrated? I have suggested that to be reintegrated into the same community without care or concern for the conditions of the community is likely to accomplish very little. Thus, even with enormous community involvement and efforts towards reintegration, we will have accomplished very little if we do not address the harm producing social inequities that exist within. Perhaps this is too big of an undertaking for restorative justice. That is not for me to decide. However, to suggest that reintegration is a key part of restorative justice and to suggest that reintegration is the key to lower recidivism rates without giving notice to the social conditions within those communities shows down right ignorance. For what have we accomplished if we



are reintegrating offenders back into the same communities, the same harmful conditions which contribute to a high rate of crime.

This is a topic addressed by Gil (1999) in an article titled *Understanding and Overcoming Social-Structural Violence*. Gil states, “when constructive developmental tendencies are *violated* by a society’s way of life, emotional and social ills and problems ensue. Societies whose policies inhibit the realization of people’s basic needs may, therefore, be considered *structurally violent*” (p. 28). Gil (1996) suggests that values underlying the policies and practices of structurally violent societies include inequality, exploitation, selfishness, competition, and disregard for community. Because of the qualities inherent in structurally violent societies, the basic human needs of all are neither considered nor fulfilled. In structurally violent societies, Gil suggests that the violence experienced by those individuals who are unable to realize their basic needs due to the structural inequalities that exist often respond with what he calls reactive violence. This form of violence is often met with repressive violence. The entire process being described by Gil (1999) as a “seemingly interminable vicious cycle, which can be reversed only when structural violence ceases, and people can fulfill their basic needs as a result of fundamental changes in the way of life” (p. 28).

Unfortunately, the American society features a long tradition of structural violence. Gil (1996) states:

Systems of domination and exploitation did not evolve as a result of ‘democratic’ choices. Rather, they were initiated and perpetuated by coercively, either by invaders from other societies or by groups of people within societies who use occupational and related differentiations to gain power relative to others. Eventually, domination and exploitation were legitimated, *ex post facto*, by political, religious, and cultural processes, and by ideological socialization (p. 80).

Thus, power inequities are created in which the valuable resources of any society including land, water, rights to a quality education, wealth, power, and influence are consumed by the dominant classes and legitimized by the rules created by the same class. Everyone else has no choice but to deal with the forms of structural violence that persist within the society including: inequity, domination and exploitation, selfishness and individualism, disregard for life, disregard for community, and competition (Gil, 1999. p. 29.).

To the extent that restorative justice strives to reintegrate offenders back into communities or societies that are so rampant with structural violence, little is accomplished. The vicious cycle alluded to by Gil is going to continue. Human suffering will persist, and crime as well. This discussion brings us back to the question of reintegration into what? The implications bear significantly on the practice of restorative justice. But, how can restorative justice overcome the structural violence that persists within our society. Perhaps it can begin by attacking the values inherent within structurally violent societies. According to Gil (1999) the elimination of social-structural violence requires:

a comprehensive social, economic, political, and cultural renaissance, involving transformations of prevailing social values and consciousness, and of established institutional systems. These institutions would have to be reshaped in accordance with values of equality, liberty, respect for everyone's individuality, cooperation, solidarity, and affirmation of community, life and nature (p. 33).

These values are inherent within restorative practices. This is not to suggest that restorative justice alone can bring about the large scale systemic changes necessary for the transformation of society, but they do promote such realignment.

Still, restorative justice is left to deal with the reality of our current society, one featuring widespread structural violence. The implication for restorative justice is that reintegration into society is not likely to be of any help to a victim or offender. Reintegration into the world of structural violence is only likely to perpetuate the cycle of harm and violence.

### **Needs**

When it comes to the issue of meeting needs, these mediations seem to push victim's needs to the forefront. In some regards this represents a great success because victim's needs are traditionally disregarded within court proceedings. However, as Sullivan and Tiff (2001) note, restorative justice should meet the needs of the participants without giving preference to one participant over another. Offender needs appear to be pushed into the background, in particular, as my findings have suggested, in the agreement writing stages of the process.

I feel that this conclusion is substantiated by the BARJ center evaluations of the mediation process. Victims are asked to evaluate their ability to contribute to agreement making, while offenders are only asked if the agreements are fair. This corroborates my conclusion that the mediation and, more importantly, the agreement writing process is driven by victim needs in this BARJ program.

There is no surprise with this conclusion, however, because the restorative justice movement was fueled by, at least in part, and continues to receive support from the victim's rights movement. The emphasis upon victim participation and meeting victim needs has been an acceptable goal for restorative justice since the practice emerged as a response to dealing with the harm created in the wake of crimes. There is nothing wrong

with this goal, or accomplishment. Where restorative justice fails is in providing the same treatment to offenders. A major criticism of the criminal justice system is that it does very little for the offenders. In punishing them, it does nothing to help them address the needs that they have. This contributes to the high rates of recidivism and our apparent lack of surprise when offenders create more harm. However, restorative justice is supposed to be different. It is supposed to be needs-based justice (Sullivan & Tifft, 2001). My findings however suggests that it has a way to go towards achieving this result when the restorative response is organized similarly to the BARJ program explored in this case study.

This conclusion, however, should not be misconstrued. It is not as if there is no regard for the offenders' needs. Accountability, for example, is a need that mediations hope to, and often do, achieve. The difference here is that accountability is recognized as a need for offenders. It is not a need as identified by offenders themselves. There is a big difference. Where these mediations have failed is in getting offenders to participate and to acknowledge their needs, the needs that they have in their lives that may have been contributing facilitators in their choices to engage in the harmful behaviors that now bring them to mediation. These needs cannot be decided for offenders. This is why participation of all individuals is essential. If one is not willing to participate, then identifying and meeting needs becomes increasingly difficult if not impossible. If the needs of offenders are not being addressed, then the same accusations that were leveled at the court process can now be applied to restorative justice as well. Offender needs must be pushed to the forefront. This is not to say that they should be ahead of the needs of

victims, however, meeting the needs of offenders should be as significant to the process as meeting the needs of victims.

### **Recognition**

The data collected indicates that with regards to the mediations observed, that recognition is a likely outcome. Both victims interviewed described a recognition or awareness about the offender which they gained in their respective mediations as a result of learning about the situation of the other. Furthermore my observations of the mediations determined that an apology is often a product of mediation. An apology occurred in each of the mediations I attended except one, including one case in which no agreement was produced. In the cases involving multiple offenders, each offender offered an apology. What is more significant is that when it comes to offering those apologies, 95% of the 127 offenders who responded stated that they felt good about apologizing to their victims. This represents recognition of the harm they created and an attempt to make the situation right by offering an apology.

Following the logic of Sykes and Matza's techniques of neutralization, mediation as a practice is likely to reduce future violations of the law in so far as recognition is accomplished. If offenders recognize the harm created by their actions they can no longer utilize the techniques of neutralization to deny the harm or to deny the existence of the victim. Furthermore, this awareness of the human suffering created by their actions is also the first step towards ending the humans suffering that Richard Quinney argues is the source of crime.

Apologies are far less common in court where the offender does not actually have to come face to face with his victim and listen to them speak about the harm their actions

caused, and does not have to explain his/herself directly to the victim. This allows the offender to effectively deny the harm created, thus reducing the guilt associated with their actions, all of which reduces the likelihood of either participant experiencing recognition.

### **Empowerment**

With regards to the notion of empowerment my original proposition suggests that the ability to participate in the mediation and to share one's story is likely to empower participants. The data collected indicate that both victims and offenders feel as though they were given the opportunity to tell their story and to participate in the process. These are two items which theoretically would lead to empowerment for the participants. However, as I noted earlier, to the extent that this was accomplished I do not know. My lack of interview data with the participants has hindered my attempt to evaluate the concept of empowerment with regards to the process of mediation.

Although both victims and offenders indicated that they were able to participate in the process, my observations, particularly in the late stages of mediation did not match their perceptions. Particularly, I observed that offenders were left out of the agreement writing stages of the process. In this late stage of the mediation I observed a preference being given to the contributions of victims. Thus, although offenders are able to contribute in parts of the mediation, their input towards the agreement appear to be missing.

The implications of this are significant. According to Sherman's defiance theory, offenders are less likely to engage in future law-breaking when they perceive the authority of the sanctioning agent as legitimate. With restorative justice, this is supposed to be more likely as the offender him/herself is supposed to be part of the decisions

regarding the agreement produced. If, as my observations indicate, offenders are only bystanders of the agreement writing stage they are less likely to perceive the sanctioning agent as legitimate in comparison to when they are actually involved and help to make the decisions themselves. The consequence of this according to Sherman would be that restorative justice is continuing in the tradition of the retributive criminal justice system in not allowing offenders to participate in decisions about how to repair the harm created by their actions. By not involving the offender in decisions about the agreement, we are reducing the strength of the bond to the sanctioning agent as offenders are likely not to have any bond to their victim and also reducing the legitimacy of the sanction imposed by the agreement produced.

Furthermore, when offenders are excluded from the agreement writing stages, the likelihood that offenders experience empowerment is reduced. If only victims are being given a chance to contribute to the agreement produced, then it is more likely that only the victims will experience empowerment. When victims are harmed they often have lasting feelings of disempowerment. Restorative justice was designed in part to restore to victims a sense of empowerment by giving them a chance to participate in the process and make their own decisions about how to respond to the harm they experienced. Offenders are frequently in need of empowerment and the restorative process is supposed to provide this sense of empowerment to them as well. To the extent that they are excluded from the agreement writing stage of the mediation and their input is not considered they are less likely to experience empowerment.

## **Accountability**

When it comes to the issue of accountability, the mediations that I observed were quite effective. As previously noted, the requirement made by the mediation center that individuals be willing to accept responsibility for their actions and the use of a pre-mediation meeting between the offender and the mediators contribute to the success observed regarding the concept of accountability. Should we allow offenders to enter into the mediation without first ensuring that they are willing to accept responsibility, we are leaving the door open for offenders to deny responsibility thus ensuring a poor experience for everyone.

Holding offenders accountable creates positive outcomes for all of those with an interest in the mediation. Holding the offender accountable is just one of the many needs of victims recognized by Zehr, (1990) but it is an important one. To see and hear the offender take responsibility for the actions that brought harm, to be able to explain the harm and its effects, and to ask questions of the offenders are all parts of holding the offender accountable and each of these components leads to positive experiences for victims.

One of the strengths of these mediations was to help offenders own the harm that was created by their actions. Mediations help in this endeavor by situating the victim and offender in a face-to-face meeting in which the offender learns first hand of the harm created by his or her actions. This achievement reduces the ability of offenders to rationalize their behaviors and to utilize what Matza (1964) refers to as techniques of neutralization to deny the harms created by their actions. Techniques of neutralization are often used by those who create harm to effectively shield themselves from the guilt



they would otherwise feel for bringing harm to others. Often we tend to think that the courts hold offenders accountable by forcing upon them a punishment of sorts, however as Zehr (1990) points out there is a significant difference between the accountability experienced in court versus that which is achieved in mediation. Through the courts the offender receives a punishment. In doing so, it is believed that the offender is being held accountable. However, the court process often fails to effectively hold the offender responsible. It is not so much a matter of punishment as it is making the offender own responsibility for the harms inflicted. In the mediations observed, the offenders accepted responsibility for their actions and sat in a face-to-face mediation with their victims and even answered questions that their victims had. This is essential to accountability, otherwise the offender can continue to deny the harms produced by their actions and he/she can continue create harm with little attention to the effects of their actions on others.

Thus, I have found that holding the offender accountable creates a positive outcome for both the victim and the offender. Furthermore, in so far as holding the offender accountable effectively reduces the likelihood of recidivism, the community has benefited as well.

### **Participation**

In the presentation of my findings, I offered data about participation in my discussion of emergent themes paying particular attention to the awareness of the participants about restorative justice principles and power dynamics within the mediation process. I have suggested that both of these are featured in the practice of mediation as I observed it and both constitute significant roadblocks to the actual participation of

victims and offenders in the mediation process. Participation is required for victims and offenders to experience empowerment, recognition, and to have their needs identified and accordingly met. These are fundamental aspects of restorative practices. No matter what the reason, whether the participants are too scared to, not given a chance, and or not comfortable with participating, mediation can not work unless the obstacle that stands in the way is overcome.

Without a general awareness of how restorative justice is supposed to function and without the knowledge that their participation is what makes the process function as it is intended, victims and offenders are likely to consider restorative justice as nothing more than criminal justice and their expectations for their level of participation are likely to be rather low. Preparing victims and offenders for participation is not likely to occur over the course of one meeting, or even one day. Some victims or offenders of violent crimes take months of preparation before they may be ready to participate. I am not suggesting that all victims and offenders will require months of preparation before mediation, or other restorative practices. I am suggesting however that many victims and offenders are unprepared when entering restorative processes, and this lack of preparation is likely to reduce the transformative potential that restorative justice can have for them.

Most people in our society are thoroughly familiar with retributive forms of justice. Through prior experiences in schools, workplaces, private life, and even prior experience with criminal justice (including television), individuals in society have a general sense of what justice in the retributive form looks and feels like. They know what to expect when they enter a courtroom, for example. Victims and offenders have no idea what to expect when they enter mediation, but they do know that it is criminal

justice. As a result, their lack of knowledge about restorative justice is filled in with what they do know about criminal justice. Consequently, the assumptions they make are often wrong.

Yet another roadblock to participation, particularly for offenders, is the power dynamics inherent in the mediation process. One proclaimed benefit of restorative justice is that it brings victims and offenders together, creating a level playing field for them to interact in a respectful and peaceful forum to discuss the events which brought them to mediation and potential solutions to the problems before them. However, to think that we can create an environment devoid of power dynamics, or devoid of the realities that bring these people to mediation, is rather naive.

In practice, a juvenile is put in a room with an adult that in some cases has served over him or her in a dominant position. Yet, this situation is considered to be an atmosphere in which all participants have an equal opportunity to contribute. Not to mention the different races, and the sex of the individuals who participate, or the incredibly value laden-labels applied to those who participate, including the mediators, all of which contribute to the power imbalances that are apparent in any mediation.

My point here is to be certain that we make no attempt to fool ourselves about this issue. We can not create a mediation environment in a vacuum. Power dynamics are at play in almost all human interaction, so to assume that we can erase these dynamics in the process of mediation would be foolish. I contend that not only are these power dynamics evident in the practice of mediation, but they contribute to the low levels of participation, particularly the low levels that I witnessed regarding offender participation. The consequences of this are devastating for the practice of restorative justice. Without

their participation offenders are less likely to feel empowered, less likely to identify needs, and consequently they are less likely to have their needs addressed. This means that restorative justice can not be conceived of as needs-based justice. When it fails to identify and meet the needs of offenders, even when succeeding to do so for victims, the process is not needs-based. In a needs-based response, the needs of all individuals involved are important. The needs of one are not placed before another.

### **Policy Implications**

The policy implications of this research revolve around three issues that are central to the practice of mediation. These issues include the concepts of community, needs, and participation. Community involvement, meeting needs, and individuals willing to participate are three ingredients that are essential to the success of restorative practices. These policy implications are aimed at improving the ability of mediation to ensure that these elements are present during mediation. The result will be an increase in the transformative potential of restorative justice to repair harm and harmful relationships, to meet participant needs, and to reduce the likelihood of future harms.

### **Communities**

Despite consensus amongst researchers that communities, both micro and macro, have a role to play in restorative practices, my research has concluded that with regards to the mediations studied, there was not a significant presence of community members involved in the mediations. While there is consensus that the communities of care have a role to play, there is no consensus about what that role is to be. However, several aspects of community involvement that have appeared in the literature would suggest that reintegration, support, forgiveness, and simply listening to participants' stories promote

restoration, reintegration, and healing. The implications of this research regarding the involvement of communities are aimed at three different concerns about the community. First, we have implications for the micro-communities or personal communities of care, followed by a pair of recommendations aimed at the larger communities from which the individuals emerge.

This research indicates that the smaller communities of care were virtually non-existent for victims during the formal mediation process observed. This is particularly significant because the victims have no one to offer them support, to listen to them, and to hear their truth. Furthermore, with no one present to hear their stories and to provide support, reintegration into these social networks as a result of volunteering for a mediation experience is less likely. Regarding offenders, my data indicate that offenders were far more likely to have at least one supporter present at the mediation. A few offenders were even accompanied by two members of their social networks.

My policy implications regarding these social networks are that they need to become a standard in the practice of mediation. Particularly in the case of victims where it would appear that the presence of supporters is the exception rather than the rule. If reintegration is a desired outcome, the presence of these social networks is essential. However, this is not something that can be forced, if these social networks do not exist for some, we should not expect much in the way of reintegration because there is nothing to be reintegrated into. (I shall return to this issue in my discussion of the large communities.)

Furthermore, we could expect to increase the extent to which offenders are held accountable in mediation due to the fact that the offender's social networks can share the

harm that they experienced as a result of the offender's harmful actions, thus helping the offender realize the extent of the harm created by their actions. This is similar to that which is accomplished by bringing the offenders face-to-face with their victims. It creates a situation in which the offender can no longer deny the harmfulness of their actions and reduces the likelihood of the offenders offering techniques of neutralization to downplay the harm and the guilt associated with that harm.

Regarding the larger communities from which the victims and offenders emerge, my data indicate that these communities were virtually non-existent in the mediations observed. Thus, any hope of reintegration or at least helping the individuals to begin to reintegrate is nearly impossible. The policy implication here is that these communities need to become involved in the mediation process, or that the BARJ program needs to engage the larger community and address the resources within. Again, if reintegration is a desired outcome, we should not expect it to be achieved without the participation of the communities into which one is to be reintegrated. One other way that this can be accomplished is to acknowledge services or opportunities within ones' community to engage in positive, conforming behaviors or programs. Yet within the mediations observed this did not appear to be a concern of the BARJ program observed.

It was noted that one goal of restorative justice is to reintegrate offenders into their communities. The concern here is with the characteristics of these communities themselves. If we are striving to reintegrate offenders into the harmful social conditions of the communities from which they emerge, then even successful mediation is unlikely to achieve the desired result- bringing an end to the harm producing behaviors of the

individual. Thus, the vision of restorative justice must transcend the individual and examine the very communities into which the victims and offenders are intended to be reconnected. The policy implications here suggest that perhaps restorative justice programs such as BARJ need to examine the harm producing social inequalities of the communities and to focus in on how these structures can be changed. Granted, this is no easy task, but to continue with the effort to reintegrate offenders into these communities is most certainly a waste of time, and unlikely to get at the root conditions of the harmful actions created by these offenders.

### **Needs**

My second set of policy implications revolve around the notion of needs. My findings with regard to this issue suggest that mediation falls short of offering needs-based justice, in particular for the offenders. The concentration on victim needs, specifically within the agreement writing stages, pushes the needs of the offenders to the rear where they are rarely discovered and addressed. Offender needs must become a co-priority in mediation. If mediation continues to fail in addressing the offenders' needs, then it is failing to live up to its potential to stop future harms. As Sullivan and Tifft (2001) have suggested, restorative practices are to work towards meeting the needs of all participants without giving preference to one or the other. The policy implication here is to do exactly that. In order to do so, contributions from offenders must be sought after and considered in much the same way as the needs of victims. Offenders need to be involved in the agreement writing stage of the mediation and to have an opportunity to identify and address their personal needs. BARJ programs, thus, must network or connect the need meeting services to offenders and victims alike.

## **Participation**

My final suggestions or policy implications revolve around the issue of participation. The implications here have relevance for restorative processes in general. As has been noted, restorative processes require individuals to participate. Anything that serves as a roadblock to participation for the individuals involved represent significant challenges for practitioners to overcome. My policy implications here are directed at two points in the mediation process. First of all, this issue can be addressed prior to the mediation itself, but, as well, may require the mediator's attention during the mediation.

What I am suggesting here is that participants in restorative practices require genuine preparation. They need at least a basic knowledge about what restorative justice is and how it is envisioned to operate. Without such preparation, the participants tend to conceive of restorative justice as retributive criminal justice. This tends to make the participants into objects of the process, rather than actors within the process. This situation could be remedied by spending more time with the participants in the pre-mediation to brief the participants about the restorative process.

What complicates this issue is the belief that governmentalities are created in the pre-mediation meeting thus restricting participants to utilize master signifiers to relate their experiences and placing restrictions on the ways in which the participants are able to express themselves. This makes the preparation of participants a delicate process, however, we cannot expect individuals to participate in a process in which they have traditionally been denied participation, and often evokes fear.

The second level upon which practitioners can attempt to elicit participation is within the mediation itself. This is already done by mediators through selective



facilitation. As I have noted, when it comes time to start creating agreements, the mediators tend to bring their focus in upon the victims, asking them what they need to have the harm repaired. This indicates that the mediation process is driven by those victim needs that are focused on offender compliance. This position must be reconsidered. The focus of mediation must to be on the needs of both victims and offenders. If mediators fail to uncover and address the needs of the offenders, or fail to bring need-meeting services to both victims and offenders, then the harm producing behaviors that we hope to stop are likely to persist.

Finally, we need to acknowledge that a level playing field is virtually impossible to create. Practitioners need to be aware of the power dynamics that exist within the mediation or other restorative practices. Behaviors which deepen the impact of the power dynamics inherent within mediation must be acknowledged and limited. As I have suggested, removing the power dynamics from mediation is not likely, if possible at all. However, actions can be taken to reduce the effect that these dynamics impose on mediation. I have argued that power dynamics, for example, are one source of the low levels of participation by many offenders. This may require the particular attention of the mediators. Offenders need to know that their contributions are valued and essential to the restorative practice. This care is already taken regarding the victims, but appears to be lacking when it comes to the offenders. Similarly, victim lecturing of offenders should be limited within the mediation as this tends to deepen the impact of the power dynamics already experienced in mediations.

To be certain, I am not suggesting that power dynamics can be removed entirely, but practitioners need to be aware of such dynamics and be prepared to limit the impact

that these dynamics play in mediation so as to ensure participation and contributions from all. Doing so will greatly increase the potential for recognition, empowerment, and having needs met for both the victims and offenders.

### **Limitations**

I must express some caution about the conclusions of this research due to the limitations of the study. In particular, the small number of cases observed at this BARJ center makes it rather difficult for me to draw conclusions about this program in general, let alone about restorative practices as a whole. Furthermore, this sample of observations represents in no way a random sample. The mediations observed were selected by judges and officers in this county to be eligible for the program. While there is no selection criteria, the cases, none the less, are selected and as such do not provide a randomized sample of cases. This opens the door for the possibility of selection bias.

This research is further limited due the nature of the data collected. A significant portion of the data to be analyzed for the research of my study's propositions was originally intended to come from interviews. Due to a lack of participation from eligible participants, particularly with regard to the interviews, the main sources of data became my observations and survey data. Most of the individuals involved in the mediations observed had no problem with my observing their mediation, however very few agreed to participate in an interview following the processing of their case through mediation. While the information I was able to collect represents an excellent foundation of data to be analyzed, I can not elaborate upon some of the study's original propositions to the extent that I had originally intended. For example, the interviews were intended to provide most of the data to evaluate the ability of these mediations to foster both

empowerment and recognition. The observations and the few questions regarding these issues in the survey data, while valuable, were not intended to provide the bulk of the data to be utilized to evaluate these issues. While these sources did provide useful data, this study lacks a significant source of data about these issues in particular.

### **Suggestions for Future Research**

My suggestions for future research about restorative justice revolve largely around those facets that I demonstrate are missing within the literature. You may recall that my literature review is divided into two parts. In Part One I discussed the non-empirical research about issues which are essential to restorative justice, but appear to be rarely evaluated. These issues include participation, community involvement, recognition, empowerment, power dynamics, and the extent to which restorative practices are in fact able to meet participant needs through mediation. Each of these issues is integral to restorative justice and represents the driving force behind the restorative justice movement. Restorative justice has the potential to provide so much more than agreements and to deliver on participant satisfaction. It is not that these issues are unimportant, but they are only a small portion of the restorative potential of restorative justice.

Furthermore, while observations of mediations are a good source of data, they are not sufficient in and of themselves. When it comes to issues of power dynamics, recognition, empowerment, comfort and ability to participate, and preparation or knowledge about restorative justice, the data that is desired must come from the mouths and minds of those who experienced the process. I find this particularly significant with regard to the notion of power dynamics and recognition. I was able to collect some

observations, however, identifying power dynamics or recognition within mediations can be a daunting task. The best source for such data can only be provided from the participants themselves. They must be given the opportunity to recount their own experiences and to tell their truth about their mediation. I would recommend the use of pre- and post-mediation interviews such as those I had intended to use within this research.

Research must aim to evaluate restorative practices beyond the level of participant satisfaction and the ability to create agreements. Just because a program claims to be restorative, we cannot simply regard it as so and assume restorative outcomes as given. Restorative practices are a work-in-progress. Evaluations such as these can help to shape the future of restorative justice and inform practitioners about what works and about the obstacles that stand in the way of achieving a justice that satisfies and restores people, repairs relationships, reintegrates participants, and meets needs.

**Appendix A**  
**Badger Model**

## BADGER: Stages of the Mediation Process

The process of mediation is a continuum which begins with at least two participants meeting face-to-face with a mediator and ends with a resolution to the conflict. There are six distinct parts to the process, which must unfold sequentially to lend order, efficiency, and fairness to the overall proceedings. The mediator's responsibility during each part of the process is summarized as follows:

### 1. Beginning the Mediation

- Greet the participants and make them feel at home.
- Identify yourself and the participants; find out how each person wishes to be addressed.
- Establish an informal relaxed atmosphere; provide each person with pencil and paper
- Explain the purpose of mediation and determine the willingness and capacity of the parties to participate.
- Clarify the ground rules of the mediation process.
- Assess the participants' readiness to begin.

### 2. Accumulating Information

- Ask the first party to begin by describing the dispute and any relevant background information you should know.
- Listen attentively; take notes if you find it helpful.
- Ask questions in a neutral voice, form your questions to get focused, pertinent information on the background and issues of the dispute.
- Maintain the information flow by focusing the participants' narration. Check with the participants to make sure you understand what she/he is saying.
- Be aware of statements that are repeated during the presentation, as these often hold the key to underlying issues and eventual resolution.
- Ask each party to identify precipitating problem in their dispute.
- Look for any underlying fundamental issues which may be at the root of the complaint.
- Pay close attention to the behavior and body language of both participants.
- Handle emotions and disruptive behavior calmly but authoritatively.
- Summarize the first participant's story as objectively as possible; identify the key issue which the first participant's story has brought forth in his/her description of the situation.
- Repeat these steps with the second party.

### 3. Developing the Agenda

- Define the problem by restating and summarizing each participant's statements.
- Summarize areas of agreement and disagreement on the issues involved in the dispute.
- Assist the participants in prioritizing the issue and their demands.

### 4. Generating Options

- Inquire if either party has any suggestions for resolving the conflict.

- Brainstorm.
- Restate and summarize each alternative.
- Assist the participants in evaluation the fairness and workability of each proposed solution.
- Suggest other possible alternatives in general terms If an impasse is reached.
- Encourage the participants to select the alternative which they believe to be the most workable.
- If needed, restate the alternative selected to ensure that both parties understand them.
- Assist the parties in selecting objective criteria for proposed solutions.

5. Escape to Caucus

- Steps under #4 above may be done privately with each party.

6. Resolving the Dispute

- Summarize the agreement terms.
- Check with each participant regarding the workability of the resolution and their confirmation of the terms.
- Establish a follow-up procedure with each party for signing the agreement and checking to see if its terms have been carried out.
- Emphasize the agreement is the result of their cooperative efforts and that they both have a stake in making it work.
- Congratulate the participants on their successful resolution of their dispute.

**Appendix B**

**Victim Pre-Mediation/Conference Interview Protocol**



1.
  - a. Can you tell me about the type of harm you suffered and how this has affected you?
  - b. What needs do you have as a result of this harm?
  - c. What do you need to make the relationship between you and the offender right?
  - d. What do you need to feel satisfied with the mediation process?
  - e. What will it take to repair the harm caused by the offender's actions?
  - f. Do you have any other needs?
  
2.
  - a. From where/who have you received the most support during this difficult time?
  - b. How have they helped you?
  - c. How have your friends and family responded to your victimization?
  - d. Has this helped you? If so, how?
  - e. Could anyone have done more? If so who and, what?
  
3.
  - a. Has the community been involved, thus far, in your case?
  - b. How did they respond to your victimization?
  - c. Were they helpful? If so, how?
  - d. Are you aware of any services in your community for victims such as yourself?  
If so, Have you used any of them?
  - e. What could the community have done to respond more effectively to your Needs?
  
4.
  - a. Did you know the offender prior to his/her harm causing behavior?
  - b. How did you feel about the offender immediately following the harm he/she caused?
  - c. Why did you agree to participate in the mediation process?

**Appendix C**

**Victim Post-Mediation/Conference Interview Protocol**

1.
  - a. Did you feel respected during the mediation process? If so, how?
  - b. By whom?
  
2.
  - a. Did you have the opportunity to tell your story?
  - b. Did you explain how the crime affected you?
  - c. How did the offender respond?
  - d. How did participating make you feel?
  - e. Were you apprehensive about participating at any point? Why?
  
3.
  - a. Was an apology important to you? Why?
  - b. Did you receive an apology?
  - c. Did you perceive this apology as sincere?
  - d. What exactly did it mean to you?
  
4.
  - a. Did the offender explain why he/she harmed you?
  - b. Did you understand this explanation?
  - c. Was it sufficient?
  - d. Has the mediation helped you to understand the offender as a person? If so, how? If not, explain.
  - e. Do you feel differently about the offender having experienced the mediation? If so, how? If not, why not?
  - f. Do you feel differently now towards the offender? If so, how?
  - g. Were all of your questions about the crime/offender answered? If not, how so? If not, what other questions did you have?
  
5.
  - a. Do you feel safer as a result of the mediation between you and the offender? If so, how? If not, why not?
  
6. Think back to the needs you expressed before the mediation.
  - a. Were you able to express any of these needs in the conference? If so, how? If not, why?
  - b. Where any of these needs met? If so, which ones? How?
  - c. Which ones specifically were not met? Does this affect your satisfaction with the mediation? If so, how?
  
7. With regards to the agreement produced in the mediation.
  - a. Are you satisfied with it? Why? Why not?
  - b. Did you contribute to the decisions made about the agreement?
  
  - c. Is there anything else you would have liked included in the agreement? If yes, what?

8.
  - a. Has the mediation helped you to regain a sense of control over your life? If so, how? If not, explain?
  - b. Did the mediation make you change the way you feel about yourself?
  - c. Do you feel you have been restored by the mediation? How? If not, explain?
  
9.
  - a. Did you have any supporters attending the mediation with you?
  - b. Did you feel supported during the mediation? If so, how and by whom?
  - c. Did you feel unsupported during the mediation? If so, how and by whom?
  
10.
  - a. Did the mediation make you aware of any support services that your community has to offer victims like yourself? If so, do you intend to use any of them?
  - b. Was the community involved in your mediation in any way? If so, how?
  - c. Do you feel safer returning to your community/neighborhood as a result of the mediation?
  
11.
  - a. How do you think your experiences with the mediation process are different than that which you would have experienced in going to court?
  - b. Knowing what you know now, if you could go back, would you choose to participate in mediation again?
  
12.
  - a. Do you think this mediation between you and the offender(s) had an effect on the offender? If so, how? If not, explain.
  - b. Do you think that he/she is likely to re-offend?
  
13.
  - a. Has the mediation process been difficult in any way? If so, how?
  - b. Do you feel better or worse as a result of the mediation with the offender?
  - c. Did you experience further harm as a result of the mediation process? If so, describe.
  - d. What could have been done to stop or limit this harm brought upon you?
  
14.
  - a. What was the most significant part of the mediation process for you?

15.
  - a. Is there anything else you would like to share about the process or the outcomes of your mediation?

**Appendix D**

**Offender Pre-Mediation/Conference Interview Protocol**

1. Can you tell me about the type of harm that brought you to mediation and how this has affected you?
  - a. Did your actions which caused the harm in this case arise out of a need(s) of yours that was not being met? If so, what are those needs?
  - b. What do you need to ensure that you will not continue to harm others in your community?
  - c. Are you aware of any services in your community to help individuals like you to meet their needs?
  - d. Are there any other needs you would like to express?
  
2.
  - a. From where/whom have you received the most support during this difficult time?
  - b. How have they helped you?
  - c. How have your friends/family responded to your victimization?
  - d. Has this helped you? If so, how? If not, explain.
  - e. Could anyone have done more, or reacted differently? If so, what?
  
3.
  - a. Do you feel that the community was harmed in any way by your actions? If so, how?
  - b. Has the community been involved in your case thus far?
  - c. Did you feel any remorse or shame as a result of your harmful actions? If so, from whom?
  - d. How did this make you feel?
  - e. What could the community have done to respond to your needs more effectively?
  - f. How would this have helped you?
  
4.
  - a. Did you know the victim(s) prior to your harm-causing actions?
  - b. Right after you committed the harmful actions which brought you here, did you think about the victim(s)?
  - c. Did you think about how they would be affected by your harm?
  - d. What did you think about him/her and how they would be affected?
  - e. Regarding the victim, do you think that your actions have created some needs for them? If so, what kind of needs?
  
5.
  - a. What needs to be done to make the relationship between you and the victim right?

**Appendix E**

**Offender Post-Mediation/Conference Interview Protocol**



1.
  - a. Did you feel respected during the mediation process? If so, how?
2.
  - a. Did you have the opportunity to tell your story?
  - b. How did the victim respond?
  - c. Did you explain how the events affected you?
  - d. How did participating make you feel?
  - e. Were you apprehensive about participating at any point? If so, why?
3.
  - a. Did the victim explain how the crime affected them?
  - b. Did you think that the victim's response to how they were affected/harmed was sincere?
  - c. Did you think it was truthful?
  - d. How did this affect you?
  - e. Has the mediation helped you to understand the victim as a person? If so, how? If not, explain.
  - f. Do you feel differently about the victim having experienced the mediation? If so, how? If not, explain.
4.
  - a. Did you take responsibility for the harmful actions that brought you here? If so, how and why? If not, why not?
  - b. Do you think that you were able to repair the harm that was caused by your actions? If so, how?
  - c. Do you think that the victim would agree that the harm was repaired? If so, why?
5.
  - a. With regards to the agreement produced in the mediation, are you satisfied with it? Why/not?
  - b. Did you contribute to the decisions made about the agreement?
  - c. Do you feel that the agreement is too harsh on you? If so, how?
6.
  - a. Did you offer the victim an apology? If so, why? If not, explain.
  - b. Was your apology sincere?
  - c. How did it make you feel?
  - d. How was your apology received by the victims?
7. Recall the needs you expressed in the pre-conference interview.
  - a. Were you able to express any of these needs in the conference? If so, how? If not, explain.
  - b. Were any of these needs met? If so, how? If not, explain.
  - c. Which ones specifically were not met? How will this affect you?

8.
  - a. Was the community involved in your mediation? If so, how?
  - b. Do you feel as though you have been reconciled with the community for the harm you caused? If so, how?
  - c. Have members of the community demonstrated any forgiveness? If so, how?
  - d. How has your relationship with your community been changed by the mediation process?
  - e. Did the mediation process make you aware of any services in your community for people who have harmed others?
  
9.
  - a. Has the mediation helped you to regain a sense of control over your life? If so, how? If not, explain.
  - b. Did the mediation make you change the way you feel about yourself?
  
10.
  - a. Did you have supporters who attended the mediation with you?
  - b. Did you feel supported during the mediation? If so, how?
  - c. Did the victim offer any support?
  - d. Did the victim offer their forgiveness? If so, how? If not, why do you think this did not occur?
  
11.
  - a. How do you think your experiences with the mediation process are different than those that that you would have experienced in going to court?
  - b. Knowing what you know now, if you could go back, would you choose to participate in mediation again?
  
12.
  - a. Has the mediation been difficult in any way? If so, how?
  - b. Do you feel better or worse as a result of the mediation with the victim?
  - c. Did you experience further harm as a result of the mediation process? If so, how?
  - d. What could have been done to stop or limit the harm brought upon you?
  
13.
  - a. Is there anything else you would like to share about the process or the outcomes of your mediation?

**Appendix F**  
**Victims Post-Mediation Survey**

This questionnaire is an opportunity for you to evaluate the Balanced & Restorative Justice program (BARJ). Your answers will be kept confidential and will not influence the outcome of your case in any way. You are not required to fill out this form but your answers and suggestions will be helpful to the program.

I am glad that I had the opportunity to meet with the offender(s)

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel the offender(s) took full responsibility for their offense.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel the offenders listened to me.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel that this process helped the relationship between the offender(s) and myself.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

The offender(s) offered to repay my losses.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel that the staff and volunteers at The Restorative Justice Center treated me fairly.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I am happy that The Restorative Justice Center offered this program.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel this program helped me feel better.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I participated in this program to get justice.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I am satisfied with the program in general.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I was given the opportunity to ask for what I wanted.

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

**Appendix G**  
**Offender Post-Mediation Survey**

This questionnaire is an opportunity for you to evaluate the Balanced & Restorative Justice program (BARJ). Your answers will be kept confidential and will not influence the outcome of your case in any way. You are not required to fill out this form but your answers and suggestions will be helpful to the program.

I was prepared to meet the victim(s)  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel good about apologizing to the victim(s)  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I took full responsibility for my offense.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I agreed to repay the victim(s) for their losses.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel the victim(s) listened to my side of the story.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

The victim said what they wanted to make things right.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel that this process has helped the relationship between the victim(s) and myself.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I know the community was affected by my actions.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I feel that the staff and volunteers at The Restorative Justice Center treated me fairly.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

This meeting has been helpful to me.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

I am satisfied with the program in general.  
 Strongly Agree      Agree      Unsure      Disagree      Strongly Disagree

## **Appendix H**

### **VOM and FGC Introduction**

The Restorative Justice Center  
Victim Offender Mediation & Family Group Conferencing  
Introduction

WELCOME... THANK YOU FOR PARTICIPATING....

(Check name and address)

\_\_\_\_\_ and I are unpaid volunteers trained through the SCAO.

- We are non-judgmental
- We do not tell you what to do
- We assist you in coming to an agreement

Explain CONFIDENTIALITY (Sign forms)

Our purpose here today is six fold:

1. Examine what happened. (victim first)
2. Help the offender understand the harm done to:
  - a. the victim
  - b. the victim's family
  - c. the community
  - d. the offender's family
  - e. the offender
3. Help the victim understand the offender's motives.
4. To the extent possible, identify what needs to be done to repair the harm..
5. To the extent possible, arrange compensation for the victim and the community.
6. To the extent possible, reconnect the offender to the families and the community.

**RULES:**

1. No interruptions
2. Civility
3. Destruction of notes to ensure confidentiality

**QUESTIONS?**

**DO YOU ACCEPT THESE RULES?**



**Appendix I**  
**Analysis Plan**

Proposition	Interview Items		Survey Items
1. Restorative justice, in particular victim offender mediation can produce a peaceful justice in which the participants believe that the situation has been made right, and neither party has been subject to further harm.			
a. The situation was made right. The harm created by the offender's actions was repaired.	Victim Pre Questions 1(a-f)	Victim Post Questions 3 (a-d), 5 (a), 8 (c), 11(a,b)	Victim Survey Questions 2,5,6,7,9,10
	Offender Pre Questions 1 (a-e), 5 (a)	Offender Post Questions 4 (a-c), 6 (a-d), 11 (a,b)	Offender Survey Questions 2,3,4,6,7,10,11
b. An agreement was created as part of the mediation/conference process.	Victim Pre Questions N/A	Victim Post Questions 7 (a-c)	
	Offender Pre Questions N/A	Offender Post Questions 5 (a-c)	
c. All participants were treated with respect.	Victim Pre Questions N/A	Victim Post Questions 1 (a,b)	Victim Survey Questions 3,6,10
	Offender Pre Questions N/A	Offender Post Questions 1 (a-b)	Offender Survey Questions 5,6,9,11
d. No further harm, to either victim or offender, is caused by the mediation/conference.	Victim Pre Questions N/A	Victim Post Questions 13 (a-d)	Victim Survey Questions 1,6,10
	Offender Pre Questions N/A	Offender Post Questions 12 (a-d)	Offender Survey Questions 1,9,11
e. Victims and offenders experience the support of their family and community.	Victim Pre Questions N/A	Victim Post Questions 9 (a-c), 10 (b)	Victim Survey Questions N/A

	Offender Pre Questions N/A	Offender Post Questions 10 (a,b)	Offender Survey Questions 8
2. The community, as defined narrowly by the participants' close knit community including family, friends, and other individuals close to the participants, as well as the larger communities in which the participants reside have a role to play in restorative justice.			
a. Victims and offenders experience the support of their family, friends and others with whom they have a close connection.	Victim Pre Questions 2(a-e)	Victim Post Questions 9 (a-c)	Victim Survey Questions N/A
	Offender Pre Questions 2 (a-e)	Offender Post Questions 10 (a,b)	Offender Survey Questions N/A
b. Victims and offenders experience the support of their larger communities.	Victim Pre Question 3(a-e)	Victim Post Questions 9 (a-c)	Victim Survey Questions N/A
	Offender Pre Questions 2 (a-e), 3 (a-f)	Offender Post Questions 8 (a-e)	Offender Survey Questions N/A
c. Participants become aware of the assistance available in their communities to help them meet their needs.	Victim Pre Questions N/A	Victim Post Questions 10 (a-c)	Victim Survey Questions N/A
	Offender Pre Questions 1(d)	Offender Post Questions 8 (e)	Offender Survey Questions N/A
3. Victim offender mediation represents a needs-based justice. A needs-based justice works to make the situation right by addressing the needs of all interested parties with no preference. Interested parties include the victims and offenders.			

a. All participants were given the opportunity to contribute to the mediation/conference.	Victim Pre Questions N/A	Victim Post Questions 2 (a-e), 7 (b), 11(a)	Victim Survey Questions 3,11
	Offender Pre Questions N/A	Offender Post Questions 2 (a-c),	Offender Survey Questions 5,6
b. Victims and offenders are able to express their needs and to have those needs addressed.	Victim Pre Questions N/A	Victim Post= Questions 6 (a-c), 11(a)	Victim Survey Questions 11
	Offender Pre Questions N/A	Offender Post Questions 7(a-c), 11 (a)	Offender Survey Questions N/A
c. An agreement was created as part of the mediation/conference.	Victim Pre Questions N/A	Victim Post Questions 7 (a-c)	Victim Survey Questions N/A
	Offender Pre Questions N/A	Offender Post Questions 5 (a-c)	Offender Survey Questions N/A
d. Victims and offenders experience the support of their family and community.	Victim Pre Questions 2 (a-e)	Victim Post Questions 9 (a-c)	Victim Survey Questions N/A
	Offender Pre Questions 2 (a-e)	Offender Post Questions 10 (a,b)	Offender Survey Questions 8
4. Restorative justice leads to awareness for each party that the other is human. The events become personalized, and this changes how the participants perceive one another. Victim(s) gain empathy for the offender(s) and it makes it difficult for the offender(s) to deny the harm caused by his/her actions.			

a. All participants were given the opportunity to contribute to the mediation/ conference.	Victim Pre Questions N/A	Victim Post Questions 2 (a,b), 7 (b), 11 (a)	Victim Survey Questions 3
	Offender Pre Questions N/A	Offender Post Questions 11 (a), 5 (b), 7 (a)	Offender Survey Questions 5,6
b. Each party has the opportunity to tell their story.	Victim Pre Questions N/A	Victim Post Questions 2 (a,b), 11(a)	Victim Survey Questions 3
	Offender Pre Questions N/A	Offender Post Questions 2 (a,c), 11 (a)	Offender Survey Questions 5,6
c. Each party gains an awareness of the other that failed to exist prior to mediation/conferencing.	Victim Pre Questions 4 (a-c)	Victim Post Questions 4 (a-d), 11(a), 12 (a-b)	Victim Survey Questions 4,8,9
	Offender Pre Questions 4 (a-e)	Offender Post Questions 3 (a-f), 10 (c,d), 11 (a)	Offender Survey Questions 7
5. The victim offender mediation process can empower victims and offenders. Empowerment is a key element in the healing process. Empowering victims and offenders means restoring their sense of self worth and dignity. It means restoring, to them, a sense of power over the experiences in their lives.			
a. All participants were given the opportunity to contribute to the mediation/conference.	Victim Pre Questions N/A	Victim Post Questions 2 (a,b), 7(b), 11 (a)	Victim Survey Questions 3

	Offender Pre Questions N/A	Offender Post Questions 5 (b), 7 (a), 11 (a)	Offender Survey Questions 5,6
b. Each party has the opportunity to tell their story.	Victim Pre Questions N/A	Victim Post Questions 2 (a-b), 11 (a)	Victim Survey Questions 3
	Offender Pre Questions N/A	Offender Post Questions 2 (a,c), 11 (a)	Offender Survey Questions 5,6
c. Victims and offenders are empowered by the mediation/conference	Victim Pre Questions N/A	Victim Post Questions 2 (a-e), 5 (a), 8 (a-b), 11(a)	Victim Survey Questions 4
	Offender Pre Questions N/A	Offender Post Questions 2 (d-e), 9 (a-b), 11 (a)	Offender Survey Questions 8,11

**Appendix J**  
**Participant Demographic Information**

Med. # V. Sex O. Sex V. Age O. Age V. Race O. Race Rel.

1	M	M	Adult	Juv.	White	White	No
1	F	M	Adult	Juv.	White	White	No
2	F	M	Adult	Juv.	White	White	No
3	M	M	Adult	Juv.	White	White	No
4	M	M	Juv.	Juv.	Interracial	Black	No
5	F	F	Juv.	Juv.	Interracial	Black	No
6	M	M	Adult	Juv.	White	White	No
7	F	M	Adult	Juv.	White	Black	No
8	M	M	Adult	Adult	White	White	No
8	F	M	Adult	Adult	White	White	No
9	F	M	Adult	Juv.	White	Black	No
9	F	M	Adult	Juv.	White	Black	No
9	F	M	Adult	Juv.	White	Black	No
9	F	M	Adult	Juv.	White	Black	No
9	F	M	Adult	Juv.	White	Black	No
10	M	M	Adult	Juv.	Black	Black	Yes
11	F	M	Adult	Juv.	Black	Interracial	Yes
12	F	M	Adult	Juv.	White	White	Yes
13	F	F	Adult	Juv.	Black	Black	Yes
14	M	M	Adult	Juv.	White	White	No
14	M	M	Adult	Juv.	White	White	No



As this table demonstrates there were adult victims and juvenile offenders in 11 of the 14 mediated cases. Furthermore, the victim and offenders had a previous relationship in that the victim held a superior position over the offender in four of the cases. Males were the offenders in all but two cases although there was much greater variation amongst the victims. The victim was a female in nine of the mediated cases, and males were the victims in seven. Note that several mediations are listed more than once in the table, this is due to the fact that several cases had either multiple victims or offenders.

**Appendix K**

**Summary of Agreement Stipulations**

Med. #    Apology    Restitution    Education    Promise    Chores/wk.    Com. Service

1	X		X			
2	X	\$100			X	
3	X		X	X		
4	X			X		
4	X			X		
5	X			X		
6		* \$427			X	
7	X					
8	N/A	N/A	N/A	N/A	N/A	N/A
9	X					150 hours
9	X					150 hours
9	X					150 hours
9	X					150 hours
9	X					150 hours
10	X		X			
11	X				X	12 hours
12				X	X	
13	X		X	X	X	
14	N/A	N/A	N/A	N/A	N/A	N/A

\* In this cases, restitution must be paid only in the case of failure to comply with other aspects of the agreement.

N/A means that no agreement was produced in the mediation.

**Appendix L**  
**HSIRB Approval**

HSIRB approval forms are on file with the graduate college.

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