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MEDIATION INTERVENTIONS AND RESTORATIVE POTENTIAL: A CASE STUDY OF JUVENILE RESTITUTION

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I. INTRODUCTION ................................... 90
II. RESTITUTION: AN OVERVIEW .................. 91
III. MEDIATION INTERVENTION IN JUVENILE RESTITUTION .......... 93
A. The Use of Mediation ................................ 93
B. Beneficiaries and Impact ............................ 94
IV. JUVENILE RESTITUTION AND COMMUNITY MEDIATION IN DALLAS .......... 96
A. The Program ..................................... 96
B. Case Profile ...................................... 97
C. Observations ....................................... 99
V. RETRIBUTION OR RESTORATION? ................. 99
A. The Punitive Imprint of Restitution ............... 100

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I. INTRODUCTION

The availability of restitution as a disposition for juvenile offenders appears to be widespread in the United States. It is estimated that 97% of juvenile courts include restitution among their menu of possible outcomes, and that 52% of juvenile courts utilize formal restitution programs.¹

This paper explores a far less prevalent variant of juvenile restitution, distinguished by the use of mediation to reconcile victims and offenders and to establish the specific terms of restitution by consensus. In addition to general discussions of restitution and mediation, a more focused descriptive profile of mediation interventions in juvenile restitution for Dallas, Texas, is presented. Drawing from case materials and the direct involvement of the authors as third party neutrals in juvenile restitution, the mediation component of this program is further scrutinized for its adequacy for addressing needs of victims and offenders within what Zehr identifies as retributive and restorative paradigms of justice.² The mediation of juvenile restitution cases demonstrates considerable promise as a process of restoring good will. Narrower, circumscribed views and practices of restitution as a mechanism simply of recovering property value and/or sanction, it will be argued, unnecessarily forego opportunities to address lingering needs of victims, offenders, and the community. Finally, selective dimensions of performance, more suitable for restorative rather than conventional strategies, are proposed. These speak to and accentuate the unique program outputs and impacts of alternative, consensus-based justice programs.


II. RESTITUTION: AN OVERVIEW

Within its larger context of formal adjudication, restitution is a mechanism through which offenders compensate victims, directly or indirectly, for damages. Restitution orders and agreements generally involve property that is lost, damaged, or destroyed, and/or costs of injury (medical expenses, lost income, etc.). Unlike public victim compensation programs (i.e., public grants) that draw from general funds and revenues specifically accumulated and earmarked for victims of crimes, restitution implies the direct accountability of offenders to their victims.

Restitution, an "ancient institution," takes a variety of contemporary forms. The most prevalent practice involves offenders making monetary payments directly to their victims, followed in frequency by community service (i.e., the "surrogate" victim), direct service to victims, and in rare instances, monetary payments to the community. Hypothetically, these methods of direct and indirect restitution are determined by, and are responsive to, the capacity of offenders to pay and provide service, and the needs (i.e., the demonstrable costs of crime) of victims. It is noteworthy that divergent preferences for the mode of restitution exist. For example, while victims prefer direct monetary restitution and community service to direct victim service, public opinion supports direct victim service as the most desirable form of restitution, while juvenile justice professionals prefer monetary restitution to victim service and community service. In practice, however, an instance of restitution may involve combinations of these forms, and may be coupled as well to other treatment strategies and sanctions in a single juvenile court disposition.

Numerous rationales for the use of restitution for property offenses can be cited. Where the basis of conflict is property damage, restitution is


5. P. Schneider, supra note 1, 2-3.


viewed as an appropriate and satisfactory remedy. The manner of determining loss and assigning an amount of restitution is felt to be a relatively easy and straightforward process. Victims can recover losses through restitution when offenders are placed in community correctional settings while incarceration precludes such a possibility. Additionally, restitution is felt to be responsive to victims' needs, an occasion of accountability for offenders (that may in turn have a positive significant impact on rehabilitation), and a satisfactory remedy for the needs of juvenile and criminal courts for diversion or an alternative to incarceration.

While certainly not exhaustive, such rationales generally speak to the efficacy of restitution and, to a certain extent, evaluations of the performance of juvenile restitution programs are in keeping with this optimism. A cursory review of research findings on experimental juvenile restitution programs suggests, for example, that restitution generally has a positive impact on recidivism. Even most serious offenders are likely to complete their restitution and are unlikely to fail by reoffending. Persons participating in restitution have lower recidivism rates than those receiving traditional dispositions. Further, restitution will be relatively successful irrespective of organizational arrangements. Some determinants of success appear to be the use of restitution as a sole sanction versus one of several conditions of probation, and the size of the restitution order (generally, less than


11. Schneider, Restitution and Recidivism Rates of Juvenile Offenders: Results From Four Surveys, 24 Criminology 533-52 (1986).

12. P. Schneider, Restitution as an Alternative Disposition for Serious Juvenile Offenders 6 (unpublished work 1982) (available through Pacific Institute for Research and Evaluation, Walnut Creek, California).


15. Schneider, Griffith & Schneider, Juvenile Restitution as a Sole Sanction or Condition of Probation: An Empirical Analysis, 19 J. of Res. in Crime & Delinq. 47-65 (1982); A. Schneider & P. Schneider, The Effectiveness of Restitution as a Sole Sanction and as a Condition of Probation: Results from an Experiment in Oklahoma County 5-28 (unpublished work 1984) (available through Institute for Policy Analysis, Eugene, Oregon).
$100), which has been found to be a better predictor of success than the number of prior offenses\textsuperscript{16} or the seriousness of the crime.\textsuperscript{17}

The forms, rationales, and performance of restitution discussed above are operationalized in a variety of organizational processes and practices of juvenile courts.\textsuperscript{18} A single method of determining restitution, one that employs the use of mediation, will be discussed for the remainder of this paper. Drawing from case file data and impressions gathered from direct involvement in the mediation process, attributes of this form of restitution are profiled, and the strategy of mediating such cases is contextualized within the larger framework of restorative justice.

III. MEDIATION INTERVENTION IN JUVENILE RESTITUTION

A. The Use of Mediation

As noted earlier, the use of restitution is widespread in juvenile courts, and about half of these courts are affiliated with formal restitution programs. It appears, however, that only a fraction of such dispositions and programs employ mediation as a means of determining restitution.

The paucity of data on these mediation programs makes the use of proxy materials inescapable. One such source of information is the National Victim-Offender Reconciliation Resource Center which has located forty-seven mediation programs in seventeen states that specifically take referrals from component criminal/juvenile justice organizations for face-to-face meetings between victims, adult and juvenile perpetrators, and mediators. In these programs (several of which are in early stages of development), mediation and restitution are utilized in the effort to reconcile victims and offenders involved in incidences of vandalism, burglary, battery, petty theft, criminal mischief, malicious destruction of property, robbery, and auto theft. Self-reported statistics reveal that 55\% of these restitution programs receive juvenile referrals, with approximately 54\% of the aggregate juvenile caseload involving felony matters. Thirty-eight percent of the programs report that more than half of their total caseload involves mediation of juvenile offenses.

\begin{itemize}
\item \textsuperscript{16} W. Griffith, Rates of Successful Completion of Restitution Requirements in Juvenile Restitution: A Multivariate Analysis (unpublished work 1982) (available through Institute for Policy Analysis, Eugene, Oregon).
\item \textsuperscript{17} P. Schneider, \textit{supra} note 1, 4-5.
\item \textsuperscript{18} \textit{GUIDE TO JUVENILE RESTITUTION: RESTTA} (A. Schneider ed. 1985) (available through the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, D.C.).
\end{itemize}
Optimally, mediation is a process through which parties to a dispute, meeting face-to-face in the company of a trained mediator/facilitator, achieve a degree of consensus -- usually formalized in an agreement -- concerning expected arrangements and performance designed to dissipate the conflict. Mediation intervention in restitution targets consensual agreements that specify the amount and form(s) of restitution, as well as a repayment schedule or timeframe. Such an agreement may stand as the solitary outcome of juvenile processing (as either a diversion or a disposition), or may be coupled with other treatment, sanction, or collateral condition(s) of the juvenile court disposition (e.g., probation). In addition to addressing the compensation of victims, mediation of restitution cases is also assumed to provide a setting and process for reconciliation of offenders and victims.  

B. Beneficiaries and Impact

A host of benefits from mediation of juvenile restitution cases have been identified, and for the most part, these appear to have some validity based upon the direct experience and impressions of the authors as mediators. These both amplify and supplement the various attributes of restitution generally. Benefits accrue to four major actor groups in the justice equation: offenders, victims, the community, and juvenile justice organizations.

For offenders, mediation provides a setting for accountability where offenders must confront, and are confronted by, the harms and ensuing responsibility for their actions in face-to-face meetings with their victims. Offenders are also accountable to co-offenders as proportional responsibility for harms (one’s share of damages) is determined. Mediation is also an opportunity for juvenile offenders to participate directly in both the process of determining restitution and compensating the victim or the community (e.g., community service). The process and outcome may empower juveniles as well, if strategies for confronting or solving future troubles are learned. Less tangible benefits are also distinct possibilities, such as reducing the likelihood of future delinquency, cultivation of an appreciation of the rights of others, and an understanding of the larger (community) impact of delinquency. Juveniles and their guardians may also find restitution in the community beneficial (irrespective of whether it is mediated or court-ordered) when it functions as an alternative for either removal from the community (e.g., incarceration) or a civil suit for damages.

Victims, like offenders, become directly involved in the process of determining the terms of restitution, and are usually recipients of at least partial compensation for losses as a result of restitution by offenders. Mediation provides a forum for communication where victims may learn details of a crime and seek additional information (e.g., how to locate missing property). Mediation is an opportunity for victims to confront their offenders, and to "humanize" the "criminal" who caused them harm. It may be an occasion as well for reconciliation, and the active participation of victims in the rehabilitation of offenders. Direct involvement in the mediation process may result in at least the partial satisfaction of the needs of victims, that is, to be taken seriously, to receive some redress for losses, and to confront their antagonists.

Many community and organizational benefits from mediation of restitution cases are complimentary. Successful restitution may reduce cynicism about offender accountability and victims' rights in the operation of the justice system, while improving confidence in organizations and practices that "work" for victims. Successful resolution of disputes in the form of restitution may decrease future trouble as well, either through rehabilitation of offenders generally, or by defusing specific animosities between offenders and victims. The process of reconciliation that may be activated in the mediation setting may assist in healing a torn environment (e.g., neighborhood reconciliation) by helping to reestablish positive ties between victims and offenders who will have an ongoing and future relationship. It may be possible, as noted by Eglash\(^\text{20}\) and Schafer,\(^\text{21}\) that restitution improves preexisting relationships by bringing protagonists "functionally together." Speaking to a broader impact of restitution, Deming proposes an outcome of considerable sweep and dimension: "[c]orrectional restitution is a means of promoting a sense of community in an impersonal mass society by personalizing the effects of the criminal act and the process of reparation."\(^\text{22}\) Compared to other dispositions, restitution is cost-effective, and may be less likely to be itself a precipitator of future trouble (as other punitive sanctions might be). In the view of some, mediation of restitution is a community-based process that promotes consideration of community needs among victims, offenders, and juvenile justice organizations.

While selective, the composite of these benefits for offenders, victims, communities, and justice organizations suggests that the coupling of the


\(^{21}\) S. Schafer, Restitution to Victims of Crime 3 (1960).

mediation process with the mechanism of restitution may significantly expand the parameters and promise of the latter. The empirical validation of these benefits from mediation interventions in juvenile restitution is an ambitious research agenda, an effort well beyond the scope of this paper. However, a more modest appraisal of a combined mediation and restitution program in Dallas, Texas, is instructive, and serves as a point of departure for clarification and elaboration of several of the foregoing points.

IV. JUVENILE RESTITUTION AND COMMUNITY MEDIATION IN DALLAS

A. The Program

In 1982, the Dallas County Juvenile Department established an offender-oriented restitution component of its general rehabilitation and treatment program for both adjudicated offenders and diverted youth. As provided by statutory authority,23 the Mediation and Victim Services Program places variable emphasis upon community service restitution, victim services, and financial restitution. Since 1982, the Dallas County Juvenile Department has delegated to Dispute Mediation Service (DMS; a private, non-profit community mediation agency) a portion of its juvenile restitution caseload for mediation.

Dispute Mediation Service, incorporated in 1981, has been funded since 1983 through a special civil court filing fee assessment that is set aside for alternative dispute resolution programs and initiatives in Dallas County. The agency enjoys, and depends upon, broad-based community support. For example, its mediator staff is made up almost exclusively of trained community volunteers, most of whom are college graduates, distributed evenly between the ages of 30-60, and who represent a diversity of occupational backgrounds, interests, and expertise. As a community mediation service, DMS addresses many different types of conflict that are amenable to mediation and conciliation; it is clear, however, that juvenile restitution mediations have become one of the organization's specialties and preferences.

The decision rules controlling which juvenile cases were referred by intake workers of the Juvenile Department (or the Juvenile District Attorney Liaison) to DMS during the period of 1982-1985 included criteria on the type of offense, prior record, the extent of property loss, and the prognosis for future encounters with the Juvenile Department based upon home and school situations (i.e., the suitability for diversion). Generally, juveniles without lengthy prior records with the Juvenile Department (and

not under current jurisdiction for previous offenses, that is, on probation), who were both eligible for and elected a diversion program, and who (allegedly) committed property offenses where loss did not exceed $2,000, could be referred to DMS. Other juvenile cases were retained by the Juvenile Department where restitution (if utilized) might be mediated and/or court-ordered. From 1982-1985, the juvenile restitution cases that were referred to DMS by the Juvenile Department for mediation appear to have involved nonjudicial intervention exclusively. For these 223 cases, restitution was the sole component of diversion, and participation had been elected by offenders and/or guardians. When victim(s) and offender(s) were successful in achieving a mediated restitution agreement, no additional formal encounters with the Juvenile Department concerning the offense in question took place.

B. Case Profile

During the period from 1982 to mid-1985, a total of 223 cases were referred to DMS from the Dallas County Juvenile Department. Each of the cases represented a file which had been opened by the Juvenile Department on an apprehended youth. These 223 cases concerned 126 independent events, involving a total of 208 juveniles. The caseload included juveniles accused of committing multiple offenses, and any single event might involve one or more perpetrators and victims.

Most information on the DMS juvenile caseload was self-reported, obtained during intake procedures of either the Juvenile Department or DMS. While the statistical significance of this data is of concern, due both to the small number of referred cases and the amount of missing information in case records on key variables, a descriptive profile of selective case features indicates preliminarily the contours of the mediation process and outcomes.

The majority of DMS juvenile cases were resolved, or closed for particular reasons, within a single month of their referral to the agency. In most cases (68%) a restitution agreement was achieved either through face-to-face mediation between offenders and victims (33%), or through conciliation, a process where agreements are obtained without face-to-face negotiations generally through a series of telephone conversations between a mediator and parties to the dispute (35%). A small percentage of attempted mediations and conciliations were unsuccessful (4%). The remaining cases were closed without mediation, conciliation, or a restitution agreement for a number of reasons. Prominent among these was the refusal of victims to participate in negotiations with offenders (12%), and unsuccessful attempts to contact the parents or guardians of the juvenile offender (9%). To a lesser extent, the unwillingness of parents of offenders
to participate, unsuccessful attempts to contact victims, and the referral of cases to other social/human service agencies also resulted in cases which were closed without mediated restitution agreements.

Information on victims and offenders reveals patterns of characteristics and relationships which add several significant dimensions to efforts to achieve mediated restitution agreements. For example, more than 60% of victims reported that they were neighbors of offenders. In addition, approximately one-third of "victims" were representing aggrieved companies or organizations. Most victims (79%) were males.

Offenders were young, averaging 13.7 years old, and ranging between the ages of 10 and 17. Most (94%) were males. Approximately 22% of juvenile offenders had a history of previous involvement with the Juvenile Department for either status or delinquency problems, or they had been caught-up in the child welfare, social service network (for abuse, neglect, or dependence). Most of the 208 juvenile offenders were accused of misdemeanor offenses (64%); the remainder for felonies. Of the total of 223 cases referred to DMS, 152 cases were interrelated, that is, involving either juveniles who were accomplices (e.g., 3 boys who vandalize an automobile together), or multiple victims of an offender/accomplices (e.g., 3 neighbors whose mailboxes were destroyed by a group of juveniles on a joyride). The distribution of offenders who had accomplices is fairly even across age, offense type (misdemeanor or felony), and gender. An exception, however, appears to be for female felony offenders, who as a rule were older (average age of 15) and committed offenses alone (i.e. without accomplices).

Of the total caseload, 37% (83 cases) resulted in face-to-face negotiations between victims and offenders. An average of four clients participated in these mediation sessions, though a number of mediations included more than ten participants. As a prerequisite of mediation, juvenile offenders were accompanied by a parent or guardian, 95% of whom identified their relationship to the juvenile as that of "parent." Approximately 75% of the sessions were conducted by a single mediator (the remainder included a co-mediator). Caucusing, which involves speaking periodically to juveniles, their parents/guardians, and victim(s) separately during the mediation session, was a prevalent strategy (69%) employed by these mediators.

The average mediation session ran more than two hours, with some lasting as long as five hours. The amount of damages in dispute, around which a restitution agreement would be fashioned, averaged $205 for the 83 mediated cases. Damages ranged considerably, however, from no declared loss to claims in excess of $1500. Approximately 93% of the juvenile mediations resulted in restitution agreements.

As noted above, restitution agreements were achieved through either formal mediation sessions or conciliations (negotiations without face-to-face meetings between victims and offenders). These strategies resulted in
restitution agreements for 68% of the total caseload referred to DMS by the Juvenile Department between 1982-1985. Of the total of 151 restitution agreements, 76% included payment or services that would be concluded in a single month. Most of the remainder of these agreements were to be executed within a period of six months or less. A profile of the first month payment agreements reveals a mix of the dominant restitution modes: monetary payment to victims (66%), direct victim services (28%), and community service (3%). The average value of the first month payment of restitution was $50, either in a cash payment, victim or community service (valued at $3.35 per hour), or a combination of cash and service. Agreements that extended beyond a single month averaged about $25 in value for subsequent months. Generally, the shorter the time period of the restitution agreement the more likely that monetary payments and direct services to victims were the dominant modes of restitution. For agreements that extended for several months, the proportion of community service restitution increased.

C. Observations

Drawing from available documentation on performance (i.e., whether restitution agreements were successfully executed by juvenile offenders), it appears that both the mode of restitution and the length of the restitution agreement were related to performance. Generally, the likelihood that direct victim services (and to a lesser extent, community service) would be performed decreased the longer the period of time over which restitution was scheduled. Monetary payments to victims (most of which were made in the first month of agreements) were the most likely mode of restitution to be performed. Plotting all restitution agreements over time (up to 8 months), the rate of performance under restitution agreements was 97% during the first month (when, it has been noted, 76% of all restitution agreements were concluded), 80% during the second month, approximately 65% for the third, fourth, and fifth months, and declining finally to a 20% performance rate by the eighth month.

V. Retribution or Restoration?

This brief descriptive profile of mediated restitution cases in Dallas certainly raises issues that merit further study. For example, an objective and logic of additional analyses of this data might be, as is true generally of research on any "alternative" or diversion innovation, the delineation of those factors that are thought to variably affect performance. Subsequent analysis might detail the statistical significance of several key elements of these mediated juvenile restitution cases, elements which have received only
nominal attention in the foregoing discussion or in the broader social scientific and behavioral literatures on mediation or restitution generally. Of more immediate concern to this paper, however, is the context within which performance is defined. A requisite prelude to performance evaluation must be the location of performance criteria within sets of ideas and methods (that is, within paradigms) of justice.

A. The Punitive Imprint of Restitution

On its face, restitution appears to be a relatively straightforward concept. When considered in the context of ideas, perceptions, and organizational rationales which shape restitution in practice, however, the concept becomes considerably more slippery and complex. In contemporary justice practice, there can be little question that the idea of restitution has been thoroughly cemented to the image of "sanction." The social scientific and professional literatures, as well as organizational accounts and practices, are replete with the assumption that restitution is an alternative sanction. Intuitively, a sanction implies a cost or penalty beyond the restoration of property value by the mere compensation of victims by offenders. Indeed, the nineteenth century philosopher and jurist Jeremy Bentham advocated that payments be made in such a way to ensure a "degree of humiliation" for the offender.24 That added cost was for Bentham the "most desirable characteristic" of restitution. Schafer concludes that restitution is "inseparably attached" to the institution of punishment.25 Germanic, Roman, Babylonian and Ancient Persian, and Anglo-Saxon law held that restitution to victims was an essential and vital ingredient of the punitive response to rule breaking. Such ideas continue to animate some restitution strategies in the modern era, though it has been suggested that restitution satisfies several demands, including rehabilitation, service to victims, and punishment.26

Within the juvenile mediation sessions studied, it was possible to discern the perception and influence of "sanction" upon restitution. In addition to organizational decision rules regarding the availability of mediated restitution as a diversion (discussed above), juvenile offenders, their parents and guardians, and victims were variably influenced by a number of factors to elect restitution as a diversion, to engage in the mediation process, and

25. S. Schafer, supra note 21, at 3.
to perform under the restitution agreement. The perception of sanction, arguably, is one such factor.

For example, juveniles and/or parents and guardians often expressed concern that had they not elected restitution, or if the mediation effort failed (i.e., no agreement was reached), other more dire consequences probably awaited offenders. This fear has a variety of potential ramifications: offenders and/or parents and guardians may feel compelled to capitulate to all demands of the victim; some victims may use this fear of unknown consequences as leverage in their negotiations with juveniles; or parents and guardians may seek to avoid juvenile justice services in general. This latter possibility, ironically, may enhance the appeal of DMS as a more neutral setting for the resolution of disputes than formal juvenile justice organizations. Juveniles and their parents and guardians often questioned the policing functions of mediators, assuming them to be officers of the juvenile court, wondering about the confidentiality of the mediation proceedings, or whether deference in a mediation session or complying with a restitution agreement would help to rid juveniles of a potentially debilitating legal blemish (i.e., a juvenile "record"). This is not to suggest that the election to participate in mediation was exclusively colored by the perception of sanction. Certainly, some offenders, their parents and guardians, and victims were motivated by genuine concerns for the well-being of victims and juvenile offenders alike, and a sincere hope that consensual restitution would help to mend fractured relationships between acquaintances and neighbors.

Such perceptions, and the biographical and organizational factors which produce them, are worthy of closer scrutiny in the effort to understand the dynamics of mediation generally, and the relationship between such predispositions and the success of mediated restitution agreements in particular. As suggested above, however, analyses of these causal relationships beg a more fundamental question: How should intended outcomes and preferences be defined in the context of performance?

B. Shifting the Paradigm: From Retribution to Restoration

Zehr has proposed typologies of two competing paradigms of justice that are germane to the issue of performance. The first, retributive justice, is the dominant, contemporary mode and method of justice. Retributive justice, he points out, is a formal processing of individuals who, because they have violated contractual relations as citizens with the state by rule infraction, are assigned blame (on the basis of both past and present

27. ZEHR, supra note 2.
behaviors) and are punished.\textsuperscript{28} Retributive justice is both a process that sidesteps the direct involvement of victims, and an outcome that ignores direct accountability to victims by offenders. It is, after all, an organization of justice that depends upon the use of proxies. The state transfigures itself into the "victim," relegating direct participants in interpersonal conflict (individual offenders and victims, and local communities) to only minor, symbolic roles in the justice process. Offenders are shielded by technicians, by professionals who through adversarial proceedings, negotiate the administration of licit injury and stigma. Such punishment, it is assumed, is the execution of a debt to society, the surrogate victim, of sufficient dimension that it deters future criminality. The needs of victims to address highly personalized trauma directly, the needs of offenders to exercise the power and responsibility to be accountable, the needs of the community to confront the social, political, economic, and moral dimensions of local conflict, all such needs are only subliminal tensions within the retributive system of justice. Retributive justice reflects an obsession with form and process, and its practitioners and participants have become anesthetized to the failures and superficiality of its outcomes.

A competing paradigm, restorative justice, is an emerging form and practice according to Zehr.\textsuperscript{29} It is an outcome-oriented process, focusing upon collective problem-solving through negotiation between parties directly involved in conflict. Its prominent feature, restitution, is a means to an end, namely, the reconciliation of offender and victim, and the mending of interpersonal and social injury. The community, the locus of conflict, participates in the restorative process by facilitating dialogue through its representatives and agencies. Offenders are encouraged to accept responsibility for the liabilities and obligations to victims incurred through their disruptive behaviors. Victims are directly involved in the process not only to insure responsiveness to their own needs, but also to participate with offenders in future-oriented, constructive, restorative actions. Crime, in this model, is personal and social; justice is the achievement of reconciliation and the restoration of personal and social relationships. The notions of crime as violations of the state, the adversary nature of proceedings, and the exclusion of victims from remedy and offenders from responsibility, punishment and stigma are not only antithetical to the ideal of restorative justice, but are held as counter productive in this view as well.

Justice in practice, of course, is a loose configuration of several different orientations to justice and the imagery of harm. Features of these dichotomous paradigms of retributive and restorative justice are evident in

\textsuperscript{28} Id.

\textsuperscript{29} Id.
contemporary practice, though it is empirically astute to concede that retributive elements are predominant. The mediation of juvenile restitution cases reflects the tensions of these competing models as well. However, the coupling of mediation and restitution suggests restorative possibilities and promise.

Clearly, mediation is not without flaws. In addition to problems alluded to earlier, detractors question whether mediation can safeguard due process for juveniles, address power imbalances between juvenile offenders and adult victims, induce settlements and performance, and the like. Despite these sobering criticisms, however, the strength of mediation appears to lie in its effort to enfranchise victims and offenders in collective problem-solving, consensual restitution agreements, and reconciliation.

VI. ASSESSING RESTORATIVE STRATEGIES: PARAMETERS AND PROPOSALS

Performance criteria that are consistent with (or born of) the retributive model may be inadequate to measure the added restorative dimensions alluded to above for mediation interventions in juvenile restitution. Conventional measurements of performance, the standard criteria of program assessment, rely on such factors as recidivism rates, programmatic cost comparisons, rates of property value recovery, perceptions of justice having been done ("just desserts"), or that the system "works." While these may be suitable criteria of performance for some applications, they are not sufficient to capture the less tangible, short and long term potentials of mediated restitution.

A. Conflict in Neighborhoods

The "neighborhood" context of a significant number of the Dallas cases alone suggests the efficacy of searching for alternative criteria of performance. Sixty percent of the mediated juvenile restitution cases in Dallas involved victims and offenders who identified themselves as neighbors. One might presume that as neighbors, future and ongoing relationships between victims and offenders are distinct possibilities. Further, such cases typified generic features of mediated neighborhood conflict in Dallas noted elsewhere. 30 For example, some juvenile cases involve multiparty (multifamily) disputes between adults and children living in close proximity to each other. Some cases may also reflect an overlay of racial, ethnic, or religious conflict, a "microcosm" of such conflict in the larger community. Any

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particular "case" may represent a momentary manifestation of enduring, protracted conflict in a neighborhood (i.e., one event in a historical progression or escalation of conflict). This raises the distinct possibility that these cases present difficult and perplexing problems for formal justice organizations and their remedies at hand to unravel and address dense and multivariate conflict. Under these circumstances, diversion of neighborhood juvenile cases to mediation may reflect a safety value for formal justice organizations. Juvenile courts (all courts, for that matter) may be poorly suited to conflict involving many disputants, where racial, ethnic, religious, or class factors have bearing, and where disputes represent ongoing, protracted conflict.

B. The Content and Context of Evaluation

The linkages between some juvenile cases and neighborhood conflict speak quite directly to the proposed attributes of restorative versus retributive strategies. However, based upon the research and experience of the authors as practitioners, there appears to be little empirical basis for the myopic view that informal justice strategies generally, or mediation in particular, are panacea. What is abundantly clear is that community mediation programs need to be cognizant, rigorous, and aggressive about displaying and verifying alternative (restorative) performance outputs and capitalizing on restorative potential. These requisites raise some tough questions with respect to mediation interventions in juvenile restitution:

1. Where a criminal event is only a symptom of diffuse and protracted conflict between the offender and victim, is a restitution agreement sufficiently broad to address the persistent and chronic difficulties that are likely to precipitate conflict in the future?
2. Where criminal events involve neighbors (i.e., persons with ongoing social relationships/interdependence), are negotiations and agreements encompassing enough to include all parties to ongoing conflict, of which offender and victim are only representative?
3. Are agreements responsive to the range of personal trauma and needs of victims, both within the scope of criminal law (e.g., offenses) and beyond (e.g., fear)?
4. Do negotiations, and ultimately agreements, address issues which cause or exacerbate conflict, such as racial, ethnic, or religious antagonisms?
5. Are negotiations and agreements opportunities for skill development, that is, are victims and offenders empowered
to manage their future relationships in constructive manners?

6. Do negotiations and agreements actively involve (or broker) relevant social and human services agencies to both assist with present difficulties and to function as responsive resources for future trouble?

7. Are any organizational/procedural impediments to reconciliation addressed in the process of negotiation?

8. Do negotiations and agreements specify remedies for future difficulties between victims and offenders, including informal self-actualizing strategies and formal organizational interventions?

9. Do negotiations and agreements establish or reestablish dialogue between victims and offenders and lay groundwork for reconciliations (e.g., repentance and forgiveness)?

Researchers, of course, will be confronted by data and information management systems that may not be suited to recovering information, particularly on a post hoc basis, for these and related alternative criteria of performance. Longitudinal (panel) data, essential for understanding longer term consequences of styles of intervention, may be particularly difficult to assemble. Some modest possibilities and strategies have been noted. Deming, for example, proposes to assess "correctional restitution" through such measures as the number of restitution agreements, the number of restitution agreements successfully completed with victim approval, the number of early discharges from sentences, the amount and form of restitution, and qualitative, self-reported perceptions of the restitution process and outcome.31 Criteria and methodology for evaluating mediation and alternative dispute resolution in general have been proposed by Cook, Roehl, and Sheppard,32 and most recently, by McGillis.33 While these bear close examination, they appear variably suited to assessing an outcome-oriented, restorative model of justice.

Minimally, the selection of specific measures and methods must defer and be responsive to the context within which restorative strategies are applied. Such strategies are located: 1) structurally, in the relationship of

31. Deming, supra note 22, at 32.
a program to the larger community environment, and its political, social, service delivery and dispute resolution contexts, including organizational linkages and referral networks; 2) they are located organizationally, reflected in intra-agency goals, processes, personnel, division of labor, and volunteer corps; and 3) they are located functionally within an organization's total program and output, in community education on alternative dispute resolution, information and referral services, mediations and conciliations, training, technical assistance, and the like. The arena within which the restorative vision has any possibility of becoming a significant reality must encompass these structural, organizational and functional dimensions, together.

Despite the various impediments and challenges to comprehending the impact of mediated juvenile restitution cases, in Dallas and elsewhere, one might simply argue that organizational self-interest is one compelling reason to expand the scope of efforts to assess mediated restitution programs on their own terms, that is, within their appropriate philosophical context. The tendency to "fit" such programs to narrow, circumscribed retributive notions of input and output greatly inhibits the more relevant displays of performance of mediated restitution for broader public constituencies, within a proactive context of peacemaking in local communities.