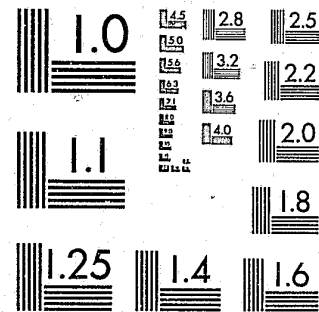


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"A Frame of Reference of The Mediation Process"

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Background: The Juvenile Restitution Program

The Juvenile Restitution Program is a Law Enforcement Assistance Administration (LEAA) funded experimental project under the sponsorship of the Social Services Division of D.C. Superior Court with the assistance of the Shaw Health Center, the Southeast Neighborhood House and the Center for Community Justice (CCJ). This program is designed to (1) provide an alternative sentencing option for juveniles who would normally be placed on probation or incarcerated and (2) present a framework of restitution that is acceptable to the juvenile offender, the victim, and the court.

Program intake is implemented by probation officers recommending adjudicated juveniles who meet the program's eligibility criteria. Once the program is notified of the recommendation, the juvenile is required to partake in mediation. The Center for Community Justice provides trained mediators who facilitate attempts at agreements between the juvenile offender and the victim that dictates the specifics of the juvenile's restitution contract.

Restitution can be made in one or two of three forms: (1) direct services to the victims, (2) performance of a prescribed number of volunteer service hours to a non-profit community agency, or (3) direct money payment to the victim. The second form of restitution, "community service," is mandated for all program participants.

In the fulfillment of the juvenile's restitution obligation, he/she is jointly supervised by a probation officer and a community service worker. There are three community service workers housed at both the Shaw Health Center and the Southeast Neighborhood House. It is the responsibility of these workers to assist probation officers in providing intensive supportive counseling, along with making needed community referrals for family services

and establishing community service placements and job placements for program participants.

Introduction:

This study focuses upon the "mediation process" that each program participant of the Juvenile Restitution Program is required to partake in. Mediation is a proceeding that involves the juvenile, his/her attorney, the juvenile's victim and/or the advocate for the victim, the assigned program Probation Officer and Community Service Worker, and in some cases the juvenile's parent or guardian. The objective of the mediation is to develop an agreement (contract) of restitution that is acceptable to all proceeding participants. To insure that established contracts adhere to the program's guidelines and that all parties are agreeable and are able to voice their concerns, trained mediators from the Center for Community Justice (CCJ) facilitate the proceedings.

Objective:

The aim of this paper is to present a frame of reference that identifies the process of interaction in mediation, in addition to presenting the solicited views of selected mediation participants.

Methodology:

From December 12, 1979 to November 17, 1981, a total of twenty-five (25) mediations were observed. (Note: This sample size does not represent an acceptable sample for purposes of statistical analysis). During the period of data collection, the researcher of the Restitution Program reviewed the "mediation calendar." Then, in accordance with the researcher's schedule, mediations were attended and at this time, interaction was charted. The data

collection tool required interaction to be charted by discussion topics. Once the mediation had concluded, the juvenile and his/her program assigned probation officer and community service worker were presented questionnaires to assess their reaction to the mediation. The juvenile's questionnaire was administered by the researcher, while the probation officer and community service worker independently completed their questionnaires.

The Sample:

Mediations observed for analysis consisted of twenty-three (23) alternative to probation (AP) cases and two (2) alternative to incarceration (AI) cases. Of the observed mediations, twenty-three (23) developed contracts that were acceptable to the court, while one juvenile decided not to participate and another did not participate due to judicial process.

Mediation Activities

Attendance: In order for a mediation to take place it is mandatory that the mediator, the juvenile, his/her attorney and at least one program representative (i.e. probation officer and/or community service worker) be present.

A mediation can be held without the juvenile's attorney present if (1) the juvenile has consented to partake in mediation without legal counsel, (2) the juvenile's attorney is unable to attend the scheduled mediation, however, both the attorney and juvenile agree to participate, and (3) the attorney fails to attend at least four scheduled mediations. It is not mandatory that the juvenile's victim partake in mediation. Therefore, in order to insure victim representation in mediation, CCJ hired advocates for representing victims (victim advocates). These persons are responsible for contacting victims to determine (1) loss incurred, (2) description of offense, (3) what type and/or amount of restitution they wish the juvenile to perform and (4) offer to represent victim or assist the victim in presenting his/her concerns in mediation. Table I reflects the attendance record of the

observed mediations.

Table I. Participants Mediation Attendance

<u>Participants</u>	<u>Frequency of Attendance</u>	<u>%</u>
Mediator	25	100
Community Service Worker	24	96
Probation Officer	24	96
Juvenile	26	
Attorney	22	88
Victim	11	44
Victim Advocate	21	84
Juvenile's Parent	3	12
Other	3	12
Victim's Parents	1	
Co-respondents	1	
Family Therapist	1	

Interaction - Mediation Discussion: Mediations generally cover a maximum of seventeen (17) discussion topics. Each topic of discussion is commenced by the mediator, who in turn solicits feedback from the mediation participants. The discussion topics are identified as follows:

Topics\*

Introduction  
Reason We're Here  
Definition of Restitution  
Mediation Etiquette  
Juvenile's Case Background  
Victim's Assessment of Offense  
Program's Guidelines for Recommendation  
Form of Restitution that Applies to Youth's Offense  
Recommendations  
Potential Placements

Juvenile's Schedule  
Benefits of Program  
Importance of Adhering to Contract  
Grievance Procedure  
Agreement  
Reading and Signing of Contract  
Last Chance

\*See Glossary for definition of discussion topics.

There was no prescribed pattern for mediation content, although, the majority (92%) of mediations discussed each topic listed. However, it was noted that frequency of participant interaction varied relative to discussion topics.

Table II presents the frequency of participant interaction (verbal and non-verbal) relative to each discussion topic.

Table II. Frequency of Interaction Relative to Discussion Topic N=25

<u>Topic</u>	<u>Frequency</u>	<u>Average Inter- action per Discussion Topic</u>
Introduction	87	3.4
Reason We're Here	122	5
Definition of Restitution	158	6.32
Mediation Etiquette	31	1.24
Juvenile's Case Background	330	13.2
Victim's Assessment of Offense	437	18
Program's Guidelines for Recommendation	206	8.24
Form of Restitution that Applies to Youth's Offense	166	7
Recommendation	1107	44.3
Potential Placements	738	30
Juvenile's Schedule	71	3
Benefits of Program	42	2
Importance of Adhering to Contract	28	1.1
Grievance Procedure	127	5.1
Agreement	221	9
Reading and Signing of contract	477	19
Last Chance	40	2
	4388	

"Recommendations" is the topic of discussion with the greatest interaction followed by "Potential Placements." The average amount of interaction per mediation is one hundred and seventy-six (176). Over half (2244) of the recorded interactions occurred in mediations with both the victim and victim advocate present

(11) as opposed to less than one-third (1237) occurring with only the victim advocate present (10). Therefore, 80% of the interactions observed was transacted with the victim and/or victim advocate present.

Participant Interaction: In sixteen of the seventeen identified discussion topics, the mediator initiated the majority of interaction (94%). The one discussion topic the mediator was not the chief interactor for was "Potential Placements," the community service worker initiated this topic. For seven of the discussion topics (41%), the juvenile charted the second highest sum of interaction. These topics were definitive of the restitution process: program's guidelines; form of restitution that applies; juveniles' schedule; grievance procedure; reading and signing of contract and last chance. The probation officer, the juvenile's attorney, and the juvenile's victim all charted the second highest sum of interaction in the three topics of discussion.

Interaction between mediation participants showed that the most frequent interaction was experienced with the mediator. However, mediators most frequent interaction occurred with the juvenile followed by the victim, and then the program assigned probation officer. Juveniles tended to interact with their attorney and then their probation officer outside of their interaction with the mediator. Probation officers interacted more with the juvenile's attorney, then with the juvenile. Community service workers frequency of interaction was the reverse, the juvenile and then his/her attorney. Finally, victims interaction leaned toward community service workers, and victim advocates interaction tallied most with the victims.

Table III shows the frequency of interaction initiated by each mediation participant.

Table III. Participant Frequency of Interaction

Participant	Frequency		Total	Average Interaction Attended Per Mediation
	Verbal	Non-Verbal		
Mediator	2071	66	2137	85.4
Juvenile	702	292	994	37.4
Probation Officer	856	26	882	37
Community Service Worker	661	19	680	28.3
Attorney	791	39	830	38
Victim	537	59	596	54.2
Victim Advocate	432	17	449	21.3
Parent	109	5	114	38
Other	27	0	27	9
Group	49	0	49	2

A review of Table III shows that 39% of the juvenile's interaction was non-verbal. In addition, the probation officer and then the juvenile's attorney follow the mediator in the number of most frequent interactions.

Mediation Interviews: After each mediation a series of questions basically requiring a yes or no answer were asked of each probation officer, community service worker and program participant. As mentioned earlier, the researcher conducted independent interviews with juveniles, community service workers (C.W.) and probation officers (P.O.). What follows will be a summarization of the questions and responses.

Questions and Responses of Community Workers and Probation Officers: First, questions were asked pertaining to preparation for mediations, presence at mediation and how the worker viewed the mediation relative to his/her client (juvenile). They are as follows:

- Did you feel that the mediation was beneficial to the youth?
- Was there enough time for you to prepare for this mediation?
- Did you feel that your presence at the mediation was necessary?

For each question, the majority of responses indicated "yes" (80%). In addition, relative to the last question, most workers viewed their presence as essential

to the mediation process.

Next, questions requiring more subjective responses concerning worker's performance, i.e., community service worker or probation officer and the mediator's performance in mediation were asked. These questions are as follows:

- If you were asked to use one of the four categories to rate the participation of the probation officer/community service worker with you in preparation for this mediation, how would you rate his/her participation?
- If you were asked to use one of four categories to rate the performance of the mediator at this mediation, how would you rate his/her performance?

Responses were rated according to the following scale:

- Excellent
- Good
- Fair
- Poor
- Don't Know

The majority rated the performance of the mediator and the respective worker as excellent (53%).

Finally, the remaining questions asked the worker specifics about his/her position on the case. The questions are as follows:

- What was your position for this case?
- What did you recommend?
- Did the outcome of this mediation utilize your recommendation?
- Are there any comments or changes regarding this mediation process you feel should be made?

Responses to the first three questions generally revealed the worker's role, i.e., community service worker or probation officer; the amount and type of restitution recommended and that for the majority their recommendation was utilized. However, 73% of the workers did not respond to the last question. And, of those who responded, the majority felt the mediation ran smoothly (12.5%).

Questions and Responses of Juvenile: Each juvenile was asked questions regarding his/her opinion of the mediation process and outcome, these questions are:

- Do you feel that the number of hours required for you to perform should be more, or do you feel you should do less?

Most juveniles believed they should do less (48%). Their reasons varied from "shouldn't do more than I have to do" to "other things to do." However, 40% did feel their required hours should remain the same.

- Do you feel that the mediation would have been the same if you were not present?

The majority was of the opinion "no" (56%). Explanations characterized the juvenile's concerns, such as (1) "Wouldn't have had the right to say something" (2) "Wouldn't have had my agreement of what I wanted to do," and (3) "had to get answers from me."

- Did the mediation help you to understand the program?

For this question, the majority of the responses indicated "yes" (96%).

- Do you feel that this program will help you?

All juveniles responded "yes" to this question (100%).

- Do you know what is expected of you?

The general response was of the opinion "yes" (83%). For those who indicated 'yes', they were also required to describe what is expected. For the most part, their response were either perform their restitution and/or stay out of trouble.

When the juvenile's victim was present at mediation, he/she was asked the following:

- Where you surprised to see the victim?
- If you were the victim, how would you feel about the mediation outcome?

None of the juveniles were surprised to see their victims (100%). Although, of those who responded, the majority felt they would have been upset (75%).

Those juveniles whose victim was not present were asked:

- How do you think the victim feels about the crime?

The majority indicated they didn't know (86%). Finally, each juvenile was asked a question pertaining to his/her viewed participation in mediation. If the interaction tool<sup>1</sup> indicated that the juvenile did not participate, he/she was asked:

- I noticed that you didn't say much in mediation, why was this?

Responses varied from "don't know," "they didn't ask me but so many questions" to "I didn't commit the crime."

Those who charted frequent interaction on the interaction tool were asked:

- I noticed that you participated in mediation, were you able to say everything you wanted to say?

The majority indicated "yes" (83%).

1.  
This is the data collection tool used for chart interaction in mediations.



Appendix

Glossary of Mediation Discussion Topics

1. Introduction - refers to opening statement of who everyone is relative their name and title.
2. Reason We're Here - refers to explanation of mediation, the program's selection process and concept.
3. Definition of Restitution - means the mediator provides the participants or definition of the three forms of restitution the program employs, i.e., community service; direct service to the victim and monetary restitution.
4. Mediation Etiquette - each participant is told that everyone will have a chance to speak, please do not interrupt anyone.
5. Juvenile's Case Background - probation officer is required to provide a detailed description of the juvenile's present offense and prior if any, court contacts. This is followed by the juvenile's version of the events that characterized his/her offense.
6. Victim's Assessment of Offense - the victim and/or victim advocate provides his/her version relative to the offense committed.
7. Program Guidelines - refers to the program's grid of community service hours required based upon the characteristics of the offense, i.e., felony or misdemeanor against person or property.
8. Form of Restitution that Applies - concerns discussing which of the three forms of restitution apply to the offense committed.
9. Recommendation - each person states what he/she feels the juvenile should do within the guidelines of the program.
10. Potential Placements - the community service worker presents the names and functions of various agencies where the juvenile may perform his/her restitution.
11. Juvenile's Schedule - a discussion of the juvenile's daily activities in order to adjust the restitution program's requirements to be conducive with his/her schedule.
12. Benefits of Program - presents the advantages of being a participant in the restitution program.
13. Importance of Adhering to Contract - stresses the importance of not violating the restitution contract, along with describing the probable consequences.
14. Grievance Procedure - describes the program procedure monitored by CCJ that provides the juvenile an avenue to express and discuss problems he/she is having in the program.



15. Agreement - all parties either agree or disagree with the recommendations for restitution.
16. Reading and Signing of Contract - each mediation participant reads and then signs the restitution agreement.
17. Last Chance - before closing the mediation each party is allowed one last opportunity to state their concerns.

Tables I thru IX: Frequency of Interaction between Mediation Participants

Table I: Mediator Interacting with Participants  
N=25

<u>Participants</u>	<u>Verbal</u>	<u>Frequency</u>		<u>Total</u>
		<u>Non-Verbal</u>		
Juvenile	781	4		785
Probation Officer	228	12		240
Attorney	130	20		150
Community Service Worker	197	6		203
Victim	276	13		289
Victim Advocate	152	11		163
Parent	51	0		51
Other	19	0		19

Table II: Juvenile Interacting with Participants  
N=26

<u>Participants</u>	<u>Verbal</u>	<u>Frequency</u>		<u>Total</u>
		<u>Non-Verbal</u>		
Mediator	345	206		551
Probation Officer	99	28		127
Attorney	109	24		133
Community Service Worker	83	28		111
Victim	32	4		36
Victim Advocate	11	0		11
Parent	2	2		4
Other	0	0		0

Table III: Probation Officer Interacting with Participants  
N=24

<u>Participants</u>	<u>Verbal</u>	<u>Frequency</u>		<u>Total</u>
		<u>Non-Verbal</u>		
Mediator	259	7		266
Juvenile	179	0		179
Attorney	172	11		183
Community Service Worker	34	3		37
Victim	64	3		67
Victim Advocate	63	2		65
Parent	39	0		39
Other	6	0		6

Table IV. Juvenile's Attorney Interacting with Participants  
N=23

Participants	Frequency		Total
	Verbal	Non-Verbal	
Mediator	266	13	279
Juvenile	165	1	166
Probation Officer	150	14	164
Community Service Worker	95	5	100
Victim	58	2	60
Victim Advocate	44	4	48
Parent	5	0	5
Other	6	0	6

Table V: Community Service Worker Interacting with Participants  
N=24

Participants	Frequency		Total
	Verbal	Non-Verbal	
Mediator	227	10	237
Juvenile	156	2	158
Probation Officer	33	0	33
Attorney	105	2	107
Victim	87	1	88
Victim Advocate	35	3	38
Parent	11	1	12
Other	0	0	0

Table VI: Victim Interacting with Participants  
N=11

Participants	Frequency		Total
	Verbal	Non-Verbal	
Mediator	268	46	314
Juvenile	44	0	44
Probation Officer	54	0	54
Attorney	35	7	42
Community Service Worker	69	3	72
Victim Advocate	50	3	53
Parent	0	0	0
Other	1	0	1

Table VII: Victim Advocate Interacting with Participants  
N=21

Participants	Frequency		Total
	Verbal	Non-Verbal	
Mediator	186		
Juvenile	22	3	189
Probation Officer	61	1	23
Attorney	47	1	62
Community Service Worker	27	1	48
Victim	63	4	31
Parent	0	7	70
Other	6	0	0
		0	6

Table VIII: Parent Interacting with Participants  
N=3

Participants	Frequency		Total
	Verbal	Non-Verbal	
Mediator	35		
Juvenile	12	4	39
Probation Officer	43	0	12
Attorney	4	0	43
Community Service Worker	13	0	4
Victim	0	1	14
Victim Advocate	0	0	0
Other	0	0	0
		0	0

Table IX: Other\* Interacting with Participants  
N=3

Participants	Frequency		Total
	Verbal	Non-Verbal	
Mediator	14		
Juvenile	1	0	14
Probation Officer	6	0	1
Attorney	1	0	6
Community Service Worker	0	0	1
Victim	0	0	0
Victim Advocate	3	0	0
Parent	0	0	3
		0	0

**END**