

CHAPTER III:

Restorative Justice and the Death Penalty

Restorative justice is a theoretical paradigm which views crime as a violation or rupture of relationships in society and argues that repair of this rupture should be the primary goal of a society's response to crime. Healing, reconciliation, and transformation among victims, offenders, and communities are primary objectives under this paradigm. The idea of restorative justice in the context of the death penalty may, at first glance, seem something of a paradox. Indeed, killing an offender is antithetical to many of the restorative ideals. However, many have begun to incorporate principles of restorative justice into the death penalty process. As the previous chapter indicated, there is an especially strong need for healing and transformation among those who are impacted by capital murder and by the death penalty process; foremost among them are the co-victims. Although less often considered, offenders' families, community members, correctional staff, and others exhibit similar needs for healing and transformation in the aftermath of capital murder and the death penalty process. Restorative justice appears to provide some paths toward this healing and transformation.

In this chapter, I begin by giving a brief overview of restorative justice, what it is, what it is not, and how it applies to the three groups most directly involved in it: victims, offenders, and communities. This is followed by a discussion of restorative justice in practice. Restorative justice has come to be applied in a wide variety of settings and has taken many differing forms. Encounters between victims and offenders will be the primary focus here as it is most directly relevant to the present study. Specifically, programs known as victim-offender

mediation (VOM) or victim-offender mediation/dialogue (VOM/D), the most common form of victim-offender encounters in the United States, will be considered in depth. Finally, restorative justice will be considered in the context of the death penalty. In this last section, the apparently paradoxical notion of restorative justice in the context of the death penalty will be addressed as will the actual use of VOM between capital murder co-victims and death row inmates. The potential for restorative justice to provide healing and transformation for not only the co-victims but for offenders' families and others impacted by capital murder and the death penalty will be considered.

RESTORATIVE JUSTICE: A BRIEF OVERVIEW

The practice of what has come to be known as restorative justice has existed in human societies as far back as history is recorded (Bianchi, 1994; Braswell, Fuller & Lozoff, 2001; Daly & Immarigeon, 1998; Llewellyn & Howse, 1999; Van Ness & Strong, 1997). Although rooted in ancient and diverse traditions and practices, the contemporary restorative justice movement (particularly in Western societies) is only in its infancy. The genesis of this modern movement toward restorative justice can be traced to Howard Zehr's paradigmatic book "Changing Lenses" (1990).

Zehr (1990) presented restorative justice as a counter paradigm to the dominant retributive model of justice in Western societies. Noting that retributive justice has failed, not only to reduce crime but also to provide victims and communities justice and to repair the harm caused by crime for victims, offenders and communities, Zehr (1990) suggests that it is time for a paradigm shift, a change of "lenses." A retributive lens, according to Zehr (1990), views crime as a violation against the state, relegates the needs and rights of victims to secondary status by making the state the victim, focuses on determination of guilt and punishment for the offender, and offers little or no consideration of the community in the justice process. It also myopically focuses on the anger- and revenge-oriented victim and community responses to crime, neglecting other important emotional responses and needs. A restorative lens, on the other hand, views crime as "a violation of people and relationships" in which there is a tear or rupture in these relationships that needs repair and restoration (Zehr, 1990, p. 181). Although it acknowledges that anger and revenge are natural responses to crime, it also views other important needs and responses as important and argues that for meaningful repair and transformation in

the aftermath of crime, we must look beyond anger and vengeance. A restorative lens also views the involvement and participation of all who are impacted or harmed by crime as essential to the justice process: victims, offenders, and community members alike. For restoration to occur, according to Zehr (1990), the needs of each must be considered and attended to. The following table (Table 1) illustrates these oppositional aspects of the retributive and restorative models of crime and justice.

Table 1
Zehr's (1990, pp. 184-185) Retributive Lens/restorative Lens Comparison

<i>Retributive Lens</i>	<i>Restorative Lens</i>
Crime defined by violation of rules (i.e., broken rules)	Crime defined by harm to people and relationships (i.e., broken relationships)
Harms defined abstractly	Harms defined concretely
Crime seen as categorically different from other harms	Crime recognized as related to other harms and conflicts
State as victim	People and relationships as victims
State and offender seen as primary parties	Victim and offender seen as primary parties
Victims' needs and rights ignored	Victims' needs and rights central
Interpersonal dimensions irrelevant	Interpersonal dimensions central
Conflictual nature of crime obscured	Conflictual nature of crime recognized
Wounds of offender peripheral	Wounds of offender important
Offense defined in technical, legal terms	Offense understood in full context: moral, social, economic, political

But, what, more specifically, is restorative justice? In a later article, Zehr & Mika (1998, p. 54) continue their comparative approach to defining restorative justice:

Where conventional justice is law and punishment oriented, we conceive of restorative justice as a harm-centered approach: the centrality of victims, the obligations of offenders (and the meaning of accountability), the role of the community, and the active engagement of all parties in the justice equation are distinctive elements, we believe, of such an approach.

A more concise definition is offered by Marshall (Cited in Zehr & Mika, 1998, p. 54): “[A] process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.” Van Ness and Strong (1997, p. 42) offer a more multi-layered definition of restorative justice:

- It is a *different way of thinking* about crime and our response to it.
- It focuses on the *harm caused by crime*: repairing the harm done to victims and reducing future harm by preventing crime.
- It requires offenders to take *responsibility* for their actions and for the harm they have caused.
- It seeks *redress* for victims, *recompense* by offenders and *reintegration* of both within the community.
- It is achieved through a *cooperative effort* by communities and the government.

Clearly, there are numerous and variant definitions of restorative justice, but the underlying ideas and objectives are the same. In the end, the goal of restorative justice is transformation (as opposed to retribution) (Cose, 2004; Llewellyn & Howse, 1999; Van Ness & Strong, 1997; Zehr & Mika, 1998). This transformation comes from reparation of the harm that crime causes and this reparation includes attending to the needs of each of the parties impacted by the crime (Zehr, 1990). Central to this transformation is the objective of restoring relationships which have been ruptured by crime. In a more specific sense, restorative justice sets out to restore victims, offenders,

communities, and the interrelationships therein in the aftermath of crime.

Victims

Restoring victims incorporates a variety of concepts and principles related to the needs of victims of crime. As Zehr (1990) states it, “[v]ictims have a variety of needs which must be met if one is to experience even approximate justice. In many cases, the first and most pressing needs are for support and a sense of safety” (p. 191). Contrary to these needs, the retributive process generally focuses on apprehending and convicting the offender with little attention given to the victims (aside from asking them questions which may lead to the apprehension and conviction of the offender, of course). Thus, the most fundamental initial aspect of restorative justice in meeting the needs of victims is the encouragement and facilitation of victim involvement and participation in the justice process. Christie (1977) observes that the criminal justice process essentially steals conflicts from crime victims by removing victim status from the individuals harmed by the crime and replacing them with the state as primary victim. Umbreit (1989a, p. 52) points out that “[t]he old paradigm of ‘retributive justice’ focuses upon the state being the victim and places the individual victim in a passive position with little, if any, participation in the justice process.” Restorative justice aims to reverse this, placing the status of victim back into the hands of those who actually experience the victimization, thereby empowering victims and making them active participants in the justice process.

By allowing the victim an active role in the justice process, the restorative process is better equipped to redress the harm that has been done to victims. Such redress may include restitution in which the offender compensates the victim for the harms he or she caused. Although this seems feasible in cases of property crimes or crimes in which property is damaged, it is much more difficult to imagine the role of restitution in cases of violence. Nevertheless, restitution is often an important (if not primary) aspect of the restorative justice process, even in cases of violent crime (Immarigeon, 1996; Van Ness & Strong, 1997). As Zehr (1990) points out however, “[r]estitution represents recovery of losses, but its real importance is symbolic” (p. 192). The real importance comes from the vindication that it represents, the acknowledgment of a wrong and acceptance of responsibility. Ultimately, the goal (whether accompanied by restitution or not) is for

things to be “made right” (Zehr, 1990). These less instrumental and tangible forms of redress may include finding answers such as why the offender violated the rights of the victim or simply understanding the situation and circumstances that brought the offender to their actions. Often such answers serve to calm anxiety and fears that otherwise accompany the ambiguity and seeming arbitrariness surrounding crime (Immarigeon, 1996). Zehr (1990) claims that “[v]ictims need reassurance, reparation, vindication, empowerment, but they especially need to find meaning” (p. 194). This meaning is often an avenue toward healing or closure and often comes from a process of reconciliation with the offender.

Reconciliation between victim and offender has come to be a cornerstone of restorative justice (Van Ness & Strong, 1997). Although use of the term reconciliation has drawn some controversy due to the fact that “reconciliation” implies a prior relationship with the offender and a desire to maintain it (See, for example, Umbreit, Vos, Coates & Brown, 2003 who prefer to use the term “mediation”), it’s use here refers to the more general process of righting a wrong and settling a dispute—or, as Webster’s New World Dictionary puts it, “to bring into harmony” (p. 1187). In the case of reconciliation with the offender, there may be a prior relationship which needs repair for the victim to move forward with the healing process. If there is no prior relationship, one has been created (regardless of intent or desires) by the crime and must be reconciled for meaningful justice to take place. Moreover, reconciliation offers the victim an opportunity to obtain answers from the one person who might be able to provide them and to glean meaning in the context of a negative and traumatic experience. Immarigeon (1996) gives the following account of a process of reconciliation practiced in Canada:

[V]ictims discovered that offenders were also human beings; victims’ emotions were released and fears subsided while they obtained peace of mind; victims’ stereotypes of offenders were challenged in some ways; forgiveness and reconciliation were evident where victims, through dialogue, developed compassion toward offenders and empathy for their social conditions (p. 474).

Perhaps the most powerful aspect of a victim’s reconciliation with the offender is the potential for forgiveness. Gehm (1992) offers the following regarding the importance of forgiveness:

Forgiveness (a) helps individuals forget the painful experiences of their past and frees the subtle control of individuals and events of the past; (b) facilitates the reconciliation of relationships more than the expression of anger; (c) decreases the likelihood that anger will be misdirected in later loving relationships; and (d) lessens the subconscious fear of being punished because of unconscious violent impulses (p. 544).

Others have reiterated the importance of forgiveness in the healing process and for obtaining peace and closure in the face of being wronged or traumatized (Cose, 2004; Dickey, 1998; Dzur & Wertheimer, 2002; Enright, 2001; Estrada-Hollenbeck, 1996; Fitzgibbons, 1998; Ransley & Spy, 2004). Estrada-Hollenbeck (1996), reporting on an analysis of victim and offender narratives regarding forgiveness, concludes the following:

The results of this study suggest that forgiveness does contribute to improved relationships between the victim and the perpetrator, compared to when forgiveness does not occur. In this way, forgiveness is a contributor to the restoration of justice to the extent that it restores a neutral or positive relationship between the victim and perpetrator (pp. 311-312).

Although forgiveness is often conceived in the context of an interrelationship between victim and offender accompanied by contrition or apology on the part of the offender, such two-way interaction is not essential (although, from a restorative justice perspective, it is ideal) to the process of forgiveness and the power it holds for the victim. Reciprocation and two-way interaction is not always possible, but for the victim, forgiveness remains an important element in healing and restoration.

It should be noted that the notion of “victim” in the context of restorative justice extends beyond the primary victim of a crime to “secondary victims” who include the family and other loved-ones of the primary victim and even others who are impacted by the crime such as the offender’s family and friends (Van Ness & Strong, 1997). From a restorative justice perspective, these other individuals suffer harm as a result of the crime and are thus victims. The restoration of relationships for these “secondary victims” is just as important in the context of restorative justice as that for primary victims, and all the

components mentioned above must be considered for all of these victims. In cases of homicide as well as cases in which the victim is a young child, secondary victims (or, co-victims) play an even more central role in the restorative justice process, as the actual victim is unable to actively participate. In any case, the restoration of relationships and repairing of harm caused by crime should incorporate all who have been impacted by the crime. If restorative justice is about restoring relationships in the wake of crime, all impacted individuals and relationships must be taken into account.

Offender

The restoration of the offender is seen as no less important to the restorative justice approach to crime. And, contrary to the currently predominant retributive paradigm of criminal justice, offenders are required to play an active role in the justice process in the wake of their criminal action. The primary focus of restorative justice in regard to offenders is on accountability and responsibility (Zehr, 1990; Van Ness, 1997; Zehr & Mika, 1998). For the restorative process to be successful, the offender must own up to their actions and the harms that they have caused. This may occur through direct interaction between the offender and the harmed parties including the victim or victims, co-victims, and community in general. Being confronted with the harm that has resulted from his or her actions is a particularly powerful aspect of this, but the offender is also often required to take specific actions to redress the harm or compensate the victims and/or community who have been violated and harmed. As Zehr and Mika (1998) put it, “[o]ffenders’ obligations are to make things right as much as possible” (p. 51). Van Ness and Strong (1997) characterize the obligation and role of the offender in restorative justice as one of “recompense.” They define recompense in comparison to the more currently dominant goal of retribution:

Retribution is defined as deserved punishment for evil done...the offender is merely a passive recipient of punishment, [a] punishment that does not help repair the injuries caused by crime [but] simply creates new injuries; now both the victim and the offender are injured. “Recompense,” on the other hand, is something given or done to make up for an injury. This underscores that the offender who caused the injury should be the active party, and that the

purpose of punishment should be to repair as much as possible the injury caused by the crime (p. 38).

Such recompense may include specific compensation such as restitution or a more broad engagement in a process of reconciliation with those harmed. In both cases the objective is to work toward repair of the harm that one has caused.

In conjunction with the needs of victims, reconciliation offers offenders an avenue to right the wrong they have created by helping in the healing of their victims but also an avenue toward their own healing. Contrition and apology on behalf of the offender and expressed to the victim have particular power in aiding in the healing and closure and experience of justice for victims (Estrada-Hollenbeck, 1996). But it is also often cited as transformative for the offenders as well, especially if an apology is reciprocated with forgiveness by the victim (Umbreit et al., 2003). Moreover, Haley (1989) notes that opportunities for expression of contrition and remorse on the part of the offender not only are restorative for the offender but also contributes to a decline in criminality. In the end, the reconciliation process is conducted in the hope that resolution and healing for both victim and offender will be generated and that the likelihood for continuing criminality and crime in the community will be diminished.

This approach to “dealing with” offenders may be perceived by many to be “soft” or otherwise lenient (Llewellyn & Howse, 1998). From the perspective of the retributive paradigm, which focuses on punishment and “just deserts,” restorative justice approaches to crime and criminals is depicted as letting offenders off easy and not holding individuals responsible for their actions. In reality, advocates of restorative justice argue, the restorative model offers greater avenues toward holding offenders responsible for their actions by requiring direct accountability and ownership of actions. Dickey (1998) offers an eloquent summary of this reality:

It is not forgetting; it is not condoning or pardoning; it is not indifference or a diminishing of anger; it is not inconsistent with punishment; it does not wipe out the wrong or deny it. Indeed, it relies on recognition of the wrong so that repair can occur. It also relies on the taking of responsibility for the wrong in a personal and social way (p. 108).

The retributive model, on the other hand, in effect discourages actual accountability by pitting the offender against the state in an adversarial process in which it is in the interest of the offender to deny guilt or remain silent (Wright, 1996).

Ultimately, the final goal of restorative justice as it concerns offenders is reintegration (Van Ness & Strong, 1997). Van Ness and Strong (1997) offer the following description of reintegration in the context of restorative justice:

When we speak of reintegration we mean re-entry into community life as a whole, contributing, productive person. This means more than simply tolerating the person's presence in the community. Reintegration requires relationships characterized by respect, commitment and intolerance for—but understanding of—deviant or irrational behavior.

Braithwaite (1989), although at the time not writing specifically about restorative justice, noted the fundamental importance of reintegrating offenders into communities in the reduction of crime, recidivism and associated harms. Specifically, he argued that offenders who fail to be reintegrated following crime will be less integrated and connected with the community (rather, they will be stigmatized) and will thus be more likely to continue violating the norms of that community. Restorative justice emphasizes the importance of relationships and connections in society and of maintaining these relationships. Reintegration of offenders (and all others impacted by crime) into their communities is critical to this.

Communities

The broader community must not be ignored in the restorative justice process. As crime is viewed as violation of relationships, the community in which such relationships exist and flourish becomes central to any meaningful justice process. A broad goal of restorative justice is to repair or restore ruptures in the community and these interrelationships therein. Many of the aforementioned principles and practices serve this goal in that they attempt to mend these ruptures between members of the community and to ultimately restore community peace and order. Van Ness and Strong (1997) point out that “[t]he victim’s and the offender’s need for resolution, and the...community’s need for public safety, must be addressed in the

same process” (p. 38). Thus, as with victims and offenders, the community and its members must be allowed to directly participate in the justice process. As previously mentioned, there are secondary victims who must be considered. But, there are also general community members who experience crime even more indirectly through the impact it has on their sense of security and safety and the integrity of the geographical space in which they reside and which they share with others. Moreover, cohesion, interdependency, and connection in communities are critical elements in minimizing crime (Braithwaite, 1989; Bursik, 1988; Sampson & Groves, 1989; Savage & Kanazawa, 2002). Restorative justice sets out to foster, maintain and repair this cohesion, interdependency and connection.

VICTIM-OFFENDER ENCOUNTERS: RESTORATIVE JUSTICE IN PRACTICE

Although true restorative justice is intended to redress the harm to each the victim, offender, and the community, some of the most predominant and effective restorative efforts have focused primarily on the victim and offender. Indeed, the practice of restorative justice in contemporary North American societies is cited as first being observed in 1974 with a victim-offender reconciliation program (VORP) in Ontario, Canada (Daly & Immarigeon, 1998). Programs in which the victim and offender are brought face-to-face to engage in dialogue and work toward reparation and restoration are many and diverse. Collectively referred to as “encounter” programs, such approaches have become “pillars of a restorative approach to crime” (Van Ness & Strong, 1997, p. 68). Some specific forms of encounters include family group conferencing (FGC), victim-offender panels (VOP), and victim-offender mediation and dialogue (VOM/D). FGC is an approach popular in Australia and New Zealand in which family conferences (involving the victim, offender, and each of their families) are held to determine what should be done to best resolve the harm caused by the (in most cases, juvenile) offender (Moore & O’Connell, 1994; Morris & Maxwell, 1998; Van Stokkom, 2002). VOPs, in which victims meet and engage in dialogue with offenders other than those who directly victimized them, have become popular in cases in which the specific offender is unknown or refuses to participate or in which victims are too frightened or traumatized to confront their actual offender (Van Ness & Strong, 1997). Research on VOPs have shown beneficial impacts for both victims and offenders. Van Ness and Strong (1997)

report “a dramatic change in attitudes of offenders and in the likelihood of recidivism” and that “82 percent [of victims] reported that it had helped in their healing” (p. 76).

Although there is a wide range of varying approaches to victim-offender encounters in the pursuit of restorative justice, Victim Offender Mediation (VOM)¹⁷ is one of the most common manifestations (and the manifestation most salient to the present study) (Umbreit et al., 2003). Based on the original conceptualization of VORP¹⁸, VOM is a process in which victim and offender are brought together to engage in a dialogue with the aid of a trained mediator or facilitator (Gehm, 1998; Umbreit et al., 2003). Participation in VOM is always voluntary on the part of the victim and is usually voluntary on the part of the offender. The encounters only occur after each has gone through at least one preparation meeting with the mediator “in which they explore the participant’s experience of the event, the nature of the harm caused, and potential avenues for repairing the harm” (Umbreit et al., 2003, pp. 11-12). Umbreit (1998) gives an overview of the process highlighting four phases:

1. case referral and intake;
2. preparation for mediation, at which time the mediator meets with the parties separately prior to the mediation session in order to listen to their stories, explain the program, invite their participation, and prepare them for the face-to-face meeting;
3. mediation, at which a trained third party mediator (most often a community volunteer) facilitates a dialogue that allows the victim and offender to talk about the impact of the crime upon their lives, provide information about the event to each other, and work out a mutually agreeable written restitution agreement; and

¹⁷ Although many programs are referred to as Victim Offender Mediation and Dialogue (VOM/D) programs, the shortened version of simply Victim Offender Mediation (VOM) has become the more common name. This latter name will be the primary term used throughout this book.

¹⁸ As noted by Umbreit et al, 2003, the use of the name VORP has fallen out of favor due to the assumption implicit in the term reconciliation that victims have, or desire to have, a relationship with their offender and thus to “reconcile” that relationship. Many, such as Umbreit, argue that the use of the word “mediation” is more appropriate.

4. follow-up, which monitors restitution agreements (online journal).

The actual mediated encounter begins with each sharing their experiences of the crime (sometimes including previously written or prepared statements) and the aftermath of the crime (Umbreit et al., 2003). Sometimes family members or other community members are also present and participate (Van Ness & Strong, 1997). Finally, in addition to follow-up on restitution agreements, follow-ups or continued monitoring may be used to ensure compliance with other obligations such as specified actions which may serve restorative purposes (e.g. particular forms of community service or specialized treatment or therapy) or even that punishment (although this is a controversial aspect in the context of restorative justice) is adequately carried out (Daly, 1999; Garvey, 1999).

In line with the general principles of restorative justice, VOM is intended to repair the harm caused by crime and restore those impacted by cooperatively and peacefully determining the best resolutions for everyone. Although the focus of VOM is primarily on the victim and offender, the goals of such a response to crime is much broader. Gehm (1998) cites the following broad objectives of VOM:

[T]o reduce victim trauma, to humanize the criminal justice process, to increase offender accountability, to provide meaningful roles for victims, to provide restitution, to create opportunities for reconciliation between victim and offender, to enhance community understanding of crime and criminal justice, to break down stereotypes, and, in combination with other sanctions, to reduce reliance on conventional punishment (online journal).

Umbreit et al. (2003) add that it “holds offenders directly accountable to the people they victimized, allows for more active involvement of...community members (as participants or as volunteer mediators) in the justice process, and can potentially suppress further criminal behaviors in offenders” (p. 12). Research has shown that these objectives are shared by both victims and offenders who have engaged in VOM. Umbreit et al. (2003) report that victims chose to engage in VOM out of “a desire to receive restitution, to hold the offender accountable, to learn more about the ‘why’ of the crime and to share their pain with the offender, to avoid court processing, to help the

offender change behavior, or to see that the offender was adequately punished” (p. 24). They go on to report that offenders “wanted to take direct responsibility for their own actions, to pay back the victim, to apologize for the harm they caused, and to get the whole experience behind them” (pp. 24-25).

Research on VOM suggests that these goals are generally met with overwhelming satisfaction on the part of both victims and offenders (Coates & Gehm, 1989; Latimer, Dowden, & Muise, 2001; Nugent, Umbreit, Wiinamaki & Paddock, 2001; Umbreit, 1996; Umbreit, 1998; Umbreit et al., 2003). Umbreit (1996), in a comprehensive study of four VOM programs in Canada, found that 89% of victims and 91% of offenders were satisfied with the outcome of mediation and that 91% and 93%, respectively would participate in mediation again (p. 381). Moreover, Umbreit (1996) reports that satisfaction with the criminal justice system overall is higher for both victims and offenders when they participated in mediation. Among victims, 78% of those who participated in mediation reported general satisfaction with the criminal justice system in comparison to only 48% of victims who did not participate in mediation. For offenders, 74% of mediation participants and 53% of non-participants reported satisfaction with the criminal justice system. Umbreit (1996) also found both victims and offenders were significantly and substantially more likely to perceive the justice system as fair if they had participated in VOM. A recent meta-analysis of 35 prior analyses of VOM programs supports these findings (Latimer et al., 2001). As Umbreit et al. (2003) conclude, based on a thorough review of prior studies, “[e]xpression of satisfaction with VOM is consistently high for both victims and offenders across sites, cultures, and seriousness of offenses.” It is typical that eight or nine out of every ten participants express satisfaction with the process and outcomes (Umbreit et al., 2003).

Beyond the high levels of satisfaction, research has also indicated overwhelming success in securing agreements and the meeting of obligations and commitments resulting from VOM (Coates & Gehm, 1989; Umbreit et al., 2003). Coates and Gehm (1989), in an analysis of 37 victims and 23 offenders, found that written agreements and contracts resulted in 98% of cases in which victim and offender engaged in mediation. Umbreit et al. (2003), in reviewing a broad array of prior studies, report that restitution (whether manifested in monetary terms, community service, or direct service to the victim) is successfully completed in 80 to 90% of VOM cases. Umbreit et al. (2003) further report that the use of VOM as a diversion produces

resource and cost savings. They conclude that “[t]he potential cost savings of VOM programs when they are truly employed as alternatives rather than as showcase add-ons is significant” (Umbreit et al., 2003, p. 34). A final focus of research is on the impact of VOM on re-offense. A meta-analysis conducted by Nugent et al. (2001) suggests a significant difference between re-offense in cases in which mediation occurred and cases in which it did not. Nugent et al. (2001) found that “VOM participants were only about 60% as likely to reoffend over a 1-year period as were non-VOM participants” (p. 16). Similarly, Umbreit, Coates and Vos (2001a), having conducted research on juveniles offenders, reported that “18 percent of the program youth re-offended, compared to 27 percent for the comparison youth...[and] also tended to reappear in court for less serious charges than did their comparison counterparts” (p. 32).

Umbreit et al. (2001a) assert that “victim offender mediation is one of the more empirically grounded justice interventions to emerge” (p. 29). Based on the research as indicated above, it is hard to disagree. And, as a result, modest gains in the utilization of VOM over the last decade can be seen. In 1998 there were more than 290 VOM programs operating in the United States (Umbreit, 1998), and over 1300 programs worldwide (Umbreit et al., 2001a). Recently, VOM has even enjoyed increased media attention and interest, being profiled and discussed on numerous popular news and talk shows (Szmania, 2005). As the use of VOM has gained momentum in recent years, its application has broadened in scope. Although initially expected to be exceedingly difficult to implement in cases of violent crimes such as rape, aggravated assault, and murder, VOM has been found to be successful even in cases of extreme violence (Flaten, 1996; Umbreit, 1989b; Umbreit, Coates and Vos, 2001b; Umbreit et al., 2003), in addition to its more traditional application in cases of less severe crime. Moreover, VOM has been implemented and operated by a range of groups, agencies, and organizations in a variety of settings. Although often operated by groups independent of the traditional criminal justice system (e.g. religious groups, non-profit organizations), VOM is also practiced in the context of probation, correctional facilities, prosecutors’ offices, victims’ services, and law enforcement (Umbreit et al., 2003, p. 22). VOM is increasingly being used in prison settings (Immarigeon, 1996) and in cases of violent crime. As will be discussed in the next section, VOM has even begun to be used on death row.

Texas is one state which has made increasingly wide use of VOM and enjoyed great success employing it in the context of their

correctional system, particularly in cases of violent crime. In Texas, which employs victim-offender mediation and dialogue (VOM/D), sessions are arranged by the Victim Services Division of the Texas Department of Criminal Justice (TDCJ). In response to pressure from crime victims and victims of violent crime in particular, Texas created the Office of Victims Services (later to become the Victim Services Division) in 1989. In 1991 the first mediated session between a homicide co-victim and the killer of her daughter was held. The first full-blown VOM/D program session was conducted in 1995. Texas' program, as it deals with particularly difficult cases of violence, is especially rigorous in its preparation of both victim and offender (sometimes spending up to a year in preparation for a mediation session) and in the management of actual sessions. The following is a detailed checklist for VOM/D sessions in Texas:

- Mediator reviews ground rules/establishes purpose.
- Victim makes opening statement (brief preview of expectations).
- Offender makes opening statement (brief preview of expectations).
- Victim begins dialogue.
- Victim and offender continue interaction.
- Lunch break.
- Mediation resumes.
- Mediation (sic) clarifies/summarizes.
- Victim and offender continue interaction.
- Mediator reviews Affirmation Agreement process, if applicable.
- Mediator facilitates brainstorming/consensus/signing of Affirmation Agreement.
- Victim and offender make closing statements.
- Mediator concludes mediation.
- Mediator interviews and debriefs offender/victim separately (Umbreit et al., 2003, p. 83).

Upon consent by both parties, sessions are routinely videotaped and used in subsequent debriefing sessions with both victims and offenders. These debriefings, aided by video of the session, are used in the context of both short-term and long-term follow-ups, both of which are deemed very important (Umbreit et al., 2003, pp. 83-84).

By 1996 there were more than 200 requests by victims for mediation (Umbreit et al., 2003). Since then, Texas' VOM/D program has enjoyed great success. In an in depth analysis of 22 VOM/D sessions and 39 participants (20 victims and 19 offenders), Umbreit et al. (2003, p. 127) found that all victims reported being either "very satisfied" (95%) or "somewhat satisfied" (5%). All 19 offenders reported being "very satisfied" (p. 173). VOM/D in Texas also was found to have positive long-term effects. For example, 60% of victims reported that the process enriched their religious or spiritual life and 73% felt that VOM/D gave them a more positive and peaceful outlook on life. Offenders likewise reported gaining a lot of long-term benefits from VOM/D. All but one (94%) reported that it gave them a newfound understanding of how their criminal actions impacted others; 72% reported that it gave them a more positive outlook on life and increased ability to cope with life events (Umbreit et al., 2003). The specific qualitative statements made by both victims and offenders only add to the strength of these findings.¹⁹ Their overwhelmingly positive and transformative theme can be well expressed in the words of one mother of a homicide victim: "If everybody in the country would do it we'd have a better world because I know it makes you a better person and it makes them a better person" (Umbreit et al., 2003, pp. 129-130).

RESTORATIVE JUSTICE PRINCIPLES IN CAPITAL CASES

The idea of restorative justice occurring in the context of the death penalty is seemingly paradoxical. In fact, many have questioned the viability of restorative justice in the context of any punishment (Braithwaite, 1999; Zehr, 1990). Braithwaite (1999) claims that punishment is a sign of weakness which fails to reduce crime and only serves to perpetuate and increase harm in society. Like Zehr (1990), who was the first to formalize much of the contemporary principles, Braithwaite (1999) argues that restorative justice should *replace* punitive responses to crime, not simply supplement them. As

¹⁹ To read the statements of VOM/D participants and a more thorough review of the findings presented here, see Chs. 4-6 in Umbreit et al. (2003).

previously discussed, Zehr's (1990) conceptualization portrayed restorative justice as the diametrical opposite of retributive (i.e. punitive) justice. The notion that restorative justice can possibly be incorporated into the death penalty process, then, brings us right up against the most punitive of sanctions and presents a great challenge in application. The death penalty is the antithesis of offender restoration and reintegration. Note the following selected "signposts" of restorative justice provided by Zehr & Mika (1998, pp. 54-55):

- Show equal concern and commitment to victims and offenders, involving both in the process of justice;
- recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable;
- encourage collaboration and reintegration rather than coercion and isolation.

These are only a select few of the "signposts" of restorative justice but it becomes immediately clear that the very nature of the death penalty violates some of the most fundamental principles of restorative justice. Nevertheless, the notion of restorative justice in the context of the death penalty has begun to be discussed by scholars and practitioners (Arrigo & Williams, 2003; Eschholz, Reed, Beck, & Leonard, 2003; King, 2003; Radelet & Borg, 2000b; Umbreit et al., 2003; Umbreit & Vos, 2000) and restorative justice principles have even begun to be incorporated into the death penalty process in some states (King, 2003; Umbreit et al., 2003; Umbreit & Vos, 2000).

In December, 2003 a conference on restorative justice and the death penalty was held in Durham, NC and was sponsored by the Duke Death Penalty Clinic, the Eno River Unitarian Universalist Fellowship, and People of Faith Against the Death Penalty. (DPIC, 2007c). The conference was entitled "Restorative Justice and the Death Penalty, Exploring the Human Costs" and was organized with the goal of exploring the ability of restorative justice to offer peace and healing to those who have been impacted by the death penalty (including co-victims, offenders' family and friends, and community members). According to conference organizers, "[t]he hope for those attending the conference is that they will find community with one another and that they will leave with information helpful to themselves and/or to others" (DPIC, 2007c).

One of the primary focal points of the conference was exploring and attending to the needs of co-victims of capital murder as well as to those of offenders' families and others impacted by the murder and the aftermath of the murder. As previously addressed in Chapter II, there are numerous casualties of both murder and the death penalty process and the needs of these casualties are complex and diverse. It's fair to suggest that restorative justice practices potentially offer the best avenue for supplying the needed healing, closure, and transformation among co-victims, offenders, offenders' families and the community in the wake of capital murder. But, the death penalty and capital trial processes present some significant barriers to such ideals and practices.

The death penalty process often only contributes to or exacerbates the grief and harm of the crime by failing to attend to these needs, and inherently inhibits the potential for meaningful restorative justice processes. Although some might argue that restorative elements exist in the context of victim impact statements offered by co-victims at trial, such allocutions often have little restorative value (Arrigo & Williams, 2003; See also, Obold-Eshleman, 2004). In fact, according to Arrigo & Williams (2003), "VIS, as presently employed, not only instill a desire for vengeance in decision makers but, correspondingly, inhibit the possibility of empathy, compassion, and forgiveness directed toward the offender" (p. 604). And, they note, instead of producing healing and catharsis, "resentment, anger, and vengeance...often accompany (or follow) the experience of such intensely charged and deeply felt victim allocutions" (Arrigo & Williams, 2003, p. 604). Indeed, the adversarial nature of VIS and the capital trial process inherently pits co-victims and offenders' families against one-another. Research has found that these are two groups who share a similar grief and who often desire and benefit from dialogue or interaction with one-another (Eschholz et al., 2003; King, 2004). However, the current capital trial process only serves to split them further apart and impede meaningful restorative interaction and healing on the part of co-victims and offenders' families (Eschholz et al., 2003).

Arguments for restorative justice reforms in the context of capital trials and the death penalty process have begun to be heard in academic, legal, and community circles (Arrigo & Williams, 2003; Beck et al., 2007; DPIC, 2007b; Eschholz et al., 2003). Advocates of restorative justice point to the supreme need for justice and transformation in cases of capital murder and argue that bringing individuals impacted by such crimes together offers the best opportunities for meaningful healing for all—co-victims, offenders,

offenders' families, and the community (Arrigo & Williams, 2003; Eschholz et al., 2003; King, 2003, 2005). It is with this intent that the practice of restorative justice has started to be incorporated into the death penalty process. Indeed, Texas has begun implementing victim-offender mediation/dialogue between death row inmates and their co-victims.

Texas is one of the rare states which offer VOM in the context of cases of extremely violent crimes and which has extended availability to capital cases. Moreover, Texas has a very rigorous training process for mediators and preparation process for participants. Umbreit and Vos (2000) point out that "[m]ediation staff in the Texas program are trained in humanistic dialogue-driven style of mediation that frequently involves little, if any, preparation of the parties prior to the mediation session" (p. 67). In the death row cases, preparation is extensive taking as long as up to a year (although, the time of preparation may be shortened due to impending execution dates). In 2000, Umbreit and Vos (2000) presented preliminary analyses of Texas' use of VOM/D between death row inmates and their co-victims. Their study included two cases of VOM/D in which three co-victims participated. In one case, the granddaughter of one of the victims and sister of another participated. In the other, the mother of a victim participated. All three co-victims and both of the offenders participated voluntarily. Umbreit and Vos (2000) reported extremely positive results from the VOM/D sessions. Based on extensive interviews with each of the participants, they concluded the following:

All were moved beyond their expectations, all were relieved, all reported significant progress on their healing journeys, and all were grateful. The extent of the actual healing and transformation that took place for the offenders can never be documented beyond their self-reports in these interviews held a matter of weeks before their executions. All 5 persons point to the same set of components to account for their response; these included careful, compassionate preparation, gentle and unobtrusive guidance during the session, and above all, the opportunity for genuine, human face-to-face encounter, which increases, rather than decreases, offender accountability and responsibility. The 5 participants were unanimous in their hope that this potentially healing process can be made more available for both victims and offenders (Umbreit & Vos, 2000, pp. 84-85).

A follow-up study by Umbreit et al. (2003) included one more case which included one more co-victim (the mother of the victim). Again, the outcomes were all reported as extremely positive. Each participant reported that “the experience was powerful and healing, and they were relieved and renewed” (Umbreit et al., 2003, p. 261).²⁰ Of course, the researchers note that much more qualitative and quantitative research is needed for a fuller understanding of the effectiveness of VOM/D for meeting co-victims’ and offenders’ needs in capital cases.

But what of others who are impacted by the death penalty—those Arrigo and Fowler (2001) refer to as “the death row community?” In accordance with restorative justice, the healing of all who are a part of this community should be considered. Although VOM/D offers restorative opportunities for co-victims and offenders, the broader community and, more specifically, the offenders’ family remain neglected. As Eschholz et al. (2003) report from extensive, in-depth interviews with capital offenders’ family members, there is a strong need for restorative justice initiatives in capital cases on behalf of offenders’ families. These families often suffer as much as co-victims, have the same needs for healing, and experience alienation and stigmatization in their communities. According to Eschholz et al. (2003), restorative justice offers the greatest opportunity to provide healing for this neglected group in capital cases. In fact, they note “many instances in which families were trying to do restorative justice on their own” (Eschholz et al., 2003, p. 173) but also that “[u]nfortunately, many of these families found that the traditional system of justice impeded their efforts at restorative justice” (p. 174). On the other hand, they found that “[o]ther family members desired restoration but needed help in their journeys” (p. 174). Unfortunately, little help in the death penalty process is currently forthcoming; in fact, the criminal justice system currently appears to only exacerbate the suffering and harm experienced by capital offenders’ families (Eschholz et al., 2003).

As noted in Chapter II, the death penalty leaves many ruptures and casualties in its path. Restorative justice offers opportunities to repair these ruptures and reduce casualties. Eschholz et al. (2003) concluded their study of offenders’ family members by noting that “[t]hese families are in need of healing. To that end, many desired to reach out

²⁰ For actual statements made by participants and testimonials to the positive outcomes of VOM/D in capital cases, see the actual Umbreit & Vos (2000) article and Umbreit et al. (2003) book.

and connect with victims' family members, their own communities, and to form new communities based on the shared experience of a homicide and trial" (p. 175). This sentiment can extend to all involved in the "death row community;" and, in the true spirit of restorative justice, the broader community and its role in the justice process must be considered. This is especially true in capital cases in which particularly horrible crimes are at center, emotions run high, and stigmatization is likely for all involved with the death penalty process. There is a need for healing and transformation for not just the co-victims, offender and offender's family, but for those other individuals touched by the death penalty such as correctional staff, attorneys, clergy, media, and many others. For healing and transformation to occur in the wake of such horrific and traumatizing crimes as well as the process of the death penalty, community support is critical, and a factor that is currently missing. It is the hope of many that the application of restorative justice principles in capital cases will provide these and other missing pieces and, ultimately, the healing and transformation so needed.

In spite of the apparent promise and potential of restorative justice in the context of the death penalty, some scholars seriously question the wisdom and viability of implementing it alongside a form of punishment which so blatantly violates its essential principles (Arrigo & Williams, 2003; Radelet & Borg, 2000b). Radelet and Borg (2000b), in a response to Umbreit and Vos's (2000) article on VOM/D and the death penalty, argue that restorative justice has no place in the capital punishment process. They argue: "By its very nature, the death penalty is not about forgiveness (however conceptualized), finding common ground, or reconciliation. Instead, it embraces the polar opposites: retribution, hatred, and denial of the offender's humanity" (Radelet & Borg, 2000b, p. 90). It is hard to disagree with them. And, there is good reason for restorative justice advocates to be skeptical about such applications. The very thought of restorative justice being practiced in the context of the death penalty may perhaps devalue the real goals of restorative justice. As Van Ness and Strong (1997) point out "[a] society cannot select certain features of the [restorative justice] model and omit others; all are essential" (p. 41). The death penalty, from a restorative justice perspective, is among the most grievous violations of certain features of restorative justice (particularly those related to restoration, respect, and reintegration of offenders). Similarly, death penalty abolitionists may find the incorporation of restorative justice into the death penalty process a bit unsettling as such practices have the potential to obscure the violent and non-restorative

end product of executions. Radelet and Borg (2000b) offer the most cogent summary of these points:

If the state is truly interested in promoting restorative justice between killers and the families of their victims—as we think it should be—the first step it needs to take is to abolish the death penalty and stop promoting the false belief that capital punishment is an effective way to foster the healing of families of homicide victims (p. 88).

Indeed, the abolition of the death penalty would be a positive reform from a restorative justice perspective; but, assuming that the death penalty persists, should potentially useful and positive restorative justice practices—practices that might best address the needs of co-victims, offenders’ families, and communities—be forbidden because of philosophical semantics? Perhaps, as a colleague recently suggested, we should resist using the label “restorative justice” in regard to VOM/D and other such initiatives in the context of the death penalty. Nevertheless, the question must be asked whether we can use principles of restorative justice (whatever we choose to call them) to reduce harm and increase peace in the context of inherently non-restorative justice practices and punishments. There is no easy answer to this question. But, it is hard to deny that there can be meaningful dialogue and reconciliation for many individuals in spite of the death penalty. In cases in which the most severe harm and suffering (both from the crime and from the response to the crime) are inherent, the paths to healing offered by restorative justice are alluring.

Lessons Learned about the Death Penalty

The voices of the condemned and of the co-victims of capital crimes offer perspectives that have for too long been neglected or ignored in the discourse surrounding the death penalty. These voices reveal the humanity that too often lies just out of view in typical observations of the death penalty. Scholars philosophize about the morality of the death penalty, examine aggregate trends and patterns in its use, and analyze judicial and legal aspects of capital punishment. Politicians and policy makers consider its efficacy as a criminal punishment and whether or not the public supports or opposes it. In contrast, this study has shed light on the humanity that is often obscured by the “machinery” of the death penalty and execution processes. What we learn from this is that the death penalty has real consequences for real human beings and that these consequences are often not congruent with the intentions of capital punishment.

Condemned murderers are often depicted as evil aberrations who are irredeemable and thus need to be permanently removed from human societies (Lynch, 2002; Vollum et al., 2004). As such, the death penalty offers a way to permanently incapacitate these individuals who will always be dangerous. A recent study of public attitudes about the death penalty in Texas indicates that incapacitation or removal from society comprises the second most common rationale for death penalty support (Vollum et al., 2004). By far the most common rationale was retribution, that the death penalty was the only appropriate response to bring justice and by which to truly hold the offender accountable for his actions (Vollum et al., 2004). These are common attitudes about the death penalty but they exist in the context of a dialogue from which the voices of the condemned have been excluded, leaving a potentially important gap between perceptions and reality.

One need only examine the cases of exonerated death row inmates to realize that blanket proclamations of these individuals as inherently evil and irredeemable are misguided (Blank & Jensen, 2004). Indeed, each of the more than 120 death row inmates who have been exonerated over the last three decades (DPIC, 2007a) were at one time included among the collectively defiled “living dead.” We learn further from the words of condemned inmates in the present study that such broad categorizations are overly simplistic and often misapplied. Rather, redemption and transformation resonate loudly in the words of many of these individuals. Does this mean that they are no longer dangerous, that they have truly reformed and should be free, and that

we should trust their words 100 percent or that their words necessarily translate into behavior? Not necessarily. Indeed, we will never know. But, in regard to the sincerity of their words, there is little reason to lie when one is going to be killed in a matter of minutes. Regardless of what we believe in regard to the connection between their words and their potential behavior, the present study reveals that redemption and transformation are possible and expressed with regularity among these individuals. This is an astounding revelation in contrast to popular and official perceptions.

The death penalty is commonly held out as the only sure way to mete out justice for these evil killers, the only way to truly hold them accountable for their horrific crimes. And, as previously mentioned, public attitudes strongly reflect this sentiment (Vollum et al., 2004). We learn from the voices of the condemned that the death penalty fails to extract real accountability on behalf of the offender. In fact, the theme of accountability, in which the condemned overtly accepted responsibility for the crime or for other harmful acts, was the least common among the ten major themes of last statements. The condemned explicitly denied responsibility in nearly one fifth of the cases. According to those who advocate restorative justice, such accountability is central to the justice process and to the healing and reconciliation of all who are impacted by crime. Retributive justice, in spite of rhetoric about holding criminals accountable for their actions, actually discourages or impedes such accountability (Wright, 1996; Zehr, 1990; Zehr & Mika, 1998). And the death penalty, being the ultimate manifestation of retributive justice, is no different.

Co-victims' voices are also obscured in the death penalty process. From the very early stages, the victims and co-victims of capital murder are removed as meaningful subjects in the justice process, literally having their "victimhood" taken from them by the state (Christie, 1977). In spite of this apparent marginalization, the death penalty is often held out as a path toward closure and justice for victims and co-victims. In fact, victims' families are often championed by politicians and advocacy groups as the reason we need the death penalty. We learn from the words of actual co-victims that this path is rarely as clear or efficacious as many would have us believe. Rather, we find that the path is one that seems to suspend the lives and the healing and grieving processes for co-victims. Their needs for closure, healing, and justice are, in many cases, delayed.

It does seem that co-victims may obtain these things in the years during which they are awaiting the execution, but there is evidence

from these statements that the death penalty process does not necessarily help this process and in many cases may impede it. In fact, the single most prevalent specific theme among co-victim statements was dissatisfaction or frustration with the delay or length of time in carrying out the execution. This was expressed by co-victims in over a quarter of the cases. Moreover, co-victims were much more likely to express that the execution represented a “conclusion” to a difficult period (22.6%) than that it brought them “closure” (2.5%). Many indicated that they had waited a long time for the execution and that they could “finally” move on with their lives. This suggests that co-victims often hold on to their grief and pain, waiting for the execution as some form of turning point for them. This is no surprise as the death penalty is often depicted as being intended for just this purpose—to provide the much needed closure and justice for co-victims. We must ask: How much sooner might these co-victims have moved through the natural grieving and healing processes had they not waited for the promised salve of the execution? Perhaps holding the execution out there as the magic point at which closure can be obtained simply leads to increased grief in the waiting. When we add to this the ambiguity of the process due to appeals, hearings, new trials, and stays as well as the often accompanying news stories and reports, the extended suffering is exacerbated even further. Co-victims must relive the traumatic events and face the unknown disposition of the person who has caused them this trauma over and over again. These realities of the death penalty are hardly conducive to healthy grieving and healing.

Finally, we learn from the voices of the co-victims that there is a lack of connection to the human “other” of the condemned. Arrigo and Williams (2003) explain the problem:

[Co-victims] have failed to connect with the humanity of the other (i.e. the stranger unlike us) and have dismissed or repressed the realization that the constitution of one’s own self-identity inexorably passes through the complexity of all social relations, including those that are devastating to accept (p. 619).

This lack of connection manifests most directly in an inability to forgive the condemned—an essential component in healing in the wake of victimization. But there is more direct evidence that this lack of connection relates to dissatisfaction with the execution and the death penalty among co-victims. The second most predominant specific

theme among co-victim statements was dissatisfaction due to something about the condemned. In nearly a quarter of cases, co-victims expressed dissatisfaction in this context. Factors related to the condemned that were found to be dissatisfying were a lack of acknowledgment of the co-victim, a lack of apology, and a refusal to take responsibility for their actions. This clearly indicates an underlying need for connection to the condemned and to the damaging impact when it is not present.

Although this study was limited to two particular populations directly impacted by the death penalty process and execution, we know from the work of others that the consequences of the death penalty and executions are not limited to just these two groups of individuals. Rather, there is a whole “death row community” of individuals who are impacted by the implementation of this form of punishment (Arrigo & Fowler, 2001). There are also the broader societal impacts noted in Chapter II of this book. The impact and often unintended consequences of the death penalty reverberate throughout all of these groups. What we learn from the voices of the condemned and their co-victims is that these reverberations often produce human casualties and that we fail to leverage the inherent human connection among these groups and the potential for meaningful transformation and healing for these individual.

There is clearly a transformative process that is occurring while condemned offenders await their fate on death row. It seems that we should try to capture the factors related to this transformative process and apply it more broadly to offenders throughout the system. There is indeed something important to be learned here. Of course, we cannot know how much of the transformation is due to the condemned facing certain death, in which case such a process can not be replicated in the absence of the death penalty. We must consider the very real possibility that facing death may be a significant catalyzing force in the positive transformation and reform of condemned murderers. But the very fact that transformation and reform may be possible among a group of offenders considered beyond redemption is an important lesson. Moreover, there is clearly a need for connection and for processes that assist in healing in the wake of losing a loved-one to murder. The death penalty process clearly does not meet these needs. If we are truly seeking healing, closure, and justice for the co-victims, as advocates for the death penalty proclaim, then this is a lesson that must not be ignored.

There is a real desire among all who are touched by murder and the death penalty to assert and express their humanity and there is a need for connection to others that goes largely unmet in the death penalty process (Arrigo & Williams, 2003). The lessons we learn from the voices of the condemned and their co-victims imply that there is a need for restorative initiatives, whether they exist in the context of the death penalty or in lieu of the death penalty (the latter, many believe, is the only option if we are to have truly restorative justice). As discussed in Chapter III, restorative justice practices have begun to be employed in the context of the death penalty process with overwhelming success for both the condemned and the co-victims (Umbreit et al., 2003; Umbreit & Vos, 2000). Restorative justice offers us a paradigm in which all of these lessons may be heeded and in which the unfulfilled needs might be more sufficiently met.

The overall lesson we learn about the death penalty from the voices of the condemned and their co-victims is that it represents missed opportunities and a failure of our responsibilities toward one another in human societies. We have missed opportunities by killing individuals who have something to offer, even if it is only their perspective and testimony to their transformation. We have missed opportunities to harness the transformative forces experienced by those on death row and offer them to offenders who will not be executed. And we have failed to offer meaningful and timely healing and justice for co-victims, instead often prolonging their pain and grief. In the end, we have surrendered to hopelessness and missed opportunities for a justice that is restorative and transformative.

Lessons Learned about Researching Condemned and Co-victim Populations

There is a richness and depth to the brief words of condemned inmates and co-victims that was, to some degree, unexpected. Although it was definitely expected that patterns, commonalities, and distinctions among the themes of these statements would be detected, the overwhelming wealth of sentiments and messages was a welcomed surprise. As pleasing as this revelation of depth and breadth was, there remained a nagging reminder that I had only scratched the surface. The wealth of information offered in the words of these individuals gave a clear indication that there existed a much greater depth of meaning, emotion, and cognition than could ever be adequately mined from these brief statements. This is one of the key lessons learned about