

## **Opening up Victim Offender Mediation/Dialogue: An Analysis of Victims' Initial Statements<sup>1</sup>**

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### **1. Overview**

This paper reports on the communication that occurs in the Texas Department of Criminal Justice's Victim Offender Mediation/Dialogue (VOMD) program, which brings together victims of violent crimes with their convicted offenders for face-to-face dialogue. The cases in this program all involve severely violent crime, including murder. The victims are best characterized as "co-victims" of a crime; that is, they are the remaining family members of the actual victim. To begin, victims initiate the process by requesting to participate. This request usually is made about nine and a half years after a crime occurs (Umbreit, Vos, Coates, & Brown, 2003). Once victims have requested the mediation, offenders are asked if they would like to participate. The offenders' participation is voluntarily and does not have any impact on the offender's prison sentence. Victims and offenders meet individually with a mediator for about six months before the face-to-face meeting. In the Texas VOMD program, mediators work through grief inventories with the participants to help them discuss how the crime has affected them and what they would like to accomplish with the mediation session. When mediators feel that both victims and offenders are ready, a one-day mediation session is scheduled to take place most often in a prison chapel where the offender is detained.

This paper investigates one essential part of the face-to-face mediation session: the victims' opening statements. Grounded practical theory (Craig & Tracy, 1995) is utilized for close analysis of five opening statements from victims who took part in this program. Victims' opening statements crystallize months of preparatory work with a trained mediator into a short summary about what they would like to accomplish during

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the dialogue sessions. The opening statements make visible how victims open up these difficult conversations.

## 2. Method

### 2.1. Research Participants and Data Set

Videotapes of five mediation cases were selected from the Texas VOMD program archive of about eighty mediations. Informed consent from all participants was obtained. The tapes were transcribed into written form following conventions from action-implicative discourse analysis in order to develop the technical level of grounded practical theory (Tracy, 1995).<sup>2</sup> Each victim was given a pseudonym and all other personal name references were changed to protect the participants in this study. A brief description of the data set is provided below.

Case Number	Co-Victims' Names	Relationship to Victim	Case Description
One	Marie	Sister	Robbery and manslaughter
Two	Peggy	Mother	Intoxicated vehicular manslaughter
Three	Sarah	Mother	Manslaughter
Four	Rachel	Mother	Negligent manslaughter
Five	Betty, Jill	Mother, Daughter	Rape and manslaughter

Victims' opening statements represented victims' spoken utterances that were given after the mediator finished his or her opening statement. In all five cases examined here, the victims' statements came directly after the mediators' opening statements. The victims' opening statements ended when the mediators asked for the offenders to give a statement (Cases Four and Five) or the offenders began speaking (Cases One, Two and Three).

### 2.2. Data Analysis

The data analyzed in this study followed grounded practical theory. Grounded practical theory (Craig & Tracy, 1995) allows researchers to meld empirical observations with normative and pragmatic concerns of communicative practices (Ashcraft, 2000). Unlike Glaser and Strauss' (1967) similarly-named grounded theory, grounded practical theory provides a model that does not predict or explain communicative practices. While both theories work from empirical observations, grounded practical theory strives to offer "a reasoned basis for deliberating about, or critically evaluating particular communicative acts" that are often in institutional contexts (Craig & Tracy, 1995, p. 248). The precursor to the development of grounded practical theory emerges from a broader interest in recognizing communication studies as a practical field of study (Craig, 2002). Craig (1989) explains, "our essential purpose [as communication scholars] is to cultivate communicative praxis, or practical art, through critical theory" (pp. 97-98). In this sense, praxis is used to describe "reflectively informed, morally accountable human action" (Craig & Tracy, 1995, pp. 249).

<sup>2</sup> See Appendix One for transcription conventions.

Toward this reflective end, grounded practical theory involves reconstructing communicative scenes and events. Grounded practical theory assumes that problems or tensions arise inevitably for communicators. Craig and Tracy (1995) believe that a reconstruction of those problems and their subsequent speaker management provide a way for critical inquiry into communicative practices. As a result, grounded practical theory may “provide a reasoned basis for deliberating about, or critically evaluating, particular communicative acts” (Craig & Tracy, 1995, p. 248). The aim is to characterize how participants themselves engage in certain problematic discourse moments by understanding the “internal logic” of the interaction (Agne & Tracy, 2001, p. 274). Importantly, the evaluative aspect of this process is not intended to “dictate” what should be done in certain communicative practices, but rather, to “stimulate further discussion” about the practices under investigation (Ashcraft, 2000; Craig & Tracy, 1995, pp. 268-269).

### **3. Grounded Practical Theory Analysis**

Grounded practical theory is developed at three levels: the problem, the technical, and the philosophical. The problem level describes problems or dilemmas faced by participants in a communicative activity. I focus my analysis on the victims’ dilemma of facing their offender in the opening moments of these dialogue sessions at two levels: the institutional and the interpersonal. Next, the technical level explores how participants manage the dilemmas formulated at the problem level. After creating written transcripts of the victim opening statements, I examined the ways the victims confronted the tensions. Finally, the philosophical level provides a critique of the philosophical positions that are implied by the data analysis. At this level, I analyze the ways the victims formulated their opening statements in relation to problems they face in the interaction.

#### *3.1 Problem Level*

Victims are placed in a difficult position in choosing to meet face-to-face with their offender. This problem is examined in two parts: the institutional and the interpersonal. The institutional level highlights the dilemma of traditional criminal justice and restorative justice. Even though all the victims in this study are co-victims of crime, they have all been personally affected by the death of a child, sibling or parent. The opportunity to meet with their offender represents a different experience than the traditional U.S. criminal justice system. In fact, the criminal justice system as it is practiced in the U.S. often discourages victims meeting directly with their offenders (Zehr, 1995). Broadly speaking, the practice of VOMD is guided by the principles of restorative justice. Restorative justice recognizes that crime affects people (Braithwaite, 1989, 2002). Rather than confronting crime with the tradition retributive orientation to crime, restorative justice works to meet victims’ needs and to encourage offenders to take responsibility for their actions. Restorative justice does not seek to replace the traditional criminal justice system, but it does seek to address personal effects of crime on human beings (Zehr, 2002). Victims who choose to participate in the Texas VOMD program are doing so within this restorative framework. However, victims are pulled between the two competing frameworks of justice—restorative and retributive—when they participate in the dialogue session. This represents one tension that victims confront on the day of the mediation.

On an interactional level, victims face another tension. This interpersonal level represents the dilemma victims face in wanting not only to meet with their offender but also in recognizing how difficult the meeting will be. This tension can be seen in the small but informative research that has been carried out on the experiences of VOMD participants. Most victims who have participated in VOMD programs find their experience satisfying. A study of twenty participants in the Texas VOMD program reported ninety-five percent satisfaction with their involvement in the VOMD program, particularly the face-to-face meeting (Umbreit et al., 2003). This finding is consistent in other programs that bring victims and offenders together for dialogue across a range of crimes and contexts (Bradshaw & Umbreit, 1998). Although the victims' experience is generally satisfactory, victims also recognize the difficulty of meeting with the offender in the VOMD session. For example, victims report that it is very difficult to look at the offender in the eye in the first moments (Umbreit et al., 2003). As a result, victims must face the interpersonal tension that results from voluntarily choosing to participate in the program but having to face the person who has harmed them very deeply. Together, the tensions resulting from competing frameworks of justice as well as competing interpersonal desires make the victims' opening statement an extremely complex communicative problem.

### 3.2. Technical Level

In response to the multiple dilemmas that the victims face in meeting with their offenders, the following four communicative practices (thanks and tokens of appreciation, acknowledgement, spiritual talk, and forgiveness) characterize what victims say to their offenders in their opening statements.

#### 3.2.1. Thanks and Tokens of Appreciation

This section introduces the first communicative practice that victims use in their opening statements to manage institutional and practice tensions. As will be shown, offering thanks to the offender is often discussed in the very first words of victims' opening statements. For instance, in the first example, Marie, the victim, explicitly thanks the offender, Paul, for participating in the mediation. Marie acknowledges that the mediation is hard and that Paul's approval was necessary for the mediation to take place.

- (1)  
 18 Marie: M'kay. Hi Paul, um **I just want to um tell to**  
 19 **thank you for agreeing to do this.** I know it's  
 20 hard. It's hard for me and I know without your  
 21 approval it wouldn't be happening? **And I thank**  
 22 **you for that.**

Similarly, the victim in the next example, Betty, expresses her appreciation to her offender for taking part in the VOMD process. She also acknowledges that the process is not easy to do; in fact, she specifically says that the offender displays "courage" and willingness through participation in the mediation (lines 26-27).

- (2)  
 26 Betty: **I want to tell you how much I appreciate your**  
 27 **courage and being willing to come.** I know it's  
 28 not easy to do this

The communicative practice of offering thanks to the offender closely corresponds with the psychological virtue of gratitude. In psychological literature, Worthington, Berry, and Parrott (2001) describe gratitude as representative of prosocial emotion directed towards another individual or other-oriented love. In this way, the victims' tokens of thanks and appreciation can be seen as the communication of gratitude toward the offender.

### 3.2.2. Acknowledgement

In this section, the examples illustrate how the victims acknowledge the offenders through their lexical choices, religious talk, verbal statements of inclusion as well as through their nonverbal communication. Acknowledgment of the offender by the victim is necessary because of the unequal power between the victims and offenders. It is widely recognized that roles of victim and offender have social costs; both roles are stigmatized in society. Goffman (1963) notes that stigmatization occurs because "society establishes the means of categorizing persons and the complements of attributes felt to be ordinary and natural for members of each of these categories" (p. 2). Arguably, offenders especially in violent crime are more stigmatized than victims. Victims seem to be sensitive to this imbalance in their opening statements by working to carefully show inclusion and concern for the offenders. In the next example, the victims' acknowledgement of the offender and herself as both "precious to God" (line 34) shows how the victim actively works to bring the offender to her own level through the use of the inclusive "we" (lines 32-33 and 35-36).

(3)  
 31 Peggy: I've waited a long time for this and I didn't  
 32 think it was going to happen. **But we finally got**  
 33 **here.** And I'd like to read Psalm 139. ((reads  
 34 the Psalm)) You and I are very precious to God.  
 35 **And we were created wonderfully, fearfully, (4)**  
 36 **((exhaling)) and you are precious to him.**

In addition to inclusive lexical choices, religious faith is also explicitly mentioned in Peggy's unscripted talk (e.g., lines 33-34) and in the Psalm that she reads as well (line 34). Religion and more specifically spiritual talk are taken up in the next section. However, at this point, it is worth suggesting that victims may initiate religious talk in their opening statements in order to test the offender's own attitude toward religion (Armour, 2003).

In the next example, the victim Sarah acknowledges the offender through both nonverbal and verbal communication. Just before the example presented below, Sarah stands up and walks around the mediation table in order to give the offender, Dwayne, a hug before he starts his opening statement. Then, because the offender is overcome by his emotions and unable to speak, Sarah continues by telling the offender that she feels as he does (lines 135-136). She tells him that she understands his pain (line 135). At the end of her opening statement, Sarah demonstrates caring for the offender by reaching her hand out over the table to pass him a tissue (line 139). This act of consideration suggests Sarah's effort to treat the offender with care and concern.

(4)  
 134 Sarah: And never think I don't know where you are, I do.  
 135 **I know where you are. I feel your hurt. I know**  
 136 **what you're going through.** Believe me on that.  
 137 (6) And before we leave here today, you're gonna  
 138 feel what I'm feeling. (15) Here you go ((passes  
 139 tissue))

The victims' acknowledgment of their offenders through lexical choices, identification with the offender's experience, and nonverbal gestures of inclusiveness (e.g., hugging or passing a tissue) shows the victims' ability to take the perspective of their offenders. In doing so, victims are able to acknowledge the offenders as human beings and ultimately communicate caring towards the offenders in their opening statements.

### 3.2.3. *Spiritual Talk*

A third communicative practice used by victims in their opening statements is talk about religion. In this section, spirituality within the VOMD context is defined, and two representative examples of how victims discuss spirituality in their opening statements are presented. In this project, talk about religion is referred to as "spiritual talk" for several reasons. First, the spiritual talk observed in victims' opening statements does not seem to serve the purpose of proselytizing in the opening statements. As mentioned earlier, the spiritual talk in opening statements may serve to function as a way for victims to learn more about where offenders stand in their own spirituality. The Texas program has no rules in place for dealing specifically with participants' religious beliefs. Victims and offenders are only asked about their spiritual beliefs during their preparation for the program. The opening statements may be the first time victims and offenders have a chance to find out more about each other's spiritual beliefs without relying on the mediator. Second, spirituality is linked with understanding. In a useful handbook on victim offender mediation, Umbreit (2001) suggests,

Spirituality is understood as the search for a deeper meaning and purpose in life and the circumstances that we now face, an honoring of the sacred gift of life, and a yearning for greater connectedness with other beings and, for some, a higher being and all of creation. (p. 258)

Spiritual talk is explicitly communicated in the next example where the victim Peggy credits her faith in God to allow her to find some good to come out of the tragedy of losing her daughter in a drunk-driving accident.

(5)  
 64 Peggy: My favorite verse is that all things work  
 65 together for good. (7) **And it wasn't a good**  
 66 **thing but there's been many good things that**  
 67 **have come out of it. Because of my faith and**  
 68 **love for God. My trust in him, I'll know he'll**  
 69 **take me through anything. And he's taken me**  
 70 **through a lot. And I survived. And I'm happy.**  
 71 (11) And I wish you didn't have to be here. I'd  
 72 set you free if I could.

In the next example, the victim Sarah also recognizes the importance of her spiritual beliefs in her participation in the mediation. Sarah explains her position about spirituality (lines 124-126) and how her faith has allowed her to come to a realization that she can now symbolically serve as mother to the offender Dwayne since her son, David, is dead (lines 130-135).

(6)

124 Sarah: **That's what this is all about. It's not about me.**  
125 **This is about Dwayne and Jesus Christ who allows**  
126 **this to be done.** The God I serve that's why it's  
127 happenin. Because I love him and he loves you.  
128 And I come to help Dwayne. And I feel so blessed  
129 being blessed to do that. I feel blessed being  
130 able to help you. And just. **I'm David's mother.**  
131 **Now your mother is gone. Let me be your mother.**  
132 **Just think of me as a mother figure. I know a**  
133 **mother loves her child. That's how I'll love you.**  
134 **Really and truly. That's the kind of God I serve,**  
135 **a God of love.**

While a discussion about the participants' own religious faith is beyond the scope of this project, it is important to acknowledge that the five victims' opening statements examined here generally display Christian oriented ideology and may predispose participants to engage in specific discussions. Most importantly, these data show how spiritual talk in victims' opening statements communicates a sense of victims' understanding the self in the larger world (Worthington et al., 2001). Victims' use of spiritual talk involves "embracing a sense of one's existence as it is and being grateful to God or some other outside source for what gifts one has received" (Worthington et al., 2001, p. 121). In this way, spiritual talk corresponds with the psychological virtue of humility (Worthington et al., 2001).

### 3.2.4. *Forgiveness*

Direct statements of forgiveness make up a final practice seen in victims' opening statements. Forgiveness in this study is defined as explicit use of the word "forgive." In these data, four of the five mediations have the victims explicitly expressing forgiveness in their opening statements. Forgiveness is a delicate issue in VOMD. There are many who feel that there are some crimes that cannot be forgiven (North, 1987). Certainly, murder and other crimes of severe violence fall into the category of unforgivable actions (Flanigan, 1992). It is important to state that the goal of this analysis is not to promote the idea that victims and offenders should engage in forgiveness during every VOMD session nor should this work be used to insist on forgiveness from VOMD participants. However, at least one study of victims' retrospective accounts of choosing to meet with the offender explicitly mention forgiveness as part of the reason for choosing to mediate, although it is not clear at what point during the mediation the victim offered forgiveness to the offender (Umbreit & Vos, 2000). The intent of this current study is to examine actual discourse from the mediations to gain deeper insight on the management of the communicative practices made visible in participants' opening statements.

Models of forgiveness have emerged from several research perspectives: psychological, therapeutic, religious, and communicative. In this project, McCullough, Rachal, Sandage, Worthington Jr., Brown, & Hight (1998) and McCullough, Worthington & Rachal's (1997) psychological model of forgiveness offers a useful model to consider the transactional nature of forgiveness. This model highlights a three-step process that begins with an offender's apology. Apology is hypothesized to create empathy in the victim, who then is able to offer forgiveness. The role of apology has historically been viewed as central to the transaction of the forgiveness process, in which confrontation with the offender is likely (Martin, 1953). Therapeutic models of forgiveness are often practically oriented; that is, they conceptualize forgiveness as achieved through a series of steps. For example, Enright (2001) describes a therapeutic process of forgiveness in four steps. The process begins by uncovering anger, deciding to forgive, working on forgiveness, and then a discovery and release from pain. Faith-based understandings of forgiveness certainly may also influence participants' views on when and why they choose to forgive (North, 1987). For instance, in Hebl and Enright's (1993) study of forgiveness in elderly females in psychotherapy, their participant pool came from a Christian church. The researchers suggest that the participants' religious beliefs may predispose them to forgiveness. Although religious conviction may help someone decide to forgive, it is not clear that forgiveness is more likely with those who ascribe to a certain faith tradition (Rye, Pargament, Ali, Beck, Dorff, Hallisey, Narayanan, & Williams, 2000). In one of the few studies on the communication of forgiveness (see also Fincham, 2000; Freedman, 1999), Kelley (1998) describes spoken forgiveness as direct, indirect, or conditional forgiveness. Included in direct practices of forgiveness are discussing the issue, showing understanding, telling the other "I forgive you," or involving a third party to act as a mediator. In four of the five mediations in this project, there are direct statements of forgiveness (Cases One-Four).

The difficulty of discussing forgiveness from a communication standpoint is that the literature separates the communication of forgiveness from the psychological, therapeutic and spiritual aspects of forgiveness. However, in VOMD there is a clear overlap between at least two of these aspects: the spiritual and the interpersonal. Consider the intersection of these two aspects of forgiveness in the next example.

(7)

22 Marie: Uh and to let you know that I forgive you for it.  
 23 Truly from my heart **I forgive you. The Bible**  
 24 **says, to be forgiven you have to forgive. And it**  
 25 **took me eight years, Paul, to get to this point,**  
 26 **but I'm here. And I truly forgive you for it.** I  
 27 know it was a choice that you had to make and  
 28 you made the choice. Um I don't agree with it, I  
 29 think it was a bad choice. **But I do forgive you**  
 30 **for it.**

On the one hand, Marie's statement of forgiveness is strongly tied to her religious convictions (lines 23-26). In Christian theology, "forgiveness is at the religious, theological, and ethical core of the Christian tradition. It represents the possibility and reality of change and transformation of the individual in relation to others and others in relation to the individual" (Rye et al., 2000, p. 31). With a strong Christian religious tradition that sees forgiveness as benevolent and merciful, faith is certainly an important factor in how individuals approach forgiveness and that is, in turn, reflected in the



discourse of VOMD participants. Rokeach (1970) found that religious faith does in fact influence individuals to recognize the importance of forgiveness, which may also make those individuals more willing to forgive. Marie's statement thus is representative of the strong connection between the communication of forgiveness and religion. On the other hand, Marie's statement recognizes the importance of telling her offender that she forgives him (lines 25-26 and 29-30). Interpersonal forgiveness is broadly defined as "the kind of forgiveness that exists between people, whether it be one individual forgiving another, family members engaged in mutual forgiveness, or even one nation forgiving another" (Enright & North, 1998, p. 4). Another definition that recognizes the communicative aspect of forgiveness proposes that forgiveness is an "intraindividual, prosocial change toward a perceived transgressor that is situated within a specific interpersonal context" (Enright, Freedman, & Rique, 1998, p. 9).

Victims in the data for this project express the importance of the interpersonal context provided by the VOMD program in their opening statement. Often this explicit orientation to the offender is made visible in the victims' discourse by their recognition of the importance of the face-to-face dialogue. Interestingly, it is this immediacy of the dialogue that provides an important condition for the communication of forgiveness: direct interaction between a victim of the crime (a family member in the case of VOMD) and the convicted offender. Hawk (2001) points out that "one person cannot offer forgiveness on behalf of another person" (p. 297). In their opening statements, victims tell the offender directly of their forgiveness. In the following example, Rachel explains that she granted forgiveness to the offender before the mediation, but she wanted to tell him in a face-to-face setting.

(8)  
 81 Rachel: It's it's been there for a long time. I've just  
 82 (. ) was trying to get this through **so I could**  
 83 **tell you personally-face-to-face where it is**  
 84 **more personal.**

This direct need to express forgiveness is echoed in Sarah's opening statement as well.

(9)  
 84 Sarah: Well you asked what would I get out of this?  
 85 What I would get out of this is ((exhale)) you  
 86 being here, it's all I's expecting. And just to  
 87 talk to you. **And to tell you, face-to-face, I**  
 88 **have forgiven you, and I need you to forgive**  
 89 **yourself.**

These examples point to the importance of recognizing forgiveness as situated within the VOMD context. Not only are victims' invoking some spiritual aspects of forgiveness, but they also discuss forgiveness as important in a face-to-face environment.

## 5. Philosophical Level

From the moment that the offender walks in to the mediation room, the victim is put in a problematic situation. At an interpersonal level, the victims are facing the person who has committed a horrendous crime against their loved ones, but yet the victims in this study voluntarily choose to participate in the program. On an institutional level, the victim has requested that the dialogue take place through the restorative justice opportunity

provided by the Texas VOMD program; however, the mediation occurs in relation to the retributive system of justice in the U.S. This study has shown that victims confront these tensions by engaging in prosocial communicative practices in order to begin the dialogue.

This finding is especially important for policy makers and VOMD practitioners. At the policy-making level, policy makers are asked to determine the feasibility of such meetings. The data presented here suggest that victims and offenders are able to begin these mediations in positive ways. Further research is needed to determine how these dialogues proceed over the course of the entire session. However, the results presented here provide an encouraging picture of what these sessions entail. For VOMD practitioners, these data offer a critical examination of victims' ability to open up the dialogue. This analysis questions the flexibility victims have for opening the VOMD dialogue in alternate ways. If the victims did not open up with the prosocial communicative practices observed here, would the victims still be allowed to meet with the offenders? This question deserves continued research attention.

#### 4. Conclusion

Outside observers may wonder how such dialogue sessions between victims of violent crimes and their convicted offenders move forward at all. They may even have the impression that victims will be so angry with their offenders that they might try to fight or harm them in some way. An unexpected finding in this data set was victims' use of forgiveness in their opening statements. Specifically, this study explores an environment in which the communication of forgiveness occurs outside the context of a close relationship. In previous research, forgiveness that does not occur in a close relationship was estimated to make up only 2% of the instances of forgiveness (Kelley, 1998). Thus, these data present the unique communication of forgiveness in non-close relationships. The data also display a counter example to a current model of forgiveness, which theorizes that apology proceeds the granting of forgiveness in interaction (Enright, 2001; Enright et al., 1998; Enright & North, 1998; Enright & The Human Study Development Group, 1996). In the VOMD context, victims who choose to do so communicate forgiveness before offenders have a chance to speak. In this light, the data suggests that the communication of forgiveness may be used to open up a dialogue rather than to end the dialogue. Future research that addresses this contentious issue of forgiveness in the context of VOMD programs is warranted. Not only will it add to the growing knowledge of VOMD practices, but it will also add to a deeper understanding of how human communication unfolds under extremely difficult circumstances.

#### Appendix One

Transcription symbols include:

.	Falling intonation
?	Rising intonation
,	Continuing intonation
-	An abrupt cut off
<u>she</u>	Stressed syllable or word
(.)	Micropause less than one second
(2)	Pause measured to nearest whole second
( )	Non-transcribable segment of talk. Words inside brackets capture transcriptionist's best estimate of the actual words.

((crying)) Additional communicative information  
**forgive** Portion of transcript highlighted for analytical attention

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