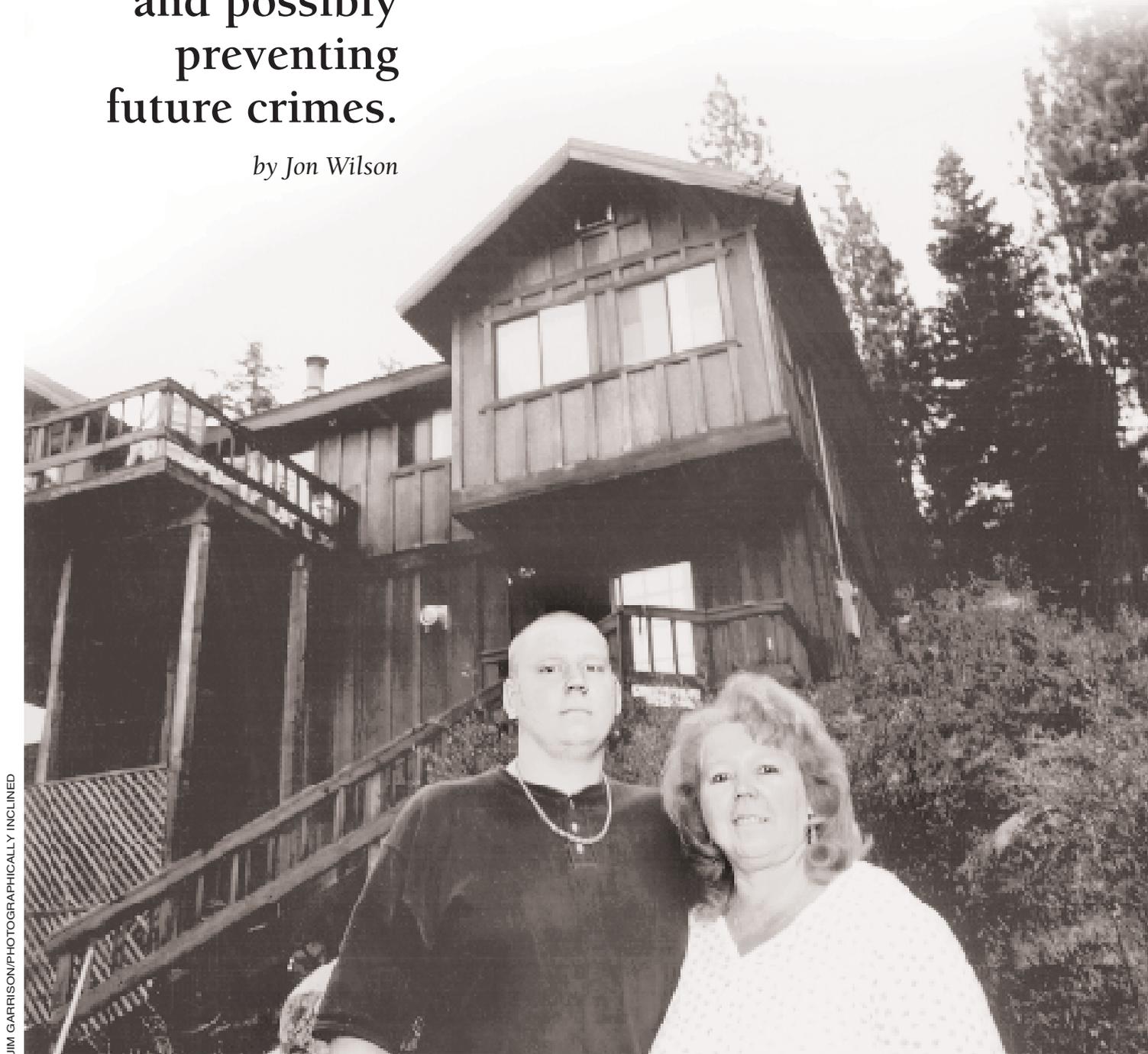


A growing movement is bringing offenders face-to-face with their victims—and possibly preventing future crimes.

by Jon Wilson

REAL



JIM GARRISON/PHOTOGRAPHICALLY INCLINED

Cindy Ames and her son Jeremiah today. In 1982, a teenage boy set fire to their home while they slept, trapping them in her bedroom. To avoid being burned alive, the single mother had to drop her son three stories to the ground, and leap after him. Seven years later, she finally sat down and talked with the arsonist.

JUSTICE

by Jon Wilson

It's been almost eighteen years, but the pain from the second and third degree burns that scarred more than fifty percent of her body still plagues Cindy Ames.

SHE NEEDS REGULAR physical therapy, she takes heart medication, and even therapeutic massage can be excruciating. This is how it will be for the rest of her life. All because a fifteen-year-old boy named Kevin broke into her Truckee, California home one afternoon in 1982. Ames was an emergency room nurse who worked nights at a nearby hospital. While she and her four-year-old son Jeremiah slept, Kevin slipped in, stole money from her purse, poured gasoline on the floor and the stairs and touched it off as he left, hoping to destroy any evidence of his presence. When Ames awoke, fire and smoke had filled the stairway, leaving a leap from the third-story window her only escape. She grabbed her son in a panic, opened the window—and then remembered her fear of heights. She didn't realize she was creating a chimney that would draw the fire; she was worried that she could be throwing Jeremiah to his death. By now the fire was rushing toward them, and Jeremiah remembers being scared enough to yell, "Just drop me, Mom!" And she let go. When he landed and called to her to leap after him, her courage returned. She doesn't remember how the fire seared the back of her body as the window drew the flames outward; she just remembers how cold it seemed outside. Jeremiah healed quickly from his fractures, but Ames, who broke her hip and pelvis in the fall, was in a burn-treatment center for four months.

She had to learn to walk again, and she was unable to return to work for two years.

When Kevin became a suspect, he bitterly denied any involvement. Ames believes that it was only her persistence that forced the case to trial—she wanted him tried for attempted murder. "I was scared and angry," she recalls. "All I could think was that he tried to kill me and my son." It was three years before Kevin was even indicted—on charges of arson with great bodily injury—and Ames spent days and nights afraid and unsure of what Kevin might do while free. One counselor testified that Kevin, whose family life was troubled, as a "sociopath who lies well."

Kevin pleaded not guilty, and Ames settled in for a long siege. At the time, victims were essentially excluded from the processing of such cases, especially those involving juveniles, but Ames had no intention of being shut out, and the judge finally agreed to allow her into the proceedings. Kevin was given a five-to-seven year sentence, but Ames was still angry and scared. In the end, he spent two years at a California Youth Authority (CYA) facility. Ames would not find relief until just before his release, when she—and a mediator—sat at a table with him, seeing a regret and remorse she had doubted were even possible for him. Ames had received a letter from Kevin. He wanted to talk with her, he wrote, to apologize in person. By this time, Ames was ready to put it behind her, so she agreed to see him at the CYA facility. What she saw was genuine remorse. "Those tears were real," she recalls. He wanted her to understand that he hadn't intended to kill her at all. He admitted that at the time he "didn't care" that she could have died—but he hadn't targeted her. This was critically important news for Ames.

She could see that Kevin was ready to start over, and that there was no longer anything to be afraid of, and the talking set her free. Kevin

MEDIATING the Victim-Offender Conflict

STEP 1: The case begins with a referral to a victim-offender restitution program (VORP). Referrals come from a variety of sources (including victim or offender), but they frequently come from a probation officer or a court. The case is recorded and screened by the VORP coordinator or manager, then passed to a volunteer. The coordinator continues to keep tabs on the case, providing advice or answers to questions that the volunteer may have, but at this point the case is basically in the hands of the volunteer.

STEP 2: The volunteer contacts and meets with offender and victim separately to explain the program, to determine interest in proceeding, to explore losses, and to learn about each participant's version of, and feelings about, the case. This serves as another opportunity to screen out inappropriate cases. Assuming that victim and offender agree to proceed, and that the mediator still finds the case to be appropriate, preliminary arrangements for the actual VORP meeting are made. About fifty to sixty percent of cases referred actually move on to a meeting. Some cases drop out because parties cannot be located, or because participants consider the case resolved.

STEP 3: When all parties have agreed to meet, the actual meeting is held, led by the volunteer mediator. Meetings may be in victims' homes, or some neutral place, such as the VORP office or a church or school, depending on participants' preferences. There are three agenda items for this meeting: review of facts, expression of feelings, and discussion of an agreement. Care is taken to give all parties opportunity to relate their version of what happened, ask questions, and express feelings. Finally, an agreement is worked out and signed, specifying restitution, behavior, or other settlement. If no agreement can be reached, parties are informed of the remaining options (for example, filing in small claims court).

A wrong has been committed, and someone has been violated. The goal of the VORP process is to make things as right as possible. Ron Claassen, director of the Central Valley VORP in Fresno, California, has identified these three central components of the process: recognizing the injustice/violation, restoring the equity as much as possible, and making clear agreements for the future.

A satisfactory VORP meeting should address all three of these components. When both sides agree that all of these parts have been completed satisfactorily, a transformation has taken place. People feel differently about each other than before. As agreements are kept, trust grows. VORP records show that almost all cases that come to a meeting result in an agreement.

STEP 4: As soon after the meeting as possible, the mediator prepares a narrative report and an evaluation. All papers are returned to the VORP office, where the coordinator records necessary information and sends copies of the narrative report and the restitution contract to the referring agency, which is usually responsible for overseeing fulfillment of the settlement. Depending on the program, either VORP or the referring agency may actually collect and distribute the restitution.

—Howard Zehr

moved to another state after his release, and Ames, who had worked so hard to put him away for as long as possible, decided to begin working with other young offenders. She now goes regularly to a nearby juvenile detention facility to talk with inmates, helping them understand what it feels like to be a victim. She knows she's reaching them when she tells her story, especially when she sees the tears in their eyes. This is restorative justice, an ancient notion with powerful implications for crime, punishment, and the restoration of community. Founded on the belief that making things as right as possible between victims and offenders is essential to a just society, it promises to make our criminal justice system more humane—and possibly more effective.

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THE EYE-FOR-AN-EYE system of justice that once prevailed probably deterred certain crimes, but it did nothing to build understanding or community. Among tribes whose strength required unity, conflicts came to be resolved by chiefs and elders, a tradition that still survives among some. Offenders were held accountable to the community *and* the victim, but reconciliation and restoration, not punishment, were their objectives. The American judicial system still holds to the twelfth-century English notion of Henry I, who decreed that the disposition of offenses like arson, robbery, murder, and other crimes of violence were the province not of the victim or the village, but the king. Crimes against persons became crimes against the crown, which had sole responsibility for meting out punishment. Called “retributive” justice, it still works—or fails to—this way. But retributive justice is punishment, not rehabilitation, and most law enforcement professionals agree that incarceration doesn't change behavior, unless it's for the worse. According to some, there is no real justice in our system. “True justice,” says Charles Colson, founder of Prison Fellowship Ministries, “heals victims' wounds, helps offenders make material and emotional restitution for their crimes, and inspires personal turnabouts within offenders.”

If retributive justice worked, offenders would see the errors of their ways and know regret and remorse. But it's the exception, not the rule. Regret and remorse require understanding of the *human* consequences of criminal acts, but the state prosecutes on *legal* consequences, and—particularly for victims—conviction is not the same as face-to-face accountability. Even after the offender is incarcerated, victims are often left with their pain and fear.

It was into this vacuum that modern restorative justice emerged. Gaining momentum in this country since the early 1980s, it has grown from the work of Mennonites in Ontario and Indiana. The movement commonly refers to victim-offender mediation programs (VOMPs) and victim-offender reconciliation (or restitution) programs (VORPs), and it's rooted in the notion that victims need and deserve an opportunity to show offenders—with a mediator present—exactly how they *feel* about the offense.

Frequently applied in cases of smaller crimes like burglary, petty larceny, and minor assaults, mediation is playing a greater role in crimes of more severe violence. Even in cases of rape and murder, where ideas of mediation and restitution might seem inconceivable, remarkable strides are being made. Families of murder victims, for example, are working to engage in dialog with convicted killers. That it helps some families come to terms with the incomprehensible says much about how important such dialog can be. There are now more than 300 victim-offender mediation programs in 43 states, and about 700 programs under way in Europe, Canada, Australia, New Zealand, and South Africa.

HOWARD ZEHR is one of the early architects of modern restorative justice. Professor of Sociology and Restorative Justice at Eastern Mennonite University in Harrisonburg, Virginia, he is the author of the book *Changing Lenses: A New Focus for Crime and Justice*. He believes that one of the failures of our system and its focus on trial and imprisonment is that it allows offenders to feel no personal responsibility for their actions. Defense attorneys, typically advising offenders to deny guilt no matter what the circumstances, also enable clients to defy accountability. Most of the time, according to Union County, Ohio Court of Common Pleas Judge Richard E. Parrott, “the perpetrator often feels there is no problem with what he’s done, other than a technical violation of the law.” Such offenders regret nothing but the fact that they were caught, and their victims remain mired in pain and anger.

The value of the victim-offender mediation process lies in the power of the expression of feelings. For the victim, this is the critical element missing from a jury trial. Mediation allows victims the opportunity to give voice to their anger and hurt, and to let it go. George and Dianne Atencio’s daughter’s truck was broken into and damaged by juveniles, who tried to steal the stereo player. The Denver, Colorado couple were so frightened and angry that they pressed charges. As George Atencio recalls, “Any time you are robbed you feel violated. All you can think of is that there is a monster out there.” But mediation sessions and an agreed-upon restitution plan with the boys allowed them to feel at ease again. “You sit and look into these eyes,” says Dianne. “You’re not afraid anymore.”

“The truth is,” says Al Wengerd, Executive Director of the Center for Community Justice in Elkhart, Indiana, “offenders come into encounters more fearful than victims.”

Remarkably, most offenders are stunned to see how deeply their victims have been harmed when they face them in person, which is why VOMPs can be so powerful in turning offenders—especially young offenders—around. “The victim comes in angry, or hurt, or scared, and the offender comes in



Courtesy Ken Davis

Ken Davis just gave up his job as a corrections officer in a juvenile detention facility to become a full-time mediation coordinator.

[acting] cocky,” says Martin Bochenek, former Director of the Nez Perce County, Idaho Juvenile Probation Department. “The goal, of course, is to get empathy on both sides. The offender [hears] how it is to be violated. It gives them a conscience.” Forcing offenders to face their victims can also place them in the victims’ shoes, which humanizes an event they tend to see as abstract. One juvenile recounted, after a mediation process, “I now realize that I hurt them a lot.... To understand how the victim feels makes me feel different.”

Victims often come to mediations intent on demanding full financial compensation, yet sometimes, especially with juveniles in minor offenses, they end up satisfied with an apology. Often, in cases of theft and vandalism, they end up arranging for offenders to “work off” the value of the loss or damage, and some victims have even become mentors and friends to their offenders.

Successful mediation might avert incarceration in certain offenses like juvenile vandalism, but it is not designed to replace prison time. Nor is forgiveness the objective, though it might result from the dialog. The goal is to make the offender understand that his or her actions affected a human being in unseen ways. But not every victim is interested. Typically, less than twenty-five percent of the victims approached choose not to participate. Some fear retaliation; others just don’t want to confront their offenders. VOMP advocates are admonished not to apply any pressure upon victims to go into mediation.

KEN DAVIS BELIEVES he was born to mediate. A professional mediation trainer and mediator, Davis has worked for seven years as a corrections officer at the Riverview Juvenile Correctional Center in Delaware, Ohio. He had to give the job up recently when he became the full-time Mediation Coordinator for the Common Pleas Court of Union County, Ohio—a job he had held part-time. He loves mediation. “This is what it’s meant

to be,” he says, “the putting of people back together.” He has a degree in family counseling, and he began working as a volunteer in victim-advocacy six years ago.

Before he even raises the subject of mediation to the victim in a case, Davis meets first with the offender—who can be a candidate only if he has pled guilty to the charges—to see if mediation might work. He does this because, even when offenders have entered the guilty plea, some will still try to back away from their responsibility once they get into mediation, seeing it as yet another chance to get off the hook. Such denial puts victims at risk of re-victimization, and Davis wants to ensure that this won't happen, and that he and the victim have a complete and honest picture of what to expect from the offender. After all, he says, “An offender in mediation who won't take responsibility would be just another proof to the victim that the system doesn't work.”

For all its power to evoke empathy and understanding, the typical mediation process doesn't work for certain offenses. Family violence, for example, is considered to be especially unsuited for it. “Acquaintance or partner dynamics are different,” says Donna Dunn, the Sexual Assault Program director at the Minnesota Center for Crime Victim Services in St. Paul. Mark S. Umbreit, Ph.D., of the University of Minnesota's Graduate School of Social Work, agrees. Umbreit, author of the book *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, believes such cases require special care. “Sexual assault cases must be victim-initiated,” he says. “As for domestic abuse, I'd rather recommend mediation for an attempted murder case than for a case involving domestic violence.”

Denise Gamache, Associate Director of the Battered Women's Justice Project in Minneapolis, would have to agree. “Victim advocates have worked for two decades to get the criminal justice system to take family violence seriously,” she says, “so we are suspicious when crimes against women are shoved out of the system.” Gamache believes the criminal justice system can work just fine when the dynamics of family violence are properly understood, and she's more concerned about restorative justice advocates whose zeal for mediation can result in undue pressure. “There should be *no* pressure on these victims to participate in mediation,” she says.

Ken Davis believes victims should always drive the process, and most VOMPs do require victim initiation, but he says cases of domestic violence can sometimes be successfully handled through what he calls “shuttle mediation,” in which one mediator works with both parties in separate rooms, or “caucus mediation,” in which face-to-face mediations are punctuated by private-room sessions, as necessary. In British Columbia, the challenge of difficult face-to-face encounters has been resolved through videotaped sessions in which victims describe the impact on their lives for the offender, or offenders answer questions posed by victims.

Nationwide, several states are leading efforts to implement initiatives. Minnesota, Texas, Pennsylvania, Indiana, and Vermont, for example, have instituted programs in their criminal justice and corrections departments that should serve as models for other states. Even the U.S. Department of Justice is interested enough to make resource information available, and the numerous national and regional VOMP

organizations offer training for professional and volunteer mediators. Professional mediators agree that properly training volunteer mediators is crucial to the continuing success of these initiatives. Mediation can reduce trial court case-loads, and skilled volunteers can save municipalities money. It's also believed that mediation is improving the rate of recidivism among youthful offenders.

It's important to remember, however, that sometimes, mediation just won't work. “For some offenders,” says Bruce Kittle, Director of the Restorative Justice Project at the University of Wisconsin Law School at Madison, “their own pain is so deep that it's hard for them to develop empathy for others.” But it doesn't mean we shouldn't try.

The challenge of creating a humane justice system has seemed intractable, but victim-offender mediation, as difficult as it is for both parties, appears to be a powerful solution available to every individual willing to try it. If nothing else, mediation is bringing humanity and understanding to a system that has been not only blind, but dumb. To Ken Davis, the potential of mediation as an approach to providing victims with a means of relieving their pain, and as an adjunct to “warehousing” offenders, is tremendous. “People have it within themselves to solve problems,” he says. “We often need help, but we do have it within ourselves to control our destiny and to make changes.”

As for Cindy Ames, she hasn't heard from Kevin in a while. He didn't answer her last letter. This is part of what happens in mediation. The point is to confront the demons that surround the event, to give voice to the terror, pain, and anguish, and move on, as much as possible, with one's life. Relationships that develop out of the process are more the exception than the norm. But Cindy Ames is sure that when she and Kevin sat down together and revealed their pain to one another, both their lives changed for the better. ▲

In the next issue: accounts of extraordinary mediations.

Jon Wilson is Publisher & Editor-in-Chief of Hope magazine.

WANT TO KNOW MORE?

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