

ADR in Hawai‘i Courts: The Role of Restorative Justice Mediators

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I. INTRODUCTION

Restorative Justice (“RJ”) is a movement that is receiving a great deal of attention throughout juvenile and criminal justice systems across the globe. Hawai‘i has endorsed this movement and has implemented the Pono Kaulike program as an Alternative Dispute Resolution (“ADR”) process at the District Court level. With the help of trained mediators, the Pono Kaulike program has helped many individuals to heal their relationships with those affected by crime.

Given the large success of the Pono Kaulike program, this author suggests that Hawai‘i adopt additional RJ processes with the help of trained mediators. Since Hawai‘i takes a more facilitative approach to mediation, implementing more RJ programs within our legal system would be relatively straightforward for mediators, given the RJ goal of “empowering” parties to find their own solutions. Part II of this article introduces the RJ movement and three relevant examples of restorative justice processes. Part III discusses the Pono Kaulike program in its entirety. Part IV compares the important role of mediators in RJ processes and “normal mediation.”¹ Aside from the differences between both

* Juris Doctor 2011, William S. Richardson School of Law. This comment is dedicated to my beautiful wife, Julia. Special thanks to my parents, family, and friends, who have always believed in me. I would also like to thank Professor John Barkai and the members of APLPJ for making this all possible.

¹ “Normal mediation” refers to the basic mediation model taught in Professor Barkai’s Negotiation and ADR course. See John Barkai, *Applying The Hawaiian Mediation Model To Disputes and Conflicts*, 11 INTERSPECTIVES 40 (1992), available at

models and their individual approaches to mediation, the role of mediators in both models is extremely important.

II. THE RESTORATIVE JUSTICE MOVEMENT

Restorative justice is “centrally concerned with restoration: restoration of the victim, restoration of the offender to a law-abiding life, [and] restoration of the damage caused by [the] crime to the community.”² It seeks to promote justice, accountability, and healing by moving beyond punishment and condemnation in order to address the causes and consequences of the offenses.³ Restorative justice has deep roots in the traditions of Pacific Islanders, the Maori in New Zealand, First Nation people in Canada, American Indians, and other indigenous people throughout the world.⁴ It is a peacemaking and collaborative approach to resolving conflicts that can be used in various settings other than the judicial system, such as at home, school, and work.⁵

Other forms of restorative justice processes include, but are not limited to, sentencing circles, community panels, community or family group conferences, and victim-offender dialogue.⁶ These processes try to involve, to the extent possible, individuals who have a personal stake in the incident in order to resolve their problems.⁷ Since restorative justice practices rely heavily upon voluntary cooperation by the parties,⁸ it must “be carefully facilitated by a skilled, specially trained mediator, whose prime tasks are to ensure a safe and comfortable environment and firm ground-rules for a fruitful exchange which is re-affirming and a positive learning experience for both parties.”⁹ Given the numerous types of RJ

<http://www2.hawaii.edu/~barkai/HO/NJC-ART.doc>.

² TONY MARSHALL, HOME OFFICE RESEARCH DEV. AND STATISTICS DIRECTORATE, *RESTORATIVE JUSTICE: AN OVERVIEW* 7 (1999), *available at* <http://members.multimania.co.uk/lawnet/RESTRJUS.PDF> (last visited October 18, 2011).

³ *See Statement of Restorative Justice Values and Processes: Introduction*, RESTORATIVE JUSTICE AOTEAROA, (May 2004), *available at* <http://www.restorativejusticeaotearoa.org.nz/rjaconstitution#15> (last visited October 18, 2011) [hereinafter RESTORATIVE JUSTICE AOTEAROA].

⁴ M. UMBREIT & J. GREENWOOD, U.S. DEP’T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, *GUIDELINES FOR VICTIM-SENSITIVE VICTIM-OFFENDER MEDIATION: RESTORATIVE JUSTICE THROUGH DIALOGUE* 2 (April 2000), *available at* http://www.cehd.umn.edu/ssw/rjp/Resources/RJ_Dialogue_Resources/Training_Resource/s/Guidelines_Victim_Sensitive_VOM.pdf (last visited October 18, 2011).

⁵ RESTORATIVE JUSTICE AOTEAROA, *supra* note 3, at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *See* MARSHALL, *supra* note 2, at 8.

⁹ *Id.* at 11.

processes and the limited scope of this paper, we will focus only on a relevant few.

A. *Victim-Offender Mediation*

Victim-Offender Mediation (“VOM”) is a restorative justice process that provides victims an opportunity to meet directly with their offenders in a safe and controlled environment.¹⁰ VOM’s can be used at various stages of the criminal justice process.¹¹ Some VOM programs are called “meetings,” “sessions,” “reconciliation,” “dialogues,” or “conferences.”¹² “With the assistance of trained mediators, the victims are able to let the offenders know how the crime affected them, receive answers to their questions, and be directly involved in developing a restitution plan that holds the offenders financially accountable for the losses they caused.”¹³ Research indicates that over 95% of VOM’s result in a signed restitution agreement of some sort.¹⁴ This agreement, although important, is secondary to the importance of the dialogue between the parties, which focuses on empowering victims and developing victim empathy in the offenders in order to help prevent future criminal behavior.¹⁵

It is important to note the differences between VOM’s and other kinds of mediation, as these differences affect the role mediators play in each. Generally, mediation is associated with civil court-related disputes that place an emphasis on settlement.¹⁶ The parties in normal mediation are referred to as “disputants,” and there is an assumption that both need to reach a compromise since both contributed to the conflict.¹⁷ In contrast, VOM participants are not disputants insofar as one participant has been victimized, and the other has admitted to committing a criminal offense.¹⁸ Although the participants do not mediate the issue of innocence or guilt, the mediators must focus on the full impact the conflict has on the lives of those involved.¹⁹ Thus, a major responsibility of an RJ mediator is to create and maintain a safe environment for dialogue between the offender

¹⁰ See UMBREIT & GREENWOOD, *supra* note 4, at 1.

¹¹ MARSHALL, *supra* note 2, at 14.

¹² See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3, at 23; UMBREIT & GREENWOOD, *supra* note 4, at 1.

¹³ UMBREIT & GREENWOOD, *supra* note 4, at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

and the victim.²⁰ In sum, while other types of mediation are largely “settlement-driven,” VOM’s are primarily “dialogue-driven.”

B. Family Group Conferences

Although similar to VOM’s, Family Group Conferences (“FGC”) involve a much wider circle of participants than in VOM’s. Those among the affected community, including the friends and families of both the victim and offender, also participate in these conferences.²¹ FGC’s are often referred to as “community conferences,” “family group decision-making,” “restorative conferences,” and “real justice conferences,” to name a few.²² Conferences are used primarily where there is a known offender who admits committing a crime, and the actual process is facilitated by an impartial third-party who does not participate in the decision-making process.²³ Conference participants sit in a circle without a table between them and face each other.²⁴ If a victim does not want to participate, she may send a representative in her place.²⁵ These conferences are unique in that there is a consensus among the entire group when determining how to deal with crime and make things right.²⁶ As with VOM’s, FGC’s can be used at various stages of the criminal justice process.²⁷ Conferences are more comprehensive than VOM’s because they are intended to focus more on addressing the offending behavior and its causes rather than just the needs of the victim.²⁸ Conferences include the conflict resolution practices of Hawaiians, the Maoris of New Zealand, Africans, North American Indians, as well as many other indigenous people.²⁹

²⁰ *Id.*

²¹ Lorenn Walker, *Conferencing: Western Application of Indigenous Peoples’ Conflict Resolution Practices*, paper presented at Fifth National Conference on Family and Community Violence Prevention, Apr. 9, 2001, 7 [hereinafter *Western Conferencing*], available at http://www.lorennwalker.com/articles/conferencingwestern9_01.pdf (last visited October 18, 2011).

²² Lorenn Walker, *Conferencing: A New Approach for Juvenile Justice in Honolulu*, 66 FED. PROBATION, 1, 1-2 (June 2002) [hereinafter *Juvenile Conferencing*], available at <http://www.lorennwalker.com/articles/lwalker02.pdf> (last visited October 18, 2011).

²³ Walker, *Western Conferencing*, *supra* note 21, at 7.

²⁴ Walker, *Juvenile Conferencing*, *supra* note 22, at 2.

²⁵ *Id.*

²⁶ *Id.* at 1-2.

²⁷ MARSHALL, *supra* note 2, at 14.

²⁸ *Id.* at 19.

²⁹ Walker, *Juvenile Conferencing*, *supra* note 22, at 2.

One of the shortcomings of VOM's is that the offender's resulting commitment to reform is often seriously attenuated by the lack of follow-up support.³⁰ This support is intended to be realized through conferencing, which utilizes the support of family members and friends in helping the offender carry out a plan of rehabilitation.³¹ Although conferencing is relatively new outside of New Zealand, research is currently being conducted in new conferencing programs in New Zealand, North America, Europe, and Australia.³² A New Zealand study found a "marked difference in reconvictions between those who felt constructively involved in the family group conference and those who felt it had been a negative, shaming experience, the latter much more often going on to re-offend."³³ This study confirms the importance of quality mediation and conferencing for those involved.³⁴ Consequently, this makes the role of conference mediators much more crucial.

C. Indirect Mediation

Not all victims want to meet with their offenders. Accordingly, mediators may negotiate between them if they do not want to meet or are unable to do so.³⁵ Although indirect mediation involves flexible negotiation for both parties, the agreement reached is generally limited to an apology and practical reparation.³⁶ Compared with VOM's and FGC's, "indirect mediation is less personal, does not allow victims' more emotional needs to be satisfied, is less effective in breaking down stereotypes and increasing understanding, and may be less influential in reforming offenders."³⁷ On the other hand, many victims not desiring a direct encounter may prefer indirect mediation to no involvement at all.³⁸ Since victim satisfaction is usually lower in indirect mediation, direct victim-offender mediation is generally preferred and encouraged.³⁹

³⁰ MARSHALL, *supra* note 2, at 19.

³¹ *Id.*

³² *Id.* at 19-20.

³³ *Id.* at 20.

³⁴ *Id.*

³⁵ *Id.* at 12.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See id.* at 18.

III. PONO KAULIKE: A RESTORATIVE JUSTICE PROCESS IN HAWAI‘I

District Court Rule 12.2 gives courts the authority to order parties to participate in an ADR process by discretion or by motion from a party.⁴⁰ In 2000, Chief Justice Moon signed a Hawai‘i State Judiciary resolution endorsing the Restorative Justice movement and the concept of “Pono Kaulike.”⁴¹ Among the many ADR processes employed in Hawaii’s courts today, the Pono Kaulike Restorative Justice Program, which began as a pilot program in the District Court of the First Circuit in Honolulu in 2003, attempts to resolve disputes and serve all participants within the justice system in a balanced manner.⁴²

The two primary goals of the Pono Kaulike program are to (1) help people hurt by crime to heal and (2) decrease repeat criminal activity.⁴³ These goals help to resolve current conflicts and prevent future conflicts. Early on, it became evident that the Pono Kaulike program was best suited for cases involving parties who knew each other, such as friends, neighbors, relatives, spouses, or individuals with an intimate relationship.⁴⁴ These cases have included assault, harassment, disorderly conduct, terroristic threatening, criminal property damage, negligent vehicular homicide, and animal nuisance (e.g., barking dogs).⁴⁵ Over the years, the program has evolved providing three unique types of RJ

⁴⁰ HAW. DIST. CT. R. 12.2; CTR. FOR ALT. DISPUTE RESOLUTION, HAW. STATE JUDICIARY, A BRIEF OVERVIEW OF SOME ALTERNATIVE DISPUTE RESOLUTION INITIATIVES IN THE HAWAI‘I STATE JUDICIARY (April 2010), *available at* http://www.courts.state.hi.us/docs/CADR/CADR_ADRInHiJud_April2010.pdf (last visited October 18, 2011). “The court, in its discretion or upon motion by a party, may order the parties to participate in an alternative dispute resolution process subject to conditions imposed by the court.” *Id.*

⁴¹ Lorenn Walker & Leslie A. Hayashi, *Pono Kaulike: A Pilot Restorative Justice Program*, 8 HAW. BAR J., 4, 7-9 (2004) [hereinafter *Pilot*], *available at* http://www.lorennwalker.com/articles/HBJ_5_04.pdf (last visited October 18, 2011). Pono Kaulike is a Hawaiian phrase meaning “equal rights and justice for all.” MARY KAWENA PUKUI & SAMUEL ELBERT, HAWAIIAN DICTIONARY (1986).

⁴² See Lorenn Walker & Leslie A. Hayashi, *Pono Kaulike: A Hawaii Criminal Court Provides Restorative Justice Practices for Healing Relationships*, 71 FED. PROBATION, 18, 18-24 (December 2007) [hereinafter *Healing Relationships*], *available at* <http://www.uscourts.gov/viewer.aspx?doc=/uscourts/FederalCourts/PPS/Fedprob/2007-12/index.html> (last visited October 18, 2011).

⁴³ Lorenn Walker & Leslie Hayashi, *Pono Kaulike: Reducing Violence with Restorative Justice and Solution-Focused Approaches*, 73 FED. PROBATION, 23, 23-27 (June 2009), *available at* <http://www.uscourts.gov/viewer.aspx?doc=/uscourts/FederalCourts/PPS/Fedprob/2009-06/index.html> (last visited October 18, 2011).

⁴⁴ See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

⁴⁵ See *id.*

processes: (A) Restorative Dialogues, (B) Restorative Conferences, and (C) Restorative Sessions.⁴⁶

A. Restorative Dialogues

A Restorative Dialogue occurs when the victim and defendant meet together without any supporters, such as family or friends.⁴⁷ In analyzing the role of a Restorative Dialogue mediator, it is important to note that a Restorative Dialogue is an example of a VOM model. As such, mediators in this type of RJ process must create and maintain a safe environment for dialogue between the offender and the victim.⁴⁸ Both parties enter into a Restorative Dialogue Agreement in an attempt to resolve the conflict.⁴⁹ Dialogues usually occur when victims simply want to know that the defendant is remorseful for his or her harmful behavior.⁵⁰ This acknowledges the importance of apologies. Although many people believe that crime victims do not wish to meet with their offenders and that repair and reconciliation are impossible, results taken from a number of different RJ programs indicate that 57% of all victims who were offered restorative services preferred to meet with their offenders.⁵¹ Furthermore, 65% of all victims participating in the Pono Kaulike program chose to meet with their offenders.⁵² As of 2007, ten Restorative Dialogues have been held, consisting of six intimate violence cases, three family violence cases, and one animal nuisance case between neighbors.⁵³

B. Restorative Conferences

A Restorative Conference occurs when the victim, defendant, and supporters of both sides meet as a group to discuss how each member has been affected by the wrongdoing and how the harm can be repaired.⁵⁴ In Hawai'i, RJ mediators attend a two-day training program.⁵⁵ In analyzing the role of Restorative Conference mediators, it is important to note that a Restorative Conference is another type of Family Group Conference. There are four phases within a Restorative Conference.⁵⁶ First, offenders

⁴⁶ Walker & Hayashi, *Pilot*, *supra* note 41, at 10.

⁴⁷ See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

⁴⁸ UMBREIT & GREENWOOD, *supra* note 4, at 2.

⁴⁹ Walker & Hayashi, *Pilot*, *supra* note 46, at 10.

⁵⁰ See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

⁵¹ Walker & Hayashi, *Pilot*, *supra* note 46, at 10.

⁵² *Id.*

⁵³ See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

⁵⁴ See *id.*

⁵⁵ Walker, *Juvenile Conferencing*, *supra* note 29, at 2.

⁵⁶ *Id.* at 3.

confess what they did and “explain what they were thinking when they committed the offense, what they have thought about since then, and whom they think has been affected by their actions.”⁵⁷ Second, the supporters of both parties discuss how they’ve been affected by the offender’s criminal action.⁵⁸ Third, the entire group discusses and decides what can and should be done in order to repair the harm and make things right.⁵⁹ Finally, a written Restorative Conference agreement is decided upon and signed by all members of the group.⁶⁰ “The conference ends with the participants eating together—a ceremonial breaking of bread—which allows for further reintegration, closure, and healing.”⁶¹ As of 2007, there have been eight Restorative Conferences, comprising of five family violence cases and three intimate violence cases.⁶²

C. Restorative Sessions

A Restorative Session occurs when the victim and defendant, who are unwilling to meet with each other, meet with mediators separately.⁶³ A Restorative Session is a form of indirect mediation. Both parties are encouraged to bring supporters and prepare a Restorative Plan to resolve the conflict.⁶⁴ Plans include self-improvement goals specifying how the defendant intends to reconcile with the victim and the community, and his or her willingness to meet with the victim.⁶⁵ As of 2007, twenty-five Restorative Sessions were held involving, among others circumstances, intimate violence and family violence cases.⁶⁶ The Restorative Conference Agreements, Restorative Dialogue Agreements, and Restorative Plans as explained above are all provided both to the court and to the respective probation officers for review.⁶⁷ These plans and agreements specifically address what the defendant promises to do in order to guide the defendant’s behaviors and actions and hold the defendant accountable.⁶⁸

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

⁶³ See *id.*

⁶⁴ See Walker & Hayashi, *Pilot*, *supra* note 46.

⁶⁵ See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

⁶⁶ See *id.*

⁶⁷ Walker & Hayashi, *Pilot*, *supra* note 46, at 11.

⁶⁸ See *id.*

IV. THE IMPORTANT ROLE OF MEDIATORS

The mediator's role is critical to a successful mediation. "The mediator's presence plays an important role in facilitating an open dialogue in which the parties are actively engaged and doing most of the talking."⁶⁹ This "presence" can be established through the mediator's tone of voice, genuine concern for each party, expression of empathy, verbal and nonverbal communication, and straightforwardness.⁷⁰ RJ mediators should not impose opinions or solutions on the participants, signaling a facilitative approach to mediation.⁷¹ Mediators must protect their impartiality in order to be trusted and respected by both offenders and victims.⁷² Mediators need to be cautious about intervening too frequently and "get out of the way" in order to encourage conversation and dialogue between victims and offenders.⁷³ A mediator conveys his or her sensitivity and trustworthiness through a hopeful, positive demeanor and nonjudgmental attitude.⁷⁴

Aside from having great communication skills, the skills required in a mediator include the ability to handle conflict and strong emotional expression, the ability to deal with a wide variety of people and personalities, and the ability to encourage and maintain dialogue.⁷⁵ We are finding value in and discovering the importance of culture in mediation.⁷⁶ Mediators need to consider culture in preparing each case, and a background on cross-cultural negotiations may also prove useful. Understanding the parties' culture and background may help mediators to better deal with a wide variety of individuals, especially when meeting with large groups of people.

Because the RJ process rests on a foundation of voluntary participation, the mediator needs to ensure that the parties are well informed.⁷⁷ If the victim is a child or young person, mediators must take particular care to make certain the child understands the mediation process and is safe and supported.⁷⁸ Mediators should also determine the

⁶⁹ UMBREIT & GREENWOOD, *supra* note 4, at 7.

⁷⁰ *Id.*

⁷¹ See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3.

⁷² MARSHALL, *supra* note 2, at 11.

⁷³ UMBREIT & GREENWOOD, *supra* note 4, at 7.

⁷⁴ *Id.* at 14.

⁷⁵ See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3.

⁷⁶ *Id.*

⁷⁷ See *id.*

⁷⁸ See MARSHALL, *supra* note 2.

expectations of the parties and establish that they are reasonable.⁷⁹ As with normal mediation, focusing on the “interests” of the parties instead of “positions” can “enhance a collaborative effort and provide more satisfying results.”⁸⁰ When an agreement is signed, mediators must ensure that the parties understand both the agreement itself and what is actually required for the agreed outcomes to be realized.⁸¹ A pre-conference meeting should be encouraged, along with a follow-up evaluation to monitor the parties’ progress, especially where a written agreement is involved.⁸²

Mediators must also facilitate communication in ADR by controlling the environment and conditions. As such, the mediation site, the arrangement of the room, the seating of the parties, the introduction process, and how parties address each other (e.g., using only first names) are key things to consider.⁸³ A mediator must also ensure that status and power imbalances are managed appropriately.⁸⁴ Depending on the nature of the crime, mediators may want to have the victim’s opinion be controlling.⁸⁵ It is important, however, that the mediation process be conducted in the most victim-sensitive manner possible while still addressing the important needs of the offender.⁸⁶ The mediator must provide information and support for the victim, yet be careful not to impose expectations on or apply pressure to the victim.⁸⁷ Providing adequate information and support is especially important in restorative sessions when encouraging the parties, usually the victim, to participate in direct mediation. Mediators should give victims adequate time when making decisions without pressuring them with arbitrary time restraints,⁸⁸ and they should always encourage victims and offenders to have supporters attend their meetings.⁸⁹

⁷⁹ See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3.

⁸⁰ See UMBREIT & GREENWOOD, *supra* note 4. Since “positions” are “what” the parties want, and “interests” are “why” the parties take the positions they do, focusing on “interests” allows the parties to better reach a settlement. See John Barkai, *The Art of Negotiation*, available at <http://www2.hawaii.edu/~barkai/HO/NEG-HO508.doc> (last visited October 18, 2011).

⁸¹ See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3.

⁸² See *id.*

⁸³ UMBREIT & GREENWOOD, *supra* note 4, at 8.

⁸⁴ See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3.

⁸⁵ UMBREIT & GREENWOOD, *supra* note 4, at 8-11.

⁸⁶ *Id.* at 6.

⁸⁷ *Id.* at 9.

⁸⁸ *Id.*

⁸⁹ See Walker & Hayashi, *Healing Relationships*, *supra* note 42.

Mediators must also be careful with their use of language, as certain phrases or words can convey expectation or imply judgment.⁹⁰ Although language is very important in normal mediation as well, it is even more important in sensitive, emotional RJ cases. Given the emotionally intense environment of RJ mediations, mediators must build rapport and develop trust with the parties, particularly the victim.⁹¹ This can be achieved by sharing individual experiences or past mediation cases that evoke insight, empathy, and understanding.⁹² Finally, the privacy and confidentiality of all participants must be respected and protected to the extent possible.⁹³ Mediators must not underestimate the power of an apology. Sometimes, victims simply want to know that their offenders have remorse for what they did. This can help the healing process, and mediators can utilize apologies to increase the likelihood of a successful mediation. Of the four parts of a successful apology, the acknowledgement of the offense is the most important.⁹⁴

In a Restorative Conference, mediators follow a script that contains a specific speaking order for all conference participants.⁹⁵

The [mediator] begins a conference by reading a preamble, which creates an atmosphere of respect, and subtly establishes the ground rules. The offender speaks next, before the other participants, allowing him or her to take responsibility for the bad behavior immediately. Having the offender take responsibility at the beginning of the conference gives the victims some emotional relief by knowing denial is not an issue. The offender answers a round of questions that cause him or her to consider the consequences of the bad behavior.⁹⁶

⁹⁰ UMBREIT & GREENWOOD, *supra* note 4, at 14.

⁹¹ *Id.* at 11.

⁹² *Id.* at 7.

⁹³ See RESTORATIVE JUSTICE AOTEAROA, *supra* note 3.

⁹⁴ Aaron Lazare, *Making Peace Through Apology*, Greater Good, 16, at 17 (Fall 2004), *available at* http://greatergood.berkeley.edu/article/item/making_peace_through_apology (last visited October 18, 2011). The four parts are (1) acknowledgment of the offense, (2) explanation, (3) expressions of remorse, shame, and humility, and (4) reparation. *Id.*

⁹⁵ Walker, *Juvenile Conferencing*, *supra* note 29, at 3. The script was developed by former Australian police officer, Terry O'Connell. O'Connell developed protocols from what he learned about New Zealand's process of conferencing in 1990, which is primarily where the essence of conferencing comes from. These protocols were later made part of the script used today. *Id.*

⁹⁶ *Id.*

Since conferencing includes many participants, mediators have a more difficult responsibility here than in other RJ processes, as they must also take into account the dynamics present when multiple individuals and their respective interests come together. Mediators must encourage dialogue while keeping participants focused on the issues being discussed, and in some cases, having a co-mediator present for a large number of participants may be necessary.⁹⁷

V. CONCLUSION

This article has shown that various RJ processes, such as those implemented in the Pono Kaulike program, have been very successful in healing the relationship between offender and victim. Thus, this author suggests that Hawai'i adopt additional RJ processes with the help of qualified mediators. Since the facilitative approach to mediation is preferred both in Hawai'i and in RJ processes, Hawai'i mediators would fit quite naturally into the RJ model, encouraging the greater use of RJ processes in our criminal justice system and in other areas.⁹⁸

Although mediation differs in some ways from RJ processes, the important role of the mediator doesn't change. In both models, mediators can help the parties resolve conflicts by improving communication between the parties and focusing on interests, not positions.

⁹⁷ See UMBREIT & GREENWOOD, *supra* note 4.

⁹⁸ See "Restorative Circles," another Restorative Justice process for prison inmates and their loved ones, is currently being used in Hawaii. Lorenn Walker, *Modified Restorative Circles: A Reintegration Group Planning Process That Promotes Desistance*, 12 Contemporary Justice Review, 1, (December 2009), available at <http://www.lorennwalker.com/articles/Modifiedrestorativecircles12-2009.pdf> (last visited October 18, 2011).