

Facilitating Restorative Group Conferences

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Participant's Guide Lesson 4: Role of the Facilitator

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PARTICIPANT’S GUIDE – LESSON 4 - ROLE OF THE FACILITATOR

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LESSON OBJECTIVES

At the end of this lesson, you will be able to:

- Listen to and communicate effectively with a wide variety of participants.
- Identify and deal with cultural issues.
- Explain the role of the facilitator including standards of conduct.
- Understand the legal issues including confidentiality and mandatory reporting.
- Understand a variety of options to repair the harm.
- Conduct effective initial phone calls and pre-meetings.
- Assess the readiness of potential participants.
- Start to determine if the facilitator role is a good fit for you.
- Evaluate your own competency and that of your co-facilitators.

DYNAMICS OF DIFFERENCE

Values - something we believe is important, and an integral part of who we are. Cultural values have a strong impact upon the way we communicate with others.

Dr. Derald Sue, clinical psychologist at California State University, has done some interesting research on the dynamics of difference.

- Majority values (white, middle class) have been imposed on the minority population.
- White middle class standard is used to judge intelligence, mental health and physical beauty, even appropriate communication style.
- If we use the white middle class norm, we will draw white middle class conclusions about the individuals we meet.

To be culturally competent, that is to work effectively with people whose cultures are different from your own, you must understand your own biases and the differences you may see in people of other cultures.

CULTURAL DIVERSITY includes differences in:

- Race
- Gender
- Sexual orientation
- Power imbalance
- Age differences
- Physical abilities
- National origin
- Lifestyle differences
- Economic level
- Religion
- Philosophical beliefs
- Education

Cultural Diversity has implications for the conference facilitator including:

- Implications in case assessment
 - ⇒ Which cases are referred for conferencing
- Implications during the conference
 - ⇒ Being impartial to all participants

⇒ Drawing conclusions from the conversation

CROSS CULTURAL COMMUNICATION WORKSHEET

Eye Contact: Looking someone in the eye can indicate:

- a. _____ or
- b. _____ or
- c. _____

Slow speech, with lots of pauses, can indicate:

- a. _____ or
- b. _____ or
- c. _____

Smiling and laughing during a serious event can indicate:

- a. _____ or
- b. _____ or
- c. _____

Sitting slouched down in a chair at the conference with arms crossed over the chest and with eyes on the floor can indicate:

- a. _____ or
- b. _____ or
- c. _____

LOCAL CULTURE ACTIVITY

How are people different from each other in this community or in the area you will serve as facilitators?

What barriers to communication might come up with these differences?

What strategies can be employed to try to make all participants in a conference feel safe and empowered? Or, what are some things you could do to improve communication?

CARE OF A FACILITATOR

Being centered enables you to focus through others' pain, frustration, extreme feelings, ability or inability to reach agreement.

1. Just before a pre-meeting or conference, establish a place of inner calm.
2. When strong feelings are being expressed, sit or stand with your body balanced.
3. Make a conscious effort to breathe deeply.
4. Talk with a colleague or another facilitator about the conference and how you felt during the conference and now after. A day or so after the restorative group conference, take time for self-assessment and try to get feedback from a fellow facilitator or mentor.
5. Say out loud one thing you did well.
6. Breathe!
7. Continue daily care. Some people may find it useful to use daily meditation, prayer, empty your mind, or practice the place of inner calm.

FUNCTIONS OF THE FACILITATOR

1. Educate potential participants in the pre-conference meeting about the opportunities offered by a conference, so they can make an informed decision about whether to participate.
2. Bring treats, forms and tissues.
3. Create a safe atmosphere through preparation of participants, selection of physical space, and facilitating the conference (tone, impartiality, calm, body language, ground rules).
4. Allow for a free expression of emotion.
5. Aid the participants' communication process and keep it going.
6. Help group develop a creative but realistic agreement.
7. Write the agreement down while participants eat and drink treats; get signatures on the agreement, if they're willing.
8. Complete conference program paperwork.

YOU ARE THE UMPIRE

- You are not one of the game players
- You watch the game
- You remind them of the rules if need be
- You throw the conversational ball back into the game so the participants can play
- You are not responsible for the final score

Used with thanks to Officer Paul Schnell, St. Paul, Minnesota Police Department (formerly with Carver County, Minnesota Sheriff's Department)



BASIC COMMUNICATION SKILLS

1. **Eliminate Distractions** - for example, television, radio, ringing phones, intercom calls.
2. **Demonstrate Active Listening** – Listen with attention, use silence (do not interrupt and do honor other people's pauses), ask open-ended questions to learn more, sometimes restate or reframe the other speaker's words to confirm you heard them, pay attention to body language, and do not give advice.
3. **Suspend Judgment** - Be open-minded and uncritical.
4. **Be Empathetic** - Put yourself in the other person's shoes, think about the possible feelings they may be having, e.g., see past the anger to the fear.
5. **Try Not to Assume** - Because you don't know what the other person's position, interests, or requests are.
6. **Be Aware and Tolerant of Differences in Communication Styles** - Personal and cultural differences can affect a speaker's eye contact, personal space definition, directness or indirectness in making a point, degree of forcefulness in speaking, use of pauses.
7. **Allow Speakers to Vent**
8. **Model and Teach Use of "I" Statements** - Rather than blaming or speaking for the other person.
9. **Be Aware of Your Emotions and Biases**
10. **Acknowledge the speaker's emotions as existing and legitimate** - do not label the other person's emotions without first checking out whether your perception is accurate, unless they have already named the emotion.

COMMUNICATION CHECKLIST

How to give feedback

- Separate behavior from the person
- Give alternate suggestions
- Acknowledge skills well displayed
- Be honest, but talk with the intention of helping to improve
- Look to learn for yourself

Facilitator Body Language

- Eye contact to all
- Physically centered, sitting with body balanced, able to see everyone easily
- Alert but relaxed muscles
- Use of body and eye contact to direct speaker to talk to all (or at least not just facilitator)

Facilitator Vocal Language

- Tone of voice: encouraging, calm, reassuring
- Model and encourage participants to use "I" statements
- Neutral word choices
- Use of silence: 10 counts after posing a question, 10 counts after answers to ensure that the speaker is finished
- Ask clarifying questions

Facilitator Allowing Emotional Expressions

- Keep facial expressions neutral or supportive if participants expressed strong emotions
- Gently pass tissues to teary participants
- Check in on all participants by briefly looking at each to see how they are doing during strong emotional expressions
- Use of silence: counted to 10 (or 20) after a strong emotional expression, before speaking

- If participant expresses anger inappropriately (name calling or a threatening manner), remind them of ground rules

COMMUNICATION CHECKLIST, continued

Problematic Facilitation Techniques

- Talking for participants
- Interrupting
- Dominating the process rather than merely facilitating the participants' speaking to each other
- Allowing participants to only look at or talk to facilitator

TYPICAL DUTIES, RESPONSIBILITIES, AND QUALIFICATIONS

DUTIES AND RESPONSIBILITIES:

- Follow procedures and script outlined in the training manual and training sessions.
- Maintain confidentiality of the victim, the offender, and the court records.
- Maintain impartiality and establish ground rules at each victim offender meeting.
- Facilitate pre-conference and conference meetings with victims and offenders towards a positive resolution whenever possible.
- Assist participants in developing and approving a mutually acceptable agreement and accurately represent the agreement in writing for the participants.
- Arrange meetings at a place and time agreeable to all parties.
- Complete all necessary paperwork accurately and completely.
- Accept cases regularly and complete within required timelines.
- Give necessary feedback regarding meetings to departmental staff.

QUALIFICATIONS

- Ability to assume responsibility, honor commitments and conduct meetings as scheduled.
- Ability to communicate with offenders and victims and understand their issues.
- Ability to communicate and listen effectively.
- Ability to maintain openness to different cultures and lifestyles and work with individuals of differing ages and backgrounds.
- Ability to communicate in a courteous and professional manner.
- Ability to maintain impartiality when persons are in conflict.
- Ability to provide their own transportation to and from meetings and conferences.
- Ability to work independently and within departmental and program policies and procedures.
- Ability to speak a second language is beneficial but not required.

Taken from the Dakota County (MN) job description for Restorative Conference Facilitator

SKILLS NECESSARY FOR COMPETENT PERFORMANCE AS A FACILITATOR

1. Ability to listen actively to both sides of an experience where harm was done;
2. Ability to keep the conference focus on the incident and its impact, rather than on the character or worth of the offender;
3. Ability to use clear language in speaking and in writing;
4. Awareness and sensitivity to strongly felt values of the parties, including gender, ethnic and cultural and lifestyle differences;
5. Ability to explore complex and sometimes contradictory factual and emotional information;
6. Ability to be a non-anxious presence;
7. Ability to be persistent in a process that may require multiple contacts over an extended period of time;
8. Ability to identify and to separate the mediator's personal values from issues under consideration;
9. Ability to understand power imbalances and to recognize the unique circumstances regarding power imbalances between victims and offenders;
10. Ability to facilitate the process so participants can determine their own appropriate resolutions, including creative options;
11. Ability to show respect for all participants;
12. Ability to maintain confidentiality;
13. Ability to invite participants into a constructive process and to guide them in a process of decision-making;
14. Ability to assist parties in assessing whether their agreement can be implemented;
15. Commitment to restorative group conferencing as one practical application of restorative justice.

KNOWLEDGE OF THE VICTIM OFFENDER CONFERENCING PROCESS:

1. Familiarity with existing methods of practice covering the Conferencing process;
2. Familiarity with commonly encountered ethical dilemmas;
3. Awareness and sensitivity to the specific needs and issues of both victims and offenders;
4. Knowledge of available community resources;
5. Basic knowledge of the justice system;
6. Demonstrated adherence to ethical standards.

Adapted from Victim Offender Conferencing in Pennsylvania's Juvenile Justice System, (1995) by Lorraine Stutzman Amstutz and Howard Zehr.

ROLE OF THE FACILITATOR

- **Be compassionate, sincere, and respectful of participants.**
- **Listen!**
- **Let people vent their emotions**
- **Stay neutral, while disapproving of the harm done.** Facilitators must appear and be impartial (“equally partial”) -- not favoring or disfavoring anyone -- but still clearly demonstrating disapproval of harm done and acknowledging the debt of the offender to the victim.
- **Be an impartial facilitator, not an arbitrator (judge), or negotiator.** The facilitator provides a safe, respectful environment so other participants can communicate well with each other. Someone who seems to have a stake in the outcome or ties to one of the participants would not be a good choice, someone who finds it difficult to maintain neutrality in dealing with either victims or offenders would not be a good candidate, and someone who has strong biases against people of different cultures or lifestyles would not be a good candidate. Facilitators must work to identify and overcome their biases; get a co-facilitator or remove yourself from a case if you cannot overcome a bias related to a crime or conference participant.
 - ⇒ Facilitators can't be in a 'care' role for one conference participant (e.g., probation agent, investigator, counselor, case manager) and be seen as neutral or “equally partial” to all participants. Even an appearance of bias is likely to compromise the conference process, and you don't want to get into a conflict of interest with your other role.
- **Do not be directive or an authority figure.** People who are used to being in positions where they tell people what to do and how to do it have a special challenge in trying to simply facilitate others' communication because they're used to being authority figures; this includes some probation agents and law enforcement members. It is not the facilitator's role to tell people how to resolve the harm.
- **Don't counsel participants!** It does not help them; they need the facilitator to stay separate and neutral, not to try to “fix” them. This is a particular challenge to people whose job it is to counsel people, such as psychologists and social workers. The conferencing model focuses on

empowering people to resolve the harm caused by a specific incident, not to address all their life problems.

- **Be aware of community resources.** Be prepared to give program names and phone numbers to participants (without assessment!). Facilitators have a responsibility to know about and be able to refer participants to other community resources for their other problems.
- **Model and teach communication skills.**
- **Demonstrate an ability to work independently.** And, to work within program procedures.
- **Be willing to keep records.** Complete the program's paperwork.
- **Be able to do a very basic readiness check.** Determine whether the victim and/or the offender are appropriate candidates for a conference in terms of:
 - ⇒ Emotional readiness
 - ⇒ Cognitive ability to understand the process
 - ⇒ Realistic expectations of possible outcomes of the conference
 - ⇒ Willingness

Note: Although participating in a conference should be voluntary, the degree to which a conference is voluntary for an offender may be small. For instance, in court diversion programs, the offender commonly has the choice of participating in the conference or else having the court deal with the case.

Note: Never try to persuade someone who was harmed to participate in a conference because you cannot guarantee a successful experience for them.

- **Be willing to do evaluations of yourself and a co-facilitator.** After each pre-meeting and conference, evaluate how it went, what each facilitator did well and what they could do better next time.

Reminder: Facilitating more serious crimes takes MUCH more extensive training of the facilitator and very extensive screening and preparation of the offender and the victim.

FACILITATOR SELF ASSESSMENT TOOL

	Strongly agree	Agree	Does not apply	Disagree	Strongly disagree
1. I effectively prepared the offender.					
2. I effectively prepared the victim.					
3. I effectively prepared their supporters and community member participants.					
4. People understood the purpose and parameters of the conference as I explained them.					
5. I kept people focused on the incident.					
6. I created an atmosphere where people felt safe to be open.					
7. I effectively drew out the thoughts and opinions of most people in the group.					
8. I drew out quieter people in the group.					
9. I was calmly assertive with angry or disruptive people.					
10. I permitted people to become very emotional without losing my own balance.					
11. I helped participants get unstuck when they had reached an impasse.					

12. I helped them to be creative in looking at options to repair the harm without giving them specific suggestions.	_____
13. I helped the group to develop and reach consensus on an agreement.	_____
14. The agreement held accountable the offender.	_____
15. The agreement is fair, workable and specific enough.	_____
16. When someone interrupted, I calmly reminded them of the ground rules so both sides were heard with respect.	_____
17. I supported re-integrative statements that demonstrated the value of the offender.	_____
18. I empowered the participants to speak rather than directing the group.	_____
19. The thing I did best at today's conference was . . .	
20. For the next conference I hope to improve or change . . .	

Some items in this assessment were adapted from the *Facilitation Skills Assessment Form* by Mark Seidler of Clearstory Communications and some from *Evaluating Mediators* by John Conbere in the Mediation Connection, 1996.

IMPORTANCE OF PREPARATION

It enables *all participants* to:

- Recall the events and sort out their feelings about them.
- Gain comfort with the process by dealing with a facilitator who is willing to listen and can be trusted and who exhibits caring and empathy.
- Learn about what is expected in the process and what it can offer the participants.
- For the victim, decide whether or not to participate.
- For the offender, understand why it is important to participate and decide whether or not to participate.
- Understand the purpose of the conference and agree to the ground rules.
- Ask questions to minimize their fears.
- Consider their feelings and plan what they want to say about the harm done and its effects.
- Work on their communication skills or barriers.
- Work through some of their feelings about the harm done so that the conference may be more useful to them.
- Decide whom to recommend as their support people.
- Understand the restorative concept and begin thinking about options for the agreement.
- Decide where and when it would be most comfortable and convenient to meet.
- In a case with many people harmed or many people doing harm, discuss whether to hold one or several meetings.
- Develop realistic expectations about the outcome.

IMPORTANCE OF PREPARATION, continued

It allows the *facilitator* to:

- Inform potential participants about the conferencing process, to aid them making an informed decision.
- Decide whether participants are appropriate for a meeting. (Either the victim or the offender may be inappropriate depending upon attitude and motivation. If either is unready or unwilling to conference, consider other options such as indirect communication through the facilitator or through audio or videotapes, or delay to a later time period if possible.)
- Develop a strategy to deal with any potential difficulties or complicating factors.
- Determine which support persons are appropriate for the conference and, if so, prepare them for the conference.

INITIAL PHONE CALLS

Initial phone calls are made to the offender (and parent, if juvenile) and to the victim (and parent, if juvenile) to see if they are interested in having an in person meeting with the facilitator to find out more about the restorative group conference opportunity.

When calling individuals, be courteous, direct and to the point. The purpose is to introduce yourself as the facilitator and to set up an in person meeting with you if the individual is interested in one, not to discuss the conferencing process in detail. If too much information is given over the phone, potential participants may feel there is no need for a visit. Yet meeting in person is crucial to the process to develop some level of rapport and comfort between the individuals and the facilitator, and so they learn enough about the process to decide whether or not to do a conference.

That meeting – which we call a preparation meeting – usually takes place at a private place and time convenient to the individual, such as in their home on an evening or weekend.

Whenever possible, arrange to meet with the offender first so you can learn whether the offender is interested in a conference before meeting with the victim, so as to avoid falsely raising the victim's hopes for a conference. By meeting with the offender first you may also be able to get permission from the offender to share some specific, basic information about the offender with the victim, to answer some of the victim's questions and mitigate some of their fears. However, do not keep the victim waiting for a prolonged period of time if the offender is hard to reach.

Be aware that victims and offenders (and parents) may assume the facilitator needs an answer during the initial phone call about whether they will participate in a restorative group conference. It's important to stress that they will not have to decide until after learning more about it in person from you.

It is particularly important to tell the victims that they are under no obligation to meet with the offender. As a facilitator you simply want to give them and their families more information about this *opportunity* that they might find interesting, so they can make an informed decision about it.

CALLING THE OFFENDER

Introduction	Introduce yourself.
Good time?	Ask if this is a good time to speak with them.
Letter/ Brochure	If the program has sent out a letter or brochure describing the process, ask if they received it.
Incident	If the program does not send out a letter or brochure, describe the specific incident that the conference will address and be sure there is an admission of guilt.
Process	Briefly describe the conference process. Keep the conversation brief and to the point.
Meeting	Tell them that you wish to meet with them to explain the process in more detail. If they are uncertain, try to find out more about their concerns.
Their concerns	Address those concerns as briefly as possible. For example, if the offender is concerned that the victim may be terribly angry, explain that while participants are encouraged to express their feelings, the facilitator will assure that the process and all communication will be respectful and safe for everyone.
Time and place	If they agree to meet, set up a place and time that is convenient for them.

CALLING THE VICTIM

Introduction	Introduce yourself.
Good time?	Ask if this is a good time to speak with them.
Letter/ Brochure	If the program has sent out a letter or brochure describing the process, ask if they received it.
Incident	If the program does not send out a letter or brochure, describe the specific incident that the conference will address.
Process	Briefly describe the conference process. Keep the conversation brief and to the point.
Meeting	Tell them that you wish to meet with them to explain the process in more detail. If they are uncertain, try to find out more about their concerns.
Their concerns	<ul style="list-style-type: none"> • Address those concerns as briefly as possible. For example if they seem worried or concerned, try to reassure them. If they seem angry, listen to them and empathize with their circumstances. • Repeat your intent is only to explain the process, and that they are in no way obligated to meet with the person who cause the harm. • Ask them if they suffered any losses. Tell them you would like to learn more about their losses and what type of compensation they would like. • Also, you would like to hear from the other members of the family how they were affected by the event. • Assure them that all communication will be respectful and safe for everyone.
No obligation	Make certain that they understand that the offender will not be present at this first meeting. This meeting is only meant to be informative. You may persuade in a gentle manner but do not in any way coerce.
Time and place	If they agree to meet, set up a place and time that is convenient for them.

PREPARING FOR PRE-MEETINGS

SAFETY ISSUES

Safety Tips to Remember:

- When juveniles are involved, schedule meetings with the parent and the juvenile, never with the juvenile alone unless he or she is an emancipated minor. (This is for reasons of liability, safety, time saving).
- Never enter or remain at a residence in which you feel uncomfortable for any reason. Trust your instincts. Leave and contact your supervisor or the program staff.
- Never remain at a residence or continue meeting if you feel any of the parties are too angry to remain in control or are under the influence of a chemical. Terminate your contact and report the incident to your supervisor or the program staff.
- Never reveal any private information about yourself that might compromise your safety, especially your home address. Most facilitators choose not to give their home phone. Some give their work phone and others only give the program coordinators' phone numbers.

CO-FACILITATION

- Sometimes facilitators have the option of sharing the responsibilities with another facilitator. While co-facilitating is more difficult to coordinate, it allows for other benefits. Potential benefits include increased safety, another person to listen and perhaps hear or view things that you missed, another person to help facilitate the session especially when things get difficult, another viewpoint and different ideas on approaching a case, and sharing feedback after the meetings.
- Since many cases selected involve more than one offender and sometimes more than one victim, as well as other community or support people, co-facilitating may be help to handle the complexity of the case.
- It is important that each facilitator have an opportunity to meet all of the participants prior to the actual conference; therefore, it is not acceptable for the facilitators to split up the cases during the preparation phase. Pre-meetings are essential to establish rapport and a sense of safety with the participants. If one of the co-facilitators fails to meet any of the participants prior to the conference, it is vital for that facilitator to

schedule a time prior to the meeting to get to know the participants.

LEGAL ISSUES

- Confidentiality of statements made by participants to facilitators.
- Admissibility (if any) in court of statements made by participants to each other at conference
- Data privacy restrictions
- Mandatory reporting
- Protection of facilitators against being sued
- Protection of the program against being sued for any injuries or damage which might result from the offender doing reparative service
- Parents' legal financial responsibility

VOLUNTEER PROTECTION

Published in *LEGALease*, quarterly newsletter for Nonprofit Managers and Boards, No. 25, Summer 1999.

People volunteer in countless ways. They deliver meals, take youth groups to the zoo, visit nursing homes and walk dogs at the humane society. They answer phones, raise money, enter data and serve on boards. We couldn't get along without them.

When we ask people to volunteer for our groups, we hope they'll have a rewarding experience. At the very least, we hope they won't go away mad. To have them become the target of a lawsuit because of something they did for us - that's the stuff nightmares.

The federal Volunteer Protection Act (42U.S.C. 14501-14505) of 1997 was meant to protect nonprofit and government volunteers from just such civil lawsuits. Congress was persuaded that volunteers' enthusiasm was being dampened by potential liability actions, and that many nonprofits had suffered when volunteers withdrew from boards and other kinds of service.

The Act says a volunteer is anyone performing services (as a director, officer, trustee, or direct service volunteer) for a nonprofit or government agency who does not receive compensation (other than reasonable reimbursement for actual expenses) or anything else of value, in excess of \$500 per year from a single organization.

There are certainly limits to the things volunteers can do under the protection of the Act. It doesn't protect volunteers for organizations practicing "hate crimes", for instance. Neither does it shield volunteers from civil lawsuits growing out of:

- injuries suffered by a third party caused by the volunteer's willful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual harmed;
- harm caused as a result of the volunteer operating a vehicle which requires the operator to possess a license or maintain insurance;
- any civil action brought by any nonprofit organization or governmental entity against the volunteer;
- acts of violence, hate crimes, or sexual offenses committed by the volunteer;

- any conduct in violation a state or federal civil rights law;
- the volunteer's actions while the volunteer was intoxicated.

Under the Act, punitive (as opposed to compensatory) damages may be awarded only if a claimant can establish by clear and convincing evidence, that the harm was caused by the volunteer's willful or criminal misconduct or conscious, flagrant indifference to the rights or safety of the individual harmed.

Minnesota Statutes Section 317A.257 protects people who serve "without compensation" as a director, officer, trustee, member or agent of an organization exempt from state income tax. Minnesota defines "volunteer" slightly differently. In Minnesota a person is considered serving "without compensation" even if he or she is reimbursed for expenses and receives a per diem of \$55 or less. Minnesota law protects volunteers only if they acted in good faith and within the scope of their responsibilities to the organization. Minnesota law affords no protection from liability for:

- acts of willful or reckless conduct;
- physical injury caused by the volunteer;
- causes of action based on the volunteer's express contractual obligation (for example, if a board member guarantees the nonprofit's bank loan);
- actions brought by the Minnesota Attorney General for a breach of a fiduciary duty such as failure to properly oversee a nonprofit's affairs; or
- actions based on federal law, such as the anti-trust ("price-fixing") law.

Publication of *LEGALease* is made possible by a grant from the "Nonprofit Protector" - property and liability coverages for nonprofit organizations underwritten by Nonprofits Insurance Association and Carolina Casualty Insurance Corporation, Minneapolis. For information on insurance call 1-800-618-0484.

OPTIONS FOR THE AGREEMENT

In every situation there are numerous ways an offender can make reparation to the victim and community. It is generally helpful in the pre-meetings to encourage individuals who say they are interested in participating in a conference to brainstorm about the various options that could be part of an agreement the group might reach. The categories include:

- Financial payment to victim
- Work for the victim
- Work for the charity chosen by the victim
- Work for the community - Restorative Community Service
- Apology spoken or written
- Community information or education
- Educational opportunity or participation in evaluation/assessment or programming (for instance: chemical dependency, anger management, or cognitive restructuring)
- Anything else they can think of that feels fair to all participants - encourage creativity
- Combination of the above

Note: Be aware of the restrictions of child labor laws and your program in helping individuals brainstorm about possible options for the agreement.

STANDARDS OF CONDUCT ACTIVITY

What **should** be the standards of conduct for restorative group conference facilitators?

MODEL STANDARDS OF CONDUCT (taken from national civil mediation standards of conduct)

SELF-DETERMINATION: A facilitator shall recognize that conferencing is based on the principle of self-determination by the participants. Self-determination is the fundamental principle of conferencing. It requires that the process rely upon the ability of the participants to reach a voluntary, uncoerced agreement. Any party may withdraw from conference at any time.

- A facilitator may provide information about the process, raise issues, and help participants explore options.
- A facilitator cannot personally ensure that each participant has made a fully informed choice to reach a particular agreement.

IMPARTIALITY: A facilitator shall conduct the conference in an impartial manner. The concept of facilitator impartiality is central to the conferencing process. A facilitator shall facilitate only those matters in which she or he can remain impartial and evenhanded. If at any time the facilitator is unable to conduct the process in an impartial manner, the facilitator is obligated to withdraw.

- As stated above, impartiality is key. Facilitators must be aware of their own personal agenda that they bring to the table. When working with victims and offenders it will be difficult not to have feelings regarding one side or another. The key will be learning to recognize personal issues and decide whether you, as the facilitator, can remain evenhanded throughout the process. If, for example, the facilitator meets with the victim and realizes that his or her personal victimization is similar to an experience of the facilitator which has never been resolved, the facilitator must decide whether he or she needs to deal with those unresolved feelings before proceeding.
- The facilitator should guard against partiality based on the participants' personal characteristics, background or performance at the conference.

CONFLICT OF INTEREST: A facilitator shall disclose all actual and potential conflicts of interest reasonably known to the facilitator. After disclosure, the facilitator shall decline to facilitate unless all participants choose to have the facilitator present. The need to protect against

conflicts of interest also governs conduct that occurs during and after the conference.

- A facilitator shall avoid conflicts of interest in recommending the services of other professionals.
- The facilitator's commitment must be to the participants and the process. Pressure from outside of the conferencing process should not influence the facilitator to coerce participants to settle.
- An example of conflict of interest would be a case in which either the victim or offender is known to the facilitator. The issues are twofold; whether the facilitator believes he/she can remain impartial and secondly, whether all participants have been informed of the conflict of interest and agree that the facilitator can proceed. In one case where the victim knew the facilitator, all participants agreed to proceed and they were fortunate to find a co-facilitator who was known to the offender, which seemed to even up the process.

COMPETENCE: A facilitator shall facilitate only when the facilitator has the necessary qualifications to satisfy the reasonable expectations of the participants.

- Facilitators should have information regarding their relevant training, education, and experience available for the participants.

CONFIDENTIALITY: A facilitator shall maintain the reasonable expectations of the participants with regard to confidentiality. The reasonable expectations of the participants with regard to confidentiality shall be met by the facilitator. The participants' expectations of confidentiality depend on the circumstances of the conference and any agreements they may make. The facilitator shall not disclose any matter that a party expects to be confidential unless given permission by all participants or unless required by law or other public policy.

- The participants may make their own rules with respect to confidentiality, or other accepted practice of an individual facilitator or institution may dictate a particular set of expectations. Since the participants' expectations regarding confidentiality are important, the facilitator should discuss these expectations with the participants.

- Where the participants have agreed that all or a portion of the information disclosed during a conference is confidential, the participants' agreement should be respected by the facilitator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of conferencing programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the participants, to individual case files, to observe live conferences and interview participants.

QUALITY OF THE PROCESS: A facilitator shall conduct the conference fairly, diligently, and in a manner consistent with the principle of self-determination by the participants. A facilitator shall work to ensure a quality process and to encourage mutual respect among the participants. A quality process requires a commitment by the facilitator to diligence and procedural fairness. There should be adequate opportunity for each party in the conference to participate in the discussions. The participants decide when and under what conditions they will reach an agreement or terminate a conference.

- The primary purpose of a facilitator is to facilitate the participants' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a facilitator and the role of a professional advising a client is problematic, and facilitators must strive to distinguish between the roles. A facilitator should, therefore, refrain from providing professional advice.

ADVERTISING AND SOLICITATION: A facilitator shall be truthful in advertising and solicitation for conferencing. Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the facilitator shall be truthful. Facilitators shall refrain from promises and guarantees of results.

FEES: A facilitator shall fully disclose and explain the basis of compensation, fees, and charges to the participants. The participants should be provided sufficient information about fees at the outset of a conference to determine if they wish to retain the services of the facilitator. If a facilitator charges fees, the fees shall be reasonable, considering among other things, the conferencing service, the type and complexity

of the matter, the expertise of the facilitator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

- This issue is especially relevant to victim offender dialogue and conferencing when the participants are referred, in most cases, by a third party. Given the dilemma of who to charge, most conferencing programs do not charge a fee for conferences. When the offender is charged, there is the issue not only of ability to pay, but also whether the offender would choose to participate in a process where not only does he/she know they will be confronting their victim but must also pay to do so. Further, charging a victim seems to perpetuate further person victimization. This issue, however, changes as facilitators begin working on cases of severe violence where the conference is often initiated by the victim rather than referred by a third party. In those cases, the person initiating the services has sometimes been charged for services. This is an ongoing debate within the field dialogue and conferencing.
- This issue is relevant to victim offender conferencing when there is a question about whether the offender is, in fact, a voluntary participant and allowed to withdraw from the conference even though he/she has been court mandated if they do not want to pay a fee.

OBLIGATIONS TO THE CONFERENCING PROCESS: Facilitators have a duty to improve the practice of conferencing. Facilitators are regarded as knowledgeable in the process of conferencing. They have an obligation to use their knowledge to help educate the public about conferencing; to make conferencing accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

PRE-MEETINGS ALLOW THE OFFENDER TO:

- Consider how the harm may have impacted others.
- Understand the difference between the conferencing process and disciplinary or justice system processes.
- Learn about the victim's attitude and circumstances to the extent possible, to help ease the anxiety of participation in the conference.
- Make an informed decision about participating.
- Consider some ways they might realistically make up for the harm done.

MEETING WITH THE OFFENDER

Introduction	Introduce yourself.
Set Tone	<ul style="list-style-type: none"> • Set the tone--small talk helps people relax.
Facilitator's Role	<ul style="list-style-type: none"> • Impartial and non-judgmental • Making certain the process is safe and productive for all participants • Tell participants what will happen if agreement is not reached or not completed
Confidential	Reassure them that even this pre-meeting is confidential. You will not share what they say unless they want you to ask something of the victim. (Except for Mandatory Reporting, if that is true in your jurisdiction. See elsewhere in this lesson.)
Purposes of Conference	<p>Briefly describe the purposes of conference.</p> <ul style="list-style-type: none"> • Meant to bring a positive resolution to the harm caused, not to be demeaning or punitive. • Discuss the harm done and how it affected all participants. • Any of the parties may leave the conference at any time if they do not feel that they are safe.
Listen to Their Account	As quickly as possible, get into the listening mode. Ask them about their experience. Listen to their account and ask for details with questions like, "What actually happened?" "How did you feel about what happened?"
Potential Benefits	<p>Emphasize the potential advantages of the conference for the offender.</p> <ul style="list-style-type: none"> • An opportunity to apologize if they are willing, but they will not be expected or pressured into doing so. • Deciding with the victim how much and in what manner they will make restitution. (Sometimes financial restitution has already been done by court but the participants together decide on what else is needed to make the harm better.) • Have their questions answered about the amount of loss the victim is claiming.

	<ul style="list-style-type: none"> • An opportunity to share their side of the story. This may be especially important if the victim believes they were responsible for the loss of some item that the offender knows nothing about. • All participants in the conference must agree on what is fair or an agreement will not be reached.
Ground Rules	<p>Explain the ground rules:</p> <ul style="list-style-type: none"> • Confidentiality (explain in detail), • Focus on the harm done and its effects, • Respectful communication, • Right to time-out during the meeting, • No inappropriate or disrespectful language, • No interrupting. <p>Ask if there are any other ground rules that they would like to have included.</p>
Conference Process	Describe the conference process in chronological order, stories and feelings, and then agreement phase.
Support Persons	Explain that support persons are crucial. Find out whom the person wants as support persons (in addition to a parent or guardian for juveniles). Make arrangements to speak with those persons.
Questions?	Discuss questions they may have or may be asked by the victim.
Restitution	If money restitution is likely to be a factor, discuss what they feel is a fair and achievable amount. Discuss financial resources, talents and interests they have and specifically how they might earn money to pay restitution.
Reparation	Discuss other possible ways of repairing the harm including possible alternatives for providing service to the community. This may include a discussion of their interests and skills.

Their Agenda Discuss and suggest that they jot down the following:

- What they would like the victim to know
- Issues they would like to discuss
- Ways they and people close to them were impacted by the harm done
- The questions they want to ask
- What they would be willing to do to repair the harm

Be sure not to leave until you ask:

Questions?	Ask if they have any questions.
Okay to Share?	Ask if there is anything that they do not want you to share with the other victim.
Dates, Times, Locations	Ask for possible dates, times and locations for the meeting and inform them that you will get back to them with the date and time.
On Time	Stress the importance of showing up on time or a little early for the meeting with the victim.
Thanks	Thank them.

If the offender is a juvenile, also add the following:

Juvenile Focus	Encourage the juvenile to talk even though the parent may want to do most of the talking.
Between Two Parties	Emphasize to the parent that this is largely between the victim and their child and it is important that their child accept that responsibility.
Parent Must Be Present	Stress that it is important for a parent to be present at the conference.

TIPS FOR WORKING WITH PARENTS/GUARDIANS

For All Parents

- Validate the parents' feelings in the same manner that you as a facilitator validate the feelings of the victim.
- Allow them to vent and express understanding.
- Allow time for them to talk.
- Find time to visit with the youth alone if possible (and permitted by the parent).

Parents Needing Special Consideration:

Controlling- These parents may frequently intervene for their children, especially when the youth is trying to tell his/her version of the story. Inform the parent that their child is aware of the behavior that they engaged in and it is important that their child take responsibility for the incident and speak for themselves. You may have to rephrase this on several occasions or even ask if you can speak to the youth alone.

Minimizing- These parents make light of the behavior of their child. They may say things like, "My son has never done anything wrong before." "Other kids have done this and nothing happened to them. I think the you are just singling out my son." The (victim) is just making a big deal out of nothing." Remind them that others have decided that some sort of harm was done and that it will be dealt with in one way or another. Tell them that this process is not intended to make judgments about whether their child is good or bad but rather to understand the harm that others feel has been caused and to decide how the harm can be repaired. If the incident cannot be resolved in this manner it will be sent back to (the school administration, the court).

Angry/Punitive- These parents are fed up and want their child to be punished. They feel that they have done all that they can and nothing has worked - now they want someone else to take over. Allow them to vent their feelings and let them know that you understand that this has been very hard. Usually these parents care about their child but are looking for help. Let them know that this process is not intended to be punitive but is intended to hold their child, not them, responsible for the behavior. Inform them that it is important that their child understands that they are

there to support their child through this process that may prove to be very difficult.

Passive/overwhelmed- These parents have given up emotionally and possibly in every other way. They say things like, “ I don't know what he does- he doesn't listen to us.” “This isn't my problem - you talk to him and do what you want.” Remind them that they are legally still responsible and that the authorities will involve them regardless of their feelings about their child's behavior. Suggest that the conference may be a less taxing mode for them than other alternatives such as going to court and it may offer their child some opportunities to learn how he or she impacts others as well as them.

PRE-MEETINGS EMPOWER THE VICTIM TO:

- Vent their anger and frustration – tell how they and others have been affected by the crime or offense.
- Experience validation of their feelings.
- Understand the difference between the conferencing process and disciplinary or justice system processes.
- Learn about their rights, alternatives and resources available to them to meet their needs.
- Learn about the attitude and circumstances of the offender (IF the offender allows the facilitator to share that), to help ease the anxiety of participation in a conference.
- Make an informed decision about whether they wish to participate in a conference.
- Develop realistic expectations, including what might be expected from the offender in terms of attitude and capacity to pay restitution, and consider some ways the offender might realistically make up for the harm done.
- Decide if they wish to speak first during the conference.

MEETING WITH THE VICTIM

Introduction	Introduce yourself.
Set Tone	Set the tone--small talk helps people relax.
Facilitator's Role	<ul style="list-style-type: none"> • Impartial and non-judgmental. • Make certain the process is safe and productive for all participants. • Tell participants what will happen if agreement is not reached or not completed
Confidential'y	Reassure them that even this pre-conference meeting is confidential - that you will not share with the offender what they say unless they want you to ask something of the person who caused the harm.
Purposes of Conference	<p>Briefly describe the purposes of conference.</p> <ul style="list-style-type: none"> • Discuss the harm done and how it affected all parties. • Meant to bring a positive resolution to the harm caused, not to be demeaning or punitive. • Any of the parties may leave the conference at any time if they do not feel that they are safe.
Listen to Their Account	As quickly as possible, get into the listening mode. Ask them about their experience. Listen to their account and ask for details with questions like, "What actually happened?" "How did you feel about what happened?"
Venting	Allow the victim to talk about his or her feelings, anger, fears and concerns and about how the harm done affected them. Allow the victim to vent and be prepared for some anger.
Potential Benefits	<p>Emphasize the potential advantages of the conference for the victim:</p> <ul style="list-style-type: none"> • Be informative and caring. • It will allow him or her to have questions answered about the harm done and how and why it happened. • They will be able to ask their questions about their property and what was done with it or to it. • They will have an opportunity to learn more about the harm done and how the offender was involved in the harm done. • They will have an opportunity to express their feelings to

	<p>the offender.</p> <ul style="list-style-type: none"> • The conference will allow them a greater say in how much restitution will be paid. They may also have an opportunity to discuss a schedule of payments. • All parties must agree on what is fair or an agreement will not be reached. • They can consider other options rather than paying restitution, such as the person who did the harm working for the victim, working in the community on a work crew, or working for a charity favored by the victim. Discuss some of these options if the victim is interested.
Help Reduce Fear	<p>If they have questions about the offender, try not to be too specific but do reassure them realistically so that they will be less fearful and prepared to face the offender. The facilitator may share generalities and any specifics that the offender agreed to. As an example, the victim may want to know the age or size or how remorseful the offender is.</p>
Ground Rules	<p>Explain the ground rules:</p> <ul style="list-style-type: none"> • Confidentiality, (except for Mandatory Reporting jurisdictions) • Focus on the harm done and its effects, • Respectful communication, • Right to time-out during the meeting, • No use of inappropriate or disrespectful language, • No interrupting. <p>Ask if there are any other ground rules that they would like to have included.</p>
Conference process	<p>Describe the conference process in chronological order</p>
Support Persons	<p>Discuss whom they might want as support persons to enhance their comfort with the process, and make arrangements to speak with and prepare the support persons.</p>
Questions?	<p>Discuss questions they may have or may be asked by the offender.</p>

SEE ADDITIONAL ISSUES ON NEXT PAGE

If the offender is a juvenile:

Not forced to attend	Inform the victim that the juvenile may be expected to participate in the process but they will not be forced to attend the conference.
Apology	Emphasize that the juvenile will not be forced to apologize because to do so would have no value. Prepare them for the level of remorse that might be exhibited by the juvenile.
Parents	Describe the role of the parents as appropriate support.

Do not forget to ask the following if there is a financial, out of pocket, loss that will not be reimbursed:

Economic Loss Documentat'n	If the victim has not yet offered documentation for the out of pocket (unreimbursed) loss, ask if they have written documentation if your program requires it or in case the offender asks for it.
Loss and Reparation	Discuss their losses. Ask them to think about what it will take to repair the harm done and help them explore non-financial as well as financial ideas. (Know your program's policy about seeking, or not seeking, restitution to pay back the insurance company. Most programs do not.)
Willing to Meet?	Ask if they agree to meet with the offender or if they need more time to think about it.

If they do wish to meet with the offender:

Their Preparation Notes	<p>Discuss and suggest that they jot down the following:</p> <ul style="list-style-type: none"> • What they would like the offender to know • Issues they would like to discuss • The ways in which the harm impacted them • What questions they want to ask • The things they would like to request of the offender
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Who Will Speak First	Ask them to think about whom they would prefer. They do not necessarily have to decide now, however.
Questions?	Encourage questions about the process.
Dates, Times, Locations	Ask for possible dates, times, and locations for the meeting and encourage a speedy resolution of the matter. Inform them that you will get back to them regarding a conference date and time with the offender.
Thanks	Thank them.

If the victim is not certain about the meeting:

Barriers	Try to determine the barriers to their meeting and try to discuss or reassure them regarding each of these.
Decision	Ask if you can call them in a few days to get their decision on whether or not to participate.
Time to consider	If they are uncertain about any of these options, ask them if it would help to think about it for a while.
Thanks	Thank them.

PREPARING SUPPORTERS AND OTHER COMMUNITY PERSONS

Conferences should include as many of the persons impacted by the harm, and the persons who caused the harm, as possible, provided the participants are informed who will attend and feel safe participating in the process.

In some programs the facilitator may suggest or choose community members to invite, and in other programs the victim and the offender select who attends the conference.

In either situation the facilitator should make every attempt in the preparation phase to draw from both the victims and the offenders who they would like to have at the conference as support persons or affected people. Those may include family members, friends, teachers, fellow students, neighbors, counselors, co-workers, probation officers or social services personnel, and cultural and religious representatives.

It is helpful to ask them who else has been affected by the harm or results of the harm. Those people should be included in the conference.

Supporters and other community members will:

- Bring resources and knowledge
- Bring creative perspective for repairing the harm
- Help reintegration of the victim and offender
- Strengthen the community itself
- Establish a base of support for the program

It is important to similarly prepare supporters and other community participants as you prepared the victim and offender, so they understand:

- The purpose of the conference
- What is appropriate and inappropriate behavior
- The importance of attending in the spirit of resolving the harm done rather than fact and fault finding

Supporters and other community people who are unwilling to participate accordingly may not be suitable to attend the conference.

COMMUNITY SCENARIO

One hot summer night, three boys ages 16 were driving around Smallville, a once rural town that was now very near a large metropolitan area, after having had a great deal to drink. One of the boys noticed a can of orange marker paint that apparently had been left in the truck by his father who often used the paint for his construction job. One of the boys held up the paint and suggested that they paint something. Just about that time they were driving by the house of Mrs. Smith, a small, perfectly maintained white frame house on a large corner lot. A brother of one of the boys was involved in a white supremacist group and was always making racial epithets. He suggested that they stop at Mrs. Smith's house. They couldn't believe their luck - a ladder was leaning against the house, it was an invitation!! One of the boys went up the ladder as far as he could and painted a big "KKK." They all laughed. Another boy said, "No we got to do more". He painted, "Nigger" on the side of the house - just as big and as orange as the "KKK."

The next morning, Mrs. Smith who was retired and a widow, woke and took her usual stroll outside to her garden. As she walked around the house she was horrified to see the words and the letters. She couldn't believe her eyes! Just then another neighbor came over. She was angry. How could this happen! Although the population in Smallville was primarily white, there were some African Americans in town, and Mrs. Smith, who had lived in the town for all of her seventy-five years, was one of them. The neighbors, most of whom were white, loved and respected her. She took care of their kids. She never forgot to bring her special apple pie to the family who was suffering from any kind of hardship, and she never missed attending church, a racially mixed congregation. Everyone loved her. The kids called her "grandma." Word spread about the vandalism to Mrs. Smith's house and the neighborhood, even the larger community was enraged.

At school the next day, one of the boys had to tell the story to another friend. The story quickly spread and very soon the police were calling the boy in for questioning. The police had a pretty good idea of who else was involved because they knew his friends and they knew that one of the boys had a brother who were deeply involved in white supremacist groups. All of the three boys were questioned and charged with vandalism. The neighbors of Mrs. Smith had many ideas of how to handle these boys. Even the larger community was getting offering suggestions to the police. The town's newspaper even had an editorial that sounded quite threatening to the boys. The Judge realized that nothing he could do would satisfy everyone. He wanted to involve the community in some way but he was concerned.

THE COMMUNITY IN COMMUNITY CONFERENCING

- When something happens in a community the effects of that event go beyond just the victim and the offender and their families
- Seemingly uninvolved individuals feel a sort of secondary victimization
- Conferences help traumatized communities dissipate the trauma and heal so they can reintegrate offender back into the community
- Who should attend, who is the affected community, is a very real dilemma
- The victim should have some say about whether the conference goes on with surrogates
- If they feel truly affected by what has occurred, community members belong at the conference. If they are volunteering their service as a means of vengeance for past wrongs done to them, they are probably inappropriate for the conference
- The facilitator must invite those who belong, avoid those who are not appropriate and make sure everyone is clear on their role in the conference and the purpose and goals of conferencing
- Community people can have a very positive effect on the conference:
 - ⇒ Bring resources and knowledge of resources to the meeting that would otherwise never come to light
 - ⇒ Bring a less passionate perspective allowing them to find creative, meaningful ways of repairing harm and building in prevention efforts
 - ⇒ Help along re-integration both by their direct involvement with the offender and the propensity for community members to engage the person. Community members understand that it is better to improve behaviors and develop worthy citizens than shut them out and have them return ever more angry and destructive.
- Conferences often helps strengthen community within a specified geographic location, be it a block, a city, a school or a workplace
- Involving community establishes a base of support and personnel for the program
- Building community support increases citizen awareness, establishes a caring attitude among people and destroys environments that allow harm done to flourish.

PROBLEM POINTS

How to Handle Cases with Multiple Persons Causing the Harm

The following are some possible considerations for deciding whether to have separate conferences:

1. **The victim requests to see the persons who caused harm separately or in any specific grouping:** The wishes of the victim should always be honored provided that they do not seem harmful to the process. The victim may feel threatened by meeting with all of the persons who caused harm at once. Or the victim may know one of the persons who caused harm very well and may want to share some concerns or feelings that are specific to that individual. In this case, it could be arranged for the offender to have some time alone with the victim either prior to the conference or after the other participants have left.
2. **There are many persons who caused harm and very few (or only one) victims.** Disproportionate numbers on any "side" may lead to a feeling of a power imbalance. However, very often this "imbalance" can be overcome by emphasizing that the conference is focusing on problem solving rather than issues of "right" and "wrong." Also, the victim could have several support people come to the conference. But above all, it is the facilitator's responsibility to make certain that the participants feel as safe as possible, especially the victim who may already have been fearful as a result of the harm done.
3. **One or more of the juvenile persons who caused harm may be in placement** Some placement facilities will allow visits to home or at least will facilitate transportation of the offender to the preparation meeting and the conference. Other facilities will not allow any contact and it may be necessary to wait until the placement terminates. In these latter cases, it is usually preferable to proceed with the other persons who caused harm who are available and determine whether the victim would want to conference with the unavailable offender at a later date.
4. **When the persons who caused harm have disproportionate levels of culpability for the incident.** It is important for the facilitator to meet with each of offender prior to the conference. If it is clear that the persons who caused harm are each blaming one another and the facilitator is concerned the effect this might have at the conference with the victim, a different strategy might be useful. It has been effective to bring all of the

persons who caused harm together in a pre-conference without the victim and sometimes without their parents. It is important that all persons who caused harm and parents are agreeable to this however. This enables the persons who caused harm to resolve their differences and enables the facilitator to observe how they relate to one another when they are together in a group.

It is important also to discuss these differing levels of culpability in general terms with the victims. Do not take away from the persons who caused harm the opportunity to tell their own story, but allow the victim to think about how they might wish to respond to each. Generally the participants will design agreements for each of the persons who caused harm that reflect their level of involvement.

How to Handle Cases Where Multiple Persons Have Been Harmed

Some cases involve harm that affects a whole community or neighborhood. For example, several juveniles drive down a street hitting every mailbox for two blocks. Or, several people set fire to an apartment dwelling and burned the residences of several individuals. Again it is important to follow the lead of the victim. Some of the persons who have been harmed may know one another and choose to attend the conference (and even the preparation meetings) together for moral support.

The most important consideration for the facilitator is always the same. "Will the process be safe for everyone?" "Everyone" must include the persons who caused harm. They should not fear that they would be confronting a "lynch mob." And the persons who have been harmed must be cautioned about that concern. They must be reminded that the purpose of the conference is for restoration and healing and the goal is problem solving, not guilt finding. This is not a recap of the school suspension or the court hearing. This is not meant to be a retributive process in any way.