

# See Spot Mediate: Utilizing the Emotional and Psychological Benefits of “Dog Therapy” in Victim-Offender Mediation

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## I. INTRODUCTION

*There, Gentlemen, that dog teaches us a lesson of humanity.*<sup>1</sup>

Emotional and psychological stresses run rampant in victim-offender mediations.<sup>2</sup> Mediators in such settings already employ various techniques to quell conflicts among the participants in an attempt to help them reach a positive outcome.<sup>3</sup> But are there resources yet untapped by even the most skilled mediators that can dramatically enhance the parties’ satisfaction with the process?

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<sup>1</sup> S. Lipschitz, Napoleon the great Rebuking his Officers at Bassano (ca. 1850) (lithograph portraying Napoleon observing those he has defeated, including a fallen soldier whose dog still attends him, even in death).

<sup>2</sup> MARK S. UMBREIT, *MEDIATING INTERPERSONAL CONFLICTS: A PATHWAY TO PEACE* 194 (1995). *See also* CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGY FOR RESOLVING CONFLICT* 161-62 (2d ed. 1996) (“[P]eople often feel angry, hurt, frustrated, distrustful, hopeless, resentful, betrayed, fearful, or resigned to unsatisfactory conditions.”); Bill Ezzell, Note, *Inside the Minds of America’s Family Law Courts: The Psychology of Mediation Versus Litigation in Domestic Disputes*, 25 *LAW & PSYCHOL. REV.* 119, 127 (2001).

<sup>3</sup> “The mediator ... needs to be able to project a sense of calm to help them feel safe and relaxed enough to participate in the mediation.” Peter Lovenheim, *Humor, Trustworthiness, and Even Drama: Assessing Whether You Have What It Takes To Be a Mediator*, 20 *ALTERNATIVES TO HIGH COST LITIG.* 169, 170 (2002).

The mediator, while not a counselor, will likely have some skills to calm the parties and put them at ease. There are several ways to calm parties that are very emotional. The methods used in a particular case will depend on the circumstances, on the individual style of the mediator, and also on the personalities of the parties involved.

KIMBERLEE K. KOVACH, *MEDIATION: PRINCIPLES & PRACTICE* 37 (1994). Indeed, a skilled mediator can help the participants rid themselves of their anger and frustration in the process of reaching closure to their issues. Judge Annette Galik, *Mediating Child Support Contempt Cases*, 62 *TEX. B.J.* 543, 546 (1999). *See* KENNETH CLOKE, *MEDIATION: REVENGE AND THE MAGIC OF FORGIVENESS* 31-32 (1990) (suggesting 25 different ways to overcome impasses in conflict, including caucuses, “homework,” and even serving food and drinks); NANCY H. ROGERS & RICHARD A. SALEM, *A STUDENT’S GUIDE TO MEDIATION AND THE LAW* 7-39 (1987) (emphasizing the variety of dispute resolution tools available to the mediator); NANCY H. ROGERS & CRAIG A. MCÉWEN, *MEDIATION: LAW, POLICY & PRACTICE*, § 3.01, 1 n.2 (2d ed. 1994) (listing articles that provide information on various mediation techniques); SHARON C. LEVITON & JAMES L. GREENSTONE, *ELEMENTS OF MEDIATION* 48-51 (1999); Floralynn Einesman & Linda Morton, *Training a New Breed of Lawyer: California Western’s Advanced Mediation Program in Juvenile Hall*, 39 *CAL. W. L. REV.* 53, 60 (2002) (discussing advanced techniques such as changing positions to interests, using caucuses efficiently, and encouraging empathy between the parties); Marc Chalpin, Comment, *It Ain’t Over ‘Til It’s Over: The Century Long Conflict Between the Owners and the Players in Major League Baseball*, 60 *ALB. L. REV.* 205, 236 (1996) (“The mediator’s role would be to help the parties settle the dispute. Mediation techniques such as private conferences with only one party would be available to the mediator.”).

The simple answer is yes, and one such resource can be found in the most unlikely of places—“man’s best friend.”<sup>4</sup>

Dogs understand conflict.<sup>5</sup> Obviously, the term “dogfight” was created in their name.<sup>6</sup> It might be considered ironic then that dogs should be utilized to pacify the participants in victim-offender mediation in an attempt to defuse many destructive behaviors before they can occur. But the idea of utilizing “dog therapy” techniques in victim-offender mediation is not as radical as it may seem—“[n]ot in spite of their basic canine nature but because of it, dogs are uniquely attuned to and synchronized with human behaviors.”<sup>7</sup> That makes them valuable aides-de-camp to the practicing conflict mediator.”<sup>8</sup>

The advantages of using therapy dogs are already known and employed in a variety of settings—hospitals,<sup>9</sup> classrooms,<sup>10</sup> rehabilitation centers,<sup>11</sup> psychiatric units,<sup>12</sup> prisons,<sup>13</sup> nursing

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<sup>4</sup> See Carin Gorrell, *The Healing Power of Pets*, PSYCHOL. TODAY, Mar. 2001, at 22, 22 (“Animals are a gift to the human race—a gift that humans rarely take full advantage of[.]”). “[R]ecent lawsuits prove that animal companions occupy a much larger space in our hearts. ... ‘Right now there are more pets in this country than children, which speaks to a lot of issues in our lives[.]’” Emanuella Grinberg, *Courts Treating Animals More Like Children: Pet Custody Battles on the Rise* (Jan. 7, 2004), at <http://www.cnn.com/2004/LAW/01/07/ctv.pets/index.html>.

<sup>5</sup> Robert D. Benjamin, *Dogs As Conflict Mediators* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>.

<sup>6</sup> But dogs may have had their good names smeared; while dogs can be aggressive, they will not usually become so unless they have been cornered, threatened, or prodded. *Id.*

<sup>7</sup> Dogs have been living with humans and sharing the environment for thousands of years. Lisa Kirk, Note & Comment, *Recognizing Man’s Best Friend: An Evaluation of Damages Awarded When a Companion Pet is Wrongfully Killed*, 25 WHITTIER L. REV. 115, 118 (2003). The domestication of dogs has been dated to the Palestinian Mesolithic era (around 9000 B.C., or 8400 B.C. in the Americas), but these dates have been since modified. Jacqueline Milliet, *A Comparative Study of Women’s Activities in the Domestication of Animals*, in ANIMALS IN HUMAN HISTORIES: THE MIRROR OF NATURE AND CULTURE 366 (Mary J. Henninger-Voss ed., 2002). “[Dogs] literally walked out of the caves with us.” *Experts: Dogs Originated in Ancient Asia* (Feb. 14, 2004), at <http://www.cnn.com/2004/US/West/02/14/evolving.fido.ap/index.html>. Archaeologists recently discovered a twelve thousand year-old grave containing a dog and human buried together: “The arm of the person was arranged on the dog’s shoulder, ‘as if to emphasize the bonds that existed between these two individuals during life.’” Kirk, *supra*, at 118.

<sup>8</sup> Robert D. Benjamin, *Dogs As Conflict Mediators* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>.

<sup>9</sup> See James A. Serpell, *Animal Companions and Human Well-Being: An Historical Exploration of the Value of Human-Animal Relationships*, in HANDBOOK ON ANIMAL-ASSISTED THERAPY: THEORETICAL FOUNDATIONS AND GUIDELINES FOR PRACTICE 13 (Aubrey H. Fine ed., 2000) (quoting FLORENCE NIGHTINGALE, NOTES ON NURSING (1860), where she observes that a small pet “is often an excellent companion for the sick, for long chronic cases especially.”); Lorraine Judson Carbary, *What Are Those Animals Doing on the Health Care Team?*, 25 J. PRAC. NURSING 28, 28-30 (1975) (discussing how many hospitals have realized the therapeutic values of animals and have incorporated pets into their treatment programs); see generally Alister Blythe, *Patients’ Best Friends ... Companion Animals*, 90 HEALTH & SOC. SERVICE J. 1479 (1980) (discussing the benefits that hospitalized and institutionalized

homes,<sup>14</sup> and even the workplace<sup>15</sup>—in order to “lift the spirits” of the people with whom the dogs come into contact.<sup>16</sup> Therapy dogs have found their way into the legal system, as well.<sup>17</sup>

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people of all ages can derive from visiting or residential pets); Bobbi Nodell, *A Nuzzle When It's Needed the Most*, SEATTLE TIMES, June 3, 2002, at E1 (discussing how Montana's Medicaid program pays the cost of training therapy dogs because of the benefits these dogs provide to the physically and mentally disabled); Aimee Edmondson, *Dentist's Dog Helps Patients Keep Calm*, CHATTANOOGA TIMES FREE PRESS, Aug. 2, 2003, at B5.

<sup>10</sup> See Ange Condoret, *Speech and Companion Animals: Experience With Normal and Disturbed Nursery School Children*, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS 467-71 (1983) (reporting the results of research that suggests a relationship between a child and a dog can satisfy essential psychological needs, especially the need to communicate); D. M. Kaye, *Animal Affection and Student Behavior*, in THE PET CONNECTION: ITS INFLUENCE ON OUR HEALTH AND QUALITY OF LIFE 101-04 (Robert Anderson et al. eds., 1984) (providing data analysis revealing that the classroom environment that included the presence of dogs produced positive pupil behavior towards teachers and peers, and fewer disciplinary referrals when compared to other classrooms); Douglas Powers, *Dog Gone*, in CREATING ENVIRONMENTS FOR TROUBLED CHILDREN 31-45 (1980) (discussing the influence of a dog on the lives of a group of adolescents in a residential school for troubled children); Nancy Polk, *See Spot Listen*, N.Y. TIMES, April 13, 2003, § 14CN, at 17 (discussing the use of therapy dogs in classrooms to help children gain confidence in their reading abilities).

<sup>11</sup> See Sandra J. Frank, *The Touch of Love*, 10 J. GERONTOLOGICAL NURSING 28, 28-34 (1984) (discussing how patients can restore and maintain muscle strength and coordination by picking up, playing with, or walking a dog); Margot Roosevelt, *Canine Candy Strippers; Dogs in Hospitals are Treating Human Patients with Succor, Creature Comfort and Unconditional Love*, TIME MAG., Aug. 6, 2001, at 52 (discussing various hospitals across the country that employ therapy dogs in rehabilitation efforts); *A Pet for All Seasons*, at <http://www.christianacare.org/body.cfm?id=201> (last visited Aug. 21, 2004) (“Sophie [a certified therapy dog at the Christiana Care Rehabilitation Center in Wilmington, DE] helps patients—both physically and psychosocially—with many therapy goals. ... Sophie assists in a variety of therapies to improve ... socialization, as well as providing moral support for patients and their families.”).

<sup>12</sup> See Sandra B. Barker & Kathryn S. Dawson, *The Effects of Animal-Assisted Therapy on Anxiety Ratings of Hospitalized Psychiatric Patients*, 49 PSYCHIATRIC SERV. 797, 798-99 (1998) (“Psychiatric patients who are withdrawn and nonresponsive have been described as responding positively to a therapy dog with smiles, hugs, and talking. ... Benefits [of pairing therapy dogs with patients with association disorders] included the dog's calming influence ... and facilitation of communication and interaction.”).

<sup>13</sup> See Linda M. Hines, *Pets in Prison: A New Partnership*, 37 CAL. VETERINARIAN, No. 5 1983, at 7, 7-17 (discussing how inmates are very enthusiastic about their work with dogs, and how prison officials believe that the program provides the inmates with a positive self-image); *Lassie Comes Home ... to Prison*, CORRECTIONS PROF. (LRP Pub., Palm Beach Gardens, Fla.), Jan. 15, 1996, at 1 (discussing how a noticeable change has come over the female inmates since they began working with the dogs); Cheryl Wittenauer, *Inmates Say Training Dogs To Help Disabled Helps Their Self-Esteem: Women Prisoners Train Service Dogs*, at <http://www.champdogs.org/WERDCC/PrisonAP.htm> (last visited Aug. 21, 2004) (“Many of the offenders said they've noticed that even the most hardened of their prison colleagues “crumble” around the dogs and ... ‘the entire feel of the institution has softened in some way.’ Even the conduct violations have declined sharply among the women ... since the dogs have arrived.”).

<sup>14</sup> See MARY RANDOLPH, *DOG LAW: A LEGAL GUIDE FOR DOG OWNERS AND THEIR NEIGHBORS* 1/8 (3d ed. 1997):

[Jed] ... had been in a nursing home for 26 years after suffering brain damage in a fall. He was believed deaf and mute. When he saw Whiskey, a German Shepard-husky dog that had just been placed in his nursing home, he spoke his first words in 26 years: “You brought that dog.” He began to talk to the staff and other residents, and to draw pictures of the dog (footnote omitted).

See generally Helen M. Hendy, *Effects of Pets on the Socialibility and Health Activities of Nursing Home Residents*, in THE PET CONNECTION: ITS INFLUENCE ON OUR HEALTH AND QUALITY OF LIFE, *supra* note 10, at 430 (concluding that dogs can have beneficial effects on the daily lives of nursing home residents); Clark M. Brickel, *Depression in the Nursing Home: A Pilot Study Using Pet-Facilitated Psychotherapy*, in THE PET CONNECTION: ITS INFLUENCE ON OUR HEALTH AND QUALITY OF LIFE, *supra* note 10, at 407 (showing

Therefore, it seems only logical to come across their company in victim-offender mediation.<sup>18</sup>

Part II of this Note will lay the groundwork for later analysis of how “dog therapy” techniques are well suited to this type of mediation by discussing the psychological dynamics of victim-offender mediation, including how the mediator must confront and deal with them.

Now it is well known that, in the course of mediation, a mediator may be called upon to wear many different hats.<sup>19</sup> Of importance to this Note are the jobs of “therapist”<sup>20</sup> and “magician.”<sup>21</sup> Part III of this Note will describe the “therapist” role as it focuses on the therapeutic effect that a dog’s presence will have on victim-offender mediation, namely the psychological benefits for the participants. The “magician” role will also be explored through a discussion of how the mediator

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that frequency of social interaction by residents placed with dogs increased over those who had no such interaction).

<sup>15</sup> See Peace Brod, *A New Breed of Help When Your Officemate is Furry*, PSYCHOL. TODAY, July/Aug. 2001, at 20, 20 (discussing how businesses that allow pets in the workplace find that the animals reduce stress and improve workers’ mental and physical health: “Even employees who did not bring their own pets to the office but worked with people who did said that pets improved the organization as a whole.”).

<sup>16</sup> See Nancy Lewis, *Ruby Goes to School: Using Therapy Dogs as Treatment Assistants*, ASHA LEADER, Sept. 23, 2003, at 12, 12-13.

<sup>17</sup> Compare Dennis J. Opatrny, *Dogging the Case in Solano County*, THE RECORDER, March 30, 1999, § Court Watch, at 4:

[The Deputy District Attorney] brought [therapy dogs] to work to gauge their positive affect on stressed out, sexually abused kids waiting to testify. “I thought it would work to calm our victims and witnesses, who are always nervous,” [he said]. [The mother of one such child] saw an immediate change in her son when he and another boy from the same neighborhood began playing with them. “He looks like he let his guard down,” she said.

with Molly McDonough, *Children Visiting Court Find Some New Pals*, CHI. DAILY L. BULL., Dec. 7, 1998, at 3 (discussing the utilization of therapy dogs to ease the anxiety of children participating in judicial proceedings).

<sup>18</sup> It seems even more logical still, when it is remembered that mediators often need to rely on creative strategies to encourage the resolution of conflict. See SAM KAGEL & KATHY KELLY, *THE ANATOMY OF MEDIATION: WHAT MAKES IT WORK* 132-35 (1989); Leo K. Bustad, *How Animals Make People Human and Humane*, 60 MOD. VETERINARY PRAC. 707, 707-10 (1979) (noting that individuals from several disciplines will have to work in creative ways to insure that the human-animal bond reaches its full potential); Denise Flaim, *The Power of a Pet: Sometimes, When Words Can’t Help, a Therapy Dog’s Twinkling Eyes and Wagging Tail Can*, NEWSDAY, Jan. 16, 2002, at B6 (“[D]ogs can be used to help tackle all sorts of goals ... There are very few limits—it depends on ... creativity[.]”). But surprisingly, only one person has authored an article on this possibility. See generally Robert D. Benjamin, *Dogs As Conflict Mediators* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>.

<sup>19</sup> See CLOKE, *supra* note 3, at 28 (listing twenty different roles that mediators can assume during a mediation). See also MOORE, *supra* note 2, at 18-19 (listing other roles that a mediator might play, including “opener of communication channels” and “problem explorer”).

<sup>20</sup> “8. **Therapist**: Surfacing underlying emotional concerns that prevent parties from reaching an agreement.” CLOKE, *supra* note 3, at 28.

<sup>21</sup> “15. **Magician**: Using creative techniques ... to overcome an impasse.” *Id.*

will use the dog's presence to aid in the process of discussing and resolving conflict, with both parties' emotional needs receiving equal attention.<sup>22</sup>

Finally, Part IV will discuss the training required by mediators who wish to employ therapy dogs in their practice. These new "mediator-handlers," as these types of mediators are known, will have a challenging task in specializing in this type of mediation, but one that can be truly rewarding.

## II. THE EMOTIONAL AND PSYCHOLOGICAL DYNAMICS OF VICTIM-OFFENDER MEDIATION THAT MAKE IT RIPE FOR A FUSION WITH "DOG THERAPY" TECHNIQUES

### A. *Why Victim-Offender Mediation?*

The question of why "dog therapy" techniques should be utilized in victim-offender mediation can be answered with the most prevalent of victim-offender mediation's characteristics—emotional intensity.<sup>23</sup> For a mediator-handler to truly use "dog therapy" techniques effectively, the emotional and psychological dynamics of victim-offender mediation must be understood.<sup>24</sup>

Victim-offender mediation draws upon the restorative justice ideology that crimes are basically against people, and not the state,<sup>25</sup> instead of continuing the regular depersonalization

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<sup>22</sup> See UMBREIT, *supra* note 2, at 35.

<sup>23</sup> *Id.* at 151.

<sup>24</sup> See MOORE, *supra* note 2, at 164 ("[A mediator] must be familiar with psychological techniques to assist parties in managing their emotions."). Indeed, conciliation (in which the mediator attempts to "create an atmosphere of trust and cooperation that promotes positive relationships and is conducive to negotiations") is the psychological part of mediation. *Id.* at 161. "Conciliation is essentially an applied psychological tactic aimed at correcting perceptions, reducing unreasonable fears, and improving communication to an extent that permits reasonable discussion to take place and, in fact, makes rational bargaining possible." *Id.* (footnote omitted). Cf. G. Francis, *The Therapeutic Use of Pets*, 29 NURSING OUTLOOK 369, 369-70 (1981) (discussing that since nurses have extensive contact with patients, they should have a great interest in understanding the psychology of their patients and explore ways to alleviate psychological and emotional turmoil).

<sup>25</sup> See MARK S. UMBREIT, FAMILY GROUP CONFERENCING: IMPLICATIONS FOR CRIME VICTIMS 1 (2000) ("Restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and representatives of the community to address the harm caused by the crime."). See also Jennifer Gerarda Brown, *The*

of victims and offenders in litigation.<sup>26</sup> The participants are increasingly choosing to turn to this type mediation because it can live up to the emotional expectations they have in the outcome—an outcome that cannot be relied upon in the normal litigation process.<sup>27</sup> Indeed, topics that are considered pertinent for mediation may only be so because they are emotionally (even though not logically) linked to the matters at hand.<sup>28</sup> Proponents argue that this is very successful: an array of studies<sup>29</sup> has already been done to corroborate traditional mediation’s advantages over litigation based on the parties’ improved interpersonal communication and psychological

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*Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 EMORY L.J. 1247, 1249 (1994) (Victim-offender mediation “transforms the criminal justice paradigm by placing victims at the center, rather than on the periphery, of the criminal process.”); Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543, 552 (2004) (“Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.”).

<sup>26</sup> UMBREIT, *supra* note 2, at 139. *See also* UMBREIT, *supra* note 25, at 1:

Research has found that restorative justice programs provide higher levels of victim and offender satisfaction with the process and outcome and a greater likelihood of successful restitution completion by the offender than traditional justice programs. Research has also shown that restorative justice programs have reduced fear among victims and decreased the frequency and severity of further criminal behavior among offenders.

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... [Indeed] as the oldest and most widely developed expression of restorative justice, ... victim-offender mediation and dialogue programs currently work with thousands of cases annually through more than 300 programs in the United States and more than 700 in Europe.

Walgrave, *supra* note 25, at 578 (“Victims appreciate communicative opportunities, often more even than material compensation.”); Alyssa H. Shenk, Note, *Victim-Offender Mediation: The Road to Repairing Hate Crime Injustice*, 17 OHIO ST. J. ON DISP. RESOL. 185, 190-91, 214 (2001) (“[V]ictim-offender mediation provides an emotional release for both the victim and the offender.”). *But see generally* Brown, *supra* note 25 (discussing the drawbacks of restorative justice principles compared with the advantages of the traditional litigation system).

<sup>27</sup> Research has focused on the elements affecting choice processes by concentrating on psychological variables, such as emotional expectations, that play an important role in choice. *See generally* Ramya Neelamegham & Dipak Jain, *Consumer Choice Process for Experience Goods: An Econometric Model & Analysis*, 36 J. MARKETING RES. 373 (1999) (recognizing that the role of emotion in certain areas of behavior outweighs other, more cognitive assessments in decision-making); Mary Frances Luce et al., *Emotional Trade-Off Difficulty and Choice*, 36 J. MARKETING RES. 143 (1999) (stating that when evaluating alternatives and making tradeoffs, emotion-laden tradeoffs complicate how tradeoffs are made and what value is assigned to various attributes during the choice process).

<sup>28</sup> Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1580 (1991).

<sup>29</sup> *See generally* Jessica Pearson & Nancy Thoennes, *Divorce Mediation Research Results*, in *DIVORCE MEDIATION: THEORY AND PRACTICE* (Jay Folberg & Ann Milne eds., 1998) (finding psychological distress may be alleviated in so far as seventy and ninety per cent of respondents who feel they were able to vent their grievances).

conditions.<sup>30</sup> The victim-offender mediation process facilitates an “active and personal process to work at conflict resolution by emphasizing the importance of restoring emotional ... losses.”<sup>31</sup>

Mediators are encouraged, where necessary, to permit parties to “vent” their feelings,<sup>32</sup> after which they can move on to discuss conclusions and outcomes of the mediation.<sup>33</sup> In many communities, crime victims are doing just this: meeting their victimizers in the presence of trained mediators to let the offenders know how the crimes affected them personally.<sup>34</sup> These

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<sup>30</sup> Isabelle R. Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55, 56 (1995). A psychological condition refers to “improvement in stress, depression, hostility, anxiety, or anger.” *Id.* at n.12. Mediation, in large part, embodies the reaction against the psychological brutality of the adversarial system of litigation. Ellen A Waldman, *The Evaluative-Facilitative Debate in Mediation: Applying the Lens of Therapeutic Jurisprudence*, 82 MARQ. L. REV. 155, 160 (1998). Litigation is a system in which the participants have no control over the events that will have a tremendous affect on their lives. Edward A. Dauer, *A Therapeutic Jurisprudence Perspective on Legal Responses to Medical Error*, 24 J. LEGAL MED. 37, 50 (2003). Another criticism of the traditional adversary method of dispute resolution is that it does not provide a role for emotion. Grillo, *supra* note 28, at 1548. Mediation is the exact opposite of litigation in these regards. Dauer, *supra*, at 50. In mediation, there must be an agreement on the outcome by both parties: “no authoritative figure, in a black robe or otherwise, with the power to err yet impose a form of closure that may be enormously destructive” is present. *Id.* This offers a therapeutic alternative to litigation, for even though the power is shared between the parties in mediation, it nonetheless exists. *Id.* See also Ezzell, *supra* note 2, at 128-31; Walgrave, *supra* note 25, at 578 (footnote omitted):

Victims increasingly understand that they have much to lose in the criminal justice system. They are often used as witnesses in court but are then left alone with their losses and grievances. Giving priority to punishing the offender impedes victim restoration, because the offender undergoing punishment has little opportunity for reparative actions. Monetary compensation ordered by the court does not appear to provide peaceful relief to victims. Victims in traditional criminal justice often experience secondary victimization.

<sup>31</sup> UMBREIT, *supra* note 2, at 139 (“The people most affected by the crime are allowed the opportunity to become actively involved in resolving conflict, in the belief that holding offenders personally accountable for their behavior and achieving some closure for the victim is far more important than on focusing on past criminal behavior ...”).

<sup>32</sup> Robert S. Dampf, *The Two Sides of Mediation: Tips From the Mediator: Of Sticks and Stones*, 45 LA. B.J. 138, 142 (1997) (“Part of the reason for the success of mediation is that parties can vent. Let them vent. Encourage them to vent some more.”). “To be sure, venting emotion is an essential part of most mediations.” David A. Hoffman, *Paradoxes of Mediation*, in BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION 172 (Daniel Bowling & David Hoffman eds., 2003).

<sup>33</sup> Grillo, *supra* note 28, at 1575. See also JONATHAN G. SHAILOR, EMPOWERMENT IN DISPUTE MEDIATION: A CRITICAL ANALYSIS OF COMMUNICATION 11 (1994) (“By ‘allowing’ ... such expressions, mediators allow disputants to ‘feel better’ and ‘think more clearly.’”); MOORE, *supra* note 2, at 168 (“The one incontrovertible effect of venting is ... a tendency toward increased relaxation after the emotional outburst. This physiological effect alone may justify a mediator’s efforts to provide an opportunity for parties to vent.”).

<sup>34</sup> See UMBREIT, *supra* note 2, at 136. Why are they doing this? The answer is simple: Victims are more satisfied with the resolution of the process if “they can participate in a constructive dialogue with the offender.” Walgrave, *supra* note 25, at 578 (footnote omitted). This provides a more suitable recognition of the victim’s emotional needs than litigation offers through its traditional practices of prosecution, probation, corrections, and the like. MARK S. UMBREIT & JEAN GREENWOOD, GUIDELINES FOR VICTIM-SENSITIVE VICTIM-OFFENDER MEDIATION: RESTORATIVE JUSTICE THROUGH DIALOGUE 1 (2000). See generally David P. Mesaros, *The Oklahoma Department of*

victims are often searching for answers to questions they have since their victimization, including an explanation of why they were victimized.<sup>35</sup> But it is not just the victims looking for a way to “vent” their feelings. Those who committed the crimes use the victim-offender mediation to tell their stories, represent the human sides of themselves, “own up to their behaviors,” and atone for what they have done.<sup>36</sup>

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*Corrections: Assisting Crime Victims Through Post-Conviction Mediation*, 1 OHIO ST. J. ON DISP. RESOL. 331 (1986).

<sup>35</sup> UMBREIT, *supra* note 2, at 136. “[W]ith increasing knowledge of the effects of crime, it [is] now recognized that most victims do pass through a phase of searching for an explanation as to why the crime has occurred.” Helen Reeves, *The Victim Support Perspective*, in *MEDIATION AND CRIMINAL JUSTICE: VICTIMS, OFFENDERS AND COMMUNITY* 47 (Martin Wright & Burt Galaway eds., 1989). Certainly, victims need a chance to express their feelings to the offender. John Harding, *Reconciling Mediation With Criminal Justice*, in *MEDIATION AND CRIMINAL JUSTICE: VICTIMS, OFFENDERS AND COMMUNITY*, *supra*, at 30. Some victims may be less traumatized if they could understand the motivations and reasons that had given rise to the crime. Reeves, *supra*, at 47. Additionally, since some victims may know that offender and may eventually see this person in their daily life again at some point, these meetings can provide a controlled environment that reduces the possibility of anxiety or revenge. *Id.* Another advantage to this type of arrangement is that many victims might also want the opportunity to take their negative experience and put a positive spin on it by helping the offender realize “the harm that he or she has done in the hope of preventing further crimes.” *Id.* See also Harding, *supra*, at 30 (“It was evident in those [programs that included a mediation component enabling victims to meet offenders] that crime victims attached as much, if not more importance to the healing process of mediation than to a compensatory gesture.”); UMBREIT & GREENWOOD, *supra* note 34, at 2.

<sup>36</sup> See UMBREIT, *supra* note 2, at 136. See also Walgrave, *supra* note 25, at 577 (“The offender must contribute to the resolution of the problem created by his behavior.”). Of course, this is necessary for true reconciliation to take place. Mark Chupp, *Reconciliation Procedures and Rationale*, in *MEDIATION AND CRIMINAL JUSTICE: VICTIMS, OFFENDERS AND COMMUNITY*, *supra* note 35, at 59-60. The offender needs to realize the consequences of his or her actions and the fear that they created: the trauma, loss, and anger that all resulted. *Id.* This, in turn, allows the victim to begin to see the offender as a person rather than just some monster. *Id.* at 63. See also KENNETH CLOKE, *MEDIATING DANGEROUSLY: THE FRONTIERS OF CONFLICT RESOLUTION* 88-89 (2001); Shenk, *supra* note 26, at 189 (“[I]t is important to provide offenders with a chance ‘to become meaningfully accountable to their victims, and to become responsible for repairing the harm they have caused.’”) (footnote omitted); Walgrave, *supra* note 25, at 578 (“[Victims] observe the offender as a human being who is embarrassed by what he has done, and ... they feel that apologies and other reparative acts express the offender’s understanding of the wrong committed and his willingness not to reoffend.”).

Ultimately, though, steps must be taken to ensure that the offender truly *wants* to make amends. As such, the preliminary meeting should be held with the offender first, so as to gather specific information about the offender’s motives and willingness to participate. Chupp, *supra*, at 59. This is done so that the victim does not first agree to meet with the offender, only to have the offender not show up at the scheduled time or not have the motive to ask for forgiveness, in effect victimizing the victim all over again. *Id.* It is therefore important to screen each case to verify that it is appropriate for “dog therapy” mediation. *Id.* at 57. This pre-screening ensures that there is not any “overt hostility between the parties, and to make sure that there is clearly a reason to meet[.]” *Id.* This also verifies that the offender is not meeting simply because he or she feels coerced by a court order, by which not meeting would have a negative impact on any criminal proceedings currently pending. Brown, *supra* note 25, at 1267. See also UMBREIT & GREENWOOD, *supra* note 34, at 8-9; Dennis W. Mattingly, *Deception, Delusions and Spin Doctors in Family Court Litigation*, OHIO LAW., May/June 2004, at 16 (“Parties must be required to make good faith attempts to mediate and not make a token appearance[.]”).

## B. *The Psychological Dimensions of Victim-Offender Mediation Practice*

First and foremost, an effective mediator-handler is “a skilled conflict manager, able to analyze the parties’ relationship, help them negotiate their disagreements and resolve their conflicts.”<sup>37</sup> To do so, mediator-handlers must have some understanding of the psychology of conflict: how strong conflict generally affects people’s perceptions and behaviors, and the various stages or cycles of feelings that are associated with conflict.<sup>38</sup>

### 1. *Emotion as the Foundation of Conflict*

To truly benefit from a therapy dog’s presence, the mediator-handler must understand emotion.<sup>39</sup> Working from the theory that emotion is the underpinning of all conflict<sup>40</sup> and is central in all mediation contexts,<sup>41</sup> understanding the ways that emotion can influence how the mediation process will unfold becomes vital to developing a successful “dog therapy” mediation

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<sup>37</sup> James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLINICAL L. REV. 457, 492 (1996). Mediators, in actuality, are trying to empower the parties so that they can come to their own suitable resolutions. See SHAILOR, *supra* note 33, at 18.

<sup>38</sup> See Stark, *supra* note 37, at 492.

<sup>39</sup> See MOORE, *supra* note 2, at 162. For rational discussions on the issues to occur, negative emotions and their impact on the parties must be minimized. *Id.* “If not handled early in negotiations, feelings—whether openly manifested or felt and not spoken—may later block a substantive agreement or inhibit the formation of more positive relationships.” *Id.* Therefore, the mediator-handler must work to minimize or neutralize the effects of negative emotions, which cannot be done unless the mediator-handler can understand their place in mediation. *Id.* A mediator-handler’s responses to emotions consists of three separate steps: recognizing that the parties have strong emotions, “diagnosing the emotion[s],” and choosing a suitable strategy to assist the parties in managing their emotions. *Id.* at 165. See also LEVITON & GREENSTONE, *supra* note 3, at 32 (“Before [the parties] can deal effectively with problem resolution, the parties must deal with [the feelings of anger, frustration, disappointment, and revenge that they possess.]”); see generally ROBERT E. EMERY, RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY, AND MEDIATION (1994) (ultimately concluding that effective mediation can alleviate tensions and prepare parties to productively address issues when emotions are recognized and understood).

<sup>40</sup> Tricia S. Jones & Andrea Bodtker, *Mediating with Heart in Mind: Addressing Emotion in Mediation Practice*, 17 NEGOTIATION J. 217, 219 (2001).

<sup>41</sup> *Id.* It is not claimed that emotion is “equally or similarly manifest and influential in all mediation contexts,” and some contexts, such as victim-offender mediation, “are usually more influenced by emotional and relational concerns than are international or labor-management mediations.” *Id.*

practice.<sup>42</sup> Emotion and stress, in varying degrees, are present in all mediations.<sup>43</sup> “[Participants] are often at their worst and trust is at low ebb. Frustration and anger flow freely or gather force just under the surface.”<sup>44</sup> Although mediation is not therapy, the mediator-handler needs to be attuned to the often concealed and suppressed emotions that motivate conflict<sup>45</sup> and recognize the psychological needs of the parties must be met.<sup>46</sup>

Because of their extremely personal nature, victim-offender mediations and the emotional forces surrounding them can become very serious,<sup>47</sup> especially in cases of murder and other severely violent offenses.<sup>48</sup> If this seriousness is carried into discussions, it becomes that much more difficult to reach a favorable settlement.<sup>49</sup> In these circumstances, emotions can get out of hand and frustrate settlement<sup>50</sup>—the more anger and less compassion that the participants feel towards each other in the victim-offender mediation, the less likely they are going to continue to work with each other.<sup>51</sup> These intense emotions can often trigger intense and irrational

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<sup>42</sup> *Id.*

<sup>43</sup> See Kathy Douglas, Mediation as Part of Legal Education, Address at the 6<sup>th</sup> National Mediation Conference, in Canberra, Australia (Sept. 20, 2002), available at <http://www.leadr.com.au/DOUGLAS.PDF>. See Walgrave, *supra* note 25, at 578 (“After victimization, many victims suffer from continuing anger, uncertainty, and anxiety, based on a stereotyped image of a ‘monstrous criminal’ and on the fear that he will repeat his victimization.”); Mattingly, *supra* note 36, at 14 (“[Parties] may suffer from wide mood swings, anger, idealization, preoccupation with self, distorted perceptions of victimization, detachment, antisocial behavior or dependency.”); Lovenheim, *supra* note 3, at 170 (“They are, after all, sitting across the table from the person or persons whom they see as the source of their problem”).

<sup>44</sup> Robert D. Benjamin, *Dogs As Conflict Mediators* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>. The parties participating may have formed very inaccurate beliefs about each other, and will not easily give up on those beliefs when someone attempts to challenge them. Mattingly, *supra* note 36, at 15.

<sup>45</sup> See Stark, *supra* note 37, at 493.

<sup>46</sup> See Anthony T. Accetta, *Mediators as Problem Solvers*, 23 COLO. LAW. 561, 562 (1994). See also LEVITON & GREENSTONE, *supra* note 3, at 56.

<sup>47</sup> See JOHN ILICH, *THE COMPLETE IDIOT’S GUIDE TO WINNING THROUGH NEGOTIATION* 263 (2d ed. 1999).

<sup>48</sup> See UMBREIT, *supra* note 2, at 151.

<sup>49</sup> See ILICH, *supra* note 47, at 263.

<sup>50</sup> Robert S. Adler et al., *Emotion in Negotiation: How to Manage Fear and Anger*, 14 NEGOTIATION J. 161, 168 (1998) (“Where one party believes that the other side cannot be trusted, tries to overreach, or unreasonably rejects a fair offer, he or she may experience frustration, anger, fear, or sadness.”).

<sup>51</sup> Keith G. Allred et al., *The Influence of Anger and Compassion on Negotiation Performance*, 70 ORG. BEHAV. & HUM. DECISION PROCESSES 175, 184 (1997).

behavior,<sup>52</sup> and at their most extreme, can result in more violence, destroyed relationships, and worsening resentment.<sup>53</sup> Additionally, intense trepidation could produce equally undesirable outcomes: bullying, mistreatment, and eventual surrender to the will of the other party.<sup>54</sup> By benefiting from a dog's natural calming abilities on humans,<sup>55</sup> and its positive affect on emotional and psychological states,<sup>56</sup> the mediator-handler will be able to address and manage this emotional unrest head on.

## 2. *Grief as the Foundation of Emotion*

The mediator-handler must be aware of another important attribute of the victim-offender arrangement—the principle that these intense emotions are founded on an underlying grief.<sup>57</sup> Professional mediator-handlers are human; “they bring emotional orientations to mediation that influence the mediation process.”<sup>58</sup> The mediator-handler must overcome the socialized propensity to shun the idea of grief and dealing with a grieving person<sup>59</sup> if “dog therapy” mediation is to be given any chance of success.

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<sup>52</sup> Adler et al., *supra* note 50, at 162. See also K. HARIGOPAL, *CONFLICT MANAGEMENT: MANAGING INTERPERSONAL CONFLICT* 64-79 (1995) (discussing various types of behaviors that emerge in conflict situations).

<sup>53</sup> Adler et al., *supra* note 50, at 168.

<sup>54</sup> *Id.*

<sup>55</sup> See *infra* note 82.

<sup>56</sup> See *supra* notes 9-17.

<sup>57</sup> See Michael J. Evans & Marcia Tyler-Evans, *Aspects of Grief in Conflict: Re-Visioning Response to Dispute*, 20 *CONFLICT RESOL. Q.* 83, 86 (2002).

[G]rief within the conflict setting complicates the human aspects of the resolution process; grief prolongs or obstructs progress toward conflict resolution.

This leads to an important consideration for ... conflict managers .... The primary concern becomes, When do we need to add the impact of grief into our dealing with conflict and the individual disputants? Which settings are suggestive of a need to consider grief experiences, and which are not suggestive of this aspect of conflict?

*Id.* See also LAUREL LAGONI ET AL., *THE HUMAN-ANIMAL BOND AND GRIEF* 37 (1994) (discussing the importance of having a basic working knowledge of the normal manifestations and progression of grief).

<sup>58</sup> Jones & Bodtger, *supra* note 40, at 220. Indeed, “mediators cannot avoid having an emotional reaction to the parties.” Hoffman, *supra* note 32, at 172.

<sup>59</sup> Evans & Tyler-Evans, *supra* note 55, at 93. See also Lois Gold, *Mediation and the Culture of Healing, in BRINGING PEACE INTO THE ROOM: HOW PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION*, *supra* note 32, at 208 (“Once a dispute has reached a level where third-party intervention is

In private conversations, outward expressions of grief are usually not encouraged as they are often seen as a sign of weakness that the other side can exploit.<sup>60</sup> Therefore, participants in victim-offender mediation often hide their responses behind “safe behaviors: anger, frustration, fear, and sadness<sup>61</sup> are all common expressions of underlying grief.”<sup>62</sup> The mediator-handler must assure the participants that grief is neither good nor bad<sup>63</sup> and must encourage the acknowledgement and support of the grief experience so as to promote the “forward movement required for resolution and closure.”<sup>64</sup> As will be shown, “dog therapy” mediation techniques are well suited to including grief as part of the resolution process.

### III. THE FUSION OF “DOG THERAPY” AND VICTIM-OFFENDER MEDIATION

#### A. *The Mediator-Handler as “Therapist”*

Obviously, mediators operating in the victim-offender mediation process must manage a great deal in terms of the parties’ emotional and psychological turmoil.<sup>65</sup> It is for this very reason that the process of traditional mediation in the victim-offender arena should be

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required, something of value in a person’s life has been compromised, threatened, or lost. ... Often neither the loss nor the grieving is acknowledged. ... Loss needs to be recognized and its significance acknowledged and honored.”); LAGONI ET AL., *supra* note 55, at 47 (“Unresolved grief occurs when normal grief is not given free expression or when the normal grief process is arrested or blocked.”) (footnote omitted).

<sup>60</sup> Evans & Tyler-Evans, *supra* note 55, at 89. *See also* LAGONI ET AL., *supra* note 55, at 46 (describing factors that complicate the grieving process).

<sup>61</sup> *See* discussion *supra* Part II.B.1.

<sup>62</sup> Evans & Tyler-Evans, *supra* note 55, at 89 (“Refusing to talk about the foundation of the dispute can also signal unexpressed grief.”). *See also* MOORE, *supra* note 2, at 165 (“Tone of voice, pacing of words, facial expressions, changes in posture, and body movement are all clues to the presence of underlying emotions.”); LAGONI ET AL., *supra* note 55, at 40 (discussing the various ways grief can manifest itself); Gold, *supra* note 57, at 208 (“[U]nrecognized or denied grieving in the form of unrelenting anger, blame, or the inability to let go may be one of the elements emotionally driving a dispute.”).

<sup>63</sup> Evans & Tyler-Evans, *supra* note 55, at 87.

<sup>64</sup> *Id.* at 88.

<sup>65</sup> *See generally* Ezzell, *supra* note 2; Shenk, *supra* note 26.

“reconceptualized;”<sup>66</sup> being familiar with the simple mechanics of mediation is no longer enough.<sup>67</sup>

Bearing in mind that mediation has been described as conflict resolution in a “therapeutic key,”<sup>68</sup> it is only natural that “dog therapy” techniques should be utilized here.<sup>69</sup> In reality, mediators and mediation scholars have always had a therapeutic focus,<sup>70</sup> as can be seen by “fundamental similarities” between mediation and therapy.<sup>71</sup> Mediation itself is designed to enhance the participants’ mental health:<sup>72</sup> without a doubt, of its benefits, mediation allows for “greater responsiveness to parties’ psychological and interpersonal needs.”<sup>73</sup> Taking into

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<sup>66</sup> UMBREIT, *supra* note 2, at 152.

<sup>67</sup> *Id.* at 153.

<sup>68</sup> Waldman, *supra* note 30, at 160.

<sup>69</sup> See ALAN BECK & AARON KATCHER, *BETWEEN PETS AND PEOPLE: THE IMPORTANCE OF ANIMAL COMPANIONSHIP* 159 (1983) (“If ... the attentive eye and uncritical ear of the [dog] are so attractive to so many of us, they should be even more important to those who have been wounded by other people[.]”).

<sup>70</sup> Waldman, *supra* note 30, at 169.

<sup>71</sup> *Id.* at 160. Much like psychological counseling and therapy, mediation can be referred to as a “talking cure”: from the opening statements on, the entire process involves words. Lovenheim, *supra* note 3, at 169.

<sup>72</sup> See Waldman, *supra* note 30, at 163. See also ROGERS & SALEM, *supra* note 3, at 10 (stating that mediators allow parties to express their emotions in order to “open their minds” to the mediation process).

<sup>73</sup> Brenda V. Smith, *Battering, Forgiveness, and Redemption*, 11 AM. U. J. GENDER SOC. POL’Y & L. 921, 934 (2003). Before continuing, it must be stated that this Note is not asserting that mediation is therapy because that is not the case. See Richard J. Roberts, *When Mediation Goes Awry: The Reflections On the Internal Complexities of Being Human* (Sept. 2003), at <http://www.mediate.com/articles/robertsJ1.cfm>. Therapy is used mainly to encourage understanding to assist the client’s mental health. *Id.* Mediation’s purpose, on the other hand, is to encourage both parties to reach a mutually acceptable agreement. *Id.* Furthermore, “therapy seeks to rehabilitate and conciliate individuals, families, or parties with enduring relationships, whereas mediation assists in the creation of client options, continuing cooperation and independence from professional help.” JAY FOLBERG & ALISON TAYLOR, *MEDIATION: A COMPREHENSIVE GUIDE TO RESOLVING CONFLICTS WITHOUT LITIGATION* 34 (1984).

Though this Note makes the assertion that the mediator-handler acts as a “therapist” at times, it must be reiterated that mediators-handlers to not conduct therapy sessions. See UMBREIT, *supra* note 2, at 35. However, it may be, at times, difficult to distinguish the two. Both systems rely on information gathering through open communication and active listening. See Waldman, *supra* note 30, at 160. “In most situations, mediation and therapy share a core set of core skills related to good communication and problem solving but require far more specialized knowledge in their respective areas.” UMBREIT, *supra* note 2, at 36. The process of mediation is “one whose very effectiveness depends upon its fostering trust, safety, and, as a result of those, candor.” Dauer, *supra* note 30, at 49. The distinction between mediation and therapy can be made even less forthright depending on the styles of mediation and therapy used. See UMBREIT, *supra* note 2, at 36.

But the mediator-handler’s role is distinct from that of the therapist. *Id.* at 35.

[Mediators] must know the difference between therapy and mediation in order to use them in synergy. The two techniques are designed for different outcomes. ... Although both share the goal of reducing inner turmoil, therapy is a much more complex process and one that mediation will never pretend to mimic.

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account that mediation itself is enveloped by the ideals of a larger movement known as “therapeutic jurisprudence”<sup>74</sup> (recently developed and applied by legal scholars<sup>75</sup>), “dog therapy”

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... [T]he mediation process is only to facilitate therapy, not replace it, and ... the session might render a lessening of hostilities. ... [M]ediation is not designed to address [the hostilities], won't lead to long term solution to underlying problems, nor facilitate the depth of understanding and change of attitudes that can lead to long term changes of behavior.

MARK STEIN & DENNIS J. ERNST, *RESOLVING CONFLICT ONCE & FOR ALL: A PRACTICAL HOW-TO GUIDE TO MEDIATING DISPUTES* 110-11 (1997). Furthermore, though emotions are allowed to emerge—encouraged even—they are not explored in great depth. *See* UMBREIT, *supra* note 2, at 35.

While strong and painful feelings can be acknowledged in mediation, it requires a therapist to further explore and work on those feelings.

In contrast, the psychotherapist's role is to develop insight and to bring about personal and behavioral change. The primary focus is on the person and relationships rather than a specific conflict or issue. Expression of emotions is encouraged and feelings are explored, often extensively. Background information about a client's life is far more available to the therapist and the relationship is usually longer term than in mediation.

*Id.* at 35-36.

<sup>74</sup> Therapeutic jurisprudence is the study of the role of the law as a “therapeutic agent.” Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 645, 646 (David B. Wexler & Bruce J. Winick eds., 1996). It originated in the field of mental health law. Waldman, *supra* note 30, at 160. Therapeutic jurisprudence is a multidisciplinary methodology that seeks to determine particular consequences of laws by looking to the behavioral sciences (psychology, social work, criminology, and related study areas). David B. Wexler & Bruce J. Winick, *Putting Therapeutic Jurisprudence to Work: The Term May Sound Academic, but It Embodies a Hands-on Approach to Solving Problems Rather Than Simply Winning Cases*, 98-MAY A.B.A. J. 54, 55 (2003).

[Therapeutic jurisprudence] is an approach to legal policy analysis that is both empirical and normative. It is empirical in its premise that law and legal processes can have effects on the well-being of the people who are involved with them; well-being not only in the economic sense, but in the physical and psychological senses as well. ... Although [therapeutic jurisprudence]'s founders eschew any narrow definition of the word, their premise is that legal processes that are therapeutic are better than those that are not. Its proponents do not argue that the therapeutic dimensions of the law should trump the law's substantive goals, rather that its therapeutic ... consequences be recognized and valued among other factors in the design and assessment of legal procedures. As David Wexler, one of [its] founders, summarized: “People should be better off after their contact with the law than they were before.”

Dauer, *supra* note 30, at 41. This developing field has several goals, including:

[S]tudying the psychological effect of law on actors in the legal process; identifying specific aspects of law that have, can have, or should have independent “therapeutic” effects on one or more of the actors; exploring ways in which use of or emphasis on mental health disciplines can help the development of the law; and *identifying ways in which law and the practice of law might be changed so as to facilitate beneficial therapeutic effects or negative “psychological fallout.”*

Fred C. Zacharias, *Therapeutic Jurisprudence/Preventive Law and the Lawyering Process: Professional Responsibility, Therapeutic Jurisprudence, and Preventive Law*, 5 PSYCHOL. PUB. POL'Y & L. 909, 909-10 (1999) (emphasis added) (footnotes omitted).

<sup>75</sup> Patricia Monroe Wisnom, Note, *Probate Law and Mediation: A Therapeutic Perspective*, 37 ARIZ. L. REV. 1345, 1352 (1995).

One example directly applies to the criminal system. It has been suggested that conditional release orders might be complied with more often if the acquittee is involved in the drafting of the order. This idea is based upon the psychology of contracts—those who enter into a behavioral contract are more likely to comply than if they are simply ordered to behave in a certain way by others. Therefore, the suggestion has been made that direct involvement by the acquittee be initiated and encouraged.

mediation can possibly offer a great deal more in terms of therapeutic benefits besides the increased satisfaction with the outcome and “enhanced understanding” due to the direct interaction and participation of the parties within the process<sup>76</sup> that traditional mediation offers.

This new “dog therapy” mediation “is less mediation is the traditional sense of negotiating a settlement between disputants and more a process of facilitating a dialogue between a person who has been traumatized and the person responsible for that pain.”<sup>77</sup> “Dog therapy” mediation is “ultimately a spiritual journey, an opening of the heart, a process in which the involved parties help each other heal”<sup>78</sup> with the assistance of the therapy dog.<sup>79</sup> To be sure, therapists will

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Another example comes from tort law, where therapeutic jurisprudence questions have been asked regarding the compensation schemes in personal injury cases. The issues revolve around which recovery system will most likely result in faster or better outcomes given different sets of circumstances. For example, one author has suggested that an apology given by the wrongdoer, probably in conjunction with a monetary award, may be helpful in validating the victim’s experience and promoting recovery.

*Id.* at 1353-54 (1995) (footnotes omitted). Therapeutic jurisprudence has also found its way into the courts. *See* Amendment to the Rules of Juvenile Procedure, Fla. R. Juv. P. 8.350, 804 So. 2d 1206, 1210 (Fla. 2001) (quoting a comment filed by Judge Ginger Wren and Professor Bruce Winick) (“Therapeutic jurisprudence is an interdisciplinary field of legal scholarship and approach to law reform that focuses attention upon law’s impact on the mental health and psychological functioning of those it affects”). *See also* del Rosario Ortego v. Star Kist Foods, Inc., 213 F. Supp. 2d 84, 95 (D. Puerto Rico 2002); Terry v. Superior Court, 86 Cal. Rptr. 2d 653, 664-665 (Cal. 2<sup>nd</sup> Dist. Ct. App. 1999); *In re* Report of Family Court Steering Committee, 794 So. 2d 518, 524 (Fla. 2001).

<sup>76</sup> Dauer, *supra* note 30, at 49-50. By providing these therapeutic benefits, the parties are more likely to adhere to the outcome agreed to and far less likely to resort to the courts to settle any future disputes on the issues they have resolved in mediation. Ezzell, *supra* note 2, at 122.

<sup>77</sup> *See* UMBREIT, *supra* note 2, at 152-53.

<sup>78</sup> *Id.* at 153.

<sup>79</sup> Bringing the victim of violent crime together with the offender, the mediator-handler, and the therapy dog will most likely be done in a comparatively small number of cases, typically at the behest of the victim or a surviving family member. *Id.* at 150. There are many possible reasons for this. For example, in any situation, there may be only a small number of people for whom dogs have been important in their lives and for whom the dogs have a particular charm. PHIL ARKOW, HOW TO START A “PET THERAPY” PROGRAM: A GUIDEBOOK FOR HEALTH CARE PROFESSIONALS 5 (1990). Indeed, some participants may not choose “dog therapy” mediation due to the simple fact that one or both of the participants are afraid of dogs or have had some negative contact with dogs in the past. *See* BECK & KATCHER, *supra* note 69, at 81 (“[C]ases in which using [dogs are] inappropriate [include] a [participant’s] previous experiences with [dogs] may have been such that the [participant] will not derive any comfort from further ... contact [with dogs].”); Philip S. Arkow & Shelby Dow, *The Ties That Do Not Bind: A Study of the Human-Animal Bonds That Fail*, in THE PET CONNECTION: ITS INFLUENCE ON OUR HEALTH AND QUALITY OF LIFE, *supra* note 10, at 348-354 (observing that animal shelters annually receive millions of unwanted companion animals from individuals, and that obviously the human-animal bond has not worked for these people).

Finally, the cost of mediation is also a factor. *See* Stephen B. Goldberg, *The Mediation of Grievances Under a Collective Bargaining Contract: An Alternative to Arbitration*, 77 NW. U. L. REV. 270, 281 (1982). Mediation fees range anywhere from \$600 to over \$2,000, depending on the type of mediator and mediation offered. *See* PETER LOVENHEIM, HOW TO MEDIATE YOUR DISPUTE: FIND A SOLUTION QUICKLY & CHEAPLY OUTSIDE THE

quickly recognize the important role that these “dog therapy” mediation sessions can play in “moving [victims and offenders] to a greater sense of closure and facilitating ... work in therapy.”<sup>80</sup> It is hoped, that by developing “dog therapy” techniques suited toward this form mediation, emotions can be stabilized and participants in the mediation can avoid, or at least significantly lessen, the psychological brutality that they would normally face.<sup>81</sup>

There is already a significant amount of research showing that the mere presence of a dog can have dramatic emotional and psychological benefits.<sup>82</sup> This is of importance to the mediator-handler, because to have their greatest impact in mediation, they must be able to work easily with the rational goals of mediation as well as the emotional goals.<sup>83</sup> This means that mediator-handlers need a high degree of “‘interpersonal intelligence’: the capacity to understand and empathize with other people, to ‘discern and respond appropriately to [their] moods,

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COURTROOM 1.20-1.21 (1996). Add to that the cost of maintaining the dog (health check-ups, training, etc.), and the cost of “dog therapy” mediation may become prohibitive for some.

<sup>80</sup> See UMBREIT, *supra* note 2, at 150. Mediation can clear away the clutter of ancillary concerns from the underlying emotional turmoil and lay the groundwork for a more effective therapy session. See STEIN & ERNST, *supra* note 71, at 110-111; LEVITON & GREENSTONE, *supra* note 3, at 54.

<sup>81</sup> See generally R.D. Ryder, *Pets in Man’s Search For Sanity*, 14 J. SMALL ANIMAL PRACTICE 657 (1973) (discussing how dogs can satisfy the psychological needs of humans in many ways: they help people to drop social facades, they boost egos, provide a feeling of security, and promote self-confidence). See also discussion *supra* Parts II.B.1, II.B.2.

<sup>82</sup> In one study, people who took a standardized anxiety-measuring test when the experimenter’s dog was in the room scored lower than those who took the test with only the experimenter there. See RANDOLPH, *supra* note 14, at 1/9. Another test showed that women attempting a challenging task felt a reduced amount of stress and performed better when their dogs were in the vicinity than when a human friend was close by. *Id.* See also R. S. Ulrich, *Biophilia, Biophobia, and Natural Landscapes*, in THE BIOPHILIA HYPOTHESIS 73-137 (S. R. Kellert & E. O. Wilson eds., 1993) (“There is now general acceptance that animals are therapeutic.”); *Take Two Schnauzers and Call Me In the Morning*, PSYCHOL. TODAY, July–Aug. 1996, at 19, 19 (discussing a study finding that stress was lower when a dog was present than with a “spousal equivalent”); Carin Gorrell, *A Caregiver’s Companion*, PSYCHOL. TODAY, Jan. 2001, at 16, 16 (demonstrating “a therapeutic role for pets dogs, suggesting that they help alleviate stress and its accompanying symptoms.”); Esther Braun, *Are Pets Good For Your Health?*, MS., March 1982, at 23, 23 (citing research indicating that owning pets is beneficial to one’s mental well-being); Barbara Humeston, *How Pets Help People Cope*, BETTER HOMES & GARDENS, August 1983, at 61, 61-66 (discussing how researchers are beginning to confirm that dogs can help treat emotionally disturbed individuals); Christine Cosgrove, *Pet Doctor: Owning a Pet Can Be Beneficial To Your Health*, at [http://my.webmd.com/content/Article/14/1674\\_50363.htm](http://my.webmd.com/content/Article/14/1674_50363.htm) (last visited March 11, 2004) (discussing further studies that reinforce the psychological and emotional advantages of a dog’s presence).

<sup>83</sup> Stark, *supra* note 37, at 495. Mediator-handlers should be attuned to the often concealed and suppressed emotions that motivate conflict. *Id.*

temperaments, motivations and desires,’ to handle relationships well and ‘interact[] smoothly with others.’”<sup>84</sup>

This is where the dog becomes invaluable in victim-offender mediations. In ways unavailable to a human, a dog has the capacity to elicit specific human responses.<sup>85</sup> As “most people are generally deferential to the interests of a dog,”<sup>86</sup> its presence helps divert participants’ attention away from the negative forces that are consuming them.<sup>87</sup> Most extraordinarily, dogs have an almost “sixth sense” capacity to sense and alleviate emotional tension in humans.<sup>88</sup> And, at the very least, for those who are “dog people,” when everything else in their life appears to be in tatters, the dog can be a reminder of a remaining thread of understanding between them.<sup>89</sup> Not every mediator may have the opportunity to bring about such a noticeable emotional transformation in their clients, but the mediator-handler has the privilege of providing the setting, in preliminary meetings and in the actual mediation itself, for just such a transformation.<sup>90</sup>

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<sup>84</sup> *Id.* at 493.

<sup>85</sup> Robert D. Benjamin, *Mediating Dogs*, 19 MEDIATION NEWS, Winter 2000, at 10, 10. *See also* LAGONI ET AL., *supra* note 57, at 16 (describing the socializing potential of people in the presence of a dog, as well as many physiological benefits experienced by such people); Flaim, *supra* note 18, at B6 (“Where a person cannot make any headway, a dog often can[.]”).

<sup>86</sup> Benjamin, *supra* note 85, at 10. *See also* Flaim, *supra* note 18, at B6 (“People will first relate to the dog much more easily than they relate to a person.”).

<sup>87</sup> *See* Alan M. Beck, *The Use of Animals to Benefit Humans: Animal-Assisted Therapy*, in HANDBOOK ON ANIMAL-ASSISTED THERAPY: THEORETICAL FOUNDATIONS AND GUIDELINES FOR PRACTICE, *supra* note 9, at 23 (“Long before there was any evidence that animal contact enhanced physical and mental health, animals were being used in therapeutic settings. ... The animals were there to provide a diversion or the joys traditionally associated with pet care.”). *See also* ARKOW, *supra* note 79, at 3-4 (“[P]ets are pleasant diversions from anxiety-provoking situations. By concentrating on a non-threatening stimulus, the [participant’s] defense mechanisms are relaxed and he or she can tolerate a more threatening stimulus such as counseling.”); *compare* Flaim, *supra* note 18, at B6 with Julie V. Iovine, *Petropolis: The Healing Ways of Dr. Dog*, N.Y. TIMES, October 28, 2001, § 9, at 8 (describing the positive effect dogs had on families who had lost members during the World Trade Center attacks, especially in promoting communication).

<sup>88</sup> Robert D. Benjamin, *Dogs As Conflict Managers* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm> (“[N]ot unlike their ability to sense an impending epileptic seizure.”).

<sup>89</sup> *Id.* *See also* Joel Greenberg, *Take Two Milkbone and Call Me in the Morning*, SCIENCE NEWS, Oct. 8, 1977, at 237, 237 (emphasizing that dogs remind humans of all the things often forgotten about getting along with each other); Dana Parsona, *Poodle is Man’s Best Friend and Patients’ Best Therapy*, L.A. TIMES, May 3, 1995, § Metro, Part B, at 1 (describing how dogs can bring back memories of better times for those with whom they come into contact).

<sup>90</sup> JENNIFER E. BEER, THE MEDIATOR’S HANDBOOK 15 (3d ed. 1997).

## B. *The Mediator-Handler as “Magician”*

### 1. *The Usefulness of the Dog in Preliminary Meetings*

Because of their intense emotional and psychological nature, victim-offender mediations require longer case preparation<sup>91</sup> and multiple separate meetings with both parties prior to the joint mediation session.<sup>92</sup> “Through an extensive preparation and coaching of the parties prior to the mediation session, the mediator can ... facilitate a healing process grounded in the parties’ helping each other through responding to important emotional and informational needs.”<sup>93</sup>

It is possible that some of the participants in victim-offender mediation have experienced problems that may have taken away their desire to speak openly with each other.<sup>94</sup> When a person stops talking, it gets more and more difficult to get them communicating again.<sup>95</sup> It may become so difficult for the mediator to try encouraging exchange that the parties themselves will also stop trying and end the mediation before a conclusion can be reached.<sup>96</sup> When either the victim or offender is hesitant to communicate, it is important to prepare them to do so during private caucuses prior to the actual mediation.<sup>97</sup>

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<sup>91</sup> UMBREIT, *supra* note 2, at 151.

<sup>92</sup> *Id.* See also Lisa G. Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN’S L.J. 57, 103-04 (1984) (recommending that mediations between perpetrator and victim begin with separate meetings involving the mediator and each party).

<sup>93</sup> *Id.* at 153. See also ROGERS & SALEM, *supra* note 3, at 37; Craig A. McEwen & Thomas W. Milburn, *Explaining a Paradox of Mediation*, 9 NEGOTIATION J. 23, 31 (1993) (outlining how a mediator can establish a “framework for cooperation”).

<sup>94</sup> KATHY DIAMOND DAVIS, *THERAPY DOGS: TRAINING YOUR DOG TO REACH OTHERS* 9 (1992). Indeed, the parties’ emotional intensity makes it difficult for them to deal rationally with each other. Galik, *supra* note 3, at 544. See also McEwen & Milburn, *supra* note 93, at 29-30 (stating that parties’ anger and attribution of fault inhibits mutual problem-solving).

<sup>95</sup> See DAVIS, *supra* note 94, at 9.

<sup>96</sup> *Id.*

<sup>97</sup> See UMBREIT, *supra* note 2, at 147. See also MICHAEL NOONE, *MEDIATION* 34 (Julie Macfarlane ed., 1996) (“The mediator can always assist parties who do not have skills and expertise in negotiation.”); LEVITON & GREENSTONE, *supra* note 3, at 32 (“A strategy of caucusing may prove beneficial in drawing out the [parties’] feelings.”); MOORE, *supra* note 2, at 166 (stating that the more the mediator and party interact during pre-mediation meetings, the more

During preparation for the actual mediation, the mediator-handler meets with each of the participants separately on multiple occasions.<sup>98</sup> In these individual sessions, the mediator-handler listens to each of the parties, explains the uniqueness of this type of “dog therapy” mediation,<sup>99</sup> and coaches the parties in communication of intense feelings with the dog present.<sup>100</sup> The mediator-handler must remember that the preliminary meetings are not meant to “fix” the parties<sup>101</sup> (this lack of will to communicate may be a manifestation of their underlying grief<sup>102</sup>) but, instead, give them the opportunity to understand that their situation (as with every mediation) is unique, they are experiencing a natural response to a deeply emotional event,<sup>103</sup> and that the dog is there to help them prepare themselves psychologically for what may be an extremely difficult process.<sup>104</sup>

Dogs are highly social animals<sup>105</sup> and “are powerful reinforcers of human attention and behavior.”<sup>106</sup> They can assist both speech and nonverbal expression.<sup>107</sup> Watching the therapy

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difficult it is for the party to maintain insincere emotional postures); Dampf, *supra* note 32, at 142 (“Part of the secret to the success of any mediation is the psychology of keeping the parties talking and continuing to narrow the gap. Stalls are the enemy of momentum and momentum is one of the important keys to success.”).

Emotions are ... channeled into a caucus when the recipient of the emotions may not be capable of responding to a direct expression. In a caucus, the emotions can be vented safely, outside the presence of other parties. Physiological release can be obtained, an assessment can be made of what is the genuine emotion ..., and the expression of manipulative comments can be curbed without risking the damage that could result from a direct negative interchange. Mediators ... initiate caucuses specifically for the purpose of provoking parties to release emotions.

MOORE, *supra* note 2, at 167. This is why it is my personal belief that therapy dogs should be utilized in preliminary meetings more so than in actual mediation sessions. *See infra* note 119.

<sup>98</sup> *See* UMBREIT, *supra* note 2, at 140, 151.

<sup>99</sup> *Id.* at 140.

<sup>100</sup> *Id.* at 151.

<sup>101</sup> MOORE, *supra* note 2, at 166 (“The mediator merely assists parties in managing their emotions so that they can negotiate on the specific issues in dispute.”).

<sup>102</sup> Evans & Tyler-Evans, *supra* note 57, at 89.

<sup>103</sup> *Id.* at 96.

<sup>104</sup> *See* BECK & KATCHER, *supra* note 69, at 159-60 (“Perhaps the most remarkable ability of animal therapists is their capacity to call forth speech from those who have given up speaking. Pets can do this because the love they stimulate in people is unambivalent, unalloyed with the distrust and fear that frequently color even loving relationships.”).

<sup>105</sup> DAVIS, *supra* note 94, at 9. *See also* Joan Arehart-Treichel, *Pets: The Health Benefits*, SCIENCE NEWS, March 27, 1982, at 220, 220-23 (illustrating how pets facilitate social interactions with strangers, and often act as social catalysts within families, bringing families closer together and lessening tension).

dog “communicate” with the participants in these meetings is a wonder of “dog therapy” mediation.<sup>108</sup> participants may find that talking to the dog makes it easier to express their thoughts and feelings than if they had to talk solely to another person.<sup>109</sup>

The purpose of these preliminary meetings with the therapy dog is to build rapport and trust between the participants and the dog, which will be “essential to the quality of the later joint meeting with both individuals.”<sup>110</sup> Additionally, it will be important for both parties to have

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<sup>106</sup> Julie Goodwin, *The Benefits of Pets in the Classroom* 3 (May 1999) (unpublished manuscript, at <http://www.teacherwebshef.com/classroompets/research-articles.html>). In mediation, one of the therapy dog’s primary functions is to act as a bridge by which mediator-handlers can reach the participants who may be inhibited and uncooperative. BECK & KATCHER, *supra* note 69, at 161. When the parties are introduced to the dog, the often “have an immediate emotional reaction.” *Id.* at 162. After a few meetings with the dog, the participants will respond to the mediator-handler and to the other parties, when previously this may have been almost impossible to accomplish. *Id.* See also Samuel A. Corson, *Pet Dogs as Nonverbal Communication Links in Hospital Psychiatry*, 18 *COMPREHENSIVE PSYCHIATRY* 61, 61-72 (1977) (discussing how “dog therapy” led to extensive positive social interactions among patients and also improved staff-patient relations); Samuel A. Corson & Elizabeth O. Corson, *Pets as Mediators of Therapy*, 18 *CURRENT PSYCHIATRIC THERAPIES* 195, 195-205 (discussing how dogs are an effective instrument for developing communication and resocialization).

<sup>107</sup> See Serpell, *supra* note 9, at 13 (describing an article in the *ILLUSTRATED LONDON NEWS* (1860) that discussed the health wards at Bethlem Hospital: “[Some patients] pace the long gallery incessantly, pouring out their woes to those who will listen to them, or, if there be none to listen, to the dogs[.]”) (footnote omitted).

It has been suggested that people are freer with animals, sharing a degree of intimacy rarely, if ever, shared with parents, spouses, children or siblings. Pets may often be the “significant other” in persons’ lives; confidants perceived as sensitive to a person’s moods and feelings. ... [Dogs] are ice-breaking catalysts to group communication[.] ... Animals can trigger reminiscences, and cause withdrawn [participants] to talk about their experiences for weeks after an intervention.

ARKOW, *supra* note 77, at 3. See also Stephen Van Drake, *Biting Back*, *BROWARD DAILY BUS. REV.*, July 11, 2000, at A1 (reaffirming the statement that dogs assist in helping people communicate). It is believed that dogs can make a unique contribution to mediation because of their capacity to make people feel safe, loved and worthwhile. BECK & KATCHER, *supra* note 67, at 159. Most participants who are feeling depressed or withdrawn have been hurt by words, and this is why participants can safely approach the dogs when they cannot approach other people—dogs do not use words. *Id.*

<sup>108</sup> DAVIS, *supra* note 94, at 9.

<sup>109</sup> See Christopher Honeyman et al., *Here There Be Monsters: At the Edge of the Map of Conflict Resolution*, in *THE CONFLICT RESOLUTION PRACTITIONER: A MONOGRAPH BRIDGING THEORY AND PRACTICE* 19 (Shinji Morokuma ed., 2001). This is true because when communicating with the dog, discussion is generally stripped of negative overtones that can only serve to hinder efforts to “build understanding and agreements.” *Id.* See also ARKOW, *supra* note 79, at 2 (“Since for so many persons pets are a common experience, often recalling pleasant memories of childhood, animals can help break down barriers that may exist between different groups[.]”).

<sup>110</sup> UMBREIT, *supra* note 2, at 140. The reason that this is important is because parties can be encouraged to change their assessment of each other by developing common positive associations. MOORE, *supra* note 2, at 172. The mediator-handler should reorient the participants in such a way as to help them achieve a new and shared perception of their relationship. Lon Fuller, *Mediation: Its Forms and Functions*, 44 *S. CAL. L. REV.* 305, 328 (1971). ““Similar attitudes toward an object (here, the dog) set up forces toward attraction between persons.”” MOORE, *supra* note 2, at 170 (footnote omitted). It, therefore, would be unwise to provide each party with its own therapy dog, as having the one dog would help blur the adversarial relationship between the parties. *Id.* at 171. The mediator can utilize the dog’s presence to make the participants aware of one point in common they share and then open the door to other

what they can see as a truly impartial third party in the mediation. Of course, the human mediator-handler has a duty to both sides, simultaneously, and “never take[s] a position or perceive[s] that he or she has a duty to one side over the other.”<sup>111</sup> But, again, mediator-handlers are human, and it is possible that either the victim or offender or both in mediation may feel some psychological discomfort, wondering what the mediator is thinking about them and their situation during the process.<sup>112</sup>

Many of the participants in the victim-offender mediation just want their feelings validated.<sup>113</sup> The dog fulfills this need by simply being there, offering unqualified attention and acceptance.<sup>114</sup> “Dogs may not offer much useful advice, but they do not criticize either. ... [T]heir nonjudgmental stance is comforting.”<sup>115</sup> For the participants, just the chance to express their feelings of grief before meeting each other decreases their “emotional load” and improves their ability to participate in the actual mediation session.<sup>116</sup> By having the dog there to listen to

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shared characteristics. *Id.* (“Some family mediators, for example, ask divorcing couples to describe how they first met and what they liked about each other to create a sense of positive history for a current negative relationship.”). See also ARKOW, *supra* note 79, at 3 (“Some researchers, using a psychoanalytic perspective, suggest that humans have an innate need to associate with dependent creatures such as [dogs]; under this theory, [dogs] can serve as objects of contact comfort and provide passive targets for the projection of feelings.”).

<sup>111</sup> Accetta, *supra* note 46, at 562.

<sup>112</sup> This is natural and should be expected, since either one or both of the parties may be experiencing an empathetic presence for the first time. Marvin E. Johnson et al., *Emotionally Intelligent Mediation: Four Key Competencies*, in BRINGING THE PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATION IMPACT THE PROCESS OF CONFLICT RESOLUTION, *supra* note 32, at 160.

<sup>113</sup> Evans & Tyler-Evans, *supra* note 57, at 92.

<sup>114</sup> See Bill Barol, *Listen Spot: A Therapy Dog can be a Shy Reader's Best Friend*, TIME MAG., § Families/Learning Center, at F14 (quoting a child who says she likes to read to dogs because “they just sit and listen” and because they are “calm.”); Julie Goodwin, *The Benefits of Pets in the Classroom 3* (May 1999) (unpublished manuscript, at <http://www.teacherwebshelf.com/classroompets/research-articles.html>).

<sup>115</sup> *Take Two Schnauzers and Call Me in the Morning*, *supra* note 82, at 19. Some people perceive dogs to be non-judgmental and dependent on the mediator-handler, so this helps the participants feel “more secure, more in control, and would strengthen the participants’ self-concept.” ARKOW, *supra* note 79, at 4 (“By empathizing with the [dog’s] natural inclinations, the [participant] can see his or her own life more objectively.”). “Dogs are the perfect ambassadors of acceptance and love ... because they are nonjudgmental, willing to please, and good listeners.” *Dogs Offer Love and Affection to Troubled Children*, STAMFORD ADVOC., Jan. 8, 2004, at 6. In fact, there is an “extreme need for nonjudgmental attitude” in victim-offender mediations. UMBREIT, *supra* note 2, at 151. “There is a healing power when [loss is acknowledged] without judging, explaining, or trying to fix it. ... This kind of compassionate listening and presence touches parties and helps them face their pain.” Gold, *supra* note 59, at 208.

<sup>116</sup> Evans & Tyler-Evans, *supra* note 57, at 96. Indeed, one of the main goals of these preliminary meetings is to relieve tension before the actual joint session. LEVITON & GREENSTONE, *supra* note 3, at 42.

the parties creates a strong “empathy connection” between the parties and the dog<sup>117</sup> that, again, may be highly important later during the actual mediation.<sup>118</sup>

## 2. *Utilizing the Dog’s Presence in Actual Victim-Offender Mediations*

Once the preliminary meetings have been completed, and the parties have become comfortable enough with the dog and themselves to move on to the actual mediation, the dog’s presence may become even more crucial.<sup>119</sup> The dog’s presence can be important in the overall process of the actual mediation<sup>120</sup> as it may be another one of the broad range of methods the mediator-handler can rely on to “help those in distress” during the process continue their dialogue.<sup>121</sup>

A good mediator knows that it is important to be compassionate.<sup>122</sup> The mediator wants to relieve tension that exists between the participants and strive to “extinguish animosity, stress, pain, aggression and destructive behaviors for the greater good of individuals and groups.”<sup>123</sup> It

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<sup>117</sup> Evans & Tyler-Evans, *supra* note 57, at 92. See also ALLEN M. SHOEN, *KINDRED SPIRITS: HOW THE REMARKABLE BOND BETWEEN HUMANS AND ANIMALS CAN CHANGE THE WAY WE LIVE* 2-3 (2001) ([Megan, a dog,] knows that her job is to calm the nervous people by being present and loving, wagging her tail, licking everyone at the most appropriate times.); Julie Goodwin, *The Benefits of Pets in the Classroom* 1 (May 1999) (unpublished manuscript, at <http://www.teacherwebshelf.com/classroompets/research-articles.html>):

This is not to undermine the strength and importance of the human relationships, but simply to note that [the dog] can complement these relationships in more ways than one. ... I recall explaining things to the dog, telling it all the things that went wrong that particular day[.] ... Somehow, it made me feel better.

<sup>118</sup> See *supra* note 110.

<sup>119</sup> Unlike the preliminary meetings, however, during the actual mediation the dog is present in a passive support role only. UMBREIT, *supra* note 2, at 149. The use of a therapy dog in actual mediation processes should be limited to only those cases where the mediator-handler feels that communication is being stifled and no other method has worked to encourage a continued dialogue between the parties. The reason that this is so is that a mediator-handler wants to maintain a professional image within mediation and would not want to do anything that the parties may feel patronizes them unless the parties themselves are open to the dog’s presence. See Robert D. Benjamin, *Dogs As Conflict Mediators* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>. However, this is not to say that the use of the therapy dog during actual mediation sessions may not be highly beneficial when they involve children (see sources cited *supra* notes 10, 17) or for the reasons discussed earlier (see *supra* note 110).

<sup>120</sup> UMBREIT, *supra* note 2, at 149.

<sup>121</sup> See STEIN & ERNST, *supra* note 73, at 67.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

can also be difficult keeping good morale,<sup>124</sup> and it is always possible for the actual mediation to unsuspectingly erupt into anger.<sup>125</sup> One of the participants may have been simply yearning for a fight.<sup>126</sup> Similarly, one of the parties “might inadvertently say something that rubs [the] opponent the wrong way and suddenly [the mediator is] in the middle of an emotional blow-up.”<sup>127</sup> If this happens, it is possible to utilize the dog to bring the discussion back onto “reasonable turf.”<sup>128</sup>

With the dog present, morale will consistently improve.<sup>129</sup> The reason that the dogs are able to assuage depression, increase morale, and develop relationships among people is that the dogs provide “social stimulation.”<sup>130</sup> The following story of two dogs, Rugger and Reilly, used in divorce mediation illustrates these points perfectly:

The *he* in this particular session was yelling and gesticulating wildly and she sat momentarily still only waiting to respond in kind. Rugger, up to this time had been laying quietly, now looked up and away, ears down with an apparent expression of dismay that Labs display when people are angry and heated in their discussion. They are quite sensitive to humans, seem to know when something is amiss and become anxious when the tenor of discussion takes on an angry tone.

Not atypically, he seemed to be taking it personally. Being opportunistic, I seized

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<sup>124</sup> Quite often, both parties have unresolved issues and “hidden agendas.” Galik, *supra* note 3, at 544. “Most of us have at some point experienced those pained moments in discussions where what is not being said sucks the air out of the room; the atmosphere is choked and stifled by the unstated agendas and closely guarded secrets.” Robert D. Benjamin, *Dogs As Conflict Mediators* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>.

<sup>125</sup> ILICH, *supra* note 47, at 258.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> See DAVIS, *supra* note 94, at 2, 5 (“[S]taff members in the facilities frequently mention that therapy dog visits improve morale for the day. This benefit seems to apply to every type of facility where therapy dogs work.”). See also SHOEN, *supra* note 117, at 69-70 (“[Animal-Assisted Therapy] is currently being used in psychological treatments in various modalities: ... to increase self-esteem, to reduce anxiety, and to reduce loneliness.”).

<sup>130</sup> DAVIS, *supra* note 94, at 7 (“When you come in with a dog, people will talk to you, they’ll talk to each other and they’ll keep talking after you leave.”).

the moment for my intervention: “Folks, I’m sorry to interrupt, but your discussion seems to be upsetting Rugger.” They stopped on a dime and apologized. While all of my previous best devised and well studied efforts to manage the conflict were to no avail, they seemed to understand that the dog deserved special consideration and courtesy. ...

But it only worked for a while. ... Suffice it to say, the verbal battle between the parties resumed later in the session. This time, Reilly offered up an even more potent intervention strategy, unavailable to human conflict moderators. As *he* again became agitated and animated with arm outstretched and forefinger pointing towards the heavens, shrieking out how *she* was destroying his family and was the sole cause of the ruination of the family ... I [noticed that Reilly, usually next to Rugger,] was not there. Suddenly, [the husband’s] tone calmed and I watched his red face, flush with the blood of anger visibly recede as he looked down toward his legs. There was Reilly—he had walked over to *him* and gently placed his chin on *his* knee. The guy smiled, petted Reilly, calmed down and apologized for the outburst. Reilly had done what no mere mortal mediator could do.<sup>131</sup>

As this brief narrative points out, if the opportunity presents itself, the dog may be relied upon to help relieve the tensions of the parties in victim-offender mediation.<sup>132</sup> The dog can easily provide the mediator-handler with a chance to introduce a jovial moment, analogous to

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<sup>131</sup> Benjamin, *supra* note 85, at 10 (emphasis in original).

<sup>132</sup> ILICH, *supra* note 47, at 263.

using humor as mediators often do,<sup>133</sup> to “take the edge off” when the participants’ emotions threaten to derail their interchange.<sup>134</sup>

#### IV. THE “MEDIATOR-HANDLER”: TRAINING A NEW BREED OF MEDIATOR

##### A. *Why Specialize as a Mediator-Handler?*

Private practice mediators are increasingly choosing to specialize in a variety of areas,<sup>135</sup> and the new mediator-handler presents an exciting new option. The advantages of specializing as a mediator-handler include the opportunity to become an expert in that one area, which not only can improve the quality of mediation provided, but also allows the mediator-handler to keep up with developments in the field.<sup>136</sup>

##### B. *Mediator-Handler Qualifications*

Regardless of the type mediator being discussed, presenting a list of qualifications and competencies is daunting.<sup>137</sup> What makes it more difficult is that there is no federal law that

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<sup>133</sup> See Lovenheim, *supra* note 3, at 171 (“Telling a joke or a humorous story is a good way to distract the parties when they get off track or when anxiety is so high they cannot continue with a rational discussion.”). See generally John W. Cooley, *Joke Structure: A Source of Creative Techniques for Use in Mediation*, 33 U.S.F. L. REV. 85 (1998) (discussing how to incorporate humor into the mediation process); Deborah M. Kolb, *To Be a Mediator: Expressive Tactics in Mediation*, 41 J. SOC. ISSUES, No. 2 1985, at 11, 19 (noting role of humor in establishing rapport).

<sup>134</sup> ILICH, *supra* note 47, at 263.

<sup>135</sup> PETER LOVENHEIM, *BECOMING A MEDIATOR: AN INSIDER’S GUIDE TO EXPLORING CAREERS IN MEDIATION* 157 (2002).

<sup>136</sup> *Id.* Cf. SARAH CHILDS GREBE ET AL., *STARTING YOUR OWN MEDIATION PRACTICE: A WORKBOOK* 264 (2d ed. 1992) (quoting STANDARDS OF PRAC. FOR FAM. & DIVORCE MEDIATION (Acad. of Fam. Mediators): “A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.”).

<sup>137</sup> Stark, *supra* note 37, at 473 (“Mediation is pluralistic and highly contextual and commentators therefore tend to disagree about the specific skills that comprise mediator competence.”). See also Kenneth Cloke, *What Are the Personal Qualities of the Mediator?*, in *BRINGING PEACE INTO THE ROOM: HOW PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION*, *supra* note 32, at 53 (“The personal qualities of mediators ... differ with each variety and type of dispute.”).

legally defines what “therapy dogs” are.<sup>138</sup> It is certain that a far more extensive training for mediator-handlers is required if they wish to pursue this type of mediation in the field of serious and criminal activity.<sup>139</sup> In addition to normal mediation competence and expertise in working with severely violent crimes,<sup>140</sup> mediator-handlers will need unique understanding and skills related to working with therapy dogs.<sup>141</sup>

### 1. *Educational Requirements*

Before someone decides to become a mediator-handler in the field of victim-offender mediation, a degree from a four-year college must be obtained.<sup>142</sup> Though this excludes some individuals from becoming mediator-handlers, this requirement is important to ensure competency.<sup>143</sup>

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<sup>138</sup> See Lewis, *supra* note 16, at 12.

<sup>139</sup> See UMBREIT, *supra* note 2, at 151.

<sup>140</sup> *Id.*

<sup>141</sup> DAVIS, *supra* note 94, at 40.

<sup>142</sup> Bobby Marzine Harges, *Mediator Qualifications: The Trend Towards Professionalism*, 1997 BYU L. REV. 687, 708 (1997).

<sup>143</sup> *Id.* Because of the complex issues involved, a degree in the field of law, mental health, behavioral or social sciences should be a requisite. Compare *id.* with GREBE ET AL., *supra* note 136, at 264-65 (2d ed. 1992) (quoting STANDARDS OF PRAC. FOR FAM. & DIVORCE MEDIATION (Acad. of Fam. Mediators)):

A mediator shall acquire substantive knowledge and procedural skills in this specialized area of practice. This may include but is not limited to family and human development, family law, divorce procedure, ... community resources, the mediation process, and professional ethics.

....

A mediator should respect the complementary relationship between mediation and legal, mental health, and other social services and should promote cooperation with other professionals.

*and* STANDARDS OF PRAC. FOR ANIMAL-ASSISTED ACTIVITIES & THERAPY 2.4.1C (Delta Soc’y 1996) (“Specialists are also familiar with animal behavior, care, and training techniques and current development in the field of [Animal-Assisted Therapy].”).

## 2. *Victim-Offender Mediation Training*

But simply having a degree is not enough. Advanced mediation training, beyond the normal forty hours required by most states, is necessary.<sup>144</sup> While this training would continue to focus on the traditional steps of mediation, it would center more on an “experiential understanding of the painful journey of the participants,”<sup>145</sup> from the perspective of both the victim<sup>146</sup> and the offender.<sup>147</sup>

There are several steps a potential mediator-handler must go through before training with the therapy dog can begin. The first step in creating an effective mediator-handler is through a comprehensive application process.<sup>148</sup> After screening the potential mediator-handler to determine an appropriate “fit” with this type of mediation, initial training begins. The initial training of the mediator-handler would include information on the experiences of the victims of crime, discussions with victims advocates, the appropriate communication skills required for “dog therapy” mediators, victim’s and offender’s rights, and the guidelines necessary for

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<sup>144</sup> See UMBREIT, *supra* note 2, at 151. See also Mary Elizabeth Lund, *Mediation 2000: Training Mediators for the 21<sup>st</sup> Century: A Focus on Emotion in Mediation Training*, 38 FAM. & CONCIL. CTS. REV. 62, 62 (2000):

Equipped with an idea of what they are doing and some ways of getting the participants in mediation to talk to each other, trainee mediators can help move many disputants toward the goal of reaching their own agreements. After this comes training for the more difficult aspects of working with people in conflict, one of which is how to deal with high emotion.

<sup>145</sup> UMBREIT, *supra* note 2, at 151.

<sup>146</sup> *Id.* at 152 (The mediator must have an “understanding of the victimization experience and phases,” as well as an “understanding [of] post-traumatic stress and its impact;” can contend with grief and loss; and have the “ability to collaborate with psychotherapists.”).

<sup>147</sup> *Id.* (The mediator must have an “understanding of the criminal-justice and corrections system,” including “the offender and prisoner experience;” and have the “ability to relate to offenders convicted of heinous crimes in a nonjudgmental manner.”).

<sup>148</sup> UMBREIT & GREENWOOD, *supra* note 34, at 19.

Prospective mediators should complete a form that requires submission of, among other things, professional and volunteer histories, reasons for choosing to become a mediator[-handler], and input about their personal style and value system. Applicants should be asked specific questions about any past victimization experiences they may have had. It is important to assess applicants’ feelings about victimization and whether their personal experiences might lead to behavior or attitudes that are predisposed to being judgmental or blaming.

*Id.*

instituting “dog therapy” techniques in victim-offender mediation.<sup>149</sup> After this training is completed, the mediator-handler and the dog begin their joint training sessions.

### 3. *Training for the Dog and Its Handler*

It takes more than a good pet to be a therapy dog—it takes teamwork.<sup>150</sup> A therapy dog in mediation cannot simply be placed with a mediator five minutes before the first meeting with the participants.<sup>151</sup> Dogs that are going to be utilized in mediation need “loving support at home from at least one person the dog loves and trusts.”<sup>152</sup> Indeed, a strong bond between the mediator-handler and the therapy dog teaches the dog how to relate to other humans, makes it possible for the handler to control the dog, and increases the dog’s confidence.<sup>153</sup> Additionally, a strong bond between the dog and the mediator-handler allows the mediator-handler to work with the dog in a way that serves as a template for how others will interact with the dog.<sup>154</sup> This will significantly add to the helpfulness of the mediation.<sup>155</sup>

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<sup>149</sup> *Id.* at 1.

<sup>150</sup> Rosemary Simota Thompson, *K-9 Probation Contribution at Juvenile Court*, 14-JAN CHI. B. ASS’N REC. 40, 41 (2000).

<sup>151</sup> See ARKOW, *supra* note 79, at 5 (“Just bringing in animals to make people smile is not pet therapy. The goal of [“dog therapy” mediation] is to employ [dogs] to change a [participant’s] ... behavior positively, ultimately permanently.”).

<sup>152</sup> See DAVIS, *supra* note 94, at 20 (One special qualification of a therapy dog is that it needs to be “somebody’s baby.”). A potential mediator-handler should first begin by asking, “Is this the way I want to live with my dog?” *Id.* at 39. A dog should not be used as “a means to an end.” Beck, *supra* note 87, at 37. Once the “dog therapy” session has ended, all involved—the participants, the mediator-handler, and the dog—must have benefited from the experience. *Id.* at 135. But how can the dog benefit? Studies are looking at the behavioral and physiological indicators of relaxation in dogs as they interact with people. *Id.* at 36. Dogs that interact with human experience similar affects that humans often do when they are in the dogs’ presence: lowered blood pressure and heart rates. *Id.*

<sup>153</sup> See DAVIS, *supra* note 94, at 36.

<sup>154</sup> *Id.* (“When the [mediator-]handler relates to the dog with obvious love, everyone is assured that the dog is loved and well cared for.”).

<sup>155</sup> *Id.* at 22. See also STANDARDS OF PRAC. FOR ANIMAL-ASSISTED ACTIVITIES & THERAPY 2.4.3 (Delta Soc’y 1996) (“Handlers must work in a way that promotes the perception of the team’s reliability, controllability, predictability, and inspires confidence.”).

Given that therapy dogs learn their jobs by interacting with people, they must work in actual situations.<sup>156</sup> This is so because some necessary skills beyond basic controls<sup>157</sup> can only be learned through working with the dog (as much as it is safe to do so) in real situations.<sup>158</sup> The goal in working with the dog in public is to teach the dog to work under the control of the mediator-handler as well as how to properly interact with the participants in mediation.<sup>159</sup>

To ensure that the therapy dog will be comfortable with the varying types of people involved in victim-offender mediation, it is important that the mediator-handler give the dog experiences with the full range of human beings that may be encountered.<sup>160</sup> As the mediator-handler shows everyone respect in mediation, the dog will learn to as well and will understand that the differences are of no concern.<sup>161</sup> A good way of doing this is by having the mediator-handler sit in on mediations merely as observers at first, just so the dog becomes comfortable with the environment. Then, as the mediator-handler feels the dog is progressing, the team should become co-mediators, taking a more visible role in the process until they are capable of functioning safely on their own.<sup>162</sup>

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<sup>156</sup> See DAVIS, *supra* note 94, at 139 (“If the situation is set up to simulate reality but isn’t real, the dog knows the difference.”). The same rationale is used when training other “working dogs,” such as search and rescue dogs. See generally HANK WHITTEMORE & CAROLINE HEBARD, *SO THAT OTHERS MAY LIVE: CAROLINE HEBARD & HER SEARCH-AND-RESCUE DOGS* (1995); AM. RESCUE DOG ASSOC., *SEARCH AND RESCUE DOGS: TRAINING THE K-9 HERO* (2d ed. 2002); SANDY BRYSON, *SEARCH DOG TRAINING* (1984).

<sup>157</sup> For an overview of the basic control commands used with therapy dogs, see DAVIS, *supra* note 94, at 143-155; see generally WINIFRED GIBSON STRICKLAND, *EXPERT OBEDIENCE TRAINING FOR DOGS* (4th ed. 2003).

<sup>158</sup> DAVIS, *supra* note 94, at 139.

<sup>159</sup> *Id.* at 140.

<sup>160</sup> *Id.* at 143 (It is important to give the dog “experiences with people of all races, people wearing unusual costumes, men with varying degrees of facial hair, children and anyone else you know to be harmless.”); Polk, *supra* note 10, at 17 (“During testing [of the therapy dog] ... a group of volunteers [wore] funny hats and robes—in an effort to look unfamiliar—and engaged in a loud argument. The dog was expected to walk calmly through a crowd and endure unfamiliar noises.”).

<sup>161</sup> DAVIS, *supra* note 94, at 143.

<sup>162</sup> See GREBE ET AL., *supra* note 136, at 36.

#### 4. *Taking the Necessary Precautions*

##### a. *With the Dog*

Every therapy dog utilized in mediation will need to pass stringent health, obedience, and temperament tests in order to work with the public.<sup>163</sup> While many dogs have a sweet nature and calm disposition, and offer love and companionship at home, not all dogs are appropriate or have the proper temperament suitable for a therapy dog in mediation.<sup>164</sup> Mediator-handlers must always keep in mind the limit of their control<sup>165</sup> and never relax their attention when in the preliminary meetings or the actual mediation itself.<sup>166</sup> Though there is no one way to legally define when a dog is “fit” to work with the public, several services can test the dog and certify its status as a therapy dog.<sup>167</sup>

Mediator-handlers must also learn to give their dogs proper support and to be always alert for early problem signs.<sup>168</sup> Once the dog is trained in the basics and observed in a variety of

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<sup>163</sup> Thompson, *supra* note 150, at 41. There are both training classes and a home study course to help potential mediator-handlers prepare their dogs to pass the therapy tests. Polk, *supra* note 10, at 17.

<sup>164</sup> Therapy Dogs International, Inc., *Who Belongs to TDI?*, at <http://www.tdi-dog.org/whobelongs.html> (last visited Aug. 21, 2004).

<sup>165</sup> “No matter how advanced, every dog has limits.” DAVIS, *supra* note 94, at 141.

<sup>166</sup> *Id.*

<sup>167</sup> See *Fulciniti v. Village of Shadyside Condominium Ass’n*, No. 96-1825, 1998 U.S. Dist. LEXIS 23450, at \*8 (W.D. Pa. Nov. 20, 1998) (discussing why Sampson, a dog, can be considered a therapy dog):

30. Sampson has become a certified and registered therapy dog with Therapy Dogs International, after successfully performing 10 steps with an evaluator.

31. Sampson has also received a good citizenship award from the American Kennel Club, which award is a measure of his temperament and obedience under a variety of distractions.

See also Therapy Dogs International, Inc., *Who Belongs at TDI?*, at <http://www.tdi-dog.org/whobelongs.html> (last visited Aug. 21, 2004) (“TDI’s standards, pertaining to temperament of the potential therapy dog, are extremely high.”). For TDI’s therapy dog testing practices, see Therapy Dogs International, Inc., *Testing Requirements*, at <http://www.tdi-dog.org/tditesting.html> (last visited Aug. 21, 2004). This national certification will provide the dog with insurance coverage wherever it works, as well. Thompson, *supra* note 150, at 41.

<sup>168</sup> DAVIS, *supra* note 94, at 140. See also SCHOEN, *supra* note 117, at 225 (“Watch your dog for anxiety, frustration, ... and concern.”).

situations, it is possible to get a read on how the dog will behave in public.<sup>169</sup> If the dog shows fear or unease around any type of person, “get the help of a qualified trainer to make sure the dog is thoroughly under control and to help ... evaluate the dog’s temperament.”<sup>170</sup> Social skill development in public should always be postponed if the mediator-handler does not feel totally in control of the dog.<sup>171</sup> Once work on public social skills begins, the mediator-handler must constantly and carefully examine the participants in mediation, especially their nonverbal expressions, to decide whether or not they are truly at ease with the dog.<sup>172</sup> Under no circumstances, and regardless of their reasons, should participants in the “dog therapy” mediation have the dog pushed upon them if they do not want to interact with it at the time.<sup>173</sup>

b. *For the Dog*

Just as it is important to guarantee the safety of the participants in victim-offender mediation by properly training the therapy dog, so too is it vital that the safety of the *dog* be ensured. That is why it is imperative that all parties considered for “dog therapy” mediation be screened for previous animal abuse.<sup>174</sup>

Perpetrators of violence against another human being often have a propensity for violent animal abuse, as well.<sup>175</sup> Indeed, a number of sociological and statistical studies show a close

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<sup>169</sup> DAVIS, *supra* note 94, at 141 (Ask: “How does it act at the veterinarian’s office? Does it react negatively under any circumstances against children or men?”).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 140. See also Polk, *supra* note 10, at 17 (“[A mediator-handler] needs to know that [a dog] thrust into an unfamiliar situation will remain unflappable.”).

<sup>172</sup> *Id.* at 199. Additionally, though it is unlikely that parties will choose a “dog therapy” mediation if they are allergic to dogs, it is important to always follow-up with the parties to be sure they do not become ill because of the dog. Benjamin, *supra* note 85, at 10.

<sup>173</sup> DAVIS, *supra* note 94, at 199.

<sup>174</sup> See MAINE COURT MEDIATION SERVICE, *MEDIATION IN CASES OF DOMESTIC ABUSE: HELPFUL OPTION OR UNACCEPTABLE RISK?* x (1992) (“If screening cannot be instituted, mediation services must not be offered.”).

<sup>175</sup> Beth Ann Madeline, Comment, *Cruelty to Animals: Recognizing Violence Against Nonhuman Victims*, 23 U. HAW. L. REV. 307, 325 (2000). See generally Alan R. Felthous, *Aggression Against Cats, Dogs, and People*, 10

connection between the two.<sup>176</sup> Essentially, a person who abuses a human is more likely to abuse a pet:<sup>177</sup> violent animal abuse is often a part of a continuum of violence, not a unique act in and of itself.<sup>178</sup>

With this thought in mind, it is important for mediator-handlers to be aware of the potential that one or both of the parties may have abused animals in the past, and might now try harming the therapy dog, if given the chance.<sup>179</sup> This is where pre-screening of the participants becomes essential in extracting any potential threat to the therapy dog before the actual “dog therapy”

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CHILD PSYCHIATRY & HUMAN DEVELOPMENT 169, 169-77 (1980) (exploring how people who admitted cruelty to animals were also highly aggressive against people).

<sup>176</sup> Angela Campbell, Note, *The Admissibility of Evidence of Animal Abuse in Criminal Trials for Child and Domestic Abuse*, 43 B.C. L. REV. 463, 464-65 (2002) (“Almost all of these studies illustrate correlations linking the types of abuse at higher than seventy percent.”). For example, one study found that 24% of abused women reported that their abuser had abused animals in the women’s presence, while another study found that 71% of the 74% of women in a battered women’s shelter who owned a pet stated that their abuser had also abused the animal. Frank R. Ascione et al., *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered*, 5 SOC. & ANIMALS 205, 205-18 (1997). See also Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law’s Role in Prevention*, 87 IOWA L. REV. 1, 42-44 (2001) (providing anecdotal evidence showing the relationship between animal cruelty as children and violent acts later in life); Phil Arkow, *The Relationship Between Animal Abuse and Other Forms of Family Violence*, 12 FAM. VIOLENCE & SEXUAL ASSAULT BULL. 29, 29-34 (1996) (addressing animal cruelty as an indication of psychopathology and as an element of family dysfunction); BECK & KATCHER, *supra* note 67, at 166-67 (discussing additional studies showing links between animal abuse and human abuse).

<sup>177</sup> Campbell, *supra* note 177, at 465.

<sup>178</sup> 142 Cong. Rec. S4630–05 (daily ed. May 2, 1996) (statement of Sen. Cohen).

Against this backdrop, in 1987, the American Psychiatric Association (APA) added physical cruelty to animals to the diagnostic criterion for Conduct Disorder. The APA defines “Conduct Disorder” as a “persistent pattern of conduct in which the basic rights of others and major age-appropriate societal norms or rules are violated.” Children and adults with Conduct Disorder generally lack feelings of guilt or remorse for actions that cause “others” pain. The APA considers “animals” as members of the group “others” when determining when a patient suffers from this disorder.

... [Some states] recognize that animal cruelty is a signal that a person has violent tendencies that may eventually turn on people. For example, California’s animal cruelty statutes require counseling when a defendant is convicted of animal abuse and released on parole. The purpose of the counseling is to evaluate and treat behavior or conduct disorders.

At the federal level, the Federal Bureau of Investigation (FBI) incorporates animal cruelty into its “threat assessment” technique during background checks. The FBI does so to determine the level of threat a suspect poses to society, because, as it says, “Something we believe is prominently displayed in the histories of people who are habitually violent is animal abuse ... You can look at cruelty to animals and cruelty to humans as a continuum.”

Campbell, *supra* note 177, at 467-68 (footnotes omitted).

<sup>179</sup> Abuse is often not directed at the dog simply because it is a dog, but used to exert power over another weaker creature. Campbell, *supra* note 177, at 478. It must be remembered, that though the majority of social science data suggests a correlation between adult violence and animal abuse, few of these studies have found a clear link between the two. Livingston, *supra* note 177, at 50 (“But even some of these studies showed a ‘near association’ between [them].”). Nevertheless, as a mediator-handler, it is better to be safe than sorry.

sessions begin.<sup>180</sup> This screening would include an assessment of the dangers that might be posed by either of the parties, as well as the circumstances, nature, and impact of what occurred that brought the participants into victim-offender mediation in the first place.<sup>181</sup> Only once the safety of the dog can be assured should the mediation commence.

On a different note, it must also be remembered that just as the parties in victim-offender mediation are under a great deal of stress, so too is the dog. The mediator-handler must remember that, for as much stress as it takes to keep the dog behaving properly on the mediator-handler's part, the dog is also under stress to stay on its best behavior.<sup>182</sup> Due to this level of stress involved with working the dog in victim-offender mediation, it is suggested that most dogs only work twice a month.<sup>183</sup>

### 5. *Continuing Education*

Becoming a mediator-handler is an ongoing process that can be best described as “a way of life.”<sup>184</sup> Mediator-handlers must continue their professional development by constantly

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<sup>180</sup> MAINE COURT MEDIATION SERVICE, *supra* note 175, at x (“Screeners must be knowledgeable about mediation and ... abuse and skillful in uncovering acts of abuse and risk factors.”).

<sup>181</sup> *Id.* Some of the kinds of the questions that can be used in screening the participants include: Have pets or other animals ever been threatened with violence in the past?; Has a pet in the household ever been abused?; Would you feel safe with keeping animals in your home?; and Has there ever been physical destruction of property or pets? Ascione et al., *supra* note 177, at 205-18. For a detailed explanation of screening procedures, see MAINE COURT MEDIATION SERVICE, *supra* note 175, at 26-31.

<sup>182</sup> *Id.*

<sup>183</sup> Scheduling, however, should depend on what each individual mediator-handler feels is appropriate for the dog. See Polk, *supra* note 10, at 17 (quoting Terrie Carpenter, a therapy animal evaluator and trainer).

<sup>184</sup> DAVIS, *supra* note 94, at 39. Mediator-handlers must realize that even though they have gone through extensive training, they “must continue to keep abreast of changing parameters.” GREBE ET AL., *supra* note 136, at 22. See *id.* at 264 (quoting STANDARDS OF PRAC. FOR FAM. & DIVORCE MEDIATION (Acad. of Fam. Mediators): “A mediator shall participate in continuing education and be personally responsible for ongoing professional growth.”). See also STANDARDS OF PRAC. FOR ANIMAL-ASSISTED ACTIVITIES & THERAPY, *supra* note 155, at 2.4.1C (“Rationale: To ensure the excellence in quality of care AAT Specialists shall participate in regular continuing education programs, including those that present information on animals and AAA/AAT.”).

improving their talents and understanding through continuing education classes<sup>185</sup> not only for their own benefit, but also for the benefit of the dogs they work with, as well.<sup>186</sup> It must be remembered that a therapy dog is never “permanently trained” and must continually be worked with throughout its career to keep up its skills.<sup>187</sup>

## V. CONCLUSION

When Boris Levinson, the first clinical psychologist to incorporate animals into therapy, presented the results of using his dog Jingles to help a withdrawn child, his colleagues literally laughed at him.<sup>188</sup> One remarked sarcastically, “Do you share your fee with the dog?”<sup>189</sup> Now, however, many recognize that therapy dogs can have a dramatic impact on the emotional and psychological functioning of the human animal. This is should be no surprise: many people find these dogs intriguing because the dogs can serve to remind these people of themselves.<sup>190</sup> It is when this unique gift of the dog is used in conjunction with mechanisms meant to help humans’ emotional and psychological states that the benefits to humans can be easily recognized.

This Note examined the use of “dog therapy” techniques in victim-offender mediation. As could be gleaned from the discussion, the dog’s presence in such situations can serve to

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<sup>185</sup> Continuing education programs are readily available in many areas, and most colleges and universities support these undertakings. GREBE ET AL., *supra* note 136, at 23. Cf. Mattingly, *supra* note 36, at 16 (stating that mediation training should be mandated for attorneys who “routinely engage in domestic relations cases”).

<sup>186</sup> Harges, *supra* note 142, at 709. “As with any craft, the more one practices, the more skillful one becomes.” Cloke, *supra* note 137, at 51.

<sup>187</sup> DAVIS, *supra* note 94, at 39.

<sup>188</sup> See Nodell, *supra* note 9, at E1.

<sup>189</sup> BECK & KATCHER, *supra* note 69, at 166.

<sup>190</sup> Robert D. Benjamin, *Dogs As Conflict Managers* (July 2003), at <http://www.mediate.com/articles/benjamin13.cfm>. It is known that dogs “actively try to be with people, presumably for the same reasons humans want to be with them—the comfort of the family, group, or pack.” Beck, *supra* note 87, at 36 (footnote omitted). Indeed, it is often joked that people look like the dogs they own. See generally GINI GRAHAM SCOTT, DO YOU LOOK LIKE YOUR DOG? (2004) (combining one hundred photographs of dogs with their look-alike owners). Dogs even have developed the same diseases and genetic health problems as humans, including night blindness, diabetes, and cancer. Emanuella Grinberg, *Courts Treating Animals More Like Children: Pet Custody Battles on the Rise* (Jan. 7, 2004), at <http://www.cnn.com/2004/LAW/01/07/ctv.pets/index.html>.

dramatically augment the natural abilities of the mediator leading to a more successful mediation process.

By allowing for an emotional outlet in situations that are filled with intense feelings, the dog becomes an invaluable asset to the mediator. The dog becomes almost a co-mediator in a sense, aiding in the smooth progression of the mediation process by alleviating the emotional burdens of the parties. The dog also provides for a completely unbiased and neutral observer who offers no help besides just being there to listen.

Mediators would do well to include a dog's natural abilities within the victim-mediation process. Though becoming a mediator-handler involves a great deal of time and effort, the rewards can be immeasurable.