

BUREAU OF JUSTICE ASSISTANCE

# THE SURVIVING VICTIMS: GUIDING THE FAMILIES OF HOMICIDE VICTIMS THROUGH THE CRIMINAL JUSTICE PROCESS

Bill Bunting

Mecklenburg County, North Carolina District Attorney's Office

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# Why Is It Important?

- Victims' families are your stakeholders.
- You may need their support for the eventual plea.
- You're a decent human being.
  - They have a human right to be informed.
  - Confidence in the outcome will aid their healing.

# Initial Contact

- Give them a couple of weeks before making contact.
- Schedule a meeting to meet them face to face.
- Invite law enforcement to the meeting.

# The Initial Meeting

## Who should be present?

- Prosecuting attorney, law enforcement, and victim assistant
- Victim's family: keep it small
  - Avoid the instigator
  - Avoid getting off topic

# Purpose of The Initial Meeting

- Begin developing the relationship
- Learn about your victim
- Explain the court process
- Explain **your** process
- The purpose is **not** to talk about details of the case.

# Format of The Initial Meeting

- Make introductions
- Ask them how they're doing

# The Initial Meeting

- Ask them about the victim:
  - Tell me a little bit about [the victim].
  - Who raised [the victim]?
  - Did [the victim] have kids?
  - What did [the victim] like to do?

# The Initial Meeting (cont.)

## The Three Promises

- You will always hear the truth from me.
- We will hear from you at every stage of the proceedings.
- Nothing will happen without you knowing.



## The Initial Meeting (cont.)

You won't be going into the details of the investigation yet.

- The investigation is ongoing.
- Your involvement up to this point.
- You have not received/reviewed the case file.
- It is not fair to anyone for you to start trying to talk about details yet.

# The Initial Meeting (cont.)

Explain the ground rules on confidentiality:

- Your ability to speak freely with them is conditioned on the fact that they will not share the information with anyone else.
- Prosecutors operate under rules and can be held responsible if information makes it to the media.
- You don't want anything to hurt this case.

# The Initial Meeting (cont.)

Explain the following on dealing with investigators:

- Only the people you brought to the initial meeting will be contacting them from your side of the investigation.
- If anyone else contacts them, assume they are not on our side.
- You cannot tell them not to talk to someone, but they have options:
  - They can talk to them.
  - They can refuse to talk to them.
  - They can ask that you be present when they talk to them.

# The Initial Meeting (cont.)

Explain the court process:

- Discuss various court dates (capital decision, administrative, bond hearing, arraignment, trial) and highlight the ones that are important for them to attend.
- Your victim assistant will keep them informed.

# The Initial Meeting (cont.)

Explain **your** process:

- Receipt of investigative file/review

# The Initial Meeting (cont.)

Explain **your** process:

- Capital decision process
- Should you ask their opinion on the death penalty?
  - It's too raw.
  - They don't have the appropriate frame of reference.

# The Initial Meeting (cont.)

Explain **your** process:

- Capital decision process
- Should you ask their opinion on the death penalty?
  - No.
  - Instead, plant seeds and manage expectations.

# The Capital Decision: Managing Expectations

How I manage expectations:

- In North Carolina, the defendant gets two attorneys and everything goes at half speed.
- Close calls go to the defendant.
- Capital verdicts are rare.
- Appeals and motions mean the case will never really be over.
- North Carolina has not executed anyone since 2006.
- The closer: Declaring a case “capital” makes the case about the defendant rather than the victim.



# The Initial Meeting

Explain **your** process:

- Describe the plea offer process.
  - Discuss how you roundtable cases to determine whether to make a plea offer and, if applicable, what kind of plea offer to make.
  - The case will be presented objectively to law enforcement and experienced prosecutors.
  - You will discuss strengths and weaknesses of the case and the best possible/worst possible/most likely result at trial.

# The Initial Meeting (cont.)

Explain **your** process:

- Describe the plea offer process.
  - **Do not** talk about resources.
  - That is all they will hear.
  - A plea offer driven by resources does not inspire confidence.

## The Initial Meeting (cont.)

Explain **your** process:

- After that roundtable, explain that you will meet with them again to share the results and get their input.

## The Initial Meeting (cont.)

- Explain how property will be handled once the case is closed.

# Wrapping Up the Initial Meeting

- The victim assistant will be in regular contact
- I don't give out business cards.
  - Funnel all direct contact through your victim assistant.
- Take questions.

## Wrapping Up the Initial Meeting (cont.)

How to get out of the room:

- Tell them: “Chances are, you’re going to leave here and think, ‘I wish I had asked X.’ That’s ok. We’re not going anywhere. You can call us anytime.”
- Hug mom. She needs it, and it is hard to hate someone you hug.

# The Plea Offer Meeting

Who is present?

- Law enforcement
- Prosecuting attorney
- Victim assistant

# The Plea Offer Meeting (cont.)

- Ask how they are doing.
- Review your process: build credibility
  - I told you I would review the file. I did.
  - I told you I would present it to my team. I did.
  - I told you these detectives would be there. They were.
  - I told you after the plea offer meeting, I would bring you in. Here we are.



# The Plea Offer Meeting (cont.)

- Should you build up to the offer or rip off the band-aid?
  - Generally, build up to the offer.

# The Plea Offer Meeting (cont.)

- Remind them you promised you would be honest.
- Share the facts with the family.
- Explain the strengths/weaknesses of the case.
- Explain the Beyond A Reasonable Doubt standard/unanimous verdict requirement/the crazy juror.
- Explain that a not guilty verdict means the defendant walks.

# The Plea Offer Meeting (cont.)

- Explain the plea offer including felony classifications and sentencing charts.
- Remind them that you promised you would hear from them. Ask for their thoughts and discuss their concerns.
- Explain that this is just an offer and the defendant may reject it. Explain that you would not be surprised if the defendant rejects the offer because a good defense attorney will explain the weaknesses in the case and that there is a chance the defendant could walk.
- If the victim's family start making arguments, explain that those are the exact arguments you will be making if the defendant does not take this offer.
- Explain they will get to address the court at sentencing.
- They are rarely going to be happy. Aim for understanding.
- Hug mom.

# The Plea Offer Meeting (cont.)

Tips and tricks:

- Care.
- Be honest.
- Be genuine.
- Know your case.
- Know when to let someone else speak.
- Listen.
- Take it on the chin.

# Bond Hearings

Before the bond hearing:

- Explain your state's laws for homicide bonds.

After the bond hearing:

- Use the result to help manage expectations.
- Is the bond lower than you expected?
  - “That number tells us the judge doesn't think the evidence is very strong.”
- Is the bond higher than you thought?
  - “Well, the judge actually set a bond which tells us their thoughts on the strength of our evidence.”

# How To Explain a Dismissal

- Tell them you did what you told them you would do (reviewed file, roundtable, etc.)
- Remind them you promised to tell them the truth.
- Explain the evidence/weaknesses in the case.
- If they make arguments, remind them those are the arguments you would make, but they will not carry the day.
- Explain how it reaches probable cause but not reasonable doubt.
- Law enforcement support is key.
- Explain double jeopardy versus the option to recharge in the future.

# Other Considerations

- You cannot fix their pain, but you can help.
- Manage expectations.
  - Expectations that are met = more confidence in the result.
- Earn their confidence.
  - Confidence in you and your process = more confidence in the result.
- Confidence in the result will help their healing.

# Other Considerations (cont.)

- This is an emotionally draining job.
- You cannot take care of others if you do not take care of yourself.
- If you ever find yourself struggling to care, it is time to take a break.



# Questions?

Bill Bunting

Assistant District Attorney/Homicide Unit Chief

Mecklenburg County District Attorney's Office

Charlotte, North Carolina

[william.bunting@nccourts.org](mailto:william.bunting@nccourts.org)

(704) 686-0865

# Download the “Initial Family Meeting” Outline

<https://www.apa-inc.org/initial-family-meeting-outline/>

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