

# THE OKLAHOMA DEPARTMENT OF CORRECTIONS: ASSISTING CRIME VICTIMS THROUGH POST-CONVICTION MEDIATION

DAVID P. MESAROS\*

## I. Introduction

Our society relies heavily on the law and the courts. It has been suggested, however, that a citizen's dependence upon the law is precisely the reason for the widespread lack of confidence in the legal system.<sup>1</sup> Indeed, in the cases that become entrenched in the legal system, the adversarial process is more likely to skew power than to equalize it, to accentuate hostility rather than trust, and to facilitate competitiveness and aggression rather than empathy and understanding.<sup>2</sup>

Alternative forms of dispute resolution have been instituted at an accelerating rate throughout the country in an attempt to address these perceived evils of the traditional legal system. Frequently, the alternatives have taken the form of programs, usually community based, that attempt to resolve conflicts through mediation. Unfortunately for such programs, and through little fault of their own, referrals and clients are often difficult to obtain, funding is uncertain at best, and the more formal legal system frequently relegates only non-fee generating or nuisance cases to mediation.

By allowing only burdensome or unprofitable cases to go to mediation, the legal system conveys a message that "a little bit of justice is better than none at all." A perceived hierarchy of worthy and unworthy problems for the legal system unavoidably results. Quite by accident then, mediation has become to a large degree synonymous with triviality. As a result, the use of mediation as a potentially effective mechanism for dispute resolution remains largely untapped.

---

\*David Mesaros designed and implemented the Oklahoma Department of Corrections' post-conviction mediation program where he served as the initial director of that program for two years. He received his undergraduate degree from Marquette University, Milwaukee, Wisconsin and his law degree from the Capital University in Columbus, Ohio. Mr. Mesaros was also formerly an Assistant Director of the Columbus Night Prosecutor Program. He currently serves as a mediation consultant for the National Institute of Corrections and the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP). He has been appointed by the Oklahoma Supreme Court to its Dispute Resolution Advisory Board and is a member of the Society of Professionals in Dispute Resolution, the American and Ohio State Bar Associations.

1. AVERBACH, *JUSTICE WITHOUT LAW?* (1983).
2. *Id.*

Progress has been made toward more closely realizing the potential of the mediation process. For example, several revolutionary programs have been implemented in the State of Oklahoma. Oklahoma legislation now provides for: 1) limited liability from suit for certain mediators,<sup>3</sup> 2) confidentiality of approved mediation sessions,<sup>4</sup> 3) state funding,<sup>5</sup> and 4) state certification of programs.<sup>6</sup> In doing so, it affords Oklahoma citizens the opportunity for additional relief beyond the judicial process. A state with a population of just 3.5 million people, Oklahoma has two major state agencies<sup>7</sup> that utilize mediation in their services statewide. Moreover, a State Attorney General's Office sponsors a mediation service for unsatisfied consumers, and the American Bar Association supports a pilot site for its Multi-Door Courthouse program. The state's two major metropolitan areas each have mediation programs operating within the counties.<sup>8</sup>

Oklahoma's effort to offer quality mediation services together with the traditional judicial system is worthy of closer evaluation. This is especially true when the mediation is provided by a major state corrections department. The Oklahoma Department of Corrections' Mediation Program successfully deals with both violent and nonviolent offenders, operates with just eight full-time staff, and utilizes both volunteer staff and community mediators. The mediation process is offered to victims and convicted felons as a method of arriving at an appropriate sentence recommendation.

As will be seen from the following discussion, mediation need not be reserved for only trivial or nuisance cases. It is substantially cost-effective and provides for the needs and concerns of the individual disputants while addressing community standards. Through the Corrections Department's Post-Conviction Mediation Program, crime victims receive the healing and vindication of seeing offenders held accountable for their behavior, and both the victim and the offender are able to interact in an atmosphere pro-

---

3. OKLA. STAT. ANN. tit. 12, § 1805(E) (Supp. 1985).

4. OKLA. STAT. ANN. tit. 12, § 1805(A) (Supp. 1985).

3. OKLA. STAT. ANN. tit. 12, § 1810(A) (Supp. 1985).

3. OKLA. STAT. ANN. tit. 12, § 1808 (Supp. 1985).

7. These two state agencies are The Oklahoma Department of Corrections and the Oklahoma Department of Human Services, Division of Children and Youth Services.

8. In Oklahoma City, The Dispute Resolution Service of Oklahoma County is run by the Oklahoma City Metro Alliance for Safer Cities. In Tulsa, Early Settlement - A Precourt Hearing Program is operated by the Municipal Court clerk's office.

moting mutual empathy and understanding rather than competitiveness and aggression.

## II. THE DEPARTMENT OF CORRECTIONS' PROGRAM

The Oklahoma Department of Corrections is viewed as a leading program in the corrections field.<sup>9</sup> In fact, the Oklahoma Department of Corrections was one of the first corrections departments to be completely certified by the American Correctional Association.<sup>10</sup> Consistent with such leadership, the Department decided to provide for significant victim input in required rehabilitation and supervision.<sup>11</sup> Specifically, in November, 1983 and January, 1984, pursuant to law, the courts required the Department of Corrections to submit specialized sentencing plans for certain offenders.<sup>12</sup> Eligible offenders for the specialized treatment were: 1) eighteen to twenty-two year olds convicted of specified non-violent crimes<sup>13</sup> and 2) any offender, regardless of age or type of crime, provided the offender had not been incarcerated in a state penal institution in the previous ten years.<sup>14</sup>

The Department's primary purpose for this program has been to provide victim input, within guidelines, to more effectively hold criminal offenders responsible for their behavior to the community and to the victims.<sup>15</sup> The Department's goal is to adequately address victims' concerns and offenders' needs so that victims can return to their previous status and offenders do not commit future crimes or return to the judicial system.<sup>16</sup>

The victim of a criminal act feels a multitude of emotions, such as disbelief, self-recrimination, paranoia, and rage. However, the impact of that experience is not isolated to the criminal incident itself. Experts have identified a "second injury" to the victim that results from bringing a case through the court system.<sup>17</sup>

---

9. Informal interviews with members of the American Correctional Association.

10. *Id.*

11. Larry R. Meachum, Director of Corrections, should be credited with the vision and motivation to establish such a program.

12. OKLA. STAT. ANN. tit. 22, § 982 (West 1986).

13. OKLA. STAT. ANN. tit. 22, § 995.1 (West 1986).

14. OKLA. STAT. ANN. tit. 22, § 982a (West 1986).

15. This purpose is outlined in the Department of Corrections Administrative Field Memorandum, Classification and Case Management Unit CM-18 and an open letter to victims from Mr. Meachum in the program brochure (unpublished brochures available in Public Information Office, Department of Corrections, Oklahoma City, Oklahoma).

16. *See Id.*

17. *See, e.g.,* National Organization for Victim Assistance, Campaign for Victim's Rights (1983). (Unpublished brochure).

Unquestionably, this second injury arises from the public acknowledgement of the crime itself and the pain suffered. But the traditional adjudicatory process fails to provide the injured party with an appropriate outlet for its emotions or a forum for its input.<sup>18</sup> It is not uncommon for the victim to feel as if no resolution was made even though the offender may enter a guilty plea. Inasmuch as the traditional legal processes can be confusing to outsiders, it may appear to the victim that nothing was ever settled.<sup>19</sup> In contrast, mediation attempts to answer some of these concerns.

The Department of Corrections' post-conviction mediation program was created in an attempt to alleviate the suffering of victims as a result of a criminal incident and of the operation of the legal system. In addition, through its mediation program the Department seeks to foster cooperation by the many factions of the criminal justice system for the benefit of victims and the community generally. The program highlights the perceptions and conditions of the aggrieved party as a result of a criminal incident. The vast formalization and impersonalization of the legal system may, for the first time, be more clearly of service to victims and the community through this collaborative effort.

Creative effort to hold criminals more accountable for their behavior is certainly not innovative. What is new and revolutionary is that a major criminal justice entity undertook to provide for significant victim input and participation in the criminal justice system, particularly in sentencing, through a process generally reserved for minor, extrajudicial complaints.

The Department's mediation program is the first of its type in the country. Both violent and non-violent incidents may be the subjects of mediation hearings. The program is conducted actively on a statewide basis by utilizing seven different cities as sites of districts that may comprise as many as twenty-three counties. Mediation hearings are often, by necessity, conducted in correctional institutions. Other hearings, depending on the offender's security level, may be held in probation and parole offices or county jails. Finally, the mediation hearings themselves may address not only issues of restitution and counseling, but also incarceration and supervision periods, community service projects, and forms of individual treatment. In some cases, it has even been sufficient that the victim and offender meet and through a mediation session share personal feelings and concerns without any discussion

---

18. *Id.*

19. 128 CONG. REC. S. 3854 (daily ed. April 22, 1982) (statement of Sen. Heinz).

of treatment or supervision.

The Department's Mediation Program is unique for other reasons. The program represents a close partnership between state agencies, court officials, and community interests. Historically, these factions have been adversaries, but they are capable of mediating with one another. These groups can have their needs addressed in mediation but not to the wholesale exclusion of each other. Moreover, state agents, prosecutors, courts, and correctional institutes are held more visibly accountable for their consideration and attention to the community's and victims' concerns.

### III. PROGRAM OPERATION

As part of the development of Specialized Offender Accountability Plans (SOAP),<sup>20</sup> which the Department is required to submit to sentencing courts, victims are routinely contacted by highly trained corrections personnel to solicit the victims' input concerning their particular concerns for the plan. In many cases victims may voluntarily participate in a mediation session.<sup>21</sup> In mediation, the offender, whose participation is also voluntary, and the victim are furnished with a controlled setting for positive discussion of the crime. They also discuss the impact on the life of the victim, motivating factors on the part of the offender, and solutions to specifically defined problem areas.

The problem areas for discussion in mediation are identified by department personnel after extensive interviews of the victims, and testing and assessment of the offender. Input from the sentencing judge and district attorney is gathered and reference is also made to certain formulas currently used by the department regarding violence and recidivism predictions.<sup>22</sup> The specific issues and probable solutions are identified for the victim and offender prior to their participation in the mediation session. Available guidelines represent the upper and lower limits for sentencing under a mediated

---

20. SOAP is the anachronism for the intradivisional department program, which was created in response to OKLA. STAT. ANN. tit. 22, § 995 (West 1986).

21. Criteria for case selection include: (a) the likelihood of a mutually acceptable resolution based on the feasibility of the guidelines for the session identified before the session takes place, (b) the likelihood the offender has the resources to achieve any of the goals identified, and (c) the ability of the victim to arrive at an agreement which contains goals beyond their own interests. CM-18, III (B). Department of Corrections Administrative Field Memorandum, *supra* note 15.

22. The Department of Corrections has recently adapted the *Iowa Risk Assessment Model* designed by Daryl R. Fischer, Ph.d. which employs numerous matrixes to produce a violence and a recidivism risk probability for any given offender.

agreement.<sup>23</sup> Such parameters are necessary to ensure consistency among the cases handled in the program. In addition, the agreements still reflect overall community standards regardless of the parties' personal orientation, and the sentencing parameters assure that agreements are not solely the result of the passion or prejudice of any particular victim.

At least one full-time mediation professional in each of the seven district sites is responsible for the on-going training of mediators, interviewing the victims, coordinating the information flow, and arranging the mediation sessions.<sup>24</sup> Mediation in any given case, if offered by the Department, is not scheduled without the agreement of both the victim and the offender. The mediation is not mandated by law, and parties are not forced to participate. However, by electing to participate in the mediation agreement, the parties are agreeing to abide by its terms.

Mediation hearings are purposefully formal and structured.<sup>25</sup> Department of Corrections mediators are highly trained and skilled in mediation techniques. They have functioned effectively as neutral third parties helping victims and offenders solve their problems. Currently, the mediators are probation and parole officers, correctional officers, case managers, and community volunteers.<sup>26</sup> Approved mediators must complete departmental training, which actually surpasses the requirements established for mediators by the Oklahoma Supreme Court Administrator's Office.<sup>27</sup>

In cases when a clearly defined personal victim is not identified, arrangements have been made to use a representative of the offended entity in the mediation process. For example, a representative of the Oklahoma Highway Patrol serves as the victim on behalf of the community in mediation hearings involving an of-

---

23. Department of Corrections Administrative Field Memorandum, *supra* note 15.

24. These staff members are referred to as Mediation Facilitators and hold a mid-management organizational rank of Administrative Officer I. The seven original Mediation Facilitators are responsible for the success of the program during the first eighteen months. They are to be commended for their courage and commitment.

25. Mediators are taught a five-stage model by which all mediation sessions are to be conducted on behalf of the Department.

26. Statewide there are approximately seventy-five departmental mediators who are approved to conduct such sessions. The vast majority of those mediators are Probation and Parole Officers.

27. Rules and regulations promulgated as a result of the Dispute Resolution Act codified in Oklahoma Statutes §§ 1801-1813 required a minimum of twenty hours of mediation training. Department mediators must complete a minimum of twenty-five hours of training. In fact, many mediators received over forty hours of training before receiving certification to mediate.

fender convicted of drug possession or driving under the influence of alcohol. Similarly, loss prevention officers represent their stores in cases of theft by employees or shoplifters.

#### IV. PROGRAM RESULTS

In the first eighteen months of the program, over fourteen hundred victims were contacted for their input in sentencing plans.<sup>28</sup> Seventy-two percent of those victims (approximately eighty-five percent in more rural areas of the state) wished to participate in a mediation session when offered the opportunity to do so. However, only fifty percent of the offenders agreed to participate.<sup>29</sup> Five hundred forty-six mediation hearings have been conducted and ninety-seven percent of those resulted in a mediated agreement acceptable to both parties and within the guidelines established for the hearing.<sup>30</sup>

Mediated sentencing plans were almost four times more likely to be accepted by the sentencing court than if a plan was submitted without the benefit of mediation.<sup>31</sup> Burglary, larceny-related offenses, drunk driving offenses were the most frequently mediated types of cases.<sup>32</sup> However, manslaughter, incest, armed robbery, assaults with weapons, indecent exposure, and molestation cases have also been mediated to the satisfaction of the victims.

Through mediation, victims received over six hundred fifty thousand dollars in restitution. This included payment schedules arranged in previous court orders.<sup>33</sup> In the same period, approximately twenty thousand dollars was to have been generated for the State Victim's Compensation Fund.<sup>34</sup> In addition, over fifty thousand hours of free community service work was agreed upon, resulting in a savings to the community in excess of \$165,000.<sup>35</sup> Also, consistent with the Department's goal of increasing com-

---

28. Mediation Program, Statistical Summary (Sept. 1985) (unpublished summary prepared by David P. Mesaros).

29. *Id.*

30. *Id.* This resolution percentage has remained consistently above 93% since the start of the program.

31. Statistical Report to Deputy Directors (Oct. 30, 1984) (unpublished summary prepared by David P. Mesaros).

32. Clark, Bud and Davis, Ph.D., Steven, Planning and Research Unit, Analysis of Oklahoma Department of Corrections' Victim/Offender Mediation Program (Nov. 11, 1985).

33. Statistical Report to Deputy Directors (Sept. 1985) (unpublished summary prepared by David P. Mesaros).

34. *Id.*

35. *Id.*

munication and cooperation between branches of the criminal justice system, eighteen municipal police departments, five highway patrol troops, six county sheriff's offices, and victim/witness coordinators from twenty three counties are participating in the mediation program.<sup>36</sup>

From the taxpayers' and correctional officials' point of view, mediation has also had a very significant financial impact. In November, 1985, the Planning and Research Division of the Corrections Department released a report of the cost effectiveness of the mediation effort.<sup>37</sup> This report analyzed three hundred and sixty-five completed mediation plans that had been ruled upon by that time by the appropriate sentencing courts throughout the state. Each case study looked at the initial sentence contemplated or imposed by the courts, the subsequent costs of effectuating those orders as compared to the sentences, and the resulting costs realized after mediation.

In the two hundred six eligible cases under the statute the average initially imposed incarceration period was twenty-nine months. The average initially imposed probationary period was three years. As the result of court approved mediation agreements, the average revised sentence for incarceration was just over one year. Similarly, the revised probationary period dropped to twenty-four months. The mediated sentence modifications, therefore, produced a net savings of approximately three hundred fifty thousand dollars.<sup>38</sup>

Even more noteworthy, in the cases involving Non-Violent Intermediate Offenders (18 to 22 years old) the average incarceration period initially imposed by courts was nearly two-and-one-half years. The average initial probation period was also slightly more than two-and-one-half years. However, court approval of mediated plans reduced incarceration periods to just eight months and probation periods to slightly less than two years. As a result, the net savings from just these 159 mediation plans was approximately

---

36. Program summary of Post Conviction Mediation Program; A First Year Report (Feb. 1985) (unpublished summary available Public Information Office, Department of Correction, Oklahoma City, Oklahoma).

37. Clark & Davis, *supra* note 32.

38. In computing cost savings, the following figures were used in the study: Average cost per year to house an inmate within an institution during FY 85: \$11,428.19; to house an inmate in a community treatment center: \$8,999.51; and to provide supervision on probation for one year: \$513.88. For incarceration cost estimates in this study, the cost of housing in a community treatment center was utilized so as to reflect a conservative estimate.



\$2.2 million dollars.<sup>39</sup> Overall, the mediation effort over an eighteen month period resulted in a net savings to taxpayers of over \$2.5 million dollars.<sup>40</sup> Moreover, the prison population was reduced by placing the appropriate offenders under community, rather than institutional, supervision.

#### V. OFFENDER PERFORMANCE AND VICTIM FEEDBACK

Because the mediation program has been operational for just eighteen months, there is little conclusive data to firmly establish the lasting impact, if any, of the mediation experience on the victim or offender. Preliminary reports from probation and parole officers are encouraging. The officers report that clients who have mediated are "model clients." These "model clients" regularly abide by the terms of the mediation.<sup>41</sup> Moreover, less than eight per cent of the offenders who have participated in mediation have had their agreements revoked, or their placement transferred back to a correctional institution, for failure to comply with their mediated sentencing plan.<sup>42</sup> In addition, victims consistently report, on follow-up by staff member, that the mediation experience was not only therapeutic but enlightening. Frequently, victims have even become empathetic towards the offender and offered to assist in their reintegration and rehabilitation. For example, victims frequently offer to let offenders perform labor for them directly and without supervision instead of insisting on extended payments of financial restitution.

Generalized comments from victims and offenders show that the integrity of the mediation process has been established by the genuine remedies, the experience of the victim, the accountability for the crime, and the sentencing plan by the offender. Most all of the participants have agreed that mediation has proven to be an effective communication structure for the positive venting of their emotions and opinions. Also, quite importantly, victims claim the mediation experience provides closure to a situation that otherwise would have left them with feelings of vulnerability, disappointment, and cynicism.

In addition, victims have frequently reported their appreciation for not only being allowed but encouraged to describe directly to

---

39. Clark & Davis, *supra* note 32.

40. *Id.*

41. Program Summary, *supra* note 36.

42. Statistical Report, *supra* note 33.

the offender how their lives have been changed and to suggest their own remedies. This ability to participate in a positive, controlled exchange with the offender also gives the victim a sense of "making a difference" as a member of the community. Rather than the system being imposed on victims who feel no sense of participation, victims become active contributors and primary figures in the criminal justice process.

#### VI. NEW PROGRAM DIRECTIONS

As a result of the early success of the program and favorable input from members of the judiciary, the Department of Corrections has begun to expand its mediation efforts. Specifically, mediation is now being conducted as part of pre-sentence investigations.<sup>43</sup> Mediation at the pre-sentencing stage of the judicial process can be extremely beneficial for the victim and offender.<sup>44</sup> In 1986, the Department hopes to use mediation as part of its institutional offender grievance process<sup>45</sup> and in conducting mediation sessions between probation officers and their clients who have violated technical requirements of their parole.

#### VII. SUMMARY

The legal system has moved away from the individual and toward specialized groups. This change has created frustration and helplessness in the lives of many of the individuals the justice system was designed to protect. Recently, mediation services have been offered as an alternative to the legal system. Typically, however, mediation programs are relegated to only minor and nuisance types of disputes. The Oklahoma Department of Corrections' post-conviction mediation program, however, is an attempt to address the gaps between the legal processes and the effective use of mediation in significant cases.

Traditionally, the legal system has distorted society's overall perception of what justice means because little, if any, attention is given to the victims' needs and perceptions. The Department's mediation efforts provide the forum and vehicle for victims of

---

43. Mediation as part of presentence investigations formally began in July, 1985.

44. Courts have been even more receptive to mediation at this stage than as part of the SOAP process. Of the first 23 presentence mediation sessions conducted statewide, 22 (96%) of those sentencing plans were ordered as mediated.

45. Classification Unit Proposal (June, 1985) (unpublished proposal prepared by David P. Mesaros).

violent and non-violent felonies to incorporate their own value judgments into the framework to community standards.

The Department of Corrections' mediation program marks an unprecedented partnership between the legal system, the community, and individual citizens. Thus, the legal system can be sensitive to ordinary citizens and supportive of community efforts for meaningful participation and contribution within the system. Through mediation programs such as this, there can be justice within law.

