

VICTIM-OFFENDER MEDIATION IN ANCHORAGE

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Paper presented at the annual meeting of the
Western and Pacific Association of Criminal Justice Educators,
Salt Lake City, October 1994.

JC# 9416

A version of this paper has been published in the
Alaska Justice Forum (Justice Center, University of Alaska Anchorage)
11(2) (Summer 1994).

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A pilot victim-offender mediation program, which involves juveniles accused of certain offenses and the victims of these crimes, has recently been established in Anchorage. Mediation is offered as a diversion from the justice system which the offender may accept to avoid more formal adjudication.

Mediation between a victim and offender with the goal of achieving restitution and reconciliation can supplement the formal adjudication process. Under mediation, both victim and offender are active participants in the resolution process. The victim has the opportunity to confront the offender to seek a resolution of the offense, and the offender is provided with the opportunity to make amends for the crime. Such problem-solving intends to restore both parties to more positive social functioning in the larger community and to compensate for some of the perceived inadequacies of the criminal justice system. Mediation programs often are used as an alternative to disposition within the justice system or as a diversion from the system.

The western tradition from which the U.S. system of criminal justice has developed views crime as an offense against the state, even though a victim may also be involved. It is the state that prosecutes and brings a case to disposition. Neither the victim nor the offender have much to say in the process, with the involvement of both often quite passive. Since, until recently, in ordinary court proceedings victims were seldom more than observers, feelings of frustration, powerlessness, and further victimization could arise.

Victim-Offender Mediation

Victim-offender mediation programs provide an opportunity for victims to meet the offenders face-to-face in the presence of a trained mediator for the purpose of reaching a reconciliation intended to resolve the injury of the crime in some way. Crime, under the mediation model, is viewed as a conflict between people rather than as an offense against the state. Through mediation the victim has the opportunity for involvement in the process of negotiating restitution, expressing feelings, and seeking answers from the offender. For the offender, mediation also achieves involvement by stressing accountability for the act, personalizing the crime, and providing a corrective intervention. The idea of the offender making restitution to the wronged person has precedent in many cultures, although it has not commonly been used as a criminal sanction under modern western systems.

Development

An early application of a modern western model providing mediation between a victim and offender occurred in 1974 in Kitchener, Ontario, Canada: the Victim Offender Reconciliation Program, or VORP. This was followed in 1979 in the United States by a program with the same name, which was started in Elkhart County, Indiana through the joint efforts of PACT Inc. (Prisoners and Community Together) and the Mennonite Church. The program spread, and by 1981 eight programs had been developed in the United States and Canada. By 1987, 50 program sites had been established, primarily in the Midwest and Canada. By 1994, 25 victim-offender

mediation programs were operating in Canada, over 100 in the United States, and 165 in Western Europe.

According to Burt Galaway in a 1988 article in *Social Service Review*, of 14,000 cases referred by the courts to VORP programs, 86 per cent were reported to have resulted in successfully completed restitution contracts. The study indicated that victims, for the most part, were not vindictive in negotiating with the offender and that there was a high level of willingness to meet among victim and offender. While long-term research regarding the effectiveness of the mediation model has been limited, such preliminary findings have been consistent in demonstrating that mediation is an effective way to resolve conflict between some crime victims and their offenders.

The Development of Victim-Offender Mediation in Anchorage

To date, the criminal justice system in Alaska has used formal mediation primarily with juvenile offenders. In 1991, Janice Lienhart, one of the founders of Victims for Justice, a private, nonprofit agency, which provides services to victims of crimes, sought assistance from staff at the McLaughlin Youth Center for a family whose son had been killed by a juvenile, who at that time was being held at the Center. What resulted was a victim-offender mediation involving the family and the juvenile. As a result of that mediation and several subsequent ones at McLaughlin, a core group of professionals formed an organizational base to explore the idea of implementing a victim-offender mediation program in Anchorage. Four organizations were

represented in this effort: Victims for Justice, the McLaughlin Youth Center, the Department of Social Work and the Justice Center at the University of Alaska Anchorage.

In spring 1993, a survey was sent to 29 Anchorage area professionals connected directly or peripherally with the juvenile justice system; responses came from the Division of Family and Youth Services, the offices of the Public Defender, Public Advocacy, the Attorney General, law enforcement, the court system and various social service agencies. The intent of the survey was to determine the feasibility of establishing a victim-offender mediation program targeting juvenile offenders in Anchorage. Respondents were asked a series of questions regarding program concept, the types of crimes, offenders, and victims to be targeted, and the organizational structure, funding, and staffing patterns. The support for establishing a program from those surveyed was highly positive (96%), with many expressing a willingness to participate actively in the development of a program. Many of those surveyed later joined the project planning group.

In fall 1993, an organizational base, the Victim-Offender Mediation Project Planning Group, was formed. The group included the original four organizations, representatives from Juvenile Probation, the Office of Public Advocacy, the Alaska Judicial Council, the Alaska Youth and Parent Foundation, Family and District Court judges, the Attorney General's Office, the Anchorage Chamber of Commerce, private practice attorneys, and professional mediators. A six-month pilot project began in early 1994.

Plans for the pilot project evolved from committees of the Project Planning Group. The Chief Juvenile Probation Intake Officer and his staff agreed to provide referrals of cases identified as meeting the criterion of first or second-time juvenile offenders accused of property crimes.

It was decided that intake officers would screen cases and determine which ones were appropriate for mediation. The Alaska Judicial Council participated in the development of instruments to evaluate the project, and the Alaska Youth and Parent Foundation, an Anchorage based private nonprofit agency, provided their facilities for training, meetings, and mediation sessions. A part-time coordinator was hired to train volunteers and implement the pilot project.

Ten volunteers, with previous mediation training, participated in a training program specific to victim-offender mediation. A training model developed by VORP in Elkhart, Indiana was drawn upon that included video presentations of mediations and issues in juvenile justice. Trainees participated in role-playing that replicated the entire mediation process, beginning with the initial contact of the participants through mediation and contracting. A second training was completed for additional community volunteers and included a teenage volunteer who had been active with Anchorage Youth Court. Fifteen trained volunteer mediators are now participating in the project. Except for the part-time coordinator, none of the participants is paid. Although evaluation of the project is in the initial stages, the volunteer mediators report success in the cases that have gone to mediation.

By late summer 1994, 61 referrals had been received from Probation Intake, with 16 mediations and contracts being completed, 13 cases in progress and 32 closed without mediation occurring. Of those 32, 22 victims declined mediation and 4 cases were screened as not appropriate for mediation. In 4 cases the offender failed to keep the appointment, and in 2 cases the victim did not keep the mediation appointment.

Each mediation case has its own flow; however, an overall process has been developed. The intake officer interviews the offender following arrest and, if in the judgment of the intake

officer, the case meets the criteria for mediation, it is offered as a possible disposition. (Ordinarily, offenders are first or second-time offenders charged with property crimes, although several assault cases have also been mediated.)

Following the referral from Juvenile Intake, the project coordinator compiles the necessary information and assigns the case to two mediators. They, in turn, contact the offender to determine if he or she wishes to participate in the process. If the offender agrees to participate, an appointment is made with the victim. If all parties determine that mediation is feasible, it is scheduled with a team of two mediators. The main purpose is to reach a reconciliation between the victim and offender. Mediators function as neutral facilitators of the process. Contracts for restitution resulting from the mediation are monitored by the project coordinator, with the intake officer informed of the final outcome. If a contract is not successfully completed, the intake officer makes a decision about further action on the case.

An example of a successful mediation involved a juvenile who had inflicted \$1,000 of damage by breaking into the garage of an elderly couple. Initially the couple were resistant to mediation because of fear that meeting the offender would result in becoming known to the offender. They came to realize the irrationality of this fear because the offender obviously already did know where they lived. With the mediators present, the couple were able to ask questions of the offender and the offender was also able to explain his behavior. The woman negotiated a restitution contract with the offender in which he was to write her a letter of apology. The man presented receipts for repairs to the garage and contracted with the offender to do work at the couple's home at \$5 per hour during the summer until the \$1,000 in damages were paid. Both the couple and offender expressed satisfaction with the mediation process, and

the offender completed his contract. The male victim described his decision to participate in the mediation as akin to jury duty: a civic responsibility to participate in the justice process.

The project contains a formal evaluation component. The mediators complete separate pre-mediation questionnaires through interviews with both the victim and offender. Another interview is conducted with each participant immediately after the mediation, and telephone interviews with both victim and offender are also conducted 10 to 14 days later. Referred cases which did not result in mediation are evaluated to determine those factors which preclude the process. The major intent of the project evaluation is to gather information for use in developing an effective, ongoing program. The assembly and analysis of the data are monitored by the Alaska Judicial Council.

The evaluation instruments contain questions concerning the nature of the offense, feelings about the crime, perceptions of the effects of the offense, and perceptions about the justice process and the mediation process. In addition, both victims and offenders are given an opportunity to provide additional relevant comments if they desire.

The Victim Offender Mediation Project has received start-up funding through University of Alaska Anchorage Faculty Development Grants and the First National Bank of Anchorage. Project members are now seeking additional funding to continue and further develop an ongoing program. Long-range plans are to institutionalize a victim-offender mediation program throughout the state in both the juvenile and adult criminal justice system. In a related effort, some members of the project are meeting with the Alaska Department of Corrections to develop an office for victim advocacy which would be housed in the offices of the Commissioner of Corrections but would operate as an entity separate from adult corrections. This may, in the

future, lead to victim-offender mediation involving inmates in the Department of Corrections and their victims. Also, legislation may be sought to obtain confidentiality protection for the mediation process and support for statewide program development.