

Engaging Offenders in Restorative Dialogue Processes

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The Clark County Juvenile Court has renamed its Victim Offender Mediation Program the Victim Offender Meeting Program. This re-naming reflects a change in both thinking and practice.

Our juvenile court's commitment to respond restoratively to all victims and offenders has led it to modify the process commonly referred to as victim offender mediation. While the process of mediation has much to commend it to Restorative Justice practitioners, there is a growing national movement (the Uniform Mediation Act) to codify the practice of mediation in such a way that can hinder the restorative intent of encounters between victims and offenders. This essay describes an approach to engaging offenders in a victim/offender encounter that highlights one of the basic issues that distinguish placing the primary focus on a restorative process rather than a process determined by the requirements of mediation.

Due to the wide spectrum of thought regarding Restorative Justice, a brief definition for the purposes of this paper is that a restorative response to crime is one that is focused on addressing the harm done to the victim and the community by holding the offender meaningfully accountable for that harm. The accountability should lead to a safer, healthier community and to the offender being more integrated into the community as a positive, contributing community member.

The Issue

Voluntary participation is a central tenet of mediation. Through the “intermarriage” of mediation and Restorative Justice, this tenet has also been viewed as a critical issue for the dialogue processes used by Restorative Justice practitioners. That is, it has become generally accepted that clients *choosing* to participate in a face-to-face process is a basic *restorative* tenet. There are critical reasons why this principle is absolutely true for the participation of crime victims. And while there are important underlying concerns that would argue for adherence to this basic principle of voluntary participation of offenders in victim offender encounters, based on over a fifteen years of restorative practice, I am convinced that the participation of offenders in restorative dialogue processes does not need to align with this principle. It is but one of several reasons why I believe mediation and restorative dialogues, while related, are distinct processes.

Let me start by acknowledging that, beyond ethical considerations, there is little practical value in *forcing* someone to participate in any dialogue or mediation. If participants do not have some level of commitment to the dialogue process it is likely to be an unpleasant experience for everyone, including the facilitator/mediator, and likely a futile exercise as well. Participants in these encounters must see some potential value for themselves if they are going to meaningfully engage

The importance of having agreed, on some level, to engage in a dialogue process is as valid for people who commit crimes as for any other dialogue participant. That is, offenders must see potential benefit for themselves in order to be willing to participate in such a meeting. They need to see how a dialogue process can be of value to them. Being knowledgeable about issues important to offenders, and being able to connect those issues to a process of

dialogue, is key to moving offenders to a place where they are willing to engage in a face-to-face meeting.

An Example: Eliciting Offender Participation in Victim Offender Meetings

Ultimately, framing offender participation in a VOM process as *voluntary* or *mandatory* is not very useful. In the practice of the Clark County Juvenile Court, offender participation is *neither* voluntary nor mandatory. And, in some ways, *it is both*. If that is confusing, that “tension” illustrates the distinctiveness of victim offender meetings and why they must be carried out as a restorative, rather than mediation, process.

A premise for the purposes of this example, and what is in fact true for all the offenders/accused referred to VOM by our juvenile court, is they are individuals who have either admitted responsibility for a crime or have been found responsible by a court. What is not voluntary for these individuals is that they *will* be held accountable for their offense. They have no choice in that. That is the community’s choice through its justice system. What the offenders do have a voice, but not the *only* voice, in is whether or not a face-to-face dialogue is a helpful way for them to be accountable.

It should also be noted that all our VOM cases are victim-initiated. If a victim expresses interest in the possibility of a meeting with the offender, the offender is referred to the VOM program. (How the initial victim work is carried out restoratively by Clark County Juvenile Court is a topic in itself.)

Engaging the Offender

Reflecting on over fifteen years of VOM experience, I have not found it useful in talking to an offender, adult or juvenile, who has been referred to VOM to use words such as *choice* and *voluntary*. I come to the offender’s initial interview with the mindset that some process of restorative accountability is going to happen. (Please note the distinction of an accountability process as opposed to a process that establishes guilt/responsibility. That latter process has already taken place.) What is being explored in this initial meeting is whether a face-to-face encounter is a helpful way for accountability to happen - helpful for the victim, for the community, and for the offender.

I explain to offenders that the *community* is committed to providing meaningful ways for them to take responsibility for their offense. (From a Restorative Justice perspective the court is, or ought to be, simply an agent of the community.)

A normative, but often unarticulated, goal for the offender is to be accountable in ways that make sense to them. This is a goal that is legitimate for any individual from a restorative perspective. But, what is added to this self-focus by the community is the offender’s obligation to be accountable in ways that also make sense to the victim and the community. And, if carried out restoratively, this accountability can also enable the offender to feel s/he has acted in a responsible manner.

I explain to offenders that the community is interested in finding a resolution that will enable them to deal responsibly with their offense, that will enable them to put the offense behind them, and enable them to move forward with their lives in a positive way. All of these outcomes relate directly to important issues for offenders. I discuss with offenders how a

dialogue process works and why I think it may be helpful for them to participate, *for their own sake*.

Responding to Resistance

If offenders resist the idea of participation in VOM, I focus on trying to understand and acknowledge their concerns. I try to genuinely address the concerns (e.g. “Will this be safe?”) and work through the resistance. *Genuinely* means I deal with the concerns honestly. If the meeting process cannot address their concern, I tell them that.

At this point, in trying to help offenders understand how the meeting process can be positive for them as well as for the victim, it is appropriate to be more focused on the offender’s needs than the victim’s. “How will this help me?” is where the offender generally is mentally and emotionally at this point. It is both useful and legitimate to work with offenders where they are, not where you want them to be. However, the value of VOM for victims, and the offender’s obligation to make amends, should not be lost in the discussion.

If, after a full discussion, it is clear the offender simply will not participate - short of my telling them they must - I will verbally confirm my sense that they do not see value in addressing the offense through a meeting. I let them know I will be returning the referral to their probation counselor for further consideration.

If I have decided the offender is not appropriate for a face-to-face encounter (e.g. unacceptable level of minimization of responsibility, potentially harmful attitude in regard to victim needs), I will tell the offender I do not see this process as a helpful or useful approach for addressing the harms in this case. Again, I inform them I am sending the referral back to their probation counselor. Note that I placed the inadequacy, or inappropriateness, on *the process* – “this process is not appropriate” – rather than on *the individual* – “you are not appropriate”.

Throughout this interview I have neither said their participation is voluntary (“You can do this if you want to.”), nor have I said it is mandatory (“You will participate in this program because you have been ordered to.”). Our community’s bias, which is conveyed in my approach in the interview, is that VOM is generally an appropriate tool for properly screened cases. Unless the offenders somehow demonstrate to me, through their behavior or responses, that a dialogue is not appropriate, I will work with them on the assumption that a face-to-face meeting is the best way for them to address their obligation and need to be accountable for their actions.

An Example: Suggested Interview Wording

Opening comments:

“John, you have been referred to the VOM program because our community is committed to helping people who have been harmed by crime to address those harms in ways that are most meaningful to them. Mrs. Smith, the person who is the victim of your offense, has stated that a face-to-face meeting with you may be of help to her.”

“It is also our commitment to help you in being accountable to your victims in ways that meaningfully address the harms you have done to them. We want both you and Mrs. Smith to be able to move away from this incident feeling that the important harms and issues have been dealt with in a way that is helpful to both of you and helpful to the community.”

“At the same time we want to assist you in taking responsibility for your actions, we want that to happen in a way that is respectful and helpful to you. Our intent is for you to be accountable for what you have done, to be able to deal with this in a responsible way, and to close this event in your life and move forward in a positive way.”

If the offender responds in a manner that conveys a feeling that they have already been accountable or done enough for their offense:

“We are not ignoring what you have already done, and I’m glad to hear that you have already taken some valuable steps (e.g. community service, counseling class).”

“A Victim Offender Meeting is about *taking direct responsibility to the victim*. The ways in which you have already taken responsibility will probably be very helpful information for _____ (use victim’s first name - humanization of the victim).”

“Victims often want to know that the person who caused the harm is being held responsible. This would be a very helpful thing for you to share with them.”

“Your (court appearance, community service hours, fine) are important parts of being accountable, but another important part of being accountable is taking *direct responsibility* to the person you have harmed; *giving your victim a chance to talk* about how your actions have impacted them and *what they want to see happen* in order for this matter to be resolved in a way that makes sense to them.”

Footnotes:

Our juvenile court has intentionally re-named our face-to-face process *Victim Offender Meetings*. Even though the actual meeting process and much of the preparation process is very similar to a standard mediation, there are important differences. One difference is articulated in the essay above. A second difference is that these meetings are often not focused on reaching an agreement. The people are not meeting to arrive at some mutually agreed upon resolution, but rather to have an encounter where the human impacts of the crime can be shared and understood. There is often neither the interest nor possibility of meaningfully “mediating” these impacts. There is, however, tremendous value for all participants to meet and talk about who they are and how this crime has impacted their lives. Broadening the understanding of the purpose of the meeting beyond that of mediation also allows the facilitator to interact with the participants in ways that are outside the traditional bounds of a mediator, yet well within the restorative purposes of the meeting.

The ability of our staff to “invoke” the name of the *community* when we speak to offenders about their obligations and what the community desires to see as an outcome flows from a very intentional and consistent effort to educate and enlist strong community support for working restoratively in our juvenile court. In Clark County, we can genuinely speak for the community because thousands of people in our county have endorsed this way of working.