

The following article was originally published in the Fall 2000 issue of “The Community Mediator,” the newsletter of the National Association for Community Mediation (NAFCM), and is reprinted here by permission. It was written in response to recent questions and comments on the NAFCM listserve about how to implement and develop a victim-offender mediation (VOM) program, and how VOM cases differ from other community mediation cases.

NAFCM has a membership of more than 300 community mediation centers or programs. NAFCM’s purpose is **“to support the maintenance and growth of community-based mediation programs and processes, to present a compelling voice in appropriate policy-making, legislative, professional, and other arenas, and to encourage the development and sharing of resources for these efforts.”**

Victim Offender Mediation

by Jan Bellard

When Gale McGloin of the Pittsburgh Mediation Center posed some questions to the NAFCM listserve recently about victim-offender mediation (VOM) practice in a community mediation center context, it spurred a lot of e-discussion. We thought it might be useful to reiterate some of the points and questions made during that discussion, and to add to them in this forum.

Community Mediation and Victim Offender Mediation - Separated at Birth?

The roots of community mediation and of victim-offender mediation (VOM) appeared in the U.S. at about the same time (the 1970s), but since then, for the most part these two streams of mediation practice have evolved independently of one another. In recent years, community mediation has become a mainstream presence in the conflict-resolving process of many communities, and a national presence as well, due in part to NAFCM’s success in creating partnerships and funding opportunities.

VOM programs, on the other hand, until very recently have operated in relative obscurity, even though the growth of these programs has been relatively similar to the growth of community mediation programs. There are now close to 300 VOM programs in the US, and more than 500 in other parts of the world.

Because of their different paths of development, there may well be an “information gap” between the VOM world and the community mediation world. While community mediation programs are often affiliated with NAFCM, VOM programs are more likely to affiliate themselves with the restorative justice (RJ) movement, a faith community, and/or the Victim Offender Mediation Association (VOMA). Relatively few community mediation centers focus on restorative justice (RJ) innovations and policy discussions. Likewise, agencies that focus on VOM may not be familiar with the variety of applications and policy discussions occurring in community mediation settings.

The Criminal Justice System “Discovers” VOM

In recent years, VOM and other RJ practices have gained recognition, support and funding from the criminal justice system. As Eric Gilman, Restorative Justice Program Coordinator for the Clark County Juvenile Court/City of Vancouver, WA, says, that's good news and bad news. There is a big impetus now to start up new VOM programs, particularly in the juvenile justice system, and some of that responsibility is falling to community mediation centers. Unfortunately, if the criminal justice system or the local agency which is starting a new VOM program do not have a clear understanding of the goals, procedures, and limitations of VOM, they may create a process that is not restorative and does not serve its participants or the system well.

How Are Community Mediation Cases and VOM Cases Different?

Most VOM practitioners make a clear distinction between VOM practice and other forms of mediation. Mark Umbreit of the Center for Restorative Justice and Peacemaking at the University of Minnesota, describes it thus:

“Mediation is being used in an increasing number of conflict situations, such as divorce and custody, community disputes, commercial disputes, and other civil court-related conflicts. In such settings, the parties are called ‘disputants,’ with an assumption being made that they both are contributing to the conflict and therefore need to compromise in order to reach a settlement....”

“In victim-offender mediation, the involved parties are not ‘disputants.’ One has clearly committed a criminal offense and has admitted doing so. The other has clearly been victimized. Therefore, the issue of guilt or innocence is not mediated. Nor is there an expectation that crime victims compromise and request less than what they need to address their losses. ... Victim offender mediation is primarily ‘dialogue driven,’ with the emphasis upon victim healing, offender accountability, and restoration of losses.”

Community mediation is perfect for a case where the people involved have a dispute which they have not been able to resolve *and* each has some degree of responsibility for/or participation in the evolution of the dispute. These are neighborhood, family, or school situations where one person did something that another didn't like, tempers flared, and a number of *mutually* antagonistic events occurred between the parties. Often there is an ongoing relationship which can serve as a motivating factor to try to resolve things in a peaceable way.

VOM, on the other hand, starts with an offender who has admitted committing the offense and an “innocent bystander” victim of that offense; i.e., someone who is in no way responsible or culpable for the damage they suffered. If those circumstances are not present, (e.g., if the accused denies the charge or if the “victim” is equally culpable for the events), the case should be referred to community mediation or to the court for resolution. But it's not suitable for the VOM process.

[The question arose in the e-discussion about the discomfort of calling one party the “victim” and another the “offender” when the facts seemed more gray than that. First, if the facts are gray about those roles, it should not be a VOM case. But second, in many community mediation cases, the same phenomenon occurs with the labels of “complainant” and “defendant,” which often arise as a result of the “complainant” getting to the warrant first! So actually the labels which are used for *appropriate* VOM cases should fairly accurately reflect the parties' roles in the situation.]

If Not to Resolve Disputes, What Then Is the Purpose of VOM?

The fundamental purpose, over the years, of having a VOM meeting is to allow a person who has been the victim of a crime to meet with the person who committed a crime, so that they can talk with and learn from each other about the crime itself and its effects on their lives and move forward in a healing process. An additional facet is expressed in the report by the ABA Criminal Justice Section:

“One of the chief benefits of the victim-offender mediation/dialogue programs is that they humanize the criminal justice process. By bringing criminal offenders together face-to-face with their victims, it becomes more difficult for the offenders to rationalize their criminal behavior. As they face the individual that they have victimized, the harm caused by their crime is also no longer an abstraction but very real.

“Mediation/dialogue sessions also bring a human face to the person who is otherwise abstractly and impersonally known as ‘the criminal.’ During such sessions, victims may gain a better understanding of who the offenders are and of the circumstances that may have contributed to their criminal behavior.”

Over 95% of VOM sessions also result in a restitution agreement, but Mark Umbreit emphasizes that:

“This agreement, however, is secondary to the importance of the initial dialogue between the parties that addresses emotional and information needs of victims that are central to their healing and to development of victim empathy in the offender which can lead to less criminal behavior in the future.”

Is the Offender Really Guilty?

A crucial criterion for a VOM case is that the offender admits responsibility without coercion. As Eric Gilman wrote,

“The accused must be willing to own their part of what happened. There must be a willingness to say, ‘Yeah I hit him and I shouldn’t have (so I own it AND it was wrong) and I am willing to make it right.’ There [must be] clear acknowledgement of responsibility on the part of the accused for their role in the incident....”

VOM should not be used to determine an accused’s guilt or innocence. If s/he says s/he is innocent, the case *should* go to court. At no point during referral or intake should anyone say, “Look, we think you’re guilty, and if you know what’s good for you, you’ll go to mediation and say you’re guilty. After all, it’s better than going to court.” Or, if the accusations seem mutual between “offender” and “victim,” it could be mediated in a community mediation process, not VOM.

Is VOM Really Voluntary?

There is a slippery slope of “voluntariness” in VOM, just as there is in other community mediation cases. We want people to participate, and sometimes they are reluctant, for whatever reason. So the system may err on the side of coercion or the mediation intake people may err on the side of persuasion. Avoiding system coercion requires ongoing watchfulness, commitment to program principles, and continuing education of people in the system by the mediation program.

The report by the Criminal Justice Section of the American Bar Association to the House of

Delegates in August 1994 states these particular program principles succinctly:

1. *Participation in a program by both the offender and victim must be voluntary.*
2. *Program goals are specified in writing and procedures are established to meet those goals.*
3. *Refusal to participate in a program in no way adversely affects an offender, and procedural safeguards are established to ensure that there are no systemic negative repercussions because of an offender's refusal to participate in the program.*

The more “benign” practice of “persuasion” can occur at the intake level. Statements like “the judge would like it if you would participate” or “I need your decision today” or even “it will be a wonderful experience for you” are a form of pressure which can result in a meeting between people who don’t really want to be there or who have unrealistic expectations, which in turn can result in an unsatisfactory experience.

Why Are VOM Guidelines So Narrow?

A primary goal of VOM is to provide a safe and structured setting which is likely to assist in the healing process for all involved. Screening and preparation reduce the chances that the victim will be revictimized (by an unrepentant or hostile offender or by having their expectations dashed when the offender does not offer an apology) or that the offender will be victimized (by a vengeful or threatening victim).

Common Pitfalls (and Solutions) of VOM Practice

#1 Pitfall: Insufficient foundation and training in VOM/RJ principles and practices of implementing entity

Results: Unclear goals or policies; inappropriate referrals; unhappy participants

Solutions: Go to the experts before setting up a program! Check out not only local or regional programs, but also national standards of practice. Invest the time and money to access the major resources in the field (see box) before taking it on. VOM is not a money-maker or a no-brainer; it requires passion, commitment, and specific base of knowledge.

#2 Pitfall: Accepting inappropriate referrals (e.g., participants who have been ordered to participate; offenders who have been told that VOM is the easy way out, even if they’re not guilty; cases that the system does not want to deal with, like domestic violence, abuse or incest, or sexual assault)

Results: Case numbers go up; process quality goes down; confusion in the system about VOM purpose; hostility toward VOM by victims’ advocacy groups.

Solutions: Set specific guidelines for appropriate cases, based on standards of practice recommended on a national level, and stick to them. Educate, educate, educate. Turn down inappropriate cases. (In most communities, the number of cases that are appropriate for VOM is small, relative to cases that are appropriate for a community mediation process.) Maybe the system won’t like it or get it the first few times, but you’ll feel better about the work.

#3 Pitfall: The system says, “Do it our way or you don’t get money.”

Results: See #2 results.

Solutions: Find your funding outside the system (see the VOMA newsletter, "Connections." Spring 1999, #2 for suggestions). Help the system change the way it handles cases and measures success. (Yes, there are places where this has happened!) Maybe, don't do it. Just because there is money available to do something doesn't mean we have to do it.

Is VOM Worth It?

When properly implemented and utilized, VOM programs have extremely positive results, which are valued both by the parties and by the system. Research gathered by Mark Umbreit of the Center for Restorative Justice and Peacemaking at the University of Minnesota indicates the following:

- *Victims of crime who participate in VOM are far more likely to express satisfaction and fairness with VOM than similar victims who go through the normal court process.*
- *Recidivism rates of offenders who participate in VOM are lower than those who do not.*
- *After participating in VOM, victims are significantly less fearful of being revictimized.*
- *Restitution agreements drawn up in VOM have a much higher rate of completion than restitution orders from the courts.*

Program staff and volunteer mediators who do VOM are themselves enhanced by the process as well. Some describe it as a spiritual or transformative experience, an honor to be present when people whose lives have crashed into each other start healing, a small way to help create a more just way to deal with injustice.

VOM and community mediation programs can enhance and complement each other. NAFCM encourages continued discussion on VOM and welcomes comments on this article or the listserv messages. Please share your experiences with us. (202) 667-9700 ext. 213; nafcm@nafcm.org.

Resources

Center for Restorative Justice and Peacemaking
School of Social Work, University of Minnesota
1404 Gortner Ave, 105 Peters Hall, St. Paul MN 55108-6160
612/624-4923; Fax 612/625-8224; <rjp@tlcmail.che.umn.edu>
<http://ssw.che.umn.edu/rjp>

Center for Peacemaking and Conflict Studies
Fresno Pacific University
1717 S. Chestnut Avenue, Fresno, CA 93702
559/455-5847; 800/909/8677; Fax 559/252-4800
<http://www.fresno.edu/pacs>

Victim Offender Mediation Association (VOMA)
143 Canal Street, New Smyrna Beach, FL 32168
904/424-1591; fax 904/424-6129; <voma@voma.org>
<http://www.voma.org>

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active in both community mediation and in victim-offender mediation since 1987.