

AN OFFENDER-VICTIM MEDIATION PROJECT FOR YOUNG OFFENDERS

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Introduction

As probation officers, our duty is first and foremost, to seek the young offender's treatment and rehabilitation. For it is agreed that the offender's reintegration into a normative lifestyle is of utmost importance.

Some of the obstacles we encounter in reaching this objective are:

- F The offender's and his parents' inclination to minimize the extent of the offense and the injury to the victim;
- F Their passing off part of the blame for the offense onto the victim and/or society as a whole (e.g. "He [the victim] started it...."); Some young offenders leave the courtroom with the feeling of being hard done by. Rather than shoulder the responsibility for what they did, they see themselves as a victim as well.
- F The need – for the sake of rehabilitation – to give weight to the positive elements in the offender's character and behavior, and to his real need for education and protection, as against the gravity of the offense and the punishment deserved.

We looked for a rehabilitation strategy and technique that, while giving due weight to the perpetrator and his deed, would also avoid the sense of his feeling a victim and encourage him to shoulder responsibility for the harm he has done. In 1992, we decided to start a project whereby the offender is brought face to face with his victim, in order to make an attempt at a two-way mediation.

The Be'er Sheva Mediation Process

Phase 1: Preparing the Offender
Every young offender referred to the Be'er Sheva YPS (except sex and drug offenders), is asked if he is interested in taking part in a process of offender-victim mediation. A 'yes' answer moves the process forward to testing the young man's suitability and maturity. He is considered mature if he admits involvement in the offense, and takes at least some of the blame and responsibility for the act and its consequences.

Both adolescent and his parents have a legitimate and vital interest in persuading the

judicial system to clear the young man's name and close the criminal file against him, or at least to lighten his intended punishment. This is the point of leverage in the project, with which we urge the offender into voluntarily undertaking a process of offender-victim mediation.

Phase 2: Getting the Victim's Agreement

A very tactfully worded letter (with a pre-paid reply envelope enclosed) is sent to the victim, which, while respecting his freedom of choice and the injury suffered, invites him to a process of balanced, controlled dialogue, and, at least, to a no-strings-attached question and answer meeting with the mediator. Whether the written answer to this letter is positive or negative, the inclusion of a phone number in the answer is taken as a willingness to think about the process. In that case, the mediator phones the victim in an effort to encourage him to take part in the project. If the victim agrees to meet with the mediator, the agenda, in addition to the questions and answers, is to lay out the conflict from the victim's perspective, and to try to get his consent to a mediation meeting with the offender.

Phase 3: The Victim-Offender Mediation Session

This session is always held at a venue neutral to the two parties. All persons with key roles in the conflict and its resolution must be invited; and likewise, no one with a less than key role or who is likely to obstruct the process, should be invited.

The mediator makes the

opening statement (objectives, procedural rules, introductions of participants, etc.), and clarifies the central function and importance of the process. The victim is asked to make his statement – facts, results, his desires and needs, etc. – for the perpetrator to hear. When finished, the mediator summarizes what has been said, both to endorse its validity and to forestall any destructive outburst. The perpetrator then makes a statement – the facts as he sees them, results, desires, needs, etc. – for the victim to hear. Again, the mediator summarizes. All other parties are invited to ask clarifying questions and make statements.

The object of this phase, is for all to listen and hear, even without agreeing with what is said.

Phase 4: The Mediation Agreement

The parties are asked if they want to draw up an agreement together, to try to repair the damage done and the bad relations caused. If not, they are asked to clarify why not. If the answer is "yes", each is asked what he would like to get from and give to the other. The agreement is formulated in the parties' own words – to show how each perceives the damage done – and practical reparations are specified. The mediator writes up the agreement and reads it out. Each party is invited to sign it and is given a copy. The original goes to the judicial authorities, to be given legal and official sanction.

The transition that occurs from

round-table discussion and mediation process, to drawing up a practical agreement, obliges the parties to sharpen their thoughts and chose the words, which will commit them to the agreement.

Phase 5: Follow-up and Reporting to the Judicial Authorities

Whether the mediator has an agreement in hand or not, he must send a written report on progress achieved, to the authorities: either to the police, recommending or not that the file be closed, or, if the case has already reached the courts, to the court with a recommendation regarding the sentencing. The report must contain: (1) a description of the offense and the victim-perpetrator conflict, (2) a description of the damage done (an impact statement from both sides), as each side perceives it, (3) an account of the mediation process and its results. It may contain any other relevant document, e.g. record of reparations payments or activities, letter of apology, etc.

An Example of a Mediation Process

The following description, is of one of the hundred or so mediation processes, which the Be'er Sheva YPS has conducted, over the last seven to eight years.

(1) A Description of the Offense and the Victim-Perpetrator Conflict

Seven high school students spent the night before the school's end-of-year party, spray-painting

the school walls with the symbols and slogans of a satanic cult, including the name of the principal and a senior teacher paired with the word 'death'. They cut a main electricity cable and opened a window into the principal's room and left a dead cat on her chair. All this was discovered the next morning by staff and students, when they arrived for the celebrations. Until then, relations between the seven students and the principal and senior teacher had been unproblematic.

(2) A Description of the Damage Done As Each Side Perceived It

The principal felt herself disgraced in the eyes of staff, students and parents. The school's name was disgraced, and physical damage occurred. For the local Board of Education, the incident was "educational bankruptcy" and totally unacceptable. As for the seven students, a criminal police file was opened and their whole life turned upside down. Their families were in an uproar, all the offenders were expelled from school and had to find new schools which would accept them; they lost daily contact with their old friends; their involvement in criminal acts was entered on their school certificate.

(3) An Account of the Mediation

Process and Its Results

The participants in the mediation process were the 7 students and their mothers, the school principal and the Chairperson of the Board of Education. All consented to a mediation process with the aim of finding a way to talk directly, frankly, and with an open mind with the other party, and move on from the incident in a positive manner. The dialogue was painful and emotional. The students said that they wished they could erase that night from their lives. They accepted that they had chosen to do what they did.

The meeting set in motion a process of regret, and asking and receiving forgiveness, which is still going on and whose results cannot yet be evaluated. The YPS recommended to the police that the file be closed, to allow the continuation of the process to be handled by the educational system, the students and their parents, without the intervention of the law enforcement system.

Intentions for the Future

We feel that the use of a mediation process meets three of the public's specific expectations regarding offenders and their acts: that public security be improved, that young offenders should pay for their offense and that a method should be found

to reintegrate them into law-abiding society.

A victim-perpetrator mediation process accomplishes four things:

- F It settles conflicts by handing the 'ownership' of the offense and the responsibility for dealing with it, to the offender, to the victim, and to their communities.
- F The exercise of non-punitive restorative justice retains a place for the offender in the justice process and demands that he take responsibility for repairing the damage done, as far as possible. It also teaches him to show more concern for others.
- F This is a form of justice that invests its energy in building a future, not in serving the past.
- F The mediation concept adds a new instrument to the law enforcement system's repertoire and so, increases its flexibility of response.

The mediation concept is now being extended from Be'er Sheva to other parts of the Southern District and eventually it will, most likely, be instated nationwide.

