



“What! What kind of apology is this?”: The nature of apology in victim offender mediation

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ABSTRACT

This qualitative study examined the multiple perspectives of participants' experiences of a Victim Offender Mediation (VOM) program operating in a Midwestern city. Thirty-four face-to-face interviews were conducted with 37 participants, including juvenile offenders and their parents, adult crime victims, mediators, and referral sources. The findings indicate disparities exist between the juvenile offenders and their victims in their perceptions of the genuineness of the apology delivered. The nature of apology is explored and its meaning in the restorative justice context is set out. This study provides a snapshot of the process and practice of restorative justice work. In particular, this study highlights the complicated nature of communication between and among VOM participants. Recommendations are made to improve victim-sensitive restorative justice practices through the composition and delivery of the apology.

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1. Introduction

Although victims of crime suffer tremendous human and financial losses (Bradshaw & Umbreit, 2003; Office of Juvenile Justice and Delinquency Prevention [OJJDP], 1998), as Zehr (1990) argues, “Victims still remain peripheral to the justice process” (p. 31). Many crime victims face insensitive treatment in the criminal justice system. They often receive no restitution and rarely do they hear genuine expressions of remorse from the offender when the case is processed within traditional criminal justice system proceedings. As part of the healing process, victims need information about the crime itself and the adjudicatory process, compensation – sometimes given only in the form of an apology, and the right to participate in the process by which their cases are handled (United Nations Office for Drug Control and Crime Prevention [UNODCCP], 1999; Wemmers, 2002; Zehr, 2002).

During the last several decades, restorative justice theory and programs have (re)emerged in part in response to victims' dissatisfaction and frustration with the traditional criminal justice system (Braithwaite, 2002; Drowns & Hess, 2000; Lemley, 2001; Roberts, 1997; Sarri, 1995; United Nations Office for Drugs and Crime [UNODC], 2006; UNODCCP, 1999; Zehr, 1990, 2002). A recent national survey identified 773 programs in the United States which fell under the rubric of restorative justice (Bazemore & Schiff, 2005). Although a restorative justice approach has been a mechanism for dealing with

conflict since ancient times (Weitekamp, 1999), its modern corollaries such as Victim Offender Mediation (VOM), Family Group Conference (FGC), and healing circles have been developed relatively recently and the proliferation of these programs has occurred in a short period of time (UNODC, 2006).

Restorative justice approaches hold promise for redressing the harm experienced by victims (Abrams, Umbreit, & Gordon, 2006; Bazemore & Schiff, 2005; Bonta, Jessemann, Ruggie, & Cormier, 2006; Umbreit, Coates, & Roberts, 2001; Umbreit, Coates, & Vos, 2002; Umbreit, Vos, & Coates, 2005; Williams-Hayes, 2002). Findings from a variety of studies suggest that restorative justice programs are likely to provide an opportunity for crime victims to have their voices heard as well as to receive restitution. Offenders, especially young offenders, are provided with the opportunity to acknowledge responsibility for their behavior.

Admittedly, restorative justice has only recently been under study (UNODC, 2006) and several important issues remain unexplored. Most importantly, even though restorative justice is both a process and an outcome, existing studies focus primarily on the latter, using quantitative methods to evaluate certain restorative outcomes such as recidivism and restitution rates (Umbreit et al., 2002). Umbreit et al. (2002, p. 44) even argue that the process of restorative justice is now a “black box” because what constitutes service delivery has not been shown to outsiders, leaving a void in identifying how restorative justice works in practice. Zehr (1990) asserts, “Justice may be a state of affairs, but it is also an experience” (p. 28). And, Bazemore and Schiff (2005) warn that if restorative justice is not properly conducted, there exists a risk that victims will be re-victimized. Therefore, what

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actually happens in the restoration process remains to be studied, as relatively little attention has been given to studying the restorative justice process using qualitative methods (Umbreit et al., 2002). In other words, although its quantitatively derived outcomes are important to consider, the quality of the restorative justice process is of equal importance to understand.

While the theoretical literature on restorative justice emphasizes its procedural aspects such as restoring interpersonal relationships, healing emotional injuries and bolstering the empowerment of victims, contemporary research seems to fall short to provide an in-depth understanding about how these aspects are introduced, delivered and evolve in restorative justice programs. In this respect, an in-depth understanding of restorative justice practice through an examination of the process is critical. To examine the multiple perspectives of participants in a Victim Offender Mediation program, this study posed the following questions: 1) What are the young offenders and their families' experiences in the restorative justice context where their case was heard?; 2) what are the adult victims' experiences in the restorative justice context where their case was handled?; and 3) what are the service providers including mediators and referral sources' experiences in the restorative justice context where they got involved? The answers to these questions are reported elsewhere, however, in the context of this larger inquiry, the meaning-filled and essential nature of apology became apparent. Consequently, this article focuses on the process of composing, delivering and receiving an apology in the restorative justice context. The nature, wording and perception of the apology are highlighted as critical findings of this qualitative research. The salient features and findings of four victim offender mediations are presented.

2. Literature review

2.1. Defining restorative justice

The retributive justice paradigm, which emphasizes punishment and stigma, has dominated the criminal justice professions (Zehr, 2002). In retributive justice, when a crime occurs, the state defines itself as the victim and takes an active role to address the crime through punishing the perpetrator using incarceration or other forms of deterrence (Lemley, 2001; Zehr, 1990). In contrast, the restorative justice paradigm personalizes victims rather than objectifies them; crime is viewed as a violation of people and relationships by recognizing the centrality of the interpersonal dimension (UNODC, 2006; Zehr, 1990, 2002). The restorative justice paradigm presumes that the offender has primary responsibility to make things right not only by making reparations including symbolic ones such as an apology, but also by repairing relationships, including, when appropriate, the restoration of the relationship between the victim and offender (UNODC, 2006). Thus, justice involves the victim, the offender, the community and other stakeholders in searching for solutions that promote healing and reconciliation among people.

2.2. Restorative justice principles

Among various practice formats of restorative justice, VOM is the focus of the current study. Every VOM session requires an application of restorative justice principles. When these principles are not actively in play in each encounter, the translation of restorative justice from theory to action fails, and the meaning of the process for victims, offenders and the community is altered. Although there exist several versions of restorative justice principles (see UNODC, 2006), the key restorative justice principles relate to the ways victims are treated. Restorative processes should 1) evidence respect for victims' personal experiences, needs and feelings; 2) acknowledge the harm or loss they have suffered; 3) recognize their claim for amends; 4) provide an opportunity for communication with the person who caused the harm, if that person is willing; and 5) recognize that the victims are the primary beneficiaries

of the restorative process and are entitled to reparations (*Restorative Justice Consortium* as cited in Johnstone, 2003, p. 482). Zehr (2001) summed up these principles as follows:

... the process of justice must be *victim-centered* [italics added]. This means that victims' voices must be heard and that victims' needs – as they define them – must be addressed. Victims should have a right and a place to say what they need to say. (p. 3)

Practitioners, as the translators from theory-to-practice, have the primary responsibility for adhering to these restorative principles. Indeed, it is this adherence that makes responses to crime restorative; that make right the wrongs (UNODC, 2006; Van Ness & Strong, 2006; Zehr, 2002).

2.3. The restorative justice process

The nature of the restorative justice process is participatory in terms of maximizing information, dialogue, and mutual agreement among victims, offenders, and communities (Lemley, 2001; Van Ness, 2004; Zehr, 1990). Zehr (2002) writes of the importance of collaborative and inclusive restorative justice practice, which ensures respect for all participants. In short, restorative justice, placing both the victim and offender in active and interpersonal problem-solving roles, focuses on restoring interpersonal relationships, healing the injuries suffered by victims, and giving opportunities to offenders to take responsibility for their wrongdoings (Braithwaite, 2002; OJJDP, 1998; Zehr, 2002).

Despite the victim-centered nature of restorative justice programs, some evidence reveals a negative emotional impact on victims who have participated in restorative justice programs, such as increases in their levels of fear and their feelings of being pressured to participate in the process or to accept the apology given during the process (Bazemore & Schiff, 2005). These concerns underscore the need to examine the process from the victim's perspective with the goal of reducing the risk of secondary victimization (Bazemore & Schiff, 2005). In addition, the process of how an apology is delivered has not received proper attention in the literature.

2.4. An apology in the restorative justice context

In restorative justice, offenders are accountable for making things "right" by accepting responsibility for their actions through their sincere efforts to make amends, repair the harms suffered, and restore the broken relationships (UNODC, 2006; Van Ness, 2004; Van Ness & Strong, 2006). One consistent finding from empirical studies is that many victims consider the symbolic reparation of an apology more or equally important than the receipt of monetary reparation (Umbreit et al., 2001, 2002, 2005). This is a clear indication of the importance of *constructing, delivering and receiving* an apology within the restorative justice context.

A common definition of apology is found in *The American Heritage college dictionary* (2002), where it is defined as "an acknowledgment expressing regret or asking pardon for a fault or offense" (p. 67). O'Hara and Yarn define an apology (cited in Lee, 2005, p. 6–7) as an identification of the wrongful act, remorse, a promise to forbear, and an offer to repair. Lee (2005) notes that an apology must include some acts such as admitting fault, expressing regret, and expressing sympathy. And, in relation to admitting fault, Tavuchis (1991) argues, "To apologize is to declare voluntarily that one has *no excuse, defense, justification, or explanation for an action (or inaction)* [italics added] that has 'insulted, failed, injured, or wronged another'" (p. 17). From these definitions, it is clear that an apology must be delivered so as to project at least three elements: sincerity; empathy; and expressing regret with no excuse. All three elements must be identifiable to the victim.

While few empirical studies exist concerning the process of delivering an apology in the restorative justice context, Witvliet et al. (2008) argue that victims are likely to experience an "injustice gap"

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