

## RJ Dialogue Processes Are They Confidential?

### Erosion of Confidentiality in Some Jurisdictions is Cause for Careful Evaluation

By Kathleen Bird and Mary Ellen Reimund

It is common practice for facilitators in victim offender mediations, meetings or conferences to make assurances to participants that information shared in these meetings is confidential, but is it? Mediator training routinely stresses the necessity of confidentiality in victim offender dialog as an essential element of the restorative justice philosophy. Erosion of the broad policy of confidentiality is underway by various state statutes, court and administrative interpretations, and the proposed Uniform Mediation Act. A lively discussion of the breadth of confidentiality was a highlight of the 2000 VOMA Conference in Minneapolis.

In the hypothetical example discussed at the Conference, an offender meeting with the victim during a mediated conference reveals that in addition to assaulting this victim, the offender had previously assaulted another person, leaving that person unconscious. The victim reacts to this disclosure by threatening to go to the prosecutor with the information. The offender seeks to prevent the disclosure by claiming that everything said in the conference is confidential. Over 50 people attending the VOMA session gathered in small groups to ponder this scenario.

The conference participants agreed that the facilitator is put in a very awkward position if the

policy regarding confidentiality has not been clearly stated and agreed upon before or during the session. The consensus was that in the absence of a mutual understanding regarding the confidentiality of the meeting, the facilitator should stop the session. If appropriate, the facilitator could caucus with the victim and offender separately before proceeding any further. A poll of the group revealed that some programs have specific policies regarding confidentiality limitations, but many are operating on the assumption that confidentiality protections are absolute.

A trend is emerging, however, to put some limits on confidentiality in victim offender dialog, particularly disclosures that are of "significant" or "compelling" public interest. It may affect the confidentiality of a conference depending on whether it is viewed as civil or criminal in nature, as therapy or a settlement negotiation. There is interest in addressing the community's concern that justice may require the disclosure not only of offenders' self-incriminatory statements, but of exculpatory statements as well. In many jurisdictions, there is no clear statement of law or policy prohibiting the victim from reporting actions and statements that occur during a victim offender conference. A concern also arises whether a "gag" policy would encourage re-victimization. An

opinion was expressed that the offender's desire to meet the victim to make amends may outweigh the risks of non-confidential communication for many offenders. The need for total confidentiality may not be as necessary as we have come to assume.

See Confidentiality on page 10

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pages 6 & 7  
for the latest

### Research and Resources Review Vol. 1 Issue 2

Sponsored by  
The Center for Restorative Justice  
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School of Social Work

#### In this RRR Issue:

- Summary of the first study of RJ circles in the U.S.
- Circle Process/Minnesota Case Study
- Book Review: "The Handbook of Victim Offender Mediation"

Kathleen Bird J.D. is Director of the Office of Dispute Resolution Services, 7th Circuit, Kansas City, MO. Mary Ellen Reimund M.A., J.D., LL.M. is Assistant Professor of Law and Justice at Central Washington University.

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## VOMA Connections

VOMA Connections is published three to four times a year by the International Victim Offender Mediation Association. VOMA's Mission Statement is:

*"Promoting and enhancing restorative justice dialogue, principles, and practices."*

Our mission will be achieved only with a commitment to full diversity and equality of participation for all people. VOMA holds this commitment as central in its work.

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VOMA welcomes contributions, including short articles, literature reviews, case studies, program news and other interesting info. Photos and graphics are also welcome. Views expressed within the VOMA Connections are those of the authors and not necessarily those of VOMA.

Send submissions to Editor Ann Warner Roberts (See Board of Directors listing at right for contact information).

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#### Co-Editors

**Beverly Moore**

**Ann Warner Roberts**

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### Publishing Schedule for VOMA Connections

Issue	Submissions Deadline
#10 Winter 2001	November 1
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#12 Summer 2002	April 1

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- ◇ Frederick Mittleman, Josephine County Community Dispute Resolution Program, OR
- ◇ James W. Hauser, H&H Consulting, WA
- ◇ Joe Higgins, CO
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## Invitation to Become a VOMA Member

The International Victim Offender Mediation Association invites Agencies, individuals, students and libraries to become members. Benefits of membership include:

- VOMA Connections newsletter (10 copies will be sent to Agency Members);
- Discount on Annual VOMA Conference registration fees (see Conference information on page 5);
- Annual Membership Directory;
- E-mail listserve for announcements and discussions of interest to VOMA members;
- A World Wide Web site at [www.voma.org](http://www.voma.org);
- Agency members can be listed on VOMA's web site.

To become a member, see back cover of this issue of VOMA Connections or call VOMA at 612/874-0570.

## Letter to the Editor

Greetings,

I was glad to see your list of websites in the latest issue of Connections. One site not listed which I find has very good information and also links is the Law Commission of Canada at:

[www.lcc.gc.ca](http://www.lcc.gc.ca)

They have a very good paper on restorative justice that is well researched and written, and also publishes ongoing pieces and ask for comments. I think the site would be a valuable addition to your listing.

Peace,

Ernie Muhly  
EcoResolve  
Maryland



## News From VOMA Webmaster

VOMA's web site has been redesigned since the last issue of Connections. Come have a look at [www.voma.org](http://www.voma.org).

On VOMA's web site there is a links page which lists agency member web sites. If your agency has a web site that isn't listed, and you would like it to be, please contact VOMA's webmaster Duane Ruth-Heffelbower at [duanerh@fresno.edu](mailto:duanerh@fresno.edu).

We also have a new "button graphic" for webmasters to use in linking back to VOMA. That button is available at:

[www.voma.org/vomabene.shtml](http://www.voma.org/vomabene.shtml).

# VOMA Welcomes new Administrators

## Center for Policy, Planning and Performance Joins VOMA in Collaborative Partnership

As a first step in implementing its newly approved strategic plan, VOMA has entered into a contract with the Center for Policy, Planning, and Performance to provide administrative and organizational development services through 2002.

The Center, based in Minneapolis, Minnesota, is a nonprofit, tax-exempt corporation whose mission is to enhance the effectiveness of nonprofit and public sector organizations to achieve social justice. The Center will serve as the physical and administrative host to VOMA for 20 months, from March 1, 2001 through December 31, 2002. Center staff who will be working with VOMA are Barbara Raye, Monica Herrera, Claire Harris, and Carol Zierman.

The strategic plan calls for VOMA to develop its Board, financial, and organizational capacity, to provide expanded services to members, and to assume a stronger role in providing leadership and support for restorative justice principles. The Board is excited about VOMA's relationship with the Center and the progress being made on the newly adopted strategic plan.

The strategic planning process was funded by the Hewlett Foundation, as part of a three-year grant to VOMA. The Hewlett Foundation has expressed continuing support the VOMA's work and the implementation of the strategic plan. The Board would like to thank all those members and colleagues who participated in the planning process through surveys and interviews.

The Board will share the strategic plan and its implementation steps in more detail at the annual membership meeting to be held at the close of VOMA's 18th Annual Training Institute and Conference to be held on October 22 through 26, 2001 in Portland, Oregon. We hope you will attend what promises to be one of the best conferences and most exciting membership meetings VOMA has ever had.



*Above: Center for Policy, Planning and Performance Staff from left to right: Carol Zierman, Barbara Raye, baby Lauren, Claire Harris and Monica Herrera.*



*Left: VOMA's new Administrative Office building in Minneapolis, Minnesota.*



## Center for Policy, Planning and Performance Looks Forward to New VOMA Relationship

The staff at the Center for Policy, Planning, and Performance are thrilled and honored to have been chosen as the host agency for VOMA. The Center selects projects and alliances that allow us to move our mission of social justice forward. Our relationship with VOMA will allow us to further engage in that work while assisting VOMA in addressing its administrative needs and future goals. We are looking forward to the Conference in Portland, Oregon, and getting to know the membership that has nurtured and sustained restorative justice principles and practices. Call us or e-mail us if you have any questions (see contact info, VOMA Administrators, Page 2).

The purpose of the Center is to engage citizen-based leadership and to enhance the effectiveness of nonprofit and public sector organizations as they work to effectively and positively impact the lives of the people and communities that they serve.

The Center's staff and organization partners form an alliance among experienced consultants and management practitioners and other nonprofit organizations committed to the work of social justice and violence-free communities. The Center strives to facilitate action, guide learning, provide appropriate leadership, and support informed decision making for those who share our vision.

# VOMA 2001 Training Institute and Conference to be held in Portland, Oregon

October 22-26, 2001

VOMA invites you to attend the upcoming 18th Annual International Training Institute and Conference, to be held in Portland, Oregon, on October 22-26. This year's conference theme "Innovative Practices in Restorative Justice and Victim Offender and Community Processes" will set the stage for an incredible week of training and conference workshops. Together the Institute and Conference will present the leaders and innovators in the areas of restorative justice, VOM, conferencing and other dialogue processes.

In addition to the 20 training sessions and 33 workshops offered at the Institute and Conference, two evening video and discussion groups will be offered. "Long Night's Journey into Day - South Africa's Search for Truth and Reconciliation" will be offered Monday evening and "Slam," a powerful film about an African American aspiring poet and rapper who is arrested in a drug deal gone bad, will be offered Tuesday evening.

For more information on trainings and workshops, and to access the entire conference brochure, visit VOMA at [www.voma.org](http://www.voma.org).

## Autobiography of Conference Keynote Myrlie Evers-Williams Will Be Available at Conference

Conference Keynote Myrlie Evers-Williams' autobiography "For Us The Living" will be available for purchase at the Conference. Evers-Williams will be available for a book-signing Thursday evening. The book provides readers with a glimpse into her life with civil rights pioneer Medgar Evers and the experience of his murder:

"...I left Mississippi in July 1964. I moved with my children to Claremont, California, entered Pomona College, and put the children in school.

Slowly, with many detours - with relapses into a numbing emptiness - my life has begun to begin again. Whole days sometimes go by when I am so caught up in what I am doing that I do not think of that hideous night of hate and fear and death. And then sometimes at night when the house is quiet and the children are in bed, I think about the man who murdered my husband, and I know that he, too, was a victim.

In Mississippi we were all victims. The disease was hate, fed by fear, nurtured by ignorance, fostered by guilt. We were all, black and white, its victims.

Medgar died from it. His assassin lives with it infecting his very soul. I was wounded by it, but I hope not crippled. My children? Who knows? Who will ever know exactly what it does to children or by what age they still have a chance to escape?"



# Core Principles of Case Development for Victim Offender Conferencing

## “The Four Pillars” Articulate Important Values and Attitudinal Components Of Victim Offender Conferencing

By David Dyck

*“Conflict transformation requires the use of the most effective mediation strategies and techniques, but ultimately requires something beyond technique - an inner centeredness of the mediator. Once we see ourselves as providers of a safe and trusting presence, and not simply as mediation technicians, we will be more comfortable inviting people to get close to their pain, to reflect on their inner struggles, values and learnings.” 1*

Mark Chupp

As a private practitioner who provides consultation in the areas of conflict resolution and restorative justice, I am blessed with many opportunities to lead training sessions on victim-offender conferencing/mediation and casework. During a recent workshop I was conducting for new caseworkers with the Nova Scotia Restorative Justice Program, it struck me again that some of the more intangible yet absolutely critical attitudinal components of doing good casework and conferencing are often left out of introductory training efforts. That is, it seems to me that a good deal of training tends to be quite “techniquey” or skills focused. Training sessions and manuals tend to devote much more time and space to the ins and

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*David Dyck is a private practitioner in conflict resolution and restorative justice. He is currently an instructor with the University of Prince Edward Island and guest taught at Eastern Mennonite University’s Summer Peacebuilding Institute in Virginia in 2001. He previously worked with Mediation Services of Winnipeg, Manitoba and remains an associate. David lives in Halifax, Nova Scotia with his partner, Tammy Sutherland.*

outs of executing a technically sound paraphrase than they do to the underlying aspects of what I call “deep listening.” Perhaps this is at least in part because these latter aspects are harder to articulate and even harder to teach. Regardless, it has often struck me that I can teach someone to paraphrase or follow a particular casework or mediation model, but they can still do a lot of damage if they don’t “get” the dynamic principles out of which the skills and models need to grow. It has been my conviction for some time that we, as trainers and practitioners in the field of victim-offender conferencing, must work to articulate these grounding values and attitudinal components in a more explicit and consistent way.

As a result of these reflections, I recently wrote a short piece I entitled “The Core Principles of Victim-Offender Casework.” In the article, I describe four attitudinal “pillars” that I have found to be foundational to my own efforts as a caseworker and mediator. When I distributed this write-up as a part of a recent workshop, a participant approached me and suggested there might be value in sharing it more broadly through the VOMA Connections. So, in a spirit of prompting more dialogue, I offer the following reflections in the original “bullet point” format I used to facilitate easy reading.

### 1. Respect

- Effective case development is based, above all, on a commitment to show radical respect for all persons we are fortunate enough to work with. This is equally true whether the person we are working with the victim, the offender, or their support person(s).
- “Radical respect” means showing regard for the person you are working with, even when they are not demonstrating the same for you. This does not mean being a doormat or passively accepting

abusive behavior. Instead, it means setting limits with people in ways which are assertive rather than aggressive (assertion demonstrates regard for the rights and basic needs of both self and other, aggression shows regard only for own rights and needs).

- Radical respect also means demonstrating understanding for people regardless of the things they may have done. This does not mean we hold their harmful behavior in high regard. Rather, it means that we separate their behavior from their personhood. It means we strive to remember that this is a fellow human being who is worthy of our care and deepest consideration on this basis alone.
- Respect means accepting that all people make mistakes and that we are all capable of learning and growing from them. It means recognizing that we all lose our way at some point or another and that we are all capable of discovering or re-discovering a more healthy path for ourselves.
- As case developers, we approach our task with a deep reverence for “the personhood of the other, their gifts, needs, and vulnerabilities. It means that (we) try to listen deeply...even to those who lash out with ferocity” or whom we are tempted to see as undeserving of respect.<sup>2</sup>

### 2. People Can Make The Decisions That Are Right For Them

- Part of respect involves working out of the understanding that people are their own best experts.
- People may need help in understanding their circumstances, choices, and the possible implications of various options.

# Center for Restorative Justice And Peacemaking 2002 Tentative Schedule

## National Restorative Justice Training Institute Tentative Schedule for 2002

Center for Restorative Justice & Peacemaking  
University of Minnesota, School of Social Work

**March 15**

Restorative Justice &  
International Peacemaking Initiatives

**April 26**

Peacemaking and Spirituality: Touching the  
Soul of Restorative Justice

**May 16-18**

Introductory Victim Offender Mediation &  
Conferencing: Multi-Method Approach

**June 17-22**

Victims of Severe Violence Meet Offender: A  
Journey Towards Healing & Strength

**July 16-19**

Peacemaking Circles in School and  
Community Settings

**Dates to be Determined**

Peacemaking Circles in School and  
Community Settings

**Sept. 5-7**

Introductory Victim Offender Mediation &  
Conferencing: Multi-Method Approach

**Oct. 7-12**

Victims of Severe Violence Meet Offender: A  
Journey Towards Healing & Strength

For up-to-date information on final plans for seminars, contact the Center's web-site at:  
<http://ssw.che.umn.edu/rjp>



### Community Peacemaking Project:

#### Responding to Hate Crimes, Hate Incidents, Intolerance, and Violence Through Restorative Justice Dialogue

The Community Peacemaking Project is a 2 year project to identify, support, and develop new responses to intolerance and hate crimes through restorative dialogue. The Center for Restorative Justice & Peacemaking, in collaboration with the National Organization for Victim Assistance (NOVA), will be examining specific cases involving intolerance or hate crimes/incidents where restorative justice programs may have used victim offender mediation or conferencing, or other forms of dialogue. Please send a brief description of the case(s), either preventative or reactive, to the Center's e-mail address: [rjp@che.umn.edu](mailto:rjp@che.umn.edu). Or, contact the Center by phone: 612/624-4923 or fax: 612/625-8224.

## Project on Use of Restorative Justice in Cases of Violence Against Women Requests Info

The Prince Edward Island's Restorative Justice Network, in partnership with other community and government organizations, has undertaken a project focussing on the use of restorative justice in cases of violence against women. The goal of the project is to ensure that women victims of violence are not re-victimized by justice, including restorative justice, options.

One of the activities we are undertaking during the project is some research into other work completed or being done in the area of restorative justice and violence against women, including programs in place which use restorative justice in cases of violence against women, critiques of restorative justice from the perspective of violence against women and any publications or reports on the topic, in Canada as well as internationally.

The research will be carried out between June and August, 2001. A compendium of the activities in this area will be compiled as a result.

If you have any information about programs, reports, projects, activities, etc. in this area, please contact:

Kirstin Lund  
Project co-coordinator  
e-mail: [lund@isn.net](mailto:lund@isn.net)  
Tel: 902/ 569-1894



### Four Pillars

*continued from page 6*

- Our role is as an accompanier and information provider, not as a problem-solver who knows what's best and talks people into participating regardless of their concerns. Our approach should be process oriented rather than outcome oriented, with a focus on empowering informed decision making by the client rather than "getting parties to the table."
- At the same time, people often need help to understand the potential benefits of participating in mediation or conferencing. They should also be helped to carefully think through potential drawbacks.
- People may need time to make their decision. Our approach should be flexible enough to meet the particular needs of particular people in particular circumstances. This entails being willing to give people time to think things over rather than pushing them to make a quick decision. It means being willing to talk more than once. This, in turn, may mean being willing to advocate on their behalf with systems which are often more concerned with expedience and efficiency. It involves being ready to refer them to others who may be able to provide them with important additional information.

### 3. Principles Take Precedence Over Models

- We must remember that the core principles described on these pages are more important than any particular model or specific techniques.
- "Form follows function" - that is, our casework models are made for people and not people for our casework models. The models we are using should serve the needs of the people we work with. If they do not, we must be prepared to adjust our models. This, in turn, may mean being willing to advocate on their behalf with systems which are often more concerned with bureaucratic, formulaic consistency.

- Whereas principles or values are dynamic, models are more static. Since principles can be fleshed out in different forms and models represent specific approaches and skills, we will be better prepared to respond effectively to a variety of situations if we emphasize the principles.
- At the same time, for a beginner, learning a particular model is a vital entry point for coming to understand and integrate the principles or deeper "spirit" of the process.
- As beginners, we must first work with discipline to become comfortable and competent with a particular approach before we can diverge and remain confident that we are still giving expression to our principles.

### 4. Making A Connection Is More Important Than Executing Technique

- Techniques and skills, when engaged with the wrong attitude, have as much potential to do harm as to do good.
- Therefore, the most important aspect of effective casework or mediation is the attitude or spirit you, as the caseworker or mediator, bring to your task.
- This is not to imply that developing proficiency in communication skills, tools and techniques, and collaborative processes are not important. Rather, it is to suggest that it is our attitude which "gives (these approaches and skills) meaning and renders them powerful."<sup>3</sup> Our spirit is the fertile soil in which learned skills can take root and become our own.
- Above all else, casework is based on "being present" and modeling what we are trying to foster in others. It is a call to sincerity and transparency. It is about making a connection with another human being.

### Resource Cited

Schrock-Shenk, C. (2000). *Spirituality: The fertile soil of peacemaking*. In Carolyn Schrock-Shenk (Ed.), *Mediation and facilitation training manual: Foundations and skills for constructive conflict transformation* (fourth edition). Akron, Pennsylvania: Mennonite Conciliation Service.

### Footnotes

- 1 Carolyn Schrock-Shenk, in *Mediation and Facilitation Training Manual*, p.29, 2000.
- 2 Carolyn Schrock-Shenk, in *Mediation and Facilitation Training Manual*, p. 29, 2000.
- 3 Carolyn Schrock-Shenk, in *Mediation and Facilitation Training Manual*, p.28, 2000.

## National Institute of Corrections Offers Web Based Distance Learning in RJ

The National Institute of Corrections is offering a Distance Learning Videoconference on Restorative Justice.

The live, 32-hour Satellite/Internet Training Program titled "Restorative Justice: Principles, Practices, and Implementation," will be held January 28 through February 1, 2002.

The two-part broadcast explores principles, values, and practices of restorative justice. Participants learn to develop systems, structure, and protocols to implement a restorative justice model. Creating active partnerships with communities and opportunities for victim participation is addressed. Participant teams prepare a strategic action plan to design, develop, and implement restorative justice practices locally.

To access information on the Videoconference:

[http://www.nicic.org/services/video/02\\_dl\\_restorjust.htm](http://www.nicic.org/services/video/02_dl_restorjust.htm)



# Fall Preview of New Restorative Justice Books

## Anthology of Original Essays Captures Essence of RJ

"Restorative Community Justice: Repairing Harm and Transforming Community." Edited by Gordon Bazemore and Mara Schiff. An anthology of original essays, this book captures the essence of this evolving field by presenting ongoing debates over practice, theory and implementation. Daniel Van Ness, John Braithwaite, Declan Roche, Howard Zehr, Mike Dooley, Adam Crawford, Todd Clear, Mark Carey and Barry Stuart are among the variety of authors represented. The wide range of perspectives is intended to integrate restorative community justice practice and theory between micro and macro, informal and formal, and prevention and intervention. Attention is focused on the movement's direction toward a more holistic, community-oriented approach to criminal justice intervention."

To order this book:

ISBN 1-58360-506-1 (2001) 375 pp. \$35.95  
Anderson Publishing Co.  
Tel: 1-800-582-7295

This book announcement was adapted from the newsletter Kaleidoscope of Justice Vol. 2 No. 2 Spring/Summer 2001, p. 5.

## Book Advocates For Rethinking of RJ

The new book "Restorative Justice: Healing the Foundations of Our Everyday Lives" poses a radical critique of current criminal justice practices in favor of a restorative justice alternative. Then, it advocates a fundamental reformulation of the thinking and practices of restorative justice itself.

The book was written by co-authors Dennis Sullivan and Larry Tift. Sullivan directs the Institute for Economic and Restorative Justice and is an Adjunct Professor of Criminal Justice at the State University of New York at Albany. Tift is a Professor

of Sociology at Central Michigan University. They have written many works on restorative justice, are founders and co-editors of the international journal Contemporary Justice Review, and co-founders of the Justice Studies Association.

To order this book:

ISBN: 1-881798-31-3 \$19.50 (paper)

North American Distributor:

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1-845-783-1144 (or 845-354-9139)

fax orders: 1-845-782-3953

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## New Book Provides Pictures and Stories of Courageous Victims

"Transcending: Reflections of Crime Victims" by Howard Zehr, presents the portraits and the courageous stories of 39 victims of violent crime. Many of these people were twice-wounded: once at the hands of an assailant; the second time by the courts, where there is no legal provision for a victim's participation. "My hope," says Zehr, "is that this book might hand down a rope to others who have experienced such tragedies and traumas, and that it might allow all who read it to live on the healing edge.

To order this book:

Paperback:\$18.95 Hardcover:\$29.95 (202 pp)

Good Books

POB 419 Intercourse, PA 17534

800/762-7171

[www.goodbks.com](http://www.goodbks.com)

## Handbook of VOM: An Essential Guide to Practice and Research

"The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research," by Mark Umbreit, is reviewed by Russ Immarigeon in the pull-out insert "Research and Resources Review, Volume 1 Issue 2" found in this issue of VOMA Connections. Immarigeon says of Umbreit's book "Every victim offender mediation and restorative justice program should have a copy of this very valuable volume, especially for those people who are now entering this field of practice."

To order this book:

ISBN: 0-7879-5491-8

\$69.95 (448 pp.) (2001) Jossey-Bass

St. Paul Campus Bookstore

University of Minnesota

Tel: 612/624-6267

Fax: 612/625-2229

## Book From European Forum Available

The book resulting from the First European Forum for Victim-Offender Mediation and Restorative Justice is now available. The first six chapters are presentations from the first conference of the European Forum, held in Leuven, Belgium, 27-29 October 1999. These chapters consider victim-offender mediation and restorative justice from a theoretical point of view. The remaining eight chapters are overviews of the state of affairs on victim-offender mediation in eight European countries: Austria, Belgium, Finland, France, Germany, Norway, Poland, and the United Kingdom.

To order this book:

ISBN 90 5867 035X

Orders can be made directly on the Leuven

University Press website:

[www.kuleuven.ac.be/upers/uplhome.htm](http://www.kuleuven.ac.be/upers/uplhome.htm)

## Confidentiality

*continued from page 1*

Another issue for facilitators is jurisdictional reporting requirements that limit confidentiality. Some states require mediators to report instances of child and elder abuse or threats of serious bodily harm. Program guidelines may include restrictions on confidentiality tied to community interests or funding requirements. It does not appear to be realistic to assert an absolute privilege of confidentiality that flies in the face of the public interest.

What can facilitators do to circumvent this confidentiality dilemma? Pre-meeting disclosure can be helpful. Some programs have the participants' sign a document outlining what is protected by confidentiality while conferencing and what is not, but even a signed confidentiality agreement may not be binding if it contravenes public policy. If there are confidentiality limitations, such as anything the offender says about crimes other than the current offense are not offered protection from disclosure, these should be agreed to by the victim and offender prior to meeting. As one conference participant said, "given the present climate we tell the offender to take the Fifth."

Participant comments presented a wide continuum of opinions ranging from not reporting the information revealed about the assault to absolutely having to report the disclosure. Concerns surfaced as to what impact revealing information shared by the offender might have on the victim offender meeting process. If victims and offenders could not be assured of confidentiality would there

to nix the restorative process? More questions than answers seem to surround this discussion. Because of the state-by-state statutory and court interpretations and program variations, absolute answers are not realistic but here are some questions to guide your evaluation.

## GUIDES FOR EVALUATION

1. Does your state have a statute or rule covering confidentiality in mediation?
2. If so, does it specifically include victim offender mediation or has there been an interpretation of that statute that makes it inclusive or exclusive?
3. Are there specific statutory exceptions to confidentiality protections?
4. Who does the statute protect (facilitator as well as the parties) and what protections are afforded?
5. Are there other professional standards that may govern how you deal with confidentiality if you are an attorney, mental health professional, social worker, police or probation officer?

## Uniform Mediation Act Addresses Confidentiality

The Uniform Mediation Act has completed the drafting stage as a joint effort of the National Conference of Commissioners on Uniform State Laws and the Dispute Resolution Section of the American Bar Association. It cleared an important hurdle by obtaining approval from the National Commissioners on August 16, 2001. Approval of the ABA House of Delegates will be sought in the near future. The final draft (dated May 4, 2001) may be viewed at [www.pon.harvard.edu/guests/uma](http://www.pon.harvard.edu/guests/uma). The goal of UMA supporters is to simplify the variety of privilege statutes by nationwide adoption of the Act.

The UMA addresses confidentiality in mediation and creates various privileges for the participants and the mediator, covering all oral recorded, verbal and nonverbal communications made in considering, initiating or participating in mediation. Some proceedings are exempt: such as collective bargaining, peer mediation among minors in a school or correctional setting, and mediation by judicial officers deciding a case. Exceptions to confidentiality are numerous, including communications offered for prosecution of a felony

offense, threats to inflict bodily injury, and conspiracy to conceal or commit criminal activity. Mediation participants are afforded the right to bring an attorney or other individual they designate to the mediation, and any waiver of this right may be rescinded. A mediator's disclosures to court, agency or other authorities are limited. The UMA imposes a duty on mediators to inquire into facts that would affect their impartiality, such as financial or personal interests or past or existing relationships with participants. Mediators must disclose conflicts of interest and their qualifications to mediate a dispute.

The Association for Conflict Resolution's (ACR) response to the latest draft of the Uniform Mediation Act is on the following web-site: <http://www.mediate.com/articles/comments.cfm>

ACR is the merged organization of Society for Professionals In Dispute Resolution (SPIDR), Conflict Resolution Education Net (CREnet), and Association of Family Mediators (AFM).

be any willing participants. Could the whole victim offender program be jeopardized? Could this be just the piece that opponents have been looking for

an attorney, mental health professional, social worker, police or probation officer?

*Confidentiality continued on next page*

6. What happens if confidentiality is breached? What is the remedy?

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**Footnotes**

1. See KS Stat. 23-606. The duty to report cases of child abuse is required in all 50 states, but there are statutory variations as to who would be a mandatory reporter. Even if the person facilitating the conference is not included in the statute, does the agency you are conducting the conference for fit within one of the categories: for example community corrections.
2. See *Tarasoff v. Regents of Univ. of California*, 17 Cal.3d 425 (1976) a psychotherapist has a duty to disclose threats to protect the public.
3. See Pamela A. Kentra, "Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict or Attorney-Mediators Between the Duty to Maintain Confidentiality and the Duty to Report Fellow Attorney Misconduct," 1997 B.Y.U.L. Rev. 715, Appendix A (survey of state statutes and local rules that grant confidentiality to the mediation process. Most statutes discuss mediation in a general way as it relates to civil mediation; few refer specifically to victim-offender mediation requirements. In 1994, the ABA passed a resolution supporting Victim-Offender Mediation/Dialogue Programs suggesting 13 requirements. Number 8 says, "The statements made by victims and offenders and documents and other materials produced during the mediation/dialogue are inadmissible in criminal and civil court proceedings."
4. A Texas Attorney General Opinion determined that victim offender mediation conducted by the Texas Department of Criminal Justice was not considered mediation under the state's ADR Act and was not entitled to the Act's confidentiality provisions. *Op. Tex. Att'y Gen., Open Records Decision No. 659 (1999)* interpreting *Tex. Civ. Prac. & Rem. § 154.073*.
5. See footnote 4. Some statutes do not afford protection for past criminal acts or future criminal threats.

**American Humane  
2002 FGDM  
Roundtable  
Abstracts Requested**

Call for Abstracts for the 2002 American Humane Association's (AHA) National Center on Family Group Decision Making (FGDM) Roundtable, scheduled to occur in Monterey, CA, June 2-5, 2002.

The focus of FGDM within the AHA is primarily on child welfare/protection, although some practitioners and programs work with cases from the criminal justice field.

This year's Roundtable theme is "Revolutionizing Practice with Children and Families: Sustaining and Growing the FGDM Movement." Independent of your experience with FGDM and the annual Roundtable, we encourage you to submit an abstract that will broaden your colleagues' perspective and advance their thinking.

Please review our call for abstracts at:  
[http://www.fgdm.org/CFP\\_2002.pdf](http://www.fgdm.org/CFP_2002.pdf).

The deadline for abstract submission is  
September 28, 2001.

The templates for the formal workshops or the discussion groups are available on the AHA fgdm website.

For more information contact:

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[www.ahafgdm.org](http://www.ahafgdm.org)

**RJ Conferencing  
Shows Promise For  
Early Intervention**

The U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the availability of "Restorative Justice Conferences as an Early Response to Young Offenders."

Youth who become involved in the juvenile justice system at an early age are significantly more likely to continue offending than their older counterparts. Indeed, it is estimated that 6 out of every 10 children who are referred to juvenile court at ages 10 to 12 will return. Since very young offenders are more likely to re-offend and to progress to serious delinquency, effective early intervention is crucial. This Bulletin features the findings of the evaluation of a promising form of such early intervention: the Indianapolis Restorative Justice Conferencing Experiment. The Bulletin was written by Edmund McGarrell, Ph.D., Director of the Hudson Institute's Crime Control Policy Center.

"Restorative Justice Conferences as an Early Response to Young Offenders" (NCJ 187769) is available free from the Juvenile Justice Clearinghouse (JJC) in a medium to suit your needs. Please use the document number when ordering. Hardcopies can be ordered online at <http://puborder.ncjrs.org/> or by writing JJC at P.O. Box 6000, Rockville, MD 20849-6000. You may also call JJC at 800-638-8736 to speak with a publications specialist to request that the document be mailed to you.



## VOMA Membership

- Agency membership is available to any organization that has an interest in victim offender mediation, conferencing and circle processes, the philosophy of restorative justice, or the criminal justice system. Annual agency dues are \$150.00.
- Individual membership is available to those persons interested and/or involved in victim offender mediation and conferencing programs. Annual individual dues are \$40.00.
- Student membership is available to full-time students. Annual student dues are \$25.00.
- Library and educational institution memberships are available, which consist of a subscription to the newsletter. Annual library and educational institution dues are \$30.00.

VOMA membership benefits include the VOMA Connections, the Annual Directory of Members, access to VOMA resources, and discounts on the Annual Conference registration.

### Membership Application

Name/Contact Person \_\_\_\_\_

Title \_\_\_\_\_

Program Name \_\_\_\_\_

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Tel \_\_\_\_\_ Fax \_\_\_\_\_ Amount Enclosed \_\_\_\_\_

Type of Membership (Full-time student membership, please list school name) \_\_\_\_\_



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