

**Models of Criminal Justice Ministry and Resistance: A Southern Christian Perspective**

by *Harmon L. Wray*

Police and prison business - a dangerous mixture of public and private investments - is a growth industry in the United States. As today's criminal justice system finds itself inheriting or seizing many of society's problems and conflicts that were formerly addressed by our primary institutions (e.g., family, workplace, public school, faith community, mental health, and welfare), it assumes a steadily growing importance in our common life and in the private lives of many, especially the poor and people of color. It also represents an expression of our society's ever growing spirit of revenge and constitutes an important link in the vicious cycle of violence; in the complex social web of economic, racial, and gender injustice; and in the growing wave of political repression.

Historically, the Southern states have led the way in the perpetuation of these cycles and in the growth of the prison industrial complex because of such factors as racism, history, and "bad theology."

As a region, the South has the highest rate of gun ownership, the highest rates of crime and violence, the highest rates of incarceration, most of the executions, most of the private for-profit prison beds, and headquarters for almost all the private prison companies in the nation. On all these scales, except executions (and it is close to the lead there), the South also leads the world. It is no accident that the South is also the historic home of the most severe racism, the most intractable poverty, the most powerful patriarchy, the most virulent militarism, the weakest labor movement, and the most vital and pervasive evangelical and moralistic Protestant religious culture in the country. Southern states also lead the nation in the percentage of convicted felons - largely disenfranchised people of color. The South is a fast-growing area, a rapidly expanding urban and suburban region, and a section that in the last generation has gone from political domination by the Democratic Party to

domination by the Republican Party.

The tentacles of the punishment industry are rooting themselves in communities of faith, particularly in the South, since Southerners are both more likely to be "churched" and more likely to serve, or have served, time in prison or jail. Yet for reasons both sociological and theological, most congregations -- especially those in the so-called "mainline" denominational traditions -- find themselves ill equipped to respond effectively and faithfully. I believe that this is true in other parts of the U.S. as well, but it can perhaps be seen most clearly in Southern churches.

Many church ministers are so alienated, unfamiliar, and intimidated that they are of little help to crime victims, offenders, ex-offenders, prison staff, or any of their family members when confronted by issues of crime and punishment. Most such church communities, those made up of primarily middle-class and/or white members, try to distance themselves from such an unpleasant and frightening world, except for those of their members (a considerable number) who hold positions of power within that system - legislators, judges, prosecutors, defense lawyers, wardens, corrections bureaucrats, probation and parole officers, and the like.

On the other hand, individual congregations and denominations whose membership is poorer and/or more African-American or Latina/o, have no choice but to engage with the system, since both crime and punishment overwhelmingly target these groups, and since many police and corrections officers are members of these groups. Again, I believe that this is also the case in other regions of the country as well as in the South, sometimes with different ethnic demographics.

Today in this nation -- and especially in the South -- the interface between the dominant Christian religious institutions and the criminal justice system tends to take one of two forms:

1. The predominantly white and middle-class, moderate to liberal, "mainline" denominations (e.g., Catholic, United Methodist, Episcopal, Lutheran, United Church of Christ, Christian Church, American Baptist, Presbyterian) pass enlightened and progressive -- sometimes prophetic -- resolutions on criminal justice issues (e.g., restorative justice, private prisons, the death penalty), which largely go unpreached and untaught at the local church level, either because many clergy disagree with them or because they are very controversial or unpopular among the laity in the pews. As for direct ministry, few of their clergy and laity ever set foot in a place of incarceration, since middle- and upper-class persons seldom get locked up. Meanwhile, church members who work in or over the criminal justice system find themselves directly and/or indirectly participating in activities and enforcing policies on a daily basis which are at odds with their churches' stated positions (although few of them know this), and often with their own consciences.

At the same time, these denominations provide (and "endorse" or "certify") most of the clergy who serve the prison system as government-paid prison and jail chaplains. Because of who writes their paycheck, these chaplains have great difficulty winning from prisoners the trust that is necessary for good pastoral work. Due to their employer's power and control over them, they also have great difficulty exercising the prophetic function of ministry, which would put their job security at risk. (This is unfortunate, since they are in

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## VOMA Connections

**VOMA Connections** is published four times a year by the International Victim Offender Mediation Association.

**The Mission of VOMA 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 information. Photos and graphics are also welcome.

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**Conferences and Membership Maintain Restorative Justice Values**

by Susan Wiese

The Victim Offender Mediation Association (VOMA) has a rich, interesting history. I first became aware of the field we now call Restorative Justice through the Victim-Offender Reconciliation Program (VORP) Gatherings held in the mid-1980s. The VORP Gatherings were the first national meetings of people working in victim-offender reconciliation programs; they were organized through the PACT Institute of Justice in Indiana. Eventually, as the field expanded, the U.S. Association for Victim-Offender Mediation was formed, and later this group evolved into what we now know as VOMA.

The story of the "original" victim offender case in Kitchener, Ontario - and the beginning of the Restorative Justice movement - is well known (see adjoining timeline). [Editor's note: For details on the first American case, see Mark Umbreit, *Crime & Reconciliation: Creative Options for Victims and Offenders* (Abingdon Press, 1985).] The 30<sup>th</sup> Anniversary of the movement will be celebrated in Kitchener in 2004. I'm sure when that case was first acknowledged, there was little realization that the concepts and values that were driving that situation would become the basis of an international movement.

My involvement with the Restorative Justice movement began in 1986 when our local Chief Public Defender suggested I apply for a position as coordinator of a new VORP program starting in our community. Having never heard of this program before, I set out to learn more about it, and was fortunate to be able to attend the VORP Gathering that was held in Valparaiso, Indiana in the summer of 1986. This was an early Gathering, but not the first. While the number of people attending was small, the enthusiasm and belief in this work was contagious. The integrity and values that were central to this work were what attracted me to pursue this work more strongly.

Since my first Gathering, I have watched this organization go through many transitions and grow in numbers. But a common theme has remained and I believe it is the true strength of our organization. VOMA has been the place where I have met "like-minded" people who are committed to maintaining the strong value base of restorative justice. While the term "re-

storative justice" has gained popularity, a fear has been that the concepts would be co-opted in ways that don't really change the way we "do business" (or as Howard Zehr has called - changing the paradigm) but rather become a trendy term for doing "business as usual". Throughout the years, it has been VOMA that has maintained restorative justice values as the core of its work.

VOMA has undergone many transitions, from its first "Gatherings" to the struggles of beginning a more formalized organization (The U.S. Association for Victim Offender Mediation) and of expanding to include an international focus (Victim Offender Mediation Association). Like other organizations, VOMA has experienced both the joys and pains of growth and development. But, its commitment to the underlying values has remained constant. Commitment to these values is reflected in front line work in the field, but also in the ways decisions are made at the Board and policy level. This has not been without its struggles, but the strength of VOMA lies in its members and their "heart" for this work.

**VOMA has been the place where I have met "like-minded" people who are committed to maintaining the strong value base of restorative justice**

VOMA is perhaps best known through its conferences. The conferences are the gathering place for its members. Here is where new ideas are presented, well-known people in the field share their work, and energy is restored. But, I think VOMA's strongest contribution in these conferences is the opportunity for the practitioners to meet and dialogue. In the "trenches" through the rest of the year, it is the connections with others who are on the front line that have helped me to stay committed to the values of restorative justice. Those "behind the scenes" phone calls and support are core to keeping the mission and values alive in our individual programs. Just as our work with those harmed by crime is work of the "heart", our work and support of each other is also work of the "heart". As VOMA continues

**A Restorative Justice Reader: Texts, Sources, and Contexts**

Gerry Johnson (Ed.)  
Willan Publishing (2003)

Review by Russ Immarigeon

In **A Restorative Justice Reader: Texts, Sources, and Contexts**, British law professor Gerry Johnson has compiled a valuable 510-page collection of international source material not just for newcomers, but also for seasoned veterans.

An introductory section on "Overviews and Early Inspirations" consists of groundbreaking articles from Tony Marshall, Randy Barrett, Nils Christie, Howard Zehr, and John Braithwaite. Another section, "Background Legacies and Frameworks," contains historical American, New Zealand, Canadian, and German studies by Harold J. Berman, Rupert Ross, Robert Yazzie and James W. Zion, and Jim Consedine. A third section on variations, developments, and rationales in restorative justice practice has articles on "the Kitchener experiment," doing justice without lawyers, an early evaluation report on family group conferences in New Zealand, and different models of restorative conferencing.

Also included are articles by Dan Van Ness, Lode Walgrave, John Gehm, Paul McCold Andrew Ashworth, Heather Strang, Barbara Hudson, and Kathy Daly. Appendices reprint the *Declaration of Leuven on the Advisability of Promoting the Restorative Approach to Juvenile Crime*, the Restorative Justice Consortium's *Statement of Restorative Justice Principles*, and the UN's *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*.

In his introductory essay, Johnson says that defining restorative justice is difficult, especially as even restorative justice advocates differ on its goals and objectives. According to Johnson, all criminal justice interventions should achieve certain outcomes, including crime prevention and reduced recidivism. Restorative justice, it is argued, has grander objectives, including fairness and victim satisfaction, which are even harder to measure. Minimally, Johnson adds, restorative justice should be evaluated from the perspectives of empirical criminology and penology, legal studies, ethics, psychology, sociology, and history.

This volume is available in hard and soft covers, at discounted prices, from International Specialized Book Services, 5824 N.E. Hassalo St., Portland, OR 97213-3644, (503) 287-3093, [info@isbs.com](mailto:info@isbs.com)



## VOMA Assists Romanian Efforts to Establish Mediation Services

by Barbara E. Raye, Annie Warner Roberts, and Sue Wiese

Since 2001, the Community Mediation and Safety Center (CMSC) in Iasi, Romania, has been the only Romanian agency offering mediation services. Unfortunately, no legislative framework currently exists in Romania to regulate and encourage the use of alternative conflict resolution services. The result is slower and more expensive processes to resolve common community and family disputes or more complex disputes such as commercial and workplace litigations. Creation of a network of community mediation centers is necessary to resolve community disputes and standardize approaches. While some

NGOs attempt to serve a community mediation function, many have differing approaches to the type of conflicts and disputes they address. A more standardized approach is needed.

In April 2003, CMSC formed a partnership with the Victim Offender Mediation Association (VOMA). The overall purpose of this partnership is to develop Romania's mediation capacity through the introduction of new services, increased public awareness, and the introduction of legislation on mediation. The two major goals of the project are:

- Establish a network of three conflict resolution centers in the northeastern Moldavian region of Romania with teams of mediators to resolve family and community conflicts; and
- Strengthen conflict mediation services in Romania through building local NGO capacity, increasing public awareness on the need for mediation services, and creating new mediation legislation.

### Training

From May through July 2003, VOMA provided 20 days of training and consultation. Barbara E. Raye (Center for Policy, Planning and Performance), Annie Warner Roberts (Center for Restorative Justice and Peacemaking, University of Minnesota, School of Social Work) and Susan Wiese (Coulee Region Mediation and Restorative Justice) comprised the training team, while Cornel Loghin, CMSC's program coordina-

tor, served as translator.

Six courses were offered in mediation and related areas, plus additional days of independent study:

- Victim Offender Mediation/Restorative Group Conferencing (VOM/RGC)
- Training of Trainers in VOM/RGC – Level 1
- Training of Trainers in VOM/RGC – Level 2
- Basic Mediation – Level 1
- Basic Mediation – Level 2
- Workplace/Commercial Mediation & Supervision

Fifty-five people were trained, including probation officers, social workers, attorneys, youth workers and other NGO professionals.



Annie Warner Roberts (left) and Barbara Raye (center, in white) with some CMSC Staff

### Media Campaign

In July 2003, a media and public awareness campaign was launched to enhance general knowledge in Romania about alternative methods for conflict resolution. Representatives from the governmental and funding agencies, Parliament, the criminal justice system, mediation centers, and the national press were present at the launch. Barbara Raye and Annie Warner Roberts were interviewed for national television and newspapers.

This opening media event featured a new video promotional clip on mediation. Based upon a Romanian folk tale about shepherds and their flocks, the video illustrates the need for and advantages of mediation. In the future, the video will be presented on five national and local

television channels. At least two million people will be reached.

### Legislation

In order to introduce, promote, and sustain mediation in Romania, it is important to develop authorizing legislation. CMSC has established a team to review existing legislation from English speaking countries, the European Union, and Romania. The Center for Restorative Justice and Peacemaking, based at the University of Minnesota, provided a copy of their recent publication, *Legislative Statutes on VOM: A National [U.S.] Review* (see page 5 of this issue for an abbreviated version of this report).

### Resources and In-kind Contributions

Significant amounts of in-kind time and resources were contributed to the project.

VOMA, the Center for Policy, Planning and Performance, and the Center for Restorative Justice & Peacemaking donated resources, including the following:

- Complete set of six VOM/Conferencing/RJ videos;
- National RJ Training Institute materials;
- *12 Steps to Personal Peacemaking* booklets; and
- A report on *The Impact of RJ Conferencing: A Review of 63 Empirical Studies in 5 Countries*.

### Romanian – American Pen Pal Partners (RAPPP)

CMSC and VOMA will sustain the partnership into the future. The Romanian–American Pen Pal Part-

ners (RAPPP) initiative will pair up practitioners from both countries for one-to-one partnerships to foster reciprocal dialogue. We expect the cross-cultural exchange will be mutually beneficial, as partners will share ideas, issues, and innovations with each other. Interested practitioners can contact VOMA for further information about how to help. Practitioners from Romania have already applied for U.S. partners.

### Future Partnership Projects

CMSC and VOMA are in the process of developing an international project for the field of conflict resolution, initially proposed by three countries – Romania, U.S. and Kenya. A fundraising strategy is also being designed. Details of the project will be available in December 2003.

**Legislative Statutes on Victim Offender Mediation: A National Review**

By Mark S. Umbreit, Elizabeth Lightfoot, and Johnathan Fier

**Introduction**

The purpose of this article is to document the existing statutory authority among states relating to victim-offender mediation (VOM), which is a dialogue between crime victims and their perpetrators. VOM is a bedrock tool of restorative justice, which is an approach to criminal justice that views accountability to the victim and competency development of the offender as important in the justice system as community protection (Bazemore & Umbreit, 1997). While general mediation procedures are common in civil and family law statutes, the purpose of this analysis is to look at mediation in criminal, rather than civil cases. The existence of specific provisions in state codes for VOM is important for providing a structure to how VOM will be implemented in the state. It is important to note that the level of statutory authority for VOM in a state does not necessarily correspond with how prevalent VOM programs are within a state. While statutory authority for VOM provides VOM programs with added strength, VOM programs may also be promulgated at the agency level without specific statutory authority. For example, a state department of corrections may implement a VOM program on its own, or enter into a partnership with a nonprofit to provide VOM, without any statutory authority. However, without statutory provisions for VOM, there is little legal authority or protections for those involved in VOM, nor are there any specific funding mechanisms.

This study finds that there are currently 29 states that have VOM or VOM-type statu-

tory authority. Twenty-three states have a specific statutory provision for VOM, and six more states have VOM-type programs that may entail dialogue between victims and offenders. The VOM provisions range from extremely comprehensive, with details on training requirements, costs, evaluation, confidentiality and liability, to a simple reference to VOM within a long list of sentencing alternatives. The vast majority of the VOM codes have been enacted within the past ten years, with many in the past five years.

There have been no previous studies on statutory authority for VOM within the

**“...there are currently 29 states that have VOM or VOM-type statutory authority.”**

individual states. However, there was one earlier study completed in 2000 that looked more broadly at "restorative justice" in state statutes or codes (O'Brien, 2000). The O'Brien study, which used survey methodology, found that 19 states had reflections of restorative justice principles in their codes or statutes. But, the existence of such principles does not necessarily mean that VOM, a common method of restorative justice, is also included in the state statute. In fact, four of the 19 states in the O'Brien study do not include statutory authority for VOM as of 2002. This more comprehensive study found that at least two-thirds of the states now have statutory references for VOM.

**Research Methods**

The methods used in this research included a comprehensive search of all state codes on Lexis-Nexus on a state-by-state basis using VOM language and VOM types

of activities. The researcher and two graduate assistants did the searches independently. Each state code and the code for the District of Columbia were searched using standard terminology of VOM, including such terms as restorative justice, mediation, reconciliation, conferencing and dialogues. As states vary in their use of language within their codes, the searches also involved common cognates (mediators, reconciling, dialoguing, etc.) and related terms such as 'community resolution' or 'reparation'. The researchers also attempted to find programs similar to VOM through looking in sentencing alternatives and/or pretrial diversion sections of the codes. The researchers excluded other popular types of mediation or alternative dispute resolution techniques that often uses similar language as VOM, such as mediation between married couples involved in child custody disputes or persons involved in contract disputes. All mediation in civil cases was excluded from this analysis.

While finding authorizing codes and statutes was fairly straightforward in many states, other states had references to VOM-type programs buried deep within general mediation codes, or used non-standard VOM language within their codes. Thus, as the language varies so differently among states, the structure of state codes is not uniform, and as state codes are being updated continually in response to new legislation or court rulings, the following findings can only be assessed as a best effort at documenting statutory authority in the states for VOM as of Spring 2002.

**Continuum of Statutory Authority.**

There currently exists a continuum of statutory authority related to VOM in the states, ranging from "little or no mention of VOM" to a "comprehensive VOM legislative framework". Twenty-nine states currently have a reference to VOM or VOM-type programs in their codes, with 23 having a specific reference to a mediation or dialogue between a victim and an offender. The states fall loosely into five categories on this continuum. See *Table 1* for details.

The seven states in the "Comprehensive VOM Program" category have state statutes or codes that detail comprehensive guidelines for a VOM program or programs within the state. While the particular

**Table 1. Statutory Authority for Victim-Offender Mediation**

Little/No Mention of VOM (22 States & DC)	Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, West Virginia, Wyoming
Codes detail programs that may involve victim offender dialogue (6 States)	Alaska, Florida, Illinois, Maine, New York, Vermont
Basic Statutory Provision for VOM (9 States)	Alabama, Arizona, California, Colorado, Iowa, Missouri, North Carolina, Washington, Wisconsin
Specific Statutory Provision for VOM (7 States)	Arkansas, Louisiana, Minnesota, Ohio, Oklahoma, Texas, Virginia
Comprehensive VOM Program (7 States)	Delaware, Indiana, Kansas, Montana, Nebraska, Oregon, Tennessee

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guidelines of each state within this category are by no means similar, they tend to include specifics regarding oversight, liability, funding, mediator training requirements, confidentiality, rights, costs and other particulars as to how VOM programs will be run. Some states with a comprehensive program have a specific statute detailing VOM. For example, in the Delaware State Code, there is one section on Victim-Offender Mediation that details all the specifics regarding VOM for both juvenile and adult offenders, including eligibility, liability, confidentiality, costs and other details (I I Del. C. § 9501-5). In other Comprehensive Program States, the statutes or codes are found within various sections. For example, in Indiana, some of the VOM statutory language is within the Community Corrections section of the code (Bums Indiana Code Ann. § I I - 12-1-2.5, § I I - 12-8- 1) while other parts of the VOM authority are within the Victims Rights section of the code (Bums Ind. Code Ann § 35-40-6-4).

Seven states have clear, specific statutory authority for VOM programs, but fewer detailed requirements of VOM programs. The state codes in this category tend to have a specific section within their codes authorizing and/or requiring a VOM program, but offer fewer specific details on the requirements of the program. While they do not include an extensive list of details, they give an overall direction of how the VOM program will be established in the state, and may include one specific requirement, such as mediator training requirements, confidentiality, liability or costs to participants. There is often strong restorative justice language within these state codes. For example, an Arkansas statute authorizes a Youth Mediation Program (A.C.A. §§ 931-401-405). The statute provides authority on the inclusion of VOM within Arkansas institutions and provides funding to two University of Arkansas law schools to provide training and technical support in the establishment of VOM, but provides no other details on eligibility for participation, funding, confidentiality, costs or other practicalities. In another example, Arizona has a specific VOM statute relating to juvenile offenders that gives the presiding judge the authority to "establish and provide voluntary victim reconciliation and restitution services to assist victims of juvenile crimes (A.R. S. § 8419). This statute does not detail any requirements of what these VOM services

may entail, leaving such details to be determined by the judge or court system.

Nine states include a basic statutory provision for VOM, but this provision is included as one option among a long list of options available. There are limited or no details on the specifics of how VOM programs are established or monitored. For example, the Alabama State Code on Community Punishment and Corrections allows that funds may be used to "develop or expand the range of community punishments and services at the local level. Community-based programs may include, but are not limited to the following: 1) community service supervision, community detention and restitution centers; *victim-offender reconciliation programs*, home confinement/ curfew; electronic surveillance; intensive supervision..." (Code of Ala. 15-18-180)." The list goes on to mention 22 different options for which funds can be

**21 states and the District of Columbia do not have any specific reference to VOM within their state statutes or codes.**

used in the area of community corrections. There is no other mention of VOM programs within the state code, aside from the inclusion of VOM on this list. Similarly, Missouri's state statutes have strong restorative justice language discussing how the community corrections program "promote(s) accountability of offenders to crime victims, local communities and the state ... (§ 217.777 R.S.Mo.)." It includes a long list of options to promote restorative justice, and "victim-offender mediation" is listed as one of the options, without further details on how it is to be established or monitored. In some of the states in this category, VOM programs are listed in a number of different statutes, but never are expanded upon greatly. For example, in California, VOM is authorized under truancy prevention programs (Cal Ed Code § 48720, § 48730), under the penal code for adults (Cal Pen Code § 8052), high-risk first time juvenile offenders (Cal Ed Code § 4776 1), and in the juvenile court provisions (Cal Wel & Inst Code § 202). While statutory support of VOM is clearly evident in California, the specifics of VOM are not provided legislatively, but rather left to the agencies developing and implementing VOM programs.

Six states have statutes authorizing programs that may entail dialogue between victims and offenders, but do not exactly fall within the rubric of VOM. For example, Illinois has a statutory authority for a community mediation program for juveniles, which has strong underlying restorative justice principles. Its goal is "to make the juvenile understand the seriousness of his or her actions and the effect that crime has on the minor, his or her family, his or her victim, and his or her community (§ 705 Ilcs 405/5-3 10)." This program involves the establishment of "community mediation panels" that will meet with a juvenile and his or her family to discuss the delinquent act. While the victim or a victim's representative may be involved in the panel, the panel is not formed for the purpose of dialogue between the victim and the juvenile, but rather for the rehabilitation of the juvenile. Maine has a similar statutory provision for "community resolution teams," whose purpose are to discuss a delinquent act and recommend sentencing or other alternatives. The victim or a victim's designee may be a member of a team, but the team is not set up primarily for dialogue between the victim and the offender. Thus, while these state statutes may result in dialogue between the victim and the offender in a similar fashion as a VOM program, the state statutes do not technically authorize a structured dialogue between a victim and a mediator in the same fashion as VOM.

Finally, 21 states and the District of Columbia do not have any specific reference to VOM within their state statutes or codes. While some of these states contained a reference or stated a commitment to restorative justice principles, none was specific enough to imply any sort of meeting between a victim and an offender. It is important to note again that just because a state does not have a state statute or code mentioning VOM or restorative justice, it does not mean that such programs cannot exist. In fact, VOM programs may flourish without any code. For example, Pennsylvania's state statutes currently do not mention VOM. However, there is a general commitment to restorative justice within the Pennsylvania code, and indeed there are VOM programs within the state. Similarly, there is language within the South Carolina Children's Code that generally promotes restorative justice, but there is no language regarding any sort of meeting or dialogue between victims and their offenders as part of its



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restorative justice orientation

**Variations in Statutory Provisions**

Along with variation in the comprehensiveness of VOM statutory provision, there is also an enormous amount of variation in the details of VOM. The variation in the structure for the provision of VOM services is likely of most significance. There are eight different approaches states have taken in authorizing VOM. *Table 2* outlines these different state approaches.

In five states there is simply language that an offender will be "referred" to VOM services, without any more detail as to who is providing these services. One can assume that these services are either provided by non-profit agencies, as there are many such programs within the states, or that such services are available or could be available through the corrections department. However, there are no details on the specific provision of these services.

Eight states establish state VOM programs or assume state responsibility for providing VOM services. Some state programs, such as Iowa, specifically delegate the responsibility for establishing VOM to judicial or regional districts, while others, such as Colorado, have established a uniform statewide system. A state system does not necessarily mean that states will be providing the VOM services. For example, Oklahoma's statute states specifically that "the Department of Juvenile Justice may enter into contracts with private supervisors for implementation of the program ... (10 Okl. St. § 7302-8. I)." Others might not have this provision specifically written into its VOM code, but it is a generally accepted part of agency business.

Four states provide funding to counties to provide VOM services. Again, these coun-

ties may operate by contracting with local non-profits to provide VOM services. Arizona's code allows counties to "enter into agreements with qualified private human services agencies for provision of any or all of these programs or services (A.R. S. § 12299.01)."

Eight states operate explicitly with grants to non-profit organizations to provide the VOM services, with state or county agencies serving only a referring, monitoring or consulting role in the provision of services. Most of these states detail the requirements for non-profits to receive funding, including eligibility and reporting requirements. One state, Montana, specifically mentions that "faith-based" organizations are eligible for funding Mont. Code Anna, § 2-15-2014).

Three states have fairly unique provisions. Ohio, has statutory language allowing for grants to either local governments or to non-profits to establish VOM programs. Louisiana refers to juveniles to an approved list of mediators, who are not necessarily required to be part of a non-profit organization or community center. And Arkansas' code funds the state universities to provide technical assistance in establishing youth mediation services.

Three states, Delaware, Montana and Oregon, also have established statewide commissions to monitor and/or provide guidance on VOM. )While other states surely also have state committees dedicated to VOM and restorative justice, these are the only three to have the committees statutorily mandated and focused narrowly on this issue.

Aside from the general structure of VOM provisions, there are many other variations among states in regards to VOM. *Table 3* (page 8) outlines some of these differences, including those related to the age of perpetrator, liability, mediator require-

ments, protections of confidentiality, and required participation by perpetrators. As discussed above, most of the variations in the details occur in the states with a specific statutory provision for VOM or a comprehensive VOM program.

Age of Offender. Of the 29 programs that involve VOM or VOM-type dialogues, all but seven provide these services for juvenile offenders. There are 12 states that statutorily authorize program solely for juveniles, seven that have separate provisions that cover juveniles and adults, and four states that authorize VOM for both juveniles and adults under the same provision.

**Of the 29 programs that involve VOM or VOM-type dialogues, all but seven provide these services for juvenile offenders**

There are seven states that provide statutory authority for VOM only for adults, without a similar program for juveniles.

Mediator Requirements. Seven states have codified mediator requirements for those providing VOM services. Three of the states have detailed requirements for mediators involved in VOM. For example, Kansas has detailed requirements for mediators involved in victim-offender mediation, including a 16 hour training that "must include conflict resolution techniques, neutrality, agreement writing, ethics, role playing, communication skills, evaluation of cases, and the laws governing mediation. Initial training must be done in a continuous manner within a 120-day period (Kan Sup. Ct. Rule 902)." There are also rules dictating annual reviews of qualification and outlining requirements to be a mediator trainer. Four states have more general requirements that agencies providing services establishment minimum training requirements for VOM mediators. For example, Delaware's code states that nonprofits can only receive funding for VOM programs if they provide "neutral mediators who have received training (I I Del. C. § 9502)."

Immunity. There are seven states that provide specific immunity to the people involved in VOM, including mediators, the agencies providing/supporting mediation,

**Table 2. Variations in Statutory Authority for Victim-Offender Mediation**

<b>General Referral language</b>	Alabama, Alaska, North, Carolina, Washington, Wisconsin
<b>State Program</b>	Colorado, Florida, Illinois, Iowa, Maine, Missouri, Oklahoma, Texas
<b>Grants to Non-profits</b>	Delaware, Minnesota, Montana, Nebraska, New York, Oregon, Tennessee, Vermont
<b>County Program</b>	Arizona, Indiana, Kansas, Virginia
<b>Specific Program</b>	Arkansas
<b>Grants to Counties or Non Profits</b>	Ohio
<b>Referrals to Individuals</b>	Louisiana

Table 3. Characteristics of Statutory Authority for Victim-Offender Mediation

	Statute(s)		Req.	Structure	Med. Regs	Training Co	No Liability	Words	Costs	Conf	Used in Sentence
AL	15-18-180	A		General				victim-offender reconciliation			
AK	Alaska Stat. §47.12.010; . §12.55.011	J/A	Vo	General				Community dispute resolution centers			Yes
AZ	A.R.S. §8-419; A.R.S. §12-299.01	J/A	Vo	General				Victim reconciliation services; victim-offender reconciliation or mediation"			
AR	A.C.A. §9-31-401,402,403,404,405	J	---	Specific Agency		x		Youth mediation			
CA		I/A						Victim-offender reconciliation			
CO	C.R.S. 19-2-309,5	1	Vo	State Program				"victim-offender mediation"			
DE	I   Del. C. §9501, 9502, 9503, 9504, 9505	C	Vo	State Program	Gen.			"victim-offender mediation"	Free	x	
FL	Fla. Stat. §985.303	1	Vo	State Program							Yes
IL	§705 Ilcs 405/5-3 10	1		Program			x			x	
IN	Bums Indiana Code Ann. §11-12-1-2.5, §11-12-8-1, §35-40-64. §11-12-8-6-5	C	---	State County Program			Sign Waiver	Victim-offender reconciliation RP)			Yes
IA	Iowa Code §90 I b I	A		State Program				Victim & offender reconciliation			
KS	K.S.A. §38-1635, §38-1663, §75-7038; Kan. Sup. Ct. Rule 902	J	Y	Grants to Non-Profits	Det.			Mediation	Yes		
LA	La. Ch.C. Art 435,439, 44 1, 444	1	Y	General Referral	Det.			Mediation	Yes	x	Yes
ME	34-A M.R.S. §1214, 15 MA-S. §3301,15 M.R.S. §3204	1		State Program				Community resolution teams		x	Yes
MN	Minn. Stat. §61 IA.77; §61 IA.775; §595.02, Minn. Juv. Ct. Proc. Appendix of Forms	J/A	No	Grants to Non-Profits	Gen.		x	Victim-offender mediation			Yes
MO	§217.777 R.S.Mo.	A		State Program		x		Victim-offender mediation			
MT	Mont. Code Anno. §2-15-2013~ 2-15-2014,41-5-1304,46-18-101	C		Grants to Non-Profits		x		Victim-offender meetings, family group conferencing, sentencing circles			
NE	R.R.S. Neb §43-274, §43-245, §43-286; RKS. Neb. §25-2901-2921 (2001)	1	Yes	Grants to Non-Profits	Detail	x	x	Victim offender mediation	Yes	x	Yes
NY	NY CLS Jud §§849-a-g, NY CLS CPL §215. 10	A		Grants to Non-Profits	Gen			Dispute resolution	Yes	x	Yes
NC	N.C. Gen. Sat. §713-2506	J	Yes	General				Victim-offender			
OK	10 Okl. St. §7302-8. 1; 22 J/A Okl. St. §991a	J/A	No	State Program			X	Victim/offender reconciliation program	Low-cost	x	
OR	ORS §36.105, ORS §I/A 36.115, ORS §135.980, ORS §135.951, ORS §135.953, ORS §135.955	J/A	No	Grants to Non- Profits				Mediation between victim and offender			Only if Yes waiver signed
TN	Tenn. Code Ann. §16-20- C10 1, §16-20-102, §16-20-103, §16-20-104, §16-20-105	C	V	Grants to Non-profits	Gen		X	Victim-offender mediation	Free	x	Yes
TX	Tex. Code Crim. Proc. Art. A 42.12, Tex. Code Crim. Proc. Art. 56.02, Tex. Code Crim. Proc. Art. 56.13, Tex. Code Crim. Proc. Art. 26.13, Tex. Gov't Code §508.324, Tex. Gov't Code §508.19 1., Tex. Civ. Prac. & Rem. Code §154.073.	A	No	State Program		x		Victim-offender mediation		x	No
VT	13. V.S.A. §7030,28 V.S.A. A §2a,28,28, V.S.A.§102, V.S.A. §252	A	Y	Grants to Non-Profits				Community reparative boards, restorative justice			
VA	Va. Code Ann, §19.2-11.4 A	A		County Programs			Sign Waiver	Victim-offender reconciliation			Yes
WA	ARCS §13.40.070 J	J		General Referral				Mediation; Victim offender reconciliation programs			
WI	Wis. Stat. §938.34 J	J	Y	General Referral				Victim-offender mediation			



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and those referring cases to VOM, such as prosecutors. Two of the states have a statutory requirement that victims sign waivers, while others provide simple blanket immunity to participants. Other states may have more general provisions regarding liability in their broader juvenile justice or corrections code.

**Confidentiality.** Nine states explicitly state that the VOM proceedings are confidential, and cannot be used in court cases. For example, Tennessee has a specific statute dealing with the confidential nature of VOM, stating that "all memos, work notes and files are confidential and privileged and not subject to disclosure to judicial or administrative proceedings Tenn. Code Ann. § 16-20-103)."

**Cost to Participant.** There are a few states that discuss the costs of VOM participation to participants. Oklahoma requires the offender to pay a specific minimal cost for the VOM (more than \$5.00, less than \$25.00), and Kansas, Louisiana and New York may require a nominal fee if it does not burden the victim. Delaware and Tennessee both stipulate that participation in VOM should be free for all participants.

**Required Participation.** Findings from the study show that there is a difference in language used in 'requiring' participation in VOM. None of the states requires victims to participate in VOM, and indeed most that provide more than basic statutory provision state explicitly that VOM participation is voluntary for victims. However, there are eight states with statutes saying that a judge may require the offender to participate in VOM. For example, Kansas' Juvenile Justice Code states that "the court may order the Juvenile offender and the parents of the juvenile offender to ... participate in mediation as the court directs (K.S.A. § 38-1663) " Of these eight states, six of them are for juveniles only, while two states have it in adult VOM statutes. No state has a blanket requirement of VOM participation by offenders. Rather, discretion is given to the judge, who likely consults with VOM program specialists on the appropriateness of VOM for particular offenders.

On the other hand, there are nine states that have specific language mandating that participation in VOM be voluntary for the offender as well as the victim. For example, Texas has language in its Vic-

tim-Offender Mediation Code that states "the pardons or paroles division may not require the defendant to participate and may not reward the person for participation by modifying conditions of the release or the person's level of supervision by granting any other benefit ... (Tex. Gov't Code § 508.324)." Texas is alone in its statutory language saying that VOM should not be used in sentencing. In fact, most states codes specifically state that VOM may be used as a way to make a negotiated agreement of restitution or other punishment to be submitted to the court for sentencing, or in itself is a sentencing alternative.

**Language of VOM.** The language used for describing VOM within state statutes varies greatly too. While "victim-offender mediation" was the most common terminology, other states referred to it as victim offender reconciliation, victim reconciliation, mediation, community dispute resolution, dispute resolution, victim offender meetings, family group conferencing, commu-

nity resolution, community reparative boards, youth mediation, mediating criminal offenses, or sentencing circles. Some states used several different terms within their statutes.

**Other Provisions.** There are numerous other unique provisions existing in some state codes that are worth note. First, there are five states, Kansas, Louisiana, Nebraska, New York and Oregon, that require the state or county to maintain comprehensive lists of individuals and/or programs that are trained to provide VOM. Second, there are four states that have statutory provisions for training in VOM. Arkansas' statute provides for training of

**Table 4. Types of Offenses**

<b>Felonies &amp; Aggravated Misdemeanors</b>	Delaware, Iowa, Tennessee, Texas, Wisconsin
<b>Felonies if no death sentence imposed</b>	Minnesota, Oklahoma
<b>Felonies with no mandatory prison sentence (or fourth degree vehicular felonies with mandatory sentencing)</b>	Ohio
<b>Formula based on seriousness and criminal history</b>	North Carolina
<b>Non-violent offenses only</b>	Nebraska, New, York, Oregon
<b>Not for Violent or serious offenses</b>	Alabama, Alaska
<b>First-time Nonviolent offenses only</b>	Florida, Kansas
<b>Only for persons with a low risk of violence</b>	Montana
<b>Unspecified or left to discretion of authorities</b>	Arizona, Arkansas, California, Colorado, Illinois, Indiana, Louisiana, Maine, Missouri, Vermont, Virginia, Washington

lawyers in mediation, and technical assistance to local institutions to incorporate mediation programs (§ 9-31-405). Both Missouri's and Texas' programs require the state department of corrections to provide training in VOM to eligible volunteers § 217.777; Tex. Code Crim. Proc. Art. 56.13). Montana's code requires the Office of Restorative Justice to provide education, technical assistance and other information on restorative justice, including VOM (Mont. Code Anno. § 41-5-1304).

**Types of Offenses.** The states have great variation in the type of offenses for which VOM is authorized (See Table 4). There are nine states that specifically state that VOM can be used in felonious offenses. Of these states, only Texas asserts that VOM can be used in cases of murder. Delaware, Iowa, Tennessee and Wisconsin simply state that VOM can be used in felonies or aggravated misdemeanors without specifically stating which types of felonies are appropriate, while others specifically disallow VOM in death penalty cases or cases with manda-

**Conclusions**  
As there has been much activity in the past five years in enacting new legislation for VOM, it is not surprising that a number of

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the best possible position to be aware of the many injustices present in prisons that demand a prophetic response.) Since government-paid prison chaplains are typically marginalized by their church denominations, they often feel little support or sense of expectation from their churches, leaving them both isolated and unaccountable, a lonely and dangerous mix. As a result of all these factors, prison chaplains all too often find their role reduced to such functions as gatekeeper (volunteer coordinator), paperwork-swamped religious bureaucrat, and priest (blessing, legitimating, and sacralizing by their very presence the incarceration and execution system).

2. The more evangelical, fundamentalist, and Pentecostal-holiness church groups (e.g., Southern Baptist, National Baptist, Churches of Christ, Church of God in Christ, Assembly of God, Nazarene, Primitive Baptist, Missionary Baptist, Free Will Baptist, Church of God, Jehovah's Witness, Seventh-Day Adventist) -- which are very strong in the South and in many inner cities across the nation -- typically have no formal denominational positions on criminal justice or other social issues. Yet because of their often more low-income and often ethnic minority makeup, the world of prison is not alien to them, and both clergy and laity of these faith communities are more likely than other Christians to do hands-on jail and prison ministry, usually as volunteers, focusing on individual prisoners and their spiritual lives. Their members who are employed in the criminal justice system are much more likely to be police officers or jail or prison guards than legislators, lawyers, wardens, judges, or chaplains.

Ministers and laypersons in these churches are likely to have conservative and sometimes judgmental theologies, but this is sometimes tempered by a healthy critical edge rooted in their personal and communal experience of class or racial injustice. At best, such individuals or communities of faith combine a deep spiritual commitment and strong personal relationships with the incarcerated (and with crime victims and corrections line staff) with an instinctive, experiential, political sophistication.

Yet, by and large, neither of the two major models of ministry in the criminal justice arena includes a strong and effective advocacy component, geared toward changing criminal justice policy and prac-

tice in the Southern region or in the nation. And most of the mainline and evangelical churches' activity in this arena -- good, bad, and indifferent -- has been done in the absence of rich, ongoing ecumenical or interfaith dialogue and debate. Too many participants in both models of how to engage criminal justice issues (if at all) have so bought into the culture of "free" market capitalism, state power, redemptive violence, and the inevitability of punishment that they have few critical theological or ideological resources by which to see the contradictions in what has become known as our society's Prison Industrial Complex. Thus, there is a radical disconnect between these churches' own faith tradition -- which would be far more compatible with a restorative justice perspective -- and the reality of the revenge-oriented system which today passes for criminal justice in the U.S. and especially in the South. While most Christian faith communities claim to believe in such values as fairness, peace, equality, justice, reconciliation, and forgiveness, too often their leaders and members tacitly or aggressively support a criminal justice system that routinely violates all these basic spiritual and ethical principles in massive and immensely damaging ways.

In the face of this, many activists engaged in movements to transform various aspects of the South's legacy of racism, violence, and other injustices -- including its criminal justice systems -- have been tempted to give up on the region's faith communities and try to make changes without them. But in a land where most people -- white, black, and Latino/a -- are still affiliated with and active participants in Christian churches, this is a strategy doomed to failure. Demonizing or ignoring them due to their hypocrisy and contradictions will write off more than half the citizenry of the region and get nowhere. To some extent, this is also true of other regions and local communities in the U.S.

This situation cries out for a new model of ministry in the arena of criminal justice that builds upon the best of the two models I have described, yet transcends both. Such a new approach must be more holistic, and more ecumenical and interfaith (working with other Christians, with Jews, with Muslims, with Buddhists, with those identifying with Native American spiritual traditions, and with others). It must also be more critical, more prophetic, and more transformative in its approach to the criminal justice system and to those caught up in it as victims, offenders, family members, and workers --

focusing upon the big picture as well as individuals. In the best restorative justice tradition, it must be aimed at the empowerment of -- and dialogue among -- the primary stakeholders in a situation of crime and other community conflict: victims, offenders, and the local community.

This new paradigm must take seriously the gifts and responsibilities of laity as well as of clergy for ministries in criminal justice, and must address the contradictions between faith and work experienced by those members of Christian faith communities who are employed in the criminal justice system. It must also raise consciousness about the theological and moral dimensions of the many ways in which people of faith interface with the system as citizens -- paying taxes, voting, serving on juries, testifying as witnesses, responding to crime victimization, and so on. Finally, it must guide church folk into political struggle, which is the only way to make substantive changes in the system.

In doing so, it must put people in churches into contact with regional and national organizations, as well as grassroots groups, which are working on criminal justice issues from a penal abolitionist or restorative/transformational justice perspective. Examples of such ecumenical and secular groups, which work with regional or national agendas of criminal and restorative justice concerns, are the Fellowship of Reconciliation, the Amnesty International USA Death Penalty Office, the Charlotte-based Public Safety and Justice Campaign, the Nashville-based Religious Leaders for a More Just and Compassionate Drug Policy, The Sentencing Project, The Justice Policy Institute, Murder Victims Families for Reconciliation (MVFR), Citizens United for the Rehabilitation of Errants (CURE), the Victim Offender Mediation Association (VOMA), the National Association of Sentencing Advocates (NASA), Justice Fellowship, Kairos Prison Ministry, Families Against Mandatory Minimums (FAMM), Critical Resistance, the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU) Capital Punishment Project, the National Coalition to Abolish the Death Penalty (NCADP), the Western Prison Project, the Drug Policy Alliance, Eastern Mennonite University's Conflict Transformation Program, and three Georgia-based groups -- the Open Door Community, the Southern Center for Human

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Rights, and southwest Georgia's Prison and Jail Project. Examples of faith-based groups working for from a historic "peace church" perspective to transform our system of injustice are the American Friends Service Committee and the Mennonite Service Committee.

It is time to engage the ecclesiastical institutions and to invite and challenge them to reclaim their radical roots manifest in the Populist movement, the Social Gospel movement, the Christian peace movement, the civil rights movement, and other historic outbreaks of progressive American and Southern Christian activism. To succeed, the current movement of critical resistance to, and transformation of, the Prison Industrial Complex must enter into a relationship of mutual empowerment and support with those church communities and individual Christians wishing to change or working for change. On issues such as the death penalty, prison privatization, the war on drugs, and restorative/transformatory justice, churches must be challenged -- from both inside and outside their ranks -- to educate, organize, and mobilize themselves, and their considerable resources, to

confront the prison industrial complex in the spirit of their founder, who, in his inaugural sermon in his hometown synagogue, read these words from the Hebrew prophet Isaiah:

"The Spirit of the Lord is upon me, because he has anointed me to bring good news to the poor. He has sent me to proclaim release to the captives and recovery of sight to the blind, to let the oppressed go free, to proclaim the year of the Lord's favor...Today [Jesus went on] this scripture has been fulfilled in your hearing." (Luke 4:18-21)

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states are currently in the process of considering new legislation. In the 2002 legislative session, several proposed legislative changes involve VOM. For example, in January 2002 New Jersey Assemblywoman Previte introduced Bill No. 1168 which intends to incorporate balanced and restorative justice principles in the juvenile justice system, including a statement encouraging courts to engage in "fostering interaction and dialogue between the offender, victim and community... (New Jersey Assembly Bill A1 168, 2002) (See Appendix C)." As VOM becomes a more greatly recognized restorative justice program and as more states begin to experiment with VOM, we can expect that more of the states that currently have basic VOM statutory provisions or no VOM provisions to enact legislation that comprehensively authorizes and regulates VOM practice within their states.

The presence of VOM statutory language is important for VOM programs to continue to function. The following example illustrates its importance. The State of Minnesota has

specific VOM language that discusses VOM, and specifically allows that a VOM process can "assign an appropriate sanction to the offender (Minn. Stat. § 61 1A.775)." In a recent case in the State of Minnesota, a district court had used its discretion to approve a recommended sanction from a sentencing circle conducted by a local VOM council. In this case, a defendant failed to disclose that she was working full-time when applying for public assistance. In the sentencing circle it was decided that she repay the money, do community service, and obtain credit counseling and financial management help. The District Court accepted this recommendation. The Court of Appeals initially reversed this decision because it asserted that the district court abused its discretion by adhering to the sentencing circle's recommendation. The Minnesota Supreme Court overruled the appeals court, citing the VOM statute allowing for the assignment of sanctions as the reason for allowing the sentencing circle's sanction to stand Minnesota v. Pearson, 2002). If Minnesota did not have this clause regarding VOM in its statute, it is possible that the Supreme Court would have made the acceptance of recommen-

dations by a sentencing circle illegal.

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## Why Sentencing Circles Might Improve the Way Courts Communicate

by Peg Christian

How well do offenders understand their court sentence and/or instructions? How does this affect outcomes of the sentence? These are very important questions and, based on five years of court watching, I do not think anyone understands the information courts give.

For court officials, as well as attorneys, sentencing day is just another routine day. For offenders and their families, however, it may be life changing, thus making psychological stress a serious deterrent to concentration on the details of the sentence-related information offered by officials. Court officials do not seem to be cognizant, or care much, about this issue.

The pace of sentencing proceedings may affect offenders understanding of the consequences of their sentence. Our county has a "Domestic Violence Fast Track" program, where domestic violence offenders have to be seen in court within 48 hours of the arrest. The purpose of this is supposedly to catch offenders in the remorseful stages of their abuse cycle so that they can be "helped." Instead, many offenders are agreeing to sentences without the benefit of counsel, and I have had many who came to me for probation (I had a domestic violence caseload for awhile) in a state of shock at what they had agreed to. I encouraged them to appeal, but they felt helpless against the sheer power of the system. Their anger at this outcome most certainly affected their ability to take responsibility for the actual offense. They instead spent their year feeling like a "victim" of the system.

The language of the courts, and the manner in which it is delivered makes it practically impossible for offenders and their families to comprehend the short- and long-term consequences of what is being said. Only an exclusive club of those educated in this particular language understands the court's language. Attorneys are generally not empathetic of their clients' needs to better understand.

In juvenile court, offenders rarely engage an attorney for their defense. Parents instead make decisions and are sorely disadvantaged due to their lack of knowledge of the legal system and its accompanying language.

Although court interpreters are available, many who would benefit from this service refuse, probably because of embarrassment or a sense that they are holding up the proceedings. I believe that disparate sentences result from this lack of understanding of the English language (Spanish, Ute, and Navajo speakers receive harsher sentences).

The courtrooms in our courthouse have amplification systems. However, they are woefully inadequate, making it impossible for those in the courtroom to understand the particulars of the proceedings. I was in court recently with a couple that is mentoring a young man, who was up for probation revocation. Because they could not hear the proceedings, they finally interrupted, asking if the judge and attor-

**The best solution, however, would be to restructure the courtroom so that sentencing circles could be used in every case**

neys could be more aware that those sitting behind the "gate" also had a stake in making sure they understood the proceedings.

Attorneys who should be working for the clients' best interests are instead merely working towards an outcome within a prescribed and accepted paradigm. I regularly see defense attorneys, who are friends with district attorneys, making disparaging comments about their clients and bargaining with DA's in the wake of these comments. I believe that defense attorneys are often more concerned with their own experience than they are their clients' futures.

So, what's the answer to these problems? As a former customer service trainer I really wish that court officials would begin to approach their work as service work to the community. Victims, offenders, and community members are court customers who need to be treated with respect. This includes explaining or simplifying language when speaking; defense attorneys re-evaluating why they do this work; and regaining the perspective that these decisions impact many lives (not just the

offenders'); and court officials making every effort to ensure that those behind the gate can hear and understand the processes. Also, the courts should allow time for offenders to ponder their decisions, providing space for them to meet with family, mentors, and defense attorneys so that all can decide the best course of action.

The best solution, however, would be to restructure the courtroom so that sentencing circles could be used in every case. Get rid of the judge's podium and the witness box, the DA and defense attorney tables, and "gate" that keeps the public out of the proceedings. Instead, place chairs in a circle and invite all those who have a stake or wish to have a say into the circle. This process would deter confusing language, as the keeper could ask judges and attorneys to reword their statements in layperson's language.

Decisions arrived at in this collaborative manner have far better odds of succeeding than our current processes. I am working with the Southern Ute Tribal Court on sentencing circles for youth, and we actually discussed this as a possibility. We're still discussing the best way to implement the circles, and this idea is still on the table. If courts conducted sentencing in this manner, I believe that all the issues I've outlined could be solved.

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The articles you read in VOMA Connections are written by VOM practitioners, just like you. If you have something you'd like to share with hundreds of your colleagues throughout the world, contact the editor:

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VOMA welcomes contributions including short articles, literature reviews, case studies, program news, and other interesting information. Photos and graphics are also welcome.

Book Reviews

**Critical Issues in Restorative Justice: Advancing the Agenda in Aotearoa New Zealand.**

Shirley Jülich (Ed.) Auckland: Centre for Justice and Peace Development, Massey University (2003).

*review by Allison Morris*

This report summarizes the outcomes of discussions at a series of conferences (*hui*) among practitioners, policy makers, and academics on a number of critical issues facing restorative justice in New Zealand. These critical issues were: accountability, ownership, and leadership; practitioner-related issues; indigenous traditions and the spirituality of restorative justice; restorative justice in schools; victim-related issues; offender-related issues; human rights abuses and restorative justice; and defining restorative justice. Each section of the report is introduced by Howard Zehr and ends with his "reflections" on the discussion, but the principal contribution of the report lies in the "conversations" among participants, liberally supported by direct quotes which capture the depth and range of feelings generated by the topics. The focus of the report is undoubtedly on the practices and future of restorative justice in New Zealand, but its messages are of wider interest and significance and, since New Zealand has gone further than most countries in implementing restorative justice, these "conversations" have some authority. In a short review, I can do no more than pick out a few of the themes that are universally relevant.

Although recognizing that there is no single method of delivering restorative justice and expressing a reluctance to define it in restrictive or prescriptive ways, concerns were expressed about the danger of dilution. Any program can claim to be "restorative" and apparently this often happens as a way of accessing funding. The answer to this was seen to lie in clearly expressing the critical values and principles that underpin restorative justice. These were, at different times, said to be respect, humility, co-operation, cultural sensitivity, honesty, integrity, love and inter-connectedness. This lead to discussions about the need to reflect these values and principles in a nationally accepted code or standards of practice. But,

at the same time, concern was expressed that such standards or codes of practice could prevent variations in practice, could enable further State control and could be culturally biased. These standards, therefore, need to be the product of wide consultation and not determined by fiat or dictate.

Another universal theme is the interface between the State and the community and, although there was undoubted agreement about the need to resource community programs properly, an important caveat was introduced: it was suggested that once community based programs were funded primarily by the State, there was a

**...once community based programs were funded primarily by the State, there was a danger that they were no longer accountable to their community**

danger that they were no longer accountable to their community. Getting the balance right was seen as the key to successful partnership.

A common question is whether or not restorative justice can be used for all kinds of offending. Concerns were expressed in these discussions about the different levels and modes of gate-keeping about which kind of case was "suitable" for restorative processes with the result that, in some participants' views, too many cases did not proceed to a restorative process. In particular, it was noted that the apparent lack of remorse should not be a barrier to a restorative meeting (as it seems to be) because it was often impossible to predict on the basis of initial attitudes which meetings would be successful. Indeed, there was some support for compelling offenders to attend restorative meeting if victims wanted these to happen. The rationale for this was that this showed that the process was victim centered. This is certainly more or less the situation with respect to family group conferencing the youth justice system in New Zealand and

practice there suggests that this can work.

The opposite (and equally or more common) scenario was not discussed: where an offender wants to participate in a restorative process but the victim does not. Restorative processes can again occur in the youth justice system in New Zealand without victims being present. There are ways of bringing home to an offender the consequences of her or his actions other than through the presence of the victim and the victim does not need to be present for reparative outcomes to be agreed. Such processes and outcomes can be victim-centered, but perhaps here, too, the answer really lies in restoring the balance: restorative justice processes are not competitions: the needs and interests of both offenders and victims need to be addressed.

Many more issues were touched upon: for example, how best to monitor agreements to ensure that victims were not victimized again by agreements not being followed through; pathways for improving the recruitment and retention of facilitators from non-European ethnic groups; the appointment of a Commissioner for Victims' Interests; and the feasibility of restorative prisons. The discussions summarized in this report raised many questions. There were few definitive answers provided, but that is no bad thing at this stage in the development of restorative justice. The important task is to keep talking about them and this report provides a stimulus for that. It deserves a wide audience.

*Allison Morris, who recently co-edited **Restorative Justice for Juveniles: Conferencing, Mediation & Circles** (Hart Publishing, 2001), can be reached at 10 Main Street, Wentworth, Ely Cambridge. CB6 3QG, England, or by email at: [alljo@btinternet.com](mailto:alljo@btinternet.com). Copies of this report can be requested from Dr. Warwick Tie, Centre for Justice and Peace Development, School of Social and Cultural Studies, Massey University, Private Bag 102 904, North Shore MSC, Auckland, New Zealand (US\$12, including P&P). Purchasers can either send a check made out to the Centre for Justice and Peace Development or request an invoice.*

## Book Reviews

**Youth Offending and Restorative Justice: Implementing Reform in Youth Justice**

Adam Crawford and Tim Newburn  
*Willan Publishing* (2003), \$59.95/ \$29.95,  
 264 pages

**Restorative Justice in Context: International Practice and Directions**

edited by Elmar G.M. Weitekamp and Hans-Jurgen Kerner  
*Willan Publishing* (2003), \$64.95/ \$39.95,  
 338 pages

*review by Russ Immarigeon*

In **Youth Offending and Restorative Justice**, Adam Crawford and Tim Newburn "examine recent attempts to introduce elements of restorative justice into the heart of the youth justice system in England and Wales through the implementation of referral orders and youth offender panels as provided by the Youth Justice and Criminal Evidence Act 1999." Crawford and Newburn note that earlier legislation also provided elements of restorative justice, but the more recent legislation does so more thoroughly and, indeed, constitutes "the most radical overhaul of the youth justice system in the last half century."

This says a lot, but readers should also be aware that radical British changes have a habit of turning back on themselves, reverting, usually with a new administration of justice, to prior, punitive practices. Still, this says more about what can happen at the national level than we have experienced in this country on either state or federal levels.

Crawford and Newburn organize their study into a dozen chapters that describe the origins of what is being called "the new youth justice," the basics elements of restorative justice theory and practice, and critical implementation issues, such as the relationship between restorative justice and punishment, voluntariness, proportionality, and impartiality. The authors also provide an overview of the national legislation and the development of referral order teams in each of their study's jurisdictions.

As they begin to report the methods and

results of their study, Crawford and Newburn describe the relationship between courts and referral order teams and the working dynamics of youth offender panels. Subsequent chapters describe the experiences of community panel members, young people and their parents, and crime victims. In the volume's last chapter, the authors raise a few issues and make some cogent recommendations.

Crawford and Newburn argue that restorative justice inevitably involves a degree of punishment and, because of this, requires restraint in its use, or the conditions and

**Offenders and victims are not equally disposed to be restorative toward each other, to listen to each other, or to be willing to repair harms**

parameters of its use. Practitioners also need to instill procedural fairness in what they do because such fairness improves outcomes of the restorative justice process. The authors also warn us about the need to think of what we want to achieve for offenders, victims, and communities in the application and use of restorative justice. They note an awkward relationship between restorative justice approaches and the current criminal justice system, where the "new" is trying, simultaneously, to challenge and replace the "old" while trying to nestle into its operations.

With these warnings in mind, Crawford and Newburn find that restorative work can be achieved within a retributive context, although not without remaining problems, such as low victim attendance at youth offender panels. Overall, this is an important, stimulating study that should be read and discussed widely.

**Restorative Justice in Context: International Practice and Directions**, edited by Elmar G.M. Weitekamp and Hans-Jurgen Kerner, is a collection of 16 articles originally delivered and discussed at the Fourth International Network for Restorative Justice for Juveniles. Article

writers in this volume come from Australia, Austria, Belgium, Canada, Germany, Japan, Sweden, and the United States. Article topics include the limits and possibilities of restorative justice; the use of restorative justice within the criminal justice, prison and school systems; the role of apology, confession and repentance; the influence of zero tolerance and community-oriented policing on restorative justice; and the use of restorative justice with multi-problem violent youth, in cases of severe violence and/ or family violence, and for corporate crime.

The writers who gather in this volume are leading contributors to the international restorative justice movement. Not surprisingly, their outlook is as cautious as it is optimistic. For example, Kathy Daly, currently researching Australian restorative justice measures for juveniles, warns against exaggerated claims or expectations for restorative conferences. She observes, "One reason that conferences succeed or fail is that offenders and victims come to conferences with varied degrees of readiness to make the process work. Here is where we see the limits of restorative justice theory. Offenders and victims are not equally disposed to be restorative toward each other, to listen to each other, or to be willing to repair harms. Some come to conferences with negative orientations and closed minds that cannot be changed, and others come with positive orientations and open minds. The conference process may engage restorative orientations already present in offenders and victims, or it may create openings for those orientations to emerge. However, for those victims with fixed negative attitudes (e.g., those who think the offender is a 'bad person'), the conference process is unlikely to move them in a more positive or restorative direction."

This volume, too, is a rich resource for practitioners and policymakers willing to invest time and thought to explore the deeper, and I suspect the most valuable, dimensions of restorative justice.

*These volumes are available, at discounted prices, from International Specialized Book Services, 5824 N.E. Hassalo St., Portland, OR 97213-3644, (503) 287-3093, (e-mail) [info@isbs.com](mailto:info@isbs.com), (website) [www.isbs.com](http://www.isbs.com).*



**Conferences and Membership**  
continued from page 3

to move forward, celebration of our past joys and struggles is essential. Continued interaction between those with history and those who bring new ideas and energy is the lifeblood of VOMA, and will create new bonds of colleagues and friends as well as innovative programs. VOMA holds many memories for me. To share only one, I remember the first conference that was held in a hotel setting, in Louisville, Kentucky in 1990. Although I live in a neighboring state, it was at this conference that I met Carolyn McLeod when I attended her workshop on involving parents in the "mediation" process (at the time a very radical idea). So, workshops were memorable. But, the relationships built as we learned together carried over into evenings of fun. In Louisville, one of my favorite memories is of a large group of conference participants taking the dinner "Riverboat" cruise. During one of our breaks from dancing, the group was sharing a bottle of wine, with lots of laughter and camaraderie. When asked where we were from by others on this boat, we proceeded to name several states and countries. To say the least, the people asking were very surprised that this group that appeared to have such great connections were not "old friends," but rather colleagues who had recently connected around a common philosophy. This memory is an example for me of the connections I have experienced in the individual members (the "heart") of VOMA.

A brief history of VOMA can be established through a list of its conferences and gatherings (*opposite*). Throughout this year, while we are celebrating 20 years for VOMA, please consider sharing your stories of experiences – both the joys and the struggles – that have been part of this organization. Art, poetry, articles, and other creative ways to celebrate the richness of our history are welcomed and sought. VOMA is its members. We are the heart of the organization and, whether we have been members a long time or only a very short time, each of our stories is important.

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**VOMA Timeline**

<b>1974</b>	The first VORP was established in Kitchener, Ontario, Canada, a partnership between a volunteer program of the Waterloo Region Probation Department and the Mennonite Central Committee MCC, Canada. Its first case was when two young men did \$2,200 damage to 22 victims in a night of drunken vandalism. When both pleaded guilty, the judge agreed that they (along with a probation officer and a MCC volunteer coordinator) would meet face-to-face with the victims to work out restitution agreements.
<b>1978</b>	First program in U.S. established in Elkhart, Indiana after a probation officer visited the Kitchener program.
<b>1984</b>	With this "new" concept taking form in America as well as Canada, a small group of VORP practitioners begin to meet in Valparaiso, Indiana – the VORP Gatherings. Those gatherings were hosted in homes.
<b>1985 - 1987</b>	VORP Gatherings continue in Valparaiso. In 1986 the VORP Gathering has grown to the need to house participants in the dorms at Valparaiso University. In 1987, the Gathering takes place at Camp Mack in Milford, Indiana. The need for a more formal organization was recognized.
<b>1988</b>	The VORP Gathering was held at the Bolten Conference Center near Toronto, Canada. With the growth of VORP programs, and the emerging concepts of Restorative Justice, the decision is made to develop a more formal organization. The U.S. Association for Victim Offender Mediation is officially created.
<b>1989</b>	U. S. Association Of Victim Offender Mediation Programs holds its first meeting at the conference at St. Catherine's College in St. Paul, Minnesota.
<b>1990 - 1993</b>	The U.S. Association of Victim Offender Mediation Programs continues to hold conferences, and publish newsletters with the assistance of PACT (Prisoners and Community Together). Conferences are held in Louisville, KY (1990 – the first to be held at a hotel), in conjunction with NCPCR in Charlotte, North Carolina (1991), Berkeley, CA (1992), and Chicago, IL (1993). At the conference in Chicago, the Board of Directors decided that the organization was broader than U.S.-based and changed the name and focus of the organization to be international in nature. Thus, the Victim Offender Mediation Association came into existence.
<b>1994 - 2003</b>	VOMA continues to evolve and grow. Although primarily North American in membership, the international membership begins to grow. Conferences take place in Winnipeg, Canada (1994), where administrative duties were transferred to Orange County, California. Additional conferences were held in Anaheim, California (1995), Fort Worth, Texas (1996), Des Moines, Iowa (1997), Tucson, Arizona (1998), Harrisburg, Pennsylvania (1999), Minneapolis, Minnesota (2000), Portland, Oregon (2001), and Fort Lauderdale, Florida (2002). Administrative responsibilities are contracted to the Restorative Justice Institute from 1996-2001. Beginning in 2000, VOMA received two 3-year grants from the Hewlett Foundation. The first year of this grant was designed to conduct strategic planning, with the following two years involved with implementation. To facilitate the strategic planning process, VOMA hired Barbara Raye and Gary Stern (Center for Policy, Planning, and Performance and Stern International). With successful completion of the strategic plan, VOMA subsequently contracted with the Center for Policy, Planning, and Performance for administrative services to assist in implementation of the strategic plan. 2003 will see the implementation of mini-grants and training and technical assistance.

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