



PENNSYLVANIA
COUNCIL OF MEDIATORS

Report For Members and Friends

Spring 2004

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PCM Annual Conference Highlights: Philadelphia, May 7–8

- Joe Folger will present a pre-conference workshop (limited to PCM members)—“Facilitating Team Development: A Transformative Approach.”
- Supreme Court Justice the Honorable Max Baer will be present on Friday evening to receive PCM’s MVP (Most Valuable Peacemaker) Award.
- Diane Kenty, Director of the Office of Court Alternative Dispute Resolution in Maine and member of the Association for Conflict Resolution Board of Directors, will be the keynote speaker on Friday evening—“Current Trends in Court-Connected Mediation: More, Better, or Both?”
- The Honorable William Lamb and several members of the Medical Malpractice Task Force will take part in the plenary session on Saturday morning.
- The Saturday workshops will cover peer mediation, restorative justice, disability-awareness, marketing for mediators, mediation centers in transition, dialogue processes, collaborative law, and federal legislation to establish a Department of Peace.



*Supreme Court Justice
Max Baer*

Mediation and Restorative Justice

The American legal system has long focused on the rights of persons accused of criminal wrongdoing. More recently the rights of the victims have gained a greater focus in the justice system. While the state has traditionally assumed the role of the aggrieved party, the ripple effect of impacts on the wider community has often been ignored in the process. To address these dissatisfactions, people have begun looking for a better way to create restorative justice by bring together all the injured parties to right the wrongs that have occurred. Over the last twenty years, this approach has quickly spread around the world and been incorporated in a variety of forms. This article highlights some examples of the roles mediators play in statewide restorative justice programs, as well as regional and local efforts. You can learn more about some of these programs at the PCM Annual Conference in May.

Consent Decree Program of Juvenile Court of Delaware County

(Based on an interview with Jacquelyn Bishop, Program Supervisor)

Awareness, responsibility and accountability are themes familiar to mediators in every area of practice. They also shape the consent decree program for first-time offenders who come under the jurisdiction of the Juvenile Court system in Delaware County (children, age 10-18). The program has been operating for three years and in that time it has worked with over 1500 juvenile offenders. Over 90% of the probation officers

involved in the program have been trained by Center for Resolutions in Media. In recognition of its positive effect, the program received the Pennsylvania Juvenile Judges Court Program of the Year Award in 2002.

A key element of the program is the Healing Circle where juvenile offenders learn about the impact of their actions on the victim, the victim's family, their own family and the community. "Circles are found in the Native American cultures of the United States and Canada, and are used there for many purposes. Their adaptation to the criminal justice system developed in the 1980s. The initial US use of circles in mainstream criminal justice took place in 1996 in Minnesota." (Lynette Parker, Prison Fellowship International, <http://www.restorativejustice.org/rj3/Introduction-Definition/Tutorial/Circles.htm>)

Through interactive exercises the youth in the Delaware County program are invited to describe a time when they may have been harmed. This helps them begin recognizing the feelings that victims experience. To expand their appreciation of others' feelings, they read victim statements. By discussing the victim's experience, they start to build empathy for the victim. The youth are asked to recount what they did, how it harmed the victim and what they would do differently now. Completing restitution is an essential element of the process. Sometimes the children write a letter to the victim. These can either be a pretend letter or one that the victim has agreed to receive.

Learn more about Circles at the PCM Annual Conference—Jacquelyn Bishop and Don Haldeman present "Introduction to Peacemaking Circles"

Any juvenile on probation can participate in the Healing Circle and other competency classes that are part of the consent decree program. District Justices and other agencies have increasingly been taking advantage of this effective program.

Offender Programs

(Based on an interview with Barbara Towes, Restorative Justice Coordinator, Pennsylvania Prison Society)

The Pennsylvania Prison Society's Restorative Justice Program approaches restorative justice from the perspective of the offender. During the last two years, it has served over 300 offenders through multiple programs that help offenders understand the impact of their crime, work with victims and community representatives and define what restorative justice can mean for them.

- Through a series of restorative justice seminars offenders explore the philosophical framework of restorative justice, each party's role in the concept and its application to life in prison.
- The Day of Responsibility, a concept developed by inmates, gives offenders a chance to explore the meaning of responsibility through conversation with guest speakers who

represent offenders, victims, the community, families and corrections. The Day ends with each participant given the opportunity to sign the Prisoners Pledge written by a Pennsylvania inmate.

- Working with the Mediation Program for Victims of Violent Crime (see below), the Society offers trained volunteers to support select inmates who have been approached for mediation with their victims.
- The Prison Society recently initiated a new program called Opportunities for Shared Dialogue. Victims and offenders involved in similar crimes, but not directly matched, come together to dialogue about their experiences and explore ways to address the root causes and effects of crime. Trained facilitators prepare the participants and keep the dialogue focused and non-judgmental.

The Department of Corrections has recognized these programs as a valuable resource for the prison system.

For more information, check <http://www.prisonsociety.org/restorativejustice/index.html>.

Mediation Program for Victims of Violent Crime

(Based on an interview with Drew Brommer and Kathy Buckley, Office of the Victim Advocate, PA Department of Corrections)

Why would the victim of a violent crime or the survivor of a murder victim ever want to meet

with the perpetrator? The answers can be as varied as the people and their life circumstances. Some victims have found that the opportunity to tell their story and ask questions of the offender can help them deal with the impact of the crime. For the offender it can present a chance to recognize the real person they have hurt and accept responsibility for their crime. Responding to requests from victims, the Office of the Victim Advocate (OVA) created a Mediation Program for Victims of Violent Crime in 1999.

All mediation requests are initiated by the victim/survivor. Once the offender agrees to participate, it becomes a balanced field. Trained mediators work to prepare the victim and offender for a possible mediation. No set time schedule constrains the process. The parties involved establish the pace: some are prepared to meet within three months, for others it could take eighteen months or longer. When the parties come to the mediation, the mediators usually find that they have a limited role, remaining in the background and allowing the victim and offender to speak with each other as directly as possible. The mediators' role might be limited to helping one of the parties broach a topic they have expressed a desire to explore during the preparation process.

The experience has produced positive reactions from all the parties. Victims have expressed surprise at having received an apology and honest answers to their questions. Offenders have remarked that it has brought them a sense of freedom from a heavy burden. And mediators have felt honored that the both parties have

Learn more about this program at the PCM Annual Conference—Kathy Buckley will be on a panel entitled "Current Trends in Restorative Justice Practices across the Spectrum"

allowed them to be part of the process.

Some times the victims have come out of the meeting so focused on the immediate experience that they have asked to have a second meeting. OVA staff acknowledge this feeling, but ask the victim to take some time to incorporate the experience into their understanding of the crime's impact before deciding on a second meeting. To date, none of those initially requesting a second session have come back to ask for it later.

The 58 volunteer mediators who are part of the program come from all parts of the state and bring varied backgrounds to their work. The mediators always work in teams of two. At any one time there are about 15 active cases in various stages of the process.

For more information, check <http://www.pbpp.state.pa.us/ova>.

Lancaster Area Victim Offender Reconciliation Program

(Based on information supplied by Jon Singer, LAVORP)

For many people the Biblical imperative to live in peace (shalom) and follow the words of the prophet Micah—act justly, love mercy and walk humbly with God (Micah 6:8)—has been the inspiration behind their involvement in the restorative justice movement. The Lancaster Area Victim Offender Program

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Mediation and Restorative Justice (continued)

(LAVORP) is one group that has built a program on the recognition that Christian churches serve as vital instruments of peace and reconciliation in the community and personal relationships. Most of their 62 volunteer mediators have come from local congregations. LAVORP was organized in 1994 and started receiving cases from Juvenile Probation in 1995. More recently they have partnered with Youth Aid Panels for referrals. In the future, they are anticipating taking adult cases, doing Truancy Mediation, Community Conferencing (nuisance crimes), Restorative Practices for Schools and Neighborhood Restorative Justice Conferencing Programs.

Following the basic victim-offender program model, they prepare the offenders and victims for a facilitated joint meeting. These encounters allow the parties to exchange facts and feelings about the incident, address the harm, and talk about building trust for the future. Occasionally they use the Circle model.

In 2003 the program received 300 referrals involving 910 victims and offenders. As the result of facilitated meetings, the parties agreed to restitution totaling over \$20,000 and 300 hours in community service. All agreements are monitored by LAVORP. So far they have experienced a 90% success rate in having those agreements fulfilled.

For more information, check www.lavorp.org

A Future View of Restorative Justice

As with any developing field, restorative justice programs have reached the point where it is useful

to step back and assess both successes and areas for rethinking. A group of researchers and practitioners recently did just that. Their study and the resulting recommendations are documented in *Taking Victims and Their Advocates Seriously: A Listening Project* by Harry Mika, Mary Achilles, Ellen Halbert, Lorraine Stutzman Amstutz, and Howard Zehr. Although restorative justice programs are promoted as offering

Good resources on restorative justice:

- Restorative Justice Online
<http://www.restorativejustice.org>
 - Victim Offender Mediation Association
www.voma.org
-

benefits both to victims and offenders, many initial programs grew out of a desire to help offenders accept responsibility for their crime and recognize the injury they caused to other persons. The listening project's goal was to confront and explore inherent program deficiencies, particularly pertaining to victim participation and impacts for victims, their advocates and victim services. The hope is that by exploring these issues, restorative justice programs might produce more responsive and beneficial outcomes for victims as well. Over 120 people from seven states participated in the project.

Victims believe that their voice and experience have too often been excluded from the program planning and facilitator/mediator training process. Yet victim advocate groups are called upon to support restorative justice programs. They can feel that

programs promote unrealistic or unreasonable goals that do not respond to their needs. Sometimes victims wonder whether they are being used by the offender to gain a reduced sentence. Going into the process with the expectation of an apology from the offender can leave the victim set up for disappointment. In some situations the victim can end up feeling re-victimized.

Many victims worry that restorative justice processes do not recognize the differences inherent in the range of crimes and victims. At its very core, trying to apply a rational process to an irrational act can raise unreasonable expectations. Mediation presumes a "dispute" and a "relationship" that needs to be worked out. Victims can see this approach as trivializing the deep harm they have suffered. Defining restitution, often a component of the process, is another area of concern, and especially inappropriate in crimes of personal violence, such as rape or domestic abuse. Finally, the strong focus on face-to-face meetings excludes cases where the offender has not been identified or refuses to participate, or cases where a meeting is inappropriate.

The project authors propose increased input from victims—including them in program planning, training and evaluation—and greater sensitivity to victims' diverse needs in the types of programs offered. Further, creating a safe place for both victims and offenders might come from greater inclusion of advocates and other support persons.

For the full report, see <http://www.restorativejustice.org/rj3/Full-text/ListeningProject.pdf>.

Is It Time for a Department of Peace and Nonviolent Conflict Resolution?

Suggested legislation is being floated around the offices of Pennsylvania legislators to introduce a Department of Peace and Nonviolent Conflict Resolution for the Commonwealth. The many-fold mission of the Department would focus on creating and/or promoting programs that successfully address issues of conflict management and conflict resolution at all levels of its application. The Department would also introduce proactive policy that supports constructive conflict resolution statewide.

Under the legislation as drafted, five offices would be created to address various facets of the field. The Office of Conflict Resolution Competency would focus on school-based programs and training. The Office of Domestic Relations would address domestic violence, including spousal, child, elder and same-sex partner abuse. The Office of Community Peace-Building would attempt to foster trust and sharing responsibility. The Office of Civil Interests and Economic Interests would address race, class, ethnic or religious disputes from an interest-based perspective. And the Office of Restorative Justice would implement judicial and extra-judicial programs that support restoration and rehabilitation and prevent re-victimization.

The suggested legislation was developed based on a federal bill introduced by Congressman Dennis Kucinich (D-Ohio). The Federal Department of Peace, in addition to issues of peace and conflict resolution in the domestic arena, would address international issues and give the Secretary of Peace equal footing with the Secretary of Defense and Secretary of State. The bill is currently in committee and has a list of 42 co-sponsors. To read more about the federal legislation, visit www.dopcampaign.org.

Pennsylvania was founded on the principles of individual liberty and fair treatment for all people. It is only natural that Pennsylvania should build on its history of leadership in recognizing the humanity of all by becoming the first state to create its own Department of Peace and Nonviolent Conflict Resolution. Isn't time we make peace and nonviolence organizing principles for the Commonwealth?

Visit www.phillymediators.org to view a draft of the proposed legislation and the executive summary or email gsmmediation@phillymediators.org to find out how you can help promote the Pennsylvania Department of Peace and Nonviolent Conflict Resolution.

In Memoriam: David Frey

It is with deep regret that The Peace Center in Wilkes-Barre announces the death on January 24 of David Frey, former Co-administrator. David died at home after a lengthy illness. During his 58 years, David gave generously of his time and talent to the Wilkes-Barre community and beyond. His presence will be missed. PCM owes a special debt of gratitude for David's leadership in the annual conference The Peace Center hosted in 1999 and his service on the Board of PCM. Condolence notes can be sent to Mrs. Nancy Frey and family (David had two sons, Ethan and Bill), 25 Mallory Place, Wilkes-Barre, PA 18702.

Job Opportunity: Executive Director

The Lancaster Mediation Center is a non-profit organization that seeks to mediate conflict in various settings including neighborhoods, businesses, families and schools. Candidates should possess demonstrated leadership skills, strong marketing and community outreach skills, and the ability to effectively utilize the skills of volunteers. Knowledge of mediation concepts and training/facilitation skills a plus. For confidential consideration, email your resume to info@lanmed.org or fax to 717-390-7783. Lancaster Mediation Center, 225 West King Street, Lancaster PA 17603, 717-293-7231

Training Opportunities

Basic Mediation

March 5, 6, & 7 or July 16, 17, & 18
Sponsored by Lancaster Mediation Center, Lancaster
\$370, or \$345.00 for early registration
For more information: 717-293-7231

Basic Mediation

March 18-20
Sponsored by Good Shepherd Mediation Program, Philadelphia
\$425; \$495 with CLE credits
For more information: 215-843-5413

Basic Mediation

March 31, April 1-2 or June 21-23
Sponsored by Center for Resolutions, Media
\$375, four weeks in advance; \$450 if less than four weeks. PA CLE and Act 48 credits offered.
For more information: Brenda Wolfer, 610-566-7710,
brenda@center4resolutions.org

Basic Mediation

April 21-24
Sponsored by Montgomery County Mediation Center, Norristown
\$375 before 3/30; \$450 after 3/30; CLE credits additional
For more information: Sheryl Richman, 610-277-8909 (Tues. or Thurs.),
mcmcpeace@aol.com.

Beyond the Basics: Advanced Training for Mediators

March 13
Sponsored by Neighborhood Dispute Settlement, Harrisburg
\$45; \$25 for NDS Members
For more information: Deb Ritchey, 717-233-8255 or 800-324-4453
concillatn@pa.net

Circle Dialogue Process

April 15 & 16
Sponsored by Center for Resolutions, Media
\$200.00 (Early bird discount available)
For more information: Jennifer Clement, 610-566-7710,
jennifer@center4resolutions.org

Emotional Competence, with Tricia Jones

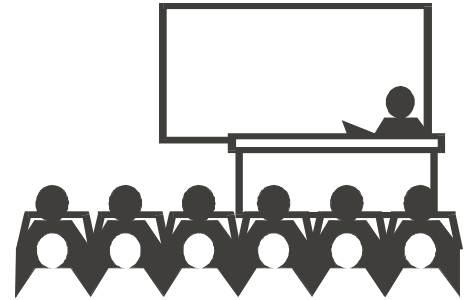
April 23
Sponsored by Good Shepherd Mediation Program, Philadelphia
\$150; \$200 with CLE credits
For more information: 215-843-5413

Victim Offender Reconciliation

May 11, 13, 18, 20 (eves) & May 15 and 22 (day)
Sponsored by Lancaster Area Victim Offender Reconciliation Program, Lancaster
\$50 for those who become Volunteer Mediators
For more information: Ken or Jon at 717-397-2404

Conflict Coaching

June 19
Sponsored by Good Shepherd Mediation Program, Philadelphia
\$150; \$200 with CLE credits
For more information: 215-843-5413



Divorce Mediation, with Zena Zumeta

June 21 thru 25
Sponsored by Lancaster Mediation Center, Lancaster
\$1050.00, or \$995.00 for early registration
For more information: 717-293-7231

Advanced Mediation Training

The Gestalt International Study Center and the Gestalt Institute of Cleveland offer a 24 hour advanced training for mediators called Unified Mediation: Working from a Gestalt Perspective: April 29-May 2 in Welfleet, MA, and August 12-15 in Cleveland. Trainers, Ann Begler (Pittsburgh), Sally Higginbotham (Boston) and Lisa Gaynier (Ann Arbor) are all long time mediators who have completed advanced training in various gestalt programs. The focus of the trainings will be on the Gestalt Cycle of Experience, how to work with resistance within both the mediator and clients, and how to develop an enhanced use of self as a tool for intervention. For more information or a PDF brochure, contact Ann Begler at 412-391-4000 or bglgrp@aol.com.

Contributing to the Newsletter

The Pennsylvania Council of Mediators publishes its Report for Members and Friends. We are able to share information about current issues in mediation across the state of Pennsylvania and the United States. We welcome your input and ideas! Please send training information, program highlights, educational articles, book reviews, or any other information useful to our readers. Submissions will be printed as time and space allow. Send submissions to:

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The Rose Center Co-Sponsors Regional Conference

Linda Baron, executive director of the National Association for Community Mediation (NAFCM), was the keynote speaker at "The Future of Mediation in Northeast Pennsylvania," a regional mini conference co-sponsored by The Rose Center and The North East Pennsylvania Institute on Conflict Resolution at Marywood University. Linda shared examples of exemplary programs around the country and how those examples could be used to promote mediation in Northeast Pennsylvania. Highlights of the event included a presentation by the Honorable Chester Harhut, President Judge of Lackawanna County Courts, who shared effective uses of mediation within the court system and within the community.

Round table discussions on "Improving Mediation in NEPA" and workshops on "Communication Skills in Mediation," "How to Write a Great Agreement," "The Gift of Listening," "How to Deal With Challenging Parties" and "Exploring Careers in Conflict Resolution" rounded out the program. The conference attracted almost fifty people from as far as Allentown who represented varied levels of skill and experience in mediation.

Membership Information

If you are interested in joining other mediators statewide and becoming a member of PCM, check out the web site at **www.pamediation.org** where you'll find a membership application and other information.

If you haven't visited the site recently, you'll be pleasantly surprised by the new look and wealth of information. Remember that PCM members can be listed on the web site for \$15 in addition to the regular membership fee. (To get more information on a listing, contact Phoebe Sheftel at phoebe@pasheftel.com.)

Decision-Making Theory and Practice: Insights for Mediators

Based on a presentation made by Craig Coletta (Coordinator, National Association for Community Mediation) at the PCM Annual Conference, May 2003.

"Now, wait a minute here. Don't get emotional. Let's make a rational decision about this." Think it's that easy? Think you can force some one into making a "rational decision?"

Society places a positive value on rationality and ascribes negative values to non-rational decisions. But every decision arises out of "irrational" elements—feelings, emotions and values. This was the theory presented by Craig Coletta at the 2003 PCM conference. Even if you use a logical structure while setting criteria to judge options, developing choices and assessing their viability, irrational impulses usually predominate at the beginning (setting the goal) and the end (making the decision.)

Coletta divides the decision process into five steps:

1. Defining the goal—This tends, by nature, to embody a perceived need or desire that arises out of feelings, emotions and values. Which house should I buy (values, emotion)? How can I get the best custody arrangement (feelings, emotions)? How should my partner and I dissolve our business (values, emotions)?

2. Determining aspects of the goal—This involves establishing the criteria that you will use in analyzing the benefits and costs of different options. Here's where you decide which key factors will guide you to a "rational" choice.

3. Generate options responding to each aspect—An extension of the rational process

4. Assess the viability of options—This can be done in a very

structured way, say by assigning numerical weights to different values and measuring the resulting benefits of each option.

5. Select the option/decide—Despite having used a strictly rational method in steps 2-4, you are not bound by the results of that analysis in making the decision, and this is where emotion tends to justify ignoring the previously established rational measures for judging each option.

Recognizing what's at work within each step helps mediators understand the value of giving the parties control over the process. All the "rationality" that an outside party could bring to the situation is fruitless in face of the "irrational" factors that will govern in the end.

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