

# The community within and without: The role of reflection in restorative justice

## ***Introduction***

In this paper I propose to discuss the importance of a reflection to conferencing. Moore and McDonald<sup>1</sup> make a useful distinction between the process and program elements of conferencing. (*Process* refers to the conferencing techniques that are taught in training sessions and includes elements of the script used by convenors. The *program* elements include where, by whom and under what guidelines the conferencing program operates such as the legislation, the position of the program, gatekeeping procedures, aims and objectives, reporting requirements and other elements specific to this program.)

Two other elements to complete the picture on program implementation are the *participants*, including the *practitioner*, who convenes the conference and the *policies* that govern the operation of the program. What the participants bring to the conference can have a significant impact on the process and outcomes. The policies, which reflect the overall aims of the program, clearly impact on whether the conferencing program is beneficial or harmful for participants. I want to draw upon some practice examples based upon my experience in conferencing to highlight the importance of reflection in all these areas to the success of the conferencing process.

Before commencing with practice examples, I want to reflect on the Victorian context of the program and define what I mean by reflection.

## ***Context of Restorative Justice In Victoria***

### **Jesuit Social Services**

I work for Jesuit Social Services in Melbourne Victoria Australia. Jesuit Social Services is a leading non-government Catholic service agency that commenced in 1977 delivering pre- and post release services to marginalized ex-offenders released from prison and youth training centres. Over the last 30 years it has expanded its range of services to many marginalized populations and developed preventative and supportive programs based in the community as well as pioneering social policy innovation and social action through its advocacy arm, The Ignatius Centre, named after the founder of the Jesuit

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<sup>1</sup> Transforming Conflict by David Moore and John MacDonald June 2000 Published by Transformative Justice Australia.

Order. Jesuit Social Services has long championed restorative justice approaches in criminal justice.

For the last three years it has delivered this program to all metropolitan children's courts across Melbourne in Victoria. After commencing the children's court program, the founder of the agency and Policy Director Father Peter Norden, considered that Jesuit Social Services should not be satisfied with simply being a deliverer of government programs. He challenged the agency to "add value" to the existing program by seeking private funding from Trusts to "further consolidate the existing program and promote restorative justice conferencing with young adults 18-25 years inclusive in the adult criminal courts as a first stage to an adult restorative justice program". Funding was successful and a part-time project position was created to develop a policy framework for adapting the existing children's court program to the adult courts. An advisory committee was established with all major stakeholders represented under the Chair of a retired County Court Judge and former Chair of the Youth Parole Board, Eugene Cullity. A policy discussion paper was released and a final report recommended program changes needed to establish a pilot young adult restorative justice conferencing model for Victoria. After meeting key government Ministers, a 2 year pilot project may commence in 2007 at the soon to be established Neighbourhood Justice Centre in Melbourne, the first neighbourhood community court to be opened in Australia<sup>2</sup>.

This project position has also contributed to the development of a submission to Government from the juvenile justice group conferencing advisory committee that developed an agreed legislative framework for the program. A minimalist legislative provision was contained in the Children's Youth and Families Act 2006 on group conferencing that is the first Victorian restorative justice conferencing legislative provision to pass through parliament. It is to be proclaimed in early 2007.

All this activity in Victoria is consistent with the Jesuit view as expressed by Mark Raper SJ at our annual dinner in 2003 when he said-

"The first step in any ambitious social project is to build an alternative vision. At a second level we identify medium term alternatives that are achievable, but that take time to build because of the obstacles. The third level involves sets of short term goals or projects around which to mobilize forces"<sup>3</sup>

Jesuit Social Services has expanded the reach of restorative justice in the Victorian criminal justice system.

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<sup>2</sup> To download both documents, on this project, go to Jesuit Social Services website at [www.jss.org.au](http://www.jss.org.au) , - then click on programs, then click on "Ignatius Centre", and under restorative justice, download both documents on the young adult restorative justice conferencing proposal.

<sup>3</sup> "The Pebble in our Shoe" Talk given by Mark Raper SJ at the Jesuit Social Services annual dinner 24/3/2003.

## **The Juvenile Justice Group Conferencing Program**

Victoria's children's court restorative justice conferencing program is called group conferencing. Victoria is unique in Australia in that the program is delivered by community agencies contracted to Juvenile Justice to deliver the program. This gives the program a strong community focus. In other states in Australia the program is delivered primarily by government services.

Victoria is also unique in Australia in that it has a highly targeted juvenile justice system. When restorative justice conferencing was considered for Victoria, it was introduced as a pre-sentence diversion program for children and youth who would otherwise receive a community supervision order. Direct referrals by police as a second option after police caution was rejected in Victoria. Our police cautioning program and our courts were considered very effective at diverting over 70% of young people. So agreement was reached for conferencing to operate with some of the approximately 1000 young people who enter the supervisory system per annum. Moreover certain offences such as serious crimes of violence and all sexual offences were, and continue to be excluded from the program. The program was targeted as a voluntary diversionary option from the first supervisory order, namely youth probation.

Juvenile Justice Group Conferencing commenced as a pilot program in 1995. It has continued to operate since that time and has been extended statewide in October 2006. The experience of last ten years has reflected the challenge of many non-legislated voluntary programs to obtain sufficient referrals to meet performance targets.

Expansion of the program has resulted from five very positive independent evaluations conducted over the last 10 years, which have demonstrated that the program is producing better results in most areas in comparison to existing supervisory regimes *with young people from the same offending and social backgrounds*<sup>4</sup>. With the expansion of the program statewide and the proclamation of legislative provision, the coming period could see the program exceed these targets for the first time in many regions. In addition, the program is being extended to young people on existing juvenile justice orders, when they are assessed as suitable by juvenile justice court advisory staff, to undertake a restorative justice conference instead of finding themselves more entrenched in the supervisory system at every subsequent court appearance. This expansion of the target group to young people on existing juvenile justice supervisory orders sees Victoria avoiding any net widening and using the program with young people who would normally not receive restorative practices.

Another key feature of the Victorian program is that the young person must return to court after the conference has taken place where a court report on the process and outcomes is provided to the court before the court determines final sentence. Finally,

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<sup>4</sup> The latest evaluations reports are "Report on the juvenile justice group conferencing program Stage 1 and 2" prepared by Clare Keating and Debra Barrow from Effective Change Dated 2005-6. For copies apply to Department of Human Services Victoria Youth Services and Youth Justice Section.

there are legislative guarantees that the young person must receive recognition from the court for their participation in the conference process and that any failure on their part to complete the process cannot be used by the court to impose a more severe sentencing outcome.

So, upon reflection, in juvenile justice, Victoria is using restorative justice conferencing more selectively than any of the other Australian states. It is targeting young people who are more deeply involved in the system, having committed offences that would otherwise warrant a supervisory order, or having a history of failure with other diversionary options including prior police cautions, court appearances, and even prior or existing supervisory orders. Victoria is making use of its extensive network on non-government agencies with substantial child and youth welfare experience to deliver the program in community locations close to victims and families of the young people.

### **The Victorian Association of Restorative Justice (VARJ)**

An exciting development in Victoria has been the establishment of VARJ in 2005, which aims to bring together people interested in restorative practices from all human services areas. In juvenile justice, Victoria adopted a full time professionally trained model of conference convenor and while this has ensured a reasonable standard of practice, it has limited the spread of the technology in the community. There is a greater interest in the use of some sessional convenors working with full time convenors to develop more expertise and provide a greater spread of conferencing skills in the diverse communities reflected in state. My reflection on VARJ is that it might play a key role in maintaining standards of practice as more people become interested in participating in restorative practices<sup>5</sup>.

### **The Place of Reflection in Conferencing**

Reflection, meaning “to cast back after an incident, to think, ponder, or meditate,”<sup>6</sup> is an inherent part of the conferencing process. Reflection is an action that involves deciding upon the meaning of an event. Terms such as critical subjectivity, critical incident analysis, involve looking at what happened and what it means and how we could make it better or improve upon it. Below are summarized relevant forms of reflection that seem to me to be appropriate to the conferencing process.

- Record keeping (There are many other reasons to keep good records of case activity, but one involves the use of case records as a form of reflection on the case.)
- Diagrams ( The use of eco-maps, family genograms, and conference circle maps with participants identified in their seats, help to reflect on the visual outline of the case.)

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<sup>5</sup> For information on VARJ go to the website [www.varp.asn.au](http://www.varp.asn.au)

<sup>6</sup> The budget Macquarie Dictionary third edition NSW 2002.

- Individual and group supervision (Discussion of cases with supervisors and other colleagues help to provide an opportunity to reflect upon what is happening in this case.)
- Identity, (When a person identifies as a restorative justice practitioner, he is reflecting on the meaning of this in his/her work and life. So the identification process as a perennial student of the field provides the practitioner with opportunities to reflect on the meaning of this identification.)
- Present moment (In preparing, and facilitating a conference, there is the second by second reflection that goes on inside the convenor with inner and outer dialogue, whether to reframe something, attend to “x”, ignore “y” etc)
- Managing expectation reflection, where the vision and reality of conferences meets and people are properly prepared so that expectations are realistic.
- Intellectual brooding reflection, that occurs when someone concentrates on a case, meditates on it and gains inspiration from this process “with the eye of contemplation”,<sup>7</sup> and, finally,
- Heart reflection that reaches out to understand and appreciate the experience of the other.

## Examples of Reflection in Conferencing

Here are some examples of cases where reflections by either the participants or the convenor have significantly impacted on the operation of the conference process. Further we can also learn from other cases where a routine approach, lacking in reflection, resulted in less than satisfactory results and then apply these lessons in the future. These are:

- A transformational moment in a conference
- Not attending to a traumatized victim
- Private Time as family reflection time
- Conferencing reaching out to fractured relationships
- Dealing with last minute surprises, and
- Managing expectations around acceptance of responsibility

### *A Transformational Moment*

These are the heart felt moments in a conference where powerful emotions connect. In this conference a 16-year-old boy addicted to an illicit drug held up three schoolboys his age over two incidents one week apart. The mothers of the offender and the three victims attended the conference. Two of the victims also attended. When one of the victim’s mothers expressed a feeling in her heart that the offender’s actions on that day had “demonstrated how vulnerable this young man was” she got to the heart of the matter. Everyone knew in that conference that she had spoken the truth, right at that moment.

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<sup>7</sup> See Ken Wilber The Marriage of Sense and Soul 1998. Pg 170.

This is a mother who can put to one side the impact on her son and focus and attend to the real needs of the young man who had caused the incident. As the convenor of the conference I did nothing to facilitate this happening. It was spontaneous. However, I *reflected* on meeting all these victims and I found that they were very well functioning, caring families who had high levels of emotional intelligence but they happen to be “time poor”. They were very busy people with hectic modern lifestyles, managing work, holidays, childcare etc. I simply gave them open invitations to attend the conference in whatever shape or form they desired. I was briefing people while they were boarding planes for school excursions. I kept in regular contact with them and this always builds a level of trust but imposed no deadlines on their decision to attend. Some made decisions on the day of the conference to attend. I had never met that particular mother before the conference. I had met the husband and the victim. The husband was an impressive guy who was very sensitive to his son’s needs and wishes.

Her comments in that conference were heart felt, powerful, and resulted from her *reflection* by active listening to the offending boy’s story. Her words resonated in the conference and are remembered by all present. They built community inside the conference.

#### *Missing a Traumatized Victim*

I am listening (but not really hearing or *reflecting*) a victim spout on at length of countless acts of vandalism on his business that has been going on for years. He is calling the young offender of the current offences derogatory and foul names which gets me anxious as I imagine how much preparation would be required before this victim could participate constructively in a conference. Then he expresses a preference to be represented at the conference rather than attend and I quickly agree to his request. After all, this will make my job easier. I won’t have to deal with a family offended by his words. The conference is a great success. The victim support officer does a fantastic job in reframing his anger while still getting the powerful messages across of the impact on his business.

Later I am desperately looking for a victim to participate in a video that will be used at a program launch. I ring him and he volunteers. When he is on camera, I become aware of his unresolved trauma behind all the bravado of his spoken words shown on his face. Had I met this victim, I would have seen this first hand. Instead I was focusing on my needs for a “smooth conference” and I neglected his needs. My *reflection* reinforced how important are the restorative justice values of respect for the needs of all participants and the importance of active listening to each participant. Short cuts aren’t always the right cuts to make.

Conferencing can suffer from workers looking for short cuts who are under time pressure. There can be pressure to think narrowly around conference procedures, which is practice that simply “ticks the boxes”. There can be an exclusive focus on method ( conference process) without consideration for assessment based upon reflection. Carole Meyer describes assessment as the “ thinking process that seeks out the meaning of case

situations, puts the particulars of the case in some order and leads to appropriate interventions”<sup>8</sup> On reflection, I regret my actions and think of how much better this conference would have been for the victim and the offender had the victim been present to meet such a strong family that this offender resided with.

### *Private Time Reflection*

A family meet in private in a conference on their son’s vandalism offences. Our agency has offered some funding to help with equipment purchases in the repair work. The family *reflects* on the offer and refuses financial assistance.

My *reflection* on this case is that families feel empowered through conferencing to draw upon untapped resources that exist within their informal networks to come up with their own solutions. This is a great strength of the conferencing process and the assumption inherent in the program seems to be sustained that many families do have untapped capacities to draw upon. Private time gives them this message.

### *Reaching Out To Disengaged Dads*

I gain a mother and son’s permission, who both hold resentment towards his natural father, to simply contact him as part of the conferencing process. I had *reflected* on their views before meeting them that this would be an achievement. The father participates in the conference by writing a letter which helps him stay connected to the son.

A separated father agrees to help his son complete his community work.

A interstate truck-driving dad doesn’t make the conference because of driving commitments but attends court as a result of the involvement in the conference preparation process. At court he meets a “problem solving” Magistrate who encourages the father to remain connected to his son no matter what obstacles are put in his way. He responds very positively to this court engagement.

My *reflection* on conferencing and its ability to rebuild relationships is that it helps people find a practical way forward that they choose to maintain connection with people that really matter to them. The conference process can be the first step.

### *Dealing With Last Minute Surprises/Reflection Time before a Conference*

You find out a few hours before running a conference that the offender charged with arson has a pre-school history of lighting fires. The police tell you about another victim witness one day before the conference is to be held. Someone crucial pulls out on the day of the conference. Someone else turns up unannounced.

These are not uncommon experiences for conferencing convenors. Your preparation helps you deal with these last minute surprises. The usual and routine aspects of

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<sup>8</sup> Assessment in Social Work Practice By Carole Meyer Columbia University Press New York 1993 Pg 2.

conference preparation such as agenda, attendance list, questions, opening statement, are all organized. The room needs to be ready. These are mostly all within your control. ( Except recently, I experienced an agency that double booked the conference room-but they came up with an alternative.) The best preparation tool for me is to arrive at least one hour before the conference. Remember there are always early and late arrivals. You want 20 minutes of down time where you can center yourself and prepare yourself for *any eventuality*. This is my reflection time before a conference and I guard it jealously. I sometimes meditate and little fazes me after this because a belief seems to come that I have done all I can to prepare and I can leave the rest to the process.

### *Managing expectations around acceptance of responsibility and reparation*

A young offender accepts full responsibility for his actions and is deeply remorseful for its severe impact on a younger boy, but at the same time asserts that he didn't intend the harm because "he wasn't thinking at the time", even though he has been charged with and found guilty of intentionally causing the offence. This leaves the police and victim with a sense of disappointment and a mixed message.

As a restorative justice practitioner I don't want people harmed by the process, who have already experienced significant harm. I want to know their expectations have a reasonable chance of being realized through the conference process. I need to forewarn them of things that might disappoint them about the process. For example there are always degrees of acceptance of responsibility by the offender. There might also be limitations on the ability of the offender and their support network to provide much in reparation. It's nice when there are surprises in the form of genuine remorse, high levels of responsibility by the offender, and significant reparation action planned.

Our *reflections* on what is likely to happen are important because they prepare people emotionally for the conference and help them manage both the positives and the negatives of the process. Conferencing is a human process which has inherent limitations.

## **Conclusion**

This paper sought to examine the role of reflection in creating community in restorative justice conferencing. Good policy in restorative justice requires reflection and the role played by Jesuit Social Services in consolidating and expanding the reach of restorative justice in Victoria was explained. Jesuit Social Services aims to shape the policy environment in criminal justice in partnership with others, not simply deliver a restorative justice program on behalf of the government. This has been evidenced in the development of a legislative basis for the existing children's court program and the proposal to develop a young adult pilot at the new neighbourhood justice centre in Melbourne.

The context of restorative justice conferencing in Victoria was reflected upon. Victoria has one of the smaller juvenile justice systems in the Western world and conferencing is

being used as a diversionary strategy from supervisory orders. While less conferences might occur as a result, netwidening has been avoided and the program is expanding statewide using multiple community agency service providers operating with a legislative based program in 2007. A practitioner based association has been formed that will help promote restorative practices more widely in the community.

It was argued that reflection is a significant element in effective conferencing process and practices. Examples of participants using reflection were described with some resultant powerful effects. Learning from routine practices where reflection is omitted can help remind the practitioner of its importance of reflection on participants needs. Reflection is used to manage expectations of participants, provide a calm in a storm of unforeseen circumstances, or engage with fractured relationships. These are just some of the examples where reflection helps to improve the functioning of restorative justice conferencing.

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