

A Conferencing Case Study:
Negligent Operation / DWI #1 Refusal – Fatal
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Summary:

The following report details a case of Negligent Operation / DWI #1 Refusal – Fatal that had proceeded through the criminal justice system to the point that a plea agreement was presented to a State of Vermont District Court judge. The judge rejected the agreement, believing that a group conference would be beneficial. The conference was ultimately convened with 18 participants and an understanding/agreement was successfully developed. The report details how it was determined who would attend, when the conference would be convened and what the exact agreement/understanding was. The feedback, which was generally positive, is included. The author concludes that this is a process that works and should be employed more extensively in any number of appropriate venues in the greater community.

The Incident

On Saturday evening, November 13, 2004, five young people drove in two pick-up trucks from one location to another in the small rural town of Tinmouth, Vermont. They had all been drinking alcohol. The first pick-up was driven by Keeley Lebo. Brian Buffum rode with her in the front of the vehicle. One of Keeley's best friends, Suzanne Knapp, chose to ride in the rear cargo area, even though it was very cold that evening. Keeley, Brian and Suzanne were all 20 years old at the time.

Suzanne Knapp subsequently died when she fell from the back of the pick-up on the way to the camp in Tinmouth Gulf to which they were headed. According to a police affidavit, Suzanne fell from the vehicle "on a straightaway, which indicates that there was not a change in the vehicle path. The roadway was recently paved and found to be smooth." The State Trooper who conducted the investigation concluded that Suzanne had probably shifted her weight and slipped on the snow and ice in the cargo area, falling to her death. Keeley Lebo was arrested shortly after the accident, charged and released.

Pre-sentence Proceedings

Keeley was arraigned in District Court on January 28, 2005, on three charges- Negligent Operation, DWI # 1 and DWI # 1 Refusal – Fatal. A plea agreement developed prior to the arraignment between the State's Attorney's Office and private defense counsel was presented to Judge Patricia Zimmerman. The State agreed to dismiss the second charge (DWI # 1), with consecutive (as opposed to concurrent) sentences of 3 months – 1 year for charges #1 and # 3 (for a total of 6 months – 2 years in jail, all suspended on probation).

A number of Suzanne Knapp's friends and family members attended the arraignment, and at least two spoke. Ed Knapp, Suzanne's father, said he still had a number of unanswered questions. Eunice Knapp, Suzanne's sister, also voiced concerns about how Suzanne had died. After hearing the concerns of the victim's family, Judge Zimmerman rejected the plea agreement. "I think there has to be something a lot more creative here," she said and suggested that the parties come back with an agreement that included a facilitated group conference so that they could all talk about what happened that evening.

I received a call the same day from Kim Ezzo, Victim's Advocate at the Rutland State's Attorney's Office. All parties (the State and defense counsel) were in agreement about convening a conference in this case. The main initial issue then became whether the conference should occur pre- or post-sentence. Below is an excerpt from an e-mail that I sent on January 31, 2005, to defense counsel, with a copy to the State's Attorney and the Court:

"Apparently, in speaking to both Kim Ezzo on Friday and you today, the parties most affected by this incident (Ms. Lebo and her supporters and the family members of the young woman who died) are interested in participating in a group conference. The main issue at this point between the State and the defense appears to be whether the conference should occur pre- or post-sentence. From my perspective as the potential facilitator, this is not a crucial issue so long as the defendant is not being coerced into participating in this process. Two of the basic conditions necessary before any conference is convened are that the defendant admits guilt and that all parties participate voluntarily. As long as those conditions are met, a conference might be held at any point on the criminal justice continuum, from pre-adjudication to pre-release from incarceration. Pre-sentence is most compelling when a plea has been entered but an agreement has not yet been reached, which is clearly not the case here."

It was clearly established that the intent of the Court was to convene the conference post-sentence by way of the following response from Judge Zimmerman on January 31, 2005:

"Thank you for keeping me in the 'loop' as you prepare to do your work on this case. I indicated to counsel that the conference could be post-plea as a condition of her probation. I will certainly make myself available if either counsel wish to speak with me about the logistics of a plea conference. However, I prefer to stay 'out of the loop' at this point so that counsel may feel free to speak with any interested party w/o running afoul of involving the court in any discussions that could present ethical considerations. Thank you to all for your quick response."

The next issue – what the exact wording of a special condition requiring a conference might be – was dealt with in a February 3, 2005, e-mail from me to defense counsel and the State's Attorney's Office. I felt this was an important issue as it might relate to the future use of conferencing as a condition of probation. While it was clear in this case that there were victims interested in participating, this might not always be the case. My main point was that the wording should make compliance with a condition requiring conferencing moot if there were no victims interested in participating. The final language of this condition reads:

“You shall attend and fully participate in... a restorative justice/family group conference with members of the Suzanne Knapp family if a member of her immediate family... requests that such a conference be convened.”

Pre-conference Preparation

The first victim I spoke with was Kim Morrissey, one of Suzanne Knapp’s sisters, who lives in Massachusetts. I spoke to her extensively over the phone, answering initial questions she had about the process, and subsequently sent (via e-mail) some conferencing case studies and links to the following sites for her information:

<http://www.cyf.govt.nz>

<http://www.communityconferencing.org>

<http://www.calgarycommunityconferencing.com>

As noted above, it had already been determined that the conference would occur after sentencing. The other issue, however – when the conference might occur – was still unresolved.

Ms. Morrissey clearly represented to me that her family wanted the conference convened as soon as possible. A calendar call in this case was scheduled for April 20, 2005, but it also had been implied that sentencing could occur sooner than that date. As it worked out, I learned on March 23 that sentencing was scheduled for April 28 at 2 PM.

This development presented me with some practical and logistical issues. Every indication was that the State’s Attorney and defense counsel were agreed that a conference would be required as a new condition of probation. On the other hand, it obviously would not be a “done deal” until after sentencing. Over four months had already transpired since the death of Suzanne Knapp and, as noted above, it was apparently the family’s desire to have the conference convened sooner rather than later. Thus, I decided to make the assumption that a conference would be ordered, to then determine a date to convene the conference as soon after sentencing as possible and, finally, to do the pre-conference preparation prior to the April 28 sentencing date.

It is always an interesting exercise to determine who will be given the opportunity to participate in any particular conference. The idea, of course, is to cast as wide a net as is appropriate and reasonable. In this case, Kim Ezzo gave me a good start with potential victim participants. She sent contact information for Suzanne Knapp’s father, three sisters, the father of Suzanne’s two young children and two friends. Kim Morrissey, a sister, became the key contact to expand this initial list. Ultimately, the original list was expanded to include Suzanne’s mother, another sister, two brothers and an aunt and uncle. Another friend of Suzanne’s was ultimately added to the list in addition to Bill Valentine. I contacted Bill as an affected party as the incident had occurred in front of his home. He was one of the first people to respond to the scene.

I did not make personal contact with Keeley Lebo until April 13, after I made significant contact with the potential victim participants and arrived at a reasonably firm target date and time to hold the conference – Friday, May 6, at 7 PM. I set up an appointment to meet with Keeley and her parents the morning of the day that the sentencing hearing was scheduled (April 28). I also sent an e-mail to Keeley to follow up on the initial phone conversation I had with her on April 13. I

asked her to reply with names, addresses, phone numbers (and the relation to her) of supporters whom she would like to attend the conference.

Keeley responded on the same day (4/13/05) with a list of quite a few friends to add to her parents as supporters at the conference. I was hoping for more immediate or extended family members, but she was only interested in having her parents attend. I had essentially indicated to her that she could have as many supporters at the conference as she wanted, but I then reconsidered that a limit should be placed on the number of friends. She had been suggesting six-eight friends, but I told her that she should limit this number to four. As it worked out, three friends attended the conference. It is clearly not a numbers game when a facilitator is determining who should participate in a conference, but it is a dynamic factor. I simply did not want eight friends who were not directly affected to participate as supporters for Keeley. Ultimately, this judgment and resolution seemed reasonable and appropriate.

On advice of counsel, Brian Buffum, the passenger in Keeley's vehicle, chose not to attend the conference. He and the three individuals in the second pick-up chose to leave the scene prior to the arrival of the police. Presumably, this was due to the fact that they were all drinking (and at least one driving) and did not want to deal with the authorities. Regardless of their reasons, the four young men left Keeley at the scene to deal with the situation and await the arrival of the police. Her initial instinct was to get Suzanne into her truck and get her to the hospital. Bill Valentine, however, who arrived at the scene and had EMT experience, suggested that the best course of action would be to call E-911 and then wait for an ambulance and the police to arrive.

Ultimately, 20 participants were expected to attend the conference that was now firmly scheduled for Friday evening, May 6, at the Methodist Church in Rutland. All the following participants had been advised that their presence at the conference and the final agreement/understanding would be part of the public record:

Keeley Lebo
Julie Lebo, Keeley's mother
Paul Lebo, Keeley's father
Lauren Stauch, friend of Keeley Lebo
Fred Wood, friend of Keeley Lebo
Shawn Holt, friend of Keeley Lebo
Bill Valentine, one of the first individuals on the scene
Carrie Knapp, Suzanne's mother
Viella Knapp, Suzanne's sister
Ed Knapp, Suzanne's father
Kim Morrissey, Suzanne's sister
Dave Morrissey, Kim's husband
Eunice Knapp, Suzanne's sister
Charles Knapp, Suzanne's brother
Felicia Knapp, Suzanne's sister
Richard Knapp, Felicia's husband
Shawn Baker, Jr., Eunice's boyfriend and friend of Suzanne's
Stephanie Baker, friend of Suzanne's

Susan Baker, mother of Stephanie and friend of Suzanne's
Shawn Baker, Sr., friend of Suzanne's

The Conference

Of the 20 participants expected to attend, 18 showed up. Carrie and Viella Knapp did not attend. As an aside, it is an interesting fact that of the 35 – 40 conferences I have facilitated, every single one was attended by a variation of the expected participant list. This has been a combination of participants attending whom I did not expect to attend and participants not showing up who were expected, as was the case here.

The space that was provided at no charge by the Methodist Church was bright, welcoming and otherwise ideal in many ways. It was ample for the number of participants (but not too large), there was a bathroom right off the room and comfortable, matching chairs were available – all important factors. I gave Carrie and Viella a reasonable amount of time to appear and began the conference without them about 5 – 7 minutes past the hour. Of course, this short period of time seemed extraordinarily long.

As always, I used a script, which is especially helpful in the initial stage of any conference (introductions, preamble, ground rules, etc.), and a pre-determined seating arrangement. Name tags (first names only) were placed on the seats to let participants know where they should sit. When it was clear that Carrie and Viella were not going to show, we simply tightened the circle a bit so as not to have two empty chairs.

A key piece of the script sets down a basic ground rule that guides the initial phase of the conference. I make sure to explain this to all participants in advance and also read it aloud to the group as part of the preamble (after introductions have been made and prior to anyone speaking). I include the exact language below:

“We will begin by giving everyone the opportunity to speak. Later on in the conference, there will be ample time for discussion and questions as we seek to develop an understanding about where we might go from here. During this first part of the conference, however, I would ask that everyone simply listen to whoever is speaking.”

Key questions that were or were not used on an as-needed basis with participants included:

- “What happened that evening?”
- “What were you thinking about at the time?”
- “What have you thought about since the incident?”
- “Whom do you think has been affected by your actions?”
- “How have they been affected?”
- “What was your reaction at the time of the incident?”

- “How do you feel about what happened?”
- “What has been the hardest thing for you?”
- “What did you think when you heard about the incident?”
- “What do you think are the main issues?”
- “Is there anything else you would like to say at this time?”

As always, the offender, in this case Keeley, was asked to speak first. She was not far into her initial response when another participant began to interject a question or statement. I did not allow the participant who was interjecting to even finish what she meant to say, simply referring to the above quoted ground rule. I did not have to state the rule in its entirety again. She and everyone else simply acknowledged that they understood that all had agreed to this part of the process in advance. It is such a natural and human tendency to dive into a back-and-forth discussion rather than simply listen to whoever is speaking, but it is crucially important that this not be allowed to occur during this initial phase.

It took almost an hour for all 18 participants to have their turn speaking, with everyone else silently listening. This certainly went a long way to lessen the tension and anxiety of the group. While who was there and what agreement/understanding was arrived at are considered part of the public record, what exactly was said by whom is certainly not. Simply put, everyone in the circle openly and honestly expressed their feelings about what had happened and how they (and others) were affected. It was an emotionally charged gathering; the overriding feeling expressed being that of sadness and loss. The tears were contagious and heartfelt.

The Agreement / Understanding

Reaching an agreement or understanding in this case was definitely influenced by the fact that judgment had already been rendered. Keeley pleaded guilty and was sentenced to 6 months – 2 years to serve, all suspended on probation. She was given conditions that included; total abstinence from alcohol, having an alcohol and/or drug screening with treatment if indicated, payment of a \$892 fine, 200 hours of community service, participation in the DUI Victim Impact Program and participation in a restorative justice/family group conference.

This phase of the conference became much more of a discussion about exactly what happened and what the broader issues were as opposed to how Keeley could somehow repair or address the harm done. Many questions were asked and answered. Much of the discussion revolved around how Suzanne’s family and friends received information about the incident from law enforcement authorities and how the rumor mill began to create the impression that there may have been foul play. Suzanne disclosed to some friends that she had recently been the victim of date rape. People began to wonder if this incident had, in fact, been murder in order to hush Suzanne up. Keeley and her family also expressed frustration about their dealings with the “system.”

The agreement/understanding, which was arrived at and signed by all 18 participants at the end of the 2.5 hour conference, is included below:

“The participants below gathered at the Methodist Church in Rutland on 5/6/05 and openly spoke about the incident leading to the death of Suzanne Knapp on 11/13/04. We are satisfied with the results of this meeting but do have several areas of concern re: issues. There is a definite and ongoing problem with young people drinking (and driving) at the several Buffum deer camps in Tinmouth. There is also the credible possibility that a sexual predator using ‘date rape’ drugs may be preying on victims in the area. All participants felt that improvements could definitely be made re: police and victim/community relations, information sharing, etc. Lastly, it was suggested that at least a portion of Keeley’s community service could be fulfilled in prevention efforts to address drinking and driving by young people.”

Feedback from participants

Within a few days of the conference, I sent a copy of the signed agreement to all 18 participants. I also enclosed a feedback form and self-addressed stamped envelope. Six participants chose to send the completed feedback form back to me, certainly a reasonable response (33%). The responses are collated below:

Scale: 1 = Lowest Score, 10 = Highest Score

Please rate your overall satisfaction with the conference:

1 2 3 4 5 6 7 8 9 10

Responses 2 - 8’s, 1 - 9, 3 - 10’s

Please rate the process as to how fairly participants were treated during the conference:

1 2 3 4 5 6 7 8 9 10

Responses 1 - 9, 5 - 10’s

Please rate your level of satisfaction with pre-conference preparation efforts:

1 2 3 4 5 6 7 8 9 10

Responses 1 - 8, 2 - 9’s, 3 - 10’s

- Do you feel the conference properly addressed the offense? YES NO

Responses 6 - YES

- Did you personally experience any benefits from participating? YES NO

Responses 4 - YES 2 - NO

Explain:

- “This allowed both parties to express their feelings, concerns and questions. Clear up any mis-information. For me it allowed me to express my feelings toward the death of a young girl and show the family that my daughter had and will continue to deal with the death of her friend.”
 - “I was an outsider due to the fact that I was on the outside not actively involved in the accident. I was basically a bystander.”
 - “I believe this was mainly a benefit for the Knapp family and Keeley.”
 - “I was able to finally tell my side of the story and let the family know that we were close friends and that I miss her everyday.”
 - “I finally got to hear the story of what happened (not cryptic pieces from one source or another leaving my imagination to fill in the blanks). It was helpful to have questions answered and to express our concerns.”
 - “Keeley was more relaxed after the conference.”
- Were you given ample opportunity to have input? YES NO

Responses 6 - YES

- Did the facilitators do a proper job in leading the conference? YES NO

Responses 6 - YES

- Would you like to see conferencing used more frequently in the future? YES NO

Responses 6 - YES

Please explain, including any ideas as to how and in what situations this might be done:

- “In situations such as this one, conferencing allows for families to get answers. Both sides have questions either because officials don’t give out information during their investigation or one party can’t speak out. These conferences allow open and honest communication. The only negative side is that the public still has only what is reported in the media that can be a stigma for many years after the tragedy, but that is the way of life.”
- “I think this will develop more as time goes on.”

- “I think a group conference is extremely beneficial where there is no line of communication between parties involved. Keeley’s case was like that. However, where communication is established and open between all parties, conferencing may not be beneficial. This may occur when family members know one another and hold no ill feelings.”
- “I believe that conferencing should be held when there is confusion on any part about what type of incident has occurred.”
- “As I said before, it was beneficial to have questions answered and to express concerns. Any situation similar to this one would benefit from such a conference.”
- “Everything was good. The only thing I would add is having a Police Officer present in case the situation gets out of hand.”
- Please take some time to reflect on the experience of being a participant and share your thoughts with us in writing, including what you think was the worst/best thing about this specific conference and how we might improve the process for future applications.
 - “The first reaction to such a conference was apprehension. This was caused in large part by the initial Court visit and then the continued father’s reaction (even though the process was well explained by Mr. Dinnan). We chose to go into the process with an open mind and hoping for the best. As the conference proceeded, there was open communication without any accusing on the part of the family. Their understanding at what occurred was freeing for both of us parents and our daughter. Mr. Dinnan did a good job laying out the rules and having participants adhere to the rules through the conference. Also, he listened to the family’s concerns and was willing to relay these to the proper personnel.”
 - “I feel the police came onto people pretty rough and haphazardly in dealing with people’s feelings. They are too much like the military in the war zone. No compassion for anybody. They came to my house unannounced when I was dealing with a problem from this incident. I would not have been in the condition I was in if they had given me a little advanced notice.”
 - “The worst part of the conference was having to wait nearly four months for it to take place after it had been accepted as part of the plea agreement. However, I do not believe it should be done prior to the Court accepting the plea agreement so to hasten the process along would require a quicker response on the Court’s part. The best part of the conference was that it cleared up any misconceptions of what happened that night and put everyone’s mind at ease that Suzanne’s death was nothing more than an unfortunate accident. It gave the Knapp Family some insight into Suzanne’s last moments and her state of mind. It allowed the family to see Keeley as a victim of circumstances as was Suzanne and perhaps empathize with her. I believe this had a positive affect on everyone and left us all with a feeling of relief and to some extent closure.”

- “The worst part was the beginning of the conference and not knowing how the family was going to react towards me and what they were going to say. As the conference went along, I became more comfortable and was a little more at ease in that the family wasn’t attacking me and were listening to what I had to say. I think that a few of the questions asked by the facilitator were a little confusing on reflecting on what happened only because I wasn’t really sure what to say and what would be the right or wrong thing to say. In the future I think that some people who are rattling on about the same small detail after its been answered should be shut off from talking so long about it, or told that the question was already answered so that maybe they will stop and find a new question. Or at least have to look at what was already answered in their own mind, privately. This way, time isn’t taken away from other issues that need to be addressed.”
- “I would like to thank Chris Dinnan for his participation in this conference. He was organized and easily available for discussion. I was nervous and he helped with that. Our family went into the conference with many questions, rumors driven from misinformation, and frustration. The best thing was learning the final chapter in Suzanne’s life, putting a face to ‘the driver,’ feeling that I was being told the truth and feeling our concerns involving the under-age parties in Tinmouth and what occurs there were heard and recorded. The worst thing was to be there at all but..... The conference could have been held sooner. It was torture to go 6 months with little information. It would be helpful to suggest that people prepare what they want to say ahead of time either with written word or note cards. In a group situation, it is difficult to speak and to remember everything you want to say.”

Conclusion / Personal Reflection

It was notable in this conference that the group gravitated away from offender accountability to broader community issues – specifically, underage drinking and the relationship between law enforcement personnel and affected community members. This may have been due to the fact that this conference was post-sentence, and Keeley had already been given a suspended incarcerative sentence with many conditions of probation attached. Participants presumably had no illusions about solving the problem of underage drinking or being able to somehow improve community relationships with law enforcement. They did, however, want their concerns to be voiced for the record.

The value of conferences such as this is once again confirmed. That said, preparing for, convening and following up on a conference (especially one such as this one) is a time-consuming proposition. I did not keep a log of time spent in total on this conference, as I invariably wove the necessary tasks into the broader fabric of my work. I would venture a guess, however, that, from beginning to end, it was probably in the neighborhood of 15 hours. Actually, certain efficiencies were realized in that a good deal of the contact with potential participants was either via e-mail or phone. Regardless, given the positive feedback and my own assessment, it was clearly time well spent.

The group conferencing process needs to be more systematically applied in any number of appropriate situations within the greater community in which I live (Rutland County - population

68,000), within the State of Vermont and beyond. There are obviously situations crying out for such interventions in our schools, our child welfare and juvenile justice systems, our adult criminal justice system, etc., and yet these opportunities are many times lost. In fact, if it had not been for the insight of Judge Pat Zimmerman in this case that something more inclusive and creative should be done, the original plea agreement would have been approved and this conference would simply not have occurred.

A Corrections colleague of mine noted, when he heard about this delay in sentencing, that here was a case of a deal being rejected because the conferencing option was exercised. He snickered a bit and shook his head, clearly questioning its value. This is indeed unfortunate but belies the potential headset of many a professional that anything requiring the further outlay of time and effort is suspect. A process such as this clearly could be viewed as superfluous at best. The danger, of course, is that it is ultimately professionals who need to identify and refer appropriate situations that would benefit from an intervention such as this.

Yes, it is a resource issue, but this sort of outlay is clearly justified. Regardless of “where we sit,” we need to continue to look at different ways to resolve or transform conflict rather than either ignore it or deal with it in a more efficient but less effective manner. I am afraid that is exactly what our present systems many times do. We mete out judgment, seeking equity and just deserts rather than reconciliation and healing. Rather than cast a wide net in order to resolve or transform present conflict and potentially prevent future conflict, we limit inclusion and focus on the relationship between the offender and the “authorities.” After all, it is the easier and less time-consuming route to take.

We know that restorative processes such as conferencing work. Granted, they may be just marginally better than more traditional methods in the area of recidivism. In the area of victim satisfaction, however, the difference is overwhelming. We also know that it is those parties who are closest to the “offender” (family, friends, etc.) who will ultimately best support positive change in that offender. The status quo is always very compelling, but perhaps it is time for us to change the way we do business by investing the necessary resources and energy to promote processes such as conferencing. If we are able to turn such a vision into reality, victims, offenders, their families, their friends and ultimately the entire community will all benefit.