INTENTIONAL CONVERSATIONS ABOUT RESTORATIVE JUSTICE, MEDIATION AND THE PRACTICE OF LAW

James Coben¹ and Penelope Harley²

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¹ Associate Professor of Law and Director, Dispute Resolution Institute, Hamline University School of Law.
² Post-Graduate Fellow, Dispute Resolution Institute, Hamline University School of Law.
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A. INTRODUCTION

In November 2003 the Dispute Resolution Institute at Hamline University School of Law hosted the third, bi-annual Symposium on Advanced Issues in Dispute Resolution entitled: "Intentional Conversations about Restorative Justice, Mediation and the Practice of Law." The purpose of the Symposium series is to bring together a range of scholars and professionals to engage in purposeful conversation around critical issues in the field of conflict studies and dispute resolution. To this end, the format of the Symposium gatherings is different from more typical academic conferences. No papers are presented. Certain individuals (termed "theme leaders") are invited to frame, open up, and promote the dialogue. However, the active participation of all attendees is encouraged by the use of intimate in-the-round seating.

The choice of the November 2003 Symposium theme was the result of a number of factors. First, restorative justice programs are springing up across the country\(^3\) and restorative justice approaches are increasingly representing the cutting edge of the dispute resolution field both nationally and internationally.\(^4\)

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4 See e.g., Mark S. Umbreit, Robert B. Coates, Betty Vos, Community Peacemaking Project: Responding to Hate Crimes, Hate Incidents, Intolerance and Violence through Restorative Justice Dialogue (2002) (using five community cases to examine a range of types of hate crimes, types of communities and uses of dialogue), available at http://ssw.che.umn.edu/rjp/Resources/Resource.htm (last visited April 19,
Second, there is a growing concern across professional disciplines with the notion of social healing and the desire, particularly, to explore how lawyers and dispute resolution practitioners can learn to regard themselves as social healers.\(^5\) Third, there is a disquieting sense among some mediators and dispute resolution academics that the mediation field has lost its footing\(^6\) and that, 


\(^6\) See e.g., Joseph P. Folger, “Mediation Goes Mainstream” – Taking the Conference Theme Challenge, 3 PEPP. DISP. RESOL. L.J. 1, 2-5 (2002) (noting that the institutionalization of mediation within the courts and other settings has diminished the defining “alternative” characteristics of the mediation process and has tended to turn mediation into a forum for dispute resolution that is highly directive and evaluative in the service of reaching settlements); Nancy A. Welsh, *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 HARV. NEGOT. L. REV. 1, 5 (2000) (observing that “the party-centered empowerment concepts that anchored the original vision of self-determination are being replaced with concepts that are more reflective of the norms and traditional practices of
perhaps, the interaction between those interested in mediation and restorative justice practitioners might re-kindle something of the original vision behind the practice of mediation. Scholars and practitioners from each of the three fields of restorative justice, mediation, and law were chosen as the individuals to lead the conversation over two days. Participants included prosecutors, theologians, community mediators, social justice advocates, Native American healers, defense attorneys, high school educators, judges, social workers, restorative justice circle members. In planning the Symposium, it was hoped the conversation would offer the chance to explore what constitutes the essence of restorative justice, as opposed to other notions of justice, and what the fields of mediation and law can learn from it. In addition it was hoped that the conversation would encourage restorative justice advocates to critically examine their practices in the light of the experience of the mediation field. Finally, it was hoped that the Symposium would give all three fields the opportunity to influence one another toward a greater possibility for social healing.

B. SETTING THE CONTEXT

1. Restorative Justice

Attempting to define restorative justice is not an easy task. The phrase is an umbrella term for a spectrum of practices used in association with the criminal justice system. The phrase is also used to describe approaches to dispute resolution in disparate settings such as neighborhoods, schools, and workplaces. Furthermore, “restorative justice” is used interchangeably with “transformational justice” and “transitional justice” to describe the work of truth and reconciliation commissions at a cross-cultural or

lawyers and judges, as well as the courts' strong orientation to efficiency and closure of cases through settlement.”).

7 See Appendix One for a list of Symposium theme leaders.
8 See Appendix Two for a list of Symposium participants.
international level. The phrase is used not only to describe specific practices, but also a set of principles and even a philosophical approach to life. Restorative justice is being explored at the academic level by theologians, lawyers, social workers, and social justice advocates. Restorative justice is also being practiced by countless individuals who have given little thought to its definition, but simply find that a particular process "works." In an attempt to enable as full an understanding as possible, the remainder of this section will offer a brief introduction to how restorative justice looks in practice, where the restorative justice field of today came from, and what its underlying principles are.

a. What Does Restorative Justice Look Like?

To those completely unfamiliar with restorative justice, it could perhaps be most simplistically understood as a practice – or practices, more accurately. The label "restorative justice" has been applied to a wide range of practices, perhaps most famously the truth-telling panels conducted by the Truth and Reconciliation Commission in South Africa. Nationally, the offering of restitution, the writing of letters of apology, the doing of community service, and the use of victim impact panels or community reparation boards have all been labeled as restorative justice practices. The three most common, widely used practices are victim offender mediation, family group conferencing, and circles.

Victim-offender mediation involves the face-to-face meeting of victim and offender after the careful preparation of each party by a skilled, specially trained mediator. The meetings are facilitated by the mediator who has the responsibility to ensure a safe and comfortable environment. The benefits of victim-offender mediation are considered to be:

1. victims' needs are more comprehensively served than in the typical judicial process – including the need to tell the story
of how the offense has impacted them, and the need to be consulted about how the offender should be treated;
2. victim and offender have the chance to experience each other as individuals rather than stereotypes; and
3. offenders are more affected by the experience of meeting their victim and hearing their story than by the relatively anonymous and detached formal prosecution and punishment system. As a result, it is hoped that the offender may experience a positive motivation to reform, particularly when combined with a feeling that society is ready to offer acceptance.9

Victim-offender mediation offers offenders a chance to initiate voluntary reparation to their victims. Reparation by no means always takes the form of financial payments. It can include an apology and explanation of how the offense came about, as well as work for the victim, work for a community cause chosen by the victim, or a specific undertaking (e.g. to attend a counseling course).10 Typically, only parties directly involved in the incident participate in this restorative justice practice.11

The number of participants is expanded in family group conferencing (also referred to as family group decision making) to include the offender’s family, the victim’s family or supporters and community contacts of the offender (such as a teacher, neighbor, employer) who are interested in offering support or help. This restorative justice practice also differs from victim-offender mediation in its emphasis. In victim-offender mediation the focus is on the victim’s suffering and how the offender may make reparation for this. In contrast, conferencing is more forward

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9 See Tony F. Marshall, RESTORATIVE JUSTICE: AN OVERVIEW 8 (Center for Restorative Justice & Peacemaking, 1998)
10 See Marshall, supra note 9, at 8. See also Howard Zehr, THE LITTLE BOOK OF RESTORATIVE JUSTICE 47 (Good Books, 2002) (noting that in the cases of severe violence a written restitution agreement is rarely the outcome).
11 See Zehr, supra note 10, at 47.
oriented as it encourages exploration by all parties of how the offender can be supported with a view to keeping out of trouble in the future.

There are two basic forms of family group conferencing. The first grew out of police work in Australia and is a standardized, almost “scripted” model characterized by the endeavor to use shame in a positive way. The second model allows adaptation to the needs of the particular parties involved, although a common element is the encouragement of the family of the offender to caucus together with a view to creating a proposal for consideration by the victim and other participants in the conference. With its focus on the future, family group conferencing can be particularly effective with young people and, indeed, normally takes the place of any court proceedings. In fact, in 1989 the second model was adopted by New Zealand as the primary juvenile justice system.12

The third most common restorative justice practice is the use of circles. In circles the number of participants is expanded yet again, with community members being essential to the process. Participants are seated in a circle and typically are encouraged to speak only when they are holding the “talking piece,” an object that is passed around the circle. The use of a circle format and the passing of a “talking piece” encourages participants to listen deeply and respectfully to each other and reminds them that each person has a contribution to make. Given the very inclusive nature of circle participation and format, discussion can be very broad in nature – particularly initially as individuals explain their interest in being the part of the circle (often referred to as “telling stories”) and begin the process of establishing trust among participants. Typically a circle process will begin with participants identifying values that will underpin the circle process – values that will encourage participants to be respectful, to speak from the heart, to honor integrity and honesty. Circles are now used at various stages in criminal cases – to heal wounds in a community, to determine

12 See id. at 47-50.
sentences, to support offenders in the execution of their sentences, to facilitate the re-entry of offenders into their communities. Circles are also used in schools and workplaces and could be used in any setting to promote inclusive dialogue and consensus-based decision-making.\textsuperscript{13}

b. Where Does Restorative Justice Come From?

Howard Zehr has been called the "grandfather" of restorative justice.\textsuperscript{14} His book CHANGING LENSES is seminal and uses the powerful metaphor of changing a camera lens to suggest how drastically different from traditional, retributive notions we can choose our view of crime and justice to be.\textsuperscript{15} In CHANGING LENSES, Zehr also suggests that the history of restorative justice as we know it today began in the late 1970s when a group of Mennonites first explored the radical idea of suggesting to a judge that victims and offenders in a series of vandalism cases be allowed to meet face-to-face to negotiate restitution. Thus was born the concept of victim-offender mediation, which Zehr described as combining "within a criminal justice framework elements of mediation and reparative justice."\textsuperscript{16}

Since the late 1970s restorative justice has moved on from the individualism of victim-offender mediation and moved beyond simply a criminal justice framework. In his more recent work, THE LITTLE BOOK OF RESTORATIVE JUSTICE, Zehr uses the image of a number of springs that have fed into the river of restorative justice.\textsuperscript{17} He suggests that those streams include the practices and beliefs of indigenous peoples, most significantly the use of peacemaking

\textsuperscript{13}See Zehr, supra note 10, at 50-52. See generally Kay Pranis, Barry Stuart & Mark Wedge, PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY (Living Justice Press, 2003).
\textsuperscript{15} See generally Howard Zehr, CHANGING LENSES (Herald Press, 1990).
\textsuperscript{16} Id. at 160.
\textsuperscript{17} See Zehr, supra note 10, at 61-62.
courts by the Navajo people, the use of sentencing circles by First Nation people in Canada and the Maori traditions from which the New Zealand model of family group conferencing has developed.\textsuperscript{18} In addition, Zehr suggests that the growth of mediation and the conflict resolution field more generally, religious traditions, and social activist movements (such as those advocating victims' rights and alternatives to prisons) have all played important roles in the development of restorative justice.

Additional feeder sources include the writings of John Braithwaite which have explored the potential benefits of "reintegrative" or "positive" shaming\textsuperscript{19}, and the work of Kay Pranis which has emphasized the ability of restorative justice to address social inequities.\textsuperscript{20}

c. What is Restorative Justice Made Of?

The essence of restorative justice is not readily identified. There is a strong sense in the field that restorative justice is not a single academic theory of either crime or justice. Rather any attempt at definition represents an accumulation of experience to date and is embryonic. As the practice of restorative justice is refined, so is the concept of restorative justice. Indeed, one of the

\textsuperscript{18} Id.
\textsuperscript{19} See generally John Braithwaite, CRIME, SHAME AND REINTEGRATION (Cambridge University Press, 1989) (suggesting that when shaming is done within a cultural context of respect for offenders it can have great advantages over formal punishment and noting that cultures and periods of history that have experienced low rates of crime are characterized by societies which employ reintegrative shaming — strictly contrasted with disintegrative shaming or stigmatization).
\textsuperscript{20} See Kay Pranis, RESTORATIVE JUSTICE, SOCIAL JUSTICE, AND THE Empowerment of Marginalized Populations in Gordon Bazemore & Mara Schiff (eds.), RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES 288 (Anderson Publishing Co., 2001) (arguing, most fundamentally, that "community-based initiatives have the potential to shift power to allow for more inclusive decision-making and more meaningful and just relationships," and that, "[o]ver time the cumulative effects of those shifts at the micro level can make a significant contribution to social justice").
basic justifications of restorative justice is that it is grounded in practical experience.\textsuperscript{21} There is an equally strong sense that restorative justice is fundamentally different from retributive justice.

It is justice that puts energy into the future, not into what is past. It focuses on what needs to be healed, what needs to be repaid, what needs to be learned in the wake of crime. It looks at what needs to be strengthened if such things are not to happen again.\textsuperscript{22}

Attempts have been made at definition – or, perhaps more accurately, suggestion or clarification. It is telling that, in his \textsc{Little Book of Restorative Justice}, Zehr chooses to begin by outlining what restorative justice is not, rather than by endeavoring to make a positive claim as to what restorative justice is.\textsuperscript{23} Restorative justice could arguably be summed up as involving "participation" and "reparation." Using slightly more words, restorative justice could be described as restoring victims, repairing harm, and re-weaving the fabric of human relationships in a community. Perhaps most important is the general recognition that no practice or policy is intrinsically restorative.\textsuperscript{24} Rather, seeking a definition of restorative justice involves an exploration

\textsuperscript{21} See Marshall, \textit{supra} note 9 at 3; see also Pranis, \textit{supra} note 20, at 287 (highlighting specifically that "academics have not been primary leaders in the development of restorative justice philosophy.").

\textsuperscript{22} Susan Sharpe, \textsc{Restorative Justice: A Vision for Healing and Change} 7 (Edmonton Victim Offender Mediation Society, 1998).

\textsuperscript{23} See Zehr, \textit{supra} note 10, at 8-13 (stating that restorative justice is not, for example, a particular program or model; does not make the same assumptions as mediation; and is not primarily about forgiveness or reconciliation).

\textsuperscript{24} See Sharpe, \textit{supra} note 22, at 19 ("Restorative justice does not have a prescribed protocol."); Howard Zehr, \textit{supra} note 10, at 10 ("Restorative justice is not a map, but the principles of restorative justice can be seen as a compass pointing a direction."
of a vision constructed around certain principles and rooted in commonly held values.\textsuperscript{25}

At its narrowest, restorative justice is made of the recognition that the traditional justice system leaves the needs of victim and offender unmet and the wounds of both unhealed. Victims need the chance to speak about the trauma they have experienced. The fact that the victim is not at the center of the traditional justice system creates yet more suffering. In turn, many offenders suffer from a poor sense of self worth, and time in prison can compound a sense of lack of personal power and worth.\textsuperscript{26} Zehr is convinced that society must be willing to see offenders themselves as victims.\textsuperscript{27} Zehr suggests that, in sharp contrast to the questions asked by the criminal justice system (namely: What laws have been broken? Who did it? What do they deserve?), restorative justice should ask the questions: Who has been hurt? What are their needs? Whose obligations are these?\textsuperscript{28}

More broadly, restorative justice involves seeing crime problems in their social context. Restorative justice attempts to put

\textsuperscript{25}See e.g., Zehr, \textit{supra} note 10, at 32-36 (highlighting five key principles including focusing on the harms and consequent needs of victims, offenders and communities, seeking to put right the wrongs, and using inclusive, collaborative processes – and advocating that the most crucial value underpinning restorative justice is respect); Sharpe, \textit{supra} note 22, at 7 (also listing five principles which include reuniting what has been divided and strengthening the community to prevent further harms); Van Ness & Strong, \textit{supra} note 14, at 31-41 (arguing that a justice that promotes healing must view crime as more than simply law breaking, help repair the injuries to all parties involved including the community, and challenge the seeming government monopoly over society’s response to crime). See also Kay Pranis, \textit{ENGAGING THE COMMUNITY IN RESTORATIVE JUSTICE} 6 (Balanced and Restorative Justice Project, Florida Atlantic University, 1998) (advocating strongly that “[p]rocesses need not only be community based, they also need to be founded on values of respect for universal human dignity and the importance of relationships”); Pranis et al., \textit{supra} note 13, at 33-67 (discussing certain values such as honesty, trust and love which are described as “universal” and outlining how values can be put into practice in setting up circles).

\textsuperscript{26}See generally Zehr, \textit{supra} note 15, at 19-44.

\textsuperscript{27}\textit{Id.} at 40.

\textsuperscript{28}See Zehr, \textit{supra} note 10, at 21.
things right – this not only involves addressing the harms caused by crime, but also going deeper to address the causes of crime. In addition, commentators have noted the potential of restorative justice, and circle processes in particular, for community building. Pranis and others have advocated that circles not only encourage community members to participate and speak, but circles also routinely allow community members to discuss community-wide problems and present the opportunity to affirm community norms and expectations of behavior, leading to significant change. Finally, the view is spreading that in restorative justice lies the seeds of true social or “participatory” democracy.

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29 See id. at 28-32.

30 See Pranis, supra note 25, at 6 (concluding, “[o]nly interventions which are grounded in community and directed by the community are likely to strengthen the community”); Pranis et. al, supra note 13, at 209 (concluding, “[c]ircles are about building healthy communities. Not only do they use crises to address unseen or untreated ills, but they also use the peace-making process to strengthen people, families and relationships.”). See also Adam Crawford & Todd R. Clear, Community Justice: Transforming Communities through Restorative Justice in Gordon Bazemore & Mara Schiff (eds.), RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES 134 (Anderson Publishing Co., 2001) (noting that for some commentators the most important consequence of restorative justice is the change in communities, and quoting Judge Barry Stuart, “[T]he principal value of Community Sentencing Circles cannot be measured by what happens to offenders, but rather by what happens to communities.”).

31 See Pranis, Building Justice on a Foundation of Democracy, Caring and Mutual Responsibility, 2 (Minnesota Department of Corrections, 2001) (arguing that two characteristics of restorative justice, namely the inclusion of all parties who have a stake in the outcome and consensus based decision-making, “push our concept of democracy to a new frontier”); Pranis et al., supra note 13, at 231 (suggesting that, in circles, not only do parties “experience basic democratic truths, namely that our views count and without each of us, some important contribution would be missing,” but circles also offer the opportunity to “flex our participatory muscles and develop skills essential to a democracy – deep listening; constructive, assertive communication; and collective problem-solving.”).
2. Mediation

A definitive history of mediation has yet to be written.\textsuperscript{32} One thing is certain: despite three decades of rapid growth and dramatic institutionalization, relatively little is known about the quality of justice delivered in mediation.\textsuperscript{33} Some would question whether mediation has anything to do with justice at all. Far simpler questions, such as how often or where mediation is being used, remain unanswered.\textsuperscript{34} Meanwhile, a vibrant debate is ongoing on the most fundamental of issues— the very definition and purpose of mediation. Is it a social process for engagement designed to change the quality of human interaction in conflict?\textsuperscript{35}

\textsuperscript{32} However, a wonderful and succinct history of ADR and mediation in the legal context can be found in Deborah R. Hensler, Our Courts, Ourselves: How The Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System, 108 PENN. ST. L. REV. 165 (Summer 2003). See also Carrie Menkel-Meadow, Mothers and Fathers of Invention: The Intellectual Founders of ADR, 16 OHIO ST. J. ON DISP. RESOL. 1 (2000).

\textsuperscript{33} See e.g., Carrie Menkel-Meadow, Do the "Haves" Come Out Ahead in Alternative Judicial Systems?: Repeat Players in ADR, 15 OHIO ST. J. ON DISP. RESOL. 19, 56 (1999) ("we still do not have good data on outcome differences or usage patterns of ADR with which to evaluate the strident claims made about ADR in the courts"); Deborah R. Hensler, Suppose It's Not True: Challenging Mediation Ideology, 2002 JOURNAL OF DISPUTE RESOLUTION 81, 95 (2002) ("The question of whether (and when) people prefer dispute resolution based on public legal norms to dispute resolution based on ad hoc privately negotiated norms unfortunately has not been subjected to much investigation to date.").

\textsuperscript{34} Stephen N. Subrin, A Traditionalist Looks at Mediation: It's Here to Stay and Much Better Than I Thought, 3 NEV. L.J. 196, 199 (2003) (bemoaning lack of concrete data and citing National Center for State Courts for proposition that "because programs, rules, etc. vary so much from state to state, and even within a single state, national data [about ADR] is nearly impossible to come by and even more difficult to analyze.").

\textsuperscript{35} See e.g. Robert A. Baruch Bush and Joseph P. Folger, THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION 12 (Jossey-Bass 1994) ("[A] transformative approach to mediation...emphasizes mediation’s capacity for fostering empowerment and recognition....Transformative mediators concentrate on empowering parties to define issues and decide settlement terms for themselves and on helping parties..."
a problem-solving procedure to negotiate and resolve pending disputes. Defining "real" mediation has been the subject of a virtual cottage industry of scholarship.

a. A Time for Reassessment

What is known? First, mediation's initial roots were in the community justice movement. The mediation field was born out of the desire to provide a true alternative to the adversarial legal system. It claimed to reflect a different set of underlying principles and to hold out different aspirations. Early mediation

to better understand one another's perspectives. The effect of this approach is to avoid the directiveness associated with problem-solving mediation.

36 See e.g., Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict, 2nd Edition (Jossey Bass 1996) ("mediation is generally defined as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.") (emphasis is original).


38 See e.g., Hensler, supra note 32, at 170-173 (emphasizing mediation's roots in the community justice movement and noting that "[t]he adoption of mediation by community justice centers may have reflected a belief that mediation -- often characterized by its supporters as antithetical to adversarial dispute resolution processes -- was more likely to nurture positive relationships within the community.").

39 See generally Patricia Hughes, Mandatory Mediation: Opportunity or Subversion?, 19 Windsor Y.B. Access to Just. 161, 164-172 (2001) ("[t]hirty years ago, its proponents promoted mediation and other forms of 'ADR' as a system-wide alternative to resolving disputes and empowering both disadvantaged groups and individual litigants.").

40 See generally Hensler, supra note 32 and Hughes, supra note 39.
advocates were concerned with community empowerment and social harmony, not simply settlement of disputes and closing of legal files.\textsuperscript{41}

The early commitment to party empowerment was manifested in mediation practice through: 1) voluntariness of participation, 2) the fostering of active party participation in communication, 3) mediator forbearance on giving his or her views on any issues in dispute, 4) disputant responsibility for the process, including identifying the issues to be resolved, recognizing the concerns and interests underlying their positions, generating options for resolution of their dispute, and evaluating the resolution options, and 5) the creation of a climate of cooperation.\textsuperscript{42}

Self-determination has consistently been identified as mediation’s “prime directive.”\textsuperscript{43} The term is contained in numerous ethical codes\textsuperscript{44} although nowhere explicitly defined.

\textsuperscript{41} See generally D.N. Smith, \textit{A Warmer Way of Disputing: Mediation and Conciliation}, 26 \textit{The American J. of Comparative L.} 205, 209 (1978) (attributing growth of mediation centers to “a growing feeling of dissatisfaction with, and a more critical attitude towards, professionals, an increasing consciousness that America and Americans must recapture a sense of 'community,' and a growing feeling that individuals must play a more active role in determining how their lives are to be lived’’); Hensler, \textit{supra} note 32.

\textsuperscript{42} Welsh, \textit{supra} note 6, at 18-20.

\textsuperscript{43} See e.g., Robert A. Baruch Bush, \textit{Substituting Mediation for Arbitration: The Growing Market for Evaluative Mediation, and What it Means for the ADR Field}, 3 \textit{Pepp. Disp. Resol. L. J.} 111, 115 (2002) (“Indeed, the central value and watchword of mediation, echoed in the scholarly and practitioner literature, in ‘policy papers’ of professional mediator organizations, and even in statutory provisions on mediation, was ‘self-determination.’’

\textsuperscript{44} See e.g., Model Standards of Conduct for Mediators, § 1 (American Bar Association, American Arbitration Association, and the Society of Professionals in Dispute Resolution, 1994) (“Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement.”); Model Standards of Practice for Family and Divorce Mediation Standard 1a (ABA 2001) (“Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.”).
One of the most helpful summaries is provided by Professor Nancy Welsh:

The vision of self-determination that inspired the contemporary mediation movement placed the disputants themselves at the center of the mediation process. They were the principal actors and creators within the process. It was assumed that the parties would actively and directly participate in the communication and negotiation that occurs during mediation, would choose and control the substantive norms to guide their decision-making, would create the options for settlement of their dispute, and ultimately would control the final decision regarding whether or not to settle their dispute in mediation.\(^{45}\)

An equally ill-defined concept at the heart of mediation is “neutrality”, most frequently operationalized as the obligation for mediators to act with “impartiality”\(^{46}\) – defined by one code of ethics as “freedom from favoritism or bias in word, action or appearance, and includ[ing] a commitment to assist all participants as opposed to any one individual.”\(^{47}\)

From the beginning, doubts were raised about the legitimacy of a process committed to a principle of self-determination and neutral impartiality in a society in which power

\(^{45}\) Welsh, supra note 6, at 8.

\(^{46}\) See e.g., Model Standards, supra note 44, § II (“The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.”). For a superb yet succinct review of the history of neutrality in mediation, see Scott R. Peppet, Contractarian Economics And Mediation Ethics: The Case For Customizing Neutrality Through Contingent Fee Mediation, 82 Texas Law Review 227, 253-257 (2003).

\(^{47}\) Model Family Standards, supra note 44, Standard IVA.
is distributed so asymmetrically. In 1985, Owen Fiss critiqued settlement for its reliance on bargaining and acceptance of "inequalities of wealth as an integral and legitimate component of the process." He hailed judgment as aspiring "to an autonomy from distributional inequalities." He also found value in adjudication's use of accountable public officials seeking "to explicate and give force to the values embodied in authoritative texts such as the Constitution and statutes" rather than simply the intervention of strangers chosen by the parties to "simply secure the peace." Richard Delgado warned against the tendency of such processes to magnify prejudices with resulting adverse impact on minority participants; and further cautioned against the "deflection of energy from collective action" and the resulting loss of the opportunity for justice through law. Laura Nader catalogued the dangers of "harmony ideology" and the inevitability of coercive influence in unregulated, and largely hidden, informal processes. Trina Grillo wrote eloquently about the risks, particularly for women in divorce mediation, posed by mediators' tendencies to de-emphasize the significance of principles, blame and rights, and their active discouragement of anger and discussion of past fault.

49 Id.
50 Id. at 1085.
51 Id.
53 Laura Nader, Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement To Re-Form Dispute Ideology, 9 Ohio St. J. On Disp. Resol. 1 (1993) ("Mandatory mediation abridges American freedom because it is often outside the law, eliminates choice of procedure, removes equal protection before an adversary law, and is generally hidden from view. The situation is much like that in psychotherapy, little regulation and little accountability. Mind control activities operate best in isolation, and those who have read the literature on influence understand that people in life crises are vulnerable to coercive influence." at 12-13).
These and other critiques were boldly challenged by a steadily refined pro-mediation publicity machine,\textsuperscript{55} marked by superb rhetoric and inspiration, but a paucity of empirical evidence that continues to this day. By the mid-1990's, at least one scholar felt compelled to ask the obvious question: "Where have the critics gone?"\textsuperscript{56}

While virtually no empirical work has been completed to examine the justice concerns raised by early critiques,\textsuperscript{57} there have been numerous articulations and defenses of theories of mediation justice and the proper role for mediators. In 1996, Professor Jackie Nolan-Haley succinctly summarized the divide as between "the vision of a mediator as a 'disinterested referee' and as an 'empowerment specialist.'"\textsuperscript{58} Over the years, mediator role/mediation justice formulations have included the following:

\textbf{Party autonomy:} "The justice that pertains in mediation is the justice the parties themselves experience, articulate and

\textsuperscript{55} See e.g., Andrew McThenia and Thomas Shaffer, \textit{For Reconciliation}, 94 \textit{Yale Law Journal} 1660 (1985); Joshua D. Rosenberg, \textit{In Defense of Mediation}, 33 \textit{Ariz. L. Rev.} 467 (1991) and hosts of others too numerous to even consider cataloguing in this short essay.


\textsuperscript{57} One exception frequently referenced in mediation literature is Gary LaFree and Christine Rack, \textit{The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases}, 30 \textit{Law & Society Rev.} 767 (1996) ("Controlling for case characteristics eliminated ethnic and gender differences in adjudication, but some ethnic differences remained in mediated case outcomes. Specifically, cases including at least one Anglo mediator resulted in higher monetary outcomes for Anglo claimants, and minority female claimants received lower monetary outcomes in mediated cases in which both mediators were women."). But c.f., Roselle L. Wissler, \textit{The Effects of Mandatory Mediation: Empirical Research on the Experience of Small Claims and Common Pleas Courts}, 33 \textit{Willamette L. Rev.} 565, 566 (1997)("studies reveal few differences between mandatory and voluntary mediation and between the assessments of male versus female litigants and white versus nonwhite litigants in mandatory mediation.").

embody in their resolution of the dispute. For individuals, public legal norms are but one factor in a constellation of norms and expectations creating a sense of correct conduct, fair procedure and a just outcome.  

Informed consent: "Parties in court mediation who resolve disputes based on their ethics, culture, sense of morality, personal fairness and the like, instead of law, should have consciously chosen to disregard their legal rights. In order to achieve the analogue to justice through law, parties must know their legal rights before choosing to abandon them in mediation. In short, the exercise of self-determination in mediation should be informed. For if the self is unknowing, just what is it determining?" [footnote omitted]  

The relevance of probable litigated outcome: "As to substantive fairness, the probable litigated outcome should serve as a reference point; the parties are free to find a solution that better serves their personal values and concerns. The mediator, however, should refuse to finalize an agreement when one party takes undue advantage of the other, when the agreement is so unfair that it would be a miscarriage of justice, or when the mediator believes it would not receive court approval."  

The utter irrelevance of probable litigated outcome: "It is irrelevant to the mediator if the terms of agreement are

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60 Nolan-Haley, supra note 58, at 91.
inefficient, shortsighted, or less than what one party could have gained in winning a lawsuit.”

**Community-Enabling:** Active neutrality of the mediator that “introduces a wide range of values and encourages parties to consider how such values, or some combination of them, might fit their needs…the mediator does not treat ideas equally by being equally silent but by being equally forthcoming: the mediator presents a variety of values and ideas and makes the argument for them.”

**Rationality:** “[T]he goal of neutrality should be less paramount in mediation theory and practice. Instead, mediators should strive to foster ‘rational’ outcomes”, which are dependent on three elements: 1) agreement if and only if both parties can better achieve goals through negotiation, than by impasse; 2) agreement that is maximally efficient; and 3) full consideration of the allocation of disputed resources).

**Empowerment and Recognition:** “The transformative framework posits that, despite conflict’s natural destabilizing impacts on interaction, people have the capacity to regain their footing and shift back to a restored sense of strength or confidence in self (the empowerment shift) and openness or responsiveness to the other (the

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62 Joseph P. Stulberg, *Taking Charge/Managing Conflict* 142 (D.C. Heath & Company 1987) (“What is relevant is that the parties have decided that, given their scheme of priorities, they can live with the solution, and the mediator is confident that the proposed terms will endure in practice.”).


65 *Id.* at 72-73.
recognition shift). The model assumes that this transformation of the interaction itself is what matters most to parties in conflict – even more than resolution on favorable terms [emphasis is original].”

While the theoretical debate raged (and rages) on, mediation’s community roots have given way to corporate and court sustenance – often through mandated use of mediation in an increasingly wider array of contexts.\textsuperscript{67} Employers and corporate interests have latched onto the ADR bandwagon with zeal.\textsuperscript{68} And why not? There is empirical evidence to suggest that repeat players (rarely individuals) benefit the most from informal disputing processes.\textsuperscript{69} In short, employers and corporate interests

\begin{footnotesize}
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\item \textsuperscript{66} Website of the Institute for the Study of Conflict Transformation, Inc., “transformational framework” link, at http://www.transformativemediation.org/transformative.htm (last visited April 21, 2004) (“In this model, the mediator’s goal is helping the parties to: identify the opportunities for empowerment and recognition shifts as they arise in the parties’ own conversation; choose whether and how to act upon these opportunities; and thus change their interaction from destructive to constructive, as they explore specific disputed issues. Success is measured, in transformative mediation, not by settlement but by party shifts toward strength, responsiveness and constructive interaction. Effective practice is focused on supporting empowerment and recognition shifts, by allowing and encouraging party deliberation and decision-making, and inter-party perspective taking, in various ways [emphasis is original].”).
\item \textsuperscript{67} See generally Holly A. Streeter-Schaefer, A Look at Court Mandated Civil Mediation, 49 DRAKE L. REV. 367 (2001).
\item \textsuperscript{68} See e.g., John Lande, Getting the Faith: Why Business Lawyers and Executives Believe in Mediation, 5 HARVARD NEGOT. L. REV. 137 (2000); Catherine Cronin-Harris, Mainstreaming: Systematizing Corporate Use of ADR, 59 ALB. L. REV. 847 (1996).
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have signed on because it meets their needs. The historical parallel of the flourishing of mediation and the Reagan revolution's focus on right to contract and individual free market rights is impossible to ignore.

Sustained institutionalization has perhaps inevitably brought with it a profound shift in predominant practice ideologies. A commitment to community empowerment has been overtaken by a desire to settle cases, and to do so in a time efficient and familiar (to the legal system, that is) manner. This


Menkel-Meadow, supra note 33, at 26 ("'Haves' come out ahead by being able to choose and manipulate what process will be used to enforce substantive rights.").

See e.g., Subrin, supra note 34, at 215 (2003) (noting "free market theories that have dominated the ideological landscape for the past twenty-five years, and their emphasis on individual agency and choice" must be considered an integral part of recent mediation history); Hensler, supra note 33, at 84 ("The idea that Americans should prefer mediation to litigation and adjudication may have received a boost from the decades long tort reform campaign by the business community, which sometimes is framed as a critique of litigiousness and other times as a critique of lawyers.").

See e.g., Folger, supra note 6, at 3 (noting that "the very process of mainstreaming has tended to turn mediation into a forum of dispute resolution that is not all that different from what it is intended to replace, threatening its identity as a non-adjudicative process"); Welsh, supra note 6, at 3-5 ("[T]he originally dominant vision of self-determination, which borrowed heavily from concepts of party empowerment, is yielding to a different vision in the court-connected context....The parties are still responsible for making the final decision regarding settlement, but they are cast in the role of consumers, largely limited to selecting from among the settlement options developed by their attorneys. Indeed, it is the parties' attorneys, often aided by mediators who are also attorneys, who assume responsibility for actively and directly participating in the mediation process, invoking the substantive (i.e., legal) norms to be applied and creating settlement options.").

Id. See also Dorothy J. Della Noce, Mediation Theory and Policy: The Legacy of the Pound Conference, 17 Ohio St. J. on Disp. Resol. 545, 550 (2002) ("In 'connecting' with the courts, mediation became more an instrument to serve the traditional values, goals and interests of the judicial system, and less a social process in its own right, with its own separate history, traditions, norms,
shift to settlement orientation has highlighted more than ever before the potential limitations of self-determination and neutral impartiality as "the" prime directives for a social process operating in a diverse society.

b. The Constraints of "Neutrality"

The "fiction" of neutrality has significant practice implications, best summarized in the following excerpt from an article authored nearly 15 years ago:

It hides hundreds of strategic judgments that must be made—each of which can practically affect the benefits achieved by any party. It hides the normative judgments that a mediator must make about what are good and bad agreements under the practical circumstances at hand. And it suggests a technical objectivity, an absence of responsibility, a "good guy" image of the mediator that actually obscures not only issues of power and representation, but the mediator's own active influence on the outcomes that may be achieved.  

Squaring "neutrality" and the alleged commitment to party self-determination with the nearly universal recognition that mediators exercise influence has always been a square peg/round hole problem. As one oft-cited mediation treatise summarizes: "Mediators, although neutral in relationship to the parties and and goals"); Bush, supra note 43, at 113-114 (noting "evidence of a rising level of 'market demand' for a form of mediation in which the mediator provides expert case evaluation (assessing strengths and weaknesses of each party's case), substantive settlement recommendations (based on predictions of court outcomes, for example), and strong pressures to accept those recommendations, in addition to tightly managing the discussion process.").  

generally impartial toward the substantive outcome, are directly involved in influencing disputants toward settlement". The same text goes on at length to catalog the myriad number of ways that mediators exercise pressure and persuasion.

Most discomforting of all is the fact that awareness of the application of persuasive techniques may rest only with sophisticated, repeat consumers. Less experienced consumers may not be so lucky.

3. The Practice of Law and Social Healing

At precisely the point that the mediation movement has matured enough to engage in serious self-reflection and critical examination of its move from empowerment/healing roots to case management/efficiency sustenance, there is a growing movement to explore how lawyers and dispute resolution practitioners can

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75 Moore, supra note 36, at 327 (emphasis added).
76 Id. at 327-333, paraphrased in James R. Coben, Mediation's Dirty Little Secret: Straight Talk About Mediator Manipulation and Deception, Volume 2, No. 4, JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION IN EMPLOYMENT 4, 6 (Winter 2000) as follows:

- managing the negotiation process (agenda control);
- managing communication between and within parties (active listening; reframing; use of caucus);
- control of physical setting and negotiations (seating arrangements; table shape; room size);
- timing decisions (imposition or removal of deadlines for settlement; when to convey offers and responses);
- managing the information exchange (packaging information so it will be heard); engineering associational influence (choosing who is at the table with settlement in mind);
- use of authority (the mediator's own, as an expert or respected elder, or that of outsiders); managing doubt (encouraging doubt as a way to moderate a party's position);
- rewarding behavior (the offer of friendship, respect, or interest in a parties' well-being).

77 Id. at 4.
learn to regard themselves as social healers.\textsuperscript{78} In part, this is driven by what some have characterized, and to some extent documented, as the dreadful state of contemporary law practice.\textsuperscript{79}

\textbf{a. Wisps of Hope}

The lawyer as healer is part of a wider evolution in practice approaches collectively labeled the comprehensive or transformational law movement,\textsuperscript{80} which share a desire to optimize

\textsuperscript{78} See generally Perlin, supra note 5, at 407-408; Daicoff, supra note 5; Steven Keeva, Transforming Practices: Finding Joy and Satisfaction in the Legal Life (Contemporary Books 1999). See also www.renaisssancelawyer.com, supra note 5.

\textsuperscript{79} See e.g., Susan Daicoff, Brief Description of the Vectors of the Comprehensive Law Movement and their Points of Intersection (2000), available at http://www.fcsl.edu/faculty/daicoff/vectors1.htm (last visited April 19, 2004) ("What we are doing in our legal system is not working. Clients are unhappy with their lawyers, with the system, and with the outcomes of the process. Lawyers are extraordinarily unhappy or even impaired. Nonlegal dispute resolution mechanisms in society have failed and society is depending on litigative processes to resolve conflict. As a result, society in general is suffering from the effects of law's overly adversarial, other-blaming, position-taking, and hostile approach to conflict resolution."). See also Patrick J. Schiltz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 Vand. L. Rev. 871 (1999); Leonard L. Riskin, The Contemplative Lawyer: On the Potential Contributions of Mindfulness to Law Students, Lawyers, and Their Clients, 7 Harv. Negot. L. Rev. 1, 9-17 (2002).

\textsuperscript{80} Daicoff, supra note 79 (listing and defining ten “vectors” of the comprehensive law movement: collaborative law; restorative justice; procedural justice; facilitative mediation; transformative alternative dispute resolution; therapeutic jurisprudence; preventive law; tj/pl; holistic lawyering; creative problem-solving).
human "well-being" and encourage the consideration of "extra-legal" concerns. Related doctrinal work of interest includes recent scholarship on the law of apology and forgiveness.

These "soft" objectives seem at first glance to be quite in conflict with the traditional view of the American legal system of justice, succinctly summarized by the late Robert Kutak, Chair of the Drafting Committee of the American Bar Associations' 1983 Model Rules of Professional Conduct:

Our legal system is not cooperative but competitive, or adversarial. The basic premise of virtually all our institutions is that open and relatively unrestrained competition among individuals produces the maximum collective good. A fundamental characteristic of the competitive theory is that competing individuals have no legal responsibility for the competence of their counterparts on the other side of the transaction and, consequently, have no obligation to share the benefits of their own competence with the other side.

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81 Id. (All of the approaches "seek to achieve the maximal psychologically beneficial outcome -- by explicitly being nonadversarial, nongladiatorial, noncontentious, collaborative, interdisciplinary, creative, respectful of others' feelings and needs, and nonbrutalizing and by seeking to maximize the emotional wellbeing of all parties involved.").

82 Id. (All of the approaches "explicitly focus on extra-legal concerns, meaning factors other than the strict legal rights and obligations of the parties, such as their emotions, relationships, feelings, needs, resources, goals, psychological health, etc. - this is what Pauline Tesler calls "rights plus" [emphasis is original]).


Perhaps not surprisingly, the word "healing" never appears in the Model Rules. "Community" is mentioned only in a serial listing of the types of organizations to which lawyers are encouraged to devote pro bono services.\textsuperscript{85} Indeed, the constellation of actors deemed relevant by the rules is best summarized as follows: clients, former clients, opposing parties, opposing counsel, and the tribunal.

b. Back to the Future?

Yet even within the minimal ethical standards articulated by the rules, there are glimmers of hope for the lawyer seeking a healing role. While zealousness in advocacy is certainly an element of the lawyer's ethical universe,\textsuperscript{86} rule commentary also states that "a lawyer is not bound to press for every advantage that might be realized for a client."\textsuperscript{87} And, there is clear recognition that narrowly framed legal advice is not necessarily in clients' best interests. Accordingly, lawyers are encouraged in the rendering of advice to "refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."\textsuperscript{88} And, while not necessarily a call to arms for considering the well-being of others, the rules do at least hint at a wider world of affected participants in conflict, through a call to respect for third persons.\textsuperscript{89}

The call for attorneys to be healers is on some level an exhortation to go back to the future. More than 150 years ago a wise country lawyer admonished his audience to discourage litigation and noted that "as a peacemaker the lawyer has a

\textsuperscript{85} Model Rule of Professional Conduct 6.1(a)(2) and (b)(2).

\textsuperscript{86} Model Rule of Professional Conduct: Preamble ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.").

\textsuperscript{87} Model Rule of Professional Conduct 1.3 comment.

\textsuperscript{88} Model Rule of Professional Conduct 2.1.

\textsuperscript{89} Model Rule of Professional Conduct 4.4 ("In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.").
superior opportunity of being a good man." 90 Twenty years ago, the Chief Justice of the Supreme Court was even more specific:

The entire legal profession - lawyers, judges, law teachers - has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers - healers of conflicts. Doctors, in spite of astronomical medical costs, still retain a high degree of public confidence because they are perceived as healers. Should lawyers not be healers? Healers, not warriors? Healers, not procurers? Healers not hired guns? 91

C. SYMPOSIUM TRANSCRIPT

The Symposium took place over two days, with two sessions on each day. Each session included an opening, plenary conversation led initially by the theme leaders, followed by conversation in three smaller groups. In order to honor restorative justice practices, the smaller group conversations were conducted in circle format.

Editing an extremely rich, two-day conversation conducted in a number of groupings into a readily accessible transcript of manageable length was never going to be easy. 92 One guiding principle was the attempt to give a flavor of the variety of voices represented at the Symposium and to reflect the wide range of

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92 The 19,000 word transcript was distilled down from over 137,000 words of conversation recorded in four plenary and nine small group sessions (three meetings each of three small groups, labeled for formation purposes at the symposium as green, orange, and blue).
views expressed. We also tried as far as possible to ensure the edited transcript flows as a conversation.93

The Symposium opened with brief welcoming remarks from Jon Garon, Dean of the Hamline University School of Law, James Coben, Director of the Dispute Resolution Institute, and Ken Fox, Director of Conflict Studies at Hamline University. Phil Bluehouse, Traditional Peacemaker and Researcher, Dineh (Navajo) Traditional Law Project, was then invited to open the conversation with a ritual.


- What is to be restored?
- What do we mean by justice in this context?
- Do we each carry within us a restorative impulse?
- How do the concepts of love and forgiveness relate to restorative justice?
- What is the role of ritual in restorative justice?
- Does restorative justice assume or require a particular way of being?
- What role does restorative justice play in building and healing communities?
- What is the role of narrative and cultural story-telling in the restorative justice process?

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93 We have taken the liberty of deleting excess words within sentences without any transcript marking. Ellipses indicate deletion of text between sentences. Within any given section of the transcript (e.g., Saturday Opening Plenary, Saturday Morning Green Small Group, etc.), speakers are presented in the chronological order that they spoke. Small group excerpts immediately follow the plenary that preceded them, with the ordering of the groups themselves (which, in real time, occurred simultaneously) determined solely by a desire for logical transitions between the groups.
a. Saturday Morning Plenary

Phil Bluehouse: I'm from Arizona. I'm with the Navaho people. "Dineh" we call ourselves. In our traditional way we try to explain who we are through describing ourself through the clan system....For us, the clan is our cosmic soup if you will. It keeps our people together....The reason why I'm up here is to go into the ceremony of bringing us together....All of us are aware the potential for peace starts with dispute. So that dispute is usually the first journey. And then from that journey we discover, we achieve, we gather, we understand, we seek knowledge, we unravel the mysteries so to speak, we try to find and make it good. That's what we're after. So we start with the difficult journey first. These [quartz crystals] represent our sacred colors....In our journey, the first color that is represented is that journey of difficulty, that journey of chaos, that journey of order. Even in the idea of dispute, there is discovery of overcoming that dispute. So the concept of duality is placed there....We always place that to the north. The second color is the blue. And that for us is the trial and tribulation of chaos and order....So here we place the color blue to the south....The color of wisdom is yellow. Positive and negative wisdom is then safe placed to the west. So we try out chaos and order. We go through trial and tribulation. We gain wisdom....Finally we get to reality. Actualization to the east. We place that to the east. And this is the placement of who we are. We are the people of chaos and order. We are the people of trial and tribulation. We are the people of positive and negative wisdom and we are people of actualization, reality....We can see in all directions by looking through the ...the clear crystal. Even [in] the crystal there is a flaw and we can see those flaws. So it isn't perfect. But then again we can try to make it perfect. We can make it right. That's our objective.

Bill Everett: We are ready to have that illumination that comes through that process that [Phil] just talked about. And it arrays in the midst of a circle of barbed wire which symbolizes our
incarceration, our separations, our fears and our hostility, and yet greenness of new growth that's in the barbed wire. We have also talking feathers -- a symbol of respectful conversation.

Ken Fox: Welcome into this space and we'll now have a chance to share in that space with our hearts, our minds and our spirits.

Darrol Bussler: In one of the courses that I teach, we -- students and I -- work on what our best traits, qualities, characteristics are. And we contend that that is our essence. We act on that -- that's what keeps us in alignment; that's what keeps us centered....I'm going to introduce you to four writers who most of you already know that will uncover those four concepts that to me are part of the essence of restorative justice. The first one comes from George Mead, late 19th century, who said children do not need to learn to be social, they need to be social to learn....And it reminds us that we are social by nature....To me the social piece is one of the essence pieces of restorative justice. John Dewey picks up on that a half of a century later and says that learning is a social process. And then later he said that the primary role of schools is to develop democratic citizens. That's my second piece of essence regarding restorative justice ... the principle of democracy. The third one comes from Thomas Anglo, who is a leading writer and thinker on assessment, who says that the story is the primary means of organizing information, organizing information in any culture....The fourth one comes from a lesser- known writer by the name of [Peter] Kropotkin, a Russian biologist who researched insects, birds, and mammals [and] found something rather extraordinary in all of those species that survived the best....The greater the social ability of a species, the greater its intelligence. And the greater its intelligence, the greater its chance for survival. That's the learning piece.

Cheryl Graves: I'm from Chicago. I teach at Northwestern but more importantly than that I spend a lot of time working in communities to develop practices that are grounded in principles of
restorative justice. One of the things I [would] like to do with my
time is to quote from some of the experts from home and those are
people in the community that are doing the work on the ground.
One comes from a woman who directs a youth center and she has
been sitting in one of our community panels for the past five
years....Why do restorative justice kind of work? She said, "It's
an opportunity for the community to wrap its arms around the
youth".... Some of the youth that we work with always say, "You
got to walk the talk"....We tried to figure out a way to "walk the
talk" in terms of young people, in terms of victims, and in terms of
community safety issues....And the question becomes how do we
treat kids and how do we treat victims and how do we try to
connect people up? Because when I think of restorative justice
what I really think about is re-connection....Most of us came from
a mediation background and so that was sort of I should say the
easy way to go. We'll just create a mediation process. But then in
talking with community people that really didn't meet all the needs
that they had....An impartial facilitator? Nah. You know people
wanted somebody who spoke the language of people in their
community who understood what the issues were....Who is
impartial? Who is unbiased? You know, if you care about the kids
and the victims and you care about the issue of safety, how can you
be unbiased? And so that didn't work. And so we created a process
that involved very concerned people who live in the same
neighborhood with the kid and the victim....So the question
became one of developing community capacity....You know,
Richard Pryor said, "It's not about justice. It's about 'just us.'"
And that's how most kids and most community people that I work
with in neighborhoods in Chicago feel. And so part of our
momentum and part of our energy comes from trying to move
from "just us" to "justice."

Joan Pennell: What is the essence for me of restorative justice?...I
am a Quaker by background....What seems to come forth to me
the most is safety. Now that fits with domestic violence. It fits with
child protection, but it also is crucial in terms of when you're
talking about people that will remain connected with each other....Safety, not only in terms of the physical and emotional, but also safety in terms of the cultural -- that we can reach into our own backgrounds to find the kinds of solutions that will keep us safe together and to feel honored.

Howard Zehr: I teach at Eastern Mennonite University....The part of restorative justice I’m involved in got started in the criminal justice field....And since that time, it has moved out to lots of other things, both on a micro level and a macro level. It’s connected with a variety of indigenous traditions. But the part that is most mysterious to me always is when someone comes up to me and says, “Restorative justice has changed my life,” or “Restorative justice is a way of life.” I can’t get my head around that because to me it’s not rocket science exactly....It is a kind of coherent value system that gives us a vision of the good, how we want to be together. And one way to understand that I think is to contrast it with the legal system. I don’t recall anybody ever telling me that law changed their lives, although some did....The legal system is established to affirm some positive values like human rights, like boundaries that define who we are and so forth. It does it though in a way that says this is the bottom line of what we will accept. So it focuses on the bottom line of acceptable behavior. It does that using something that’s morally problematic -- coercive punishment. And it does it basically through “thou shall nots”....So I think what people are saying when they say, “It’s a way of life,” is that restorative justice to some extent is a coherent set of values. And they are values that seem to have some universality....It connects with a lot of indigenous religious traditions....It gives us a vision of how we want to be together and I think it’s probably time we were a lot more explicit about those values and how they link with principles. But we have to do it in a way that doesn’t put it in a box....In my LITTLE BOOK OF RESTORATIVE JUSTICE [Good Books, 2002], I talk about respect being a fundamental value. Well I think humility is as well. And I don’t just mean humility in the sense of whether we take credit or
not. I mean humility in the sense of a deep awareness of the limits of what we know and the recognition [that] what we know is so shaped by our gender, and our culture, and our biography, and all of that. We need to be deeply humbled about what it is we actually know and to what extent what I know can be taken to some other person or situation.....A profound learning for me in college was a philosophy teacher who at the beginning of the year said, “Look, Western philosophy has been shaped by doubt. The primary way of knowing is doubt.” And he said, “Descartes was wrong. It ought to be wonder.” And that had a profound effect on me. David James Duncan, [author of] My Story is as Told by Water defines wonder this way. Listen to this: “Wonder is unknowing experienced as pleasure.”....So I think a fundamental value of restorative justice is humility expressed as wonder -- the pleasure of being open to the unknown. Thanks.

Bill Everett: I live in the mountains of Western North Carolina and I’m a recovering academic. I spent 32 years teaching ethics and religion in society and now I mostly do woodworking. I live in Haywood county which has a courthouse in which the courtroom has at the front a large plaque with the ten commandments on it....The God who gave the ten commandments as we call them was very wide awake about who’s hurting, who’s oppressed, who’s exiled, who’s in trouble, and what needs restoring -- a wide-open type of God. And here we have the principle of blindness in the justice process just weighing scales of intimate unchanging objects that are placed in scales. And that has for me just become an emblem of the contradiction, symbolically, in which we live: on the one hand a tradition of blind justice which simply wants to put numbers into the computer and out comes some formula and answer, and the God of justice who sees and seeks to restore persons who are known and recognized as Cheryl was saying. And I think restorative justice is more on the God who sees and the one who looks at the exact injury: who is wounded, who is injured, who is really oppressed in the situation, and how to bring about “making right” or “putting right” in that situation. We’re in a deep
symbolic change that's going on and I was asked to be on the panel
I think because I've given a lot of thought to ritual and symbolism
in this process. If we're going to make any changes in how we deal
with these kinds of problems we'll have to embed them not only in
a good theory but in powerful symbolism. Phil started us with
some powerful symbols to orient us. We have here a round table
which is a symbol of conversation and bringing people together in
the circle process which is so essential to restorative justice....And
it demands certain values and it's a very deep ritual process we're
engaged in right now....Ritual authorizes and legitimates
action.....Ritual orders what goes on; it establishes proper
relationships among the actors....The third thing that ritual helps
us do is to rehearse. We live life as a drama. That’s why story is
the best way to organize information.

Phil Bluehouse: I think that I want to talk about the whole issue of
credentialing. And the reason why I say this is because I was one
of the persons that helped design the peace-making process up on
the Navaho Indian reservation....And part of my whole effort was
to try to incorporate as much as possible the way things were done
before there were ever prisons or even court systems....It seems to
me that when you start credentialing, you start eliminating people
who have the natural ability to deal with these kinds of issues....I
usually talk about my 98.6 degrees and that’s all I need. The
humanity of who we really are is the bottom line....How are we
going to honor ordinary folks at the street level where the rubber
hits the road, where the problems are in this country?....Mediation
is catering toward the multinational corporations. Let's face it,
there [are] some bucks there to be made and maybe sometimes
that’s the motivation that we all have is to move into that direction.

Ken Fox: Each of you has introduced some important and
different qualities that relate to this essence of restorative
justice....We’ve heard about restorative justice as a coherent set of
values, something that has a spiritual quality. [We’ve heard]
language in relation to faith and belief, democracy and democratic
principles. I wonder, is the essence [of] restorative justice [something] that rests within each person? Is it something that rests within a set of values that are embedded in belief systems or a belief system? Or something that rests within a space that must be created by people and interaction in relation to one another?

Bill Everett: Obviously I think it is this shared tradition that comes out of people’s sense of what binds them together. That’s the only basis on which you can have the rebuilding of community and restorative justice tends to assume there is some kind of commonality one can return to. And ritual of course is one of the ways that you build shared memory and shared habits....So one of the problems we confront is what if there is a such a deep fracture that not even basic rituals can bridge it. What do we do there? That’s when people turn to warfare.

Howard Zehr: I think a lot about this question of what the essence is of restorative justice and I feel like the more I think about it the less or the fewer answers I have....I mean is it primarily a process? Well you know you can do the process and you can come up with some pretty awful things. Or is it a product? Can you come to a good restorative healing outcome in a bad way?...And then this whole question, to what extent is [restorative justice] dependent on democracy or [a] human rights foundation -- the rule of law?....My students bring some wonderful stories of traditional ways of doing justice from their homes. But there are the other kinds as well. Last summer one of my students had just come from Uganda and he told us a story that happened just before he left. Two communities had been at war. [They] made a fragile peace agreement and it was working. And then two young men from one of the communities took their guns and they went to the other community like they would have done in the old days and they shot a boy....So now what are they going to do?....So they decide, being victim-centered and all, they should take these two boys to the other community and say, “Here, these are yours to do what you think ought to be done.” And they took them to the spot where they
killed the other boy and shot them. You know and then you start thinking now, what parts of that are restorative justice and what’s not? It gets very complicated.

Darrol Bussler: Your last word is the one that’s just helped me by the way -- being “complicated”....To me it’s more basic than any of that....When you’re human at your best, what are you? Lay it down in front of you. And for me it’s if we can be all these things and we often hear respect, compassion, listening, caring. If we are those, aren’t we being restorative? For me it is that simple.

Bill Everett: I just wanted to respond to Howard because I think his example from Uganda really does press this point. By “restorative”, some people mean putting back in equilibrium....And others by “restorative” mean actually building community, that they have a substantive notion of the kind of community they want to build....I think we just need to be aware that people can use that term ”restorative” in those two ways.

Cheryl Graves: Within this whole restorative justice set of principles we really need to do some work to clarify our values or we’re going to end up with a huge mess on our hands.

Phil Bluehouse: When we get sick, we always want to become well again, don’t we? We always do. When we fall into that chaos, we always want to find order. When we find our bodies out of balance, our minds out of balance, our spiritual beings out of balance, we want to attain that balance again. We want to feel good again. We want to recreate our situation again....So we’ve got to get back to understanding how do we heal?

Ellen Barlow: Three weeks ago I had brain surgery and I’m sort of back from the brink of death and I’m sort of angry. Angry because it could have all been over and done with three weeks ago in my life and I wouldn’t have to keep repeating and going through the struggle. I’d like to hear something about what you all think the
face of restorative justice really is and the economics of restorative justice. One of the things that I see happening here (and I don’t want to call it a movement because I want it to remain) is like the status quo. The face looks the same to me. The economics is definitely the same to me. So I would just like to hear what you have to say about that. I’m an angry black woman today....The white privilege, is that the way of restorative justice?

Darrol Bussler: I’m not sure I can answer that question. But I do want to say, I want to affirm the question.

Marie Failinger: I was struck by this story about the killing in Uganda this sort of eye for an eye question. Last night at our dinner, one of our Muslim speakers talked about an eye for an eye and tooth for a tooth and she said, “Of course, everyone forgets the rest of the Qur’anic verse which is ‘but to forgive is better’”. What struck me is that was an invitation to forgive. It wasn’t a demand to forgive. It was like, “You’re entitled to your justice but we would prefer to call you in to forgiveness.” What about the people that either say “I just can’t or I won’t forgive? I refuse to go beyond restorative justice.” Or, “I just don’t think I can do it. I’m so angry about what’s happened to me. I won’t feel right about it unless [there is] retribution, unless there is some equilibrium restored.”

Darrol Bussler: Every social intervention no matter how well intended, no matter how well thought out, has unintended consequences....Restorative justice is no different than that and so it is inevitable that it’s going to be misused. It is inevitable that it’s going to reflect some of the underlying structures of oppression and that kind of thing and we just have to be really, really clear about that and guard it as much as we can.

Joan Pennell: Thank you Ellen for what you said and also [Marie] who talked about forgiveness....For me the process of restorative justice is really about going beyond the kind of entrapment that all of us have in our lives, whether it’s from poverty, from violence,
from colonization. Trying to get that circle wider....It’s a process of really becoming accountable as a group for what has happened and that means cutting across many different kinds of boundaries. And then taking pride in coming up with ways of moving forward together.

Cheryl Graves: I think too often these “movements” get started on behalf of people. We come from a social service kind of mentality where we’re still going to do it for people. And it’s very paternalistic and it’s very liberal. And I think that if we’re serious about patterning ourselves after indigenous cultures then we need to go there. We need to be there, or better than that, they need to be here.

Howard Moore: I’m from the South so I have a soft voice even though I live in California....I think that what’s missing from the conversation and the conceptualization of what you’re doing is the question of violence or non-violence. The existing judicial system is a system that mediates the use of violence and force. Behind every judgment or decision, however trivial, or insignificant, there is the possible use of force by the state to compel acquiescence and consent to do what is pronounced as a judgment. And I look at restorative justice not as a movement, but as a process or a development that in its essence would attempt to replace the threat of violence as the method of getting acquiescence and consent or consensus.

b. Saturday Morning Circle Conversations
(Green, Orange, and Blue Groups)

**Green Group**

Bobbi McAdoo: I was really struck by the very last comments in the session this morning, where [Howard] was talking about the power of the state with force. Because I have a legal lens, I found myself writing down, “What exactly do we want the power of the
state to be?....How do we want the power of the state to interact or intersect with things having to do with the restorative justice movement?"....And then I think it goes to the real practical question depending on what the answer to that is, of what exactly are the resources, or where do they come from, or how do we really make the kind of transformation that would make these kinds of programs more of a reality?

Calvin Sharpe: I think that probably where we want to be is a place where we don’t need to rely upon violence even as a final sort of impasse resolution device anymore....Maybe we will – as we grow as human beings – we’ll be able to do better.

Sia Lo: I have been in restorative justice long enough to know that the process works....No matter what you say we are going to respect what you say. Doesn’t matter what your background is. Doesn’t matter who you are. We are equal in this circle. That’s a powerful concept that is foreign to the Western [community], but is natural to a lot of minority or immigrant, or native communities....I’m from the system. I’m heading the criminal division [in St. Paul]. We do 20,000 cases a year. We’re very successful in prosecuting. We’re locking people up more than ever before and they’re right back on the street and right back in our courtroom. I know people with warrants that go two three pages. What are we doing? And then I walk around town and see neighborhoods that are not safe to even walk [in]. We need to do something different....[That] theory about the ants and the birds -- why they are so successful is the level of intelligence. The higher the structure, the better the survival rests on their ability to cooperate, to build that intelligence, right? The birds and the bees tell us that. Maybe that’s God’s answer to us....Maybe that’s part of the design that we are to figure this thing out. That’s the beauty of being human....Every time when on the East side of St. Paul, when someone gets killed, I’m hurt. And we don’t get to talk. We all just run around without feeling and we start fearing each other.
Ellen Waldman: My name is Ellen Waldman and I’m also a law professor. ...I have this sort of deep-seated faith in the rule of law both as a civilizing influence and as a mechanism for redressing imbalances in economic and other types of power. On the other hand, from my brief stint as an attorney I quickly became somewhat disillusioned with the way the rule of law played itself [out] on the ground....One of the justifications for retributive justice is that people as part of our makeup feel angry and seek some sort of redress from those who have denied our humanity. So one question I would pose in thinking about human nature: which mechanism of justice, retributive or restorative justice, best fits with the way we are hard-wired -- the way we are organized to deal with violation? Secondly I’m also interested in this equation of coerced forgiveness. We’ve talked about the coercion of the state, the violence of the state, and other questions of how we are hard-wired. Does restorative justice coerce reactions and feelings in a way that we might find problematic?

Dave Hines: I don’t usually admit this when I’m in one of these groups but I will today. I’m actually a cop and have been for almost 27 years....I generally don’t deal a lot on the philosophical unless I’m dragged into it. I’m much more interested in the practical application.... Most of the times when we get into these kinds of conversations especially on the philosophical level about restorative justice it tends to become a question of should restorative justice replace everything else? And I don’t believe that that’s a valid question. Restorative justice has its place, but so does retributive justice....It isn’t going to fit every situation. It isn’t going to be right for everybody....It should be looked at as something that we can do to increase our effectiveness to make things work a little bit better in this society.

Darrol Bussler: Sia....I was struck with your story about when somebody is killed it affects you. And it reminded me of a literary piece -- Thomas Moore’s work in CARE OF THE SOUL..... “The soul is the silence when no one knows what to say. The soul is when
I’m hurting so much that I don’t know what to do. The soul is when we don’t have an answer for anything. The soul is when I’m doing things wrong. The soul is when I’m not effective.” So I appreciate you bringing up the whole question of soul and then pushing that beyond just the human piece because those of us who have been involved in restorative justice [know] it really is about soul work.

Ronnie Earle: It seems to me that there has been a role reversal in the law. People created the law in order to establish some species of order -- to avoid roving bands of desperados. The law was a means to the end. And it seems to have become an end to itself....I think the importance of restorative justice is that it has become a default vehicle for democracy if you will. Because all of the other modalities of democracy have begun to fade away and with the increasing monocultural aspects of our culture today there are very little opportunities to get together and build community....Restorative justice seems to me to be where justice began. This is the vehicle that was its first incarnation. And as we continue to explore ways to live together and something that is more harmonious, we may be going back to the mother of justice, which again is restorative justice.

Ora Schub: I think we have maybe a difference because I don’t really thing that the law was formed to stop roving bands. I think law was formed to support whoever was in power, to perpetuate that power....When we professionalize something or we credential something then we’re automatically excluding people -- certain communities and certain thoughts and certain input. ...It’s usually the marginalized communities that aren’t invited to the table and therefore aren’t heard from. So when the process gets developed and it’s carried on, then their voices aren’t included; our voices aren’t included in that.

Phil Bluehouse: The letter of the law is very linear. It’s based upon back in the early days of win-lose....And now we’re saying,
“Let’s look at it holistically.” And that’s why we’re hearing about restorative justice.

Darrol Bussler: I want to close with something that Ellen did for me this morning. She said, “What does restorative justice look like?” Remember her asking that question and then she said, “She’s an angry black woman today.” And I’m an angry white guy and here is what my anger is about….I see some dangers of what I’m calling restorative justice fundamentalism. It has caused division in my community. And I have been involved in circles, which someone has got up and said, “Well, if this is the way it is I’m leaving.” Or, “We can’t work with the county attorney’s office because they defined it this way.” And so to me restorative justice fundamentalism is like any other fundamentalism where “I have the truth damn it.”

Orange Group

Ellen Halbert: One of the issues that wasn’t talked much about this morning, I [would] like more conversation about and that is the word “forgiveness”. Because for many victims that is called the “f” word. And to me, it’s about peace in your heart.

Aimee Gourlay: I’m not a restorative justice practitioner. I’m a mediator here at Hamline….I was really struck this morning by the use of the word “the” community instead of “our” communities….But as we were having the dialogue it really struck me that there is some otherness to saying “the” community -- that we’re not a part of it and sitting in it. So I’m curious about that.

Michael Perlin: I teach at New York law school….What Aimee said about “the” community is I think really on point especially because, in fact, there are people who have been marginalized out of just about every community in the world. And I give a lot of thought to whether or not less formal processes would be better or
worse. And in my heart I think I know they would be worse in real life.

Jack Schaffer: I am a psychologist here in St. Paul.... It seems to me that forgiveness is what happens in the person who is doing the forgiving. That it ultimately is a process that is restorative in a way to the person doing the forgiving. Not necessarily in the relationship....People suffer as a result of that inability to forgive.

Twila Hugley Earle: I’m from Austin, Texas. I’m a communications specialist....What do you do with forgiveness with something that is ongoing or continuing, or that you can’t stop?

Jim Bonilla: I was an organizer and doing social justice work for many years....If restorative justice tends to focus in on micro communities who disproportionally are being asked to take responsibility, it seems that there is a social identity question here.

Roberto Juarez: I teach at St. Mary’s law school in San Antonio....We law professors like to think that we get paid these outrageous amounts of money to sit around and think up great ideas that are then going to be implemented into the real world. Restorative justice is something that did not develop within the legal academy. It developed within the community.

Gary Schurrer: I’m kind of a hometown kid here today. I went to law school here and am one of the judges in the county....The benefit from restorative justice is on one level the fact that it provides you an opportunity to have discussions in a respectful fashion about any kind of questions you have -- the most difficult questions in our society and our culture, in our communities, that generally people don’t get the opportunity to talk about.

Nancy Riestenberg: I work for the Department of Education here in Minnesota....I suppose I am part of myth-making but I
sometimes say that in the original communities, when we were all way back when and we all depended just upon ourselves and our little pot of fire to survive, we had to be restorative because we couldn’t afford to lose anybody....You have to come up with another way of making [offenders] part of the community and to fix the wrong that they did because you need them to run into the buffalo herd, otherwise everybody is going to starve....I don’t think we can get away with sending people away.

Tom Porter: I am a trial lawyer in Boston in a lover’s quarrel with the profession.... I’m very much interested in the way faith-based communities can be part of this restorative justice movement....I’ve become very convinced of the power of circles. The ritual aspects of it. The relationship covenant part of it. The role of the steward which I find to be a wonderful role and much less burdensome than that of the mediator.

Fania Davis: I’m from Oakland, California where I practice employment discrimination law....It’s so wonderful to be in a room with lawyers talking about circles....A woman by the name of Charlene Spretnak says something like, “It is the massive denial of our inherent relatedness or inter-relatedness which has led to inter-species and intra-species disaster.” And it was Einstein who said something like, “It is the historical imperative of our time to free ourselves from this prison, from this optical disillusion of thinking that we’re separate – separate from one another.” And so to me this work is a very revolutionary movement, and not revolutionary in the Marxist way that we used to talk about, but revolutionary in [that] we are talking about reinventing a new way of being.

**Blue Group**

Barb Toews: I work for the Pennsylvania prison society doing restorative justice....One of the things that captured my attention this morning is kind of that broader question of restorative justice
and its connection to social oppression. Does it have the potential to be just as bad on oppression issues as the current criminal justice system?

Stephanie Barnett-Erickson: I am a facilitator for family group conferences.... The experience of a restorative justice journey is a very personal journey and it's not always about -- and sometimes it never is about -- forgiveness. It's about accountability and about diplomatic confrontation.

Patricia Gonsalves: I'm here visiting from England. I work with a community mediation program called Greenwich Mediation....My question really is about what is that thing that we allude to that could be restored or should be restored or that is about to become restored? What happened to disrupt it?

Michael Green: I teach dispute resolution at Texas Wesleyan Law School. I was actually going to raise the question but we ran out of time....Are there problems with applying restorative justice in the context of other types of disputes and how much can we spread what we know of the criminal justice application to other situations?

Jim Radde: I'm a priest in the Twin Cities area.... How do I maintain integrity in my own life and congruence between what I identify with and what I propose by way of restorative justice and its values and principles and so forth?

Edward Valandra: I'm a professor of ethnic studies at Metropolitan State University...One thing that intrigues me about the restorative justice movement [is] origins....That has to be raised because almost without exception native people have origin stories that set out what your instructions are to be a good relative. And in almost every non-Indian situation I never hear that. It's always about human rights. It's always about our essential humanity. I never hear about those plants and what our relationship is [to the earth]
and so sometimes the discussion disturbs me. Because it’s so ethnocentric, that’s the term.

Susan Hackley: I’m with the Program on Negotiation which is based at Harvard in Cambridge, Massachusetts....What could be useful from restorative justice to help prevent violence? Why should it be a response to violence? Why was it when Romeo and Juliet died that their parents finally decided to stop fighting?

Jeannie Zimmer: I’m with the Dispute Resolution Center here in St. Paul....We’re in a place right now where we’re looking at community mediation and restorative justice on a continuum of ADR....We’ve offered circle processes for mediators and mediation for circle keepers. And we’re seeing more and more situations where it’s not black and white. A straight mediation process does not work. A straight restorative process does not work....It’s more of the facilitators, the mediators, the circle keepers having a set of skills.

Gwen Chandler-Rhivers: I’m a circle-keeper....We don’t need a formal process to be able to engage in that. It’s about how we live in relation with each other. One of the issues that is very strong for me is this whole issue about credibility and especially being a community member from a community of color, it’s something that has been a concern for me for a long time....Language is key. You know there are some terms that are thrown around and that we just assume that they are acceptable and they feel good. “Justice” doesn’t feel good to me. That’s a Gwen thing. “Democratic process” does not feel good to me....If we’re trying to encourage participation from all sectors, every race, every culture, then we need to be working toward finding an inclusive language.

David Lerman: I’m an assistant district attorney in Milwaukee....We need to find ways to reach out across boundaries and reach out to the people who control other systems because when we have those kinds of conversations, when sparks really fly
between people, [there are] real solid gains to be made. And that is what I hope to be involved in.

Jean Greenwood: I teach conflict resolution and mediation as an adjunct at the University of Minnesota and [am a] Presbyterian minister and do restorative justice from a lot of different angles....One of the things that is so compelling to me about restorative justice is that I'm just a very personal believer in people's stories. I love people's stories, love to gather them, hear them, be a part of them and share my own story. I felt like perhaps today we haven't really had a chance to tell our stories.

Richard Hiers: I have retired just recently from teaching at the University of Florida. Split personality, partly in the religion department focusing on biblical studies and partly in the law school teaching courses there in law and ethics and social policy....I hear disparaging thoughts or vibrations perhaps about the justice system as if perhaps restorative justice will somehow eventually replace that and we wouldn't need it anymore....What can we expect of people?.... We say we're "essentially human" but that includes a lot of possibilities. "Essentially human" can be pretty bad and pretty nasty. It can also be wonderful. I'm thinking that while we're moving toward enlarging the possibilities of restorative justice, we don't want to unnecessarily discharge and forsake what may be possible in the realm of more traditional justice.

Jim Coben: I'm a lawyer and a teacher here at Hamline....If I was to review the legal rules of professional conduct, I can tell you that the word "healing" never appears there. Neither does the word "community"....The notion that anybody matters other than the client I'm representing and the opposing party and the judge is absent from the ethical [universe] other than the responsibility overall to the judicial system....So I'm struck that the construct about community and healing being fundamental to the delivery of
justice is on some level absent from the way that lawyers are taught to think about the world.

Kay Pranis: I worked for nine years for the Department of Corrections here in Minnesota as restorative justice planner and now doing training. For me this has always been about social justice. It’s never been about sort of individual reconciliation. The idea of restoring right relationships with an assumption that at our core there is a place where we were born with right relationships with the universe and each other.

Richard Hiers: It seems to me that restorative justice rather depends upon some common grounding, which involves at a minimum trust. Some trust of one another to enter into the process. I think it works in a setting where there is some common religious affirmation at least as to the value of what is human life -- which is not to say any one particular religion but at least religious traditions that provide that common sense of meaning and value and the worth of the persons involved.

Kay Pranis: Actually, in my experience [people] don’t necessarily enter with trust and that in a lot of this work you can build trust in the process. Being listened to respectfully builds a sense of trust that allows people then to get to the next step.

Gwen Chandler-Rhivers: To me the essence of this whole work is about stripping away the layers and getting down to the humanness in each person. There is some ugly stuff probably in all of us. I know there is in me. I can only speak for myself, but it’s about being intentional -- about showing up differently -- that makes that growth happen.
2. How Does the Concept of Restorative Justice, as Compared with Justice as Expressed in Mediation and the Practice of Law, Relate to a Broader Social Context, Including the Dynamics of Race, Class, and Other Social Identities?

- What are the concepts of justice that underpin mediation and law practice?
- How do these concepts relate to the justice of restorative justice?
- What are the broader social critiques of justice found in mediation and law practice?
- To what extent do these critiques extend/apply to restorative justice practices?
- How do different theories of punishment inform our thinking about justice?

a. Saturday Afternoon Plenary

Ronnie Earle: I have been for the last 26 and a half years a district attorney in Austin, Texas. I’d never been a prosecutor when I first became district attorney so I wasn’t really sure what the job was. I thought all you had to do was be tough on crime because what people really wanted was justice. I thought at that time that justice was vengeance or pay back. And so we started being tough on crime, like all DA's are supposed to be. But pretty quickly I came to understand that vengeance wasn’t making victims feel any better. And so I started looking for different ways to do my job....It began to be apparent to me that there were certain functions of the community that were not being performed beginning with care of crime victims. And someone said this morning that restorative justice assumes commonality and I think that in terms of the overall system that’s [what] we’re looking for.....So I see restorative justice as a modality that really has two functions. One has to do with the immediate dispute at hand, whether it’s a mediated dialogue or cultural sentencings or
whatever. But the other far more importantly has to do with creating bonds between the people who are part of the process, which is why I think circle sentencing offers such great promise. Because it is a vehicle – a loom, if you will – for reweaving the fabric of community....Originally the law was a vehicle for community building because with any kind of infraction or any kind of dispute there was some kind of a restorative process. That was the origin of the jury trial. But we don’t do that anymore very often; in federal courts, it’s mostly with six members juries because juries are not efficient....There is nothing more inefficient then a circle sentencing process. But the point is not efficiency. The point is democracy....Cheryl Graves said something this morning about if we don’t have principles that are clearly articulated and held fast to [we] are going to end up with a big mess. And that’s exactly right. A restorative justice process without principles can be a lynch mob.

Michael Green: I’m a frustrated litigation romanticist, but I’m also a skeptical proponent of informal dispute resolution.....I am a law professor, so my litigation romanticism has to do with the law....I think the law can provide justice, racial justice. In the spring will be a 50 year anniversary from the Brown vs. Board of Education decision and that’s a key example of how the law provides racial justice. ....Maybe what we have in terms of the court systems are formalized systems to protect the have nots -- to protect people who don’t have the bargaining power....If Brown vs. Board for instance was resolved through some type of community restorative justice system, you wouldn’t have that public outcry from a Supreme Court decision to send a broader message to help regulate further disputes. Maybe when disputes involve issues of race, it’s not about resolving the dispute. It’s not about obtaining peace because it may be a need for someone to shout. It may be a need for someone to raise the issue in a public setting.... While I’m a litigation romanticist, I’m also frustrated. And why I’m frustrated is that many people of color and people who might be challenged in terms of the system don’t have clear legal redress. They can’t
get representation. Or they can’t afford representation in the court system. And so they can’t really get that ultimate justice. But if you look at it in terms of informal systems, and restorative justice possibly being one of those informal systems, it is incumbent on that process to be just as fair....So while I think that both systems can have value I think my real suggestion is don’t throw out either one.

Ellen Waldman: I teach law at Thomas Jefferson School of Law out in San Diego....Take yourselves back over 50 years now. Imagine that you are in Nuremberg, Germany and it’s 1944 and Telford Taylor, who is the prosecuting attorney, has in the criminals’ dock a collection of the most active men of science who were involved in the Nazi experiments....As witnesses to provide testimony, we have the victims of those experiments....Imagine that the scene changes and instead of a prosecution there is a circle sentencing process, a restorative justice process. And if that makes some of you uncomfortable, then the next question would be why?....Imagine the situation that these victims are in. They have been systematically dehumanized....But what is the experience of crime but the experience of dehumanization?....What is the effect of this kind of dehumanization? Well, I’d argue the effect is that one loses the sense of entitlement. One loses the sense of having a rightful claim to basic human properties: like security, like happiness, like freedom....Now let’s look at the perpetrators. These are individuals who led a life of privilege. It may seem a leap from this rather extreme example that I’ve provided to the corridors of a restorative justice hall but in many communities the victims of crime are traditionally marginalized peoples. Oftentimes, the offenders are traditionally marginalized people. When we say that we want a negotiated process, what you’re essentially saying is we are going to come up with a resolution that accords with people’s sense of need. Need is a terrifically subjective standard. Our needs are going to be a function of our place in an existing social hierarchy. People at the bottom of that hierarchy are going to have dramatically reduced notions of their
need and their entitlement. And so one critique of mediation in general which can be extended to restorative justice is that we merely perpetuate existing power imbalances when we allow agreements to be forged entirely based on the individual needs.

Jim Bonilla: We started out about talking a little bit of who we were in terms of social identities so I think I'll root my discussion in that. I'm a "Newyorkrican." A New York born, Puerto Rican in Minnesota living on the farm, so that's even funnier...I want first to interrogate this idea that restorative justice tends to pay attention to the commonalities [of] the community. I thought that was a really interesting insight, as if there is "the" community....One of the quotes I had here earlier had to do with, "We're really doing restorative justice when we're treating people respectfully," and I guess that's a question for me: do we all assume that we all believe that we respect the same things? Because if not, that means we are going to approach restorative justice differently. So in the States it seems that respect is based on treating people the same. In Puerto Rico, we treat people with respect, but also based on age, on status....So one level of question I want to raise is this notion of cultural difference. The other is even paying attention to cultural differences is not sufficient for me. Because awareness of difference, cultural competency, is not the same as doing anti-racism work. I can be a great mediator and not [be] doing anti-racism work. In the readings I was stuck by the comment that offenders have the responsibility to address the causes of their behavior. I think one of my colleagues just said that, "Disproportionately, offenders tend to be folks of color"....So that raises the question: who are the offenders that we're saying have the responsibility to address the root cause?....Which communities are disproportionately being held accountable? And it's interesting, who's not being held accountable? So for me the question is about does restorative justice really overcome the legacy of oppression and privilege? Or is it in some ways perpetuated in the best of intentions?
Patricia Gonsalves: Damn, follow that....I’m going to say a little bit about mediation....If any of you saw that not so great film called *The Count of Monte Cristo* starring Richard Chamberlain. Well, I was very struck by the closing moments of that film in which the Count is being held to account for his actions – terrible vengeance on people who had done him wrong. And in being held accountable to it his response was, “It’s simple justice Madam, and I assure you it has brought me no joy.” Now that gave me some pause really to think that within concepts of justice there is this appreciation, or even an expectation, of personal happiness. Now that led me to thinking about what might have been the Count of Monte Cristo’s experience had he, instead of reeking vengeance, pitched up at the mediation center that I’m a part of and underwent the transformative mediation process that we practice there. Well, you see I think he might have had the opportunity to find out that mediation is not the substitute for justice....Nor would it be an alternative to it. He might have found out that mediation is actually a social process in its own right. The goal of mediation as we practice it would be to offer opportunities for self determination and for connection to others....He may have had the opportunity in terms of this connection to others to find out that there were some routes to joy that he had previously expected but hadn’t been on the receiving end of or indeed haven’t even explored himself....I think our practice of transformative mediation offers opportunities to address those things because it’s built around the geography of [the] human condition. It starts from a place of profound respect and empathy for human capacity....People have the capacities to make these kinds of decisions for themselves and to look at and to decide and to define for themselves what their justice looks like.

Michael Perlin: When I was a trial lawyer, I used to represent juveniles in the juvenile house of detention in Trenton, New Jersey, which was very informal. The judge didn’t wear a robe. Everyone sat around a table and my clients were always convicted. One month the juvenile hall was being painted. So the judge went downtown to the regular county courthouse where he had a robe on
and he was up on the pedestal and we were down below and there were the fancy murals on the wall and I had a better acquittal rate that one month than any time before or afterwards and I didn’t change at all. It was the same judge.....Number two, I teach civil procedure and I quote I think it’s David Engel, the law and society scholar, who points out that 95, 97, 99 percent of all torts and contract cases are settled. But only about 60 percent of civil rights claims are settled. The notion being that civil rights plaintiffs want their day in court and that notion of justice is much more important than money. And I wonder because I’m such a newbie in the restorative world….I want to hear how that is responded to by someone – by anybody – in terms of what this means for people who are unempowered, for people who are minorities, for people who feel traditionally that they don’t have access to the routes of power.

Michael Green: My background is in employment. Most employees want [a] voice. They want to be heard as part of the resolution, yet most employment discrimination cases, over 90 percent, are resolved through the summary judgment process for the employer. And so in terms of that justice component that’s problematic. Is the solution then mediation? And I like something that Patricia said. “Mediation is not justice.” I don’t equate it because mediation is a process that requires agreement on both sides and one of those parties is a party with power that doesn’t want necessarily justice for the other side….It doesn’t have to be about justice. It’s about self-determination. And those are different to me.

Ronnie Earle: I think that the point of not closing off any options is also very important just because what might work in one forum would not work in another. The area of domestic violence/family violence is a classic case where restorative processes have to be very carefully modulated in order to be effective.
Howard Zehr: The youth justice system in New Zealand is probably the first institutionalized restorative legal system in the world. It came not from the restorative justice movement but [as a result of] charges of institutional racism by the Maori. It came out of a process of listening to the Maori about what was racist and how it was impacting that community. And one of the principles in the legislation for it is, a process has got to be culturally appropriate so to protect practitioners. One of the principles they have to follow is make sure it’s culturally appropriate for everybody involved.

Jim Bonilla: I’m going to go out on a limb here....The parallel is for me for many years people with disabilities were ignored. And then a lot of well-intentioned people said, “Let’s build special homes for them, or special schools where their needs will be taken care of.” They didn’t use the word culturally appropriate. They said it would be appropriate to their difference, their disability. And it’s only been in the past decade -- my lifetime -- where people have said, “Well that’s a nice way of ghettoizing disabled people.” And I’m wondering if this discussion around restorative justice is sort of a nice way of saying, “Let’s have a separate house for justice for disenfranchised people,” rather than “Let’s accommodate the house we have so that everybody has equal access to it.”

Nancy Riestenberg: I come from education.... I really don’t know anything about mediation as it has to do with what lawyers do and that sort of thing. But I do know about mediation in schools and one of the main things that I try to distinguish is that there is a difference between mediation and restorative practices. For school kids the way we do it is that we say when you’re doing mediation, you’re bringing together basically people with equal power to try to talk, communicate, until they come with a win-win solution. And if somebody bonks somebody else on the head, there is a power imbalance and so mediation is not an appropriate way of dealing with that problem. Because the power imbalance happens,
people need to come to a communication process, i.e. a restorative process, with different roles to play....And they need to be articulated as different because in certain instances of harm in school, for instance bullying, mediation causes harm....And the other thing I wanted to say is that from a school vantage point, I would never say to an administrator that they should give up their formal system of rules and regulations. Their responsibility is first and foremost to secure the safety of the children and the staff and the school.

Mark McCrea: I’m just a local mediator....Mediation can be developed and practiced in any number of ways. The only limitation frankly is the creativity of the parties themselves.....I’ve been practicing mediation for well over 20 years and I've certainly used many restorative practices in mediation sessions all the time. I start getting worried when I see this categorization occur and limitations placed on what mediation really is....I’ve noticed that, yes indeed, there have been a lot of corporations that have jumped on the so-called “ADR bandwagon”....Some of those corporate exec types they like this stuff. They like the idea of being able to sit around in a circle and talk about what really happened and people telling their stories and occasionally you can even sneak a ritual of some kind in there when they are not looking.

Jim Bonilla: I was doing o.k. until the last comment you made. So thank you for being provocative. I don’t want to be the only one. I mean I think it makes lots of sense to me that corporations would like mediation. I mean they don’t want a bunch of Latinos coming in there and doing a class action suit about them dumping stuff in their neighborhoods.

Jeanne Zimmer: I like to think of ADR as not alternative dispute resolution but more complementary dispute resolution. We do not replace the judicial or the criminal justice system. We work along side it. We complement it. It’s not an either/or proposition.
Ken Fox: I’m beginning with an assumption that we live in a racialized and hierarchical society where there are groups with privilege. And I’m listening to some of the critiques of justice in relation to this society and the question that arises for me is: are the values and principles on which restorative practice rests qualitatively different or respond or interact with this – the assumption that I’m working with of a racialized society?....There are multiple models of mediation so it may be important to talk about the values and principles on which different approaches to mediation practice rest in order to address that question. That’s what I’m not clear about in terms of the role of restorative justice and a racialized society.

Barb Toews: One of the things I find helpful when going back to the philosophy is just kind of going back to three questions that Howard often uses: Who’s been hurt? What are their needs? And, who is responsible for them? And I think that with restorative justice, usually the way we look at that question of needs is really on a micro level. We understand it micro, we go to micro processes for responding to it. And I think when we start talking about what we’re talking about here, we’re kind of raising that question about how you do restorative justice at a macro level?....What is the role of anger for social institutions that are violent? What is the role about speaking up and just advocating and how does that fit into [a] restorative justice paradigm? Do we always have to be conciliatory? Is it always about bringing people together to figure it out? Or is it sometimes being angry about stuff?

Patricia Gonsalves: I’m moved to kind of share a poem that I came across some years ago. It’s written by a Philippine poet called J. Cabazares....He says, “Talk to us about reconciliation only if you first experience the anger of our dying. Talk to us about reconciliation only if your living is not the cause of our dying. Talk to us about reconciliation only if your words are not the product of your devious schemes to silence our struggle for freedom. Talk to
us about reconciliation only if your interest is not to entrench yourself more firmly on your throne.”

Ellen Waldman: I don’t actually practice restorative justice except when I’m dealing with my extremely dilatory students. So in order to get a little bit more information on the ground I began reading about the largest macro application of these principles internationally and that was the South African Truth and Reconciliation Commission. What I’ve gained from the accounts of that historical experiment is that it was both a great success and a great failure in ways that I think illuminate this discussion. On the micro level, apparently there were remarkable days – you know days where the nobility of the human spirit was truly in evidence....Now on the macro level was this success? No. Most commentators would say that what happened is that there were individual instances of truth-telling, reconciliation and atonement. But on the macro level, the white Afrikaners essentially traded information about abuses that occurred during the apartheid reign for the continued maintenance of economic congeniality....Reparations were promised to victims after all of this reconciliation and atonement, which were never delivered. Why? Because economic wealth was still massed in the hands of people who didn’t particularly care about providing reparations and the governing party didn’t have the political will to ensure that there was a transfer of wealth. So again I think that we do have to look at the cleavage between psychological healing and economic redistribution.

Tom Porter: What is the justice that a facilitated conversation serves?....It appears that mediation might have a different justice. Is it the view here that mediation serves retributive justice and is there any other justice that a collaborative process can serve other than restorative justice?

Ellen Waldman: Well, one form of justice that we haven’t really discussed that’s typically seen as one of the strengths of mediation
is procedural justice -- the ability for individuals in conflict to tell their story; to be treated with dignity and respect by an even-handed and objective third party; and to play a role in the construction of an agreement by which they move forward....That's different from substantive justice.

Ronnie Earle: We talk about justice a lot....Perhaps it can’t be defined. The law in Texas says that it's the duty of every prosecutor not to convict but to see that justice is done....I don’t know what it is, but I've arrived at a definition that I will share with you: it is the fairness and balance that comes from healthy relationships....There is no separation between community and justice. Community, I’ll venture a definition since we’re already on thin ice: community is a network of relationships that share joy and pain. And if the relationships are healthy they also share power and so the justice then flows from that.

Patricia Gonsalves: Justice is also really a very personal thing....The kinds of things people come to mediation for are things that they really want to engage with others about because they feel very unjustly treated....They feel done to. They feel a sense of victimization....I have seen a process, a social process that we call mediation, which is not justice. It is something in and of itself in which people are offered the opportunity to engage with things in ways that no other processes allow for....They can afford themselves, on their own terms, to try to reach some kind of understanding about that situation and have the opportunity to actually speak back in terms of how they see injustice.

Cheryl Graves: I’ve been taught not to say something is a restorative program. I’ve been taught to talk about things – to ask a question: is it a process that’s grounded in principles of restorative justice?

Daniel Bowling: I’m very troubled because this conversation is a complete swirl for me....I practiced law for 20 years in South
Carolina primarily as a public defender and a civil rights lawyer and there is no such thing as justice down there. It's who's the smartest lawyer or who's got the most money or who can manipulate the case in front of the judge who's only slightly corrupt as opposed to totally corrupt. So to make a comparison [of] a formal system like that to the other things we are talking about today just leaves me sort of scratching my head and my own experience. I can't quite get a grasp of it....The formal justice system we have on the whole I would assert is absolutely and totally corrupt and to hold out that it has any meaning or relationship to anything that any of us in this room likely would deign as justice is absurd....We all know justice when we see it. We don't need to define it....The source of justice is us. And that means the system that I'm responsible for working on is me.

Calvin Sharpe: I think that there is something to be said for conceptual clarity....It seems to me that it really is important to understand a difference between restorative justice, which has to do with putting things right; and reconciliation which occurred in the context of forgiveness in South Africa....That it really is necessary to distinguish between these processes in order to understand what's going on and I think it also facilitates the process of borrowing from one process into another process because you then at least have some clarity of thinking about what you're doing.

Ellen Halbert: I'm a crime victim. That's how I got started in all of this RJ stuff....Whether we like it or not, victims are forever attached, associated, involved with the offender. We don't like it, but it is there forever and ever.....What I want to say to you is don't forget the victim and don't forget to talk about them.....We seem to spend so much time trying to define whether mediation is justice....Does it really matter whether we call it justice if people are o.k. about what happens in the end and we've come to an agreement?
Jack Schaffer: I want to pose a question that reflects a position obviously....For those of us that have a set of values and convictions (and I would guess that applies to everyone in this room or you wouldn’t be here), don’t we have an obligation to take action in support of justice? Don’t we have an obligation to do something other than be a neutral observer in a mediation process? So doesn’t justice in at least some ways take precedence over simple neutral mediation?

Michael Green: People who see themselves as mediators trying to deliver justice between the parties have to realize that a component of that is what the parties want.....If you start off the process by saying, “I’m going to deliver justice,” I think that’s the wrong approach because they may deliver you to another party to mediate!

Patricia Gonsalves: I have some considerable degree of difficulty and discomfort with the concept of neutrality....In order to be neutral, the mediator would have had to land yesterday from Mars to have not been subject to the way that society works....I prefer to think about multi-partiality. Not impartiality, not neutrality, but a process that’s actually there in support of every one which is involved in the situation....I would argue instead for a multi-partiality, which would suggest support rather than facilitation.

Rodney Peterson: Thank you Patricia for your comment on multi-partiality because I think where I’m going really supports that as well in a different way.... I’m left wondering how do we create, how do we become moral persons?....I’m uneasy with saying, “Well, let’s just leave it up to individual spirituality.” I’m never sure what that means and how individual spirituality coalesces around common values [to] create new communities. What religion or what set of values are we left with then that help to create community?
Jim Bonilla: Daniel, I think you said, “We know justice when we see it.” And that stopped me dead in my tracks. That depends on who you are. So if it’s affirmative action I call that justice because my Latino daughter can go to college. Some other people say, “That’s not justice, my white child can’t go to college.” So today for many people in the African-American community and the Latino community that was justice. To a lot of people, it wasn’t. So I think there is this tension between wanting to have sort of a sense of universal moral principles but also acknowledging that we’re very different about how we engage and I’m not even sure we have a common definition yet of justice.

Phil Bluehouse: Back to story telling and this comes from our traditional people. There is a time when the wise men and the wise women were sitting around in counsel. And they were discussing how they were going to place the stars in the universe and you had this great big velveteen blanket spread all over the hogan floor. And they were all sitting around. Besides them were little bags of obviously stars glowing within the bags. And each one of them had their own gift and their own knowledge and their own wisdom. And they were collecting one by one, clockwise fashion, placing the stars....[In came] Coyote.... “I want to participate. What are you folks doing? I heard you were placing the stars”....He went to all four corners and he brushed the stars together. He said, “Boy, that is beautiful”....He threw it up in the sky. “Look,” he says, “There is beauty up there. There is perfection. There is order, there is chaos”....How does it fit into what we’re trying to do here? All of us have our nice little shiny stars, yeah. All of us are trying to put into nice little compartments somewhere so it fits in. But wouldn’t it be better if we just let it glow and fall into its natural state so we can see?
b. Saturday Afternoon Circle Conversations  
(Green, Blue, and Orange Groups)

**Green Group**

Clark Cunningham: When you say “You know, shake it all up, throw it up and watch it shine,” I have some discomfort with that…. The *Brown vs. Board of Education* case that’s been referred to a couple of times is not a case that you probably wanted to see mediated or arbitrated or negotiated because it was an opportunity for an authoritative pronouncement on the question of separate but equal that needed to be made so that something with legitimacy would change the society. You couldn’t get that through settlement….You have the best chance of getting sustained protection through official processes.

Bobbi McAdoo: Is restorative justice only “working” (and I put “working” in question marks because I don’t know exactly how you all define success), because the alternative is so bad?….The public/private school problem comes to mind: “Let’s all abandon the public school system and let’s get great private schools for our kids.” Guess what? The public schools just keep getting worse and worse….My second question -- is there conventional wisdom about cases that shouldn’t go or don’t go to restorative justice?….Is there conventional wisdom about things that need procedural protection that are provided by the court system?

Joan Pennell: We also need to remember that restorative justice processes are incredibly intrusive and that we have to have a good reason to proceed with having these kinds of forums that bring together the people that are important in our lives and for them to hear about these issues.

Ronnie Earle: The real issue is how do moral persons come about? And I think that to do that we have to rescue and safeguard and protect the institutions of community. I call them the ethics
infrastructure – home and family and extended family, neighborhood, church, school.....Responsible moral people are not created by the government but the government supports the institutions that in turn create moral, responsible people. Moral persons are necessary to support democracy....Restorative justice is basically an anthem, a political anthem for participatory democracy.

Phil Bluehouse: You can have all the legal documents in the world but one the most powerful documents is a box of Kleenex....There are a lot of people out there that naturally do peacemaking in the homes....I have grandmas and grandpas who want to do voluntary work and want to come in. But the system that is now in place I walked away from four years ago because the judicial system was so powerful that the judges wanted to see a Westernized mediation process in place over tribal.

**Blue Group**

Barbara Toews: I’ve become all the more aware of what it means to be white, educated and middle-class and what that means for defining what restorative justice is....And one of the things that I’ve really had to learn, and at times it’s been painful, is to stop and to let other people offer their definitions out there and to be very aware of how I react to them.

Jim Radde: I’m a mediator. I listen to people who don’t have a clue what their feelings are much less their needs....What did they teach kids in school about problem solving? They didn’t....It’s not an acknowledged cultural or education value in this culture that I know of or in Western civilization..... And so for me that’s an underpinning of everything we’re talking about today is our education system and being able to be educated as a whole person.

Edward Valandra: I just want to comment on this notion of the radicalization of the dispute resolution process of mediation or
restorative justice. I think that’s critical....As a nation and as a people, when we have gone to the court system to redress land theft, ill-gotten gains, and all of those issues and we still get turned down by the court system and they say for that – what we will do is give you money.....The court system is not set up to compensate us for the loss of our spiritual universe. The court system is not set up to allow for compensation of the stolen resources. The court system is not set up to compensate us for the genocide that has been occurred to us by white people...We engage the legal system although we know it’s stacked against us.... We go through the practice of law and then we try to mediate.... And the white people freak out. What are you Indians going to do to us? .... We tried a few years back to launch a reconciliation movement. The white people said, “Yes, let’s have pow-wows. Let’s put Indians in feathers. Let’s have drumming and singing. And we’ll have some feasts.” And the dialogue went on that way and then finally a Lakota got up and said, “The litmus test for reconciliation is land return.” The whole reconciliation movement fell apart. So I think what it gets down to [is] it’s just white people who don’t want to give up power. I know that probably hurts for those that are here that are white, but for restoration in terms of justice you need to hear that.

Patricia Gonsalves: You are talking about a system (and you’ve included mediation in that) which actually does not allow for the expression of some of the things that you have just expressed. The anger, the insight, the hurts also....The sense of outrage, the ways in which the people, the Lakota, have experienced the unjustness of the situation....You’ve been talking about an engagement with a system that does not allow even for that conversation.

David Lerman: What’s interesting to me about listening to you, Edward, was that I immediately went to my people’s story and it’s a national conflict in Israel....Why bother having the conversation? Because there are experiences on these kinds of issues elsewhere that can begin to give us guidance -- whether it’s Northern Ireland
[or] South Africa.... Lots of person-to-person efforts. Person-to-
person bridges being made and that is so crucial for these kinds of
national, cross-national issues.

Richard Hiers: Can there be common ground with others,
particularly with people who have been victimized by them, until
or unless there is some kind of transformation -- that consciousness
elevation?

Jean Greenwood: I became involved in restorative justice
inadvertently when I was pastor for [a] congregation where three
young men stole from the church in a variety of different
ways....I've witnessed social justice being negotiated before my
eyes and that's not to be a substitute for advocacy, which is
another paradigm and it's one we need....You know it's one thing
for me to hear somebody, "O.k., Jean would you get on board with
the needs of Lakota people?" I'd say, "Yeah, that's a good thing."
And then I hear Edward speak a little bit more from a personal
perspective and that moves me to a whole different place, catalyzes
me to say, "Yeah, we've got to do something about it!" Again, it's
the power of the story and I believe very strongly that restorative
justice gives us an incredible vehicle for social justice.

Bill Everett: We're living through a time in this country where the
idea of the common good has been pushed to the margins of
political discourse so that you can't even bring it up. It's just
interest clashing with interest and radio talk shows inciting
people's most primitive desires for overcoming the interests of
others. So I think we need to lift up the importance of trying to
think about the common good and what that is. I think restorative
justice people really have that in the background as the norm by
which to measure justice....That's partly what I hear behind what
Edward is saying, "How can we live together with a sense of
genuine neutrality on a land that doesn't belong to me or you?"
Kay Pranis: Ellen gave [the] hypothetical example around Nazi Germany and seemed to have an assumption that we would not choose a restorative response in that situation. And I want to say I want to try to figure that out. That situation did not discourage me from thinking about restorative justice....There are times when we need to – we might in fact have to – hold the person in some kind of restriction if they are unwilling to take responsibility and control their own behavior. But you can do that in a way that honors some [of] the core values of restorative justice. I also want to say that one of the huge issues facing us as a country is historical harms....We know from a restorative justice model how we begin to do that....The first step is acknowledging the harm and we should on a national level acknowledge the wrongness of what happened and a part of that is hearing the stories, listening to the anger, listening to the pain over and over and over again. I think that’s what we’re called to do. And I think those things are doable. Then what can actually be done to make amends is a lot fuzzier but I think that if we started down the path we might begin to find the way.

Jim Coben: The thing that got clarified for me today listening so much to so many passionate people talking about restorative justice -- it confirmed for me something that I feel is really wrong with the mediation movement....I realized we haven’t spent a lot of time talking about different models of mediation, but there is this guiding principle of self-determination....On some level, it’s a selfishness that is very absent from the restorative justice principles that I’ve heard articulated today: self determination [as a] uniquely American concept in its worst sense – in other words, the ideology of the single person as opposed to some notion of common good which is so the heart of what all of you have been talking about today.

Patricia Gonsalves: What [do] we mean when we’re talking about the “common good”? Which “common” and “whose good”? Usually that term “common good” refers to a sense of the
dominant culture, which actually is a euphemism for white....I'm not that comfortable with terms like "common anything" because generally it means a removing of one....I had an opportunity to talk with the Chief Justice in the Navaho nation a couple of years ago about the concept of walking a mile in somebody's moccasins. What came out of that conversation for us is a real understanding that the purpose and even conceptualizing something like walking a mile in another person's moccasins is actually to discover that you can't.

**Orange Group**

Howard Zehr: I'm going to tell a little different kind of story....I was off the first semester on sabbatical and I came back and we had gone to war during that time. There were lots of tension around that. The Arab students were feeling pretty paranoid. The North American students were feeling like some of the Middle Eastern students were being very critical of them even though many of them were opposed to the war....So we decided we would lead a circle. Well, it was a disaster....We did virtually everything wrong.... Some of the things we should have known better. We shouldn't have reacted so fast. We shouldn't have taken over the conflict. We have student community coordinators who normally handle these things. We bypassed that for whatever reason....The facilitator had decided he needed a darkened space with candles and some ritual thing in the center and he began to use a rock that one of the class had given us the previous year to use as a talking piece....Well it didn't work very well.... [A student] told me this week, she said, "That darkened room for me, that's what happens after a bombing. [On] the West Bank, we go get candles and we don't have any light. So this didn't work for me." And then the part that we didn't even think about -- the stone. [The Arab students] figured it was some kind of way to "dis" them you know because the stone is the symbol of the occupation.
Howard Moore: I’d like to tell a brief story....This is a day in February of 1982 in California....It was the day I was to go to a funeral for a colleague of mine who was also in a fraternity who had been shot to death by an irate client in San Francisco....We finished up his service and I went back to my office and I stayed there for a period of time and then I got a ride home....We got within about ten blocks of my house when all of a sudden a car came up behind us (and must have been going about 200 – 300 miles an hour if a car can go that fast) and it ran into the back of the car which I was traveling [in] as a passenger. And the car flipped over.... It would have been much more severe had I not had my seat belt on, but I did receive a very devastating crush injury to my left hand, which had to be surgically repaired. And I was in the hospital for about six days. And about a month later I had to appear in court for the arraignment or preliminary hearing for the guys who ran into me....I went there as an accuser. I had never thought about the guys who hit me. I didn’t care whether they were prosecuted or not. That was the furthest thing from my mind. The only thing that I was concerned about was living my life and getting the use of my hand back....There was one thing that happened at the court trial. It has always been a sore spot with me. And that is when I saw the guys who were driving the car. They were sitting there. Neither of them said anything to me. And the only thing I wanted them to say was, “Hey man, how you doing? I hope your hand gets all right.”

Daniel Bowling: Twenty-eight years ago, I was a very arrogant public defender who was quite righteous about being in South Carolina and defending poor African American kids. And I did it extremely well. And there was a client I had named Robert Lee Robinson. Robert Lee and I went to three jury trials together. Now it’s pretty unusual for a criminal defendant to go to a jury trial....We went to three. And he was acquitted three times. Not on the same charge – three different charges. And a year or so passed and I was talking to a correctional officer in the judge’s chambers waiting for a jury to come back on another case and I asked the
cop, “What’s going on with Robert Lee? I haven’t seen him in a while.” And the cop said, “I just arrested him again the other night.” And I said, “When is he going to learn he’s just getting arrested all the time?” And the cop looked at me like the idiot that I was. And he said, “What do you mean learn? He’s got a free, very smart lawyer down here in court that gets him off every time. What’s for him to learn?” I quit as [a] public defender a week later.

3. What Implications does the Essence of Restorative Justice Have for the Fields of Mediation and Law?

- Should lawyers and/or mediators embrace a restorative essence in their practices?
- Is incorporating a restorative essence an extension of, or a fundamental change to, current mediation and law practices?
- What must be done and/or let go of in order to more fully reflect this restorative essence in mediation and the practice of law?

a. Sunday Morning Plenary

Daniel Bowling: When I reflect on what I think about my life as a lawyer and who I was as a lawyer, I don’t like the person that I was. Who I am as a mediator is a very different person then who I was as a lawyer. And what calls to me from what I’ve heard about restorative justice this weekend calls me to be a different person even than that mediator. My sense of what I will carry away in terms of reflection on what restorative justice calls to me in terms of my practice now of mediation is a deeper call for authenticity.

Gwen Chandler-Rhivers: One of the things that I’ve learned and I take it really to heart is the hardest part about the work is the work we have to do on ourselves, and that’s the piece the folks don’t want to deal with.
Howard Vogel: I’m one of the local locals, which means I work in this building. So that means I’m a law teacher....The thing that has struck me is why in the world are we talking about “restorative” justice? The longer this conversation goes on, the more it seems to me like it’s a conversation about justice. Who needs “restorative”?....It seems to me, especially for the lawyers here, what this conversation could mean for us is that we ought to reclaim what my students call the “J” word in thinking about what it is that we do. Because if we don’t, I don’t think it has any purpose.

Kay Pranis: The image of Brown vs. Board of Education is sort of becoming very symbolic for me because it’s a reminder of how that adversarial process has sometimes served for a very, very important message and so I think those of us in restorative justice have to keep that in mind. It also is an image for the limitations....It was a very important thing to happen but it didn’t get us where we wanted to be. The fact that it’s been 50 years and look where we are, tells us that it was necessary but not sufficient....Very early in my work in the Department of Corrections I had a visitor, a woman from Nigeria. ....There happened to be a one day conference on restorative justice that I took her to and we were at that time still sort of contrasting retributive justice and restorative justice. And as we were driving away she said, “We need to get to retributive justice first before we can get to restorative justice.” I think what she meant by that was the rule of law in some orderly system. It made me think that it was quite a luxury for us in a sense to be able to be having the conversation that we’re having. I’m also taking from the things I heard yesterday a very strong sense that in the restorative justice movement we are not talking enough about making sure that the informal processes are not replicating the structural imbalances.

Jim Coben: I felt very challenged yesterday listening to the incredible enthusiasm and sense of mission and joy that I perceived
from everyone from the RJ community. It made me on some level feel quite sad almost for the way it feels parts of the mediation movement have been transformed through institutionalization and I hope for the RJ movement that there is a way to figure out a path that doesn’t get there. That’s the upside of the comment I want to make. And the critical side of the comment is I really didn’t hear a lot of doubt yesterday, which scares me a little bit.

Howard Zehr: Well I have lots of doubts…. And this is where I think mediation has something to teach us. To what extent are we enabling a system one part of which functions to exercise power, a form of oppression? It’s racist in its application in many ways. To what extent are we enabling that system? I mean to some extent that has been the critique of the mediation field which is longer, it’s older than our field and that’s part of the analysis that I was hoping we’d get here this weekend.

Ken Fox: I’m still struggling [about] whether where we stand makes a difference in addressing things like race, inequality, structural injustice…. In my own thinking and work in the mediation community I have come to a place where I believe that where one stands in terms of the values and the principles on which one practices mediation does make a difference and that it’s not a question of style. It’s a question of belief.

Clark Cunningham: Two weeks ago I spoke to a group of lawyers in Atlanta….The topic of my talk was “Does law school make us worse people?”….One of many things that kept being said by people was really striking to me, which was about how law changed them. Over and over again people said, quite unselﬁciously, “Law school taught me there is no relationship between what’s legal and justice”….That was something they learned and one of the things that makes their practice diﬁcult is having to tell clients that….The world I see of courts is just an unbelievable appalling world where everybody who was on the defending side is poor and nothing fair happened. That’s really my
sense of it....And so a question for me is, if one cares about justice, does one try to redeem those institutions?....Or, do you try to divert things out of those horrible institutions into some other places?....If you’re trying to do that, say on behalf of a criminal defendant looking at some kind of pretrial diversion that kicks into at least one form of restorative justice, what do you do with what seems to be the most common situation my clients face? Where is the restorative justice approach if the client says he did not do it?....Does your client have to give up that position and admit they did it for restoring to happen? And the second point is how does restorative justice work where there is no readily identifiable victim or victim community?

Ora Schub: When people come to the panels, if they say they didn’t do it, then they have a right to go into court and say they didn’t do it, even though that system sucks....Why should they take the accountability for something that they didn’t do? That would be wrong. Secondly, for any kind of situation there is a harm ...When there is a drug situation, there is somebody who is harmed. There is a community who’s harmed....The young people themselves are being harmed by that too.

Barb Toews: Even if the offender doesn’t accept responsibility there is a victim there that has been hurt, that has needs that someone needs to attend to....I also wanted to come back to the question earlier about what are some of those critical issues in the restorative justice field that people are kind of chewing on. And two of them have really come to my mind over our conversation for the last day. And the first one being the idea of best practices and the second one being the tension of government involvement in restorative justice. There is decades of experience of practice out there and it’s not always good. That’s the reality of it, that no matter how hard we try to live up to those values, sometimes we fail miserably and we do bad practice. And you know, we talk about becoming authentic. My authentic self can revictimize a victim.
David Lerman: Clark's comment about the seminar [he] gave with the lawyers about the way it has changed their lives: I think that's specific to people who have to represent one individual client. Because the role of prosecutor is that we don't represent one individual client. Our codes of conduct talk about the greater good, the community, public safety, and that's really different than being the whole into one client.

Cheryl Graves: You asked should defenders that are concerned about these issues go out and organize their own communities? I can tell you that if the defendant community does not step up and does not get involved, I have a huge concern about how this whole thing is going to play out.

Ronnie Earle: I think that for those of you who want to do some restorative justice practices in your jurisdiction, there [are] very few things that offer the level of political advantage to a prosecutor and elected DA more than restorative justice. I mean this is politically potentially powerful, and effective. So if you want to sell it to your prosecutor, speak the language of reelection because we all listen to that first.

Howard Vogel: When I think about my work as a lawyer, I think of the image of the storyteller....The first thing that I do is I listen to the stories brought to me by my clients. And then I "re-member" them and re-tell them in the language of the law for the purpose of claming meaning for them that's relevant for the client and for their benefit. Now if I put on restorative ears in that process, it means that I have to really take context and community seriously in the practice of law and probably in mediation and counseling....The minute we cut off the gathering and understanding of context we risk the possibility of destroying the reality of the people that we're dealing with.
b. Sunday Morning Circle Conversation
(Blue and Orange Groups)

Blue Group

Jeannie Zimmer: I’m a little bit concerned about the way the two [Sunday morning plenary session] questions were posed. You had lawyers and mediators and a question for them and a question for restorative justice practitioners. And as you look at the people in the room there are many people who are lawyers and restorative justice practitioners. Many people who are restorative justice practitioners and mediators. Many who are all three, and it’s not an either/or proposition.

Gwen Chandler-Rhivers: I’ve always viewed mediation as part of the restorative justice movement. The only difference between mediation and restorative justice was that mediation was incident based and restorative justice is more holistic to get to the root cause of why crime happened and try to eliminate those factors…. If you’re doing mediation, one of the key components would be to create a space where people can share their truth. I mean to me that’s what restorative justice is about also….To me that’s where the cross-over is because they are both bounded in principles about showing up in a good way and doing the work in a good way.

Edward Valandra: There needs to be a bright line between what restorative justice is, who the practitioners are, and the legal profession….The individuals that I would want to be involved with the restorative justice movement are in the field – the community, the people from my community, be it the elders that lived a long life and don’t have even a college education, can speak very little English, and individuals who know the ambiance of what it is to be a Lakota. Because we have a different idea of what restorative justice means. And what I would fear most, and fight most, is if somebody came in with the restorative justice model and there were attorneys involved in that, or even educators like myself
trained in the Western tradition. I would just like start sounding alarms because believe it or not we bring those influences into this process....Everyone should have an equal voice? Not in our community. That’s not how it works. Everyone just does not have an opportunity to speak. Those are different ways of acknowledging subtleties and nuances that bring some kind of resolution to what issues are faced in our community. So maybe keeping it as organic as possible would be a really good thing.

Joan Pennell: For me that bright line is between a legal profession and a social movement....Coming out of the battered women’s movement the language of restorative justice can sound quite odd. But what I always found over and over was that people would invite me in. The legal profession does not invite you in.

Barb Toews: Another critical issue in the field of restorative justice is this rush to commonality, this rush to reconciliation, this rush to figure it out, but not taking the time to sit back and say just tell me about the pain. Just go. Just tell me. Tell me 20 times if you need to tell me. Tell me 50 times and letting it come out no matter how raw it is. And I just kind of reflect on some of the things that you said yesterday Edward. You know with the process that you described what you we’re trying to do. Were there places in there for the people who are representing the white community to listen to that pain? Or was it this rush to commonality?

Jim Coben: What I see happening is like the moth and the light. The mediation movement in large part, though not completely, has been co-opted by the law in a way that’s been very destructive....The same is very possible for restorative justice....Edward, the plea that you made for justice for the Lakota — “the litmus test is the return of property”....The question I want to ask the group, “Is that most likely to happen through some kind of exercise of power, or is it likely to happen through conversation, dialogue, understanding?” And I do not in my heart have an answer to that question....Power can be very useful in making
good things happen….Yet, I get suspicious just like I’m suspicious of the mediation movement. The mediation movement is now wholly embraced by corporations, by big economic power. That makes me curious of what’s going on. When I hear in the RJ movement that prosecutors love it and endorse it; victims’ rights groups love it and endorse it; but defense counsel and people representing the rights of the offenders in society maybe are more reluctant. [That] just gives me pause. I mean what does that say about who is being served?

Allie Anfinson: Barb had talked about or touched on creating a space to talk about pain and creating the space for healing. And one of the things that takes is time. [Yet] I’m hearing from institutions, “We need to get this done. We need to see 40 cases in a month”….That ability to take space and to be cost-effective and be time-effective and all these different things that we’re hearing from institutions to make this a parallel movement and a parallel practice for the courts and to be as effective as the courts. We’re getting these things that will prevent [what] we’re really effective and really doing good….We’re using the wrong tools to evaluate.

**Orange Group**

Ellen Halbert: I can tell you that from the victims’ side, they have had a difficult time embracing restorative justice because they think it is all about the offender…. Of course, there is some truth in all of that. But once a victim does take part in it, they catch the fire, or the emotion, or everything in the room, and it is an incredible process, and they too become concerned about the offender.

Howard Zehr: I just don’t think most of us are aware how deeply offender-focused our thinking about justice is…. The other issue may be related, maybe not -- the supposed intersection between restorative justice and indigenous values. You know we talk a lot about that and some people want to write it off as a kind of a myth
of origins. Something we use to justify what we do. I don’t think it’s that....The first time I was in New Zealand in 1994 they ran me all over the islands and I was on the radio and TV....And at the end of the my trip Mick Brown, who was then presiding juvenile judge who was Maori, said, “You don’t know how good it is to hear you on the radio legitimating what we’re doing from a European perspective.” He said, “Everybody wants to write it off as Maori and what you’ve done is legitimized it for people in a Western way.” And I found that actually that’s what restorative justice is for many people. It’s legitimization -- it’s a way to legitimate people going back and resurrecting what’s been repressed. But there is also a problem there. And that is I worry about how much restorative justice, as we understand it, is [from a] Euro-centric framework....We’re not going to have authentic restorative justice until we start from an Afro-centric perspective and from some other perspectives. And I don’t think we’ve done that. I think we’ve done what we do so often -- that we white folks set the table and we invite other people to come to it and before we go too much farther we’ve got to have some kind of authentic discussion or interaction around this issue.

Howard Moore: There is no relationship that is immune from exploitation for greed, for the sake of profit. And until there is a collapse of that system where profit is the engine of all progress in the organization of society, the values that we are talking about here cannot become the predominant values in society because the foundation isn’t there....I don’t want to continue to live in that type of world....I mean we’re a nation of strangers.

Howard Vogel: I hear people talking about relationships, relatedness, connectedness....We’re all kind of engaged in a process of moving [from] what I call a culture of separation [to] the culture of connectedness....It really does start inside but for a lot of people it never gets out of the inside and so if it isn’t expressed it isn’t connected to anything....We belong to each other....The point is there is no reason why a lawyer can’t be
trained as a whole person, to be a whole lawyer. And to think of holistic spelled with a “w” and not an “h”, although I like the connection to holiness....So the heart of it I think is to work on this foundational principle of what does it mean to think of ourselves as constituted by our internal relations -- my identity as a product of my relations.


- How can scholars and practitioners work together to advance thinking and practice in and between these fields?
- What is missing in our understanding of restorative justice principles and practice?
- How can members of the restorative justice community work more intentionally with members of the ADR, legal, and other communities?

Twila Hugley Earle: I’m from Austin, Texas and Kay asked me if I would come and listen from the perspective of community.... Well obviously I can’t do that because nobody can do that because nobody can really represent the community. I can only really represent me and at the same time I really have been listening from that perspective and will do my best about it....What’s the differences between restorative justice and dispute resolution and mediation?....You know it all depends which type of response is most appropriate for what the situation is....I heard a lot of different versions of circling back around the paradox of the micro and the macro issues....People who have done restorative justice work, know how powerful it is – the micro sensing when you sit in a circle and you feel the power and you see the lives change and you see the relationships form and strengthening and you know how valuable, how important that is....These values of restorative justice and the similar values that underlie the spirit of mediation and dispute resolution are very important medicine for our
communities, for our culture now....There is a sickness here....Restorative justice is good medicine from the perspective of the community because it’s all about how will we live....Whether there is a potential here to deal with the more macro social justice issues that are driving these things case-by-case is where the paradox for the community arises. Because if we’re not able to have any impact on those macro social justice issues, what we’re going to see is more and more cases.

Phil Bluehouse: As this movement grows, I kind of foresee in the future somewhere where the issue of how much authority, power will be transferred over to us. What I mean by that is the whole process of decriminalization.

Kay Pranis: That sort of leads into what I was thinking about and [about which we must be] most very cautious when we talk about taking it back to the community because things went to systems for some good reasons....And community oppression is, was, one of the characteristics that they were trying to correct in sending everything to systems....Are the outcomes in fact in alignment with our good intentions? We can only know that from the people whose lives are impacted by what we do. So I think there is a huge call to us to make sure that we’ve got feedback mechanisms that invite truth from people about how it felt for them. If respect is a fundamental value, do offenders actually feel respected in the processes?....I have this fear of us replicating the ‘50’s. There was a lot more informal social control in the ‘50’s and it was overthrown for very good reasons from my perspective. We need to carry those images to remind us of what we don’t want to do.

Clark Cunningham: [The RJ community needs] to provide as much information as possible about the effectiveness and cost benefits of the approach....In the world that we’re in right now cost-benefit is a huge thing....We’re willing to spend a lot of money to build prisons for example and presumably because people feel that makes us safer. If there was evidence that any
particular approach actually produced safer communities and/or ended up spending less taxpayer dollar, it would be worth getting that information out.

Aimee Gourlay: I want to say something about passion. Because I feel a great deal of passion in this room and energy around doing the right thing. And so the first thing I want to do is thank you for that….And the second thing I want to do is caution you….As the daughter of a minister I know what it’s like to have to believe a certain thing a certain way in order to be accepted. And I sense that here a little bit. And so I just want to say, if you really want to accomplish your ideals, you need to really question whether there is one way to be or think.

Jean Greenwood: There is another word that comes to my mind that I just want to offer up to our conversation and I guess I want to call it generative justice. I just made that up. But my point is that you know in a climate of shrinking resources, growing fear and anxiety, we really need to be careful not to feed into that kind of mentality and start to believe that there is in fact this zero sum that we’re all competing for. Because if we’re doing our work out of a sense of franticness and fear you know it’s going to affect the quality of the work that we do.

Bobbi McAdoo: I’m concerned because I look at the mediation movement and think about it two decades ago or more. All of our language at that time about the goals and objectives of mediation and the kind of passion that so many people had in the discussions. Saving time and money those also seemed important, but it was the potential to build relationships (you know mediation really especially works when there [are] relationships to be preserved); that there could be more integrative solutions that could come out in this process; you could look outside the box, etc. Not much research has been [done on] those kinds of claims….There aren’t easy answers to figure out how to determine whether the goals are met, when you’re talking about things like building community,
important relationships, making it so that people can live together in harmony. But if you go [to] the root of mediation, people didn’t think hard enough at the beginning about what they were really trying to achieve. So guess what? The things that they said they were trying to achieve, they’ve now not been able to necessarily prove that they have achieved. So then there have been such enormous fights over “that’s because it’s not real mediation”….I just find myself extremely worried throughout this conversation about these important values; these values that people are saying our democracy depends on. We have to find the ways to be able to tell what’s been achieved and why it’s so important. People may not like the word “quantify,” but then we have to be able to have the sufficient qualitative research that can build the base. Unless you just want to stay marginalized. If you want to stay marginalized, then fine and you’ll be doing individual incredible great works with incredible passion and maybe a great deal of individual satisfaction and fulfillment....I’m afraid that when you all meet in 20 years, you will have not gotten wherever it is that you ought to have gotten, where we need you to get, where the country is depending on you to get.

Jane Hiers: Our problem really is the community in which we all exist, the community in which all of these problems grow. The community in which these criminal acts are spawned and the community which has to be responsible for the answer. It’s not the people who are in power over us and around us, the people who spend the public money and who make the decisions. It’s us, in our neighborhoods....What we need to do is find a method, a way of waking up these people who are our neighborhood.

Ken Fox: We began the conversation together yesterday morning with Phil and Bill helping us with an opening ritual and Phil has been very gracious in saying that he would be willing to recite a saying that may be helpful as we move in the transition from this space and carry this space with us in the directions that we take.
Phil Bluehouse: We move forward with the sacred mind and the sacred voice. We move forward from that time of creation, that time of darkness, from that time of blueness, from the time of yellowness, from the time of whiteness, reality. Those are the movements that we have all moved together regardless of race, creed, regardless of belief. We’re equal in that way. We’ve had our chaos. We’ve had our order. We’ve had our trial. We’ve had our tribulation. We’ve had our moments of wisdom....So we move forward.....We can look at the universe with awe and wonderment, with new beginning and with new knowledge.

D. POST-SYMPOSIUM REFLECTIONS

1. Structural Lessons: The Tyranny of Time Meets the Wonder of Stories

As was stressed in the introduction, the Symposium differed radically in its structure from a typical academic gathering. The overriding aim was to provoke deeper thought and reflection in all participants, not to invite experts to provide answers to a passive audience. The commitment to encourage the active participation of all attendees was reflected in the choice of seating arrangement (a series of concentric circles of which “theme leaders” were a part) and the encouragement to theme leaders to keep their opening remarks short and provoking. Such a radical departure from a formal presentation of papers – or at least, actively facilitated - model for academic discourse brought with it a degree of frustration. The conversation was not linear, at times it seemed fairly fragmented and disjointed. Few ideas were able to develop beyond a couple of sequential comments. And yet, the structural decisions bore rich fruit, fruit rarely seen at academic gatherings. The discourse was truly animated. People spoke with immediacy and spontaneity, constantly reinforcing points with descriptions from their personal experience. In addition, the contributions of every participant were equally honored: the voices of academics followed those of community members, the voices of
theologians followed those of prosecutors. Theme leaders had been chosen to address the plenary questions precisely because they would do so from a range of perspectives and, on balance, what emerged felt natural and fresh – undoubtedly spawning new questions in those open to additional consideration of the issues raised.

In the small group sessions, the desire to respect restorative justice principles was even more explicit. The discussion was conducted in a circle format with a microphone acting as a talking piece. The limited time available for each small group discussion gave rise to a tension between honoring the passing of the talking piece and seeking consensus as to what topics the small group would like to address, and the intended aim of using the small groups to further develop responses to questions raised in the foregoing plenary session. For those not familiar with restorative justice practices, this tension brought with it a deepened respect for the investment of time required for true consensus-based decision-making. In addition, from the seeming lack of coherence in some small group conversations, came even greater understanding of one of the challenges (and joys) of the circle process: namely, that being encouraged to speak from the heart in a setting respectful of everyone’s right to be heard involves the inclination to consider any issue raised through the prism of very personal experience and to tell very diverse, relatively time consuming and extremely powerful stories.\(^4\)

2. Practitioner Zealotry: What’s Theory Got to Do With It?

One of the most striking aspects of the Symposium was the deep sense expressed by restorative justice practitioners that restorative justice cannot be adequately described in the abstract –

\(^{4}\) Indeed, one of the Saturday afternoon small groups abandoned “discussion” altogether in favor of story-telling, three examples of which are included in the transcript. See stories by Howard Zehr, Howard Moore, and Daniel Bowling, Symposium Transcript (hereafter “Transcript”), supra, at 304-305.
that the processes have to be experienced and the stories have to be
heard in order to understand the principles on which restorative
justice rests and its potential for individual and community
healing. Indeed, there was the conviction that the very strength
of restorative justice lies in its ‘bottom up’ approach, the fact it is
grounded in a passionate commitment to ‘what works’ – most
particularly the power of telling and hearing stories. For those
participants seeking theoretical underpinnings the nebulous,
embryonic nature of restorative justice felt somewhat
uncomfortable. To others, the relatively unexamined zeal and
passion of some restorative justice advocates seemed surprising
and even alarming.

For mediators in the room, the discussions were
disturbingly familiar for another reason: anyone with sufficient
experience in the field knows there is a significant disconnect
between theory and practice. At one level this has played out as
the historic lack of communication between academics and
practitioners. At another level, the theory/practice disconnect is
between what mediators say and what they think they do, rather
than what they actually do.

95 Jean Greenwood, Transcript, supra, at 302 (“I’ve witnessed social justice
being negotiated before my eyes.”); Twila Hugley Earle, Transcript, supra, at
315 (“People who have done restorative justice work know how powerful it is --
the micro sensing when you sit in a circle and you feel the power and you see
the lives change and you see the relationships form and strengthening”).
96 See Darrol Bussler, Transcript, supra, at 278 (“I see some dangers of what
I’m calling restorative justice fundamentalism.”); James Coben, Transcript,
supra, at 307 (“I really didn’t hear a lot of doubt yesterday, which scares me.”);
Aimee Gourlay, Transcript, supra, at 317 (“[I]f you really want to accomplish
your ideals, you need to really question whether there is one way to be or
think.”).
97 Christopher Honeyman, Theory vs. Practice in Mediation, 15 Alternatives
to the High Cost of Litigation 93 (July-August 1997), updated version
available online at http://www.convenor.com/madison/theory.htm (“there is
some evidence that the only people consistently reading new material
thoroughly are students.”).
98 Riskin, supra note 37, 79 Notre Dame L. Rev. at 9-10 (identifying three
disparities “between conventional explanations of mediation and certain
3. Building “The” Community: Medicine for a Sick Democracy?

“Re-connection,”99 “a vision of the good, how we want to be together”100, “a political anthem for participatory democracy”101 were just a few of the many ways symposium participants talked about the centrality of “community” to restorative justice. There was a palpable sense of purpose and excitement expressed in the desire to explore together the idea of the common good.102 In the end, the collective vision was best summarized by Howard Vogel as a journey from “a culture of separation [to] a culture of connectedness.”103 A direct link was drawn between community (“a network of relationships that share joy and pain”104) and justice (“the fairness and balance that comes from healthy relationships”105). And, Twila Hugley Earle urged participants to see restorative justice as the medicine for a sick democracy106 where individuals have increasingly sought advantage for self at the direct expense of others.

common mediator beliefs and behaviors”, specifically: 1) the frequency of mediation evaluation; 2) the degree to which mediations focus on legal and other positional claims rather than party interest or need; and 3) “the degree to which parties do not have the opportunity or knowledge necessary to exercise self-determination.”).

99 Cheryl Graves, Transcript, supra, at 267.
100 Howard Zehr, Transcript, supra, at 268.
101 Ronnie Earl, Transcript, supra, at 299.
102 See e.g., Bill Everett, Transcript, supra, at 302 (bemoaning the fact that the “common good” is a concept “pushed to the margins of political discourse...[with] interest clashing with interest and radio talk shows inciting people’s most primitive desires for overcoming the interests of others.”).
103 Howard Vogel, Transcript, supra, at 314.
104 Ronnie Earl, Transcript, supra, at 295.
105 Id.
106 Twila Hugley Earle, Transcript, supra, at 315 (“There is a sickness here....Restorative justice is good medicine from the perspective of the community because it’s all about how will we live.”).
Restorative justice practitioners are remarkably comfortable talking about their role in community. In contrast, mediators continue to struggle with their relationship to participants. Conflict of interest principles and the ill-defined ethical proscription to act impartially, together with calls for increased professionalism, in some ways serve to isolate the mediator from the community s/he serves – a "detachment" perhaps inevitable for western culture (particularly American), which on some level, so fundamentally devalues, among other things, both wise elders and community. Moreover, mediation’s focus on self-determination, when operationalized in a free market era, promotes an emphasis on self-interest that is ripe for exploitation.

Of course, the desire to explore the common good raised concerns as well. For one thing, speakers tended to talk about community as external to themselves. And as Patricia Gonsalves so succinctly noted: "Which ‘common’ and ‘whose good’?" The notion of “community” as code for “dominant culture” came up repeatedly. Indeed, the degree to which restorative justice asks members of communities of color

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107 See e.g., Cheryl Graves, Transcript, supra, at 267 ("An impartial facilitator? Nah?"...If you care about the kids and the victims and you care about the issue of safety, how can you be unbiased?").

108 See e.g. Patricia Gonsalves, Transcript, supra, at 297 ("In order to be neutral, the mediator would have had to land yesterday from Mars to have not been subject to the way that society works....I prefer to think about multi-partiality.").

109 Jim Bonilla, Transcript, supra, at 292 ("It makes lots of sense to me that corporations would like mediation. I mean they don’t want a bunch of Latinos coming in there and doing a class action suit about them dumping stuff in their neighborhoods."); Ellen Waldman, Transcript, supra, at 287-88 ("[O]ne critique of mediation in general which can be extended to restorative justice is that we merely perpetuate existing power imbalances when we allow agreements to be forged entirely based on the individual needs.").

110 Aimee Gourlay, Transcript, supra, at 278 ("I was really struck this morning by the use of the word “the” community instead of “our” communities").

111 Patricia Gonsalves, Transcript, supra, at 303.

112 Id. ("Usually that term ‘common good’ refers to a sense of the dominant culture, which actually is a euphemism for white.").
(disproportionately represented in the criminal justice system) to take responsibility raises troubling questions of social identity.\footnote{Jim Bonilla, Transcript, supra, at 288 ("Who are the offenders that we're saying have the responsibility to address the root cause?....Which communities are disproportionately being held accountable? And it's interesting, who's not being held accountable?").} Others expressed concern that the emphasis on community control brings with it the fear of excessive social control – a replication of the 1950’s, which has to be carefully guarded against.\footnote{Kay Pranis, Transcript, supra, at 316 ("There was a lot more informal social control in the '50's and it was overturned for very good reasons from my perspective. We need to carry those images to remind us of what we don't want to do."); Howard Zehr, Transcript, supra, at 308 ("To what extent are we enabling a system one part of which functions to exercise power, a form of oppression?"); Darrol Bussler, Transcript, supra, at 273 ("Every social intervention no matter how well intended, no matter how well thought out, has unintended consequences....Restorative justice is no different than that and so it is inevitable that is going to be misused. It is inevitable that it's going to reflect some of the underlying structures of oppression and that kind of thing and we just have to be really, really clear about that and guard it as much as we can.").} As Ronnie Earl cautioned: “A restorative justice process without principles can be a lynch mob.”\footnote{Ronnie Earl, Transcript, supra, at 286.}

4. Sustaining a Movement: The Need For and Dangers of Institutionalization

Considerable fear was expressed about the risks of institutionalization. How does a movement grow and successfully grapple with the pressure to professionalize? Who is excluded by credentialing?\footnote{Phil Bluehouse, Transcript, supra, at 270 ("I usually talk about my 98.6 degrees and that's all I need.").} The latter is an especially complex issue for the restorative justice movement because of its roots in indigenous culture and its present practice being so grounded in community.

Institutionalization brings with it the necessity of quantification and evaluation – and inevitable pressures to be
efficient and cost-effective.\textsuperscript{117} Neither of the latter objectives square well with the emphasis on ritual, the taking of time to tell stories, and the inherent inefficiency of circle process. At the same time, the ability to measure and document success seems a critical element of long-term success and a hedge against marginalization. A critical challenge is whether the process of institutionalization can be accomplished without destroying the vitality of restorative justice.

There was considerable angst expressed about the color of restorative justice. Is it still white men offering the invitation to minorities to join them at the table?\textsuperscript{118} Is restorative justice a form of separate but equal?\textsuperscript{119} And finally, a big question left unresolved and much debated: Is restorative justice a complement

\textsuperscript{117} Allie Anfinson, Transcript, \textit{supra}, at 313 ("That ability to take space and to be cost-effective and be time-effective and all these different things that we’re hearing from institutions to make this a parallel movement and a parallel practice for the courts and to be as effective as the courts. We’re getting these things that will prevent [what] we’re really effective and really doing good.").

\textsuperscript{118} Howard Zehr, Transcript, \textit{supra}, at 314 ("[W]e white folks set the table and we invite other people to come to it and before we go too much farther we’ve got to have some kind of authentic discussion or interaction around this issue."); Ellen Barlow, Transcript, \textit{supra}, at 273 ("The face looks the same to me. The economics is definitely the same to me. So I would just like to hear what you have to say about that. I’m an angry black woman today….The white privilege, is that the way of restorative justice?").

\textsuperscript{119} Jim Bonilla, Transcript, \textit{supra}, at 291 ("I’m wondering if this discussion around restorative justice is sort of a nice way of saying, ‘Let’s have a separate house for justice for disenfranchised people, rather than ‘Let’s accommodate the house we have so that everybody has equal access to it.’").
to the existing court system, or a candidate to replace it?\textsuperscript{120} Redeem or divert out?\textsuperscript{121}

5. Supporting Healing Across Practice Disciplines: The Limits of "Throw in a Ritual" and Other "Toolbox" Approaches to Cross-Fertilization

The Symposium topic was chosen in the hope that the conversation would give the three fields of restorative justice, mediation and the practice of law a chance to influence one another toward a greater possibility of social healing. At one level, Symposium participants regarded restorative justice and mediation as two approaches to dispute resolution located on the same ‘facilitated discussion’ spectrum.\textsuperscript{122} The idea was shared that restorative justice practices, such as story-telling and the use of ritual, are tools that can easily be transported and used to good effect within the context of a mediation.\textsuperscript{123} Restorative justice practitioners and scholars never explicitly challenged this view.

\textsuperscript{120} Jeannie Zimmer, Transcript, \textit{supra}, at 292 ("We do not replace the judicial or the criminal justice system. We work along side it. We complement it. It's not an either/or proposition."); Howard Moore, Transcript, \textit{supra}, at 274 ("The existing judicial system is a system that mediates the use of violence and force....I look at restorative justice not as a movement, but as a process or a development that in its essence would attempt to replace the threat of violence as the method of getting acquiescence and consent or consensus.").

\textsuperscript{121} Clark Cunningham, Transcript, \textit{supra}, at 308 ("[I]f one cares about justice, does one try to redeem those institutions....Or, do you try to divert things out of those horrible institutions into some other places?").

\textsuperscript{122} Jeannie Zimmer, Transcript, \textit{supra}, at 310-11 ("[A]s you look at the people in the room there are many people who are lawyers and restorative justice practitioners. Many people who are restorative justice practitioners and mediators. Many who are all three, and it's not an either/or proposition."); Mark McCrea, Transcript, \textit{supra}, at 292 ("I've been practicing mediation for well over 20 years and I've certainly used many restorative practices in mediation sessions all the time.").

\textsuperscript{123} Mark McCrea, Transcript, \textit{supra}, at 292 ("Some of those corporate exec types they like this stuff. They like the idea of being able to sit around in a circle and talk about what really happened and people telling their stories and
Yet such a “toolbox” approach limits the possibilities for social healing in cross-fertilization. On more than one occasion restorative justice scholars and practitioners emphasized the limits of a mechanistic approach to restorative justice. Simply going through the motions of a restorative justice practice in no way guarantees a restorative outcome. It was stressed that rather than seeking to define restorative justice practices per se, it was more accurate to talk in terms of practices rooted in restorative justice principles. Restorative justice principles are rooted in the explicit acknowledgement of the importance of shared values—values that emerge within individual communities and act as reference points in any restorative process. It is this very identification of shared values and explicit commitment to their importance that is a powerful component in the social healing potential of restorative justice.

Linked to the notion of healing was the recurrent theme in the Symposium discussion that, whereas mediation and the practice of law addressed individual instances of conflict on the “micro” level, restorative justice practices alone offered the chance to address the root causes of a conflict. At the “macro” level, restorative justice may offer a much greater potential for airing deep-rooted issues of social injustice and promoting lasting social healing.

occasionally you can even sneak a ritual of some kind in there when they are not looking.”.

124 Howard Zehr, Transcript, supra, at 271 (“Is it primarily a process? Well you know you can do the process and you can come up with some pretty awful things. Or is it a product? Can you come to a good restorative healing outcome in a bad way?”).

125 Cheryl Graves, Transcript, supra, at 295 (“I’ve been taught not to say something is a restorative program. I’ve been taught to talk about things -- to ask a question: is it a process that’s grounded in principles of restorative justice?”).

126 Gwen Chandler-Rhivers, Transcript, supra, at 311 (“The only difference between mediation and restorative justice was that mediation was incident based and restorative justice is more holistic to get to the root causes of why crime happened and try to eliminate those factors.”).
Interestingly, healing and relationship building has always been a key part of mediation rhetoric. Yet, the limited available studies suggest that, at least in legal disputing, relationship repair may not be a frequent mediation outcome.\textsuperscript{127} Ritual also has always been a significant part of mediation. Despite wide variety in practice styles, there is certainly consistency in such things as the ritual of greetings and closings, and for that matter the overall basic structure of a mediation process. However, institutionalization has meant a dilution in ritual content. In small claims courts where community mediation programs now frequently operate, the press of time limits rituals. More insidiously, in other forms of legal mediation, even the most critical "ritual" of all -- the parties conversing together in joint session -- is being increasingly abandoned in favor of a "caucused" model of mediation where the mediator deliberately keeps parties apart.

6. The "I" Word: Who Needs "Restorative"?

Going into the Symposium it was hoped, naively perhaps, that the true essence of restorative justice could be identified -- a pure, crystallized, sparkling gem of wisdom which could easily be

\textsuperscript{127} See e.g., Dwight Golann, Is Legal Mediation a Process of Repair—or Separation? An Empirical Study, and its Implications, 7 HARVARD NEGOT. L. REV. 301 (2002) ("even when able mediators work with parties whose dispute arises in the context of a significant prior connection with each other, relationship repairs in legal mediation appear to be uncommon events: even excluding the court mediators, who reported no repairs at all, study respondents achieved a repair in only 20% of their cases" at 331). See also Bobbi McAdoo and Art Hinshaw, The Challenge Of Institutionalizing Alternative Dispute Resolution: Attorney Perspectives On The Effect Of Rule 17 On Civil Litigation In Missouri, 67 MISSOURI LAW REVIEW 473, 512 (2002) (noting that "[t]he least cited reasons for choosing mediation were preserving party relationships," but attributing the finding, in part, to the high percentage of personal injury attorneys involved in the survey, who routinely deal with "one time events" in which conventional wisdom suggests there is no relationship to preserve).
held up against definitions of justice employed in the fields of mediation and law. This did not prove to be the case.

For one thing, the notion of essence meant different things to different people. To some, the essence lay in the practice itself. To others, it lay in the particular values embraced by a particular program. To others the essence lay in the fact that restorative justice is based on agreed principles or values, or the importance of story-telling, or simply the striving of individual human beings to be at their best.

Nor was there consensus on the justice from other fields with which to compare restorative justice. Some mediators suggested that mediation wasn’t about justice at all.128 Others suggested everyone has an obligation to take action in support of justice.129 And more than a few participants were caustic in their characterization of justice delivered by the traditional legal system.130 At the same time, litigation romantics were not bashful in suggesting that, at least when fundamental human rights are at stake, formal processes and rights assertion are the most humane of

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128 Patricia Gonsalves, Transcript, supra, at 289 ("[M]ediation is not the substitute for justice....Nor would it be an alternative to it....[M]ediation is actually a social process in its own right."); Michael Green, Transcript, supra, at 290 ("[M]ediation is a process that requires agreement on both sides and one of those parties is a party with power that doesn’t want necessarily justice for the other side....It doesn’t have to be about justice. It’s about self-determination. And those are different to me.").

129 Jack Schaffer, Transcript, supra, at 296-97 ("For those of us that have a set of values and convictions (and I would guess that applies to everyone in this room or you wouldn’t be here), don’t we have an obligation to take action in support of justice? Don’t we have an obligation to do something other than be a neutral observer in a mediation process?").

130 Clark Cunningham, Transcript, supra, at 308 ("The world I see of courts is just an unbelievable appalling world where everybody who was on the defending side is poor and nothing fair happened."); Daniel Bowling, Transcript, supra, at 295-96 ("It’s who’s the smartest lawyer or who’s got the most money or who can manipulate the case in front of the judge who’s only slightly corrupt as opposed to totally corrupt.").
all pursuits. Indeed, the question was raised whether restorative justice can work at all absent the rule of law.

Given the breadth of the conversation, it came as no surprise when, as the symposium moved toward conclusion, one participant asked, “Why in the world are we talking about ‘restorative’ justice? The longer this conversation goes on, the more it seems to me like it’s a conversation about justice. Who needs ‘restorative?’”

E. CONCLUSION

Phil Bluehouse opened the Symposium with the words, “[W]e try out chaos and order. We go through trial and tribulation. We gain wisdom.” Chaos was certainly well tried. Indeed, the questions posed in each of the plenary sessions simply lifted the lid on a rich morass of ideas, perspectives and passions that could barely be exposed, let alone explored, in a mere two days. But there was much wisdom too, including the fitting conclusion that “a fundamental value of restorative justice is humility expressed as wonder – the pleasure of being open to the unknown.”

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131 Michael Green, Transcript, supra, at 286 (“If Brown vs. Board for instance was resolved through some type of community restorative justice system, you wouldn’t have that public outcry from a Supreme Court decision to send a broader message to help regulate further disputes. Maybe when disputes involve issues of race, it’s not about resolving the dispute. It’s not about obtaining peace because it may be a need for someone to shout. It may be a need for someone to raise the issue in a public setting.”).
132 Howard Zehr, Transcript, supra, at 271 (“[T]o what extent is [restorative justice] dependent on democracy or [a] human rights foundation -- the rule of law?”); Kay Pranis, Transcript, supra, at 307 (“It made me think that it was quite a luxury for us in a sense to be able to be having the conversation that we’re having.”).
133 Howard Vogel, Transcript, supra, at 306.
134 Phil Bluehouse, Transcript, supra, at 265.
135 Howard Zehr, Transcript, supra, at 269.
Appendix One: Symposium Theme Leaders

Daniel Bowling, Director, Washington, DC office of RESOLVE, Inc.

Darrol Bussler, Professor of Education, Minnesota State University; Founder and Board Member, South St. Paul Restorative Justice Council

Phil Bluehouse, Traditional Peacemaker and Researcher, Dineh (Navajo) Traditional Law Project

William Everett, Herbert Gezork Professor of Christian Social Ethics, Emeritus, Andover Newton Theological School

Ken Fox, Director of Conflict Studies, Hamline University

Ronald Earle, District Attorney, Travis County (Austin), Texas

Patricia Gonsalves, Director, Greenwich Mediation, London, GB

Cheryl Graves, Clinical Associate Professor, Northwestern University School of Law

Michael Green, Associate Professor, Texas Wesleyan University School of Law

Joan Pennell, Professor and Director, Social Work Program, North Carolina State University

Kay Pranis, Former Restorative Justice Planner, Minnesota Department of Corrections

Ellen Waldman, Professor, Thomas Jefferson School of Law
Appendix Two: Symposium Participants

Ali Anfinson (Minneapolis, MN)
Terry Anfinson (Minneapolis, MN)
Ellen Barlow (Saint Paul, MN)
Stephanie Barnett (Saint Paul, MN)
Tyrone Benally (Kayenta, AZ)
Phil Bluehouse (Fort Defiance, AZ)
James Bonilla (Saint Paul, MN)
Daniel Bowling (Washington, DC)
Mary Joy Breton (Saint Paul, MN)
Denise Breton (Saint Paul, MN)
Darrol Bussler (Saint Paul, MN)
Gwen Chandler-Rhivers (Minneapolis, MN)
James Coben (Saint Paul, MN)
Clark Cunningham (Atlanta, GA)
Fania Davis (Oakland, CA)
Pete DeWind (Madison, WI)
Ronald Earle (Austin, TX)
William Everett (Waynesville, NC)
Marie Failinger (Saint Paul, MN)
Ken Fox (Saint Paul, MN)
Patricia Gonsalves (London, Great Britain)
Aimee Gourlay (Saint Paul, MN)
Cheryl Graves (Chicago, IL)
Michael Green (Fort Worth, TX)
Jean Greenwood (Minneapolis, MN)
Michele Elaine Guillickson Moore (Minneapolis, MN)
Susan Hackley (Cambridge, MA)
Ellen Halbert (Austin, TX)
Penelope Harley (Saint Paul, MN)
Emily Albrink Hartigan (San Antonio, TX)
Mary Beth Heavrin (Saint Paul, MN)
Intentional Conversations

Jane Hiers (Gainesville, FL)
Richard Hiers (Gainesville, FL)
Jane Hilger (Saint Paul, MN)
David Hines (Woodbury, MN)
Stephanie Hixon (Baltimore, MD)
Twila Hugley Earle (Austin, TX)
Simone Izek (Minneapolis, MN)
Roberto Juarez (San Antonio, TX)
Sheri Kramer (Berkeley, CA)
David Lerman (Milwaukee, WI)
Carolyn Lesnick (Philadelphia, PA)
Howard Lesnick (Philadelphia, PA)
Sia Lo (Saint Paul, MN)
Alice Lynch (Minneapolis, MN)
Bobbi McAdoo (Saint Paul, MN)
Mark McCrea (Saint Paul, MN)
Elizabeth Mensch (Buffalo, NY)
Howard Moore, Jr. (Oakland, CA)
Janet Mueller (Yellow Springs, OH)
Joan Pennell (Raleigh, NC)
Herbert Perkins (Saint Paul, MN)
Michael Perlin (New York, NY)
Rodney Petersen (Newton, MA)
Thomas Porter (Wellesley, MA)
Kay Pranis (Saint Paul, MN)
Jim Radde (Fridley, MN)
Mary Ellen Reimund (Issaquah, WA)
Nancy Riestenberg (Roseville, MN)
Don Riggs (Saint Paul, MN)
Jack Schaffer (Saint Paul, MN)
Linda Schneider (Minneapolis, MN)
Ora Schub (Chicago, IL)
Gary Schurrer (Stillwater, MN)
Calvin Sharpe (Cleveland, OH)
Susan Stacey (Saint Paul, MN)
Barb Toews (Philadelphia, PA)
Cindy Tredwell (Grand Forks, ND)
Edward Valandra (Saint Paul, MN)
Howard Vogel (Saint Paul, MN)
Ellen Waldman (San Diego, CA)
Melissa Weldon (Roseville, MN)
Howard Zehr (Harrisonburg, VA)
Jeanne Zimmer (Saint Paul, MN)