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INTRODUCTION TO THE RESTORATIVE JUSTICE SYMPOSIUM

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I am delighted that the Marquette Law Review is publishing this Symposium on restorative justice. It is a wonderful introduction to the field and to our program at Marquette University. In the last five years, this is the third symposium related to dispute resolution, and I am grateful to the Marquette Law Review for allowing its dispute resolution faculty to regularly designate a law review issue to emerging issues in the field of dispute resolution. Our first symposium was in 2001, focusing on the impact of the Uniform Mediation Act (“UMA”).¹ Lead with an article by Professor Scott Hughes,² this symposium was the first to fully publish the UMA in its entirety. Our second dispute resolution symposium focused on negotiation, titled “The Emerging Interdisciplinary Canon on Negotiation.”³ Filled with twenty-five articles on varying topics in negotiation and written by seventeen contributors from seven different fields, this symposium has already become a classic in the dispute resolution field. Articles from this symposium have been reprinted in every major dispute resolution and negotiation book published since the symposium.⁴ We are delighted to

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1. Symposium, *Uniform Mediation Act*, 85 MARQ. L. REV. 1 (2001).

2. Scott H. Hughes, *The Uniform Mediation Act: To the Spoiled Go the Privileges*, 85 MARQ. L. REV. 1, 1-77 (2001).

3. Symposium, *The Emerging Interdisciplinary Canon on Negotiation*, 87 MARQ. L. REV. 637 (2004).

4. *See, e.g.*, DISPUTE RESOLUTION AND LAWYERS (Leonard L. Riskin et al. eds., 2005);

turn to the emerging field of restorative justice—a field that builds on dispute resolution theories and processes, but also a field that differs in some key ways. This Symposium explores the emerging importance and role of restorative justice in the criminal justice system and in law schools.

In this Introduction, I would like to note several key features of the Symposium. First, I would like to thank Professor Mark Umbreit and his colleagues for their new addition to the field, outlining the very latest in research on restorative justice. Professor Umbreit is the Boden Chair⁵ this year at Marquette University. His classes and public lectures have already resulted in numerous benefits to our students. Through this issue of the *Marquette Law Review*, we hope that his most recent work will reach even more people. We think that his lead article is well complemented by responses from a variety of perspectives. As was the case with our earlier symposium on negotiation, this Symposium recognizes the important contribution that different academic perspectives can bring to the field of law and, therefore, offers views on restorative justice from a mix of professors trained in law, sociology, and communications.

The first article, by Professor Umbreit and colleagues, outlines the varying processes used in restorative justice and adopted by different states including conferencing and victim-offender mediation. The article also reviews the most recent empirical work on restorative justice, outlining the common findings while pointing out key differences (and concerns) raised by other studies. This review of the empirical work (much of which has been conducted by Professor Umbreit himself) is the most recent and timely review of the studies. The goals of the article are to explain the status of restorative justice and to set forth the challenges and goals of the restorative justice movement for the twenty-first century. As one of the leading researchers and advocates of the field, Professor Umbreit's outline for the future is a crucial blueprint of where restorative justice has the potential to effect change.

The second article, by Professor Michael O'Hear, addresses one of the key criticisms of the restorative justice movement. Many observers

DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL (Carrie J. Menkel-Meadow et al. eds., 2005); NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS (Charles B. Wiggins & L. Randolph Lowry eds., 2005).

5. The Boden Chair was created in 1995 and is named for Robert F. Boden, the Acting Dean and then Dean of the Marquette University Law School from 1965 until his death in 1984.

of the restorative justice process are worried that the restorative justice movement could undercut both the deterrence and the uniformity of the criminal justice system. In other words, if restorative justice is perceived as either “nicer” or “easier” on criminals, will it continue to deter criminals appropriately? Furthermore, if restorative justice affects the uniformity or predictability of sentences for criminal acts, does that further undercut deterrence or even fairness? Professor O’Hear, an expert on the issue of uniformity and sentencing, replies with a resounding “no!” He notes, quite eloquently, that while several concerns with restorative justice could be raised relative to uniformity, these “static” models ignore the impact of and the impact on the victim. On the other hand, the more dynamic models of uniformity—which allow for more interaction between the offenders, victims, and the criminal justice system—are quite compatible with restorative justice. In fact, as O’Hear notes, these models (much like restorative justice itself) better serve victims of crimes. As he notes in his conclusion, if uniformity means uniformly long sentences, restorative justice might clash with uniformity. On the other hand, if uniformity means the goals of transparency and systematic sentencing, then restorative justice would have little problem being implemented uniformly.

The third article in the Symposium is by Professor Janine Geske who runs the Restorative Justice Initiative at Marquette University Law School. Her perspective on the program is primarily the skills and awareness that a restorative justice program can bring to the students who are now exposed to and trained for these types of interactions. Similar to listening skills developed in our mediation clinic, students who participate in victim-offender conferencing, visit prisons, talk to survivors, and talk to offenders, have the opportunity to learn far more than these particular stories. These students develop particular listening and empathy skills, learn more about dealing with clients and the criminal justice system than from just visiting court, and are prepared to become leaders in bringing restorative justice concepts to whatever area of law they practice. It is through Professor Geske’s great energy and determination that the Restorative Justice Initiative⁶ began here at Marquette.

The last article takes the very interesting perspective of communications as Professor Susan Szmania and her colleague examine

6. For more information on the programs and resources of the Restorative Justice Initiative at Marquette, see Marquette University Law School—Restorative Justice Initiative, <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=1831> (last visited Dec. 13, 2005).

a particular case and explore the various types of communication that can occur between a victim and offender throughout the criminal justice system. These types of communication—a perfunctory apology at trial, a very apologetic opinion editorial several years later, and a direct apology to the parent of one of the victims another year later—are compared both in terms of what the offender was conveying as well as the impact of each communication on the victims. The authors also analyze the different venues for communication (court, indirectly, face-to-face) for how each of these venues affects the offender and the victim. Not surprisingly, their analysis demonstrates how important the structure of restorative justice is *for the victim* in permitting the type of communication most beneficial for the victim. This analysis, conducted from the field of communication, further supports the sociological as well as the legal support of this process.

Marquette University is proud to have started the Restorative Justice Initiative and delighted to have both a devoted core of students and key professors determined to be leaders for the state, region, and country. We hope that you enjoy reading about restorative justice in general and, of course, encourage you to contact us with any questions, concerns, or comments.