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WHY DO I TEACH RESTORATIVE JUSTICE TO LAW STUDENTS?

JANINE GESKE*

As a former general jurisdiction trial court judge and Wisconsin Supreme Court Justice, I observed how lawyers who were good empathetic listeners and creative problem solvers best represented their clients' interests by guiding them to peaceful resolutions of their disputes. While sitting in criminal court for nine years, I experienced both the successes of our criminal justice system as well as its failures in bringing restoration to victims and communities harmed by crime. I see the practice of restorative justice processes as a means to address those failures through the guidance of professionals who understand how best to address the needs of those who have been harmed. As a legal educator, I know that the best way for future lawyers to learn about serving their clients, particularly the disadvantaged, is for them to listen to and to collaborate with others in working toward creating processes and programs that truly address issues of justice and equality through addressing peoples' interests and needs.

As Professor Umbreit points out in his article, over the last thirty years the restorative justice movement has grown to become an integral part of many American criminal justice systems.¹ Additionally, restorative processes are increasingly being utilized to address more than everyday criminal law issues. Around the world, countries are turning to similar techniques to address those political, religious, and cultural conflicts that harm both individuals and communities. In many different contexts, leaders are revisiting very old peacemaking and restorative practices used by indigenous people to increase respectful

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1. William R. Nugent, Mona Williams & Mark S. Umbreit, *Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis*, 2003 UTAH L. REV. 137 (2003); see Mark S. Umbreit, *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251 (2005).

dialogue among those who are in conflict and to encourage them to work together to rebuild safer and more peaceful communities.

Marquette University decided to address the growing need for the legal community to assume a leadership role in the development of restorative justice programs. We created the Restorative Justice Initiative, which includes the academic study of restorative justice, the promotion of scholarly and community dialogue, and the formation of a clinical program to train the law students to become restorative justice leaders in their communities. The students serve as expert resources for victims, communities, and restorative justice organizations. Those interested in the field can take a substantive course in restorative justice as well as participate in an in-house clinical experience. Our students learn how to be leaders in this important field of working toward personal and community healing and restoration. They are working on issues involving violent crime, juvenile offenders, bullying, racial profiling, sex abuse in the Catholic Church, etc. We work side-by-side with other academic disciplines to maximize the expertise in the various fields to best serve the restorative justice movement. Since lawyers have the unique opportunity to bring the ultimate in service to others, bringing peace and healing to people in great distress, we wanted our law students to be academically and experientially prepared to undertake that work.

Marquette University is a Catholic, Jesuit institution committed to serving God by serving others. Specifically, we are working to integrate restorative practices into the study of law. Marquette's guiding philosophy of *cura personalis* (care for the whole person) underlies a core university objective to educate and train men and women in service to others. Perhaps this objective is particularly important to Marquette's law school since part of the Jesuit tradition of education is to encourage students to become agents for positive change. Positive change being the essence of restorative justice, our law school is an ideal environment to undertake such study and clinical work. These factors, coupled with the excellent academic rigor and resources of the law school, create a program that can contribute to the necessary high standards for conflict resolution training, research, and writing in this emerging field.

Marquette Law Dean, Joseph Kearney, explains our mission in his letter to prospective students:

We want our students to be decent people, to give back to our communities, and to be leaders in doing good, both within

and outside the profession. We are committed to encouraging our students upon becoming lawyers to provide legal assistance to people who lack the resources to retain counsel and to ensuring that all members of the profession are moral and ethical. We want to use law as an engine for positive change, not as a device to cause anger and unhappiness. Even in the context of adversarial relationships and an attorney's obligation to provide zealous representation to clients, lawyers must be skilled and committed to resolving disputes while maintaining respect for opposing parties and counsel.²

Restorative justice processes develop those necessary skills that will insure that our students can be agents for change and servant leaders³ in the community. They get to experience firsthand how to work alongside other professionals for true justice and healing in creative ways that meet the needs of crime survivors, communities, and offenders. They go into the prisons to facilitate dialogue among inmates, victims, and community members through restorative circle work; they work one-on-one with survivors of violent crimes and their specific perpetrators; and they design programs for juvenile offenders so that they can understand the depth of the harm they have caused and can work towards demonstrating their remorse and restoration of the victim and the community.

Law students who have the opportunity to look into the eyes of survivors of crime who have been devastated by the offense and to hear how best to find some healing in victims' lives will be better positioned to be creative peacemaking leaders in their communities when they graduate. Working with offenders who are taking responsibility for the harm they have caused and are desirous of making amends to the victims and to the community at large gives future lawyers an effective way to deal with crime. The students also learn that many of our perpetrators were child victims of violent crime and that our communities failed to work toward healing for them before they turned into adults committing violent offenses.

Collaborating with restorative justice programs across the state,

2. Joseph D. Kearney, *Message from the Dean*, <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=1222> (last visited October 23, 2005).

3. ROBERT K. GREENLEAF, *SERVANT LEADERSHIP* 16 (1991) (A servant leader is defined as someone who is a servant first—versus a leader first—and serves others interests prior to his or her own.).

students use their legal knowledge as well as their experiences to create restorative processes that will make a true difference for those whose lives have been ravaged by crime. These future lawyers learn how to create safe environments for tough discussions and how to listen with open hearts and minds.

Some lawyers say restorative justice is really just social work and has nothing to do with the practice of law. They are wrong. Clients come to lawyers to be counseled on how to best handle the problems they are facing or the claims they want to make. Restorative skills are needed at all levels of client counseling and working towards settlement of claims. Lawyers and judges control our judicial and legal system. Lawyers and professionals from other fields must collaborate to effectively weave restorative theories into our societal treatment of crime and conflict. Judges, criminal lawyers, prosecutors, elected officials, nonprofit agency board members, and other leaders, many of whom are lawyers, influence public policy in a myriad of ways.

We look at restorative justice through the specific study of that subject as well as by studying skills being used in other forms of our alternative dispute resolution curriculum. The listening skills, the techniques of ensuring that someone knows that he or she has been truly heard and understood, and the designing of a process that can best address the conflict are tools that every mediator and negotiator should understand. Future lawyers should master those skills and be able to effectively utilize them at appropriate times. These are skills that lawyers are not taught once they leave law school. Some attorneys possess those abilities naturally, but many do not, and as a result their clients receive less than the full benefit of their counselor at law best meeting their needs.

Restoration occurs both in our formal restorative justice clinic as well as in our in-house small claims mediation clinic. Every Monday morning, we have eight law students in the Milwaukee County Courthouse Small Claims Court to serve as mediators in pro se cases. One of the law students, who is now a small town lawyer, encountered a woman in a wheel chair suing a much younger woman. The mediator set the tone for a mediation in which the two women might be able to listen to each other and work towards a settlement. He had each of them talk about their conflict and how it occurred. Much to his surprise, the student learned that the plaintiff was the mother of the defendant. They had not spoken to each other for nearly three years.

The plaintiff described how she had a fatal illness and she was facing foreclosure of her home. She angrily described how she had loaned her

daughter the \$300 to buy a car and how she needed to be repaid. The defendant then countered by saying that her mother had given her the \$300 as a gift. She obviously had a great deal of resentment toward her mother.

The student split up the parties and talked to them individually. The daughter angrily described all the things that her mother had done to her. The mediator sat quietly and listened. When she was finished, the student sat with her in silence for a few moments and then asked a terrific question, "How do you feel about your mother dying?" This is not a question that we would ordinarily teach in law school, but it was exactly the right thing to ask. The daughter started sobbing and describing her sadness of the now imminent loss of her mother. The student asked her how she felt. She described the fact that she loved her mother, who obviously was not taking care of herself. The student asked her if she could tell her mom what she just said. The daughter refused, saying it would be too difficult. The mediator did not give up and asked if she would write it out, which she finally agreed to do.

The student mediator put the mother and daughter together once again and sat in silence. They started talking to each other more respectfully. At some point, the daughter passed the written document over to her mother to read. The mother started weeping, looked at the student mediator, and said, "I am dismissing the lawsuit." The daughter turned to her mother and said, "I am going to work with you to get you some housing and better medical care." The daughter then asked the student how she could ever thank him for what he had just done. The student mediator told her to "just go hug your mom." That law student, and those watching, learned an invaluable lesson that day. They learned the value of empathetic listening and providing a process in which people can communicate. They specifically learned the value of working beyond the legal surface of the dispute and creating an environment in which this relationship could be healed.

During victim-offender facilitated discussions, the students experience listening to both offenders and survivors describe their experiences in the criminal courts. In a homicide by intoxicated user case, the offender told the surviving but profoundly injured couple that he had wanted to send flowers to them but was prohibited by his attorney from doing so. He also was told not to send the apology letter he had written and not to look at them when he appeared in court. He tearfully explained to them how he always intended to admit what he had done and bear the consequences.

The couple told the offender about the pain of losing their health

and livelihood and then seeing in court what appeared to be an offender who had no remorse for what he did. In another similar case, involving a homicide by intoxicated use of a vehicle, the surviving mother of the deceased son recounted that when the defense attorney hired an accident reconstructionist, she saw that act as the defendant adding insult to injury by looking to blame her son for the accident. Finally, the survivors of both these two offenses always told the offenders that their no contest pleas were one final insult. In the eyes of the victims and their families, it appeared that the defendants still were not taking responsibility for what they did. The students learn how lawyers' actions, when protecting the rights of offenders, can deeply impact the victims of the offenses.

In clinical programs, our law students experience how our criminal court system succeeds at protecting rights but fails in assisting in the healing process that is needed after the commission of a serious crime. When we meet with survivors of crime, they recount how they are as angry at our judicial system as they are at the perpetrator of the offense. They depended on the system to support them and to "provide them with justice." So often, even though the defendant may have been convicted and sentenced, the victims felt that the system failed in providing them with what they truly needed.

As part of the Marquette Restorative Justice Initiative, the students meet with survivor support groups, as well as advocates for those victims. Domestic violence treaters and advocates report how our criminal justice system still fails to meet the needs of battered women. They continue to search for better ways to support those who suffer at the hands of the abuser as well as working to stop the abuse by the offenders. There is a place for leaders in the law to work to design processes that can better accomplish the goal of safety and treatment for the individuals caught in this cycle of violence. The students are working with advocates to train survivors who will work in the treatment area with the abusers to communicate the pain and devastation of violence in their lives and in the lives of their children. Engaging in that kind of leadership activity prepares law students to leave the law school environment and go out into the community and be transformational leaders for justice.

Students also collaborate with struggling community groups attempting to weave restorative justice into their schools, neighborhoods, police departments, court systems, and corrections systems. The students do research, answer questions, and assist in training.

Although many law schools assert that they are developing future leaders, very few offer actual leadership training. The breadth and the infancy of the restorative justice movement in our communities afford law students an incredible opportunity to train and develop as leaders in a field that cries out for standards and creativity. There must be a natural intersection of restorative processes and the criminal justice system. Trained lawyers are well equipped to be at the forefront of that work.

Why teach restorative justice to law students? There are many reasons. One answer is so that law students can learn about criminal behavior from offenders. We received this letter from a convicted murderer with whom we had worked:

Crime has no face or age. I was always aware of what I was doing, but I never knew just how much pain I caused my victims and to what extent my victims hurt until [my restorative justice experience.] I stopped pretending to be the victim. I was no longer being beaten [by family members as a child], so there was no need for me to hurt someone. In one blink of an eye, I made a stupid mistake that not only affected me for the rest of my life but everyone around my victims and me. . . . I now give every effort in my being to helping myself, others who show signs of my past, and to kids, so they will never become who I used to be. My incarceration is my way to show people a different way to live their lives.

Students also learn from crime victims, like the surviving daughters of a murdered armed robbery victim who met face to face with their father's killer and then wrote us this letter:

It has been two weeks since our visit with [the offender] and we were still feeling blessed. Something has happened in our souls that will last through eternity. This has brought a new dimension to forgiveness. We've been seeing people differently. It seems quite clear that if we can forgive the man for shooting and causing the death of our father, then we can certainly forgive anyone else of anything.

The most important benefit of teaching restorative justice in a law school is that the students develop the vision, the skills, and the passion

to positively transform our justice system. These future lawyers, who participate in the study and work of restorative justice, have experienced the enormous part they can play in providing an environment and process for people in pain to work toward healing and restoration. We will all be the beneficiaries of that work.