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Social Justice and Comprehensive Law Practices: Three Washington State Examples

Heather E. Williams¹

“[D]issatisfaction is not inevitable.”²

Our courts have a very tough job. Scholars and citizens may disagree over whether our courts and legal processes are, at best, inefficient or, at worst, broken; but it is safe to say that there is a large degree of dissatisfaction. Still, judicial systems at the tribal, state, and federal levels accomplish a tremendous feat every day, serving society by hearing and adjudicating claims by parties great and small. While efficiency may not be a hallmark of the American judicial system, the existing infrastructure has proved remarkable in its ability to let each case be heard. Hard-working judges, attorneys, clerks, and staff endlessly turn the cogs and wheels of our adjudicative machinery in the pursuit of justice. As monolithic as the judiciary may seem, perhaps its most remarkable feature is its ability to adapt as our societal needs and notions of justice change and, one hopes, evolve over time. This ability to adapt, combined with the fact that the legal field is endlessly analytical and self-evaluating, means that there is always change afoot.

According to Professor Susan Daicoff, the leading scholar of the comprehensive law movement, there is big change afoot.³ Daicoff describes a “tripartite crisis” in the legal profession over the past two decades as the driving force behind the development of a quantifiable comprehensive law movement.⁴ The crisis consists of high levels of job

dissatisfaction among attorneys, a marked decrease in professionalism between attorneys, and tremendous client dissatisfaction with attorney services.⁵ The term “comprehensive law” refers to at least twelve different approaches to alternative dispute resolution being used in various communities around the country, all of which attempt to move beyond traditional forms of arbitration and mediation.⁶

Each area of comprehensive law is called a “vector.”⁷ These vectors include procedural justice, collaborative law, holistic law, therapeutic jurisprudence, problem-solving courts, preventive law, and restorative justice, among others.⁸ Each of the vectors of comprehensive law has a common goal of optimizing human well being by seeking psychologically beneficial processes and outcomes for all of the parties involved⁹—including judges and lawyers, as well as victims and offenders.

The comprehensive law movement, and in particular the therapeutic jurisprudence vector, recognizes that one’s interaction with the legal system and its agents can either be psychologically harmful or psychologically beneficial. In an attempt to maximize that which is beneficial and minimize that which causes harm, comprehensive law practices are redefining notions of justice by expanding the options available for dispute resolution, as well as the ways in which offenders are confronted and victims are empowered. The exciting result for attorneys, our legal system, and our communities is that all across the country the system is being opened up to provide more options for those with legal claims; opened up for attorneys and judges to consider the psychological effects of their words and actions on their clients, who are often in crisis; opened up to the potential for healing; and perhaps most importantly, opened up to relationships formed through broader participation in the service of justice by the community at large.¹⁰

In pursuing social justice and giving deeper meaning to “making a party whole,” an important consideration is the capacity of our judicial system to provide opportunities for broader participation from the greater community. The strength of the comprehensive law movement is that its vectors provide

a new roadmap for our legal system by upholding the strengths of, and flexibility within, our traditional adjudication procedures while emphasizing opportunities for more satisfying procedures and results. Widespread adoption of comprehensive law practices would increase overall satisfaction with the legal system and promote a multifaceted approach to attaining social justice for all participants.

Although pioneers of the comprehensive law movement can be found all around the country,¹¹ this article looks at three contemporary Washington State examples that highlight the community involvement possible with this movement: the Kalispel Indians'¹² peacemaker panel, formed as a reflection of ancient tribal practices and values; King County's new Family Treatment Court; and choreographer Pat Graney's arts-based residency program at the Washington State Corrections Center for Women. These examples provide powerful illustrations of how comprehensive law practices work to serve and expand notions of social justice.

This article will first examine various definitions of social justice. What then follows is an exploration of what people really want from the judicial system. The article will then provide an overview of comprehensive law and specifically, the vectors of procedural justice and restorative justice. The three Washington State examples will highlight how each program or experiment relates to those two vectors. Finally, this article addresses the well-documented criticisms of dispute resolution and comprehensive law practices, concluding that through creative, collaborative, and healing approaches, comprehensive law facilitates greater broad-based participation by concerned citizens, as well as legal professionals, in the process of defining and creating justice.

I. DEFINITIONS OF SOCIAL JUSTICE AND THE NEED FOR BROADER PARTICIPATION

Any meaningful exploration of expanding and redefining our notions of social justice requires finding a starting point for defining social justice and

identifying who is responsible for bringing it about, or at least responsible for steering the process. Historical notions of justice are divided into two basic ideological camps much like other viewpoints on so many societal debates: private versus public, or individual responsibility versus governmental authority.

Proponents of individual responsibility as the driving force behind social justice do not necessarily view the pursuit of justice as an individual choice. Rather, it is a top priority and responsibility for those living in a free society.¹³ Friederich Hayek was considered by his actions to be a model for the cause of social justice.¹⁴ However, he scoffed at the idea of justice being anything other than social and anything more than a virtue of the individual.¹⁵ According to Hayek, there is no government to blame or destroy in the pursuit of justice. Hayek's "social justice rightly understood" is a habit of justice that comes about when individuals in a free society, recognizing that wealth and power are not distributed according to agreed-upon principles of justice, share the perpetual goal of working together for the good of the commonwealth.¹⁶ Contemporary scholar Michael Novak takes Hayek's life-example and healthy skepticism a bit further and places it within a social and political context. Novak states that if "the principle of association is the first law of democracy," then "social justice is the first virtue of democracy."¹⁷

In contrast, the school of thought that places greater responsibility for social justice in the public or government realm posits that societies can be virtuous in the same way as individuals.¹⁸ John Stuart Mill explained that the most rational approach to justice is based on the principle of social utility, not individual conceptions of morality or sentiment.¹⁹ Thus, all institutions, as well as the efforts of virtuous citizens, should converge with the goal of maximizing utility.²⁰

Scholars examining the psychological impacts of judicial procedures have combined the individual perspective of Hayek and Novak with Mill's philosophy implicating public entities.²¹ Pioneers in identifying issues

around procedural justice, John Thibaut and Laurens Walker believe that “one of the major aims of the legal process is to resolve conflicts in such a way as to bind up the social fabric and encourage the continuation of productive exchange between individuals.”²²

Drawing from the work of Thibaut and Walker, Tom R. Tyler has developed a multifaceted look at what should inform our notions of social justice.²³ Tyler’s definition of social justice focuses on the importance of measuring justice in terms of disputants’ satisfaction with the outcome.²⁴ Comprehensive law practices, which Tyler refers to as “informal justice” or “informal procedures,” consistently achieve higher levels of satisfaction in the many studies he cites, as well as in those he has conducted.²⁵ Using objective and subjective measures, this higher level of satisfaction can be traced to comprehensive law’s heavy emphasis on the concerns, needs, and values of the parties themselves.²⁶

Tyler made a stunning empirical determination that regardless of the type of legal proceeding, process is usually more important to individuals than outcome. Tyler’s findings illustrate the following: (1) justice must develop from concerns, needs, and values of people who bring their problems to the legal system; (2) an essential interpersonal component to justice includes process-values, which are distinct from the correct application of legal rules and have little to do with the actual solution to the conflict; (3) the goals of social justice are served, and public trust in the legal system is rebuilt, by responding to society’s desires for how disputes are resolved; and (4) the public’s perception that the legitimacy of American judicial authority is declining parallels a decline in Americans’ feelings of attachment to their communities.²⁷

The echo of Hayek’s and Novak’s conceptions of social justice can be heard here. If it can exist at all, justice must be achieved as a result of individuals being responsive to each other in the context of building a better community. While our current mainstream judicial system has demonstrated its capacity to respond to a seemingly infinite variety of

individual complaints, the system itself, in its present and traditional forms, has a very limited capacity to facilitate the responsiveness of individuals to each other in the context of community building. John Stuart Mill would approve of the notion that the judicial system is an equal player and that service to social justice should include exploring systematic opportunities for improving judicial procedures.²⁸

Daicoff's previously described tripartite crisis in the legal profession—job dissatisfaction, decreased professionalism, and client disillusionment—is certainly a major issue for lawyers and judges to address for the sake of their own sanity and job satisfaction. However, the broader implication evident from Tyler's research and findings is that the American judicial system is also suffering from a fourth prong of crisis: a crisis of public confidence. Let us add one more, perhaps more direct and quantifiable, definition of social justice to those already discussed: social justice as satisfaction with the legal system, for the public at large as well as the individuals who must interact with it first hand.

II. WHAT PEOPLE SAY THEY WANT FROM THE JUDICIAL SYSTEM

Intuitively, it is easy to believe that what parties want most from their dispute is to win. Secondary concerns include a speedy and inexpensive trial or other adjudicative process. Surprisingly, results from actual research on the subject differ markedly from those expectations. Process, or procedural justice, is the most important issue to people, while fairness of outcome is second and winning is third.²⁹ These results point to a big "interpersonal gap" between what is really important to people and what is emphasized by lawyers and the legal system as important. Comprehensive law practices may go a long way to address this gap.

A. Participation in the Process

Regardless of whether money or liberty is at stake, research suggests that the most important issue to people is the process and, more precisely, the perceived fairness of the process by which their case is handled.³⁰ This is particularly important for the parties receiving negative outcomes.³¹ The importance of perceived fairness, in turn, serves to instill respect for the legal system.³² Perhaps the only way to provide the required level of individualized fair treatment, which can lead to client satisfaction with the adjudicative process, is to involve clients in resolution of their cases. Research shows that more than anything else, clients want to be heard, and they want to be involved in the resolution of their cases.³³ Data from numerous studies confirms this assertion.³⁴

While a body of statistical analysis has not yet evolved regarding comprehensive law practices, there has been much analysis around one of the precursors to comprehensive law: mediation. Mediation involves a neutral mediator who helps the parties play an active role in reaching a mutually agreeable resolution to their dispute.³⁵ A 1981 Maine study looking at small claims court cases revealed that 44 percent of both parties in mediated disputes viewed the outcome as fair, compared to 24 percent of adjudicated cases.³⁶ The same study revealed that parties who mediated were also more likely to comply with the settlements.³⁷ There was 71–85 percent full-compliance with mediation outcomes, compared to 34–60 percent compliance with adjudicated groups.³⁸ Findings from similar studies conducted in Pittsburgh and New Jersey were consistent with the Maine study.³⁹

The higher degree of compliance with the outcome becomes significant in light of the fact that our system is highly dependent upon voluntary compliance.⁴⁰ When an offender or civil party carries out his or her sanctions, the justice served translates to justice for the community at large. Approximately 50 percent of civil cases filed in state court are for the dissolution of marriages.⁴¹ Considering that compliance with divorce

agreements is largely voluntary (until another action is brought for enforcement), it is easy to realize how truly valuable satisfaction with the procedure and outcome can be when it leads to higher rates of voluntary compliance with duties such as child-support payments, visitation, community-service hours served, damages or restitution payments, and lawyers' fees paid.

Equally noteworthy is the statistic that 92 percent of those who have successfully mediated, and 61 percent of those who mediated unsuccessfully, would recommend the process and would mediate again in the future.⁴² Mediation techniques have been shown to have a powerful impact in criminal proceedings as well. In the criminal process of plea bargaining, there is a negotiated agreement between the prosecutor and defendant.⁴³ Surprisingly, even those receiving heavy prison sentences were more satisfied with their plea-bargaining process (15 percent) than those who went to trial (0 percent).⁴⁴ The number jumped to 52 percent for those with average sentences who rated their plea-bargaining process as fair.⁴⁵

While most citizens may not care, or want to know, whether a convicted criminal felt his or her process was fair, it is precisely in this area that extra attention to procedural justice by courts and legal professionals is needed. A higher level of satisfaction with the process leads to higher satisfaction with the outcome.⁴⁶ This, in turn, may result in increased docket efficiency with fewer complaints and appeals filed. However, the larger issue in the context of social justice is the fact that the vast majority of offenders will be released one day and an offender's experience with the judicial system can serve to foster perceptions of alienation from the larger community, or it can provide a bridge to a future of law-abiding behavior and reintegration with family and community.

B. Fairness

Voice, trustworthiness, respect, and neutrality are all important factors leading to the perception that one's legal process has been fair.⁴⁷ Among these factors, "voice" is most readily equated with fairness. Having a voice means having the opportunity to make one's case and be heard.⁴⁸ Victims and offenders in criminal cases, as well as all civil litigants, want to have a voice and a degree of participation in the resolution of their dispute. Although the reality of this proposition might make most lawyers cringe, the desire to be heard does not necessarily mean that the parties want influence or control over how the case is handled, or even influence over the outcome of the case. It seems parties simply want to share in the discussion about their case and tell their story, but will defer to legal authority to shape the legal context and decide the applicable legal principles.⁴⁹ Participation, not control, turns out to be the key to participants' perceptions of procedural fairness.

Closely tied to having a voice is trustworthiness. Perceptions of trustworthiness hinge upon the perceived motives and character of the police officers, attorneys, and judges. Without active listening, which involves genuine concern and careful consideration of the story being told, there is little apparent value to having a "voice." In order to be trustworthy, legal authorities must make clear that they have listened to the points made and then explain why they are making certain decisions.⁵⁰ This factor—as well as the third factor, interpersonal respect—is closely tied to the "ethic of care" that advocates of comprehensive law argue must be at the heart of legal practice.⁵¹

In evaluating legal decisions after they are handed down, citizens focus on whether the authorities with whom they dealt appeared to care about them and their problems and had worked to find a good, just, and appropriate solution.⁵² While this notion of trustworthiness may seem simple because it embodies concepts of common sense and general professionalism, it stands in stark contrast to the reality that legal training

focuses almost exclusively on understanding and interpreting the law⁵³ in the belief that litigants want only to win their dispute.⁵⁴

Third, interpersonal respect, or how one is treated, carries important social messages.⁵⁵ Promoting dignified treatment shows participants that the authorities take their dispute seriously.⁵⁶ As Tyler points out, “Reaffirming people’s sense of their standing in the community can be as or more important than solving their problems.”⁵⁷

Lastly, the fourth factor affecting participants’ perception of whether the legal process was fair is neutrality. People focus on neutrality, as well as procedural justice, when the appropriate outcome is not clear to them.⁵⁸ Perceptions of honesty, impartiality, and the use of facts rather than opinions all work to create a sense of genuine authoritativeness—even for those who do not receive favorable outcomes.⁵⁹

C. The Interpersonal Gap

What exactly do these findings mean? The revelation of the importance placed on these factors points to a significant gap between the public’s desire for a system that offers more psychologically-satisfying treatment and the existing formalities of the current legal system.⁶⁰ In other words, there is an important “interpersonal component to justice.”⁶¹ Citizens’ social and psychological concerns are distinct from the correct application of legal rules. The former can be addressed by creating opportunities for participation, by evidence of trustworthiness, by demonstrations of interpersonal respect, and by inferences of neutrality.⁶² While increased fairness and procedural justice are not a panacea to high levels of dissatisfaction, the legal system can do a better job of recognizing that the way grievances and disputes are handled provides people with important feedback about their status within society and furthers their perceptions as to the legitimacy of the system.⁶³

The implication is that the procedural and interpersonal feedback given by legal authorities can either strengthen or tear down the social connection

between litigants and authorities.⁶⁴ When the process is deemed just and the authorities perceived to be fair, the parties more readily accept, and thus comply with, the outcome. Ultimately, this means that relationships are preserved rather than destroyed, and the legitimacy of the legal system is bolstered rather than maligned.⁶⁵

In order to pursue goals of social justice, all those working within the legal system must recognize that the system does not exist outside of the realm of human bonds that create our society and our communities. The easy reply, “But of course!” comes to mind. However, what this might mean in daily practice is not so obvious because it requires big shifts in intention and approach. Such shifts are not likely to occur through legislation. The impetus to shift to a legal system that works to strengthen and preserve the social fabric will likely be found in the power of individuals—those who choose to recognize the need for social and psychological affirmation in the resolution of our legal crises and disputes. This does not mean that lawyers, judges, police officers, and others who turn the cogs of the system are the only people who must be mindful of the intent to help rather than harm. Rather, this shift must also extend to concerned citizens, community leaders, social workers, and family members.

Recognizing the nature and importance of our human bonds in making a more effective judiciary does not have to mean a shift away from the accurate application of legal rules to ensure a consistent outcome. Rather, recognizing our human bonds in legal practice means developing a dual awareness of the social and psychological factors discussed, eschewing a single-minded focus on the legal rules that can create resolution only by a win for one party.

III. ADDRESSING THE INTERPERSONAL GAP: JUDICIAL DEMOCRATIZATION THROUGH COMPREHENSIVE LAW

A significant shift in awareness permeates each of the vectors of the comprehensive law movement. While each vector is distinct, they all have at least two characteristics in common: a goal of optimizing human well-being and a focus on “extralegal concerns.”⁶⁶ Legal rights are not “thrown out the window,” but maximizing individual legal rights is not the sole concern. As Daicoff notes:

[I]f there are two ways we can maximize your legal rights and do what we normally do as lawyers, and, if one way optimizes your well-being and one way either doesn't optimize or is actually destructive to your emotional mental health, then let's do it in the way that optimizes human well-being ... Let's look at something more than legal rights as we form a solution for the client and for the legal problem.... And, the choice is up to the client.... Sometimes it is quite therapeutic to be adversarial with someone because they will not listen any other way.⁶⁷

The comprehensive law movement, and its vectors, can be delineated into three often-overlapping categories: lenses, processes, and skills.⁶⁸ Four of the vectors function as lenses that give a particular perspective and approach on the practice of law: therapeutic jurisprudence, procedural justice, holistic law, and creative problem solving.⁶⁹ The process-oriented vectors provide more concrete techniques that emphasize relationship-preserving processes over outcome: preventive law, collaborative law, restorative justice, and problem-solving courts.⁷⁰ The skills needed to be generally effective as an attorney, and particularly effective in any of the comprehensive practices, comprise the third category: mindfulness and counseling.

Most comprehensive law scholars propose implementing a new “toolbox of skills” to include mindfulness meditation, psychological sophistication, enhanced communication skills, and greater self-awareness.⁷¹ These skills provide an essential foundation for care-oriented forms of lawyering.⁷²

Indeed, even for lawyers committed to a traditional adversarial practice, mindfulness practices can be useful for enhancing perception skills.⁷³

While the vectors of procedural justice and restorative justice fall into different categories of comprehensive law, the two approaches both require a high level of mindfulness, and both provide roadmaps for our society to identify and facilitate opportunities for greater democratization through increased participation in our legal system.

A. Procedural Justice

While the basic concepts behind procedural justice are not new, some contemporary examples are aimed at addressing what people want from the legal system.⁷⁴ Procedural justice does not advocate any one particular way of administering the law; instead, it seeks optimal participant satisfaction and optimal dispute resolution through each of the four factors discussed: participation, trustworthiness, respect, and neutrality, with a particular emphasis on participation, or being provided the opportunity to speak freely.⁷⁵

As a somewhat academic vector,⁷⁶ procedural justice encourages lawyers and judges to fulfill their professional roles in psychologically sensitive ways and to recognize that *how* disputes are resolved is often more important to individuals than the resolution itself.⁷⁷ Making procedural justice a priority means looking for flexibility within the system and facilitating participation by those involved in and affected by the offense or dispute. Increased participation by the parties can lead to payoffs such as higher satisfaction with the process, higher rates of conformity with decisions, and ultimately, greater social justice through reduced alienation, resulting in stronger community bonds.⁷⁸

B. Restorative Justice

Restorative justice gives a voice to disputants and provides greater community participation, primarily in the criminal justice system.

Restorative justice presents a framework for dealing with crime and victimization that is completely outside of our historically political solutions, which are based on punishment.⁷⁹ Like procedural justice, restorative-justice practices not only invite, but require, participation by those directly and indirectly affected by the offense. This approach stands in sharp contrast to our system of retributive justice that places offenders, and especially victims, in largely passive roles because the crime is considered to be against the state.

Many successful restorative-justice programs focus on non-violent property crimes by juvenile offenders and young adults.⁸⁰ Other programs provide for victims and offenders of violent crimes to meet in an attempt to reach some reconciliation—often years after the crime and court actions occurred, and often in maximum-security prisons.⁸¹ The court settles the legal issues, and then the restorative-justice process picks up the pieces of the emotional issues yet to be resolved.

Modern restorative-justice programs have grown out of both ancient indigenous and tribal-justice traditions, and the more recent justice-reform movements of victim advocacy and community policing.⁸² The aims of restorative justice involve punishment for the offender, but place much more emphasis on reconciliation of the offender, the victim, and the community. Importance is placed on giving voice to the victim(s) and, ideally, avoiding costly punishment because the larger community is involved in holding the offender accountable.⁸³ Victim-offender mediation conferences are the most common implementation, but techniques such as family-group conferencing and circle-sentencing are also gaining momentum.⁸⁴

The restorative-justice movement presents an “opportunity to build a far more accountable, understandable, and healing system of justice that can lead to a greater sense of community through active victim and citizen involvement.”⁸⁵ Perhaps not surprisingly, research findings in the realm of restorative justice verify those in procedural justice.⁸⁶ Restorative-justice

procedures often involve negotiated restitution agreements. Restitution agreements that are perceived as being fair to both parties are negotiated, on average, in nine out of every ten cases that enter victim-offender mediation programs.⁸⁷ A 1994 study of such programs in Albuquerque and Minneapolis found that offenders were much more likely to complete their restitution obligation to victims (81 percent) compared to similar offenders in a court program without mediation (58 percent).⁸⁸

The misconceptions of our leaders—what they think people want as compared to citizens' actual concerns and priorities—underscore the need for restorative justice.⁸⁹ A statewide, demographically balanced, public-opinion survey conducted in Minnesota revealed a greater preference for restitution rather than for costly retribution: "Holding an offender personally accountable to their victim is more important than incarceration in a jail."⁹⁰ More than 80 percent of those surveyed were interested in participating in a program that would allow them to meet with offenders who had victimized them.⁹¹ Several studies have confirmed that even if the process includes signed restitution agreements (payment by the offender directly to the victim for the repair of the damaged or defaced property or, alternatively, some form of community service), victims place an even higher value on the opportunity to express their feelings regarding the crime directly to the offender.⁹²

A 1996 study confirmed that both victims and offenders demonstrate higher rates of satisfaction with the adjudication process when enrolled in victim-offender mediation programs. Data from four sites in the United States showed a 90–91 percent satisfaction rate among victims and offenders in the mediation outcome; victims' fears of re-victimization were reduced 56 percent, and 83 percent of victims and 89 percent of offenders perceived the referral of their case to mediation as fair.⁹³

Interestingly enough, the growth of restorative-justice programs does not seem to depend upon adoption by, or involvement of, attorneys or the courts. As of 1998, there were six hundred victim-offender programs in

place in the United States, Canada, and Europe.⁹⁴ A majority of the 280 programs in the United States are administered by private, community-based, nonprofit agencies.⁹⁵ For example, a restorative-justice program that began in Oakland, California, in 1987 had involved eighty volunteer mediators as of 1991.⁹⁶ Restorative justice opens the legal system to participation by volunteers from a broad spectrum of the community and takes a deeper, more interpersonal approach to the offenders' responsibility for, and the victims' healing from, the crime. Similar in its effect to procedural justice, the goals of social justice are served in restorative justice through a process that requires voice, trustworthiness, respect, and neutrality in order to strengthen the social fabric and the ongoing productive exchange between individuals.

IV. COLLABORATION, CREATIVITY, AND EMPOWERMENT: THREE WASHINGTON STATE EXAMPLES OF COMPREHENSIVE LEGAL PRACTICES

The following Washington State examples combine elements of both procedural and restorative justice in order to facilitate broader involvement in the handling and resolution of pressing social issues and concerns about justice: the Kalispel Tribe's incorporation of peacemaking as a reflection of ancient tribal practices and values; a problem-solving court aimed at holding families together through recovery from drug addiction; and an artist's commitment to working in women's prisons. Each of these serve to empower the community through collaboration and creativity, all in the search for greater satisfaction with legal processes and outcomes.

In Washington State, many citizens and community leaders have realized that the promotion of justice does not happen by leaving judicial and societal problems—such as disenfranchisement, drug abuse, and alarming rates of incarceration—to be solved by the system or the forces of a market economy. Instead, better, more just solutions are to be found through the collaborative approach required by procedural and restorative justice.

These programs create support within the system, allowing interpersonal relationships to form. The idea most germane to all of the comprehensive law practices, and exemplified through the vector known as therapeutic jurisprudence, is healing. Procedural justice promotes healing through showing respect, honoring the desire to be heard, and requiring treatment of others to be with dignity and fairness. Healing cannot happen in an environment where one feels “pushed down” or treated as if he or she is not worthwhile. Likewise, restorative justice gives all parties a voice and empowers each to participate in both the emotional and restitutive resolution of their case. Healing for the victim and the offender is supported through accountability and carefully guided, but direct, communication in order to preserve a sense of belonging in the community. Together, procedural justice and restorative justice facilitate healing on an individual level, as well as on a broader community level.

A. The Kalispel Tribe’s Experiment with Traditional Tribal Justice

In 1997 a bold experiment was undertaken in the tiny community of Usk, Washington, when, in an effort to restore a greater sense of justice-through-healing in the Kalispel tribal court, a peacemaker panel was formed.⁹⁷ Nowhere in North America is the concept of “justice as healing” embraced more fully than in the traditional tribal-justice practices of American Indians.⁹⁸ It would be a huge disservice to describe these “contemporary” comprehensive law paradigms without acknowledging the ancient roots and historical precedence that comes from indigenous cultures.⁹⁹ A brief history of Indian courts in the United States will help place the Kalispel experiment in context. This section then explores how peacemaker panels and tribal drug courts promote “justice as healing” by exemplifying procedural and restorative justice.

In tribal cultures, a sense of allegiance informs what is called “original justice.”¹⁰⁰ Original justice considers the relationships and tolerance required in kinship societies.¹⁰¹ Solidarity and solace are found in reflecting

upon relationships with others—not to subvert individual identity, but rather to provide a context for the individual.¹⁰² Indian law scholar James W. Zion points out that “[i]t is difficult to contrast Western individualism with Indian concepts of allegiance to the group.”¹⁰³ Traditionally, tribal disputes and criminal acts were handled by consensus, rather than by formal, Anglo-style adjudication.¹⁰⁴ That is, until the 1880s when Crow Dog’s murder of Spotted Tail on a Sioux reservation in South Dakota spurred the Federal Government to intervene.¹⁰⁵ The Sioux, including Spotted Tail’s family, decided that Crow Dog must provide goods and provisions for the family of Spotted Tail in his absence.¹⁰⁶ The federal government, however, decided Crow Dog should be hanged.¹⁰⁷ Once it was determined that the federal government had no jurisdiction to decide retribution, legislation was quickly passed to give federal courts jurisdiction over various crimes within Indian country.¹⁰⁸

Tides turned somewhat in 1934 when the Indian Reorganization Act encouraged tribes to establish their own laws and justice systems.¹⁰⁹ As a result, the organization and practices of tribal courts vary widely. Modern tribal justice is often administered as a mixture of the once-imposed federal system with traditional practices, often with a remarkable flexibility to go back and forth between the two. A particularly poignant example of this judicial flexibility can be found within the attempt by Eastern Washington’s Kalispel Tribe to establish a traditional peacemaker panel.

Washington State has twenty-eight official tribal courts.¹¹⁰ While the peacemaker system is thoroughly integrated within the Navajo Nation in the southwest United States,¹¹¹ very few Washington tribes have a version of a peacemaker system. Although in modern practice there are distinct differences between the two, peacemaker traditions reflect the ancient roots of mediation.¹¹² That men and women are designated with the title of Peacemaker—a position which plays an historic and integral part in the Indian legal system—speaks volumes about the tribal approach to justice. The fact that leaders have been designated to resolve disputes with the

priority placed on the promotion of peace within the community reflects a powerful intention and signifies a major distinction from the Anglo system. The website for the National Tribal Justice Resource Center lists peacemakers on their list of regular court personnel and describes their role:

Peacemakers work to resolve disputes in a fair and friendly manner between family members, neighbors, and others. To do this, peacemakers must conduct information gatherings with the parties, ensure in each gathering that all relevant facts are presented, ensure that all parties have a chance to articulate their sides, and persuade the parties to arrive at a settlement that is satisfactory to all parties.¹¹³

The National Tribal Justice Resource Center lists an impressive total of five designated tribal peacemakers for the Kalispel Tribe of Eastern Washington, including a Chief Peacemaker, an Associate Peacemaker, and an Alternate Peacemaker.¹¹⁴ David Bonga is the former education and planning director and current general counsel for the Kalispel tribe.¹¹⁵ Mr. Bonga was instrumental in researching and developing the experiment with the peacemaker system after it became evident that there was growing dissatisfaction with the existing Anglo-style, judge-based system.¹¹⁶ Although Mr. Bonga did conduct research and consult with Indian experts on the subject, the experimental system that resulted from his work grew out of what the *population* said they wanted, and was not based specifically on any other tribal model.¹¹⁷

The Tribe's evaluation after the first few panel meetings was that the program worked well with family-law issues but not so well with criminal issues.¹¹⁸ This may be due in part to the close-knit nature of the Tribe, which includes just 360 members and consists of five main families.¹¹⁹ In addition, following the first set of resolutions, the panel met with resistance because of perceived unfairness, especially with regard to criminal issues.¹²⁰

As a result of dissatisfaction due to perceptions of bias for some parties, the Kalispel peacemaker panel is currently dormant and judge-based

adjudication prevails.¹²¹ However, the hope is that the Kalispel tribal court may “morph” into a system that provides two options. Eventually, parties may be able to choose whether to go before a judge in an Anglo-style proceeding, or work with elders as peacemakers and mediators in a talking circle.¹²²

While an outsider could view this process as a failure, much was gained in empowering tribal members and their leaders to find more satisfying, and viable, solutions through their court system. The Kalispels were not deterred when the initial plan for change faltered. Instead, they have decided to continue on the road to defining *how* justice can best be achieved for their community. The Kalispel experiment provides an eloquent example of systematic flexibility, allowing procedural justice to be defined in a way that preserves tribal values around restorative justice. In addition, while many tribal courts look to revive traditional practices, similar examples exist throughout the country.¹²³ Each bold experiment requires careful broad-based dialogue and evaluation in order to develop a system that satisfies the needs of justice for each particular tribe, both traditionally as well as in the modern social and political context.¹²⁴

Given the importance that was traditionally placed upon healing and restorative justice, it is not surprising that tribal courts have taken an equally groundbreaking approach to address pervasive issues of substance abuse. In 1996, at the impetus of the federal government, thirty “Healing to Wellness Courts” were established in various communities; now, there are fifty-six Wellness Courts with another seventy-one in the planning stages.¹²⁵ The Wellness Courts, like peacemaker panels, are aimed at tailoring the judicial approach to specific tribal traditions and practices. At the core of the Wellness Courts is the concept of healing rather than curing. Where curing takes a mechanical approach, as if fixing the parts of a machine, healing is done more on a metaphysical level and requires spiritual work as well as community support.¹²⁶

As exemplified by the Wellness Courts, Indian ideals of justice and the role of the legal system have traditionally taken a therapeutic approach. Other indigenous and aboriginal cultures also recognize a basic human need for healing. When the need to find healing for ourselves is supported, we may see new possibilities for solving our problems; we may participate in finding a satisfying outcome; we may find renewed hope; and, in turn, we may also support others in our community. The Anglo system is just beginning to understand the value of this type of therapeutic and restorative approach, particularly in the area of substance abuse. When courts begin to recognize that the system can empower individuals, as creative beings, to solve their problems and heal with the support of others, the doors of judicial participation open and more satisfying outcomes are possible.¹²⁷

B. King County Family Drug Court

An additional promising and exciting vector of comprehensive law is that of problem-solving courts.¹²⁸ These courts represent the ideals of several different vectors: therapeutic jurisprudence, procedural justice, and restorative justice. Problem-solving courts use a collaborative approach that involves many community professionals. The problem-solving courts have the oversight of a judge working not just as an expert in the legal system, but also as a problem-solving facilitator. Problem-solving courts first found their way into the Anglo system to address the special needs of mental health clients.¹²⁹ Today they include drug-treatment courts, domestic-violence courts, homeless courts, drunk-driving courts, and other specialized courts where judges have specific knowledge about the particular area they are working to address.¹³⁰

The King County Family Drug Court (KCFDC) has just completed its second year of a two-year, federally funded pilot project.¹³¹ The program builds on the successes of standard drug courts that have become prevalent in many jurisdictions. The program's goal is to serve children affected by addiction through working with their parents toward two goals: attaining

sobriety and building a stable home.¹³² Ideally, this means reuniting children with birth parents once the parent is ready. But it can also mean supporting a parent through the decision to relinquish custody and let a child go to a stable, permanent foster-care family.¹³³

A significant number of families—434 in King County last year—are torn apart, and children are placed in foster care, solely because of abuse or neglect charges stemming from parental drug and alcohol addiction.¹³⁴ In the KCFDC, the children and the family unit are viewed as the real victims of the substance abuse.¹³⁵ The family drug court, where appropriate, directly involves the children in the process and support system established by the court.

The KCFDC uses a team approach that typically involves at least ten players: the parent's lawyer; children's lawyer; an assistant attorney general; a state social worker; a Court Appointed Special Advocate; and a mental health case manager, in addition to the family drug court program manager and the judge.¹³⁶ The court meets each Friday, and participants are required to appear twice each month.¹³⁷ Whether coincidental, or due simply to space constraints, the seating arrangement for the team of collaborating professionals and participating family members forms a circle around the judge's bench.¹³⁸ As each client is called, he or she, and often his or her children, join the circle.¹³⁹

The KCFDC began in August 2004 with a caseload of two families.¹⁴⁰ It is now at capacity, serving twenty-five families with forty-three children.¹⁴¹ Each social worker is assigned fifteen children, which is a reduced caseload from that of most King County social workers.¹⁴² Of the parents served by the program, 86 percent are women.¹⁴³ As of this writing, more than ten families are at different stages of being reunited (often custody of older children is regained before younger children).¹⁴⁴ A few parents have been dismissed from the program before completion for failure to meet the requirements.¹⁴⁵ Of the parents who graduated from a similar family drug

court located in Pierce County, 85 percent have regained custody of their children.¹⁴⁶

Provided there is evidence of substance abuse, parents facing child-abuse or neglect allegations are eligible to apply to the program within six months of the state's removal of children from the home.¹⁴⁷ Parents with past or present convictions for violent crimes, weapons, or sex abuse are not eligible.¹⁴⁸ The team works together closely to support participants through eight steps that include completing a rehab-treatment program, attending a support program apart from the court, arranging housing, having an employment or work plan, resolving any warrants, and establishing a personal support system.¹⁴⁹ The final steps are six months of sobriety and having the children at home or in permanent placement for six months.¹⁵⁰ Along the way, the court requires frequent drug testing (urinary analyses, or UAs), up to three times per week, and assesses when visitation and custody become appropriate, which is ultimately decided together with the parent.¹⁵¹ The founding judge for the program, Patricia Clark, involved the children by giving reading and writing assignments intended to provide opportunities for expression and accomplishment during the process.¹⁵²

The steps sound amazingly simple and straightforward. However, the process of meeting each step can be fraught with messy, heartbreaking moments. For this reason, the court is both realistic and holistic in its approach. Because of the nature of addiction and recovery, the court expects that relapses will happen.¹⁵³ The job of the team in the case of a relapse is to both assist the parent and assess how quickly the parent takes steps to get back into rehab, and to determine whether the parent remains committed to completing the program.¹⁵⁴

The real difference in this problem-solving approach is that relationships are built, particularly with the judge.¹⁵⁵ The relationships serve to empower the parents in their own recovery. As discussed above, in the findings from procedural-justice research, these relationships signify to the clients that they and their families are worthy of a team to help them get well.¹⁵⁶ The

team approach and relationships created by that approach reinforce that one matters to the community. When a parent fails to appear and cannot be reached, members of the team will drive around, knock on doors, and make repeated phone calls to locate that parent.¹⁵⁷

The process used by the court is interactive. Clients can make requests of the team to support their recovery efforts and often ask to appear more frequently than required.¹⁵⁸ Linda Garcia, mother of three and a recovering heroin addict, was the first person to enter the new program.¹⁵⁹ When she appeared one year later, in August 2005, she was not required to be there. Still, she felt the need to connect with her support team to acknowledge all of the hard work on her behalf and to report her good news in person. Ms. Garcia announced that she had a job lined up for September and was preparing to move into a rented house in Bellevue with her three children, at least one of whom had been out of her custody for at least ten months.¹⁶⁰

The relationships formed in this particular problem-solving court are real and genuine. Even when Judge Clark had to resign her position on the court due to other professional responsibilities and equally pressing dockets, she planned a reunion party for the clients and children she had worked with throughout the year.¹⁶¹ Program coordinator Kelly Warner-King reminded some of the children in attendance at court one Friday that Judge Clark was expecting to discuss a recent reading assignment at the reunion party.¹⁶² Judge Philip Hubbard, who replaced Judge Clark, has been startled by the lack of distance between him and the offenders.¹⁶³ After spending most of his career as a judge in more traditional court settings, he is now required to be much more hands-on, working directly with the team to respond to client problems throughout the week, not just while sitting on the bench each Friday.¹⁶⁴

The KCFDC combines the structure and legal expertise of the traditional court system with a broad-based, team approach. Social workers, child advocates, and the offenders themselves are as much a part of the solution as the attorneys and judge. Each collaborative approach is individualized,

but all require each party to voice their needs and participate in order to build mutual trust and supportive relationships. For example, it is common for parents to request more frequent drug testing during the holidays.¹⁶⁵ The court willingly grants these requests.¹⁶⁶ In this way, everyone is kept honest, and the trust and support continues because the parent has been proactive in his or her own recovery. In family drug court, trust is formed by communication—and clean UAs.

Tragically, the federal grant funds for the KCFDC are set to expire in 2006.¹⁶⁷ Fortunately, however, court administrators are committed to keeping the KCFDC up and running. First, they will apply for a program extension because use of the funds already received can be stretched through December 2006.¹⁶⁸ A team of evaluators from the University of Washington is currently making an assessment that will be used to make the case for supporting the future work of the court through a patchwork of public and private resources.¹⁶⁹ Nothing is certain but, using a great deal of foresight, the framers of the pilot project ensured that the operating costs of the KCFDC were never entirely dependent on the federal funds. At least two other existing King County agencies are directly involved as collaborators in the new court and are committed to its ongoing operation.¹⁷⁰

As illustrated by the KCFDC, funding is one of the biggest challenges and threats to experimenting with and sustaining many comprehensive approaches, particularly in the public sector. Because it is difficult to evaluate empirically, it is unclear whether alternative approaches are more cost-effective than traditional adversarial resolution.¹⁷¹ The KCFDC believes that the team approach may be more expensive up front, but there is a savings in the long run by avoiding costly legal-custody battles¹⁷² and possible permanent intervention for many clients in the cycle of substance abuse and recidivism.

C. Pat Graney's "Keeping the Faith" Project for Incarcerated Women

Funding challenges also threaten the future of a dynamic artists-in-residence program for incarcerated women in Washington State.¹⁷³ Eleven years ago, and each year since then, Seattle-based choreographer Pat Graney has designed, implemented, and raised funds to realize her commitment to serving women in prisons.¹⁷⁴ The commitment began in 1991 while on tour with her professional modern dance company in Boston.¹⁷⁵ The contract for the performances required a community-outreach activity as part of the dance company's weeklong stay. Graney decided that rather than give another lecture-demonstration to kids, students, or usual arts-goers on the "outside," she would rather go "inside," to the Massachusetts Correctional Facility for Women in Framingham.¹⁷⁶ The one-time visit was such a powerful experience that Graney began to think about how beneficial an on-going residency could be—not only for the incarcerated women but also for artists.¹⁷⁷ Once back home in Washington, she quickly set out to meet with management and recreation directors at the Washington Corrections Center for Women (WCCW) in Purdy, Washington.¹⁷⁸ Early on, Graney's Keeping the Faith project (KTF) was hailed as one of the nation's most innovative programs for prison inmates.¹⁷⁹ KTF teaches participants different modes of self-expression to explore their lives in ways that are nonviolent and reflective.¹⁸⁰ Over the years, the structure of the residency period has varied, from two to six months, with sessions two to four times per week.¹⁸¹ Each session is usually a two-hour workshop of various activities with that year's roster of collaborating artists.¹⁸² The program is interdisciplinary; it uses writing, music, movement, visual arts, and often American Sign Language or traditional drumming to introduce different modes of expression.¹⁸³ Activities and exercises are aimed at creating a positive and supportive environment through meeting three main goals: 1) exploring self-esteem issues through the development of autobiographical material and performance skills; 2) building cooperation and mutual respect in a diverse

group of women through specific partnering and performance activities; and 3) creating a model for other individuals and groups to go inside the prison to interact with members of that community.¹⁸⁴

The real potency of KTF seems to come from the fact that so many of the usual prison rules and strict codes of conduct are allowed to be broken or bent to make the residency activities and final performances possible.¹⁸⁵ The staff and management at WCCW and other facilities where KTF has taken place have found that the benefits of the program far outweigh the purpose of the rules.¹⁸⁶ On most days, other than during organized recreational activity, there is no singing, dancing, clapping, shouting, or any sudden movements allowed at the prison.¹⁸⁷ Any written materials must be turned over to staff on request.¹⁸⁸ Touching is strictly prohibited.¹⁸⁹ Individual expression is kept to a bare minimum for purposes of controlling the population.¹⁹⁰ The joy of dancing and the vulnerability of self-expression, then, take on entirely new meanings in this context.

The hallmark of KTF is its culmination in a forty- to fifty-minute performance montage by the inmates.¹⁹¹ The audience of anywhere from one hundred to two hundred people is comprised of donors, volunteers of the Pat Graney Company (who must clear background checks two weeks in advance), prison officials, and almost all of the other inmates. The result is some truly riveting theatre. The power of having a voice, telling one's story, and being heard is made manifest on an almost primal level. If listening to the performers read excerpts from their own writing and seeing the joy in their movements does not stir your emotions, then seeing the inmates in the audience cheering the performers for their courage most certainly will. Only seven lone inmates, out of the fifty participants who floated in and out of the project, participated in the very first KTF prison performance in 1994.¹⁹² However, in recent years, Pat and the artists have had to offer "double sessions" to be able to work with all of the nearly one hundred inmates who had signed up for the program.¹⁹³ KTF became one

of the most popular and highly anticipated volunteer programs at WCCW.¹⁹⁴

In 2005, however, KTF was not held at WCCW, due largely to changes in administrative personnel and management philosophy at the prison.¹⁹⁵ Instead, Pat and that year's residency team (the Staff Counselor, a visual artist, and a writer) spent two months working at Mission Creek Corrections Center for Women, in Belfair, Washington.¹⁹⁶ Mission Creek, a recently opened, minimum-security facility for women, is housed at a former youth-detention camp.¹⁹⁷ As part of the State's pre-release program, some of the women who served the bulk of their sentence at WCCW in Purdy are moved to Mission Creek near the end of their sentence.¹⁹⁸

Having attended KTF performances in three prior years, the author traveled to Mission Creek in November 2005 to attend the culmination of that residency. Fifteen women performed in the Mission Creek gymnasium against a canvas backdrop of three huge mandalas painted during the residency. Marvin Gaye blared through the speakers, and the women strutted and danced onto the gym floor, moved in formation together, and created group poses while taking turns at the microphone. The women shared excerpts of what they had written in their exploration of the four themes chosen for this residency: the five senses; the seasons as a metaphor for where they are in their lives; the beliefs the women held as a result of what their families told them; and the women's personal definitions of respect. Some women exhibited break-dancing skills, while others shared their dreams for the future. Each of the participants wore a t-shirt they had painted with a mandala that held personal meaning. In American Sign Language, they signed the lyrics to the song "Respect" by Aretha Franklin. The audience applauded enthusiastically throughout the performance. At the end, the crowd went wild with a standing ovation, and the performers beamed as they took their bows. Fortunately for everyone in attendance, there was time for questions and answers about the experience of the residency and the shared experience of the performance.

The women and staff of Mission Creek provided feedback that echoed the feedback of women who participated in KTF residencies at WCCW in previous years. Participants explained that, at first, sitting down to write something personal was difficult. Initially, animosities between individuals and groups that existed at the facility carried over into the residency activities. Soon, however, the genuine kindness and care exhibited by the artists helped to break down the barriers. What the women discovered they had in common became much more important than what they previously thought should divide them. The artists explained that through their participation they felt they had gained much more than they had given. A prison administrator mentioned a noticeable difference in the demeanor and behavior of KTF participants. Some of the inmates watching in the audience voiced how proud they were of the women who dared to perform for their peers as well as strangers. Another inmate urged a continuation of the new-found cooperative energy and a setting-aside of petty differences beyond the end of the residency.

Graney's commitment to developing KTF began when she realized that most of the people in prison were in fact going to be our neighbors again on "the outside" one day.¹⁹⁹ For this reason, prisons cannot continue to be viewed as places of exile. Opportunities for delivering procedural justice do not end on the day of sentencing when the offender walks out of the courtroom. Prisons are perhaps the most critical area for improved procedural justice because prisoners are also members of the community. Nearly two-thirds of the women incarcerated at WCCW have children.²⁰⁰ These women may be prisoners for a time, but they will always be our mothers, daughters, nieces, and sisters.

In a 1999 interview, Graney explained that aside from the value of the creative activities, there is a secondary set of benefits for the participants that is even stronger. "The participants learn how to deal with being in a group, how to respect people they don't like and don't trust, how to complete a task and then witness something personal."²⁰¹ While these skills

may not exactly land jobs on the outside, they are skills that improve the participants' ability to form supportive relationships—a key to being reintegrated and restored to the community. Restorative justice dictates that when a person feels unworthy or unable to express herself, she needs to be restored to herself before she can be restored into the community.²⁰² Graney's KTF project has found a way, through personal creativity and collaboration with the system, to begin the process of empowerment for a segment of our society most in need of a comprehensive approach to justice.

Sadly, this program, like the KCFDC described above, faces potentially fatal funding issues. After eleven years, the possibility of future KTF programs in Washington seems dire. Each residency costs \$40,000–\$50,000 to produce. No funds are received from the prison facilities. All of the funds to make KTF possible have come from project grants and contributions from individuals secured entirely through the fundraising efforts of the Pat Graney Company staff and volunteers. However, running a modern dance company is not a lucrative business, and this year there is no staff to do the fundraising. If the principles of the comprehensive law movement were more pervasive, programs like KTF would be readily available throughout the country for all kinds of incarcerated populations, instead of struggling year-to-year for their very existence.

V. SOME PROBLEMS AND CRITICISMS OF COMPREHENSIVE LAW PRACTICES

Secure funding is not the only challenge to the development of comprehensive approaches to procedural justice and restorative justice. Detractors have raised many red flags from the mid-1980s when a precursor to comprehensive law, Alternative Dispute Resolution (ADR), first began gaining traction in the court system.²⁰³ The criticisms focus on the compulsion to use ADR, as in the case of court-ordered arbitration or mediation; the need for the public to have reported decisions and for courts to interpret the law; and the potential for undermining the need for legal

expertise through greater involvement by non-lawyers and the use of less formal resolution processes. However, none of these critiques argues that judge-based courts and comprehensive approaches should not coexist.

One of the foremost critics of ADR is Yale law professor Owen Fiss, who decries the use of ADR as a docket-clearing measure. Fiss's primary concerns are the following: the lack of opportunity for subsequent judicial involvement by appeal; the lack of procedures for mitigating disparities in resources between the parties; the lack of clarity around who is authorized to give consent and how settlements are enforced upon parties that are groups, government or corporations; and particularly with corporations, the option of a "backdoor" process that may prevent management from being held accountable.²⁰⁴

Fiss explains that society, government, and justice all suffer when courts are deprived of rendering an interpretation.²⁰⁵ This implies that broad social goals of equality-through-structural-reform may become secondary concerns.²⁰⁶ This is a valid point where structural reform is required for large-scale organizations (e.g. school desegregation), but autonomy and individual choice should not be sacrificed or made secondary to the government interest in interpretation of the law in cases involving non-violent disputes between individuals. Compulsion of any process not only undermines autonomy, but it denies participants satisfaction from involvement in resolving one's own dispute and ultimately may weaken public confidence in the judiciary. Both of Fiss's concerns can be addressed by affording individual parties a choice to make fully informed decisions about the respective benefits of going before a judge and/or jury versus using another approach to resolution.

Further underscoring the continued need for diligent legal expertise, Harry T. Edwards, echoing the concerns of Fiss,²⁰⁷ argues that even when alternative approaches are used, skilled lawyers and judges are essential. Judges and lawyers are needed to assess the rights and duties at issue and the full legal implications of using an alternative method of resolution.²⁰⁸

Edwards believes that ADR is not appropriate for novel questions of law, domestic-violence situations, disputes involving environmental issues, or any other issues where legislative or agency-mandated standards must be reached.²⁰⁹ He identifies divorce, landlord-tenant disputes, employment discrimination, parent-school disputes, and other routine types of complaints as ideal for ADR.²¹⁰ It is difficult to disagree with Edwards because he recognizes that individual legal rights must not be compromised by comprehensive practices and also proposes several potential growth areas where comprehensive practices could be particularly successful. However, it is interesting to note that despite Edwards's resistance to ADR in the realm of government agencies, there has been an "explosive" growth in the use of ADR precisely in this area.²¹¹

Compulsion to mediate may in fact be adopted for docket clearing, but it can also be the result of an underlying assumption that people prefer mediation.²¹² Deborah Hensler points out the dangers in this assumption, asserting that the court system is undermined when its energies are directed toward leading citizens to believe that integrative solutions and transformation through ADR are preferable to a ruling by a judge or jury.²¹³ Instead, she argues that the system should remain focused on fact-and-law-based rulings and perhaps provide comprehensive options but without according any one procedure more legitimacy over any other.²¹⁴ Hensler does not discount mediation categorically and believes it to be a valuable process in many situations;²¹⁵ however, her solution includes giving parties a description of their options, including an "evaluative mediation."²¹⁶ The evaluative mediation would proceed much like a judicial settlement conference but with the important addition of full participation by the parties.²¹⁷ The mediators would be "expert neutrals" who report directly to the courts.²¹⁸

Similar to the dual approach that the Kalispel tribe aspired to utilize, Hensler's model gives parties the right to bypass all ADR procedures. The other empirical advantage is that a true evaluation can be made regarding

the value that parties place on dispute resolution procedures in various situations—when the process actually reflects a choice and not compulsion.²¹⁹

Even though she notes that self-realization and self-empowerment may not be appropriate or typical goals for the public-justice system,²²⁰ Hensler comes very close to envisioning a system with more flexibility to realize the goals of the comprehensive law practices. As illustrated by each of the Washington State examples, standard court procedures and gap-filling with comprehensive law practices can coexist to address the interpersonal components of a dispute and the extra-legal concerns almost all parties have.

On one hand, empowering parties to find a mutually beneficial resolution to their dispute means that the same legal resolution reached or imposed upon a seemingly very similar dispute can be considered, but should not be determined to be the only possible resolution, for those particular parties. Both Fiss and Edwards concede that the public interest in the substance of a legal resolution is not necessarily consistent with the goal of peaceful co-existence, which should be the primary aim of private resolution.²²¹

On the other hand, for purposes of practicality and finality, there must be some limits imposed on process and procedure in any form of dispute resolution. This applies even to the most important interpersonal concerns, such as supporting a party's need to have a voice and to be heard.²²² There is also a potential danger when fairness of procedure becomes a substitute or measure for fairness of outcomes.²²³ Symbolic satisfaction with process will not enhance social justice. There must be a balance between legal substance and interpersonal needs.

In the area of restorative justice, problems arise from the fact that this vector of comprehensive law requires such a dramatic paradigm shift away from the modern approach to criminal justice. One pitfall occurs when criminal courts use more humane language as “window dressing” to describe their approaches, without then making any substantive policy or

procedural changes.²²⁴ To be effective, restorative justice requires that courts genuinely allow an elevated role for community volunteers and crime victims. Another major danger of restorative-justice practices stems from the resulting emotional satisfaction and intuitive appeal. Due diligence is required to ensure that programs such as victim-offender mediation do not distract from larger societal issues, namely the overuse of costly incarceration and overrepresentation of people of color in the juvenile and criminal justice systems.²²⁵

A final common criticism—of ADR twenty years ago and of comprehensive law today—is that it is too trendy, too touchy-feely, and too idealistic. Unfortunately, there are proponents of comprehensive law that feed this stereotype. In sharp contrast to the encouraging optimism of comprehensive law, Peter Gabel paints a very dire picture of our current justice system.²²⁶ He outlines a “re-imagining” or paradigm shift which, he alleges, must take place within the next century.²²⁷ However, he proposes no roadmap to realize his vision. He cites only a couple of current bright spots in our conflict resolution systems—these include the restorative-justice movement, the South African Truth and Reconciliation Commission, and the ideals of economist David Korten.²²⁸

Gabel’s views, while deftly articulated, pose more questions and concerns than those they answer. He proposes abolishing the adversarial system so that the law’s primary focus is no longer “judgment directed toward divided individuals, but the healing of wounds to the connection that is to be restored.”²²⁹ To that end, Gabel believes that resolution of civil cases should be guided by ethical and spiritual ideals. One cannot help but wonder exactly *whose* ethical and spiritual ideals should guide the resolution.

Gabel fails to acknowledge the diversity of our society and the ability of the adversarial system to serve a large and increasingly diverse population with a vast range of disputes. Nor does he recognize that the system itself is not monolithic but rather has the ability to be changed and improved. The

legal system cannot impose wholesale culture change (i.e., force everyone to become a healing force and be guided by spiritual ideals). As amusing as it may be to imagine Fortune 500 corporations beginning litigation with meditation, sharing a meal, and passing the “talking stick,”²³⁰ abolishing the adversarial system within the next century would only create expensive chaos, skepticism, and lack of faith in the judiciary.

VI. CONCLUSION

Perhaps the real import of Peter Gabel’s viewpoint is that it provides a foil against the work of those like the Kalispel Tribe, with its dynamic community involvement and courage to work continuously on reshaping its judiciary; the collaborative pioneers of the King County Family Drug Court; and the artists working with Pat Graney in women’s prisons to give a spark of inspiration to other women. These programs are redefining the status quo and making a difference in the system as it exists today. Each of the Washington State examples provides a powerful illustration of the possibilities for social justice that arise when we are each empowered to bring the full force of our humaneness, as well as our intellect, to bear on the system.

Under the premise that there is no such thing as too much social justice, the comprehensive law vectors show us just how possible it is to pursue justice from every angle, whether deemed part of the public or private purview. Spurred on by lawyers, judges, and other civic leaders, our society needs to recognize that *how* we treat clients has a substantial effect on each individual whose dispute comes before us—whether that client is the accused, the incarcerated, or the victim. The treatment that one receives while in the legal system will be either helpful or hurtful and will perpetuate satisfaction or dissatisfaction in the legal system. Being mindful of this fact does not impose any material burden on the system. A heightened awareness of our shared humanity and shared desire for a more just society are the main requirements. There is no need to wait for utopia—examples

from our current judicial system demonstrate its potential flexibility and opportunities for collaboration, creativity, and empowerment—in order to find more legally just and socially satisfying solutions.

¹ J.D. candidate, Seattle University School of Law. The author would like to thank Stella Rabaut and Jennifer Sweigert for their suggestions and encouragement.

² Tom R. Tyler, *Citizen Discontent with Legal Procedures: A Social Science Perspective On Civil Procedure Reform*, 45 AM. J. COMP. L. 871, 875 (1997) [hereinafter *Citizen Discontent*].

³ SUSAN SWAIM DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES 171-73 (2004).

⁴ Susan Daicoff, *The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement*, in PRACTICING THERAPEUTIC JURISPRUDENCE LAW AS A HELPING PROFESSION 465, 466-67 (Dennis P. Stolle et al. eds., 2000).

⁵ Diacoff, *supra* note 4, at 465-66.

⁶ *See* Diacoff, *supra* note 4.

⁷ *See id.* (one vector is creative problem solving).

⁸ Diacoff, *supra* note 4.

⁹ *Id.*

¹⁰ *See generally* Daicoff, *supra* note 4.

¹¹ *See generally* DAICOFF *supra* note 3 (presenting an overview and national survey of the comprehensive law vectors).

¹² Use of the term “Indian” as opposed to “Native American” is intentional and aligned with the reasoning set forth by Chief Justice Anita Dupris. *See* Anita Dupris, Colville Tribal Court of Appeals Chief Justice, Should I Say Native American or Indian?, Address at the Plenary Session of the First Annual Statewide Conference on Diversity in the Legal Profession (June 2, 2006) (transcript on file with the author).

¹³ *See generally* Michael Novak, *Defining Social Justice*, 108 FIRST THINGS 11 (2000).

¹⁴ Novak, *supra* note 13, at 12; Friederich Hayek is regarded as a key figure in the twentieth century revival of liberalism and tide change away from statism. His work in theoretical psychology represents a landmark in twentieth century thinking about human learning and cognition. Hayek was a 1974 Nobel Prize winner. *See* The Friederich Hayek Scholars’ Page, <http://www.hayekcenter.org> (last visited Oct. 30, 2006).

¹⁵ Novak, *supra* note 13, at 13.

¹⁶ Novak, *supra* note 13, at 12-13.

¹⁷ Novak, *supra* note 13, at 13 (quoting Alexis de Tocqueville).

¹⁸ Novak, *supra* note 13, at 13.

¹⁹ JOHN STUART MILL, UTILITARIANISM 52, 53-55 (George Sher ed., Hackett Publishing Co. Inc. 2001) (1861).

²⁰ *Id.* at 62.

²¹ *See, e.g.*, JOHN THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS (1975); E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988).

- ²² THIBAUT & WALKER, *supra* note 21, at 67.
- ²³ *See generally* LIND & TYLER, *supra* note 21 (survey of the theory and research on procedural justice presenting the premise that people are more interested in process than outcome and evaluate their experiences by the form of the social interactions involved).
- ²⁴ *Citizen Discontent*, *supra* note 2, at 877.
- ²⁵ *Id.* at 877-879.
- ²⁶ *Id.* at 875.
- ²⁷ *See generally* *Citizen Discontent*, *supra* note 2.
- ²⁸ Washington State examples in this realm are worth noting: implementation by statute and growth of certified translators in five languages by Washington courts and the formation of several state-sponsored, problem-solving courts and dispute resolution centers; *see generally* Washington Courts, <http://www.courts.wa.gov> (last visited Oct. 10, 2006).
- ²⁹ *Citizen Discontent*, *supra* note 2, at 882.
- ³⁰ *Id.*
- ³¹ *Id.* at 885.
- ³² *Id.* at 887.
- ³³ *Id.*
- ³⁴ *See e.g.*, *Citizen Discontent*, *supra* note 2 (citing the works of Thibaut and Walker (1975), Houlden (1980), Heinz and Kerstettner (1979), Kitzmann and Emery (1993), MacCoun, Lind, Hensler, Bryant, and Ebener (1988)). *See generally* the studies and published articles of Tom R. Tyler and E. Allan Lind.
- ³⁵ BLACK'S LAW DICTIONARY 1003 (8th ed. 2004).
- ³⁶ *Citizen Discontent*, *supra* note 2, at 878.
- ³⁷ *Id.*
- ³⁸ *Id.* at 878-79.
- ³⁹ *Id.*
- ⁴⁰ *Id.* at 873.
- ⁴¹ *Id.* at 878.
- ⁴² *Id.*
- ⁴³ *See* BLACK'S LAW DICTIONARY 1190 (8th ed. 2004).
- ⁴⁴ *Citizen Discontent*, *supra* note 2, at 888.
- ⁴⁵ *Id.*
- ⁴⁶ *Id.* at 895-96.
- ⁴⁷ *Id.* at 887-92.
- ⁴⁸ *Id.* at 888.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.* at 889.
- ⁵¹ *See, e.g.*, David Wexler & Bruce Winick, *Putting Therapeutic Jurisprudence to Work*, 89 A.B.A. J. 54, 54-57 (2003); Barry E. Katz, *Putting the Counsel Back into Counselor*, ABA STUDENT LAWYER, May 2000, at 32-35; International Alliance of Holistic Lawyers Home Page, <http://www.iah.org> (last visited Dec. 19, 2006); Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering?*, 8 GA. ST. U. L. REV. 385, 386. (1992).
- ⁵² *Citizen Discontent*, *supra* note 2, at 890.
- ⁵³ *Id.*

⁵⁴ *Id.* at 882.

⁵⁵ *Id.* at 892.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 894.

⁶¹ *Id.* at 893.

⁶² *Id.*

⁶³ *Id.* at 894.

⁶⁴ *Id.*

⁶⁵ *Id.* at 895.

⁶⁶ Susan Daicoff, *The Comprehensive Law Movement*, 19 *TOURO L. REV.* 825, 832-34 (2004).

⁶⁷ *Id.* at 833-35.

⁶⁸ *Id.* at 836.

⁶⁹ *Id.* at 838.

⁷⁰ *Id.* at 839.

⁷¹ See, e.g., Daicoff, *supra* note 66, at 836; Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 *HARV. NEGOT. L. REV.* 1 (2002); Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 *HARV. NEGOT. L. REV.* 109 (2002); STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999); *Citizen Discontent*, *supra* note 2, at 893; DAICOFF, *supra* note 3.

⁷² See Daicoff, *supra* note 66, at 845; DAICOFF, *supra* note 3, at 171.

⁷³ See Steven Keeva, *A Mindful Law Practice*, 90 *A.B.A. J.* 78, 78-79 (2004); Steven Keeva, *A Meditative Perspective*, 91 *A.B.A. J.* 76, 76 (2005).

⁷⁴ See generally LIND & TYLER, *supra* note 21.

⁷⁵ Daicoff, *supra* note 4, at 477-78.

⁷⁶ Daicoff, *supra* note 66, at 837.

⁷⁷ *Id.* at 837-38.

⁷⁸ See generally, LIND & TYLER, *supra* note 21.

⁷⁹ Mark S. Umbreit, *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, 1 *W. CRIMINOLOGY REV.* 1 (1998), available at <http://wcr.sonoma.edu/v1n1/umbreit.html>.

⁸⁰ *Id.*

⁸¹ *Id.* at 21.

⁸² *Id.* at 4-5.

⁸³ See Umbreit, *supra* note 79, at 3-4.

⁸⁴ *Id.* at 23.

⁸⁵ *Id.* at 24.

⁸⁶ *Id.*

⁸⁷ *Id.* at 18.

⁸⁸ *Id.*

⁸⁹ *Id.* at 10.

⁹⁰ *Id.* at 11.

⁹¹ *Id.*

⁹² *Id.* at 12.

⁹³ *Id.* at 20.

⁹⁴ *Id.* at 23.

⁹⁵ *Id.* at 13.

⁹⁶ *Id.* at 14.

⁹⁷ Telephone Interviews with Dave Bonga, General Counsel, Kalispel Tribe (Nov. 11, 2005, and Oct. 3, 2006). *See also* Kalispel Tribe of Indians Res. 1997-54 (1997) (enacted) (authorizing the Traditional Court of Peacemakers); Kalispel Tribe of Indians Res. 2005-06 (2005) (enacted).

⁹⁸ *See generally* National Tribal Justice Resource Center, Tribal Healing to Wellness Courts, <http://www.tribalresourcecenter.org/courts/details.asp?39> (last visited Oct. 30, 2006); Robert Yazzie, Chief Justice of the Navajo Nation, *Healing as Justice: the American Experience*, NATIVE LAW CENTRE OF CANADA (SPRING 1995), <http://www.usask.ca/nativelaw/publications/jah/yazzie.html> (last visited Oct. 23, 2006).

⁹⁹ James W. Zion, *Indian Restorative Healing* (Aug. 2002), http://iirp.org/library/mn02/mn02_zion.html (last visited Oct.30, 2006). I echo the sentiments of Mr. Zion, a non-Indian scholar of Indian law for more than twenty years, when he writes, “I hope that I will not offend if I discuss traditional healing ways—or at least concepts that can be abstracted from them.” *Id.* Being non-Indian myself and having had very little exposure to traditional Indian ways, I, too, am treading on sacred ground where I do not belong. My treading is with the desire to begin to understand.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ National Tribal Justice Resource Center, Tribal Court History, <http://www.tribalresourcecenter.org/tribalcourts/history.asp> (last visited Oct. 30, 2006).

¹⁰⁵ *Ex Parte* Crow Dog, 109 U.S. 556 (1883).

¹⁰⁶ National Tribal Justice Resource Center, Tribal Court History, *supra* note 104.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *See* Washington State Court Directory: Washington Tribal Courts, http://www.courts.wa.gov/court_dir/orgs/134.html (last visited Oct. 30, 2006).

¹¹¹ *See* Official Site of the Navajo Nation, Navajo Nation Phone Directory, <http://www.navajo.org/NNDir.htm> (last visited Oct. 30, 2006) (listing Peacemaker divisions within the office of the Chief Justice as well as each of the seven district courts).

¹¹² *See* Phyllis E. Bernard, *Community and Conscious: The Dynamic Challenge of Lawyers' Ethics in Tribal Peacemaking*, 27 U. TOL. L. REV. 821, 821-825 (1996); Robert D. Garrett, *Mediation in Native America*, 49 DISP. RESOL. J. 38, 39 (1994). *But see*

James W. Zion & Robert Yazzie, *Indigenous Law in North America in the Wake of Conquest*, 20 BRIT. COLUM. INT'L. & COMP. L. REV. 55, 71-72 (1997).

¹¹³ National Tribal Justice Resource Center, Tribal Peacemaker, <http://www.tribalresourcecenter.org/personnel/details.asp?27> (last visited Oct. 30, 2006).

¹¹⁴ National Tribal Justice Resource Center, Tribal Court Directory, <http://www.tribalresourcecenter.org/tribalcourts/directory/default.asp> (enter Kalispel in search by tribal name field) (last visited Oct. 30, 2006).

¹¹⁵ Bonga Interviews, *supra* note 97.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Telephone Interview with Cathleen Kintner Christie, Prosecutor, Kalispel Trial Court, (Nov. 10, 2005).

¹²³ *See, e.g.*, National Tribal Justice Resource Center, Court History, *supra* note 104.

¹²⁴ The Navajo Nation presents perhaps the most dynamic example of a modern tribal justice system rooted in traditional practices. *See, e.g.*, Navajo Nation Home Page, <http://www.navajo.org> (last visited Mar. 16, 2006); Yazzie, *supra* note 98 (noting the elements of the traditional Navajo justice ceremony as including prayer, expression of feelings, lecture, discussion, reconciliation, and consensus); Navajo Nation Bar Association, http://www.navajolaw.org/aboutus_01.html (last visited Mar. 16, 2006) (stating that the Navajo Nation has had a tribal bar association for twenty-five years).

¹²⁵ U.S. DEP'T. OF JUST., BUREAU OF JUST. ASSISTANCE., TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS, (2003), at vii, *available at* <http://www.ncjrs.org/pdffiles1/bja/188154.pdf>.

¹²⁶ Zion, *supra* note 99.

¹²⁷ The work of at least two contemporary legal scholars and practitioners reflect the Native American approach to justice as healing. David Link, president and CEO of the International Centre for Healing and the Law and former dean of Notre Dame Law School for twenty-four years, points out that historically the law was one of the three great healing professions, the others being the clergy and medicine. Steven Keeva, *Once More, With Healing*, 90 A.B.A. J. 74, 74-75 (2004). Stella Rabaut is an attorney and adjunct professor at Seattle University School of Law and the Leadership Institute of Seattle at Bastyr College for naturopathic medicine. In a class for law students called "Transforming the Practice" and at various retreats, trainings, and CLE workshops for attorneys, Rabaut presents a vision of the legal profession informed by the six principles of alternative medicine. The principles are: do no harm; utilize the healing power of nature; treat the whole person; prevent problems before they occur; establish health and wellness in your client; and coach and teach rather than control or act as an expert. About her perspective on her practice she writes, "my clients routinely appeared at my door in distress because they were troubled by a violated business contract, a personal

injury done, or a torn relationship. Healing is the work I do as an attorney.” (materials on file with Rabaut and the author).

¹²⁸ Daicoff, *supra* note 66, at 842.

¹²⁹ *Id.*

¹³⁰ *Id.* at 842-843.

¹³¹ *Id.* at 842.

¹³² See Cara Solomon, *King County Court Helps Drug Addicted Parents*, THE SEATTLE TIMES, Aug. 23, 2005, at B1.

¹³³ *Id.*

¹³⁴ See Claudia Rowe, *A New Court Exists to Help Reunite Families*, SEATTLE POST-INTELLIGENCER, Oct. 4, 2004, available at http://seattlepi.nwsource.com/local/193614_foster04.html.

¹³⁵ Telephone Interview with Kelly Warner-King, Program Manager, King County Family Drug Court (Nov. 22, 2005).

¹³⁶ Solomon, *supra* note 132.

¹³⁷ *Id.*

¹³⁸ Author observations while in attendance at the Aug. 12, 2005, King County Family Drug Court session.

¹³⁹ *Id.*

¹⁴⁰ Rowe, *supra* note 134.

¹⁴¹ Warner-King Interview, *supra* note 135.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Solomon, *supra* note 132.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Rowe, *supra* note 134.

¹⁵³ Solomon, *supra* note 132.

¹⁵⁴ *Id.*

¹⁵⁵ Warner-King Interview, *supra* note 135.

¹⁵⁶ See generally LIND & TYLER, *supra* note 21.

¹⁵⁷ Solomon, *supra* note 132.

¹⁵⁸ Warner-King Interview, *supra* note 135.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Author observations, *supra* note 138.

¹⁶² *Id.*

¹⁶³ Solomon, *supra* note 132.

¹⁶⁴ *Id.*

¹⁶⁵ Warner-King Interview, *supra* note 135.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See generally *Citizen Discontent*, *supra* note 2.

¹⁷² Solomon, *supra* note 132.

¹⁷³ Telephone Interview with Patricia M. Graney, Artistic Director, Pat Graney Company, Project Director, *Keeping The Faith* (Nov. 15, 2005). The author has had a long association with the Pat Graney Company, both employed as the company manager and as a volunteer on the Board of Trustees. Thus, much of this section stems from personal knowledge and experience.

¹⁷⁴ *Id.*

¹⁷⁵ Therese Frare, *Inmates Find Personal Freedom in Dance Program*, N.Y. TIMES, Aug. 6, 1995, § 1, at 26.

¹⁷⁶ *Id.*

¹⁷⁷ Graney Interview, *supra* note 173.

¹⁷⁸ Author's personal knowledge and experience, *supra* note 173.

¹⁷⁹ *Id.*

¹⁸⁰ Graney Interview, *supra* note 173; materials describing KTF also on file with Pat Graney Company.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Printed Program for *Keeping The Faith* 2005 Performances at Mission Creek Corrections Center for Women, Belfair, Wash. (Nov. 18-19, 2005).

¹⁸⁵ See, e.g., Frare, *supra* note 175.

¹⁸⁶ *Id.*

¹⁸⁷ Jean Lenihan, *Choreographer and Inmates Make Personal Statements Within Confines of Institution*, THE SEATTLE TIMES, Aug. 14, 1995, at F1.

¹⁸⁸ Graney Interview, *supra* note 173.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Author's own knowledge and experience, *supra* note 173.

¹⁹² Lodi McClellan, *I Know Why the Caged Bird Dances*, CURVE, Mar. 1998, at 26.

¹⁹³ Graney Interview, *supra* note 173.

¹⁹⁴ Printed Program, *supra* note 184 (stating that in 1999, over 130 inmates sent in requests to sign up for the KTF program).

¹⁹⁵ Graney Interview, *supra* note 173 (Graney stated that a new management philosophy at WCCW in Purdy, Washington, has become inhospitable to the KTF program because it imposes fundamentalist Christian values and only provides programming for inmates around the fundamentalist Christian definition of "the good woman," which Graney found to conflict with the mutual support and honest expression required by KTF activities).

¹⁹⁶ *Id.*

- ¹⁹⁷ Printed Program, *supra* note 184.
- ¹⁹⁸ Graney Interview, *supra* note 173.
- ¹⁹⁹ *Id.*
- ²⁰⁰ Lenihan, *supra* note 187.
- ²⁰¹ Lodi McClellan, *Serving Time, Keeping Time*, SEATTLE WEEKLY, Aug. 5, 1999, at 33.
- ²⁰² *See generally* Umbreit, *supra* note 79.
- ²⁰³ For the purposes of this article, ADR generally includes the comprehensive law practices.
- ²⁰⁴ Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073 (1981).
- ²⁰⁵ *Id.* at 1085.
- ²⁰⁶ *Id.* at 1083.
- ²⁰⁷ Harry T. Edwards, *Alternative Dispute Resolution: Panacea or Anathema?*, 99 HARV. L. REV. 668, 670-72 (1986).
- ²⁰⁸ *Id.* at 671.
- ²⁰⁹ *Id.* at 677-79.
- ²¹⁰ *Id.* at 680-82.
- ²¹¹ LEONARD L. RISKIN ET. AL, DISPUTE RESOLUTION AND LAWYERS 731-746 (3d ed. 2005).
- ²¹² Deborah R. Hensler, *Suppose It's Not True: Challenging Mediation Ideology*, 2002 J. DISP. RESOL. 81, 84-85.
- ²¹³ *Id.* at 98.
- ²¹⁴ *Id.*
- ²¹⁵ *Id.* at 82.
- ²¹⁶ *Id.* at 98.
- ²¹⁷ *Id.*
- ²¹⁸ *Id.*
- ²¹⁹ *Id.* at 99.
- ²²⁰ *Id.* at 98.
- ²²¹ Edwards, *supra* note 207, at 677-78; Fiss, *supra* note 204, at 1085-86.
- ²²² *Citizen Discontent*, *supra* note 2, at 893.
- ²²³ *Id.* at 896.
- ²²⁴ Umbreit, *supra* note 79, at 23.
- ²²⁵ *Id.*
- ²²⁶ Peter Gabel, *Imagine Law*, 15 TIKKUN No. 6, 11-15 (2001).
- ²²⁷ *Id.*
- ²²⁸ *Id.* at 14.
- ²²⁹ *Id.*
- ²³⁰ *Id.* at 15.