

# RESTORATIVE JUSTICE IN CRIMINAL PRACTICE

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Co-Presented by the  
Alternative Dispute Resolution Section,  
Criminal Law Section, and Government Lawyer Section  
of The Florida Bar, and the  
Florida Restorative Justice Association

**Friday, June 25, 2021**  
**1:00pm-4:00pm**

*A virtual CLE presentation  
via Zoom Webinar*

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The Alternative Dispute Resolution, Criminal Law, and Government Lawyer Sections of The Florida Bar, along with the Florida Restorative Justice Association, proudly present **Restorative Justice in Criminal Practice** -- a program intended to open hearts and minds and inspire transformational change in how we resolve criminal cases.

Through very personal case study, and frank discussion, some of the country's foremost scholars, judges, and practitioners will define the concept of restorative justice, explore its theory and origins, and discuss various models and the practical application of restorative justice practices in our criminal justice system.

## PROGRAM

1:00pm-1:05pm

Welcome

**Jacek Stramski**

Special Counsel, Florida Department of Revenue,  
Tallahassee

Immediate Past-Chair, Government Lawyer Section and  
Program Co-Chair

1:05pm-1:55pm

An Introduction to Restorative Justice

This panel will define the concept of restorative justice and explore its theory and origins. The panel will then discuss how restorative justice works -- its efficacy -- describing various models of applying restorative justice in the criminal justice system.

Moderator

**Edith Georgi**

Assistant Public Defender (ret.), Miami

University of Miami School of Law, Miami

St. Thomas University College of Law, Miami Gardens

Panelists

**Donna Coker**

University of Miami School of Law, Miami

**Justice Janine Geske (ret.)**

Marquette University Law School, Milwaukee, Wisconsin

**Aparna Polavarapu**

University of South Carolina School of Law, Columbia,  
South Carolina

1:55pm-2:05pm

Break

2:05pm-2:55pm

A Case Study

Moderator

**Kelly McGrath**

Kelly McGrath Law, Tallahassee

Panelists

**Kate and Andy Grosmaire**

**Julie and Michael McBride**

2:55pm-3:05pm

Break

3:05pm-3:55pm

Restorative Justice in Criminal Practice

This panel will discuss practical considerations in applying restorative justice practices to criminal cases.

Moderator

**H. Scott Fingerhut**

FIU College of Law and H. Scott Fingerhut, P.A., Miami  
Program Co-Chair

Panelists

**Michael Becker**

Assistant State Attorney, 8<sup>th</sup> Judicial Circuit, Gainesville

**Robert Burrs**

Executive Director, Conflict Solutions Center of Santa  
Barbara County, California

**Dean Galigani**

Gailgani Law Firm, Gainesville

**Hon. Steve Leifman**

County Judge, Eleventh Judicial Circuit

3:55pm-4:00pm

Program Close

**H. Scott Fingerhut**

FIU College of Law and H. Scott Fingerhut, P.A., Miami  
Program Co-Chair

## **Michael Becker**

Michael Becker is a parent, a Marine, a stoic, and a prosecutor, generally in that order. I'm funnier inside my head than when the attempt at humor escapes, but my wife of 21 years still smiles my way. To relax, I climb trees with a chainsaw.

History –

Prosecutor, 8<sup>th</sup> Circuit – 2000-present

2012 – present (Intake – thousands of search warrants & other court applications)

Santa Fe College, Police Academy – 2003, 2008-present

Guardian Program – 2019-present

Liaison with Drug Task Force – 2012-present

Drug Task Force Award for Prosecution – 2015-2018

Two 8<sup>th</sup> Circuit jury trial convictions for racketeering – 2019

Sexually Violent Predators (Jimmy Ryce Act) – 2007-2017

United States Marine Corps, Reserves – 1992-2000

Quotes –

Every day we go to work and push back the fall of civilization by one day.

The work is hazardous, our decisions can make it dangerous.

A society that doesn't protect children won't survive for long and doesn't deserve to.

There are too many mistakes to be made to waste time repeating them.

Assistant State Attorney

Office: 120 West University Ave.

Gainesville, FL 32601

Email: [beckerm@sao8.org](mailto:beckerm@sao8.org)

Education

1999 Juris Doctor, University of Florida

1996 Bachelor of Arts, University of Florida, Major in Economics

## **Robert Burrs**

Rob is an energetic and passionate community voice on restorative justice. He is a juvenile justice advocate, problem solving court professional, innovative program developer, restorative justice practitioner, non-profit executive, and lawyer. Rob's delivered addresses on criminal justice reform using restorative principles when he was an Advisor for Loyola Law School's Center for Conflict Resolution (LCCR) in Los Angeles in 2013. He was also a keynote panelist for Prison Fellowship® Justice that Reforms Conferences 2016, the School District 49 Rocky Mountain Restorative Practices Conference, and the Pikes Peak Community Colleges Courageous Conversation Series on Justice Reform in 2019. He has been at the forefront establishing restorative justice programs throughout the country in Victim Offender Mediations and Victim Advocacy programs. In Colorado Springs, CO implemented a \$2.5 million Department of Labor &

Justice grant initiative centered on placing offenders into high growth and high demand industries under a restorative justice approach. In Santa Barbara County, CA he led in the creation of the Restorative Justice Partnership Initiative linking victims of crime, their offenders, and the community in restorative dialogues designed to repair victims and address their needs, recover restitution, and make offenders accountable for their actions. In Brevard County Florida, Rob is a member of the Florida Restorative Justice Association. In March 2020 he established Restorative Justice Diversified Services, LLC (RJDS), a Restorative Justice development, implementation, and customized trainings for government agencies, schools, community based organizations, citizens, and neighborhood associations. Rob graduated with a Bachelor of Arts, in the Administration of Justice and Political Science from Howard University in Washington, DC in 1999 and received his Juris Doctor degree from the Southern California Institute of Law in Santa Barbara, CA in 2013. He completed the University of Northern Colorado Monfort College of Business in Executive Nonprofit Leadership in 2005. His greatest blessings are being the husband to his wife Bethany who serves our country in the US Air Force 114th Space Wing and as the father to their three children Kaleb, Evelynna, and Eliana.

## **Donna Coker**

Donna Coker's scholarship focuses on criminal law, gender and race inequality. She is a nationally recognized expert in intimate partner violence (IPV) law and policy. Her research concerns the connection between economic vulnerability and IPV; restorative justice responses to IPV and sexual harm; and the intersections of gender and race subordination in criminal law doctrine, policy, and application. Her research is interdisciplinary and influenced by scholarship in critical race feminism, restorative justice, public health, and criminology.

Professor Coker is a leading critic of the disproportionate focus on criminal justice responses that characterizes U.S. IPV policy. Her widely cited research illustrates the negative impact of this focus on women marginalized as a function of poverty, race, and immigration status. In 2014, she co-organized a national conference of more than 200 academics across disciplines, service providers, attorneys, activists, and students. The conference, Converge! Reimagining the Movement to End Gender Violence, furthered gender violence activism and policy that is anti-racist, supports alternatives to crime-centered approaches, and addresses structural inequality. In 2015, she was the co-investigator for a national survey of service providers regarding police response to domestic violence and sexual assault. With more than 900 respondents, the survey uncovered significant police bias on the basis of gender, race, class, immigration status, and LGBTQ identity.

Professor Coker's research regarding the use of restorative approaches to IPV and sexual harm has influenced work in the interdisciplinary fields of restorative justice and domestic violence in the United States and abroad. Her empirical study of Navajo Peacemaking use in domestic violence cases was one of the first empirical studies of

Peacemaking and the first to focus on domestic violence cases. Her recent work examines the use of restorative justice responses to campus sexual assault.

Her work on the nature of "heat of passion" doctrine uncovered gender related assumptions imbedded in criminal law doctrine. She continued to explore gender and racial bias in her Criminal Law Stories chapter on Wanrow, a self-defense case frequently cited as the first "women's self-defense" case. She co-edited Criminal Law Stories (2013) with Professor Robert Weisberg (Stanford Law).

Before attending law school, Professor Coker worked in the domestic violence field for 10 years. This work began in 1978 when she became the sole staff person for a newly opened battered women's shelter in Little Rock, Arkansas. In subsequent years she was the Coordinator of a community based battered women's project in Honolulu, Hawaii, overseeing advocacy and support for more than 100 women a year.

## **H. Scott Fingerhut**

Now in his 33rd year as a trial lawyer and 22nd year of full-time law teaching, H. SCOTT FINGERHUT is a three-time Professor of the Year and two-time Pioneer Award winner at FIU College of Law in Miami, where he teaches Trial Advocacy, Criminal and Civil Pretrial Practice, Criminal Procedure, and coaches the Trial Team. By Dean's appointment, Professor Fingerhut is also a Fellow of The Honors College at FIU and Pre-Law Faculty Advisor, teaching the two-part upper-level seminar Observing Ourselves: in fall, YOUiversity: A Legal Primer for Life After Honors, and in spring, The Gathering: Great Discussions About Contemporary Law in My America.

In court, Professor Fingerhut devotes himself to criminal defense and the defense of applicants seeking admission before the Florida Board of Bar Examiners and lawyers facing Florida Bar discipline. Rated AV Preeminent by Martindale-Hubbell, Professor Fingerhut is consistently ranked among the region's top criminal defense lawyers, including The Best Lawyers in America.

Beyond campus and the courthouse, Professor Fingerhut is a Florida Bar leader, earning the unique distinction to twice serve as chair of The Florida Bar Criminal Procedure Rules Committee, and also serving as chair of the Criminal Law Section of the Bar.

Currently, Professor Fingerhut is a member of The Bar's Professional Ethics Committee, the Code & Rules of Evidence Committee, the Criminal Law Section Executive Council, and serves as the Criminal Law Section CLE chair. Professor Fingerhut is also appointed to a State of Florida Eleventh Judicial Circuit Professionalism Panel. And most recently he has been selected to serve as a subject matter expert on the revision of the Florida Bar examination for the Florida Board of Bar Examiners' Practice Analysis Panel.

Professor Fingerhut has chaired the Dade County Bar Association Criminal Law Committee, served as president of the Florida Association of Criminal Defense Lawyers-

Miami Chapter (FACDL-Miami), and was the Dade County Bar Designee to the Miami-Dade County Mayor's Mental Health Task Force.

He has also served as a member of The Florida Bar Committee to Study the Decline in Jury Trials, The Bar's Committee on Student Education and Admission to the Bar, The Florida Supreme Court Criminal Court Steering Committee Workgroup on Post-Conviction Relief, the Editorial Board of The Florida Bar Journal and Florida Bar News, and, by appointment of the Chief Justice of the Florida Supreme Court, the Florida Innocence Commission.

A frequent writer, lecturer, and legal commentator on ethics, liberty, and justice matters, Professor Fingerhut's co-authored chapter, "Conflicts of Interest and Other Pitfalls for the Expert Witness," has been twice published in Springer Publishing's Handbook of Forensic Neuropsychology. Released in 2016 from LexisNexis is Professor Fingerhut's Practice Guide, Florida DUI Law, which he co-authors with the extraordinary Robert S. Reiff. And most recently, Professor Fingerhut is being invited to speak with lawyers across Florida – including the federal judiciary of the Eleventh Circuit -- on the need for our profession to "Take Back Truth in an Age of 'Literal Truthiness.'"

Professor Fingerhut received his undergraduate degree in American Government and Music from the University of Virginia in Charlottesville, and his law degree from Emory University in Atlanta, where he was a Moot Court Team member, softball captain, and proudly hosted the Law Follies.

Before entering private practice, Professor Fingerhut served as a prosecutor in Janet Reno's Miami-Dade County State Attorney's Office.

He is the recipient of the "Put Something Back" Pro Bono Award from the Dade County Bar, the Daniel S. Pearson-Harry W. Prebish Founders Award from FACDL-Miami, and the Steven M. Goldstein Criminal Justice Award from FACDL Statewide.

Six times Professor Fingerhut has been selected by the FIU College of Law graduating class to hood them at Commencement. And in 2019, the graduates chose him to deliver the inaugural "Last Lecture."

## **Edith Georgi**

Edith Georgi joins the adjunct faculty of St. Thomas University Law School in January of 2017. After 35 years in the Miami-Dade County Public Defender's Office litigating death penalty and other major crimes cases, she is looking forward to sharing her knowledge and practical experience with the students, especially as this is a critical time in the history of death penalty law in Florida.

After receiving her B.A. at Wellesley, she taught at the Chinese University of Hong Kong for several years while studying Chinese. She then received her Master's in Chinese



Studies from Indiana University. After working on a volunteer basis with children in abusive family relationships, Professor Georgi entered law school and received her J.D. from University of Miami Law School and chose to go directly to the Public Defender's Office. Within a few years, she was trying homicide cases, including capital cases. In the mid-1980's she was chosen to create and lead the office's Capital Litigation Unit, which has become a model unit in Florida as well as nationwide.

Professor Georgi has been honored for her work by the Dade County Bar Association, the Florida Association of Criminal Defense Attorneys, as well as the statewide Florida Public Defender's Association. She has been teaching in the Litigation Skills Department at University of Miami Law School for over 20 years and has recently been instructing there in the field of Death Penalty Litigation.

Professor Georgi believes in teaching theory with an emphasis on practical applications. "As we face the challenges of an ever complex world, our students need to be prepared to understand the rulings of the higher courts as well as to navigate as an advocate in our multi-disciplined society. The study of capital punishment is one example. It is as much a study of our religious, social, and cultural values as it is about our constitutional system."

## **Justice Janine P. Geske**

Justice Janine P. Geske served as a Distinguished Professor of Law at Marquette University Law School and Director of the Law School's Restorative Justice Initiative. She currently is a member of the Marquette University Board of Trustees. In the fall of 2011, she served as a Visiting Professor of law at the Catholic University of Leuven, Belgium in Restorative Justice at its Institute of Criminology. She served as interim dean of Marquette Law School from July 2002 to July 2003 and as interim Milwaukee County Executive from February 28 to May 6, 2002. She previously served on the Wisconsin Supreme Court from 1993-1998. From 1981-1993, she was a Milwaukee County Circuit Court judge. Prior to becoming a judge, she served as chief staff attorney for the Legal Aid Society of Milwaukee and then as clinical director and assistant professor of law at Marquette University.

She served as the Association of Marquette University Women Chair in Humanistic Studies, 2000 - 2001 and served as a member of the faculty of the National Judicial College in Reno, Nevada for over ten years.

In 2013, the St. Thomas More Lawyer's Association awarded her its Faithful Servant Award. In 2009, she received the Woman of Faith Award from the Sisters of the Divine Savior, the F.B.I. Director's Community Award and a Wisconsin State Bar Fellows Award in recognition for contributions to the Bar and the ideals of the American Bar Foundation. In 2008, she was inducted into the Wisconsin Academy of Science, Arts and Letters. In 2007, she was awarded the 2007 Thurgood Marshall College Fund Legacy Award, the 2007 American Inns of Court 7th Circuit Professionalism Award, the 2007 U.S. Postal Service Government Service/Law Award, the St. Norbert College

Ambassador of Peace Award, the SET Ministry Transformation Award, an honorary member of Phi Beta Kappa. In 2006, Justice Geske was awarded "The Woman of the Word Award from the Milwaukee Cathedral Place (a women and children's homeless shelter), The "Difference Maker Award" from the American Bar Association General Practice, Solo and Small Firm Division.

In 2003, Marion College in Fond du Lac, Wisconsin awarded Justice Geske an honorary doctor of law degree and Marquette University High School awarded her the Spirit of St. Ignatius Award. In 2002 the Milwaukee Archdiocese recognized her with the Vatican II Award in communication. In 1998, she received an honorary Doctor of Law degree from Marquette University and an honorary doctorate of humanities from Mount Mary College in Milwaukee. In that same year, the Wisconsin Newspaper Association selected her as the Newsmaker of the Year and the Milwaukee Press Club honored her by choosing her as the Milwaukee Headliner of the Year. In both 1994 and 2002, the Milwaukee Bar honored Justice Geske with its "Lawyer of the Year" award. Justice Geske was recognized by Marquette University as the 1993 Law School Alumnae of the Year and as the 1994 all university Alumnae of the Year. She was also honored with an alumni Service Award from Beloit College in 2002. She was granted a Special Achievement Award as a Wisconsin Leader in the Law that same year. The Friends of the Benedict Center gave Justice Geske their Justice Award in 2003.

She also has been recognized by receiving the Marquette University Criminology and Law Studies Program Veritas et Justitia Award, 1994 (for dedication to truth and justice), the Professional Dimensions' Sacajawea Award, 1994 (for exceptional community service and leadership), the Legal Aid Society's Equal Justice Award, 1992 and the Outstanding Citizen Award, Pi Lambda Theta, 1992.

Justice Geske has served as the commencement speaker at a number of college and university graduation ceremonies. She frequently teaches at judicial, legal and community conferences on mediation, restorative justice, sentencing, evidence, the courts, and spirituality and work. She is a member of the American Bar Association, State Bar of Wisconsin, Fellows of the American Bar, Fellows of the Wisconsin Bar, American Law Institute, Association of Conflict Resolution and the Wisconsin Association of Mediators.

Justice Geske is also a Fellow of the American College of Civil Trial Mediators, member of the Association for Conflict Resolution, member of the Alternative Dispute Resolution sections of the American and Wisconsin Bar Associations, member of the Standing Committee for Indigent Defense, Federal Public Defender's Office, and member of the Board of Trustees for the Greater Milwaukee Foundation, member of the Board of Directors for the Opus Prize ( an annual \$1 million humanitarian award), member of the Department of Corrections Victims Advisory Committee. She has previously served as the Dean of the Wisconsin Judicial College, member of the Board of Trustees for the International Centre on Healing and the Law, Chair of the Marquette University High School board of directors, former member of Inns of Courts-Madison, Inns of Court-Milwaukee, Mayor John Norquist's Task Force on Drugs/Crime in the Neighborhoods,

Wisconsin Equal Justice Task Force, Task Force on Victims' Rights Amendment, Milwaukee Homicide Advisory Panel, State Bar Commission on Delivery of Legal Services, Beloit College Board of Trustees, and Milwaukee Bar Association Board of Directors.

Justice Geske graduated from Beloit College with a Bachelor of Arts degree and a Masters of Arts in Teaching and received her J.D. from Marquette University Law School.

Special Recognitions: Selected for 2005 through 2015 as one of "The Best Lawyers in America" for her work in dispute resolution.

### **Andy Grosmaire**

Andy Grosmaire is the Chief of Enforcement with the Office of Financial Regulation for the State of Florida and a permanent deacon in the Catholic Church serving the diocese of Pensacola-Tallahassee.

### **Kate Grosmaire**

Kate Grosmaire is a Business Analyst with the Florida Department of Environmental Protection and is the author of "Forgiving My Daughter's Killer: A true story of Loss, Faith, and Unexpected Grace."

### **Judge Steve Leifman**

Judge Steve Leifman is the Associate Administrative Judge of the Miami-Dade County Court – Criminal Division. From 2007 – 2010, Judge Leifman served as Special Advisor on Criminal Justice and Mental Health for the Supreme Court of Florida. He currently chairs the Steering Committee on Problem Solving Courts for the Supreme Court of Florida and the Mental Health Committee for the Eleventh Judicial Circuit of Florida.

Judge Leifman is the co-chair of the American Bar Association Criminal Justice Mental Health Committee and co-chair of the Judges and Psychiatrists Leadership Initiative. He is also a gubernatorial appointment to the Florida Statewide Task Force on Opioid Abuse and a member of The National Institute on Drug Addiction's (NIDA) Justice Community Opioid Innovation Network. Judge Leifman is a lifetime member of the Group for the Advancement of Psychiatry (GAP), a Lecturer in Psychiatry at Columbia University Vagelos College of Physicians and Surgeons and a Voluntary Assistant Professor of Psychiatry and Behavioral Sciences at the University of Miami School of Medicine and on the Board of Directors of the Corporation for Supportive Housing. More recently, Judge Leifman was appointed to serve on the Conference of Chief Justices and Conference of State Court Administrators National Judicial Task Force to Examine State Courts' Response to Mental Illness and the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC) established by the 21st Century Cures Act.

In 2015, Judge Leifman received the William H. Rehnquist Award for Judicial Excellence. One of the nation's highest judicial honors presented by Chief Justice John G. Roberts Jr., the Rehnquist Award is presented annually to a state court judge who exemplifies judicial excellence, integrity, fairness, and professional ethics. Judge Leifman is also the first recipient to receive the Florida Supreme Court Chief Justice Award for Judicial Excellence (2015). He was named by New Times as one of Miami-Dade's most interesting people of 2017 and a 2016 Governing Magazine Public Official of the Year. More recently, Judge Leifman was awarded the 2020 Dade County Bar Association (DCBA) David W. Dyer Professionalism Award, the most prestigious honor bestowed by the DCBA, the 2018 Pardes Humanitarian Prize in Mental Health, the 2019 Yale-NAMI Mental Health Advocacy Award and a 2019 Presidential Commendation by the American Psychiatric Association.

Judge Leifman has been featured in many national and local television programs, radio programs, and articles regarding mental health and the criminal justice system. He has appeared as a guest on many Podcasts and has authored and published numerous articles and book chapters on mental illnesses and the criminal justice system. Judge Leifman is the subject of the Documentary, The Definition of Insanity which aired nationally on PBS on April 14, 2020.

The Definition of Insanity shows how one local judge's novel approach to solving the mental health crisis could be the model to tackle the much larger epidemic throughout America. [www.DOIFilm.com](http://www.DOIFilm.com)

## **Julie McBride**

Julie McBride has been teaching the joys of art for a number of years to children and college students in the Tallahassee community as an Elementary Art Instructor, and now as an Adjunct Professor.

## **Michael McBride**

Michael McBride is a Senior Database Administrator contracted with the Florida Department of Transportation.

## **Kelly McGrath**

Kelly is a Florida Supreme Court Certified Family Law Mediator, a Collaborative Law trained attorney, a Restorative Justice Facilitator, and a Conflict Coach.

I know that mediation is more powerful, less expensive, and less costly than a legal battle.

I help you settle legal disputes with peace and privacy, without putting you through the usual traumatic battle tactics or cold court procedures.

Bringing together 15+ years of experience and training in Restorative Justice, Trauma Informed Care, Non Violent Communication, and Conscious Contracts®, my goal is to help you bounce back from major life hardships, becoming even more deeply rooted in your sense of peace.

I want you to not only be legally secure, I want you to experience a mindset shift so you can heal, clear up any chaos that's holding you back, and begin to build a fresh future.

Since becoming a lawyer in 2004, I've gathered a deep and wide understanding of compassionate listening and mediation practices that are remaking the profession for the better.

As a member of J. Kim Wright's Integrative Law Movement, I'm part of a movement of lawyers around the country who stay out of court and help people resolve their conflicts using their values and strengths. Mediation is a way to do that and take control of your life.

## **Aparna Polavarapu**

Professor Polavarapu is an Associate Professor at the UofSC School of Law and the Executive Director and Founder of the South Carolina Restorative Justice Initiative. She has over a decade of experience working in human rights and rule of law, both domestically and abroad. She has significant expertise in the field of legal pluralism, with a particular research focus on informal, community-driven justice systems and how they work together with formal, state-centered systems. Her research has covered a wide range of topics, including legal innovations used by courts to expand access to constitutional justice, the use of restorative justice mechanisms to combat domestic violence in Uganda, and how customary and statutory law interact to govern land rights in sub-Saharan Africa. Much of her scholarship draws from her direct experience working with women's rights groups in sub-Saharan Africa and in the United States

As the Executive Director of the South Carolina Restorative Justice Initiative, she oversees the development of restorative justice education and programming and works with organizations seeking to develop and implement their own restorative practices.

In addition, Professor Polavarapu continues to work with practitioners on domestic and global women's rights and justice matters. She has instructed practitioners on international rule of law topics, including African customary law, legal pluralism, and strategies for promoting human rights in legally pluralist systems. She has authored or contributed to expert human rights reports for organizations such as the UN Foundation and the Center for Reproductive Rights. Locally, she has testified before the South Carolina Senate on legislation affecting women and conducted trainings on restorative justice.

Professor Polavarapu teaches courses in Restorative and Transformative Justice, Comparative Law, Rule of Law, Transnational Law, and International Human Rights Law. Prior to coming to South Carolina, Professor Polavarapu was a Teaching Fellow with Georgetown's International Women's Human Rights Clinic. Prior to that, she practiced law at Edwards Angell Palmer & Dodge LLP in Boston. She received an LLM and JD from Georgetown University Law Center, an MA in international affairs from The Fletcher School of Law and Diplomacy at Tufts University, and a BS from the Massachusetts Institute of Technology.

## **Jacek Stramski**

Jacek Stramski currently serves as Special Counsel with the Florida Department of Revenue, and is an adjunct faculty member at the Florida State University. Prior to joining the Department of Revenue, Mr. Stramski was the enforcement attorney for the Florida Office of the Attorney General, Consumer Protection Division, where he enforced injunctive and monetary awards in state and federal courts throughout Florida, including in bankruptcy, and created an interstate working group to facilitate the cross-border enforcement of consumer protection judgments obtained by the various states. He previously worked as an attorney with the Florida House of Representatives and the Florida Department of Financial Services.

Mr. Stramski obtained his J.D. and M.S. in Political Science from the Florida State University, and his B.A. in Political Science and International Relations at the University of California, San Diego.

## **Role of Restorative Justice in Resolving High Emotion Civil Cases**

**Justice Janine P. Geske (ret.)  
Distinguished Professor of Law (ret.)  
Marquette University Law School**

### **1.) The intersection of negotiation, mediation and restorative justice**

**In a high emotion case (regardless of what side you are on), the emotions are a barrier to a negotiated settlement. There are many resources available on creative strategies in resolving conflict. A good resource on mediation is *The Mediation Process—Practical Strategies for Resolving Conflict 3<sup>rd</sup> Edition* by Christopher W. Moore.**

**In these cases, it is helpful to understand the principles of restorative justice, a philosophical approach to harm based on some very old traditions. The three fundamental questions to be answered to designing a restorative approach are:**

- a.) Who has been harmed?**
- b.) What was the true nature of the harm?**
- c.) What needs to happen to help in repairing the harm?**

**A good simple primer on restorative justice is a book by Howard Zehr, *The Little Book of Restorative Justice*.**

**Traditional litigation and negotiations often do not adequately address these questions. The focus in litigation is primarily on the plaintiff (instead of his/her relationships with others), the harm that is measurable in damages and the solution which usually lies in a financial payment. The needs of someone who has been hurt are often much more complex.**

### **2.) First steps**

**If you are representing someone who is emotionally damaged because of the harm of another, you need to use patient active listening to that individual and even members of his or her family. Much of what you hear may not be relevant to a lawsuit but are critical to the individual.**

**Fundamental to creating a resolution to these cases is creating a safe space and audience for those who have been harmed to tell their full story of what happened and how it has impacted them. Whether that audience might include the specific perpetrator depends on the facts and circumstances of**

**the case and the desires of those who have been harmed as well as the potential defendants.**

**3.)\_Selecting a mediator**

**When selecting a mediator for such a case you should know the style, philosophy and experience of the mediator you choose. You should also know the following information:**

**--is the mediator willing to handle the high emotional issues of the case (some mediators do not want to deal with the messiness of the emotional components of a case)**

**-is the mediator experienced in mediating these types of cases**

**-is the mediator able to promote creative problem solving to address the harm**

**4.) Selecting and preparing the space for a restorative encounter**

**5.) Different models of restorative approaches**

**a.) Victim/offender mediation/dialogue/negotiation**

**b.) Family group conferencing**

**c.) Community conferencing**

**d.) Circles**

**e.) Other individualized processes designed to meet the needs of addressing the harm**

**For an example see: Why Do I Teach Restorative Justice to Law Students?, 89 Marquette Law Review 327 (Winter 2005)**

**6.) Preparation, preparation, preparation.**

**7.) Process—See Cultivating Mindfulness**



## **CULTIVATING MINDFULNESS**

**To best serve as a mediator/facilitator/attorney with someone who has been through a seriously emotional or physical trauma, you must be personally peaceful and centered to be an effective listener and a creative problem solver. An important part of serving as an effective lawyer is physical and spiritual self-care. Before interacting with an emotional party, one should consider centering oneself by taking time to sit in silence, perhaps meditating, praying or practicing mindfulness. Only then can you peacefully enter into what will be a difficult conversation.**

**Professor Leonard Riskin's article is the seminal work on mindfulness. See 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)**

**Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79, (2004).**

### **PREPARING FOR A MEDIATION**

**When you are working with victims and survivors of violence or severe emotional harm, it is critical that you spend time with the parties to properly prepare them before any face-to-face meeting at a mediation. The primary objective is to avoid revictimizing anyone during the process. You also must strive to create a process that creates a safe environment for the difficult conversation, whether it be a direct face-to-face process or through a mediator.**

#### **1) Planning With the Client**

**It is critical that the attorney has a full discussion with the client about his or her expectations, interests, objectives, and areas of concern. The client should fully understand the mediation process (and know about the style of the mediator) before going to the mediation.**

**A mediator who knows how to work with a highly emotional party should be retained for cases with very emotional parties. The client needs to trust the mediator in order to have a successful mediation.**

**See Mark S. Umbreit, *The Handbook of Victim Offender Mediation*, Jossey-Bass, 2001 for tips on preparing people for facilitated processes.**

#### **2) Planning for the Mediation by Attorney and the Mediator (facilitator)**

**The attorney should decide whether a face-to-face meeting between the parties would make sense. The first step is assessing whether the situation is appropriate for a meeting or a mediation. If there has not been a good opportunity for the client to tell the lawyer about his or her life, at the mediation preparation meeting, the attorney should listen carefully as the client describes his or her life, what happened during the event(s) and how the harm has impact him or her (and his or her family, colleagues, friends, etc.). The attorney should practice deep listening to absorb not only the words but also the emotions behind the story.**

**See, Eleanor Rosch, Professor of Psychology, Univ. of Cal., Berkley, Address at The American Psychological Association: What Buddhist Meditation Has to Tell The Psychologist About the Mind (Aug. 23, 2002), available at [http://www.cpsphd.edu/dp\\_rosch%20meditation-mind.htm](http://www.cpsphd.edu/dp_rosch%20meditation-mind.htm).**

### **3) Educating the Victim/Survivor's Support Network**

**Support network members can have a significant impact on the psychological or emotional state of the victim/survivor whether they are present at the face-to-face meeting or not. If support people (family members, therapists, friends, etc.) are going to be involved, the attorney should make early contact with those people in order to educate them about the purpose of the process, the risks and benefits, and to help them understand the importance of their supporting roles. These contacts will help facilitate the development of a good process. It is critical to stay attuned to the psychological needs of the parties and refer them for therapy to a professional in appropriate.**

### **4) Defendant (offender) Accountability**

**Usually, in face-to-face meetings, the offender should acknowledge some responsibility for his or her part in causing the harm. Without offender accountability, the risk of revictimization increases substantially. It is often harmful to have a face-to-face meeting between the victim and the offender on these issues. If the case is for civil damages, the mediator will have to play the role of the empathetic neutral who deeply listens and acknowledges the harm and the pain that has been caused, remaining neutral in terms of any outcomes.**

### **5) Mediator's Preparing Participants (for a face-to-face meeting)**

**In crimes or incidents involving severe violence, a mediator must allow enough to adequately prepare the participants and allow them enough time for reflection before the meeting. Deep and thoughtful reflection will help the face-to-face meeting be the best that it can be. It is helpful for the participants to write questions for the other person before the meeting. The face-to-face meeting will not be limited to those question but they serve as a roadmap for the conversation. The questions can be shared with the other participant through the mediator. The mediator should listen to the answers to the questions and even coach the responder how he or she can most effectively answer the question without needlessly causing harm.**

**6) The Mediator's Role in the Face-to-Face Meeting (to talk about what happened as opposed to settlement discussions)**

**During the actual conference, the mediator's role is usually to create a safe environment, open up the session, help people relax and get them going. In most circumstances, and unlike in traditional mediations, the mediator often becomes only an observer to a very intense dialogue. In the "storytelling" phase of the mediation, the lawyers should remain relatively passive and quiet. When and if there are proposals for settlements, the attorneys obviously will be more involved.**

**There should be opportunities for breaks for the parties to individually meet and check in with the mediator and/or their attorney.**

**7) The Issue of Forgiveness and Apology**

**Forgiveness is a very complex religious, legal and psychological issue. A true apology can be enormously helpful in healing parties but a contrived apology usually does more harm to the parties and to the likelihood of reaching any kind of resolution. The issue of forgiveness in these contests can be found addressed in a book by Mark Umbreit, "The Energy of Forgiveness" and in a You Tube video "Being With the Energy of Forgiveness."**

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### ***Introduction to Restorative Justice Resource List***<sup>1</sup>

Florida Restorative Justice Association at <https://www.floridarestorativejustice.com/>

sujatha baliga, *A different path for confronting sexual assault. What is restorative justice? A practitioner explains how it works*, VOX (Oct. 18, 2018) <https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-circle>

Office of Program Policy Analysis and Government Accountability (OPPAGA), *A Review of Restorative Justice in Florida and Other States* (January 2020) available at <https://oppaga.fl.gov/Products/ReportDetail?m=20-02>

Bailey Maryfield, Roger Przybylski, & Mark Myrent, *Research on Restorative Justice Practices*, <https://www.jrsa.org/pubs/factsheets/jrsa-research-brief-restorative-justice.pdf>

sujatha baliga, Sia Henry & Georgia Valentine, *Restorative Community Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion program in Alameda County* at [https://impactjustice.org/wp-content/uploads/CWW\\_RJreport.pdf](https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf) (2021)

For a source list for Restorative Justice & Gender Violence, contact Professor Coker at [dcoker@law.miami.edu](mailto:dcoker@law.miami.edu).

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<sup>1</sup> Prepared for the *Restorative Justice in Criminal Practice* webinar, co-presented by the Alternative Dispute Resolution Section, Criminal Law Section, and Government Lawyer Section of The Florida Bar, and the Florida Restorative Justice Association, June 25, 2021.

## **Additional Resources**

**Home Page, South Carolina Restorative Justice Initiative**

**<https://scrji.org/>**

**From the South Carolina Restorative Justice Initiative,  
collected resources**

**[https://www.youtube.com/channel/UCThjoHVVRPjyME23yf  
PLufug](https://www.youtube.com/channel/UCThjoHVVRPjyME23yfPLufug)**

**Panel Discussion, Restorative Justice and Gender Based  
Violence, sponsored by the ABA Commission on Domestic  
and Sexual Violence and ABA Section of Civil Rights and  
Social Justice**

**<https://www.youtube.com/watch?v=JVy-5u17M08&t=493s>**

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