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Interdisciplinary Collaboration and the Beauty of Surprise: A Symposium Introduction

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Articles

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> *The rapid changes in technology and society are destabilizing old occupations, while the newly emerging ones are still in a state of chaos. "What constitutes good work?" is a question all of us must ask again and again. How can we live up to the demands of our job and the expectations of society without denying the needs of our personal identities? What resources can we draw on, as powerful, often contradictory forces cause stress, doubt, and guilt to creep into the performance of our work?*[1]

This symposium was borne out of hope and idealism in the face of disappointment. Chris Honeyman, Nancy Welsh, and Bob Ackerman, all

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1. HOWARD GARDNER, MIHALY CSIKSZENTMIHALYI & WILLIAM DAMON, GOOD WORK: WHEN EXCELLENCE AND ETHICS MEET 34-35 (2001).

experienced practitioners, teachers, and scholars in the field of dispute resolution, had observed an unsettling phenomenon: a young profession that had started with "alternative" (perhaps even revolutionary) aspirations—respect for party self-determination, encouragement of new understandings and creative solutions, solicitation of different visions of public and private justice—had become the victim of its own success, gradually slipping into "routinization" and drifting away from the exciting "good work" and practices embodying those early aspirations. Mediators now were more likely to be intent on marketing to attorneys and getting agreements than on fostering self-determination; courts that had voiced concern over the quality of dispute resolution had become preoccupied with clearing dockets; academicians once concerned with standards were answering the siren call to provide three-hour mediation "training" programs. A field that had promised a different, more creative way of doing things was succumbing to the pressures of the market, to professionals and consumers accustomed to the old dispute resolution paradigm, to the felt need just to get it done rather than get it done "right." The field of "alternative" dispute resolution, and our beloved process of mediation in particular, had begun to capitulate to the routine.

Of course, the cycle of innovation-institutionalization-capitulation is not new. Formerly innovative fields as disparate as social work, education, and workers' compensation now seem to be characterized more by bureaucracy than idealism. And yet . . . aren't there also fields and professions—successful ones—that have managed to stay faithful to their early aspirations? What are those fields and professions? If such fields and professions exist, how have they managed to avoid "eating the apple" that would trigger their exile from Paradise? What internal and external factors explain their ability to stay true to their ideals? What can the field of dispute resolution, and particularly mediation, learn from the experience of these older, perhaps wiser fields and professions?

Fortunately, three different endeavors were well positioned to address these questions. The Pennsylvania State University's Dickinson School of Law had, in 2002, launched a (thus far) successful series of dispute resolution symposia with a program entitled *Resolving Disputes Arising Out of the Changing Face of Agriculture: Challenges Presented by Law, Science, and Public Perceptions.*[2] That interdisciplinary symposium was designed to connect dispute resolution theory to practice. Meanwhile, Chris Honeyman, fresh from the triumph of the not-so-coincidentally-named Theory-to-Practice Project, had now

2. Symposium, *Resolving Disputes Arising Out of the Changing Face of Agriculture: Challenges Presented by Law, Science, and Public Perceptions*, 10 PENN ST. ENVTL. L. REV. 105 (2002).

embarked on the new Hewlett Foundation-funded Broad Field Project. That project was intent on linking practitioners and academicians in a variety of disciplines and endeavors related to dispute resolution. And in the summer of 2002, the Association for Dispute Resolution formed a Research Section. Among other things, the new section would try to involve researchers in interdisciplinary projects helpful to practitioners in the field. The problem of *Dispute Resolution and Capitulation to the Routine* would provide fertile ground for collaboration.

In organizing the symposium, we deliberately tried to recapture the dispute resolution field's early desire to be creative, to stretch itself, to explore new perspectives and come to new understandings. As a result, we invited experts from disciplines beyond the law and legal academy, people who knew much about the evolution of professions and fields but not necessarily much about the particular field of dispute resolution. And the expertise was not limited to our panels; the entire audience was composed of accomplished professionals, academics, and officials who could engage each other in thoughtful, provocative discussions. Indeed, when the group assembled for the first set of presentations, both of us marveled at the depth and breadth of the talent and distinction represented. The format of the symposium, therefore, specifically included time for presentations and for small-group discussions, which brought together knowledgeable people from a variety of disciplines and areas of expertise. Consistent with a desire to move from theory to practice, the planned presentations and small-group discussions on Thursday and Friday served as the foundation and catalyst for self-directed workshops on Saturday. In fact, several unplanned papers were inspired by these workshops. And on Friday night, the symposium acknowledged the need for human beings to connect on a level more profound—maybe even more fun—than a purely intellectual one. With the gracious assistance of two of our colleagues, Grace D'Alo and Tom Place, we held an old-fashioned barn dance—and for just a few hours, revisited that part of our field (a term that took on a double meaning in this context) that reveled in our common humanity and promise.

In the pages that follow, you will find papers that reflect the presentations, the small-group discussions, the self-directed workshops, and perhaps a bit of that barn dance. In the first set of papers, from Thursday night's presentations, Chris Honeyman describes the phenomenon of "capitulation to the routine" in the context of workers' compensation and labor arbitration.[3] Dorothy Evensen (now joined by

3. Christopher Honeyman, *Prologue: Observations of Capitulation to the Routine*, 108 PENN ST. L. REV. 9 (2003).

two co-authors, Patrick Shannon and Jacqueline Edmondson) describes the path that professional educators have trod as they have attempted to institutionalize the ideas and ideals of John Dewey.[4] Sharon Press, as director of perhaps the largest institutionalized mediation program in the world and one that regularly bridges theory and practice, thoughtfully describes what research has revealed regarding both the Florida program's successes and shortcomings.[5] These initial presentations and papers—from the trenches—illustrate the cycle of innovation-institutionalization-capitulation and thus set the stage for the analysis that followed during the symposium's second day.

The second set of papers, reflecting the Friday morning presentations, offers some fascinating and diverse lenses through which to view the process of professionalization and institutionalization. Robert Dingwall (now joined by co-author Kerry Kidd), while acknowledging professionals' desire for autonomy and flexibility, uses the perspective of sociology to point out that institutionalization appropriately brings with it a public demand for predictability and accountability.[6] David Sally, making very creative use of economic principles, urges founders of the dispute resolution field to recognize our successes, cling to our aspirations, and learn to embrace the imperfection and promise of limbo (which Sally describes as a state of "optimal frustration").[7] Following these presentations (and another by Tom Metzloff which will appear in a future issue of this law review), symposium participants enthusiastically discussed whether the evidence presented and the perspectives offered by sociology, economics, and legal realism adequately mapped the evolution of the field of dispute resolution.

In the third set of papers, we turn to engineering as a profession that may have managed to become institutionalized without "eating the apple" that spells the end of life in Paradise. Why engineering? First, it is worth noting that the engineering profession has not been beset by scandals on the scale of Enron or the Boston Archdiocese. Indeed, one of our author/panelists, a highly regarded engineer in the employ of MCI (formerly WorldCom), has emerged from that organization's recent

4. Dorothy Evensen et al., *Where Have You Gone, John Dewey?: Locating the Challenge To Continue and the Challenge To Grow as a Profession*, 108 PENN ST. L. REV. 19 (2003).

5. Sharon Press, *Institutionalization of Mediation in Florida: At the Crossroads*, 108 PENN ST. L. REV. 43 (2003).

6. Robert Dingwall & Kerry Kidd, *After the Fall . . . : Capitulating to the Routine in Professional Work*, 108 PENN ST. L. REV. 67 (2003).

7. David Sally, *Yearn for Paradise, Live in Limbo: Optimal Frustration for ADR*, 108 PENN ST. L. REV. 89 (2003).

difficulties with his professional reputation fully intact.[8] Second, unlike other professions, engineers seem programmed to improve their surroundings. Think about the evolution of bridges, refrigerators, and computers. All of these products are better now than they were before. In his paper, Vinton Cerf, co-founder of the Internet, sets forth some basic precepts of engineering ethics.[9] Joseph Herkert moves the discussion a step further—with a dose of sad realism to leaven our admiration for engineers—with an examination of the evolution of engineering ethics and the link between microethics and macroethics.[10] Melvin Blumberg examines the ways in which organizational behavior and other pressures have affected—sometimes constructively, sometimes counterproductively—the manner in which engineering expertise has been brought to bear in practice.[11]

The fourth set of papers may have demanded the most from their authors. We asked our extraordinary group of panelists to arrive at the symposium with a planned answer to the question, "Can the field of dispute resolution restore its principles and thus regain Paradise?" We also asked the panelists, however, to be ready to amend their thoughts based on the presentations and discussions that had occurred throughout the symposium and particularly the small-group discussions that immediately preceded the panel. This rather heady mix of pre-existing expertise, preparation, and spontaneity led to five wonderfully provocative presentations and, now, papers. Deborah Hensler's article provides a comprehensive and critical perspective of the evolution of alternative dispute resolution in the legal world.[12] Charles Pou uses the earlier discussion of engineering ethics as a springboard for a thoughtful inquiry into the manner in which we inculcate a sense of ethics into our profession.[13] Jonathan Cohen, who brings a spiritual and philosophical voice to the topic, suggests that mediation's ultimate goal should be conflict prevention and that a focus on fostering mutual respect will best enable the process to achieve that goal.[14] Leo Smyth (whose clog dance

8. *See* Holman W. Jenkins, Jr., *Internet Pioneer Meets the Telecom Wars*, WALL ST. J., Aug. 8, 2003, at A13.

9. Vinton Cerf, *Ethics and Engineering*, 108 PENN ST. L. REV. 113 (2003).

10. Joseph R. Herkert, *Biting the Apple (but Not Inhaling): Lessons from Engineering Ethics for Alternative Dispute Resolution Ethics*, 108 PENN ST. L. REV. 119 (2003).

11. Melvin Blumberg, *Why Good Engineers Make Bad Decisions: Some Implications for ADR Professionals*, 108 PENN ST. L. REV. 137 (2003).

12. Deborah Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165 (2003).

13. Charles Pou, Jr., *"Embracing Limbo": Thinking About Rethinking Dispute Resolution Ethics*, 108 PENN ST. L. REV. 199 (2003).

14. Jonathan R. Cohen, *Let's Put Ourselves Out of Business: On Respect,*

in the barn on Friday evening was an unexpected delight) examines the issue of capitulation to the routine in the context of international mediation.[15] And Timothy Hedeen, who has directed a community mediation program and now writes about the evolution of this part of the field, discusses the advantages and dangers of institutionalization.[16] Together, the articles in this section reflect thoughtful consideration of the themes discussed throughout the symposium.

Now, as promised in the title of this introduction, we come to the beauty of surprise: how the high wire act of interdisciplinary collaboration and inclusiveness got us thinking in ways we otherwise might not have, and how this beats the heck out of the same-old-same-old. The articles on these pages by Gregory Jones, Grace D'Alo, Cynthia Savage, and Louise Phipps Senft (along with a piece by Doug Yarn that will appear in this journal in Spring, 2004)[17] were not solicited in advance of the symposium. Rather, they came to life as the authors engaged with others and pursued new avenues of theory and practice during the proceedings. Gregory Jones's article, for example, sets forth a research agenda serious enough for him to have been asked to co-chair (together with Doug Yarn) the Next Generation Research Committee of the ACR Research Section.[18] Grace D'Alo's article, consistent with our theory-to-practice objective, describes Pennsylvania's efforts to institutionalize alternative dispute resolution processes without capitulating to the routine.[19] Cynthia Savage and Louise Phipps Senft's article provides an insider's perspective on the institutionalization of alternative dispute resolution and suggests a practical framework for avoiding routinization.[20]

For several of us, the biggest surprise came in the form of David Sally's suggestion that we should learn to live in limbo; i.e., that a state that combines a sense of accomplishment *and* a sense of dissatisfaction may give rise to the greatest creative energy.[21] That an element of discomfort or maladjustment will accompany the maturation of a

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Responsibility, and Dialogue in Dispute Resolution, 108 PENN ST. L. REV. 227 (2003).

15. Leo F. Smyth, *International Mediation and Capitulation to the Routine*, 108 PENN ST. L. REV. 235 (2003).

16. Timothy Hedeen, *Institutionalizing Community Mediation: Can Dispute Resolution "of, by, and for the People" Long Endure?*, 108 PENN ST. L. REV. 265 (2003).

17. Douglas Yarn, *The Death of ADR: A Cautionary Tale of Isomorphism Through Institutionalization*, 108 PENN ST. L. REV. (2003) (forthcoming).

18. Gregory Todd Jones, *Fighting Capitulation: A Research Agenda for the Future of Dispute Resolution*, 108 PENN ST. L. REV. 277 (2003).

19. Grace E. D'Alo, *Reflections on Pennsylvania's ADR Community: Paradise, Pragmatism, and Progress*, 108 PENN ST. L. REV. 309 (2003).

20. Louise Phipps Senft & Cynthia A. Savage, *ADR in the Courts: Progress, Problems, and Possibilities*, 108 PENN ST. L. REV. 327 (2003).

21. Sally, *supra* note 7, at 89.

professional field—and that it may signal the vitality and energy of that field—was reassuring, although we must confess as academicians that it is easier for us to live in limbo (where many of our ilk spend much of their lives) than for full-time practitioners. Some of the court administrators were surprised by the extent to which the annexation of alternative processes to the courts was viewed as compromising or diluting these processes. But much to their credit, the court administrators, rather than assuming a defensive posture, began to ask questions of themselves. As a consequence, a panel addressing some of these questions will occupy a session at the 2003 Annual Conference of the Association for Conflict Resolution.

For the purpose of intellectual stimulation, surprise is good. But when it comes to the logistics of operating a symposium, the best surprise is no surprise. Our thanks to Dianne Nichols, Karlisma Souders, Tom Dennis, Nancy LaMont, and other members of the Pennsylvania State University Dickinson School of Law staff whose painstaking efforts were instrumental to the smooth running of the symposium. Thanks also to Philip McConnaughay, our Dean, for providing generous funding for the symposium, and to the Hewlett Foundation for funding the Broad Field Project, through which we received the inestimable services of Chris Honeyman. And to Chris Honeyman, whose energy, creativity, and well-tended e-mail address book were critical to the symposium's success, we reserve our special gratitude.

The law school's ADR Society, and especially Colleen Karpinsky, deserve thanks for efforts rendered above and beyond the call of duty. And our Law Review editors have been instrumental not only in editing this issue, but in hosting our panelists during the symposium. Between the live symposium and the publication of this issue, the venerable *Dickinson Law Review* changed its name to the *Penn State Law Review.* This issue is the first publication under the new title. We think that this is especially appropriate, in that both the new name and the contents of this issue reflect the fact that law and legal process no longer operate in isolation (if they ever did), and that we must increasingly turn to other disciplines for their insights.

And so a symposium that could have become mired in nostalgia and disappointment concluded with hope: hope that we can find promise and the potential for good work in Limbo; hope that we can withstand the temptation of routinization; hope that we can draw upon our experience and hard-won wisdom to define a more realistic and yet fully-aspirational Paradise for the field of dispute resolution. The process of maturation can be hard and yet exhilarating. We hope that you will enjoy the good work that appears on these pages.