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RESTORATIVE LAWYERING AND WELLNESS

Brenda Waugh

INTRODUCTION

Rachel Hott: Hello everyone. Good morning again. [inaudible speaking and laughs] You're fine. I hope you all are enjoying yourselves. Um, I'm Rachel Campbell, I'm the current communications editor for the Public Interest Law Review, and it's my pleasure today to introduce you to someone whom I've gotten to know very well over the past few months, um, Ms. Brenda Waugh. Brenda is a lawyer and mediator licensed to practice in Virginia, West Virginia, and DC. She graduated from the University of Virginia in 1982 and West Virginia University Law School in 1987. After law school, she began working as counsel to the West Virginia Senate Judiciary Committee and with the West Virginia Supreme Court of Appeals as a clerk to the committee, creating professional rules for family court. Her later work as a prosecutor in Kanawha and Berkeley counties created an interest in finding ways to address harm experienced by victims, prompting her to earn her master's degree from Eastern Mennonite University in 2009. Brenda has taught at both West Virginia University College of Law and Eastern Mennonite University. She has published several articles in academic journals pertaining to restorative justice and has presented on the topic of restorative justice at conferences throughout the United States and Canada. Together, Brenda and I have co-authored an article on the attorney disciplinary process, and an . . . the imposition of an alternative restorative based approach that would help to contribute to overall lawyer wellness. Thank you, Ms. Waugh, for coming to speak with everyone today on a very important topic.

RESTORATIVE LAWYERING AND WELLNESS

[applause]

Brenda Waugh: Can I get the next slide? And I, um, I have really enjoyed working with Rachel Campbell. When, um, Jackie and Rachel asked me to, uh, participate in this program, uh, I was pretty hesitant. I am too busy and overcommitted, but their zealousness and excitement about restorative justice lured me in. Um, and I agreed to participate only if I could find a student to collaborate with. I think it's really important that we lawyers learn how to collaborate on all levels and find ways to . . . to work together in ways that, uh, share

our vulnerabilities, um, and still we find ways to mend those and work together and create, you know, a nice collaborative process. So, Rachel and I have had a lot of challenges, um, over the last several months. We've had to do almost all of this via the internet or emails or video conference, but it's been a great pleasure to work with Rachel Campbell, and I am so happy, um, that I was able to work with her on this project. So, what an idea. This came up when, um, when Jackie first talked about this with us, and Rachel, when we first talked about it, um, I was going to talk about my, my practice as a restorative lawyer. Um, I've been working on that since I graduated from EMU, trying to figure out how to bring the principles and practices of restorative justice into the ordinary practice of law. But, I went to a conference back in April, um, where I was presenting on lawyer wellness and the relationship between restorative lawyering and restorative wellness, and I heard a lot about lawyer discipline, and I really never thought about it in my thirty-year career, but all of a sudden, after all of this time, this idea went off in my mind, like, what if we married restorative justice and lawyer wellness and attorney discipline? So, I reached out to Rachel and said, "I have this idea – what do you think?" And she said, "Let's explore it." So, this is our effort to explore, um, this idea. We want to invite you to participate with us, and so we're going to ask you to raise your hands, and we're going to ask you to raise your hands for two reasons. One is so we know kind of who's here, but we also want to be able to see . . . and we want you to see and for us to see, what kind of baggage we bring to this topic. You know, um, lawyer wellness is a very . . . we're going to get into some more detail about that later . . . but it's important and highlighted issue right now, and the reason being, um, is that lawyers are suffering. So, a lot of this is to help us connect with that part. So, we're going to ask you to volunteer . . . can we get the next slide up . . . you're going to volunteer, to raise if your hands if you agree . . . uh, Rachel's agreed to do this part of the program.

Campbell: Okay so first, raise your hand if you agree.

"I am a lawyer."

A lot of people here.

Raise your hand if you agree, "If I could quit practicing law, I would."

[laughter]

Raise your hand if you agree, “Sometimes the practice of law feels overwhelming.”

[laughter]

Raise your hand if you agree, “When I read the Rules of Professional Responsibility, I feel confident that I’ve never acted contrary to any rule.”

[laughter]

We got one back there.

[laughter]

Raise your hand if you agree, “I work in the judicial system.”

A couple people.

Raise your hand if you agree, “When lawyers show weakness, it kills their business.”

Raise your hand if you agree, “I often skip meals or get less sleep in order to get my work finished.”

Raise your hand if you agree, “I feel competitive with colleagues in my office.”

[laughter]

Raise your hand if you agree, “I enjoy my work because I like to help people improve their lives.”

Raise your hand if you agree, “The practice of law is hard work. It drains a person emotionally and to do it right, one has to spend very long hours on the job.”

Raise your hand if you agree, “Difficulties with my personal relationships is a necessary by-product of practicing law.”

[laughter]

Some honest ones out there,

Raise your hand if you agree, “I personally know of profess . . . professional associates or colleagues who have suffered from abuse of drugs or alcohol.”

And raise your hand if you agree . . . if you agree, “I have felt helpless when I had a colleague who was suffering from depression or abuse issues.”

Okay.

Waugh: So, on those raising your hands, um, anybody raise your hand, um, and kind of surprised that you found yourself raising hand, or were there any observations that you looked around the room that you were surprised to see other people raising their hands? . . . Nobody raised their hand on the question about whether or not, um, . . .

having difficult personal relationships is a byproduct of practicing law. I, I found that . . . curious. Is anyone willing to tell me why they did not agree with that statement?

[Inaudible audience member response]

Waugh: So, you didn't raise your hand because you're like it, it is a byproduct for most of us, but it's not necessary . . . that we could invent ways that it's not going to have to flow. Anybody else have any more comments on that one? I put that up there just . . . oh go ahead, I'm sorry.

Audience member: [inaudible] . . . the aspect of, I think there are a lot of people out here who really have problems with their personal relationships, but it isn't always a necessary problem, um, sometimes it is . . . [inaudible]

Waugh: So, what he was suggesting was that there are . . . that, that it's also not a necessary byproduct, but it's not unique to the legal profession, that there are other professions that potentially have this, um, detrimental effect on personal relationships via byproduct of their profession. Um, and I think it might be depending upon what your profession is training you to do, um, as to exactly what that might look like. So, the legal one might look different going back to what you said, just because we're trained to be combative, we're trained to argue over things, we're trained to never be wrong, we're trained to push our way, and so we go home, and we tell our spouses and our kids this is the way it's going to be and everybody goes "whoa." [laughing]

Or, I mean, I've, I've seen it in so many offices I've worked with where we've got all the lawyers together and everybody's got that same kind of that personality and that same training and everybody wants to be in charge, everybody wants to run the show, everybody wants to argue until they get their way right. But other professions, or I guess in the medical profession, maybe it's the long hours that are demanding, that that impairs personal relationships. Police officers having to do different varying shift work could impair personal relationships. So, um, is that what you were kind of thinking?

Audience member: [inaudible]

Waugh: Any other sides anybody want to comment or discuss? I'm not going to ask you all to divulge what rule of professional responsibility you may have breached [laughter]. There was one person here that hasn't breached any. Um, I honestly probably couldn't even count them if I tried. So, I've been practicing since '87 so, um . . . so let's move on a little bit and talk about lawyer wellness. Those questions, you may have noticed, kind of start, uh, start bringing up this issue. What do you guys know about lawyer wellness? What do you think that means or what has anybody heard about that? . . . Anybody working on any projects with lawyer wellness? What . . . lawyer wellbeing?

Audience member: I've heard of it in relation to Lawyers Helping Lawyers or, um, people with substance abuse issues.

Waugh: Yes, there's organizations Lawyers Helping Lawyers, um, that, uh, do work with folks that are dealing with substance abuse, and I think they are kind of extending their net a little broader to hit depression as well. Um, the other day I was talking to a colleague about doing this presentation, and I told him we were going to be talking about depression and substance abuse. And he, um, . . . we were texting each other because we were talking about our running schedule and he said, "I suffer from depression," and I said, "well yeah, you're a lawyer." And he said . . . I said, "I think practicing law actually feeds depression, I know, you know, it feeds anxiety, it feeds all of those things because we're just dealing with conflict so much. So when you look at lawyer wellness, there's the Lawyer's Helping Lawyer's folks, but I think they're getting broader, and the work I've been doing in lawyer wellness has been trying to look at, um, what is there about the practice of law that is . . . that does potentially create a toxic environment? Because I do this mediation, and I do this restorative justice, and I do collaborative law, and when I'm doing a collaborative law meeting – I feel great. I feel like I'm solving problems, I feel happy. I go home. I mean I . . . you know it's not all rainbows and unicorns . . . but I mean I go home, and I don't feel like I need to go run 15 miles to feel better. On the other hand, if I've been in a contested hearing all afternoon or a trial for three days, I mean, my whole body is changing. It's a completely different feeling, so I'm curious about lawyer wellness and whether we can move out of the

adversity, out of the competitive, out of the angry pushing pro – practice and still advocate for our clients in a way that’s healthy for our clients and healthy for us. So, where does this whole concern about lawyer wellness come from? Um, if you’ve not read Susan Daicoff’s *Lawyer Know (Yourself) Thyself* and you’re a lawyer, I recommend you read it. She kind of hits the nail on the head about our personalities, who we are before we go to law school, how law school makes parts of our personalities bigger, and the practice of law makes parts of them bigger and some other parts of them get suppressed, and so, I feel like Susan Daicoff’s book is great about that. Um, I used her for a source on this. You can find any number of sources to, to support this, but the bottom line is, is that lawyers have one of the highest instances of depression, alcoholism, and substance abuse. I got very interested in this topic in 2015 when, within a six-month period, three of my colleagues from my professional life all died from suicide. Um, all very good lawyers, one of them had been in bar leadership, one of them had clerked for a fourth circuit judge, um, and one of them had been a prosecutor with me. And, um, within six months they all died from suicide and I was like what is going on? Fortunately, that hasn’t happened again, but that’s what raised my concern. It’s like this is, this is a problem for me. What is going on? So, the factors that impact lawyer wellness, um, . . . looking at those, anybody have any comments about any of those? Anybody agree, disagree, or want to make a statement or . . . what am I missing? Because I think that’s one of the one’s I made up.

Audience member: I’m just going . . . I’m going to comment on the, uh, stigma attached to help seeking behaviors . . . uh, just to remind everyone that because there may be some stigma attached to seeking help, that . . . that’s part . . . the reverse of that is for us to be sensitive to projecting a willingness, making an offer to help, so that nobody has to seek it.

Waugh: Yes, so you’re saying that, that, you’re seeing the stigma attached to help seeking behaviors, and one way to help mitigate that as lawyers is to offer help before somebody has to ask for it.

Audience Member: Yeah, and that, I mean, in incremental and small ways, you can help people, and they don’t have to feel like they had

to go out and seek help, you know, and, and honestly, little, little things help a lot. So.

Waugh: And you know, this isn't just about alcoholism and drugs and depression. There's little tiny things too. Um, you know when I was a brand-new lawyer, I was told not to tell anybody that I had to leave court early to pick up my kids because people would think I was not serious about my profession. One time, I called somebody at a, at an office I was working in to ask them to send the discovery over in Word rather than PDF and somebody said, "You can't do that, that's going to show that we're weak!" And I was like, "Holy cow!" And . . . but just yesterday I, uh, emailed a colleague because I'm going to be late on some discovery, and I told him that, um, I need a little more time because I'd had a health issue with my family member, and, um, and I was working on this project with Rachel, um, and between those two things I was overwhelmed and having a really difficult time. And this is the opposing counsel, and he said, and he, he emailed me, and he called me and wanted to know if he could do anything else to help. And so next time when he has that happen, then maybe he'll have, he'll have that same experience. So, I think we can reduce the stigma with like the little things like you're talking about. And . . . and actually, it's just being kind. So instead of being a jerk and a jackass, you could just be nice and helpful. And that can change the environment.

Audience Member: I think the, uh, general public perception of the lawyer is, uh, poses a lot of people being shy saying that they're a lawyer because it's a stigma sometimes that people have at home, or a bad impression of lawyer.

Waugh: Yes, people . . . the . . . your, your comment goes to the, the public impression of lawyers and how some of us were ashamed to even say we're lawyers anymore. And I do tell people sometimes, especially when I'm traveling or something, "Yeah, I'm a mediator." Yep. Mediator. Um, the, the thing is though, and we're going to get to that in a little bit longer . . . in a little bit, why we feel restorative justice components to our discipline system can actually help improve, uh, public perception. So, I'm glad you brought that up because that's a good segue into, into kind of the next part of our, our segment here. So, this is just, uh, how did we get into this situation

with lawyer discipline? What does our lawyer discipline system look like and how did we get here? The lawyer discipline system has been self-regulatory in the United States for at least about a hundred years. Ah, you can go back further than that and there are other components of it, but at least for a hundred years lawyers are in charge of ourselves. So, we have a massively great opportunity to fix it. We're not like the professions that have to get somebody else to fix it or go to the legislature and say, "You fix it." We can fix it! It's self-regulatory. The other thing, um, that . . . that you need to think about is that there's the model code, and that's what the rules are, and then there's the process for enforcing the model code. The changes we are talking about today could impact the model code, but they're primarily focusing on the processes to enforce the model code. So, um, that's kind of how we got here, where the, the standardized rules that have been adopted by the ABA off and on in different formats since about 1969, and the states then, the bar, self-regulatory committees, deciding what the process looks like to enforce those.

Campbell: And in Virginia specifically, um, most of you lawyers should know, that the process starts when, uh, an individual . . . it could be an attorney, it could be a client, it could be anybody . . . files a complaint with the Virginia Committee on Lawyer Discipline. And I tried to shorten this up as much as possible, but it's, it's a long, long . . . and we talk about in our paper . . . a long and draining process, especially for all the people involved. But if, after the complaint is filed, staff finds that an alleged misconduct violates the Virginia Code of . . . Virginia Rules of Professional Conduct . . . then the complaint . . . or, does not find that it violates it, the claim will be dismissed. Uh, but if they do find that it could be a potential violation, they'll categorize it, um, and start an investigation, but they categorize it based on seriousness, so they do have a spectrum of seriousness of offenses, um, with category one being the most serious, and category four being the least serious. Um, an attorney whose conduct is under investigation will receive notice once the investigation has started and then they have 21 days to respond. And after the investigation, the Disciplinary Committee will decide whether the complaint should be certified to, um, the Virginia Bar for, uh, formal adjudication. Or they can impose, uh, a limited punishment, um, and throughout this whole process, the . . . the committee has the ability to dismiss the complaint at any time or impose that limited, um,

punishment, which the attorney can either accept or reject and opt for the . . . the formal adjudication. And once the complaint is adjudicated, there's a variety of sanctions, many of which you've probably heard before, um, that could be imposed including license suspension. Um, there's a variety of private and public sanctions, and then even disbarment in serious cases or cases of repeated misconduct. And so, um, this quote from the ABA Report on the National Task-force on Lawyer Well . . . Well-Being really sets forth the notion that wellness and competence are two related concepts. Um, you really can't have effective competence without being a well lawyer and taking care of yourself. And I also want to remind all of you of the Virginia Bar's stated mission, um, so they . . . they . . . their mission is to protect the public, to, uh, regulate the legal profession, to advance legal services, and to assist in improving the legal profession and judicial system. Um, so in reference to the quote on the last slide, we asked, "Are we really meeting these goals?" And, "Is there another way?" Um, what can we do to improve upon lawyer wellness in the lawyer disciplinary system, and that's what we're here today to talk to you about.

Waugh: Did anybody recognize the lawyer that I had in a . . . two slides ago? It's, uh, it's Jeff Daniels playing Atticus Finch on Broadway. Has anybody seen it? I want to go so bad. And, I like . . . I couldn't figure out what slide to use for that . . . what picture to use for that slide, and I was like, No this is great! Uh . . . uh, a modern Atticus Finch. So, he's still this great lawyer, but I think what I've . . . what I've I read about the Broadway production, it takes the great lawyer that Atticus Finch is and makes him a lot more complex as a human being. And so I think that that's our mission here, um, in marrying lawyer wellness and lawyer competence, is to think about the lawyer as a whole person with . . . that's, that's complicated and has a whole life and has a lot of skills, interpersonal skills, that need to be grown and nurtured so that they can be better lawyers by working better with their clients. Um, . . . so, the question becomes, like, what can we do? Is there another . . . is . . . and . . . and I . . . I've really, I've got to say I'm embarrassed that I studied restorative justice and graduated with my Masters at EMU in 2009, and I have advocated restorative justice in forums all over the place and all kinds of weird ways in civil cases, everything you can imagine. And yet, it took me ten years for the light to go off over my head that said, "Wait a

minute, can't we use restorative justice in lawyer discipline?" Why would we do that? Well the first thing is . . . the problem with the way the system works now when a complaint gets filed, the complainant doesn't even know what happens to it. They just disappear. Kind of like a victim in the criminal justice process. When they go and get . . . and, and . . . I've represented a lot of victims in the conventional criminal justice problem and sometimes they don't . . . sometimes they don't even know when their hearing is going to be. They have no input in some situations about the outcome. They're just kind of kept in the dark. Same thing happens to the complainant in a, um, bar disciplinary proceeding. They have no idea what's going on. So to go back to your comment about public perception . . . I mean, if my lawyer stole my money, and I file a complaint and I'm pissed off at him, and nobody tells me anything for a year, I'm going to think that lawyers just suck, and I'm going to tell that to all my friends, and I'm going to be disgusted by lawyers. So, the first question is how can we be more inclusive and include the victim in the lawyer discipline process? The other thing is, my friends that all died from suicide . . . one of 'em . . . I mean we knew for ten years that he was really suffering and really needed help, and we didn't know what to do. Everybody did everything they could. He worked for a really good firm. He had a fabulous family. Everyone did everything they can, but we didn't have a good institutional way to help him. I want to have an institutional way, that when someone is suffering, we have a group of colleagues to come in and help. In restorative justice there's a program called COSA, Circles of Support and Accountability, and sometimes when someone is being released from incarceration, or in other circumstances, you may form this COSA. It's a group of people that the, uh, person that may be . . . reentering society, uh, or may be going on a probation . . . it's a group of people that can all look out for him. They're going to look out for him to make sure he's getting the resources he needs . . . he or she needs . . . make sure that, um, they have some place to live, make sure their life is ok, but also make sure they're not reoffending, support and accountability. And I'm like, what if we could have COSAs for lawyers that are having trouble? Whether they're having trouble because they're disorganized and they can't manage their practice, or because they're depressed, or because they're suffering from substance abuse. What if we could have COSAs? So, when I talk about what would be more inclusive, that's what I'm talking about. Bringing the victims in,

bringing other lawyer colleagues in, and the families. When somebody files a bar complaint, it's just seen as like this inquisition. This investigation. We're just going to look at this. We're going to look at this. We're going to look at this. And we're . . . we might send the lawyer off this way or that way, but it's kind going in a straight line. What if it's not on a straight line? What if it . . . it's weaving, and we're picking up family members, saying, how can . . . how can these family members participate in this outcome? How can these colleagues participate? How can the judiciary participate? What can we do to broaden the participation? And faster. We need to be faster. I mean, uh, it's just amazing when I read these reports of the lawyers that are eventually disbarred. Sometimes it takes two and three years. Meanwhile there's all this chaos going on. What can we do to expedite it? And by . . . well let me keep going here, I don't want to get behind . . . And then what can we do to promote lawyer wellness? The system we have now is not promoting lawyer wellness. It's . . . just mirrors the criminal judicial system where a complaint gets filed, it gets adjudicated, and sanctions gets awarded if the . . . they decided to be awarded. What can we do to make it more re – rehabilitative? Um, so, can we create a process that would do that? . . . Bravo! Restorative justice. And, um, I believe that restorative justice can be used to create the framework to really reconfigure what our judicial . . . our, our, our disciplinary process looks like, and . . . Can you hear me ok? Somebody was making a sign back there, and I didn't know it, uh, maybe I shouldn't have brought it up because maybe it was an obscenity and I didn't know it, but, uh, I wanted to make sure you could hear me. Trying to figure out if there's a frame . . . that . . . how restorative justice might be that kind of a framework to both improve lawyer well-being, and, consequently, improve, um, legal services. Next slide. The key here is looking at restorative justice, um, I'm not sure, I couldn't get here this morning, so I'm not sure what you guys know about Restorative Justice, but to me, the heart of restorative justice is looking, uh, at wrongdoing and looking at what the harm was and how that harm can be addressed. What needs result from harm and how can those needs be met. Rather than what rule was broken and what punishment can be inflicted. And, so, that's the heart of restorative justice, and that is what I would like to see be the backdrop for lawyer discipline. Um, here is a chart that, most of the time when I'm telling my fellow lawyer colleagues about restorative justice, they all like this. Um, they feel like it's concrete and it helps

them understand a little more about, you know, what restorative justice is all about. And so, as you can see, as a whole, it really just kind of shifts everything from rule, and guilt, and sanctions, to harm, needs, and responsibilities. So, um, has anybody else talked about Howard Zehr today? [laughter] Howard is, um, . . . he's just like one of my favorite people in the whole world, so I had to put his picture up here. He would be kind of mad if I, I think he wouldn't like it very much, but . . . and a friend of mine pushed me, who was a fellow student at the same time I was at EMU, and she took this picture, and I loved it because it gave me the space to put the five principles on. Um . . . But Howard, um, he, he was one of the original folks to start using restorative justice here in the United States, uh, with a program called Warp out in Indiana, and he followed up with Warp, uh, with his book, *Changing Lenses*, and if you're interested in restorative justice, reading *Changing Lenses* it's, it's really . . . oh, you're not going to take a picture and show it to Howard, are you? [Laughter] Who's going to repair the harm? [Laughter] Now look, can you go back to the principles for just a second . . . okay, well having, having been busted on this, and yeah, these five . . . so, I was going to suggest, *Changing Lenses* is really important to read and there's, . . . and if you're like a really kind of overworked lawyer who's so exhausted and can't really bear to read anything very long, uh, there's a series of little books, and Howard co-authored a little book on restorative justice. It's really boiled down, and, um, I love it because you can read it in about half an hour or an hour, and it'll give you more of an essence of what restorative justice is. But when I talk about my restorative lawyering and my restorative practice of law and how I do that, the way I do that is I just kind of keep these principles kind of tattooed on my eyelids, and so when somebody comes into my office and they tell me about their case, I think well, what can I do? How can I be more inclusive here? How can I put right the wrongs? And whenever I'm dealing with opposing counsel that's really mean and horrible and driving me crazy, I try to go back to the principles and say, "is there anything I can rely on these principles to, to help me make this more restorative?" Um, both Dan Van Ness who, um, . . . Dan Van Ness has done some really good videos, you can google him . . . Dan Van Ness and Howard both talk about restorative justice, um, . . . and any practice to resolve harm doing or wrong can be placed along a continuum, but some practice is more restorative than others and so in my work, I'm always . . . that's why I'm looking at

the restorative law. I'm trying to figure out, what can I do to move the bar? This practice right now of being in this case with this trial and the judge making the decision and everybody else being in appall is missing as many restorative features as possible. It's in this far end of not one bit restorative. What can I do to at least do to move it two steps over? Can I . . . can I find a way to get this into some mediation to move it over a little bit further? Could I move a little bit of collaborative practices into the way that I am dealing with opposing counsel to move it over? What can we do to make it more restorative? So, these principles are a good way to check in with yourself about what you're doing and figure out how to make what you're doing more restorative. Clearly, um, it would also . . . its . . . of course, our argument that, that this would also really change the face of, of lawyer discipline if we could find ways to incorporate this into our processes. So, here are . . . let's see how I'm doing on time . . . here are some practices that are often associated with restorative justice when it's in the criminal judicial system. Anybody do any of these? Yeah? Which one? [answer is inaudible] You do victim-offender conferencing? Can you describe for everybody what it is?

Audience Member: Bringing together a person who was harmed and the person who caused the harm, having preparation meetings with both parties beforehand to discuss the process, to explore possible concerns, um, and bringing them together in a space with facilitators to talk about the harms they occurred and recognizing the harm that the victim . . . for lack of a better word . . . experienced and then, um, taking steps to identify some of the needs and what can be done to address those needs.

Waugh: So, basically what you are saying, and I'm trying to boil it down a little bit, but if I do I'm going lose some nuances that are important so if you are interested please . . . please do research on it because there's a lot of nuances. I think there's sometimes a public perception that, um, victim-offender conferencing, it means, uh, to kind of throw the victim and the offender in a room and see what happens, and that's not it. I think what you're suggesting is that it's a facilitated discussion with a lot of preparation where the offender and the victim and again the language fails us, um, come together and have the opportunity to examine the harm and what could be done to make, the uh, . . . to right the wrongs. Is that right? Okay. Anybody

else, uh, familiar with any other processes or they want to add anything else about victim-offender conferencing? Well we talked a little bit about COSA and circles of support and accountability, and the, the first case that I am aware of with that that had to do with, uh, a sex offender that was going to be released because he had served his time, and he was just straight up going to be released back into the community, and there was no parole, probation, nothing. he was straight up just going to be released, and the community was really upset, they were worried about the kids. It was a small community, everyone knew him, and they were worried about him being loose in the community. So, uh, the church got together, and they created circles of support and accountability to meet with the offender and check in with him, uh, and watch what he is doing, but also provide resources. And, uh, that . . . there's going to be a little bit more about that case in our paper, but, um, basically the guy lived in the community, and there was never another report of, uh, of abuse, so that's considered successful. Kind of the neighbor to, uh, re - . . . to COSA, uh, is a reentry circle. I know there's a lot . . . there's really successful programs in Hawaii, and there's also some I'm familiar with up in Maryland. Where . . . when an offender is ready to be released from prison, a lot of time there's no plan, it's like, here's your bag, good luck! And, um, and a reentry circle is usually convened prior to the release of the person that has been incarcerated to help figure out what the reentry is going to look like and try to create support with professionals and family members and employers and everybody else to make sure that the reentry is successful. Sentencing cir - . . . Sentencing circles, um, have typic - . . . most of the ones I'm aware of, have been in Canada and Minnesota. But in those, the judge convenes a circle and a circle process, um, which usually uses a talking piece and restricts the person who may be conversing to whoever is holding the talking piece and is passed sequentially around the circle. Um, the judges have used that often for an advisory opinion about what would be the appropriate sentence. Um, the first . . . I think the first one that I am aware of was Judge Berry-Stewart, he was ready up, in the Yukon territory, to sentence a repeat offender that just kept coming through over and over and over, and he's like, I'm not doing this again, we have to come up with something else, and so the, uh, the indigenous community talked about how they had used, uh, these circles, so he said let's try it. And, um, that was, as far as I know, the first time that, uh, circle sentencing

was used. So, the next slide are other applications of restorative justice, and, I just want to make sure . . . school discipline is one of the areas that I have worked least in, but it's one of the most successful areas, um, in restorative justice. Um, I know Fairfax County's, uh, entire system is now based on restorative justice. There is a lot of critique that I have read, um, about restorative justice for school discipline, but when I go to read the articles usually they are talking about something that's not the kind of . . . that doesn't fit the definition of restorative justice I'm, I, familiar with. It's, it's . . . I don't know, it's almost just like a word someone is using, I, you know, and they're afraid . . . afraid it's not hard enough, and I have seen that criticism, but, um, but I'll tell you, there's, there's great success in it, with, with, uh, far less suspensions and disciplines. I, I've worked with two different counties in West Virginia that changed their systems from being entirely punitive to being as restorative as possible with no money, and, uh, one school system went from having, I don't know, I think like a very large number, I can't remember, more than 20 suspensions in a year, it's a very small system, to none the next year. Um, so it's . . . I've seen it. And that's with very little training and very little resources, but a lot of dedication, and they were able to do it. Um, Lorraine Studsman Ampstead has written a little book on restorative discipline for schools, and I recommend that book as well. Restorative justice is also used with juvenile offenders and child dependency proceedings. With juvenile offenders, that began in New Zealand, um, in 1989, when the government passed a new scheme to deal with juvenile offenders. Um, and basically . . . what it requires is a series of meetings between the family members, professionals that might be involved, the victim, and offender, following a juvenile offense. And child dependency proceedings, there are several . . . many, many areas in the United States that use restorative justice processes, especially talking circles, um, to address child dependency issues, and they usually call that family-group decision making. The, um, Casey Foundation, online, has some really great resources on family-group decision making . . . So, what is all this . . . anybody, anybody have any ideas . . . what does all this have to do . . . what do you think all this restorative justice stuff has to do with lawyer discipline? Anybody have any ideas or thoughts on that? But where do you think that the, the match might occur? . . . One of my law school professors said whenever she says something in class, and nobody says

anything, to just keep waiting until somebody says something, and they will.

[Laughter]

Waugh: She's like . . . I'm going to want to eat lunch, okay?

Audience Member: Thank you for building on [inaudible] . . . The kind of scenario that I referenced to the . . . uh . . . the takeoff . . . airline flight, and we all get that instruction, the, the planes losing altitude, or oxygen, or whatever, the mask is going to drop down. So, if your, if your practice is losing altitude because you've got problems, uh, the historic part is, the thing you do first is help yourself to get to some stability. It always tells you, put on your mask first, and then you can help the dependents, or the clients, or the others that, that need your help when you . . . you've got to do something to restore yourself to be able to provide the trained good that you can provide others.

Waugh: That's a really great point. So, so the key there is that, that if you're going to be working to help your clients, or if you're going to be helping other lawyers that might be in need, or if you're going to be helping, even your family, the first person that has to be healthy is yourself. And, um, . . . most of my studies at EMU also had a very big component of self-awareness. And I think that that is something that lawyers often overlook. I mean, we're very aware of ourselves as far as how we look in court in front of the jury, and, um, how we look when we're storming out of a mediation because they won't negotiate, but we're not necessarily very aware of what our triggers are, what is upsetting us, what's making us maybe not perform at our, our best level. And so, yes, being able to get in touch with that is, is really key to being a good lawyer and to be able to being a restorative justice practitioner as well.

Audience Member: *inaudible* Let me just out myself now. I've represented the Bar off and on for over twenty years. Um, there are actually an amount of opportunities for restorative justice within the process, but they are not explicitly written in the process. So, for example, back in the 90's, I had a case in which I was representing the Bar. The lawyer had been, um, uninformed, or unable, to handle his

trust accounts appropriately and anyone who's ever had to manage a trust account knows there's very specific rules about how to handle a trust account. And, so, the Bar actually worked with him during the disciplinary process, so there's no question he was mismanaging his trust accounts, but the Bar worked with him, and part of his discipline was to do quarterly reporting and have an accountant who would oversee that reporting to try to educate him and give him the tools which really to me falls into this restorative justice because you truly address the harm. The Bar's responsibility, as you mentioned earlier, is to protect the public. So, the goal is to have lawyers who aren't mismanaging your trust accounts, who aren't mismanaging money that doesn't belong to them, so, the Bar took that opportunity to try to educate this person to protect the public, insert Bar's goal, but also to educate this individual lawyer which would then protect that lawyers clients, and it did directly address the harm that was occurring, which was the mismanagement, mismanaging of these funds by this lawyer. So, there might be opportunities that aren't explicitly in the process that are out there, and it takes, we mentioned earlier that, in the process, a lawyer can accept or reject certain discipline. They can offer certain things too. And so just to evangelize a little bit, because there a lot of people here in this room, a lot of lawyers in the room, if you are aware of the disciplinary process, there are opportunities to propose, or to suggest something like this, that might actually address the harm, that would give a lawyer an opportunity to be educated, or if it's a substance abuse, that's obviously one of the things that's being talked about a lot these days, with the um . . . the, the committee that the, that the Bar put together about lawyer wellness . . . but, but if you see a problem, there's a lot of ways to address it, ways to refer Lawyers Helping Lawyers now that didn't use to happen. You just got a dis . . . you got a disciplinary action against you. But . . . *inaudible*

Waugh: I love . . . I love that story. And yeah, I didn't . . . I don't . . . I think that the . . . there's nothing wrong with a lawyer disciplinary committee in as much as, they haven't . . . nobody's intentionally done anything wrong, I just want us to put on . . . I want a new lens. That's what I mean . . . restorative justice is a new lens, I want a new lens, and you've given a great example of what that lens could look like, when a lawyer is having problem managing your trust account, then, provide them resources to teach them to manage the trust

account. That is addressing the harm straight up front, and I would love to be able to find ways to institutionalize that, that type of a response, even expand it, so that everybody knows that just because somebody has turned in for that, maybe you're going to bring in their . . . their other lawyers that they may associate with, or maybe family members to say, I want to be part of the, the improvement period, you know, design, um, because [inaudible] the chaotic. And that might tip you into something else to say, maybe there's something else going on, or maybe [inaudible] fine. I think it's just he needs to learn how to do this math. So, I mean, I think expanding to be more collaborative and bigger and institutionalizing the story you've told is exactly the track I would love to see us go down. That sounds perfect. So, thank you for sharing that story. . . . And so, what, what would a, a practice look like in . . . you know, this is, I only thought of this idea in May, so, it's really kind of . . . definitely coming into focus . . . Rachel and I, neither one of us had thought of it, and we'd say, well, there's all kinds of neat things, but we're . . . it's still developing, and I don't know what it would look like, and it's not something that will go to buy in a kit from the ABA, because what works in Virginia is not going to work in Wyoming and not going to work in Hawaii. So, it would have to be something that would be designed from our own community, for our community, to benefit our community. So, um, so what, what, what, what could it look like? What are some potential applications? . . . And so, we've talked about a little bit . . . a few of these. So, the, the stigma that you brought up before, so instead of attaching the stigma, learn collaborative ways to problem solve. Um, when, when I did a training with the Virginia Bar recently, they had a factual scenario about what you're supposed to do when you see this lawyer who seems like they're probably . . . or always a little bit drunk or hungover in court, and everybody talked about what role they were violating . . .

Carl Hamm: Your mic's cutting out. Can I just, um, let me make sure this is plugged in properly, okay.

Waugh: What rule they were violating and how to report it and all that stuff. And I thought, Well, why don't you just go off lunch with them or have 'em to dinner and check it out? You know, maybe, maybe that's not . . . they're not drunk at all. Maybe they just never sleep because they're working too hard, or maybe they are

developing a drinking problem. Maybe if you can have for dinner, you can get a sense of that. I mean, so what would be some more collaborative ways to problem solve rather than going to, to the reporting and the sanction, and how can it not be a stigma to be able to need some help? What? . . . You know when a, when a lawyer has to miss some deadlines because they're sick or has miss deadlines because they're overwhelmed. Isn't there a way we can work collaboratively to deal with that rather than to attach a stigma to not being independent enough? Um, these are just some ideas that I was thinking of. There's probably thousands of idea, um, but this would just be a way to kind of get started on looking at ways to bring restorative justice into lawyer discipline. . . . And I think we are about out of time, let's, let's . . . let me just ask you guys this first. Can you go back just a second?

Campbell: Okay.

Waugh: I think, do we have five minutes?

Campbell: Like, three.

Waugh: Go to the next one. I'm sorry. There we go. Anybody have any ideas to, . . . anybody have any suggestions here on what we can do to improve lawyer wellness, or what the program, a program could do, if they think depression is adversely impacting a practice?

Audience Member: I don't know if we have something that can get that far. Sort of having a, a council of elders having some sort of an advisory group of other lawyers of those who've been through it, those who work through the process, that someone can turn to. Not just the Bar, um, though the Bar's got a great ethics line, if there's something where, hey, I may have crossed the line, you don't want to report it to them and even ask hypothetically, but to have a group that you can turn to that, that can sort of assist and either help guide you back on that path or say, you know, okay, I did it right. Maybe there's an opportunity *inaudible*.

Waugh: Yeah, so, you're suggesting that we, that we kind of take a responsibility for ourselves, and our fellow attorneys, and make ourselves available to be more of a community and to deal with each

other's struggles more communally, uh, rather than targeting them, uh.

Audience Member: But one outside of the disciplinary process.

Waugh: Right.

Audience Member: of the Bar.

Waugh: Move it outside that and have it be completely, uh, independent of the disciplinary process. That would certainly take care of a lot of issues with confidentiality, and, um, fears of, uh, repercussions. Anybody else have ideas to either of those? . . . You guys can't rely on her up here every time. C'mon, if we can up finish a little early, we can get an early lunch. Back in the back.

Audience Member: I think to improve lawyer wellness there should be a real effort to forgive student loan debt. [audience clapping and laughing].

Waugh: Yes, the, the problem of having giant . . . I mean, lawyer wellness is definitely impacted by financial pressures, um, and then you add the pressures that you guys have that, that we didn't have, um, I can't imagine what that feels like.

Audience Member: We can't choose the careers we want. We can't choose the practice areas we want. We can't choose where we want to live. We have golden handcuffs when were lucky enough to get a job. So I mean, I had 180 grand in student loan debt when I got out from undergrad and law school, and I got a pretty good . . . decent help undergrad, but law school not much so, and I got out 15 years ago, and people younger than me are a lot worse shape.

Waugh: I, I appreciate you bringing that point up because I, I graduated with \$20,000 in debt, um, and that is like [scared noise]. I, I worked through school, I didn't work all the way through but . . .

Audience Member: [inaudible]

Waugh: And so, I think, I forget about what . . . even that was a horrible burden. I actually . . . I did end up filing suit against one of my, uh, loan companies, and I did win and that took care of some of the debt, but, um, I think that that does create a big cloud for you to even get started so that, that . . . of course it's going to be depressing to try to be working and then never ever be able to, to make any financial gain. Okay, I'd like to move on. Um, if you – there are . . . if you have any ideas, suggestions, criticism, anything at all, please contact us. This is in your materials. We'd love to hear from you. Um, you know, again, it's a, it's kind of an idea that's in its infancy. So, I think it can go anywhere, and I'm hoping that, uh, there's some interest. And the next slide I put up this to remind us of what's at stake here. Um, this is a woman, Joanna Litt. She wrote a piece for a blog called Big, . . . How Big Law Killed My Husband, and this is her husband, Gabe, making a speech at his brother's wedding, and I love her quote, because we do need people like Gabe. We need good lawyers. And we can't just exclude people who need, who have . . . he was a really great lawyer, I think he was the one . . . he, he shot himself in the parking garage of his Los Angeles law firm when he was working on a case for a big mattress company that was going into bankruptcy, and a number of other things happened—the firm was putting a whole lot of responsibility on him, and, and he was a really good lawyer, and he just couldn't stand it. And we . . . I don't want to see any more Gabes. I want, I want, I want us to have a new day, where, where lawyers can be healthy and happy, and that the public perception is that we're helpers, and that we're not just stinkers. So, thank you guys very much. I really appreciate you sharing this time with me, and I hope you have a good day. [applause].