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RESTORATIVE JUSTICE: HOW LAW SCHOOLS CAN HELP HEAL THEIR COMMUNITIES

*Rachel King**

I. INTRODUCTION—THE LIMITATIONS OF THE CRIMINAL JUSTICE PARADIGM

A. Azim Khamisa's Story¹

On Saturday night, January 21, 1995, nineteen-year-old Tariq Khamisa was delivering pizzas at DeMille's Italian Restaurant in San Diego, California. His pizza-delivery job helped pay some of his college expenses at San Diego State University.

He was getting ready to leave for the evening when his boss asked him to make one last delivery. Reluctantly, Tariq agreed. Before doing so, he stopped by his girlfriend's house to bring her a soda.²

Tariq drove to the address, a large housing project on Louisiana Street in San Diego's working-class North Park neighborhood. He searched in vain for Unit D. After knocking on several doors, he realized there was no Unit D—the order had been a hoax. As he walked back to his Volkswagen, a boy pointed a gun at him and said, "Pizza man, give me those pizzas." Tariq ignored him and kept walking back to his car. He tossed the pizzas inside and started to drive away. The boy fired. The nine-millimeter slug shattered the car window, ripping through Tariq's arms and chest, killing him immediately.³

The police easily located the assailant, Tony Hicks, who was already in custody for stealing his grandfather's gun. Tariq's father, Azim, was devastated by his son's senseless murder. The case

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1. All references to Azim's story come from the author's book, *RACHEL KING, DON'T KILL IN OUR NAMES: FAMILIES OF MURDER VICTIMS SPEAK OUT AGAINST THE DEATH PENALTY* 250 (2003).

2. *Id.*

3. *Id.*

quickly became high-profile and political because Tony was the first fourteen-year-old to be prosecuted as an adult under California's new, tougher laws enabling juveniles to be prosecuted in the adult criminal justice system.⁴ The case engendered much debate—some supported the law while others opposed it.⁵ Azim did not take part in the debate, which to him seemed irrelevant. No matter what happened to Tony, it would not bring his son back.

My thoughts and emotions began to return the day after we buried Tariq. One of the first emotions I felt was anger. However, it was not directed at Tariq's assailants. The entire society was the object of my rage. I wondered how it was that in our great country children too young to have a driver's license are not too young to carry a gun. Why do we spend billions on wars on foreign soil or conquering space, when every day, in our own backyard, our defenseless children are wiped out in a frenzy of bizarre violence? Why couldn't our intelligent nation, the world's only superpower, get its priorities right? How many more children would have to be sacrificed? When did we start accepting these killings? And why did we allow them to continue?⁶

Tony was sentenced to twenty-five years to life in prison, but the harsh punishment did nothing to ease Azim's pain:

Sentencing Tony to prison did not make me feel whole. It did nothing to bring Tariq back. We need a justice system that is more holistic. We have to look at where violence comes from. Parents are not only responsible. All of society is responsible.

I was starting to think more about the concept of restorative justice, especially for juveniles. Our system is based on retributive justice, which punishes the offender and ends there. Restorative justice seeks to make both parties whole. We need to be realistic that if we do not change offenders, we as a society will continue to suffer.⁷

B. The Families Make Contact

With the help of the district attorney, Azim contacted Tony's grandfather and guardian, Plex Ferguson, a very unusual thing to do. Through Plex, he began corresponding with Tony in prison, and eventually chose to meet Tony in person. Azim believed that

4. *Id.* at 253.

5. *Id.* at 258.

6. *Id.* at 257.

7. *Id.* at 265-66.

2007]

RESTORATIVE JUSTICE

1287

Tony's ability to change was dependant on Azim's ability to forgive him:

Unabated anger directed at the perpetrator harms us, however, because anger is a very strong emotion and can become an all-consuming passion within us. It fills us with hatred and tension and blocks out love and joy. The only way to defuse that unabated anger is through forgiveness. The criminal needs the victim's forgiveness to heal. And in one of human nature's strange twists, full healing for the victim may require him or her to grant that forgiveness. There may be no other way to defuse the destructive anger one feels.⁸

Azim, with Plex Ferguson's help, transformed his rage and disappointment with the criminal justice system by starting the Tariq Khamisa Foundation ("TKF"), an organization aimed at preventing gang violence. Using the TKF, Azim and Plex developed a Violence Impact Forum, which they take to public schools throughout California, sharing first-hand accounts of how violence has impacted their lives. They believe that if, at a young age, children see how harmful violence is, they will make better choices in the future. In the year 2000 alone, TKF reached 18,000 middle school children (fourth through sixth graders).⁹ It targeted this age range because it is the period when most gang recruitment begins. Before and after TKF programs, children were asked to fill out questionnaires about their thoughts on violence and joining a gang. The program has had documented success in changing childrens' attitudes about gang violence.¹⁰

Additionally, Azim encourages the school children to correspond with Tony, who has decided to become a child psychologist. Azim hopes that the letters of support from the school children will give Tony the encouragement he needs to stay on the straight and narrow path while he is in prison. Azim is anxious for Tony to finish his prison sentence, complete his education, and work for

8. *Id.* at 266.

9. *Id.* at 271.

10. The Tariq Khamisa Foundation measures the effectiveness of its Violence Impact Forum ("VIF") by asking the students to fill out pre-, post-, and 45-day post questionnaires, which continue to demonstrate "that the VIF causes significant changes in students' beliefs and attitudes toward revenge, violence, gangs and guns." Tariq Khamisa Foundation, *How TKF Measures Success & The Effectiveness of Our Programs*, http://www.tkf.org/measuring_our_success.html (last visited May 2, 2007). Additionally, independent consultants evaluating the program over a ten-month period concluded that "the VIF has significant, sustained positive impact on key youth attitudes and beliefs that have been shown to reduce aggressive behavior." *Id.*

TKF. Azim wants Tony to make amends for Tariq's death by helping other young people turn their lives away from violence.¹¹

Azim Khamisa was able to transform the horror of losing his child into a life mission to end gang violence. His son's murder was resolved in a way that could be considered just. This justice, however, did not come from the criminal justice system—it came from his own ingenuity and strong passion to create something meaningful.

C. The Inadequacies of the Legal System

I have spent my nearly twenty-year legal career as an advocate, lobbyist, teacher, and researcher in the area of criminal justice and, based on these experiences, believe that our justice system insufficiently addresses the harm caused by crime. Our justice system's biggest limitation is that it does little or nothing to heal the families affected by crime.

I have spent a decade documenting the effects that the criminal justice system, especially the death penalty, has on both the family members of murder victims and the family members of people on death row.¹² Generally, the legal system does not meet the needs of people on the periphery of the system. The legal system is concerned with the determination of guilt or innocence, and to some degree protecting the rights of the accused. What happens to the parent of a murder victim or the sister of a defendant is not a core concern of the system. Through my work, I seek to shine a light on the experiences of those who are excluded from the system, and hopefully to help them heal as well.

In law school, we should teach students how our legal system affects real people. Although we sometimes act as though the law is something separate from society, in fact, it is a human construct. Every student who graduates from law school will enter the legal

11. See KING, *supra* note 1, at 270-71.

12. From these experiences, I have written two books and several articles. See generally RACHEL KING, CAPITAL CONSEQUENCES: FAMILIES OF THE CONDEMNED TELL THEIR STORIES (2005); RACHEL KING, DON'T KILL IN MY NAME: FAMILIES OF MURDER VICTIMS SPEAK OUT AGAINST THE DEATH PENALTY (2003); Rachel King, *The Impact of Capital Punishment on Families of Defendants and Murder Victims' Family Members*, 89 JUDICATURE 292 (2006); Rachel King, *Why a Victims' Rights Constitutional Amendment Is a Bad Idea*, 68 U. CIN. L. REV. 357 (2000); Rachel King & Katherine Norgard, *Using the Impact on Death Row Defendant's Family Members as a Mitigating Factor in Death Penalty Sentencing Hearings*, 26 FLA. ST. U. L. REV. 1119 (1999); Rachel King, *No Due Process: How the Death Penalty Violates the Constitutional Rights of Death Row Prisoner's Family Members*, B.U. PUB. INT. L.J. (forthcoming Spring 2007).

profession and become part of that construct. The good news is that every new lawyer has a chance to improve our legal system.

I am convinced that the criminal justice paradigm, based on retributive justice, addresses only part of the crime problem. There must be an additional system of justice, perhaps parallel to the criminal justice system, that looks at the real-life effect of the criminal justice system and seeks to heal everyone who is harmed by the crime—the victim and offender, their family members, community members, and those who provide support to any of these individuals.

The legal system needs to develop this complementary paradigm, and law schools should help to do so. This Essay proposes establishing Restorative Justice Programs in law school, where law students would gain first-hand experience working with people who are caught up in the criminal justice system. Along with learning the traditional legal tools, students would have the opportunity to employ other techniques to heal those involved in legal disputes.

II. THE NEED FOR A NEW PARADIGM

A. What is Restorative Justice?

Restorative justice is in some ways a new field, but in other ways a very old one. It borrows from traditional methods of dispute resolution in an attempt to bring a more balanced approach to the criminal justice system.¹³ Although restorative justice principles can be applied to address any type of wrongdoing, typically they are associated with the criminal justice system.

Restorative justice is described as: “not simply a way of reforming the criminal justice system, it is a way of transforming the entire legal system, our family lives, our conduct in the workplace, and our practice of politics. Its vision is of a holistic change in the way we do justice in the world.”¹⁴ Although no consensus exists as to what constitutes all aspects of restorative justice, many restorative justice advocates agree on three concepts: “(1) restorative jus-

13. Paul McCold, *What Is the Role of Community in Restorative Justice Theory and Practice?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE* 155, 160 (Howard Zehr & Barb Toews eds., 2004). McCold calls restorative justice a “re-discovery” in that “similar processes have existed in most human societies and continue in many indigenous cultures today. The emerging field of restorative justice is a modern manifestation of these ancient processes that has not yet reached a consensus in theory and practice.” *Id.*

14. Gerry Johnstone, *How, and in What Terms, Should Restorative Justice Be Conceived?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 5 (citation omitted).

tice views crime as a harm to people and relationships; (2) offenders have an obligation to make things right to those affected; and (3) victims and offenders are direct stakeholders, but others are affected as well.”¹⁵

Instead of focusing on what laws were broken and how the offender should be punished,¹⁶ restorative justice focuses on who has been harmed and how that person can be made whole.¹⁷ Restorative justice not only seeks to heal the wrongs committed by individuals against other individuals, it also seeks to heal wounds inflicted by the government-sponsored retributive justice paradigm against criminal defendants and their families, such as the harm caused to relationships by lengthy periods of incarceration or execution.

Howard Zehr,¹⁸ widely considered one of the founders of the restorative justice movement, contrasts the ways that retributive justice and restorative justice look at crime. Retributive justice views crime as a violation of the state, defined by lawbreaking and guilt. The role of retributive justice is to determine blame and administer punishment in the form of pain.¹⁹ Restorative justice, however, views crime as a violation of people and relationships. Using this model, justice involves creating solutions that promote, repair, and reconcile victims and offenders with their communities.²⁰

People interested in restorative justice ask different questions from those involved in a retributive framework. Instead of asking what law has been broken, who did it, and what punishment do they deserve, restorative justice broadens the dialogue to ask questions such as: Who has been hurt? What are their needs? Whose obligations are these? What are the causes? Who has a stake in the situation? What is the appropriate process to involve stakeholders in an effort to address causes and put things right?²¹

15. See McCold, *supra* note 13, at 160.

16. *Id.* at 161.

17. *Id.*

18. Howard Zehr, Ph.D., is a Professor of Restorative Justice and co-director of the graduate Conflict Transformation Program at the Eastern Mennonite University. Zehr lectures and consults internationally on restorative justice. *About the Authors*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at xiii, xxii.

19. HOWARD ZEHR, *CHANGING LENSES* 181 (Herald Press 2005) (1990).

20. *Id.*

21. *Id.* at 271.

B. The Return to the Restorative Justice Paradigm

In the 1960s, colonized peoples in North America, Australia, and New Zealand started to suggest that they be permitted to use their own justice systems based on native customs and values.²² This movement grew, and by 1989, New Zealand had radically overhauled its juvenile justice system by adopting traditional Maori customs.²³ The Children, Young Persons, and Their Families Act makes a restorative justice model the official juvenile justice system in New Zealand, and uses the court system as a backup if the restorative system fails.²⁴ The success rate of this program is impressive: eighty percent of young people do not formally enter the system, but are dealt with through a diversionary process.²⁵ The primary process used is the Family Group Conference (“FGC”). In one model of the FGC, the victim meets the offender, along with her family. From this meeting, an Acceptable Behavior Contract is developed, which outlines how the offender will change her behavior. All the parties must agree upon the contract.²⁶

The first official example of restorative justice in the traditional western criminal justice context occurred on May 28, 1974.²⁷ Two young men from Ontario, Canada vandalized twenty-two properties.²⁸ The probation officer handling the case suggested that it would be “neat” if the offenders had to meet their victims.²⁹ On a whim, he made this recommendation to the judge, who made it part of the sentence.³⁰ Accompanied by probation officers, the boys visited all but two victimized families, who had moved before the visits began.³¹ The boys worked out a restitution plan, and within months repayment was made.³²

22. GERRY JOHNSTONE, *RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES* 37 (2002).

23. See Restorative Justice Consortium, FGCs, http://www.restorativejustice.org.uk/?About_RJ:FGCs (last visited Apr. 2, 2007).

24. The Children, Young Persons, and Their Families Act 1989, 1989 S.N.Z. No. 24, available at http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes. References to Family Group Conferences begin in Section 20 of the Act. *Id.*

25. Guy Masters, *What Happens When Restorative Justice is Encouraged, Enabled and/or Guided by Legislation?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 227, 231.

26. See 1989 S.N.Z. No. 24 § 145.

27. See ZEHR, *supra* note 19, at 158-59.

28. *Id.*

29. *Id.*

30. *Id.* at 159.

31. *Id.*

32. *Id.*

Practically speaking, restorative justice is carried out through practices such as victim-offender mediation, sentencing circles, and family group conferencing.³³ In the United States, the most common restorative justice practice is Victim Offender Mediation (“VOM”). There are 300 VOM programs in the United States and 700 in Europe;³⁴ Canada, New Zealand, and Australia have implemented restorative justice programs as well.³⁵ Initially, restorative justice techniques were used only in cases less serious than those involving the death penalty. They are now used in death penalty cases with Defense Based Victim Outreach, which “provides a link between the families of murder victims and defense attorneys in order to help meet victim needs and reduce the trauma of the legal process.”³⁶

C. Restorative Justice Beyond the Criminal Justice Context

Restorative justice is not only relevant in the criminal justice context—history is replete with examples of governments engaging in genocide, slavery, ethnic cleansing, apartheid, female exploitation, and forced relocation or internment. Societies can experience healing if these harms are addressed and some type of restoration is achieved. As Vernon Jantzi points out, “[n]ations typically recognize the facts, but rarely offer appropriate repentance or restitution, thereby insuring that the harm becomes a negative national legacy.”³⁷ One example of a government attempting to address past injustices is the South African Truth and Reconciliation Commission,³⁸ where victims of apartheid are given the opportunity to confront their perpetrators.³⁹ Although there is much debate about the effectiveness of this Commission, it was an important step for the society to take to heal the harm caused by apartheid.

Additionally, some non-criminal justice government programs are beginning to use restorative justice programs. For example, a

33. Susan Sharp, *How Large Should the Restorative Justice “Tent” Be?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 17.

34. Office for Victims of Crime Bulletin, Office of Justice Programs, U.S. Dep’t of Justice, *The Restorative Justice and Mediation Collection: Executive Summary*, available at http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/bulletin1/welcome.html (last visited May 3, 2007) (select “How Many Programs Exist” hyperlink).

35. Vernon E. Jantzi, *What Is the Role of the State in Restorative Justice*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 189, 194.

36. See ZEHR, *supra* note 19, at 275.

37. See Jantzi, *supra* note 35, at 195.

38. *Id.* at 193.

39. *Id.*

Boston area community organization championed the use of restorative justice principles with its work with at-risk youth.⁴⁰ The Massachusetts Department of Social Services and Department of Youth Services were so impressed that they began to explore the use of peacemaking circles both internally with their employees, and externally with their youth work.⁴¹ They brought together all the relevant stakeholders to sit in a circle to address problems. The professionals have found sitting in a circle with the youth they serve to be a humbling experience. It forces professionals to realize the limitations of their work-related experiences and to realize that “they need to find ways to support, not replace, informal networks within the community.”⁴²

The peace making circles can also provide healing for the employees who are confronted daily with poverty, discrimination, neglect, abuse, and violence, yet have no outlet to talk about their feelings. One young caseworker in Massachusetts was moved to tears after listening to a young person talk about his life. While this caseworker was embarrassed by her reaction and felt she was being unprofessional, the purpose of the healing circle is for people to share their feelings, which will hopefully help the staff be more effective at their jobs, and less likely to become apathetic or cynical.⁴³

Through my research, I have seen a number of cases where families harmed by murder have experienced healing through restorative justice-type programs. Sometimes these efforts are initiated by the government, but most often, as with the case of Azim Khamisa, the family members have to create their own restorative justice experience.

III. VICTIM-OFFENDER MEDIATION—AN IMPORTANT TYPE OF RESTORATIVE JUSTICE

Victim-offender mediation is one type of restorative justice program. Its goal is to bring together the victims of crime with their perpetrators so that they can discuss what happened—the victim has the opportunity to tell the offender how the crime harmed her and to ask questions of the offender, and the offender has the op-

40. Carolyn Boyes-Watson, *What Are the Implications of the Growing State Involvement in Restorative Justice?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 215, 217.

41. *Id.*

42. *Id.* at 220.

43. *Id.*

portunity to apologize. The following story of Linda and Ami White is an example of an effective victim-offender mediation.

Linda White's daughter, Cathy O'Daniel, was driving home late one night when she stopped at a service station for gas. Two young boys were having car trouble; Cathy approached them and they asked her for a ride. This is what happened next:

The boys instructed Cathy to drive to an isolated area four miles south of Alvin in Brazoria County on Texas Route 35. Their original plan had been to get her to a secluded location, steal her car, and leave her behind, but at some point they decided to rape Cathy. Each boy took his turn assaulting her while the other held a gun to her head. When they had finished, Marion shot her in the leg so she could not go for help. Hearing the shot brought home to them the gravity of what they had done, so the boys decided to kill her.⁴⁴

The murder devastated the family. Cathy, who was engaged and pregnant at the time of her murder, had a five-year-old daughter, Ami, from a former marriage. After her mother's death, Ami, who had little contact with her father, went to live with her grandparents, Linda and John; Ami's grandparents found themselves parents of a young child at a time in their lives when all of their children had already grown to adulthood.

Both boys had confessed, so neither of them had much of a defense. Since they were both under sixteen, they were not eligible for the death penalty.⁴⁵ They both entered into plea agreements, sparing Linda, John, and Ami the agony of a trial. Marion Berry received a fifty-five year sentence, and Gary Brown, a fifty-four year sentence.

The killing had an unusual effect on Linda in that it convinced her to return to school and get a Ph.D. in psychology. As Linda put it, "My studies and my career choice were motivated by my own need to grieve and to 'fill the hole' left by Cathy's murder. I had lots of experience with grieving, and I wanted to share those experiences with others."⁴⁶

During the course of her studies, Linda came across a book called *Restorative Justice—Towards Non-Violence*.⁴⁷ She read the book, and then everything else she could find on the subject. One

44. See KING, *supra* note 1, at 225.

45. Since that time, the United States Supreme Court decided the case of *Simmons v. Roper*, 543 U.S. 551, 574 (2005), declaring that the execution of any person under eighteen violates the Constitution.

46. See KING, *supra* note 1, at 234.

47. VIRGINIA MACKEY, *RESTORATIVE JUSTICE: TOWARDS NON-VIOLENCE* (1990).

2007]

RESTORATIVE JUSTICE

1295

book written by Gerald Austin McHugh described the dehumanization process taking place in every prison in the United States.⁴⁸ Linda explained:

One chapter [in McHugh's book] made the point that if you really want to make a difference you need to volunteer at a prison, which is one way of helping to restore relationships between the prisoners and the community. Another suggestion was to teach. . . . Teaching at the prisons also opened my eyes to the reality of prison life. For the first time in years I found myself thinking about Gary Brown and Marion Berry. I had tried so hard to push them out of my mind that I actually got to the point where I couldn't remember their names. I started carrying around a newspaper clipping about Cathy's murder so that I would remember them.

Getting to know my students made Gary and Marion more real to me. Prisoners are not all alike. They are multi-dimensional, like other people. Over time, I found myself caring about what happened to them. I understood a little better how things like murder happen and I knew what they went through being in an adult prison at age 15.⁴⁹

Around that time, one of Linda's students informed her about a victim-offender mediation program being developed in Texas.⁵⁰ In 2001, Linda and Ami signed up to take part in the program.⁵¹ They spent nine months preparing to meet Gary. They answered dozens of questions in writing about how the crime had affected them.⁵² Linda, Ami, and Gary each met individually with the mediator to discuss expectations for the session.⁵³ On April 27, 2001, Linda and Ami flew to Wichita Falls to meet Gary.⁵⁴ Linda describes seeing Gary for the first time:

He looked like a lost little boy to me, even at thirty. He just doesn't look like a tough kid. I could see him pretending to be tough, but what I saw was a lost, forlorn, little boy.

Because of his emotional state it was very hard for him to talk, so I thought it made sense to start out talking about something

48. GERALD AUSTIN MCHUGH, *CHRISTIAN FAITH AND CRIMINAL JUSTICE: TOWARDS A CHRISTIAN RESPONSE TO CRIME AND PUNISHMENT* (1978).

49. *See* KING, *supra* note 1, at 237-39.

50. *Id.* at 239.

51. *Id.* at 241.

52. *Id.* at 242-43.

53. *Id.* at 241-43.

54. *Id.* at 243. Linda and Ami only met with Gary, and not Marion, because the mediator had determined that Marion was not sufficiently remorseful to be a good candidate for mediation.

besides the crime. I asked him to tell us about the family of an older inmate who had befriended him.

Gary told us that when this man first reached out to him, he assumed the man wanted to take advantage of him. It was hard for Gary to accept that the man didn't want anything from him, except to be his friend. The man told Gary to put his family down on his visitor's list and they would visit him. Eventually Gary did. This family took an interest in him. It was really the first time Gary ever got any love or acceptance from anybody.

Gary had had a very difficult childhood, and it was very hard for him to trust other people. He had been sexually abused by his dad. He lived mostly with his mother and stepfather, but he was also in foster care for a while. He spent the first few years of his life in an orphanage. He doesn't know his real last name—apparently his mother didn't tell him. He doesn't have a birth certificate. When he started school, he took the last name of his stepfather at the time.

His life was just a train wreck.

Gary has attempted suicide ten times—the first time when he was eight years old. He took pills, lots of Tylenol. He wasn't old enough or sophisticated enough to know how to kill himself.⁵⁵

Like most victims, Linda and Ami had a lot of questions about the crime; they particularly wanted to know how the boys came into contact with Cathy.⁵⁶ Gary explained that he and Marion stole a car that was not working, and Cathy approached their car and offered to help them.⁵⁷ Linda heard this story before, but never believed that Cathy would offer a ride to the boys. Once she saw how young and vulnerable Gary looked, however, even years after the crime, Linda could imagine why Cathy would agree to give him a ride.⁵⁸ Gary then described the crime and how it escalated from car theft, to rape, and then ultimately to murder.⁵⁹ Gary relayed Cathy's last words: "I forgive you, and God will forgive you, too."⁶⁰ Linda described the experience:

By this point, both Ami and I were bawling. That was the hardest part of the mediation, but it was also without question the best part. If she could say those words to them, then she had to have transcended whatever was going on in some way. I had

55. *Id.* at 244-45.

56. *Id.* at 245.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 246.

always thought that Cathy's last moments were filled with terror, but the fact that she said that made me think otherwise. She had already achieved a level of peace that put her beyond fear. That piece of information alone was a total validation of the mediation process.⁶¹

Linda and Ami both experienced tremendous healing after meeting with Gary. Unfortunately, the program that assisted their mediation is not available to most victims. According to the Department of Justice Office of Victims' Services, Texas is one of only seven states that provide comprehensive victim-offender mediation services.⁶² Unlike most states that only offer programs for offenders who committed non-violent offenses, the Texas program includes offenders who committed violent crimes, including homicide.⁶³ Unfortunately, limited resources have prevented most states from pursuing these types of programs to any significant degree.

IV. LAW SCHOOLS SHOULD PLAY A ROLE IN DEVELOPING RESTORATIVE JUSTICE PROGRAMS

The examples of Azim Khamisa and Linda and Ami White are just two of many cases I have encountered where people needed contact with the offender apart from the prosecution of the criminal case. Many more victims could experience the benefits of restorative justice if the legal profession incorporated such practices.

There are several reasons why law schools should be involved in developing restorative justice programs. First, by exposing law students to restorative justice principles in law school, they will be more likely to use them when they enter the profession. Also, restorative justice-type programs in law school may keep students more interested in public interest work.

In my four years as a law school professor, I saw many students begin their education maintaining ideals of helping other people and practicing public interest law, but by the end of their education, choose to work for a large firm, making significantly more money. The opportunity to be involved in a restorative justice program may help keep these students engaged and interested in the

61. *Id.*

62. See Directory of Victim-Offender Mediation Programs in the United States, http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/96521-dir_victim-offender/direct9.html (last visited Apr. 11, 2007).

63. For an explanation of Texas' victim-offender mediation program, see Texas Dep't of Criminal Justice, Victim Servs. Div., <http://www.tdcj.state.tx.us/victim/victim-vomd.htm> (last visited Apr. 11, 2007).

pursuit of a public interest path, which I believe will improve the legal profession. Lastly, restorative justice programs are an opportunity for law schools to partner with the larger community and provide a service to that community, which fulfills an ethical ideal of the legal profession—public service.

During law school, I took part in several clinical programs which encouraged me to choose a public-interest path. After law school, I became a public defender. If I had the opportunity to be part of a restorative justice program while in law school, it would have made me more sensitive to the needs and interests of victims and offenders, therefore making me a better lawyer.

A. Possible Practice Models

1. VICTIM-OFFENDER MEDIATION: As described above in Part III, this is one of the classic restorative justice models. In fact, for many years, the concept of victim-offender mediation was nearly synonymous with restorative justice.⁶⁴ Initially, VOM began as a one-on-one mediation facilitated by a neutral mediator.⁶⁵ Before long, this model expanded to include multiple victims, offenders, family members, and their supporters.⁶⁶ As in the case of Linda and Ami White,⁶⁷ the victim had an opportunity to ask questions, and the offender had an opportunity to apologize—the experience was healing for all parties.⁶⁸

Many law schools have criminal justice clinics where law students have an opportunity, under the supervision of a trained lawyer, to represent clients in misdemeanor criminal cases. A victim-offender mediation program could run in tandem with these clinics, training law students in mediation techniques and making them available to facilitate victim offender mediations. The larger community would be served both from legal representation and the healing that sometimes results from in-person mediations.

2. FAMILY GROUP CONFERENCES: Similar to victim-offender mediation sessions, FGCs also include the extended families or other support people of the victims and offenders, as well as law enforcement and social service providers.⁶⁹ One outcome of an FGC is the healing contract. A healing contract is similar to a sen-

64. Ann Warner Roberts, *Is Restorative Justice Tied to Specific Models of Practice*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 241.

65. *Id.* at 242.

66. *Id.*

67. *See supra* Part III.

68. *See* KING, *supra* note 1, at 248.

69. RUPERT ROSS, *RETURNING TO THE TEACHINGS 17* (2006).

tence; it is designed by all parties involved in or personally affected by the offense.⁷⁰ “[I]t requires that [each party] ‘sign on’ to bring certain changes or additions to their relationships with all the others.”⁷¹ Some of these contracts can be in effect for years.⁷²

Both VOM and FGCs can be done alongside any formal criminal justice process. Both have the goal of encouraging restorative dialogue; this emphasizes the value of “repairing harm as much as possible, direct involvement of the parties, a problem-solving, collaborative approach, consensual decision making, respect among all parties, flexibility of the process, and empowerment of all parties.”⁷³

3. SENTENCING CIRCLES: Sentencing circles combine Western judge-imposed sentences with the idea of a community circle in which all can participate.⁷⁴ The sentencing circle has two purposes: to promote “the community healing process by providing a forum for the community to address the parties of the victimization,” and to allow the courts to hear directly from everyone affected by the crime.⁷⁵ Unlike the first two models, sentencing circles are actually part of the criminal justice system, and require the willingness of the sentencing judge, the prosecutor, and other criminal justice players. Ideally, sentencing circles include: the victim; the support people working with the victim (professionals such as psychologists and social workers); the family of the victim; the victimizer; the support people working with the victimizer; the family of the victimizer; the community; the court participants (the judge, the district attorney, and the defense attorney); and the police responsible for the arrest and investigation.⁷⁶ Also, following Native American traditions, sentencing circles could begin with rituals such as sweat lodges, smudging, passing a tobacco pipe, and prayer.⁷⁷

4. RESTORATIVE CAUTIONING: This is one of the main applications of restorative justice in the United Kingdom.⁷⁸ Police officers deliver cautions to youth offenders instead of arresting them and putting them through the court process. A restorative caution is a meeting with the victim, offender, members of their families and

70. *Id.* at 31.

71. *Id.*

72. *Id.*

73. Roberts, *supra* note 64, at 241-42.

74. See ROSS, *supra* note 69, at 202.

75. *Id.* at 202-03.

76. *Id.* at 203.

77. *Id.* at 204-05.

78. JOHNSTONE, *supra* note 22, at 115.

supporters, and a trained restorative justice facilitator.⁷⁹ The aims of the conferences are to:

[c]onfront offenders with the consequences of their unacceptable behaviour; to get them to understand what it was about their lifestyle, company, habits, etc. that led them to offend; to commit themselves to changing their lifestyle, etc. so that there is less risk of them reoffending; to persuade them to apologise to their victims and to agree to a reparative action plan; to give victims a chance to express their feelings about what happened and to meet the offender; and very gently, to encourage victims to take some first steps towards forgiving offenders.⁸⁰

With all of the four above-listed models, discharging painful emotions is key if real healing is to take place. To the extent that these programs can incorporate the values and culture of the victims and offenders, the experiences will be that much more effective. For example, talking is the basis of family group conferences, but indigenous people often use other techniques as well. Cree teaching lists seven ways to discharge emotions: crying, yelling, talking, sweating, singing, dancing, and praying.⁸¹ For the African American community, an emphasis on liberation of the community is an important part of the cultural heritage to incorporate into restorative justice models.⁸²

5. TRUTH COMMISSIONS: Truth commissions present opportunities for community healing on a large scale.⁸³ The point of the commission is to provide an opportunity for people to tell their stories, or the stories of their family members, and to understand how those stories continue to play out in their lives today, drawing

79. *Id.*

80. *Id.* at 115-16.

81. *Id.* at 141.

82. Morris Jenkins, *How Do Culture, Class and Gender Affect the Practice of Restorative Justice?*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 315, 318. Jenkins postulates that in order for restorative justice to work in African American communities, it should incorporate an Afrocentric approach. He states:

The primary focus is not retribution for the criminal act, the rehabilitation of the offender to a perfect Eurocentric citizen, or even the compensation of the victim. The Afrocentric approach does not ignore these concerns; however the liberation of the community is the primary concern. A true understanding of one's culture is needed to achieve emancipatory literacy: the ability to conceptualize the world in ways consistent with one's history and to apply that knowledge as one's personality and situation requires.

Id.

83. Ann Skelton & Cheryl Frank, *How Does Restorative Justice Address Human Rights and Due Process*, in *CRITICAL ISSUES IN RESTORATIVE JUSTICE*, *supra* note 13, at 203.

upon the wisdom of the community to fashion solutions to the problem.

Truth commissions can be established by government action, such as through a democratic legislative act, executive decision, treaty, or efforts of the United Nations or nongovernmental organizations.⁸⁴ Examples include the Truth and Reconciliation Commission in South Africa, the Commission on the Truth for El Salvador, and the National Commission for the Disappearances of Persons in Argentina.⁸⁵ Examples of private commissions are the truth commission in Rwanda, established by non-governmental organizations, and the commission to investigate military trials in Brazil, established by the World Council of Churches.⁸⁶

Besides programs in the criminal justice arena, law school restorative justice programs could also tackle large-scale social issues. For example, at Howard University, a historically black university, the law school could organize a Truth Commission to look into the issue of slavery reparations,⁸⁷ or a more local problem such as how to repair the broken Washington, D.C. school system, which also primarily affects African Americans.

V. CONCLUSION

Law schools are uniquely qualified to play a role in promoting restorative justice programs. Implementing any of the restorative justice models mentioned in this Essay will teach students important skills about communicating, mediating conflict, and organizing within one's community. The community will benefit from the programs because they will, ideally, empower the community and help heal conflict. Most importantly, law students who participate in these programs will learn new conflict resolution skills to employ

84. See MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 53-54 (1998).

85. *Id.*

86. *Id.* at 54.

87. Associated Press, *Advocates Quietly Push for Slavery Reparations: With Global Attention and Cases in Court, Scholars Say Issue Has Momentum*, July 9, 2006, available at <http://www.msnbc.msn.com/id/13785355/> (last visited Apr. 11, 2007). Since 1989, Congressman John Conyers has introduced legislation to study the issue of reparations (H.B. 40), but so far, the bills have not seen any movement. John Conyers, Jr., Major Issues—Reparations, Statements from April 6, 2005 Briefing: The Impact of Slavery on African Americans Today, http://www.house.gov/conyers/news_reparations.htm (last visited Apr. 2, 2007). This may change now that Conyers is Chairman of the Judiciary Committee, and has the power to convene hearings on the issue. U.S. House of the Representatives, Comm. on the Judiciary, <http://judiciary.house.gov/CommitteeMembership.aspx> (last visited Apr. 2, 2007).

1302

FORDHAM URB. L.J.

[Vol. XXXIV

when they become practicing attorneys. Instead of solely learning substantive law, law students will have the opportunity to help real people experience healing, and perhaps also achieve a measure of justice.