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## Segregation, Violence, and Restorative Justice: Restoring our Communities, 50 J. Marshall L. Rev. 487 (2017)

Michael Seng

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# SEGREGATION, VIOLENCE, AND RESTORATIVE JUSTICE: RESTORING OUR COMMUNITIES

MICHAEL P. SENG\*

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## I. INTRODUCTION – VIOLENCE IN OUR CITIES – CHICAGO AS AN EXAMPLE

American headlines in the past several years have reported tragic cases of shootings of young persons and innocent bystanders in many of our cities largely resulting from gang and other acts of random violence. Perhaps no city has received greater publicity and has been hit harder by this type of thoughtless violence than Chicago. Every day one reads about small children, innocent teenagers and seniors being shot down in the line of fire on Chicago’s streets. Most of the violence occurs in impoverished and low-income communities of color.

Along with private acts of violence, we hear of the shootings and deaths because of questionable police actions. These actions are also largely confined to impoverished and low-income communities of color. Most prominent are the deaths of civilians by police that have occurred in Ferguson and Baltimore, as well as Chicago.

What is going on in Chicago and other major American cities is not isolated. Violence, whether perpetrated by private individuals or groups or by those in public authority such as the police, is not acceptable at any level. Violence simply begets more violence. What

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is happening is closely related to other social and economic ills. Persons often resort to violence when they have nothing else to lose. Violence as perpetrated in our cities today is closely tied to a lack of jobs, lack of educational opportunity, lack of political power, and a feeling of utter and complete hopelessness.

Traditional remedies such as hiring more police or locking up the perpetrators are not working and are done at considerable cost to society. Often these remedies exacerbate problems rather than alleviate problems. Having more police officers on the street can perpetuate the siege mentality that is experienced by persons in low income segregated communities, especially if the officers are not well trained to handle the resentment their presence inevitably brings. Convicts return from imprisonment with a chip on their shoulder. The prison environment only reinforces their bad habits. They return to their communities with criminal records that make it more difficult for them to find decent employment or housing. They become estranged from their families. Rather than preparing persons to reintegrate positively back into society, incarceration does exactly the opposite.

Society is more and more moving to solutions offered by restorative justice. Restorative justice offers a holistic approach to the effects of violence. It recognizes that focusing only on the perpetrator does little good. Victims must be restored, but a victim-centered approach is insufficient. Crimes of violence affect the entire community. The community must be restored, but restoration does not mean returning to the status quo. The community, as well as the offender and often the survivor, must be transformed so that bad behavior is discouraged and not seen as the norm. Racism, classism, and other impediments to reintegrating the individual and the community must be expunged. The community itself provides the environment where the anti-social behavior occurs, and the community must be part of the solution. We cannot ignore the causes that lead to the antisocial behavior. To do so will only exacerbate it. The task is immense, but the cost of inaction is too great to ignore.

This article will explain why restorative justice is an effective remedy in resolving the social and economic problems that plague our communities. A narrow approach will not succeed. Restorative justice solutions require participation by the entire community; nothing less will work.

## II. SOURCE OF THE PROBLEM

Many explanations can be offered for the problems of violence in our cities. Urban violence is not new. Violence has been around as long as persons have congregated in urban areas. Street gangs were in existence in American cities in the 19th and 20th

centuries.<sup>1</sup> Police misconduct has existed ever since the establishment of modern police forces.

Nonetheless, the level of violence that we are experiencing today, whether greater or less than that suffered in the past, is disturbing and is unacceptable. The loss of even one life is a tragedy. The loss of more than 760 lives due to violence, as occurred last year in Chicago, is a major catastrophe.<sup>2</sup> The loss of these lives did not happen through a force of nature; it happened because of the failure of our institutions. We can do better.

Three reports have been issued in the City of Chicago this year that provide explanations for the violence that is occurring there: The Justice Department Report on Police Misconduct in Chicago issued on January 13, 2017;<sup>3</sup> the Great Cities Institute at the University of Illinois at Chicago Study on Youth Joblessness in Chicago;<sup>4</sup> and the Metropolitan Planning Organization's study on The Costs of Segregation in Chicago.<sup>5</sup> None of these studies in itself offers a complete explanation, but each is helpful in pointing out problems that must be corrected if the shootings in Chicago are to be reversed. I cite them in the order that they were published.

#### A. *The Department of Justice Report Finding a Lack of Police Training and Accountability in Chicago*

On January 13, 2017, the United States Justice Department (DOJ) published its investigation of the Chicago Police Department.<sup>6</sup> The report was issued in the final days of the Obama Administration. The new Trump administration has announced that it will not enforce the reforms against police departments

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1. Evan Andrews, *7 infamous gangs of New York*, HISTORY.COM (June 4, 2013), [www.history.com/news/history-lists/7-infamous-gangs-of-new-york](http://www.history.com/news/history-lists/7-infamous-gangs-of-new-york); James C. Howell & John P. Moore, *History of Street Gangs in the United States*, NATIONAL GANG CENTER BULLETIN (May 2010), [www.nationalgangcenter.gov/Content/Documents/History-of-Street-Gangs.pdf](http://www.nationalgangcenter.gov/Content/Documents/History-of-Street-Gangs.pdf). One of the most popular American musicals, *West Side Story*, is about gang violence in New York in the 1950s.

2. *Trump again puts spotlight on violence in Chicago*, CHI. TRIB., Mar. 29, 2017, at 7.

3. United States Department of Justice and the United States Attorney's Office Northern District of Illinois, *Investigation of the Chicago Police Department*, JUSTICE.GOV (Jan. 13, 2017), [www.justice.gov/opa/file/925846/download](http://www.justice.gov/opa/file/925846/download).

4. Great Cities Institute, University of Illinois at Chicago, *Abandoned in their Neighborhoods: Youth Joblessness amidst the Flight of Industry and Opportunity*, GREATCITIES.UIC.EDU (Jan. 29, 2017), <https://greatcities.uic.edu/wp-content/uploads/2017/01/Abandoned-in-their-Neighborhoods.pdf>.

5. Metropolitan Planning Council, *The Cost of Segregation*, METROPLANNING.COM (Mar. 31, 2017), [www.metroplanning.org/uploads/cms/documents/cost-of-segregation.pdf](http://www.metroplanning.org/uploads/cms/documents/cost-of-segregation.pdf).

6. Great Cities Institute, University of Illinois at Chicago, *supra* note 4.

recommended by the previous administration.<sup>7</sup> The Chicago mayor and police chief have taken the position that they will implement the reforms whether or not required to do so by the federal government but perhaps not through a consent decree.<sup>8</sup> Regardless of how the recommendations are implemented, the report details major deficiencies in the police department that stand as unchallenged at the present time.

The investigation was initiated to determine if the Chicago Police Department (CPD) was engaging in a pattern and practice of police misconduct and, if so, to identify systemic deficiencies that lead to that misconduct.<sup>9</sup> The investigation focused on officer use of force, including deadly force, and on officer training, reporting, and accountability.<sup>10</sup> It also focused on disparities, including race and ethnicity.<sup>11</sup>

The investigation concluded that Chicago police officers “engage[d] in a pattern or practice of using force, including deadly force, that is unreasonable.”<sup>12</sup> It found that this was attributable to the fact that:

[The CPD] has not provided officers with adequate guidance to understand how and when they may use force, or how to safely and effectively control and resolve encounters to reduce the need to use force. CPD also has failed to hold officers accountable when they use force contrary to CPD policy or otherwise commit misconduct. [T]hese failures result in officers not having the skills or tools necessary to use force wisely and lawfully, and they send a dangerous message to officers and the public that unreasonable force by CPD officers will be tolerated.<sup>13</sup>

Some of this failure was attributable to the quality or quantity of training given to police officers.<sup>14</sup> Indeed the report recited that interviews with recruits who had recently graduated from the training academy revealed that only one in six recruits came close to properly articulating the legal standard for use of force.<sup>15</sup> It found that post-academy training was equally flawed.<sup>16</sup>

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7. *Sessions move muddies cop reform*, CHI. TRIB., Apr. 5, 2017, at 1.

8. *Id.* The long-term effectiveness of consent decrees has been questioned. What is needed is an on-going dedication to police reform, the momentum of which is often very difficult to sustain especially given changes in the political environment. *The Rise and Fall of Federal Efforts to Curb Police Abuse*, N.Y. TIMES, Apr. 10, 2017, at A12. *Chicago, get that consent decree*, CHI. TRIB., July 6, 2007, at 18.

9. Great Cities Institute, University of Illinois at Chicago, *supra* note 4, at 21.

10. *Id.*

11. *Id.*

12. *Id.* at 5.

13. *Id.*

14. *Id.* at 10.

15. *Id.*

16. *Id.* The report finds that post-academy training fails to provide probationary police officers with appropriate training, mentorship, and

The report further found that officer wellness and safety was ignored.<sup>17</sup> Officers understandably face acute distress and this is manifested in how they interact with local citizens. Officers that are under stress are more likely to overreact in confrontations with community residents. The report cited “officer alcoholism, domestic violence, and suicide” as manifestations of the trauma suffered by members of the CPD.<sup>18</sup> The report articulates how stress can impact on the officer’s performance.<sup>19</sup> It found that “high levels of unaddressed stress can compromise officer well-being and impact on officer’s demeanor and judgment, which in turn impact how that officer interacts with the public.”<sup>20</sup> The effects of such trauma manifest themselves when the officer is both at home and at work creating a vicious cycle that is not easy to interrupt.

The report found that CPD officers “expressed discriminatory views and intolerance with regard to race, religion, gender, and national origin in public social media forums, and that CPD takes insufficient steps to prevent or appropriately respond to its animus.”<sup>21</sup> Furthermore, “the raw statistics show that CPD uses force almost ten times more often against blacks than against whites.”<sup>22</sup> The report concluded that:

[T]he City must address serious concerns about systemic deficiencies that disproportionately impact black and Latino communities. CPD’s pattern or practice of unreasonable force and systemic deficiencies fall heaviest on the predominantly black and Latino neighborhoods on the South and West Sides of Chicago, which are also experiencing higher crime. Raw statistics show that CPD uses force almost ten times more often against blacks than against whites. As a result residents in black neighborhoods suffer more of the harms caused by breakdowns in uses of force, training, supervision, accountability and community policing.<sup>23</sup>

Of particular interest to restorative justice advocates is the way that the City handled citizen’s complaints against the police. The report states that rather than investigate complaints, the Independent Police Review Authority (IPRA) disposed of complaints through a process it called “mediation.”<sup>24</sup> “Mediation” according to the IPRA basically meant a quick bargaining process where the officer who is under investigation agrees to a sustained finding in exchange for a reduced punishment.<sup>25</sup> The complainant and the

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oversight and lacks any long-term plan or strategy. *Id.*

17. *Id.* at 11.

18. *Id.*

19. *Id.* at 118.

20. *Id.*

21. *Id.*

22. *Id.* at 145.

23. *Id.* at 15.

24. *Id.*

25. *Id.*

community are excluded from the process.<sup>26</sup> Even apart from the appropriateness of the solution, this procedure does not satisfy community feelings of injustice and lack of power. It also ignores the positive input that all participants can have on the final outcome.

The complaint process furthered feelings of unequal treatment in black and Latino communities in Chicago. The report found that “complaints filed by white individuals were two-and-a-half times more likely to be sustained than complaints filed by black individuals, and nearly two times as likely to be sustained as complaints filed by Latinos.”<sup>27</sup>

The report explains the breakdown in police-community relations in Chicago and how, at best, the police are ineffective, or at worse, how they contributed to the violence and unlawful behavior that plagues some of Chicago’s residential communities.<sup>28</sup>

### *B. The Great Cities Institute Report on Youth Joblessness*

On January 29, 2017, the Great Cities Institute of the University of Illinois at Chicago issued a report that, with the DOJ report, is relevant to violence in Chicago’s neighborhoods.<sup>29</sup> The report directly ties youth unemployment to violence. The report summarizes a series of hearings where young people testified that they wanted work and that they connected joblessness and crime in their neighborhoods, and how securing a job, even a summer job, created pathways for life changing opportunities.<sup>30</sup> The report supplements these testimonials with data and provides analysis and context to these concerns.<sup>31</sup>

The report demonstrates that youth joblessness is disproportionately felt by young people of color and especially black males and that it is concentrated and chronic.<sup>32</sup> The problem is tied to the emptying out of jobs from neighborhoods and concentrating jobs in Chicago’s downtown, where whites are employed in professional level services.<sup>33</sup>

The report found that among 20 to 24 year old men, nearly half were neither working nor in school and that these low rates were spatially concentrated in racially segregated neighborhoods.<sup>34</sup> In a cluster of communities that were predominantly African-American,

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26. *Id.* at 54.

27. *Id.* at 68.

28. *Id.* at 144.

29. Metropolitan Planning Council, *supra* note 5.

30. *Id.* at i.

31. *Id.* at ii.

32. *Id.* at iii.

33. *Id.*

34. *Id.*

the unemployment rate for 16 to 19 year olds was over 90 percent and in predominantly Hispanic areas on the Southwest or Northwest sides it was between 80 and 90 percent.<sup>35</sup> The unemployment rate for young people in Chicago, both male and female, was extremely high compared to New York and Los Angeles.<sup>36</sup> The statistics showed that the employment rate for young people in Chicago was worse in 2015 than in 1960. This was the opposite from the experience in the rest of Illinois and the United States.<sup>37</sup>

These statistics were further enhanced by the fact that among the employed, the percentage of black and Hispanic youth working in relatively high paying manufacturing jobs declined since 1960.<sup>38</sup> During that period, the percentage of black and youth working in low paying service jobs increased, while white youth increased employment in professional and related fields.<sup>39</sup> The study also showed that most jobs had moved away from areas of the city with heavy black and Hispanic concentrations to the Loop and the North Side, where there were larger concentrations of whites.<sup>40</sup>

The executive summary of the report concluded that:

[J]oblessness disproportionately persists for young people of color and is geographically concentrated. Its roots are structural and have an impact on young people, their households, and their neighborhoods. Reflecting long-term impacts of segregation, racial disparities and economic restructuring, joblessness is a function of structural changes in the economy that date back several decades and was compounded by the 2008 global recession that exacerbated conditions and isolated people even further.<sup>41</sup>

Ultimately, the report suggested that the lack of economic opportunities increases stress and a feeling of hopelessness in young people, which can then lead to lawlessness and violence.<sup>42</sup>

### *C. The Metropolitan Planning Council's Report on the Cost of Segregation in Chicago*

On March 31, 2017, a third report was issued by the Metropolitan Planning Council in partnership with the Urban Institute that focused on the cost of segregation in the Chicago region.<sup>43</sup> In many ways, this report confirmed the self-evident. The report found that:

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35. *Id.* at 51.

36. *Id.*

37. *Id.* at v.

38. *Id.* at xiv and xv.

39. *Id.*

40. *Id.* at xxiii.

41. *Id.*

42. *Id.*

43. Metropolitan Planning Council, *supra* note 5.



Economic and racial segregation has strangled opportunities for millions of people. Disinvestment has devastated entire city neighborhoods and suburban villages, towns and cities. Lack of diversity also hurts affluent communities, where limited housing options often mean that young people cannot afford to return when starting their own families, retirees cannot afford to stay and valued employees are priced out.<sup>44</sup>

The report estimated that incomes for African-Americans would rise by an average of \$2,982 per person per year if economic and racial discrimination in Chicago were reduced to the national median.<sup>45</sup> Income and racial inequality compound and exacerbate each other's effects.<sup>46</sup>

The report further found that segregation results in lost lives and that in 2016, the homicide rate in the region would have dropped by 30 percent if the level of segregation had been reduced to the national median.<sup>47</sup> Noting that the number of African American homicides was over 17 times the number for whites,<sup>48</sup> the study concluded that reducing segregation would have a significant impact on the violence and murders that occurs in Chicago. Not only is the effect in lost lives. The study traced a nexus between the homicide rate and residential real estate values, which in 2010 would have increased by at least six billion dollars if segregation was reduced to the national median.<sup>49</sup>

The report also found a strong link between segregation, school quality, and college preparedness, which translated into further inequality and its social and economic consequences.<sup>50</sup>

Significantly, the report details that the negative effects of segregation are not only felt in low-income, racially segregated neighborhoods, but everywhere in the region because taxpayers pay the costs of segregation in higher taxes for criminal justice and public health systems. The cost is also reflected in lower long-term economic growth.<sup>51</sup>

These three reports while not covering the entire field document the strong link between racial discrimination and segregation and violence. Each of these reports contains important recommendations to address the root causes of discrimination and violence, and the recommendations should be implemented. However, none of these reports offers a holistic solution that addresses the individuals whose lives are affected by the social and economic issues addressed in these studies.

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44. *Id.* at 3.

45. *Id.* at 4.

46. *Id.* at 5.

47. *Id.* at 6.

48. *Id.* at 7.

49. *Id.*

50. *Id.* at 8, 9.

51. *Id.* at 16.

The factual findings in these reports are supported by similar findings nationwide. Many recent studies detail the growing wealth gap in the United States,<sup>52</sup> and the crucial link between greater income and wealth inequality and a widening racial wealth gap.<sup>53</sup> As well stated by Thomas Shapiro in his recent book, *Toxic Inequality*, “[r]esidential segregation bakes inequality into the lives of families by reproducing parents’ disadvantages for their children.”<sup>54</sup> These inequalities breed the sense of hopelessness that is so prevalent in many residents of our most neglected neighborhoods.<sup>55</sup> Shapiro urges a combination of wealth building and racial justice to remedy the situation.<sup>56</sup>

### III. TRUMP’S SOLUTION – “SEND IN THE FEDS”

The studies outlined above are admirable because they look at the broader social and economic forces at work that create the environment where violence occurs. They are a step ahead of the traditional response to violence, which is to call for tighter law enforcement and stronger penalties and punishment for the offenders. Citing the socio-economic factors that lead to crime has traditionally been tantamount to being soft on crime. The way to be tough on crime is to make offenders accept responsibility for their bad actions. This approach is not absolutely wrong, but it is only part of the solution.

President Donald Trump has provoked alarm in Chicago by saying if Chicago does not get a handle on its murder problem, he will “send in the Feds.”<sup>57</sup> If by this, he means, as most persons assume he means, sending in troops or other federal law enforcement personnel, he is probably constitutionally and politically in trouble. Constitutionally, because there would appear to be little constitutional basis for the federal government to intervene in local law enforcement by sending in federal personnel to perform peace-keeping functions.<sup>58</sup> Also, depending upon how it

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52. THOMAS PIKETTY, *CAPITAL IN THE TWENTIETH CENTURY* (Harvard 2014); ROBERT REICH, *SAVING CAPITALISM: FOR THE MANY, NOT THE FEW* (First Vintage Books 2015); JOSEPH STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY’S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (W.W.Norton 2013).

53. THOMAS M. SHAPIRO, *TOXIC INEQUALITY: HOW AMERICA’S WEALTH GAP DESTROYS MOBILITY, DEEPENS THE RACIAL DIVIDE & THREATENS OUR FUTURE* 15 (Basic Books 2017).

54. *Id.* at 198.

55. *Id.* at 216.

56. *Id.* at 185.

57. *Trump tweets about Chicago gun violence, threatens to “send in the Feds”*, CBS NEWS (Jan. 24, 2017), [www.cbsnews.com/news/president-trump-tweets-chicago-gun-violence-send-in-the-feds/](http://www.cbsnews.com/news/president-trump-tweets-chicago-gun-violence-send-in-the-feds/); Liam Ford, *Trump tweets about Chicago ‘carnage,’ says he may ‘send in the Feds!’ if not fixed*, CHI. TRIB. (Jan. 25, 2017), [www.chicagotribune.com/news/local/breaking/ct-trump-chicago-carnage-tweet-20170124-story.html](http://www.chicagotribune.com/news/local/breaking/ct-trump-chicago-carnage-tweet-20170124-story.html).

58. There is precedent for a president sending troops into Chicago to stop

is done, sending in federal troops could violate the Posse Comitatus Act, which forbids the use of the military in domestic operations.<sup>59</sup> And politically, because his own political party and his own rhetoric does not favor federal intervention in matters that have been traditionally of state or local concern. If he means that he will give Chicago money to fight violence, this is, of course, allowed through Congress' constitutional power to spend money for the general welfare.<sup>60</sup> How that money would be spent and whether it would further escalate the problem or provide a solution as proposed by the three studies above is not clear at this time.

#### IV. CHICAGO AND THE NATION DID NOT JUST GET THIS WAY – LONG ESTABLISHED PROBLEMS

Chicago did not just wake up one day and find itself to be segregated. Segregation in Chicago, like in much of the rest of the country, resulted from intentional policies and practices over the years. Even when the policies and practices were not overtly intentional, they were often followed without any consideration of their effect in perpetuating segregation.

Chicago is among the top five or six most segregated cities in the United States.<sup>61</sup> Chicago experienced the great migration of

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violence and the disruption of commerce in President Cleveland's response to the Pullman Strike. In re Debs, 158 U.S. 564 (1895). However, that decision was undercut by the Supreme Court's invalidation of President Truman's seizure of the steel mills to prevent a nationwide strike. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Nor do the sending of troops by Presidents Eisenhower and Kennedy to enforce federal court orders in civil rights cases provide precedent. The Supreme Court has held that the Fourteenth Amendment does not give persons a right to federal protection if their right to life or liberty is taken through the inaction of state officials. *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189 (1989). Similarly, the Court's recent jurisprudence interpreting the Commerce Clause provide strong precedent against federal intervention when individual rights are at stake. *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000); *National Federation of Independent Business v. Sibelius*, 132 S. Ct. 2566 (2012).

59. 18 U.S.C. § 1385 (1994); see *United States v. Dreyer*, 804 F. 3d 1266 (9th Cir. 2015).

60. U.S. CONST. art. 1, § 1, cl. 1. While the federal government can give the states money for law enforcement and social programs, it cannot compel them through threatening the loss of non-program funds to initiate programs that they find objectionable. *Sibelius*, 132 S. Ct. 2566.

61. This section is recycled from my chapter, Michael P. Seng, *Restorative Justice and Housing Discrimination*, in *RESTORATIVE JUSTICE IN PRACTICE – A HOLISTIC APPROACH* (Murphy & Seng, eds., Vandepas Pub., 2015). Much of this section is based on a study undertaken by The John Marshall Law School Fair Housing Legal Support Center. John Marshall L. Sch. Fair Hous. Leg. Support Ctr., *Segregation in the Chicago Metropolitan Area – Some Immediate Measures to Reverse this Impediment to Fair Housing*, JMLS.EDU (May 1, 2013), [www.jmls.edu/fairhousing/pdf/2013-chicago-segregation-study.pdf](http://www.jmls.edu/fairhousing/pdf/2013-chicago-segregation-study.pdf).

African Americans to the North in the first half of the 20th century.<sup>62</sup> African Americans found defined boundaries where they could live. Some of these boundaries were set through official action, such as through policies followed by the Chicago Housing Authority,<sup>63</sup> and others were set privately, especially through the use of restrictive covenants.<sup>64</sup> Segregation defined Chicago's neighborhoods, and it carried over into commercial life, job opportunities, schools, and political representation.

Chicago's neighborhoods were further defined by religion and ethnicity. Nicknames given to communities that reflect their ethnicity still carry over today even though the religion or ethnicity of the neighborhood has changed.<sup>65</sup> When neighborhood boundaries were breached this was met with resistance and sometimes by violence. Because of market restrictions, African Americans were subject to fraud and exploitation.<sup>66</sup> Lending and insurance practices, policies followed by the Federal Housing Administration, and the actions of brokers, appraisers, and homeowner's associations all combined to keep Chicago segregated and African Americans confined to deteriorating areas.<sup>67</sup>

Thus, segregation in Chicago was carried on over the years through both private and public action. Segregated housing patterns once established are not easy to erase. Indeed, many of the neighborhoods that were redlined or subject to restrictive covenants retain their racial identity today.<sup>68</sup>

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62. ALLEN H. SPEAR, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO* (U. Chicago Press 1967); NICHOLAS LEMANN, *THE PROMISED LAND* (Vintage Books 1991); ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS* (Random House 2010); JOE ALLEN, *PEOPLE WASN'T MADE TO BURN* (Haymarket Books 2011).

63. See *Gautreaux v. Chicago Housing Authority*, 501 F.2d 324 (7th Cir. 1974) (Chicago and the federal government were accused of creating segregated housing patterns through their siting of housing developments).

64. See BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* (Metropolitan Books 2009); RICHARD R. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD* (Harvard U. Press 2013).

65. For instance, the Czech Pilsen neighborhood has become Mexican, and Little Italy is now the site of the University of Illinois in Chicago campus.

66. *Id.*; *Clark v. Universal Builders*, 501 F.2d 324 (7th Cir. 1974) (the "contract buyers" case).

67. NATALIE MOORE, *THE SOUTH SIDE* (St. Martin's Press 2016); Satter, *supra* note 64.

68. An excellent study connecting redlining with contemporary predatory lending practices in Sacramento is Jesus Hernandez, *Redlining Revisited: Mortgage Lending Patterns in Sacramento 1930-2004*, 33 INT'L J. OF URBAN AND REGIONAL RESEARCH 291 (2009); see also, Jesus Hernandez, *Race, Market Constraints, and the Housing Crisis: A Problem of Embeddedness*, 1 KALFOU, A JOURNAL OF COMPARATIVE AND RELATIONAL ETHIC STUDIES 29 (2014). (discussing the high concentration of unsustainable mortgage products in predominantly non-white neighborhoods that have a history of racialized credit lending practices).

It was not until 1968 that federal law was clarified that private housing discrimination was illegal. The Supreme Court reexamined the Civil Rights Act of 1866<sup>69</sup> and held that Congress meant what it said. The Court held that all persons had the right to own or lease real property free of both private and public racial discrimination and that the Thirteenth Amendment was the source of Congress' power.<sup>70</sup> For the first time, the Court recognized that racial discrimination was a "badge or incident of slavery" for which Congress could provide a remedy under Section 2 of the Thirteenth Amendment.<sup>71</sup>

Also in 1968, Congress passed the Fair Housing Act that broadly prohibited many, but not all, discriminatory housing practices based on race, color, religion, and national origin.<sup>72</sup> Later Congress amended the Act to add sex<sup>73</sup> and, in 1988, familial status (defined as families with children under the age of 18) and handicap (or disability) as protected classes.<sup>74</sup> The Fair Housing Act reaches private discrimination as well as discrimination through governmental action.<sup>75</sup> It prohibits intentional discrimination as well as policies and practices that have a discriminatory impact.<sup>76</sup> The Department of Housing and Urban Development has adopted a regulation implementing the disparate impact standard.<sup>77</sup> Even before the Supreme Court's decision in June 2015 finally upholding the impact standard, all the federal courts of appeal had held disparate impact to be an appropriate theory of liability under the Fair Housing Act.<sup>78</sup>

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69. 42 U.S.C. § 1982 (1978). The present codification of §1982 reads: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." *Id.*

70. *Jones v. Alfred H. Meyer Co.*, 392 U.S. 409 (1968).

71. *Id.* at 443.

72. Civil rights, Pub. L. No. 90-284, 82 Stat. 73 (1968), 42 U.S.C. § 3600 *et seq.*

73. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 808(b), 88 Stat. 633, 729 (1974).

74. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988).

75. 42 U.S.C. § 3603 (1968).

76. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 1335 S. Ct. 2507 (2015). The case concerned how the State of Texas allocates Low Income Housing Tax Credits. *Id.* Justice Kennedy recognized that once established, segregated housing patterns are not easily eradicated. *Id.* Therefore, policies that perpetuate segregation and that are "artificial arbitrary and unnecessary barriers" to housing choice are illegal. *Id.*

77. Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460-01 (Feb. 15, 2013).

78. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507 (2015). Important earlier opinions adopting the disparate impact standard included *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025 (1978) and *Huntington Branch, NAACP v.*

Chicago and Illinois played an important role in bringing about the passage of the Fair Housing Act. A report by the National Advisory Commission on Civil Disorders that was appointed by President Johnson and headed by Illinois Governor Otto Kerner described America as moving toward two separate and distinct societies divided by race.<sup>79</sup> Also, Congress passed the Fair Housing Act as a memorial to Dr. Martin Luther King following his assassination in April 1968. It was through Chicago that Dr. King became an advocate for fair housing. In 1966, Dr. King led an open housing campaign in Chicago. It was his first civil rights initiative outside the South. He met with both official and private resistance. He allegedly remarked that he had never experienced such manifest racial hatred as he saw in Chicago.<sup>80</sup>

However, the passage of civil rights laws did not reverse the legacy of segregation in Chicago. The city remains segregated today as demonstrated by the recent study of the Metropolitan Planning Council.<sup>81</sup>

The economic meltdown and the foreclosure crisis that began in 2007 has only exasperated the problem. Because many African Americans—even African Americans who were qualified—were shut out of the prime lending market and steered to subprime loans, the foreclosure crisis hit them particularly hard.<sup>82</sup>

Additionally, many renters in Chicago are minorities, and many have been displaced because the properties they rented went into foreclosure.<sup>83</sup> This contributes to the cycle of diminishing the

Town of Huntington, 844 F.2d 926 (2d Cir. 1988), *aff'd, per curiam*, 488 U.S. 15 (1988).

79. *Report of the National Advisory Commission on Civil Disorders*, NCJRS.GOV (1968), [www.ncjrs.gov/pdffiles1/digitization/8073ncjrs.pdf](http://www.ncjrs.gov/pdffiles1/digitization/8073ncjrs.pdf).

80. DAVID GARROW, *BEARING THE CROSS* (William Morrow 1986); ALAN B. ANDERSON & GEORGE W. PICKERING, *CONFRONTING THE COLOR LINE: THE BROKE PROMISE OF THE CIVIL RIGHTS MOVEMENT IN CHICAGO* (U. Georgia Press 1986); JAMES R. RALPH, JR., *NORTHERN PROTEST* (Harvard U. Press 1993); TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965-68* (Simon & Schuster 2006).

81. Metropolitan Planning Council, *supra* note 5.

82. *Id.*; see Christine Vidmar, *Seven Ways Foreclosures Impact Communities* NEIGHBORWORKS AMERICA (2008), [www.nw.org/network/neighborworksprogs/foreclosure/resolutions/reports/documents/7ForeclosureImpacts.pdf](http://www.nw.org/network/neighborworksprogs/foreclosure/resolutions/reports/documents/7ForeclosureImpacts.pdf); Lawyers' Committee for Better Housing, *Three Year Impact Assessment: Apartment Building Foreclosures and the Depletion of Rental Housing in Chicago – Fact Sheet*, LCBH.ORG, [http://lcbh.org/wp-content/uploads/2012/07/LCBH-Three-Year-Impact-Assessment-Apartment-Building-Foreclosures-and-the-Depletion-of-Rental-Housing-in-Chicago\\_Fact-Sheet.pdf](http://lcbh.org/wp-content/uploads/2012/07/LCBH-Three-Year-Impact-Assessment-Apartment-Building-Foreclosures-and-the-Depletion-of-Rental-Housing-in-Chicago_Fact-Sheet.pdf). (last visited Oct. 25, 2017)(outlining the negative effects that foreclosures have on the broader community).

83. Rebecca Burns, *The House that Jim Crow Built*, THE CHICAGO READER (Mar. 2, 2017); James H. Carr & Katrin B. Anacker, *White Paper: Long Term Social Impacts and Financial Costs of Foreclosure on Families and Communities of Color*, NAT'L CMTY. REINVESTMENT COALITION (2012), [www.nrc.org/images/stories/pdf/research/wp\\_aecf\\_final10312012.pdf](http://www.nrc.org/images/stories/pdf/research/wp_aecf_final10312012.pdf); Maya

supply of housing available to minority residents, who often are forced to live with family members or in shelters. The foreclosure crisis has effectively stripped the wealth from minority communities.<sup>84</sup>

Because it took many years to reach where Chicago is today and because much of Chicago's segregation is due to intentional discrimination, or at best indifference toward people of color and lower income individuals, affirmative steps will be necessary if Chicago is ever to achieve any real integration. We cannot ignore history. Nor can we believe that by simply following neutral policies in the future, the effects of the past will be undone.<sup>85</sup> What is true of Chicago is true for most of America.

## V. REMEDIES – THE STRUCTURAL LAWSUIT; NON-VIOLENT PROTEST; AND RESTORATIVE JUSTICE

Three important remedies are available to fight segregation and discrimination. Two of them originated during the civil rights struggle in the 1950s and 1960s, and one is quite new, at least in the civil rights context.

First of all, Thurgood Marshall and the NAACP Legal Defense Fund pioneered the structural lawsuit to secure civil rights in the United States.<sup>86</sup> The structural lawsuit came into its own in *Brown v. Board of Education*,<sup>87</sup> which held that education is perhaps the most important function of state and local government, that children cannot get an equal education in a segregated school, and that segregated schools are inherently unequal.

While the objective of *Brown* has not been achieved in public education in Chicago,<sup>88</sup> the structural lawsuit has been used successfully not only to fight racial discrimination,<sup>89</sup> but to secure

Dukmasova, *South Shore is Chicago's Eviction Capital*, THE CHICAGO READER (Apr. 17, 2017), [www.chicagoreader.com/Bleader/archives/2017/04/17/south-shore-is-chicagos-eviction-capital](http://www.chicagoreader.com/Bleader/archives/2017/04/17/south-shore-is-chicagos-eviction-capital).

84. *Id.*

85. Texas Department of Housing and Community Affairs v. Inclusive Communities Project, 135 S. Ct. 2507, 2525 (2015).

86. MICHAEL P. SENG AND F WILLIS CARUSO, ACHIEVING INTEGRATION THROUGH PRIVATE LITIGATION, THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES (Chester Hartman & Gregory D. Squires, eds., Routledge 2010); Owen Fiss, *The Supreme Court 1978 Term: The Forms of Justice*, 93 HARV. L. REV. 1 (1979); Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).

87. *Brown v. Board of Education*, 347 U.S. 483 (1954).

88. Ronald Brownstein, *Why Poverty and Segregation Merge at Public Schools*, THE ATLANTIC (Nov. 12, 2015), [www.theatlantic.com/politics/archive/2015/11/why-poverty-and-segregation-merge-at-public-schools/433380/](http://www.theatlantic.com/politics/archive/2015/11/why-poverty-and-segregation-merge-at-public-schools/433380/); Steve Bogira, *Trying to Make Separate Equal*, THE CHICAGO READER (June 13, 2013), [www.chicagoreader.com/chicago/segregated-schools-desegregation-city-suburb-s-history-solutions/Content?oid=9992386](http://www.chicagoreader.com/chicago/segregated-schools-desegregation-city-suburb-s-history-solutions/Content?oid=9992386).

89. Michael P. Seng, *The Cairo Experience: Civil Rights Litigation in a*

equal rights for women,<sup>90</sup> persons with disabilities,<sup>91</sup> and the LGBT community.<sup>92</sup> It provides a path to protect immigrants and refugees. The structural lawsuit has been under attack since it was first used, and since the 1960s, United States Supreme Court opinions have weakened but not destroyed its impact.<sup>93</sup> Nonetheless, civil rights litigation still offers a means to change society. Indeed, America's resort to the courts for justice is an example for the world.

A second means to achieve change is through protest movements. Martin Luther King and the Southern Christian Leadership Conference developed non-violence as a technique for peaceful protest.<sup>94</sup> Non-violence played and continues to play an important role in securing civil rights in the United States and inspiring peace movements around the world. Non-violence has been attacked as unrealistic and naïve, but it offers hope and sanity and a prospect for permanent change.

A third movement is underway. The restorative justice movement takes inspiration from Archbishop Desmond Tutu and the Peace and Reconciliation Commission in South Africa.<sup>95</sup> Restorative justice offers a comprehensive solution to antisocial actions, including civil rights violations, by focusing on the relationships between individuals and on their relationship to the community. The restorative justice movement seeks techniques to transform individuals and communities by repairing the harm done by criminal and anti-social behavior.

Thus, restorative justice is the ideal tool to confront the problems associated with violence in Chicago. The restorative justice tool does not reject the possibility of a structural lawsuit, and indeed, the threat of a structural lawsuit may well be a motivating force to activate the restorative justice process. Ultimately, a voluntary, bottom-up remedy specifically designed to implement restorative justice may be more efficient in achieving the dismantling of segregation than a top-down federal court injunction.

Similarly, restorative justice is a form of nonviolence that is structured to achieve a lasting solution. The South African Truth and Reconciliation Commission and similar efforts aimed to transform society through a peaceful, non-violent process.

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*Racial Powder Keg*, 61 U. ORE. L. REV. 285 (1982).

90. *United States v. Virginia*, 518 U.S. 515 (1996).

91. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

92. *Obergefell v. Hodges*, 135 U.S. 2584 (2015).

93. *Missouri v. Jenkins*, 515 U.S. 70 (1995); Seng, *The Cairo Experience*, *supra* note 89; ERWIN CHEMERINSKY, *CLOSING THE COURTHOUSE DOORS: HOW YOUR CONSTITUTIONAL RIGHTS BECAME UNENFORCEABLE* (Yale U. Press 2017).

94. Martin Luther King, Jr., *Letter from a Birmingham Jail*, UPENN.EDU (Apr. 16, 1963), [www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html).

95. DESMUND TUTU, *NO FUTURE WITHOUT FORGIVENESS* (Doubleday 1999); MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (Beacon Press 1998); Sarah Ester Maslin, *El Salvador's Ghost Town*, *THE NATION*, Apr. 17, 2017, at 20.



Restorative justice is the natural fulfillment of the litigation and protests against civil rights violations that were initiated in the 1960s.

## VI. THE RESTORATIVE JUSTICE TRIANGLE

Restorative justice remedies have been successful because they seek a holistic solution. Restorative justice is frequently described though a triangle. On one side is the perpetrator; on the second side is the victim, often described as the survivor; and on the third side is the community. All are parties to a restorative justice solution.

### A. *The Perpetrator*

Restorative justice focuses on the offender, or the perpetrator.<sup>96</sup> It looks to the root of the misbehavior and demands accountability. It sets up a plan for the offender to repair the harm done.

Our current criminal justice system looks at the perpetrator from a strictly punitive perspective.<sup>97</sup> We too often equate prison time with punishment, and the focus is how long? Rehabilitation has ceased to have any meaning in our criminal justice system. Similarly, if the purpose of our criminal justice system is deterrence, we are not accomplishing that goal very well either. Even outside the criminal realm, our focus in the civil area is not very creative. We seldom move beyond trying to pin a dollar amount on the damages caused by a tort-feasor.

Policies that seek only to punish offenders have been singularly unsuccessful. They are not only ineffective; they are costly. The overwhelming subjects of our criminal justice system are persons of color. These findings are presented in a number of recent books.<sup>98</sup>

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96. In discussing the discretion given to federal judges when imposing a sentence under the Federal Sentencing Guidelines, the United States Supreme Court held that a district judge may consider evidence of the defendant's post-sentencing rehabilitation and adjust the sentencing guidelines downward. *Pepper v. United States*, 131 S. Ct. 1229, 1239-40 (2011). Justice Sotomayor stated that the federal tradition has allowed the sentencing judge "to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes, magnify, the crime and the punishment to ensue." *Id.* In making this determination, judges have "broad discretion to consider various kinds of information." 18 U.S.C. § 3661 (1970).

97. The United States Supreme Court has recognized that the adoption of a penological theory is a matter of choice for the legislature. *Ewing v. California*, 538 U.S. 11, 25-26 (2003). In upholding California's Three Strikes and You're Out" law, Justice O'Connor stated that "Recidivism is a serious public concern in in California and throughout the Nation" and that "incapacitation and deterrence" were proper rationales for recidivism statutes. *Id.*

98. MICHELLE ALEXANDER, *THE NEW JIM CROW* (The New Press 2012); TANEHISI COATES, *BETWEEN THE WORLD AND ME* (Random House 2015); JAMES FORMAN, JR., "LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA" (Farrar Straus Giroux 2017); CHRIS HAYES, *A COLONY IN A NATION*

These books differ about the causes for the increased incarceration of persons of color, but they agree that our current system is broken and is not subject to easy repair. Michelle Alexander in her bestselling book, *The New Jim Crow*, largely places the blame on racism and the war on drugs.<sup>99</sup> John Pfaff in his recent book, *Locked In*, places the blame on tough political talk and prosecutorial discretion.<sup>100</sup> James Forman, Jr. reminds us that much of the push that resulted in the current crisis came from a tough on crime movement that originated in black neighborhoods that were affected by crime.<sup>101</sup> Once someone is involved in the criminal justice system that person is disabled for life, finding it difficult to secure a job or a home and sometimes disqualified from exercising his or her political rights as well.<sup>102</sup>

Our present system breeds resentment and not responsibility. Restorative justice holds perpetrators responsible for the consequences of their actions. It makes perpetrators see the harm that they have done and ideally requires them to work out a solution to repair that harm. Restorative justice does not mean that there is no punishment. What it does mean is that the perpetrator must acknowledge the wrong and make amends, when possible. Accountability is thus the byword. Restorative justice is creative and it is healthy. It does not seek to stigmatize the offender. It places the crime and the offender in context and seeks to restore the offender to a good, productive life.

### B. *The Victim or Survivor*

Restorative justice also focuses on the victim, or the survivor. The history of American criminal law is to exclude the victim from the equation except as a witness. The parties in a criminal case are the perpetrator and the state. However, victims have demanded to be heard and the strength of restorative techniques is that the victim is brought into the process.

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(W.W.Norton & Co. 2017); JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REAL REFORM* (Basic Books 2017); BRYAN STEVENSON, *JUST MERCY* (Random House 2014).

99. ALEXANDER, *supra* note 98; *see also*, STEVENSON, *supra* note 98; COATES, *supra* note 98.

100. PFAFF, *supra*, note 98.

101. FORMAN, *supra* note 98.

102. The impact of criminal charges on persons of color and other classes protected by the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, has been recognized by the United States Department of Housing and Urban Development in its recent guidance against imposing blanket restrictions making housing unavailable to ex-offenders. U.S. Department of Housing and Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, HUD.GOV (Apr. 4, 2016), [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

Identifying the victim is an important part of the process. Restorative justice does not view the object of the crime as being the only victim. Victims may be family members and others who are affected by the anti-social actions of the perpetrator. For example, the perpetrator's children who will be left without parents if the perpetrator is sent away to prison are true victims of the offense.

How to make someone whole is not always readily apparent. One cannot undo a murder, for instance. Nonetheless, consideration must be given to the victim's or survivor's feelings and some type of pay-back will be required even if it is general community service. This payback is not only important to making the victim whole, it is important to making the perpetrator whole. It helps remove the stigma and shame that can be poisonous and that can weigh on the perpetrator and lead to further antisocial conduct.

Perhaps the most difficult question when confronting restorative justice is whether forgiveness of the perpetrator by the victim is necessary. Forgiveness is certainly the ideal. Forgiveness should be the aim of all restorative techniques. Forgiveness completes the circle. It makes the victim whole by removing resentment from the victim's heart. To the extent possible, the parties should work toward forgiveness.

But forgiveness is hard and often takes considerable time to achieve. Forgiveness should not hold up the process. It is unfair to punish indefinitely a perpetrator who wishes to make amends simply because the victim cannot find the heart to reach out to the perpetrator. I do not believe that forgiveness is absolutely necessary in such circumstances. But I do believe it must be the goal of the process. A more important part of the process is that perpetrators must forgive themselves in order to move on. The shame must be removed to restore the offender to full health. But we must view restorative justice as not only an end, it is a process. We work toward forgiveness even if we do not achieve it.

The classic journey to forgiveness is told by Jean Bishop, who forgave her sister's and brother-in-law's murderer and ended up visiting him in prison.<sup>103</sup> This was not an easy journey, but it is the ideal that restorative justice seeks.

Another classic example is Lisa D. Daniels, whose son Darren was shot in a drug-related murder in Chicago. Ms. Daniel read her victim impact statement at the sentencing hearing of the young man who plead guilty of second degree murder over her son's death. Her statement expresses the ideals of restorative justice:

Bishop Desmond Tutu is quoted as saying: 'my humanity is bound up in yours, for we can only be human together.' I believe that statement

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103. Jeanne Bishop has written accounts of her journey. JEANNE BISHOP, *CHANGE OF HEART* (Westminster John Knox Press 2016); Jeanne Bishop, *The Shock of True Forgiveness*, in *RESTORATIVE JUSTICE IN PRACTICE: A HOLISTIC APPROACH* (Murphy & Seng, eds., Vandepas Pub., 2015).

to be true. I believe that we are all connected by our humanity and I cannot speak for my son's humanity without speaking for the same humanity of the man who, by one really bad decision, took his life.

Ms. Daniels told the court what her son meant to her and to his children. She said that her hope was that her son would not be remembered for his worst mistake and that she recognized that the result of the encounter could just as easily have been reversed so that her son would have been the defendant and the defendant would have lost his life. She ended her statement by asking the judge to show leniency.

In pronouncing the sentence, the judge altered the originally agreed 15 years sentence to 7.5 years plus time served. As he left the courtroom, the defendant turned to Ms. Daniels and looked into her eyes and said, "Thank you." She burst into tears but one month later she wrote him a letter assuring him that she meant what she said and that she would assist him in his re-entry process. Ms. Daniels has now started the Darren B. Easterling Center for Restorative Justice that will serve as a trauma recovery center on the South Side of Chicago to help young people avoid the fate of her son and his shooter.

This is the ideal that restorative justice aims for and sometimes achieves. The survivor is made whole to the extent possible by reaching out in forgiving the perpetrator. The perpetrator is made whole by making amends for his or her misconduct.

### C. *The Community*

Restoration between the offender and the survivor will only take us so far. We must also recognize the responsibility of the community and ensure that the conditions that led to the antisocial behavior are corrected. This means confronting discrimination and violence and working to change the environment that produced them whether it be in the areas of employment, education, housing, law enforcement, health care, or political representation.

Community itself is a slippery concept. It may be a circle of family or friends or neighborhood residents. Hawaii does 'Ohana conferencing where in juvenile cases the entire family is brought into the process – parents, grandparents, aunts and uncles, and whoever else is part of the extended family. They discuss the situation and together come up with a solution that generally involves the entire group.<sup>104</sup> The process respects Hawaiian culture

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104. Wilma Friesema, *Restoring Connections: Hawaiian Values and the EPIC 'Ohana, Inc. Programs that Serve the Children and Families in Hawaii's foster Care System*, in RESTORATIVE JUSTICE IN PRACTICE: A HOLISTIC APPROACH (Murphy & Seng, eds., Vandeplass Pub., 2015); see also Martha Mills, *Why Restorative Justice? And, Less Straightforward, How Did I Get There?*, in RESTORATIVE JUSTICE IN PRACTICE: A HOLISTIC APPROACH (Murphy & Seng,

and provides an extended sounding board for reaching a solution. Because everyone is involved in making the plan a success, the group is more likely to achieve the results agreed upon.

In school settings, participation may be extended to include teachers, administrators, staff, or other students – whoever has a stake in correcting the misbehavior. If the injury affects the neighborhood, involving those who live or work in the neighborhood may be helpful if done in a respectful and restorative manner and not just to shame the offender. Involving police and other public officials may be important to bring them into the solution and also to educate them about the problems in the community and the personal situation of the offender. If the offender acted because he or she did not have a job or had an addiction problem, involvement of the entire community may be necessary to assist in changing the environment that produced the conduct.

Furthermore, lawyers should be educated in restorative justice. Lawyers should be familiar with restorative justice techniques as a form of alternative dispute resolution. Lawyers can also bring unique insights into the process, and when structural impediments stand in the way of achieving a just solution, lawyers are trained how to remove those impediments whether by filing a lawsuit or advocating for change in a legislative or administrative forum.<sup>105</sup>

Restorative justice cannot be separated from civil rights, and sometimes the two can be effective partners in establishing enduring and healthy relationships.

Restorative justice thus may lead to truly effective ways to confront neighborhood problems, especially if the demands are taken to city hall or to the local school board, or if local residents band together to sue a property owner who is allowing vacant property to be used for illegal purposes. Restorative justice cannot be successful in a vacuum. It requires community involvement, and if something is standing in the way of the community and its residents from achieving their potential, then the restorative justice process provides an ideal forum to discuss the solution to the problem and a springboard for action.

The community itself is benefitted by the reform of the offender and the restoration of the victim, but the community must accept its own responsibility in producing the offense, and if the causes of violence and misbehavior come, at least in part, because of conditions in the community, the community must take action to correct the situation. Communities have real personalities, and they cannot be neglected in the restorative justice process.

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eds., Vandeplass Pub., 2015) (discussing how restorative justice was used to solve a dispute between teenagers who destroyed a fish house and the owners of the fish house and the community).

105. A number of legislative and administrative reforms are suggested by SHAPIRO, *TOXIC INEQUALITY*, *supra* note 53.

## VII. IMPLEMENTING RESTORATIVE JUSTICE IN CHICAGO

In many respects, Chicago is taking a lead in implementing restorative justice, which makes it an interesting time to be practicing law in Chicago. Other cities are likewise creating innovative solutions to solve the problems created by violence and similar anti-social activities. Now is not a time for despair. Now is a time of opportunity to advance new agendas.

Restorative justice provides a unique opportunity to create solutions from the bottom up. Restorative justice focuses on the immediate problem in a specific context, and it allows those affected by the problem to provide solutions. We do not have to look to Washington. Often, we do not even look to State government. Restorative justice remedies rely upon local communities for implementation. The remedies fit local needs and the work being done by private and faith-based organizations located in the neighborhoods.

Chicago has established a Restorative Justice Community Court in West Lawndale that will allow youth involved in non-violent offenses to appear before a judge to seek a restorative solution.<sup>106</sup> The judge, public defender, and prosecutor will all be trained in restorative justice techniques. The purpose is to divert cases away from the criminal court and to give those accused of offenses an opportunity to become productive members of society free from the stigma of a criminal record. The court is a pilot project, but already there are conversations about opening similar courts in other neighborhoods. It will supplement some of the work already being done in specialized courts that focus on addiction problems, prostitution, and veterans.

Local federal judges have initiated a reentry program, the James B. Moran Second C.H.A.N.C.E. Program, where persons released from federal prison elect to participate.<sup>107</sup> Participants meet in bi-monthly sessions with a federal judge, federal prosecutor, federal defender, a representative of the parole service and a trained counselor to discuss the problems they are having in reentering society after serving time in prison. The sessions are very therapeutic and encouraging. Participants share their experiences

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106. Mary L. Datcher, *Cook County Circuit Court Wins Grant to Create Community Court*, CHICAGO DEFENDER (Apr. 4, 2014), <https://chicagodefender.com/2016/04/14/cook-county-circuit-court-wins-grant-to-create-community-court/>. The courtroom was dedicated on July 20 and was set to open on August 31, 2017. CHICAGO SUN TIMES, July 21, 2017, at 10.

107. Joan Gottschall & Molly Armour, *Second Chance: Establishing a Reentry Program in the Northern District of Illinois*, 5 DEPAUL J. FOR SOC. JUST. 31 (2011); Martha Neil, *2 Federal Judges Work with Ex-Cons in Chicago Re-Entry Program*, ABA JOURNAL (Aug. 16, 2012), [www.abajournal.com/news/article/federal\\_judges\\_work\\_with\\_ex-cons\\_in\\_chicago\\_re-entry\\_program/](http://www.abajournal.com/news/article/federal_judges_work_with_ex-cons_in_chicago_re-entry_program/).

in confronting social, employment and other challenges. They set individualized goals and that encourage them to follow a crime-free, drug-free lifestyle and these goals are enforced by positive and negative consequences. Persons who complete the program participate in a “graduation” ceremony. The program provides an encouraging bridge between incarceration and return to society.

Several years ago, the Chicago public school system made restorative justice an official policy of the Chicago public schools.<sup>108</sup> Restorative justice has not been implemented evenly in all schools, but at least some schools have implemented restorative programs to deal with truancy and disciplinary problems. The Chicago Department of Public Health recognizes that violence and the trauma it produces is a public health concern and, therefore, impacts on student performance in school.<sup>109</sup>

Community organizations have formed restorative justice hubs in the neighborhoods.<sup>110</sup> The hubs create a safe and healthy space where youth are welcomed and supported. The hubs are especially important because they serve those young people who are no longer in school.

Colleges, universities and law schools are teaching restorative justice to their students. The John Marshall Law School has initiated a course in restorative justice and as part of the course students are required to do an externship in the community.<sup>111</sup> The majority of these law students are going into neighborhoods noted for their gang activity and violence and are working with

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108. The Purpose section of the Student Code of Conduct for the Chicago Public Schools states that:

Chicago Public Schools is committed to an instructive, corrective, and restorative approach to behavior. If behavior incidents arise that threaten student and staff safety or severely disrupt the educational process, the response should minimize the impact of the incident, repair harm, and address the underlying needs behind student behaviors. In accordance with the SCC, all disciplinary responses must be applied respectfully, fairly, consistently, and protect students’ rights to instructional time whenever possible.

*Policy Handbook*, CPS.EDU, <http://policy.cps.edu/> (last updated Sept. 27, 2017); *see also*, MAYOR’S COMMISSION FOR A SAFER CHICAGO, STRATEGIC PLAN FOR 2015 37-41 (2015).

109. MAYOR’S COMMISSION FOR A SAFER CHICAGO, STRATEGIC PLAN FOR 2015 31-35 (2015). A research letter in the *Journal of the American Medical Association* states that “Between 2004 and 2015, gun violence research was substantially underfunded and understudied relative to other leading causes of death, based on mortality rates of each cause.” *JAMA* (Jan. 3, 2017), <http://jamanetwork.com/journals/jama/article-abstract/2595514>.

110. *Community RJ Hubs*, RJHUBS.ORG, <https://rjhubs.org/> (last visited Oct. 24, 2017); Robert Koehler, *Restorative justice and the rebirth of Chicago*, CHI. TRIB. (Jan. 1, 2015), [www.chicagotribune.com/news/columnists/](http://www.chicagotribune.com/news/columnists/).

111. The John Marshall Law School, *The Restorative Justice Project*, JMLS.EDU, [www.jmls.edu/restorative-justice/](http://www.jmls.edu/restorative-justice/) (last visited Oct. 25, 2017).

elementary and high school students on truancy and disciplinary issues.

The Interfaith Committee of the Chicago Bar Association has been sending attorneys into Chicago schools to teach restorative techniques to teachers, administrators and students.<sup>112</sup> The Catholic Lawyers' Guild along with other faith based legal groups has drafted a confidentiality rule that is now before the Illinois Supreme Court Rules Committee to assure confidentiality to those participating in restorative programs. It is also working to introduce new restorative justice programs in some of the Catholic elementary and high schools.<sup>113</sup>

Each of these programs is making a contribution and together they will have an impact.

## VIII. CONCLUSION

Restorative justice provides a promising answer to the violence and anti-social behavior that seems to be gripping our social institutions. It is the obvious successor to the social movements that started with the civil rights struggle in the mid-Twentieth Century.

What is so healthy about restorative justice is its focus. It is not narrowly focused on the offender. Nor is it narrowly focused on the victim. It is a community based movement that seeks to transform the entire community. The focus on individual responsibility is not lost, but it is kept in perspective.

Restorative justice offers promise that we can have a more harmonious society where everyone feels interconnected and where we feel safe, but also confident that we are seeking fairness along the way. Restorative justice provides us with a path that we can use on our journey to assure civil rights to all human beings.

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112. Aurora Abella-Austriaco, *Letter from the President of the Chicago Bar Association*, METROCORP.COUNSEL.COM (May 23, 2013), [www.metrocorp.counsel.com/letters/23953/letter-president-chicago-bar-association](http://www.metrocorp.counsel.com/letters/23953/letter-president-chicago-bar-association).

113. The Catholic Lawyers Guild of Chicago, *Restorative Justice Project*, CLGCHICAGO.ORG, [www.clgchicago.org/restorative-justice-project/](http://www.clgchicago.org/restorative-justice-project/) (last visited Oct. 25, 2017).



