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## Restorative Justice in Chicago and Abroad: Comparing the Work of the Community of Sant'Egidio to the Restorative Justice in the United States, 50 J. Marshall L. Rev. 511 (2017)

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# RESTORATIVE JUSTICE IN CHICAGO AND ABROAD: COMPARING THE WORK OF THE COMMUNITY OF SANT'EGIDIO TO THE RESTORATIVE JUSTICE IN THE UNITED STATES

HON. SHEILA M. MURPHY (RET.)\* & SCOTT M. PRIZ\*\*

DEDICATED TO THE MEMORY OF DOMINIQUE GREEN, WHO ENTERED  
THE TEXAS PRISONS ACCUSED WRONGFULLY OF MURDER AND LEFT  
A SAINT.<sup>1</sup>

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## I. THE COMMUNITY OF SANT'EGIDIO AND ITS LESSONS FOR RESTORATIVE JUSTICE IN CHICAGO

There is an organization based in Rome called Sant'Egidio that is dedicated to helping people, through the spirit of friendship, in numerous ways. They aid refugees fleeing from the brutal civil war in Syria to give them a new life in Italy.<sup>2</sup> They visit prisoners on death row in Africa, and throughout the world, to give them hope

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1. See THOMAS CAHILL, *A SAINT ON DEATH ROW: HOW A FORGOTTEN CHILD BECAME A MAN AND CHANGED A WORLD* (First Anchor Books 2009) (telling Dominique Green's life story).

2. Gerald O'Connell, *'Humanitarian Corridors' Offers Hope to 101 Syrian Refugees in Lebanon*, AMERICAN MAGAZINE (Apr. 29, 2016), [www.americamagazine.org/content/dispatches/humanitarian-corridors-offers-new-life-101-syrian-refugees](http://www.americamagazine.org/content/dispatches/humanitarian-corridors-offers-new-life-101-syrian-refugees).

and friendship.<sup>3</sup> They go outside of St. Peter's basilica, and give food to the homeless, while also operating a soup kitchen in Trastevere.<sup>4</sup> They've ended a civil war in Mozambique, through their mediation work,<sup>5</sup> and recently brokered a cease fire in the Central African Republic.<sup>6</sup> On a smaller scale, they have also intervened to spare a juvenile murderer, Paula Cooper, the death penalty through their international activism and two million signatures gathered from around the world.<sup>7</sup>

These are all forms of Restorative Justice. The Community of Sant'Egidio has been practicing Restorative Justice for decades, and has created a viable way of assisting those in need. These methods are worth importing to Chicago and the United States.<sup>8</sup> If Restorative Justice is an alternative to mass incarceration,<sup>9</sup> the form of Restorative Justice practiced by the Community of Sant'Egidio provides an example of how it can be effectively practiced. The Community approaches those in need, not as an authority figure, but practices its aid through friendship with those it would like to help.<sup>10</sup> They are doing their work in the Catholic tradition of subsidiarity—that decisions should be made by the smallest and least centralized level possible.<sup>11</sup> It is the idea that is “a principled tendency toward solving problems at the local level

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3. *Freedom for the Prisoners*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/45/langID/en/Freedom-for-the-prisoners.html](http://www.santegidio.org/pageID/45/langID/en/Freedom-for-the-prisoners.html) (last visited Apr. 17, 2017).

4. *The Soup Kitchens*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/36/langID/en/The-Soup-Kitchens.html](http://www.santegidio.org/pageID/36/langID/en/The-Soup-Kitchens.html) (last visited Apr. 8, 2017).

5. *Ten Years of Peace in Mozambique*, COMMUNITY OF SANT'EGIDIO (Oct. 4, 2002), [www.santegidio.org/en/pace/10anni/20021004.htm](http://www.santegidio.org/en/pace/10anni/20021004.htm).

6. James Joshua, *Sant'Egidio Brokers Peace Deal with C.A.R militants*, THE ITALIAN INSIDER (June 20, 2017), [www.italianinsider.it/?q=node/5537](http://www.italianinsider.it/?q=node/5537).

7. BILL PELKE, *JOURNEY OF HOPE...FROM VIOLENCE TO HEALING* (Xlibris Corp 2003) (detailing a grandson's journey from anger towards the murderer of his bible teaching grandmother to his befriending, to advocating for the release of the murderer, and eventual abolition of the death penalty for minors in the state of Indiana).

8. *See generally* COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/index.php](http://www.santegidio.org/index.php) (last visited Mar. 23, 2017) (describing the work done by the Community).

9. Rebecca Beitsch, *States consider restorative justice as alternative to mass incarceration*, PBS NEWS HOUR (July 20, 2016), [www.pbs.org/newshour/rundown/states-consider-restorative-justice-alternative-mass-incarceration/](http://www.pbs.org/newshour/rundown/states-consider-restorative-justice-alternative-mass-incarceration/).

10. *Friends on the Street*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/25/langID/en/idLng/1064/Friendsbron-the-street.html](http://www.santegidio.org/pageID/25/langID/en/idLng/1064/Friendsbron-the-street.html) (last visited Mar. 23, 2017).

11. Meghan Clark, *Subsidiarity is a Two-Sided Coin*, CATHOLIC MORAL THEOLOGY (Mar. 2, 2012), <https://catholicmoraltheology.com/subsidiarity-is-a-two-sided-coin/>. This is in contrast to the libertarian interpretation of subsidiarity, which argues for a devolution of federal authority to the states and local authorities. *See* Comment, *Re-Balancing State, and Federal Power: Toward a Political Principle of Subsidiarity in the United States*, 53 AM. U.L. REV. 1421 (2004) (arguing for a devolution principle of governance in the United States as a more effective form of governance, particularly regarding the expansion of Congress's commerce clause powers).

and empowering individuals, families and voluntary associations to act more efficaciously in their own lives.”<sup>12</sup> Contrast this with mass incarceration in the United States, which has imposed a toll on those caught in its grasp, particularly minority communities that have been targeted by it.<sup>13</sup> The Community of Sant’Egidio, like most practitioners of Restorative Justice, is looking to achieve better outcomes for the community, for those that might commit crimes, and those who would be directly and indirectly affected by criminal activity and the poverty that gives rise to it.<sup>14</sup> There are lessons to be learned from the work of the Community of Sant’Egidio. This article will show the similarities between the work of the Community and various other practitioners of Restorative Justice in Chicago, and the United States, and it will focus on the similarities between the work of the Community and drug and reentry courts in the United States.

The first section of this article will describe what Restorative Justice is to get a better understanding of this alternative to the punitive criminal justice system. It will then describe the work done by the Community of Sant’Egidio in Rome through the lens of Restorative Justice. It will move on to the state of the criminal justice system in Cook County and the United States, particularly in how it treats criminal behavior. In particular, it will compare the work of Sant’Egidio to the Restorative Justice work being done by state Drug Treatment Courts. Federal reentry courts address the problems of reintegration of prisoners in the criminal justice system. Finally, it will then argue that the type of work done by the Community of Sant’Egidio needs to be imported to the criminal justice system of Cook County and beyond. It would create a radically different approach to criminal justice that would address the root causes of criminal behavior, using the Community’s approach of treating people who have committed crimes through the prism of friendship and accountability that should be incorporated into criminal justice reform in Chicago.

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12. Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103, 116 (2001).

13. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (The New Press 2010) (describing the system of racialized mass incarceration in the United States).

14. See generally SHEILA M. MURPHY & MICHAEL P. SENG, *INTRODUCTION TO RESTORATIVE JUSTICE IN PRACTICE* 13 (Sheila M. Murphy & Michael P. Seng eds., Vandepas Pub., 2015) (introducing the basic concepts of restorative justice).

### A. Restorative Justice

"What is Restorative Justice?" is the first question that I am normally asked when I write or speak about this subject.<sup>15</sup> Before describing the work of the Community of Sant'Egidio and how their principles and techniques could be imported into Chicago, it is first necessary to define Restorative Justice. It is a tricky concept to define, because it is "most commonly defined by what it is an alternative to,"<sup>16</sup> the punitive criminal justice system.<sup>17</sup> Within the academic field, there is a sense that restorative justice is not a single academic theory of either crime or justice,<sup>18</sup> but that "any attempt at definition represents an accumulation of experience to date and is embryonic."<sup>19</sup> It is fundamentally different than the retributive form of justice that is the common experience of people caught in the criminal justice system of the United States since the mid-1970s,<sup>20</sup> where the purpose is to punish the offender because the offender deserves it.<sup>21</sup> Restorative Justice is the best means to achieve harmony in communities.

I have been speaking about Restorative Justice for some time, and its principles have been with civilization for centuries. Sometimes I speak of ancient Ireland where men and women were considered equal. It was not invaded by the Romans so the society was saved from the denigration of women that existed in lands they conquered. Women could testify in court for themselves or as witnesses. They owned and transferred property, and practiced law.<sup>22</sup>

The harmonious law of Ireland ended with the English invasion and the punitive and prejudicial law of the Kings and Queens of Britain were forced upon the people.<sup>23</sup> Unfortunately, the

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15. Any instances of first person in the article should be attributed to Retired Judge Sheila M. Murphy.

16. John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1, 4 (1999).

17. *Id.*

18. James Coben & Penelope Harley, *Intentional Conversations about Restorative Justice, Mediation and the Practice of Law*, 25 HAMLINE J. PUB. L. & POL'Y 235, 244 (2003-2004).

19. *Id.*

20. *E.g.*, Etienne Benson, *Rehabilitate or Punish?*, MONITOR ON PSYCHOLOGY 46, 46-47 (2003), [www.apa.org/monitor/julaug03/rehab.aspx](http://www.apa.org/monitor/julaug03/rehab.aspx).

21. MICHAEL S. MOORE, PLACING BLAME: A THEORY OF THE CRIMINAL LAW 33 (2010).

22. This ancient form Irish law is what is known as Brehon law. See Katharine Simms, *The Legal Position of Irish Women in the Later Middle Ages*, 10 IRISH JURIST N.S. 96 (1975) (describing the legal rights of Irish women during the late middle ages).

23. See SEUMAS MACMANUS, THE STORY OF THE IRISH RACE: A POPULAR HISTORY OF IRELAND 399-404 (1921) (describing the various ways in which England attempted to annihilate the Irish and their culture through invasion).

laws of Ireland approved by the Roman Catholic Church, followed English law. These practices against women cast some girls into "homes" where they were enslaved and their children stolen from them. Some babies died of malnutrition. Birth control was contraband. Higher education was saved largely for boys.<sup>24</sup> The male courts and clergy ruled.<sup>25</sup>

South Africa is one example of Restorative Justice in practice. There Archbishop Desmond Tutu wept with his nation when the Truth and Reconciliation Commission publicly opened the horrors of apartheid. It is time for Ireland and many other nations to open such Commissions to examine the denigration of women, of people of color, of different religions, etc. One for women of all colors and religions, one to expose slavery, and for those on death row. A Jewish lawyer gifted, a death row inmate, Dominique Green with a book and it changed his young life. It was the very book that Archbishop Tutu wrote, of the need for restorative justice in a world of forgiveness.<sup>26</sup> Dominique left death row a saint. Texas could not kill his spirit.

What is restorative justice? It is the opposite of ego, the opposite of power, the opposite of a judge sitting high above those he or she presides over. It is the opposite of guards lording it over prisoners. Instead, it is treating each person with dignity.

Restorative practices help wither the rocks of ego inside us. It is healing, not hurting another. We can throw away the tapes of what adults did and said to us. Restorative practices can evict the shaming process. Once the person, old or young, is listened to, hope is restored. The hardest thing for most of us to learn is to listen. Especially lawyers. And law students. Judges for sure. We are taught how to speak, how to cross-examine, how to bring motions and do trials. We are not taught how to go home and listen to our 5th grader tell what happened to her that day. Our daughter Brigid taught me this one evening when I was describing a new case. She interrupted me and said, "Mommy is there a time for me to talk tonight?" Most of us are so ego-bound. We can become holistic, caring people. The first step is to listen. We can change.

The first time I ever witnessed restorative justice in a courtroom was in Cripple Creek, Colorado. My father represented a man on a drunk driving matter. As he stood before the judge, the judge called the school where the defendant's children attended.

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and changes in laws).

24. See FRANCES FINNEGAN, *DO PENANCE OR PERISH: MAGDALEN ASYLUMS IN IRELAND* (Congrave Press ed., 2001) (describing the Magdalene laundries in Ireland, wherein women were forced into confinement and labor for becoming a so-called "fallen woman." The last of the forced labor facilities shut down in 1996). Fiachra Gibbons, *In God's Name*, THE GUARDIAN (Feb. 6, 2003), [www.theguardian.com/culture/2003/feb/07/artsfeatures](http://www.theguardian.com/culture/2003/feb/07/artsfeatures).

25. FINNEGAN, *supra* note 24.

26. DESMOND TUTU, *NO FUTURE WITHOUT FORGIVENESS* (Doubleday ed., 2000).

The judge quickly discerned that their grades had gone down and they had been late and absent. She hung up the phone and told the defendant his children were being hurt by his conduct. The judge sentenced defendant to go to work every day and spend the night at jail until his children's grades improved. He also asked defendant to attend 12 step meetings.

I saw restorative justice again in federal court in Brooklyn, New York. I came early to the court and a man was sitting at counsel table in the well of the court. He was talking to men on probation one after another. I thought it odd that the judge allowed the probation officer space in his courtroom. When the court opened the same man who listened to the probationers now wore a robe. It was Judge Jack Weinstein, who was famous for the Agent Orange cases.<sup>27</sup> The morning I saw him in that court, he mostly listened and asked questions.

There were plenty of judges in Cook County who practiced restorative justice.<sup>28</sup> Many of them were beloved by all because of their humility. They were on the bench early because they were considerate of those who came before them. Some of them understood addiction to alcohol and other drugs better than doctors. They may have been recovering themselves, or had family members or close friends in recovery. Often, they used the word, "we" instead of "I" when addressing those in need of help. One judge sent five probation officers to alcohol/drug treatment centers so they could learn kindness and firmness. All five of them worked in his court. In the late 1980s, Judge Michael Getty had the first Drug and Alcohol treatment court. He taught a week-long class at the National Judicial College and wrote an article about how to treat people instead of sending them to prison.<sup>29</sup> Treatment took longer he said, but in the end the community where the defendant came from was helped not hurt. Judge Stanley Goldstein of Miami, as a student of Judge Getty, took the Drug Treatment Center to Miami and the nation.

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27. William Glaberson, *Agent Orange, the Next Generation; In Vietnam and America, Some still see a Wrong not Righted*, N.Y. TIMES (Aug. 8, 2004), [www.nytimes.com/2004/08/08/nyregion/agent-orange-next-generation-vietnam-america-some-see-wrong-still-not-righted.html?\\_r=0](http://www.nytimes.com/2004/08/08/nyregion/agent-orange-next-generation-vietnam-america-some-see-wrong-still-not-righted.html?_r=0).

28. In particular, the Chief Judge of the Circuit Court of Cook County Tim Evans has been a proponent of Restorative Justice. See *Balance & Restorative Justice Programs*, CIRCUIT COURT OF COOK COUNTY, [www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/ProbationDepartments/ProbationForJuvenciles/BalanceRestorativeJustice.aspx](http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/ProbationDepartments/ProbationForJuvenciles/BalanceRestorativeJustice.aspx) (last visited May 8, 2017) (describing the various programs that the Cook County Circuit Court runs related to Restorative Justice programs).

29. Terry Wilson, *Court's Drug Program Intrigues Ohio Observers*, CHI. TRIB. (Nov. 18, 1992), [http://articles.chicagotribune.com/1992-11-18/news/9204150328\\_1\\_drug-possession-treatment-center-drug-treatment](http://articles.chicagotribune.com/1992-11-18/news/9204150328_1_drug-possession-treatment-center-drug-treatment).

In 1992, I became the Presiding Judge of the Sixth District Court in Markham, Illinois.<sup>30</sup> During the first year in Markham, African American ministers came to me. They told me that judges were doing nothing but harm to their towns. Alcohol and drugs were affecting families and especially children. Children acted out in school and were suspended and expelled and then were exploited by drug dealers. They told me how judges were awarded good assignments based on the number of cases they heard. In their opinion, the numbers of cases disposed was the main concern of the courts. They explained that there is no justice without mercy and mercy was not a vibrant virtue among most of the judges sitting in the Markham courthouse. The judges knew that prisons had no alcohol and drug treatment. So, the men and women who were sent to prison came back worse. Still addicts, still hopeless. They did not return to the communities where the judges, prosecutors, or defense lawyers lived.

They also complained about the language the prosecutors used in referring to their sons and daughters. These Ministers claimed that prosecutors charged African American defendants with felonies. They compared the convictions to the white suburbs where cases were dismissed or charged as misdemeanors.<sup>31</sup> However, the Ministers were quick to mention several judges who did understand and worked with the accused until they were able to recover. In the darkest night of the court system, there were still judges with their fingers in the Restorative Justice dike.

Because of the entreaties of the African American Ministers we received get a grant from the United States Justice Department for Drug treatment courts. Judges were sent to Miami, Florida to learn the principles of restorative justice. They learned that recovery is possible, listening is needed and nothing good happens without mercy. There must be immediate consequences if relapse occurs. The best consequence is intensive drug and alcohol treatment.<sup>32</sup>

Restorative Justice seeks to deal with the effects of criminal behavior, about “restoring victims, repairing harm, and re-weaving

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30. Karen Craven, *Courthouse to Feel Void When Judge Steps Down*, CHI. TRIB. (Aug. 15, 1999), [http://articles.chicagotribune.com/1999-08-15/news/9908150176\\_1\\_court-administrator-drug-court-markham](http://articles.chicagotribune.com/1999-08-15/news/9908150176_1_court-administrator-drug-court-markham).

31. See e.g., Luka Kutateladze Besiki & Nancy R. Andiloro, *Prosecution and Racial Justice in New York County*, NCJRS.GOV (2014), [www.ncjrs.gov/pdffiles1/nij/grants/247227.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/247227.pdf) (finding racial disparities in every step of criminal prosecutions in New York County). The study concluded that “compared to similarly-situated white defendants, black and Latino defendants were more likely to be detained, to receive a custodial plea offer, and to be incarcerated; but they were also more likely to benefit from case dismissals.” *Id.* at ii.

32. See generally Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 462-67 (1999) (describing the benefits of therapeutic drug treatment in the court system).



the fabric of human relationships in a community.”<sup>33</sup> It targets not only the offender of the crime, but also the victim and the community that the crime occurred in to “heal the harm caused by the crime.”<sup>34</sup> It has three main constituencies: the offender, the victim, and, and again, the community.<sup>35</sup> Its goal is to repair the harm of the crime, through the involvement of all of the stakeholders, to transform the relationships between the victim, the offender, and the community.<sup>36</sup> Restorative Justice works well anywhere. Civil cases are fertile ground for restorative practices.

Restorative Justice is rooted in some older, forms of justice than the type practiced in the United States:<sup>37</sup>

Early societies could not operate jails and prisons. If the crime was really serious, the community might execute the offender or banish her from the community. Incapacitating the offender only added to the burdens of the community. Therefore, it was expected that the offender would return to the community and function as a productive member of the community. This could only be done through a restorative process. A Native American peace circle, a Native Hawaiian *ho’oponopono*, a Brehon judge listening to stories, or a Tswana *kgotla* or village council- all were aimed at reconciling the offender, the victim and the community so that society could move forward.<sup>38</sup>

These ways of dealing with offenders are forms of Restorative Justice. It is a response to crime that is less concerned with retribution, and more concerned with getting a better result for the community. Restorative Justice can take the form of finding restitution for the victim. Take the simple example of an offender committing property damage against a fence. A form of Restorative Justice might be to have the offender physically repair the property damage that they committed. A much more complex version of Restorative Justice can occur when there has been a violent crime.<sup>39</sup> This form of Restorative Justice can take years to accomplish, if ever. It is a physically daunting task especially for the victims and

33. Cohen & Penelope Harley, *supra* note 18, at 245.

34. Kay Pranis, *Understanding Restorative Justice*, quoted in SUNNY SCHWARTZ, DREAMS FROM THE MONSTER FACTORY 126 (Scribner eds., 2009).

35. Michael P. Seng, *Restorative Justice and Housing Discrimination*, in RESTORATIVE JUSTICE IN PRACTICE, *supra* note 14, at 19.

36. *What is Restorative Justice*, CENTER FOR JUSTICE AND REHABILITATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/> (last visited Mar. 30, 2017).

37. Murphy & Seng, *supra* note 14, at 13.

38. *Id.*

39. *See, e.g.*, BILL PELKE, *supra* note 7; *see also* JEANNE BISHOP, CHANGE OF HEART: JUSTICE, MERCY, AND MAKING PEACE WITH MY SISTER'S KILLER (Westminster John Knox Press 2013) (following the transformative journey of forgiveness undertaken by the sister of a murder victim); *Murder Victims' Families Against the Death Penalty*, MVFR.ORG, [www.mvfr.org](http://www.mvfr.org) (last visited Apr. 3, 2017) (organizing murder victim families against the death penalty).

their families of violent crime.<sup>40</sup> It should be understood that not everyone is capable of forgiveness. Nevertheless, our compassion for the victims is not lessened.

One of the primary tools of in-person Restorative Justice is the peace circle.<sup>41</sup> Peacemaking and restorative circles are “used to address conflict holistically and solve problems. Peace circles emphasize healing and learning through a collective group process, aiming to repair harm done and assign responsibility by talking through the problem” by forming agreement of the values that will be used in the circle.<sup>42</sup> There is a circle keeper, whose duty is to protect the process.<sup>43</sup> The circle keeper is not part of the agreement of the other participants in the circle, but will instead attempt to keep the balance of the circle in place.<sup>44</sup> They help the participants in the circle establish the rules of the circle. One of the rules is that everyone may talk, one at a time and everyone will listen, with an emphasis on respect within the circle.<sup>45</sup> Within the circle, an agreement is hopefully reached, where all the parties involved in the circle have a stake in keeping the agreement.<sup>46</sup> The circle is a way of bringing all parties to the table, to facilitate them listening and speaking to each other. Offenders have to “commit themselves to a healing process that includes restitution and reconciliation with the victim, their family and the larger community.”<sup>47</sup> This sort of process provides not only a better way for the offender to provide some form of restitution to the victim, but also allows the victim and the community to speak and identify solutions to their grievances.<sup>48</sup>

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40. See, e.g., PELKE, *supra* note 7, at 77-81 (describing a spiritual epiphany of forgiveness towards his grandmother’s murderer).

41. See *Circles*, CENTER FOR JUSTICE AND MEDIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/circles/> (last visited Apr. 8, 2017) (giving a lesson plan on how to implement Peace Circles within Restorative Justice programs).

42. *Restorative Justice Training: Peace Circles*, STUDENT PEACE ALLIANCE, [www.studentpeacealliance.org/uploads/2/9/4/4/29446231/peace\\_circles-3.pdf](http://www.studentpeacealliance.org/uploads/2/9/4/4/29446231/peace_circles-3.pdf) (last visited Apr. 8, 2017).

43. Martha Mills, *Why Restorative Justice? And Less Straightforward, How did I Get There?*, in RESTORATIVE JUSTICE IN PRACTICE, *supra* note 14, at 39.

44. *Id.*

45. *Id.* at 42.

46. *Id.* at 43.

47. *Peacemaking/Restorative Circles*, STUDENT PEACE ALLIANCE, [www.peacepower.info/modules/PeaceCircles.pdf](http://www.peacepower.info/modules/PeaceCircles.pdf) (last visited Apr. 8, 2017).

48. Kay Pranis, Minnesota Department of Corrections, *Restoring Community: The Process of Circle Sentencing*, MINNESOTA DEPARTMENT OF CORRECTIONS (June 6, 1997), <https://mn.gov/law-library-stat/archive/urllarchive/c9992021-1.pdf>.

Restorative Justice, however, is interested not only in re-integrating the offender into the community, but also creating communities that are less likely to produce offenders in the first place:

The community is not a passive player in the drama. The community bears responsibility for anti-social conduct. The community provides the environmental context where anti-social action occurs. On closer examination, all too often, the restorative triangle manifests a cycle of injustices that must be addressed and transformed for any positive change to occur.<sup>49</sup>

Much of the violence in minority communities is often the result of the illegal drug trade that takes place in those communities.<sup>50</sup> Drug crimes are “the scourge of poor minority communities.”<sup>51</sup> Judge Joan Gottschall of the United States Northern District of Illinois Court and Molly Armour described their approach to drug addiction and its relationship to the community. They questioned the argument that addicts are singularly to blame for the harms inflicted on their communities:

But the problem with this argument is that the defendant, probably the third generation living through the war on drugs, is almost always the paradigmatic victim as well as the perpetrator. He may be an addict himself. He grew up in a household with a parent or parents addicted to controlled substances who were periodically incarcerated...He grew up surrounded by poverty and unemployment, went to poor schools, probably dropped out before graduating from high school, and may be functionally illiterate...So, sure, he made bad choices and did illegal things, but what good choices did he have? How can I see him as responsible for the community degradation that so powerfully contributed to making him what he is? And how likely is it that this young man can return to his community after imprisonment with any hope of a different future?<sup>52</sup>

Restorative Justice is looking to answer that question of Judge Gottschall: how can people who have committed criminal acts return to their communities with a different set of the circumstances that the ones that led them to their criminal acts. Restorative Justice is interested in reforming not only the criminal actor, but also in restoring the communities that contributed to the criminal proclivities. These forms of Restorative Justice are what the Community of Sant’Egidio is practicing through their work. It is this community based work of reaching out to refugees, to the Roma, to prisoners in jail, and to the poor gathered outside of St.

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49. Seng, *supra* note 35, at 19.

50. Dan Werb et al, *Effect of Drug Law Enforcement on Drug Market Violence: A Systemic Review*, 22 INT. J. DRUG & POLICY 87, 87 (2011).

51. Joan Gottschall & Molly Armour, *Rethinking the War of Drugs: What Insights Does Restorative Justice Offer?*, in RESTORATIVE JUSTICE IN PRACTICE, *supra* note 14, at 91.

52. *Id.*

Peter's Basilica not as authority figures, but as friends, that is the form of Restorative Justice that should be imported into the United States.

## *B. The Work of the Community of Sant'Egidio*

### *1. What is the Community of Sant'Egidio?*

The Community of Sant'Egidio was founded in 1968 in Rome, and now has expanded its charity work to more than 73 countries.<sup>53</sup> They began to try to reach out to the children growing up in a Shantytown in the Cinodromo district of Rome.<sup>54</sup> Although the Community has since expanded its work globally, it has always viewed its work with children as working with "the most defenseless of the poor."<sup>55</sup> It is a Catholic organization, who view their work, particularly with children, as continuing Christ's work: "These "little ones" have accompanied the Community since its inception. Their lives, as weak and as in need of help and protection as they are, have always shown us how much suffering indifference and loneliness can cause."<sup>56</sup>

They also work directly with prisoners, through the spirit of friendship, corresponding and visiting prisoners throughout the world to uplift their spirits in darkest of circumstances.<sup>57</sup> They work with the disabled, to bring them into the community, and even operate a restaurant that is staffed with by disabled people.<sup>58</sup> They have established people's school to reach out to the Roma living on the outskirts of Rome, focusing on "teaching the Roma children the Italian language and giving them health education."<sup>59</sup> They operate a soup kitchen in the Trastevere district of Rome where they are based, and deliver food and blankets to the poor in various areas of Rome.<sup>60</sup> The Community even intervened in the midst of a civil war

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53. *The Community*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/2/langID/en/the-Community.html](http://www.santegidio.org/pageID/2/langID/en/the-Community.html) (last visited Feb 1, 2018).

54. *A Bit of History*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/187/langID/en/A-bit-of-history.html](http://www.santegidio.org/pageID/187/langID/en/A-bit-of-history.html) (last visited Apr. 8, 2017).

55. *The Youngest*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/minori/bambini\\_eoggi.htm](http://www.santegidio.org/en/solidarieta/minori/bambini_eoggi.htm) (last visited Apr. 8, 2017).

56. *Id.*

57. *Friends in Prison*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/27/langID/en/idLng/1064/Friendsbrin-Prison.html](http://www.santegidio.org/pageID/27/langID/en/idLng/1064/Friendsbrin-Prison.html) (last visited Apr. 8, 2017).

58. *Trattoria degli Amici*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/disabili/trattoria.htm](http://www.santegidio.org/en/solidarieta/disabili/trattoria.htm) (last visited Apr. 8, 2017). The restaurant is located in the Trastevere section of Rome, where the Community is based. From personal experience, the food is excellent, and highly recommended should a reader travel to Rome.

59. *The Youngest*, *supra* note 55.

60. *The Soup Kitchens*, *supra* note 3. One of the authors of this article, Scott Priz, was fortunate enough to spend a week with the Community, and participate with their outreach to their poor. The needy are known to gather

in Mozambique in 1992, and successfully helped broker a peace with the Rome General Peace Accords.<sup>61</sup> They also work in re-settling Syrian refugees in Italy.<sup>62</sup>

One of their most visible works is their Cities of Life campaign against the death penalty.<sup>63</sup> As part of a call for a global moratorium on the death penalty, the Community rallies on November 30<sup>th</sup> of each year in the capital of Rome, lighting up monuments to show their collective opposition to the death penalty.<sup>64</sup> It is “is the largest contemporary planetary mobilization in order to indicate a higher and more civil form of justice.”<sup>65</sup> More than 2,000 cities light up public buildings in support of the worldwide abolition of the death penalty,<sup>66</sup> with lighting of buildings such as Rome’s Coliseum, Cathedral Square in Barcelona, and St. James Cathedral in Toronto.<sup>67</sup> Both authors of this article have participated in the weeklong Cities for Life Campaign that is centered in Rome. One of the authors of this paper, Scott Priz, had the good fortune of giving a speech, translated on the fly by two high school English teachers, in the city of Civitavecchia on a cold November night to fifty shivering Italians. He had been sent there by The John Marshall Law School, as part of the Braun Symposium. Despite the cold, and his almost entirely non-existent Italian, the residents of the city were full of good spirits, and eager to participate in the abolition of the death penalty. This is done even though Italy has not had the death penalty since their modern constitution was adopted in

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and rest in St. Peters Square in Rome. Bags of food were gathered at their Soup Kitchen, and the community convoyed to St. Peters Square. Hot food, drink and blankets were handed out to the poor, who gathered in a long line. The community gave all that it had brought in more than half an hour, with some people being turned away for want of resources. Some nights the community would go off into Rome, other nights they would welcome the poor into their soup kitchen.

61. *Ten Years of Peace in Mozambique*, *supra* note 4. The peace treaty signed in 1992 has largely held, although in 2013 the violent conflict was renewed. See generally Natália Bueno et al, *Provincial Autonomy: The Territorial Dimension of Peace in Mozambique*, 10 GERMAN INST. GLOBAL AND AREA STUDIES 1 (2015).

62. O’Connell, *supra* note 1.

63. *Campaign*, COMMUNITY OF SANT’EGIDIO, <http://nodeathpenalty.santegidio.org/pageID/225/langID/en/Campaign.html> (last visited Apr. 8, 2017).

64. *Id.*

65. *Cities for Life*, COMMUNITY OF SANT’EGIDIO, <http://nodeathpenalty.santegidio.org/pageID/10/langID/en/Cities-for-Life.html> (last visited Ap. 8, 2017). Both authors have participated as speakers as part of the weeklong Cities for Life Campaign that is centered in Rome. Scott Priz had the good fortune of giving a speech, translated on the fly by two high school English teachers, in the city of Civitavecchia on a cold November night to fifty shivering Italians. Despite the cold, and his almost entirely non-existent Italian, the residents of the city were full of good spirits, and eager to participate in the abolition of the death penalty.

66. *Cities for Life*, COMMUNITY OF SANT’EGIDIO, <http://nodeathpenalty.santegidio.org/pageID/10/langID/en/Cities-for-Life.html> (last visited Feb. 1, 2018).

67. Rose Marie Berger, *Cities Light Up for Life*, SOJOURNERS (Feb. 2010), <https://sojo.net/magazine/february-2010/cities-light-life>.

1947,<sup>68</sup> and that all 15 original members of the European Union have abolished the death penalty.<sup>69</sup> They are committed to the worldwide abolition of the death penalty, and will light up Rome's Coliseum whenever a country or state has abolished the death penalty. For instance, the Colosseum lit up when New Jersey abolished its death penalty in 1999.<sup>70</sup> In 2000 and 2001 the Colosseum lit up again when then Governor George Ryan put in a place a death penalty moratorium and when he commuted the sentences for all death row inmates.<sup>71</sup>

The death penalty is the antithesis of Restorative Justice. If Restorative Justice is trying to reconcile the offender back into society,<sup>72</sup> then the death is society's ultimate removal of that person from society, and from life itself. It is the ultimate form of retributive justice. As one writer put it, "[t]he death penalty is about retribution for past offenses, not prevention of future ones."<sup>73</sup> The Community of Sant'Egidio chooses to fight against the death penalty as a violation of human rights:

The death penalty, the extreme epitome of human rights violations, represents a means of torture, contradicts a rehabilitative view of justice, lowers civil society to the level of those who murder, legitimates violence at the highest level and often becomes a tool for the repression of political, ethnic or religious minorities.<sup>74</sup>

All of these works done by the Community of Sant'Egidio are done through the spirit of friendship. This is done in the Catholic tradition of subsidiarity. It is about working with people on an individual basis, focusing on that person's needs.<sup>75</sup> The Community of Sant'Egidio does not operate as a branch of the Catholic Church, but is instead a group of individuals dedicated to helping those in need.<sup>76</sup>

68. Art. 27 Cost. (It.).

69. Allen Shoenberger, *The European View of American Justice*, 36 LOY. U. CHI. L.J. 603, 603 (2005).

70. Frances Kennedy, *Colosseum lights reflect death penalty campaign*, THE INDEPENDENT (Dec. 13, 1999), [www.independent.co.uk/news/world/colosseum-lights-reflect-death-penalty-campaign-1132220.html](http://www.independent.co.uk/news/world/colosseum-lights-reflect-death-penalty-campaign-1132220.html).

71. Shoenberger, *supra* note 69, at 603.

72. Murphy & Seng, *supra* note 14, at 13.

73. Jelani Cobb, *Out of Time, The Banal Horror of Arkansas's Executions*, THE NEW YORKER (May 8, 2017), [www.newyorker.com/magazine/2017/05/08/the-banal-horror-of-arkansas-executions](http://www.newyorker.com/magazine/2017/05/08/the-banal-horror-of-arkansas-executions).

74. *A long path towards abolition*, COMMUNITY OF SANT'EGIDIO, <http://nodeathpenalty.santegidio.org/pageID/225/langID/en/Campaign.html> (last visited May 3, 2017).

75. Kyle Duncan, *Subsidiarity and Religious Establishments in the United States Constitution*, 52 VILL. L. REV. 67, 71 (2007).

76. *The Community*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/pageID/2/langID/en/the-Community.html](http://www.santegidio.org/pageID/2/langID/en/the-Community.html) (last visited May 8, 2017).

## 2. *The Community's Friendship Towards the Poor and Those in Prison*

The work that the Community does is all done through the concept of giving friendship to the poor. One of the more direct ways in which they extend their friendship is through their program of writing.<sup>77</sup> The Community is also heavily involved in visiting prisoners in Africa's jails,<sup>78</sup> and coordinates a program wherein people can volunteer to write to prisoners to raise their spirits.<sup>79</sup> The Community runs these programs to help the prisons mental and spiritual life:

A letter has always an enormous value for prisoners. It means getting in touch with the outside world. As a matter of fact letters, even if they are often censored, are the only free space in the life of men and women on death rows. Receiving mail is a bit like opening the bars. Having someone to write breaks the monotony of everyday life, making room for emotions and helping not to lose faith in oneself.<sup>80</sup>

This program creates enormous benefits to the prisoners. The separation of being in prison can lead to greater isolation, and the effects of prison can lead to additional violent acts once they have been released, unless they are taught kindness.<sup>81</sup> These types of programs can reduce the isolation of prisoners, and help make reintegration into a community more successful after release.<sup>82</sup> This writing to prisoners is not just an act of charity. It's about growing a unique breed of friendship."<sup>83</sup>

Some prisoners have written back, to express what it meant to have this kind of friendship extended to them. The letters that the Community and its friends write are meant to help the prisoners cope with the trauma of prisons. One prisoner wrote:

77. *Friends in Prison*, *supra* note 51.

78. *Friends in Prison, In Africa*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/carcere/africa.htm](http://www.santegidio.org/en/solidarieta/carcere/africa.htm) (last visited Apr. 10, 2017).

79. *Pen-Friend*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/carcere/scrivere.htm](http://www.santegidio.org/en/solidarieta/carcere/scrivere.htm) (last visited Apr. 10, 2017).

80. Pen-Friend, *Receiving a Letter Pleases Everyone*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/carcere/scrivere02.htm](http://www.santegidio.org/en/solidarieta/carcere/scrivere02.htm) (last visited Apr. 10, 2017).

81. See e.g., Mika'il DeVeaux, *The Trauma of the Incarceration Experience*, 48 HARV. C.R.-C.L. L. REV. 257 (2010) (describing the harmful psychological effects of incarceration to the author). "Several researchers found that people in prison may be diagnosed with posttraumatic stress disorders, as well as other psychiatric disorders, such as panic attacks, depression, and paranoia; subsequently, these prisoners find social adjustment and social integration difficult upon release." *Id.* at 259.

82. See Maya Schenwar, *The Radical Power of a Prison Pen Pal*, TALKING POINTS MEMO (Dec. 12, 2014), <http://talkingpointsmemo.com/theslice/power-prison-pen-pals-12-12-14> (relating how writing to prisoners can affect both the prisoners and the writers).

83. *Id.*

I deeply thank you for your letter and your good heart. We are usually seen just as criminals and nobody is able or wants to look at our soul. But deep inside soul we are not so bad... the soul yearns for good things.<sup>84</sup>

Another wrote, just before his execution:

15 years ago, if I had been killed in a gun battle with someone of that environment, I would die friendless and alone, and no one, besides my family, you would be worried about my death. Now I know that I will not die alone and without friends. I know that I will die loved by others, as well as from my family. The family will have to love, and in this he has no choice, but in the friendships you can choose. The friends you choose with each other because there is a tie, something in common, somewhere. We may never find out where it is, but there is.

And so, finally, you're my friend, for some unknown reason, and for this I thank your friendship. It 'a blessing in someone's life with a past like mine to say that true friends. You helped me during the hardest thirteen years of my life. Thanks for being there. Thank you for being my friend. Thanks for the time of your life that you gave me. Saying thank you does not seem enough to express everything. Know that your friendship is to make a difference.<sup>85</sup>

How this type of prisoner outreach can work is best seen through some case examples of prisoners that the Community has been involved with. Two such cases will be given in this article: the tragic story of Paula Cooper, and the uplifting story of Susan Kigula. The case stories will show how the type of work done by the Community of Sant'Egidio can improve the spirits of prisoners, even those who would appear to be without hope, and increase the chances of reintegration into the community.

### 3. *Paula Cooper - 15-Year-Old Murderer of Ruth Pelke*

Four teenage girls on May 14th, 1985 murdered Ruth Pelke, a 78-year-old Bible teacher in Gary, Indiana.<sup>86</sup> In the investigation, the lead culprit was found to be a 15 year girl at the time of the murder, Paula Cooper, who was seen as being the "dominant personality"<sup>87</sup> of the four girls who committed the crime. The four girls stabbed Ruth Pelke 33 times after letting the four girls into

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84. *A Pen-Friend- Writing to a Person Sentenced to Death*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/carcere/scrivere02.htm](http://www.santegidio.org/en/solidarieta/carcere/scrivere02.htm) (last visited May 3, 2017).

85. *Those Condemned to Death*, COMMUNITY OF SANT'EGIDIO, [www.santegidio.org/en/solidarieta/carcere/pdm.htm](http://www.santegidio.org/en/solidarieta/carcere/pdm.htm) (last visited June 28, 2017).

86. *Paula Cooper Case Records, 1986-1989*, INDIANA HISTORICAL SOCIETY, [www.indianahistory.org/our-collections/collection-guides/paula-cooper-case-records-1986-1989.pdf](http://www.indianahistory.org/our-collections/collection-guides/paula-cooper-case-records-1986-1989.pdf) (last visited Apr. 10, 2017).

87. Wes Smith & John O'Brien, *4 Unlikely Suspects in Savage Slaying*, CHI. TRIB. (June 17, 1985).



her house.<sup>88</sup> The girls then took ten dollars from Ruth Pelke and the keys to her car.<sup>89</sup> Police were led to the suspects after a white denim jacket was left in the later abandoned car with a receipt with Paula Cooper's name on it.<sup>90</sup> It was a brutal crime, committed against a woman who was described as being a "meek and mild' Bible studies teacher"<sup>91</sup> who was described as serving cookies to neighborhood children, who would give boxes of candy to children if they remembered the bible verses that she gave to them.<sup>92</sup>

The court sentenced Paula Cooper sentenced to death for her role in the murder of Ruth Pelke, as Indiana then allowed for the execution of people who had committed capital crimes as minors.<sup>93</sup> But her story didn't end with her sentence. Paula Cooper, by all accounts, did murder Ruth Pelke. It's probable that her trial and sentence would not have received such global attention had it not been for her age when she committed the murder- she was only 15 years old when she and her friends killed Ruth Pelke.<sup>94</sup> After she had been sentenced to death, reactions varied, even from Ruth Pelke's community.<sup>95</sup> Some members of Gary, Indiana wrote to the local paper wanting to execute everyone on death row to save a lot of money,<sup>96</sup> others expressed qualms with the concept of death penalty, particularly towards someone as young as Paula Cooper.<sup>97</sup>

When thinking about Paula Cooper, and the terrible act that she and her friends committed upon Ruth Pelke, it is vital to understand who Paula Cooper was, and how a 15-year-old girl could be warped by trauma to commit such an act. Paula Cooper, in the word of the Indianapolis Star, had a childhood that was "a catalog of horrors."<sup>98</sup> Her childhood involved: frequent beatings by her father, a witness of a violent rape of her mother by her father, an attempt to asphyxiate Paula and her sister by her mother, beatings by her mother, stays in mental hospitals, and an abortion forced upon Paula Cooper by her mother.<sup>99</sup> One incident of abuse was recounted in the Indianapolis Star:

Perhaps the pinnacle of Paula's abuse came, ironically, after her father visited Gary police seeking advice on how to deal with a wayward child. Paula was 14, and Herman Cooper couldn't keep her

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88. *Id.*

89. *Id.*

90. *Id.*

91. Robert King, *Paula Cooper, The Executioner Within*, INDIANAPOLIS STAR (Dec. 9, 2016), [www.indystar.com/story/news/2016/12/09/paula-cooper-executioner-within/93650408/](http://www.indystar.com/story/news/2016/12/09/paula-cooper-executioner-within/93650408/).

92. *Id.*

93. *Id.*

94. INDIANA HISTORICAL SOCIETY, *supra* note 86.

95. PELKE, *supra* note 7, at 67-71.

96. *Id.* at 69.

97. *Id.*

98. King, *supra* note 91.

99. *Id.*

reined in. Frustrated, he asked the police what he should do with her. It was a family matter, they said; he should do what he thought was right.

For Herman Cooper, that meant one thing: another beating. But for what he had in mind this time, he'd need some privacy. He took Paula to a woody patch near a spot where he kept a garden. Paula had been there before; so had Rhonda.

"If you scream where I take you," he told Paula, "no one will hear you."

Several times in her life, Paula thought her father was going to beat her to death. This was one of them. "He just kept beating me and beating me," she would tell the clinical psychologist, for what seemed like half an hour. Instead of the cord or a broom or a stick, this time Herman beat her with his bare hands.

When he was done, Herman put Paula in the car to take her home. But as they drove through the darkening streets of Gary, Paula knew she couldn't go back there. Not when the possibility of more punishment lay ahead in the Cooper house of horrors.

As Herman pulled the car up to the house, Paula jumped out and took off running into the night. Running and screaming. Herman gave chase, but porch lights began to click on. Up and down the street, neighbors stepped out to investigate the commotion. The neighbors had seen this show before; it never seemed to end. This time, though, Herman retreated.<sup>100</sup>

The most powerful reactions were the reactions of Catholic organizations in Rome, and of Ruth Pelke's grandson, Bill Pelke. In reaction to a 15-year-old minor being sentenced to death, Pope John Paul II began a campaign to commute her sentence.<sup>101</sup> From Italy alone, two million petitions poured into the Indiana Supreme Court, begging them to spare her life.<sup>102</sup> Groups of Italians began demonstrating outside of the U.S. Embassy in Rome, protesting against Paula's death sentence.<sup>103</sup> Bill Pelke began appearing on various television programs, advocating for a clemency of Paula Cooper's death sentence.<sup>104</sup> There was a tangible result from all of this activism – the Indiana legislature passed a law that future crimes committed by minors could no longer carry the possible sentence of death.<sup>105</sup> Past offenders, however, like Paula Cooper, would still have their death sentences carried out.<sup>106</sup> An appeal was

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100. *Id.*

101. Lilita Segura, *From Death Row At 16 To Suicide At 45: The Life And Death Of Paula Cooper*, THE INTERCEPT (June 12, 2015), <https://theintercept.com/2015/06/12/paula-cooper-dead-at-45/>.

102. Uli Schmetzer, *Indiana Killer, 18, A Symbol to Europe*, CHI. TRIB., (July 20, 1988).

103. PELKE, *supra* note 7, at 114.

104. *Id.* at 101-06.

105. *Id.* at 138.

106. *Id.*

made to the Indiana Supreme Court, and the Indiana Supreme Court set aside her death sentence, and gave her a twenty year prison sentence instead.<sup>107</sup>

Bill Pelke, while the case made its way through the courts, underwent a spiritual transformation in his views towards the killer of his beloved grandmother. He had gone through immense pain, as the family member of a murder victim.<sup>108</sup> He was understandably caught up in the grief and pain the violent murder. But he began, one night while working as a crane operator, a religious epiphany of forgiveness:

I began to think that Paula Cooper didn't know what she was doing when she killed Nana. Someone that knows what they are doing does not take a twelve-inch butcher knife and stab someone thirty-three times. It was a crazy, crazy senseless act. I thought maybe the right thing to do was to forgive Paula. I told myself that I should try to forgive her...I spent about forty-five minutes in the crane that night. The mechanics never did show up for their lifts. I walked down the fifty feet of stairs to the floor below. When I had gone up at the start of the night, I was a defeated man. When I came down those same stairs forty-five minutes later, I felt victorious. I felt like a man with a mission!<sup>109</sup>

While Paula was in prison, Bill Pelke began corresponding with the murderer of his grandmother, putting forward his forgiveness of her.<sup>110</sup> Paula Cooper wrote back, asking for his forgiveness, and for Bill's friendship.<sup>111</sup> They began corresponding, the family murderer and the victim's family member, and Bill asked for, and eventually received, permission to visit Paula Cooper in prison.<sup>112</sup> After visiting her, "[o]ne word kept going over and over in my mind, the word *wonderful*."<sup>113</sup> Bill achieved not only a mental and spiritual healing from his forgiveness, and also received a new mission in life—he became an international activist against the death penalty, through his organization, Journey of Hope.<sup>114</sup> Through this extension of friendship and forgiveness by Bill, the psychic wounds of the terrible crime healed. Bill wasn't operated, at the time, under any group or guidance. He was, however, practicing

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107. *Cooper v. State*, 540 N.E.2d 1216 (Ind. 1989). The United States Supreme Court would eventually hold that the execution of people who had committed crimes at minors violated the Eight Amendment's prohibition of cruel and unusual punishment. *Roper v. Simmons*, 543 U.S. 551, 555-556. The Court would later hold that a life sentence of a juvenile with no possibility of parole also violated the Eighth Amendment. *Graham v. Florida*, 560 U.S. 48 (2010).

108. PELKE, *supra* note 7, at 79.

109. *Id.* at 78, 81.

110. *Id.* at 84.

111. *Id.*

112. *Id.* at 240-42.

113. *Id.* at 241.

114. *Who we are*, JOURNEY TO HOPE, [www.journeyofhope.org/who-we-are/murder-victim-family/bill-pelke/](http://www.journeyofhope.org/who-we-are/murder-victim-family/bill-pelke/) (last visited Apr. 17, 2017).

Restorative Justice on himself, and on Paula Cooper. During Paula's incarceration, they corresponded hundreds of times, and Bill visited with Paula 14 times.<sup>115</sup>

Through Bill, and his activism, the Community of Sant'Egidio became involved in trying to improve the Paula Cooper's psychological well-being. They, along with the Catholic Church in Indianapolis, extended their friendship to Paula Cooper while serving her lengthy sentence.<sup>116</sup> Paula had some difficulty adapting to life outside of prison, but she began rebuilding her life.<sup>117</sup> She got a job in a burger restaurant, and then became a receptionist at one of the law firms that had defended her while she was on death row. She began speaking to law classes and other organizations about her life.<sup>118</sup> She appeared to "to be far ahead of the curve for ex-offenders returning to society."<sup>119</sup>

But not every story has a happy conclusion. On May 16th, 2015, Paula Cooper drove her car to a parking lot outside of a school. She made a final recording to her friends and family, and took her own life.<sup>120</sup> This was despite the best efforts of people like Bill Pelke, the Community of Egidio, her parole officer, her fellow ex-prisoners, her family, and her employers. This is not to say Restorative Justice efforts were the wrong type of action to take towards Paula Cooper. It is that when dealing with heavily traumatized people, not every effort will result in a reintegrated offender. Although Bill Pelke, through his practice of Restorative Justice, achieved peace with the murder of his grandmother, the Community was unable to save Paula Cooper from her demons. Her life was a tragedy, compounded by a violent, monstrous crime. But her life, and the life of Bill Pelke, was improved through the efforts of the Community. Her story is a reminder that while Restorative techniques may be able to improve some people lives, practitioners should be aware that they will lose some battles.

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115. Ass. Press Reporter, '*She never felt she deserved a second chance*', DAILY MAIL (Oct. 3, 2015), [www.dailymail.co.uk/news/article-3259168/She-never-felt-deserved-second-chance-Inside-tortured-mind-killer-freed-death-row-rebuilt-life-committing-suicide.html](http://www.dailymail.co.uk/news/article-3259168/She-never-felt-deserved-second-chance-Inside-tortured-mind-killer-freed-death-row-rebuilt-life-committing-suicide.html).

116. Dani Clark, *An appeal to Supreme Court US: "I am here to witness my friendship with Ivan, and to call for abolish death penalty"*, COMMUNITY OF SANT'EGIDIO (July 5, 2015), [www.santegidiocommunity.org/2015/07/](http://www.santegidiocommunity.org/2015/07/).

117. King, *supra* note 91. This article goes into much deeper analysis of Paula Cooper's life and well-being that space allows in this article. Although Paula did have a network of friends, former cellmates, a job and a place to live, it is clear from this article that she was never able to fully escape her own demons. It is a gripping newspaper article that gives the reader a full sense of what it is like to be released from prison after thirty years.

118. *Id.*

119. *Id.*

120. *Id.*

#### 4. Susan Kigula

The final example of the work that can be done with prisoners, and the positive effects of Restorative Justice techniques is the inspirational story of Susan Kigula.<sup>121</sup> A Uganda court convicted Susan of the murder of her husband in 2002, and sentenced her to death by hanging.<sup>122</sup> Susan did not wait idly by for the hangman's noose to claim her. She instead, in 2009, led a lawsuit in the Ugandan courts to attempt to overturn the death penalty for herself and for 416 other prisoners.<sup>123</sup> Although the Supreme Court of Uganda declined to abolish the death penalty, declaring that "[t]he imposition of the death penalty does not constitute cruel, inhuman or degrading punishment in terms of articles 24 and 44 of the Constitution,"<sup>124</sup> she did achieve a commutation for those who had been waiting for a decision of appeal of three years, and a resentencing hearing for prisoners like herself to hear mitigating circumstances.<sup>125</sup> In that re-hearing, Susan's death sentence was commuted to a twenty year sentence.<sup>126</sup>

While in prison, she began working with the African Prisons Project,<sup>127</sup> an organization that does similar work as the Community of Sant'Egidio with prisoners in Africa.<sup>128</sup> Their mission is to "bring dignity and hope to the men, women and children living and working in prisons across Africa."<sup>129</sup> In 2012, Susan began studying law in prison through a distance education program from the University of London, sponsored by the African Prisons Project.<sup>130</sup> The African Prisons Project set up a library in the prison where Susan was being held, and Susan took the opportunity to open a school in prison for other inmates.<sup>131</sup> The prison itself was

121. One of the authors, Scott Priz, was fortunate enough to speak along Susan at the 2016 Cities of Life Day that the Community put on. I have never met a more positive or cheerful person. Even while telling the harrowing parts of her story, she managed to bring happiness to every room that she was in. I was privileged to get to know her and her story.

122. Jan Banning, *Death Sentence in Uganda: the case of Susan Kigula*, JANBANNING.COM, [www.janbanning.com/my-writings/death-sentence-in-uganda-the-case-of-susan-kigula/](http://www.janbanning.com/my-writings/death-sentence-in-uganda-the-case-of-susan-kigula/) (last visited Apr. 16, 2017).

123. *Attorney General v. Susan Kigula and 417 Others*, UGANDA: SUPREME COURT (Jan. 21, 2009), [www.refworld.org/cases,UGA\\_SC,499aa02c2.html](http://www.refworld.org/cases,UGA_SC,499aa02c2.html).

124. *Id.* at 3.

125. *Id.* at 63-64.

126. *Kigula's death sentence reduced to imprisonment*, NEW VISION (Nov. 12, 2011), [www.newvision.co.ug/new\\_vision/news/1003454/kigulas-death-sentence-reduced-imprisonment](http://www.newvision.co.ug/new_vision/news/1003454/kigulas-death-sentence-reduced-imprisonment)

127. *One Year On*, AFRICAN PRISONS PROJECT (Jan. 31, 2017), <https://africanprisons.org/blog/2017/1/30/one-year-on-interview-with-susan-kigula>

128. *About us*, AFRICAN PRISONS PROJECT, <https://africanprisons.org/about/> (last visited Apr. 16, 2017).

129. *Id.*

130. AFRICAN PRISONS PROJECT, *supra* note 127.

131. *Id.*

supporting the school who, in 2014, had 1,050 students enrolled.<sup>132</sup> The rationale of the prison “is that prisoners should receive counselling, religious guidance, ideological re-orientation and skills to enable them become more useful and less troublesome members of society.”<sup>133</sup>

In 2014, Susan graduated from the University of London with a degree in law, through the assistance of the African Prisons Project.<sup>134</sup> She decided to study law so that she could advocate for the rights of the less privileged, and hopes to set up her own law firm now that she has been discharged.<sup>135</sup> Susan Kigula, through the work of the African Prisons Project and the friendship they extended to her, is now going forward, and extending friendship in turn to other prisoners. If such programs are fortunate, the people that Susan reaches out to can be reintegrated as well, as they can extend their friendship in turn to other prisoners. Not only is Susan a productive member of society after being sentenced to death in Uganda, she is helping make the re-integration of other prisoners possible.

## II. RESTORATIVE JUSTICE IN CHICAGO

Restorative Justice is a movement that is gaining momentum in Chicago. The John Marshall Law Review was fortunate enough to host the 2016 Braun Memorial Symposium on Restorative Justice. This was held at The John Marshall Law School on November 3-4, 2016, to showcase the progress and possibilities that Restorative Justice brings with the problems in communities both within Cook County and throughout the United States.<sup>136</sup> A video presentation was given by a member of the Italian Parliament, Mario Marazziti, who spoke about the Restorative Justice work done by the Community of Sant’Egidio.<sup>137</sup> Others spoke about the techniques that they have practiced in applying Restorative Justice.<sup>138</sup> These were not theoretical, but active practitioners of Restorative Justice in their respective fields- be it an attorney, an activist, a Judge, or a student in The John Marshall Law School’s

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132. NEW VISION, *supra* note 126.

133. *Id.*

134. AFRICAN PRISONS PROJECT, *supra* note 127.

135. *Susan Kigula- Once Condemned, Now a Beacon of Hope for Many*, KONNECT AFRICA, [www.konnectafrica.net/susan-kigula/](http://www.konnectafrica.net/susan-kigula/) (last visited Apr. 29, 2017).

136. The John Marshall Law School, *Braun Symposium Focuses on Restorative Justice Alternatives to Mass Incarceration*, JMLS.EDU (Oct. 28, 2016), <http://news.jmls.edu/featured-news/restorative-justice-is-the-focus-of-john-marshalls-23rd-annual-braun-symposium/>.

137. The John Marshall Law School, *Restorative Justice in Action: Charting a more Humane Path for our Criminal Justice System*, JMLS.EDU, <http://email.jmls.edu/events/braun/2016/3/email.html> (last visited Mar. 3, 2017).

138. *Id.*

Restorative Justice Clinic.<sup>139</sup> Much of this work is in the spirit of the efforts of the Community of Sant'Egidio- it is about treating each person as a member of the community, and finding the best way to reintegrate them back into that community, if needed.

One of the speakers at the Symposium, Judge Colleen Sheehan of the Juvenile Justice Division of the Circuit Court of Cook County, will be presiding over the Restorative Justice Community Court in Cook County.<sup>140</sup> This Community Court will “offer select young people charged with non-violent felonies or misdemeanors another way to redress alleged wrongs.”<sup>141</sup> That court will be practicing Restorative Justice, whose goal is to “reduce crime and substance use, increase services to victims, reduce unnecessary use of jail, save money, and improve public confidence in justice.”<sup>142</sup> There is a reform movement that is ongoing in Chicago, and the 2016 Braun Symposium, and this issue of the John Marshall Law review whose lead articles are all written by the speakers of the Symposium, are part of the reformation of the criminal justice system in Cook County. There is hope of a viable alternative to dealing with communities that have been stricken with crime and poverty.

There is a cycle of crime, prison, poverty, and lack of jobs that afflicts concentrated areas of Chicago.<sup>143</sup> Shootings, again concentrated in the poorer areas of the south and west sides of Chicago, spiked in 2016 and are again on the rise in 2017.<sup>144</sup> The

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139. *Id.*

140. Lauraann Wood, *Community Court Offers Hope for Healing*, CHI. DAILY LAW BULLETIN (May 31, 2016), [www.chicagolawbulletin.com/Archives/2016/05/31/Community-court-5-31-16.aspx](http://www.chicagolawbulletin.com/Archives/2016/05/31/Community-court-5-31-16.aspx).

141. Yana Kunichoff, *Should Communities Have a Say in How Residents Are Punished for Crime?*, THE ATLANTIC (May 2, 2017), [www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/](http://www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/).

142. *Id.* quoting The Department of Justice, Office of Justice Programs, *Bureau of Justice Assistance Awards \$2 Million to Implement and Enhance Community Courts*, OJP.GOV (Apr. 13, 2016), <https://ojp.gov/newsroom/pressreleases/2016/ojp04132016.pdf>.

143. See, e.g., *Crime, Prison, Joblessness. Repeat*, CHI. TRIB. (May 23, 2016), [www.chicagotribune.com/news/opinion/editorials/ct-illinois-rauner-prison-exposure-recidivism-edit-0524-jm-20160523-story.html](http://www.chicagotribune.com/news/opinion/editorials/ct-illinois-rauner-prison-exposure-recidivism-edit-0524-jm-20160523-story.html); see also Carl Vogel, *If we're at the end of mass incarceration, what works better?*, THE UNIVERSITY OF CHICAGO SSA, <https://ssa.uchicago.edu/end-mass-incarceration>, (last visited Apr. 29, 2017) (“[R]oughly two-thirds of the 35,000 prisoners who are released from Illinois prisons each year return to just seven zip codes on the West and South sides of Chicago, where black male unemployment is over 40 percent.”).

144. Deanese Williams-Harris, Megan Crepeau and Elvia Malagon, *Homicides in Chicago Outpacing Last Year After Deadliest Day so Far in 2017*, CHI. TRIB. (Feb. 23, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-man-61-found-shot-dead-in-garage-in-south-lawndale-20170222-story.html>. There were 762 homicides in Chicago in 2016, the highest in 19 years. Azadeh Ansari & Rosa Flores, *Chicago's 762 homicides in 2016 is highest in 19 years*, CNN (Jan. 2, 2017), [www.cnn.com/2017/01/01/us/chicago-murders-2016/](http://www.cnn.com/2017/01/01/us/chicago-murders-2016/). As of this writing on April 29th, 2017, there have been 191 murders, which would put Chicago at a pace of 593 murders for 2017. *Chicago Murders 2017 Death Toll*, DNA CHICAGO, [www.dnainfo.com/chicago/2017-chicago-murders](http://www.dnainfo.com/chicago/2017-chicago-murders) (last visited

murder rate in Chicago outpaces the murder rates of New York and Los Angeles,<sup>145</sup> although Chicago is far from the city that has the highest murder rate in the country.<sup>146</sup> The shootings in Chicago have become political, with the current President mentioning Chicago during his campaign and offering to send in the federal authorities to solve Chicago's shooting crisis.<sup>147</sup> One Chicago newspaper columnist has even called for the military occupation of the Chicago neighborhood of Englewood, asking that National Guard be called in to stop the shootings in the name of the child victims.<sup>148</sup> These sorts of plans are the antithesis of Restorative Justice. Instead of treating neighborhoods and criminals as people, and approaching them through the spirit of friendship, these plans treat them as enemies to be occupied with military force. The Obama administration, particularly in its later years, embraced some aspects of criminal justice reform on the federal level.<sup>149</sup> The

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Apr. 29, 2017). This would be less than the number of murders in Chicago in 2016, although still significantly higher than the number of murders in Chicago in 2015, which was 495. *Chicago Murders 2015 Death Toll*, DNA CHICAGO, [www.dnainfo.com/chicago/2015-chicago-murders](http://www.dnainfo.com/chicago/2015-chicago-murders) (last visited Apr. 29, 2017). An analysis by the Economist in 2017 put Chicago into the category of "High and Rising", in regards to its murder rate. The Data Team, *Murder rates in 50 American cities*, THE ECONOMIST (Feb. 7, 2017), [www.economist.com/blogs/graphicdetail/2017/02/daily-chart-3](http://www.economist.com/blogs/graphicdetail/2017/02/daily-chart-3).

145. Tanveer Ali, *Chicago has had More Murders than New York and L.A. Combined this Year*, DNA CHICAGO (Aug. 30, 2016), [www.dnainfo.com/chicago/20160830/woodlawn/chicago-has-had-more-murders-than-new-york-la-combined-this-year](http://www.dnainfo.com/chicago/20160830/woodlawn/chicago-has-had-more-murders-than-new-york-la-combined-this-year).

146. Chicago had a murder rate in 2016 of 27.9 murders per 100,000 citizens, which is eighth among large American cities. Francesca Mirabile, *Chicago Still Isn't the Murder Capital of America*, THE TRACE (Jan. 18, 2017), [www.thetrace.org/2017/01/chicago-not-most-dangerous-city-america/](http://www.thetrace.org/2017/01/chicago-not-most-dangerous-city-america/). In comparison, the city with the highest murder rate is St. Louis, which has a murder rate of 59.3 per 100,000 citizens. *Id.*

147. Katherine Skiba, *Trump again calls out Chicago on violence and repeats debunked murder rate claim*, CHI. TRIB. (Feb. 7, 2017), [www.chicagotribune.com/news/local/breaking/ct-donald-trump-chicago-crime-20170207-story.html](http://www.chicagotribune.com/news/local/breaking/ct-donald-trump-chicago-crime-20170207-story.html).

148. One Chicago newspaper columnist has even called for the military occupation of the Chicago neighborhood of Englewood, asking that National Guard be called in to stop the shootings in the name of the child victims. John Kass, *A Plan for Trump's Feds in Chicago*, CHI. TRIB. (Feb. 21, 2017), [www.chicagotribune.com/news/columnists/kass/ct-chicago-crime-kass-0222-20170221-column.html](http://www.chicagotribune.com/news/columnists/kass/ct-chicago-crime-kass-0222-20170221-column.html). The plan, which was concocted with the assistance of a former federal prosecutor, envisioned sealing off the neighborhood in Englewood, and "flood the zones with local police and federal law enforcement officers." *Id.* Entrances and exits to the neighborhood would be guarded by law enforcement and the military. The neighborhood would be sealed off from the rest of Chicago, all in the name of protecting the people that are being occupied. *Id.*

149. See e.g., Grainne Dunne, *Four Ways the Obama Administration Has Advanced Criminal Justice Reform*, BRENNAN CENTER FOR JUSTICE (May 19, 2016), [www.brennancenter.org/blog/four-ways-obama-administration-has-advanced-criminal-justice-reform](http://www.brennancenter.org/blog/four-ways-obama-administration-has-advanced-criminal-justice-reform) (describing the ways in which the Obama administration has advanced criminal justice reform through additional



administration dramatically increased the number of commutations, banned the use of checking for felony convictions in federal employment, began a commission on the ending of mass incarceration, and tried to reduce federal subsidization of mass incarceration.<sup>150</sup> There are many signs, however, that on the federal level, the new administration has ordered a reversal of these modest reforms.<sup>151</sup> Both sides are trying to solve the same problem- what can be done about the violence in cities like Chicago?<sup>152</sup> Restorative Justice argues that the money being spent to incarcerate people would be better spent on improving the public schools.<sup>153</sup> With

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commutations, through a presidential commission on mass incarceration, the ending of federal subsidization of mass incarceration, banning the checking for felony convictions for federal employment); *see also* Barack Obama, *The President's Role in Advancing Criminal Justice Reform*, 130 HARV. L. REV. 811 (2017) (describing the ways in which the President can guide the criminal justice system and how criminal justice reform has been a focus of President Obama's career).

150. Dunne, *supra* note 149.

151. *See e.g.*, Sari Horwitz, *How Jeff Sessions wants to bring back the war on drugs*, WASH. POST. (Apr. 8, 2017), [www.washingtonpost.com/world/national-security/how-jeff-sessions-wants-to-bring-back-the-war-on-drugs/2017/04/08/414ce6be-132b-11e7-ada0-1489b735b3a3\\_story.html?utm\\_term=.7ed72e4fd7d9](http://www.washingtonpost.com/world/national-security/how-jeff-sessions-wants-to-bring-back-the-war-on-drugs/2017/04/08/414ce6be-132b-11e7-ada0-1489b735b3a3_story.html?utm_term=.7ed72e4fd7d9) (describing how the department of Justice under Attorney General Sessions is bring back get tough on crime policies to unwind the advances in criminal justice reform made under the Obama administration); Keegan Hamilton, *Jeff Sessions is Quietly Preparing to Double Down on Mass Incarceration*, VICE NEWS (Apr. 17, 2017), <https://news.vice.com/story/jeff-sessions-is-quietly-preparing-to-double-down-on-mass-incarceration> (explaining the signs of Attorney General Sessions preparing to increase mass incarceration).

152. *See* Horwitz, *supra* note 151 (describing the motivations of the Justice Department under Jeff Sessions. "Sessions says that the spike in homicides in several cities, including Chicago, is a harbinger of a "dangerous new trend" in America that requires a tough response."); *see* Grace Wong, *Juvenile detention youths, law enforcement talk about how to stop violence*, CHI. TRIB. (Jan 19, 2017), [www.chicagotribune.com/news/local/breaking/ct-violence-summit-met-20170119-story.html](http://www.chicagotribune.com/news/local/breaking/ct-violence-summit-met-20170119-story.html) (quoting Chief Judge Tim Evans on how to decrease violence in Chicago, "Evans called for 'restorative justice,' in which juvenile offenders who complete work assigned by a judge can have their records expunged. 'As they come back to the community, they come back as accomplished citizens," Evans said. "Not as a terrorist or somebody you need to be afraid of.'").

153. *See* LANCE LOCHNER & ENRICO MORETTI, *THE EFFECT OF EDUCATION ON CRIME: EVIDENCE FROM PRISON INMATES, ARRESTS, AND SELF-REPORTS* (2003) <https://eml.berkeley.edu/~moretti/lm46.pdf> (calculating the economic benefits of increased education spending and related decreased high school drop-out rates.) Lochner and Moretti concluded that the positive effects of increased education spending and completion of high school was substantial:

Given the consistency of our findings, we conclude that the estimated effects of education on crime cannot be easily explained away by unobserved characteristics of criminals, unobserved state policies that affect both crime and schooling, or educational differences in the conditional probability of arrest and imprisonment given crime. Evidence from other studies regarding the elasticity of crime with respect to wage rates suggests that a significant part of the measured

proper education, members of the community who might otherwise commit crimes would prepare themselves for getting a job. Since 2011, law students from the John Marshall School in Chicago have spent 56 hours each semester visiting students in the back of the yards neighborhood on the south side of Chicago. The law students perform restorative practices with the students, to try and achieve better outcomes for any disciplinary trouble that the students in the back of the yards might be in.<sup>154</sup>

The shootings in the city of Chicago tend to be concentrated in certain neighborhoods that are inflicted with the scourges of poverty, drug addiction, and criminal behavior. Two thirds “of the 35,000 prisoners who are released from Illinois prisons each year return to just seven zip codes on the West and South sides of Chicago, where black male unemployment is over 40 percent.”<sup>155</sup> These prisoners who are released are coming back to communities with little education or training, and few opportunities for employment.<sup>156</sup> The effects are magnified if they were convicted of a felony, and have to deal with the many consequences of having a felony conviction on their record.<sup>157</sup> In Cook County Jail, about 1/3 of its approximately 10,000 residents suffer from a mental illness, making it America’s largest mental health facility.<sup>158</sup>

There is some good news in North America. There are programs that many people worked hard to develop. It is possible to change behavior of individuals from violence to peace. It takes therapy, peer counseling, and good nutrition to stop mood swings. The greatest help is if one person believes in them: such as a Judge,

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effect of education on crime can be attributed to the increase in wages associated with schooling. We further argue that the impact of education on crime implies that there are benefits to education not taken into account by individuals themselves, so the social return to schooling is larger than the private return. The estimated social externalities from reduced crime are sizeable. A 1% increase in the high school completion rate of all men ages 20-60 would save the United States as much as \$1.4 billion per year in reduced costs from crime incurred by victims and society at large. Such externalities from education amount to \$1,170-2,100 per additional high school graduate or 14-26% of the private return to schooling. It is difficult to imagine a better reason to develop policies that prevent high school drop outs.

*Id.* at 27.

154. See Daniela Velez & Timothy Jackson, *Restorative Justice: A Look at a Legal Community Creating Harmony on the Front Lines of an Urban Jungle*, 50 J. MARSHALL L. REV. (forthcoming 2017) (describing The John Marshall Law School Restorative Justice program’s operations in Chicago public schools).

155. THE UNIVERSITY OF CHIC. SSA, *supra* note 143.

156. *Id.*

157. See ALEXANDER, *supra* note 13, at 148-54 (giving a description of the employment difficulties of felons and the financial struggles that felons have as a result of criminal history discrimination by employers).

158. Matt Ford, *America’s Largest Mental Hospital Is a Jail*, THE ATLANTIC (June 8, 2015), [www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/](http://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/).

their doctor, a lawyer, a social worker, or a mentor. Most who commit violent acts are victims themselves of untreated trauma.<sup>159</sup> Even with their mentors, a trigger of past abuse might come over them and incite them to go back to their old ways.

The Restorative Justice Project has a class and a clinic at The John Marshall Law School. The law students go to where we need to start- we start with the children. We go into the schools in the inner city where you can hear gunshots.<sup>160</sup> Our students learn restorative practices in our class and then they go to Back of the Yards. This is the area where Upton Sinclair set the *Jungle*,<sup>161</sup> when the old Chicago Stockyards still dominated the neighborhood, in size and stench.

Then we follow the dots. The children who are most traumatized daily by the neighbors, the violence, the fears, are the same children who act out in school. They may not learn to read by third grade. Some of them remain largely illiterate throughout grade school.<sup>162</sup> They get behind, are shamed, and disciplined. They arrive late, or not at all. If they are present it is a sure thing that they will be interrupting the teaching so that they will be suspended, expelled, or just stop showing up. Others, just like them, a bit older will welcome them into gangs. The trauma is heightened in the individual, and so is the violence. Those who survive the streets are sent to prison. Prisons that cost billions of dollars to taxpayers.<sup>163</sup>

“Why?” a law student asked in our first class. “Why not take the money they use to lock people up and use it to help the children grow up in safety and get decent educations so they can lead us in the future?” Putting people who are mentally ill and treat

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159. See e.g., Nancy Wolff & Jing Shi, *Childhood and Adult Trauma Experiences of Incarcerated Persons and Their Relationship to Adult Behavioral Health Problems and Treatment*, 9 INT J ENVIRON RES PUBLIC HEALTH. 1908, 1923 (2012) (concluding that exposure to trauma among incarcerated men being associated with a wide range of behavioral problems and symptoms, and arguing for a targeting intervention to treat those who have experienced trauma).

160. See Velez & Jackson, *supra* note 154.

161. UPTON SINCLAIR, *THE JUNGLE* (Doubleday 1906).

162. See Kalyen Belesha, *Racial gaps widen as some elementary math, reading scores improve*, THE CHICAGO REPORTER (Oct. 28, 2015), <http://chicagoreporter.com/naep-results-show-racial-gaps-widen-as-some-elementary-math-reading-scores-improve/> (describing the achievement gaps in Chicago along racial lines and their proficiency in reading).

163. The Brookings Institute has compiled Bureau of Justice information, and estimates that the United States spent a total of 72.5 billion on corrections in 2012. Diane Whitmore Schanzenbach, Ryan Nunn, Lauren Bauer, Audrey Breitwieser, Megan Mumford, & Greg Nantz, *Twelve facts about incarceration and prisoner reentry*, THE HAMILTON PROJECT 4, [www.brookings.edu/wp-content/uploads/2016/10/thp\\_20161020\\_-twelve\\_facts\\_incarceration\\_prisoner\\_reentry.pdf](http://www.brookings.edu/wp-content/uploads/2016/10/thp_20161020_-twelve_facts_incarceration_prisoner_reentry.pdf) (last visited Oct. 31, 2017).

themselves with drugs to stop their illnesses into and out of prison helps no one, especially not the children who are left in shame.

Is this possible? Can we change? Not if we keep doing what we have done for decades. We continue to fail. It is absurd to deny treatment for mental illness, substance abuse, trauma ... in fact, it is more than absurd. But it is worse than this because, we deny them their humanity. And when we deny others that, we deny ourselves.

A psychiatrist in the Bronx at Lincoln Hospital treatment center discovered that addiction and depression could be eased and then eradicated by an inexpensive tool: acupuncture. Dr. Michael Smith, M.D, the retired director of Director of Lincoln Hospital Recovery Center,<sup>164</sup> learned from Dr. Wen in Hong Kong that acupuncture works, not only for suppressing pain during operations, but for suppressing cravings for drugs.<sup>165</sup>

Dr. Smith developed 3-5 points on each ear for needles that are light and nearly painless. When I visited Lincoln hospital with another Judge, we asked him how acupuncture worked. He told us that to answer would be self-serving. "Ask my patients," he said. We went into a huge room that was absolutely silent, and filled with people of all ages and descriptions. Every one of them had needles sticking out of their ears. They told me one by one about the many years that heroin had been their drug of choice. They woke up first thing in the morning and craved it and could not stand the pain without it. One said that because of her childhood involving gang rapes, abandonment, etc. she had "a hole in my soul. I thought it could only be filled with heroin. With the drug inside me I could feel good about myself. I never imagined for a moment until I came here that I could live without it. The needles bring me peace. I am now able to wake up without drugs and for the first time. I can take good care of my children and plan to finish high school. I have been a bad example for so long, now I will show them right way to live."

We find that prisons make addicts worse. They are not treated for the addiction or the trauma that caused it. Nicholas Kristof in the New York Times op-ed,<sup>166</sup> quotes a memoir called "Becoming Ms. Burton."<sup>167</sup> A woman who grew up in Watts,

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164. Michael Smith, M.D., D.Ac., Board of Advisors, ACUPUNCTURE NOW FOUNDATION, <https://acupuncturenowfoundation.org/officers-and-advisers/michael-smith/> (last visited June 5, 2017).

165. See Michael O. Smith, *The Use of Acupuncture in Addiction Treatment Programs*, HUFFINGTON POST (July 16, 2012), [www.huffingtonpost.com/dr-michael-o-smith/addiction-acupuncture\\_b\\_1665796.html](http://www.huffingtonpost.com/dr-michael-o-smith/addiction-acupuncture_b_1665796.html) (describing Dr. Smith's treatment for addicts using acupuncture.)

166. Nicholas Kristof, *A Modern Day Harriet Tubman*, N.Y. TIMES (May 4, 2017), [www.nytimes.com/2017/05/04/opinion/susan-burton-modern-day-harriet-tubman.html?\\_r=0](http://www.nytimes.com/2017/05/04/opinion/susan-burton-modern-day-harriet-tubman.html?_r=0).

167. SUSAN BURTON, *BECOMING MS. BURTON: FROM PRISON TO RECOVERY TO LEADING THE FIGHT FOR INCARCERATED WOMEN* (The New Press 2017).

neighborhood in Los Angeles had a child that was killed by a policeman driving recklessly. On top of the trauma, this woman suffered in her past from rapes, she ended up like millions of others in prison. The prison did not help her at all. She explained:

After six prison commitments, at the end of those, I was more broken than when I went into the system. Each time I was released I would say I'm going to get it together, but each time it was more daunting.<sup>168</sup>

Apparently through some great fortune, Ms. Burton was treated in a drug treatment program in Santa Monica. Now Ms. Burton helps other women who, like herself, felt hopeless. Now she runs five homes for women in recovery. Stories like Ms. Burton make it is obvious that our prisons are based on revenge, not recovery.

It is the failure to treat people with kindness and care that gives rise to the violence in our communities. Ms. Burton told Nicholas Kristof that she could have been helped years ago. "She told me that a trigger to her own downward spiral was the gang rape that resulted in her pregnancy; if she had received counseling, she thinks she might have avoided unraveling."<sup>169</sup> Ignoring the causes and treating the crime is a costly mistake that only encourages violence, hopelessness, and more addiction that stays in their souls the rest of their lives, and for generations in some cases.

There are specialized courts in the county that deal with issues such as domestic violence, mental health issues, and substance abuse.<sup>170</sup> There are also programs dedicated to giving "options to incarceration for non-violent offenders by redirecting money from prisons to community programs."<sup>171</sup> These organizations are doing work like the work of the Community of Sant'Egidio- helping to re-integrate former prisoners back into society after they have been released from prison.<sup>172</sup> They handle everything from educational support, crisis support, substance abuse treatment, to monitoring terms of the released prisoners parole.<sup>173</sup> These programs, however, are in continual danger from the state and federal budget crises, and this has put the funding for these re-entry programs at risk.<sup>174</sup>

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168. Kristof, *supra* note 166.

169. *Id.*

170. THE UNIVERSITY OF CHIC. SSA, *supra* note 143.

171. *Id.*

172. See e.g., *Re-entry Services for Returning Citizens*, LUTHERAN SOCIAL SERVICES OF ILLINOIS, [www.lssi.org/prisoner-family-ministry/pfm-reentry-services-returning-citizens.php](http://www.lssi.org/prisoner-family-ministry/pfm-reentry-services-returning-citizens.php) (last visited May 1, 2017); *Reentry support: Lessons learned from community-based programs*, ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY 16 (2016), [www.icjia.state.il.us/assets/articles/Final%202014%20CVPP%20Reentry%20Report.pdf](http://www.icjia.state.il.us/assets/articles/Final%202014%20CVPP%20Reentry%20Report.pdf).

173. ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, *supra* note 172, at 16.

174. *Id.*; see also *Illinois Budget Impasse Forces Program Closures, Staffing Cuts at Lutheran Social Services of Illinois*, LUTHERAN SOCIAL SERVICES OF ILLINOIS, [www.lssi.org/post.php?ID=427](http://www.lssi.org/post.php?ID=427) (last visited May 1, 2017); Lisa

No other law school- to our knowledge- goes into the neighborhood schools where the shootings are occurring to teach the children restorative practices.

This article calls for an expansion of these types of program- following in the spirit of friendship of the Community of Sant'Egidio, that already exist in Chicago. Not only additional funding from within the state level, but also greater implementation within the justice system. In the criminal justice system, on the state level, there are specialized courts like the Drug Treatment Courts, while on the federal level, there are Diversion or Re-entry programs. Both are attempting to help offenders to re-integrate, rather than viewing them as an enemy that needs to be punished and deterred. Both types of programs will be examined to show how they are practicing Restorative Justice, and how they compare to the work of the Community of Sant'Egidio.

### III. DRUG TREATMENT COURTS IN THE UNITED STATES

When I was Presiding Judge of the Markham Courthouse, my Mother told me two things: "Do not have a judges' meetings unless you feed them first . . . good warm food, not sandwiches. And remember the voters who put you there. They pay your salary. Talk to them, get their ideas."

I followed her advice. One was Judge Marvin Garvin, who was a Harvard law graduate. His sister Catherine had a PhD in education. I told Dr. Gavin my concerns about all the children that were being expelled from the schools. She listened when I suggested that we could have a school in the basement of the courthouse. There was plenty of room. Galvanized by Dr. Gavin, the U. S. Department of Education gave the communities a million dollars to start Talent Search, a Second Chance school in the courthouse. The legal community in the south suburbs helped. My mother was right. The community has great power to help children.

My assistant, Linda Johnson, pointed out to me that people attending court had children who were hungry but had no money to buy food. We called the Chicago Food Depository and fresh food was brought to the court daily. In some restorative practitioner courts, free soup is offered to all.

Children were protected in our court because we petitioned the Cook County Board to give us money to keep the children in a safe place and not in the hallways. The signs, "No cigarettes and no

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Christensen Gee, *Lack of Budget Is Dismantling Critical State Services*, VOICES FOR ILLINOIS CHILDREN (Sept. 2015), [www.voices4kids.org/wp-content/uploads/2015/09/Lack-of-Budget-Dismantling-Critical-State-Services-Final.pdf](http://www.voices4kids.org/wp-content/uploads/2015/09/Lack-of-Budget-Dismantling-Critical-State-Services-Final.pdf); Monique Garcia, *Stopgap budget failing to erase damage of state impasse*, CHI. TRIB. (July 18, 2016), [www.chicagotribune.com/news/local/politics/ct-illinois-stopgap-budget-met-20160717-story.html](http://www.chicagotribune.com/news/local/politics/ct-illinois-stopgap-budget-met-20160717-story.html).

children" came down on the courtroom doors. A beautiful room with children is the first thing you see when coming into the courthouse.

Judges at Markham saw many of those who came before them recover and become good citizens. The Judges hosted the South Suburban Bar association meeting at the courthouse. The administrator of the court, Joy Lee, was a certified drug and alcohol counselor. She insisted that everyone was treated with dignity, whether on the phone, in court, or at 12 step meetings. After dinner, a woman spoke who had been arrested and convicted 35 times. She told the assembly that it was the first time a judge had believed in her which allowed her to believe in herself.

Now Drug Treatment courts are in courthouses across the country. I assisted in the training of some of the early courts. It is a very different way of treating an offender. Instead of punishing the offender for the crime, Drug Treatment Courts are attempting to cure the source of the crime. What sense is it to send a self-medicating schizophrenic to prison without treatment? Drug Treatment Courts are not a good fit for every criminal defendant. They provide an alternative that can reduce both recidivism and costs for a significant portion of the criminal defendants in American court.<sup>175</sup> They are successful when co-occurring disorders, such as depression, are treated as well.<sup>176</sup>

These Drug Treatment courts are an alternative form of court, whose goal is to "bring drug treatment more fully into the criminal justice system, treating offenders with a history of drug abuse for their addiction, while simultaneously ensuring supervision, and sanctions when needed, from the courts."<sup>177</sup> They combine the structure of drug treatment with the authority of a judge. The first Drug Treatment Court opened in Miami, Florida, in 1989,<sup>178</sup> and thousands of these courts now exist around the country. It is a form of therapeutic, rather than retributive justice,<sup>179</sup> whose goal is to

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175. See generally Ojmarrh Mitchell, David B. Wilson, Amy Eggers, & Doris L. MacKenzie, *Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts*, 40 J. OF CRIM. JUSTICE 60 (2012) (detailing the effects of drugs courts of various types of offenders).

176. See Stephen S. Goss, *Co-Occurring Disorders: The Expectation in a Drug Court Setting*, NADCP 22ND ANNUAL TRAINING CONFERENCE ANAHEIM CALIFORNIA (June 1, 2016), [www.nadcp.org/sites/default/files/2014/TS-6.pdf](http://www.nadcp.org/sites/default/files/2014/TS-6.pdf) (describing the prevalence and treatment procedures for co-occurring disorders in a drug treatment court).

177. Ryan S. King and Jill Pasquarella, *Drug Courts, A Review of the Evidence*, THE SENTENCING PROJECT 1 (Apr. 2009), [www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf](http://www.sentencingproject.org/wp-content/uploads/2016/01/Drug-Courts-A-Review-of-the-Evidence.pdf).

178. *Drug Court History*, NAT'L ASS'N OF DRUG CT. PROFS., [www.nadcp.org/learn/what-are-drug-courts/drug-court-history](http://www.nadcp.org/learn/what-are-drug-courts/drug-court-history) (last visited Apr. 29, 2015).

179. Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 462 (1999).

find the “method of curing the underlying problems of drug crimes—drug use and addiction.”<sup>180</sup> Instead of focusing on punishing the drug offenses, the drug treatment courts seek to cure the underlying issues to help the offender, and to reduce recidivism.<sup>181</sup> A traditional drug treatment court works in traditionally three steps:

Phase I, “detoxification,” seeks to end chemical dependency on drugs. If the individual requires detoxification, the court transfers her to an independent treatment provider, where an individualized treatment plan is created. During Phase II, the individual continues to attend counseling, but is no longer in residential treatment. The individual structures her own treatment program while the judge monitors her progress. This phase lasts for about fourteen to sixteen weeks. If the defendant regresses, the judge may send her back through Phase I.<sup>182</sup>

In these treatment courts, the judges are not just handing down sentences, but are becoming life coaches to help the defendants get their life back on track, to help, in conjunction with prosecutors, the defendants overcome the illness of their addiction.<sup>183</sup> There are examples of judges, coming down off the bench, and sitting at a table without their robes to encourage or admonish defendants.<sup>184</sup> These judges are extending friendship and guidance to the defendants, to help them overcome their demons and their illnesses. These types of courts have been shown to reduce both recidivism and crime rates in jurisdictions where these types of courts operate.<sup>185</sup> Interestingly, a study in 2010 by the Center for

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180. *Id.* at 463.

181. Molly K. Webster, *Alternative Courts and Drug Treatment: Finding a Rehabilitative Solution for Addicts in a Retributive System*, 84 *FORDHAM L. REV.* 855, 858 (2015).

182. *Id.* at 870-71.

183. Sheila M. Murphy, *A Retired Judge's Story*, in Murphy & Seng, *supra* note 14, at 78.

184. *Id.* at 76.

185. Webster, *supra* note 181, at 884-95. This comment goes through a series of studies on the effectiveness of both traditional Drug Treatment Courts and other types of alternative forms of justice. One example is Hawaii's Opportunity Probation with Enforcement program. In the study of the program, it found that HOPE probationers only had a positive test rate of 9%, as compared to the comparison group who had a positive test rate of 33%. *Id.* at 890. Other studies have shown that Drug Treatment Courts not only reduce recidivism, but also reduce the costs to the state. The average cost of a participant in a Drug Court is \$4,300, while the cost of incarcerating a prisoner for a year is \$23,000. *See* King and Pasquarella, *supra* note 177, at 8. A number of studies have found significant savings, just in dollars saved to the government. *Id.* at 8-9 (listing seven studies that found significant savings achieved through the use of Drug Courts). There has been pushback on the use of Drug Courts in the United States. Notably, Judge Morris Hoffman of the Denver District Court, in his article *The Drug Court Scandal*, accuses Drug Court of being “driven by politics, judicial poppsychopharmacology, fuzzy-headed notions about “restorative justice” and “therapeutic jurisprudence, and by the bureaucrats’ universal fear of being the last on the block to have the latest administrative gimmick.” Judge Morris cited several studies that concluded that Drug Courts only achieved



Court Innovation found that state reentry courts reduce recidivism, but also increased technical violations of prisoners' parole that sent them back to prison.<sup>186</sup> The study concluded that "the additional supervision and easy transfer of information creates an effect where a certain portion of parolees may not have been revoked had they been in a traditional parole caseload."<sup>187</sup> This conclusion makes sense. Some people's technical violations would have been missed had that they not been under the greater supervision of the program. This may just be the price that needs to be paid for the reduction in recidivism that these programs can create.

#### IV. THE FEDERAL RE-ENTRY PROGRAM

I was an Assistant Public Defender and I met the men and several women who returned from Vietnam. They were in the lockup in the back of the courtroom waiting to see me. They were broken in every way. The trauma of that war was in every cell of their body. They could not stand the memories. When the memories came over them, the pain was insufferable. So they did in America what they did in the war. They self-medicated with drugs and alcohol. They were without hope. Prison awaited them.<sup>188</sup>

*Powell v. Texas* had already been decided.<sup>189</sup> The Supreme Court said that drunks could be locked up for being drunk in public. Into their hell another drunk came forth- Harold Hughes of Iowa. This drunk was in recovery. He had been the Governor of Iowa and was now a U.S. Senator.<sup>190</sup> He knew what hopelessness was all

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quicker adjudication, and did not result in lower rates of recidivism. Morris Hoffman, *Commentary: The Drug Court Scandal*, 78 N.C.L. REV. 1437, 1491-98 (2000). Additionally, Judge Morris believes that Drug Courts are "inflicting serious injuries to the institution of the judiciary and to the way in which that institution relates to the other two branches of government." *Id.* at 1498.

186. Zachary Hamilton, *Do Reentry Courts Reduce Recidivism?*, CENTER FOR COURT INNOVATION 29 (March 2010), [www.courtinnovation.org/sites/default/files/Reentry\\_Evaluation.pdf](http://www.courtinnovation.org/sites/default/files/Reentry_Evaluation.pdf).

187. *Id.* at 29.

188. See Susan Stuart, *Overdose: The Failure of the U.S. Drug War and Attempts at Legalization: All Roads Lead from Vietnam to Your Home Town: How Veterans Have Become Casualties of The War on Drugs*, 6 ALB. GOV'T L. REV. 489 (2013) (describing the substance abuse problems of returning veterans and the Nixon administration's reaction to the substance abuse problems of the veterans).

189. *Powell v. Texas*, 392 U.S. 514 (1968). This was a case that concluded that a person's chronic alcoholism was not a defense to being found drunk in public. *Id.* at 536. This case distinguished itself from *Robinson v. California*, which found that simply being an addict to drugs was not a punishable offense. *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417 (1962). *Powell* instead focused on the criminal behavior, rather than the underlying causes. *Powell*, 392 U.S. at 536.

190. Bart Barnes, *Harold Hughes Dies At 74*, WASH. POST (Oct. 25, 1994), [www.washingtonpost.com/archive/local/1996/10/25/harold-hughes-dies-at-74/5c2e1ca8-ce34-4d3f-93f4-d684ba9f1e5b/?utm\\_term=.c469bd786174](http://www.washingtonpost.com/archive/local/1996/10/25/harold-hughes-dies-at-74/5c2e1ca8-ce34-4d3f-93f4-d684ba9f1e5b/?utm_term=.c469bd786174).

about. The voters knew that he was an alcoholic and elected him anyway. Because he was a member of a 12-step group, Alcoholics Anonymous, he knew that no one was hopeless. Recovery was possible as long as their shame could be removed. The American Medical Association declared that addiction to drugs and alcohol is a disease, a medical disorder. Recovery was possible if they became willing to listen and learn from sober and clean addicts.

Senator Hughes brought the Comprehensive Drug Abuse Prevention and Control Act of 1970 into law.<sup>191</sup> The Cook County Jail had tiers that were run by recovering guards and personnel. The addicts were placed there after detox. Into these tiers came recovering addicts from the outside. They brought cigarettes, donuts, and the Big Book of Alcoholics Anonymous.

These recovering addicts came from meetings in the many communities that are in Chicago. They became the bridge to jobs. These formerly hopeless addicts became mountain climbers, hikers, joggers, and golfers. When the triggers to drink and use came, they called their sponsor. Or they relapsed. If they relapsed the court increased the treatment. It was a divine program because some of the judges on the bench were themselves in recovery and shared recovery practices with their colleagues. Not all the judges were willing to have patience with the addicted defendants, sometimes because the judges themselves were addicted to alcohol and drugs.<sup>192</sup> They looked down on those who used heroin or cocaine.

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191. CQ Almanac online, *Comprehensive Drug Control Bill Cleared by Congress*, CQ PRESS (1970), [https://library.cqpress.com/cqalmanac/document.php?id=cqal70-1293935#H2\\_2](https://library.cqpress.com/cqalmanac/document.php?id=cqal70-1293935#H2_2). Senator Hughes was critical in amending the bill to include several important features to deal with drug dependence:

“Hughes explained that his amendment would:

Establish a national health institute for dealing with drug dependence.

Authorize formula grants of \$55 million over fiscal 1971–1973 to help state governments develop programs to deal with drug dependence.

Authorize grants totaling \$135 million over fiscal 1971–1973 to state and local agencies to help finance specific projects.

Set up an independent advisory council on drug abuse and an intergovernmental coordinating council to ensure coordination of Federal efforts.”

*Id.*

192. One recent example of this type of behavior was the case of former St. Clair County Drug Treatment Court judge, Michael N. Cook, who was sentenced to twenty-four months for his long time use of illegal narcotics. Robert Patrick, *Former Illinois judge Michael N. Cook gets two years in drug and gun case*, ST. LOUIS POST—DISPATCH (Mar. 24, 2014), [www.stltoday.com/news/local/crime-and-courts/former-illinois-judge-michael-n-cook-gets-two-years-in/article\\_2e78e7d0-0621-51ea-9668-57186e12a8c0.html](http://www.stltoday.com/news/local/crime-and-courts/former-illinois-judge-michael-n-cook-gets-two-years-in/article_2e78e7d0-0621-51ea-9668-57186e12a8c0.html).

Politicians began passing harsher than treated addicts as criminals.<sup>193</sup> These laws ultimately affected addicts who, like Vietnam veterans, were traumatized by the violence that surrounded them in the streets of Chicago. Many went to the Chicago Public Schools that have long been described as pipelines to prison.<sup>194</sup>

Our law students' reports from the Restorative Justice Program at The John Marshall Law School would bring tears to your eyes. Many of the students go to local Chicago schools and work directly with the schools' students.<sup>195</sup> The trauma those local students experience just going to school, praying their mother will get home safely, as another mother was shot, afraid to keep the lights on to do homework as lights at night attract random shots. Gangs are made of those who have been suspended and expelled, and the gangs wait.

Reentry courts are made up of grown-ups who had childhoods of trauma. But now they have a chance as the judge who sits in the circle in the courtroom with them twice a month, knows their background and helps them. These judges need help finding jobs for the returning people. How terrible it is to wake up every day with no job. It is humiliating. It triggers deeper depression and heart break to families.<sup>196</sup>

Since adults have come forward for help because of sexual abuse as children, some by ministers, priests, or rabbis, they do not want a program that is religiously centered. The court can ask the returnees to attend QUADAA meetings: meetings for agnostics and atheists if they do not want to attend the traditional meetings. Volunteers are needed to help the judges who, at the end of the day cannot find jobs. Opening the windows and doors of courts and letting volunteers in who are themselves in recovery is necessary, both at federal and state prisons, and upon release. This way they have a bridge, like the Ha'penny bridge on the River Liffey in Dublin.<sup>197</sup> A bridge made by many hands and heart who can say, "I

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193. See, e.g., Emily Dufton, *The War on Drugs: How President Nixon Tied Addiction to Crime*, THE ATLANTIC (Mar. 26, 2012), [www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/](http://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/)

194. See, e.g., Earl Ofari Hutchinson, *For Black Students the School to Prison Pipeline Is in Higher Gear Than Ever*, HUFFINGTON POST (Dec. 24, 2014), [www.huffingtonpost.com/earl-ofari-hutchinson/for-black-students-the-sc\\_b\\_6037060.html](http://www.huffingtonpost.com/earl-ofari-hutchinson/for-black-students-the-sc_b_6037060.html).

195. The John Marshall Law School, *Restorative Justice Project*, JMLS.EDU 3, [www.jmls.edu/restorative-justice/pdf/restorative-justice.pdf](http://www.jmls.edu/restorative-justice/pdf/restorative-justice.pdf) (last visited May 8, 2017).

196. See Rebecca J. Rosen, *The Mental-Health Consequences of Unemployment*, THE ATLANTIC (June 9, 2014), [www.theatlantic.com/business/archive/2014/06/the-mental-health-consequences-of-unemployment/372449/](http://www.theatlantic.com/business/archive/2014/06/the-mental-health-consequences-of-unemployment/372449/) (detailing the effects of unemployment on mental health, and finding that the long term unemployed are more three times as likely to suffer from depression).

197. The Ha'penny bridge is so named because it would cost half a penny to

am a community member of a recovery program that is only in every Chicago community, but in nearly every nation of the world.”

These reentry court systems in the federal system had their genesis out of both the state drug and other alternative courts,<sup>198</sup> and pilot programs were launched by the Department of Justice in 1999.<sup>199</sup> The federal courts came along later than the state courts because before *United States v. Booker*,<sup>200</sup> federal sentencing guidelines were mandatory, and judges were unable to use much discretion in their sentencing of defendants.<sup>201</sup> In the federal re-entry courts, the “courts operate as a team. Judges, defense lawyers, prosecutors and probation officers must all ‘come out of their silos,’ meaning they must work together, bringing their diverse professional expertise collectively to bear on solving the problems on which the program is focused.”<sup>202</sup> The programs also utilize volunteer social workers to help the released prisoners.

In United States District Court for the Northern District of Illinois, the re-entry program is called the James B. Moran Second Chance Program. It was begun on April 1, 2010, modeled after other reentry courts in the federal system. One of the volunteer social workers, Rick Kleinman, was kind enough to respond to a query on how this program operates:

The Northern District of Illinois’ Second Chance Program’s team includes a district judge, magistrate judge, U.S. probation officers, an assistant U.S. attorney, a federal defender, a substance abuse treatment specialist, social work interns, and a deputy U.S. Marshall. The program requires that participants attend two-hour sessions on the first and third Thursday of every month. Meetings take place in courtrooms, but set up in a circular meeting common ground format where participants and team members sit together around a large table and discuss their progress. Like many other reentry programs, the Second Chance Program operates based on rewards and sanctions, with rewards reducing the length of post-release supervision and sanctions increasing.

All reentry team members are volunteers and share the same mission: to help formerly incarcerated not reoffend or violate supervised release by getting them the skills they need to deal with substance abuse and the stresses of reentering society – to assist participants to target their own thinking process and to empower

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cross it. It was the first pedestrian bridge opened in Dublin, to replace the ferries that would cross the river. *Ha’penny Bridge*, BRIDGES OF DUBLIN, [www.bridgesofdublin.ie/bridges/hapenny-bridge/history](http://www.bridgesofdublin.ie/bridges/hapenny-bridge/history), (last visited July 7, 2017).

198. Hon. Joan Gottschall & Molly Armour, *Second Chance: Establishing a Reentry Program in the Northern District of Illinois*, 5 DEPAUL J. FOR SOC. JUST. 31, 35 (2011).

199. Kristin Brown Parker, *The Missing Pieces in Federal Reentry Courts: A Model For Success*, 8 DREXEL L. REV. 397, 401 (2016).

200. *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005).

201. Gottschall & Armour, *supra* note 198, at 38.

202. *Id.* at 39.

them (through the power of group mutual aid with the assistance and support the authoritative court oversight) to achieve another way of dealing with irrational thoughts, maladaptive addictive behaviors and obtain and maintain a balanced positive lifestyle. This is a very collaborative process - both for the agencies coming together to foster communication and faith in the program and by design addressing the participants' journey.<sup>203</sup>

This work with the participants can be viewed as extending the same sort of friendship that the Community extends towards the people that it works with. When asked as to whether the program was extending friendship to the participants, Mr. Kleinman responded:

While not utilizing the language of 'friendship', the reentry court team and participants emphasize and make utility of many of characteristics and values found in the definition of that term: mutual respect, honest communication, resilient trust, and the earned tolerance of any nurturing relationship leading to learning and growth potential of life's and relationship challenges.

Judge Joan Gottschall, a federal district court of the Northern District of Illinois founded the reentry program in the Northern District of Illinois, replied via e-mail on what the participants get out of the program:

The program was voluntary and the participants, as far as what they told me, found it very helpful. Repeatedly, participants told me that it helped them to be in a "positive" environment during our meetings. They also said that the program helped them, and that they felt that a system in many ways designed to hurt them was at least to the extent of this program helping them. I cannot say whether we attracted primarily those who were committed to living a crime-free life or whether our participants were actually random and were assisted in avoiding recidivism. Random was not our goal. We wanted to help people who wanted help. Many of our participants helped other participants: helped them find jobs, helped them find needed medical care. The helpers tended to be the most resourceful and committed to living crime-free. The people they helped needed more assistance, but at least we found them the assistance they needed in many cases.<sup>204</sup>

People practice Restorative Justice not only to help the mentally ill and the addicted, but also to help themselves. Rick Kleinman may have put it best, when he said why he participates in the program: "I perpetuate my professional standing, I keep myself healthy, it keeps my fingers in something I'm very proud of . . . I'm perpetuating restorative justice, which perpetuates me."<sup>205</sup>

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203. E-mail from Rick Kleinman to authors (Apr. 2, 2017)(on file with authors).

204. E-mail from Hon. Joan Gottschall to authors (Apr. 29, 2017)(on file with authors).

205. Laurann Wood, *New graduates use program to start new lives*, CHICAGO

Studies of the effectiveness of federal reentry programs have shown some positive results. A study of the effects of a reentry program in the Eastern District of Pennsylvania concludes that the reentry program had a reduction in recidivism, and an eighty-four percent reduction in supervision revocation.<sup>206</sup> The report did caution that future research of the program was necessary to determine the long-term effects of the programs.<sup>207</sup> Other studies, however, have found more significant effects on recidivism from the reentry programs.<sup>208</sup> Studies on Massachusetts, Michigan, and Indiana all found positive results from reentry courts, in addition to the positive study from Pennsylvania.<sup>209</sup> All of these studies cautioned that additional research was necessary into the effectiveness of reentry courts.<sup>210</sup>

On the other hand, another more recent and larger study by the Federal Judicial Center concluded that there was no a significant difference in either recidivism or supervision revocation rates between “reentry participants and those individuals assigned to standard supervision.”<sup>211</sup> The study did find that “early employment and the ability to maintain employment were the most important factors” affecting whether a participant completed a reentry program,<sup>212</sup> having an unstable residence was a statistically significant risk factor in the revocation of their supervised release,<sup>213</sup> and that an unstable employment history was the most dangerous hazard factor for whether a participants would have a felony arrest within the first 30 months after release.<sup>214</sup> This finding is in line with a study done on an Oregon reentry court, which found

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LAW BULLETIN (June 9, 2017), [www.chicagolawbulletin.com/Archives/2017/06/09/Second-CHANCE-graduates-6-9-17](http://www.chicagolawbulletin.com/Archives/2017/06/09/Second-CHANCE-graduates-6-9-17).

206. Caitlin J. Taylor, *Program Evaluation of the Federal Reentry Court in the Eastern District of Pennsylvania: Report on Program Effectiveness for the First 164 Reentry Court Participants*, Research report prepared for the Federal Probation Department and US District Court, Eastern District of Pennsylvania, LASALLE UNIVERSITY 14 (2014), [http://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1000&context=soc\\_crj\\_faculty](http://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1000&context=soc_crj_faculty).

207. *Id.*

208. Daniel M. Fetsco, *Reentry Courts: An Emerging Use of Judicial Resources in the Struggle to Reduce the Recidivism of Released Offenders*, 13 WYO. L. REV. 591, 598-600 (2013).

209. *Id.*

210. *Id.*

211. DAVID RAUMA, EVALUATION OF A FEDERAL REENTRY PROGRAM MODEL (2016). This study does not make any policy recommendations, but it merely a study of the results from five federal reentry programs in California, Florida, Iowa, New York, and Milwaukee. *Id.* at 11. It compared two different groups of inmates, both of whom were in a reentry program, with a control group. *Id.*

212. *Id.* at 25.

213. *Id.* at 37. The other statistically significant factors were the number of prior arrests, what federal district the participant was located in, the time served, and the age of the offender. *Id.*

214. *Id.* at 47. The other statistically significant factors were prior arrests, age, and unstable employment history. *Id.*

that “the comparison group underwent less monitoring and supervision and had fewer drug and mental health services and yet had more employment and fewer sanctions.”<sup>215</sup>

## V. CAN THESE TECHNIQUES OF THE COMMUNITY OF SANT’EGIDIO BE APPLIED IN THE AMERICAN CRIMINAL JUSTICE SYSTEM?

The Community of Sant’Egidio practices a form of Restorative Justice with its extension of friendship towards the poor. They do a form of social work that is practicing long-term rehabilitation of the people that they help. Particular with prisoners like Paula Cooper, who are suffering from trauma and mental health issues, long term social work is necessary to not only to help reintegrate them into society once they have left prison, but to continually offer them support. The question that this article is attempting to address is whether there is anything that the criminal justice system can learn and use from the techniques of the Community of Sant’Egidio. If the Federal Judicial Center’s May 2016 report is accurate in its findings, the most important things to reduce revocation of parole and recidivism is employment and having a stable residence.<sup>216</sup>

The work done by the reentry courts have a lot of similarities to the work of the community of Sant’Egidio. In the federal courthouse, the judges come down off the bench, and treats the participants not as an offender, but as a human being, and a friend. Everyone, including the judge, is seated around a table, and talking through the participant’s challenges in their reintegration after prison. The judges and the probation officer sitting at the table certainly have more power than the Community does- supervised release could be revoked if a participant behaves in a prohibited manner- but there is a spirit of friendship between the judges and the participants. The federal judges want the participants to succeed, and are trying to “get their lives back on track.”<sup>217</sup> They are trying to help the participants find jobs, get medical care, find a place to live, and deal with the stresses in their lives.<sup>218</sup>

But the federal reentry program relies on volunteers like Rick Kleinman to help the participants reintegrate into society. Some courts, like Oregon, will have mental health counselors in the program,<sup>219</sup> but there is no formal cooperation with social service organizations like the Community of Sant’Egidio. Perhaps this

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215. Rauma, *supra* note 211, at 598 (quoting Stephen E. Vance, *Federal Reentry Court Program: A Summary of Recent Evaluations*, 75. FED. PROB. 2, 66 (2011)).

216. *Id.* at 25, 37, 47.

217. Gottschall, *supra* note 204.

218. *Id.*

219. Gottschall & Armour, *supra* note 198, at 44.

should change. The program might increase its effectiveness if it included a paid substance and mental health counselor. Sixty five percent of the people in jail meet the criteria for a substance abuse addiction, which is seven and a half times the rate of the general population.<sup>220</sup> Other social workers might be of assistance to participate directly in the re-entry program. If employment and housing are the factors that most help a participant reintegrate into society, then perhaps the organizations in Chicago that specialize in this type of work should be given a seat at the table in the reentry program.

The assistance of social organization like Alcoholics Anonymous, and the various organization that do similar work,<sup>221</sup> could also help the participants with their substance abuse problems if they had a seat at the re-entry court table.<sup>222</sup> The work would have to be adapted to the federal re-entry program of course- an Anonymous type program is not feasible in an open courtroom like the re-entry program. There are various addiction support groups in Chicago and around the country that could help participants in both state drug treatment courts and federal re-entry courts. This would be improving these courts by inviting organizations like the Community of Sant'Egidio into the courts directly to help the participants.

The federal reentry program is, however, performing a type of Restorative Justice, wherein it is not seeking to punish the offender, unless absolutely necessary, but instead welcome them back into the community. Many of the offenders on supervised release have considerable needs- many are unemployed, have substance abuse problems, mental health issues, medical conditions, or in need of financial assistance.<sup>223</sup> The Bureau of Justice Statistics has estimated that “that nearly three quarters of all released prisoners will be rearrested within five years of their release and about 6 in

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220. *Behind Bars II: Substance Abuse and America's Prison Population*, THE NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE 25 (2010), <https://www.centeronaddiction.org/addiction-research/reports/behind-bars-ii-substance-abuse-and-america%E2%80%99s-prison-population>

221. See *If Not AA, Then What? Five 12-Step Group Alternatives*, REHABS.COM, [www.rehabs.com/pro-talk-articles/if-not-aa-then-what-alternatives-to-12-step-groups/](http://www.rehabs.com/pro-talk-articles/if-not-aa-then-what-alternatives-to-12-step-groups/) (last visited Jun. 5, 2017) (listing various alternative groups to Alcoholics Anonymous).

222. See Lee Ann Kaskutas, *Alcoholics Anonymous Effectiveness: Faith Meets Science*, 28 J. OF ADDICTIVE DISEASES 145 (2009), [www.ncbi.nlm.nih.gov/pmc/articles/PMC2746426/pdf/nihms143522.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2746426/pdf/nihms143522.pdf) (tracking the studies of Alcoholics Anonymous effectiveness, finding some studies supporting a conclusion of high effectiveness of the program, and others showing inconclusive results). These programs would have to be adapted to the re-entry program- an anonymous program is not feasible.

223. William Rhodes, Ph.D., Christina Dyou, M.A., Ryan Kling, M.A., Dana Hunt, Ph.D., & Jeremy Luallen, Ph.D., *Recidivism of Offenders on Federal Community Supervision*, ABT ASSOCIATES INC. 3 (Dec. 21, 2012), [www.ncjrs.gov/pdffiles1/bjs/grants/241018.pdf](http://www.ncjrs.gov/pdffiles1/bjs/grants/241018.pdf).



10 will be reconvicted.”<sup>224</sup> The federal reentry program helps these prisoners with these significant issues, and thus helps them reintegrate successfully into their communities after prison.

The counter argument to the running of these programs is that some studies have concluded that they do not reduce recidivism or revocation of supervised release,<sup>225</sup> and that these programs cost money to operate.<sup>226</sup> The cost, though, of federal reentry programs is paltry compared to the expenses of the federal prison system. In the 2017 year, the Bureau of Prisons is slated to receive 7.18 billion dollars in federal funding to house over 205,000 offenders.<sup>227</sup> Housing a prisoner for a year costs approximately \$30,000.<sup>228</sup> The cost of reentry courts is relatively modest. For instance, in the recent study by the Federal Judicial Center, it estimated that the total cost, for 45 participants in the New York portion of their study,<sup>229</sup> was \$290,368.<sup>230</sup> The average cost for a participant over the multi-year study at \$6,452.

If the cost of a reentry court participant is only in the thousands of dollars, as compared to \$30,000 for imprisoning them because of their recidivism, the cost benefits of the reentry program are in its favor if there is much reduction of recidivism. If the results of reentry courts are closer to the results of their study in Pennsylvania, where participants were less likely to be arrested, have their supervised release revoked, and much more likely to be employed,<sup>231</sup> then the cost benefit is very clearly in favor of the reentry courts. More research is necessary to determine how effective reentry courts are in reducing recidivism.

Whatever their effectiveness, federal reentry and state drug treatment courts are practicing Restorative Justice that is similar to the work done by the Community of Sant’Egidio. They are stepping down off the bench, and engaging with the participants to try help those who wanted help.<sup>232</sup> They are practicing their own form of subsidiarity—the federal judges in the reentry program are

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224. Nathan James, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, CONGRESSIONAL RESEARCH SERVICE 4 (Jan. 12, 2015), <https://fas.org/sgp/crs/misc/RL34287.pdf>.

225. Rauma, *supra* note 211, at 48.

226. *Id.*

227. *Federal Prison System Per Capita Costs FY 2015*, BUREAU OF PRISONS (Feb. 11, 2016), [www.bop.gov/foia/fy15\\_per\\_capita\\_costs.pdf](http://www.bop.gov/foia/fy15_per_capita_costs.pdf).

228. *Annual Determination of Average Cost of Incarceration*, DEPARTMENT OF JUSTICE, BUREAU OF PRISONS (Mar. 10, 2015), [www.gpo.gov/fdsys/pkg/FR-2015-03-09/pdf/2015-05437.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-03-09/pdf/2015-05437.pdf)

229. Rauma, *supra* note 211, at 21.

230. *Id.* at 49. These costs were the total of the tasks performed by members of the reentry program. There was no direct cost of the program, and the costs were for the participant’s time which is paid for by their respective offices. It’s important to note that all of the judges reported that there was no reduction in their other judicial activities. *Id.*

231. Taylor, *supra* note 206, at 9.

232. Gottschall, *supra* note 204.

working directly with the prisoners to help them, and find the best way to get them reintegrated into society. The decisions for the prisoners are not being made by a policy from the government, but by decisions of the judges upon recommendation of the stakeholders. The judges are practicing Restorative Justice, and are doing their part to alleviate the damage that has been done by the policies of mass incarceration in the United States. So long as the Department of Justice allows these federal judges to continue these reentry courts, the judges will be allowed to practice Restorative Justice in their courtrooms, and their initiative. In their own way, they are operating in the spirit of the tradition of subsidiarity in their courtrooms. The judges are reaching out to the participants in their program, and trying to improve their lives. Most important of all, the returning prisoners know that the judges care about them.

The drug treatment courts and federal re-entry programs can perhaps be improved through the direct participation of groups that do work similar to the Community of Sant'Egidio. I have found their work to be life changing. It is impossible to describe all their great works in this paper. Suffice it to say, that Sant'Egidio was an inspiration for me to leave the bench. I went to a great law firm,<sup>233</sup> where my chief client was Dominique Green. I then went to teach restorative justice with Professor Michael Seng at The John Marshall Law School. Mario Marazziti, a former journalist and current member of Congress asked me to read a box full of legal papers when I was in Rome with law students. He explained that Dominique Green was on death row and had been one of the hundreds sentenced to death in Harris County, Texas. The box contained the transcripts and motions, etc. of Dominique Green.<sup>234</sup>

Andy Lofthouse, then a law student, now a top lawyer in Chicago, and myself came into the case too late to save Dominique's life. We promised Dominique that we would continue the struggle so that the horrors he suffered would be prevented in the future. Dominique's hope was shattered when the United States Supreme Court denied our motions that night. However, when I offered to get his ashes to Rome instead of Texas, he gave me a million-dollar smile.

It is in his name and image and in his memory that we formed the Restorative Justice Project at The John Marshall Law School. We hope that it can be expanded internationally so that other law students can benefit, and like Scott Priz, become a light beaming in the darkness of vigilante "justice."

What is shown in this article is how kindness is the center of success. Kindness and friendship, what the theologians call

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233. Rothschild, Barry, and Myers, LLP.

234. Dominique's story, and that of the intervention of the Community of Sant'Egidio, is told in full in a book by Thomas Cahill, *A Saint on Death Row*. CAHILL, *supra* note 1.

“subsidiarity.”<sup>235</sup> Kindness is also the basis for the success of Norway. In visiting Haldon prison, I was told that no employee could work there without a college degree or Master’s degree. When I asked what they studied, I was told “Kindness.” Norway has a two-year recidivism rate of twenty percent.<sup>236</sup> Contrast this with The United States where the three-year recidivism rate is sixty-eight percent.<sup>237</sup> Massive incarceration of our nation causes it to be number 1 of every country in the world. We take freedom away from our people at a shameful rate.

Federal judge and state judges in small numbers have diversion practices. Some courts also have reentry courts for prisoners. Our law students sit in on these hearings. They learn that all the former prisoners had drug addiction problems when they were sent to prison and nearly everyone came back with the same addiction untreated. It is as though those leaving the prisons are worse off than when they left their loved ones. Restorative Justice, and the type of work done by the Community of Sant’Egidio, provides a different way of helping the people that have been caught up in the criminal justice system. Approaching these people not as criminals, but as friends, can help them rejoin their communities, and reduce the chances of recidivism. The goal is to find better outcomes for everyone, and Restorative Justice provides a promising alternative to the problem of mass incarceration in the United States.

## VI. CONCLUSION

The multitudes of people that are arrested every year in Chicago will eventually be released from prison. But what sort of a community will they be returning to, and what will be done for them to reduce their chances of committing future. It is the goal of Restorative Justice to bring people back into the communities, to heal the harm that offenders have committed, and to heal the trauma of the former offenders. Restorative Justice practitioners should emulate the work of the Community of Sant’Egidio, and extend friendship to offenders, the people affected by crimes, and their communities. Our judicial system has become too focused on achieving retribution against offenders, rather than seeking better

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235. See Michelle Evans, *The Principle of Subsidiarity as a Social and Political Principle in Catholic Social Teaching*, 3 SOLIDARITY: THE J. OF CATHOLIC SOCIAL THOUGHT AND SECULAR ETHICS 44, 45 (2013)(describing the Catholic tradition of subsidiarity).

236. Jessico Benko, *The Radical Humaneness of Norway’s Halden Prison*, N.Y. TIMES (Mar. 26, 2015), [www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html](http://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html).

237. *Id.*, citing Matthew R. Durose, Alexia D. Cooper, Ph.D., & Howard N. Snyder, *Recidivism of Prisoners Released in 30 States In 2005: Patterns From 2005 To 2010*, BUREAU OF JUSTICE STATISTICS (Apr. 22, 2014), [www.bjs.gov/index.cfm?ty=pbdetail&iid=4986](http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986).

outcomes for offender and victim alike. It is within our power to make our criminal justice system more humane. We can choose a better path- the resources exist, and Restorative Justice is showing a better way of dealing with crime and poverty.

