

Day One – Working Luncheon
Restorative Justice

*Moderator: **Honorable William K. Sessions III**, Vice Chair, United States Sentencing Commission*

***Denise C. Barrett**, Assistant Federal Public Defender, District of Maryland*

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***Sunny Schwartz**, Program Administrator and Co-founder, Resolve to Stop the Violence Program
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***Dr. Howard Zehr**, Professor of Sociology and Restorative Justice, Eastern Mennonite University*

SUMMARY

This panel provided an overview of the concept of restorative justice. The focus of restorative justice is for an offender to repair the harm caused by his or her crime by taking responsibility for the harm. Beginning in the 1970s, the restorative justice movement aimed at three practical concerns: the perceived neglect and retraumatization of victims in the criminal justice system, the lack of accountability by offenders, and the lack of input and involvement of the community. Since then, restorative justice practices (such as victim-offender dialogues, conferencing, circle processes, and community service) have arisen to address these needs, and the use of these practices has expanded to include violent felons. These practices strive to address the real harm suffered by victims, create opportunities for offenders to take responsibility for their conduct and improve their own situations, and involve the community in the restorative process. Studies show that these practices can reduce recidivism at higher rates and lower costs than traditional incarceration, and anecdotal reports indicate a high level of satisfaction among victims, offenders, and the communities participating in these practices.

RESTORATIVE JUSTICE

VICE CHAIR SESSIONS: [Dr. Howard Zehr is professor of sociology and restorative justice at Eastern Mennonite University. Dr. Zehr lectures and consults internationally on topics related to restorative justice including victim offender conferencing, which he helped pioneer. In May, 2008, he was appointed to the Victims Advisory Group of the U.S. Sentencing Commission.] He's also the author of numerous books and articles. Next, to his left, is Dr. Gordon Bazemore. Dr. Bazemore is currently professor and chair in the Department of Criminology and Criminal Justice, the director of the Community Justice Institute at Florida Atlantic University. His research is focused on juvenile justice and youth policy, restorative justice, crime victims, corrections and policing. Dr. Bazemore is the author of 65 peer review articles, 34 book chapters, 25 monographs and technical reports, and numerous other publications. He is the first author of three books on juvenile justice reform. Dr. Bazemore has 30 years of experience in juvenile justice practice, research, training and technical assistance, and he has directed research in action projects funded by the National Institute of Justice, Office of Victims of Crime, Office of Juvenile Justice and Delinquency Prevention, the Robert Wood Foundation, and other public and private agencies. Since 1993, he has been the director of the Balanced and Restorative Justice Project funded by the Federal Office of Juvenile Justice and Delinquency Prevention.

Now next to Dr. Bazemore's left is Denise C. Barrett, who is an assistant federal public defender, has worked in the office of the federal public defender for approximately 20 years in Baltimore, handling a wide variety of complex felony cases. She obtained her J.D. from the University of Baltimore, School of Law, and holds a Master's Degree in social work from the University of Maryland, School of Social Work. She has received intensive training in defense-based victim outreach from Tammy Krause, a leader in restorative justice in federal capital cases. She's interested in bringing together victims and defenders through application of restorative justice principles so that the federal criminal justice system can better meet the needs of both.

And, finally, on my far left is Sunny Schwartz, who is a nationally-recognized expert in criminal justice reform. She's pioneered new policy initiatives for prisoners' programs and their reentry, as well as alternatives to incarceration. Ms. Schwartz has worked in the criminal justice field for over 25 years. She was admitted to the practice of law in California in 1985. In 1990, she joined with Sheriff Michael Hennessey, who appointed her as the program administrator for the San Francisco Sheriff's Department. She directs the design and operation of prisoner programs in six county jails, which house a daily average of 2500 men and women prisoners. She supervises over 150 teaching and treatment professionals. She has designed and established the Resolve to Stop the Violence Project. Resolve to Stop the Violence Project is a nationally-recognized restorative justice program, which unites diverse community organizations and individuals to collaborate, and the first in the nation correctional program offering services to everyone harmed by violence: victims, offenders, and communities.

So it's with my deep appreciation that all have agreed to speak with you today.

And, first, Dr. Zehr.

DR. ZEHR: I feel rather guilty trying to talk to you while you're trying to eat, but I'll do my best and hope you can still get the chance to eat.

It's an honor to be here. I think I'm here in two capacities. I'm pleased that restorative justice is part of the conversation, but I've also been appointed to the new Victims Advisory Group, and so I think I'm here interacting with the Commission in that role, and that's an issue that's particularly dear to my heart.

I've been given the task of giving a brief overview of restorative justice, and then Denise and Sunny and Gordon are going to look at some specific applications of it.

Restorative justice as a field developed in the 1970s. It was a kind of laboratory and community democracy, developed in specific communities in the United States and Canada as an effort to deal particularly with three areas of concern. One was the neglect of victims that we were feeling in the justice process. The fact that they were so left out of the process and also the traumatization or re-traumatization they often seemed to experience in the justice process. Judith Lewis Herman's important book *Trauma and Recovery* says if you wanted to set out to create a system for generating post-traumatic stress, you couldn't do better than a court of law. Not a very good endorsement, I'm afraid. That's become a lot of my work these days. There's a whole cluster of what we call "justice needs" that victims aren't able to obtain in the usual justice process. So one of the concerns is the neglect and even re-traumatization of victims. A second had to do with how we deal with offenders. We were concerned. It looks ludicrous when we look at those graphs now, but back in the late '70s and '80s, we were concerned with the overuse of prisons. We had no idea where we were going to be going as a society, but we were also concerned at what we felt was the lack of real accountability for offenders. We were convinced that offenders have deep denial processes, and that the legal system and the experience of prison tended to increase those denial mechanisms. We wanted a way to find them, to hold them accountable, in the sense of helping them to understand to take some responsibility for what they were doing. As several of our speakers have pointed out, we were convinced that when offenders are involved and have to take responsibility, that they have greater ownership in the outcomes and are more likely to do well.

And the third was the impact and the involvement of the community. We were concerned that justice not only did not reduce the tensions around the crime in the community, but often actually increased the conflicts and tensions around it. We felt that the community was often victimized and needed to have its needs addressed just like individual victims, but it also needed to be engaged in this process, and it needed to step up to the plate and accept its responsibilities. So those are the kind of concerns that led to restorative justice. It actually developed more out of practice than it did theory though. The concept or the theory of restorative justice came later after we began to try to conceptualize what we thought we were doing.

Today there's a whole continuum of practices. The best known practices are practices that allow victims and offenders to meet in some way, and those are the ones you've seen on *Oprah* and other kinds of things. There are a variety of forms. There are victim-offender dialogues. There are conferencing processes. There are circle processes that many judges in Canada are using as a way to involve not only victims and offenders but community members in designing specific sentences. The best known ones involve some sort of encounter. New Zealand has actually restructured its whole juvenile justice system so that the core of it for serious crime is a restorative conference, and the courts are there in the background for those who refuse to admit their guilt, or for murder. It's resulted in dramatically reduced incarceration rates and dramatically reduced court case loads. But there are many other applications as well that apply these restorative principles without maybe being the whole thing but involve trying to address victims' needs, give them more options, try to hold offenders accountable and involve them in the

process, and try to involve the community in some way. Gordon may talk about this, but there is a great deal of research on these. The research has been very encouraging. The latest meta studies from Sherman and Strang released in England looked at 36 studies from around the world and found high levels of victim satisfaction, reduced recidivism by most offenders, greater understanding by victims and offenders of the other, and so forth. They concluded that the research for restorative justice is much stronger than many of the innovations that we're spending billions of dollars on.

So it's been a series of practices. We're still low on the learning curve. There's lots of new and exciting developments. I think we have an awful lot to learn. I always say I wish I had another ten years before Oprah discovered us because we wanted to [stay off] the radar while we were trying to learn these things. But more than this program, it's a different way of reshaping how we think about wrongdoing and justice. Restorative justice is essentially reminding us that what matters about crime is the harm that's caused. And when we hurt somebody, when we do something wrong, it's the damage that's caused to people and to relationships. And, therefore, justice ought to, to the extent possible, try to repair that harm. And so restorative justice is trying to put more emphasis on repairing harm. One way to think about it is that sometimes the state revolves around three basic principles. One is that crime and other kinds of wrongdoing create harm, and harm always generates needs. That's why victims have to be the center of restorative justice. If crime is about harm, then we should be starting with the victims regardless of whether an offender is available, whether one has been caught or identified. Secondly, it has to do with obligations. All of our ancestors, I think, understood that when we harmed somebody, we had an obligation. That obligation was to try to put it right to the extent we can. So the second principle is about the obligation. The first obligation is the offender's, but the community may have obligations as well.

And the third principle is the principle of engagement. As you've seen this morning in some of the research, the more you involve victims and offenders in the outcomes, the more satisfied they are, and the more satisfactory the outcome. We believe that those impacted by crime, or involved in some way, ought to be, to the extent possible, involved in the solution of a crime. Sometimes I say it really revolves around three questions. In the legal system, we tend to ask, "What laws were broken and who did it; what do they deserve?" Restorative justice is trying to think, well, there are three other questions that are important. Who has been harmed in this situation? What are their needs? Whose obligations are they? When we first began, we began with more "minor crimes." We did many, many, many burglary crimes in those early days. Burglary is often experienced as a violent crime by victims, and yet the system is often ill-prepared to deal with the volume of these cases. But today there are programs for the most serious kinds of crime and many new applications. It is today a world-wide phenomenon. There are programs in every continent except Antarctica. I don't think there's any in Antarctica that I know of. Do you know of any? I don't.

Otherwise, I think they're pretty well everywhere. One of the most exciting arenas is school disciplinary procedures. The schools are beginning to realize that basically we're mirroring the criminal justice system in our schools with zero tolerance, and so forth. It's not working. And so more and more school systems are adopting restorative disciplinary processes.

So that's a brief introduction. Each of the panelists is going to talk about some real world application of restorative justice. Thank you.

VICE CHAIR SESSIONS: Okay. Next is Dr. Gordon Bazemore.

DR. BAZEMORE: Thank you. It's very good to be here today. Glad to be on a panel where you meet a couple of new folks. And I actually saw Sunny Schwartz today. We met for the first time. I've talked to her lots of times on the phone, and I realized I recognized her because I saw her, guess where, on *Oprah*. And despite what Howard said, that was a very good depiction of restorative justice. Thanks to Sunny and some of the other folks that were on there.

Good to see Howard again. I feel like sometimes that we've known each other since the late '50s. I do get my decades kind of mixed up. I know that Howard is the "grandfather of restorative justice." He invented it. Someone told me once it was a science project in the seventh grade. He got a "C" on it, and he's been improving it a lot ever since then.

As Howard told you, I am primarily an academic and a researcher who loves practice. I love to watch practitioners. I don't really like to do it, but I am a researcher. And, so I do want to say, Howard mentioned this, but I do want to reinforce how strong the research is on restorative justice. And I'm surprised by that. I couldn't say this to you ten years ago, but restorative justice really works. We've got some very serious kinds of research being done using experimental designs and meta-analysis as Howard mentioned. Some of us still wonder why it works. I think we need to know more about that because practice will improve when we do. We can say though that there are dozens of studies. And I must say, I know there are a lot of studies on effective treatment and studies on punishment. What we do not find in any of those restorative justice studies that I know of is that restorative justice doesn't seem to make things worse. Those of you who know the effects of treatment literature, you'd know that even some forms of treatment seem to be kind of counterproductive.

And a lot of what we do in the name of punishment, things like boot camps, and programs like Scared Straight, and you know the rest, actually can make things worse. And we can really say that restorative justice doesn't do that. And, in fact, it tends to make things better. And it's somewhat surprising also, I must say, because relative to some other programs, restorative justice is pretty much a short-term phenomenon, as it sometimes happens in a half an hour or less, and sometimes it goes on for days and there is some follow-up. But it is a relatively short-term and inexpensive kind of program.

However, the other thing that impresses me about restorative justice today is when I look around the world and I see how robust what seems at times to be fairly weak kind of practice, how robust that practice can be in post-conflict situations, post-genocide things that are going on in countries like Rwanda, Northern Ireland, which I've gotten pretty familiar with over the past year. I spent my sabbatical over there for about six months. Bosnia, Herzegovina, and of course South Africa in the Truth and Reconciliation Commission. So I think we sometimes underestimate restorative justice, and I guess my pitch to you is, you know, that we should not just limit it to these low-level offenses. Sometimes I think we waste the strength of restorative justice when we use it on what one of my Canadian friends calls "potato chip thieves," kids who steal potato chips. Now they may need some accountability, but they may not need a whole restorative justice process.

One of the things, and Howard knows a lot more about this than I do, I really admire in what they're doing in Northern Ireland, as an example, and this goes back to juvenile justice, former combatants, some of whom have been in jail a long time by UK and European standards, are now coming out of prison as the conflict dissipates, and they're using a lot of those folks to, to essentially work with kids. And some of the best examples I've seen for reintegrating offenders, and these are a different kind of offender, but they're nonetheless violent offenders, many of them are actually working with kids in

restorative programs and running restorative programs, and they have a lot of credibility and set a very good example in that way.

Howard just gave you the principles of restorative justice—involvement, repairing the harm. I'm not going to say much about that today. I have a little Powerpoint, and I want to turn, I think, more directly to the issue that you guys are facing here today, and that's the issue of offender reentry. [Off topic.] Academics don't write papers anymore. We just do long, long Powerpoints. And I must say that a lot of this work was inspired by my colleague, the late Dennis Maloney. He was able to start some projects around the country that were actually implementing this model. I titled this *Earning Redemption* because this is really what this seems to be about. This is about a way to allow offenders to really earn their redemption. They do that by taking on new roles in the community. Dennis and I had begun calling this a "civic engagement model of reentry." This is another little slogan Dennis had. Dennis used to say our problem is that people can do their time. It's easy to do their time. What we really want people to do is to do good. If they're going to get better, they need to learn that they need to begin to do good. Many of them are already doing good. We need to show folks that they can do that. We started with the limits of current practice, and this is not a critique of anyone in this room, but traditional reentry practice has been plagued by this kind of real individualized insular focus on the needs and risks of offenders. It's not just about the offender. It is partly about them, but there's a bigger picture out there. It's surveillance oriented. It's punishment oriented, and a very limited—and many of you know this already—treatment focus. And more than that, a lack of attention to real community needs and resources, what we might call "social capital." This is Dennis's model in a very simple little diagram. I think he sort of says it all.

We focus on that resistance to recidivism. All our effective treatment programs are trying to do that, and fortunately we're getting a lot better at doing that, but we've ignored the other side of the picture. It's not just about the offender. It's about the community being willing to take them back. So I'm not going to use any more research terms than what you see right there. But in research we have something called the "independent variable," and it acts upon something to make a change, hopefully for the better. So we begin to talk about, and I talk about it all the time, the community as being an independent variable. No matter what we do, the community is going to act on the offender for better or worse when they're coming out. What we're looking for is for them to provide some informal, positive support and positive informal social control, if you will. The community is also a dependent variable, and this is my challenge to you as folks working in reentry. We've got to not just do things to and with the offender. We need to do things to and with the community.

By the way, we do have some papers and publications on this for those of you who are interested. The goal of this model is really to strengthen the commitment of those who have harmed others to citizenship, to being good citizens, and to help them to do that. The objectives are to weaken barriers to their pro-social identity. Change the community's image of those persons, how they see former incarcerated persons. And then to begin to help mobilize those informal sources of support and social control. The three main components to this model as Dennis and I talked about it, and as Dennis over the years has begun to implement it. Civic community service is the main part of this. Now some of that can also be paid where Reverend Charles See in Cleveland found ways over a period of 30 years or so of work has found ways to get inmates coming out doing community service and then find various ways to pay them and move them toward other jobs. But this idea of civic community service is at the core of this. Restorative conferencing. Howard talked about some models. In juvenile justice, we're seeing a lot of reentry conferencing. Kids coming out of facilities meeting with family, community people and victims as well as on the front-end kids going into facilities doing that, and we're seeing a little bit of that

with adults. And, again, democratic participation in voting. I live in Florida. I'm not proud of much of anything about Florida, especially of our governor, but the one thing he did do is he now is allowing felons to vote for the first time. We were for a long time one of three states that prohibited felons from voting for life, and now they can do it. So we're happy about that. We'll see how it works.

Here are the problems we're looking at in a nutshell. And this is what in the work that Dennis and others were doing they we're really talking about. There are these deficits, and they aren't just deficits with thinking errors and all that stuff. Regardless, even offenders who've made good and begun to reform themselves still have a reputation deficit. A "bankrupt trust account" as Dennis used to call it. Limited references. No portfolio. To what extent are we helping them get that? To what extent are we helping them get research skills? Many of them have restitution and service obligations that don't get met. We should make those a priority. Lack of a community support network. The solution then is through service and other kinds of positive civic activities to change that portfolio, give them a new portfolio, if you will, a new reputation as a contributor. This is, if you haven't figured out already, very much a strengths-based approach. We want to give them new references. We want to give them the basic work skills and a reliable support network.

You know, Dennis came up with this term "service in the interest of others." I thought it was kind of redundant, but it's really not when you see how he talks about it, and how we think about it now. What are the community's interests in this? What does the community get out of it? Well, first of all, they began to see, as Howard pointed out, accountability. That term "earned redemption" is one we use to say, "This is how you're held accountable. You're held accountable just by taking your punishment. You're held accountable by taking responsibility." And we're looking for offenders to begin to show that. Begin to help with meeting unmet needs in the community. I could give you millions of examples of this, but programs where inmates build parks, work on schools, help the elderly and so on. And you can see the rest. Dennis used to say, you know, we have a workforce here that could be a workforce for the good if we could really begin to employ these folks in positive service and work. And what does it do for public policy? Well, it addresses that issue where everybody says to us, "Why do you spend all this money, and what do you get for it?" Seeing people doing positive, productive things in the community begins to address that.

Finally, this stuff just makes sense. What does service do? It's got some higher interest. Service can address suffering in the community. It can build good will. It can allow people to express their humanity. Incarcerated persons want to do that. Some of them are doing it on the inside and some try to do it when they come out, and we need to help them do that. And it develops a better sense of community and a sense of social capital.

And I'm going to show you our final model, and I'll stop here. Without explaining all of this, what this says below the bottom axis, as Howard suggested, is that it's really about participation. It's about getting community participation on this. On the vertical axis, it's about really building capacity. In the yellow bars there, we're talking about how community service can be used. The least helpful way is when it's only used to structure the time of offenders. We do that a lot with juvenile justice and community service. That can be a positive, but we can do better than that. Holding offenders accountable in a better, more meaningful way is a good approach to that. Doing service that provides community benefit is even better—service that meets the individual needs of the elderly. Service to folks who are sick and needy in other ways is one step better. Building social capital is at the top, and I think that sort of includes everything else. And that's what we're looking for when we talk about the civic

engagement model of reintegration based on restorative values.

Thanks.

VICE CHAIR SESSIONS: Next, Denise Barrett.

MS. BARRETT: Thank you, Judge Sessions. Good afternoon and thank you, especially to the Commission staff for giving me an opportunity to share with you some really exciting examples of restorative justice practices at work in federal criminal cases. And what I would like to do is to talk about two kinds of examples, victim-offender mediation and sometimes called “defense initiated victim outreach.” And then at the end, I’ll talk a little bit about how we can nurture those restorative justice practices in our federal cases.

The first case example is a case that arose in Eugene, Oregon—a young man by the name of Gabriel Laskey. And this case just came to conclusion in November of 2007. It started back in 2002. Gabriel at that time was 18 years old. He and his brother, who was older leader of a group called “Volksfront,” which is a neo-Nazi white supremacist group, along with other members of the group, went by a synagogue during its Friday evening services. There were about 80 members in attendance, and they threw through the stained glass windows rocks that were engraved with swastikas. This terrorized the community. Many of the temple members of this particular synagogue were children of Auschwitz and Holocaust survivors, and there were also some Holocaust survivors within the group.

They caught the suspects, and Gabriel fairly quickly entered a plea of guilty in federal court to conspiring against the rights of citizens and damage to religious property. And then he found himself thinking about his offense. He went to his lawyer, who was a member of the Criminal Justice Act Panel, and said, “I would like to apologize to the members of the synagogue.” And the lawyer, who is an incredible lawyer by the name of Lynn Shepard, said, “Well, you can’t just walk into the synagogue and apologize. Let me check this out.” So she got in touch with an individual by the name of Ted Lewis, who runs a restorative justice project out there called “Community Mediation Services.” Community Mediation Services worked with the offender Gabriel and his lawyers and members designated by the rabbi to participate in victim-offender conferencing over the course of 15 months. The number of meetings here is unusual, as we’re to talk about, for the level of involvement of these groups. But as we go through this, you’ll see why.

I asked Lynn specifically, “Well, how much did this cost?” And actually, she had very limited CJA funding from the expert budget to pay for the mediator, and that was really the only cost associated with this. But there were nine joint meetings between the offender and about four or five representative members of the synagogue. Then there were 14 separate meetings where the facilitator would either meet with Gabriel, or meet with the victim participants to talk about next steps, and kind of help them process the feelings and thoughts that they were going through. So what kind of reparation package did they come up with for Gabriel to make things right? Well, he conducted five study sessions with the rabbi and his wife on Jewish culture and tradition. He shared a Shabbat meal with rabbi and nine other participants one Friday evening. He listened to direct first-hand accounts of an 80-year-old Holocaust survivor and the children of the Auschwitz survivors. He viewed *Shoah*, which is a nine-hour movie, incredibly intense documentary of interviews with participants in the Holocaust, including survivors, but also people who were sort of third-hand witnesses, as well as former members of the Gestapo. He read three books on Jewish culture and history, *The History of the Jews*, *What is a Jew?* and *Survival in Auschwitz*.

And at the end of this process, he renounced his anti-Semitic beliefs. He wrote multiple letters of apology at three phases through this, because as he went through this process he realized, and he learned more and more, about how he had harmed this community. And because some members of the synagogue were unable to personally engage Gabriel in any level, but they wanted to make it a more personal delivery than a letter, he actually agreed to film an apology for them. He also agreed to use his welding skills to create a sculpture for the Temple garden. So when he got the sentencing in November, actually let me back up. You might ask, “Why did the victim parties invest this kind of time and energy?”

Ted Lewis, who was the facilitator, wrote a memo to the court explaining this process, and he said that the victims stated more than once that one of the most healing things that could happen for a Jewish community is to know and see how someone can change a racist mindset, and be integrated into the local community as a contributing citizen. And this was truly the driving force. I’ve had the pleasure of speaking with one of the primary victim participants in this, and that was really her motivation in a very large way. So we get to sentencing, and we have the guidelines. Well, the guidelines called for sentence of imprisonment for Gabriel of 12 to 18 months, which is a Zone D sentence. And what that means, of course, is it’s a required sentence of imprisonment. There’s no alternative if we just go with the guidelines sentence. The presentence report recommendation consistent with the guidelines was the low end of the guideline, 12 months’ imprisonment.

The particular participants in this process said, “Well, wait a minute. We feel like we’ve made some efforts here, and we’re making progress in changing his ways, and we’re concerned. We don’t really want to speak for the synagogue, but we do want the court to consider something.” And what they said, through Ted Lewis, was, it goes without saying, that this hope for ongoing change is linked to concerns about Gabriel going back to a prison environment where skinhead racism is present, posing a challenge for Gabriel either to regress or be at serious risk. The sentiment has been expressed that enough pain was caused by the initial crime and its aftermath, and that the need is not for additional pain and loss, but for ongoing reparation and restoration.

So the judge received this, heard a lot of other evidence about Gabriel, and decided not impose the guidelines sentence. The judge imposed a term of five-years’ probation, six-months’ work release, six-months’ home detention, and restitution for property damage. My understanding is that Gabriel has completed his welding class, and is actually beginning to start work on the sculpture for the synagogue. He is also engaged in filming some other aspects of a project that synagogue members are working on—a public forgiveness project. Now I won’t go through all these, because some of these we’ve talked about in terms of studies. But if you’re skeptical about the results of this kind of programming, there are studies that show that it helps offenders take responsibility for the harm. It increases their ability to be empathetic. It models constructive ways for them to deal with conflict and problem-solve in their own community. It helps them motivate toward rehab, and it reinforces their ability to resist crimogenic factors and criminal thinking. It also correlates with reduced recidivism. The most recent study was just this month from the UK on recidivism. It helps victims feel more in control. It lessens feelings of isolation. And, as Howard talked about, it reduces their trauma from the process.

Now the other thing I’d like to spend a little bit of time talking about is something called “defense-initiated victim outreach” (DIVO), which had its origins in the Oklahoma bombing and the trial of Timothy McVeigh. At that point there was a defense lawyer by the name of Dick Burr, who looked at this case representing McVeigh and said, “There are an awful lot of victims here, and they need to be

heard, and we can't be put in a position of re-traumatizing them." Dick, a very smart man, found Howard, and Howard found Tammy Krause. And they teamed up with the lawyers to teach them how to be sensitive to victims' needs. This started in 1994. It has been growing, particularly in federal capital cases where it really is the standard of care in capital cases. There are those of us in the community who are trying to import the concepts and the teachings from those cases into non-capital work. Now the model that they developed of DIVO basically asks two basic questions to victims: "What is most important to you, and what are your needs within the judicial process?"

Well, as a case example, one of the very early cases that Tammy Krause worked on involved the murder of a young woman in Yosemite National Park. The defendant in that case was an individual by the name of Cary Stayner. Well, as defense-based victim outreach, she reached out to the surviving victims and learned a couple of things from them—that they really didn't want to go to trial. They thought that they would be re-traumatized, since this whole scene had to play out in the public courtroom. They wanted to keep Stayner from profiting from the crimes by publishing any materials, they wanted to keep him from making statements in the media, and they wanted the media attention on him specifically to stop, in terms of his involvement in the offense, because they didn't want their daughter's name trotted out. And they wanted to have the option at some point in the future to be able to meet with him to ask him what really happened. What were her last words—the kinds of questions that only the offender can answer for victims, and why Tammy very early on said that the relationship between victims and defendants is the "organic relationship." Prosecutors have a very huge interest in this. But in terms of the harm that's been caused and who can be accountable for it, that relationship is between the offender and the victim. So they were able to negotiate plea agreement provisions. The huge benefit for Cary Stayner was that he avoided a death penalty trial. And, of course, the victims, their needs intersected because they didn't want that trial either. They also were able to get anti-profiting and anti-publicity clauses placed into the plea agreement, and he did agree at some future point, if they wanted, to participate in facilitated meetings.

Another example of this in a non-capital setting happens to be another hate crime. I don't want you to believe that this only applies in hate crimes, because it's actually been applied in a variety of situations, including aggravated identity theft, drug cases, and robberies. In this case, there wasn't a victim-offender meeting that happened in Gabriel Laskey's case, but what happened is representatives of the defendant were able to deliver apologies to the victims and community activists who had been harmed by his offense. The offense was basically a series of threatening communications, over many months, to mostly African-American members of a community that was already undergoing a lot of turmoil with racial tension, as well as to individuals who had been targeted based on sexual orientation. So they offer the apologies, they listen to the victims describe the harm caused by the defendant's conduct, they answered questions about what motivated his actions, and they made facilitated victim-offender meetings available. In your materials, there's a CD, and a letter on it from Tammy Krause, which outlines for the court and for the potential participants in this process what those facilitated meetings look like. It gives a general description of the theoretical overview of this.

Now what can we do to nurture restorative justice? Change our thinking. We need to rethink our assumptions that victims' needs are not met unless the maximum penalty is attained. We need to recognize that victims' needs are not always uniform. We need to shift our focus from an adversarial win-lose process to a restorative one. We need to question the assumption that offender accountability always equals a prison sentence. It's more about having them be aware of the harm and taking measures to correct that harm. And recognize, above all, that the needs of the victim, the needs of the community,

and the needs of the offender often intersect at some level, and that is where we can do our best work with restorative justice.

We also need to amend the guidelines. We need to build into them a mechanism to encourage dialogue among victims and offenders, and community stakeholders, through counseling, reparation, mediation, and other restorative justice processes. We need to build flexibility for judges to decide in a particular case whether or not there should be another kind of sentence, other than what is specifically called for under the guidelines, just as the judge did in Gabriel Laskey's case. And we need to recognize that not all disparity is wrong or avoidable; that the needs of victims, their willingness to participate, the needs of offenders and their willingness to participate are going to vary from case to case, and the only way for us to take account of those individual variables and to construct a different sentencing package is if we get out of the mindset that as long as you have the same offense level and same criminal history, then you get the same sentence. We need money. We need funding for training victim outreach workers. And actually because I'm running out of time here, I'd like to point out a couple of other things in terms of the money. On the defense-initiated victim outreach aspect, Pam Leonard is the head of the Georgia Council for Restorative Justice—I actually put her phone number up here—and is really leading the way in the state systems on defense-initiated victim outreach. She is an excellent resource of information on that. The other place to go for a lot of information, because it has a lot of links to some of these studies that we talked about, is www.restorativejustice.org. And the other person that I haven't met, but I saw on the list of attendees, is Erik Luna. Erik has written, with Mr. Poulson, a very nice law review article on restorative justice in federal sentencing as an unexpected benefit of *Booker*. With that, I will stop, and I hope you keep an open mind about the potential of restorative justice in these federal cases.

Thank you.

VICE CHAIRMAN SESSIONS: Next, Sunny Schwartz.

MS. SCHWARTZ: Thank you. Howard, Gordon, Denise, I'm really heartened. I'm heartened to be part of this panel. Thank you, Kira and Lisa. Since Gordon goaded me about *Oprah*, it occurred to me that some of you are thinking, "Come on, 'fess up."

I did not get a car. I just want to clear that up. Listening to the three of my colleagues, this Albert Camus essay that he wrote decades ago just keeps ringing in my ear. I'm paraphrasing, so pardon me if I'm botching it, but it's something to the effect of, "Don't say to the man condemned to death that he's paying his debt to society. Rather, say, "We're cutting his head off." It may seem like a little thing, but it makes a difference. Meaning who benefits? Who benefits from doing what we've been doing in our Sheriff's Department, which is my bailiwick for the last 15 years. It's so important that we're here together—I number myself among them—to humble ourselves to really take a gutsy look at what works and what doesn't, and willing to roll our sleeves up and take some intelligent—as we say in California—mindful risk. There's a writer in California. I just heard her at a 10-year commemoration of the James Byrd murder in Texas. Her name is Susan Griffin, and she said this fantastic thing, which is very simple no matter what side of the aisle we're on, whether we're Republicans or Democrats or anarchists or independents, we have this yearning for justice, like food and water. And I trust everybody in this room shares that to some extent, regardless of our occupational hazard of becoming cynical. I think we still are yearning for that concept called "justice."

And I want to share with you a personal experience. I've had the good fortune, as well as

heartache, to be in criminal justice now for 28 years, as a law student, as a lawyer, and in the last 18 years as Sheriff Michael Hennessey's program administrator. I entered law school to be a criminal defense attorney. That's where my roots were. Maybe it was being a product of the south side of Chicago where I saw some of my classmates, all of a sudden, up and gone to [inaudible] the juvenile hall. So it seemed pretty personal. I just really had this yearning too, to represent and advocate the have-nots, the disenfranchised. And as a law student for four years, I needed to work to put myself through law school. I worked as a legal service intern, which was basically negotiating and being a liaison with the public defender's office or private attorneys, if they had such a thing, and custody cases, landlord/tenant, *et cetera*, helping with modifications and the like. Quite frankly, after three-plus years I really was quite sickened by what I saw. I became that cynical person as well. I was becoming a better lawyer, and this is not a knock to defense attorneys, so please know that. But for me, I was becoming a really good advocate and not such a nice human being, in that I never took the time to talk to anybody, except for taking care of my job. And so one day I was on the tiers, and this middle-aged man with horn-rimmed glasses came up to me, and almost spitting out rage, and he said, "I'm a sick man and I need your help." And I was like, "What's going on?" And he showed me about 35 or 40 action-request slips asking for help from our jail psych and from other places.

To make a very long, painful story a little shorter, he was in for a year on a child molestation charge. He explicitly said to me, and I'm sharing this personal story because I think it's indicative and today as well it's apropos. He was getting out in two weeks. He molested a little girl, and he said, I'm going to do it again. I'm going to get out, and there's a woman who is living in my house and she has a little girl, and I promise—it was so explicit. Now I wasn't a sworn attorney at that time, but I still was a quasi-advocate. I didn't have attorney/client privilege at that time, but I was blown away because I took my job very seriously as their advocate. But he was promising to reoffend, and I didn't know what to do. I went to the sheriff. My goodness, what do we do? He said go to the judge. I went to the judge. Judge, this is disgusting. He recused himself. I went to his public defender and again, I don't want to point the finger. We're talking about a system here. The public defender, a woman, said, "Bad piece of you know what, but if you mess with trying to get him out, I'm going to kick and scream." That's what she's supposed to do. "Come on, Susan," I said, "Let's talk about restorative justice. I don't have any contacts there." I was just coming from this gut place. Not knowing what the hell—pardon the expression. I went to the DA. The DA was like, "I want to get him, but I don't know what to do."

Finally, I went to the probation officer, and the probation officer said, "I have an idea. He's not going to sign this release, I know. He's supposed to register as a sex offender, go check in periodically. He's not going to sign that." He didn't sign that. But lo and behold, two weeks came and he was about to get released. I'm summonsed to the presiding judge's court. It was a very, very difficult thing on one hand because here I am, quasi-defense, spending my three-plus years believing that we should get as many people out as possible, and now here I'm going to testify to do everything I can to make sure this man does not come out. So it was a real shift in my professional identity as well, but I had no issue about it. I went forward. The bad news was the judge didn't have a context either. I did some research. There was one locked-in treatment place for sex offenders in Los Angeles. The judge said, "Instead of three years probation, five years, and come in and report every month." And I'm very sorry to say that, within a couple of months, he reoffended. Not that little girl, because we were able to get a hold of her mother. But a six-year-old little girl from Nicaragua. And I heard he spent the remainder of his life in [inaudible] for the criminally insane, but meanwhile, another person's life was completely obliterated.

So I share the story because of so many things. Who benefits? Who benefits? Many of us know

traditional criminal justice is based on retribution. I see it every day. Just before I came here, we have rec supervision jail; we've got the linear traditional jail. The vast majority of time people sleep all day, watch Jerry Springer, or play cards and dominos, never taking the time to look at themselves and say, "My God, what have I done?" So if we're talking about being soft on crime, that, to me is coddling prisoners. I really think it's about time we start really being frank about our language when we talk about being soft on crime. You know naturally people assume, being from San Francisco, I'm a tree hugger and like red wine, white wine, and soft on crime. And my sheriff gets that all the time. But I respectfully challenge those jurisdictions that allow their men and women incarcerated to sleep all day, play cards and dominos—that, I submit to you, is coddling prisoners instead of what I'm about to share with you—some of the measures that we've been doing that have some promising results.

So we started to change things, and we took one jail. We took one jail and said, "Wait a minute. We're not going to have these elective classes." I now am called the Jesse Helms of education because I require people to go to classes, which seems antithetical to my progressive roots and to proper treatment. I submit to you, when you create an environment that is invested in people's success, not only the studies—I'll explain to you some of the studies we have, but just think of basic human logic. Instead of having the strongest thug run the prison or jail, we have them emulating the standards and practices of you and me. We have to be up and ready to go at seven o'clock, or eight o'clock, or five o'clock. So forget about the programs right now. Just emulating the standards of practice of a pro-social human being, up and ready to go, cleaning up, all those things that institutions do very well with inspection, [permitting] no obscenities, a contract that they were going to participate, a social contract that they'll participate with their best effort and good faith. So then we started looking at the demographics, which tragically, I assume, is quite universal. We interviewed 360 men and women in our facility. Eighty percent are victims of child sexual or physical trauma or adult trauma. This was self-disclosed. Ninety percent are addicts or alcoholics or both. Ninety percent are parents, whether custodial or noncustodial parents. I was shocked by this one. Ninety percent never had a legal job. Fourth—75 percent had a fourth to seventh grade reading level. So after several years, we had to really again humble ourselves and start looking at what we're doing and why. So we consequently started integrating programs that responded to those deficiencies, and we made it required. It wasn't come when you want, leave when you want. That's not the real world. We had to get up. Some of us wanted to be here. Some of us, maybe not. So same with our offender students. You're up and ready to go. If you're going to remotely make it out there, you have to start getting with this incredible exercise of pro-social living.

So we're looking at all that. It's rehabilitation, and it was a heroic beginning that we did, and others throughout the country. But we kept seeing the same people coming back over and over again. I'm sorry today to say I see the grandchildren of the grandmothers and fathers I worked with as a law student in 1980. And we also were looking at drug treatment, we were looking at literacy, but no one wanted to put the elephant in the room and talk about violent offenders. In 1995, the timing was fortuitous. I happened to be in Minnesota at a conference. I happened to go to a legal workshop. A colleague in California hands me this slip, this brochure saying, "Oh, I went to a really cool workshop on restorative justice." I said, "Let me see. What the heck is that?" I looked at it, and it was like one of those crazy, "Oh, my God, this is unbelievable. This is just what the doctor ordered." Kay Pranis was a pioneer as well. Maybe she's the grandmother of restorative justice. I got on the phone to the sheriff and said, "I'm coming back early," and I have a video to explain that.

I want to underscore a couple of things before I share a video about the program. In my 28 years, it's one of the most meaningful works that I've ever seen. The potential is amazing because it's so

inclusive. Rehabilitation, as I said, I think is wonderful and important, but there's missing pieces for a lot of us. It didn't engage the victims. It didn't engage the community, and it didn't hold that mirror up to the offender. It's not about shame, but about creating an environment that engendered introspection. So we started a group, and I want to underscore this. I mean a crazy, diverse group of people that would normally not sit next to each other. We had Orthodox rabbis and Baptist ministers. We had victims of the most horrific violence with perpetrators of the most horrific violence. We had lieutenants and captains and line staff and housewives and feminists and homophobes and gay rights activists. Forty people and not one time did we digress. We had one objective—how to stop violence in our homes and our community. And we never, ever digressed. You know, you have ten people in a room, you can't figure out where to go to lunch. But here's 40 people talking about something so personal and so compelling, and for 18 months we created a program called "Resolve to Stop the Violence Project." And using the principles, is it a pure restorative justice program? Whatever that is, I'm not sure. I don't think so. I think we need to be real frank about it. I think it has restorative justice trappings. I think it has restorative justice principles, and but what I mean by that is that we're still embryonic, quite frankly.

We're very satisfied with some of the dramatic results, but the jury is still out if it has long-term effect. Offender accountability—12 hours a day, ten to 12 hours a day, five days a week. Will men work at their accountability? That's the backbone of restorative justice. We have community restoration where we have victims of violence coming in, community restoration where we have banners on the jails promoting nonviolence—the San Francisco Giants, we team up to strike out violence. As a matter of fact, the mothers of the Yosemite massacre were there. And that's a healing process. I'm running out of time—the victim impact portion of it is very compelling. This video does far better than talking about the heart and soul of that portion, and we really want to hear questions from you.

Thank you.

