

2000

Forgiveness and the Law - A Redemptive Opportunity

Douglas B. Ammar

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>



Part of the [Criminal Law Commons](#)

Recommended Citation

Douglas B. Ammar, *Forgiveness and the Law - A Redemptive Opportunity*, 27 Fordham Urb. L.J. 1583 (2000).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol27/iss5/12>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

FORGIVENESS AND THE LAW — A REDEMPTIVE OPPORTUNITY

*Douglas B. Ammar**

I. LYNN'S STORY

Lynn's uncle, a former client, and her mother approached us, the Georgia Justice Project ("GJP") about representing Lynn. When I took the case, Lynn would barely talk to me. She was still in shock from the shooting. We tried to work with Lynn on her shock. Lynn grew to talk more about what had happened and the role that she played in this horrible incident.

Lynn and her cousin, both teenaged African-American girls, drove up near a pay phone outside a convenience store in suburban Atlanta. Their car was loud and the noise disturbed Matt, a twenty-two-year-old white man, who was making a phone call. After a brief interchange, Matt began cussing and threatening Lynn and her cousin. The two cousins quickly left and went directly to the motel room where Lynn's cousin's boyfriend (Joe) was staying.

Joe and two friends, all between eighteen and twenty years old, were in the room. They were drinking and smoking. After hearing what happened, they demanded to be taken back to the store. Minutes later, the group of five arrived at the store. Matt was still on the phone. Unbeknownst to everyone else, Joe had a gun.

After the car stopped near the store, Joe and one of his friends got out and walked toward the pay phones. Joe picked up a phone near Matt and acted like he was making a call. Suddenly and without warning, Joe pulled out a gun and opened fire. One shot pierced through Matt's mouth, another straight through the heart, another in the chest, another in the groin area, and a fifth shot in his leg. Without a word, Matt was killed in cold blood.

Joe and his friend quickly ran back to the car that was waiting beside the convenience store. The five sped away and went back to the motel. It took the police several weeks to find out who was

* Douglas B. Ammar is currently the Executive Director of the Georgia Justice Project (the "GJP"), where he has practiced criminal defense for the past ten years. The GJP is a nonprofit organization whose mission is to provide justice for the indigent criminally accused, and to help them become productive citizens. The author wishes to thank J.C. Hillis for his generous time and energy in this effort.

responsible for the killing. A confidential tip led the police to all five involved in the shooting — including Lynn.

In their statements to the police, everyone but Lynn gave varying and inconsistent stories. Eventually, they were all charged with the murder.

Fortunately, the prosecutor was fair and understanding. He did not believe that anyone but the trigger-man (Joe) was guilty of murder. Therefore, Lynn got a break. After many meetings with, and memos to, the prosecutor, Lynn was allowed to plead guilty to conspiracy to commit aggravated assault. Her sentence was 120 days in a detention center with five years of probation to follow.

During the months leading up to trial, we worked with Lynn, encouraging her to address her grief. She began by writing a letter to Matt's family. Lynn sympathized with their pain. The letter eventually resulted in a meeting with Matt's father. This occurred outside the courtroom after Lynn and three other co-defendants were sentenced. Four of us stood in a circle. Lynn and her mother cried as they expressed their sorrow over the senseless loss of life. Her head lowered as she sobbed and begged forgiveness. Matt's father wept as he listened. He said he was glad that she contacted him and that she was the only defendant to approach him. He could not forgive her yet, he said. He was hurt and angry. But some day, he said, he hoped he could.

I wept, too, as the four of us stood in a circle, sharing the grief and the pain. This is what healing is about. These are the moments when a law practice is redeemed — possibly even transformed. Moments of healing like this is where we might all begin to be redeemed — by willingly entering the circle of pain and suffering, by being exposed to and embracing the suffering of another.

Forgiveness is not easy, and sometimes not possible, especially in criminal cases. Even when intentionally fostered, there is very little room for forgiveness in the court system. There is rawness in this kind of opportunity, a brushing up against difficult things. Some suggest it is a journey we should not be too quick to encourage others to take. Others think it is the only journey that offers us hope.

I believe I was asked to be involved with *The Role of Forgiveness in the Law* Symposium at Fordham University School of Law because of my work with the GJP. The GJP is a legal nonprofit organization in Atlanta, Georgia. The GJP's unique approach to criminal defense and rehabilitation is based on a relationship ethic,

a community-oriented ethic. I have been connected with GJP since 1986, a few months after John Pickens, a refugee from the corporate practice of law, founded the project. It is our work — working with the poor and the homeless, it is in our “street lawyering” approach, and it is our long-term and innovative involvement with those in the criminal justice system — that informs my view on forgiveness.

II. ON NOT KNOWING HOW TO FORGIVE: A RESPONSE TO JEFFRIE MURPHY¹

In cases of criminal wrongdoing, the propriety of forgiveness hinges upon at least three fundamental considerations: 1) the victim's selfhood; 2) the moral significance of forgiveness for the offender; and 3) the wellbeing of the community. It is only by respecting each of these concerns that the moral value of forgiveness becomes most apparent. Yet, it is not always apparent. On the one hand, an act of forgiveness may come only after much inner turmoil and anguish, as when a particularly heinous crime has been committed and the victim is left to put the broken pieces back together. Forgiveness in such cases usually arises from a steadfast religious faith or an enduring moral commitment. On the other hand, forgiveness is invariably wedded to particular circumstances: our street, that house, his anger, that knife, her body, your friend, his blood. Amid such circumstances and emotions, forgiveness may or may not see the light of day. Yet, the interruption of people's lives by a criminal offense and the possibility of living beyond it make forgiveness an issue. Forgiveness is foremost, though not exclusively, an issue for the victim, and it is for this reason that one must consider the victim's selfhood.

What is at stake when someone is the victim of a crime? In addition to her relations both to the offender and to the larger community, the victim's relation to herself has been called into question. In a sense, the criminal has challenged the notion that the victim is a person of equal worth and value. In the aftermath of the crime, the victim may feel compelled to reassert her own sense of identity and self-worth. Complicating things, it seems, is the possibility of forgiveness. For if the victim should choose to forgive the offender, the “language” through which she expresses forgiveness is bound-

1. Parts II and III are co-authored by Patrick R. Leland, who recently finished his Masters of Theological Studies at Emory University in Atlanta. Patrick has been a volunteer and intern at the GJP for about a year and one-half. He has been instrumental in starting a juvenile program at GJP.

up with the language through which she reasserts her own value as a human being, and the danger arises that the former message might very well drown out the latter. In a culture historically influenced by exhortations to Christian charity, knowing when *not* to forgive has become something of a problem for some people.

A. Murphy's Focus on the Victim's Selfhood

Recent attempts to resolve this dilemma find expression in Jeffrie Murphy's work on forgiveness as a qualified moral virtue.² For our purposes, Murphy's work is significant in that it articulates a criterion for adjudicating the appropriateness of forgiveness *and* that it does so with direct reference to the victim's selfhood. Specifically, Murphy has articulated an ethic of forgiveness, or, depending upon the circumstances, an ethic of resentment, based upon the primary value of self-respect.³ For Murphy, an individual has a moral obligation to respect all individuals (including oneself) as ends in themselves. Failure to respect another human being properly runs contrary to one's moral duty. Failure to respect oneself is no less of a moral offense. Thus, the victim may bestow forgiveness upon an offender so long as doing so does not encroach upon the victim's sense of self-respect. Forgiveness and reasserting one's self-worth are not immediately compatible. In such cases, Murphy argues for the moral value of resentment as a means of restoring the equilibrium.⁴

The driving force behind Murphy's proposal is a formal ethic, the fundamental structure of which was articulated in the philosophy of Immanuel Kant. For Kant, all human beings in possession of a will and capable of reason are subject to the *moral law*.⁵ This law is universally binding for all rational beings and presents itself to us as soon as we become conscious of our freedom to act. Moral obligation is thus determined by the instrument of universal reason, as exemplified in the oft-cited formula of Kant's categorical imperative: "conduct yourself in such a way that the maxim of your will could always simultaneously function as the giving of a universal law."⁶ Phrased somewhat differently, when considering the moral

2. See Jeffrie G. Murphy, *Forgiveness and Resentment*, in JEFFRIE G. MURPHY & JEAN HAMPTON, *FORGIVENESS AND MERCY* 14 (1988).

3. See *id.* at 14-34.

4. See *id.*

5. See IMMANUEL KANT, *KRITIK DER PRAKTISCHEN VERNUNFT* 32 (Karl Vorländer ed., 1990) [hereinafter *KANT, KRITIK*]; IMMANUEL KANT, *CRITIQUE OF PRACTICAL REASON* 3 (Mary Gregor trans., 1997).

6. KANT, *KRITIK*, *supra* note 5, at 30.

propriety of your behavior, pursue only those actions that you could honestly desire to become universal human conduct. As suggested earlier, this ethical construal of how one should conduct oneself is fundamentally formal in the sense that it abstracts from all particularities and relies solely on the rational form of ethical behavior — its sole criterion being that it rationally conforms to the universal law.

Murphy's rationale for deciding when the victim should and should not forgive her offender emanates from the scheme moral decision-making espoused by Kant. For Murphy, as with Kant, all rational persons have a responsibility to respect the rules of morality. Among these rules exists the obligation to respect all persons as ends in themselves. When a crime is committed against a person, the victim is denigrated and rendered less than human. As a rational being, the victim is morally obligated in the first instance to respect, or in this case reassert, her own self-worth. For Murphy, this may take the form of moral indignation, or resentment, directed at the offender. Furthermore, it is only after she has fulfilled her obligation to the moral law that the victim may consider bestowing forgiveness upon the criminal.

B. Limitations of Murphy's Proposal

Jeffrie Murphy's proposal is admirable on several counts. Foremost, perhaps, is that it provides a rational recourse — if not a source of accountability — for persons who might otherwise forgive too much; or, in other words, persons whose commitment to the virtue of charity inadvertently sustains the very denigration of selfhood which made the criminal act offensive in the first place. Yet, the manner in which Murphy suggests that we think of forgiveness and resentment has some serious weaknesses — limitations that are arguably inherent in any Kantian ethic. We will briefly discuss two of these difficulties.

One limitation is that the Kantian character of Murphy's proposal lends itself to a variant of narcissism. If one carefully examines the moral deliberations of the victim from within the context of rational moral decision-making, which Murphy advocates, one finds the victim morally obligated to enter a narcissistic vacuum. In this vacuum all particularities are excluded leaving only the individual and the rational moral law.

It is only from within this vacuum, that is, solely by means of the universal moral law, that the victim can arrive at an ethical decision as to whether she should forgive, hate or resent the person who

wronged her. When the victim asks herself, "Should I forgive him?," the voice she hears is not that of her friends or community, but rather the impersonal voice of the universal law, the voice of reason, the voice for everyone, every time.⁷ It is not someone outside of the victim's head who proclaims the long-awaited answer. Rather, the voice emanates from within; with logical precision the voice arises from the very core of her identity.⁸ When the victim asks, "Should I forgive him?," the only voice she can hear is her own. In a consumer society saturated with narcissism, espousing an ethic that arguably reifies some of our worst tendencies seems questionable, to say the least.

A second limitation, and one that is more pertinent to the interests of this essay, consists in the fact that Murphy's account of forgiveness and moral resentment strikes us as decidedly *non-relational*. In the moment of moral deliberation, when the victim might entertain the possibility of forgiveness, the fundamental axis upon which everything moves is not the victim's relationship to her community, much less her relationship to the offender, but rather the victim's exclusive obligation to fulfill the moral law. As suggested earlier, it is only when the moral equilibrium that regards all persons as ends in themselves is restored and, with that, the victim's own sense of self-worth, that the victim may *morally* forgive the criminal. Of course, this may yield the positive result of affirming the victim's selfhood. Yet, even this is questionable.⁹ More problematic though is the fact that, for Murphy, one's moral obligation to a rationally-mediated universal law presumably takes precedence over all particular human relationships.

As is the case in the Kantian schema, where one abstracts from the particularities of a situation in order to apprehend rationally the formal principle of right conduct, the victim's primary response to the criminal is formulated from within a vacuum where only the universal moral law is present. All particularities are discounted, regardless of whether the offender is a fourteen-year-old child, the old man across the street, a lover from years past, or anyone else. In this scenario, morally speaking, you and I never relate to each other directly. Rather, my relationship to you is always mediated

7. See Jacques-Alain Miller et al., *A Discussion of Lacan's "Kant with Sade,"* in *READING SEMINARS I AND II: LACAN'S RETURN TO FREUD 222* (Richard Feldstein et al. eds., 1996).

8. See *id.* at 230.

9. Indeed, is there not something existentially dissatisfying about deriving one's sense of self-worth — even if only temporarily — from a moral obligation?

by the imperative that my conduct be universally valid for all persons in *my* (and never *our*) situation. Thus, you and I, and all human beings are atomized, separated, as it were, into our cubicles of individual moral responsibility. Later, when we consider the status of the victim in the criminal justice system, the significance of this non-relational character will become more apparent.

III. THE CRIMINAL LAW: HISTORY AND ISSUES

A. The Role of History

The leaders in the restorative justice movement¹⁰ urge us to look to the past. There was a major shift in criminal law approximately one thousand years ago. When William the Conqueror successfully invaded England, though he was king, he found that his hold over the people and nobility was lacking. In looking for a way to get the nobility to pay him respect, he devised an innovative strategy. Starting at first with violent "crimes," he and his son following him (King Henry I) made the offender pay the State (either with money or other penalties).¹¹ William injected the State in the resolution of disputes among citizens.

Prior to this change in English law, even violent offenses had avenues of making the victim whole (for example, the State reinforced a community ethic by making the offender compensate the victim).¹² This tradition of the State requiring healing, compensation or restitution was present in the laws of many cultures.¹³ The

10. Howard Zehr, considered by many to be the contemporary father of restorative justice, summarized restorative justice as: "Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance." HOWARD ZEHR, *CHANGING LENSES* 181 (1973). He compares this with a retributive justice model, which he defines as: "Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules." *Id.*

11. See DANIEL W. VAN NESS, *CRIME AND ITS VICTIMS* 66-68 (1986).

12. See *id.* at 64-66.

13. See *id.* For example, in Mesopotamia around 1700 B.C., the code of Eshnunna, allocated specific levels of compensation when victims lost noses, eyes, ears or teeth. In the *Iliad*, Homer refers to victim restitution — even paying a family after their brother was murdered. Roman law (under the Law of the Twelve Tables in approximately 449 B.C.) mandated that a thief pay back the victim as many as four times the amount stolen, depending on the circumstances and discovery of the theft. Restitution, even in violent offenses, was allowed in Sumeria under the code of Ur-Nammu in about 2050 B.C. *Lex Salica*, a German tribal law during the late 400s A.D., provided for restitution as the remedy in "crimes" from thefts to murder cases. See *id.* at 64-65.

emphasis was on healing and reconciliation between the victim and the offender (for example, if you stole your neighbor's horse or if you physically assaulted and injured him, you made your neighbor whole). After the change in English law, harming your neighbor is a crime against the State.

Thus, English criminal law took a major shift with William the Conqueror. Essentially, what the new king did was to replace the victim with the State. Crimes were now considered against the State, and the offender owed, first and foremost, the State. Today, it is accepted almost without question that when someone breaks the law (criminal law) his or her primary obligation is to the State, and not to restore the broken relationship with the victim.

B. The Status of the Victim in Murphy's Proposal

Murphy's emphasis is on the victim's obligation to the moral law. He seems to want to restore a damaged relationship, but the "relationship" that he primarily emphasizes is that between the victim and the moral law. This is not a human relationship. Keeping (or restoring) the abstract equilibrium is his primary concern.

One could argue that Murphy and those who offer theoretical underpinnings to support a thousand-year-old displacement of power and relationships are supporting a thousand-year-old mistake. Perhaps they are political philosophers offering argument for why our society gives so much power to the State. It strains reason to understand why an offender owes the State anything for stealing his neighbor's goat (or Lexus). These are legitimate complexities.

Murphy's concern for relationships is well placed. Yet, Murphy is inadvertently serving the same role as William the Conqueror by offering a rationale that keeps the victim removed from the more true and vital relationship in a criminal case. One could argue that he is replacing William's state with the moral law. Both paths lead away from true restoration, however.

The primary relationship, contrary to Murphy's view, is one between the victim and the offender, not the victim and the moral law, nor the offender and the State. Murphy's approach is piecemeal. Also, Murphy perpetuates the victim's status as victim — that of not having power. To accept Murphy's arguments, opportunities for the victim to be anything other than a wounded, and possibly vocal, recipient of the offender's bad conduct are slight.¹⁴ He

14. See Jeffrie G. Murphy, *Getting Even: the Role of the Victim, in* RETRIBUTION RECONSIDERED: MORE ESSAYS IN THE PHILOSOPHY OF LAW 61 (1992) (almost argu-

is reinforcing the victim status and giving them neither the tools nor the opportunity to move beyond it.

C. Restorative Hope

The current state of our criminal justice system leaves more victims than it finds. Victims lie in its wake by increasing what is considered a crime, by increasing mandatory sentences, by exploding prison populations, by eroding our civil liberties (which is often justified to the public as a price for the war on drugs), and by not offering the chance for healing and reconciliation. In our experience, victims are rarely involved in the resolution of cases.¹⁵ In fact, some trends and practices, such as “no drop” policies¹⁶, remind us who has the power and who does not. It is no surprise that the State wins these metaphysical tug-of-war matches. Yet, restorative justice offers the possibility of hope.

Roughly speaking, restorative justice emphasizes that the resolution of a criminal case should lie in a dialog-based process between the community, the victim, and the offender. Restorative justice has profoundly affected the way we in our office practice criminal defense. It properly pulls back the power of the State and re-allocates it between the victim and the offender within the context of the larger community. It offers the chance for healing.

D. Hope's Limitations

Though an obvious proponent of the restorative justice movement, I also am witness to its limitations. I practice criminal defense law in the Deep South. To the best of my knowledge, most of the successful Victim Offender Reconciliation Programs (“VORPs”) and other restorative justice practices do not take place in the South. Instead, they seem to do well (or at least have a chance of survival) in communities that are more homogenous than the South. Perhaps in those communities it is easier for the victim to recognize that they are members of a common community.

ing for the “Victims’ Rights Movement” — advocating for a larger role in the criminal justice system).

15. For instance, in one case the victim contacted the GJP in referring the client to our office. He wanted to be involved in the outcome of the case. In discussing and subsequently resolving the case with the district attorney, the victim was intentionally left totally out of the process by the district attorney, even after I tried to have the victim included.

16. See Martha Minow, *Between Vengeance and Forgiveness: Feminist Responses to Violent Injustice*, 32 NEW ENG. L. REV. 967, 977 (1998) (“[N]o-drop policies deprive or constrict the victim’s choices and refuse deference to her own assessment . . .”).

In the South, the criminal justice system operates also as a social control device. With the highest incarceration rates in the country (and in the United States, which is second in the world), the criminal justice system acts to oppress African-Americans, the poor, and other minorities. Howard Zehr, one of the present-day fathers of restorative justice, told me a few years ago that attempts to locate a VORP in Atlanta, the self-proclaimed "human rights capital of the world," failed. The racial divide is a massive gorge to cross and perhaps is particularly daunting when one side is harmed.

My experience in employing the above principles of healing reinforces my view. We are often successful at some form of reconciliation — most often when the perpetrator and the victim are of the same race. While attending *The Role of Forgiveness in the Law* Symposium at Fordham University School of Law, I was informed of a failed attempt to bring together our juvenile African-American client and his white victim of armed robbery. On the telephone, the wife of the victim ranted about race issues and obviously saw our client not as a fifteen-year-old child, but as a black man. It is important here to acknowledge limitations. I believe these are not limitations in or about the restorative justice process per se, but instead are issues of our culture, our prejudices, and our human limitations, which infect all that we do.

IV. THE GEORGIA JUSTICE PROJECT: SOME REFLECTIONS FROM A RELATIONAL PRACTICE

A. The GJP: History & Mission

Sixteen years ago, as John Pickens walked among the poor and homeless on his way home one night, his two worlds were in sharp contrast. As a person of faith, he had been spending years volunteering in soup kitchens and shelters. As a high-powered corporate litigator, he was accustomed to the plush offices and exalted salaries. How could one reality claim to be the most important (his faith), yet the other demand all of his time and energy? It was during that walk, as he saw the two worlds juxtaposed, when he decided to address personally the paradox of privilege versus poverty.

In April 1986, he entered the paradox of these disparate images by founding the GJP in Atlanta, Georgia. There are few places in the country where one can integrate lawyering and social service simultaneously. The GJP combines both in a unique way to offer

clients and staff an opportunity to merge these two worlds that often remain separate and isolated.

Since its beginning, the GJP has been providing crucial services to the homeless and indigent populations of metropolitan Atlanta through an innovation that breaks the destructive cycle of crime and incarceration. The GJP's mission is to do justice for the indigent criminally accused, and take a holistic approach to assist them in establishing crime-free lives as productive citizens. People are initially referred to the GJP because they have a criminal case pending and cannot afford to hire an attorney. They become a GJP client if they are committed to making a life change and becoming a productive member of society.

Our relationship with our clients does not end when the case is over. If our clients go to prison, we continue to visit them. We advocate for their needs and their release. Once released from prison or jail, we offer a variety of social services such as individual and group counseling, GED and literacy classes, monthly support dinners, and employment with our business New Horizon Landscaping.

Transformation, both theirs and ours, begins when we meet our clients. During the initial stage (legal representation), we establish the foundation of trust upon which all our programs are based. By providing quality and caring representation to the indigent, we are reversing the way legal services have been traditionally available to the poor. We make sure our representation is both thorough and personal and that the client is involved in all stages of the representation, not just at the courthouse on the day of trial.

The GJP is supported solely by private sources. We do not seek government funding. Because we are independent of the court system, we have total control over our caseload. Thus, we maintain an independent status with regard to the court system.¹⁷

B. Relationships are the Key to the GJP's Approach

"When a poor person is accused of a crime, most of society sees this as the end; Georgia Justice Project sees it as a beginning."

17. This also gives me a unique perspective in this discussion — especially given that everyone on my panel was (or is) employed by either the Justice Department or a State's prosecutor's office. As the only criminal defense lawyer (to the best of my knowledge) at the Symposium, it is incumbent upon me to address one point — of standing up for the outcast, of being united with those in our communities that are ostracized. This ethic is not only part of many religious traditions (including mine — Christian), it is also (I hope) part of the American legal culture.

Martha Barnett, President-elect, American Bar Association

The most unique and most powerful aspect of our work is that it is relationship driven. At GJP, we seek long lasting, redemptive relationships with our clients. It is not uncommon for our staff to spend time every week with clients whose cases have been over for years. Some of this time might be structured (e.g. counseling, working with our landscaping company). Some of the time is informal — our clients know that there are folks who care about them. One of our supporters describes the work of GJP as forming a second family for our clients. The attorney-client relationship is only the beginning of the relationship, not the end. It does not act as the sole temporal boundary of our relationship.

Without a relationship, without working toward it, without including it in the paradigm of the criminal justice system, there cannot be any forgiveness. There needs to be space, creating opportunity for relationships to begin and grow. Indeed, it is in this creating of space, that there is need for reform and change — from the big picture to the small — that creates the possibility of forgiveness and reconciliation.

In the end, it is the status of the relationship (whether one exists, whether such a relationship can be fostered) that is at the heart of forgiveness. Relationship is at the core of restorative justice. For forgiveness to be a possibility in the criminal justice system, the issue of relationship is central.

C. Forgiveness

To address forgiveness, to suggest that it has any place at all in the criminal justice system, is to imply that there is, or could be, or even should be a relationship. What relationship? The relationship is between the offender and the victim. It suggests some level of relationship beyond the current criminal justice configuration.

To suggest, or even to advocate for, the possibility of forgiveness proposes giving the victim more of a role — not less — in the criminal justice system. Before parties can reach the issue of forgiveness, there first must be a window of opportunity and space for two parties to interact.

Should the victim and offender, through some form of mediation or reconciliation process, not be able to reach forgiveness, even that conclusion is one that can empower the victim. The result is a process that creates more options, and not less, for the victim (and possibly the offender). Most systems today resign the victim to the dis-empowered role of witness for the prosecution. Reconciliation,

restitution, even “venting” of one’s anger, are all important opportunities that allow healing. Unfortunately, all of these are the exception and not the rule.

Overall, I suggest that opening the process to include a wider set of options benefits everyone. The only winner in keeping the system is the State, which continues to retain the power.¹⁸ Empowering the victim and communities is a healthier and more holistic model.

D. The Practice

The GJP’s practice is representing the poor in Atlanta’s inner city. It is this and our relationship ethic that informs our perspective on forgiveness.¹⁹ Having been favorably influenced by restorative justice principles, our office seeks, where appropriate, to work toward healing not just with our clients but with the victim too.

18. I found it interesting that in discussing these issues at the symposium, many folks voiced: But what about the State? What about the criminal justice system? Here is where I ask those questioners to expand their horizons. Are they so concerned about the State losing power or position? I suggest that we as lawyers, as concerned citizens, ought to be very careful and concerned when the State gains more power over the citizenry. I also suggest that the State will always take care of itself. Indeed, the more power we, as a society, give to the State, the more that power is most often used against the weakest citizens. In our current criminal justice system, nationally 80-90% of those in its grasp are poor. As middle class folks, giving more police and incarceration power to the State will probably have little impact on our lives. Most assuredly, it will and does adversely impact the poor, the minority, the powerless.

19. If we began to see everyone in our community as part of our community, then we might become invested in everyone’s condition. To the extent that our community is better, everyone benefits. If anyone in the community improves, then the whole community improves. Even those who are accused of (and those who commit) crimes are part of our community. Most non-violent offenders are getting out of prison and coming back . . . to *our* community. There are many issues related to our soaring prison population (such as the increased incarceration rates for non-violent offenders). Regardless, we are inextricably bound to each other.

Some lines in our society are easier to draw than others. Though I doubt it is a recent phenomenon, the “us-them” continuum has been recently reinforced. One of the most pervasive ways this occurs in our culture is the criminal justice system. Perhaps with the fall of the Iron Curtain and Eastern European communism, America needed a new common enemy. The criminally accused and convicted seem to be the largest recipients of our collective wrath. Indeed, in our growing rush to judgement, we often lose our humanity by denying the humanity of the offender. We lose our perspective by seeing only the criminal as someone other than a fellow member of our community. Saddest of all, our society has continually given more power to the State to keep “those people” away from “us.” Prison populations are at an all time high — highest in the Western world — and constitutional liberties are on the ropes. Might we be ready to turn a corner out of this dark period of our recent history?

In cases where we believe it appropriate, this first and foremost translates into not sacrificing our client's legal rights in the guilt-innocence phase — we pursue restitution and forgiveness. We often contact and include the victim in our case plan, even in violent cases. It is not uncommon for the victim to become an advocate for our client, sometimes contacting the prosecutor independently and coming to court at our request. My experience has been that we are far more likely to contact and work with the victim than the prosecution. Too often the victim is seen merely as “just another witness” by the prosecutor.

On a number of occasions, the victim has contacted us. Knowing of our social service program and long-term approach, most of these victims contacted us with the hope that we can work with the offender to address the underlying issues that led to the offense.

To most criminal defense lawyers, the idea of asking forgiveness is tantamount to a confession. Indeed, following conventional wisdom, what lawyer sabotages his or her own case? I have rarely seen forgiveness or apology employed by a criminal defense lawyer either tactically or for moral considerations. The current configuration of evidence law and ethical standards governing the profession do not allow much room for having a client “confess” by apologizing or asking forgiveness. It is understandable why so many criminal defense lawyers would not encourage their clients to seek forgiveness. On the other hand, too many practitioners are stuck on seeing only one fight — the guilt or innocence issue. So many lawyers forget that seeking forgiveness can have an impact on the second phase of a criminal case. Perhaps because GJP does so much alternative sentencing with our regular caseload, we are more prone to incorporate “radical” strategies.

There is plenty of room for the criminal defense bar to examine the practice and look for “forgiveness openings.” Just as alternative dispute resolution has revolutionized the practice in the civil arena, there is an opportunity for substantial change on the criminal side. Though there are structural limitations, some of that change needs to come from those most closely allied with the defendant.

V. TED'S STORY: MORE THAN JUST CRIME AND PUNISHMENT

The Judge looked at Ted. "Do you have anything to say?"

"Yes," Ted responded, "I'd like to say something to the victim." The courtroom grew silent. Ted turned to face the victim. Un-rehearsed and unplanned, Ted said:

I had many months in jail to think about what I did, about who I was and about choices I made I am a better person now And I am sorry about what I did I was wrong. And I ask you to forgive me.

The courtroom was still holding its breath. Everyone was stunned, including us.

It started on a cool spring morning, as church was ending, someone tapped me on the shoulder. "Doug, my grandson is in trouble. He's in jail. They say he robbed some other boys of their jackets. Could you help him?" My church, a small Episcopal outreach in Atlanta's inner city, is composed of all kinds of folks: black and white, rich and poor. Although GJP turns down ninety percent of those who ask for help, I knew I would have a hard time saying no to this concerned and troubled grandmother. "We'll look into it," I said.

Ted was a likeable eighteen-year-old. Though he dropped out of high school, he was smart and well spoken. While in jail, he earned his GED. Ted impressed everyone who talked with him. He was a nice kid, but one who made some bad choices. He spent over six months in jail before we got him a bond. When he was released he came to work on NHL (New Horizon Landscaping — our company operated to employ clients). In addition, he attended individual and group counseling sessions with our staff.

The case didn't look good. He was charged with two counts of armed robbery. There were two eyewitnesses. Despite this, he vigorously proclaimed his innocence. GJP's custom is to believe our clients unless we can prove otherwise. It was not long into our investigation that we realized, despite his claims, Ted would be convicted if we went to trial. We confronted Ted and he told the truth - that he robbed two teenagers of their jackets. It was then that I asked him to write a letter - a letter asking forgiveness of the victims.

In the world of criminal defense, writing this kind of letter is lunacy - a sure way to get your client sent "down the road." However, it could not get any worse. He was looking at twenty years, at least. GJP has a different philosophy. We are about healing our clients and the community.

For the next few weeks, Ted continued to work on NHL. He was making progress. He talked about his past, his mistakes, and his pain. He began composing a letter to the kids he had robbed. The court date came faster than we expected. Due in large part to a district attorney ("D.A.") who had heard of GJP's program and our success with other clients, a miraculous plea bargain was negotiated - four-month boot camp and eight years of first offender probation.

The morning of Ted's public act of forgiveness, the courtroom was crowded. Lawyers, clients, and court staff were running around. We stopped by the victim's house and brought him to court. The D.A. presented his case. Then, GJP told the court about Ted's work with us.

The judge accepted the sentencing alternative. As of this writing, Ted is still in boot camp — though he should be out in a month or so. In a letter we recently received, he wrote:

*I have learned to take responsibility for my actions
I now see where I was making mistakes in my life I
have learned to accept the past and try to prepare myself
for the future I miss the concern, help, and love that
GJP has shown me since I've been a client.*

Ted's change would not have been possible without GJP's multifaceted approach. We fought for him. We employed him when he was released on bond. We counseled him and confronted him about his conduct. We encouraged him to reconcile with his victim — to heal the division that he created. Indeed, it is that healing, that joining of folks, joining of responsibility and conduct, which has been integral to Ted's rehabilitation.

GJP's approach is unique — not just in our services, but also in our approach with our clients. We believe in them and we encourage them to do things that other lawyers might consider imprudent. Ted is not out of the woods yet, but he has made progress. We will be there for him when he is released, and we will be along side him as his journey continues.

VI. CLOSING THOUGHTS

Forgiveness, at least creating some paths for its possibility, is worthwhile for the whole community because it allows reconciliation and healing — not just for the offender but for the victim and the community in general. Healing is the goal, the end result. Let us not too soon foreclose options that lead us toward this goal.