

November 2022

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### Recommended Citation

Chris Shanahan, *Retribution: The True Cost*, 57 IDAHO L. REV. (2022).

Available at: <https://digitalcommons.law.uidaho.edu/idaho-law-review/vol57/iss3/4>

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# RETRIBUTION: THE TRUE COST

CHRIS SHANAHAN

I

If you are an Idahoan, I've seen things that you need to know about. My name is Chris, and as one of over 8,000 people currently serving a prison sentence in our state, I've seen behind the concrete curtain of incarceration and have terrible news: thousands of lives and hundreds of millions of hard earned Idaho tax dollars are pouring into a criminal justice system that is actually hurting you.

Before I show you how, I need to acknowledge that each of us with a docket and prison number are sadly connected to even more, such as crime statistics. We are people who have caused a wide range of damage to our victims, our communities, our own families and even ourselves. We are people who have caused the state of Idaho to intervene in the best interest of all affected and who are now at the mercy of the very system we forced into action. The question in cases such as ours isn't whether something needs to be done, but rather, what.

Which brings us back to the point I feel compelled to make: the Idaho criminal justice system intended to help and serve us all is actually causing even more damage. Using the lens of my personal experience—over twenty-five years living inside our criminal justice system—I'll show you a flaw in the formula we have been using for decades to sentence those convicted of crimes in Idaho. A flaw that is responsible for much of the ineffectiveness, inefficiency and overburdening of our overpriced and underperforming criminal legal system. I'll show you a tragic, unnecessary and unintended miscalculation in priorities that overvalues the sentencing aim of retribution to our great detriment, while significantly undervaluing the aims of rehabilitation and restoration that could be emphasized to our great benefit. After I have, I hope you will see the same thing I do: that there is a better way to ensure the safety of Idahoans and, most important of all, that you can play a fundamental role in demanding better of our criminal legal system.

Idaho Code §19-2513, "Unified Sentence," states "the primary consideration of sentencing is the good order and protection of society" and that "though humanitarian considerations and rehabilitation are important to our society, they cannot be allowed to control or defeat punishment, or to force courts to ignore or subordinate other factors to the detriment of society." It further directs that "when imposing sentence in a criminal proceeding the trial court applies the following criteria: (1) the protection of society (2) deterrence to the defendant and others (3) the possibility of rehabilitation and (4) punishment or retribution." Though, as we have seen, not necessarily in that order.

"Though humanitarian considerations and rehabilitation are important to our society, they cannot be allowed to control or defeat punishment . . . ." That's the part that really catches my attention. Why is this, exactly? Especially considering that many other countries, like Norway—widely acknowledged as having one of the most successful correctional systems in the world—make rehabilitation their primary focus. Norway denies liberty only as a last resort and inflicts incarceration only as long as absolutely necessary (and under the least restrictive means possible) to protect the public and ensure that rehabilitation takes place.

Criminologist Bob Cameron sheds light on the reasoning behind such a

sentencing philosophy, explaining that in America, rehabilitation remains the most controversial of sentencing goals, which also include retribution, incapacitation, deterrence and restoration. This, he tells us, is primarily because retributive punishment so strongly appeals to a societal sense of justice and fair play. “Any talk of prioritizing rehabilitation ahead of retribution very typically generates complaints about how doing so will endanger public safety, ignore the needs of crime victims, and—most damning of all—coddle criminals. Never mind that certain forms of rehabilitation have been shown through research to reduce risk of future offending, we want our pound of flesh first and foremost.”<sup>1</sup>

But, what does such an approach to sentencing actually look like? Sharing personal experiences and observations, I'll show you why such attitudes towards retribution don't best achieve the primary objective of ensuring the good order and protection of society.

## II

"Begin with the end in mind." – Stephen R. Covey

As you might remember or already know, 1995 fell during the peak of the “tough on juvenile crime” sentencing era. Everyone from criminal justice experts to First Lady Hillary Clinton were chicken littling about the coming invasion of juvenile super predators, and while it never arrived, I had just committed a terrible crime that only fanned the flames of such hysteria. I wasn't aware of the political climate at the time, as I was fifteen years old behind the sliding steel door of a suicide cell in the decrepit and now decommissioned county jail located in my small hometown of Rigby, Idaho. All I was aware of was that there was no window, TV or radio in my small two-man cell and I felt like I was losing my mind those first few weeks. I left my cell only twice a week for shackled, cuffed, and belly-chained fifteen-minute trips to a library or visiting room that was the size of a small closet—where I would browse the tiny library shelves' old books or cry with my family through a small window the size of two decks of playing cards. It took me a few months to discover that reading, sleeping, eating and sleeping some more were very practical means of keeping what remained of my sanity. I didn't always know whether it was AM or PM when I asked a jailor the time, but could deduce it by the arrival or lack of a meal showing up. Time didn't matter much other than when they would wake me from my fog for a surprise consultation with my attorney. Nothing like making life altering decisions in a trauma, medication and sleep induced daze! These coping skills served me well over the next year and a half as I was processed through the legal system, though I never did find any other way to lower the temperature of my shower's scalding water besides filling my small plastic cup and letting it cool before splashing it on myself. The shower knob was in another room.

In return for the State agreeing not to pursue the death penalty in my case, as well as granting a few other concessions, I pleaded guilty and was sentenced in 1997. Not until decades later would I discover, by accident, that the United States

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1. Bob Cameron, *Why Does Norway Have a 21-Year Maximum Prison Sentence?*, SLATE (May 7, 2013), <https://slate.com/human-interest/2013/05/why-does-norway-have-a-21-year-maximum-prison-sentence.html>.

Supreme Court had already indicated by 1988, in *Thompson v. Oklahoma*,<sup>2</sup> that the death penalty cannot be imposed on children younger than 16 when they committed a capital offense. When I pleaded guilty, I did not have the guidance of either now-established science or United States Supreme Court precedent based in that science, which has since established many factors further distinguishing juveniles from adults for purposes of sentencing, including but not limited to:<sup>3</sup>

- Immaturity, impetuosity, less capacity to consider future consequences, and related characteristics that impair juveniles' ability to make decisions;
- A family and home environment from which a child cannot extricate himself or herself;
- The circumstances of the offense, including the role the youth played and the influence of peer pressure;
- Impaired legal competency that puts juveniles at a disadvantage in dealing with police or participating in legal proceedings
- The youth's potential for rehabilitation

The judge in my case explained that my sentence was primarily intended to serve the still accepted sentencing aims of societal protection, deterrence, and retribution. In light of the horrible crime I committed, it was clear that I posed a great threat to society and needed to be removed from the community. While hopeful it was possible, my prospects for rehabilitation appeared uncertain to him and were granted the least weight of all, especially considering the nature of my crime and behavior in legal proceedings. He expressed doubt that anyone besides myself would ever truly be deterred by my sentence and explained that, even if I should prove to be sufficiently deterred, rehabilitated and safe for release one day, those factors should not be entitled to more weight than retribution.

In the minds of many jurists, applying this approach today would conflict with the line of reasoning and guidance established in multiple United States Supreme Court precedents over the last 15 years, which acknowledge and explain the reduced culpability of adolescents and greatly diminished role retribution is entitled to. But again, this was 1995. The judge sentenced me to concurrent sentences of thirty-five years fixed, life indeterminate for first degree murder and ten years fixed, life indeterminate for robbery. Having been charged, sentenced and now treated as an adult, I was transported to and housed in the Idaho Maximum Security Institution by the end of the work day. I was 17 years old.

### III

My introduction to “Max” was terrifying. Passing through double fences piled high with endless rows of razor wire, I was handed off by the Jefferson County authorities to the Idaho Department of Correction. Upon intake, IDOC Lieutenant Rentee asked me how much time I had. “Thirty-five to life, Sir,” I answered. “Damn, Boy! Thirty-five to life?! You're bound to get punked out once!” He laughed. I soon

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2. *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (plurality opinion). The Court would later rule set 18 years at the time of offense as the minimum age for capital punishment. *Roper v. Simmons*, 543 U.S. 551 (2005).

3. JAMES GARBARINO, *MILLER'S CHILDREN: WHY GIVING SECOND CHANCES MATTERS FOR ALL OF US* (2018).

learned that “punked” meant raped. Other inmates explained this to me through the vents in my cell as they told me what they planned to do to me when we were released into general population. I quickly wrote letters home telling my mom how much I loved her, fully believing that I might not survive and that these might be the last words she ever heard from me.

Placed in general population shortly after, I was shocked to watch men be suddenly and savagely beaten weekly (if not daily) by other inmates for a wide variety of reasons ranging from the crime they were incarcerated for, the tone of voice one had spoken with, a look perceived to have been given, or for simply not following one of the many unwritten (usually unknown) rules in the “convict code.” Seeing other juveniles and even adults around me being victimized in every tragic and disgusting way imaginable, I quickly learned that the only way to keep myself safe from a wide variety of dangers was to be willing to fight, to commit even more violence than that which had brought me to prison in the first place.

Early choices to ensure my own safety would keep me in Max for the next four years, where I celebrated my 18th and eventually 21st birthdays. Normal coming of age lessons were replaced with being taught how to burn plastic razors to make tattoo ink, hide drugs and tobacco to avoid detection, brew prison wine in secret, and inflict maximum physical and psychological damage on an enemy as ruthlessly as possible. Acceptance of this way of life was mandatory for ensuring social standing, which itself was essential for maintaining personal safety. I should have been voting, going away to college or the military, even visiting the bar for a first legal drink. Instead, I found myself being schooled in the way of the convict and indoctrinated with the skills and philosophy of the only world I would know for a very long time. One more “fish” dropped into the shark tank to become predator or prey.

#### IV

My childhood had mutated into a sentence so long and dark I couldn’t see a pinprick of light beyond it. It didn’t take long to realize the only bright points remaining in my life were the few people still remaining by my side—the very family I had taken for granted and run away from. Having learned the ins and outs of existing in prison those first few years and managing to dig my hole even deeper—earning multiple trips to the prison inside of prison called segregation (and ultimately, a seven-month stay in administrative segregation)—an unintended side effect was that I finally had the time, solitude and safety to think about more than mere survival. In the quiet of my isolation, I could hear the worry in my family’s voices when we talked during short, but expensive phone calls. I could see the pain on their faces when they were able to make the four hour one-way drive to visit me for a few hours, once again through glass. For the first time, comprehension of the immense damage I had caused and was continuing to cause began to sink in. My family’s anguish sparked thoughts about the many others I had hurt and what they might be feeling and experiencing as a result. Witnessing my actions reflected in their heartbreak inspired the first steps on the journey of redemption that continues to this day.

Still in segregation, also known as “The Hole,” those early steps and the hope of meeting my baby sister, Micala, for the first time, who had been born while I was

in county jail, led me to the decision to refuse participating in an organized group disruption against prison staff. The inmates involved followed through that day and were eventually subdued with large amounts of pepper spray and physical force. For myself, what would have been a difficult choice even a year before under intense social pressure and fear of reprisal was now relatively easy to make with the benefit of a few more years of age and experience. My hope and new direction led me choice by choice, class by class, out of Max and eventually to a medium security facility called the Idaho Correctional Center, where I finally achieved my years long goal and met my baby sister. We shared a soda, laughed and sang the Barney song together. Those are the sum total of my few memories from what proved to be our too short time together, her mother not allowing my dad to bring her into the prison visiting room anymore. I was devastated, but I understood. Prison is no place for a child.

Riddled with the same drugs, violence, and prison politics of Max (only to a lesser degree), ICC nonetheless offered a world of increased freedom and opportunities. I could have a real plastic pen, not just flimsy surgical tubing housing an ink cartridge like the security pens in Max. I could attend educational classes like basic computer literacy and vocational training, work a variety of institutional jobs and even participate in voluntary behavioral programming like relapse prevention, anger management and cognitive self-change. It finally seemed possible to begin some semblance of a normal routine and "life" inside.

## V

Seeking to understand myself better and grow further, I signed up to participate in the cognitive self-change program known as CSC. Within a few months, I was told to pack and moved to another unit where it was located.

CSC was based on the premise that thinking drives behavior and that all change is self-change. In the years to come, I would be taught how to identify my thoughts, beliefs and patterns of thinking and challenged to scour them to the Nth degree for signs of self-deception, antisocial traits and criminality. These dysfunctional and harmful ways of thinking and behaving would then be processed in peer groups with the guidance of skilled staff counselors and worked on to be replaced with much healthier and more productive alternatives, the goal being to become a mentally healthier, higher functioning and more prosocial individual.

For myself, the program worked wonders and I credit it with playing a major role in my personal change and growth. In it, I was taught not only the mechanics of how my thinking drives my behavior, I was also encouraged to further consider the consequences my crime and behavior have had on my family, friends, self and community, and most importantly, the irreparable and devastating impacts I have had on my victim and my victim's family.

## VI

The growth I made in CSC would soon require all of the tools I had just learned. My eyes and heart opened to the deep and irreparable harm I caused so many—the victim of my crime and her family most of all. This increasing awareness was excruciating. It became nearly impossible to live with myself. I hated myself for

what I had done, for the senseless pain and tragic loss I now realized I had inflicted on so many innocent people. Feeling unworthy of living, I struggled with thoughts to take my own life almost daily. It took every skill, prayer and ounce of grit I had to persevere and work through the shame, guilt and hopelessness I was drowning in.

I eventually confronted myself with making the choice to either end my life or continue living. Realizing the selfishness of taking my life and inflicting even deeper pain and loss on my family and loved ones, as well as depriving my many victims and the community of a life dedicated to making amends, I chose to live. I realized that I couldn't change what I had done and that the depth and intensity of my grief and self-disgust was the greatest proof I would ever have that I was no longer the same person who had so intentionally, selfishly and wrongly taken the life of an innocent woman.

With this personal epiphany, I realized I was no longer capable of even considering things that years earlier I had not only thought about, but even worse, had acted on. I knew for a certainty that the pain of incarceration, understanding and true remorse combined with years of reflection, maturity, education and self-improvement had changed and transformed me. Not only was I deterred from the thinking and behavior that had brought me to prison, I was now many years down the path of rehabilitation I had dedicated my life to. Not coincidentally, this crisis of conscience, deepening understanding and intense period of growth took place in my mid-twenties—right when developmental science shows that our brains reach physiological maturity.<sup>4</sup>

With this additional step in my development came yet another level of pain and struggle: living in an environment designed to suppress and contain mindsets and behavioral issues I had progressed far beyond. Knowing I was no longer the kind of person capable of committing the crime I was incarcerated for, I was nonetheless still guilty and responsible for it. I had decades left to serve on my sentence before I could be even considered for parole and being prosocial does not make living in prison easier. In fact, it makes life inside much more painful and difficult. Every prosocial skill and attitude I developed made me stand out, look suspect and feel at odds with the vast majority of men still entrenched in the criminal thinking and addiction that had brought them to prison. Every antisocial comment and behavior surrounding me was a sharp sting to my deepening morality and yet another obstacle I needed to avoid or overcome. Every day I was incarcerated was now a day I had to fight being pulled back down into an antisocial environment I was powerless to escape. This only added to the already agonizing pain that loneliness, loss of freedom and the inability to be closer with friends and family has tormented me with every single day since that first moment of incarceration.

Having taken advantage of every opportunity for improvement I had available and feeling the limits of my personal development with nowhere else to go or grow, I became stuck in a deep rut of depression. My change of heart and mind held tightly, I isolated and kept to my small cell as much as possible, the closest thing to a sanctuary I could find. This lasted weeks, months and then years as I struggled beneath the now crushing weight of hopelessness, frustration and despair. I was experiencing the full force of a sentence which I knew in my heart had already

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4. GARBARINO, *supra* note 2.

deterred me from future crime, was no longer necessary to stimulate change or facilitate rehabilitation and had long since ceased to serve any function to protect society. As a deeply remorseful, deterred and fully rehabilitated man, every second inside now just hurt. This was retribution.

## VII

As I struggled to endure the pain of my punishment, face after familiar face rubbed in mine the costly harms of untreated drug addictions, mental health issues and long-term incarceration as I watched recidivism's sick merry-go-round. Men I had served years of time alongside got paroled one after another only to return, take a diluted and ineffective treatment class and be paroled yet again, repeating the cycle as many as three and even four times! I watched in shock as men who had struggled with addiction the entirety of the many years I had known them came back with sentences like two years fixed with five years indeterminate for possession crimes like a plastic baggy testing positive for drug residue. Sick to my stomach, I watched as \$30,000 dollars per year of taxpayer money was flushed down the toilet to imprison each person who continued to get high on smuggled drugs almost daily. My mind ran wild with alternatives for how addiction could be more effectively treated and, if that proved unsuccessful, how the collateral damage of such behavior could more cost effectively be contained from impacting the community.

I became more and more convinced that an essential part of the solution was changing the lens we viewed the problem through, which currently viewed addiction as a crime needing punishment rather than a public and mental health issue needing treatment. It made so much practical, financial and even moral sense to me that what we should be doing is investing in intensive substance abuse treatment and aftercare models that had some hope for healing and restoration rather than punitive sanctions imposed simply in blind reaction to violating the rule of law and offending against the state. Every familiar face I saw return became one less college scholarship for a hard-working Idaho student in my mind. A scholarship that held a much higher probability for a successful return on investment than such senseless incarceration. A return benefitting not only the person and their family, but also the state that had assisted them. Instead, here those tens of thousands of dollars per year were being wasted to inflict meaningless pain while passively enabling lifelong drug users' untreated and unslowed addictions. Returning face after returning face tormented me as I dreamt of what not only I would make of just one such opportunity for freedom, but the tragedy of Idaho taxpayers unknowingly and unnecessarily funding the enormously expensive, inefficient and revolving door that is recidivism.

It would be easy to point the finger at the Idaho Department of Correction for this perceived failure in treatment, but the sad reality is they have limited resources to address the overwhelming needs of an ever-increasing number of incarcerated individuals who continue being punitively sentenced to their custody for long periods of time. Having zero control over who is charged for what crime, how long they are sentenced for and when they will be released, IDOC is tasked with performing the balancing act of how to best use its limited space and resources to house, care for and treat the masses of incarcerated offloaded into their custody.

In recent years, this has meant performing a treatment triage of sorts and identifying those nearest to release to focus efforts and resources on. Of course, this rushed and diluted effort comes much too late and at the expense of both quality and effectiveness, as evidenced by a recidivism rate of 35%! Scariest of all is that 95% of everyone incarcerated *are* returning to our communities, many of who in my experience return home even more damaged and dysfunctional than when they left.

## VIII

That's right, unresolved addictions, mental health issues and high recidivism rates aren't the only things you're paying for in the name of retribution. You're also paying to make already dysfunctional people worse.

I have had limited contact with family/friends through expensive phone calls. I've had too few and too short visits—too few letters and emails. My primary source of face-to-face human interaction the last twenty-five years has been with other prisoners and prison staff including officers, teachers, counselors and medical personnel—the latter half of which is highly restricted due to official policy. Like I mentioned, many of the men who surround me remain engaged in the same antisocial mindsets and addictive/criminal behaviors that brought them to prison in the first place, which makes finding prosocial individuals to talk and form healthy relationships with incredibly challenging. And even when this is possible, those few relationships barely slow the inevitable social debilitation that occurs when deprived of more frequent, wider scale social interaction with family members, neighbors, coworkers and the community in general.

So, how does a person maintain, let alone improve or even develop effective social skills with such limited opportunities for healthy interaction? Most don't. And the exceptions who do are viewed with surprise. Less than seven years into my sentence, I was stuttering, freezing and having a social anxiety induced meltdown in the job coordinator's office. And you've never seen the shade of purple I turned simply being close to or talking with a woman!

Even more concerning, what about the skills and opportunities necessary to repair, develop and maintain healthy relationships with children, spouses and families? Incarceration by its very nature makes it difficult to allow for meaningful improvement on such critical life skills and relationships that were most likely already lacking and potentially the problem to begin with. Once again, not only does incarceration not help in these areas, it typically exacerbates the problem, further damaging important relationships that are essential for the health and wellbeing of the entire family unit, not to mention an offender's eventual reentry. Sadly, I've watched the social decline of many men serving long sentences and it is heart breaking. Especially knowing they *will* be released, but have become so obviously and seriously debilitated that they now face even more challenges integrating into society than when they came in.

And all of that damage before even touching on work skills and employability. What happens when an individual is suddenly removed from the workforce for years or decades at a time, then suddenly inserted back in? Will they really be capable of picking up where they left off or is this just another ingredient in a recipe for recidivism? Even worse, what about those who never had that life and work

experience to start with? The answers to these questions are obvious and just a few more of the extraordinarily high costs of long-term incarceration that are too rarely given the consideration they deserve.

## IX

So much pain. So much waste. So tragic and unnecessary. I've had glimpses of what's possible. And while thirty-five looming years of incarceration has clouded my experience at every step, there have been bright spots along the way.

Having just returned from a two-year trip out of state due to overcrowding and still recovering from the whirlwind of over seventeen separate placement moves in the last few months alone, I was fifteen years into my sentence and once again trying to regain my footing. Unexpectedly, I was granted a reprieve from the tightly packed (and still overcrowded) dorm I had landed in when my former case manager asked me to join the dog program. I was thrilled. A lifelong animal lover, dogs had always held a special place in my heart. So much so, that the day before I was sentenced and transported to Max., my mom had asked the sheriff if she could bring my cocker spaniel Jiggs in for one last visit, knowing how much it would mean to me. He generously allowed it and I cried as I hugged and said goodbye to him. I hadn't had the opportunity to pet a dog since that day so many years before and was so excited!

## X

I was officially hired as a secondary trainer in the Idaho Dog Alliance Project of Idaho, known as the IDAPI, or as it's more commonly called "the dog program." The IDAPI is a partnership between the Idaho Department of Correction and the Idaho Humane Society designed to socialize both prisoners and rescued shelter dogs. It gives participants the opportunity to learn the craft of dog training from a professional trainer employed by the Humane Society, develop a marketable skill and, last but not least, enjoy the companionship of dogs in a hard and lonely environment.

If you ask most trainers the purpose of the dog program and why they do what they do, they'll tell you it's all about second chances, service to the community, redemption and the opportunity to save lives. Most dogs brought in have behavioral issues or socialization deficiencies and would likely be euthanized if not for the opportunity to receive intensive training from skilled IDAPI trainers. Dogs live 24/7 with their trainers in kennels located in the trainers' cells. Each cell is composed of a training team consisting of one primary or "lead" trainer and one secondary or "back up" trainer. "Leads" are tasked with developing and implementing training protocols in coordination with the professional trainer, as well as overseeing the training of their "backups."

The program works wonders in its ability to socialize both trainers and dogs. Trainers learn patience, responsibility, communication and teamwork skills while dogs receive lots of love, attention, and intentional socialization and rehabilitative training. IDAPI trainers are taught to never allow themselves to become reactive and punish a dog simply for the purposes of inflicting pain and releasing frustration they might feel in response to the dog's behavior. They are

reminded that they have very little idea of a dog's life history and therefore do not know exactly why a dog behaves the way he or she does. We learn that, while physical punishment and the application of various pain inducing techniques can force compliance, this change in behavior typically lasts only as long as these methods continue to be applied and that when this force is removed, the dogs typically regress to previous behaviors and often times actually worsen. Dogs trained to "comply" and avoid punishment often appear stiff, timid, flinchy and just a little bit "off." It is easy to cause a dog to "shut down" with this approach, making it difficult to teach new behaviors as they seek to simply avoid further punishments.

In contrast, positive reinforcement training promotes changes in thought processes and encourages genuine learning by teaching dogs how to achieve a desired result rather than simply avoiding painful punishments. As trainers, we are taught that every moment of interaction with our dogs is an important opportunity to better prepare those in our care for their forever homes and that building a foundation of trust and relationship through humane treatment is critical to our training partnership and success. Once established, we begin addressing problematic behaviors by simply teaching and encouraging more positive alternatives through frequent doses of positive reinforcement delivered in the form of high value rewards like treats, playtime and even praise. Dogs quickly learn that these rewards signal success and that they can predictably earn more rewards by more frequently exhibiting desirable behaviors. Once this process of learning how to work together takes place, more and more new behaviors are taught, practiced and quickly ingrained, lasting long after formal training is over. Many dogs even begin taking the initiative to "offer" new and unsolicited behaviors in hopes of earning more treats! Hundreds of heartwarming success stories later, I am more convinced than ever of the power such rehabilitation methods have to transform once troubled dogs into happy, friendly and well socialized canine citizens, safe and eager to reengage with the community.

With over eleven years in the program now—ten as a lead trainer—I've been greatly encouraged to witness these same positive reinforcement and relationship centered approaches work just as effectively with people. Simply experiencing such humane practices firsthand changes the way most trainers approach their day-to-day interactions and relationships with others. I am continually awed by the many parallels and even contradictions existing in our approaches to addressing dysfunction and undesirable behavior in the lives of dogs and people. Having personally experienced the great power of rehabilitative practices to transform and save troubled lives, I struggle to understand why such humane and highly effective approaches continue to be so stubbornly reserved for dogs. Having seen the contrasting results of punishment based and positive reinforcement methods—I know, without a doubt, that punishment-based models are failing our families and communities.

While the dog program was a welcome and much appreciated reprieve from a typically cold and harsh prison life, I discovered that even the warmth, companionship, satisfaction and privilege of working with them couldn't overcome many of the struggles simply inherent in long-term incarceration. Years passed, and while with many more smiles and much more joy in my heart, I was still in a cage right along with the dogs I worked with. While they seemed to be having the time of their lives, now it was not only human friends I watched leave day after day, but

my furry ones as well. And though training circles, play times, afternoon naps and sneaking treats together were absolutely worth the bittersweet pain of seeing one after another off to their forever homes, I was left wondering when, if ever, I would be allowed to leave for mine. Decades of loss, limitation and restriction in my cage began to weigh heavily once more and yet again I returned to my familiar standby of isolation and simply enduring passing days.

## XI

Thankfully, there are increasingly more reasons to hope something better is possible. The BSU/ISCC Prison Debate Initiative, "Sentences" creative writing program, Peer Mentor Team and Restoring Promise young adult mentorship program are just some of the many fruits of IDOC bravely embracing a new direction and correctional philosophy. Beginning with a trip touring Norway's highly successful, restorative justice centered correctional system a handful of years ago, IDOC leadership was inspired and has gradually begun implementing more and more of these restorative based approaches, introducing concepts such as "normality," where correctional staff are encouraged to "treat people like people," and making prison more closely mirror "real" life. A myriad of changes like potted plants on tiers, murals in hallways, couches and bookshelves in some units, email, video visits with family, and online education are working. Prison culture in many living areas has improved significantly from my days in Max. Even just a decade ago, ICC (now called ISCC) was known as "Gladiator School" by the national news media when it was run by private prison contractor Corrections Corporation of America, now known as CoreCivic. But, while these improvements are welcome, much needed, and already having many positive impacts in the facility and on the resident community, no amount of salve can heal the deep wounds that unnecessarily long retributive based incarceration continues to inflict on so many.

## XII

### Beyond Incarceration

Fortunately for Idahoans, the IDOC is blazing trail for us and proving many revolutionary (for Idaho) concepts and philosophies that we can all look to, learn from and—hopefully—continue to expand upon. Here's yet one more example of what can happen when old attitudes and ineffective mindsets are put aside in the pursuit of progress, healing and success. IDOC's community based Free2Succeed mentorship program is one of the most exciting and proven examples of a restorative justice based approach in our state. Composed of both those with clean criminal histories as well as successfully reintegrated returning Idahoans, the program seeks to pair a mentor with participants to offer prosocial guidance and be positive role models for those recently released. According to IDOC Program Director Jeff Kirkman, the recidivism rate for those who receive a mentor drops significantly from 35% all the way down to 4%!

Unfortunately, demand for this program alone greatly surpasses resources. While 700 prisoners have requested mentors, only 300 people have applied to be mentors statewide. Considering that 63% of Free2Succeed's current

mentors are former prisoners and recipients of mentorship themselves, the significant benefits of programs like these cast new light on the hundreds of deterred and rehabilitated prisoners still serving sentences in the name of retribution. Potentially only a mentor and successful reintegration away from becoming contributing mentors themselves, exciting statistics like this only further prove the compounding value giving higher priority in sentencing to “humanitarian considerations and rehabilitation” could have to our Great State and its deserving citizens.

But the benefits to the community of tapping into the often unrecognized and vastly underutilized resource of transformed lives doesn’t stop with mentorship. Many returning citizens I know have gone on to volunteer or work for the very service organizations who helped them get on their feet. In a few particularly exciting and inspiring instances, these individuals have gone on to create entirely new and unique reentry organizations to fill voids in services they suffered in order to solve those problems for someone else: like Mark Person’s Day One program, where he and other former prisoners help newly released returning citizens get their first day’s supply of food, hygiene supplies, clothing, bedding and other necessities, and Kyle Shockey’s registered nonprofit organization Helpful Solutions, founded to provide critical reentry support, coaching and mentorship, in addition to practical life skills training.

Add to these kinds of social benefits the incalculable value restoring our citizens back into society could have by simply enabling them to become productive taxpayers, participants in our economy and contributing members of their families and communities. Most importantly, keep in mind that an over 88% reduction in recidivism doesn’t just translate to incredible financial savings and increased social capital: it means fewer victims.

To sum up the beauty of such a concept in the words of my close friend and fellow prisoner Ken Arrasmith, who is currently serving his twenty sixth year of a life without parole sentence: “Who is to say that those who have caused the pain of the past, won’t be the ones to bring the healing of the future?”

**That** is the true essence of restorative justice in action. And a direction worth going. But, what is restorative justice, really?

### XIII

#### A Better Direction

“A harm to one is a harm to all.” – Howard Zehr

Many traditional criminal justice systems, including Idaho’s, are based in retributive theory, which views crime as an offense against the State requiring a guilty individual to have pain imposed as punishment, typically marginalizing victims in the process. In contrast, restorative justice theory views crime as a violation of relationships between the victim, offender, and community that creates obligations for all involved to work to right or repair these harms to the greatest degree possible. Whereas traditional justice systems are concerned with what laws have been broken, who did it, and what they deserve as a result, restorative justice

systems are concerned with who has been harmed, what their needs are and whose obligation it is to meet them.<sup>5</sup>

Both retributive theory and restorative theory share the goal of balancing the scales through reciprocity. According to Zehr, “[b]oth acknowledge that a balance has been thrown off by wrongdoing. Consequently, the victim deserves something and the offender owes something. They differ, however, on the currency that will fulfill the obligations and right the balance.”

So, while retributive theory believes that the infliction of additional pain in proportion to the harm caused is the remedy, as we’ve seen, this practice in Idaho promotes long-term incarceration that only compounds the extraordinary financial and social costs of crime without netting much tangible benefit for anyone involved. In stark contrast, Zehr explains that according to restorative theory, “what truly vindicates is acknowledgment of victim’s harms and needs, combined with an active effort to encourage the offender to take responsibility, make right the wrongs, and address the causes of his or her behavior. By addressing this need for vindication in a positive way, restorative justice has the potential to affirm all parties and to help them transform their lives.”

Sounds like a promising way to ensure the good order and protection of society. Now we’re getting somewhere.

Contrary to what many might have thought, it seems that prioritizing restorative principles does not mean letting those who have committed crimes off easy. In fact, restorative processes actually have the potential to make offenders work much harder, be it much more productively for everyone. Rather than relegating those who have committed crime to waste away years in a small cell and prison tier reading, exercising, working a menial job or even continuing to abuse drugs and engage in other criminal activities (all of which results in little reparation or healing for victims, the community or the offender themselves), restorative theory promotes initiating a wide variety of processes ensuring individuals begin repairing the damage they have caused. These processes could include an offender addressing and resolving the root causes of their criminal behavior, repaying and making amends to victims and the community when possible (such as paying restitution, participating in victim-offender dialogue, or social programs aimed at deterring crime and preventing future victimization), and undertaking whatever personal transformation is necessary to become a productive and contributing member of society. And while initial incarceration might be required in some circumstances, it need only be with the intention of ensuring the public’s immediate safety, stimulating change and providing whatever rehabilitation is necessary for an individual to further progress down the path of working for the healing and restoration for all. The end goal always being the ultimate degree of transformation and reparation possible for all impacted.

But, where would we even start?

#### XIV

Prioritizing rehabilitation in sentencing is a very reasonable, effective and important step in the right direction. Considering that Idaho currently ranks in the

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5. HOWARD ZEHR & ALI GOHAR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 59 (2003).

top ten nationally for highest incarceration rates, with over 8% of its population being offenders serving life sentences, doing so would provide a long list of valuable benefits.

For one, prioritizing rehabilitation in sentencing would lead to judges imposing more flexible sentences which more effectively promote rehabilitation to take place and provide for the release of offenders once it has. In cases of serious juvenile crimes like my own (and even young adult offenders 18–25 years old), a sentence of 10-to-life would provide Idahoans every bit as much protection from me as 35-to-life had I remained a danger, while also providing the Parole Commission the opportunity to evaluate and release me sooner than is now possible if convinced I am sufficiently deterred, rehabilitated and safe to rejoin society. While retaining the ability to keep incarcerated those who refuse to rehabilitate and continue posing a risk to others, such flexibility sets the stage for much more productive outcomes by allowing transformed offenders to rejoin the work force, contribute to the economy, pay outstanding restitution and, most importantly, actively make amends to their victims, communities and families. The many clear benefits of such restoration are in addition to freeing up the millions of taxpayer dollars currently funding unnecessary incarceration to meet the needs of Idahoans elsewhere, the important needs like education, infrastructure, and healthcare, to name just a few.

Once sentences are more responsibly, effectively, and efficiently imposed in such a manner, allocated resources can then be more intentionally focused to ensure rehabilitation takes place. Rather than simply funding long-term isolation, debilitation, and pain, resources could be used to actively promote this restorative based process of addressing and resolving the root causes of an offender's criminal behavior through substantive behavioral, mental health, and substance abuse treatment, in addition to providing meaningful education, vocational, and life skills training. By intentionally investing in transformation and healing, we better ensure an offender's ability and opportunity to repair the other harms they are responsible for addressing. Operating from such a restorative philosophy recognizes that investing in the wellness of the offender is the best way to ensure the well-being of our society. It also acknowledges that the state, as an impacted party, has an obligation to do its part in facilitating the transformation and healing of all involved.

We can prioritize rehabilitation in sentencing by implementing new and corrective legislation that ensures this. Many other states already have. Simply making this one philosophical adjustment to prioritize rehabilitation over retribution opens a veritable treasure trove of options and resulting benefits for Idaho and its citizens, ranging from optimizing Idaho Code § 19-2513 to ensure more humane, responsible and effective sentencing practices to enacting entirely new bills addressing existing detrimental sentences imposed on juvenile offenders such as myself, young adult offenders, the geriatric and others who are demonstrably deterred, rehabilitated and safe for release.

Examples of such legislation abound, ranging from the many laws providing earlier parole eligibility for juveniles initially sentenced to longer terms,<sup>6</sup> to the

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6. W. VA. CODE § 61-11-23(b) (2021) (providing parole eligibility for juvenile offenders after 15 years); WYO. STAT. ANN. § 6-10-301(c) (2021) (providing parole eligibility for juvenile offenders sentenced

recently passed and widely acclaimed Second Look Amendment Act in the District of Columbia, which permits offenders who committed their crime under the age of 25 to petition courts after 15 years for a sentence reduction.<sup>7</sup> California's Elderly Parole Program provides prisoners age 50 or over who have served over 20 years in prison with a parole hearing.<sup>8</sup> Such laws have the potential to free up millions of dollars currently being wasted on unnecessarily long punitive sentences, rehabilitate dysfunctional lives, add productive workers and participants to our economy, empower valuable social contribution to our society, and most importantly, better position and empower transformed offenders to address the needs of the victims, communities and families they harmed, which is where it all started in the first place.

And all we have to do is answer this one question: what value and direction actually best achieves our primary consideration of the good order and protection of society? Retribution or rehabilitation? I hope by now the answer has become as clear to you as it has to me.

## XV

In recent years, I have been incredibly fortunate to have many valuable opportunities for growth and contribution that, due to a variety of factors beyond their control, most incarcerated have not. From learning and promoting debate in the BSU/ISCC Prison Debate Initiative, helping build, train, and lead the Peer Mentor Team, participating in and contributing to the arts through the "Sentences" creative writing program, to developing and leading a young adult mentorship project, I have finally found my way. The meaning, satisfaction and sense of value I have gained from the opportunities I've had to serve my community is indescribable. I have experienced true peace and contentment in my service and eagerly embrace each new opportunity to use my unique experiences and perspective to contribute. Yet, while happy and fulfilled in many ways, I feel like a fish limited by the size of its tank. Having come so far and grown so much, now it's dreams of partnering with former cellmates turned mentors turned creators and nonprofit Executive Directors that dance in my head. Dreams of creating community-based youth mentorship programs that inspire young people to find their own passion, dream, and direction for their lives, the only intervention I believe that could have helped me walk a different path. Dreams of partnering with the State, IDOC, and community to apply the painful lessons I've learned and experiences I've had in hopes that broken lives can be intervened in, repaired, and restored. This is urgently important work. The safety of our communities and all who live within them depend upon our success.

For now, however, these higher callings remain more dream than achievable goal for me, because as things currently stand, I have just under ten more years to serve before being parole eligible. Regardless of a model prison record (one disciplinary write up in the last 20 years, for unauthorized music), a

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to life after 25 years); N.D. CENT. CODE ANN. § 12.1-32-13.1 (2021) (providing parole eligibility for juvenile offenders after 20 years).

7. D.C. CODE ANN. § 24-403.03 (2021).

8. CAL. PENAL CODE § 3055 (2021).

developmental evaluation resulting in the glowing support and endorsement of nationally renowned forensic psychologist Dr. James Garbarino (an author and leading expert in the field of developmental psychology of juvenile homicide offenders), and the certainty in my heart that I have matured, rehabilitated, transformed and proven myself safe for reentry into the community, according to my sentence... I still just haven't suffered near enough. The terrible choices and actions of my incredibly ignorant, troubled and selfish fifteen-year-old self continue to prevent me from contributing to my fullest potential in the name of paying an unpayable debt. My heart will be forever broken by the deep pain and irreparable loss I have caused and am responsible for, but what torments and keeps me up at night now is the immeasurable pain and loss I am unable to do my part in preventing to the fullest of my desire and ability. For now, I do what I can where I am. The problem is, there is only so much one can do in a cage.

In the words of Dr. Garbarino, explaining why freedom makes sense for not only convicted criminals, but juvenile killers like myself no less:

For a start, there is the fact that as the Supreme Court acknowledged, "less guilty by reason of adolescence." Then there is the psychological benefits for the community and society, as well as for the reformed men. Also worth considering is the cost borne by society in continuing to imprison these men long after they have become "safe" for release and capable of contributing to society's well-being. Finally, a case can be made that forgiveness can benefit the family members and loved ones of the victims themselves, if they can follow that path. Getting here allows them to avail themselves of the psychological and spiritual benefits that accrue from the process of forgiveness itself. If they don't walk that path to forgiveness, they can remain mired in the traumatic memories of loss and rage that come from experiencing victimization.

He continues, sharing:

One thing I have learned from my observing cycles of trauma is that violence creates a ripple effect across the community that cannot heal without a process of coming to justice, followed by a process of reconciliation and forgiveness.<sup>9</sup>

If twenty-five plus years living inside of the Idaho criminal justice system has taught me anything, it's that, while we definitely have a process, as long as we continue to prioritize retribution over humanitarian considerations and rehabilitation in sentencing, the meaningful justice, reconciliation and restoration our citizens deserve are a long ways away. And with them, not only the protection and good order of our Great State, but our healing.

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9. JAMES GARBARINO, *MILLER'S CHILDREN: WHY GIVING TEENAGE KILLERS A SECOND CHANCE MATTERS FOR ALL OF US* 58, 61 (2018).