

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Bench & Bar Section Council year in review 2018-19: Reflections from the chair

BY DAVID W. INLANDER

As I conclude my term as chair of the Bench & Bar Section Council of the ISBA, it's time to reflect on the past year, and look forward to the future. This section council strives not only to enhance a spirit of cooperation and collegiality between judges and practicing attorneys, but also to address crucial issues impacting the legal profession. One must conclude when reviewing our efforts over the past year that we have advanced our mission, although

much work is needed in the future.

We didn't shy away from difficult, controversial topics. Indeed, in my forty-four year legal career, I have never witnessed more challenges to judges and lawyers than in the past year. Foremost amongst these was the attack on the Rule of Law over and over again, with a drumbeat that could not help but detrimentally impact the public's view of our judicial

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Before you run, know the rules and prepare yourself ... it may be a bumpy ride!

BY JUDGE APRIL G. TROEMPER & PETER L. ROTSKOFF

For decades, scholars, professors, members of the judiciary and legal community have questioned whether judges should be elected by the public or be appointed based on merit. There certainly are pros and cons to both approaches. Many will argue that the judiciary, as the

third equal branch of government, should be appointed to ensure isolation from political influence, while maintaining a commitment to judicial independence. Others will argue that the voters should be the ones to decide which judges they want to preside over the intimate details

of a case that may forever impact their lives. Until there is a change, Illinois judges and judicial candidates remain subject to the electoral process and should note that the political climate can be unpredictable, callous, and merciless depending upon

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system. Coupled with this concern was a contentious judicial confirmation hearing bringing to our television screens questions of judicial temperament, civility, and potentially cracking the aura of respect our society has held judges at all levels throughout my lifetime. Frankly, the core elements of our profession were being put to the test.

This section council did not shy away from tackling these issues head on, and held a frank, no holes barred brainstorming session with ISBA President Hon. James F. McCluskey. We vowed to move forward with concrete efforts to combat the negativity disseminated from certain circles to regain the public's trust and confidence in the judicial system. Many thanks to President McCluskey for his inspirational leadership in this area on behalf of the ISBA.

As if the public attacks were not enough, increasingly a private epidemic became more and more alarming. Studies showed the opioid crisis had crept its way into the legal profession. Once again, we focused on the issue and looked at the admirable efforts of LAP, Lawyers' Assistance Program, to aid troubled members of the bar. Whether it's drugs, alcohol or mental illness, the increasing level of stress impacting our profession must be addressed now.

At another section council meeting, we reviewed the potential dangers of for-profit online legal referral services as they attempt to charge into Illinois. The ISBA leadership has closely watched these efforts and thoroughly weighed the advantages of access to justice versus the dangers associated with non-regulated providers. No doubt, the ISBA will continue to scrutinize this issue in the coming year.

Most recently, Bench & Bar explored the increasingly popular philosophy and positive impact of restorative justice. Taking several

forms from engaging in peacemaking circles to supplementing juvenile and criminal proceedings, to assisting parties in resolving family disputes in probate, trust, chancery and domestic relations litigation, restorative justice is on the rise in Illinois. One of the long-time chief proponents of this philosophy and its way of life is Cook County Circuit Court Judge Sophia Hall. Judge Hall led us through a thorough examination of the distinctions between a traditional justice model and a restorative justice approach, centered on reintegration, obligation, healing, repair and meeting the needs of all parties. These types of values have endless possibilities both within and beyond the courthouse. To learn more about restorative justice, please see www.rjhubs.org/mission-and-vision, www.citybureau.org/restorative-justice, the impressive work of Kay Pranis, and the University of Wisconsin ongoing studies on the topic.

As you can see, we had a very full year of substantive, challenging topics to study and debate. The men and women of the Bench and Bar Section Council are extraordinary ISBA leaders, and the pinnacle of the legal community. It has been an exceptional honor to chair this group for the past year. Special thanks to my vice chair, the Hon. Stephen Pacey, who takes over the chair at the ISBA Annual Meeting in June. Judge Pacey has been a most valuable partner throughout the term and will make an outstanding chair in the coming year. Profound thanks as well to our secretary, Sandy Blake, who so accurately recorded the minutes of our meetings, a thankless task! Much gratitude to our exceptional committee chairs, including professional ethics (Justice Ann Jorgensen), continuing legal education (Judge Michael Chmiel), legislation (Daniel O'Brien), and newsletter (Hon. Edward Schoenbaum, so ably assisted by Evan Bruno and

Bench & Bar

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Edward Casmere).

Once again, this section council produced nearly monthly top-notch newsletters for the benefit of ISBA members covering numerous important topics. Any list of thanks must also include my deep appreciation to a

most active member of our section council, Illinois Supreme Court Chief Justice Lloyd Karmeier for his invaluable input. Finally, my sincere thanks to ISBA Staff Liaison Melissa Burkholder, whose characteristics of patience, efficiency, intelligence, and good

nature combine to benefit us all. More than anyone else, Melissa is the person most responsible for the excellence of the section council. Thank you, Melissa! ■

Before you run, know the rules and prepare yourself ... it may be a bumpy ride!

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one's party affiliation, geographic location, and practice area. In addition, all judicial candidates, whether sitting judges or attorneys, are subject to stringent ethical rules, which must be followed. Failure to do so may result in disciplinary action, as illustrated below.

General Guidelines

Before turning to specific case examples, we will examine some top basic rules that all candidates should be aware of. First, if you are an attorney and are considering running for a judicial office, not only are you bound by the Rules of Professional Responsibility, but you are also bound by the Code of Judicial Conduct. (See Rule 8.2(b), which provides: "A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.") Often times, attorneys do not realize they have committed an ethical violation until it is brought to their attention. Sitting judges already know this rule but, for instance, lawyers running for judicial office may not personally ask for and may not personally receive financial contributions. This means you, individually, cannot ask people to attend your fundraiser, nor may you indirectly ask them to attend by posting the event on your personal Facebook/social media page or by personally handing them an invitation. If someone wants to hand you a check in support of your election, you may not personally accept it. You must direct that person (as uncomfortable as it may be) to forward the check to your campaign committee or someone other than you who may then forward it to your committee. Under no circumstance, whether anyone

is watching or not, should you tell yourself it is okay to violate this rule. If you start to tell yourself that story, then perhaps you need to ask yourself if you are truly ready for the responsibilities that accompany this honorable position. Judges are held to a higher standard and your integrity must be impeccable.

Second, if you are fortunate, or unfortunate, enough to have an opponent, realize that regardless of your qualifications and experience, the opposition may try to minimize those qualifications and convince the general public that you are not worthy to hold the prestigious office of judge. This applies equally to sitting judges, who may already hold that position due to a merit-based appointment. Thus, if you have an opponent and choose to run commercials and/or ads or distribute mailers or post on social media websites, you and your committee have to decide whether you are going to run on your own credentials, experience, and record, or whether you are going to treat this judicial election like most other political elections and take the negative, "win at all cost" approach by primarily criticizing your opponent, personally and professionally.

Regardless of which approach you choose, make sure your content is 100% accurate and make sure you are able to look at yourself each day in the mirror and feel proud of the approach you have selected. Be forewarned though, that if you and/or your committee make any misrepresentation and/or are dishonest, your conduct may require members of the legal community (and your opponent) to report your misconduct. (See Rule 8.3 and Rule 8.4(c) (conduct involving dishonesty,

fraud, deceit or misrepresentations) of the Illinois Rules of Professional Responsibility.)

The beckoning beam of light that should guide all attorneys running for a judgeship is found in Rule 8.2(a) of the Code of Professional Conduct, which states "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory office or public legal officer, or of a candidate for election or appointment to judicial or legal office." All judicial candidates shall also follow Rule 67, Canon 7 (A), which reads "... (3) A candidate for judicial office: (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate; ... [and] (d) shall not: ... (ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent."

Thus, if you state and/or print/post something misleading and/or inaccurate about your opponent or your opponent's record, not only must that conduct be reported, but you may also be subject to a defamation lawsuit, depending upon the severity. Remember... most reported misconduct to the Attorney Registration Disciplinary Commission (ARDC) is based on an attorney's negligent misrepresentation about his/her own candidacy or some flagrant misrepresentation about the opponent. This is a judicial race. You are held to the highest level of integrity

and ethical standards. You should expect nothing less from your committee and those supporting you. So if you choose to be a “Negative-Nelly,” proceed with caution because once you choose the path of attack, your opponent may have no choice but to defend him/herself and in so doing, may perhaps have to reveal negative things that have happened in your legal career. In the end, it is best to just stick to your record, your credentials, and your qualifications. Leave the rest to the voters.

Third, recognize you should not misuse or misconstrue information from the bar poll results, nor should you bank your entire campaign on the bar polls, which are often times viewed as a popularity contest, unreliable, and a sword in contested elections. Surely you have more to rely upon than just percentage points from a small group of individuals who chose to take the time to complete them. While the anonymous bar polls can provide valuable information to the voters, the polls can also create a lot of confusion and/or leave unanswered questions, especially when a sitting judge is running against a non-sitting judge. For instance, the anonymous bar poll asks the individual completing the bar poll if that person has sufficient, first-hand information about the candidate. What the bar poll does not ask is the following: 1) whether the individual has ever appeared before the sitting judge and if so, how many times; 2) whether the surveyor has ever had any cases with or against the attorney running for judicial office, and if so how many cases; 3) how many years of legal experience the surveyor has; 4) what is the surveyor’s primary practice of law, and 5) whether the surveyor has ever sought out or applied for a judicial office. Why does any of this matter? It matters because there is no way to gauge the validity of the responses or how much weight should be given, yet a candidate in a contested election can distort the findings to his/her advantage and/or recruit others from outside the circuit to complete a ballot without any repercussions as to the truthfulness of those responses.

More specifically, what does first-hand knowledge mean? Does it mean the responses are based on actual court

appearances before the judge and/or having had a case with or against the attorney candidate; or ... are the responses based on hearsay without any direct involvement with the candidate? And if it is based on first-hand knowledge, is the surveyor’s response based on a one-time favorable or unfavorable encounter, or is it based on multiple appearances/dealings? Also, when asked to survey the candidates’ legal ability, it is important to know the surveyor’s primary practice area. For instance, if a candidate primarily handles criminal law matters but the vacancy is to fill a family/domestic relations call, then a family law attorney might mark “no” under legal ability because the applicant has zero experience in that particular field. Another defect with the bar poll is that it only allows the surveyor to indicate “yes” or “no” under each category. Lawyers and judges are trained to analyze and consider many different scenarios. Forcing the surveyor to select either “yes” or “no” deprives that person from exercising a more careful, thorough analysis of each category.

One final point with regard to the bar polls -- Remember ... ISBA Judicial Advisory Polls Manual and Committee meetings make it clear that the polls are not to be used to compare candidates and to rank them against one another, but to rate individuals on his/her own merit. Often times, a candidate will send out literature or run a commercial stating, “Attorney X or Judge Y scored higher than his/her opponent in all categories.” This is not an appropriate use of the bar polls, especially if and when both candidates receive the minimum score to be “recommended.” (Keep in mind, a candidate needs only 65% favorable responses to be recommended for the position, compared to 60% of the vote to be retained in a general election.) Thus, do not be tempted to violate this policy by comparing your scores with other candidates, especially considering most bar polls are done before the primary election and before the list of candidates has been narrowed down. Think about this - if the goal is to truly educate the public, a subsequent poll closer to the election should be done once some of the political jockeying has been removed. So,

again... if you choose to run your entire campaign on your bar poll results and use abusive, misleading tactics, just know that your opponent may be inclined to further educate the public and media by pointing out all these other perceived defects.

Examples of Disciplinary Cases

While there have only been a few formal disciplinary cases involving misconduct by judicial candidates during the course of an election, the ARDC receives a fair number of complaints and reports about election conduct during each election period. The disciplinary cases involving conduct by lawyers in judicial campaigns are summarized below:

False Statement in Campaign Mailer

In *In re Duebbert*, M.R. 27475, 2013PR00127 (September 21, 2015), an attorney running for judge in the 20th Judicial Circuit was charged with violating the rules when he sent a campaign flyer out that contained false and misleading statements about Duebbert’s opponent, a former assistant public defender and current associate judge. The campaign flyer stated that a man served 12 years in prison for a crime he did not commit due to his opponent’s “negligent” representation of the man. In fact, the opponent never represented the man and the flyer misquoted the findings of the 7th Circuit Court of Appeals in the wrongful conviction case. The hearing panel found that Duebbert violated Rule 8.4(c) by making a false statement; Rule 8.2(a) by making a false or reckless statement about a judge; and Rule 8.2(b) for violating the Code of Judicial Conduct as a candidate for judicial office. He was censured by the Illinois Supreme Court.

Disclosure of Confidential Information

The conduct which gave rise to the disciplinary case in *In re Gregorich*, M.R. 12998, 1995PR00436 (January 30, 1997) was the disclosure of confidential information by a judicial candidate. Gregorich had worked as a staff attorney for the Illinois Appellate Court before he declared his candidacy to run in the primary against a sitting appellate court justice in the district where he had

previously worked as a staff attorney. During the campaign, Gregorich disclosed to the press an internal memo that had been circulated by the justices and obtained by Gregorich while he was employed at the court. At a press conference, Gregorich used the memo to claim that the justice he was running against was “inept” at handling civil cases. The hearing board found a number of disciplinary violations including dishonesty and conduct prejudicial to the administration of justice. Gregorich did not participate in the disciplinary proceedings and he was suspended for four years and until further order of the court.

False Statements in Response to a “Not Qualified” Rating

In *In re Morask*, M.R. 26061, 2010PR00136 (September 25, 2013), a judicial candidate was disqualified for making false statements during a judicial campaign in response to a negative rating from the Chicago Council of Lawyers. The Council found Morask “not qualified” in part because, as an assistant state’s attorney, she had been criticized on a number of occasions by reviewing courts for possible prosecutorial misconduct. In response, she sent out an email to a blogger in which she claimed that she had a hearing before the ARDC and was “completely cleared” of any prosecutorial misconduct. The blogger posted the email on his blog. Some of the statements in Morask’s email were false including the fact that she had not been completely cleared by the ARDC; she had been admonished. She was suspended for 30 days for the false statements and other misconduct.

Improper Judicial Campaign Contributions

In *In re Fazioli*, M.R. 19580, 2001PR00019 (September 27, 2004) an attorney who was interested in becoming a judge, persuaded two attorneys to make \$5,000 contributions for the campaign of a candidate for Illinois Supreme Court Justice. Fazioli then reimbursed each attorney for their contributions, and one of the attorneys told the Judge’s campaign manager that the contributions were actually from Fazioli. The contributions

were returned, and Fazioli and the attorneys were charged by the ARDC. The findings against Fazioli included criminal conduct for violating election laws, dishonesty and conduct prejudicial to the administration of justice. Fazioli was suspended for three years.

Summary

As the country becomes more politically divided, current judges and judicial candidates need to remember that as the third equal - independent - branch of government, our decisions cannot be lobbied, bought, and/or negotiated for on behalf of special interest groups. We cannot personally accept financial contributions, nor can we show favoritism toward certain political leaders. We take a solemn oath to uphold the laws of the land and the Constitution – even if doing so makes us “unpopular.” That is what judicial independence looks like. But as we approach election cycles, we quickly realize that politics do play a role. It is up to us, the candidates, though to decide to what degree. Will you be the candidate that lets selfish desires, revenge, and the “win at all costs” attitude guide your campaign or will you turn toward your moral, ethical compass to point you in the right direction?

As you wrestle with that question, make sure you study and know the Professional Rules of Responsibility and the Judicial Code of Conduct as you decide whether to run for judicial office or not. As explained herein, depending upon where you reside, what your political party affiliation is, and whether you are a sitting or a non-sitting judge, the electoral process can be a bumpy ride. Give the voters something to be proud of. Give them a reason to trust the judiciary’s independence and impartiality.

If you have any concerns or questions about running for judicial office, you may review the judicial ethics opinions on the Illinois Judges Association’s website at www.ija.org/opinion-list. Alternatively, you may contact a member of the Illinois Judicial Ethics Committee or the ARDC Ethics Inquiry Program for guidance. *Best Wishes...* ■

Restorative justice: An overview

BY JANNA M. MILLER MIDURA & ELIZABETH BLEAKLEY

“Restorative justice” is a phrase that comes up in many scenarios these days. One can find it applied in courthouses, schools, workplaces, prisons, and community groups. CNN hosts a weekly series, The Redemption Project, that gives viewers an inside look at restorative justice in action. Judge Sophia Hall recently generously shared with the ISBA Bench & Bar Section Council her extensive knowledge and insights gained from many years of implementing restorative justice principles and practices in the juvenile setting. Annalise Buth, who created and teaches Northwestern Law’s Restorative Justice Practicum, served on the Restorative Justice and Safe Communities Committee for Illinois Governor J.B. Pritzker’s transition. In 2019, the Illinois General Assembly introduced a bill to amend the Code of Civil Procedure to add a new section on restorative justice practice.¹ But what is restorative justice, does it work, and is it a helpful tool for society?

What Is Restorative Justice?

Restorative justice is a philosophy where wrongdoing or conflict is viewed as a “breakdown of relationships and community.”² Restorative justice focuses on “repairing harm, understanding the social context surrounding the harm, and empowering those affected so that they can address and repair the harm done.”³ The process brings together those affected by the harm - offenders, victims, and communities.⁴ Since restorative philosophy is based on the belief that conflict and crime are the result of a breakdown of relationships, the idea behind the philosophy is that the resulting harm, whether disruption or damage, should be addressed by those involved and impacted by it. Those individuals or communities have the capacity to identify, address, and resolve their issues and concerns in both an effective and sustainable manner, as defined by them.

Restorative justice is based on the principle that it is the responsibility of a “community” to keep peace and maintain

order. The wrong committed is viewed as more of a breakdown of healthy norms of established societal conduct rather than a formal breakdown of written laws.

Development

The development of restorative justice has been fragmented over time and place,⁵ and no single era or culture has a claim on its origin. Restorative justice dates back to indigenous cultures that employed its principles to keep peace in their communities. The commonality across time and place is that restorative justice principles have been used to respond to unacceptable behavior within societies by attempting to repair harm and rebuild relationships.

The person often credited with popularizing the term restorative justice is Dr. Albert Eglash, an American psychologist who worked with incarcerated people in the 1950’s.⁶ Dr. Eglash studied the rehabilitative value to offenders of being held accountable for their behavior that hurt others and of restoring the offenders’ humanity by allowing them to make restitution to those they hurt. His studies focused on the benefits to the wrongdoer. Another person to whom the term restorative justice is attributed, and the main person recognized today, is Howard Zehr, a Mennonite and still active restorative justice proponent.⁷

Methods of Restorative Justice

There are many methods to employ the principles of restorative justice.⁸ According to the Center for Justice and Reconciliation, “[i]f restorative justice were a building, it would have four corner posts: (1) inclusion of all parties, (2) encountering the other side, (3) making amends for the harm, and (4) reintegration of the parties into their communities.”⁹ The parties taking part in the restorative justice process may (but need not) be limited to the person who committed the wrong, the person against whom the wrong was committed, and a facilitator. In some methods, all parties affected by the

precipitating action, including community members, can take part in the process.

Prevalent restorative justice methods include:

Victim-Offender Mediation. Under Victim-Offender Mediation (VOM), the parties are not considered disputants and the focus is on the process and on the restorative outcome.¹⁰ VOM is one of the most well-known and commonly used contemporary restorative programs, especially in North America and Europe.¹¹ This method “usually involves a one-to-one meeting between the crime victim and the offender ... facilitated by a mediator... who helps the parties to achieve a new perception of their relationship and the harm caused... by providing... an opportunity to talk about the crime in an unthreatening atmosphere.”¹² VOM is often used for less serious crimes, such as misdemeanors, juvenile crimes, and property crimes.¹³ However, VOM is also used with more serious and violent crimes, including homicide, sexual assault, and armed robbery.¹⁴

Restorative Circle Approach. The “Restorative Circle Approach,” sometimes called “Conferencing,” allows the offender and victim, as well as their supporters and members of the community, to take part in the process.¹⁵ The Restorative Circle Approach can be used successfully for offender-victim meetings, and also for the vast number of instances in which there is a conflict that is likely to benefit from a restorative approach.¹⁶ The content of the discussion is confidential and the participants can decide, in cases where a judge is involved, whether or not they want to tell the judge what was discussed. While there may be a judge in a criminal or other matter, many (perhaps even most) cases will not have a judge involved. What the parties may want to discuss is whether they want their agreement or solution put in writing. The process can take anywhere from two to eight hours and the parties can come back

for additional circle encounters, if they agree that doing so would be beneficial.

Community Panel Model. An approach that can be successful with crimes involving youth is the Community Panel Model. In this approach, “young people [are] offered the chance to participate in a panel composed of members of their community who [are] trained in listening skills, working with youth, and making appropriate referrals to resources. The victim is invited to share his or her experience of the crime and to contribute to a plan for the young person who caused the harm.”¹⁷ The panel recommends a contract for the young person in need of direction and guidance, which may include regularly attending school, making amends to the victim, and connecting to the community. A member of the community panel will need “to agree to work with the young [offender] on a regular basis” in order to help the offender and community build a better relationship during the contract period.”¹⁸

Various forms of the methods described above are implemented in the application of restorative justice, depending on the place and the needs of the parties, but one thing that is common among all of them: restorative justice should not be implemented as part of a structured, cookie cutter program. The beauty of restorative justice is that it facilitates the free flow of communication between the parties. Attempting to put the process in a box ruins the ability of the parties to let the process be taken wherever the parties choose to go with it and, in doing so, to introduce innovative solutions to problems during the discussions.

Example of Process Using Restorative Circle Approach¹⁹

Under a Restorative Circle Approach (or “Conferencing”), the offender, victim, their supporters, and members of the community may take part in the process.²⁰ A “Circle Keeper” administers the process, which often involves significant preparation. Prior to the meeting, the Circle Keeper meets with the parties and identifies the problems the participants would like to see addressed by the circle. The Circle

Keeper explores the backgrounds of the people involved, as it seems relevant to the problem the parties wish to address, and asks about other matters, such as whether there are additional people who should be included in the process.

When the meeting takes place, all participants sit in a circle. The circle has a beginning or an “opening,” which could be a story or almost anything that may be relevant to what the parties need or want to accomplish. The parties then introduce themselves. There is almost always a “talking piece,” a physical object held by the speaker, which denotes the party who has the “floor” and gives speakers time to say what they want to express at their own pace.

The Circle Keeper asks the participants to select values that are important to the circle, such as honesty, respect, safety, and equality and gets agreement from the circle members that these values will govern the process. Once the values are established, it is the Circle Keeper’s function to get the discussion started. The Circle Keeper may encourage the parties to participate and continue the discussion and may also participate in that discussion by asking questions about the issues being explored by the parties.

The Circle Keeper will have no role in the solution to the problem or conflict that brings the parties to the circle, but will guide the parties to discuss how they wish to resolve their issues, when the time seems appropriate, and how to move forward. At the conclusion of the process, there is a “closing ceremony,” which can be a story, a reading, a poem, or even a fun physical exercise of some sort to relax the participants who participated in the circle for an extended time.

Example of a Real Life Success Story²¹

In Minnesota, a man’s house was entirely trashed by neighborhood youth. When the man came home and found what they had done, his approach in dealing with the situation centered around the application of restorative justice principles. The juveniles were charged with a criminal offense, but the man encouraged a restorative

approach, based on his belief that there was something missing in the community. The juveniles’ actions were, in part, because there was no longer a sense of community in the neighborhood. Following a Circle Approach, the youth offenders agreed to help clean up the man’s house. On top of that, the man and the kids organized a block party that helped give the neighbors a sense of connection that was missing. The philosophy inherent in the approach the man took was restorative justice in action - where parties strive to make and restore human connections.

Strengths of Restorative Justice

Many who have participated in the restorative justice process claim tremendous benefits from engaging in it.²² The victims of the wrong can have questions answered such as “why and how did you pick me as the victim of the crime?” and can have the opportunity to tell the offender “this is how what you did hurt me” and “now my life has change this way because of what you did.”²³ On the flip side, the process can give perpetrators some peace of mind, allow them to apologize, and help them to assuage their guilt. The process can also provide an avenue for parties who do not have an instance involving a crime, but merely a conflict or situation that needs a thorough discussion or work through in a circle atmosphere.

“All part[s] of a person - physical, mental, emotional, and spiritual - become out of balance when a harm occurs, and restorative justice seeks balance and wholeness.”²⁴ Not only can the application of restorative justice practices provide help to parties on all sides of the process on an individual level, it can also benefit communities and society as a whole by bringing neighborhoods together, cutting down on crime, and in some instances, being more cost-effective than the application of the criminal process alone.

Studies

Some studies have shown the benefits of restorative justice. For example:

In two studies conducted in London, analyses showed that post-traumatic stress symptoms (“PTSS”) scores were

significantly lower among victims assigned to restorative justice conferences (“RJC”) in addition to criminal courts.²⁵ There were overall 49% fewer victims with clinical levels of PTSS and possible post-traumatic stress disorder (“PTSD”).²⁶ Further, victims of crime who participate in restorative justice efforts have greater levels of satisfaction with the justice process (Campbell-Strang 2013, Latimer 2005).²⁷

Some studies have found strong evidence that restorative justice in the criminal system reduces recidivism (Campbell-Strang 2013, Latimer 2005, Sherman 2015, Sherman 2007).²⁸ Additionally, “[o]ffenders who participate in restorative justice appear more likely to comply with restitution requirements than those who participate in the traditional justice system (Latimer 2005).”²⁹

Other studies have found the application of restorative justice to be cost effective. One such United Kingdom experiments found a ratio of 3.7-8.1 times more benefit in cost of crimes prevented than the cost of delivering RJs.

The first few examples above involve studies of the use of restorative justice in more serious cases, while the later example would involve circle conferencing.

Limitations of Restorative Justice

Despite its many potential benefits, restorative justice does not solve all problems and has its limitations. While restorative justice may be a helpful tool in the toolkit, it does not work in every situation. Not every perpetrator will care about the harms caused. Not every victim, offender, or community will want to engage in a restorative justice process.

According to Judge Martha Mills,³⁰ who was instrumental in the application of restorative justice principles in Chicago, the process may not work or be effective when:

- one party has a mindset that is not open to change,
- someone engages in the process because of someone else’s desire for them to do so,
- one party insists on maintaining their “rights” instead of acknowledging their responsibilities, or

- someone is limited mentally or by the use of controlled substances.

The parties involved must want to engage in the process on a completely voluntary basis.

Some have raised concerns that a limitation of restorative justice is that it is a time-consuming process, involving trained facilitators and producing results that are not guaranteed to be positive or to have a quantifiable impact on the parties involved. Others respond that although some restorative conferences may be time consuming, many are not, and that is rarely something that can be determined in advance. There is generally agreement that good circle keepers need to be carefully trained to serve in a role that can be more complicated than traditional alternative dispute roles because of the difficulties of preparing for and being keeper of a circle as a participant with a role, but with no role in fashioning the result. Results are not guaranteed, to be sure, and quantifiable impact should be studied, although it may be difficult to determine.

Studies

Some studies have shown a lack of benefits from the application of restorative justice principles in a criminal setting. For example:

Some studies have found that “there is insufficient evidence to support the view that there are inherent benefits in the restorative justice process that provide victims of sexual assault with a superior form of justice.”³¹

Further, while some studies have found that “the overall result of restorative justice methods employed reduced the likelihood of reconviction over the next two years, the results were not statistically significant.”³²

These same studies have found that, in terms of reconviction studies, there were no significant differences between the groups employing restorative justice methods and control groups.

Other studies in Australia, New Zealand, the United Kingdom, and the United States have found that while these countries’ populations are among those with the highest incarceration rates, as well as the most widespread use of

restorative justice, there is little evidence that restorative justice has served to reduce prison populations.³³

According to the studies cited above, it is difficult to quantify any measurable positive results from the restorative justice process.

Appropriate Applications of Restorative Justice

There are questions that need to be asked and answered about the use of restorative justice:

- When is the use of restorative justice appropriate?
- Is it of benefit in all situations with all offenders or are there some types of crimes and certain groups of people to whom the concept is just not beneficial?
- If the crime is violent, like murder or rape, or if it involves domestic violence or sexual predation of a child, does it really help to have the families of the murder victim, or the victims of a violent assault, confront the wrongdoer in a face-to-face meeting?

These are questions that those who wish to apply the principles of restorative justice must tackle on a case by case basis.

One author who has explored the application of restorative justice to gendered violence situations questions the extent to which due process safeguards and standards must be incorporated in restorative justice applications in those scenarios.³⁴ In her study of various types of applications of restorative justice in different countries involving gendered violence, she comes to the conclusion that “questions of range and questions of standards cannot be dealt with in isolation, and that the wider the range of offences and offenders restorative justice deals with, the more it may merge with formal criminal justice”³⁵ Her conclusion is based on her findings that those who advocate for the application of restorative justice in these hard cases see it as effective justice while those who argue against its application in such scenarios see it as diversion.³⁶

When applying restorative justice in cases involving extreme antisocial wrongs,

the anticipated value to the person who was harmed must be strongly considered. If an additional confrontation with the wrongdoer may cause more trauma and angst, or if the person harmed may not be fit to handle the meeting, then is it best to let traditional criminal justice methods take their course? Such questions are the types that those seeking to apply restorative justice must consider.

Restorative Justice in Chicago

Chicago has been fortunate to have many leaders in the application of restorative justice principles. There are many places in which the concept has been applied.

One such place in the Circuit Court of Cook County is with Judge Sophia Hall, the presiding Judge of the Juvenile Justice and Child Protection Resource Section (“Resource Section”). The Resource Section was established in 1995 as the outreach arm of the court to communities, agencies, organizations, and businesses that are concerned about making a difference in the lives of young people and their families.³⁷ The Resource Section plays a significant role in supporting the expansion of the use of restorative justice principles in programming for juveniles throughout Chicago, Cook County, and the State of Illinois.³⁸ In Judge Hall’s presentation to the ISBA Bench & Bar Section Council on May 10, 2019, she emphasized that “restorative justice is not a program; it is a philosophy, and it is a philosophy that can be a part of everything that you do.”

In North Lawndale, Judge Colleen Sheehan uses restorative justice practices in the Restorative Justice Community Court, where the focus is on nonviolent offenders between the ages of eighteen to twenty-six. Through restorative practices such as peace circles and community conferences, offenders, victims, their families, and community members determine what steps are needed to repair the harm done.³⁹

Retired Judge Martha A. Mills, another pioneer in the practice of restorative justice in Chicago, graciously sat for an interview for this article.⁴⁰ Judge Mills embraced the principles of restorative justice in family

law when she presided over and introduced a Pilot Restorative Justice Project for the Parentage and Child Support Court of the Circuit Court of Cook County.⁴¹ She offered restorative circles to help resolve issues involving parents and children. The children participated when both parents agreed and the child was mature enough to participate. Parties had the opportunity to address whom the children should reside with and when, as well as timing, school and visitation issues, transportation, and other conflicts. Sometimes, the children themselves suggested solutions that the parents were not likely to come up with on their own. The parties involved were under no obligation to tell the judge what happened in the circles, but sometimes they wanted a court order to manifest their agreement in writing. Other times they were so pleased with the results of a restorative circle that they wanted to inform the judge of their success. The circles presented opportunities for conflict resolution that simply were not present in the typical court scenario.

Restorative Justice Hubs (“RJ Hubs”) have also been established in the city’s communities. Three such RJ Hubs are: Precious Blood Ministry of Reconciliation in Back of the Yards, The Urban Life Skills program that is part of New Life Centers of Chicagoland in Little Village, and Lawndale Christian Legal Center in North Lawndale.⁴² Through the hub model, which is often developed through a faith-based organization, “community sites...offer effective violence prevention and intervention strategies for court and gang-involved youth and families, providing structures and supportive atmosphere that promotes healing and pro-social development.”⁴³ These hubs, which allow for the unique needs of each community, are directed by a leadership circle that provides support to the hubs, allows for the creation of a replicable model, and encourages coordination between the hubs.⁴⁴ These proactive models help Chicago residents interact with their communities and each other in ways the normal criminal and civil justice system cannot.⁴⁵

Restorative Justice Elsewhere

Communities in other parts of the U.S. and in other countries have also implemented restorative justice models. Looking to our closest neighbor first, many restorative justice proponents view the state of Minnesota⁴⁶ as a model for restorative justice techniques.⁴⁷ Restorative justice practices have been implemented in about half of the state’s school districts. In one Minnesota elementary school, the number of acts of physical aggression recorded per year dropped from 773 to 153 over 3.5 years as a result of the application of restorative justice principles.⁴⁸

New Zealand is a leader in the implementation of restorative justice and has adopted two main types of conferencing in the criminal justice setting, namely the New Zealand family group conferencing model and the Wagga Wagga police-led conferencing model.⁴⁹

“The Family Group Conferencing (FGC) model first emerged in New Zealand as a response to the overrepresentation of Maori people in the criminal justice system.”⁵⁰ New Zealand enacted a law that “required that conferencing involving the extended family, community representatives, and professionals be used in decision-making in juvenile delinquency and child protection cases (Levine, 2000).”⁵¹ Except for cases of murder and manslaughter, all crimes can be referred to the FGC model in New Zealand, given how embedded the process is in the legal system.⁵² Internationally, the use of FSGs has been extended to Australia, Canada, the U.S., South Africa, the U.K., Norway, Sweden, Israel, France, Belgium, and the Republic of Ireland.⁵³ The FGC Model has undergone various adaptations in its implementation in these different countries and communities.⁵⁴

The Police-led conferencing model, implemented in Wagga Wagga, “differs from the family group conferencing in four ways: (1) the conference is carefully scripted, (2) the offender and the offender’s network speak first, (3) there is not “private time” allocated to the families during the formal part of the conference, and (4) officials representing the “authority” actively facilitate the process.”⁵⁵ The

structure of this model is more formal, which differs from the unscripted nature in the application of the philosophy.

There are as many types of conferencing as there are crimes, harms, or cultures. Restorative justice's philosophy can be implemented in many forms, as long as the basic principles are applied.

Conclusion

As an alternative to other processes that focus on punishment of offenders and do not address reparation to victims, restorative justice promotes the dignity of both victims and offenders. Restorative justice can also be helpful in non-criminal scenarios for resolution of problems involving various types of groups in different settings. Critical to a successful implementation of the restorative justice process is a respect for the process by the parties engaging in it. In the criminal setting, the end goal of the process is to repair the harm caused between the parties, but there is also a broader societal goal. The purpose of the process is the betterment of a community where an offender can understand the harm caused by his or her actions and the victim can participate in the healing process from the wrongful act. The principle relies on the assumption that a community is responsible for the well-being of its members and that by engaging in restorative justice practices there will be less of a possibility of further misdeeds. In the non-criminal setting, restorative justice can help provide an avenue for solutions to problems that could not easily be solved through other means. At the heart of this action-oriented response to (mis)behavior is the desire to make things right, which is the best we humans can strive to do. ■

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1. The proposed legislation provided generally that communications received by a party in preparation for, during, or after a restorative justice practice would be inadmissible in court unless the privilege is waived by the party or parties about whom the communication concerns. HB 1458 filed by Rep. Emanuel Chris Welch on 1/29/19 and re-referred to the rules committee on 4/12/19.
2. Annalise Buth and Lynn Cohn, *Looking at Justice through a Lens of Healing and Reconnection*, 13 NW. J. L. & Social Policy. (2017) at 3, <https://scholarlycommons.law.northwestern.edu/nljsp/vol113/iss1/1>.
3. *Id.* at 3-4.
4. Judge Sophia H. Hall, *The Reality of Restorative Justice, The Community Restorative Justice Court*, 32 CBA Record (Jan. 2017) at 34; https://incarcerationreform.com/wp-content/.../03/restorative.hall_2017.01.cba_.pdf.
5. Bluth and Cohn, *supra* note 2.
6. *Id.*; Loren Walker, *Restorative Justice & Other Public Health Approaches for Healing; Transforming Conflict into Resiliency, Albert Eglash & the history of restorative justice*, July 27, 2008, <https://www.lorenwalker.com/blog/?p=117>; Eglash's paper is reportedly the first time the term restorative justice was used.
7. Howard Zehr, *A New Focus for Crime and Justice: Changing Lenses* (Herald Press, Scottsdale, PA, 1990); Howard Zehr, *Changing Lenses: Restorative Justice for Our Times, Revised and Updated* (Herald Press, Scottsdale, PA, 2015).
8. Other less serious criminal restorative justice processes, as well as others where there is an "offender" (criminal or non-criminal, such as school bullying where there is really an offender and a victim), but not other situations where restorative justice may be an excellent way of proceeding, but there is not a particular wrongdoing, offender or victim. Those latter civil kinds of conflict are for anyone—schools, offices, workplaces, religious or social groups, families—whatever configuration of people need or want restorative justice. The care with which the preparation and meeting of the parties is done relates to seriousness.
9. Centre for Justice & Reconciliation; A program of Prison Fellowship International, Tutorial, Lesson 1: What Is Restorative Justice, <https://www.restorativejustice.org/about-us/>.
10. Estelle Zinsstag, et. al., *Conferencing: A Way Forward for Restorative Justice in Europe*, European Forum for Restorative Justice, v.z.w. 2011 at 41; https://www.antonioacasella.eu/restorative/Zinsstag_2011.pdf.
11. *Id.*
12. *Id.*
13. Ilyssa Wellikoff, *Victim-Offender Mediation and Violent Crimes: On the Way to Justice*, 5 Journal of Conflict Resolution 1, available at <https://cardozoicr.com/issues/volume-5-1/note-1/>.
14. *Id.*
15. *Id.* at 311
16. Judge Martha A. Mills was a significant contributor of information for this article. She is a retired circuit court judge of Cook County and as such started a pilot restorative justice project in a branch of the family court. She was also an early civil rights attorney in the south. Among other details, she provided significant information regarding her experiences with the restorative Circle Approach.
17. Bluth and Cohn, *supra* note 2 at 6.
18. *Id.*
19. Mills, *supra* note 16.
20. *Id.* at 311.
21. Story credit of Judge Martha A. Mills, to the best of her recollection of having seen a videotape regarding this instance.
22. Zinsstag, *supra* note 10.

23. *Id.*
24. Bluth and Cohn, *supra* at 2, citing Kay Pranis, et al., *Peace-making Circles: From Crime to Community* (2003) at 4.
25. C.M. Angel, L.W. Sherman, H. Strang, et al. *Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: a randomized controlled trial*, Journal of Experimental Criminology (2014), <https://doi.org/10.1007/s11292-014-9200-0>.
26. *Id.*
27. <https://www.whatworksforhealth.wisc.edu>, accessed 06/01/19.
28. *Id.*
29. *Id.*
30. See also the Restorative Justice in Chicago section in this article.
31. Annie Cossins, *Restorative Justice and Child Sex Offences: The Theory and the Practice*, 48 The British Journal of Criminology 359-378, <http://doi.org/10.1093/gjc/azn013>.
32. www.justice.gov.uk/publications/research.htm.
33. William R. Wood, *Why Restorative Justice Will Not Reduce Incarceration*, 55 The British Journal of Criminology 883-900, <https://doi.org/10.1093/bjc/azu108>.
34. Barbara Hudson, *Restorative Justice and Gendered Violence: Diversion or Effective Justice?*, 42 The British Journal of Criminology 616-634 (2002), <https://doi.org/10.1093/bjc/42.3.616>.
35. *Id.*
36. *Id.*
37. <http://www.cookcountycourt.org/ABOUTTHECOURT/JuvenileJusticeChildProtection/JuvenileJusticeChildProtection-ResourceSection.aspx>.
38. *Id.*
39. Bluth and Cohn, *supra* at note 2, at 14-15.
40. Zinsstag, *supra* note 10.
41. Judge Martha Mills, et al., *Restorative Justice Pilot Project at the Parentage and Child Support Court of the Circuit Court of Cook County*, 8 DePaul Journal for Social Justice (Winter 2014), accessed 06/10/19 at <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1100&context=jsj>.
42. Other hubs include Circles and Ciphers in Rogers Park, Alliance of Local Service Organization in Humboldt Park and Logan Square, and Target Area Development Corporation in Auburn Gresham, Little Village Urban Life Skills, Adler University Institute on Public Safety and Social Justice, Kenwood Oakland Community Organization, Austin Coming Together, the Community Justice for Youth Institute and the Juvenile Justice and Child Protection Resource Section, Circuit Court of Cook County. <https://rjhubs.org/>.
43. Bluth and Cohn, *supra* note 2, at 10-11.
44. *Id.*
45. *Id.*
46. Victim offender mediation is explicitly addressed in Minnesota's statute (Ch. 611A.775).
47. Judy C. Tsui, *Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System*, 104 J. Crim. L. & Criminology 635 (2014).
48. Marilyn Armour, *Restorative Justice: Some Facts and History*, Charter for Compassion 2017, <https://muse.jhu.edu/article/469534/pdf>.
49. Zinsstag, *supra* note 10 at 60
50. *Id.*
51. *Id.* at 53.
52. *Id.* at 56.
53. *Id.* at 57.
54. *Id.* at 57.
55. *Id.* at 58.

Recent appointments and retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be a circuit judge:
 - John L. McGehee, 14th Circuit, May 1, 2019