The Day the Jail Walls Cracked: A Restorative Plea Deal

by Sujatha Baliga

When I got the call from Howard Zehr, I balked at the idea.

“In a capital case? He shot her in the head? No chance, Howard.”

Howard agreed, but encouraged me to speak with the young man’s mother and explain, from a restorative lawyer’s perspective, why it wouldn’t work.

“Go ahead and give her my number. But I don’t have anything good to tell her. What I do here with kids in Oakland is never going to happen in a capital case in Florida.”

Within the hour I was speaking with Conor’s warm and tenacious mother, Julie McBride, who tearfully told me how a few months earlier her nineteen-year-old honor student, planning to take his own life, shot his fiancée instead. Conor drove himself to the police station and confessed. She went on to explain that “everyone” wanted the case resolved through restorative justice.

“Even the victim’s parents?” I asked.

“Yes! Kate and Andy Grosmaire are the ones who told me about restorative justice.”

“You’re in contact with them?”

“I just had breakfast with them last week. My husband, Michael, meets with Andy every Friday. And both of Ann’s parents visit Conor in jail.”

“Julie, it sounds like a remarkable situation. But I’m just not sure what we can do in a first-degree homicide case at this stage of the game.”

I went on to explain how I facilitate restorative practices in Oakland to meet victims’ needs while keeping children out of the juvenile justice system for crimes like burglary and teen dating violence. I told her about family group conferencing—how victims, families, police, the district attorney, and affected community members meet face-to-face with the child who caused harm to develop a plan to repair the harm and support the young person to follow that plan.

“But not yet for cases with gun charges or for homicides, let alone first-degree murder. Julie, it took me years to build the kind of trust I have with the DA’s office here. So even if your son and the victim’s family are amenable, I just can’t imagine

Andy Grosmaire talks about his daughter, Ann, who was killed by her fiancé, Conor. The Grosmaires asked for a restorative justice process to resolve the case, a highly unusual request from the parents of a murder victim.

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how we could pull this off in a homicide case in the Florida panhandle. So I just can’t let you hire me since I can’t imagine how I can help you.”

“I understand that you can’t make any promises, but please, if you just talk with the Grosmaires, I think you’ll want to be involved in this case,” Julie pressed.

“Sure,” I said, never expecting to hear from them. Jaded by my past work as a defense lawyer, I dismissed Julie as another wonderful mother holding out an impossible hope.

But the very next day, I was listening to Kate and Andy Grosmaire tell the story of how they lost their daughter, Ann. It brought tears to my eyes to hear that when Conor’s father walked into the hospital, Andy embraced him. Then Kate shared how, despite knowing that her youngest daughter would be taken off life support later that day, she visited Conor in jail to tell him they had forgiven him. I learned that all of this was grounded in their deep Catholic faith.

“If God forgives us, how can we not forgive Conor?” Andy asked.

As I listened to the Grosmaires’ story of seemingly impossible love and forgiveness, my feeling that nothing could be done started to shift. While forgiveness is not a prerequisite for starting restorative work, nor even required as an outcome, if by some spiritual or psychological grace it has already taken place in one or more of the survivors it can be extremely helpful.

“We met with the State’s Attorney; the death penalty is already off the table,” the Grosmaires explained. “We don’t need Conor to serve the rest of his life in prison and we have no interest in this case going to trial. We’d like to have restorative justice be the way this case gets handled.”

But even with victims so willing to come to the table, achieving a restorative outcome in a homicide case would be an uphill battle. This was a conservative jurisdiction on the Florida panhandle with severe penalties for gun crimes. Conor McBride had fired a shotgun at Ann Grosmaire at close range, and his confession made clear that while it wasn’t premeditated, it wasn’t an accident, either. Restorative dialogues in cases this serious do happen, but only after a defendant is well into his/her lengthy prison sentence. But something in the voices of both Ann’s and Conor’s parents—a wisdom and beauty and creativity growing out of an unthinkable horror—made me incapable of saying “no chance” as flippantly as I’d said it to Howard Zehr the day before.

I thought about how restorative justice, at its best, uses participatory dialogue to centralize victims’ needs, and how it uses collaborative decision making to decide the outcome of a case. The Grosmaires were asking for restorative justice at its best.

They wanted to meet with Conor now—not in fifteen years—to explain the impact of his crime and ask the kind of questions victims never get answered in our traditional justice system. They had a right to know: How could this have possibly happened? What were my daughter’s last words? How can we be sure you’ll never harm someone else again? And as the ones truly aggrieved by Conor’s crime, they deserved to be a part of fashioning the legal outcome in this case.

“OK.” I took a deep breath. “I’ll talk to Conor’s lawyer and see if there’s something that we can do.”

The first words out of Conor’s lawyer’s mouth were not unexpected.

“Never heard of anything like it. You want us all to sit down together and figure out what should happen to Conor? Face to face inside jail?”

I responded that while I understood his discomfort, restorative processes are by no means unheard of. People have been doing this for millennia all around the world, and it’s an idea whose time has come in the United States. So by the end of our conversation I was a member of the defense team as the restorative justice expert. Conor’s lawyer had a clear understanding that I was not a traditional defense team member, but rather held a space in the middle where I could work to meet the needs of everyone involved in this case. And Ann’s parents understood that I was a member of Conor’s defense team to preserve the confidentiality of the process, not because I was on “the other side.”

I heard those same words—“never heard anything like it”—from the prosecutor, from jail staff, from reporters, and from community members: “Ma’am, in my twenty-six years of running this jail, I’ve never seen such a thing.” “I would love to be a fly on the wall for that conversation.” “What a remarkable idea.” Each person whose approval or help I needed would stay on the phone just a few minutes longer. In those extra moments I felt hearts and minds open to a different way of doing things.

The legal vehicle for this process was the pre-plea conference. Traditionally, the pre-plea conference is a meeting between the defense attorney and the prosecutor in which plea deals get duked out. No one else, not even the defendant, is present for those meetings. Like all settlement conferences, nothing that comes out in those meetings is admissible at trial. The idea arose to have everyone be a part of that process: Conor, his parents, the Grosmaires, their priest, and the two attorneys.

I was confident about each person’s capacity to bring honest feelings and realistic expectations to the process. In our weekly phone calls, Conor was consistent in his acceptance of...
responsibility, and seemed deeply sincere in his desire to spend the rest of his life repaying an unpayable debt. His parents were able to hold him responsible while loving him unconditionally. Michael came to the table with a profound capacity to explore how his parenting had affected Conor. And the Grosmaires were dedicated to Ann’s death being transformed into a seed of something transcendent. They were willing to participate in this process knowing that the truth of what happened that day might test their capacity to forgive. Both the defense attorney and the prosecutor needed to step out of their traditional adversarial roles. And Conor’s jailers had to believe that it was safe to allow all of us to sit in a room together. At Kate Grosmaire’s request, Conor was to be unshackled.

I flew in a few days before the pre-plea conference to match some faces and places to the hearts and minds I had come to love. In Tallahassee I got to know more about the one person I will never get to meet—Ann. She was revered for her great compassion towards animals. A devout Catholic, an honor student, and a stage manager with a quirky sense of humor, Ann was just becoming comfortable as an actress in her own right. She was extremely private, keeping from even her sisters—her best friends—that Conor’s anger was growing out of control.

Wanting to understand the depth of the loss, I had accepted the Grosmaires’ invitation to stay in their home. Some of my lawyer friends had questioned that choice, worrying about “boundaries.” Kay Pranis, my mentor and friend, put it so beautifully.

“Boundaries? In this work we are trying to get rid of boundaries, Sujatha. The important thing is to have a strong center, not strong boundaries.”

In a tiny cinderblock room in the Leon County Jail that would hold five hours of sorrow, confessions, trauma, love, and forgiveness, we created that strong center. We draped a piece of cloth on the floor and decorated it with representations of Ann. A trophy. A box filled with notes between Ann and Conor. A rubber teething giraffe that Ann suggested to customers at the baby boutique she worked in. A plaster cast of Ann’s hand made while she was lying in her hospital bed. Ann had remarkably long, delicate fingers.

Father Michael Foley, the Grosmaires’ priest, opened with prayer. The prosecutor briefly summarized the charges and the facts of the case. Then, the Grosmaires shared the story of their beloved daughter—what her life had been and what her death had taken from them. Without vindictiveness, they did not spare Conor the totality of what he had done. When they finished, we listened to Ann’s favorite hymn, “Angel Band,” and then sat in silence for a few minutes to honor her.

All eyes turned toward Conor. I asked him to tell us, in his own words, how he’d taken Ann’s life. The story was not so different from what the police had recorded in his confession. But hearing it from his mouth in the presence of Ann’s parents was devastating. As Kate said in a radio interview a few months later, after Conor spoke, “we had to remind ourselves that we had forgiven him.”

After everyone was given time to speak, we turned to the difficult question of what Conor needed to do to begin to redeem himself. There was talk of anger management and domestic violence counseling. Conor agreed to speak at high schools about teen dating violence. He also spoke of the types of volunteer work that Ann would have done had she lived; Kate told Conor he carried the burden of doing the good works of two people when he was eventually released.

The last question was by far the most challenging. How much time should Conor serve? I had asked everyone to think about this far in advance of this day. (continued on page 64)
cultivation is meditation, social engagement, conscious parenting, entheogenic shamanism, or communion with nature. (Of course, it may be desirable to complement each pathway with practices that cultivate other human potentials.) The new spiritual bottom line, in contrast, will be the degree to which each spiritual path fosters both an overcoming of self-centeredness and a fully embodied integration that make us not only more sensitive to the needs of others, nature, and the world, but also more effective agents of cultural and planetary transformation in whatever contexts and measure life or spirit calls us to work.

The affirmation of our shared spiritual family naturally calls for the articulation of a common—nonabsolutist and contextually sensitive—global ethics. This global ethics, however, cannot arise exclusively out of our highly ambiguous moral religious past, but needs to be crafted in the tapestry of contemporary interfaith interactions, comparative religious ethics, cross-cultural dialogue on global human rights, and cooperative spiritual inquiry. In other words, it is likely that any viable future global ethics will be grounded not only in our spiritual history, but also in our critical reflection on such history in the context of our present-day moral intuitions (for example, about the pitfalls of religious dogmatism, fanaticism, narcissism, and dissociation). Besides its obvious relevance for regulating cross-cultural and interreligious conflicts, the adoption of global guidelines—including guidelines for dealing with disagreement—seems crucial to address some of the most challenging issues of our global village, such as the exploitation of women and children, the increasing polarization of rich and poor, the environmental crisis, xenophobic responses to cultural and ethnic diversity, and unfairness in international business.

Let me draw this essay to a close with the following: situated at the creative nexus between the mystery’s generative power and our own psycho-cultural dispositions, spiritually individuated persons might become unique embodiments of the mystery, capable of co-creating novel spiritual understandings, practices, and even expanded states of freedom. If we accept this approach, it is plausible to conjecture that our religious future may bear witness to a greater-than-ever plurality of visionary and existential developments grounded in a deeply felt sense of spiritual unity. Such spiritual unity, however, may not be found in the heavens (i.e., in mental, visionary, or even mystical visions) but deep down into the earth (i.e., in our embodied creative connection with our shared roots). This account would be consistent with a view of the mystery, the cosmos, and/or spirit as moving from a primordial state of undifferentiated unity toward one of infinite differentiation-in-communion.

If you let me wear my visionary hat just a bit longer, I would say that the future of world religion will be shaped by spiritually individuated persons engaged in processes of cosmological hybridization in the context of a common spiritual family that honors a global order of respect and civility. This is the scenario I would personally like to see emerging in the world and that I am committed to help actualize.

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The morning after the conference, Julie McBride said that there were times when it felt as if the cinderblock walls in that tiny room would crack from all the sorrow and heartache that poured forth in our five-hour meeting. Looking back, I think those jail walls did crack, not from the sorrow and heartache, but from the honesty, bravery, and willingness to try something our criminal justice system rarely sees: including victims in deciding what happens to the people who did them unthinkable harm, and a chance for their wrongdoers to begin to try to repair the irreparable before the case ever reaches the courthouse doors.

Kate began by saying no less than five years, and no more than fifteen. Andy said ten to fifteen, and the McBrides also suggested ten years. The Grosmaires preferred probation time over a longer sentence, with the terms of probation including public service. Conor declined to comment, saying that his fate was in the hands of those around him. The prosecutor did not feel at liberty to agree to anything that day but said that he had heard and understood what everyone was suggesting. A few weeks later he came back with an offer for twenty years, and included the anger management, speaking in high schools, and other ideas for repair in the terms of probation that would follow Conor’s incarceration. Although it was more time than the Grosmaires had wanted, it was far less than the prosecutor would have offered in another case. As he said in a recent newspaper article, "There’s no way I would have—based on these facts and circumstances—agreed to a sentence this lenient had they not asked me and sincerely expressed to me how important it was to them to allow them to heal."

Emerging Areas of Practice

An increasing number of hybrid or modified practices are developing in response to specific social issues. Circles are being used in prisons, for example, to bring together surrogate or unrelated victims and offenders for dialogue. Family group conferencing is being integrated into the child welfare system to give families more power and control over developing permanency plans for children who are in or at risk of entering foster care due to parental abuse or neglect. Adaptations in core approaches also allow restorative justice to be used experimentally for seemingly intractable problems such as domestic violence. Although controversial because of concerns about the victim’s ongoing safety, a number of new programs are using