Redemption for Offenders and Victims

A new variation on an age-old tradition helps criminal defendants redeem their lives, far more effectively than prison does.

By Lara Bazelon

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Judge Leo Sorokin, 56, has spent his professional life working in the criminal justice system. A graduate of Yale College and Columbia Law School, Sorokin served as an assistant attorney general, a federal public defender, and a magistrate judge. In 2013, President Barack Obama nominated Sorokin to the federal district court in Boston; he was confirmed by the Senate in 2014.

Sorokin, a soft-spoken, balding man with pale blue eyes, has an unassuming manner that gives no hint of his tenacity. In the fall of 2015, Sorokin launched a pilot program he had been envisioning for years, with no precedent in the federal system. He called it RISE—Repair, Invest, Succeed, Emerge. RISE offered a rare second chance for adult defendants convicted of serious federal crimes to avoid prison.

Beginning in October 2015, a committee of judges, prosecutors, defense
lawyers, and probation officers met monthly to screen possible RISE participants. To be eligible, defendants had to have a verifiable history of addiction or a life of extreme deprivation. They also had to plead guilty, and have their sentencing hearings postponed for 12 months, during which time they had to get clean, get jobs, go to school, and find a place to live.

But the core, non-negotiable component of RISE was attendance at a two-day restorative justice workshop. Sitting in a room for eight hours a day, the RISE participants came face to face with people who had lost children and close family members to overdoses and shootings. Also in the room were prosecutors, defense lawyers, judges, and probation officers, but not in their traditional roles. They, too, participated, sharing personal experiences, and offering support and encouragement. Mostly, they listened without judgment as the offenders haltingly described their own victimization. They spoke of their addiction, mental illness, abuse, and poverty.

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Restorative justice is a centuries-old approach to crime, with roots in tribal cultures. It seeks to empower people to address the harms, needs, and obligations that arise from crime by bringing together victims, offenders, and members of their respective communities. The face-to-face open dialogue process is focused on personal accountability and reparation. It requires the seemingly impossible: that victims and offenders share deeply personal and painful life experiences with the least likely person in the world—each other.
Restorative justice requires its participants to lay bare feelings—self-loathing, suffering, rage, loneliness, rejection—they have hidden from the world and often from themselves. They must face reckonings they have long resisted and engage each other with radical empathy.

IT HAD TAKEN MONTHS for Sorokin to convince skeptics within the criminal justice system that RISE was worth a try. A key ally was Maria D’Addieco, a federal probation officer with a master’s degree in social work and extensive training as a restorative justice facilitator. D’Addieco said that many participants have told her that the restorative justice workshops were harder than doing time, where they could “put their game faces on and just get through it without facing up to what they did.” Most had long told themselves that their crimes were “victimless,” as they never saw the direct effects of the drugs and guns they sold.

In February 2016, D’Addieco co-facilitated a restorative justice workshop for the first RISE class of eight offenders. They were a diverse group: men and women, black, white, and Latino; one young man was 19, others were in their early fifties. Their offenses included trafficking in heroin, cocaine, and marijuana, selling illegal firearms, and assaulting a federal officer. Judge Sorokin and Magistrate Judge M. Page Kelley, who had been holding monthly meetings with the program participants to monitor their progress, came to observe at the end of the second day. Assistant U.S. Attorney James Herbert participated, as well as several activists from the community.

One offender was Bobby Fitzpatrick, 39, a bald, trim, middle-aged man with a broad Boston accent. Fitzpatrick came from a working-class background in Quincy, near Boston. Fitzpatrick signed up for RISE knowing that he was in the worst trouble of his life and the program was his only way out. In late September 2014, he had been indicted for conspiring with three others to bring more than 50 kilograms of marijuana into Massachusetts from California. He did it on behalf of the New England branch of an organized crime family that claimed him as “an associate.” A cocaine addict and alcoholic, Fitzpatrick had been using his position as a driver for UPS and other
delivery companies to bring in drugs for the mafia, off and on, for more than 15 years. He spent the money on drugs.

Fitzpatrick agreed to get clean, spending more than two months in a residential drug treatment facility, and emerging in June 2015. Since then, he had followed every RISE directive: His twice-weekly drug tests were all clean, he had steered clear of his co-defendants, and he was working 70 hours a week for a different delivery company, which was aware of his ongoing case but agreed to give him a second chance.

Late in 2015, Fitzpatrick reinitiated contact with his 15-year-old son, Brendan. They had not seen each other in two and a half years. Brendan was struggling, smoking marijuana daily and failing school, and his mother could not control him. Fitzpatrick was trying to regain Brendan’s trust and be a real father for the first time in the boy’s life.

But despite his progress in RISE thus far, Fitzpatrick viewed the restorative justice workshop skeptically. Introspection and self-reflection—never mind sharing his feelings with a roomful of strangers—seemed like a lot of touchy-feely fluff. “Rainbows and lollipops,” he called it. His father was a truck driver, his mother stayed at home and later worked at a daycare center owned by a friend. He first described his upbringing as “very normal, very middle-class. Or at least it seemed that way,” he added after a moment. In fact, Fitzpatrick’s father was a drug addict who was gone for long periods of time, because of both his work and his own addiction.

Fitzpatrick’s paternal grandfather was an active member of the Winter Hill gang, an affiliation of Irish and Italian American gangsters whose members included the notorious criminal boss Whitey Bulger. Growing up, Fitzpatrick was very close with his grandfather and impressed by his power, his associates, and his gangster persona. It all seemed glamorous and high-stakes, he says, “The money, the women, the booze.”

Fitzpatrick was drawn to drug dealing to support his cocaine habit and to live the lifestyle that his grandfather had enjoyed. A brief attempt to “clean up my act” in 2005 by getting married and going straight ended when his wife divorced him two years later. By 2012, he had moved back to Quincy and “got
heavily into the whole criminal enterprise thing again.” He never believed he would get caught, having gotten away with it for so long. When he did, he said, “I was once again in the throes of addiction.”

The exercises Fitzpatrick did in the restorative justice workshop asked him to acknowledge that beneath the image he cultivated—of a man who took what he wanted and did what he wanted—“I hated myself so much.”

On the second day, when it was his turn to speak, Fitzpatrick was asked to list the people he had harmed over the years. At the top of the list was his son, Brendan. As Fitzpatrick talked, he realized he was perpetuating a family cycle of ruinous relationships between fathers and sons. Fitzpatrick’s grandfather, an alcoholic, hated Fitzpatrick’s great-grandfather. Fitzpatrick’s father, a drug addict, hated Fitzpatrick’s grandfather, whom he viewed as an unrepentant criminal. Fitzpatrick grew up alienated from his own father, whose addiction made him seem weak and neglectful. Fitzpatrick’s son, in turn, felt abandoned by Fitzpatrick, an alcoholic and drug addict who had played little or no role in the first 15 years of the boy’s life. The revelations were painful, but also motivating. There was a larger purpose to his sobriety beyond getting off drugs and staying out of prison. He could reclaim his son.

Two months later, in April, with the support of Brendan’s mother, Fitzpatrick
took physical custody of Brendan. The probation department was supportive, albeit concerned that Fitzpatrick might buckle under the additional challenge: He had been sober less than a year, and his criminal case was hanging over his head. Judge Kelley was concerned too, telling him, “Bringing home a 16-year-old boy that you haven’t had a relationship with is pretty much a life-changing experience.”

At first, the transition was difficult. Brendan had to change schools and make new friends. He was angry, fell in with the wrong crowd, and failed two classes. “His level of trust with me,” Fitzpatrick said, “was low.” A breakthrough came when Fitzpatrick sat Brendan down on the couch one day in the late spring of 2016.

“I started off the conversation by telling him about me and my father and how I live every day with a huge hole in my heart knowing that we could never be honest with each other. I talked to him about my addiction and my father’s addiction and how we never really connected and that I saw it happening all over again with him and me.”

The turnaround did not happen overnight, but the dynamic changed. Brendan trained all summer to try out for the football team, went to summer school, and got a job mowing lawns. In the fall, his grades went up and he made the football team. “Now we have normal parent-kid problems,” Fitzpatrick said, “I told him ‘I ain’t going nowhere,’ and he trusts me now.” Fitzpatrick focuses on maintaining what he calls “a good clean healthy environment so we can have this life that we should have had a long time ago.”

Fitzpatrick, who pleaded guilty to using a cell phone to distribute marijuana, was sentenced on March 17, 2017. More than two years had passed since his arrest. Referring to his sobriety, Fitzpatrick said, “I don’t even count the days anymore. It’s just my life.” He was a full-time single parent working 70 hours per week whose idea of cutting loose was spending Sunday mornings running football drills with his son and going for long swims at the YMCA.

But Fitzpatrick was facing 18 to 24 months under the federal sentencing guidelines. In the weeks leading up to the court date, he became increasingly anxious, especially fearful of the impact on Brendan if he was sent to prison.
Four days before the hearing, Timothy Moran, the assistant U.S. attorney assigned to the case, filed a short memorandum requesting no prison time. Moran wrote that Fitzpatrick’s “excellent” results in RISE have “served as an example to others and ought to be rewarded.” Fitzpatrick’s lawyer called his client’s turnaround “extraordinary.” He continued, “More importantly, Mr. Fitzpatrick has recognized the importance of not just acting, but being a real role model for his son.”

Appearing in front of Chief Judge Patti B. Saris in the early morning of March 17, Fitzpatrick, dapper in a gray suit and blue tie, felt fearful and overwhelmed. His apprehension grew when Saris noted that she had given his co-defendants prison sentences; she wanted to hear from Fitzpatrick directly about why he deserved greater leniency. “I didn’t write anything or prepare anything. No poems, no cards, no quips.” Instead, Fitzpatrick talked about RISE and its impact on his relationship with his son. “I keep going back to the values, and that’s really what’s changed in me. The things I value today are my son, my family. And I love those things. And I wish to God I woke up earlier.”

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OFTEN, RESTORATIVE JUSTICE is an adjunct to the criminal justice system or
occur years after that process has concluded. But it can also be a stand-alone alternative. There are few pre-determined expectations other than open-minded and full-throated participation on all sides and a commitment to accountability by the offender. The scholar Howard Zehr, who led the movement to bring restorative justice into mainstream American thinking about crime, is emphatic that “we don’t impose a goal of forgiveness.” Still, he says, “it often happens. There are so many misunderstandings about what forgiveness is: that if you forgive that means you are not holding people accountable or forgetting about the harm that was done to you.” But the victims who do forgive, he says, talk about it as a kind of personal liberation, a gift as much to themselves as to the offenders. Although most restorative justice programs are not overtly religious, for many it is a profoundly spiritual experience. Many describe participating in a restorative justice process as one of the most intense and life-altering experiences of their lives.

These concepts are foreign to many accustomed to a justice system modeled on retribution, usually in the form of lengthy prison sentences and permanent social ostracism. And yet, restorative justice was practiced for centuries on our soil by Native Americans, and it is widespread in other cultures. Beginning in the 1970s, it was rediscovered by activists like Zehr, who were searching for ways to reform the system. Over the years, restorative justice has slowly gained a certain level of acceptance in pockets of the country. Today, it is used in a small number of jurisdictions across the United States and pilot programs have been launched in others, with the hope that a show of successful results will allow it to gain a permanent foothold.

ONE OF FITZPATRICK’S classmates in the RISE program was Laura Santana, 27, a petite woman with shoulder-length dark hair. Born in the Dominican Republic in 1987, she came to the United States with her mother, Yvonne, and twin brother, Gus, when they were infants. They followed Santana’s father, who lived in New York, but she rarely saw him. Her primary relationship was always with her mother, whom she describes as “the love of my life. She was my everything.”
But Yvonne struggled financially to support Laura and Gus. She also struggled psychologically—she was an alcoholic prone to severe depression, at one point slashing her wrists and having to be hospitalized. The family moved constantly, and not always for rational reasons. "If she didn’t like the vibe, it was like, ‘We’re leaving.’” In 1999, Santana’s mother settled the family in Boston, where they remained for six years—the longest they had ever been in one place. Like her mother, Santana was also plagued by depression, but the newfound stability helped her. Santana developed friendships, and committed to her studies.

But in the fall of 2005, when Santana was 18, Yvonne announced that she was moving to New Jersey. Caught off-guard, Santana became overwhelmed by anxiety—her mother had made it clear that she had no intention of staying in Boston for the duration of the school year. In February 2006, Santana tried to commit suicide. In April, Yvonne carried out her plan to move to New Jersey. Without a place to live, Santana dropped out of high school six weeks before graduation and never went back. She decided not to follow her mother, and instead took a friend up on his offer to spend time at his house in a small town in Vermont “to try to get my life together.”

Santana decided to return to Boston later that year. In 2007, she got a job at Virgin Atlantic Airlines as a cargo agent. The fast-paced work was consuming and cathartic: Santana excelled and was promoted, first to cargo supervisor, then station manager. In 2009, at the age of 21, she got married.

In 2012, Santana took a job with Embassy Freights, where she worked as an export agent. Santana lived by the work-hard/play-hard ethic. “I partied a lot. I traveled a lot. I was always working. Pretty much I was just enjoying life. I clubbed a lot and went out drinking. Living very carefree.” Her marriage grew troubled.

Yvonne continued to be Santana’s primary source of support and love. Though the relationship was long-distance, mother and daughter spoke on the phone daily. When her mother’s heart disease got worse, Santana took every opportunity to visit her.

One day in 2013, Yvonne called to say she was very sick. Frightened, Santana
immediately starting driving from Boston to New Jersey. Her mother died before she got there. Though Yvonne’s health had been poor, there had been no hint that she was nearing the end of her life. After the shock, Santana felt crushing despair. Her marriage collapsed, and suicidal thoughts returned.

For the next 18 months, Santana had trouble eating and sleeping, going off and on medication, unable to find a combination that didn’t make her feel like a zombie or a robot. She tried different coping mechanisms: partying, taking days off to isolate herself in her room, and putting on her game face when she went back to her job. Nothing worked.

In February 2014, Santana was out at a club in the Dominican Republic when she met a charming older man who called himself Choco. “He kind of like complimented me and I got the attention I needed. Usually, I don’t go for that, but I wanted to be irresponsible and I was on a very self-destructive path and I didn’t care.” They flirted, went out to dinner, and stayed in touch by phone when Santana went back to Boston. Santana flew back to see Choco in June. When he asked her to bring back a package into the United States and deliver it to his friend at the airport after clearing customs, she agreed. In exchange, he promised to pay her $5,000.

Santana’s flight left at 4 a.m. on June 16. She boarded the plane drunk, having been up all night dancing and drinking with friends. When she headed to the customs checkpoint, a border patrol agent pulled her aside for secondary inspection; he and his partner then searched her carry-on bag and her suitcase. Inside, agents found two purses. They were empty, yet bulging at the sides. When they cut into the lining, the agents found just under a pound of cocaine. Stricken with fear and sick from the alcohol, Santana immediately threw up. She then confessed and was charged with importing drugs into the United States.

Santana’s assigned federal public defender, Jennifer Pucci, was on the RISE committee. She thought Santana fit the program’s criteria—she had already pleaded guilty to the offense, was out on bond, and still working at Embassy, which knew about her criminal case and continued to support her. Pucci encouraged her to consider applying and Santana entered the RISE program.
The following month, Santana attended RISE’s first restorative justice workshop. Like Fitzpatrick, she was skeptical, though for different reasons. Santana expected to be judged harshly for her crime, the way she felt when she went to court and “the prosecution was kicking me down so much.” And in fact, some in the prosecutor’s office had been opposed to Santana joining RISE, believing she had no insight into her conduct. They felt strongly that she needed to go to prison. But to her surprise, the members of the restorative justice circle, which included a different prosecutor, James Herbert, offered her acceptance and hope. “They told me, this crime does not define who I am, and I gained confidence.”

Talking about her mental illness and her suicide attempt, always a source of shame, was much harder. D’Addieco asked Santana to describe her state of mind when she committed the offense. Santana described her unbearable grief after losing her mother and her growing sense—given her intense identification with her mother and their psychological similarities—that she was destined to the same fate. Heartsickness, depression, and an extreme sense of isolation made her good-girl choices seem pointless. In a perverse way, it felt good to tear her life down by taking crazy chances, because it made her feel, however briefly, more alive. Describing the events of the past several years and what her life had become, Santana broke down in sobs.

The process marked the beginning of facing her pain, anger, and fear. The following month, Santana began seeing a therapist every week. “At the beginning, it felt forced, because I had to go.” But after a while, Santana began looking forward to the sessions. She got her GED and began taking business and writing classes on Saturdays at Bunker Hill Community College, earning As and Bs in the first year. “I love school and consider it a form of therapy,” she said. A relationship she had with an on-again, off-again boyfriend became steadier shortly after the crime; in May 2016, they bought a house together.

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On October 26, 2016, Santana graduated from the RISE program. Appearing in court before Judge Kelley, Santana spoke at length about her accomplishments and her determination to get her associate’s degree. While there was no changing the fact that she was a convicted felon, Santana planned to “emerge on the other side triumphantly.” When she finished speaking, Santana was wiping away tears. Clearly moved, Kelley said, “You are just a great person.”

Exactly one month later, on November 28, Santana appeared before Chief Judge Saris, the same judge who had sentenced Fitzpatrick. Under the federal guidelines, Santana faced three years in prison. Santana said she walked into court prepared “to accept whatever happened.” But she was still terrified.

Pucci pushed hard for probation, listing Santana’s accomplishments and writing, “In every way, she has proven to be a star.” Even the prosecutor, convinced by Santana’s progress in the program, agreed that Santana did not deserve to go to prison. Saris sentenced Santana to three years of probation instead. Looking back, Santana feels relief that “everything turned out okay,” and a determination to continue moving forward.

As of this writing, the RISE program has 15 graduates, and 11 current participants. Four people have been terminated from the program for failing to complete it. Shortly before Fitzpatrick was sentenced, Sorokin traveled to Washington, D.C., to testify about RISE before the United States Sentencing Commission, hoping to encourage other federal trial courts to adopt it as a model. Saris says that “it is too soon to tell” if RISE will be a successful program in the long term because there is not enough data to make an empirical assessment. But, she says, “the initial signs are excellent.”

There is an impulse among some to dismiss restorative justice as a lot of
kumbaya hooey. But if you ask the men and women who have engaged in it, they will tell you emphatically that it is not. At the same time, restorative justice is not a magical antidote for everything that is wrong with the criminal justice system. It is hard—programmatically, logistically, and emotionally. To work, the participants must approach it with an open mind, willing to engage with each other and with the darkest parts of themselves. For many people, that is not possible. Of the four people who left RISE, Judge Kelley says three failed to comply “with the rules of the program,” resulting in them re-entering detention before being sentenced.

But for those who are willing and able to do the hard work—victims, perpetrators, prosecutors, defense attorneys, judges, family members, teachers, community activists, and other leaders—the results are well worth the effort. It’s not overstating it to say that restorative justice has the power to heal and give hope to those who had long ago resigned themselves to lives of brokenness and despair.