Across the River of Fire

“I sometimes think of myself as a scar.” It was years after his face was slashed open that Elijah would describe himself that way. In part, it was because his scar had transformed his appearance and, he believed, how people saw him. But it was also because the violence he sustained had become so great a part of him as to obscure the rest. Other facets of his identity—as a son, a brother, a nerd (his own words)—all paled in comparison to his experience as a survivor. It was not just that violence had added something awful to his life. It was that it had displaced so much else. I have always thought the phrase “all-consuming” was a particularly good description of the experience of some stages of trauma: not all-hurting or all-enraging or all-terrifying—all-consuming. It is as though trauma is not simply an additional set of emotions and experiences. It is as though it devours all others. “It is not the unending presence of pain that hurts,” a mother who lost her son once said to me, “it is the unending absence of joy.”

Becoming a country that can end violence will have to begin with facing the pain that violence causes. There is no pathway to safety, healing, or justice that does not begin with a deep regard for what has been done and what has been lost. We cannot solve a problem we cannot look at squarely. Envisioning responses to violence therefore requires that we contend honestly and unflinchingly with the lasting impacts of harm, take seriously
those consequences and the people who experience them, regard the transformation of the pain violence causes as our collective responsibility, and commit to understanding that pain more fully so that we may help ease it.

We are not practiced in that attention. However prevalent violence may be in our culture and media, its aftermath is largely rendered invisible. Plotlines for action movies rarely include the hero’s flashbacks, night terrors, or arduous physical therapy. We watch violence compulsively, and we just as compulsively turn from it the moment it occurs. Righting our national course to respond effectively to violence will require turning back and facing it head-on.

The consequences of violence that may be the easiest to see and understand are physical injuries, particularly ones that impair how people live or cause them chronic pain. The limitations and pain can themselves be sources of substantial loss and suffering for survivors—people who can no longer walk, no longer speak, no longer use their dominant hand, no longer digest their own food, no longer hold their children, no longer go more than an hour without pain; survivors whose lives are shaped by surgeries and doctors’ appointments and medication regimens and the constant specter of pain.

But this pain has another layer to it: it is a reminder of what was done to us. Each new X-ray, each new specialist, each new sick day from work can remind survivors of the day we were harmed and can make it nearly impossible for us to go for long stretches that aren’t shaped or haunted by that memory. The feelings of powerlessness, rage, self-blame, terror, and sadness associated with the violence we survived can be woven into our daily rituals of taking a given medication, hoisting ourselves into our wheelchairs, taking the bus to physical therapy, or practicing the breathing exercises we learned to manage our chronic pain. These physical repercussions extend beyond the immediate effects of violence: the lasting effects of trauma and post-traumatic stress include a wide range of challenges, including cardiovascular and endocrine disease.

Then there are the scars. For some survivors, our bodies may function as they once did but still bear the marks of what happened. These scars tell stories survivors often want to keep private—or at least want to choose when they tell and to whom. Scars have no regard for that legitimate desire. They tell the stories constantly and to everyone. They expose private loss to anyone who can see. They invite speculation and intrusiveness and pity and judgment, virtually none of which are helpful to any survivor. Scars resist evolution and healing; they insist on the permanence and persistence of the past. They drive a wedge into the present where the pain can always slip in.

Physical scars are not the only way the past steals into the present. Trauma can include the reliving of our pain and terror. When survivors experience flashbacks, it is not simply that we are reminded of a terrible event. Many experience a flashback as though that event is happening now. Unlike other experiences, which we successfully organize into memory, traumatic experiences can stay endlessly current. As one Common Justice community member put it, “I don’t remember it happening. It is happening.” When we suffer from flashbacks, we experience many of the symptoms that accompanied the original experience—panic, escalated heart rate, fight or flight, difficulty controlling our bowels, cold sweats, abject terror. Our community member continued: “Healing doesn’t mean I get to forget it. Healing means I get to remember it. Right now I don’t remember it. I relive it.”

Trauma transforms us. As survivors, we can feel rage so intensely that we become unrecognizable to ourselves. We can feel loss so deeply that we want to wring out the marrow of our bones just to be free from it for one moment. We can experience earthshaking fear in our own homes, in our own beds, in the arms of the people we love and trust most in the world. For some of us, our
symptoms meet the diagnostic criteria for post-traumatic stress disorder (PTSD). For others, it may feel more like a haunting.

We wrestle with the force of this distress in a wide variety of ways. We blame ourselves, we rage, we overwork, we drink and self-medicate with legal and illegal drugs, we withdraw, we trust no one, we attach too intensely, we feel everything, we feel nothing, we become intensely cautious, we take unreasonable risks, we bury our dead, we bury our hearts, we dig everything up, we sleep for days, we can never sleep, we make ourselves invisible, we expose ourselves completely, we cannot feel our bodies, we can only feel our bodies, we eat, we starve, we weep, we cannot even weep, we forget things, we remember everything, and we heal. We rise, we wrestle, and we heal. And we bring others along with us when we do.

Transforming our national response to violence will require placing the people who survive it at the center of any response to it. This is not what we currently do—though we pretend that it is. Legislators have enacted draconian criminal justice laws in the names of survivors. Others have drawn on crime victims’ stories to motivate sympathy, horror, and outrage. But the one thing rarely done is to ask the full range of survivors what they want.

We are used to two main tropes about victims and what they want. The first, and overwhelmingly dominant one, is the victim who wants the greatest possible penalty for the person who hurt them. This includes victims who call for the death penalty, who insist on the maximum allowable sentences for the people who hurt them or their loved ones, and who oppose parole when the person who caused them harm is eligible. These stories make it into the news, into the halls of legislatures, and into legislation itself. One might think of it as grieving by punishment. It is appropriate to have deep compassion for those who do it, even as we know it causes great harm and almost never delivers them from their own pain in the way they deserve. These voices are certainly part of the picture and deserve to be heard. But they reflect a far smaller portion of victims than we are led to believe, and their power is dangerously outsized as compared with other victims.

The other stories that are told—often offered as counterpoints to the dominant narrative about revenge—are stories of what we might call extreme mercy. This is the story of Charleston, where in 2015 the twenty-one-year-old white man Dylann Roof entered a church, prayed with its congregants, and then opened fire and murdered nine people and injured others. As early as Roof’s bond hearing, some of the survivors of the dead offered him their forgiveness. It is the story of Kate and Andy Grosmaire, whose daughter Ann was murdered by her boyfriend, Conor. The Grosmaires forgave their daughter’s killer and participated in a restorative dialogue with him that reduced the prison sentence he faced for the murder. It is the story of Mary Johnson, whose only son, Laramiun, was killed by four gunshots during a gang-related altercation in 1993. Mary forgave Oshae Israel, the young man who murdered her son, and even arranged his coming-home party in 2010 when he was released from prison.

Sometimes we pathologize the angriest victims, but equally, we pathologize the forgiving ones. The angry ones scare us, but they also affirm our system as it is. They reassure us that the system we have built in their names is the right one, that it embodies the right values and takes the right actions in response to harm. Forgiving victims complicate matters. They suggest that winning justice and securing the maximum possible penalty might not be equivalent. They suggest that the tools we have available to respond to harm might not be the right ones. They make clear that however much we set policy in victims’ names, we do not respond to their wishes in its application. After all, even after many of the victims’ families in Charleston forgave Dylann Roof, the U.S. Department of Justice still declared its intention to seek the death penalty in that case.
We need these stories of extraordinary forgiveness and the complication they introduce. They are critical testimonials to the human capacity for compassion. They, like the painful stories of hungry revenge, deserve their place in public consciousness. But like those other stories, they are not fully representative of most survivors. Most of us lie in the vast space between complete hatred and full forgiveness. And far less than is true of extreme mercy, that messy middle is almost nowhere in our public understanding of violence, justice, and healing.

For many survivors, anger is a central part of their response to the harm they survive. When we reduce survivors’ responses to that anger, though, we miss the other emotions that exist alongside it. If you were to ask most survivors if they could choose only one emotion to describe their feelings, many would indeed choose anger. But if you allowed them, as in multiple-choice tests, to select all of the responses that apply, they would choose more. They would choose anger. But they would also select compassion, grief, loss, fury, and confusion. They would select love, despair, resentment, terror, and hope. They would choose them all, and none would cancel the others out.

Our criminal justice system does not know how to hold all of these things at once. The only space to hear information about a defendant’s own experience of pain is for the purpose of mitigating their sentence—though of course, the defendant’s pain doesn’t in any way lessen the survivor’s. Most often the only place for a survivor’s pain is in a victim impact statement typically meant to enhance the defendant’s sentence, regardless of what the victim finds healing. In our zero-sum system, complexity is a liability, and survivors are nothing if not complex.

The system protects its purported simplicity in part by excluding the voices that belie it. In that way, when the image of an innocent white woman is invoked as the prototypical victim, it not only supplants and displaces the lived experience of the vast majority of victims who do not belong to that demographic. It is also meant to conjure up a story about what justice looks like—justice in which the victim is pure and innocent, in which the person who caused harm is heartless and monstrous, in which the protector is righteous and vengeful, and in which the system as we know it contains them all in a proper and rightful order.

Resisting this formulation does not require excluding even a single furious and pained voice, denying the validity of a single call for revenge, or pretending merciful people are better than angry ones. What it requires is allowing it all in—all the mess, all the seeming contradictions, all the survivors—and committing to building a system that can hold them all. We have to resist the urge to cancel things out and instead allow them to build, to accumulate, and in their aggregate, to become something different, more honest, and more just than anything we have envisioned thus far. We will stand a chance at doing that only if we take seriously the pain of every survivor, every time.

For the vast range of experiences and responses survivors embody, when we do ask them, their responses are notably consistent—and notably consistent with what the trauma recovery field has identified as critical components of healing and recovery. That is to say, for all their variability, on the whole survivors crave precisely the things that have been demonstrated to alleviate their pain and support their well-being. These things, it turns out, are also consistent with the interests of justice and safety.

To begin the conversation about appropriate responses to violence, survivors first want validation that what happened to them is wrong. They want their pain taken seriously, and they do not want to be blamed or judged for what happened to them. They deserve this validation no matter who they are, what they did, or where they were when they were hurt. They need it no matter what our societal biases are about “people like them,” no matter what their criminal record may be, no matter whether they reported the crime to the police or didn’t. This validation matters in part because it reaffirms exactly what has been compromised.
when someone has been hurt: the belief that they live in a world that rejects violence and in which they should be able to be safe. It is easier to come through a terrible aberrant experience and be held in a society that recognizes its impact than to experience violence as an expression of the society’s norms, values, and expectations. In clearly, directly, and repeatedly affirming that what a survivor sustained is wrong, we stake a claim for a world in which what people endured should not have happened in the first place, and we walk with them in the process of re-creating and returning to (or creating for the first time) that world.

Once we have established our recognition that what happened to them is wrong, survivors want answers. Information contributes substantially to what people in the trauma recovery field describe as the formation of a “coherent narrative”—a story about what happened and why that the survivor can believe, make sense of, find some meaning in, and live with. So, for example, for survivors who before the crime believed that bad things do not happen to good people, there are two primary ways within that narrative for them to tell the story of what happened: either (a) that they are actually a bad person and therefore less deserving of safety, of good things, even of love; or (b) that their goodness, the way they live, their righteous behavior, their attempts to be consistently caring and ethical and kind do not matter and will not keep them safe. Both of those stories are far worse than the one they believed before the crime. In coming through the traumatic experience, the survivor who is telling this story will have to grieve the worldview they once held—one that made them feel whole and made it possible to expect at least some real measure of safety—and will have to form a new worldview that is workable and includes the reality of what has happened to them. That new narrative may be as simple (and as profound) as “Even terrible things are survivable with love,” or “I am more resilient than I ever knew,” or “Hurt people hurt people,” or countless other ways survivors make sense of and integrate their pain. These stories also help survivors accomplish a core feat of trauma healing: to arrange the story into their memory so they no longer experience it as eternal and ongoing.

But these new narratives are hard to build on the basis of mystery and doubt, so the more information a survivor has about what happened and why, the more thoroughly and quickly they are positioned to heal. There is almost never anyone who knows more about what happened to a survivor and why than the person who caused them harm. Survivors who want answers to their questions therefore need and deserve to be able to ask these questions and get those answers: Why did you do it? Why did you choose me? What, if anything, could I have done to stop you? Did you think I did something to you? Did you think I was someone else? Was that a real gun? Were you really prepared to shoot me? Did you feel bad at the time? Do you feel bad now? What would you have done if I had fought back? What happened to you? Did you think you could get away with this? People are built to heal, and when we have information, we are profoundly capable of putting it into the service of our healing. The problem is that survivors rarely have access to such information because every response our systems have created to manage their relationship with the person who hurt them is designed to keep them separate rather than to help them come together productively.

Survivors do not only want to ask questions. They want to speak and they want their voices heard. In that way, forming a coherent narrative is not just about listening. It is also about talking. Survivors want to be able to say, “How dare you?” They want to be able to say, “My brother was killed the year before you stabbed me. Can you imagine how it felt to my mother to get the call from the hospital that I was unconscious in the E.R. and had been stabbed?” Or: “I was going to spend that money you stole on a present for my daughter’s birthday the next day. It was all I had. And so you left me with a terrible choice: make it look like I had forgotten her birthday or tell my five-year-old...
baby girl that she lives in a world where someone can hurt her daddy like that.” Survivors want to say, “You had no right.” They want to say, “If it had been five years earlier, I would have killed you for what you did to me, but I’ve grown, and you’re lucky.” They want to say, “The fact that I am okay now does not let you off the hook for the impact you had on me then.” They want to say, “I did not deserve what you did to me” or “I have not slept one solid night since you robbed me” or “Every time I see my scar in the mirror, I think of you” or “I wished you were dead” or (and I really should say “and/or”) “I forgive you.” Survivors are right to want to speak. Speaking about their experience helps in the formation of their story and can contribute substantially to the abatement of their symptoms and to their healing. When we think about the association of trauma with cardiovascular disease, the phrase “I got it off my chest” becomes perfectly salient and clear.

Survivors want what they say to have an impact, and more broadly, they want what they want and what they do to have an impact, too. They want a sense of control relative to what happened to them. Trauma is fundamentally an experience of powerlessness. Experiences that counterbalance that powerlessness with some degree of power—including over the story and the response to the harm involved—can contribute substantially to a survivor’s healing process. For some, this sense of control can arise from shaping the outcome of their case if it proceeds through the criminal justice system. It can arise if we are honest, through retaliatory violence. It can arise in meaningful accountability processes in which survivors get to shape the outcome. And it can also arise by developing an enhanced ability to make choices that keep them safe (such as by having the economic means to move, change jobs, or buy a car so they do not have to walk to the bus) and by fostering their inherent ability to heal. For some survivors, working to change the conditions that made them unsafe in the first place can give them a sense of greater power and connection. We see countless survivors in movements to end violence, and their presence is not only generous, it can also be life-saving for them.

In that spirit, survivors want access to the resources they need to heal and be safe—and they want them available even if they choose not to involve the police. Trauma can disrupt all parts of a survivor’s life. For survivors who are students, common responses to traumatic experiences—including flashbacks triggered by sounds or smells, trouble sleeping, a sense of danger even in safe spaces, and panic attacks—can interrupt their education, contribute to disciplinary concerns, and diminish the chance of academic achievement. Similarly, exposure to trauma can affect people’s ability to function effectively, do their best at work, or obtain and keep a job. And some people who are harmed and do not get well are more likely to commit violence themselves. Each of these factors carries a financial cost in addition to a human one, and can have an impact on social service systems like law enforcement, hospitals, and public aid.

Still, despite the moral and financial benefits of helping victims heal, the services and support to help them come through their pain are often scarce—and frequently leave out a significant portion of survivors. A truly survivor-centered response to violence would include the broad availability of mental health treatment, counseling, trauma-informed care, and culturally rooted healing practices, and would emphasize the removal of barriers to these supports. This holds true not only for community-based services, but also for public victim-compensation resources, which reimburse survivors for costs such as hospital bills associated with a crime. Despite widespread recognition that many survivors do not believe that engaging police will make them safer, federal law nonetheless requires that victims “cooperate” with law enforcement to receive this help. When that cooperation feels neither safe nor just to victims, they are barred from getting this key support to meet their basic needs.
Survivors do not want their healing resources tied to the person who hurt them, but they often do want things from that person. In addition to answers, many survivors want the person who harmed them to repair the harm as best they can.\textsuperscript{24} It is a basic human desire to want what is broken to be fixed, and to want those who broke it to take responsibility for that repair however possible. Survivors who experience that repair can be greatly aided in their healing processes. For many survivors, repair can be most meaningful when it comes from the person who caused the harm. At Common Justice, for instance, a number of the survivors we have served have expressed a desire to see the person who harmed them apologize, contribute positively to their community, or pay restitution. The desire for restitution is not only about the money itself. It is about who should bear the burden for the responsible party's choices and what it means when the person who does wrong actively acknowledges their impact and bears that burden—and sometimes the suffering and other costs—of repair.

With or without that repair, survivors want to be safe.\textsuperscript{25} They want to be protected from the person who hurt them in the short term. They want legitimate reason to believe they will be safe from that person in the long term. They want other people to be safe from that person. They do not want other people to hurt them in similar ways.\textsuperscript{26} And they want the conditions that put them at risk of violence to change.\textsuperscript{27} Sometimes (though not always, as discussed below) that means they want the person who hurt them incapacitated. It almost always means they want that person to stop hurting people. But sometimes it means they want the ability to relocate to another neighborhood; they want economic mobility; they want self-defense classes and new locks on their doors; they want support addressing the trauma symptoms that they know not only make them feel less safe but put them at greater risk of repeat victimization; they want support in breaking cycles of addiction, poverty, violence, and pain; they want help for their children and families; they want a transformation of the conditions in their neighborhoods so that fewer people are desperate, furious, and hurt, because desperation, fury, and pain put everyone at risk.\textsuperscript{28}

Survivors' need for safety—their own and others'—should not be equated with an appetite for incarceration. Even though incarceration provides some people with a temporary sense of safety from the person who harmed them or satisfies a desire to see someone punished for wrongdoing—or both—many victims find that the person's incarceration makes them feel less safe.\textsuperscript{29} For some, this is because they fear others in the community who may be angry with them for their role in securing the responsible person's punishment. For others, it is because they know that person will eventually come home, and they do not believe that he or she will be better for having spent time in prison; to the contrary, they often believe that incarceration will make the person worse. Many victims who live in communities where incarceration is common are dissatisfied with its results.\textsuperscript{30} And even victims who do want the incarceration of those who hurt them are often disappointed by what it delivers in practice.\textsuperscript{31} Many survivors seek incarceration only to find later that it did not make them safe and did not heal them in the way they had hoped.\textsuperscript{32}

Survivors' own safety is not always their most essential desire. We have talked with hundreds of survivors at Common Justice, and there is only one thing that has been important to all of them. Some want retribution and revenge; some do not. Some want restitution; for some it is unimportant. Some want apologies; some find them meaningless. Some want to look the person who harmed them in the eyes; some never want to see that person again. Some want to be heard publicly; some want privacy. Some want a space to talk about what happened; some want to be given space to forget. Some care about the transformation of the person who harmed them; some could not care less. And though almost all survivors talk about their own safety, for some that has
not been a core concern or priority. But every single survivor we have spoken to has wanted one thing: *to know that the person who hurt them would not hurt anyone else.*

It is, in fact, an extraordinary commonality, one that speaks to a degree of compassion and altruism in the human spirit. But it also makes pragmatic sense and is in the self-interest of the survivors themselves. Our experience of being harmed is often one that isolates us. One way we reconnect to the community from which the violence separated us is by caring about and seeking the safety of others like us. Survivors know the harm done to them may be partially repaired, but it will never be fully undone, so many seek meaning, power, and peace in the notion that the violence they survived could somehow be leveraged to help protect others from the same pain. That impulse to make meaning is also supported in the literature about trauma recovery as a basic element of coming through harm.\(^{33}\)

These needs are widely recognized, legitimate, and imminently possible to meet—when it is our priority to meet them. We know what survivors need to heal and be safe. The problem is that our criminal justice system delivers almost none of these things to the vast majority of victims. Most victims do not report crime, a significant portion of reported crimes do not result in arrest, many arrests do not result in convictions, and the results of convictions—including incarceration—often do not meet victims’ needs.\(^{34}\) Victims’ voices are almost never heard during this process. Although trial may offer an opportunity for some victims to speak, 94 to 97 percent of convictions nationwide are the result of plea bargains, not trials, so exceedingly few victims see a day in court.\(^{35}\) Their questions are unanswered, their voices excluded, their input legally not required (with the exception of victim impact statements, which have not been shown to significantly affect sentencing outcomes), and their preferences frequently disregarded.\(^{36}\) Many victims describe their experience of the justice system as re-traumatizing; many report being treated with suspicion or hostility; and many report experiencing bias based on their identity.\(^{37}\)

People concerned about crime survivors must grapple with two things when thinking about criminal trials: (1) It is important to understand how trials affect victims in practice, not just theory; and (2) What happens at a criminal trial has very little to do with almost any victims’ experiences.

A number of studies document the negative impact of trials on crime victims.\(^{38}\) The experience can be overwhelming and even harmful, due to the stress of the process, the lack of clarity about the timeline of the proceedings, the difficulty of facing the person who harmed them or their loved ones, the desire and/or pressure to testify, the experience of being doubted or invalidated by defense counsel (whose job it is to doubt and invalidate testimony that will result in their client’s conviction), the difficulty of dealing with gaps or contradictions in memory (a common feature of trauma and a problem on the stand), the experience of reliving the crime through hearing testimony (including often heart-wrenching testimony like a coroner’s report on an autopsy of a loved one or a doctor’s report about a surviving victim’s own body), the sense that their voices are not nearly as central or consequential in the process as they had imagined and/or been led to believe, the strains of taking days or weeks off of work, of getting back and forth to court, of coordinating childcare during the trial, and of managing expectations—their own and others’.

Each of these experiences can be painful; taken together, they can be damaging and re-traumatizing. During and after a trial, many victims experience a recurrence of symptoms that had abated or an amplification of symptoms that have persisted.\(^{39}\) The result of a trial can provoke in a significant portion of victims feelings ranging from disappointment to outrage.\(^{40}\) Even victims who are satisfied with the result report that they found the process extraordinarily difficult and even harmful.\(^{41}\) And for victims
who are ambivalent about the extreme punishment of the person who hurt them, even a "victory" can feel at best hollow and at worst like another addition to their pain.

However difficult and even detrimental trials can be, they remain the only formal forum in which victims get to have their voices heard and sometimes get answers to their questions—a forum that the prevalence of plea bargains has all but eliminated. In most jurisdictions, more trials probably air on reruns of *Law and Order* in a given month than take place in court. As mass incarceration has grown, so have the systems that feed it—including court processing and policing. The work required of all parties to go to trial creates a shared disincentive to do so. But the prevalence of plea bargaining is also the product of practices and policies in which prosecutors pursue charges that are in excess of what defendants actually did (or what can be proved). The higher penalties associated with these magnified charges present defendants with a hard choice: they can admit their guilt and be offered a shorter sentence (say, one to three years in prison) or they can run the risk of going to trial—and if they are found guilty of the top charge against them, they could face a much longer sentence and even life in prison. Many defendants do not have confidence that they will get a fair hearing at trial, so the risk becomes too much and they accept the lesser offer, even when they would have had a strong chance of being found not guilty at trial.

This practice also distorts victims' experience of the process. Someone who committed an assault, for instance, might be charged with attempted murder but may ultimately accept a deal to plead guilty to a lesser charge of attempted assault. For the defendant, the specter of the attempted murder charge, artificially inflated though it may be, compels him to take a plea without exercising his right to a trial. For the victim, the conviction for the lesser charge of attempted assault can feel profoundly disrespectful of his experience. As one survivor once said to me, "What about the assault on me was 'attempted'? He didn't attempt it. He did it. And I still have the scar to show for it." We are left with a result that is not satisfying to either party, does not reflect the reality of what occurred, and has not been subject to the rigorous promised by the Constitution to defendants accused of crimes in our courts.

It is crucial in this context to note that a survivor-centered system is not a survivor-ruled one. Valuing people does not mean giving them sole and unmitigated control. The criminal justice system maintains a responsibility to safety, justice, and human dignity that it should uphold even when those interests run contrary to survivors' desires. So if a survivor wants someone free and that person poses a present and demonstrable threat to others, the survivor's opinion should not inherently outweigh the safety of others. Similarly, when a survivor wants a level of retribution that runs contrary to the values of justice and fairness, the system does not have an obligation to satisfy the person's desire for punishment. The system's actors do, however, have an obligation to listen to the survivor, be transparent and honest with the person about the decisions they make, and connect the survivor with healing supports. And when it is possible for these actors to fulfill their obligations to safety and fairness while also meeting the needs of the survivor, they should do so, even if that means seeking a less punitive response than they might otherwise have sought.

That said, even a plea bargain is far more than most victims will ever see from the justice system. Fewer than half of reported violent crimes result in an arrest and fewer than half of those arrests end in convictions. But what's more is the fact that only a fraction of violence gets reported to the police in the first place.

In considering survivors' experience of the criminal justice system, we must begin far earlier than the revictimization that often happens during the court process: we have to begin with a survivor's decision whether to engage with the system at all.
In recent years, a full 52 percent of violent victimizations in the United States went unreported.\(^4\) Even in cases of the most serious violence, reporting rates were strikingly low: a full 56 percent of cases in which victims were injured went unreported, as did 42 percent of cases involving a weapon.\(^4\) Even 29 percent of cases involving a serious injury went unreported to police (for example, when the victim was knocked unconscious or sustained a broken bone, a gunshot or stab wound, or internal injuries).\(^6\)

More than half of the people who survive serious violence prefer nothing to everything available to them through law enforcement.

The reasons victims give for not reporting to law enforcement include a belief that police could not or would not do anything to help; a belief that the crime—even a violent one—was not important enough to report; or, most commonly, a decision to handle the victimization another way, such as reporting it to someone else or addressing it privately.\(^6\)

Even though people's experience of victimization varies based on their identity and where they live, these reporting patterns hold across demographic groups.\(^7\) What's more, these estimates are widely regarded as understating the issue, as they reflect the participation of only those people reached by (and who decided to participate in) the National Crime Victimization Survey. Those who do not interact with or have access to systems of contact and care—or whose victimization is so minimized that they do not even identify it as such—are not represented in these already strikingly high numbers. When one considers the short- and long-term consequences of unaddressed violence—ranging from physical and emotional pain for people harmed to cycles of violence that result when harm is unhealed—these rates point to a practical and moral crisis in tending to the needs of crime survivors as well as a formidable challenge to securing public safety.

Survivors make practical decisions about whether to engage law enforcement, based in part on whether they believe that doing so will meet their needs for safety and justice. It has been widely debated and documented that these beliefs often stem from survivors' views of the police.\(^6\) But another factor is likely underestimated: survivors' views of jail and prison. What if the barriers to survivors reporting crime involve a disbelief that the end result of the justice system's involvement—the incarceration of the person responsible—is right or will work? Thus far, debate about the causes of underreporting has focused almost exclusively on whether victims believe police involvement will make a difference. The discussion has rarely examined the degree to which survivors consider incarceration an effective means of securing justice and safety. If survivors believe that a police investigation is likely to result in the incarceration of the people who hurt them, and if they do not believe that incarceration will result in greater safety or justice, why would they pick up the phone in the first place?

When people are deciding whether or not to call the police, they are likely to ask two questions: \textit{Will it advance my sense of safety?} and \textit{Will it advance my sense of justice?} If the answer to both is yes, we call. If it is no, we do not. And if we answer yes to one question and no to the other, we make a judgment about which of those things is more important to us. In a criminal justice system that produced safety and justice, crime survivors could consistently answer yes to both of those questions. But that is not what they do in this country. Rather, in the richest nation in the world with arguably the largest and most expensive criminal justice system in human history, the majority of people who survive violence prefer nothing to everything we have to offer. It is an extraordinary fact to absorb, and one that points to a moral crisis that is ours to answer to.

For years, we have been told a story that crime victims in this country want and need incarceration. We have been told that it is their overwhelming preference for what happens to the people who hurt them and that it delivers them healing.

In the 1990s, I had the fortune to learn from a mentor who
helped me see more clearly through this myth than I had before. Annie was an elder I knew and loved living in East Point, Atlanta, and she was brutally robbed and assaulted one night by a young man roughly the age of her teenage son. Everything in the criminal justice system’s response went as well as it could have. The police came quickly and treated her with respect. The person who hurt her was identified and arrested. The assistant district attorney showed Annie care and compassion and worked hard on the case. The case went to trial (one of the few that would not be resolved by plea bargain that year in that county), and the jury convicted the person who assaulted her of the most serious charge against him. The judge sentenced him to the maximum allowable prison sentence—a long one by any measure. The system worked as seamlessly as it possibly could.

Several years later, when I came to know Annie well, one day I asked: Ms. Annie, with all my respect, may I ask, when that man who assaulted you was sentenced to that long prison term, were you relieved? And she answered: Oh yes, honey, of course I was. And I asked: Can I ask how long that relief lasted? And she said: Oh, baby, at least three or four hours.

And then I took the bus home, she said, and I was still afraid. And I got to my apartment, and I was still poor. And when I crawled into bed that night, I still couldn’t sleep, and when exhaustion finally took me and I fell asleep, I still had those same nightmares. And when I woke up that next morning, the only difference was that I could not shake the image of that boy’s mother’s face in court when those guards took her baby from her for good. Because that is my face.

For all my formative experience that taught me otherwise, I had still held on to a desire to believe that prison—at least sometimes—provided victims what they deserve. I did that partly because the thought of it failing to do so was crushingly hard to bear—because of what it meant for both survivors and those incarcerated. But I also continued to search for proof of that outcome because I, too, had been so deeply socialized to believe it was there to be found.

To be clear, I am not saying that no victims want incarceration. They do. Nor am I saying that the incarceration of someone who causes harm never contributes to a victim’s sense of safety or justice. It undoubtedly can. But it accomplishes those things far less frequently than we are led to believe, and even when it does, it invariably falls short of contributing to healing in the way that victims deserve.

Years ago, I began to pay attention to a particular phrase that I kept hearing in news reporting about crime. “Sigh of relief.” It was an odd phrase to hear so often, because it does not seem to meet the journalistic standards for precision; it is hard to distinguish between different types of sighs, so it seems unlikely that reporters could consistently identify a sigh of relief when they heard it. But still, it was everywhere. “The victim breathed a sigh of relief tonight, knowing the person who robbed her had been apprehended.” Or “The shaken victim breathed a sigh of relief, knowing she will sleep soundly tonight now that the burglar who invaded her home and held her hostage is finally in police custody.” The truth is, that’s not how trauma works. The night after your home has been invaded and you have been held hostage is not a night you are likely to sleep, no matter who is in police custody. The apprehension of the person who harmed you can surely help, but in itself will not deliver you peace. In all likelihood, you will be up for days, and when you finally collapse from sheer exhaustion, you are likely to experience night terrors, which will carry into the day in the form of flashbacks in which you relive the experience as though it is currently happening again—even though the person who did it is in custody. Trauma is profound; it is a persistent creature that burrows its way into our minds and bodies, and shifts and evades us when we try to rid ourselves of it. It is possible, though not easy, to heal through trauma. But for
all the long-standing and emerging treatments that show great promise, an arrest is not one of them.

The story we tell about the role arrests play in healing is a dangerous one for survivors. First, I think of the victim from the news story that next morning, after she has been up all night, after she slept just thirty minutes at dawn and was awakened by a nightmare so intense, it took her ten minutes to stop shaking. When she heard that report, it suggests that the arrest should have been enough—and therefore that something is wrong with her, that she is not like other victims whose symptoms stop when the person is caught—that she is different, broken, weak. Given how common it is for victims to blame themselves for what happened and for the symptoms they experience as a result, perpetuating a narrative that fortifies this belief is not only inaccurate, it is harmful.

But it is not only harmful to the victims whose experiences make the nightly news. The same story is one that many of us internalize. If I do come to believe the story, then when I am harmed, I want the person arrested and sentenced because I believe it will bring me relief—as I have been told it has done for so many others. We hear few other examples in our public discourse about what will bring such relief—other than, perhaps, retaliatory violence. Nothing really about healing, nothing about taking sanctuary in the people I love, in therapy, in faith, in physical exercise, in meditation. And rarely about restorative justice or accountability other than prison. So I seek the one thing I have been told might ease my pain—because my pain is enormous, my pain is nearly unbearable—and I call the police and I participate in the process, and, if I am like most victims, at the end of doing so, I am still unhealed, I still feel unsafe, and my appetite for justice is still unsatisfied. But now, unlike before I sought that remedy, I am heartbroken, because the thing in which I invested my hope, my time, my energy, and my sense of possibility other than unending pain has failed, and I am not better, and I think

something is wrong with me because what I was told worked for others did not work for me, and I have been offered nothing else, and for a while at least, the only things left to me are rage and despair.

We hear a common narrative when news outlets, police, prosecutors, and other elected officials talk about an arrest or a prison sentence. They suggest that the consequence imposed on the person responsible for harm is adequate to meet the needs of the person harmed—that the survivor is safe now, relieved, resolved, even healed. This narrative is familiar, but it is not based in fact. There is no evidence whatsoever, for instance, that connects the length of a defendant’s sentence to the well-being of a victim of crime. None.49

The evidence there is includes the following: victims want to be heard: they want to provide statements in court and are often more satisfied when given the opportunity to do so.50 They want to provide input into sentencing and are often more satisfied when they feel their input is heeded.51 They want the option to participate—or not participate—to the degree they choose.52 They want information about the status of the case, the timing of its resolution, the sentencing outcome, and the whereabouts of the person who hurt them (including when they are going to be released from incarceration).53 Some victims report greater satisfaction at longer sentences, but that satisfaction has never been demonstrated to have any correlation with improvements in mental health, reduction in trauma symptoms, or overall well-being, nor is there evidence that their satisfaction remains greater over time—and of course these studies represent a small and typically nonrepresentative sample of victims.54

But none of what we know about what victims prefer amounts to evidence that the long sentences we seek in victims’ names increase their well-being or alleviate their trauma in any way. One of the places we see this most clearly—though it is never held up as evidence of this point—is in victims’ letters to parole
boards. It is important to acknowledge that these letters represent only a small subset of victims’ views. Most parole boards operate in secret, meaning that there is no way to know how many victims provide letters to parole boards, or what they say or request when given the opportunity. So we do know that victims who want to oppose parole are more likely to participate in the parole process than those who favor it or are neutral; many believe this is in part because of the more positive relationship these victims have maintained with the prosecution or correctional system (as compared with victims who are not opposed to parole). So we have even less information from those letters about the experience and thinking of victims who do not oppose parole.

That said, these letters reflect trends that are telling. And the most basic one is this: time after time, victims tell the parole board that they still feel exactly the way they did the day the crime occurred. Ten, fifteen, twenty years later—they feel the same. We also hear this in victims’ testimonials beyond the context of parole. Their stories of ongoing, ceaseless pain implicate us all. How heartless do we have to be to fail to develop other ways to support healing in the face of the unwavering evidence that what we are doing for victims is not working? If someone’s pain does not subside over time, it means the tools we are using to transform it are at worst wrong and at best inadequate. If prison worked, survivors would feel better as a result of the incarceration of the person who hurt them. And yet so many survivors do not. Their pain continues unabated because they are relying on an intervention—incarceration—that is not equipped and was never even designed to help them heal. And yet, when they testify at parole boards that even ten years of a defendant’s incarceration has made no dent in their pain, many people assume the problem is simply that the person has not been incarcerated long enough, as though one day (after fifteen years? thirty?) we will reach the juncture where incarceration will finally help the victim, despite no indication that it has contributed to their well-being thus far.

Imagine someone suffering from terrible, debilitating migraines. He goes to the doctor and reports his unbearable pain and the doctor prescribes a medication. He returns the next year and tells the doctor that his pain has not diminished at all; the doctor says to just keep taking the same medication. A full decade later, still racked with pain, he goes back, and the doctor tells him to stay on the medication a little longer. There is no way we would regard that as good medicine or as ethical care. And there is no way it is what a person in pain deserves. When we hear victims attest to the unremitting intensity of their pain, we should not hear it as a straightforward justification of more incarceration—we should hear it at least in part as an indictment of our reliance on incarceration to help them heal.

But despite a profound lack of evidence demonstrating incarceration benefits victims’ well-being—and despite evidence to the contrary—we continually lengthen sentences in victims’ names. Elected officials do so through legislation; judges and prosecutors do so through the sentences they impose; and parole boards do so in their denials of applications for parole. As a culture, we repeatedly tell victims that these longer sentences will bring them relief, and we do this without evidence (or any basis in the psychological literature) to suggest that it would be true. Trauma is not resolved by the infliction of pain on another person. How much simpler things would be if it were.

Our society’s continual retelling of this story is, quite simply, unethical. As a culture, we are selling survivors something that we claim will deliver them from pain, even though we have no legitimate basis to believe it will. We are talking to people who have survived serious violence, in their moments of most profound suffering, and, knowingly or not, we are lying to them over and over again. That is not what a society that cares about survivors does.

Compounding the fact that prison is almost always inadequate in securing victims’ healing (in part because that is just not its
function) is the reality that prison all too often fails to deliver on its most explicit purpose: providing safety to crime victims. Chapter 2 discusses the limitations of incarceration as a public safety strategy in far more detail, but it is important to note here that the problem with our reliance on incarceration is not just about failing to meet survivors’ emotional needs—it is also about failing to meet their most basic need to be safe.

Across the country, people are working to develop responses to harm that meet survivors’ needs. It is in the presence of these options that survivors’ wishes become far clearer. For instance, at Common Justice, the vast majority of victims who have been given the choice of seeing the person who harmed them incarcerated or seeing them take part in an alternate restorative justice process have chosen the alternate process.\(^57\) All of these survivors are people who participated in the criminal justice system. They are among the less than half of victims who called the police and are part of the even smaller subgroup who continued their engagement through the grand jury process. They are people who initially chose a path that could lead to prison. They are people who have suffered serious violence—knives to their bodies, guns to their heads, lacerations to their livers, punctured lungs—and have engaged the criminal justice system in a way likely to result in the incarceration of the person who hurt them. Even among these victims, when another option is offered, 90 percent choose something other than very incarceration they were initially pursuing.

Ninety percent is a stunning number in context of the story we have been told about what victims want. And the reality it points to may not be as obvious as it appears. Some certainly choose an alternative process for the reasons we think of first—compassion, forgiveness, the belief that people can change, an experience having caused harm themselves or having loved someone who did, a desire to be part of transformation. But most are simply more practical. Most choose it because they believe something other than incarceration stands a better chance of meeting their short- and long-term needs for safety and justice and for ensuring that others won’t experience the same suffering that they did.

As a country, we have failed to provide victims of violence with real options other than incarceration to hold the person who harmed them accountable. The decisions of survivors given other options points to an essential way of anticipating survivors’ needs: what survivors choose when they have only one option does not predict what they will want when multiple options are present. Absent other options, when we ask victims, “Do you want incarceration?” we are essentially asking: “Do you want something or nothing?” And we know that when any of us are hurt, we want—we need—something. But if instead of asking, “Do you want something or nothing?” we ask, “Do you want this intervention or that prison?” many victims want the intervention. And the least we can do is offer them the option.

It is essential to note that the overwhelming support among victims for a restorative justice process is not just about the promise of those processes—it is more specifically and more broadly about the failure of incarceration to meet victims’ needs—including their need for safety.\(^58\) As one victim of a violent crime said to me, “Two things in these [robbery] cases are always true. One is they [the people who did it] come back. The other is that their friends don’t go with them. Tell me, what am I supposed to do with that?” This victim’s question is a fair one, and one our criminal justice system has abdicated responsibility for answering. If we are going to rise to the challenge of reducing violence, we will have to pay attention to the impact that incarceration has on victims, listen to the full range of people who survive harm, and become honest as a nation about the profound limitations of prisons as a method of delivering safety or healing. When we do that, we will understand that accountability to survivors requires that we break our dependence on incarceration to address the pain they endure.
Choosing alternatives to prison in no way requires survivors to be forgiving or to be invested in the well-being of the person who hurt them. Early in Common Justice, a case was referred to us in which a boy—just fourteen years old—was badly beaten and robbed. The young man who did it was facing three years in prison. I went to speak with the survivor's mother, to see whether she and her son wanted the young man who committed the crime to be given the opportunity to participate in Common Justice.

She said to me: When I first found out about this, I wanted that young man to drown to death. And then I wanted him to burn to death. And then I realized as a mother that I don't want either of those things. I want him to drown in a river of fire.

But three years from now, when my nine-year-old son is twelve, he is going to be coming to and from his aunt's house, to and from school, to and from the corner school alone. And one day he's going to walk by that young man. And I have to ask myself: when that day comes, do I want that young man to have been upstate or do I want him to have been with y'all?

And the truth is, while if that young man were before me today and I had my machete, I would chop him to bits, bury him under the house, and sleep soundly for the first night since he dared hurt my child, the truth is I'd rather be with y'all.

This mother did something I have since seen countless survivors do over and over again: she put aside an individual desire for revenge in the interest of what would secure the safety of her child and children like him.

During a conversation a few months later with another survivor also faced with the choice between incarceration and Common Justice for the person who robbed him, he began drawing a series of boxes on the piece of paper in front of him. Then he began drawing X's through some of the boxes. I asked him what he was doing. He said, The boxes are everyone I know who has returned home from prison. The X's are everyone who went back. What did you say your success rate was? I told him that fewer than 10 percent of people in the program had been terminated for new crimes (by 2018 that figure was only 6 percent). And he nodded and said, Let's do it.

Another man who had been robbed at gunpoint asked me, Can he get life without parole for this? I told him the statute in New York did not allow for it. And he said, Well, then, let's do Common Justice. So his first preference was that the person die in prison; his second was that he get access to an alternative to incarceration in which he would serve no prison time; and his third and by far least favorite was that the person serve any amount of time other than a life sentence. As he put it, If he can't be gone forever, then I'd rather he be changed. For some, that may seem incoherent—wouldn't a long sentence be better than nothing? But for someone who has seen the limitations of incarceration in producing safety and who is considering his own safety and the safety of others as his primary decision-making criteria, it makes perfect sense: if not forever, then none at all.

These survivors' decisions align with national findings. In 2016, the Alliance for Safety and Justice conducted the first national poll of crime survivors that explores their preferences regarding criminal justice policy. The poll found overwhelming support—even higher than among the general public—for rehabilitative programming, alternatives to incarceration, and shorter sentences, as well as greater investments in education, mental health treatment, jobs programs, and drug treatment. Roughly 52 percent of crime victims answered that they "believe that time in prison makes people more likely to commit another crime rather than less likely."59 Perhaps for that reason, 69 percent of victims preferred holding people accountable through options beyond prison, such as rehabilitation, mental health treatment, substance use treatment, community supervision (mostly probation and parole), or community service.60 The findings are not surprising to people who work closely with crime survivors, but they are directly contrary to the public and law enforcement narrative about what victims want.61
Even in the context of what could fairly be described as a four-decade media and public education campaign promoting incarceration, the portion of victims who see it as an effective remedy is far smaller than public discourse reflects. When it comes to punishment, survivors consistently express a desire for options other than incarceration and an interest in them when they are available. Yet the criminal justice system rarely offers alternatives to prison as responses to violence. According to the Downstate Coalition for Crime Victims in New York, “Survivors/victims want the people who harm them to be held meaningfully accountable. Many survivors/victims find the criminal justice system, including incarceration, to be inadequate and/or counterproductive to that end.” What this means in practice is that when the country relies almost exclusively on incarceration to address serious crime, many survivors lose out.

Survivors’ preferences about criminal justice policy are only one part of their larger set of needs and desires, including real hunger for solutions that have nothing to do with punishing the person who hurt them. These priorities include safety, housing, trauma-informed care, fair treatment, prevention, and having a real voice in potential solutions. Opening these avenues of support is therefore as essential to developing survivor-centered responses as any reform of the criminal justice system will ever be.

Imagine there is a hamburger stand in the middle of the desert that sells really bad burgers. There is nothing for two hundred miles in any direction. You pull up to it and you see an extremely long line. If you concluded, based on that line, that you had just come across the most delicious burgers in America, you would be missing something.

In this country we have offered survivors nothing but that bad hamburger stand in the middle of nowhere. We have offered only two choices: something or nothing, bad burgers or nothing for miles. And when some survivors have chosen something, we have used it to promote the hamburger stand, we have claimed they loved what we gave them, that they wanted more. We have done that never having asked them why they chose it, never having asked them how they felt later, and never having asked them what they would have liked instead. It is not hard to understand why so many people are in that line for burgers. We have all done it. When we have been hungry enough, whether because of need or circumstance, we have eaten food that we know will not nourish us, food we do not want or like, food that would make us feel sick later, food we had sworn we would not eat anymore, food we would never choose if there were other options—because we are too hungry to eat nothing at all. The fact that we ate it should not be used as evidence that it was good food.

I believe we owe it to victims to offer them something better than a nasty burger. I believe that if there were a chicken spot and a veggie spot and a pizza spot and a taco spot alongside that burger stand, the line for burgers would be dramatically shorter and more people would be well fed. I believe that what people choose when they have only one option is no predictor of what they will choose when they have others.

There is another thing you would see, standing in that long line at the hamburger stand, if you looked off to your left. You would see a long line of people driving by—people who knew there was nothing else for two hundred miles, people who were as dizzy with hunger as you were, people whose mouths were watering but who could not bear the thought of eating that food because they knew how bad it would be for them and that in the end it would be worse than nothing. Those people are the majority of victims who do not even call the police in the first place, and we owe them exactly as much as we owe the people in line for those awful burgers.

The former Brooklyn district attorney Charles Hynes used to tell a story about a bumper sticker his colleague, another DA, had. It
said, "Victims say: Catch & release is for fish—not felons." The first few times I heard the story, my only reaction was to be horrified by the dehumanizing comparison it drew, and by the levity with which it did so. But after a while, something else struck me about the story—the line "Victims say." Here was the top-ranking law enforcement official in his jurisdiction, and his bumper sticker didn’t say “I say catch & release is for fish—not felons.” It said, “Victims say.” And the more I thought about the bumper sticker, the more I realized it revealed something about criminal justice policy in the United States: that regardless of whether our policy is motivated by a concern for victims, whether it produces the outcomes they seek and deserve, and whether their input is gathered to inform our practice, we still do what we do in their names. Their experience—their pain—is the well from which decision makers draw their moral authority, and the stories we tell always start with their names.

I have become persuaded that if we made a record of what victims really say—if we listened deeply and well and asked open-ended questions—we would end up with a criminal justice system that would look surprisingly like the one we would develop if we listened to what defendants say. It would be characterized by accountability, by safety, by justice, and by healing. And it would look very little like what we have today.

This is not mostly about mercy. When survivors advocate for shorter prison sentences, parole, or the reallocation of funding from the criminal justice system to the social service infrastructure that prevents and heals violence, they are often presumed to be forgiving. It is assumed that their policy preferences are motivated by mercy and grace. For some, they surely are. But for most, they are displaying what I would argue is one of the most common and vastly underestimated qualities of crime survivors: survivors are pragmatic. Saying survivors are pragmatic does not mean that they are not emotional. It means that their emotionality does not prevent them from making highly rational decisions.

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