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FAITHFUL LAWYERS?

Issues of Faith and the Practice of Law

Towards a Deeper
Understanding of
Vocation and Work

October 12, 2004

Emory University School
of Law - Gambrell Hall,
Tull Auditorium

8:50 a.m. - 12:15 p.m.

Registration available at
8:00 a.m.

3 CLE hours, including
1 Professionalism hour

Presented by:

- The Atlanta Bar Association
- The Chief Justice's Commission on Professionalism
- Emory University School of Law - Law & Religion Program
- The W. Lee Burge Endowment for Law & Ethics, Georgia State University College of Law
- Georgia Justice Project

FAITHFUL LAWYERS?

Some may wonder if the phrase “faithful lawyers” is an oxymoron, but it is not. Lawyers of all faiths practice law every day in metro Atlanta. Whether the lawyer is Muslim, Jew or Christian... Buddhist, Hindu or Bahai... or any of a number of other faiths, the faithful attorney is faced with an ever-present struggle: to discern the impact, if any, that one’s faith will have on the professionalism and ethical choices made while practicing law.

This seminar will:

- ▶ **Identify issues of faith that impact the practice of law**
- ▶ **Spark conversation in an ecumenical environment**
- ▶ **Provide a forum for a deeper understanding of law practice as both vocation and work**

Seminar Agenda

- 8:00** Registration (light breakfast provided)
- 8:50** Welcoming Remarks - Prof. Frank Alexander, Emory University School of Law
- 9:00** Law-Faith Intersections: Perspectives from Different Faith Communities
 - Fatima El-Amin Ziyad, The Ziyad Group
 - David Lerman, Restorative Justice Coordinator & Assistant District Attorney, Milwaukee County DA’s Office, Milwaukee, Wisconsin
 - Karen Baynes, The Carl Vinson Institute of Government, University of Georgia
 - A. Craig Cleland, Ogletree Deakins
 - Michael G. Leeper, Leeper Lindsey, LLC
- 10:00** How Does Religious Faith Impact the Performance of Professional and Ethical Obligations as a Lawyer? - Breakout Groups
 - Facilitators:** Doug Ammar, Margaret Courtright, Prof. Clark Cunningham, Michael Tabachnick, Prof. Tim Floyd, Rev. Jim Pritchett, and other current and former practicing attorneys
- 11:00** Refreshment Break
- 11:15** Putting It All Together: Faithful Lawyering in a Sometimes Unfaithful World
 - Peter Gabel, Project for Integrating Spirituality, Law, and Politics;
 - C. David Butler, Shapiro Fussell
- 12:15** Adjourn

Registration Information

- Seminar location:** Emory Law School, Gambrell Hall; Tull Auditorium
- Parking:** Emory Visitor Garage. From Clifton Road, turn onto Gambrell Drive (behind the Law School) and follow the signs to Visitor Parking. Sorry, but parking is not validated.
- Registration fees: Attorneys: \$60** (includes State Bar of Georgia fees for reporting CLE & Professionalism credit).
Non-attorneys: \$35. Law students, faculty and staff: Free.
- Payment:** Checks, Visa, MasterCard and American Express. Make checks payable to the Atlanta Bar Association.
- Registration: Mail** your registration form to: Atlanta Bar Association, Suite 400, 229 Peachtree St. NE, Atlanta GA 30303.
Fax it to 404-522-0269. **Register online** at www.atlantabar.org.
- Cancellations:** In order to receive a refund, notice of cancellation must be received before 5:30 p.m. on Friday, October 8, 2004.
- Questions?** Call the Atlanta Bar at 404-521-0781 or email mljohn@atlantabar.org.

SPEAKER BIOGRAPHIES

Karen Baynes is Associate Director, Governmental Services, at the Carl Vinson Institute of Government at the University of Georgia. Ms. Baynes served as an Associate Judge of the Fulton County Juvenile Court from August of 1998 through June of 2002 during which time she served as liaison to the Department of Family and Children Services. Before joining the Juvenile Court she was employed with the law firm of Alston & Bird from September 1992 to May of 1995 as an Antitrust Associate. Ms. Baynes received a Bachelor of Arts in Politics from Wake Forest University, Winston Salem, North Carolina in May of 1989. She also obtained a Juris Doctorate from the Boalt Hall School of Law, University of California at Berkeley in May of 1992.

C. David Butler, an Atlanta native, is an associate of Reflections Ministries, the teaching ministry of Dr. Ken Boa, and of Leadership Ministries, headed by Chris White. His work is with "Christian Men in Transition." He is a past president of the Atlanta Bar Association and the Southeastern Bankruptcy Law Institute, and he is a member of the American Bankruptcy College and the Christian Lawyers Society. He was the U.S. Trustee appointed by the Attorney General to oversee the bankruptcy courts in the southeast. Now he is back in private practice. His professional credo is, "Blessed are the peacemakers for they shall be called the daughters and sons of God." He is the father of two women, a lawyer and a preacher, both residents of New York City, and of three sons in the development business here in Atlanta.

A. Craig Cleland represents and counsels employers in employment law matters, including class and collective actions. Recognized in the December 2003 issue of *Georgia Trend* magazine as one of the State's *Legal Elite* Labor & Employment lawyers, he is a frequent speaker to management and human-resource professionals on employment issues. Serving as a co-editor for the Third Edition of *Employment Law*, Mr. Cleland is also a contributor to the forthcoming Fourth Edition. He is a co-editor of the ABA's Labor & Employment Section's *Ethics Newsletter*. Before law school, Mr. Cleland was a chaplain, instructor, and coach at The Lovett School in Atlanta. During law school, he was the Editor-in-Chief of the *Georgia State University Law Review*. Before entering private practice at Paul Hastings in 1994, he served as law clerk for The Hon. Marvin H. Shoob on the U.S. District Court for the Northern District of Georgia in Atlanta. Mr. Cleland joined Ogletree Deakins in September 2002.

Peter Gabel is Director of the Institute for Spirituality and Politics at New College of California. He served as President of New College for twenty years and has been a professor at New College's Public Interest Law School since 1975. A founder of the Critical Legal Studies movement and author of many law review articles on law, politics, and social change, Peter is also the co-founder with Michael Lerner of the Politics of Meaning movement. He is currently Associate Editor of *Tikkun* magazine, a progressive Jewish bi-monthly. His collected writings on the Politics of Meaning can be found in *The Bank Teller and Other Essays on the Politics of Meaning* (Acada Books/New College Press, 2000). He received his B.A. and J.D. from Harvard University in 1968 and 1972, respectively, and his Ph.D. in Social-Clinical Psychology from the Wright Institute in 1981.

Michael G. Leeper is a principal in the firm of Leeper Lindsey. He practices in both the field of criminal defense and workers compensation.

David Lerman has been an Assistant District Attorney for Milwaukee County since 1988. He received his JD from the University of Wisconsin Law School and Master of Science in Industrial Relations from the UW Institute of Industrial Relations in 1984. He has earned additional certificates from the Community Justice Institute, Florida Atlantic University, as a Restorative Justice Trainer; and Harvard University's Program of Instruction for Lawyers in mediation. Mr. Lerman has also practiced law in Israel. Mr. Lerman is the Restorative Justice Coordinator for the Milwaukee County District Attorney's Office. He directs the Community Conferencing Program and the Neighborhood Initiative. He also chairs the Milwaukee County Task Force on Restorative Justice. He has presented workshops on Restorative Justice for various types of audiences throughout the United States. He has published articles on general Restorative Justice issues as well as the nexus between Jewish Law and Restorative Justice. He has created and delivered a curriculum on Restorative Justice for the University of Wisconsin – Milwaukee Criminal Justice Program.

Fatima El-Amin Ziyad is a native Atlantan and a 2000 graduate of the Emory University School of Law. Immediately following graduation, Mrs. Ziyad joined the Dekalb County District Attorney's Office where she served as an Assistant District Attorney in Dekalb's Superior and Juvenile Courts for three and a half years. After giving birth to her son in January, 2004, Mrs. Ziyad left the public law sector and currently practices real estate law with a small firm in East Point, Georgia. Mrs. Ziyad is a devout Muslim and a member of the Atlanta Masjid of Al-Islam.

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THE ATLANTA FAITHFUL LAWYERS: A BRIEF HISTORY

The Atlanta Faithful Lawyers group was formed after a group of seven Atlanta residents (four practicing lawyers, a judge, a rabbi, and an Episcopal priest) attended a December 1998 conference at Fordham Law School entitled ***“Rediscovering Religion in the Lives of Lawyers and those they Represent.”*** After the conference, the group of Atlanta attendees, along with several additional lawyers, began meeting on a somewhat regular basis (usually monthly) to get to know each other better and to share experiences as lawyers (or former lawyers) in dealing with faith concerns in our professional lives. The group has continued to meet since 1998.

In early 2000, the Faithful Lawyers members decided to attempt to expand the group's discussions more broadly into the Atlanta legal community by pursuing the possibility of organizing a seminar patterned to some extent after the Fordham conference. The group was able to enlist the support and sponsorship of Emory Law School's Law and Religion Program, the Georgia Chief Justice's Commission on Professionalism, the Atlanta Bar Association, and the Georgia Justice Project. In February 2002, a religiously diverse group of speakers and panelists presented a half-day program at Emory Law School entitled ***“Issues of Faith and the Practice of Law: Towards a Deeper Understanding of Vocation and Work.”*** More than 120 individuals attended the conference.

Many attendees at the Emory conference expressed an interest in continuing the discussions. As a result, the organizing group decided to set up some informal breakfast meetings, to invite all who had expressed an interest and to encourage them to spread the word by email. The Faithful Lawyers have now sponsored four breakfasts (two at an Episcopal church, one at a synagogue, and one at a mosque), each of which has been attended by approximately 25 to 30 persons. The programs have included presentations and small group discussions on relevant topics (e.g., "Does Law School Make Us Worse People?" and "Responsibilities and Dilemmas in Representing Institutions"). More recently, the Faithful Lawyers organizing group has initiated on a trial basis the scheduling of a monthly informal "morning coffee" at a local coffee house, with individuals encouraged to drop by for coffee and conversation before they head to work.

In early 2004, the Atlanta Bar Association invited the Faithful Lawyers to help organize another Faith and Law conference, which has led to an effort culminating in the October 12, 2004 conference at Emory Law School on Issues of Faith and the Practice of Law, which is co-sponsored by Emory Law School's Law and Religion Program, the Georgia Chief Justice's Commission on Professionalism, the Atlanta Bar Association, the Georgia Justice Project, and the W. Lee Burge Endowment for Law and Ethics at Georgia State University Law School.

Tom Cox
October 8, 2004

**ANNOUNCING:
NEXT FAITH AND LAW BREAKFAST MEETINGS**

**BEING A CLIENT:
HOW MY LAWYER HELPED ME MAINTAIN SPIRITUAL VALUES
IN THE MIDST OF CONFLICT**

Speaker: **DAISY HURST FLOYD**
Dean and Professor of Law
Walter F. George School of Law
Mercer University

Offering insights from the perspective of an attorney who becomes a client, Dean Floyd will discuss her experience of being represented for over two years in an employment dispute (with a former employer) that ultimately resulted in litigation. Discussion will include the role of spiritual values in the attorney-client relationship.

Wednesday, November 17, 2004

7:30 - 9:00 a.m.

All Saints' Episcopal Church
634 West Peachtree Street
Atlanta, Georgia

SPEAKER AND TOPIC TBA

Friday, March 4, 2005

7:30 - 9:00 a.m.

ATLANTA MASJID OF AL-ISLAM.

(Imam Plemon T. El-AmiN
560 Fayetteville Road, SE
Atlanta, GA 30316
Telephone: 404-378-1600

FROM DOWNTOWN, take I-20 East to EXIT 61-B (Glenwood Avenue). Proceed toward the East Lake Golf Course. We are right at the intersection of Glenwood and Fayetteville Roads on the right side of the street

Admission: \$8.00 per person
(payable in cash at the door)

For more information, contact Tom Cox at (404) 378-4300 or at
tcx@weekescandler.com.

RALPH WHITE

***From Hired Guns To Healers
The Emerging Movement to Renew Legal Culture***

Reprinted from *Lapis* Magazine

...

At a California retreat of the Project on Integrating Spirituality, Law and Politics, thirty lawyers and law professors met to discuss the new, holistic impulses now emerging in the legal field. To an observing non-lawyer, wondering when it all started to go wrong, the first big surprise was the unanimity with which virtually everyone present felt little short of horror and rage when they recalled the damage inflicted on their psyches and values by law school. Contrary to televised fantasies like *The Paper Chase*, which celebrated the elegant, unerring socratic logic of the law professor, legal education was almost universally recalled as a horrible institution and an alienating experience. In the words of one participant, "We were told in law school that they would spend three years taking our souls away from us, and that we would spend the rest of our lives trying to get them back." Others spoke of having their compassion buried, of the loss of imagination, and of the corrupting influence of a legal doctrine that completely separates heart from head. Law teachers commented ruefully on how within six months of arrival, countless young people devoted to the highest ideals of justice become hardened, emotionally brutalized and convinced that only the mean spirited adversarial practice of law will ever work in modern America.

Peter Gabel, director of the Project, a member of New College of California's law faculty and a leading advocate of legal renewal, describes law schools as filled with the "disconnected analytics" of a previous revolution. Students are required to endure endless case analysis according to Eighteenth and Nineteenth Century doctrines, conceived when individualism and materialism were groundbreaking concepts. Today, he argues, this dated perspective needs to be balanced by the awakening of moral empathy. Students need to be asked the simple question: "How is your work going to create a more loving and caring society?" Our spiritually deadened law schools desperately need a validation of the students' heart and wisdom if we are to move beyond a legal culture characterized by brutality and rudeness in "a democracy of strangers who are protecting themselves from each other."

Clearly, the transformation of legal education is a crucial agenda item for the near future. But what signs could retreat participants offer of a functioning alternative to the "Nail 'em, jail 'em; Try 'em, fry 'em" ethos that has led the United States to lock up over two million of its citizens and produced an orgy of prison building during the last twenty years? **David Lerman**, a prosecutor in Milwaukee whose work is funded by the Wisconsin State Legislature, happily described his refreshing experience with Restorative Justice, a new approach to crime and punishment that is gaining ground from Iowa to Texas. In contrast to the heartless practice of mandatory sentencing that eradicates any role for the humanity of judges, Restorative Justice brings victims and offenders together with the local community in sentencing circles or councils. In this context, the focus becomes the need to repair the damage to both victim and community caused by a crime. Offenders, if they choose to participate, must plead guilty and admit wrongdoing. The sentence then aims to leave the offender with greater competencies to face life's challenges in the future. In this way, the emphasis

shifts from the usual focus on retribution to the healing value of truth, responsibility, apology and forgiveness.

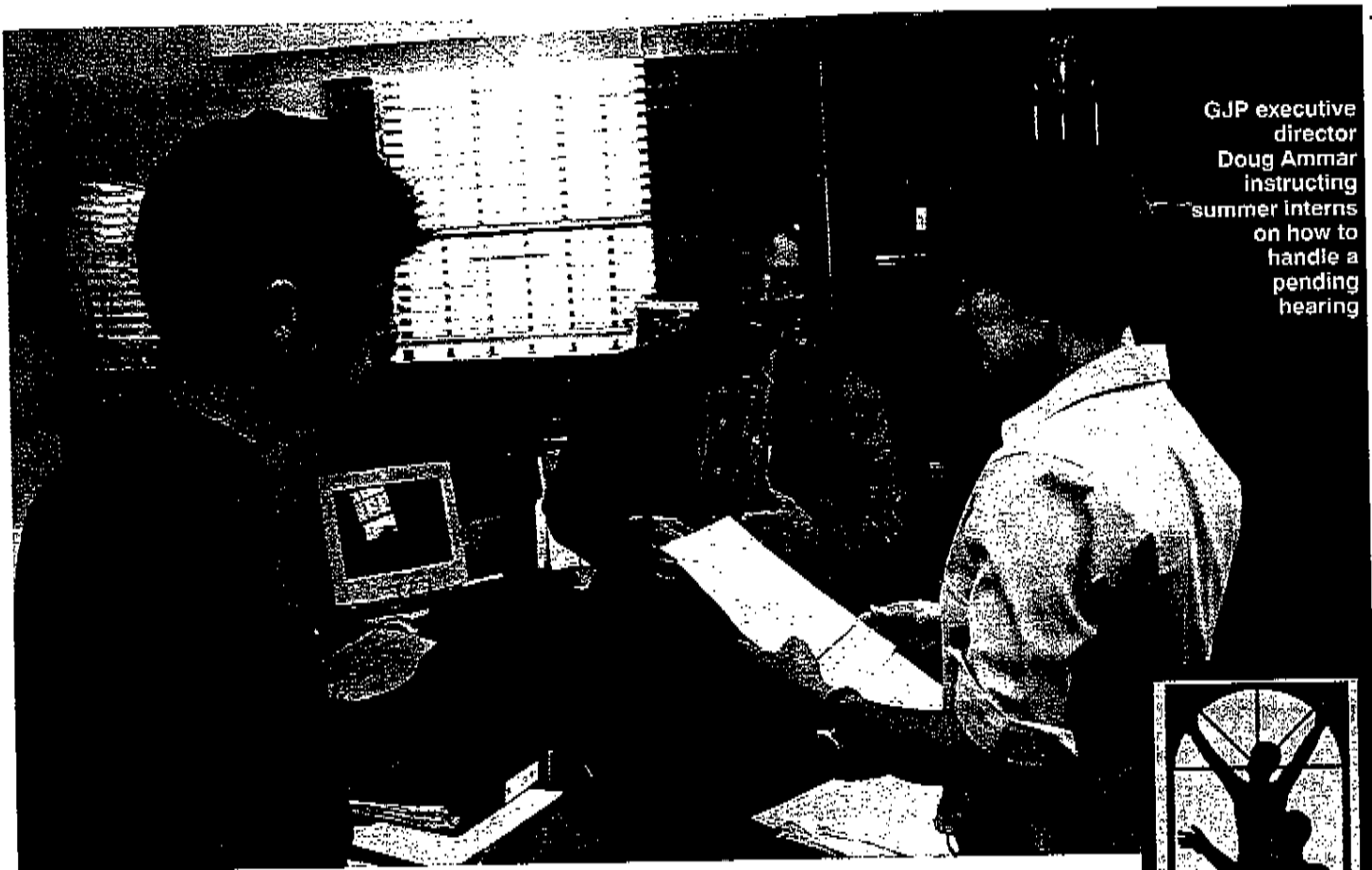
Forgiveness? When did we last hear a word like that from a prosecutor's mouth? Perhaps it is the start of what Howard Vogel, professor of constitutional law at Hamline University, called the "re-enchantment of the law" in which spiritual qualities come to balance the materialistic thinking so widespread today. It may sound too idealistic for a society filled with conflict and disagreement, but recall the remarkable success of the South African Truth and Reconciliation Commission that has drawn on the Zulu idea of Ubuntu - the notion that my humanity is inherently connected to your humanity - to restore wholeness to a divided society filled with the potential for explosive violence.

Contrary to popular belief, it is increasingly clear that many lawyers have within them the impulse to be helpful, to listen, and to understand - to develop skills in conflict resolution, not just to play the role of attack dogs eyeing their opponent's jugular in vicious, adversarial encounters. Hence the continuing shift in legal practice toward mediation. At the retreat we learned that simply stepping into an unthreatening mediation room rather than a court room can change the whole atmosphere of a case. Mediators develop skills of attunement to psychological and emotional subtleties and can even choose to begin a session with a short prayer if the parties wish. However, Gary Friedman, co-director of the Center for Mediation and Law, offered a word of caution for the holistically inclined. He told the story of attempting to mediate between two Zen roshis. At the outset, he innocently inquired if they would like to begin with a few moments of meditation only to be greeted with perplexed looks and a simultaneous cry, "Why would we want to do that?"

But few lawyers at the retreat worked with such exalted personages. Most had regular folks as clients and some, like **Doug Ammar**, work with the poverty stricken down South at the Georgia Justice Project. "This is work that enables me to embrace my full humanity," he remarked as he spoke of a law firm in which lawyers feel a spiritual responsibility for their clients. In Georgia, if you eliminate drunk driving charges, 93% of those arrested are poor, and the state has long been locked in an unbroken cycle of poverty and crime. When convicted clients get out of jail, the GJP offers them a job in its landscaping business and invites them to community dinners to give them the means to change their lives. "A lot of clients say that GJP is their first family" Ammar commented, as the joy and satisfaction in this work radiated through his cheerful, humorous face.

Initiatives like this seem to point the way to a warmer, more humane view of legal practice and offer hope for those of us listening attentively for the bell that tolls the death knell of a heartless and disturbing era. At the Project on Integrating Spirituality, Law and Politics, the question that recurred frequently was nothing less than, "How can we make the practice of law sacred?" In recent times, it has seemed barely possible to put the words "law" and "sacred" into the same sentence. Yet former US attorney Cheryl Connor now teaches a course at Suffolk University on the integration of contemplative practice with law. As a student at Harvard Law School, she felt forced to bury her heart beneath the smog of materialistic legal doctrine. Now a Tibetan Buddhist, her work is guided by the principle of causing no unnecessary harm to others, and she leads a growing number of retreats for students, judges, and lawyers on how to uncover their inherent compassion and wisdom.

Our current legal system permits neither lawyers nor clients their true dignity, and no modern society can expect to function well in the long run without a healthy legal climate. Fortunately, the signs of new and vigorous life are unmistakable among the clear sighted individuals pioneering the nascent elements of a new legal culture. In Peter Gabel's words, we require "Lawyers who are whole, loving human beings," as much for their own well-being as for that of the system as a whole. Certainly, this non-lawyer left the California retreat convinced that a viable legal future lies with the holistic innovators of today and their dedication to training healers, not hired guns.



GJP executive director Doug Ammar instructing summer interns on how to handle a pending hearing

The Georgia Justice Project

An innovative relationship-based approach is generating results in the area of criminal defense for the poor.

By AMY UELMEN

LOOKING AT THE HOST OF PROBLEMS surrounding legal representation for the poor who have been charged with a crime, there seems to be little hope. It is not so much because their legal rights are undefined. As the United States Supreme Court decided in 1963, the Sixth Amendment to the U.S. Constitution requires states to provide counsel to indigent defen-

dants charged with serious crimes.

It is not even because the legal system fails to recognize how important it is to assure adequate defense for the poor. "If we do not adequately support criminal defense for poor Americans," as former attorney general Janet Reno stated in a national report on indigent defense,¹ "people will think that you can only get justice if you can afford to pay a lawyer. This perception would undermine confidence in our system." Similarly, law

enforcement also has a strong interest in insuring adequate defense for the indigent. As Reno explained, "Skimping on adequate representation also hurts effective law enforcement by creating delays and leading to the reversal of convictions on appeal."

The heart of the problem is in the practical implementation. Extraordinarily heavy caseloads, severe under-funding and general political hostility to increased support for criminal defense, often make



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"We defend people accused of crimes and, win or lose, we defend their lives. This is the only way to break the cycle of crim

Justice Through a Faith Perspective

The initial vision behind the project

THE FOUNDER OF THE GEORGIA JUSTICE Project, John Pickens, was initially a partner at a large law firm in Atlanta. As he volunteered his time at a local homeless shelter run by his church, people found out he was a lawyer and began to ask him for legal advice. As he delved into the criminal justice system, he increasingly realized the conventional system was incapable of truly serving the needs of indigent defendants. His musings in the project's inaugural newsletter, *Matters of Justice*, reflect how a faith perspective could contribute to a much needed transformation of the criminal justice system:

I have come to believe that it is important to look at the way justice is dispensed in our criminal courts from a faith perspective, and not from just a worldly view, because a faith perspective brings into the system a sensitivity that fosters compassion, reconciliation, understanding, truth, relatedness and an end to oppression. Such sensitivity gives balance to a system so prone and subject to harshness,

disrespect, punishment and closed-mindedness. From a faith perspective, "criminals" become human again, no better or worse than ourselves; the poverty, racism and physical and psychological abuses suffered by many become understandable circumstances of the crime, not just intolerable excuses; fear is transformed into caring; forgiveness overrides desires for revenge; and hope for positive, life-giving change replaces apathy and disinterest. Viewed through such eyes of faith, much of what the world calls justice is exposed as injustice and cries out for transformation. (August 29, 1986).

What was later named the "Georgia Justice Project" was initially operated out of Pickens' home. It now has seven full-time employees, including three attorneys and a social worker, two part-time counselors, a landscaping crew, and a number of student interns of various disciplines.

—A. U.

More information can be found on the web-site: www.gjp.org

this constitutional protection illusory. In one extreme example, in 1992 the Texas Court of Criminal Appeals upheld George McFarland's death sentence, even though his lawyer slept through much of his trial. The trial judge had quipped: "The Constitution doesn't say the lawyer has to be awake." In 1998, detainees in Fulton County, Georgia often languished in jail for over a year waiting to be indicted for simple crimes such as burglary. In one California county in 1999, a single attorney was responsible for handling all misdemeanors—over 3,500, as compared with the cap of 400 recommended under

national standards. When it comes to criminal defense for the indigent, we are facing what Fordham University law professor Bruce Green described as a "national epidemic of neglect."

Given this background, it is all the more remarkable to see the statistics on the Georgia Justice Project, an innovative approach to indigent criminal defense. For the years 2000-2002, only 8% of its clients were incarcerated, as compared with more than 70% for urban public defender offices. In the years following the representation, less than 19% of its clients return to the criminal justice system, as compared with the

67.5% national average. Its dismissal and acquittal rates are twice the national average. Former Deputy United States Attorney General Larry Thompson has described the project's success as "stunning."² From the statistics it appears that the attorneys are paying close attention not only to their cases, but also to their clients.

What is the secret of the project's success? Its webpage self-portrait immediately catches the eye: "We are an unlikely mix of lawyers, social workers and a landscaping company. We defend people accused of crimes and, win or lose, we stand with our clients as they rebuild their lives. This is the only way to break the cycle of crime and poverty."

Because the Georgia Justice Project is privately funded, they are able to be selective. Through an intensive interviewing process, they select clients who are in serious trouble, who cannot afford to pay an attorney, and—most important—who will make a serious commitment to use their encounter with the law as an opportunity to change their lives. As lawyer and executive director Doug Ammar described in a recent article in the *Fordham Urban Law Journal*, "This helps ensure that they move beyond the social, emotional, and personal challenges that may have contributed to their legal problems." To qualify for long-term help, clients sign a probationary contract which could include satisfying conditions such as drug treatment, job training, a high



stand with our clients as they rebuild and poverty."

world outlook

school equivalency exam, or an anger-management course. Often the progress made before the case comes to trial becomes a chance to demonstrate one's commitment to change, and proves decisive for success in the legal process itself—at times even resulting in dismissal of the case.

Caseloads are kept small—attorneys team up with social workers to handle no more than 15-20 cases at any given time, and no more than 100 per year. In this way they have time not only to pay close attention to the legal aspects of each case, but also to develop and nurture relationships with each client so as to better understand their social, emotional and mental health background. As a result, the legal crisis often leads to deeper healing and becomes a bridge which helps clients to reconnect with their families, further their education, and/or work toward healing from drug abuse.

For the Georgia Justice Project, the attorney-client relationship is only the beginning. As a result of smaller caseloads, the attorneys and social workers are also able to maintain their relationship with clients long after the case is concluded. For those convicted, this could include visits in prison and arranging for continued connection with family members. Upon release from prison, clients often need help with what Ammar describes as the "snowball" effect of their legal problems, including loss or denial of public housing benefits, ineligibility for employment licenses and problems with

immigration status. The project assists with a number of crucial services—finding a home, medical care, counseling, education, even a job with the New Horizon Landscaping company, an integral part of the project. And long after release from prison, the project's family-style buffet dinners help to build a sense of belonging and re-integration in society.

Could the project's "stunning" success hinge on simply selecting the low-risk clients? Unlikely, as most have been charged with felonies, and are repeat offenders. Many of the project's clients would have slipped through the cracks of an indigent criminal defense system which leaves little time to focus on each person individually, and where a certain narrowness in their education and mentality may prevent attorneys from delving into the host of social issues which often lie at the root of the problems that lead to crime.

The Georgia Justice Project has found that within each of its clients is a tiny and fragile spark of hope which would have been easily extinguished under the pressures of an overwhelmed and impersonal criminal justice system. It catches that spark, encourages it to grow and then feeds it with support and love, until it becomes a robust and burning flame.

Amy Uelman is the Director of the Fordham University School of Law Institute on Religion, Law & Lawyer's Work

1) Report of the National Symposium on Indigent Defense, Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations (March 2000); 2) May 17, 2002.

of love and justice where, as Dr. King described, "brotherhood is a reality" in all aspects of social life.

"The end is reconciliation; the end is redemption; the end is the creation of the beloved community," Dr. King said in 1956. "It is this type of spirit and this type of love that can transform opposers into friends. It is this type of understanding and goodwill that will transform the deep gloom of the old age into the exuberant gladness of the new age. It is this love which will bring about miracles in the hearts of men."¹

—A. U.

1) For more information on Dr. King's description of the beloved community, see thekingcenter.com/prog/bc.

Dealing with People, not just Problems

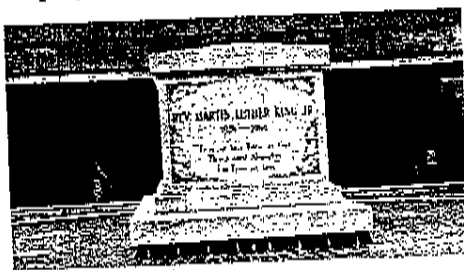
We talked with Doug Ammar, the Georgia Justice Project's first staff attorney and its current Executive Director, to learn more about the spirit which animates the project's unique approach.

HOW DID YOU INITIALLY GET INVOLVED IN THE GEORGIA JUSTICE PROJECT?

For me the challenge was not to use law school to escape from my own suffering, but to go back to the place I had been running from. I grew up in poverty and my father was an addict, so for me education and law school were a ticket out of poverty into a comfortable life. After having been involved with Christian mission and service activities, I felt what you could call a "vocation" to trade that ticket in, in order to be in difficult places, with difficult people—to go back to the inner city, back to poverty, in order to work for social justice. In 1986, while I was still in law school, I spent a summer working for the Georgia Justice Project. I saw it as a way to integrate the suffering of my past, and also to make a spiritual connection—to live as a Christian. As they say in my church, God does not save you just for yourself, he saves you for others, for a purpose. I understood that in my case God did not save me to make a lot of money but to make a difference in the lives of others.

WE KNOW THAT CRIMINAL DEFENSE WORK IS FILLED WITH PROBLEMS. WHAT IS THE APPROACH OF THE GEORGIA JUSTICE PROJECT?

What makes our work spiritual and redemptive is the fact that it is relational. We do not just defend people or offer them



Martin Luther King's "Beloved Community"

THE CURRENT OFFICES OF THE GEORGIA Justice Project are about 100 feet away from the grave of Dr. Martin Luther King, Jr. (above). The project sees its mission as one of creating "pockets" of the "beloved community"



jobs. Our founder had a vision of forming relationships that defy normal conventions—going beyond the boundaries of being lawyers, being middle class, being white or black. Generally lawyers often feel that what we have to offer the community is what we know how to do. It's easy to hide behind the skills and the degrees and the profession, in anything we do. But people are beginning to see—whether from a Christian perspective or from a community organizing perspective—that the best thing we can bring to the table is not the initials after our name, nor certifications from the state. No, it is ourselves, it is building relationships—and that is what really changes things.

HOW DOES YOUR WORK DIFFER FROM CURRENT MODELS FOR INDIGENT CRIMINAL DEFENSE?

We do focus on doing a good job legally. But we are also involved with our clients in a much deeper and more meaningful way. What we are saying to the court system is that if you provide social services on the front end, if you address people's needs and not just what they've done, then the clients are much less likely to offend again—and this is certainly a more compassionate, holistic, safer and effective way to do things. Many judges and prosecutors are responding to this idea, and are beginning to appreciate how the encounter with the legal system can be an opportunity to address the deeper issues.

AND YOUR SERVICES ALSO CONTINUE AFTER THE CASE IS OVER?

Yes, that's the other part that makes our work very different. For example, we visit

our clients in prison. A lot of people ask, isn't it difficult or embarrassing to visit someone in prison after you have defended their case and lost? Absolutely not. To be with someone in prison, after the case is over, sends a huge message to the system that we're dealing with the people, not just the problems.

ANOTHER AREA OF CONTROVERSY IN CRIMINAL DEFENSE IS THE EXTENT TO WHICH ONE SHOULD ENCOURAGE A CLIENT TO FACE THE TRUTH ABOUT WHAT THEY HAVE DONE. DOES THE GEORGIA JUSTICE PROJECT HAVE ANY INSIGHT INTO THAT PROBLEM?

Many studies have been done about the impact and importance of taking ownership over something that one has done, and how it helps people to take their encounter with the law as a learning opportunity. Unfortunately, criminal defense lawyers can be part of the hiding process which blocks our clients from the opportunity to move forward with their lives. If the definition of criminal defense is only to beat the state's case, how can we understand what's really going on? How can we help to heal it? Of course a lot of people who are charged are innocent. For example, last year alone close to 80% of our cases were dismissed or acquitted—so we do fight for our clients. But on the other side, when you have someone who has been caught with a lot of drugs or caught hitting somebody, if we do not help them to face what they have done, it's a missed opportunity, and the law becomes a barrier to transformation. Some cases even get dismissed when we have our clients take ownership and do some form of restoration or compensate the victim.

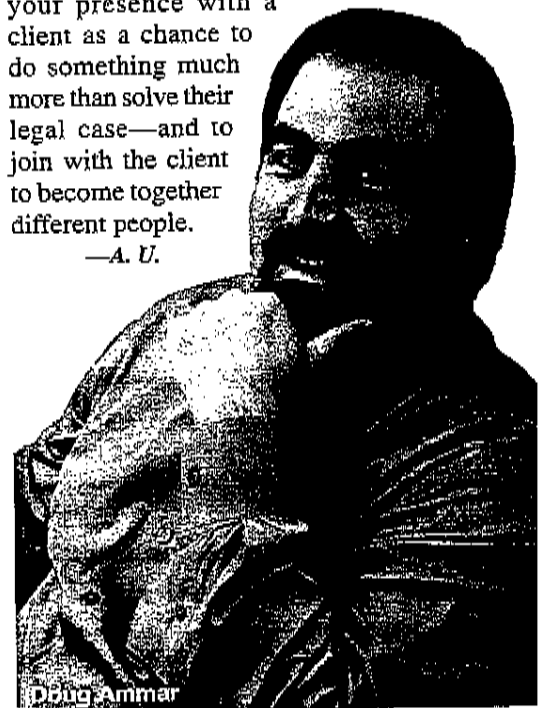
IN YOUR EXPERIENCE, THEN, FACING THE TRUTH CAN ACTUALLY WORK TO THE CLIENT'S BENEFIT?

As both Gandhi and Martin Luther King said and lived, the truth as love cuts through everything—if you really deal with truth from a love perspective, it creates openness. If my client is charged with drug sale, and also has a drug problem, which most dealers do at some point, my fighting the state's case at every turn, denying that he has done this, adds another barrier to him accepting that he has a drug problem. How much more powerful it is to embrace the truth, and help the client come to terms with where he is and what he's done, and then help him move through that.

ANY SUGGESTIONS FOR STUDENTS WHO ARE THINKING ABOUT ENTERING THIS FIELD?

This kind of work will bring them into contact with people who are very broken, in desperate places, suffering not only from poverty, but from the tragedies of addiction, abuse and systematic discrimination. If you walk into these settings with the belief that the best tool you have to offer is your law degree, you will come up with very shallow solutions. Instead, the best tool you can offer is your heart, your spirit, your humanity. Catch the opportunity to see your engagement and your presence with a client as a chance to do something much more than solve their legal case—and to join with the client to become together different people.

—A. U.



A Biblical Worldview of Work

[Contributed to CLE Materials by C. David Butler]

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Work and Who God Is

- Work is not a result of the fall. It is a part of God's created order for humanity (Genesis 2:5, 15), and it is patterned after God Himself (Exodus 20:11; Hebrews 4:3-4; Revelation 15:3).
- Jesus accomplished the works of His Father during His earthly sojourn (John 4:34; 5:17; 5:36; 10:32-37; 14:10-13; 17:4).
- The Father gives us work to accomplish during our earthly sojourn (Acts 13:2; 1 Corinthians 16:10; Ephesians 2:10).
- God has appointed us over the works of His hands (Genesis 1:27-28; Hebrews 2:7).
- We are called to please God by bearing fruit in every good work (Colossians 1:10; Hebrews 13:21).
- Our work will be tested and rewarded by God (1 Corinthians 3:13-15).
- We must work for the food which endures to eternal life (John 6:27-29).

Work and Who I Am (Heart)

- When work is done in and for the Lord, it benefits others and honors God. It is in creative activity that we externalize our identities as people made in the image of God.
- Our identity transcends our work, and if we do not derive our identity from our relationship with the Lord, our work will tend to shape and define us.
- True importance is not found in position or prestige, but in the manner in which our work is done and the Audience for whom we do it. Significance is not determined by wisdom, power, or wealth (Jeremiah 9:23-24; Philippians 3:8), but by our relationship with God. Because of this, it is always a mistake to compare ourselves with others.
- If we look to our customers and clients rather than the Lord as our source of provision, we will be far more inclined to manipulate and use them than to minister to them.
- There should be no secular/spiritual duality regarding work. God has promised that the product of our work will ultimately perish (2 Peter 3:10). It is not the fruit of our labors but the focus of our heart that gives value to our work in the sight of God. Thus, "secular" work becomes spiritual when it is done to please God, and "religious" work becomes secular when it is done to please and impress people.

- We are called to do our work as unto the Lord instead of seeking to impress and please people (Ephesians 6:5-8; Colossians 3:23-24). Employers should see themselves as accountable to Christ for the way they treat their employees (Ephesians 6:9; Colossians 4:1).

Work and How I Think (Head)

- The fall affected the character of work in such a way that it became associated more with toil than with joy (Genesis 3:17-19).

- Work becomes idolatrous when it becomes an end in itself (Ecclesiastes 2:4-11, 18-23; Luke 12:16-22), and it can become a means of exploitation and oppression (Exodus 1:11-14; 2:23; James 5:4).

- Work hard, but do not overwork. The sluggard is reproached in the Old and New Testaments (Proverbs 6:6-11; 12:27; 13:4; 20:4; 21:25-26; 22:13; 24:30-34; 26:13-16; Matthew 25:24-30; Ephesians 4:28; 1 Thessalonians 4:10-12; 2 Thessalonians 3:6-12; 1 Timothy 5:8, 13). But when work becomes the source of our significance and security, we swing to the opposite extreme and become consumed by our work.

- It is God who gives us our ability (Romans 12:6), our intelligence (Daniel 2:21), our wealth (Deuteronomy 8:18), and our promotions (Psalm 75:6-7).

- We do not work to provide for our needs. Our culture associates work with the quest for success, significance, provision, esteem, and purpose. By contrast, Scripture teaches us that it is God, not our work, to whom we should look for these things (1 Corinthians 4:7; Philippians 4:19). Believers must come to see that God is their source of provision, and their work is a means He uses to supply their needs.

- We cannot contribute to the work of God (Esther 4:13-14; Psalm 115:3; 127:1-2; Ecclesiastes 3:14; Isaiah 46:9-10; 2 Corinthians 3:5), but we can participate in it (John 4:34; 1 Corinthians 3:6-9). If we think that we can add to the work of God, our work becomes so inflated in importance that it can overwhelm relational commitments. We take ourselves too seriously when we think God needs what we have to offer. When leaders attempt to build ministry empires by using people to serve their visions, they make the mistakes of trying to measure the ministry and of basing their significance upon their accomplishments.

- Working harder does not necessarily lead to greater prosperity. There is certainly a correlation here, but not a fixed causality. In many occupations (e.g., farming, real estate, technology), the ratio of productivity to time invested can vary dramatically. We may suppose that we can out-earn our needs by working harder, but income is only one of several components that can affect our standard of living. If we miss these truths, we will be inclined to sacrifice other priorities (our relationships with God and others) when business is less productive.

Work and What I Do (Hands)

- Scripture rebukes idleness and sloth and affirms that work has genuine value (Ecclesiastes 2:24; 3:12-13; 5:18).
- All honest professions are honorable, and there is dignity in manual as well as mental work, as is evident from the occupations of the characters of the Bible.
- When we seek to glorify God in whatever we do (1 Corinthians 10:31), we will pursue excellence in our work, whether others notice or not. (Consider the superb craftsmanship of Bezalel and Oholiab, the men who constructed the tabernacle in the wilderness; Exodus 35-40. Also imagine the quality and workmanship of the wooden articles that Jesus crafted during His years as a carpenter.)
- Work embeds us in a natural environment in which we can exhibit kingdom values and hope in a temporal arena. It provides a context in which we can represent Jesus Christ by building relationships; by demonstrating character, conviction, and integrity; and by doing our work with care and quality.
- God is not impressed by or dependent upon our abilities or accomplishments. But if we do our work for His sake, it pleases Him in the same way the drawings children make for their parents decorate the refrigerator. These drawings are not valued because they qualify to hang in an art gallery, but because of the parent's relationship with the children who made them.
- There should be a rhythm between work and leisure in our lives so that we can enjoy periods of refreshment, renewal, restoration, and relationships. Work and rest are equally legitimate in God's economy, but most of us have a tendency to overvalue work. Leisure can be a mode of worship (Leviticus 16:29-31; Deuteronomy 14:22-26) and an expression of contentment with the will of God in our lives. From a biblical standpoint, rest is not so much the absence of activity as it is the presence of God (Exodus 33:14; Nehemiah 8:10-12; Matthew 11:28-30; Mark 6:31; Romans 15:32; Hebrews 3:11-4:11).

IMAGINE LAW

Peter Gabel

The most profound definition of justice is Martin Luther King Jr.'s: "Love correcting that which revolts against Love." Its power comes from its affirmation that we are first of all *connected*, that as individuals we are but unique incarnations of a spiritual force that unites us, and that justice is the making manifest of that love by correcting, through the inherent ethical call that this love makes upon every one of us and all of us, the spiritual distortions that revolt against love and seek to deny it. It was to this inherent ethical understanding emanating from the very essence of our social existence, pulling upon the conscience of the oppressor as much as giving courage to the oppressed, that King always addressed himself. Injustice is as self-evident to us as the presence of justice—even the Nazi cannot stop killing for fear of becoming aware of what he knows—and it is the necessity of love that both enables us to tell justice from injustice and calls upon us to move from the one to the other.

Law ought to be the particular temporal embodiment of our effort as a real historical community to move from the one to the other. Law is not a body of rules or any other such thing-like entity, but rather a *culture of justice* whose ethical legitimacy depends upon how deeply and sincerely it enables us to carry out the work of justice, of love correcting that which revolts against love. Thus conceived, legal culture ought to be a spiritual practice through which the community calls upon love's evolving wisdom to heal the spiritual distortions that continue to alienate us from love itself as the realization of our social being. Like the mountain climber who *first* throws his pick up to the top of the mountain, making sure that the pick is anchored so as to maximize the tension in his rope, and who *then* seeks to pull himself upward by intuitively gauging the rightness of every step in relation to his ultimate and transcendent end, law must maintain its connection to justice by following an ethical intuition anchoring the present to the future, an intuition of what we are in our being but are not yet in reality.

America's legal culture at the turn of the millennium has temporarily lost this connection to justice because its great historical accomplishment—the affirmation of the freedom of the individual and the protection of the individual from officially sanctioned group coercion—has been misunderstood to require the denial of the spiritual bond that unites the individual to the other and, through love, fulfills the individual in his or her social existence. As a result, alongside the accomplishments of constitutional democracy and the Bill of Rights, which liberated the individual from the officially sanctioned religious and political oppression of previous historical periods, we have created a society of disconnected monads, spiritually isolated and starved for love and recognition. Not only has this collective spiritual starvation now progressed to the point of posing a threat to the very existence of the planet (because the denial of the universal need for loving connection has spawned a pathological, paranoid scramble to exploit everything outside oneself—other people and the natural world—in order to "save" oneself), it has also failed to secure the liberty of the individual in whose name the denial of our spiritual bond was legislated. Today as "free individuals," we live most of our lives in a completely unnecessary spiritual prison, each of us longing for the same liberation that

only we can provide each other, each of us denying that this longing exists within ourselves because we doubt that our longing would or could be reciprocated by the other. Since this is the IMAGINE project, let us begin by acknowledging that it is we, and not merely Eleanor Rigby, who are all the lonely people, withdrawn into our heads and peering out at a social world whose collective gaze we have come to fear and whose love, whose reciprocating acceptance and affirming recognition, is at the same time our only spiritual salvation.

Of course the law is not exclusively to blame for this, but it does have a special responsibility because it legitimizes our predicament in the name of justice. Law cannot exist without claiming to be just: it would be superfluous to elevate what are merely orders backed by the threat of violence to some higher cultural status. But when law loses its true spiritual connection to justice, it becomes "legitimation"—a justification of the status quo that lacks the ethical legitimacy that only moral anchorage in true justice, Martin Luther King's justice, can provide. Law as legitimation exploits the longing for justice by using the claim of justice to legitimate an alienated society that the community, deep in its core, experiences as spiritually and ethically illegitimate.

Thus however much we are tempted to blame the present ecological and spiritual crisis on the global capitalist marketplace, for example, we must realize that this marketplace is held in place, so to speak, by a legal culture that through a vast network of "rights" allows the community of souls that form that marketplace to believe that what it is doing is right and even required by justice itself. If the prevailing culture of justice declares that individual liberty means there exists no spiritual force, no essential love, that unites us to each other and to the sacredness of the natural world and the wider universe, then the universal longings of the soul are in contradiction with the community's public declaration—through the official political and legal institutions that define the community's very public existence—of the ethical basis of community membership. To put it simply, absent the support of a spiritual/cultural/political movement, the isolated soul cannot but believe that its longing for a loving and spiritually connected society is "wrong" and that the ethics of the marketplace is both "right" and a condition of social membership. Thus the prevailing legal culture, which we begin to internalize even before the explicit conditioning of seventh and eight-grade civics class, plays a unique and powerful role not only in sustaining what is, but in keeping our spiritual longings and our spiritual knowledge a collective and even unconscious secret.

Since what we are to imagine, in a moment, is precisely the legal/spiritual revolution that will dissolve these invisible walls that separate us, we must first enumerate the elements of our existing legal culture that contribute to this state of affairs and that must be revolutionized. All of these elements reflect the central mistaken conviction that the protection of individual liberty requires the denial of, rather than the affirmation of, the spiritual bond that unites us. Here are the most important ones:

1. Our legal culture declares that disputes are to be resolved through an adversary system that defines differences as antagonistic clashes of conflicting interests, fosters hostility, mutual deprecation, and lying, and rejects any moral objective that might

inform the process beyond the parties' own objectives, beyond their self-interested goals. Protection of the "rights of the individual" is thought to require that each side treat the other with skepticism and mistrust, to demean the other's position while exaggerating the virtue of your own, to use cross-examination to undermine the testimony of even those you believe to be truthful, and to conceal any information that might be harmful to your side unless your opponent extracts it from you under penalty of perjury (only in rare circumstances is voluntary disclosure legally required). The adversary process assumes that justice is best served by the use of evidentiary rules that limit what the judge and jury may hear to the proof of empirically verifiable facts. Any evidence regarding the spiritual and social *meaning* of the dispute or of the social and ethical context that might bring out this meaning is inadmissible because it is regarded as "merely subjective," merely matters of opinion that cannot be determined to be true or untrue and therefore can only unfairly prejudice the objectivity of the proceeding. The assumption is that the vindication of "individual rights" is the basis of law's claim to justice, and that objectivity in pursuit of that end is best assured by having an impartial third-party (sometimes the judge, sometimes a jury) evaluate each side's case after the other has had a full opportunity to destroy it.

2. Once the "facts" are thus determined, the basic rules of substantive law that are used to resolve disputes—embodied in, for example, the law of contracts, torts, corporations, and property—assume that people are essentially unconnected monads whose principal desire is to pursue their own material self-interest in the competitive marketplace, and whose principal social concern is limited to protecting their persons and property against unwanted interference by others. Even the Constitution, often thought to be among the world's great documents in securing social justice, provides no recognition of the human longing for community, for social connection, for the authenticity of mutual recognition, for the creation of a society that fosters our awareness of the sacredness of life itself and of the natural world. Instead, the main text of the Constitution provides only the formal structure to secure a democracy of strangers, an unconnected collection of individuals protected against their neighbors by the secret ballot and against abuses by the government itself through the "checks and balances" secured by the separation of powers. Similarly, the Bill of Rights does not aspire to *connect* us to one another but to protect us against each other, against the community's interfering with our right as isolated individuals to speak, to assemble (if as disconnected monads we can find anyone to assemble with), to be secure in our homes (those supposed havens in a heartless world), and even to keep others from taking away our guns. Indeed, the current preoccupation with "the right to bear arms" is an example of a highly visible appeal to the Bill of Rights (in this case the Second Amendment) that reveals how clearly its protections equate individual freedom with fear of the other rather than connection with and love for the other.

3. In their training and in the disciplinary and ethical rules that govern the legal profession, lawyers are encouraged and even to some extent required to ignore ethical considerations beyond the narrow self-interest of the client. Because our legal culture lacks a spiritual and moral direction, or more precisely because it denies the legitimacy

of embracing such a direction in order to defend an isolated conception of individual liberty, the role of the lawyer is simply to advocate for the legitimacy of whatever the client wants or does (so long as it is not a crime). Legal education is almost exclusively directed toward teaching students the analytical techniques of rule-manipulation; the best students are those who can demonstrate their capacity to argue for any side irrespective of moral consequences. No part of a law student's education is directed toward instilling in the student the obligation or the capability to promote the creation of a more loving, more spiritually whole society. And once in practice, the lawyer's professional "duty of zealous representation" virtually requires the lawyer not to allow his or her own "private" ethical concerns to interfere with the zealous pursuit of the client's ends, irrespective of the impact of these ends on others, on the society as a whole, or on the environment.

Because the individualistic, materialist, and adversarial character of this legal culture is "binding" on the consciousness of society—because its assumptions about who human beings are and how we ought to relate to one another are also The Law—we cannot overcome the spiritual alienation that is at the heart of our own and the world's suffering without a fundamental transformation of this culture. And because the great social movements of the twentieth century did not grasp this, they foundered when they entered the legal arena. The labor movement, the civil rights movement, and the women's movement, for example, were fundamentally spiritual movements aspiring to a new kind of connection that would realize our common humanity—even the word "movement" denotes the spiritual emergence of just such a vitalizing connection. But once these movements began to translate their spiritual aspirations into a demand for legal rights, their very victories became a cause of the defeat of these aspirations. Absorbed into the law's individualistic and materialist framework, the labor movement's aspiration to a classless society based on solidarity and universal brotherhood became the right to bargain for higher wages and safer working conditions; the civil rights movement's aspiration to love across our racial differences became the right of "the individual" not to be discriminated against on the basis of race in order to protect his or her liberty to pursue "equality of opportunity" in the marketplace; the aspiration of the women's movement to replace a world of power, hierarchy, and heartless rationality with a communal, intuitively grounded fabric of care became the right not to have one's liberty to pursue material success in the marketplace impeded by gender. No matter how important these liberal victories were, they required looking in a mirror that made the spiritual aspiration for a fundamental social transformation invisible.

Yet for a complex of reasons—the most important of which are probably the failure of the liberal global marketplace to create a meaningful social existence, and the failure of the movements for social transformation to be able to sustain themselves through either the liberal or the materialist-socialist framework—a new flower has begun to sprout across the face of the world. This flower is the world-wide spiritual/ecological movement that is finally helping the necessity of love to *recognize itself* as the spiritual force that unites us. To bring this recognition to fruition, to enable this flower to grow in spite of the centuries of alienation and mistrust and "misrecognition" that have preceded its

birth into awareness, we must create a new legal culture. And we are already beginning to do so.

Love Correcting That Which Revolts Against Love

A legal culture that can begin to realize Dr. King's great description of justice is one in which the community's response to conflict of every kind—civil and criminal to use the current categories—begins with a moral awareness of the love, the sense of compassionate and caring social connection, that is to be restored through the legal process. This requires that law's primary focus no longer be judgment directed toward divided individuals, but the healing of wounds to the connection that is to be restored.

This in turn requires that the three principal elements of the individualistic and materialist legal culture undergo the following transformation:

1. The adversary system should be abolished and replaced by processes that encourage empathy, compassion, and mutual understanding. Each human and ecological problem that requires community resolution should proceed by locating the presentation of all "facts" within a context of *social meaning* that reveals their ethical significance. Within this transformed framework, the courtroom would be the public space devoted to healing the spiritual wounds of alienation by allowing the community to hear these wounds in their full human dimension, instead of restricting what constitutes "evidence" to intentionally despiritualized "facts." For example, imagine the effect of a single public hearing of a case of racial oppression in such a setting. Imagine if the community and the perpetrator listened with a legally validated compassion to the suffering of the victim, and then with equal compassion to the desperate allegiance of the perpetrator to whatever distorted vision of racial superiority and false communal identity led him or her to inflict humiliation and pain on another (for listening with compassion does not mean sparing the offender of moral responsibility). And imagine the healing effect on the wider culture of watching such spiritual truths revealed on television—in contrast, say, to the alienating effect of watching the manipulations of the O.J. Simpson trial. The effect of a single such act of collective witnessing would have an immense impact by giving communal recognition, through a public legal process, to the pain of separation that pervades all of our lives and produces our worst distortions.

If you find it difficult to imagine how we could arrive at such a transformed vision of law's purpose and process, consider the rapid spread of the Restorative Justice movement in criminal law in America today. All across the country (but especially in Austin, Milwaukee, and Minneapolis), concerned lawyers, religious leaders, and community members are seeking to heal the community wounds caused by crime by creating safe contexts for victims to confront those who have hurt them with the full expression of the pain they have suffered, by allowing the perpetrators to come face to face with *the reality of the Other* that such a confrontation permits, and by sometimes eliciting sincere apologies and the sincere forgiveness that is the only true way to repair the spiritual harm of violence. Of course these restorative justice processes also require the offender to provide appropriate and meaningful restitution to the victim where

possible—such as requiring, in one case, two teenagers who had defiled a Des Moines synagogue with swastikas to remove the offending symbols, perform other community service, and study Jewish history in addition to coming to understand, through face-to-face encounters with Holocaust survivors who were members of the synagogue, the enormity of the suffering associated with the swastika. But the essential point of Restorative Justice is responding to crime in a manner consonant with love correcting that which revolts against love, with understanding crime as a wound to love that is itself almost always caused by such a wound that preceded the criminal act.

The power of this re-imagining of the healing power of law has been nowhere better revealed than in the work of South Africa's Truth and Reconciliation Commission (TRC) under the leadership of Bishop Desmond Tutu. That commission has sought to avoid the vengeance that almost inevitably accompanies revolutions against a legacy of oppression by seeking, on behalf of the black majority, to forgive the white minority for the crimes of apartheid so long as the offenders acknowledged the truth of what they had done. With all its limitations, including the immense political complications accompanying the TRC's work (hearing and televising a review of some 22,000 cases often involving extreme violence), the TRC is one of the greatest experiments in human history in a spiritual approach to healing social conflict. Imagine if we began now to take the next millennium to build our entire legal culture on the TRC's premise announced in the title of Bishop Tutu's recent book: *No Future Without Forgiveness*.

2. The role of "rules" in resolving disputes in civil cases should be greatly diminished, in favor of wisdom guided by ethical and spiritual ideals. Just as the Restorative Justice movement has sought to foster the healing of the effects of violence on individuals and communities in criminal cases, the process of resolving civil disputes should draw upon the healing-centered focus of today's transformative mediation movement to assist in the realization of these spiritual and ethical ideals.

The importance of this shift can best be understood by grasping the changes in legal culture that will have to occur for David Korten's visionary conception of a post-corporate, sustainable economy to actually come into being. Korten's alternative to globalization calls for the creation of "mindful markets" that will be based on such ethical values as true mutuality and cooperation, respect for the meaningfulness of one another's labor, the production of material goods that satisfy real human needs in a manner that respects the sacredness of the earth, and respect by economic actors for the integrity of each other's local cultures. But the only way to bring about such an economic transformation is to build a parallel legal culture that gradually helps to develop acceptance of these values as expressive of a *just* economy, and to fill out the practical meaning of these ideal values through the resolution of individual cases over time—through a spiritual/ethical equivalent of our present individualist/materialist common law.

What this new legal culture requires is not a new set of abstract rules to be applied neutrally and logically to strangers who want to remain strangers, but a legal process that emphasizes empathic listening and the elicitation of the social meaning of an

economic exchange in order to gradually overcome the legacy of capitalist self-interest that presupposes disconnection between the parties. The purpose of the legal proceeding must be to bring into being a *connection* expressive of Korten's vision of an ethical and sustainable economic culture. If a dispute develops between a buyer of coffee in the United States and a supplier from Central America, the legal resolution of the dispute should perhaps begin with a period of meditation and a sharing of food and music, followed by a telling of respective stories and a period of questioning (not "cross-examination") aimed at resolving the dispute in accordance with the aspiration to a spiritual and ethical ideal. The aspiration to respect the inherent worth and meaningfulness of each other's labor cannot be realized by a verbal statement of this ideal in the form of a "rule" to which alienated actors must conform their conduct, but by a process that realizes this aspiration is an ideal "in front of us" that must be nurtured into existence through empathy, education, and reciprocal sensitivity.

Accompanying the replacement of rules with ideals in substantive law must be the development of spiritual remedies for the resolution of differences. In today's legal culture, the measure of all things is money. Consistent with the law's emphasis on material self-interest and the profit motive as the driving force of humankind, the legal remedy prescribed for almost every injury, whether economic (such as breach of contract) or non-economic (such as sexual harassment) is monetary damages to be transferred from one disconnected stranger to another. In the civil area as in the criminal area, remedies aimed at creating social connection must emphasize acknowledgment of wrong-doing and the elicitation of genuinely voluntary apology and forgiveness. Of course some and perhaps many cases will require some material restitution for material loss unjustly suffered by one party, but even here the aim wherever possible should be the promotion of future material assistance freely given, rather than just the payment of money.

Finally, while I have here emphasized re-imagining the relationship between a new legal culture and a new economic culture, the same re-imagining should occur in the non-economic sphere of a reconceived civil society that aspires to connect us rather than separate us. To take but the most obvious example, the present rule of American tort law that there is no duty to attempt to rescue someone in distress—for example, someone drowning in front of you in a swimming pool—should be replaced by the ideal expectation that we will do all we can to rescue each other from isolation, fear, and danger, whether someone is drowning or someone is homeless. That we today associate this expectation as "making sense" only in relation to intimate family members is but a result of our conditioning that transforms those outside the tiny circle of blood relations into mere strangers, mere vessels of anonymity to whom we are not essentially related.

3. The role of lawyers must be equally reconceived as a "calling" rather than a trade. Instead of lawyers understanding themselves as neutral legitimators of their clients' individual self-interest, lawyers must reconceive of themselves as healers—that is, as spiritual actors whose aim is to reconcile the goals of their clients with the creation of a

loving world. No longer should the ethics of the profession encourage the criminal defense lawyer to seek the acquittal of those whom the lawyer knows has committed violent acts, or encourage the lawyer for a lumber company to help his or her client destroy old-growth Redwoods with impunity. Instead, the lawyer should be trained from the first day in law school to engage every human situation with which he or she is confronted so as to create a better, more spiritually connected world. Rule-manipulation and the cultivation of cleverness should give way, through the study not of "cases" but of ethically compelling and challenging situations, to empathic engagement with both one's client's deepest hopes and the reconciliation of those hopes with the law's substantive ethical ideals. The purpose of the profession as a whole, therefore, should be the deepening of the collective moral consciousness of the community as a whole, as the community—finally facing the inevitability of the destruction of its own species if it cannot overcome the fear of the Other that has come to dominate its existence—approaches Martin Luther King Jr.'s simple and universally desired moral truth.

Whether this vision sounds hopelessly utopian to you or fully realizable and even necessary—whether you believe such a profoundly connected vision of law and legal culture cannot be accomplished without unacceptable threats to individual freedom, or, on the other hand, whether you believe such a vision of legally recognized spiritual connection is essential to the fulfillment of individual liberation—depends upon whether you really can embrace Martin Luther King Jr.'s affirmation that loving connection made manifest in the world will be but the realization of who we already are. I can embrace this. And with Dr. King and John Lennon in my mind's eye, I know I'm not the only one.

*Peter Gabel is president of New College of California, associate editor of Tikkun, and author of **The Bank Teller and Other Essays on the Politics of Meaning** (Acada Books, 2000).*

Peacemaking Circles

From Crime to Community



About the Authors

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Mark Wedge brings a lifelong knowledge of aboriginal culture and broad experience in both using and training others in using peacemaking Circles for complex issues. He carries the Circle process to workplace and public forums, including the outstanding issues in Canada between victims of Mission School abuse and the Anglican Church.



LIVING JUSTICE PRESS
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"The Ugly Feather" The Story of a Circle Process at Work

CIRCLES BRING US TOGETHER TO SHARE who we are beyond our appearances. They're places of listening—of hearing what it's like to be someone else. They're also places for being heard—for expressing what's on our minds and hearts and having others receive it deeply. Telling our stories in the safe space of Circles opens windows on each other's lives, giving us moments when we can witness the path another has walked as well as feel that others appreciate our own path. The life stories shared are naturally transforming. Speakers and listeners are touched and changed; so are their relationships. Circles don't "make" this happen; rather they provide a forum—imbued with a philosophy and format that reflects it—where profound change is highly likely to happen.

Perhaps the best way to introduce the Circle process, then, is to share a story. Because honoring confidentiality is an essential guideline of Circles, all names and identifying circumstances have been altered or omitted throughout the book, unless specific permission has been given otherwise. This is the story of "the ugly feather":

Shumped in his chair, legs stretched out, arms folded and head down, Jamie listened as the feather was passed around the Circle. People were talking about him or his crime. He heard anger, but mostly he heard people asking him in many different ways: Why? Why had he spent so many years lost to alcohol and crime? When was he going to change? What would it take for him to change? Did he not care about the

people be hurt? He was now twenty-one; when was he going to grow up? When was he going to take responsibility for his life?

Amidst the questions and anger were comments reflecting on his past—about the good things he had done. Some spoke about how he dealt with Elders and young people and about what he could be. These comments surprised him. Those were the only times he looked up. A furtive glance at those who spoke kindly about him briefly altered his otherwise frozen posture, sending messages that he didn't care and perhaps wasn't even listening.

But Jamie was listening. He was nervous, very nervous. He knew the feather would soon be passed to him. Soon he would have to talk and answer many questions. In court, anger, hostility, and a silent resignation to the process enabled him to slip through without being involved. Not here.

The feather came to him. He held the feather, twirling it in his hands. He paused. "I don't know what to say. I'm here because I want to change. That's it."

He passed the feather to John with a desperate hope that John might answer all the questions. John, a respected Elder, had been talking with him for weeks, trying to help him prepare for the Circle. John was in the Circle to support him. Jamie thought John would help him now.

John held the feather but didn't speak. Jamie worried that John might pass the feather back to him. John reached into his pouch and pulled out another feather. This feather was hardly recognizable as an eagle feather. It was twisted and large gaps suggested strands were missing. It was bedraggled, unkempt, and obviously not cared for—not a sacred object. John held up the feather for everyone to see.

"This is a very ugly feather. I don't know when I've seen such an ugly feather. This feather reminds me of myself when I was running wild and crazy. I was missing many strands, it seemed. I was twisted up inside, full of booze and anger, full of not caring for anyone, not even for myself. I was an ugly feather with lots of gaps in my life. I

want everyone to see up close how ugly this feather really is, so I'm going to pass it around while I talk. Hold this feather for a while. Look at it, feel it, and see how ugly and uncared for it is."

As the feather passed around the Circle, John spoke about his youth and broken life.

"I wasn't going anywhere but bad. I needed help, but I didn't know it. I needed someone to care, but I didn't know that either. Then Agnes, an Elder, came into my life. Slowly, you know, she always greeted me with a smile and asked how I was doing. Sometimes she gave me presents of food. She asked me to her house for tea. We talked. At first, she just listened. I did most of the talking. Soon she had me meeting with other Elders. Then I got working with an Elder on a trap line. I was still drinking, but it seemed like a lot less. She kept me busy.

"Pete, her husband, died that fall. It hit her hard. She turned to me for help. I didn't know how to handle that. I tried. I spent time with her. I went hunting and fishing to bring her food. She counted on me. That made me try.

"Soon I was taking courses from Sue, her niece, at the school. They kept me at it even when I went to jail for drunken driving. It was the first time I was ever embarrassed to be in jail. I'd been there before—lots of times. This time was different. I worried about Agnes. Who would get her food? Who'd visit her? People did, but I worried about it.

"She was worried about me too. Agnes saw to it that lots of people visited me in jail. They even had a dinner for me when I got out. I had to miss the drunk party planned by some of us getting out of jail the same day.

"She kept me at it, because she cared and got me caring. Agnes filled my life with caring people. It happened slowly, but it happened."

By the time John finished the story of his youth, the old, ugly feather had been around the Circle. Jamie held it for a moment, stroked it, and passed it to John. Holding up the old feather, John said, "Now, look how beautiful this old, ugly feather has become."

touches of care and love that make a big difference: these potentials are present in us and in our communities. People like Agnes, John, and Jamie live among us. Circles connect us in ways that help us find them in each other and bring to life the sacredness of people like Jamie.

Each Circle is different, and no one can predict what will happen in any given gathering. On one hand, Circles have no fixed formula. On the other hand, definite factors—inner and outer, unseen and seen—help to create their unique dynamics. The more a group comes to know and use Circles, the less obvious some of these factors become. They get woven into a community's way of being together, until they seem almost invisible—just second nature.

For those new to the process and seeking to use Circles to respond to crime, though, knowing these factors helps tap the full power of Circles to support healing and transformation. By understanding the Circle process enough to trust it, participants let the process work and don't try to force it. They learn to allow the Circle to respond to the unique needs of a situation, and no two are ever alike.

Circles are, therefore, paradoxical. They're both structured and open, ordered and spontaneous, framed and free, limited and unlimited. This book explores one side of this paradox. It's as if the structured, ordered, framed, and limited parameters of the Circle provide the springboard for participants to come together in ways that are open, spontaneous, freeing, and unlimited in possibilities. The latter experience is what each Circle discovers on its own. It can't be written down.

This book describes the elements of Circles—their structure, frame, format, and overall process. Based on our own experiences, we can sketch the factors that go into making the Circle process what it is, and we can describe how these factors serve to make each Circle whatever it needs to be for those involved as they

The feather was different. Maybe not beautiful, but certainly not ugly. Everyone, as they held the feather and listened to John, had stroked it almost unconsciously, as most of us do when holding a feather.

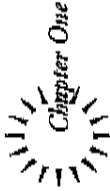
Still holding up the feather, John said, "This feather is like me. Once I was ugly mad, and twisted up by anger. There were big gaps in my life. Many important parts of living a good life were missing. Then Agnes and several others came into my life. They held me, cared for me, and changed me like this feather. That's what we all have to do with Jamie. If all of us touch him with caring hands, we can help him become like this feather. Everything is beautiful, is sacred. It takes caring to bring out beauty, to make someone realize they are sacred, and to make us realize they are sacred. So I'm asking all of us tonight to touch Jamie's life, to care for him, to bring out his beauty, his sacred spirit."

John spoke about how Jamie had come to him asking for help. They had spoken several times, shared a sweat, and told each other the stories of their lives. "I believe in this young man. I believe he is genuine about wanting to change. In our old ways, we give a feather to those we believe in, those we want to know the teachings."

John stood, called upon Jamie to stand up, and presented Jamie with the once-ugly feather. "Jamie, this feather is yours. It says to you we believe in you. As this feather has been changed into something beautiful by the caring hands of everyone in the Circle, so will you be touched by the caring hands of all the people in our community. By respecting yourself, you will respect those who touch your life with care. Respect this feather. Let it keep you aware of what you are and of how people care about you."

The healing power of connecting with others in community, the wisdom of those who have traveled hard roads, the transforming experience of listening and speaking with respect, and the little

enter a difficult conversation. We can describe a Circle's anatomy, but that's very different from the actual experience of being in a Circle—of witnessing a Circle come alive to address pain, offer healing, and help birth transformation. No words can capture that.



Chapter One

Circles: A Paradigm Shift in How We Respond to Crime

It is clear that the way to heal society of its violence . . . and lack of love is to replace the pyramid of domination with the circle of equality and respect.

—MANITONQUAT
Elder of the Assonet Band of the Wampanoag Nation

CIRCLES HAVE A UNIVERSAL, enduring quality, because they operate from a few fundamental premises about human beings and our human condition.

First, Circles build on the premise that every human being wants to be connected to others in a good way. We don't thrive in isolation. Although negative life experiences may repress our innate desires to reach out, we need each other, and on some level, we know it.

Second, Circles operate from the premise that everybody shares core values that indicate what connecting in a good way means. As we will discuss in chapter 2, people the world over and from every walk of life turn to the same basic values to guide them in building good relationships.

Third, Circles assume that being connected in a good way and acting from our values are not always easy to do, especially when conflicts arise. Our core values may lie buried beneath the pain of adverse life experiences, or they may be overshadowed by values imposed on us by other people or by the institutions and systems that influence our lives. We may come to believe that we can't afford to act from our values if we want to survive. As a result, we

harmful behavior. In other words, it uses a system of external controls to maintain social order. This method exerts "power over" — the power of state authority over individuals—to react to crime and to make society safe.

Circles, on the other hand, engage "power with"—the power of people and communities to connect positively, to confront harms, to address deeper causes, and to seek transformation. When harms occur, Circles seek harmony by exploring our potentials for healing and rebuilding relationships. To prevent future harms, Circles cultivate healthy relationships with self and others. From a Circle perspective, healthy relationships are the key to good conduct, hence to public safety.

This approach to creating safe communities nurtures health and wholeness in every direction, within and without. By striving to heal wounded and broken relationships, Circles foster interactions that allow individuals, families, and communities to thrive. As social order flows from a shared inner sense of well-being, external coercion and state-imposed punishment become less necessary. Circles promote safety, therefore, by promoting healing; addressing the pain that gives rise to hurtful or violent conduct.

Shifting the focus from coercive measures to healing raises different questions about how we respond to crime. Instead of asking, "What should the standard punishment for this crime be?" or, "Should incarceration be mandatory?" Circles ask:

- How can we move toward healing?
- What can be done to repair the immediate harm and to prevent further harm?
- What wounds and circumstances—past and present—prevent us from having healthy relationships, both with ourselves and with others?
- What steps can we take to understand these wounds and to aid healing?

may feel isolated, and we may despair of being able to connect positively with others.

Fourth, Circles presume that, given a safe space, we can re-discover our core values, and that as we do, we also uncover our deep-seated desire to be positively connected. By providing the kind of space that supports both of these processes, Circles enable us to reach out to each other, which is one of our deepest longings. In Circles, our minds and hearts open in ways that the dominant Western model of criminal justice discourages, and we find ourselves connecting on levels we didn't believe were likely or even possible for us to experience.

FOUR BASIC SHIFTS

Guided by these premises, Circles are designed to help us access our common humanity and from this basis to forge a healing response to conflicts. In so doing, Circles present a radical shift in how we respond to hurts and create social order. Specifically, Circles invite a paradigm shift:

1. from coercion to healings
2. from solely individual to individual *and* collective accountability;
3. from primary dependence on the state to greater self-reliance within the community; and
4. from justice as "getting even" to justice as "getting well."

1. From coercion to healing

How can we live together without harming each other? And what do we do when harms occur? To respond to these questions, the criminal justice system relies primarily on the threat of punishment to prevent harm and the execution of punishment to change

someone, we have to fix not just the person but the Circle, for we are all the Circle. That is the mystery of it—the connections among all of us.”

3. From primary dependence on the state to greater self-reliance within the community

A third fundamental shift that Circles make lessens our dependence on the state and increases our reliance on communities to deal with conflicts and crimes. In many respects, the state, through the justice system, deprives communities of their conflicts and hence of the mutual growth that can come from working through them together. The state takes over, leaving the community in the role of spectator. Not all but many crimes can be opportunities for uncovering the deeper causes of breakdown, for rallying local resources to correct them, and in the process, for developing vital, healthy relationships.

A crime indicates that a community's sense of mutual understanding and respect is disintegrating. If we don't explore the underlying reasons for this trend or work to turn it around by building positive connections, we miss a rich opportunity for constructive change and leave the community vulnerable to worse breakdowns.

Circles provide a space—perhaps the only space in most communities—for us to discuss shared values and expectations. Through Circles, we can respond to crime by building mutual understanding and doing the hard moral work that transforms people living or working together into a community. In the Circle space, professionals and lay people forge partnerships that produce much more than a sentence for the offender. A new way of life can emerge. When communities take the lead in resolving and preventing crime, they can be far more effective than the state in producing deep, lasting changes. At the very least, Circles forge

When a Circle explores everyone's genuine interests, punishment is rarely relevant to what offenders need to rehabilitate and become accountable, what victims need to heal, or what communities need to grow stronger.

2. From solely individual to individual and collective accountability

A second fundamental shift that Circles make in responding to crime centers on the question, “Who is accountable?” The criminal justice system endeavors to make offenders accountable as individuals. Circles hold individuals accountable as well for the harms they cause, but they also explore the collective dimensions of accountability, and there are many to consider. For example, have we ignored how social, cultural, racial, and economic conditions give rise to crime? Are we tolerating patterns that isolate individuals and lead to destructive behavior? Do our attitudes in some way create tensions within communities or polarize people into opposing factions? In other words, are we functioning in our families and communities in ways that contribute to the imbalances, misunderstandings, and inequities that culminate in crime?

Operating from the assumption that all things are connected—that we live in an interdependent universe—Circles take a more collective approach to accountability. This approach doesn't deny individual responsibility but balances it with the responsibility held by the family, community, and society. Mindful of our profound interrelatedness, Circles craft a response to crime that says: We as a family or a community bear some responsibility for what happened, and so we have an obligation to help make things right, including helping those who caused harm to assume their responsibility. We are all in some sense accountable to each other.

Judge Stephen Point of British Columbia captured this sense of interrelatedness when he observed, “If something happens to

partnerships that can both lessen dependence on the state for dealing with crime and increase the self-reliance that constitutes the social capital of communities.

4. From justice as "getting even" to justice as "getting well"

The three preceding shifts generate a fourth; namely, a shift in our concept of justice.

First, if Circles are less about coercion and more about healing, then the justice that the Circle process generates has less to do with imposing punishments and more to do with cultivating our human capacities to change. In Circles, we share who we are in order to begin our healing journeys together. We reveal our wounds, stories, and histories, as well as our potentials. The justice we experience, then, is less rule-and-law centered and more human centered. It's a person-oriented, soulful justice—a justice that we both give and receive by respecting each other, expressing care and concern, and working for mutual healing.

Second, if Circles seek not just individual accountability but individual *and* collective accountability, then the Circle process generates a very different experience of justice in which everyone shares responsibility for working through the difficulties that precede and follow crime.

Third, if Circles spur a shift from depending primarily on the state to greater community responsibility, then Circle justice is less about exercising top-down authority and more about finding mutual interests through an egalitarian exchange. It's less about power-over and more about power-with. To use spatial images, Circle justice is less vertical and more horizontal.

In other words, with Circles comes a fundamental shift in how we both understand and experience justice. The traditional judicial process establishes justice by imposing variations of "getting even." To do that, the process depends on state authority and its

power to control individuals—to "get even" in ways one individual can't do to another. In this context, victims and their needs are irrelevant except to justify punishment.

The Circle process, by contrast, generates justice by "getting well." In such a context, victims and their needs are of primary concern, because they're the ones who have been harmed. Justice devoted to getting well depends on victim participation in order to understand the victim experience. It asks the victims what harm has been done as well as what can repair it and contribute to healing. Not only victims, though, but everyone affected is invited into the Circle's process. Circles call us to support each other in healing ourselves, our families, and our communities, so that the needs surrounding crime can be addressed on many levels. The concept and practice of justice shift dramatically.

* * * * *

CEREMONIES OF REINTEGRATION

In all of these uses—with offenders, victims, justice professionals, and communities—Circles are essentially ceremonies of reintegration. Because crime signifies some breakdown of relationships that leaves people isolated, Circles focus on forging connections—reintegrating what has come apart. Disconnecting offenders from their families and communities will often increase whatever danger they may be to others. Whether offenders go to jail or not, Circles endeavor to rebuild their connections with their family and communities as instrumental to changing their lives. Circles seek ways to heal bonds that have been broken as well as to create new bonds.

To do this, Circles look beyond immediate appearances. To turn a destructive situation into something constructive or to heal what has been broken, Circles open us to experiencing each other as being more than we appear. Crime involves pain, hurt, and trauma. If we stop there, though, we won't be able to transform the situation or move beyond it.

The Circle's capacity for reintegration draws its strength from our capacity to discern in each other, in situations, and in communities more facets than one act or event initially presents. In Circles, we see inside each other's hearts and lives. We hear, for example, personal stories that explain how a person feels or why a deed was done, and we see ways to heal hurts and prevent more pain. Circles reintegrate people and communities by discovering the "more" that resides in each of us and by using it to build new bonds.

Specifically, the Circle process recognizes that we are more than our acts. It is appropriate for a person to feel bad for harming others, but it's not appropriate for others to treat that person as a lesser or defective human being, lacking in worth or deserving of respect. This distinction between the act and the actor opens the door to positive change, because it frees people to grow beyond the place of behaving hurtfully. Accordingly, Circles call on offenders to take responsibility for what they did, to gain a full understanding of the harm caused by their behavior, to make reparations, and to seek personal changes to prevent further offenses. Circles support this transformative process, so that those who have acted hurtfully can choose a different course, access their potentials to connect positively, and be reintegrated into their families and communities.

Victims, as well, are more than what has happened to them. All the gifts, talents, strengths, dignity, and personal resources that they possessed before the crime are still theirs. However, victims

have definite needs as a result of the crime—physical, emotional, mental, and spiritual—that must be met. Circles acknowledge the harm to victims, validate their pain and suffering, affirm that what happened was wrong, and attend to victims' needs and interests. In these ways, Circles help victims access their capacities to deal with trauma. By participating in Circles, victims often feel less isolated by the pain caused by the crime and are gradually able to reintegrate with their families and communities.

Circles also break down barriers between professionals and the community, allowing the community to see the professionals as more than "just a badge." Professionals reintegrated with their communities beyond their roles. James Roche, a street team worker for Roca, reflected on the first time he sat next to a policeman in a Circle:

It was funny, because the first day [in Circle], I think I sat next to a cop. I didn't realize it until the feather went around, and I looked to my right, and I said, "Oh wait! Oh, this is the first time in my life I'm sitting next to a police officer." It was hard, but it was worth it to hear some of the coppers, what they say. At the same time, they listened to us. And I finally seen something there . . . like I could see, this could work. Just off that Circle alone, to this day, I say, this could work.⁵

Communities, too, are more than lives juxtaposed by external factors—geography, work, or institutions. They have their own unseen life force, which we can either nurture or let languish. Circles create spaces to discover the potential of any community to be a force for good in people's lives. At Roca, for example, Circles have demonstrated people's potential to "show up for one another." The ceremony of coming together in a respectful

process has a reintegrating effect, inspiring people to pull together in ways they otherwise wouldn't do:

The Circle brings people together to focus on what they have in common, what they most want for themselves, their family, and their community, and how they can work together toward these goals. It is a profoundly hopeful process. When James [Roche] organized a Circle within the community to support a young man going through a difficult crisis, he and others in the Circle realized that it was one of the first times that the community had come out to be there for each other in a positive and supportive way. That, in and of itself, was a powerfully moving experience for the community to just see their capacity to show up for one another.⁶

By encouraging us to access the "more" that we are on all these levels, Circles help us move toward a healthy balance of personal power after an experience of either powerlessness or inappropriate power over others. If we've felt powerless, Circles help us regain our capacities to be autonomous and to speak our truth. If we've exercised inappropriate power over others, Circles help us access our capacities to witness the hurt we've caused, to feel remorse, and to develop respect. Because we express our sense of power through our relationships, we change power imbalances by working them out with others. It's not something we can achieve alone. Circles provide the means to do this—to rebalance the flow of power in our relationships. As ceremonies designed to reintegrate us, Circles help us reweave the fabric of our families and communities, so that we're held in a good, power-balanced way.

In short, Circles offer a dramatically different response to crime from the current justice system. By bringing people together to address profound human needs, they help us reach out to each other and discover deeper connections—connections that for some have rarely, if ever, graced their lives. In our experience, the possibilities that follow for healing and transformation—for weaving our lives anew—can exceed our hopes and imaginings.

Courts and Circles: A Comparison

	Courts	Circles
	Restricted; primarily reliant on experts	Inclusive; primarily reliant on community
	Adversarial	Consensus
	Broken state laws	Broken relationships
	<ul style="list-style-type: none"> • Past conduct • Individual responsibility • State legal requirements 	<ul style="list-style-type: none"> • Past, present, and future conduct • Individual and collective responsibility • Needs of all parties
	<ul style="list-style-type: none"> • Banishment • Punishment • Coercion 	<ul style="list-style-type: none"> • Reintegration • Healing/support • Trust/understanding
	Fixed rules	Flexible guidelines
	Winners/losers	Finding common ground to maximize all interests

Courts aspire to settle disputes. Circles aspire to resolve differences by improving relationships, by addressing underlying causes, and by enhancing individual and community self-reliance.

BOOK REVIEWS

SOMETIMES YOU CAN'T MAKE A DENT,
BUT THEY KNOW YOU'VE BEEN THERE:
THE LAWYER AS GOD'S WITNESS

The Word and the Law. By Milner S. Ball.¹ Chicago: University of Chicago Press. 1993. Pp. 216. \$27.50.

*Reviewed by Clark D. Cunningham*²

I. INTRODUCTION

A. The Threat of Death

In 1956 William Stringfellow graduated from Harvard Law School. Twenty-six years later he wrote that he "enjoyed the law school, but . . . did not take it with the literally dead earnestness of those of my peers who had great careers at stake."³ He explained what he meant by "literally dead":

Law students . . . are subjected to indoctrinations, the effort of such being to make the students conform quickly and thoroughly to that prevailing stereotype deemed most beneficial to the profession and to its survival as an institution, its influence in society, and its general prosperity. At the Harvard Law School, this process is heavy, intensive, and unrelenting. . . . The demand for conformity in a profession commonly signifies a threat of death.⁴

Stringfellow reported that he resisted this indoctrination and emerged "as someone virtually opposite of what a Harvard Law School graduate is projected by the prevailing system to be."⁵ He went directly from Harvard to the slums of East Harlem where he undertook a subsistence-level practice representing poor people in civil and criminal matters. His autobiographical account of that practice,

¹ Professor of Law, University of Georgia.

² Associate Professor of Law, Washington University. Helpful comments and advice on this essay have been received from Helen V. Cunningham, Dana Ellis, Bill Wylie Kellermann, Howard Lesnick, Charles R. McManis, Jean Koh Peters, Donald Walters, and James Boyd White.

³ WILLIAM STRINGFELLOW, A SIMPLICITY OF FAITH: MY EXPERIENCE IN MOURNING 128 (1982).

⁴ *Id.* at 126-27. Stringfellow entered law school following a period of military service; he did not use the word "indoctrination" lightly. See *id.* at 125.

⁵ *Id.* at 128.

My People Is the Enemy,⁶ was published in 1964, and had a wide readership that included Robert Kennedy, who convened a national conference to address issues of poverty law after reading it.⁷ Stringfellow was an active lawyer in both the civil rights and anti-war movements of the 1960s; Father Daniel Berrigan, while a fugitive from the FBI, was arrested at Stringfellow's home. After a lifetime remarkable for its commitment to representing the poor, oppressed, and outcast, Stringfellow nevertheless reported a "relentless tension" that caused him to ask "nearly every morning, whether my remaining an attorney condones — or appears to condone — the decadence against which I complain."⁸ He concluded his retrospection on his life as an attorney with these words: "I continue to be haunted with the ironic impression that I may have to renounce being a lawyer the better to be an advocate."⁹

Discomfort and even despair about the moral life of the conventional practitioner have become an ever more common refrain. This statement in a recent *Newsweek* column entitled "Why I Quit Practicing Law" is representative:

I am astounded that I was able to practice law for more than two years of my life. It was not any single event that pushed me over the edge. It was an uneasiness, an uncomfortableness that was always there for me. I was tired of the deceit. I was tired of the chicanery. But most of all, I was tired of the misery my job caused other people.¹⁰

Stringfellow's reflection, though, is more startling because he had lived a seemingly exemplary life of public interest lawyering. Yet some of the harshest critiques of the lawyer's role now appearing in law reviews are written by former public interest lawyers who criticize their own work as "inevitably" subordinating clients despite their best efforts to empower them.¹¹

⁶ WILLIAM STRINGFELLOW, *MY PEOPLE IS THE ENEMY: AN AUTOBIOGRAPHICAL POLEMIC* (1964).

⁷ See STRINGFELLOW, *supra* note 3, at 129.

⁸ *Id.* at 132.

⁹ *Id.* at 133.

¹⁰ Sam Benson, *Why I Quit Practicing Law*, *NEWSWEEK*, Nov. 4, 1991, at 10, 10; see also Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 *S. CAL. L. REV.* 1231, 1260 (1991) (reporting widespread "disillusionment and despair" among former students).

¹¹ Lucie E. White, *Goldberg v. Kelly and the Paradox of Lawyering for the Poor*, 56 *BROOK. L. REV.* 861, 861 (1990) ("[T]he advocate, no matter how 'rebellious' she aspires to be, inevitably replays the drama of subordination in her own work."); see Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *YALE L.J.* 2107, 2128-29 (1991); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 *HASTINGS L.J.* 861, 864 (1992). For a response to these critiques, see Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43

B. Against Death, Joy

Milner Ball's highly original and challenging new book, *The Word and the Law*, can be read to address both the young Stringfellow in law school and the self-doubting veteran attorney who wrote twenty-six years later, and by extension, all law students and lawyers who are haunted by the sense of something deadly lurking in the law.

Ball, who now holds a chair in constitutional law at the University of Georgia, has had a career that looks rather like Stringfellow's in reverse. Stringfellow began his professional life immersed in a daily practice of law and emerged from the Vietnam War era as a semi-monastic on an island off the coast of New England writing highly regarded books of theology.¹² Ball began as a theologian and practicing minister but responded to the tumult of the late 1960s by leaving the ministry to go to law school.¹³ Ball, however, did not enter law practice after graduation but instead became a law professor, a self-described "academic lawyer . . . which is the worst kind."¹⁴ He has become a leader among those American legal scholars who see relevance in theology, as an intellectual discipline, to the study of law.¹⁵ But *The Word and the Law* represents a very different effort by Ball to bring together theology and law, an effort grounded not in legal texts but in legal lives.

Ball describes his book as "an experimental journey" that begins with the depiction of seven people "who work with law"; he begins this way because, he says, "I cannot think about law apart from such

HASTINGS L.J. 971, 983-84 (1992); and Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123 *passim* (1992). Perhaps the most balanced assessment of the moral dangers of public interest lawyering is GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

¹² See, e.g., WILLIAM STRINGFELLOW, *A SIMPLICITY OF FAITH* (1982); WILLIAM STRINGFELLOW, *INSTEAD OF DEATH* (1976); WILLIAM STRINGFELLOW, *AN ETHIC FOR CHRISTIANS AND OTHER ALIENS IN A STRANGE LAND* (1973).

¹³ Ball graduated first in his class at Harvard Divinity School in 1961. He then went to Europe as a Fulbright Fellow for a year and studied with one of the century's most influential theologians, Karl Barth. But, like Stringfellow, Ball did not employ these credentials to obtain a prestigious position; rather, he took the pulpit of a small Presbyterian church in Tennessee. Six years later, while a campus minister at the University of Georgia, he went to the Democratic National Convention in Chicago as part of a protest delegation challenging the exclusion of blacks from the nomination process. That experience catalyzed his decision to start law school that year, while continuing his campus ministry. "Something had to be done," Ball said. "I decided that what had to be done was that I had to get a law degree." Steve Hendrix, *Speaking for the Voiceless: Theology and Activism Meet in the Activism of UGA's Milner Ball*, FULTON COUNTY DAILY REP., Nov. 9, 1990, at 6, 6-7.

¹⁴ *Id.* at 7.

¹⁵ See, e.g., MILNER S. BALL, *LYING DOWN TOGETHER: LAW, METAPHOR, AND THEOLOGY* (1985); MILNER S. BALL, *THE PROMISE OF AMERICAN LAW: A THEOLOGICAL, HUMANISTIC VIEW OF LEGAL PROCESS* (1981); Milner S. Ball, *Studies of Origin and Constitutional Possibilities*, 87 MICH. L. REV. 2280 (1989).

people . . .” (p. 1). Thus, the first third of this short book is devoted to biographical vignettes of a wide variety of “lives in the law”: the director of the ACLU’s Capital Punishment Project (pp. 7–16), the founder of an Appalachian legal aid program (pp. 16–24), a landlord-tenant judge in Manhattan (pp. 24–38), a Native American tribal judge (pp. 38–49), the head of the Indian Law Resource Center (pp. 49–60), a Yale clinical law professor, and a former student in the Yale clinic (pp. 60–72).

These portraits are worth reading simply for their literary merit — to meet the vivid personalities evoked and to glimpse the dramatic landscapes in which they are found, from the claustrophobic hallways of a drab Manhattan courthouse to the mountains of an Oregon Indian reservation.¹⁶ But they also provide a rather mysterious answer to the deadly portents invoked above, because common to these highly varied lives in the law is a recurring sense of joy amid what seem to be hopeless circumstances. The best way I know to convey a sense of the force and mystery of these lives, and the joy that animates them, is to present a few excerpts from one portrait among the seven.

II. JUDGE MARGARET TAYLOR: “THEY KNOW I’VE BEEN THERE”

Ball finds Judge Margaret Taylor in a tiny courtroom on the eleventh floor of the New York City Civil Court building:

Courtroom 1164B . . . has, in addition to the raised judge’s desk and a table and chairs for attorneys, fifty green metal chairs for spectators and a table bearing stacks of books and papers along with a computer terminal. The linoleum-covered floor, fluorescent lights, and blond wood wainscoting give it a harsh air. Above the wainscoting, the white walls are scarred. Broken chairs are piled in a corner (p. 26).

¹⁶ Narratives are becoming an increasingly accepted component of legal scholarship. See, e.g., Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2411–2415 (1989); Barbara Flagg, *Women’s Narratives, Women’s Story*, 59 U. CIN. L. REV. 147, 155–59 (1990); James B. White, *What Can a Lawyer Learn from Literature?*, 102 HARV. L. REV. 2014, 2018 (1989). One particularly valuable feature of Ball’s book is the way he presents the voices of his subjects telling their own stories; his approach thus resembles the important work now being done using ethnographic methods to display the construction of reality within American social institutions. See, e.g., JOHN CONLEY & WILLIAM O’BARR, *RULES V. RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE* (1990); Austin Sarat, . . . *The Law Is All Over: Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMANITIES 343 (1990); Joseph Verloff, Lynne Sutherland, Letha Chadiha & Robert M. Ortega, *Newlyweds Tell Their Stories: A Narrative Method for Assessing Marital Experiences*, J. SOC. & PERS. RELATIONSHIPS (forthcoming 1993) (summarizing studies that use narratives as a research methodology “because in story-telling people reveal the meaning they make of their experience in a way that is different from answering explicit questions about that experience”).

Despite this unjudicial setting, Ball describes her as authoritative and attributes her authority in part to an unconventional judicial attribute: "She can be uproariously, raucously funny. She both commands and enraptures audiences" (p. 26).

In Judge Taylor's current work — landlord-tenant cases — she has become notorious for her approach to default judgments. When she began hearing landlord-tenant cases, she was "stunned by the routine" (p. 29).¹⁷ Every week she was presented with a stack of hundreds of default judgments; in each case, the clerk's office had stapled the papers so that only the line at the bottom for the judge's signature remained visible:

Discrepancies in the record . . . or facts indicating a tenant in need of medical or other help were stapled out of view. It was not easy for a judge who chose actually to read the documents. [Taylor told Ball,] "It would take me two days just to pull out all the staples" (p. 30).

After raising the issue with fellow judges for years, Taylor succeeded in changing the stapling practices of the clerk's office. Now the stacks come stapled only if a particular judge so requests, with the result that about half the judges actually read the papers and hold hearings on default judgments (p. 30).

Pulling out the staples was only the beginning of Judge Taylor's assault on what landlords had viewed as an efficient business routine. Not content to rest upon the process server's affidavit that the tenant received notice, Taylor personally sends a postcard (at her own expense) to the tenant in advance of the default hearing. Even if the tenant still fails to appear, she often insists that the process server appear in person for examination, not only to assure that correct procedure has been observed but also to learn about what she calls "the real 'questions'" (p. 31): Does the tenant have small children? Is the tenant ill or old? Is there evidence of mental illness so that a guardian may need to be appointed before proceeding against the tenant? (pp. 30-31). Only about twelve percent of these hearings result in a default judgment of possession, and even those do not all end in eviction. Before the judgment is executed, Judge Taylor sends a *second* postcard to the tenant that says "Come NOW." Some tenants do, and the eviction is avoided (p. 32). To a landlord frustrated with the delay her vigilance entails, she says, "I am the one doing the evicting. I need to know who is there. I may need to bring in an agency. You will get your money. There are things I can do. I really do want to know who I am evicting" (p. 31).

Ball reports a dramatic change in Judge Taylor's demeanor when tenants do appear and testify:

At these times, in conversation with tenants, compassion renders her uncharacteristically still and quiet. "Can you pay this rent?" she asks. As she listens to tenants tell about the conditions of their lives and how they believe they can find rent money, she is unguarded and vulnerable. Fatigue shows in her face. She shares exhaustion with the person she attends. . . . She urges the tenants to come back if they see there is going to be a problem in meeting the payment terms they have agreed to. . . . "[C]ome in *before* you can't pay. . . . Once I sign an order, I have only tears." And then, quickly, she smiles, and the Manhattan banter begins again (p. 33).

However, perhaps the most revealing story about Judge Taylor does not take place in the courtroom at all. At one point in her career, she was assigned to a courthouse in Brooklyn and discovered upon arrival that the women's room was not supplied with toilet paper.

Judges could request a roll of toilet paper to carry with them. This meant first checking out the roll and then clutching it while standing in the women's bathroom line with those who had to do without, a circumstance that called for solidarity and meant that Judge Taylor usually emerged empty-handed . . . (p. 29).

She complained to the landlord, who pointed out that the lease required the city to supply toilet paper. She went to city officials, who said there was no money in the budget for toilet paper and that it had not been furnished for five years. Finally, Judge Taylor announced that she would "no longer hold court in cases where there were female court officers, attorneys, or parties, because I would not subject them to such discrimination" (p. 29). Immediately thereafter a huge box of toilet paper arrived at Judge Taylor's chambers, which forthwith doubled as the toilet paper dispensary. The story does not end with this apparent victory over bureaucratic indifference. Rather, the conclusion Judge Taylor told Ball presents vividly the mysterious presence of joy amidst seemingly hopeless circumstances that I find the most compelling feature of the lives Ball portrays. After Judge Taylor moved to the Manhattan courthouse, she ran into some court personnel from Brooklyn who reported that the toilet paper stopped with her departure (p. 29). Telling the story to Ball, Judge Taylor says: "Sometimes you can't make a dent . . . but they know I've been there. They remember." And then "[s]he laughs about these things — as she does about many others . . ." (p. 29).

B. Witness to the Word

Imagine the following plot. Someone is on a city street heading for the store or a movie. Suddenly violence breaks out in front of her — a blade flashes or a shot rings out. As she ducks for cover, she glimpses the victim crumple to the ground and the killer dash off. A crowd gathers around the fallen man. Her assistance is not needed, and she decides to leave before the police arrive. Perhaps she just doesn't want to get involved; perhaps she fears retaliation from the killer or his possible associates. But she reads with interest newspaper accounts of the murder investigation and ensuing trial. As she reads of the trial, a detail catches her attention that makes her wonder whether they arrested the right man: perhaps the defendant is right-handed and she saw the weapon wielded with the left, or the defendant has a prominent facial scar that she knows she didn't see. To her dismay the defendant is convicted and given the death penalty. She struggles with herself and decides to call the defendant's lawyer. A motion for a new trial is filed and she testifies. The conviction is set aside, and with the aid of her evidence, the true killer is caught. The title of this story is, obviously, "Witness."

She became a witness in two distinct but related senses. First, she was a witness to the event, simply because she was on the scene and had her eyes open. Second, she was a witness in court, because she was impelled to speak by what she had seen. At first she only observed what others did, but then she became an actor herself by speaking; her speech was her action, and it saved a life.

"Witness" seems to capture several aspects of what Ball means by "the Word," especially as applied to the lives he portrays. First, one does not become a witness by plan, design, or personal effort; like the Word of God, the transforming event hits suddenly and without warning. Second, nonetheless, there are certain prerequisites to becoming a witness: one must be personally present, and one must have one's eyes and ears open. Third, once transformed into a witness, one feels impelled to speak of what has been seen and heard.³⁰ Finally, when one speaks as a witness, those words, as testimony, have force and effect. Ball tells us that "[t]he Hebrew for 'word,' *dabar*, has the sense of power: the word that accomplishes what it says" (p. 120). He associates *dabar* (through the Greek intermediary word *dunamis*) with "dynamics" and "dynamite" (p. 120). Thus, when God's witness is impelled to speak of what she has seen, by that act she herself becomes the Word of God.³¹

Witness and testimony are favorite New Testament metaphors for acts of faith and co-occur with "Word" in Ball's sense. The most famous example is the beginning of John's Gospel. God's first action is to speak the Word: "In the beginning was the Word, and the Word was with God, and the Word was God."³² The first human response to that Word is to give testimony: "There was a man sent from God, whose name was John. The same came for a witness, to bear witness of the Light, that all men through him might believe."³³ From the founding of Christianity down to the present day, expressions and actions of faith are described as witnessing and giving testimony.³⁴

Margaret Taylor began her legal career in 1956 with a large Wall Street firm, but she did not move directly from corporate practice to landlord-tenant court. Her first stop after leaving Wall Street was a three-year stint as a legal aid lawyer with Mobilization for Youth (MFY), where lawyers served as part of a team that included doctors, educators, social workers, and job specialists working together under one roof to “keep kids going” until they made it to twenty-one (pp. 34–35). “The wholeness of response offered by that program in that setting is a guiding image for what Judge Taylor provides through her present [judicial] office” (p. 35).³⁸

What did Margaret Taylor witness at MFY that shaped her current life in the law? My surmise, based on the evidence given by Ball, is that she saw and heard her legal aid “clients” as fully-rounded personalities, thanks to the physical location and total service design of

MFY.³⁹ In Chapter Four, Ball struggles with the saying of Jesus that “the people” will “see but not perceive, . . . hear but not understand” (pp. 106–10).⁴⁰ I have frequently thought that this saying describes how I have seen and heard clients without understanding them. The very fact that I give each of the vastly varying personalities I meet the same name — “client” — is symptomatic of my narrowed vision. My professional role as lawyer excludes much of myself — my self as son, father, husband, neighbor, friend — and projects upon the person in my office a complementary, limited role as client. It seems that when Margaret Taylor moved from Wall Street to MFY, she left behind her professional blinders. What she saw clearly and intensely at MFY not only impelled her into her current career; that vision also stayed with her so that she continues to witness anew. This freedom from role constraints links many of her distinguishing attributes as a judge: her determination to treat each case, even defaults, individually no matter how long it takes; her interest in the “real questions” that show the impact the case will have on a tenant’s life; her willingness to take personal responsibility for the harm caused by her judgments; her empathy with the parties before her; and her vulnerability.⁴¹ For me, these qualities were united in Judge Taylor’s striking comment that after she signs a final judgment she has “only tears” (p. 33); few lawyers or judges can publicly admit that they weep about their work.⁴²

The toilet paper story illustrates most vividly the importance of her freedom from role constraints and of just “being there”. In the common bathroom she was vulnerable, just herself. It simply was not humanly possible for her to stand in line clutching her official roll and not share it. As she passed out pieces of her judicial privilege, Judge Taylor received in return bits of her fellows’ indignity and humiliation — and in that communal moment, no doubt shared a laugh or two.

Laughter most often arises when we are shoulder-to-shoulder with other people doing things that are simply human — making food, playing with children, cleaning up a mess, and even sharing a roll of toilet paper.⁴³ Thus, Judge Taylor’s experience of being there not only impels her to speech and action, but also sustains her by constantly and repeatedly connecting her with others at moments, like a possible eviction, that touch both lives deeply.