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### Transforming Justice, Lawyers and the Practice of Law

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# **Transforming Justice, Lawyers, and the Practice of Law**

Marjorie A. Silver, editor  
Professor of Law  
(forthcoming Carolina Academic Press 2016)

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# TRANSFORMING JUSTICE, LAWYERS AND THE PRACTICE OF LAW

## PREFACE

In February 2011, I was invited to a weekend-long retreat in New York of members of the Project for Integrating Spirituality, Law and Politics (PISLAP). In that room, I experienced a wellspring of energy emanating from this group of people, each working in different ways to transform law and legal practices. Several I had known from the work in which I was already involved, most I hadn't met before, some I knew by reputation, and one, whose work had been an inspiration to me and so many others, Stu Webb, the progenitor of Collaborative Law<sup>1</sup>—well, I was awed to make his acquaintance.

What distinguished this group, for me, were principally three things. As only a handful of us there were academics, these were mostly people walking their talk, already doing great work in transforming the practice of law and advancing justice. And although this was a group composed primarily of lawyers, a profession not known especially for its modesty, I experienced no *ego* strutting in that room, no need to brag about accomplishments—although accomplishments were many and awesome. Rather, I experienced a pervasive sense of a mutually supportive community, each member delighting in the variety, creativity, commitment, and accomplishments of the others. I knew by Sunday morning that this was a group with whom I wanted to play a meaningful role, that my next major project was going to

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<sup>1</sup> See *infra*, Stuart Webb, *Transforming Conflict Resolution: Collaborative Law's Promise & Potential*, ch. 4, p. [].

be what I initially called “A PISLAP Reader,” and that I would design and propose to teach a new course to introduce my law students to the kind of law practices in which these visionaries were involved.<sup>2</sup>

A second distinction was the spiritual element. Long before I entered the PISLAP family, I had been devoted to and involved with Therapeutic Jurisprudence,<sup>3</sup> and in the movement alternatively known as Comprehensive,<sup>4</sup> Law as a Healing Profession,<sup>5</sup> and, more recently—and more satisfactorily, in my mind—the Integrative Law Movement.<sup>6</sup> Although some of the fellow travelers I had encountered were motivated by deeply held religious or other spiritual beliefs, many others would have described themselves as decidedly *not* spiritual. In or around the turn of the twentieth century into the twenty-first, when Professor Susan Daicoff attempted to capture the commonalities of the various phenomena that had been taking shape over the previous decade or so, spirituality was not among them.<sup>7</sup>

Yet the people I met that February weekend actively embraced the spiritual component of transformation, even though we never explicitly discussed what the word meant to each of us. Over time, it became clear to me that we each cherished our own individual definitions of the word; what united us was the belief that each of us was called to work toward social justice in a way that healed the brokenness of our world. The people in this remarkable gathering

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<sup>2</sup> See *infra* Marjorie A. Silver, *Healing Classrooms*, ch. 9, pp. []-[].

<sup>3</sup> See, e.g., *International Network on Therapeutic Jurisprudence*, TJ, <http://www.law.arizona.edu/depts/upr-intj/> (last visited Aug. 9, 2016).

<sup>4</sup> See, e.g., SUSAN SWAIM DAICOFF, *COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION* 33-36 (2011).

<sup>5</sup> See, e.g., *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (Marjorie A. Silver, ed. 2007).

<sup>6</sup> See, e.g. J. KIM WRIGHT, *LAWYERS AS PEACEMAKERS: PRACTICING HOLISTIC, PROBLEM-SOLVING LAW* (2010); Hollee Schwartz Temple, *Is the Integrative Law Movement the next “Huge Wave” for the profession?* (Aug. 1, 2013), [http://www.abajournal.com/magazine/article/integrative\\_law\\_puts\\_passion\\_into\\_the\\_profession/](http://www.abajournal.com/magazine/article/integrative_law_puts_passion_into_the_profession/).

<sup>7</sup> See DAICOFF, *supra* note 4.

were each engaged in creative endeavors that drew from a well of commitment to something larger than themselves, and that was fed by looking inward at their individual amazing potential.

It was tying the transformation of legal processes to social justice that was, for me, the third distinguishing factor about this group. “Politics” in the name of the group had its roots in the politics of the sixties, a politics of social transformation in service of social justice and egalitarianism.<sup>8</sup> This, too, was something that called to me powerfully.

### *What This Book Is and Is Not*

This book is not “The PISLAP Book.” It is not the definitive or official Word on PISLAP’s mission and goals. Rather, it is a collection of writings largely<sup>9</sup> by some of the active participants in PISLAP, an opportunity to introduce readers to a sampling of the myriad ways in which those involved aspire and endeavor to change the legal landscape, to transform law, legal education and social justice into something that is collaborative rather than adversarial, that seeks to heal brokenness rather than merely resolve disputes, and that moves us toward The Beloved Community envisioned more than half a century ago by the Reverend Martin Luther King, Jr.<sup>10</sup>

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<sup>8</sup> See *infra* Peter Gabel, *The Spiritual Dimension of Social Justice*, ch. 1, p. [ ].

<sup>9</sup> Although a substantial majority of contributing authors to this volume are members of PISLAP, the contributing authors include a few “outsiders” I solicited whose excellent work is congruent with PISLAP’s goals and mission.

<sup>10</sup> Philosopher Josiah Royce coined the term *Beloved Community* to describe the ideal community. Dr. Martin Luther King, Jr. used the term frequently to describe a society built on justice, peace, and harmony, achievable through nonviolence. On April 2, 1957, in a sermon he delivered at the Dexter Avenue Baptist Church in Montgomery, Alabama, Dr. King said, “The aftermath of nonviolence is the creation of the beloved community.” *Glossary of Nonviolence*, THE ASSOCIATION FOR GLOBAL NEW THOUGHT, <http://www.agnt.org/snv2010/nonviolenceGlossary.htm> (last visited Aug. 9, 2016).

I am so grateful to the authors whose work you will experience in these pages—most of all, for the work they do and, of course, for their willingness to commit that work to prose for this book. But I must acknowledge as well the remarkable PISLAP participants whose work is not described here, for a variety of reasons—often because they are too busy *doing* the work!

Hopefully, what you read will inspire you—whatever it was that brought you to this book—to take your place in transforming justice, however you define it.

*--Marjorie A. Silver, August 2016*

*We don't have to adjust to the world. We can adjust the world.*

*-Thomas Merton<sup>11</sup>*

## INTRODUCTION

### A SHORT HISTORY OF PISLAP AND ITS PHILOSOPHY<sup>12</sup>

I was a latecomer to something that had begun some fifteen years earlier. The origins of PISLAP are rooted in a national *Summit of Ethics and Meaning* organized in the summer of 1996 by Rabbi Michael Lerner in Washington, D.C.<sup>13</sup> The Summit reached far beyond legal culture, but moved a group of like-minded lawyers to form the Law Task Force of the Foundation for Ethics and Meaning. The Law Task force coalesced at a gathering the summer following the 1996 conference and met monthly by conference call, with a core group of participants from all over the country. Founding members included law professors, a legal services lawyer, a prosecutor, a corporate lawyer, and a patent attorney. The Law Task Force transformed itself into the independent Project for Integrating Spirituality, Law, and Politics

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<sup>11</sup> Parker Palmer, *Life on the Mobius Strip*, ON BEING, <http://www.onbeing.org/blog/parker-palmer-life-on-the-mobius-strip/8426> (Feb. 17, 2016). In response to a question posted on this site the following day as to the source of this quote, Palmer responded as follows:

[F]rom 1955 to 1965 Merton served as Novice Master at the Abbey of Gethsemani and gave regular talks to the novices, many of which were tape-recorded. Several reel-to-reel tapes of these talks were given to me by Sr. Mary Luke Tobin (Sisters of Loretto) who was a good friend of Merton's and later became a friend of mine. The quote in question is from notes I took from one of those tapes -- tapes that, to my knowledge, are not among the cassette tape versions now available commercially. Eventually, I donated my tapes to the Thomas Merton Center at Bellarmine University. I've read most of what Merton wrote, but I've never seen the quote in a book.

*Id.*

<sup>12</sup> I wish to acknowledge and thank Nanette Schorr for furnishing me with text from which the following borrows heavily. See *infra* Nanette Schorr, *Community Lawyering, Legal Services Work, and Social Healing*, ch. 13, pp. []- [] (describing her personal journey with PISLAP).

<sup>13</sup> See *Who We Are*, MEANING.ORG, [http://www.meaning.org/frame\\_who.html](http://www.meaning.org/frame_who.html) (last visited Aug. 14, 2016).

(PISLAP) in the summer of 2001, when some thirty “spiritual/political” legal activists gathered for the first of two annual retreats. Under the leadership of Peter Gabel,<sup>14</sup> associate editor of *Tikkun* Magazine and former president of New College of California,<sup>15</sup> and Nanette Schorr,<sup>16</sup> a legal services attorney practicing in the Bronx, the Law Task Force, and later PISLAP, held national gatherings in the Seattle, San Francisco, Atlanta, and New York areas, wrote magazine and law review articles, and conducted panels in a variety of settings.

The philosophy of PISLAP derives from a developing vision of the nature of both human reality and of social transformation that originated primarily in the work of Peter Gabel and Rabbi Michael Lerner and came to be called The Politics of Meaning. This vision owes much to the idealistic experience of the movements of the 1960s and begins with the belief that human beings are fundamentally motivated by more than economic and material interests. PISLAP’s view is that as much as the need for food and shelter, every person longs for an authentic connection to others through which people’s essential spiritual goodness and loving capacities can be recognized, affirmed, and socially validated. In order to bring such a world into existence, however, PISLAP holds that those who pursue progressive social change must shake off the constraint of thinking solely in terms of economic and political inequality and focus more deeply on developing a healing-centered paradigm that addresses the pervasive

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<sup>14</sup> See *infra* Peter Gabel, *The Spiritual Dimension of Social Justice*, ch. 1, p. [].

<sup>15</sup> New College was forced to close its doors in 2008, amid heated controversy that the progressive institution could and should have been saved. See, e.g., Randy Shaw, *New College’s Tragic Demise*, BEYONDCHRON (June 23, 2008), <http://www.beyondchron.org/news/index.php?itemid=5797>.

<sup>16</sup> See Schorr, *supra* note 2.



alienation and isolation that underlies the spiritual distortions in social relations that in turn lead to economic and political injustice.

Rather than seeking to address and attempt to heal the widespread alienation in society, PISLAP claims that our existing adversarial legal system reinforces the climate of mistrust, self-interest, and materialism that blocks the creation of a loving and caring world. Its conviction is that law and legal culture could and should be a central public arena in which to foster empathy and understanding across the wider society, in which to reawaken a sense of the sacredness of the natural world and of existence itself – a precondition to the prevention of widespread and otherwise, as recent studies have warned,<sup>17</sup> catastrophic ecological destruction.

The challenge involves calling upon the legal profession to develop and strengthen its role as a helping profession, to act in ways that earn the respect of those it serves, and to provide a moral presence for clients in their own decision-making. This requires lawyers to take affirmative steps to dispel perceptions that they act as technocrats who manipulate rules for the benefit of the highest bidder. Such an approach calls for fostering methods of conflict resolution that facilitate healing and reduce the perpetuation of destructive behavior. It also is a call to deepen the ethical content of legal education, to redefine the working ethics of the profession, and to humanize the content of law and the conduct of legal proceedings so as to

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<sup>17</sup> See, e.g., IPCC, FIFTH ASSESSMENT REPORT, <http://www.ipcc.ch/report/ar5/> (last visited Aug. 14, 2016).

promote truth-telling, compassion, reconciliation, and responsibility for the well-being of the other, as well as the self.

Members of the Project have come to share in this vision from both the spiritual and political worlds. Indeed, it is the blend of spiritual and political activism, and the cross-fertilization of the encounter between these two historically separated universes, that distinguishes PISLAP from virtually all other spiritual or political movements within law. Its aim is to develop a legal theory and practice that unites the spiritual and the political and seeks to bring about a transformation of legal culture that can best advance the creation of a loving, just, and socially-connected world.

I met the group when it gathered in New York City at the end of February 2011 for a weekend of re-visioning and planning for the future.<sup>18</sup> My involvement has included helping to plan and present at a retreat at the Marconi Center in Point Reyes, California in September of 2011, and participation in two major conferences since then.<sup>19</sup> And, of course, this book.

### **WHAT'S SPIRITUALITY GOT TO DO WITH IT?**

*Let's take the mystery out of the "S" word. Many of us conjure mental images of solemn, esoteric religious practices when we think of spirituality. "Spirituality" is simply "the release of the qualities of the human spirit." <sup>20</sup>*

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<sup>18</sup> See Preface, *infra* p. [].

<sup>19</sup> See Schorr, *supra* note 2 at pp. []-[].

<sup>20</sup> Holiday email from Stu Webb, founder of Collaborative Law and Collaborative Practice, to PISLAP participants (Dec. 13, 2012) (on file with author). Stu, in his wonderfully homespun style, continued: "Isn't that great! Spirituality shows up when we are in a state of consciousness where the natural qualities of our human spirit (or Self) are naturally available to us. Some of these innate qualities are compassion, patience, tolerance, contentment, loving-kindness, not to mention clear insight, access to common sense and appropriate humor." *Id.*

*When I discuss spiritual[ity] . . . I identify the Latin root of “spirit,” which means breath or air, and then talk about breathing in and out. It’s a way to get spirituality back down to earth.*<sup>21</sup>

This book, as noted in the Preface, is written with the hope of inspiring the reader to consider new possibilities for how each of us might participate in transforming our system of law and justice. Interestingly, the words “inspiring” and “spiritual” share common roots. Both come from the Latin word *spirare*, “to breathe.”<sup>22</sup> Arguably, we breathe, we are human; therefore, we are spiritual, whether we believe ourselves to be so or not.

I have found the mention of spirituality to be a de-legitimizing factor in the eyes of many involved in the transformation of law and legal practices.<sup>23</sup> My experience in discussions with many caring, committed, socially and politically progressive colleagues has convinced me that the subject of religion and spirituality is one that causes many lawyers discomfort. While I do not claim to understand all of the reasons for this, I believe it bears some relationship to the deep ambivalence many lawyers share about the appropriate boundary between the personal and the public. Nothing is more personal than our religion, our belief system, or the fact that

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<sup>21</sup> Don McCrary, *Struggling with “The Spiritual Part,”* RECOVERY MATTERS (Apr. 2013), <http://www.hazelden.org/web/public/apr13struggling.page>. Discussing spirituality in the context of the Twelve Step Program, McCrary, a chemical dependency professional at Hazelden in Chicago, states that in the Big Book, spirituality “is described as the daily experience and practice of wakefulness to one’s own life (Steps 11 and 12). This is the change, the transformation needed to sustain recovery and have a life worth living.” *Id.*

<sup>22</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1170, 2198-99 (1993).

<sup>23</sup> My dear friend and mentor David Wexler, co-father of Therapeutic Jurisprudence, is among them. In a visit during the spring of 2013, David shared how he has no use for religion or spirituality. He proclaimed, “I’m not an atheist. I’m not an agonistic. I’m an *apathetic*.” Actually, to me he seemed more an *antagonistic*, questioning the legitimacy of those who ground their work in a religious or spiritual perspective. Our point of agreement was that we would continue to live our lives and do our work exactly the same, whether there is a God (or gods) or not. Nonetheless, someone like David, who has shunned material rewards in favor of doing meaningful work, is, in my mind, a spiritual person. I have seen him delight in the antics of a parrot singing *Cucaracha* and the beauty of tiny blue fish. He might never use the word “sacred,” yet he seems to appreciate the sacred nature of such small wonders.

we may subscribe to none. For many of us, what churches we attend and what practices we employ to help us make sense out of the world and our place in it are matters private and separate from what we do as professionals.<sup>24</sup>

To be spiritual does not mean that one is religious, not at all. I can think of many devoutly religious people—the radical right among them—who are decidedly *not* spiritual. And many people, like me, who are spiritual and decidedly not religious.

An essay by Chaplain Binyamin Biber, founder of the Humanist Chaplaincy at American University,<sup>25</sup> engages with the question of why many people who move away from their affiliations with organized religion nonetheless self-describe as spiritual beings.<sup>26</sup> According to Chaplain Biber, the philosopher George Santayana contrasted spirituality and piety, describing the former as characterized by “exploration, innovation and risk-taking,” and the latter by “fearful guarding, convention, and submissiveness.”<sup>27</sup> This dichotomy, however, fails to recognize that there are religious people who are deeply spiritual, and many individuals whose spirituality is rooted in their religious traditions. As a Humanist, Chaplain Biber finds “in

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<sup>24</sup> See *Introduction*, THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION xxxiii-iv. (Marjorie A. Silver, ed., 2007) [hereinafter AFFECTIVE ASSISTANCE OF COUNSEL].

<sup>25</sup> See HUMANIST CHAPLAINCY AT AMERICAN UNIVERSITY, <http://humanistchaplaincyau.org/> (last visited Aug. 14, 2016).

<sup>26</sup> Chaplain Binyamin Biber, *Spiritual But Not Religious: A Humanist Perspective*, AMERICAN HUMANIST ASSOCIATION, <http://americanhumanist.org/HNN/details/2012-11-spiritual-but-not-religious-a-humanist-perspective> (last visited Aug. 14, 2016).

<sup>27</sup> *Id.* See ERNEST KURTZ & KATHERINE KETCHAM, THE SPIRITUALITY OF IMPERFECTION: STORYTELLING AND THE SEARCH FOR MEANING (1992) [hereinafter KURTZ & KETCHAM].

Those who think of themselves as “spiritual rather than religious” tend to equate religion with belief, and therefore with doctrine and authority; with worship and therefore with the organization of community and its boundaries; with rewards and punishments, and therefore with greed and fear. Such negative consequences need not always follow from the religious impulse; they are indeed perversions of it. But as historian of theology Jaroslav Pelikan confessed with more than a little pain: “Religious belief is notorious for encouraging a sense of ‘us’ against ‘them.’”  
*Id.* at 24.

naturalistic (vs supernaturalistic) approaches to ‘spirituality’ discourses of inspiration, exploration, elevation, connectedness, expansiveness, fulfillment, self-actualization of human potential, love beyond simple drives, enlightenment, progress, and the horizons of the imagination.”<sup>28</sup> I would wager that while the spiritual aspect of PISLAP’s goals and mission resonate in a myriad of ways for its participants, the aspirations described by Chaplain Biber likely resonate for all contributors to and readers of this book.<sup>29</sup>

David Hall, former dean and law professor, now president of the University of the Virgin Islands, has acknowledged the resistance by many in the legal profession to accept the relevance of spirituality to the practice of law.<sup>30</sup> In his personal and powerful book, *The Spiritual Revitalization of the Legal Profession*, he endeavors to persuade the reader otherwise:

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<sup>28</sup> See *supra* note 16.

<sup>29</sup> One might compare Chaplain Biber’s take on the spirituality of humanism with that of Patrick Duffy Hutcheon’s *A Humanist’s Perspective on Spirituality*, which takes a somewhat exceptionalist view of what it means to be human. See *A Humanist Perspective on Spirituality*, HUMANISTS.NET, <http://www.humanists.net/pdhutcheon/humanist%20articles/Spirituality.htm> (last visited Aug. 14, 2016). In this piece, originally delivered as a homily to the Unitarian Church of Vancouver in the summer of 1992, Hutcheon argues that spirituality equates with the essence of what it means to be human, and identifies six qualities he claims are uniquely human:

- Artistic creativity and appreciation
- Attempts to idealize and expand upon the emotion of love (not lust)
- The sense of being part of something that extends beyond the individual lifetime
- The desire to make sense out of the human role in the nature of things
- A concern with living a good life and envisioning ideals and guiding moral principles
- The desire to seek objective truths and the capacity to build reliable knowledge
- The capacity for making wise value judgments

*Id.* Studies of the behavior of other species directly challenge several of his assumptions about the uniqueness of these attributes. See, e.g., Sam Mowe, *Signs of Intelligent Life: Carl Safina’s Evidence that Other Animals Think and Feel*, THE SUN 4 (Aug. 2016); Charles Siebert, *The Rights of Man...And Beast*, THE NEW YORK TIMES MAGAZINE 28, 33 (Apr. 27, 2014), <http://www.nytimes.com/2014/04/27/magazine/the-rights-of-man-and-beast.html> (under the title “Should a Chimp Be Able to Sue its Owner?”); Brandon Keim, *Animal-Made ‘Art’ Challenges Human Monopoly on Creativity*, WIRED (Feb. 13, 2012), <http://www.wired.com/2012/02/animal-art/>.

<sup>30</sup> DAVID HALL THE SPIRITUAL REVITALIZATION OF THE LEGAL PROFESSION 47-48 (2005).

Spirituality, in its purest sense, is a mirror that points always at the persons holding it, challenging them to live at their highest level of existence, and urging them to love that which exists on the other side of the mirror.<sup>31</sup>

Acknowledging that lawyers' skepticism about spirituality is certainly understandable, given the destruction and evil that have been wrought in its name, Hall exhorts the profession to remember that "spirituality, like a river, can be used for both constructive and destructive ends."<sup>32</sup> It is our professional and sacred obligation to insure that it is used in service of the noblest aspirations of the profession—to ensure justice.

Spirituality is a lot like health. We all have health; we may have good health or poor health, but it's something we can't avoid having. The same is true of spirituality: very human being is a spiritual being. The question is not whether we "have spirituality" but whether the spirituality we have is a negative one that leads to isolation and self-destruction or one that is more positive and life-giving.<sup>33</sup>

Parker Palmer, whose inspiring book, *The Courage to Teach*,<sup>34</sup> has profoundly influenced my pursuit of a humanistic pedagogical approach,<sup>35</sup> defines spirituality as "the eternal human yearning to be connected with something larger than our own egos."<sup>36</sup>

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<sup>31</sup> *Id.* at 48.

<sup>32</sup> *Id.* at 49.

<sup>33</sup> KURTZ & KETCHAM, *supra* note 17 at 17. "The quotation here is from Jerome Dollard, as quoted by Thomas Prugh, *Alcohol, Spirituality and Recovery*, 10 ALCOHOL HEALTH AND RESEARCH WORLD 28-31, 53 (Winter 1985-86), supplemented by correspondence and conversations between Dollard and Ernest Kurtz." *Id.* at 247, n. 5.

<sup>34</sup> PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER'S LIFE* (1998).

<sup>35</sup> See *infra*, Marjorie A. Silver, *Healing Classrooms*, ch. 9, p. [].

<sup>36</sup> Parker Palmer, *Teaching with Heart and Soul: Reflections on Spirituality in Teacher Education*, 54 J. TEACHER EDUC. 376 (2003); Parker Palmer, *Teaching with Heart and Soul*, CENTER FOR COURAGE & RENEWAL, <http://www.couragerenewal.org/parker/writings/heart-and-soul> (last visited Aug. 14, 2016).

Viktor Frankl, the European psychiatrist and concentration camp survivor, whose memoir essay, *Man's Search for Meaning*, is the quintessential record of the human ability to survive the most inhuman of experiences, developed, largely in response to his incarceration, the school of psychotherapy known as logotherapy (also known as "The Third Viennese School of Therapy"). Its premise is that man's search for meaning is intrinsic to being

In a thoughtful essay about the relationship among secular humanism, spirituality, justice and conflict resolution, Professor Carrie Menkel-Meadow offers the following:

[S]ecular humanist movements that see "justice" as equally important a value as forgiveness and reconciliation, remind us that conflict resolution practices must serve many masters. It is not enough to provide a location for a sacred ceremony or a ritual of understanding and reconciliation if injustices remain. Thus, conflict resolution professionals have learned to create their own doctrines that recognize substantive values (equality, liberty, self-determination, equity, and fairness) as well as process or "ceremonial" values (participation, "voice," and groundrules [sic]).<sup>37</sup>

This is the challenge, then, for those of us who strive towards a legal system that is more just, more fair, more inclusive and that doesn't require that for one person to win a dispute, another must lose. This is what spirituality has to do with it.

### ***My Spiritual Journey***

Although the wind is very powerful and you can feel its presence, in and of itself it cannot be seen. You know it is there by its effect on others. The great trees, the grasses and waves on the sea bend with its force. If you are aware of your surroundings, you know it is there long before you feel it. So it is with the ineffable.<sup>38</sup>

I cannot pinpoint the date, or even the year, when I began to think of myself as a spiritual being. It certainly wasn't in my formative years, when I was turned off from the religion of my parents by the angry and distant man who was our temple's rabbi, or by what I

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human and is vitally important in the pursuit of happiness. VIKTOR E. FRANKL, *MAN'S SEARCH FOR MEANING* 120-21 (republished 1984). One of several studies supporting his conclusion was a survey undertaken by Johns Hopkins of about 8,000 students from forty-eight colleges. When asked what they considered "very important" to them, 16 percent chose "making a lot of money" compared to 78 percent who selected "finding a purpose and meaning to my life." *Id.* at 122.

<sup>37</sup> Carrie Menkel-Meadow, *And Now a Word About Secular Humanism, Spirituality, and the Practice of Justice and Conflict Resolution*, 28 *FORDHAM URB. L. J.* 1073, 1083 (2001).

<sup>38</sup> KURTZ & KETCHAM, *supra* note 17 at 31 (citing Millicent E. Buxton et al., *Spirituality and Other Points of Resistance to the 12-Step Recovery Process*, 19 *J. OF PSYCHOACTIVE DRUGS* 279-80 (1987)).

perceived as the meaningless and boring Sunday School I was forced to attend until age sixteen and my “confirmation.” It surely wasn’t during my later high school and college years, when I majored in academic excellence and minored in pursuing social justice. These were the years of the Vietnam War and the Civil Rights movement, and while I was committed to ending the former and supporting the latter, I would never have considered either a spiritual pursuit. Nor was it during my law school years when I thrived on the intellectual combat that comprised the bulk of my Ivy League legal education. My desire to teach law school was a natural outgrowth of my (arguably perverse) love of intelligent argument.

Yet I entered law school because I wanted to contribute to making the world a better place, and, unlike so many of my classmates, I left with the same resolve. First I would save the world; then I would teach.

Skip forward a decade or so, during which I had experienced a wonderful federal clerkship, the birth of my first child, nine years as an attorney in the federal government, the end of one marriage, the beginning of another, and three episodes of major clinical depression.<sup>39</sup> I had not quite succeeded in saving the world. But I did succeed in entering law teaching, and I strove to emulate the brilliance of the law professors I had so admired.<sup>40</sup> There was nothing that struck me then or strikes me now as spiritual about those years.

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<sup>39</sup> See generally Marjorie A. Silver, *A Transformational Melancholy: One Law Professor’s Journey Through Depression*, SSRN (Sept. 6, 2011), <http://ssrn.com/abstract=1908992>.

<sup>40</sup> See *infra*, Marjorie A. Silver, *Healing Classrooms*, ch. 9, p. [].



Perhaps the shift began when I discovered Therapeutic Jurisprudence in 1998<sup>41</sup> and began to explore the psychological dimensions of lawyering. I have told the story elsewhere of how I came to write a major article about countertransference in the lawyer-client relationship and why lawyers need to be cognizant of their own psychodynamic processes in order to be good legal counselors.<sup>42</sup> My friend Professor Larry Grosberg<sup>43</sup> then encouraged me to explore how lawyers might use emotions in ways that would affirmatively enhance their lawyering. So I plunged into literature from the other social sciences to explore its application to lawyering and legal education, and that became my scholarly agenda.<sup>44</sup> By moving towards the social sciences, I now see that I was moving away from the narrow box of “thinking like a lawyer” and towards something far larger.

My first anthology, *The Affective Assistance of Counsel: Practicing Law as a Healing Profession*,<sup>45</sup> was a natural outgrowth of this newfound passion. While most of the contributions reflected some aspect of what had come to be known as the Comprehensive Law Movement,<sup>46</sup> somehow, the spiritual dimension seemed to be an integral part of *Law as a*

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<sup>41</sup> David B. Wexler, *Introduction to the Therapeutic Jurisprudence Symposium*, 41 ARIZ. L. REV. 263, 263 (1999).

<sup>42</sup> See Marjorie A. Silver, *Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 278-79, 307-08 (1999) [hereinafter *Love & Hate*].

<sup>43</sup> Lawrence M. Grosberg, NEW YORK LAW SCHOOL, [http://www.nyls.edu/faculty/faculty-profiles/emeriti\\_faculty/](http://www.nyls.edu/faculty/faculty-profiles/emeriti_faculty/) (last visited Aug. 14, 2016).

<sup>44</sup> See, e.g., Marjorie A. Silver, *Supporting Attorneys' Personal Skills*, 78 REVISTA JURIDICA ESCUELA DE DERECHO U. PUERTO RICO 147 (2009); AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 14; Marjorie A. Silver, *The Professional Responsibility of Clinics: Emotional Competence, Multiculturalism & Ethics*, 13 JOURNAL OF LAW AND MEDICINE 431 (2006); Marjorie A. Silver, *September 11<sup>th</sup>, Pro Bono, And Trauma*, 7 CIL 64 (2003/2004); Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L. REV. 219 (2002); Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 J. PSYCHOL. PUB. POL'Y & L. 1173 (1999); *Love & Hate*, *supra* note 32.

<sup>45</sup> See AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 14.

<sup>46</sup> See Preface, *supra*, p. [].

*Healing Profession*, and I included four chapters on *Lawyering with Mindfulness, Spirituality and Religion*.<sup>47</sup>

And while I still wouldn't have characterized it as spiritual, I came to realize a vocation in being of service. In large measure, this was an outgrowth of my own experience with major clinical depression.<sup>48</sup> Once tenured, I came out of the closet about my depression and shared my history with students both in and outside of the classroom. I sought and obtained a position on the New York State Lawyer Assistance Trust in order to further its work in educating about, and providing resources for, treatment of depression and mental illness among lawyers, judges and law students.<sup>49</sup> I became a volunteer with the New York City Lawyer Assistance Program, serving as a "buddy" to other lawyers suffering from mood disorders.<sup>50</sup> During my last episode, in 2006-07, my husband was filming our daughter's last year at home before she left for college, for what became the acclaimed documentary *The Kids Grow Up*.<sup>51</sup> We decided to keep footage of me at my lowest in the film as a further means to help de-stigmatize depression: the viewer sees me well, then not well, then well again. In Q&As after screenings of the film at festivals and other venues, I would talk about the reasons for including that in the film. Almost always, one or more people would come up privately afterwards to share their experience with depression and thank me for sharing mine so publicly. All of these manifestations of my

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<sup>47</sup> See Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, ch. 15, pp. 447-472; Timothy W. Floyd, *Spirituality and Practicing Law as a Healing Profession: The Importance of Listening*, ch. 16, pp. 473-492; Calvin G. C. Pang, *Sojourner to Sojourner*, ch. 17, pp. 493-512; Paula A. Franzese, *The Good Lawyer: Choosing to Believe In the Promise of Our Craft*, ch. 18, pp. 513-523 in *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 14.

<sup>48</sup> See *supra* note 29 and accompanying text.

<sup>49</sup> Unfortunately, funding for the Trust was cut off in May 2011. *Grant Bulletin*, NYLAT.ORG, <http://www.nylat.org/grants/> (last visited Aug. 14, 2016).

<sup>50</sup> *Lawyer Assistance Program – Confidential Helpline*, NEW YORK CITY BAR, <http://www.nycbar.org/member-and-career-services/committees/lawyer-assistance-program-confidential-helpline> (last visited Aug. 14, 2016).

<sup>51</sup> Copacetic Pictures, *The Kids Grow Up*, THEKIDSGROWUP.COM, <http://www.thekidsgrowup.com/>.

vocation have been profoundly gratifying, and, cliché though it may be, I feel I receive far more than I give by being of service.

Another major shift began when I started meditating. Although I had practiced yoga for many, many years and occasionally participated in group meditation, I had had no regular meditation practice. This changed in the fall of 2008. The Center for Contemplative Minds in Society offered a weekend-long silent retreat in upstate New York for lawyers, law students and judges.<sup>52</sup> Charles Halpern, chair of the Center, was someone I knew, whose work in introducing members of the legal community to meditation and other contemplative practices had long intrigued me.<sup>53</sup> I decided to attend and experience what this phenomenon was about.

Here's what I learned: I don't especially like being silent for a whole weekend, and I did like sitting silently in meditation for reasonable periods of time. I wasn't sure, however, that I was ready to start a regular practice; life seemed busy enough without adding another scheduled twenty minutes to it each morning. On the last morning of the retreat, however, the facilitator who had been leading most of the meditation sessions suggested the following: Try it for a month. Then stop for a month. See which feels better. Signing on for a finite period was far more attractive to me than signing on for life, so I took this approach. However, it wasn't necessary to stop for a month thereafter in order to know my preference. During the time I was meditating, I felt less stressed, more present, and generally happier than previously. So I

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<sup>52</sup> *The Law Program*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, <http://www.contemplativemind.org/archives/law> (last visited Aug. 14, 2016).

<sup>53</sup> Halpern has had a truly amazing career. A self-described social entrepreneur, Halpern started the first public interest law firm and later became the founding dean of the CUNY Law School. See CHARLES HALPERN, MAKING WAVES AND RIDING THE CURRENTS: ACTIVISM AND THE PRACTICE OF WISDOM (2008).

have continued to meditate, most days, for about fifteen minutes in the morning after I wake up.

Meditation has made a huge difference in my life. I am less judgmental. I am able to tune out everything else when engaged in conversation with a student. I smile at strangers on the street. I am more generous.<sup>54</sup> And while I don't follow any particular religion's approach to meditation, the practice has made me present to the realization that yes, I consider myself a spiritual being.

Creating and sustaining community is in and of itself a spiritual practice, and has been essential to my spiritual growth. My spirituality is strongly connected to my communities. Included among these are the yoga studies in the two communities in which I live. When I enter those spaces, I feel grounded and peaceful, both within myself and within the group, whether I am among people I know or complete strangers. It feels like home. I experience a profound sense of belonging to something greater than my physical world.

My spirituality is also grounded in my connection to the natural world. Since 2006, my husband and I have had a second home on Louse Point, an exquisite strip of land on the eastern end of Long Island surrounded by Accabonac Harbor on one side and Gardiners Bay on the other. For the first sixteen years, we rented the house, eventually purchasing it in August of 2012. Both renting and ownership have challenged our financial resources, but I have never doubted their worth. I find a sense of peace there beyond anything I have ever before

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<sup>54</sup> See David DeSTENO, *The Morality of Meditation*, THE NEW YORK TIMES (July 5, 2013), [http://www.nytimes.com/2013/07/07/opinion/sunday/the-morality-of-meditation.html?\\_r=0](http://www.nytimes.com/2013/07/07/opinion/sunday/the-morality-of-meditation.html?_r=0) (new empirical evidence that meditation enhances compassion).

experienced, beyond what any dollars and cents cost/benefit analysis could yield.<sup>55</sup> The land and the water are so beautiful. Two stories, hopefully, will capture what this place means to me, and where it fits within my spiritual constellation.

### ***Begin text box***

#### **EASTER SUNDAY 2013<sup>56</sup>**

I left Jolie's yoga class, feeling whole and peaceful. From there, a five-minute drive to Quail Hill Farm, the CSA<sup>57</sup> to which we have belonged the past four or five years. I walk about the farm, foraging for food in this definitely off-season. The ground on the hill is mostly hard beige dirt, hardened mud, dry and cracked, with little to find but ground cover. Some small green plant is pushing its way up to greet the spring. Small broccoli type buds—is it broccoli rabe? The leaves look different, thicker. Tiny bok choy? No matter, it will be delicious sautéed with olive oil and garlic, as all the greens from this hallowed ground always prove to be.

I cross the road to check the herb garden. Not much here, but the oregano has started to awaken, and I pluck a handful of leaves. I find the mint, but it's oh so small yet. Soon, but not yet. But I go home with plenty to nourish me for the next two days until I return to NYC.

This is my farm. It sustains me in so many ways. Our seventeenth season in this home, but the farm has only been in our lives for a handful of seasons. Perhaps I wanted to join to please Lucy, my

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<sup>55</sup> This passage from MARTIN SHEEN & EMILIO ESTEVEZ, *ALONG THE WAY: THE JOURNEY OF A FATHER AND SON* (Free Press 2012) resonated for me. Emilio, describing the vegetable garden and vineyard he has cultivated at his home in Malibu, California:

If there is such a thing as ancestral memory, I felt it at work in my home in the guise of my grandfather, Francisco. . . . I feel his influence in my vineyard and my garden each time I pull a vegetable from the ground or check the progress of the vines. The relationship we're having now, removed from the trappings of time, echoes back to generations of men before us who lived off their land. Unlike my father, I never chose a formal religion to follow, but the connection to the earth and this connection to my grandfather are my form of spiritual sustenance. These aren't things I asked for but things that just seemed to happen, that slowly revealed themselves to me.

*Id.* at 383-84.

<sup>56</sup> This story is taken from a journal entry, written while contemplating my reasons for writing this book.

<sup>57</sup> Community Supported Agriculture.

environmentalist daughter. Perhaps to be part of a community, something that I felt missing from my life, especially here on the East End. But what a discovery. Luscious produce, much never before experienced. Getting my hands dirty then going home to Google the yield to find online recipes. Garlic scapes. Broccoli rabe; only much later, *kale*. Bok choy. Hakurei turnips. *Their greens!* And the familiar lettuces, tomatoes, peppers, cukes, carrots, so much better than any I had ever eaten before.

And the community, too. Unpretentious people (mostly). Potluck suppers. Harvest dinners. Winter gatherings. New friends, not close friends, but a friendly community. And Scott, our Poet-Farmer. What an extraordinary man. So loving, so gentle. So wise. When did that feeling that we were isolated from others on the East End disappear?

The beauty of the farm in every season. Even at this dead time before the explosion of spring to soon come, I love walking around its perimeters, seeing what has survived, listening to the silence. Not many come to forage as I do—last year, such a warm winter, I harvested the entire year, finding the little white hakurei turnips and baby lettuce on New Year’s Eve Day, used in our celebration that night with other new friends.

I turn 65 in 11 days. How much longer will this bliss be in my life? No way to tell. Perhaps till I’m 100. Perhaps it will end suddenly today or tomorrow. My mantra: There’s what I have control over. And what I don’t. I am pleased with how I have integrated that understanding into my daily life, and how proud I am of how I construct that life. Spending this past February in Hawaii during my sabbatical, I made such good choices. There were some disappointments, but not with myself.

Last night, I stopped off at the local IGA for a few things, and greeted the manager, Eric. I asked about the impending construction—they are expanding the store—and then after his wife, who I know had been doing Sandy-relief work in the Rockaways<sup>58</sup> last time we spoke. His face almost dissolved into tears. She has just undergone a double mastectomy, and he was devastated. I offered empathy and encouragement. It’s clear he wanted to talk and talk. I could do that. Then I remembered a book I had really liked about three adult sisters coming home to their parents’ home after their mother was diagnosed with breast cancer. I asked if his wife liked to read novels. She did. I wrote down the name for him. He was so grateful, and said he would buy the book for her right away. Clearly, he wanted to

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<sup>58</sup> See, e.g., *The East End Does Care About Sandy’s Victims*, 27EAST.COM (last updated Nov. 13, 2012), <http://www.27east.com/news/article.cfm/East-End/444775/The-East-End-Does-Care-About-Sandys-Victims>; Carrie Ann Salvi, *Many Relief Efforts For Sandy Victims*, THE EAST HAMPTON STAR (Nov. 8, 2012), <http://mobile.easthamptonstar.com/node/6715>.

do anything he could to be of help to his wife, whom he clearly adored, whom he was so scared to lose. When I got home (actually on the way home), I realized I got the name wrong—it was *The Weird Sisters*, not “The Wicked Sisters” as I had written. So I called the store and told him and offered to email the link to the book on Amazon. He couldn’t stop expressing his gratitude, saying over and over what a nice person I was. As if this small thing was the greatest kindness he had ever been shown.

Is there a different kind of kindness within me, which was communicated to him? A more patient caring? Perhaps. Who got the most out of that encounter? I would wager it was I.

### ***End Text Box***

### ***Begin Text Box***

#### **LOUSE POINT**

In season, one of my other great joys is swimming and paddling around Louse Point. The beach at the Point is the place to which I retire on hot summer days to read and think once the mid-afternoon sun wilts me and shuts down my ability to keep writing in the un-air-conditioned corner of the living room in which I work. It is often there, while reading something either relevant or not, that my most creative ideas emerge to be incorporated into the next day’s writing. At some point, perhaps immediately upon arrival, I will plunge into the cool, deep water and perform the hundreds of repetitions of the aerobic exercise routine I developed many, many years ago, performed with a Styrofoam “noodle” as a prop. If I have hauled my stand-up paddle board – a delightful, total surprise 25<sup>th</sup> wedding anniversary present from my husband in November 2010—down to the beach, I will set off for twenty-five minutes or more. This, too, is a workout, good for core and upper body strength. But it is much more: It is about balance, creative meditation and respect for the natural world, all elements of a peaceful, loving approach to right-living in this world.

In yoga, physical balance, especially on one leg, is something with which I have always struggled. On the board, balance comes easily, much like the ease with which one rides a bike; subconscious, body-knowing, muscle-memory takes over.

As I usually paddle alone, I am largely in my head as I glide along. It is a form of meditation, but not one in which I try to focus only on my breath. As on the beach, insights, both personal and professional, emerge, and I follow them wherever they wish to take me.

Yet at the same time, I never lose sight of the unbelievable beauty of my natural surroundings. The lush green grass rising up from the patches of marshes within the harbor. The egrets dotting the marshes. The oyster-catchers with their bright orange beaks darting and swooping in front of me. The occasional fish jumping out of the water. In my mind, Louse Point is one of the most beautiful spots on earth, and it is a stone's throw from my house. What a gift.

I have great respect for the natural forces that may disturb my outdoor plans: the wind, the current, whether the tide is low or high. Factors over which I have absolutely no control, and therefore no cause for stress.<sup>59</sup> The weather, the tide and the wind are indifferent to my desires.

### ***End Text Box***

#### ***Watering the Seeds of Love***<sup>60</sup>

One of the greatest manifestations of my growing spirituality is Love. Love as *Agape*.<sup>61</sup> It is the love that those who designed the Contemplative Practice Course at CUNY Law meant

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<sup>59</sup> Professor Larry Krieger introduced me to an exercise designed to focus our students on the distinction between that over which they have no control, and that over which they do. It's not so different from the Serenity Prayer, a mainstay of any Twelve-Step Program. See, e.g., *12 Step Prayers*, 12STEP.ORG, <http://12step.org/reference/12-step-prayers.html> (last visited Aug. 14, 2016). Professor Krieger's exercise, found at Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 438-39 (2005), encourages students to stop stressing about that over which they have no control, and focus on what is within their power to affect. He uses an exercise about litigation; I often use it around exam time with respect to test-taking and the grading curve.

<sup>60</sup> At the celebration of Martin Luther King's birthday in 2012, see Marjorie A. Silver, *Symposium Introduction: Humanism Goes to Law School*, 28 TOURO L. REV. 1141, 1176 (2012), Judge Maria Arias made a statement that has stayed with me that she attributed to the Vietnamese Buddhist Teacher, Thich Nhat Hahn. She said, "We all have within us the seeds of rage and the seeds of love. It's a matter of which we choose to water." In searching for this statement's provenance, I found the following Dharma teaching by Thich Nhat Hahn: Thich Nhat Hahn, *Watering Our Good Seeds*, MINDFULNESSNYC.ORG, [http://www.mindfulnessnyc.org/index\\_files/watering\\_our\\_good\\_seeds.htm](http://www.mindfulnessnyc.org/index_files/watering_our_good_seeds.htm) (last visited Aug. 14, 2016) (speaking of our ability, our obligation, to water the good seeds in one another as well as in ourselves).

<sup>61</sup> *Agape* is selfless love, free of sexual or amorous implications. *Agape Love*, THE FREE DICTIONARY, <http://www.thefreedictionary.com/agape+love> (last visited Aug. 14, 2016). It "embraces a universal, unconditional love that transcends, that serves regardless of circumstances. *Agape*," WIKIPEDIA, <https://en.wikipedia.org/wiki/Agape> (last visited Aug. 14, 2016).



when they named it “LAW: Love in Action with Wisdom.”<sup>62</sup> It is the Love of which St. Augustine<sup>63</sup> and Martin Luther King, Jr. spoke.<sup>64</sup> It is the Love that made a hero out of Antoinette Tufts, the Decatur, Georgia elementary school clerk who talked down a gunman armed with an AK-47 and 500 rounds of ammunition, intending to shoot up the school before he killed himself.<sup>65</sup> As I have shared, I went into law teaching for the intellectual challenges. Now, over thirty years later, my greatest joy is found in my relationships with the students I teach and the colleagues with whom I work. While I do my job to engage my students’ intellectual development and teach them the knowledge, skills, values and *habits* of the professionals they are studying to become, I view my personal calling to be engaging their intra- and inter-personal competences. My desire is to help them both see the centrality of emotional competence in the practice of law, understand deeply that their clients are *people*, not *cases*, and support them in developing the necessary skill set to be emotionally-competent lawyers. I aspire to teach Kindness and Love. I aspire to Unconditional Positive Regard.<sup>66</sup> G\_d knows I often fail miserably, but my teaching is a journey towards this Goal.<sup>67</sup>

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<sup>62</sup> See *infra* Jeanne Anselmo & Victor Goode, *Contemplative Practice for Social Justice Lawyering: From the Cushion to the Very Heart of the Struggle*, ch. 11, pp. []-[].

<sup>63</sup> See David Brooks, *Stairway to Wisdom*, THE NEW YORK TIMES (May 16, 2014), <http://www.nytimes.com/2014/05/16/opinion/brooks-stairway-to-wisdom.html>.

<sup>64</sup> “But I want to tell you this evening that it is not enough for us to talk about love. . . . There is another side called justice. And justice is really love in calculation. Justice is love correcting that which revolts against love.” Martin Luther King, Jr., Montgomery Bus Boycott speech at the Holt Street Baptist Church (Dec. 5, 1955), <http://www.blackpast.org/1955-martin-luther-king-jr-montgomery-bus-boycott>.

<sup>65</sup> See, e.g., Elisa Hulin Peterson, *Helping others: The Antoinette Tufts among us*, STARTRIBUNE (Sept. 3, 2013), <http://www.startribune.com/opinion/commentaries/222244761.html>; Greg Botelho et al., *Antoinette Tufts hailed as 'true hero' for handling Georgia school gunman*, CNN (Aug. 22, 2013), <http://www.cnn.com/2013/08/21/us/georgia-school-gunshots/>.

<sup>66</sup> CARL RODGERS, ON BECOMING A PERSON: A THERAPIST’S VIEW OF PSYCHOTHERAPY 283-84 (1961).

<sup>67</sup> See *infra*, Marjorie A. Silver, *Healing Classrooms*, ch. 9, p. [].

For over twenty-five years, I have been blessed with teaching in a Love-infused workplace at Touro Law Center in central Long Island. We call ourselves the Touro Family, and it isn't just words. Like all families, we have our squabbles, but we celebrate each other's successes—both personal and professional—and when times get tough, as they have certainly been for most of us in legal education these past several years,<sup>68</sup> we pull together and put our personal differences aside. And that “we” includes not just faculty, but everyone from custodian through Dean. Touro Law Center is the least hierarchical academic institution I have ever experienced.<sup>69</sup>

I have several other communities permeated with Love that I hold dear and that sustain me, especially when I swim against the tide. These include the remarkable academics with whom I collaborate in the AALS Section on Balance in Education, who are devoted to humanizing legal education, supporting and enhancing our students' wellbeing and their professional identity development, and finding more healing ways to practice law.<sup>70</sup> They include the Therapeutic Jurisprudence community, dedicated to diminishing the anti-therapeutic effects and enhancing the therapeutic effects of law and legal actors.<sup>71</sup> And, of course, they include my PISLAP community.

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<sup>68</sup> See, e.g., Elizabeth Olson & David Segal, *A Steep Slide in Law School Enrollment Accelerates*, DEALBOOK (Dec. 17, 2014), <http://dealbook.nytimes.com/2014/12/17/law-school-enrollment-fall>; Debra Cassens Weiss, *Law School Applicants Drop by More Than 15 Percent; Are Tuition Cuts Ahead?*, A.B.A. J. (Apr. 9, 2012), [http://www.abajournal.com/news/article/the\\_number\\_of\\_law\\_school\\_applicants\\_drops\\_by\\_more\\_than\\_15\\_percent/](http://www.abajournal.com/news/article/the_number_of_law_school_applicants_drops_by_more_than_15_percent/).

<sup>69</sup> I recognize that I overstate my case; I tend to get carried away by exuberance over what matters to me. I am a tenured full professor of law; a secretary worried about staff lay-offs might see a very different picture. But I do believe that with very few exceptions, everyone who works at Touro would agree that our community is marked by a deep caring for one another.

<sup>70</sup> See Silver, *Humanism Goes to Law School*, *supra* note 50 at 1144-45.

<sup>71</sup> See *supra* note 31 and accompanying text.

### ***The Connection to Transforming Justice, Lawyers & the Practice of Law***

But what do these musings have to do with justice, with lawyers, with the practice of Law? What emerges from my connections to my communities and to the natural world, are feelings of love, of compassion, of gratitude, and of peace. And from those feelings come a political commitment to finding loving, compassionate, and peaceful means of healing the world's brokenness, whether that brokenness exists within or among individuals, communities, or nations. Hence this book.

### **THE CHAPTERS WITHIN**

This book is divided into eight parts containing fourteen chapters. In **Part I, THE VISION**, Peter Gabel, one of the originators of and deepest thinkers about the theoretical underpinnings of PISLAP<sup>72</sup> has contributed a version of a talk he gave at Georgetown Law Center in 2012 entitled ***The Spiritual Dimension of Social Justice***. This chapter expands upon Martin Luther King's definition of justice as "Love correcting that which revolts against love."<sup>73</sup> Gabel argues that justice within our existing legal system is based on an individualistic notion of equal rights that fails to take account of the importance of the relational dimension of justice--the need for legal processes to heal distortions in human interaction through a spiritual process of "recognition of the other." Drawing upon the history of the Civil Rights movement, Gabel uses the example of affirmative action to show its original meaning in the context of that movement as a healing for the wrongs of slavery, and the way that this deeper spiritual meaning was

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<sup>72</sup> See *supra* note 4 and accompanying text.

<sup>73</sup> See *supra*, note 75.

largely lost when affirmative action was assimilated through existing legal thought to a question of competing individual rights in a socially disconnected world. This discussion serves as a jumping off point for Gabel to introduce and explain the vision and purpose of PISLAP as a new movement seeking to restore the Spiritual Dimension of Social Justice.

In **Part II, TRANSFORMING CRIMINAL AND JUVENILE JUSTICE**, three active PISLAP practitioners explore the transformation of our justice system. In chapter two, ***The Georgia Justice Project: Reimagining the Lawyer/Client relationship***, Doug Ammar, the executive director of the Georgia Justice Project (GJP), lays out the history and vision of this criminal defense organization. The attorneys of GJP provide vigorous criminal defense to individuals accused of crimes and, win or lose, support them in rebuilding their lives through the provision of social and employment support in a familial environment. Ammar shares stories of individual clients transformed by GJP's unique model for criminal defense innovated by this twenty-five-year-old legal organization that was originally inspired by a faith perspective to reimagine the criminal justice system.

Restorative Justice (RJ) traces its ancient roots to justice systems of indigenous peoples around the world.<sup>74</sup> It provides an alternative to our retributive criminal justice system, in which the state, rather than the victims directly impacted, assumes the responsibility for meting out punishment to those found guilty of crimes. RJ is more than a conflict resolution method; it is a set of principles, values, a way of life that deeply affirms our interrelatedness as

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<sup>74</sup> See, e.g., *About Restorative Justice: RJ Around the World*, CENTRE FOR JUSTICE & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/around-the-world/> (last visited Aug. 14, 2016).

human beings with one another and with all the earth's inhabitants. Although RJ is commonly used at the individual and community levels, its principles have been utilized to address systemic problems as well. The South African Truth and Reconciliation Process is one prominent example.<sup>75</sup> In chapter three, Fania Davis and Jonathan Scharer propose a national project to address historical and ongoing racial harms in *Reimagining and Restoring Justice: Toward A Truth and Reconciliation Process to Transform Violence Against African-Americans in the United States*.

Sylvia Clute, the author of chapter four, *Creating a Parallel Model of Justice: Unitive, Not Punitive*, argues for comprehensive justice system change. Clute, the President of the Alliance for Unitive Justice,<sup>76</sup> offers evidence that our traditional model of justice is broken—collapsing from being taken to the extreme and inconsistent with our growing understanding of how interconnected we all are. Clute advocates for *unitive* justice, a new model for a new era, grounded in loving-kindness, equality and shared responsibility. Utilizing twelve comparisons between the traditional and the unitive model, Clute draws upon her legal career, her spiritual journey, and her experience utilizing the unitive structure in an inner-city high school to argue that the unitive model of justice promises to go beyond merely addressing incidents to healing root causes, something the structure of our traditional justice system is not designed to do.

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<sup>75</sup> See, e.g., Laura McLeod, *Reconciliation through Restorative Justice: Analyzing South Africa's Truth and Reconciliation Process*, BEYOND INTRACTABILITY (Spring 2005), <http://www.beyondintractability.org/library/reconciliation-through-restorative-justice-analyzing-south-africas-truth-and-reconciliation>.

<sup>76</sup> See ALLIANCE FOR UNITIVE JUSTICE, <http://rysov.org/> (last visited Aug. 14, 2016). Alliance for Unitive Justice was formerly named Restorative Youth Services of Virginia.

**Part III** examines **HEALING CIVIL CONFLICT**. All dispute resolution processes aim at ending disputes and hopefully leaving the parties feeling more or less that justice has been done. Consider, however, a process that leaves the parties with positive feelings towards the stakeholders involved, with a feeling that true understanding and community have resulted from honest and deep communication with one another. Consider how such processes may move towards creating “the beloved community” envisioned by Dr. King.<sup>77</sup> (Consider how the restorative practices inherited from our ancestors, indigenous peoples around the world, helped to do just that.<sup>78</sup>) In chapters five and six, *Transforming Conflict Resolution: Collaborative Law’s Promise & Potential* and *Collaborative Practices*, Stu Webb, the “father” of the collaborative law movement, and Pamela Donison, an integrative attorney and mediator, provide insight into the collaborative process. Webb’s contribution recounts how he came to create this internationally embraced approach to conflict resolution. Donison explains how and why lawyers embrace the collaborative process and why collaboration may be seen as both a political and spiritual act. Through interviews, stories, and vignettes, Donison allows us to visit the minds and hearts behind the collaborative movement.

In chapter seven, *Dispute Resolution and Spiritual Congruity*, F. Peter Phillips, director of the Alternative Dispute Resolution Skills Program New York Law School<sup>79</sup> and principal of his own business conflict management firm,<sup>80</sup> explores the uncomfortable tension between the foundational assumptions of interest-based negotiation and the cultural and spiritual principles

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<sup>77</sup> See Preface, *supra*, p. [].

<sup>78</sup> See *The Origins of Restorative Justice*, RESPECT REFLEKT RESTORE: PROMOTING RESTORATIVE APPROACHES IN BEHAVIOUR MANAGEMENT, <http://www.restorativeapproaches.eu/origins> (last visited Aug. 14, 2016).

<sup>79</sup> *Alternative Dispute Resolution Skills Program*, NEW YORK LAW SCHOOL, <http://www.nyls.edu/alternative-dispute-resolution-skills-program/>.

<sup>80</sup> BUSINESS CONFLICT MANAGEMENT LLC, <http://www.businessconflictmanagement.com/> (last visited Aug. 14, 2016).

with which Western people identify. Phillips takes us on a journey around the world, allowing us to experience the abundant evidence of congruence between cultural and spiritual values in non-Western cultures and their conflict resolution processes, contrasting the individualistic, non-spiritually congruent approaches to dispute resolution in the West.

While the previous two parts have focused on dispute resolution mechanisms in both the civil and criminal realms, **Part IV, TRANSFORMING THE RULE OF LAW**, samples how PISLAP principles might alter the law itself. Rhonda Magee, Professor of Law at the University of San Francisco School of Law<sup>81</sup> and former president of the board of the Center for Contemplative Mind in Society,<sup>82</sup> shares the journey that has led to her re-envisioning possibilities for the law she teaches her students, that of Torts and Racial Justice in particular. In chapter eight, ***Teaching Law to Transform: Mindfulness-Based Learning Communities as Incubators of Social Justice Through Law***, Magee draws upon the experiences and inspirations that have made storytelling and mindfulness a central focus of her teaching and scholarship.

To create a new vision for lawyers and the practice of law, legal education must change, which brings us to **Part V: TRANSFORMING LEGAL EDUCATION**. In chapter nine, ***Healing Classrooms***, I explore the dehumanizing effects of traditional legal education and suggest a number of remedies. I share my journey from academic achiever enthralled with the intellectual gamesmanship of legal education to an awakening and understanding of how traditional legal education has exacerbated, if not caused, law student distress. The chapter explains the

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<sup>81</sup> See Rhonda Magee, UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW, <https://www.usfca.edu/law/faculty/rhonda-magee> (last visited Aug. 14, 2016).

<sup>82</sup> See THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY: SPRING/SUMMER 2012 NEWSLETTER, <http://www.contemplativemind.org/admin/wp-content/uploads/2012-CMind-spring.pdf>.

humanistic methodologies I and others have introduced in our teaching methods to mitigate that harm. I conclude by identifying some of the challenges in swimming against the current and the possibilities for re-envisioning the practice of law by transforming how and what we teach our students.

In chapter ten, ***Creating a Beloved Community***, Susan Brooks, Associate Dean for Experiential Learning and Professor of Law at Drexel University, describes her journey towards bringing more caring and connection to the law and to legal education. Using her training in anthropology and social work as well as law, Brooks tells the story of how she came to embrace the healing power of communities, and also to embrace the spiritual nature of creating and sustaining connections to each other and to our shared sense of purpose and meaning. Brooks provides stories and examples from her current role as a legal educator and administrator to demonstrate how she is translating these ideas into practices that can be taught pervasively in the law school curriculum, as well as in dedicated courses. Brooks reasons that these healing practices have the potential to transform legal education and ultimately, to help create a more relationship-centered legal profession.

In chapter eleven, ***Contemplative Practice for Social Justice Lawyering: From the Cushion to the Very Heart of the Struggle***, Jeanne Anselmo, holistic nurse and meditation teacher, and Victor Goode, Associate Professor of Law, City University School of Law (CUNY), discuss the extraordinary program they created at the CUNY Law School in 2001. During the ensuing fifteen years, the co-authors of this chapter have experienced how the personal transformative process can, and from their perspective must, be linked to a broader vision of social change. For them and others, a meditative perspective lies at the very core of what it



means to be fully engaged in the process of pursuing social justice through law. This chapter describes how they came to these realizations, and what they have been able to accomplish at CUNY, both within and beyond the academic curriculum. The chapter concludes with contributions from the program's alumni on how the contemplative approach has informed their careers in lawyering for social justice.

One of the most dramatic changes in recent years is the burgeoning of “problem-solving” or “solution-oriented” “treatment” courts. In **Part VI, TRANSFORMING THE COURTROOM**, Judge Bruce Peterson of Hennepin County, Minnesota, shares his vision for spiritually-infused judging in chapter twelve, ***Problem Solving Courts and the Evolution of the Court System***. Peterson describes how the adversarial litigation system is a product of the larger legal philosophy that the function of the law is to protect people from each other, not connect them. Judge Peterson contends that this philosophy renders the system ultimately ineffective and unsustainable. His personal spiritual journey has led him to embrace problem-solving courts, and, in particular, the Co-Parent Court for low income, unmarried parents that he manages, as more consistent with basic spiritual truths and a more evolved and effective model for judicial action.

While a more relational and healing approach to dispute resolution is central to PISLAP's mission, its vision extends to the myriad ways that lawyers can create sustainable careers that help connect people and communities. **Part VII** suggests possibilities for **TRANSFORMING COMMUNITY LAW PRACTICE** in both the public sphere. In chapter thirteen, ***Community Lawyering, Legal Services Work, and Social Healing***, Nanette Schorr, a legal services supervising attorney in New York City and one of the original founders of PISLAP, explores her experience of as a

lawyer who has been an attorney and advocate for twenty-five years working in a low-income community and seventeen years as an activist in the movement to renew legal culture. Schorr examines the intertwined ways in which holistic legal services work by building on family and community strengths and moving forward the movement to transform the law. In turn, this partnership between lawyers and communities can have a transformative impact on the social conditions that lead to poverty and injustice.

Finally, **Part VIII, TRANSFORMING THE EARTH**, looks beyond our national borders to the transformative revolution happening around the world to save our planet. In chapter fourteen, ***Voices for Mother Earth: Talks with Activists and Earth Lawyers***, Femke Widjekop, senior expert on environmental justice at the International Union for the Conservation of Nature, Dutch National Committee (IUCN),<sup>83</sup> interviews some of the key environmental warriors striving for radical change in law and policy. These environmental justice heroes recount the successes and challenges of working on a global scale to educate and motivate people and governments to take the measures necessary to combat climate change and save this one precious, irreplaceable resource, the loss of which would make all the other transformational initiatives described in this volume impossible.

I wish to conclude this introduction to the riches that lie within this volume, with the conclusion to the introduction of my previous compilation, *The Affective Assistance of Counsel*<sup>84</sup>:

Whatever calls to us, let it be something that sustains us throughout our lives.  
For some of us, that will mean fighting for social, economic, or political justice. For

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<sup>83</sup> IUCN, <https://www.iucn.nl/en> (last visited Aug. 14, 2016).

<sup>84</sup> See AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 14 and accompanying text.

others it will be championing the environment. For still others, it will be providing competent legal services at reasonable prices to the members of our communities. Whatever it is, let it be something that challenges us every day to be not only the best lawyers we can be; let it be something that allows us to be the best people we can be.

I invite the reader, in a spirit of generosity and optimism, to open up to the opportunities . . . this book offers you . . .

*--Marjorie A. Silver, August 2016*