

## **Lawyers as Healers: Following the Path of the Spirit**

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*Attorneys in today's legal climate face a variety of challenges from within and outside of the legal profession. Facing contemporary stereotypes and stigma ascribing degrees of shame to those who practice law, attorneys of all provinces act as representatives of the wider legal community and can influence the perceptions society presumes about lawyering. Armed with knowledge of the very framework of society's social contracts, such power can shift the focus away from healing our shared harms, and lead attorneys astray from their original calling and pure intentions. Spirituality, not religion, can act as a professional compass – guiding attorneys towards a path of healing for their clients, themselves, the legal profession, and our shared communities. In this article, the notion of 'Lawyers as Healers' is proffered as both a reminder to practicing attorneys and towards law students as an intrinsic verity of the legal profession. In closing, three stories are offered as key examples where attorneys have served as conduits of healing at a case, institutional, and a national level.*

I. INTRODUCTION.....	1
II. WHAT IS SPIRITUALITY?.....	3
III. RELATIONSHIP OF SPIRITUALITY TO HEALING AND THE LAW.....	5
IV. EXAMPLES OF LAWYERS AS HEALERS.....	12
A. 9/11 Hate Crime.....	13
B. Archdiocese of St. Paul & Minneapolis.....	14
C. Taiwan and Restorative Justice.....	16
V. GUIDELINES FOR LAWYERS AS HEALERS.....	17
VI. CONCLUSION.....	19

### **I. Introduction**

To the extent that you enter it as a calling, the practice of law is about hunger – the hunger for resolution; for healing the lives of individuals, organizations, and communities; for enabling society to function harmoniously and productively; and ultimately, for justice. Spirituality may not always be easy to define, but the concept is certainly embodied in these yearnings, as it is in any quest to deepen your understanding of what it means to live a good and meaningful life. When lawyers express in words and actions that they feel caught between a professional role and who they really are, they are describing a

personal spiritual crisis – a crisis that is much talked about in law schools and law firms, albeit in somewhat different terms.

-Steven Keeva<sup>1</sup>

The majority reading the above words would likely be surprised to learn they were written by a lawyer – in fact, by a former senior editor of the American Bar Association Journal, in his book entitled *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*<sup>2</sup>. The general public is much more inclined to associate lawyers with cutthroat tactics, bearing the capacity to escalate conflict through demonizing the other party in the dispute, and an obsession with winner-take-all strategies. A recent Gallup poll found that only 3% of respondents rated lawyers as “Very high” in “honesty and ethical standards”.<sup>3</sup> The image of law practice portrayed in countless novels, news stories, films, and television series portray aggressive, mean-spirited lawyers who embody the farthest thing imaginable from healing and spirituality. Perhaps ‘inspired’ by popular media representations of lawyers in television shows such as *Better Call Saul* or *Breaking Bad* of lawyers as dysfunctional and engaging in illegal practices, this condemnation of the legal profession may actually offer opportunity.<sup>4</sup>

Yet, as Keeva suggests, both healing and spirituality undergird the culturally sanctioned profession of attorneys at law.<sup>5</sup> Both our legal system in general and, too often, lawyers as individuals stray far from these roots, but the inherent connection between healing and

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<sup>1</sup> Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*, XXII (1999).

<sup>2</sup> *Id.*

<sup>3</sup> Honesty/Ethics in Professions, <https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx> (last visited July 31, 2021). Respondents rated lawyers accordingly: 3% as “Very High”, 18% as “High”, 48% as “Average”, 24% as “Low”, and 6% as “Very Low”.

<sup>4</sup> Christopher (I) Ryan, No Longer Perry Mason: How Modern American Television's Portrayal of Attorneys Shifts Public Opinion, 17 U. DENV. Sports & ENT. L.J. 133, 157-158 (2015).

<sup>5</sup> See generally Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*, (1999).

spirituality is present in the very purpose of laws and from which the profession of law developed.<sup>6</sup> Keeva's words further suggest that a return to these roots will benefit lawyers and our collective culture. At a time when our society is seemingly saturated with conflict, violence, aggression, cynicism, despair, meaninglessness, and hyper-activity there is a call among increasing numbers of people, including lawyers, for deeper meaning in their lives and for cultivation of the inner life.<sup>7</sup>

Evidence has shown that lawyers are particularly vulnerable to the stress and vicarious trauma that can lead to a sense of meaninglessness.<sup>8</sup> Recent literature has highlighted lawyers' high rankings for substance use, depression, and suicide, with younger attorneys showing heightened risk.<sup>9</sup> A focus on healing and spirituality has great potential for addressing these difficulties.<sup>10</sup> The numerous practical effects of cultivating the inner life can have a profound impact on increasing the quality of one's legal education, legal practice through reclaiming a sense of purpose in serving one's clients, functioning in a far more focused and effective manner, and deepening one's experience of life.<sup>11</sup>

Many have suggested that the notion of lawyers as healers goes all the way back to the original charter of the legal profession to preserve justice, freedom, and peace grounded in a

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<sup>6</sup> *Id.* at 92, 194

<sup>7</sup> Charity Scott, *Mindfulness in Law: A Path to Well-Being and Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635, 671-673 (2018).

<sup>8</sup> Grace Maguire & Mitchell Byrne, *The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals*, 24(2) J. of Psychiatry, Psychology and L. (2017).

<sup>9</sup> Andrea Ciobanu & Stephen M. Terrell, *Out of the Darkness: Overcoming Depression among Lawyers*, 32 GP Solo 37 (2015); Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, *Journal of Addiction Medicine* 46-52 (2016); Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116-156 (2016).

<sup>10</sup> Charity Scott, *Mindfulness in Law: A Path to Well-Being and Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635, 651-665 (2018).

<sup>11</sup> Peter H. Huang, *Mindfulness in Legal Ethics and Professionalism*, 48 Sw. L. REV. 401, 412 (2019); Jan L. Jacobowitz, *The Benefits of Mindfulness for Litigators*, 39 LITIG. 27, 28 (2013)

spirit of service and integrity.<sup>12</sup> In contemporary times, the challenge for lawyers to reconnect with the founding values of their profession was most boldly stated by Chief Justice Warren E. Burger in his 1984 annual report to the American Bar Association. He challenged his audience, asking them: “Should lawyers not be healers? Healers, not warriors? Healers not procurers? Healers, not hired guns?”<sup>13</sup>

Throughout the years there have been lawyers who have focused on healing relationships rather than winning conflicts. They are a special group of very talented and gifted individuals whose work has largely gone unnoticed. It is now time for such creative and compassionate work of attorneys to not only be recognized but to broadly proclaim healing and spirituality as the very foundation of what it means to be an effective lawyer in the 21<sup>st</sup> century.

## II. What is Spirituality?

Spirituality is often confused with religion, as though they were synonymous. For this reason, it is extremely difficult for most people to effectively discuss spirituality, healing, and lawyering. Historically, researchers have treated religion with measures of behavior – such as affiliation with organizations, participating in gatherings, and other observable behaviors – inappropriate measures for assessing spirituality.<sup>14</sup> Spirituality, while there are certainly individual, subjective interpretations of the concept can be conceptualized as “intensely personal and experiential [by] nature.”<sup>15</sup> Therefore, by the nature of religious affiliations, exclusive

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<sup>12</sup> Susan Daicoff, *Comprehensive Law Practice: Law as A Healing Profession* (2011); Susan Daicoff, *Law as a Healing Profession: The Comprehensive Law Movement*, 6 PEPP. Disp. Resol. L.J. 1, 24, 47 (2006); Kim Wright, *Lawyers as Peacemakers: Practicing Holistic, Problem-Solving Law*, 97, 219-220 (2010); Brennan Ong & Paula Gerber, *Dispute Boards: Is There a Role for Lawyers*, 5 Const. L. INT’L 7, 11-12 (2010).

<sup>13</sup> Chief Justice Warren W. Burger, *Remarks at the Midyear Meeting of the American Bar Association* (Feb. 13-14, 1984), reprinted in 52 U.S.L.W. 2471 (Feb. 28, 1984).

<sup>14</sup> Harold G. Koenig, Dana E. King, & Verma Benner Carson, *Handbook of Religion and Health* (2<sup>nd</sup> ed. 2012); Robert A. Giacalone & Carole L. Jurkiewicz, *Right from Wrong: The Influence of Spirituality on Perceptions of Unethical Business Activities*, 46(1) *Journal of Business Ethics*, 85, 93 (2003). 607

<sup>15</sup> Afton N. Kapuscinski & Kevin S. Masters, *The Current Status of Measures of Spirituality: A Critical Review of Scale Development*, 2(4) *Psychology of Religion and Spirituality*, 191, 195 (2010); Brian J. Zinnbauer, Kenneth I.

confederacies form and membership based on specific criteria create ostracization. In other words, as Rachel Naomi Remen explains, “The spiritual is that realm of human experience which religion attempts to connect us to through dogma...religion is a bridge to the spiritual—but the spiritual lies beyond.”<sup>16</sup> Throughout our lives we seek the spiritual, however, we may become attached to the bridge and never actually cross over.

The Fetzer Institute in Kalamazoo, Michigan, has developed a helpful definition of what this “spiritual bridge” that grows out of its pioneering work in the field of the mind, body, and spirit connection:

By spirit we mean that universal spirit that is the deepest and most inclusive Ground of Being. Spirit is the source of all that exists. Spirit is infinite, creating energy that gives birth to the universe. Spirit is the common source of the world’s faith traditions. Spirit is the love that creates and sustains life.<sup>17</sup>

From this understanding of spirituality, the Fetzer Institute has taken initiative towards understanding role of spirituality within individuals. In 2020 the Fetzer Institute released a nationwide report on spirituality in the US.<sup>18</sup> Among other important findings, the study found that 2 in 3 reported that spirituality guides how they act in the in the world, and 3 in 5 people

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Pargament, Brenda Cole, Mark S. Rye, Eric M. Butter, Timothy G. Belavich, Kathleen M. Hipp, Allie B. Scott and Jill L. Kada, Religion and Spirituality: Unfuzzifying the Fuzzy, *Journal for the scientific study of religion* 549, 555 (1997).

<sup>16</sup> Rachel Naomi Remen, On Defining Spirit, 47 *Noetic Sciences Review*, (1998).  
<https://www.dailygood.org/story/2215/on-defining-spirit/>

<sup>17</sup> Bruce Fetzer, *History of the Fetzer Foundation Commitment*, (2006),  
[https://fetzerlibrary.com/uploads/pdf/1558830392\\_History\\_of\\_the\\_Fetzer\\_Institute\\_Commitment.pdf](https://fetzerlibrary.com/uploads/pdf/1558830392_History_of_the_Fetzer_Institute_Commitment.pdf)

<sup>18</sup> Fetzer Institute, *What Does Spirituality Mean to Us? A Study of Spirituality in the U.S.*,  
[https://spiritualitystudy.fetzer.org/sites/default/files/2020-09/What-Does-Spirituality-Mean-To-Us\\_%20A-Study-of-Spirituality-in-the-United-States.pdf](https://spiritualitystudy.fetzer.org/sites/default/files/2020-09/What-Does-Spirituality-Mean-To-Us_%20A-Study-of-Spirituality-in-the-United-States.pdf) (last visited August 1, 2021).

stated that their spirituality inspired them to give back to their community.<sup>19</sup> As such, understanding spirituality is critical for ethical legal practice and understanding the different philosophies of clients' motives.

### III. Relationship of Spirituality to Healing and the Law

The underlying themes of spirituality and healing belong among the founding values of the profession of law, even though the legal system in our culture has evolved in other directions. Driven perhaps by the desire to defend and uphold the rights of all citizens, the practice of law is entrenched within an adversarial process that separates persons rather than a collaborative process that joins them together, leading to the dehumanization of people.<sup>20</sup> Returning the profession to its roots will require a new paradigm. In *Table 1*, adapted from the International Centre for Healing and the Law, compares the traditional legal system with the emerging legal system that incorporates the concepts of healing and spirituality.<sup>21</sup>

Table 1: The Traditional Legal System v. Emerging Legal System That Incorporates the Concepts of Healing and Spirituality

<b>Traditional Legal System</b>	<b>Legal System Based on Healing and Spirituality</b>
Legal Outcomes	Therapeutic/Relationship Outcomes
Adversarial Process	Collaborative Process
Case Oriented	People Oriented
Linear Focus	Systemic Focus
Efficient	Effective/Empathetic
Win/Lose Mindset	Best Solution for All
Rights Based	Needs Based
Solely Rational	Emotionally Inclusive
Rule Based	Concern For the Common Good
Dispute Resolution	Creative Problem Solving
Formal	Informal - Personal

<sup>19</sup> *Id.* 99-100

<sup>20</sup> Gregory Firestone & Janet Weinstein, IN THE BEST INTERESTS OF CHILDREN: A Proposal to Transform the Adversarial System, 42 FAM. CT. REV. 203, 204 (2004).

<sup>21</sup> Credit attributed to Dean Emeritus David Link, the International Center for Healing and the Law now under the auspices of the Fetzer Institute [https://web.archive.org/web/20101125235933/http://www.healingandthelaw.org/Centre\\_Overview.html](https://web.archive.org/web/20101125235933/http://www.healingandthelaw.org/Centre_Overview.html) (last visited August 3, 2021).

Employer-Employee Relationship	Partnership
Informs Client of Strategy	Client Centered

Several internal and cross disciplinary movements within law already embody the concept of healing. Three which resonate principles of spirituality and humanism are those of therapeutic jurisprudence, collaborative law, and restorative justice. Therapeutic jurisprudence is an interdisciplinary approach that places the primary emphasis on the law's impact on the psychological and emotional health of the involved parties, although not exclusively on the clients.<sup>22</sup> The goal of therapeutic jurisprudence is to bring greater sensitivity into the practice of law<sup>23</sup>. It focuses on listening deeply to the expressed needs of clients, with an awareness of the psychological and emotional issues, including stress, confidence, and trust.<sup>24</sup> Therapeutic jurisprudence also looks at the broader horizon, or at how the court system impacts society.<sup>25</sup>

Collaborative law is a method of practicing law where the involved parties (clients and lawyers) agree to work towards a settlement, commonly used within the contexts of family law<sup>26</sup>. In cases in which the parties are not able to reach a settlement and adversarial proceedings are eminent, the lawyers are required to withdraw.<sup>27</sup> New lawyers will be secured for the trial. In collaborative law practice, the attorneys' primary focus is on settlement, and they are free to use their creative problem-solving skills.<sup>28</sup>

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<sup>22</sup> David B. Wexler and Bruce J. Winick, *Judging Law in a Therapeutic Key Therapeutic Jurisprudence and the Courts* (1<sup>st</sup> ed. 1996).

<sup>23</sup> Dennis P. Stolle, David B. Wexler, and Bruce J. Winick, *Practicing Therapeutic Jurisprudence Law as a Helping Profession* (1<sup>st</sup> ed. 2000).

<sup>24</sup> David B. Wexler & Bruce J. Winick, *Essays in Therapeutic Jurisprudence* (1<sup>st</sup> ed. 1991).

<sup>25</sup> Bruce J. Winick, The Jurisprudence of Therapeutic jurisprudence, 3 *Psychology, Public Policy, and Law* 184, 206 (1997).

<sup>26</sup> Pauline H. Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation* (1<sup>st</sup> ed. 2001).

<sup>27</sup> Pauline H. Tesler, Collaborative Family Law, 4 PEPP. Disp. Resol. L.J. 317, 319 (2004); Rita S. Pollak, Collaborative Law, 24 FAM. ADVOC. 29 - 31 (2002)

<sup>28</sup> *Id.* 29

Restorative justice (RJ) is an international social movement based on the belief that crime wounds and justice heals.<sup>29</sup> It is codified in at least 45 states<sup>30</sup> and more than 80 countries<sup>31</sup> and is based on the core principles of addressing the harm caused by crime upon individuals, families, and communities, the importance of engagement, and providing opportunities for those most affected by crime to be directly involved in responding to the harm caused.<sup>32</sup> RJ is grounded in a paradigm of healing – rather than fixing. It is far more concerned about holding offenders accountable in very practical ways that serve the needs of victims and communities<sup>33</sup>. RJ is anchored in the belief that crime is fundamentally a violation of people and relationships rather than the rather abstract notion that crime is a violation of the interest of the state.<sup>34</sup> While the state clearly has a stake in crime control, individual victims, community members, and willing offenders are empowered to become actively involved in repairing the harm, responding to the needs of victims, and to build safer communities. Practical expressions of restorative justice include victim offender mediation, family group conferencing, peacemaking and sentencing circles, community justice councils, community reparative boards, and victim impact panels.<sup>35</sup>

These three practice domains show much promise as mechanisms for integrating healing, spirituality, and the law. No matter what the practice domain, the success of the integration of

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<sup>29</sup> Daniel W. Van Ness, *Restorative Justice: International Trends*, (1998), <http://restorativejustice.org/10fulltext/vanness13.pdf>

<sup>30</sup> Thalia Gonzalez, *The Legalization of Restorative Justice: A Fifty-State Empirical Analysis*, 2019 Utah L.R. 1027 (2020).

<sup>31</sup> Daniel W. Van Ness, *Eleventh United Nations Congress on Crime Prevention and Criminal Justice: An Overview of Restorative Justice Around the World*, (2005).

<sup>32</sup> Howard Zehr, *Changing lenses: A New Focus for Crime and Justice*, (1<sup>st</sup> ed. 1990)

<sup>33</sup> Mark S. Umbreit, Betty Vos, Robert B. Coates, and Katherine A. Brown, *Facing Violence: The Path of Restorative Justice and Dialogue*, (1<sup>st</sup> ed. 2002).

<sup>34</sup> Howard Zehr, *The Little Book of Restorative Justice*, (1<sup>st</sup> ed. 2002).

<sup>35</sup> *Id.* 47-54; Mark Umbreit, *The Handbook on Victim Offender Mediation: An Essential Guide for Practice and Research*, (1<sup>st</sup> ed. 2001). See pages 81-179 for descriptions of RJ programs.

efforts will nonetheless rely on the individuals who carry out the practice – individuals who must learn a different way of being than that currently being taught in most law schools. Three concepts grounded in Buddhism yet mirrored in nearly all faith traditions can assist in the personal journey of law practice and education: cultivate virtue, do no harm, and tame the mind – our egos.<sup>36</sup>

To cultivate virtue in one's clients and oneself is to find the strength that exists in each one of us. Despite frequent layers of woundedness, frustration, pain, and even anger that are present in so many people, none of these experiences and feelings defines the essence of who we are as people. Within every one of us can be found inner strength, resilience, joy, compassion, and special unique gifts that are part of our personalities. It is the task of lawyers as healers to listen for, acknowledge, honor, and cultivate these strengths at all milestones of one's legal career.<sup>37</sup> It is also the task of lawyers as healers to identify and cultivate such strengths and virtues within themselves. To do this requires the capacity to listen deeply, to connect with the humanity of all, to openly confront and work with the conflicts before us, and to speak from the vulnerability of our hearts rather than from the strategic egos dwelling within our minds.

To do no harm seems self-evident. What attorney would ever want to do harm to a client? Yet doing harm often has less to do with our intent than with the frequently unintended consequences of our professional or personal behavior, particularly when our egos are running rampant, driving our assumption that we 'clearly know what is best for our clients'. After all,

<sup>36</sup> Mark Umbreit, *Peacemaking and Spirituality: Touching the Soul Within the Energy of Conflict and Trauma*. [https://nacri.org/index.php?option=com\\_easyfolderlistingpro&view=preview&format=raw&data=eNptkMtOxDA MRX8lygokpG15DOAu2bFCINyjt3U7FulDjjMMQvw7bjsVs2AV5ybnXtsleQ7fEbbgmyHUJL6lcHsDnjtsKW6E4pCk smpMZebq80pRB0HIA7nnFJUrmhBz8SmSLCZxIsBn61ObDPsLuAe\\_283adHiY0B672SoDPx3bReXaFwzZAgmFEX V\\_9svYhgOt7KnlvRBW1OEh963DvnZvlwtrwsD65S6eqFcSIwzi\\_hllBs4Mrtx7Vwqxuissu7ucXCJsN3TUUzXWzWke OloMxbXZ3PpDVaz2nQX6ooR8as8loQPT57IHm7Gf833x8wtwW4Fa](https://nacri.org/index.php?option=com_easyfolderlistingpro&view=preview&format=raw&data=eNptkMtOxDA MRX8lygokpG15DOAu2bFCINyjt3U7FulDjjMMQvw7bjsVs2AV5ybnXtsleQ7fEbbgmyHUJL6lcHsDnjtsKW6E4pCk smpMZebq80pRB0HIA7nnFJUrmhBz8SmSLCZxIsBn61ObDPsLuAe_283adHiY0B672SoDPx3bReXaFwzZAgmFEX V_9svYhgOt7KnlvRBW1OEh963DvnZvlwtrwsD65S6eqFcSIwzi_hllBs4Mrtx7Vwqxuissu7ucXCJsN3TUUzXWzWke OloMxbXZ3PpDVaz2nQX6ooR8as8loQPT57IHm7Gf833x8wtwW4Fa) (last visited August 1, 2021).

<sup>37</sup> Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 271-275 (2003).

our egos lead us to believe that the client is clearly distressed, perhaps traumatized, and certainly in no condition to make an appropriate decision. Any attorney can work hard on behalf of their definition of what the client needs, only later to find out the client would have preferred a less adversarial path which was pressed upon them. What the client really needed was to be listened deeply to about their problem and intense feelings surrounding the harm. Then, after due patience and humanistic connection, to provide helpful advice on how to deal with the problem without eroding the relationship in the process – and therefore empowering those impacted through choices.

To do no harm, lawyers as healers need to ground themselves in a spirit of humility and compassion rather than professional expertise and judgment. They need to recognize that they don't always have or even need to have the answer to every problem a client brings to them. Lawyers as healers honor and sometimes defer to the enormous strength, resilience, and wisdom within the people they work with. For example, sometimes a client does not need someone to “protect” and make decisions for them, but simply provide them with options. Lawyers as healers are also often in the role of bearing witness to the strength and wisdom within their clients' unique contexts, often distinct from their own lived experience. While we will never truly know what our clients have endured in their lives, through deep listening and spiritually grounding ourselves in the moment we can grow through other's stories and experiences. In other words, as Bernie Glassman of the Zen Peacemaker Movement explains, “places of great suffering [are] also places of great healing. But the healing cannot arise until we bear witness to the suffering.”<sup>38</sup>

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<sup>38</sup> Bernie Glassman, *Bearing Witness: A Zen Master's Lessons in Making Peace*, 110 (1<sup>st</sup> ed. 1998).

Tame the mind is another way of saying slow down, quiet the mind, and learn to let go of the endless distractions and thoughts that fill our minds at any moment. To tame or quiet the mind, aides one to be more present in the moment and mindful of all that lies before. It is not about reading a book and then doing it – but much more. Rather, it requires learning specific techniques of meditation or centering that uniquely fit with one’s culture, predisposition, and individual spiritual needs. Even more important than the initial learning is the capacity to integrate what has been learned into the rhythm of one’s daily life. Taming the mind, living more mindfully in the present moment with a greater capacity to have a healing presence with one’s clients requires practice, practice, and even more practice. This practice, however, can be as simple as taking five or ten minutes in the morning or evening, to be still, to focus on the breath, and to be in silence, reflecting on a beautiful scene in nature, a child, or anything that brings joy to the heart.

In previous decades, the practice of mindfulness meditation has been introduced to lawyers through the work of Professor Len Riskin<sup>39</sup>, of the University of Missouri Law School, and other pioneering legal scholars. This draws largely upon the pioneering work of Jon Kabat-Zinn, a physician and Buddhist practitioner, who has introduced the wisdom of Buddhist meditation to mainstream America.<sup>40</sup> Kabat-Zinn and others’ work has been shown to be highly effective for the majority of patients who engaged in mindfulness meditation, alleviating a variety of medical conditions, and providing other positive health impacts.<sup>41</sup>

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<sup>39</sup> Leonard L. Riskin, *The Contemplative Layer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers and Their Clients*. 7 Harv. N.L.R. 1-66 (2002).

<sup>40</sup> Jon Kabat-Zinn, *Full Catastrophe Living: Using the Wisdom of Your Body and Mind to Face Stress, Pain, and Illness*, (1<sup>st</sup> ed. 1990).

<sup>41</sup> Jon Kabat-Zinn, An outpatient program in behavioral medicine for chronic pain patients based on the practice of mindfulness meditation: Theoretical considerations and preliminary results, *4 General Hospital Psychiatry*, 33, 43-46 (1982); Jon Kabat-Zinn, Compliance with an Outpatient Stress Reduction Program : Rates and Predictors of Program Completion, *11 Journal of Behavioral Medicine*, 333, 345-350 (1987) ; Juliane Eberth & Peter Sedlmeier, The Effects of Mindfulness Meditation: A Meta-Analysis, *3 Mindfulness*. 174, 185-187 (2012); Ofir Yakobi, Daniel

Mindfulness meditation is a systematic process to affect how we perceive and respond to circumstances we are faced with. Actual practice of mindfulness meditation consists of the following steps:

- Sit comfortably with your back and neck erect—either on a chair with feet flat on the floor or on the floor with legs crossed and your hands on your knees or thighs.
- Pay attention to the sensation of your breath as it enters and leaves your nostrils, or to the rising and falling of your abdomen as you breath in and out.
- If you have trouble concentrating on your breath, silently count each exhalation until you reach ten; if you lose count begin again at one.
- When your mind wanders, gently return your attention to the breath.
- Try this for five minutes, then gradually extend the length to 30 minutes.
- Notice how the mind wanders and its propensity to latch onto and get carried away with thoughts, feelings, and sensations.

Some attorneys, perhaps many, might consider the practice of mindfulness meditation to be at best an impractical luxury they don't have time for – at worst a waste of time that has no relevance to their practice. But from the perspective of lawyers as healers following the path of the spirit, mindfulness meditation is one of the most practical foundational pillars of effective law practice. The numerous benefits of mindfulness meditation, including:<sup>42</sup>

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Smilek, & James Danckert, The Effects of Mindfulness Meditation on Attention, Executive Control and Working Memory in Healthy Adults: A Meta-analysis of Randomized Controlled Trials, *45 Cognitive Therapy and Research*, 543, 553-557 (2021).

<sup>42</sup> Leonard L. Riskin, The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients, 7 *HARV. NEGOT. L. REV.* 1, 16, 19, 30, 46, (2002); Jan L. Jacobowitz, The Benefits of Mindfulness for Litigators, 39 *LITIG.* 27, 2729 (2013); Charity Scott, Mindfulness in Law: A Path to Well-Being and Balance for Lawyers and Law Students, 60 *ARIZ. L. REV.* 635, 646, 648, 650, 653, 657, 664 (2018).

- greater understanding of self and others
- greater ability to detach from habitual mindsets and behavior
- acceptance of present moment reality
- ability to be fully present with others
- less vulnerability to having one's "buttons" pushed
- enhanced ability to concentrate
- increased happiness
- increased compassion for others

#### **IV. Examples of Lawyers as Healers**

In numerous communities throughout the United States and abroad, attorneys embodying principles of their respective spiritual traditions are changing the collective culture of law. Attorneys representing parties seeking a divorce may choose the path of mediation and dialogue rather than confrontation and aggressive litigation. Some attorneys work collaboratively with non-attorney mediators and other community stakeholders to creatively solve problems and overcome institutional barriers. Others use the principles of collaborative law and therapeutic jurisprudence, rather than formal mediation procedures rather than formal mediation procedures, to facilitate these non-adversarial encounters, healing alternatives. When compared to litigation, practices such as mediation provides parties with a greater likelihood of ending their relationship in a respectful fashion and multiple measures of satisfaction.<sup>43</sup> To demonstrate the impact that attorneys can have when championing healing works, three examples are provided below. While there are numerous other examples that could be provided, these three cases offer a succinct

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<sup>43</sup> Lori Anne Shaw, *Divorce mediation outcome research: A meta-analysis*, 27 *Conflict Resolution Quarterly*, 447-467, (2010).

representation of micro, mezzo, and macro level change that attorneys can make when prioritizing the heart, all the while being supported by the head.

#### **A. 9/11 Hate Crime<sup>44</sup>**

September 11<sup>th</sup>, 2001 – the nation watched its state of surreal trepidation as four planes, hijacked by extremists and caused the abrupt deaths of 2,750 people. During these waves of trauma and grief felt by millions, one man responded by directing his hate and pain towards the Islamic community, specifically an Islamic Cultural Center and a mosque in his immediate area of Eugene, Oregon. Calling both places of gathering, the man insulted and vented a death wish towards all Muslims. After quickly being identified, arrested, and arraigned, the prosecuting attorney provided two options in a meeting with the director of the local Islamic Cultural Center and his partner: First, they can follow the normal adversarial criminal justice process and the case will be aggressively prosecuted, with the maximum sentence sought. With this option, the victims would have very little direct involvement, other than serving as witnesses for the prosecution. Alternatively, their case could be referred to a new RJ initiative called the Neighborhood Accountability Board. After extensive preparation, the victims would appear before a panel of neighbors and the offender, to discuss the impact of the crime and to develop an individualized plan for repairing the harm. In this option, the victims would be actively involved in holding the offender accountable and fostering their own healing process. Reflecting upon the teachings of Islam, the director of the Islamic Cultural Center and his partner chose the RJ path and participated in two, three-hour Neighborhood Accountability Board meetings. They found the experience respectful, satisfying, and helpful in their healing process. The plan to repair the harm included the offender writing a letter of apology to be published in the local

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<sup>44</sup> Mark S. Umbreit, Ted Lewis, & Heather Burns, A Community Response to A 9/11 Hate Crime: Restorative Justice Through Dialogue, 6 *Contemporary Justice Review*, 383-391 (2003).

paper, attending two lectures on Islam with the victims, and speaking at local schools. Effectively, the process encouraged and enabled the offender an opportunity to not only address the harm he had caused, but even broadened his sense of community.

### **B. Archdiocese of St. Paul & Minneapolis**

Over \$210 million dollars – this was the sum which made the Archdiocese of St. Paul & Minneapolis one of the largest archdioceses to be forced into bankruptcy in 2018.<sup>45</sup> 450 victims came forward during the suit, with many others feeling the ripples of the decades of harms. Despite this record setting financial settlement being closed in 2018, the process of healing was not. As two victim/survivors elucidated,

I don't want anyone to leave the room [speaking at a press conference] and think that the Catholic church sexual scandal is now over. It's not. There's lots of work to be done around the world...it changed the playing field. They have to listen to victims now...I do believe we have made the world safer.<sup>46</sup>

However, alongside financial, other settlement agreement items were included in the Judge's order – the settlement pledged the church's attention towards engaging in RJ programs to offer a humanistic platform for dialogue. Victims, families, and the communities could engage about the impacts of the harms and receive the attention of the church.<sup>47</sup> To coordinate this restorative response and serve the needs of victims and the communities, several lawyers were called upon

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<sup>45</sup> Clergy abuse victims settle with Twin Cities Archdiocese for \$210M, *Star Tribune*, <https://www.startribune.com/clergy-abuse-victims-settle-with-twin-cities-archdiocese-for-210m/484212871/> (last visited August 3, 2021).

<sup>46</sup> Twin Cities archdiocese, sex abuse victims OK \$210M settlement plan, *MPR News*, <https://www.mprnews.org/story/2018/05/31/twin-cities-archdiocese-sex-abuse-victims-bankruptcy> (last visited August 3, 2021).

<sup>47</sup> U.S. Bankruptcy Court for the District of Minnesota v. The Archdiocese of St. Paul and Minneapolis, 887 B.R. 181, 184 (2015). Details of this case can be found at <https://www.ramseycounty.us/your-government/leadership/county-attorneys-office/news-updates/case-updates/state-v-archdiocese-saint-paul-minneapolis> (last visited August 3, 2021).

to contribute towards healing. Among other legal leaders former Wisconsin Supreme Court Justice Janine Geske, Father Daniel Griffith of St. Thomas Law School, Ramsey County Attorney John Choi, and the Director of Ministerial Standards and Safe Environment, Timothy O'Malley all led the RJ efforts between the church, victims, and the wider community.<sup>48</sup> Within these RJ circles, conferences, and conversations, victims and their families were provided the platform to tell their stories, share their deep trauma, and most importantly be listened to by members of the church. Continuing to the moment that this article is being written, restorative efforts towards cultivating healing are still being conducted.

As detailed by legal scholars, academics, and mainstream media this initiative taken by the case's lawyers in partnership with the 450 victims and their families and those who dedicated hundreds of hours of coordination, preparation, and compassion yielded an opportunity for change.<sup>49</sup> With these efforts by passionate lawyers and the continued commitment of the Archdiocese of St. Paul and Minneapolis, a path of healing and accountability has been laid for institutional renovation.<sup>50</sup>

### C. Taiwan & Restorative Justice

<sup>48</sup> St. Paul-Minneapolis Archdiocese taps restorative justice to heal impact of sex abuse, *Star Tribune*, <https://www.startribune.com/st-paul-minneapolis-archdiocese-taps-restorative-justice-to-heal-impact-of-sex-abuse/563888512/> (last visited August 3, 2021); Clergy abuse survivors may use counseling payouts as they wish, *Star Tribune*, <https://www.startribune.com/clergy-sex-abuse-survivors-will-receive-money-for-counseling-at-their-discretion/488522081/> (last visited August 8, 2021); Marquette University: Law School hosts Restorative Justice Initiative conference, Nov. 9-12, *WisBusiness*, <https://www.wisbusiness.com/2020/marquette-university-law-school-hosts-restorative-justice-initiative-conference-nov-9-12/> (last visited August 3, 2021).

<sup>49</sup> Kevin H. Govern, Truth, Justice, and Reconciliation in the Wake of Cleric Sexual Abuse in America, 5 *BAKU St. U.L. REV.* 216, 228-230 (2019); Meredith Edelman, An Unexpected Path: Bankruptcy, Justice and Intersecting Identities in the Catholic Sexual Abuse Scandals, 41 *Austl. Feminist L.J.* 271, 286 (2015); Henry J. Shea, Restorative Justice, Law, and Healing, 17 *U. ST. THOMAS L.J.* 1 (2020); Daniel Griffith, Healing the Harm—the Effectiveness of Restorative Justice in Response to Clergy Abuse, 17 *U. ST. THOMAS L.J.* 18 (2020).

<sup>50</sup> Safe Environment, *Creating Safe Environments: Promise to Protect, Pledge to Heal*, <https://safe-environment.archspm.org/>, (last visited August 3, 2021). Safe Environment, *News & Events*, <https://safe-environment.archspm.org/category/news-events/>, (last visited August 3, 2021).

In 1999 the Taiwanese Ministry of Justice faced an increasing crime rate, limited resources, and problems within their correctional apparatus.<sup>51</sup> Exploring alternatives that offered “both punishment and leniency”, Taiwan settled on RJ practices, which include mediation services, deferred and conditional sentencing, youth justice, and centrally the Restorative Justice Initiative, specifically victim offender mediation.<sup>52</sup> The mediation system in Taiwan is nationwide, where either litigants or court officials can initiate mediation.<sup>53</sup> Using RJ mediation infused in Chinese traditions, 65-71% of civil cases and a staggering 78-85% of criminal cases are settled.<sup>54</sup> Taiwan’s use of deferred and conditional sentencing took on speed in 2002-2006 – enabling judges and prosecutors the flexibility to coordinate restorative responses, and has led to an increasing number of cases being deferred.<sup>55</sup> The youth justice efforts in Taiwan center around the importance of fostering rehabilitative treatment and family involvement.<sup>56</sup> Lastly, the Restorative Justice Initiative of victim offender mediation was introduced in 2010 and later eight prosecutorial districts participated in a trial lasting two years.<sup>57</sup>

Spearheading many of the efforts which helped to ground the use of restorative justice in Taiwan is Dr. Cheun-Jim Sheu of National Taipei University and was a visiting scholar at the University of California Berkeley Law.<sup>58</sup> Alongside Sheu, hundreds of RJ mediators, probation

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<sup>51</sup> Yao Chung Chang, An Introduction to Restorative Justice Practices in Taiwan, 8 *British Journal of Community Justice*, 37, 37 (2011); Hsiao-fen Huang & Lennon Y.C. Chang, Evaluating Restorative Justice Programs in Taiwan, 8 *Asian Criminology*, 287, 288 (2013).

<sup>52</sup> *Id.* 288, 291.

<sup>53</sup> *Id.* 291

<sup>54</sup> *Id.* 292-293, <http://sowf.moi.gov.tw/stat/year/list.htm> (last visited August 3, 2021).

<sup>55</sup> *Id.* 294-296

<sup>56</sup> *Id.* 296-298

<sup>57</sup> *Id.* 298

<sup>58</sup> Yao Chung Chang, An Introduction to Restorative Justice Practices in Taiwan, 8 *British Journal of Community Justice*, 37, 38 (2011); Cheun-Jim Sheu, Elements and Practicing Models to Restorative Justice, 1 *Crime and Criminal Justice International*, 37 (2003).

officers, attorneys, and judges continue to work in tandem to provide healing opportunities to the Taiwanese people and enabled restorative justice to flourish at the macro level.<sup>59</sup>

#### **V. Guidelines for Lawyers as Healers**

There is no easy quick path for lawyers to become healers of individual, communities, and wider social conflicts. For many, healing requires a major stretch in their understanding of the nature of law and its contemporary professional expression. For others, the notion of lawyers as healers goes to the heart of why they entered the profession. It resonates within the core of their being, in the spirit of Chief Justice Warren Burger and his challenge to the ABA. Few authors have addressed this topic better than Steve Keeva and his lengthy experience with the American Bar Association and legal journalism provide an undeniable credibility to his words. There is no better ending to this chapter than the guidelines he offers:<sup>60</sup>

- Make it clear that healing can in fact become the goal of your collaboration.
- Enlist the client's help in determining what would constitute a healing result.
- Refuse to take the adversarial role as your center.
- Advocate for the deepest, truest interest of the client that you are aware of, rather than just for the surface emotions they present, such as anger or vengefulness. (You can even help clients heal on the psychological level by pointing out that chronic anger and hostility has been shown in study after study to increase chances of heart attack and premature death.)

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<sup>59</sup> Dennis Wong, *Victim-offender mediation in Taiwan and mainland China: Current practices and challenges, Restorative Justice and Justice Reinvestment*, Public presentation, (2016).

<sup>60</sup> Steve Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* 96-97 (1<sup>st</sup> ed. 1999).

- Realize that your client is probably in transition – ending something and moving into a time of new beginnings. Ask “What steps can we take to set you on a positive path of growth?”
- Seek to understand your client in his or her familial, occupational, and social contexts. It’s hard to really understand anyone’s needs if you don’t understand the ways in which they are connected to the wider world.
- Seek to understand the client’s spiritual life (if he or she cares to share this information). It may offer clues to what kind of approaches and outcomes would be most healing. For example, where there is a dispute, might forgiveness play a significant part in resolving the dispute?
- Open yourself to the possibility that what the client needs may be either wider or different from what you presume. Then allow the client to express what he or she really wants.
- Understand the healing power that comes when you advocate for the client as a whole and unique human being, rather than merely as an interesting legal problem or just another file to close.
- Understand the healing power of listening.
- Realize that clients really do want more than a legal fix and that they come to you because they want to feel more whole and at peace.
- Encourage your client to get the emotional support he or she needs.
- Help your client find the real human meaning behind the legal problem.

## **VI. Conclusion**

While lawyers at every stage of their careers face challenges of differing calibers, healing harms and inspiring faith in our social contracts is an intrinsic duty of all who practice law. As students our horizons are broadened, we are educated, and guided to pursue our passions. Conversely, as educators we act not only as teachers, but as a spiritual guide – modeling and embodying the practices we preach. As legal educators we can begin to bring in principles and practices that foster the notion of lawyers as healers, such as through talking circles to open a space for dialogue outside of the traditional educational pedagogy.<sup>61</sup> As community members lawyers can work beyond the litigation and offer knowledge and their peacemaking skills fundamental to the practice of law. Ultimately, we as professionals are not just bound to a set of ethical principles, but to our neighbors, the wider community, and our world. In closing, the words of Gandhi breathe further life to the notion of ‘Lawyers as Healers’,<sup>62</sup>

“My joy was boundless. I had learnt the true practice of law...I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer...I lost nothing thereby - not even money, certainly not my soul.

Healing and the law became one for Gandhi, a way of life and of peace.

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<sup>61</sup> Kimberly Stamatelos, *Lawyers of the Future: Is Legal Education Doing Its Part*, 66 *DRAKE L. REV. Discourse* 101, 111 (2016-2017). An example of this is the integration of guest speakers into existing classes and the use of “talking circles” to explore alternative areas of practice.

<sup>62</sup> Mohandas Karamchand Gandhi, *The Story of My Experiments with Truth*, Part 2, Preparation for the Case 158-159 (1994).