



Spring 2-24-2023

Festschrift Symposium: Honoring Professor Samuel Pillsbury

Guyora Binder

Samantha Buckingham

Deborah W. Denno

Kevin Lapp

Mary Graw Leary

See next page for additional authors

Follow this and additional works at: <https://digitalcommons.lmu.edu/llr>

Recommended Citation

Guyora Binder, Samantha Buckingham, Deborah W. Denno, Kevin Lapp, Mary Graw Leary, Stephen J. Morse, John T. Nockleby, Samuel H. Pillsbury, Michael Waterstone, Gary C. Williams & Scott Wood, *Festschrift Symposium: Honoring Professor Samuel Pillsbury*, 56 Loy. L.A. L. Rev. 93 (2023). Available at: <https://digitalcommons.lmu.edu/llr/vol56/iss1/3>

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

Festschrift Symposium: Honoring Professor Samuel Pillsbury

Authors

Guyora Binder, Samantha Buckingham, Deborah W. Denno, Kevin Lapp, Mary Graw Leary, Stephen J. Morse, John T. Nockleby, Samuel H. Pillsbury, Michael Waterstone, Gary C. Williams, and Scott Wood

**FESTSCHRIFT SYMPOSIUM:
HONORING PROFESSOR
SAMUEL PILLSBURY**

Michael Waterstone

Guyora Binder

Mary Graw Leary

Deborah W. Denno

Stephen J. Morse

Scott Wood

John T. Nockleby

Gary C. Williams

Samantha Buckingham

Samuel H. Pillsbury

Kevin Lapp, moderator

The Loyola of Los Angeles Law Review is pleased to publish this Festschrift Symposium Honoring Professor Samuel Pillsbury. The following is an edited transcript of the live symposium held at LMU Loyola Law School on Friday, March 25, 2022.

SPEAKERS

- MICHAEL WATERSTONE, Fritz B. Burns Dean and Professor of Law, LMU Loyola Law School; Senior Vice President, Loyola Marymount University.
- GUYORA BINDER, SUNY Distinguished Professor and Hodgson Russ Scholar, University at Buffalo School of Law.
- MARY GRAW LEARY, Senior Associate Dean for Academic Affairs, Professor of Law, Columbus School of Law.
- DEBORAH W. DENNO, Arthur A. McGivney Professor of Law and Founding Director, Neuroscience and Law Center, Fordham University.
- STEPHEN J. MORSE, Ferdinand Wakeman Hubbell Professor of Law and Professor of Psychology and Law in Psychiatry, University of Pennsylvania Carey Law School.
- SCOTT WOOD, Professor Emeritus, LMU Loyola Law School.
- JOHN T. NOCKLEBY, Professor of Law, Susan Gurley Daniels Chair in Civil Advocacy, Director of the Civil Justice Program, LMU Loyola Law School.
- GARY C. WILLIAMS, Professor Law, Johnnie L. Cochran, Jr. Chair in Civil Rights, LMU Loyola Law School.
- SAMANTHA BUCKINGHAM, Professor of Law, Director Emeritus of the Juvenile Justice Clinic, Of Counsel for the Center for Juvenile Law, LMU Loyola Law School.

IN HONOR OF

- SAMUEL PILLSBURY, Professor Emeritus, LMU Loyola Law School.

HOSTED BY

- KEVIN LAPP, Professor of Law, LMU Loyola Law School.

KEVIN LAPP: I have the honor of opening this event and welcoming you all to the celebration of the career and the life of Sam Pillsbury.¹ It's going to be a warm and wonderful afternoon, I expect, and I am happy to get it started. The fact that there are people here from all across the country, from inside and outside the law school—and I'm sure that many of the men Sam talks to in prison would be glad to be here this afternoon if they could leave and come—is a reflection of the tremendous impact Sam has had on the lives of people here in Los Angeles and beyond.

Before we dive in, I want to thank a few people who helped make this event possible. First, I want to thank Lindsey Hinojosa and Samantha from the Conference and Events staff who have done things both visible and invisible to help put this event together, which is actually the law school's first event bringing in outside folks since the pandemic began. We're shaking off the rust and welcoming the community back here on the campus. It feels good. I want to thank Mi Tran and Jesse Edelman from the *Loyola of Los Angeles Law Review* who helped me organize this event. They're also going to be putting together a special issue of the *Law Review* that will publish some materials about Sam's career and his work. Associate Dean Lauren Willis's support and guidance were helpful to me, as well as all my colleagues who have shared their memories and their compliments about Sam. Not everyone can be here today, and it hasn't been easy to plan and pull off an in-person event during a global pandemic, but I have heard and learned a lot more about Sam just in the last few months than I did in the years that we had offices down the hall from each other. It's been a blessing to hear about how amazing Sam is. I already thought he was an amazing colleague, and the things I've learned and heard from other people just reinforced that view. And thank you all for being here so we can honor Sam.

Today, we're going to have a panel of some outside scholars who will talk about Sam's work and career, then we'll have some remarks from people from Loyola, and then Sam's got some remarks for us that he wants to share. Before we dive in, I want to invite the Dean, Michael Waterstone, up here.

1. Professor Lapp's written contribution to the festschrift appears later in this Issue. Kevin Lapp, *Professor Pillsbury and the Boundaries of Deserved Punishment*, 56 *LOY. L.A. L. REV.* 183 (2023).

DEAN MICHAEL WATERSTONE: Thank you, Kevin. It is good to actually do this—to be able to be in a room together and see people. I just want to start with an acknowledgement that we used to take days like this for granted and now they're harder to come by. So, thank you all for being here: it means the world and speaks to the kind of community we are, so thank you. I want to thank Kevin for his work on this event. I also want to thank our colleagues Lindsey, Samantha, Brett, and everyone here at Conferences and Events. I was hoping to open with a few of my observations about how our colleague and friend, Sam, really does define the best of who we are and who we hope to be.

First, I know that we're going to spend a good part of today talking about Sam's scholarship and the impact he's had through what he's written. And I'm glad you're having time and space to celebrate that; it deserves to be celebrated. I think what is probably often a little less visible to people outside of the institution is that, in addition to his writing, Sam is unique among his colleagues as someone who always took the time and was willing to read other people's work. Sam has a talent: he could take anyone's article and make it better by welcoming that scholar in a kind manner and helping them become the best version of themselves, instead of just telling them what article he would have written. And I know so many of our junior scholars have benefited from that over the course of their careers.

We take pride as an institution in setting a high bar for our teachers, and Sam has always managed to exceed that bar. And there are hundreds if not thousands of students who have come through and benefited from the care, time, and attention he places in the art of being a fine and dedicated classroom teacher.

Service—we are probably unique among law schools in that we ask and celebrate our faculty doing additional service, and we think about ways that they can contribute to the life of the law school. There's a lot I could talk about in terms of service, but I wanted to focus on one thing.

Although it predated me, my understanding of how the Center for Juvenile Law and Policy came to be was through Sam putting in the time, attention, and work—no doubt dealing with the politics as well. Sam realized there was a role for Loyola to play, and in many ways was the architect of the Center and brought the plans to fruition. So,

Sam, that will always be a part of your legacy here, and I thank you for your role in that.

I think Sam also exemplifies the best of who we are. He is always trying to improve people's lives outside of this institution. I know I've benefited from hearing about the work that Sam does in prisons, and he was always able to bring that perspective and what he learned from that in terms of the impact that he was able to make on our community. I think that's something truly special that not a lot of people would do and I think it also represents our highest aspirations. I've never known a Loyola without Sam. From the time I got here as a baby Professor, I have known that Sam was a leader within our community and someone whom we could always count on to provide grace and wisdom when we were having hard times or facing hard decisions. To say something, either in writing or verbally, that would uplift us and remind us of not just who we are but who we hope to be.

Many of you know that Sam would routinely send out notes about things he said in his class on the anniversary of 9/11 and many of us would look at and internalize those notes as we tried to grapple through that very difficult moment in our experiences. I found something that Sam wrote right after the Las Vegas shooting that he said to his class and circulated to all of us. I'm going to read you an excerpt and I think it makes this point better than I ever could in my own words. It offers reflections that both seize on a difficult moment to bring us together as both a community and as a nation, and in this case, challenges us to do better and become a better version of what we already are. These are Sam's words, and the title of this particular note was "This is Us":

The brave helpers and rescuers, and the dead and shattered in body and spirit in Las Vegas—this is part of who we are, the best of who we are. But the man with twenty-three guns in his hotel suite and nineteen more in his home—all as far as we know lawfully bought—he was part of us too. All around the world people will be looking at what happened here in the American West and say, "When will these Americans come to their senses?" Or will they just see it as more evidence of our violent nature? And we can try to say, "No, you don't understand, this isn't really who we are." But is that right? Because we are a nation under law, defined by law, and under that law what happened cannot be so much of

a surprise. If this is not who we want to be—if this is not who we *should* be, if we think we might be better than this, then it is on us to change. Because right now, this is us.

Sam, on a personal note, you've always been kind to me. You've always been nice. You've always been supportive, and you've always been a good listener. I think those qualities too exemplify who we hope to be as a community. So, thank you, and it's fitting that we get to spend this time today celebrating.

KEVIN LAPP: Now it's time to talk about Sam's writing, but not all of Sam's writing, because we couldn't possibly cover it all. In addition to things like *Judging Evil*² and scholarly works about criminal law and criminal responsibility, there's of course *Conviction*,³ a novel by Sam Pillsbury, which Vincent Bugliosi describes as “an absorbing fast-paced crime story.” And who can forget the Planet Wampetter series of children's books, which Sam has published, including the sequel, *Mission to California*.⁴

Our first speaker I'm going to invite is Guyora Binder.⁵ He is a State University of New York Distinguished Professor, a University at Buffalo Distinguished Professor, a Hodgkin Russ Faculty Scholar, and currently the Vice Dean for Research and Faculty Development at University at Buffalo School of Law. His research and scholarship, which includes several books, too many articles to list, and all sorts of other works, has explored legal theory and numerous aspects of criminal law, criminal responsibility, and constitutional history. Most recently, he's been writing about efforts to disband and defund police agencies.

GUYORA BINDER: Thanks very much and good afternoon. It's an honor to be included in the celebration of Sam's career. Sam is one of our country's most profound theorists of criminal law. In these remarks I plan to speak as a contemporary whose career has been framed by the same political and intellectual history as Sam's, and as an admiring colleague whose work he has deeply influenced. Sam and I are

2. SAMUEL H. PILLSBURY, *JUDGING EVIL: RETHINKING THE LAW OF MURDER AND MANSLAUGHTER* (1998).

3. SAMUEL H. PILLSBURY, *CONVICTION* (1992).

4. SAMUEL H. PILLSBURY, *MISSION TO CALIFORNIA* (2003).

5. Professor Binder's written contribution to the festschrift appears later in this Issue. Guyora Binder & Mathew Biondolillo, *Re-Tribute: Reconsidering the Moral Psychology of Culpability and Desert*, 56 *LOY. L.A. L. REV.* 139 (2023).

indeed contemporaries; we attended college in the mid-seventies and studied humanities. The romance and prestige of law were high in the 1970s on the backs of the Warren court and the Watergate hearings. With academic job opportunities in the liberal arts shrinking, former and aspiring academics went to law school, and legal scholarship became interdisciplinary. Across the curriculum, legal scholars like us debated the merits of economic efficiency and Kantian fairness.

Fairness appealed to liberal legal academics as a Rawlsian rationale for redistribution.⁶ It also seemed to offer a more capacious view of persons and a nobler role for law. Kantians recognized that people cared not only about accumulation, but also about relationships and mutual respect; law's role was not to maximize wealth but to protect dignity. In criminal law, however, Kantian morality seemed to imply not redistribution, but retribution.⁷ Blame and punishment seemed deserved insofar as offenders freely chose to violate a fair social contract. Now, retributive punishment seemed like a more conservative implication of fairness. For one thing it ran counter to the prevailing wisdom on criminal law taught in law schools, which was the utilitarian program of the Model Penal Code.⁸ The Model Penal Code was designed to enable officials to identify dangerous persons who knowingly risked harm and rehabilitate them, if possible, but incapacitate them if not. Our teachers told us this was an "enlightened" and "lenient" program. By contrast, retribution was invoked in defense of capital punishment and determinate sentencing from very early in our careers.

But honestly, support for penal severity had less to do with moral philosophy than met the eye. Throughout the last third of the twentieth century, crime rose, fear proliferated, and support for probation, parole, and rehabilitation collapsed across the political spectrum. The democratic public demanded tougher laws and replaced leaders who failed to provide them. In truth, the war on crime deployed whatever weapons were handy, invoking incapacitation to justify life without parole and recidivist sentencing, and invoking deterrence to justify the death penalty. New codes patterned on the supposedly lenient Model

6. See, e.g., JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

7. See generally IMMANUEL KANT, *THE METAPHYSICS OF MORALS* (Lara Denis ed., Mary Gregor trans., Cambridge Univ. Press rev. ed. 2017) (1797).

8. See Guyora Binder, *Foundations of the Legislative Panopticon: Bentham's Principles of Morals and Legislation*, in *FOUNDATIONAL TEXTS IN MODERN CRIMINAL LAW* 79–99 (Markus D. Dubber ed., 2014).

Penal Code were actually passed by “tough on crime” legislatures. These codes had higher penalties, more inchoate and accessorial liability, and broader causal responsibility. Mass incarceration ultimately happened by democratic choice. Again, this is us, and not by philosophical edicts.

Indeed, across the divide between utility and fairness, criminal justice policy and criminal law were rife with half-philosophical rationales for penal severity that considered punishment in isolation from other institutions. Consider utilitarian rationales for punishment. The more criminogenic our social conditions are, the more punishment deterrence and incapacitation will seem to be justified. Yet, we can more beneficially prevent antisocial behavior by fostering prosocial behavior through, for example, investing in families, education, and work. So too, it’s easier to justify punishment as fairly imposed for injury to others if we ignore the distributive unfairness elsewhere in society. Retribution without redistribution may be only half fair. Moreover, we know that the distribution of penal severity within our criminal justice system is marked by unfair racial disparities everywhere anyone has ever looked. The less we identify with those we judge, the more severe our judgments of blame will inevitably be. It turns out that fairness and utility alike depend on empathy, and this is the space where Sam has lived and labored.

Although he’s worked mainly on the retributive side of this street, his has been the voice of empathy in criminal law scholarship. Along with other such luminaries as the philosophers Jean Hampton⁹ and Martha Nussbaum,¹⁰ and the criminal law theorists Antony Duff¹¹ and Ken Simons,¹² Sam has drawn attention to the role of emotion and motive in both crime and punishment. We are responsible not only for the consequences of what we do, but for the reasons we do it. These reasons inform the expressive meaning of our actions, and so can increase or decrease our culpability and guilt. A cool and venal killing for hire has a different meaning than a justifiably enraged killing to avenge a wrong. It matters not only what tangible injuries we’ve

9. See, e.g., Jean Hampton, *Correcting Harms Versus Righting Wrongs: The Goal of Retribution*, 39 UCLA L. REV. 1659 (1992).

10. See, e.g., Dan M. Kahan & Martha C. Nussbaum, *Two Conceptions of Emotion in Criminal Law*, 96 COLUM. L. REV. 269 (1996).

11. See, e.g., R.A. Duff, *Responsibility, Restoration and Retribution*, in *RETRIBUTION HAS A PAST: HAS IT A FUTURE?* (Michael Tonry ed., 2012).

12. See, e.g., Kenneth W. Simons, *Rethinking Mental States*, 72 B.U. L. REV. 463 (1992).

inflicted, but what we have thereby expressed about the dignity and worth of others. The irrelevance of motive to criminal liability is a venerable maxim, but Sam has showed it is both false in fact and wrong in principle.

Sam has also shown that empathy matters in judging and punishing. We impose blame to express the solidarity with victims that the offender failed to show. This has implications for the limits of criminalization and punishment. Where there are no victims, punishment is a less necessary response. The value of empathy also has implications for *how* we punish and how we justify punishment. In judging, we should consider unfair circumstances beyond the defendant's control that contributed to their crime. We should provide meaningful opportunities for rehabilitation.

Sam's work has been particularly important and influential in my own journey as a scholar. While I taught criminal law for the first years of my career, my work focused more on broader issues in legal and political theory; I've completed a book on international law, a project on slavery and abolition, and a book on law and literature. But I began thinking more about punishment and criminal culpability, and by good fortune just at that moment, I was asked to write a review essay on Sam's remarkable book *Judging Evil*.¹³ That review, and Sam's book, dramatically changed the trajectory of my career. *Judging Evil* was a reconstruction of the law of homicide in the U.S. This was the first theoretically informed, comprehensive account of American homicide law since Herbert Wechsler's two-part article *A Rationale of the Law of Homicide*.¹⁴ Wechsler's *Rationale* famously provided the germ of the Model Penal Code. So, the law of homicide is central to modern American criminal law, and what Wechsler put there at that center was a purely cognitive and utilitarian conception of culpability's expected harm.

Sam was not the only criminal law theorist challenging that cognitive conception by emphasizing motives and desires, but he was the first to apply that insight across a broad area of criminal law and show that it actually better explained the doctrine, making sense of many features of the law of provocation, depraved indifference murder,

13. Guyora Binder, *Meaning and Motive in the Law of Homicide*, 3 BUFF. CRIM. L. REV. 755 (2000) (reviewing PILLSBURY, *supra* note 2).

14. Herbert Wechsler & Jerome Michael, *A Rationale of the Law of Homicide I*, 37 COLUM. L. REV. 701 (1937); Herbert Wechsler & Jerome Michael, *A Rationale of the Law of Homicide II*, 37 COLUM. L. REV. 1261 (1937).

premeditation, and capital sentencing. Sam showed that culpability had two dimensions: expectation and motivation. And the doctrine recognized this. It was a thoroughly impressive union of theory with doctrinal expertise, informed by actual practice. There's no other book like it.

And yet, there was a gap in Sam's account. An anomaly that demanded and ultimately claimed my attention. Surely, I thought, the most obvious case of motive mattering in American homicide law was felony murder. Insofar as felony murder substituted a felonious motive for an expectation of death, it seemed all motivation with no cognition. For this reason, utilitarian reformers from the English Law Commission through Macaulay to Stephen and Wechsler had all portrayed felony murder as nonsensical.¹⁵ And yet almost all states retained it in defiance of the Model Penal Code. Moreover, opinion data collected by Paul Robinson and John Darley suggested this was no fluke; mock jurors chose severe sentences for armed robbers who killed negligently.¹⁶

It seemed to me that Sam's book had gone a considerable distance toward explaining this oddity. On Sam's analysis, a felonious motive could significantly magnify the negligent killer's culpability. Now, there was indeed much wrong with American felony murder law. It did punish too severely based on insufficient culpability towards death, sometimes not even amounting to negligence. Liability was too often imposed on accomplices who had little reason to expect death. Some predicate felonies such as burglary and cocaine distribution were insufficiently dangerous. Others, like aggravated assault, were not independent enough. Causal responsibility for death was often too easily assigned. For all its severity, the law of felony murder did nothing to prevent crime, and for this reason Sam quite rationally rejected felony murder. But despite these flaws, felony murder did seem to reflect a moral intuition that motives matter, and that bad motives can add culpability to careless conduct. It seemed to me that this discovery of a rational core within felony murder law was actually good news,

15. See Guyora Binder, *The Origins of American Felony Murder Rules*, 57 STAN. L. REV. 59, 103, 129–30 (2004); Guyora Binder, *The Culpability of Felony Murder*, 83 NOTRE DAME L. REV. 965, 1010 (2008) (citing Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARV. L. REV. 1097, 1106 (1952)).

16. See generally PAUL H. ROBINSON & JOHN M. DARLEY, *JUSTICE, LIABILITY & BLAME: COMMUNITY VIEWS AND THE CRIMINAL LAW* (1995).

arming defense attorneys and reform advocates with arguments for confining the doctrine within this justifying rationale.

Well, many articles followed reviewing the doctrine's contested history, developing and examining the rationale, and applying that rationale to reforming current law. Some articles examined culpability theory more broadly in homicide law, or causal responsibility more generally. In all, about a dozen articles resulted from my grappling with Sam's brilliant book. There have been practical consequences as well. In 2017, the Massachusetts Supreme Judicial Court abolished felony murder in that state relying on my research.¹⁷ My work also figured in a smaller way in felony murder reforms in Maryland, Illinois, and even here in California. This week, the Sentencing Project issued a comprehensive report calling for reform on felony murder across six different areas of the doctrine that I've written about.¹⁸ But my felony murder research is just one effect of Sam's comprehensive rethinking of guilt and punishment for our very troubled times. So, I conclude as I began: I am so honored to be here to celebrate Sam's remarkable career.

KEVIN LAPP: Next, we're going to have Mary Graw Leary come up. Mary Graw Leary is a Professor of Law, the Senior Associate Dean for Academic Affairs at the Catholic University of America's Columbus School of Law, and a former state and federal prosecutor. Her scholarship has examined the intersection of criminal law, criminal procedure, technology, and victimization. Her work has studied the exploitation and abuse of women, children, and the marginalized, and she's a recognized expert in human trafficking and missing persons. She's also testified before congressional committees and is the chair of the U.S. Sentencing Commission's Victim Advisory Group.

MARY GRAW LEARY: Thank you very much. It's a real honor to be here and I'm honored to be among such distinguished scholars to talk about our colleague and mentor, Professor Pillsbury. It's an honor for me to be invited to the inner circle. I feel a little bit of imposter syndrome because I'm not friends with Sam. I know, it's weird, right? I am, however, someone who admires Sam. I admire Sam from across

17. *Commonwealth v. Brown*, 81 N.E.3d 1173, 1192–93 (Mass. 2017) (Gants, C.J., concurring).

18. THE SENT'G PROJ., *FELONY MURDER: AN ON-RAMP FOR EXTREME SENTENCING* (2022), <https://www.sentencingproject.org/app/uploads/2022/10/Felony-Murder-An-On-Ramp-for-Extreme-Sentencing.pdf> [https://perma.cc/A62P-Q82V].

the country in Washington, D.C., where I too teach Criminal Law and Criminal Procedure and those sorts of classes. I view him as a fellow legal academic. I read his work. I direct my students to his work and his ideas. I direct my colleagues to his work and ideas. But more than that, I am a person who is moved by his work. Now that might sound very law professor-y. Really? Are you kidding me? But law professors are like that, and when I say that I am moved by his work, I mean that.

In 2019—I was, of course, familiar with Professor Pillsbury’s work because, in case it’s not obvious, everyone who is a criminal law, criminal procedure, or evidence person is familiar with his work—I was asked to review his transformational book, *Imagining a Greater Justice: Criminal Violence, Punishment and Relational Justice*.¹⁹ And I approached this task like many of us approach community service: “Sure, I’ll do it; I’m going to read it anyway. I’ll help out the prestigious peer-reviewed criminal justice journal the *Ohio State Journal of Criminal Law*, which does not review every book but only the important ones. I’ll do it.” But, like community service, at the end of my time I realized, as we always do, that I was not doing a service. That in fact, I was blessed with the opportunity to be exposed to that thinking, and I was walking away from that project a better person, a better scholar, and a better professor than when I began.

Good work, and often good scholarship, actually does that—it pushes us not only to consider new ideas, but to appreciate the depth and the thoughtfulness of the work, the craft and legal writing it represents, and in turn, to raise our own bar of what we think we can do and what we *must* do in order to keep up. So, after that experience I became much more of a student than I already was of Professor Pillsbury’s, and when I received the invitation to come today, I was thrilled. I set about preparing my remarks, rereading some of his works—old and new—and I found myself again moved by some of the things that I hadn’t realized and some of his work that I hadn’t read. I even tasked my wonderful librarian with trying to find some of his old newspaper articles from when he was a reporter in Florida. We were not successful, and if Steve can’t find it, it does not exist. But we did find some old *L.A. Times* op-eds from before when most of you were born, back in the 80s and 90s. And whether it’s an old op-ed, a

19. Mary Graw Leary, *A Vision of Criminal Violence, Punishment, and Relational Justice*, 17 OHIO ST. J. CRIM. L. 227, 228 (2019) (reviewing SAMUEL H. PILLSBURY, *IMAGINING A GREATER JUSTICE: CRIMINAL VIOLENCE, PUNISHMENT AND RELATIONAL JUSTICE* (2019)).

recent book, or an article, three words for me kept emerging throughout what I read, and they are: dignity, nuance, and courage. So that is going to be the framing of my comments.

First, dignity. I'm not talking about Professor Pillsbury's dignity. That's obvious, right? But what I am talking about is how through his work he sees and conveys everyone's dignity. And let me be clear, that word "dignity" can be thrown around a lot these days—full disclosure, I'm on the editorial board of a journal entitled *Dignity: A Journal of Analysis of Exploitation and Violence*, so I'm here to tell you it can happen—but that word used to mean something more, and I found it's often a place where people from opposing views can come together to work on an issue. The human trafficking and genocide spaces are great examples of where people who normally disagree can come together because they agree about the dignity of the person being harmed. But as of late, too often it's exploited and used as an excuse to recognize one person's dignity over another—law enforcement versus the public, offenders versus victims—and that can be abused. But it's an important word because fundamental to a functioning criminal justice system is the recognition of the human dignity of every stakeholder. And I would submit to you that Professor Pillsbury sees and conveys to his audience that human dignity—indeed, the humanity of all the stakeholders who touch the criminal justice system and the inherent humanity of the community for whom it is acting.

His words give voice to everyone, victims and offenders, avoiding the easy pitfalls focusing on the needs of one constituency or another, and that gives him the space and credibility to invite his audience to see the same inherent dignity of the offender, the lawyer, the police officer, the family member, and everyone involved. And it's not just giving voice; it's the brilliance with which he does it.

His concept of moral regard: he explains in his book and in other writings that an offender's lack of moral regard for his victim produces the need for the offender to take responsibility for that failure to have moral regard for the victim. But then he turns the concept on us, the public. Once we've agreed with him, as we must, that the offender's fundamental flaw is this lack of moral regard for another, he points out that we must show the same moral regard for the offender.

And we're boxed in.

You see how he did that? Tricky, very tricky. He then calls upon us to take responsibility for the harms caused by the criminal justice

system, which in its current form shows no moral regard, or very little, for offenders and victims (some of us would argue) and he argues that our failure to do so is similar to the responsibility-avoidance for which we have condemned the offender. *That* is what real understanding of human dignity looks like.

It's a lifelong value, and we know this because in a 1988 op-ed speaking out against a sweep the police had done of a homeless encampment, Professor Pillsbury wrote eloquently about that injustice. He told tens of thousands (back when tens of thousands of people read the *L.A. Times*):

Yet it should go without saying that our first obligation to all persons, with homes or without, is to treat them with dignity. It should go without saying that the most prized possessions of the homeless should be accorded the same respect as the more financially valued possessions of those who have traditional shelter.²⁰

That is what recognizing human dignity looks like. In fact, it is for what the namesake of this university, Saint Ignatius of Loyola, would say: *cura personalis*—recognizing the whole person. And that is the theme of his writings which I personally feel is the most important throughout all his work.

Word number two: nuance. Now, all the law professors in the room, we know what the students want, right? The *answer*—right? They want the answer. They want it to be simple. Is he guilty or is he not? Is it in or is it out? Is it a contract or not? I might argue among this crowd that the academy may not be that different, at least in the scholarship space where there's real impact in the world. We are, dare I say, a scholarly system that often rewards "hot topics" and the issue of the day. We race to avoid being preempted, and in the criminal realm, those pieces are often written by scholars who will hopefully never be touched by that darker corner of the criminal justice system. So, we are comfortable often with our lofty theoretical solutions to problems, real or imagined, without regard for the practicality or the implications for the human beings who will actually be affected by our proposals. Thus, we can oversimplify, or when we recognize we're

20. See, e.g., Samuel H. Pillsbury, *The Homeless Are Not Stateless: Their Poverty Challenges Our Fidelity to Equality of Law*, L.A. TIMES (July 3, 1988), <https://www.latimes.com/archives/la-xpm-1988-07-03-op-9024-story.html> [<https://perma.cc/3A9E-BKTM>].

really in a thorny area, we can use the famous footnote acknowledging that that could be a problem but it “exceeds the scope of this Article.”

Not Professor Pillsbury. He appreciates the nuance and the complex issues facing our criminal justice system. Maybe it’s the keen eye of a journalist who had the court and police beat in Florida, or the eye of a practicing prosecutor, or a prison minister, but Professor Pillsbury seems to appreciate the nuance of the issues because he listens, and he listens to *everyone*, and when we listen, we see pain. We see pain for the victim survivors and their families, pain experienced by the offenders and their families, and just the mere fact that he ties together the concept of violence and justice reflects this deep appreciation for nuance. He writes in his book: “Our problems with violence and with criminal justice are inextricably intertwined. We would not be so punitive a people if we were not also so violent.”²¹ For example, he does not simply rail against an unjust system, but he asks some deeper questions and explores them “slogging through the facts,” as Justice Scalia might say, and in so doing he sees what people and what victim survivors really want: as he puts it, “an assurance of future safety.”²²

But he then observes in his writing that the current system might feel as though it is providing justice to victims, but it’s not, because people don’t actually feel more safe. As he says, “punishing offenders has distracted from addressing victims’ deepest needs.”²³ He notes that nuanced point, that what will attain this goal of feeling safer is a system that works—where more than forty-three percent of people are actually willing to report their crimes because we have a trusted police force that will act professionally and without bias. *That’s* what works.

And again, this is a lifelong theme for him going back to another 1988 op-ed, this time addressing massive police sweeps here in Los Angeles during the height of the gang problem. With full support from the community, and \$150,000 a day—in 1988 dollars—this was happening, and he writes about this. He notes the public support for this, but he urges people to “take crime seriously.”²⁴ Sounds like we are, right? That sounds like a big commitment, but what does he write? He writes: “What I mean by taking crime seriously is combatting crime

21. PILLSBURY, *supra* note 19, at 4.

22. *Id.* at 198.

23. *Id.* at 153.

24. Samuel H. Pillsbury, *Gang Sweeps Only Look Good: Low-Profile, Constant Street Policing Is the Better Idea*, L.A. TIMES (April 17, 1988), <https://www.latimes.com/archives/la-xpm-1988-04-17-op-1975-story.html> [<https://perma.cc/N38Q-EEJ7>].

not only with those means that are easy, quick and emotionally satisfying but also undertaking long-term solutions, even if they involve more difficult, more costly and less immediately rewarding methods.” If only we had listened in 1988.

Last word: courage. Now that’s another one that might seem strange, right? This sounds crazy, but I would suggest to you that I find Professor Pillsbury quite brave. To quote the great legal scholar (so I’m not outshone by Professor Binder), Dumbledore, in *Harry Potter*, has a great line that always stuck with me. He talks about courage, and he says: “It takes a great deal of [it] to stand up to your enemies, but a great deal more to stand up to your friends.”²⁵

Legal academics, many of us pride ourselves on intellectual elitism and, dare I say, at times, certain perspectives can dominate scholarship—the AALS, the ABA, random panels we’re put on. But for a scholar who values nuance and rigor, and who places his work squarely within the realm of the real and reality, that is not enough. And the examples of Professor Pillsbury’s courage to take on popular positions, sometimes to his own detriment, are many. He writes a book about violence, and rather than using it as a vehicle for his ideas on the easier crimes, the “victimless crimes” or the “nonviolent offenders,” which would be a lot easier, he instead takes on violence, and he takes on us.

Very early in the book he writes: “For highly educated people—such as the kind who write and read books like this on criminal justice—close and patient listening to victims is difficult. . . . It’s hard because listening to the hurt, hurts. . . . For those who love to discuss ideas . . . sustained attention to emotion can be uncomfortable.”²⁶ Something very courageous to say, but he’s got it for the whole spectrum. He ends that book reflecting on the then fairly recently elected president and a glorification of violence that might be gleaned from his positions and those who support him.²⁷ But he also takes on his own flaws. In a 2014 article, he openly discusses the importance of humility and how in his own professional journey, he too realized that what he thought at each stage of his career was right, he now is rethinking, and he is constantly rethinking it and growing.²⁸

25. HARRY POTTER AND THE SORCERER’S STONE (Warner Bros. Pictures 2001).

26. PILLSBURY, *supra* note 19, at 4–5.

27. *Id.* at 318.

28. Samuel H. Pillsbury, *Questioning Retribution, Valuing Humility*, 11 OHIO ST. J. CRIM. L. 263, 275–79 (2013).

The last point I want to make about bravery: it is also brave to openly discuss subjects that are really taboo in legal scholarship. And now I'll talk about the obvious—morality and values. In a 1992 piece about the death penalty Professor Pillsbury writes, "Criminal law works (when it does) because it carries the moral weight of virtually everyone in the community. Effective criminal law requires a deeper and broader agreement than that needed to win elections or impress a pollster."²⁹

In his more recent book, he talks about the deep pain that violent crime causes and the moral responsibilities he encourages. He talks about the value of and need for healing the individual and the collective. The harm he talks about: the harm violence causes *to the soul*. These are not words that usually find their way into legal scholarship, but I think they resonate with all human beings, because he then turns the mirror to ourselves and raises questions of redemption—*redemption* is his word for offenders which we as a society have a moral responsibility to afford others.

So, I once again have to thank you, Professor Pillsbury. Thank you for your scholarship that you've shared with countless fellow academics. It's challenged us, both with its rigor and with its bravery. I want to thank you for the opportunity to review your transformative book, which caused me to rethink some of my own views, and I want to thank you for inviting me today because this exercise has caused me to really think about what it means to become a successful professor. For many of us, it's measured by the rank of the school, the number of citations, the invitations to television and radio—which indeed Professor Pillsbury has many of those accolades—but that path is often one which does not wade into the most difficult of questions, does not often acknowledge the ugly realities of both crime and punishment, and does not afford dignity to everyone involved, even those for whom it is most difficult.

What I realized in this is that a truly great professor, again, follows the guidance of Saint Ignatius, calls us to identify our gifts and talents, embrace them, and offer them in service to the world. *Magis*, one of Saint Ignatius's ideals, requires one to ask the question: What

29. Samuel H. Pillsbury, *Laws Work When We All Agree on Them: Effective Punishment Requires a Moral Consensus, Which the Death Penalty Is Too Divisive to Obtain*, L.A. TIMES (April 17, 1988), <https://www.latimes.com/archives/la-xpm-1992-04-22-me-379-story.html> [<https://perma.cc/YFL5-K4NP>].

is the best choice in a given situation, of several good choices, to better glorify and serve the Lord? Professor Pillsbury, you've done that, not only by producing exceptional scholarship, and impacting and raising the voices of all of those on the ground, and that can only be done by somebody who is on the ground with their sleeves rolled up, taking a look at the truly fundamental questions and offering the world a path.

In 1991, in trying to explain Oliver Wendell Holmes's famous observation of the legal system, "The life of the law has not been logic: it has been experience," Professor Pillsbury went on to say that what Oliver Wendell Holmes meant was that "the law's growth and wisdom come more from the practical lessons of history than from abstract reasoning."³⁰ It comes from someone who's lived it, and Professor Pillsbury has.

So, like all good law professors, I will end by quoting myself and how I ended my book review:

Towards the end of the book, [Professor] Pillsbury reflects on his "justice work" as he calls it. While he apparently defines this "justice work" as his prison ministry and teaching, this work is rooted in observing the criminal justice system as a journalist, participating in it as a prosecutor, and studying it as a scholar. He questions his impact by confessing, "I just don't know that I accomplish much. I just *don't know*." Well, Professor Pillsbury should include in his "justice work" this book. By doing so, he will see the answer to that question is most assuredly, "yes." Yes, he does accomplish very much.³¹

KEVIN LAPP: Next up will be Deborah Denno.³² She's the Arthur A. McGivney Professor of Law and the founding director of the Neuroscience and Law Center at Fordham University School of Law in New York City. She earned, in addition to an M.A. and J.D., a Ph.D.

30. Samuel H. Pillsbury, *Perspective on the Supreme Court: Fifth Amendment Takes Another Blow: The Ruling Shows a Tendency to Trust Government, Even When Experience Encourages Skepticism*, L.A. TIMES (March 29, 1991), <https://www.latimes.com/archives/la-xpm-1991-03-29-me-843-story.html> [https://perma.cc/J88E-PHWP].

31. Mary Graw Leary, *supra* note 19, at 240 (quoting PILLSBURY, *supra* note 19, at 316).

32. Professor Denno's written contribution to the festschrift appears later in this Issue. Deborah W. Denno, *Professor Samuel H. Pillsbury's Science of Mind: A Tribute*, 56 LOY. L.A. L. REV. 167 (2023).

in sociology with a specialty in criminology from the University of Pennsylvania. Her scholarship has covered topics from execution methods, rape law, mental health, neuroscience, predictors of crime, criminal law defenses pertaining to insanity, postpartum psychosis, and consciousness. Her articles have not just appeared in top journals; they've been cited—seven different articles—by the United States Supreme Court. We're delighted to have her here.

DEBORAH W. DENNO: Thank you very much. Like my colleagues I am very happy to be here and really honored. Like Mary, I don't know Sam Pillsbury all that well either and to me, in this profession, that's a huge compliment in this era where everyone is sending you their work or you're going through Twitter and seeing people posting it, etc. I actually found Sam's work the same way my two colleagues did. In the course of my writing, I discovered that his articles were the best that were there for me to draw upon, without knowing him at that time. And in the course of bringing materials together for this event today I realized he's influenced me more than I had fully recognized.

So let me just begin with this: much of criminal law reflects a philosophical and scientific perspective on the human mind, but few have clarified this proposition with as much nuance—that was the word I had picked for him as well—and keenness of insight as Sam Pillsbury, as early as he did. Some of the topics that people write more about are topics that were the ones that he started with. That really started the ball rolling on emotion and cognition, etc. So, in my mind, Sam does not think outside of the boxes; instead he rummages inside them, rearranging the spotlight so that we can see human behavior in the doctrine in a more real-world way. By embracing cognitive science, Sam moves us past the traditional doctrinal framework to prompt fresh proposals for changing the criminal justice system. Over the years I've relied on Sam's work continuously, but in this talk I focus on three articles in particular to demonstrate how his work has helped me see the doctrine differently.

In an article I wrote critiquing the artificial dichotomy of conscious-versus-unconscious thought processes in the criminal law, I relied on Sam's highly influential article, *Crimes of Indifference*, to provide key support.³³ In his article, Sam dives into the philosophy of

33. See Deborah W. Denno, *Crime and Consciousness: Science and Involuntary Acts*, 87 MINN. L. REV. 269, 272 (2002) (citing Samuel H. Pillsbury, *Crimes of Indifference*, 49 RUTGERS L. REV. 105 (1996)).

mind and cognitive science to discuss the defendant's mental state and, as all first year law students taking Criminal Law know, mental state is one of the core tenets of criminal law, particularly in the context of mens rea requirements for depraved-heart murder and unintentional manslaughter.

Sam hones in on what he calls the concept of "responsible choice."³⁴ With it he flips the criminal law's priorities in assigning culpability from focusing on the defendant's level of awareness of the risk of their behavior, which we law professors emphasize, to their indifference to the value of human life. In essence the modern criminal law's requirement that a defendant have actual awareness of their risk may, in Sam's words, "blind us to the more passive, but more common evils of callous indifference."³⁵ So, by relying on cognitive science, Sam posits that criminal responsibility should depend on (1) the nature of the risks involved; (2) in his words, their "obviousness"; and (3) the reasons for the defendant's lack of perception or disregard of those risks. In addition, Sam plainly articulates that despite criminal law's focus on the purposeful and intentional wrongdoer, in his words, "the most common cruelties are acts of indifference."³⁶ Ultimately his article leaves the reader with this final thought: "The modern human community requires more than avoiding deliberate aggression; it requires active concern, at least for the lives of other human beings."³⁷

So, I'd like to take a recent New York case to give us a sense of how to apply Sam's concept of responsibility. I'm using this in the way that I used it last night. I was teaching my evening class and applying Sam's discussion of the cruelty of indifference to a scenario that had really gripped us. On March 10th of this year, Lauren Pazienza, who's age twenty-six, was caught on video walking down a New York City street when she suddenly shoved to the ground the woman walking ahead of her, a much beloved eighty-seven-year-old Broadway singing coach. According to the police, Pazienza's attack was "unprovoked and senseless."³⁸ There was no evidence that Pazienza knew her victim and we now know that she didn't. And she had

34. See Pillsbury, *supra* note 33, at 106.

35. *Id.* at 107.

36. *Id.* at 106.

37. *Id.* at 218.

38. See Press Release, Alvin L. Bragg, Jr., Manhattan Dist. Att'y, Lauren Pazienza Indicted for Fatally Pushing 87-Year-Old Broadway Vocal Coach (May 10, 2022), <https://www.manhattanda.org/d-a-bragg-lauren-pazienza-indicted-for-fatally-pushing-87-year-old-broadway-vocal-coach/> [<https://perma.cc/AQ87-UAU6>].

absolutely no reason to shove her. Pazienza also simply kept on walking after the victim hit her head when she fell. Five days later, the victim died of acute brain trauma from hitting her head. Meanwhile the New York media continuously broadcast Pazienza's photo and the video of her shoving the victim for nearly a week until Pazienza finally turned herself in, realizing that they were going to catch her.

So, Pazienza now faces a manslaughter charge, and last night I used Sam's concept of responsible choice as a useful tool for analyzing this case. Was Pazienza fully aware of the risks of her acts, or did she intend to kill? It certainly was clear that she probably didn't intend to kill or was perhaps not even fully aware of the risks of her acts. It didn't seem so. Was she callously indifferent to her victim in the way that Sam characterizes it? Absolutely. And the New York City community was outraged. It was the cruelty of this indifference.

This focus on victims and the human element is echoed in much of Sam's scholarly work that plunges into criminal law. In his book, *Imagining a Greater Justice: Criminal Violence, Punishment and Relational Justice*,³⁹ about which Mary spoke much more than I will, Sam examines the perspectives of all actors in the criminal justice system, arguing for the need to collaborate with all parties including, and perhaps especially, the victims. In my neuroscience work—I'm looking at every criminal case discussing neuroscientific evidence—I've found that at least a third of these cases involve injuries to victims, and nobody has ever really stressed that, but certainly Sam always has. This approach has three benefits according to Sam: (1) it's the way to effectuate reform that punishes wrongdoing, (2) it helps victims heal, and (3) it outlines the realities of violence that the victims have experienced.

In another of Sam's articles, *Emotional Justice: Moralizing the Passions of Criminal Punishment*, Sam examines the human aspect of emotion within the criminal justice system, particularly emotions regarding sentencing for capital punishment.⁴⁰ In my own work, I analyze the constitutionality of execution methods, especially lethal injection, and the work I rely on examines Sam's discussion of retribution.⁴¹ Sam outlines the responsibility that each individual has

39. PILLSBURY, *supra* note 19.

40. See generally Samuel H. Pillsbury, *Emotional Justice: Moralizing the Passions of Criminal Punishment*, 74 CORNELL L. REV. 655 (1989).

41. See Deborah W. Denno, *Getting to Death: Are Executions Constitutional?*, 82 IOWA L. REV. 319 (1997) (citing Pillsbury, *supra* note 40, at 656).

for their own emotions and formulates a “moral-emotive theory of retribution” that in his words “constitutes an emotional dynamic for determining just punishment.”⁴² The approach encourages sentencers to “attempt to empathize with the offender,”⁴³ a viewpoint that is especially important in my mind when states recommend how they think death row inmates should die. In other words, we should have the most empathy where the state typically has the least. As Sam concludes, “[w]hen we reach the limits of law, when we enter those areas where rules lose their power to direct us toward just results, recognition of and struggle with the emotional influence becomes necessary.”⁴⁴

And again there’s a current example of this. Just a few days ago South Carolina adopted the firing squad as a method of execution because they were having problems with getting the lethal injection drug (pharmacology companies don’t want to want to sell prisons drugs for this use). The legislature was prepared to adopt this but people were surprised that the arguments were made by a Democrat and somebody who took a progressive criminal justice approach.⁴⁵ But what that Democrat was really arguing was that this was the approach that would entail the most empathy for the offender. Why? Because the firing squad, even though it’s associated with historical barbarity in this country, is the technique that would be the most kind and most humane to an offender—the least cruel technique and the least indifferent to their suffering, which is an unusual context for people to talk about empathy in. But certainly Sam, in discussing empathy and focusing on emotion, was really one of the first to start this ball rolling in the literature.

This ability to bridge the gap between intellectual discourse centered on rationality and responsibility of criminal actors, and the public concept of moral wrong and the value of others is a resonating theme in Sam’s work. For example, in Sam’s article, *Evil and the Law of Murder*, he focuses on homicide to argue that legal definitions fail to accurately express the qualities we all tacitly agree are part of bad

42. See Pillsbury, *supra* note 40, at 657.

43. *Id.* at 658.

44. *Id.* at 710.

45. See Meg Kinnard, *Firing-Squad Executions Get the Greenlight in South Carolina*, AP NEWS (Mar. 18, 2022), <https://apnews.com/article/business-executions-south-carolina-columbia-e9e1e1108d337526883b1b2b179ba223> [<https://perma.cc/2H4V-5DH9>].

human behavior.⁴⁶ Sam ultimately proposes alternate legal descriptions that more adequately encompass the “human evil” that such legal definitions describe and articulate the shared intuitions that we have on murder.⁴⁷ I don’t have time to describe how much Sam’s work has permeated standard Criminal Law casebooks and literature that professors use around the country. I’m sure your students really relish seeing all the quotes and everything in the work that you do, and call home and say, “Professor Pillsbury was in my textbook today.” So, I’m sure that you hear that a lot, but when I teach homicide especially, a week doesn’t go by where my casebooks don’t cite Sam’s work.

So his books and articles have been vastly influential in my own scholarship and teaching, and in my own day-to-day life, and in the larger discussions of criminal justice as a whole. Sam’s work has introduced new approaches and perspectives to legal doctrine that draws in scientific understanding and human appreciation of right and wrong, proposing integrated reforms and legal definitions to the criminal justice system. Without question, Sam’s contributions will likely continue to impact the discourse on legal tenets within the criminal law for many years to come—and who knows, they may be up there when they’re teaching Criminal Law on Mars someday. So, we will never know, but I predict that, so thank you.

KEVIN LAPP: Before we take a break, we have some recorded remarks from Professor Stephen Morse, who is a Professor of Law and a Professor of Psychology and Law in Psychiatry, and the Associate Director for the Center for Neuroscience and Society at the University of Pennsylvania’s Carey Law School. He was unable to join us today, but he has recorded some brief remarks that he wanted us to share, so we are going to share those remarks now.

STEPHEN J. MORSE: Hello everyone. I’m Stephen Morse from Penn Law School and I’m delighted to be with you at this celebration of Sam’s life and career. I often say to my students that they are my teachers—and I mean it, but I mean it collectively for the most part. Every now and then, and it’s a quite rare event, I mean it individually. Sam Pillsbury was one of those students when I was at USC on the faculty. He was and remains my teacher. Of course, his intelligence is

46. Samuel H. Pillsbury, *Evil and the Law of Murder*, 24 U.C. DAVIS L. REV. 437, 479–87 (1990).

47. *Id.*

legendary. As one of his classmates said to me, in some awe, and I thought with understatement, “Sam’s intelligence is stratospheric.” Who could disagree with that? But as we all know just having very high intelligence is insufficient to be a really good scholar. You need creativity, you need drive, and you need insight, and Sam has amassed a corpus of work over the many years he’s been at Loyola that meets all those tests. He is an extraordinary scholar. I would like to just focus on one work that had a particular influence on me, which is his book *Judging Evil*.⁴⁸

I read it with my seminar students over two decades ago now at the University of Pennsylvania and I thought then and remain thinking that it is one of the most insightful, wise, and original works of criminal scholarship that I have ever come across. And it had a very particular and important influence on me. I was then under the sway of some excellent criminal law scholars who were in the process of convincing me that negligence should not be part of the criminal law mens rea armamentarium because it wasn’t a mens rea, and I had been almost convinced. Sam’s book single-handedly turned me around. Since I’ve read it, I have been a very strong advocate of retaining negligence in the criminal law.

Now, Sam has not only been an excellent and influential criminal law scholar: he’s a renaissance man. As many of you know he has published novels. He’s published a work about the practical and conceptual aspects of criminal law. He’s had a wonderful career. Having said all that, I want to close with two characteristics of Sam’s that I think are crucial in any scholar and in any good human being.

He is both wise and humane, and that doesn’t mean he’s a softy. He’s not. He understands the importance of criminal responsibility and human responsibility generally, but he is wise, and he is humane. He in fact is a model to us all. Congratulations Sam on a career well done and to Loyola Law School for being the home of such a fine scholar. Thanks very much.

KEVIN LAPP: Our next set of speakers all hail from Loyola Law School. They’ve been colleagues of Sam’s for a decade or more. Capturing the contributions that Sam has made to the law school, to our students, to the Los Angeles legal community, and more broadly to the people of Los Angeles, is simply impossible. There’s too much ground

48. PILLSBURY, *supra* note 2.

to cover—there’s too many people who’ve been shaped and inspired by Sam. But hopefully these speakers will give you just a glimpse into a small portion of the profound impact that Sam has had on all of us. First, I’m going to ask Scott Wood⁴⁹ to come up and speak about Sam. Scott is a retired Clinical Professor who taught at Loyola for almost twenty years. Among the many courses he taught were courses on Restorative Justice, Law and Literature, seminars on Law and Catholic Tradition, and Religious Lawyering. During his time, Professor Wood received several awards including the Bert Thompson Pioneer Award from the National Association of Community and Restorative Justice in recognition of his leadership in promoting restorative justice.

SCOTT WOOD: Let me first say what a tremendous honor it is to be here and to make some remarks.

According to the familiar parable, on the last day of class an old professor brought in a big fishbowl. It was filled to the top with large round stones, and he asked the class, “Is this bowl full?” Everyone nodded in agreement. The professor then reached down in the podium and pulled out a bag of sand, poured it into the bowl, and said, “Is the bowl full?” No, not this time. The professor reached down, pulled up a pitcher of water, poured it into the bowl and asked, “Is this bowl full?” This time everyone agreed. He asked, “So, what’s the lesson?” Someone in the back raised their hand and said, “The lesson is there’s always room for one more thing.” He responded, “No, this is not the lesson. The lesson is if you don’t put the large stones in first, you never get them in later.” So, what are the large stones? Your principles, your values, and your relationships.

So, as you’ve heard already from this wonderful panel, when Sam came to Loyola in 1986, his bowl was pretty full with large round stones. What’s impressive is that during his more than thirty years of teaching here, he managed to keep out the sand and water, and he kept fitting in large round stones. As a capstone, after thirty years of teaching, he published this wonderful book, among many of his excellent publications, *Imagining a Greater Justice: Criminal Violence, Punishment and Relational Justice*.⁵⁰ It’s a wonderful book. It’s an eloquent blending of criminal law, history of criminal law, criminal justice, criminal injustice, many compelling anecdotes from Sam’s

49. Professor Wood’s written contribution to the festschrift appears later in this Issue. Scott Wood, *The Stones in Sam Pillsbury’s Bowl*, 56 LOY. L.A. L. REV. 219 (2023).

50. PILLSBURY, *supra* note 19.

personal journey, and very wise teaching on the philosophy of relational justice.

So, I would like to hold up just three stones from this wonderful book. First, compassionate healing for victims of criminal violence. As we heard, Sam's insight into criminal violence and the effect on victims and their families is more than just what happens to them bodily. He devotes several pages to talking about injury to soul—a soul injury, a deep wound, and however within a religious context or otherwise you might try to probe the meaning of soul, I think we can all agree that it means your core identity. So that, according to Sam, is deeply wounded by criminal violence.⁵¹ Consequently, “tough on crime” laws are not going to answer the need for healing—it takes more than that. The “tough on crime” laws we hope give the victim of crime or the family a feeling of greater security. There's a vindication of public morality, and this has been noted about Sam—he's not soft on crime; he's a believer in appropriate punishment. But we have to go beyond that, and Sam does in talking about the need for healing, which is a question of being with and deep listening to the victim of crime. They need relational justice.

Next stone: Sam in his book, because he's so candid, admits to being surprised to be called to religious ministry in midlife, and so there he went to become an Episcopal deacon, taking on a second career along with being a law professor. The added surprise that Sam says occurred is that he found that his religious pursuit led him to jail. So he ended up in Twin Towers Correctional Facility where he joined the other Episcopal deacons and other ministers in their work in that facility. For those of you who are from outside and don't know L.A., suffice it to say that the Twin Towers is a gigantic human warehouse, filled with thousands of broken men, a very high percentage of whom struggle with mental illness.

Sam says in his book that he finds it to be just the right place for relational justice. So he goes into the Twin Towers and it is as I understand it mostly a listening experience on Sam's side. He's not in there doing his law school class. He's sitting patiently, listening, and as one of our wonderful speakers already pointed out, he teaches in his book that offenders need moral regard just as much as victims of the crime. And in according them moral regard, it means that they need

51. *Id.* at 31, 39.

an opportunity for redemption. They need to acknowledge their crime. They need to accept a fair punishment, but then they need an opportunity to come back home, to be incorporated back into the community. So, offenders also need relational justice.

Last stone, and this is probably the heart of the book to my reading, entitled “Race and Criminal Justice.”⁵² Sam writes, “Race is the great fault line in America’s past, which makes it the great fault line in society today. It remains our greatest barrier to the belonging needed for a peaceful and just community.”⁵³ Before analyzing that dark history of racial discrimination, Sam very candidly, and I think humbly, admits that he will probably never fully understand race in America. He writes: “There is too much difference between the white experience and the experience of people of color for complete understanding.”⁵⁴

He then proceeds to probe into the most challenging questions that we have on this subject. He discusses police use of excessive force against unarmed Black Americans and in this part of his book he adds some Los Angeles stories.⁵⁵ We in Los Angeles bear the burden of having probably one of the worst example of abusive police conduct against an African American in the Rodney King case, an injustice for which our entire city and our entire community paid a terrible price. Sam spotlights the general amnesia that we have in our country for the history of racial discrimination in the criminal law, and he argues for a national memorial, an annual Martin Luther King Day type of recollection to keep us focused on that historical reality so we can keep working to change that history.⁵⁶ He says, “Creating just relations in the American community requires engaging across race lines: speaking honestly and listening closely,”⁵⁷ as he does in the Twin Towers.

This part of the book I found amazingly prophetic. This book came out in 2019 and within a very few months the world witnessed the police murder of George Floyd and millions of people marching. I think it’s safe to say that despite ongoing challenges, more Americans than ever are supporting criminal justice reforms and more Americans

52. *See id.* at 272–98.

53. *Id.* at 278.

54. *Id.* at 298.

55. *See id.* at 274–78.

56. *See id.* at 285–86.

57. *Id.* at 298.

than ever before are speaking honestly and listening closely across race lines.

Sam's own hopeful striving continues. So, the old professor asks again: "Is Sam's bowl full?" No, not at all. Not only does his Episcopal ministry continue both in church and in jail, but so does his scholarship and his creative writing, much to our future delight. As for now his work at Loyola Law School is done. Reflecting on Sam's remarkable teaching career and scholarship, we can easily imagine the greater justice that's being done by so many of the thousands of students who have been privileged to have him as a teacher. So let me end with some lines from the great Jesuit poet Gerard Manly Hopkins. In his poem about an ideal life's work, he writes:

Crying *What I do is me: for that I came.*
I say more: the just man justices;
Keeps gráce: that keeps all his goings graces.

Sam leaves Loyola, to gather more stones of hope, keeping all his goings graces.

KEVIN LAPP: Thank you, Scott. Now we're going to play a couple clips from some colleagues from the faculty. The first is a clip from Professor John Nockleby. John is a Professor of Law, the Susan Gurley Daniels Chair in Civil Advocacy here at Loyola; he's the founding director of our civil justice program and the founder of Loyola's amazing Journalist Law School. He's taught at Loyola since the late 1980s after his career as a civil rights lawyer. So, we'll listen to John Nockleby.

JOHN T. NOCKLEBY: First, hello everyone. Sam Pillsbury and I have been close colleagues for more than three decades. For the past two of those decades, our offices were down the hall from each other and I would regularly pop into his office to talk about campus issues or world events. I'm sorry I can't be with you all in person right now to join in celebrating Sam and his amazing contributions to the school and the larger community. I assure you I would much rather be in your presence, but technology allows me to record a few thoughts in advance.

If Sam and I were on campus right now, I would be dropping by his office to talk about important events, maybe the topic would be the

war against Ukraine and the immorality of Putin and the war machine that Russia has inflicted on the great country of Ukraine. Or maybe we would talk about the absurdity of right-wing politics that have labeled critical race theory a leftist plot to contaminate our children's minds. I would be very interested in hearing Sam's perspective on that subject because I tend to be rather unforgiving of people who are manipulating vulnerable working-class folk, while Sam always brings perspectives to bear that involve building bridges to those who are different or think differently than either of us.

Or maybe Sam and I would have a conversation about the nomination of Ketanji Brown Jackson to the United States Supreme Court. I would say, "Sam, something amazing is happening, an incredibly talented person who has more credentials and a better record than most prior nominees in my lifetime has been nominated to the Supreme Court, and maybe, just maybe the right wing will ease up on efforts to undercut her nomination." At this point, I imagine that Sam would shake his head and say something like, "Those folks have to take a stand to please the Trumpers." While what I fear he was really thinking is: "Don't be naive, John."

What I'm getting at is that I truly value Sam as a colleague and as a friend. I'm interested in his thoughts because, unlike me, he's not going to condemn anyone for being a racist or a right-wing nutcase but retains a perspective that has helped me navigate my own views. This is not to say that Sam doesn't have strong views, but simply to acknowledge that he tries to see past moral error to the core humanity in every person. Sam's moral compass has helped guide the law school for more than three decades.

If our law school constantly strives to create knowledge and advance justice, it is because many leaders like Sam have made the pursuit of justice and equity a core value of our community. When I came to Loyola thirty-three years ago, I was looking for guidance on how to teach, and I was advised to sit in on a few of Sam's classes, which I did and learned a great deal about how to teach. Then, later in various committees and faculty meetings, when naughty issues involving academic standards or educational policies or hiring decisions arose, Sam's colleagues could count on his providing a thoughtful evaluation on how best to proceed.

A few years ago, Sam announced to his colleagues that he had become a deacon in his church and I told him I was so proud that he

had chosen to pursue religious training that would place him in leadership in his church. I was not surprised that he had chosen that course, for his sensibility and moral character make him a natural to help the rest of us think harder and more compassionately about the human condition.

In summing up, I want to thank Sam for his vision and moral leadership at Loyola, for his thoughtful scholarship and inspired teaching, and for being a caring and compassionate voice in our community. I know that Sam has many wonderful projects in mind for the next stage of his life, including at least two books, but I want to thank him for enriching our lives at Loyola for the past many decades. Thanks, Sam, and bon voyage on your next adventures.

KEVIN LAPP: Next we have a clip from Professor Gary Williams. He's a Professor of Law and Johnnie L. Cochran, Jr. Chair in Civil Rights here at Loyola Law School. Before he joined the law school back in the 1980s, Professor Williams was staff counsel for the Agricultural Labor Relations Board and then a staff attorney and assistant legal director for the ACLU Foundation of Southern California. Among the many hats that Gary has worn here, he teaches a highly sought-after civil rights litigation seminar here at the law school.

GARY C. WILLIAMS: Good afternoon everyone, and Sam, good afternoon indeed. It is such a pleasure that Loyola is doing this. It is so appropriate because Sam has been such a valued and essential member of the Loyola Law School community. I thought I would start with an excerpt from Loyola's mission statement that reads as follows: "The Law School should be distinguished by its concern for social justice." And Sam, your time at Loyola Law School has been one of holding Loyola to that part of its mission statement by both deed and word. I want to share with people two ways in which that is true. The first is something that you would do whenever there was an important, troubling, or tragic event that affected our community. You wrote these beautiful reflections that addressed the issues and addressed how we as a law school community should face those issues, and I think about September 11th, the invasion of Iraq, and the murder of Trayvon Martin as examples of when you wrote beautiful reflections that inspired, provided food for thought, and challenged us to do better. They were truly pieces that helped our community deal with trauma and

helped us to move forward, and it was so indicative because you shared them with the entire community.

The second thing I want to talk about is the King-Chavez celebration. Back in 1999, you, I, the late Larry Lawrence, and I believe Professor Chris May got together because we felt that, while the holiday, the celebration itself, obviously was important and valuable, it was equally important for the law school to address the legacy of Dr. King, the aspirations of Dr. King, and how those things related to our mission going forward. So, we created the Dr. King celebration, and over the years, we've brought in very distinguished speakers, including the Reverend James Lawson, friend and mentor to Dr. King, Dolores Huerta, the friend and co-founder of the United Farm Workers union, and other people who were similarly distinguished and inspiring.

But what I want to really tell people about this afternoon is your brainchild because, as we were doing that celebration, one year you said, "We should invite the law students to be our speakers," and then you came up with the creation that would make that true. You said, "We should invite students to submit essays talking about Dr. King and/or Cesar Chavez and their meaning to them, and then select three or four students to actually be the presenters." That was not all. Your brainchild was that we would then work with the students to edit and expand their essays, and to help them with their oral advocacy skills, and this was a labor-intensive thing. It meant meeting with the students basically weekly between the time of the essays being submitted and the celebration, and working with them on their written essays, as well as their presentation.

And I have to tell people you were the laboring core in all of that. I contributed but really and truly Sam, it was a labor of love that you did, and I want people to understand that those presentations over those two years were some of the most moving, the most emotionally touching of the MLK and Cesar Chavez celebrations because they came from the heart, and the students were wonderful, and it was all a tribute to you, your inspiration, and your hard work. Sam, my favorite speech of Dr. King is how I want to close. And he said:

[I]f you want to say that I was a drum major, say that I was a drum major for justice. Say that I was a drum major for peace. I was a drum major for righteousness. And all of the other shallow things will not matter. I won't have any money to leave behind. I won't have the fine and luxurious things of

life to leave behind. But I just want to leave a committed life behind.⁵⁸

Sam, you have done that for the Loyola community over the years that you've worked here, and thankfully you've not really left it behind yet because you are now doing it in another setting, and I know that you will continue. Sam, we thank you and I thank you, from the bottom of my heart, for being such a great drum major for justice.

KEVIN LAPP: Excellent. Now, I get to invite Samantha Buckingham. She is Visiting Professor here. She teaches Criminal Procedure, a seminar on Race, Criminal Justice, Juvenile Law and Trial Practice since 2018. She's been a part of the law school's unrivaled Juvenile Justice Clinic, serving as a Clinical Professor, the Co-Director, and then the Director of that amazing clinic. She's also Of Counsel to our Center for Juvenile Law and Policy. Before that she was at the amazing and world famous Public Defender Service in Washington D.C. She's done a tremendous amount of advocacy and training work across the country, testifying to the United States Senate, serving on boards and policy roundtables, and helping to shape the next generation of criminal juvenile defense attorneys and trial judges both here in California and across the country.

SAMANTHA BUCKINGHAM: Hello Sam, and my fellow colleagues. This is very personal because I wouldn't be here but for Sam Pillsbury. Sam Pillsbury was on the committee of people who hired me. My very existence here and anything that Kevin wants to give me credit for is due to Sam Pillsbury. So, thank you.

I'm going to talk about Sam as a visionary and I am going to talk about the ripple effects both here at Loyola Law School and beyond Loyola of his vision for starting a Juvenile Justice Clinic here at Loyola Law School. So in 2005, the United States Supreme Court decided a case called *Roper*,⁵⁹ and in that case, for the very first time, the Supreme Court had all of this information on adolescence and adolescent brain development, and we had that because all of a sudden we had MRIs that studied longitudinally the brain across a lifetime.⁶⁰ *Roper*

58. Martin Luther King, Jr., *The Drum Major Instinct* (Feb. 4, 1968), <https://web.archive.org/web/20190213145806/https://kinginstitute.stanford.edu/king-papers/documents/drum-major-instinct-sermon-delivered-ebenezer-baptist-church>.

59. *Roper v. Simmons*, 543 U.S. 551 (2005).

60. *See generally* Brief of the American Medical Association et al. as Amici Curiae in Support of Respondent, *Roper*, 543 U.S. 551 (No. 03-633), 2004 WL 1633549.

outlawed the death penalty as an available punishment for children.⁶¹ So, if you at that point in time in 2005 before *Roper* was decided, you could still get the death penalty for killing another person if you had done so under the age of eighteen. After *Roper* came a series of cases before the United States Supreme Court that have radically changed the way that we look at juvenile justice in the United States of America and the world and will continue to do so.⁶² *Roper* really ushered in this era where adolescent development became the way that we should be shaping our policy, the way the law treated young people, and why young people are different from adults.

So in 2005 that happens, and in 2007, after the idea for the clinic had already been presented to the faculty as a faculty initiative, the Carnegie Institute issued a study on clinical legal education and said, “You know, we really need to be taking a cue in legal education from the medical profession, and we really need to have more clinical programs in law school so that when law students graduate from law school they are practice ready.” It is pretty phenomenal to me that Sam was really ahead of the Carnegie Institute, right? He came to the faculty and said we need to have a clinic and it started with the very best of practices.

Cyn Yamashiro is very grateful for being the first person to be able to serve as the Executive Director of the Center for Juvenile Law and Policy, and he had the opportunity when he started this clinic to be able to learn about the best practices in clinics and the best practices in juvenile clinics in order to start the very first clinic at the Center for Juvenile Law and Policy, the Juvenile Justice Clinic, a trial level clinic representing kids in the juvenile justice system. So, this was visionary in the sense that Sam saw that juvenile justice was going to be changing radically. He was right. It’s been a tremendously interesting area of practice. It was a visionary moment because he saw what was happening and the need for clinical legal education in a law school, and it was visionary because he saw a need here in Los Angeles and how Loyola Law School uniquely fit into the community—how Loyola Law School was well poised with students who come here because they want to have practical education and go on in the world to be able to be practicing lawyers at the District Attorney’s Office, at the Public Defender’s Office, and taking the bench.

61. *Roper*, 543 U.S. at 578.

62. *See, e.g.*, *Graham v. Florida*, 560 U.S. 48 (2010).

So, Loyola had this moment in time where Sam had approached the faculty and said, “Let’s start a clinic.” And the way that the Juvenile Justice Clinic, the Center for Juvenile Law and Policy, the way they originally started was unique here for Los Angeles and Loyola in that it was a faculty initiative. That is amazing and it had to have been at the time when there was an interesting opportunity to educate the rest of the faculty on the importance of clinical legal education, and from there, the program grew tremendously.

We went from having the Juvenile Justice Clinic, doing trial level representation of kids, to having a Youth Justice Education Clinic, representing those same kids on their education needs, and then to having the Juvenile Innocence and Fair Sentencing Clinic. And what’s so amazing is that Sam saw that this was going to be a world where juvenile justice was going to be evolving based on what had happened in *Roper*, based on what we were learning about adolescent development, and that happened as the Center for Juvenile Law and Policy grew. When the ability to start the Juvenile Innocence and Fair Sentencing Clinic came, we also had the decisions now in *Graham* and in *Miller* limiting life without the possibility of parole as an available punishment for young people and requiring resentencing.⁶³ We saw the State of California passing all sorts of new legislation to try and address how we are going to revisit these extreme mandatory sentences of life without the possibility of parole for young people even in advance of resentencing hearings happening, even when it was uncertain whether those resentencing hearings were going to be retroactive.

Sam was a visionary in that he saw what was happening in juvenile justice and got us involved right away. He saw what important work it was going to be for our students to be able to have an opportunity to have clinical legal education and how that was going to help them in their careers. He saw that this was a unique opportunity for Loyola to serve the Los Angeles community and for the community to be able to look to Loyola to populate the criminal defense bar and beyond. So, there are ripple effects; there are ripple effects here at Loyola and there are ripple effects beyond Loyola. In terms of the ripple effects at Loyola, I just mentioned the growth of the Center for Juvenile Law and Policy to add additional clinic: they also added the Collateral

63. *Id.*; *Miller v. Alabama*, 567 U.S. 460 (2012).

Consequences of Conviction Justice Project, and I don't think it's an accident that we also saw other sorts of initiatives. When Laurie Levenson saw the idea for the Project for the Innocent and students came to her interested in that, when students went to Kathleen Kim and talked to her about starting the Immigration Clinic, we just saw a growth in our clinical programming, in part because we had this great opportunity for Sam to have educated the faculty through a faculty initiative to create the Juvenile Justice Clinic and the Center for Juvenile Law and Policy.

It is something that allows us to attract Loyola students who are going to come here now, who have come here in the past, and who will come here in the future. So many students come to Loyola—we talk to them on admit day, we talk to them when they start school, we talk to them when they're applying for clinics—and they come here because they're interested in practicing law in Los Angeles, and they think they're going to get the best education here. They think that, in part, because of the clinical programming that's available, and it's something that has allowed us to attract talent, talent like Sean Kennedy, to come to the law school and be a leader here because we have built that reputation within the community as a group of people who are knowledgeable. It's given a platform to the people who are here, like Christopher Hawthorne, to be able to advise George Gascón on what his policy should be when treating serious juvenile offenders and looking at their sentencing, and that is all a testament to the seed that Sam planted. He made it possible for all of this to happen by having the vision of starting a clinic and of starting the Center for Juvenile Law and Policy.

And those effects go beyond Loyola and beyond Los Angeles. We have students who have graduated and gone on to work in criminal justice in Louisiana; we have a student who just became a juvenile supervisor in Maryland; we have a student who's been a public defender in Minnesota, and a student who's been a public defender in Florida. We have students all over the country, and we have students from San Diego to San Francisco—we have students in Kern Valley and in Fresno. We have former students who are public defenders holding strong in all of the different offices around Los Angeles, from San Bernardino to Ventura and Orange County—in the federal system and in the state system. And there are a number of people who have worked at the Center for Juvenile Law and Policy over time who have

gone on to do amazing work. We've had folks who've worked with the Children's Defense Fund, folks who've gone on to work at the Federal Public Defender. Jojo Liu, who some of you may know and remember, is working with the indigent defense services delivery system in the State of Utah.

For Cyn Yamashiro, this job created an ability to be able to look at the delivery system of juvenile indigent defense here in Los Angeles, which Sam saw was a big problem. So, Cyn studied the panel of appointed attorneys, and basically the way it works is this: you get arrested, you get a public defender. If you get arrested and you're doing something that is with someone else, then you can't both have the public defender, and it used to just go to the panel. Those panel attorneys, anybody want to take a guess how much money they used to make per case? It was about \$350.

So, it didn't matter whether the kid was being tried for murder or for shoplifting, it didn't matter if this is a kid you're seeking to try in adult court. That incentive structure for attorneys when you make that little money is to have a high volume of cases. I remember coming here and seeing things like attorneys turn to their client in court and tell them what a plea offer was. Not doing it outside of court. Doing it just right inside the court, just, let's get this done real quick. After Cyn had studied that, when he left here, he became the head of the panel and reconstituted the panel in juvenile court. We now have the presence of three different agencies in the juvenile court, the Public Defender's Office, the Alternate Public Defender's Office, and the panel. The panel now gets paid on an hourly basis for their work. They get paid much better and we've got a ton of alumni who are on the panel. We also have the Center for Juvenile Law and Policy on the panel—the only law school clinic that is on the panel of appointed attorneys. Cyn's now doing the same thing in that he's reforming the adult system, so he's managing both the juvenile system and the adult system panel of conflict attorneys. Similarly, Michael Schultz is a judge and Maureen Pacheco was the juvenile defender of the year a couple of years ago. So, there are so many more, but those are just some of the ripple effects, and Sam, I am forever grateful that you started this program, that you saw this opportunity and allowed me to be a part of it. Thank you.

KEVIN LAPP: Thank you, Samantha. Well, now a man who at this point obviously needs no introduction. I'm going to turn it over to Sam Pillsbury⁶⁴ to take the lectern and teach us some more things.

SAMUEL H. PILLSBURY: Thank you. If anyone wants to stretch a little bit, it'll just be a couple hours. No, it won't, but I do have a couple things to say. I really want to thank everybody who has spoken today in person and online, everyone who has attended in person and online. It's really been an extraordinary day. I suppose at this point one might reminisce a little about thirty-five years of teaching and scholarship here at Loyola, and I will a little bit. Beginnings you always remember the clearest, like getting chased down in the parking garage by the head of security who told me, "You can't park there, that's for faculty." Well, I guess with my old Toyota Corolla and my youthful looks I didn't much look the part. I turned thirty-two in my first semester here at Loyola, had six units of new prep in two classes, some 150 students—I wouldn't want to do that again. And then there were the early days of writing here when I was part of the new young scholars group doing fancy things like having a faculty workshop. But the truth is, I'm more interested today in speaking about the present than I am about the past, and I'll explain that choice this way:

This Fall, I received a letter from a guy whom I'll call Mark, whom I met in jail in 2018. He was writing me from another lockup facility after being found incompetent to stand trial, and in his letter he described the woes of his situation: the acrylic blanket that they gave him that made him itch like crazy, the ice-cold shower, the once a day hot meals that were the same two days in a row; and then he joked in the letter, "How would you know this letter is really from me unless I complained?" And I laughed out loud because it's true, Mark is a great complainer.

As for me, I like to talk about the justice part of criminal justice. My students can tell you that, but since I stopped teaching I lost my best captive audience, so I couldn't let the chance go by. In my jail work, I see the legal system from the other side. I see some of the ways that our profession consistently gets people and situations wrong. However competent we may be as lawyers, too few of us are competent to do justice. There shouldn't be a difference, but there is. I serve

64. Professor Pillsbury contributed an Introduction to the festschrift. Samuel H. Pillsbury, *Introduction: Varieties of Recognition*, 56 LOY. L.A. L. REV. 71 (2023).

as the Episcopal chaplain in the Twin Towers Correctional Facility, which is a jail a ten-to-fifteen minute drive from here. It's where male inmates with mental illness or disabilities are housed in the county system. Of these I am concerned today to speak to you about men found incompetent to stand trial. I call them the disappeared.

I'm sure you've had this experience: you're looking for something that you just had, something that you really need, and you've looked all over again and again but it's nowhere to be found, and then, somehow it appears, right where you thought it was, and you wonder, "How could I have been so blind?" But you don't wonder for very long because now you have your watch, your glasses, your phone, those papers, and you're ready to go on with your life. Usually what happened, of course, is that something went wrong with the way that you were looking—a process so that your eyes skipped over the item that was right in front of you. The same thing can happen with people—they disappear from view.

For the guys I see in jail, the process goes like this: a man is arrested who is suffering from a mental illness, and he does not connect very well with his appointed lawyer. In the brief time that they have for a colloquy in the lockup, in the courtroom, or by video, there's little meaningful communication, and so the lawyer indicates to the judge that there may be an issue with his competence. Seems like this defendant cannot assist counsel in his current state. Due process dictates that we cannot have any legal proceedings unless the accused can understand what's going on and assist his counsel. So the judge will usually order an expert assessment, and a psychiatrist or a psychologist will look at the file, interview the defendant, and write a report. If the expert opines that the defendant is incompetent, then a judge will usually agree, and if it's a felony case, the matter will be taken off calendar and the defendant will stay in jail and sent to a state hospital for restoration of competence. It all seems to make sense—a rational process requires rational actors.

But let's look at this for a moment through the eyes of the accused. Being arrested and being locked up in jail is stressful, even more so for a person of fragile mental health, and often in these cases, the crime for which he has been arrested comes out of an episode of psychosis, mania, or depression combined with substance abuse. So he's in pretty bad shape. Then a stranger, a public defender or other appointed attorney appears, usually one without a lot of training in

mental illness asking sharp questions and needing immediate answers. It's not a great way to build an important relationship, and usually there's no further attorney-client interaction until the next court date. Then, a mental health expert shows up—another stranger, with a bunch of different questions—who also needs to get answers right now. So, maybe this exchange doesn't go all that well either. Then the man is told that he is incompetent to stand trial and he disappears. The situation of the disappeared reminds me of those “no reply” emails that we're always getting, you know, the ones that convey really important information to which you may have some questions or objections, but good luck with that unless you can find the phone number to call and wait on hold and then wrangle with customer support. But that's not an option for the disappeared. They just sit in their cells and wait day after day. Now if you think this sounds bad, it's actually worse.

First, there's the sheer quantity of time that the disappeared spend in confinement. For a legal system always pressed for time, it's extraordinary how profligate the legal system is with the time of others. The defendant found incompetent to stand trial generally spends far more time in lockup than others charged with the same offense. In L.A., it's common for those declared incompetent to wait for four, or six, or eight months in the Towers before being sent to a state hospital. There have been some successful legal challenges to these delays but there is no broad-based relief that I have seen. And while all of us know what it is to wait, and few of us like to wait, very few of us, I hope none of us, will ever experience the kind of waiting that goes on in the Twin Towers.

Most of the disappeared are locked in a single cell the size of a parking space, where they eat, sleep, and take care of bodily functions. If they're lucky they'll get a few hours in the day room with other inmates nearby, each shackled to a separate table, maybe twice a week. But depending on their classification, on their attitude, on the deputies and staffing, they may also go days and days and even weeks without getting out of their cells. Recreation usually means coming out to a large cage which is open to the outside air. Oh, but I did forget this one—there is television sometimes, if it gets turned on. One large screen over on the wall of the pod blaring at top volume so it can be heard through the cell doors. So, you can watch Dr. Phil or whatever movie AMC is putting on that day, which can help pass the time. But

the nights, oh, the nights have to be long. Once you finally get to the state hospital there's another time of four, or six, or eight months, or even longer for treatment and then it's back to the Towers and to the courtroom.

Thing is, if the trial court on return does not act with dispatch, the defendant may become incompetent again, and this is not unexpected because the Towers is a terrible place for your mental health, and if the inmate decompensates, it's rinse and repeat. Incompetence proceeding, incompetent to stand trial, wait for state hospital, go to the state hospital, get restored, maybe return again. Mark, the man whose complaining letter I started off with, was arrested in 2018; he's now on his second round of incompetence proceedings. First time they sent him to the state hospital as a patient, then he returned to court, became incompetent again; they sent him out to a new facility in San Bernardino County, apparently that didn't work so well, and he's now been sent to the Metropolitan State Hospital in Norwalk.

Now, I've got a lot of questions about the incompetence process as I have seen it work through the inmates that I visit with in jail. First off, on the merits of these decisions, based on the guys I talk to, I wonder sometimes about whether the declarations of incompetence don't sometimes have more to do with the defendant being a difficult client rather than being entirely irrational. I'm certainly skeptical of the restoration-of-competence programs, which seem to involve a whole lot of psychotropic meds and some very crude legal education involving fake courtrooms and repeated screenings of *My Cousin Vinny*. What more do you need to know about the legal process than that?

Most of all, I wonder about race. I wonder what would happen if the disappeared were mostly white. Though severe mental illness crosses all race and class lines, the disappeared I see are primarily Black and brown, but especially Black. I wonder why? You know, and I know why. Who is most likely to be seen as scary, and difficult, and crazy? Who is most likely to be suspicious, with good reason, of impatient professionals and their questions? And so, who is most likely to disappear from view?

What should we do? There's a legal literature full of calls for the reform of incompetence rules and processes aimed at improving the rationality of decision making, and these are good. But they don't address what we're missing about the disappeared. Too often highly educated people conflate humanity and rationality. But we know they're

different. A three-year-old who dashes out into a crowded parking lot to escape parental control is acting irrationally but she's still a precious human being. We see her value, we see her spirit, regardless. It's harder, unfortunately, to see the spirit of adults with rationality issues. In our profession, we respect the body and we value the mind, but not so much the human spirit. But when someone is suffering from mental illness, if you don't look for that person's spirit, you may miss him or her entirely. We need new ears and new eyes for this task.

*Blackbird singing in the dead of night
Take these broken wings and learn to fly
All your life
You were only waiting for this moment to arise*⁶⁵

Why do I sing now, with sincere apologies to Paul McCartney? Because this song is about the human spirit. Often, we go to music to engage this part of ourselves. We go to art, we go to novels, we go to poetry, we go to the movies. In law school, in law practice, and in legal scholarship, not so much. But we cannot neglect the human spirit even here; we especially cannot neglect it here if we want to do justice.

Which brings me to the takeaway, what *will* be on the final exam. What it takes to be competent to do justice—three qualities, I think: patience, curiosity, and hope. Patience means being willing to sit with someone who isn't making much sense. Give them time to calm down, time to trust, and if it doesn't work the first time, to try it a second time, and if that doesn't work, to try it a third. Some relationships are great right from the beginning, love at first sight, but lots of them take time, and therefore patience. Curiosity: curiosity means being interested in the spirit of another. Who is this person? Where has he come from? What's her story? What does he fear? What does she want? Finally, we need hope for the other, hope for justice.

These qualities, patience, curiosity, and hope, are *relational* qualities. They're about how we interact with each other. They're not about what we know. I'm reminded here of that old line about teaching: first the kids have to know you care, and then they can learn. Same holds here. Relationship first and then assessment. And yes, you can build relationships with people who have rationality problems. Let me give

65. THE BEATLES, *Blackbird*, on THE BEATLES (EMI 1968).

you a real-life example. In the Twin Towers, in the C- through F-Pods on 141, there are inmates who are trained as mental health assistants and they live and work 24/7 with other inmates in the unit who are some of the most seriously mentally ill and mentally disabled men in the Towers. As soon as you step off the elevator to 141, you notice the difference. There are painted murals on the wall. It's quiet. There's none of the inmates throwing themselves at the cell doors with a huge bang. There's no screaming and yelling, and there are even a couple of living plants there. It feels peaceful, and you know why? It's not just the physical setting; it's because the mental health clinicians and the mental health assistants are patient, are curious, and they express hope for the men there whose lives have been full of trouble to date—and mostly the custody staff is on board too.

Last year an inmate in that unit died suddenly and I was asked by one of the clinicians to see if I could come in and do something. So I put together a memorial service, and we gathered out in the rec area, inmates, mental health assistants, clinicians, and deputies, and we did a memorial for this man, Samuel Doe, to grieve a collective loss. It was an extraordinary moment and everyone appreciated it. Many people in the jail and many people outside the jail think this program on 141 is great, yet it remains the exception, much like the work done by our wonderful social justice clinics here—terrific and exceptional. *But why the exception and not the rule?*

Well, there's enormous resistance to broad-based change, and it's not just political, and it's not just about resources. It's culture. We don't want to change the way we think or feel, and I think this is particularly true of our profession. The qualities of patience, and curiosity, and hope, they're not tested on the bar exam, obviously. Nor are they particularly looked for in interviews with prosecution offices or defense offices. In fact, I suspect that many interviewers will view them with some degree of skepticism if they hear that this is something that the interviewer is bringing to the table, because "the practice of law is tough, and adversarial, and it's about rights and rules, about getting the job done. It's not about relationships, I mean, come on grow up, this is the real world." Exactly, this *is* the real world.

I have found something similar in academia; my writing about justice, present guests notwithstanding, has not generated so much objection as, at least in my experience, a lot of silence. I think I know why: writing about the relationality of justice, about the soul harms of

sexual violence, or way back in the day, the evil of murder—it's a different language. Few people have gotten what I've been talking about or want to because it's not part of the prevailing discourse about theory, power, or doctrine. And in my jail work I have learned that most people, regardless of political persuasion, do not really want to hear about those locked up, including the disappeared. The truth is, that while people say they want to support equal treatment regardless of race, or money, or education, or mental illness, that support disappears pretty fast if it requires any personal sacrifice, even if only a change of attitude or thinking. It's enough to make one lose hope for justice, especially if you're out there on the front lines.

So let me close with some personal thoughts about keeping going, which is obviously another prerequisite to doing justice. In the summer of 2019, I was in a car accident and I suffered a concussion, which meant brain fog, headaches, dizziness, and fatigue, the worst of which went away, but I was left with something called post-concussion syndrome. I could still read, drive, and teach, but not easily. Legal scholarship was pretty much out of the question. My head issues were hard to talk about with anybody outside of my family, but I did happen to mention the accident when I saw Mark in jail soon afterwards, and every time I saw him after that, month after month, one of the first things he would ask me is, "How are you doing, how are you feeling, still having the headaches, are you still having the dizziness?" He always wanted to know. Simple sincere concern, and it became a kind of bond between us because I knew he had lived with head issues all his life. This kind of connection is key to longevity in justice work. We all have losses, we all have broken places, mostly we see them as things to work through and to get beyond, but if we can feel the weight of our own losses and the sadness that comes as a result, then we can connect with the sadness of others. It's a very un-American thing to say, but I do believe we need to share sadness with people different from ourselves in order to do justice for all.

The lyrics of that song, about a bird with a broken wing, they make me think about all the broken people of this city, all the folks in lockup, and all the people living out in tents around this neighborhood. But the song also speaks to our own brokenness, our own sadness, that if shared can change everything:

*Blackbird singing in the dead of night
Take these broken wings and learn to fly
All your life
You were only waiting for this moment to arise
You were only waiting for this moment to arise⁶⁶*

Patience, curiosity, and above all, hope.

KEVIN LAPP: Thank you so much Sam, thank you for those great remarks. You know, it's a shame someone has to retire before we tell them how much we like them. I do want to take a couple moments to add to many of the comments that have been said today and in particular to talk about Sam's role as a mentor to junior faculty, because I haven't been around for thirty-five years at Loyola Law School, but I was lucky enough to be put on the fourth floor a few doors down from Sam's office when I first came to Loyola Law School—and I'm not speaking only for myself, other junior faculty members I've spoken to all universally agree that you've been one of the most important mentors to all of us here.

You're generous with your time, you're sincere and thoughtful about any topic, whether it was scholarship, whether it was teaching, which standing desk to get for people with bad backs, and one of the notable things you would do, Gary and Michael mentioned, were to send out those emails after important world events and tragic events, in which you shared the thoughts that you had shared with your students. And beyond the wisdom of those thoughts that you shared, they were a message to us as faculty members that we're not just here to teach statutes and case law, but it reminded us that you know we're here to build up and create professional, ethical, engaged lawyers and practitioners in the community. And so I really appreciated you sharing those comments.

Sam was also the kind of guy who in Spring, when many of us are sort of burnt out from teaching, would send out an email to all the criminal law faculty and say, "Hey guys, we need to have a potluck and talk about how we're teaching criminal justice." In one such message, I went back and looked at it, Sam challenged us to teach knowledge beyond doctrine and then he went on to list, for several pages, the various topics that we all needed to be covering in our

66. *Id.*

criminal justice classes that we weren't covering. Trauma, race, class, mental health, ethics, social science, leadership, and he was encouraging us to incorporate all of those topics into our Criminal classes. I'm sure the response he got from us was overwhelming. We weren't measuring up to Sam's vision for a first-class legal education, but particularly for young faculty members, it was tremendously important to have someone like Sam around who was putting that front and center about teaching, to keep us out of our comfort zones or this sort of easy coverage model of what should I teach in my class, but to think hard about the things that are important and that our students need to hear and grapple with on a daily basis.

I finally just want to recognize his general support for navigating the world of legal academia. You know pre-tenure I made the mistake of sending out one of those responses to a faculty-wide email on a hot political topic of the day and I shared my opinion about a value that's been central to my work, both as a lawyer representing kids in New York City and as a scholar, that people shouldn't be judged permanently on their foolish, or their criminal, or even their despicable behavior as a young person. And the reaction of some of my colleagues at the time to me sharing this principle wasn't enthusiastic and I think some of it was uncharitable, in fact. But Sam's response, which wasn't faculty wide like all of the negative ones were (it was just to me), and in about this many words he said, "Brush it off, Kevin. Your comment came from a good place." And that was really important. Not to say I was right or wrong, or that my colleagues were right or wrong, but just to say, I'm encouraging you and I recognize where you're coming from. So I appreciated that, Sam.

So it's time to have a toast in Sam's honor to celebrate this amazing colleague that we've all been lucky enough to have either in person down the hall or as someone whose work has inspired us and challenged us to think. So cheers, Sam, thank you so much.

