

To: Spring 2020 Restorative Justice Group #15

Title: *What's in a Lawyer's Heart*

When Rev. Hancock asked me to write for Restorative Justice, he gave me the simple instruction “please say what’s in your heart.” Well that seemed easy enough, at least at first. But the more I thought about it, the harder the assignment became. Because what’s in my heart is changing.

I became a lawyer on September 15, 1978. Since that time, I have practiced and taught criminal law and criminal defense, first as a public defender and then as a clinical professor at the University of Wisconsin Law School. I have given over 40 years of my life to standing with my fellow men and women as their lawyer, their confidant, and their friend. I’m proud of that career and wouldn’t trade the privilege of being a defense lawyer for anything. But that career has also planted anger and despair in my heart, and never more so than over the past few weeks.

The despair comes from fear that the legal system, especially the criminal justice system – my professional home for decades – may be irreparably broken. We certainly all know what’s going on with the police. The lethal police knee on George Floyd’s neck in Minneapolis is seared into our consciousness forever. So is the picture of 75-year-old protestor Martin Gugino bleeding on the sidewalk after being knocked down by the police in Buffalo. But make no mistake, the police didn’t get this way on their own. Yes, the world is blaming the police right now, but the entire criminal justice system is complicit. To quote one of my favorite police philosophers, “*we get the police we want.*” Judges, lawyers, the legal community -- we’re all in this.

In the legal profession, we love to talk about “the rule of law,” as if it is holy wisdom – a combination of the Bible, the Koran, and the Talmud. Except that the rule of law is often anything but holy. The rule of law has told police and prosecutors that even if they intentionally violate an individual’s rights, there probably won’t be consequences. The rule of law ignores the realities of people’s lives and has given all of us permission to be callous and even cruel. Walk into any courtroom and you’ll see dehumanization at a frightening level. Human beings with names and families become case numbers, data points, and risk levels. Or just Defendants. Courts hand out sentences like cheap Halloween candy. All in the name of the rule of law.

If the criminal justice system were in your restorative justice program, all of you men, along with Rev. Hancock and the volunteers, would ask - no you would demand - that the criminal justice system confront the harm that has been caused by its institutional failures. But the criminal justice system is very bad at owning its mistakes and even worse at apologizing. In fact, if the criminal justice system were in your program, it would probably be kicked out, and told to come back when it was ready to show some maturity and wisdom.

And yet, for all the anger and despair in my heart, there's a new feeling of hope and optimism springing up. Change is in the air and in my heart. Americans are stepping up and saying "enough." New polls repeatedly show that a majority of our fellow citizens want a new order. They want a change in policing practices. They want a justice system that is just. They want equality in opportunity.

Significantly, there are signs that even some justice systems are catching on. After Mr. Floyd's death, the Massachusetts Supreme Judicial Court wrote a letter to all lawyers and judges telling them that the entire legal profession in Massachusetts must accept responsibility for creating inequities and injustices and must accept responsibility for fixing them. *"We must do more than express our feelings of sadness and anger."*

The Supreme Court of the State of Washington wrote a letter that went even further, saying it was time to change those laws and practices that promote injustice. *"Too often in the legal profession, we feel bound by tradition and the way things have 'always' been. We must remember that even the most venerable precedent must be struck down when it is incorrect and harmful."*

Change will not come overnight, as much as all of us might want it. But we can't give up. We can't say "what's the use?" because if we do, we'll still be in the same place in ten, twenty, fifty years. Instead I'd like to offer words from the Joint Statement of Federal Defenders on the killing of George Floyd (written by Jon Sands of Arizona). Those words remind us that our hard will be worth it. *"We are better than this; we can be just and empathetic. We can do what is right and what is moral...And in this crucible of anger, we take a breath, and begin to repair the moral arc of the universe and bend it back towards justice."*

~ Professor LaVigne is a recently retired Clinical Professor of Law from the University of Wisconsin Law School. She has kept her law license because it's part of her identity.