Good morning. It's great to be back up here. This is my third platform here at WES. My first was in 1994 on the subject of Competition and I took the position that competition was generally not a good thing, and most of the time was destructive to the values of Ethical Culture. My second platform was in 1996 and was called Ethics & Politics where I spoke about a movement called the Politics of Meaning and how similar our own Ethical Culture was to it. So, as you can see, every two or three years I get to thinking, and then I get to tell you about my thinking. Today, since I am talking about the legal profession, it really hits close to home since I have been making my living practicing law for over 25 years, and some of the experiences I've had, and I will be sharing some of those, give me a certain perspective that has led me to where I am today. In particular, my talk today is about the Legal Renewal Task Force of the Foundation for Ethics and Meaning which is the nonprofit group that grew out of the politics of meaning.

I first became exposed to the ideas of the politics of meaning at a National Summit held 2 years ago here in Washington, which was organized by Michael Lerner, editor of Tikkun magazine, and Peter Gabel, president of New College of California, a law professor and a former leader in the Critical Legal Studies movement. Essentially, the goal of the politics of meaning is to change the bottom line in our society from selfishness to sharing, from materialism to idealism, and from cynicism to hope.

During this Summit, a group of lawyers met for the first time as the Legal Renewal Task Force. We began to envision what the practice of law would be like from a politics of meaning perspective - if the focus was on closeness and caring instead of money and power -- talk about a paradigm shift! Legal Renewal seemed like a natural place for me to be, since I see myself as a person who was once a greedy and cynical lawyer. And I figured if I can see the light, so can others. The Task Force has been meeting for the last 3 years, mostly by monthly telephone conference calls. We have been working on re-inventing the legal system, on supporting each other in our efforts to reform our individual practices, on organizing other lawyers to join our efforts, and have taken on various projects.

This morning I’d like to give you our spin on what’s wrong with our legal system while I talk about what it’s like to be a lawyer in such a system. Then, I'll give you some
of our ideas for legal reform, and a couple of examples where reform is actually taking place.

Simply stated: we believe that our present legal system is heavily tilted towards validating individualism, selfishness and materialism, and shows little concern for fostering a sense of community or a spirit of caring for the well-being of others or for the natural environment. [Surprise, surprise.]

Lawyering used to be a vaunted, even exalted profession. We've had access to positions of power, our opinions are valued, we are paid well, we have status. Yet, we are increasingly regarded as dishonest, greedy, aggressive, manipulating and inhuman. Why is this?

Our job as lawyers is to use the law to further the interests of our clients. Because we live in a class society motivated by financial rather than human factors, law serves primarily to protect property interests over human interests. Many lawyers, like me, work directly to strengthen the economic interests of their clients; others advocate for human interests. All lawyers work within a legal system designed to uphold the status quo of a minority but very powerful owning class, to protect their wealth and the institutions that maintain it.

This does not mean that lawyers are not good people. Every lawyer is good. The role we play in our class society is an oppressive one, but only because we have been coerced, deceived and oppressed ourselves. The reality is that many lawyers, even within the oppressive role, are trying to work for justice and for human beings.

Almost all lawyers chose to become lawyers for human reasons. Many of us had dreams about creating a just society, about defending people in a corrupt system. Deciding to become a lawyer seemed to offer us the opportunity to do something about the situation we saw in the world. Few of us had much understanding of the legal system or of the class system when we started law school. We knew something was wrong, but only later did we realize that justice in a class society is a travesty, and a lot of us, despite our good intentions, our inherent goodness, our zest for life and for justice, become participants in perpetuating the status quo and the facade of justice.

For those of you unfamiliar with how this conditioning gets laid in, let me tell you: it begins in law school. Law schools function to transform us from people motivated by a desire for justice into functionaries serving our clients' interests by clever rule manipulations.

The first day of class is a shock. You must have read your first assignment before going to your first class, and the semester is in full swing the moment the bell rings. Most classes require reading 30-50 pages of cases and law review articles each night. You take 4 or 5 classes each semester. The class itself consists of the law professor
standing at a podium, talking about the cases, and questioning students. Any student can be called upon at any time, and is expected to be ready to discuss any part of the assignment. The students’ answers are torn apart by the professor, and another student is called upon and dared to give her answer. The professors act as though there is a correct answer; as though if you are smart enough you will figure it out. No one ever does, and students are never correct in their answers since there is no "correct" answer. Thus begins three years of humiliation and being pitted against fellow students.

Validation doesn't come very often, and when it does, it's for conformity, for exhibiting the "right" way of thinking, for writing filled with footnotes to historical authority, which discourages fresh thinking, for the ability to represent both sides of a case, and for winning, right or wrong.

We learn that what we are valued for is our ability to manipulate technical rules; how well we can argue for either side is evidence of this. Very little of our law school training is directed toward instilling any sense of obligation to create a more humane, more just, or more caring society. We learn about the ethical rules of the bar that reinforce the view of a lawyer as a hired gun with no ethical consciousness. As an example, we learn the duty of zealous representation virtually requires a lawyer not to allow her own ethical concerns to interfere with the zealous legal pursuit of the client’s goal, irrespective of the impact of such goal on others, on the community, or on the environment.

In law school we are conditioned for the real world by being mistreated, invalidated, and lied to.

Is it any wonder that we are mistreated, invalidated and lied to by other lawyers when we get out of law school? I got a good dose of this in my very first job as a lawyer in 1973. I took a position in a small firm in which some of the partners were my fraternity brothers from college. Since I grew up in this country and breathed the capitalistic air all around us, I was very much into making money, and part of the attraction of this firm was that they paid associates 40% of their billings. The harder I worked, the more money I would make. What could be more fair? The trouble is that the partners' greed got in the way. After I had been there for about 6 months, the partners announced a change from an "open billing" system where each associate was provided with an actual copy of the bill that was sent to the client, to a "closed billing" system where the actual bill would remain in the accounting department, and we associates would receive instead a "bill sheet" where the total amount of the attorney's fees would be inserted by hand, and our percentage would be based on that number. The reason they gave for going to this "closed billing" system was that they didn't want the actual bills floating around the office since different clients were charged different fees, and the clients were in the office frequently. At the time of this changeover, the associates specifically asked if the amount on the bill sheet would be the same as the
amount actually billed to the client, and we were answered with an unqualified yes. Well, several months later, I and several other associates discovered to our shock and disappointment that in fact the firm was billing the clients more than they were crediting us on our bill sheets; we had hard evidence of this. We all felt horrible since we had been lied to. Three of us decided we could not stay at such a firm. When the partners found out that we were looking for jobs, they fired all of us on a Friday afternoon with 2 hours notice to clear out our desks. It was humiliating and scary, especially to an overachieving good Jewish boy like me. I had a one year old child, my wife was pregnant with our second child, and we had just moved into a new house with a big mortgage. After this incident, I did not trust what partners in other firms told me, and although I interviewed for other jobs, and was made several offers, I wound up hanging out my shingle since I figured the only one I could trust was myself.

Before the first day of classes, we're feeling pretty good about ourselves. The competition to get in to law school was rough, and we feel smart to have been picked. We're excited about the intellectual challenge, about learning law. We're full of hopes and dreams for what we can do when we finish school.

It soon becomes obvious that our own identities are unimportant in the legal training experience. The dreams and hopes we came to law school with, our values and ethics about right and wrong, are devalued. Past accomplishments, knowledge and skills are characterized as meaningless. The ways we are unique or different are handicaps for us to overcome. Our ways of thinking and problem-solving are to be made over in a legal framework. We are treated as blank slates to be created in a certain mold, and are valued and accepted only when the training "takes" and we become lawyers.

Substantively, it becomes apparent that the basic rules of law assume that people simply wish to pursue their own self-interest in the competitive marketplace. We find that the Bill of Rights of our own Constitution, being heavily and understandably tilted towards the rights of the individual, unfortunately does not express the human longing for community, for social connection, for mutual caring and recognition.

There are huge time pressures in law school, particularly in the first year when very little of what we must learn makes any sense to us at all, and we read cases over and over attempting to derive rational thought from legal reasoning. We have to radically change our lifestyles to accommodate the hours we must now spend in the law library. We abandon old friends for lack of time, destroy love relationships from inattention, and ignore rational needs.
We quickly learn that the system is not based on justice. We find that the law is not about doing the right thing for people in a difficult situation, but rather about upholding the status quo through the application of historical precedents and ancient laws. We learn that the system protects property values over people, and is fueled by economic and not human motivations, and we are made to feel naïve and foolish to have ever thought otherwise.

There's a lot of pressure to compete with other students - to give the best answer in class, to get the highest grades, to make law review, to win moot court, to get summer jobs. We learn early in our first year that there are too many lawyers, and not enough jobs for all of us, and that we must do well in law school and start looking for a job now if we want to be employed when we graduate. Slowly we stop trusting each other, and begin to despise what we are becoming.

Finally, we graduate, but there's no time to celebrate because the bar exam is only two months away. Bar review classes begin about two days after the end of final exams, and last all day and all evening for 6 to 8 weeks. The bar exam itself is 2-3 days and covers all the standard areas of the law. The exam is given only twice a year, and results are not available for 4 or 5 months. One-fourth to one-half of us will fail the bar exam, and will have to take it again.

Thus exhausted and discouraged, we take our first jobs. Half of law school grads cannot get jobs practicing law at this point. We usually have large debts, exceeding $100,000 for tuition, room and board for 3 years of law school. We feel ambivalent about whether we even want to be lawyers, and feel more or less hopeless about using law for social change. We more or less give in to the pressures to find financial security and status through our jobs.

New lawyers are often expected to work 60, 70 or 80 hours a week, and are assigned the least desirable cases or most mundane jobs. Our clients are usually in times of crisis when they come to us, and our families and personal lives are expected to come second to our work - large law firms are intolerant of lawyers who want regular work hours.

We take the responsibility of representing another person seriously, and are committed to doing a good job, but in these first few years we often lack the skills to do a good job under the time pressures the system places upon us. We work extra hard in our "spare time" to learn what we feel we should have learned in law school. We are conditioned from law school to hide our doubts and insecurities about our competency. Many of us practice law for years before we learn that others feel incompetent too, and that it takes years of practice to become a skilled lawyer.
Over the years, we learn that our adversary system of justice fosters hostility, and normally excludes any community interest in the resolution of disputes. It assumes that everyone should treat each other with skepticism and mistrust, and that justice is best served by using rules of evidence that limit proofs to empirically verifiable facts. As a result, the underlying social meaning of disputes is considered too subjective, and *healing* underlying social causes of an injury is not considered, while empathy, compassion and forgiveness are considered *irrelevant* to the legal process. Quite the contrary, in the headlong competitive rush to "win at all costs", the adversary process promotes a war-like mentality, with wounds, battle scars, and lawyers dying on the battlefield.

Lawyers play a visible role as they fight the battles than maintain the class system. Since we are visible, we are scapegoated with people's anger and resentment at the class system and at the facade of justice, both of which it is our role to maintain. We hear messages about lawyers - that they are dishonest, in it only for the money, not to be trusted, inhuman - statements that are true about the role of lawyers in this society but not about the people who are lawyers. We internalize the messages as true about us.

Lawyers are oppressed by this conditioning to distrust everyone, and to be in a competitive adversarial mode all the time. We work long hours, and constantly struggle with fatigue. Our worth, like that of other workers, hinges on the value of what we produce - have we billed enough hours this month, is our caseload high enough, what is our win-loss record? Our personal lives are expected to come secondary to our work, and vacations are a luxury to be taken only if you can work them into your caseload.

All of this leads to a high percentage of lawyers who become alienated from law and from each other. Since the legal system is a reflection of the larger culture, this high percentage of alienated lawyers tells us a lot about what kind of shape our society is in. I venture that every lawyer has a story to tell about how he or she has been hurt working as a lawyer, how she or he has been alienated.

I graduated from George Washington University's Law School over 25 years ago. My specialty is intellectual property, and I got started in that when it wasn't quite as hot as it is today.

Three events in my career stand out as examples of alienation. The first took place during my first job as a lawyer, right out of law school in 1973.

A second incident occurred a few years later, in the late 70s-early 80s. I had a neighbor who was a very smart tax lawyer. He was a partner with a prestigious DC law firm, a tax boutique, and he had written a treatise, about some arcane area of tax law, I think it was about inventory accounting. This lawyer, who knew I was on my own and how hard I was working to build up a practice, would brag to me about how much
money his partners made while they advised their Fortune 100 clients. Once time, he was telling me how he was able to roll up the hours on his clients. He said that sometimes he would be able to bill 70-80 hours a week, while working only 40. Naturally I was very curious, since at the time I had just the opposite situation: I was working 60-70 hours a week and was lucky to bill 40. I of course asked him how he was able to do that. Simple. He gave me this example: if a client called and asked him a question about inventory accounting, he would usually know the answer right off the top of his head; in fact, he sometimes knew the page number of his book where this was discussed. But rather than tell the client the answer, he would say that he would have to look into it and call him back. So he would call back the next day, and give the client the same answer he could have given him the day before when he first called. And then, he said with a smile, he would charge the client from 4 to 8 hours for legal research. He had a broad grin on his face, like wasn't he clever, and I think he expected me to compliment him for knowing how to cheat his clients so cleverly. I was mortified and said nothing, except our relationship kind of cooled after that. And since he was my neighbor and our kids played together, I didn't even think of reporting him to the bar association. The way he told it, everyone in his firm did it; it was expected. I was amazed, shocked, and alienated.

The third incident involved the intense competition that is fostered in the legal profession. In 1979, I started a firm with another lawyer, and we built it up to 75 people by 1990. During this time, I was managing partner, regularly worked 60-70 hours a week, and had a practice group of 15 people working directly under me. Some of my partners believed that when clients said "jump", we should say "how high"; our firm culture depended on everyone putting in a lot of time. Our practice was primarily getting patents for clients; an administrative practice dealing with the U.S. Patent Office. We only got involved in litigation if one of our clients happened to get into trouble. So, we had a steep learning curve when it came to patent litigation. Well, I was lucky enough to represent one of the founders of the AVIA running shoe company out of Portland, Oregon. Eventually AVIA merged with Reebok, and we became attorneys for Reebok as well. One of Reebok's lawyers was a real Rambo litigator, very knowledgeable, who specialized in tracking down counterfeits; he was based in New York. I remember the first few times we met, he was very friendly and very complimentary of the work we had done for AVIA. Now right about this time, we were trying to settle the first design patent lawsuit we had ever filed for AVIA. In negotiating the settlement with the defendant, I needed some help, so I called this New York litigator to ask a few questions, since he had a lot of experience and we were essentially working for the same client. Well, he helped me out a lot, but about a month later, Reebok made a sudden decision to shift all of our design patent litigation to this New York lawyer. What I later learned had happened was that he had called the client and apparently told them how little we knew about settling a lawsuit, and scared Reebok into not trusting us with their litigation. So, I made the mistake of asking for help, in the best interest of the client, and of trusting this person, who used this incident to fatten up the legal work for his firm.
This loss hurt a lot, both from a business standpoint and in terms of trust. I also found out over the years that winning wasn't all that great either; being successful in competition was very short lived. To many of my corporate clients I was only as good as my last victory. The pressure was enormous; I was constantly on the line to produce a win in each case, and losses had to be analyzed in anguishing post-mortems as if life or death was at stake instead of just money. After all, winning a patent case for a corporation only resulted in money changing hands from the shareholders of one corporation to the shareholders of another. I also discovered that winning really didn't satisfy me in the long run. All winning meant was that we would need to do it again and again and again. Instead of contributing to my self-esteem, beating other people contributed only to the need to try and continue to beat other people. It is very much like an addiction, a vicious circle. The more I competed, the more I needed to compete. I began to see the negative effects of competition itself; it dragged me down, tended to poison my personal relationships, and actually interfered with doing well.

And of course, when I tried to slow down, my partners would have none of it; after all, what kind of role model would that be for the young associates whose workaholism the partners relied on for the firm’s profits. So in 1990 I left my firm to go solo. My goal was slow growth, and friendly clients who appreciated what I did for them. Staying small has given me the enormous advantage of turning away the really troublesome clients, and working for only who I want. By choice, I now work from 9 to 5, and rarely work evenings or weekends. While my first marriage was a victim of my workaholism, when I went solo, I was able to reclaim my relationship with my children from that marriage, who were then 16 and 18 years old. I also had the time to totally enjoy my new little girl Sasha, who is now 6, in ways I didn't know were possible the first time around.

Thus, we propose the following 7 initial changes in the American legal system:

1. We call upon all lawyers, judges, law professors and law students to declare that the healing of distortions in human interaction and the fostering of mutual recognition and respect shall be acknowledged as a central aspect of the meaning of justice, and the core objective of law and the legal process.

2. The current adversary system must be modified to foster a greater sense of empathy and compassion regarding the social causes of legal disputes. One key element is to modify evidentiary rules regarding relevance to permit the telling of stories or narratives that place disputes in their meaningful social and personal context, and therefore reveals more of the full human meaning of each party’s actions. Similar techniques might be: encouraging contextualizing opening and closing statements by judges, attorneys and litigants; encouraging judges to make “findings of social meaning” instead of just the traditional findings of fact;
encouraging judges to use expressive rather than narrowly objective language when writing legal opinions so as to reveal how empathy plays a part in both understanding a legal problem and proposal of a just response.

3. The rules of ethics must be modified to state that a lawyer has an ethical responsibility for the welfare of the broader community. This will require reworking the lawyer’s “duty of zealous representation” so that it is not limited to advancing the individual self-interests of clients, but contains an ethical obligation to work toward promoting social justice and the larger goals of a good society.

4. In the criminal justice system, where there is a conviction, after sentencing all those who participated in the trial - judge, jury, attorneys, the public, the defendant - would convene for a second stage to the trial, at which there will be a discussion of the deep social meaning and pain in the community that the trial uncovered. The purpose for this second stage would be to explore healing, repair, acknowledgment of responsibility, as well as understanding and compassion for the defendant, the victims of the crime, and the larger community.

5. In civil disputes, the focus on money damages would be changed so that liability is redressed by directly healing the wrongs committed by the defendant. Such an approach would focus on face-to-face reconciliations, and would also recognize the value of contrition, and the acknowledgment of pain caused by the defendant - all in the hope of eliciting forgiveness. Also, those found liable for civil damages would undergo some process of public education that would speak to the nature of the personal and social injury that they had caused. In addition, the law would promote remedies that change workplace dynamics or other social contexts that caused the injury.

6. (this one feels very spiritual and therefore appeals to me) - The profession of law will be recast in the nature of a “calling”, and lawyers will serve in more of a priest-like way to counsel our clients to try and heal the conflict or injury caused by the client’s problem. Criminal lawyers will be encouraged to call upon their guilty clients to confess, apologize, make amends to the victims, and seek forgiveness. In the civil area, the focus will be on mediated solutions, and undertaking litigation will eventually become a vestige of a bygone era.

The 7th and final area of Legal Renewal is probably the most important, involving the training of future lawyers. This is close to my heart because my oldest daughter just graduated last month from Northwestern University Law School:

7. The current system of legal education breeds an unhealthy culture of competition, anger, resentment and rage. We propose the following 7 reforms for law school education:
1. Law schools should create opportunities for sharing and caring in the law school community so students can appreciate the human dimension of their classmates and faculty;

2. students should be taught how to counsel clients in a way that develops a appreciation for the moral and psychic dimensions of a client's suffering and pain;

3. there should be more clinical opportunities, so that students can see the value of working within the community with people who have real problems;

4. law school instruction should outlaw the Socratic method of teaching and instead adopt methods that encourage students to work together, share information, and not be made to feel isolated and alone; there should be less focus on grades and more focus on group activity and problem-solving;

5. law schools should place more emphasis on teaching students the role and value of being a counselor;

6. students should be taught that ethical principles are not merely code words for how one goes about avoiding legal consequences, but in fact are real moral imperatives that make all of us in society better off;

7. mediation should be taught as a replacement for the adversarial system as the basis for resolving legal disputes; traditional subjects of contracts, torts, and property will be recast as problems to be solved by mediation; students will be steeped in mediation skills and experience by the time they graduate.

There are some good examples out there of what this new legal culture might look like. One example is the restorative justice movement in criminal law in which, in contrast to the current criminal justice system, victims and offenders meet face-to-face in a context in which the trauma to the victim is taken seriously, in which the victim is allowed to experience the trauma in the presence of the offender, and the offender, given the opportunity to empathize with the victim's suffering, is encouraged by the context to be able to apologize, in many cases be forgiven, and to be reintegrated into the world at a higher level of community. This goes way beyond the Bill of Rights and the protections of the isolated individual to seeing the legal culture itself as a place where community can be created.

Another good example is the South African Commission on Truth and Reconciliation in which we have a remarkable example of the black majority engaging in a process that is seeking, first, to demand the truth of what occurred under apartheid in a highly public manner, on television for all to see on a daily basis, forcing the truth to be told, and expecting the whites responsible for it to take responsibility for it and acknowledge the truth; but then, also seeking to forgive them, so that it is possible to
create a human society that emphasizes these dimensions of love, caring, a world based on our capacity to recognize one another across our difference. It is a great thing.

One of our modest objectives is to hold regional lawyers gatherings to focus on sharing stories of alienation and to organize, perhaps as the un-ABA, to change the legal system.

If you’d like more information about our group, I’ve got some flyers containing our Declaration of Legal Renewal.

Despite these distortions, which has led to lawyers having the highest percentage of job dissatisfaction ever, what is the reality? The reality is that every lawyer is a full human being - we are good, cooperative, intelligent, zestful and loving. We can take pride in our humanness, and in choosing to become a lawyer. It is rational to want to see people treated justly; to want to create a just legal system; to want to work within the legal system to change it. We have special skills and knowledge which enable us, unlike any other group, to bring about improvements to the legal system, to defend people against injustices, and to better the condition of people’s lives. For example, we can take pride in our skills of writing, arguing, thinking while being attacked, analyzing key issues, and in our knowledge of the law. We have and can use these skills to shape the future legal system by developing a model for how people should be treated in a just society. We are experts in dispute resolution and can take the lead in developing a mediation based dispute resolution system. We can demystify the legal system, empower people to take charge of their legal problems, and minimize the hurts people experience in their dealings with the legal system. We can organize for good working conditions, we can develop good legal education, we can use our contacts with other lawyers, judges, police and community leaders to organize. We can become general leaders and use the prestige and respect accorded to us as lawyers to broaden our constituency. We can organize to change the role of a lawyer from that of a hired gun to a role where we work for the good of all and for justice. We can make these changes from whatever legal position we fill - as prosecutors, legal aid lawyers, corporate attorneys, legal workers, private practitioners, law school teachers, etc. I believe that our most powerful allies will be not other lawyers, but the lay public, if you will, who more readily than lawyers see the need for change. The O.J. Simpson trial and the Clinton trial have had the effect of exposing the infirmities in the legal system to a larger segment of the population than ever before. I personally believe that the Clinton trial was a caricature of our litigious society will someday be viewed as the death knell for politics as we know it, and event that finally turned the American people off to two-party, competitive, partisan politics...it was like the last act of a bad play, where the actors have not even paused to notice that half the audience has left, and the other half are fast asleep. They keep acting, because that is what they are paid to do, oblivious to the world outside their theater club.