

Panel: Therapeutic Jurisprudence: An Interdisciplinary Approach
Professional Responsibility and the Affective Assistance of Counsel

Marjorie A. Silver¹

*I find there is a deep yearning among lawyers everywhere to find a different way to be that is more healing, more therapeutic, more contributory.*²

* * *

There are clearly practitioners who have found ways to bring an awareness of their depths into their work and have come to enjoy that work beyond what most had thought possible.

*As the numbers of such lawyers grow—and they are growing—there will come a time when even the tone-deaf will realize that things are changing. The rhythm of legal life will become more amenable to pleasure and satisfaction, and the lower registers will pulse audibly, providing emotional and even spiritual support for the profession.*³

Introduction: Changing Times

On one of those slow news days in mid-August, a day I was planning to work on this paper, I opened up the New York Times to find the first article on the front page, spanning three columns, entitled *In the Hospital, a Degrading Shift from Person to Patient*.⁴ The article described the all too familiar dehumanizing experience many encounter in hospitals around the country, even among those institutions renowned for the high quality of care they deliver. It also noted that several hospitals had begun taking steps to address this problem. The article mentioned in particular the efforts of the University of North Carolina Medical Center.⁵

¹ Professor of Law, Touro Law Center. Copyright ©2005. I thank Stephanie Adduci for research assistance on this paper.

² Jenny B. Davis, *Texas Shows its Softer Side*, ABA JOURNAL, March 2002, p. 30.

³ Steven Keeva, *Listen Well*, ABA JOURNAL, September 2005, p. 76.

⁴ Benedict Carey, *Being a Patient: A Loss of Dignity*, NYTimes 8/16/05, A1.

⁵ *Id.*

The *last* article of the front section was an op ed piece entitled *No Emotion Left Behind*.⁶ It critiqued the perspective held by many politicians and educators that either schools could focus on the emotional and social needs of children, or they could improve their academic performance, as mandated by the federal No Child Left Behind law. The authors cited a study that demonstrated that those children who had access to social and emotional learning programs made significantly greater academic gains than those who did not.⁷

Yet that wasn't all. Another item on the front page of the Metro Section caught my eye. It was about a plea deal in a case involving a nineteen-year-old Long Island man who could have faced 25 years in prison for hurling a large frozen turkey from a speeding car, shattering the face of Victoria Ruvolo.⁸ Let me share some of it with you:

Every bone in her face was shattered last November when Victoria Ruvolo was struck by a 20-pound frozen turkey hurled through her windshield by a Long Island teenager. But when she came to court on Monday to hear the teenager accept responsibility for nearly killing her, she was there not for retribution but for his redemption.

* * *

Accompanied by several friends and relatives, Ms. Ruvolu, a 44-year old office manager, came to court wearing a black pantsuit and a gold cross on a chain for her first face-to-face meeting with Mr. Cushing.

Stopping to speak to her on his way out of the courtroom, Mr. Cushing choked on an apology and began to cry. For an intensely emotional few minutes, Ms. Ruvolo alternately embraced him tightly, stroked his face and patted his back as he sobbed uncontrollably.

Many of the two dozen people in court—prosecutors, court officers and reporters—choked back tears.

“I’m so sorry, I’m so sorry,” Mr. Cushing said over and over again. “I didn’t mean it.” Most of the exchange was whispered, but at one point Ms. Ruvolo’s advice to him was just barely audible.

“It’s O.K., it’s O.K.,” she said. “I just want you to make your life the best it can be.”

⁶ Timothy P. Shriver & Roger P. Weissberg, *No Emotion Left Behind*, Op. Ed., NYTimes 8/16/05, A15.

⁷ *Id.*

⁸ Julia C. Mead, *Deal in Turkey-Throwing Case After Victim Calls for Leniency*, NYTimes, 8/16/05, B1.

When Mr. Cushing is sentenced on Oct. 17, he is expected to receive no more than a six-month jail term and five years probation.⁹

What these three articles had in common, and the reason I mention them here, is because they evidence the growing awareness in our culture that the *human* needs of empathy, kindness, caring, forgiveness, validation, respect, self-esteem, wholeness, are critical in how we measure “success,” whether the domain be health care, education—or legal services. When we represent clients, we receive into our care a human being with a cadre of problems and possibilities, only some of which are likely to be legal.

The focus of this panel is on the therapeutic practice of law. Whether we call it Therapeutic Jurisprudence, the Comprehensive Law Movement, Law as a Healing Profession, Affective Lawyering, Holistic Lawyering, or any one of a number of other related monikers,¹⁰ what we are speaking about is practicing law in a way that aims to improve the client’s quality of life, while at the same time enhancing the lawyer’s satisfaction with law practice.

Recent years have witnessed a spate of both new and renewed approaches to the practice of law. Disaffected by the gladiator model, many practitioners and academics have been constructing a quiet revolution, a marriage of theory and practice designed to maximize the healing potential of the law.

⁹ *Id.* See also Abraham Veghese, M.D., *Close Encounters of the Human Kind*, NYTimes Magazine, 9/18/05, p. 192. Dr. Verghese recounts a conversation he had with an African American from New Orleans, trapped in the aftermath of Hurricane Katrina:

He told me that for two nights after the floods, he had perched on a ledge so narrow that his legs dangled in the water. At one point, he said, he saw Air Force One fly over, and his hopes soared. “I waited, I waited,” he said, but no help came. Finally a boat got him to a packed bridge. There again, he waited. He shook his head in disbelief, smiling though. “Doc, they treat refugees in other countries better than they treated us.”

“I’m so sorry,” I said. “So sorry.”

He looked at me long and hard, cocking his head as if weighing my words, which sounded so weak, so inadequate. He rose, holding out his hand, his posture firm as he shouldered his garbage bag. “Thank you, Doc. I needed to hear that. All they got to say is sorry. All they got to say is sorry.”

¹⁰ See, e.g., Cait Clarke & James Neuhard, *Making the Case: Therapeutic Jurisprudence and Problem Solving Practices Positively Impact Clients, the Justice Systems and Communities They Serve*, 17 ST. THOMAS L. REV. 781, 782 (2005) (noting communalities among “problem-solving” lawyering, holistic lawyering, integrated service models, and “whole client” representation).

New approaches have demanded new pedagogy. The traditional law school curriculum, as clinicians have long recognized, does not prepare its graduates well for the practice of law. It is even more deficient in preparing students for alternative visions of what it means to be a lawyer. The first year curriculum consists largely of analyzing appellate court decisions. When we speak of teaching our students to “think like lawyers,” what we generally mean is we want to cultivate the skills of advocacy and argument. We want them to master the ability to argue both sides of a “case,” so that they may develop the necessary competence to serve as hired guns for contentious clients. In large measure, we prepare our students to be adept at playing the adversary system’s game.¹¹

But not all of us. Increasingly, law teachers—both clinical and classroom—inspired by approaches such as Therapeutic Jurisprudence and Humanizing Legal Education, are integrating into our pedagogy individual and systemic approaches that challenge the gladiator model of lawyering. New pedagogy is informing old courses, and new courses are evolving and taking their places in the curriculum of increasing numbers of law schools. Courses in Alternative Dispute Resolution have been a mainstay at most law schools for some time.¹² Last May, my faculty at Touro Law Center approved a transformation of the traditional first year Civil Procedure course into *Civil Dispute Resolution and Procedure*, which, among other things, will integrate, in a substantial way, the teaching of alternatives to litigated dispute resolution with the teaching of the

¹¹ I experienced my own frustration with the challenges of such transformation this past August. One of my younger Civil Procedure colleagues had agreed to “test market” a first year required Dispute Resolution and Civil Procedure course in which litigation would be approached as only one of many alternative dispute resolution processes. See *infra*, note 13 and accompanying text. As the new course was originally my idea, I would have happily been the tester, but I am on sabbatical for the fall semester. My colleague—both brilliant and caring—was excited about the opportunities that the new course provided to use *A Civil Action* and its Documentary Companion. LEWIS A. GROSSMAN & ROBERT G. VAUGHN, *A DOCUMENTARY COMPANION TO A CIVIL ACTION* (2002). Although aware that he intended to teach the course somewhat differently than I would have done, I had full confidence in his abilities to take this on. When I reviewed his draft syllabus in August, however, I was unhappily struck by what I viewed as a disproportionate emphasis on litigation as compared to the alternatives. In discussing this with him, it was clear that litigation—which was his practice background—was, for him, the norm, the default position, from which all else was a deviation. It is this “worldview” of law and lawyering that TJ and related movements seek to alter.

¹² See Robert B. Moberly & Judith Kilpatrick, *Introduction: The Arkansas Law Review Symposium on Alternative Dispute Resolution*, 54 Ark. L. Rev. 161, 164 (2001) (noting ABA Dispute Resolution Section surveys from 1983 through 1997). The 1997 survey listed 714 ADR courses in 177 law schools. *Id.*

Federal Rules of Civil Procedure.¹³ A growing number of law schools offer courses with names like Therapeutic Jurisprudence, New Directions in Lawyering, and Interpersonal Dynamics for Attorneys.¹⁴ Last spring, I began teaching a seminar at Touro in selected topics in Professional Responsibility entitled: *Lawyering as a Happy, Healthy, Healing and Ethical Profession*. Theory and practice, one often following the other, are evolving within the academy and the profession.

The Burgeoning of Therapeutic Jurisprudence

The first International Conferences on Therapeutic Jurisprudence took place in Winchester, England in July of 1998. (It was my first experience with TJ). A second international conference was held in Cincinnati, Ohio in May of 2001, and the third will be held in Perth, Australia in June of 2006. Numerous TJ-related conferences have been held around the globe over the past several years. For example, the 20th annual meeting of the Australia and New Zealand Association of Law, Psychiatry and Psychology held in Auckland, New Zealand focused on Therapeutic Jurisprudence.¹⁵ Professor Winick chaired a panel on Therapeutic Jurisprudence at the European Association of Psychology and Law held in Lisbon Portugal in June of 2001, and a TJ session held at the International Association of Law and Mental Health in Amsterdam in July of 2002.¹⁶

Therapeutic Jurisprudence played a significant role at the May 2004 AALS Clinical Legal Education Conference.¹⁷ Later that month, Therapeutic Jurisprudence was

¹³ This course is being taught as a pilot this year by one Civil Procedure professor, with the understanding that it will be refined over the course of the year and will become a part of the first year curriculum for all students in the fall of 2006, when we are slated to move to a new facility in Central Islip, Long Island, New York, sharing a campus with the federal and state courthouses and offices. As excited as we all are about this move and the opportunities it creates for our students and their education both in and outside of the classroom, many of us are concerned that the “litigation as norm” paradigm may, without explicit measures to counteract it, grow even stronger. The changes to the procedure course are one such measure.

¹⁴ For a list with links to description of more than a dozen such courses, see the official website for the International Association of Therapeutic Jurisprudence (hereinafter “TJ website”) at <http://www.law.arizona.edu/depts/upr-intj/> (“Course Descriptions” page) (last visited 9/19/05).

¹⁵ See <http://www.brucewinick.com/TherapeuticJurisprudence.htm>.

¹⁶ *Id.*

¹⁷ <http://www.aals.org/clinical2004/program.html>. These papers and others were recently published in a special symposium issue of the St. Thomas Law Review, *Therapeutic Jurisprudence in Clinical Legal Education and Skills Training*, 17 ST. THOMAS L. REV. 403-873 (2005).

featured at The Greek Conference 2004 on professional responsibility, held in Crete,¹⁸ and attended by a group of (mainly) Australian judges, lawyers, doctors and business professionals.

TJ has had a profound impact over the past decade or so on legal institutions. The growth of problem-solving courts is perhaps the most dramatic example here in the United States and elsewhere.¹⁹ Judges from many different countries around the world are embracing TJ principles.²⁰ The National Judicial Institute in Canada is drafting a handbook on how to incorporate TJ principles into generalist courts.²¹ In July 2004, Professor Wexler participated in a workshop for New Zealand judges to help them identify and use therapeutic interventions in general court work.²² Last November, at their annual conference in Perth, the Western Australian Country Magistrates unanimously passed a resolution supporting the use of TJ in their courts and programs.²³

Related to the growth of TJ's impact on law and legal institutions has been a focus on the wellbeing of lawyers. Numerous studies have documented the discontent within the profession and noted the disproportionate incidence of alcohol, substance abuse and depression among lawyers.²⁴ Steve Keeva's 1999 book, *Transforming*

¹⁸ www.greekconference.com.au. This annual conference is sponsored by Australians of Greek descent. The audience consisted primarily of Australian doctors, business persons, lawyers and judges. Some of this paper is adapted from a paper the author delivered at that conference, entitled *Emotional Competence, Multiculturalism and Ethics*.

¹⁹ See generally JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS (Bruce J. Winick & David B. Wexler, eds., 2003).

²⁰ See David B. Wexler, *Therapeutic Jurisprudence: It's Not Just for Problem-Solving Courts and Calendars Anymore: International Developments*, http://www.ncsconline.org/WC/Publications/KIS_ProSol_Trends04.pdf.

²¹ *Id.*

²² *Id.*

²³ See TJ Website, *supra* note 14, *Announcements*, June 3, 2005.

²⁴ See Connie J. A. Beck, Bruce D. Sales & Andrew H. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1 (1995); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J. L. & PSYCHIATRY 233, 233-34 (1990); G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, AM. B. FOUND. RES. J. 225 (1986). See also Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. LAW 261 (2004). Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002).

Practices: Finding Joy and Satisfaction in the Legal Life, shared the stories of numerous attorneys who have forged a variety of pathways that allow them to practice law consistent with their values and belief systems.²⁵ The book, in part, inspired me to facilitate, in April 2003, a conference at Touro entitled *Lawyering and its Discontents: Reclaiming Meaning in the Practice of Law*. And it continues. In September 2005, the Association of the Bar of the City of New York held a one-day program sponsored by numerous organizations, *Women Attorneys: Lives in the Balance: Defining Success, Reclaiming Meaning*.²⁶ This January, inspired by the work of Professor Larry Krieger and others in the Humanizing Legal Education movement,²⁷ the AALS is sponsoring an all-day workshop on *A Search for Balance in the Whirlwind of Law School*.²⁸

A glance at the bibliography of the website of the International Network on Therapeutic Jurisprudence graphically demonstrates the impact and growth of TJ on our legal culture. It lists twenty-five books & monographs, twenty-one symposia and 749 articles, all published over the past fifteen years, the vast majority over the past five or six years.²⁹

My own journey with TJ continues with my current project, a forthcoming anthology of articles and essays, many new, some borrowed, designed to teach students and lawyers alike how to practice law as a healing, helping profession.³⁰ And as a teacher of Professional Responsibility, I am particularly interested in how the definition of *competence* is affected by this way of practice.

²⁵ STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).

²⁶ See <http://www.nylat.org/events/>.

²⁷ See http://www.law.fsu.edu/academic_programs/humanizing_lawschool.php.

²⁸ See <http://www.aals.org/am2006/program.html>.

²⁹ See TJ Website, *supra* note 14, TJ Bibliography.

³⁰ *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (Marjorie A. Silver, ed., forthcoming 2006-07) (hereinafter *AFFECTIVE ASSISTANCE OF COUNSEL*). Contributors include Harold Abramson, Sue Bryant, Jonathan R. Cohen, Susan Swain Daicoff, Edward A. Dauer, Timothy W. Floyd, Paula Ann Franzese, Aderson Francois, Kristin Henning, Steven Keeva, Calvin Pang, Jean Koh Peters, Leonard L. Riskin, Lisa Schreibersdorf, Marjorie A. Silver, Pauline H. Tesler, Paul R. Tremblay, Carwina Weng, David B. Wexler and Bruce J. Winick.

The Professional Responsibility of the Affective Lawyer

Developing Competence

Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct provides that "[c]ompetent [legal] representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Nowhere within that definition, or in the comments that explicate the rule, is there anything specifically stating that a lawyer need have any familiarity with psychological theory, or any training in intra- or interpersonal skills development, or in cross-culturalism. The MacCrate report, which aspired to be a comprehensive compendium of the knowledge, skills and values required for competent and responsible representation, gave little attention to emotional or multicultural skills and knowledge.³¹ The premise of this paper is that such knowledge and skills are necessary for lawyers to practice competently, that the legal profession should so recognize, and that legal education has an obligation to insure that lawyers receive the necessary training.

The approaches to lawyering described by this and the other papers on this panel require a variety of skills and knowledge not traditionally taught in the basic American law school curriculum. Law is a *helping* profession, and for lawyers to attain true competence, they need to develop their intra- and inter-personal skills. They require sufficient familiarity with basic psychological principles so that they can respond appropriately to their clients' concerns. They should understand how the psyche and emotions may affect their relationships with their clients. Furthermore competent lawyers ought to appreciate the life experiences of people different from themselves, and should have the knowledge and skill sets necessary for cross-cultural representation. Along with other aspects of professionalism, these competencies should be affirmed throughout the law school curriculum, and emphasized in courses in Professional Responsibility. Lawyering programs and law school clinics, however, are logical homes in which the necessary skills and values may be developed and practiced.

³¹ Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass'n, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992). See Marjorie A. Silver, *Emotional Intelligence and Legal Education* (hereinafter *Emotional Intelligence*), 5 J. PSYCHOL. PUB. POL'Y & L. 1173, 1176-78 (1999).

Emotional Competence & Psychological-Mindedness

Thanks to the work of Professor Peggy Davis and others in her Workways project,³² clinicians and other legal educators have begun to take account of the multi-dimensionality of intelligences relevant to the competent practice of law.³³ Daniel Goleman introduced the term “Emotional Intelligence” to mainstream American culture several years ago with his best-selling trade publication of the same name.³⁴ Goleman’s theories built on the work of psychologist and educator Howard Gardner who had recognized multiple definitions of what we normally consider *intelligence*—that which we measure by a standardized intelligence quotient (I.Q.) examination. Among these other attributes are inter- and intrapersonal intelligence:

Interpersonal intelligence is the ability to understand other people: what motivates them, how they work, how to work cooperatively with them. Successful sales people, politicians, teachers, clinicians, and religious leaders are all likely to be individuals with high degrees of interpersonal intelligence. Intrapersonal intelligence . . . is a correlative ability, turned inward. . . . [it is] knowledge of the internal aspects of a person: access to one’s own feeling life, one’s range of emotions, the capacity to effect discriminations among these emotions and eventually to label them and to draw upon them as a means of understanding and guiding one’s own behavior. A person with good intrapersonal intelligence has a viable and effective model of himself or herself.³⁵

Gardner and others recognized that while these skills might be more highly developed in some people than in others, they were skills that could be taught and learned.³⁶ Goleman, writing for a mass audience, made a persuasive case that success in life had more to do with emotional intelligence than with academic or intellectual

³² <http://www.law.nyu.edu/workways/theoretical/multintell/multintel.html> (last visited Oct. 3, 2005).

³³ See, e.g., Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11 CLIN. L. REV. 15 (2004); Mark Neal Aaronson, *Problem Solving in Clinical Education: Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLIN. L. REV. 1, 7 (2002); Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLIN. L. REV. 247 (2001); Silver, *Emotional Intelligence*, *supra* note 31. See also, Kirsten A. Dauphinais, *Valuing and nurturing multiple Intelligences in Legal Education: A Paradigm Shift*, 11 WASH. & LEE RACE & ETHNIC ANC. L.J. 1 (2005).

³⁴ DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1997).

³⁵ HOWARD GARDNER, *MULTIPLE INTELLIGENCES: THE THEORY IN PRACTICE* 9, 24-25 (1993).

³⁶ See Peter Salovey & John D. Mayer, *Emotional Intelligence*, 9(3) IMAGINATION, COGNITION AND PERSONALITY 191 (1989-90).

intelligence, and he promoted the actualization of emotional intelligence as a blueprint for living a meaningful life.³⁷

It is interesting, though not surprising, that Gardner did not count lawyers among those who are “likely to be individuals with high degrees of interpersonal intelligence.” Nonetheless, emotional intelligence—or emotional competence, as I prefer to call it to emphasize that these are skills that can be learned—is necessary for competent lawyering.

It would hardly be hyperbole to suggest that legal education in the United States³⁸ does little to encourage the cultivation of emotional competence and psychological-mindedness among law students. Multiple studies have demonstrated that the psychological profile of the typical law student or lawyer favors thinking over feeling.³⁹ This inclination is then reinforced through the use of the Socratic Method as the principal teaching tool in traditional legal education. From their first day in law school, students are encouraged to put their *feelings* aside, and learn to make rational, logical, persuasive arguments based on *reason* and *the law*.

Concerns about this approach to legal education are not new. Andrew Watson, a psychiatrist on the law faculty first at the University of Pennsylvania and later at the University of Michigan law schools, critiqued the Socratic Method over thirty-five years ago:

[T]he Socratic Method exaggerates, and in a sense, distorts the importance of intellect. . . . [A]nalytical skill is the hallmark of a good lawyer and a crucially important tool. However, when the Socratic Method leads to an ablation of emotional awareness, it can have a seriously distorting effect. I recall my surprise when I first heard this stated as a desired goal in the development of lawyers. A very famous lawyer, widely known for his writing on professional ethics,

³⁷ Goleman, *supra* note 34. Goleman has subsequently published other related works, including *WORKING WITH EMOTIONAL INTELLIGENCE* (1998).

³⁸ I don't know whether this is a prevalent practice worldwide. I am aware, thanks to a Russian masters in law student I had the pleasure of teaching, that the required curriculum for law students in her country included courses on basic psychology.

³⁹ See, e.g., Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 *UNIV. CINN. L. REV.* 91 (1997); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 *AM. U. L. REV.* 1337, 1361-62 (1997).

vigorously urged a new class of law students to eliminate their emotions in order to become what he termed a “good lawyer.” *While I agree completely that emotions can thoroughly disrupt a lawyer’s skill, I cannot overstate the folly of attempting to eliminate them. Emotions are part and parcel of the biological reactivity of the human animal and are therefore irremovable.* While they may be modified and grotesquely distorted, they are always present to influence all human behavior, even that of lawyers. The Socratic Method reinforces the false image that it is possible to get rid of emotion, and the nature of the Socratic arena in some law schools makes it sound possible to achieve this impossible goal.⁴⁰

As compelling as his writing was, Watson failed, in his day, to make any significant impact on the development of legal education. For whatever reason that was so, his insights resonate today for those of us committed to practicing a more humanistic and therapeutic approach to lawyering, to practice law as a *healing profession*.

Human beings are simultaneously rational *and* emotional, and to deny the emotional component does not cause emotions to disappear; it merely pushes them below the surface, making them a taboo subject for “lawyerly” discourse.⁴¹ Traditional legal education has failed to prepare lawyers for what they will likely face in practice: clients whose legal needs are only a piece of their needs, needs often complicated by socio-psychological factors of which even the client may be substantially unaware.⁴² To represent the *whole* client, lawyers need to understand how psychological phenomena may affect their relationship with their clients.

My interest in the relationship of emotions and psychology to lawyering began many years ago in a Professional Responsibility class I was teaching. The class was exploring the potential ethical problems of attorneys having sexual relationships with their clients, specifically how such relationships pose a risk that attorneys might violate

⁴⁰ Watson, *supra* note 39 at 124 (emphasis added). Ironically, the Socratic method that prevailed in law school classes in Watson’s time was largely aggressive and demeaning, not at all the approach Socrates used. *Id.* at 123-24; 145-46. Socrates was much gentler; his use of questioning of his pupils was done with what humanistic psychologist Carl Rogers would call “unconditional positive regard.” CARL ROGERS, ON BECOMING A PERSON: A THERAPIST’S VIEW OF PSYCHOTHERAPY 62 (Mariner Books 3ed. 1995).

⁴¹ And, in all likelihood, contributing to the high incidence of alcoholism, substance abuse and depression among attorneys. Marjorie A. Silver, *Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship* (hereinafter *Love & Hate*), 6 CLIN. L. REV. 259, 282 (1999) (*citing studies*).

⁴² Of course, not all lawyers will do direct client representation, and consequently these skills will be of lesser importance to those who do not.

their fiduciary responsibilities to their clients.⁴³ I asked the class: “What if an attorney develops strong amorous feelings towards a client, but doesn’t act on them? Might that not muck up the lawyer/client relationship?” Students were aghast that I would even consider that as something with which they, as lawyers-in-training, should be concerned. “Thought police!” “1984!” “There’s nothing you can do about that!” they exclaimed.⁴⁴

Yet psychotherapists and others in counseling relationships with clients are *trained* to anticipate that such feelings (known as *countertransference*⁴⁵) may well develop in their professional relationships. And they are trained on how to handle these feelings, in order to guard the integrity of the counseling relationship, and to keep such feelings from adversely affecting the care they render to their clients.⁴⁶ Lawyers, on the other hand, rarely contemplate that they may act in ways towards their clients affected by feelings of which they may be relatively—or even entirely—unaware.

Clients’ emotional complexities present special challenges for their lawyers. This is most evident when the clients’ legal needs arise from an emotionally-charged situation, such as a divorce case, or involvement in a criminal or immigration deportation proceeding.⁴⁷ A spouse facing a divorce action, for example, may be so seized with anger, or engaged in denial, that she is incapable of making sound legal decisions. The competent lawyer needs to be able to recognize when this occurs and respond appropriately, so as to enable, and not frustrate, the continuation of the professional relationship. Massachusetts psychologist and author of *The Family Lawyer’s Guide to Building Successful Client Relationships*, Sanford Portnoy, has developed a specialization in educating matrimonial lawyers about basic psychological concepts. Portnoy counsels lawyers on how they can use this knowledge to help clients make sound decisions,

⁴³ Specifically, we were discussing ABA Formal Op. 92-364 (1992), which, while not prohibiting such relationships, placed the burden on the attorney to demonstrate that the relationship had not jeopardized the integrity of the representation. The Model Rules have since been amended, and MR 1.8(j) now prohibits such relationships unless they predated the commencement of the lawyer-client relationship.

⁴⁴ Silver, *Love & Hate*, *supra* note 41, at 278-79. A student in my spring 2004 class perceptively observed that sexual *tension* in a relationship may cause as many or more problems than consummated sex.

⁴⁵ *Id.* at 263-65.

⁴⁶ *Id.* at 271-72.

⁴⁷ *Id.* at 299-300.

including the decision to seek the assistance of other professionals when appropriate.⁴⁸ By focusing on the needs of the whole client, the lawyer can achieve both better *legal* and *therapeutic* outcomes for the client.

Trauma & Lawyering

Working with trauma victims presents another situation where a lawyer needs basic psychological competence. In the wake of the tragedy of September 11th, 2001, the Association of the Bar of the City of New York mobilized an historic *pro bono* response. Thousands of lawyers responded to the City Bar's plea, and were trained as facilitators—legal liaisons to those who lost loved ones and livelihoods in the terrorist attacks. These legal problem-solvers provided services that ran the gamut of the clients' legal needs. They helped obtain expedited death certificates, arranged for estate administration, and filed claims for death benefits. With the support of expert mentors, these lawyer/facilitators helped clients with landlord/tenant disputes, insurance claims, and family law problems. I was one of the attorneys who received such training.⁴⁹

The training included a presentation by a social worker expert on trauma. She discussed what we might expect when we met with our clients, and what signs and symptoms of trauma we might observe. Not only did she talk about what it might be like for the client who had suffered the traumatic loss of a loved one, or who had witnessed the collapse of the Twin Towers, she shared what we lawyers might encounter in talking with our clients. We, too, might experience many of the same symptoms, because, in different degrees, we had all experienced the traumatic events of September 11th.⁵⁰

Professor Jean Koh Peters has written about her discoveries in representing children in child protection proceedings.⁵¹ Many of the clinic's clients are victims of

⁴⁸ See generally SANFORD M. PORTNOY, *THE FAMILY LAWYERS' GUIDE TO BUILDING SUCCESSFUL CLIENT RELATIONSHIPS* (Section of Family Law, American Bar Association 2000).

⁴⁹ Marjorie A. Silver, *September 11th, Pro Bono, and Trauma* (hereinafter "*September 11th*") 7 CONTEMPORARY ISSUES IN LAW 64, 64 (2002/03).

⁵⁰ *Id.* Lawyers representing victims of Hurricane Katrina are likely to experience similar vicarious effects. For those lawyers whose own homes and families were directly affected, the trauma may be direct as well.

⁵¹ JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE: PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS, Ch. 9: *The Lawyer-as-Context II: Fulfilling the Ethical Duty to Address Occupational Hazards that Imperil Client Service: Stress, Burnout, Vicarious Traumatization* 421-87 (2d ed. LexisNexis, 2001).

trauma. What Professor Peters found in doing this work was that she and her students often experienced many of the symptoms their clients presented, including nightmares, panic attacks, inability to concentrate or find pleasure in life, and emotional numbness. This phenomenon is known in the literature as *vicarious* or secondary trauma, and is a risk for all caregivers who engage empathically with clients who have suffered trauma.⁵² In recent years, much has been written about vicarious trauma, most of it aimed primarily at therapists and social workers. As Peters demonstrates, lawyers who work with trauma victims are also at risk, and need to know what to expect, how to minimize the chance of suffering from vicarious trauma, how to recognize the symptoms, and what to do when it nonetheless occurs.⁵³ The first line of defense against the effects of vicarious trauma is *knowledge*.⁵⁴ A consult with a trauma specialist or some familiarity with the literature on vicarious trauma would be of great benefit to the lawyer.

Professor Lynda Murdoch has noted that lawyers who practice with a therapeutic orientation are likely at a higher risk to suffer vicarious trauma, as well as other hazards of caregiving.⁵⁵ These hazards include over identification with the client, challenges in finding an appropriate balance between neutrality and involvement, as well as the need to identify and manage transference and countertransference.⁵⁶ Thus, as increasing numbers of lawyers move towards practicing law as a healing profession, the greater the need for training in the knowledge, skills and values necessary to develop psychological-mindedness, to anticipate psychological hazards, and to develop strategies to prevent or control their interference in the professional relationship.

In addition, lawyers must learn to tend to their own physical and emotional needs. Caregivers who are burned out, suffering from stress, depression, vicarious trauma or

⁵² See Marjorie A. Silver, Sanford Portnoy, & Jean Koh Peters, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship: A Panel Discussion*, 19 *TOURO L. REV.* 847, 853-54, 858 (2004) (comments of Professor Peters); Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 *PACE L. REV.* 254 (2003).

⁵³ *Id.* at 858-95, 860-62.

⁵⁴ Silver, *September 11th*, *supra* note 49 at 20.

⁵⁵ Lynda L. Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protective Strategies*, 24 *SEATTLE UNIV. L. REV.* 483 (2000).

⁵⁶ *Id.*

other debilitating, are unable to do their best for their clients. It is the lawyer's *ethical responsibility* to care for herself by whatever means necessary—by eating right, getting enough sleep, exercising, meditation, spending time with loved ones and friends, psychotherapy, or all of the above.⁵⁷ For if the caregiver does not meet her own emotional, psychological and physical needs, she will be in no position to competently care for her client.⁵⁸ As psychotherapists Neumann and Gamble write, “if therapists [substitute attorneys] do not care for themselves, they are at much greater risk of hurting their clients.”⁵⁹ Self-care is thus another vital component of professional competency.

Multicultural Competence

Over the last several years, clinicians have increasingly focused on the critical importance of developing cross- (or multi-) cultural competency.⁶⁰ Multicultural, or cross-cultural, competence requires a combination of knowledge, skills and values that enable successful intercultural relationships. As with issues affecting other aspects of our emotional life, only through critical self-examination can we begin to uncover how our unconscious biases and stereotypes affect our views of people who are different than

⁵⁷ Peters, *supra* note 51, at 466-76 (discussing strategies for self-care).

⁵⁸ *Id* at 444 (citing Debra A. Neumann & Sarah J. Gamble, *Issues in the Professional Development of Psychotherapists: Countertransference and Vicarious Traumatization in the New Trauma Therapist*, 32 PSYCHOTHERAPY 341, 345 (1995)).

⁵⁹ Neumann & Gamble, *supra* note 58, at 345.

⁶⁰ See PETERS, *supra* note 51, Ch. 6: *Representing the Child-in-Context: Five Habits of Cross-Cultural Lawyering*; Susan Bryant, *The Five Habits: Building Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001). Others clinicians whose pedagogy includes cross-cultural awareness training are Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLIN. L. REV. 195 (2002); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373 (2002); Christine Zuni Cruz, *[On The] Road Back in: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557 (1999); Jane Harris Aiken, *Striving to teach “Justice, Fairness, and Morality*, 4 CLIN. L. REV. 1 (1997); Kimberly E. O’Leary, *Using “Difference Analysis” to Teach Problem-Solving*, 4 CLIN. L. REV. 65 (1997). Undoubtedly, there are others, and the numbers hopefully will continue to grow. It is heartening to note that the new edition of the exceedingly popular clinical text, DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2004).contains a subchapter on cross-cultural issues that did not exist in the original two versions. Compare *id.* at 32-40 with DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977); DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991). See also ROBERT F. COCHRAN, JR., JOHN M.A. DIPPIA, MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* (1999), Ch. 11, *Dealing With Client-Lawyer Difference*, 203-221. Two of the chapters of my forthcoming book, one by Sue Bryant and Jean Koh Peters and another by Paul Tremblay and Carwina Weng, will also explore multicultural competence and lawyering. See *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 30.

ourselves. And only through learning about different cultures, are we able to begin to appreciate the life experiences of such people.

Human beings—including lawyers—make assumptions about people based on ingrained, frequently unconscious, stereotypes that may have little or no basis in reality. When lawyers represent clients who are different from themselves, these erroneous assumptions may undermine the lawyer/client relationship and threaten the quality or competency of the representation. Despite the increasingly diverse world in which most American lawyers practice, few have received any training on cross-cultural representation. Once again, we can learn a great deal from social scientists, who have for some time recognized and addressed the need for multicultural competency and diversity training.⁶¹ Our profession needs to move towards recognizing multicultural competence as a basic element of professional competence.

Social work professors Carolyn Copps Hartley and Carrie Petrucci note similarities between the generalist approach to social work and therapeutic jurisprudence.⁶² Drawing upon experience in their discipline, they advocate cultural competency training for lawyers with a therapeutic orientation.⁶³ As they note, numerous studies support the effectiveness of cultural competency education for helpers in counseling relationships.⁶⁴ The lawyer who seeks an outcome for his client that will be beneficial emotionally as well as legally must be authentic, empathic and nonjudgmental.⁶⁵ To achieve that, lawyers who represent clients of race and ethnicity

⁶¹ “Some time” is a relative term. The need for, and methods of implementation of, this training has received serious attention in the social science literature only over the past two decades or so. See, e.g., ANTHONY J. MARSELLA & PAUL B. PEDERSEN, *CROSS-CULTURAL COUNSELING AND PSYCHOTHERAPY* 16 (1981); LARRY A. SAMOVAR & RICHARD E. PORTER, *INTERCULTURAL COMMUNICATION: A READER* (4th ed., 1985); Paul Pedersen, *Ten Frequent Assumptions of Cultural Bias in Counseling*, 15 *JOURNAL OF MULTICULTURAL COUNSELING AND DEVELOPMENT* 16 (1987); WOODROW M. PARKER, *CONSCIOUSNESS-RAISING: A PRIMER FOR MULTICULTURAL COUNSELING* (1988); DERALD WING SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE* (2d. ed 1990).

⁶² Carolyn Copps Hartley & Carrie J. Petrucci, *Justice, Ethics and Interdisciplinary Teaching and Practice: Practicing Culturally Competent Therapeutic Jurisprudence: Collaboration Between Social Work and Law*, 14 *WASH. U. J. L. & POL’Y* 133, 135 (2004). See *infra*, text at notes 80-105 (discussing use of social work constructs with a TJ focus in clinical teaching).

⁶³ *Id.*

⁶⁴ *Id.* at 169-70.

⁶⁵ *Id.* at 153 (citing Bruce J. Winick, *Redefining the Role of the Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic Jurisprudence/Preventive Law Model* 245, 287 in *PRACTICING*

other than their own need some historical and contextual understanding of their clients' experiences.

Additionally, lawyers, like other professionals in helping relationships, require awareness of how race and other differences occur to *them* and *for them*; that is, they must seek to make their own unconscious biases conscious. This process of self-examination is often an uncomfortable one. Only through facing our own unconscious biases, however, can we hope to insure that they will not jeopardize our professional relationships with people different from ourselves.⁶⁶

The need for cross-cultural education is especially acute for lawyers working with traditionally disadvantaged client populations. Among these are public defenders working in the criminal justice system⁶⁷ and other lawyers who represent poor people, whose clients are disproportionately minorities and immigrants.⁶⁸

THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION (Dennis P. Stolle, David B. Wexler & Bruce J. Winick, eds. 2000)).

⁶⁶ Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L. REV. 219, 232-35 (2002).

⁶⁷ See Harley & Petrucci, *supra* note 62, at 144-151.

⁶⁸ In an article aimed primarily at legal services attorneys, Ellen Hemley, training director of the Massachusetts Law Reform Institute, describes the knowledge, skills and attitudes necessary for representing "the whole client." Whole client representation, Hemley writes, means seeing clients not only as "poor people" or as legal issues, but requires the lawyer to recognize the client's strengths and resources, as well as the client's challenges and needs. It means paying attention to the client's non-legal, as well as legal needs. Cultural competency is a component of whole client representation. "When we understand the nuances of clients' experiences and the lenses through which they see the world, we are in a better position to serve them and achieve the best outcomes on their behalf." Ellen Hemley, *Representing the Whole Client*, J. Poverty Law & Pol'y 483, 483 (Clearinghouse Review, Jan.-Feb. 2003).

Hemley encourages legal aid lawyers to develop the requisite knowledge, skills and attitudes of cross-cultural competency. *Id.* at 485. First is to inquire how people from different cultures approach different issues. For example, how do Hmong people view health care, or child protective services? How do women from particular Asian or Hispanic cultures react to domestic violence? Hemley notes that cultural competence does not mean that one knows all the answers. Rather, it means one knows what questions to ask. Lawyers engaged in cross-cultural representation need the requisite *knowledge*. They should learn about (1) the history and sociopolitical situation in the client's country of origin; (2) how culture affects the client's experience of different legal institutions; (3) how courts and other legal institutions respond to persons from client's culture; and (4) how cultural experience affects the client's decision-making processes. Lawyers also need to develop the appropriate *skills* for cross-cultural representation. They need to (1) build rapport with clients from different cultures; (2) listen effectively; and (3) work through interpreters. In addition, they should (1) have awareness of their own values and belief systems; (2) recognize their attitudes towards persons of different cultures; (3) recognize differences among cultures; (4) understand how historic distrust affects interactions with clients; (5) recognize the tendency to misjudge based on learned expectations; and (6) have a willingness to learn about different cultures. *Id.*

Carol Fisler, Project Director for the Brooklyn Mental Health Court, Center for Court Innovation,⁶⁹ shared with me an example of her experience in how cultural ignorance can impair representation of a client. Mental health courts, like other problem-solving courts, are instruments for a therapeutic approach to criminal justice. Posit a client who (1) has mental health issues; (2) is charged with a crime in which guilt appears to be clear; and (3) is given the choice to accept diversion to the mental health court in lieu of pursuing his right to go to trial. Attorneys with a therapeutic orientation would likely counsel the client in favor of participating in the mental health court's program, which in many instances, would enable the client to avoid a criminal record. Carol learned, however, that among many inner-city communities, the stigma of mental illness is far worse than the stigma of a criminal record. If the lawyer is unaware of this, she runs the risk of failing to counsel her client as to what is the best course for that individual.

On the other hand, a lawyer cannot assume that any given cultural generalization applies to any given individual from that culture. The lawyer must guard against *assumptions* based on *stereotypes*, regardless of whether those stereotypes are generally true.⁷⁰ The client might prefer the therapeutic possibilities despite the social stigma that participation in the program may cause. Understanding the cultural mores is necessary, but not sufficient. To borrow a concept from social work, the competent lawyer must strive to meet the client where the client is.⁷¹ The client is an autonomous individual as well as a member of his culture.

The Panel Papers

The papers for this panel present a sampling of what this “new wave” of lawyering has to offer clinical legal education, and how clinics can help prepare law students for the affective practice of law. The four papers discussed below⁷² share

⁶⁹ See www.courtinnovation.org.

⁷⁰ See Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373, 385 (2002).

⁷¹ See Harley & Petrucci, *supra* note 62, at 143.

⁷² A fifth paper prepared for this panel by Professor Gregory Baker, based on his clinic as described in a recent article he coauthored for the St. Thomas Law Review Symposium, described *supra* note 17, was not

several common characteristics inherent in Therapeutic Jurisprudence and its family of related movements. All of them focus on health and healing. All of them recognize, either explicitly or implicitly, that the practice of law is a *helping* profession, analogous in many ways to social work and medicine. In fact, successful legal representation often depends on successful integration with other support systems available to the client. Further, there is a synergy between what is helpful and healing for the client, and intrinsic value for the lawyer. By focusing on helping, healing outcomes for clients, lawyers—current and future—can aspire to greater professional satisfaction and self-actualization.⁷³

In *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law Clinic*, Professors Bruce Winick and David Wexler, co-founders of the Therapeutic Jurisprudence movement, explore potential applications of the integration of TJ and preventive lawyering to the training of clinic students. For example, students need to recognize “psycholegal soft spots” and learn strategies for addressing them.⁷⁴ Psycholegal soft spots are “any aspect of the legal relationship or legal process that is likely to produce in the client a strongly negative emotional reaction.”⁷⁵ Overlooked, the client’s emotional reaction may jeopardize the competence of the representation. A second technique that draws upon TJ and preventive lawyering is the rewind exercise. Once the client’s immediate problems have been addressed—through litigation, negotiation or otherwise—it is important and worthwhile to “rewind” the conflict back to its origins, in order to determine what went wrong, and what might have been done differently to potentially *avoid* the problems that occurred. This enables both the student *and* the client to learn from their mistakes, to learn how to respond differently in comparable circumstances, and to avoid reoccurrences.⁷⁶

available at the time of writing. See Gregory Baker & Jennifer Zawid, *The Birth of a Therapeutic Courts Externship Program: Hard Labor but Worth the Effort*, 17 ST. THOMAS L. REV. 711 (2005).

⁷³ See ROBERT B EWEN, AN INTRODUCTION TO THEORIES OF PERSONALITY 403-04 (4th ed.1993) (discussing theories of Abraham Maslow and, specifically, the definition of self-actualization).

⁷⁴ Bruce J. Winick & David B. Wexler, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law Clinic* at 5. (NB: pinpoint cites for this and the other panel papers relate to manuscript pages as of the time I finished writing this paper (10/10/05), and may not correspond exactly to the page cites of the papers on the Conference website.)

⁷⁵ *Id.*

⁷⁶ *Id.* at 6.

Focusing on criminal defense clinics in particular, Professors Wexler and Winick urge that students explore all of the options available to the client, including *problem-solving* courts, designed to facilitate and support rehabilitation.⁷⁷ Engagement in rehabilitative and preventive efforts may present new challenges and opportunities for clinic students. Professors Wexler and Winick offer concrete examples of how principles of TJ lawyering may be applied at both sentencing,⁷⁸ and in juvenile parole revocation.⁷⁹

In *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, Professor Susan Brooks, a “double clinician”—she was a clinical social worker prior to attending law school and becoming a clinical professor of law⁸⁰—shares stories of how she utilizes the lens of TJ and the structure of core elements from social work practice in her clinical teaching.⁸¹ Professor Brooks urges clinicians to draw upon social work principles and language, as well as TJ, to enhance the students’ educational experience, as well as to improve the outcomes for their clients and communities.⁸² She notes that *naming* the phenomena observed and experienced by students and their clients, helps to *normalize* these phenomena, as well as giving students a language for discussion.⁸³ Her paper explains how a TJ-oriented inquiry, and social work principles, further the goals of most clinics.⁸⁴ And she offers examples. At the *micro-level* of application, for example, she discusses how *modeling* anger control for our students and our clients can help them in managing their own anger;⁸⁵ how important it is to be explicit about the scope of the representation, and how that relates to *boundaries* and *limit setting*;⁸⁶ how students’ relationships with and

⁷⁷ *Id.* at 9.

⁷⁸ *Id.* at 10-16.

⁷⁹ *Id.* at 16-19.

⁸⁰ See Susan L. Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 ST. THOMAS L. REV. 513, 513 (2005).

⁸¹ Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*. at 2.

⁸² *Id.* at 2-3.

⁸³ *Id.* at 3, 8.

⁸⁴ *Id.* at 4-7.

⁸⁵ *Id.* at 8-9.

⁸⁶ *Id.* at 9-11.

reactions to their clients may be affected by *transference* and *countertransference*;⁸⁷ and how one can navigate the *phases of the helping relationship*.⁸⁸ These include *engagement*;⁸⁹ *resistance* or *readiness for change*;⁹⁰ *partialization*;⁹¹ and *termination*.⁹² Professor Brooks uses experiences from her own clinics to explore the applications of these principles in clinical teaching.⁹³

Professor Brooks next discusses relevant *macro-level* constructs.⁹⁴ The first of these is *Family Systems Theory*, a foundation of social work theory and practice, which employs a “strength-based, non-judgmental orientation”⁹⁵ along with an understanding of the dynamics within families, and how those dynamics affect the personal development of the members of that family.⁹⁶ Understanding the family,⁹⁷ she explains, is essential in understanding the individual client who is a member of that family.⁹⁸ She further discusses the relevance of a range of family dynamics including *subsystems* and *coalitions*;⁹⁹ boundaries of *openness* or *closedness* to outside influences;¹⁰⁰ and the family’s ability to respond to change constructively.¹⁰¹ Through a non-judgmental methodology, a family systems professional utilizes the family’s strengths, rather than dwelling on its pathology, to achieve desired goals.¹⁰² Professor Brooks also notes the

⁸⁷ *Id.* at 11-12.

⁸⁸ *Id.* at 12-18

⁸⁹ *Id.* at 13-14.

⁹⁰ *Id.* at 14-15.

⁹¹ *Id.* at 15-16.

⁹² *Id.* at 16-18.

⁹³ *Id.* at 18-21.

⁹⁴ *Id.* at 21-22.

⁹⁵ *Id.* at 23.

⁹⁶ *Id.* at 23-24.

⁹⁷ Family, according to Professor Brooks is by no means limited to biological family, and may include any persons with whom the client shares “bonds of intimacy.” *Id.* at 23.

⁹⁸ *Id.* at 23.

⁹⁹ *Id.* at 23-24.

¹⁰⁰ *Id.* at 24-25.

¹⁰¹ *Id.* at 25.

¹⁰² *Id.* at 25-26.

importance of *cultural competence* as a critical element of responsible social work.¹⁰³ The paper concludes with macro-level examples of applications of these principles in Professor Brooks' clinical teaching,¹⁰⁴ focusing in particular on the systemic legal obstacles involved in kinship care.¹⁰⁵

Professors Linda Morton and Janet Weinstein have written about the two clinics they teach at California Western Law School, the focus of which are to develop students' problem-solving skills in a real-world context that nurtures their intrinsic values.¹⁰⁶ Professor Weinstein co-teaches *Children and Families: Problem Solving Through Interdisciplinary Collaboration*, along with a professor from the School of Social Work at San Diego State University.¹⁰⁷ The course is open to both law students and students from the social work school.¹⁰⁸ Unlike the typical live client clinic, the work of this clinic is geared towards helping students develop problem-solving skills to address real community needs within the domain of the course's subject matter.¹⁰⁹ Working in small, interdisciplinary teams, on a topic of their choice, students have the opportunity to develop skills of interviewing, fact investigation, systems thinking, collaboration, teamwork, creative thinking and presentation skills.¹¹⁰ Professor Morton's clinic, *Problem Solving and Prevention in Health Care*, similarly focuses on developing problem solving skills and values, including consensus building, teamwork, listening and collaborative negotiation, within a context of healthcare simulated problems.¹¹¹ As their paper explains, a conscious goal of these clinics is to nurture students' intrinsic values, so that their students will develop as more competent, more professional, and, hopefully,

¹⁰³ *Id.* at 27-28. As I noted earlier, in recent years, a significant number of clinicians and others have sought to foster culturally competent lawyering. *See supra* note 60.

¹⁰⁴ *Id.* at 28-30.

¹⁰⁵ *Id.* at 30-36.

¹⁰⁶ Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses As A Context for Nurturing Intrinsic Values*, at 1.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 5.

¹¹⁰ *Id.* at 5-6.

¹¹¹ *Id.* at 6-7.

happier practitioners.¹¹² They do so by discussing four goals—expanding approaches to problem solving;¹¹³ working with others;¹¹⁴ focusing on community;¹¹⁵ and developing a sense of self¹¹⁶—and share how these goals are developed in their clinics to support the students’ wellbeing and professionalism. As with Professor Brooks’ work, many of the skills and attitudes that inform their clinics’ work—such as systems thinking¹¹⁷ and developing cultural competence¹¹⁸—have their foundation in social work constructs. Professors Weinstein & Morton end with a candid assessment of how well they have achieved their teaching goals, and what changes they plan to make in their clinical teaching in the future.¹¹⁹

Professor Susan Daicoff’s paper, *Law as a Healing Profession: The “Comprehensive Law Movement,”* describes the history and characteristics of what she has described as the many *vectors*¹²⁰—of which Therapeutic Jurisprudence is one—that comprise that Movement. These include the *lenses* of Preventive Law,¹²¹ Procedural Justice,¹²² Creative Problem Solving,¹²³ and Holistic Justice,¹²⁴ as well as the *processes* of Collaborative Law,¹²⁵ Transformative Mediation,¹²⁶ Restorative Justice,¹²⁷ and

¹¹² *Id.* at 8-10.

¹¹³ *Id.* at 11-13.

¹¹⁴ *Id.* at 14-17.

¹¹⁵ *Id.* at 17-19.

¹¹⁶ *Id.* at 19-22.

¹¹⁷ *Id.* at 3, 6, 11-12.

¹¹⁸ *Id.* at 14, 17, 19.

¹¹⁹ *Id.* at 22-26.

¹²⁰ “This term ‘vectors’ reflects the forward movement of the disciplines in the future and their convergence toward common goals.” Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement”* at 2.

¹²¹ *Id.* at 17-19.

¹²² *Id.* at 19-22.

¹²³ *Id.* at 22-24.

¹²⁴ *Id.* at 24-26.

¹²⁵ *Id.* at 26-30.

¹²⁶ *Id.* at 30-33.

¹²⁷ *Id.* at 33-36.

Problem Solving Courts.¹²⁸ Professor Daicoff explores the similarities as well as the differences among these vectors. All of them, she writes, aim to “maximize the emotional, psychological, and relational wellbeing of the individuals and communities” involved, and require attention to extra-legal factors.¹²⁹ Her paper notes the empirical work done by Professor Lawrence Krieger and others that documents the adverse effects our legal culture has on law students and lawyers, the socialization process that undermines students’ self-confidence, and that effects a focus on extrinsic (*e.g.*, money, material possessions, grades, status), as opposed to intrinsic values, such as wellbeing, harmony, caring, and social connectedness.¹³⁰ Additionally, Professor Daicoff speculates on the reasons why the Movement has gained momentum at this point in the evolution of the legal profession.¹³¹ She identifies parallel developments in legal education and practice, including the Humanizing Legal Education movement,¹³² Mindfulness Meditation,¹³³ and Law and Spirituality.¹³⁴ She notes the inter- and intrapersonal skill development, and psychological-mindedness necessary for Comprehensive Law practice.¹³⁵ She concludes the paper by (1) describing how the intrinsic rewards achievable through practicing law within the Comprehensive Law Movement may serve as an antidote to the demoralization within the profession and among law students;¹³⁶ and (2) noting that the minority of law students and lawyers who are “Feelers”—in the Myers-Briggs nomenclature—are likely to thrive as practitioners within the Comprehensive Law Movement.¹³⁷

Conclusion: Good Work and Professional Competence

¹²⁸ *Id.* at 36-42.

¹²⁹ *Id.* at 4.

¹³⁰ *Id.* at 6-7.

¹³¹ *Id.* at 42-54.

¹³² *Id.* at 55-56.

¹³³ *Id.* at 56-57.

¹³⁴ *Id.* at 57.

¹³⁵ *Id.* at 57-62. *See, supra* text at notes 32-59; Silver, *Emotional Intelligence*, *supra* note 31 at 1176-78.

¹³⁶ *Daicoff*, *supra* note 120 at 62-64.

¹³⁷ *Id.* at 64-66.

As noted, there is tremendous dissatisfaction and disaffection among significant numbers of lawyers.¹³⁸ Lawyers who approach the law as a *healing profession*, however, who develop emotional and multicultural competence and are able to use those skills to achieve more therapeutic outcomes for their clients, undoubtedly enhance their own wellbeing. In serving the “whole” person, we will serve ourselves as well. The intrinsic rewards can be powerful, and, as Steve Keeva has reported, can bring joy and satisfaction in our professional and personal lives.¹³⁹

Clinicians, among others, thus have an important opportunity to train lawyers who are not only more competent, but also healthier and more satisfied with their professional choices. The burden of developing these skills and competencies should not, however, be that of the clinic alone.¹⁴⁰ I write as a non-clinician, committed to finding ways to integrate the ideas discussed in this paper pervasively throughout the curriculum, as well as in specialized non-clinical courses. Through employing curriculum that enables students to develop psychological-mindedness, emotional and multicultural competence, through teaching students therapeutic principles, techniques and interventions, clinicians and fellow travelers will serve their clients and their students well. This panel’s papers offer a range of possibilities towards that end.

¹³⁸ See, *supra* note 24 and accompanying text.

¹³⁹ See generally KEEVA, *supra* note 25.

¹⁴⁰ See, e.g., Aaronson, *supra* note 33 at 13, 42-44.