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# Practicing (And Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education

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# PRACTICING (AND TEACHING) THERAPEUTIC JURISPRUDENCE: IMPORTING SOCIAL WORK PRINCIPLES AND TECHNIQUES INTO CLINICAL LEGAL EDUCATION

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Practicing Therapeutic Jurisprudence (“TJ”) requires proponents to advance a particular normative framework. As a clinical social worker turned lawyer, who is now also a clinical law teacher, I believe strongly that the field of social work provides a useful framework for legal education and practice.<sup>1</sup> As I will demonstrate through examples from my teaching and my students’ practice experiences, the role of the clinical law teacher is uniquely and well suited to apply social work values, principles, concepts, and techniques.<sup>2</sup> By importing these core social work elements into the clinical legal education, faculty can truly teach future lawyers to practice TJ in a meaningful way.

The first time I heard the term “Therapeutic Jurisprudence,”<sup>3</sup> my immediate thought was that it captured the essence of my work as a former

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1. See Robert G. Madden & Raymie H. Wayne, *Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model*, 18 *TOURO L. REV.* 487 (2002) [hereinafter *Constructing a Normative Framework*]; Robert G. Madden & Raymie H. Wayne, *Social Work and the Law: A Therapeutic Jurisprudence Perspective*, 48 *SOC. WORK* 338 (2003).

2. These core social work elements comprise what has come to be known as the “generalist” approach to social work. “Specifically, the generalist model encompasses social workers operating effectively within an organizational structure, utilizing their knowledge, professional values, and skills to target change at the individual, group, organizational, or societal levels.” Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 *WASH. U. J. L. & POL’Y* 133, 140 (2004). Hartley and Petrucci point out that generalist social workers interact with client systems at three different levels: individual (micro); small group (mezzo); and agency or community (macro). This paper will focus specifically on micro-level examples. I plan to elucidate macro-level examples in future work.

3. The first time I heard about TJ was in a practice context. The Honorable Richard Fitzgerald, a juvenile court judge from Louisville, Kentucky, who also happens to be a social worker and a lawyer, described his work as a judge using this term. The Honorable Richard Fitzgerald, Presentation given at *Beyond Rhetoric* (1994) (an interdisciplinary training session for child advocates in Chicago, IL).

social worker now teaching and practicing law as a clinical instructor. TJ sets up an inquiry into whether the law enhances the well-being of persons affected by it.<sup>4</sup> The TJ movement began as a scholarly inquiry mainly focused on the area of mental health law.<sup>5</sup> Since its origins, TJ has evolved and grown in many directions. It has expanded its scope into many fields of law and public policy and has also grown from an academic pursuit to an orientation for practitioners, judges, and professionals of many disciplines.<sup>6</sup>

A basic proposition of TJ is that the law should promote therapeutic outcomes for the individuals affected by it “consistent with considerations of justice and other relevant normative values . . . .”<sup>7</sup> At the same time, TJ has always recognized that there may be other competing values, and it has not embraced a single normative framework. For purposes of encouraging scholarly debate and discussion, perhaps it makes sense not to choose a single normative framework for determining what is therapeutic in any given context. When it comes to practicing law, however, one needs to be able to look to a well-defined framework for guidance as to how to respond, meaning how to act therapeutically in the face of a particular set of circumstances.

I propose that social work offers a normative framework that is responsive to this inquiry and that the core social work elements are not only compatible with, but greatly enhance the teaching and practice of law. These core elements include overarching values and principles, as well as specific concepts and techniques that form a well-established framework for the social work practice. By applying these core elements, a clinical law teacher is more likely to address “psycholegal soft spots”<sup>8</sup> and to reach

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4. See generally DAVID B. WEXLER & BRUCE J. WINICK, *ESSAYS IN THERAPEUTIC JURISPRUDENCE* (1991); DAVID B. WEXLER & BRUCE J. WINICK, *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* (David B. Wexler & Bruce J. Winick eds., 1996); *PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION* (Dennis P. Stolle et al. eds., 2000) [hereinafter *PRACTICING THERAPEUTIC JURISPRUDENCE*]; *International Network on Therapeutic Jurisprudence*, at <http://www.law.arizona.edu/> (last visited Feb. 1, 2005).

5. See *PRACTICING THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at xv.

6. See generally *Id.*

7. Dennis P. Stolle, et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, in *PRACTICING THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at 5, 7.

8. David B. Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, 67 REV. JUR. U.P.R. 317, 320 (1998). A “psycholegal soft spot” is a concept that developed out of the preventive law notion of a legal soft spot. Legal soft spots are potential areas of legal conflict that the preventive lawyer tries to anticipate and minimize through the use of careful planning, drafting, and other interventions. *Id.* David Wexler has recognized that the “shape” of psychological soft spots may be larger in substantive areas such as family law. He describes an example related to the children of divorce as producing “a highly amorphous mass of

positive outcomes for clients as well as students.

This project is profoundly personal as well as professional. It draws upon my own training and experience as a social worker, which I pursued prior to attending law school. I have long believed that the education I received as a social worker plays a significant role in my day-to-day work as a lawyer and clinical law teacher. I continue to identify strongly with the social work profession. As a social worker, I adopted a set of values, principles, concepts, and techniques, which together comprise a therapeutic framework. In my present career, I have applied that same therapeutic framework in a legal context.

Despite my strong identification with social work as a profession, my current professional role involves being a member of the clinical faculty at a law school. In a sense, I am a practitioner, but my practice occurs in the context of teaching in a legal clinic. What that means for me is that the practice of law is inextricably linked with teaching law students. Further, both my practice and my teaching are tied to my commitment to improving the lives of vulnerable populations, such as economically disadvantaged children and families. This commitment is consistent with the longstanding mission of most legal clinics, which has been not only to provide an effective context for teaching students, but also to provide a means for law schools to serve the community and to carry out their commitment to social justice.

There is a significant body of literature about the unique manner in which teaching occurs in the context of a legal clinic.<sup>9</sup> Much of this literature focuses on the nexus between teaching and practice and how that translates into experiential learning on the part of the law student.<sup>10</sup> The skills taught within the legal clinic setting must also be considered from the perspective of what it means to provide legal services to individuals who are indigent and who are often culturally as well as socio-economically different from the students in the clinic.

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legal forces, psychological repercussions, and possible preventive strategies." *Id.* at 335. See also Stolle, *supra* note 7, at 35. Psycholegal soft spots are the predictable dimensions of law-related psychological well-being that arise out of legal procedures or interventions. It could easily be argued that the entire field of child welfare law is a vast psycholegal soft "area."

9. See J.P. OGILVY & KAREN CZAPANSKIY, CLINICAL LEGAL EDUCATION: AN ANNOTATED BIBLIOGRAPHY 1 (2d ed. 2001) (offering a comprehensive guide to literature on clinical legal education); ALEX J. HURDER, ET AL., CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS 1 (1997) (organizing the clinical scholarship to present topics for the classroom component of clinical teaching).

10. See, e.g., DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977); GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978).

Being a clinical law teacher means that although technically I am the attorney representing the clients, for the most part (outside of holidays, breaks, and summers) their day-to-day contact is with the students enrolled in the legal clinic. Thus, most of my practice occurs through the vehicle of supervising students, which in turn translates into the students' interactions with clients and other professionals. In this way, teaching and practice become integrated to such an extent that it may be difficult to separate one from the other.

This unique connection between teaching and practice in the clinic setting gives special meaning to the idea of "modeling."<sup>11</sup> From a social work perspective, whatever I model for my students, they will likely model for the clients.

Assuming modeling does occur, clinical teaching offers a particularly fertile ground for the exploration of TJ. By adding the layer of teaching, there is an extra "bang for the buck," therapeutically speaking. The therapeutic interactions are not simply those that take place with clients directly, but also those that take place with students, which inform and shape students' interactions with clients.

In terms of subject areas, my clinical work focuses exclusively on child and family law matters. The fact that my work involves child and family law strengthens the case for applying core social work elements as a normative framework for TJ. The fields of child and family law are by their very nature interdisciplinary, drawing upon knowledge from fields such as social work about issues including child custody and "best interests." I have devoted several articles to advocating the application of social work principles in the child custody and permanency planning contexts to promote TJ.<sup>12</sup> These writings emphasize the importance of using a "family systems" approach, a core social work element, to guide child welfare proceedings in order to make them more therapeutic for the children and families affected by them. Here, I propose to look more broadly at essential social work elements, and to explore what they offer to legal teaching and practice in the clinical context. I will use specific

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11. Modeling is a concept that has been imported into the clinical teaching literature, but it has historically been a fundamental premise of clinical social work practice. See, e.g., BEULAH ROBERTS COMPTON & BURT GALAWAY, *SOCIAL WORK PROCESSES* 571 (4th ed. 1989).

12. See generally Susan L. Brooks, *Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach*, 5 *PSYCHOL. PUB. POL'Y & L.* 951 (1999) [hereinafter *Therapeutic Jurisprudence and Preventive Law*]; Susan L. Brooks, *Therapeutic and Preventive Approaches to School Safety: Applications of a Family Systems Model*, 34 *NEW ENGLAND L. REV.* 615 (2000); Susan L. Brooks, *The Case for Adoption Alternatives*, 39 *FAM. CT. REV.* 43 (2001).

examples drawn from my clinical supervision of law students and from their student practice experiences to make the case for the usefulness of social work principles and techniques as a normative framework for practicing TJ.

When I refer to the application of core social work elements, I do not mean that I act as a social worker toward my students. Similarly, when I refer to therapeutic interactions, I am not in any way referring to acting as a therapist for a student or for a client. Rather, I am referring to what I consider to be an integral part of my role as lawyer and as teacher – to promote ways of addressing issues that arise in the context of practicing law in a manner that is therapeutic for the client and the student. Another way to refer to this type of interaction is a “teachable moment.” Such interaction, if it is to have any real meaning, must be guided by a set of principles that make sense and fit together as part of a well-constructed whole.

Despite my general posture of not “social working” my students, there are instances in which the line between educator and therapist necessarily becomes blurred. Most commonly, this occurs when students’ personal issues interfere with their professional roles. In those instances, I adhere to the well-established social work practices of “starting where the client is” and “working from the “outside in.”<sup>13</sup> I start with the most immediate and tangible aspect of the students’ difficulties, and explore their issues with them only to the extent necessary to understand the problem and to develop strategies toward an appropriate resolution. This process involves: (1) using “ongoing assessment”<sup>14</sup> to identify an issue as one that needs to be processed and (2) applying the social work principle or technique that fits the solution. This is a clear example of one way in which social work informs my work. Indeed, had I not had social work training, I would probably struggle more in such situations, which occur fairly frequently.

#### THE THERAPEUTIC FRAMEWORK: CORE SOCIAL WORK ELEMENTS

It must be noted that the social work profession represents a synthesis of theories and practice approaches that has developed over time by incorporating elements from other mental health fields as well as the social

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13. These were fundamental concepts taught to me as a beginning social work student.

14. The concept of the assessment of the client being an ongoing part of the helping relationship is another fundamental social work element.

sciences.<sup>15</sup> Its overarching goal is to help people become increasingly self-sufficient by enhancing their own adaptive skills and abilities, while simultaneously decreasing existing environmental barriers.<sup>16</sup> The balancing of individual, community, and societal interests, as well as the systems orientation, creates a solid model from which to build a normative framework for TJ.<sup>17</sup>

One clear source of identification for many of social work's core elements is the *Code of Ethics* of the National Association of Social Workers ("NASW"),<sup>18</sup> which was developed in the mid-twentieth century, but has maintained the same core values since 1979. The Preamble begins as follows: "The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty."<sup>19</sup>

Thus, TJ and social work share a focus on human well-being. To take it a step further and assume that *practicing* TJ means acting in a manner to enhance the well-being of clients, the social work mission offers an even stronger parallel. The Preamble to the *Code of Ethics* goes on to state that the profession focuses "on individual well-being in a social context and the well-being of society."<sup>20</sup> It also states that social workers promote social justice and social change with and on behalf of clients.<sup>21</sup> Not surprisingly, these are the same values we teach students in the legal clinic and encourage them to integrate into their legal practice.

The reference to focusing on individual well-being in a social context refers to a fundamental paradigm that has been adopted by the social work profession, which is known as an ecological approach to human development or systems theory.<sup>22</sup> In positing social work as offering a

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15. *Constructing a Normative Framework*, *supra* note 1, at 496.

The theories that ground social work practice are derived from the fields of sociology, psychology, economics, human biology, and political science. These disciplines provide social workers with the ability to understand human behavior, development, mental health, family and group dynamics, cultures, and political processes to allow for an intervention at whatever system level is warranted by an ecological assessment.

*Id.*

16. *Id.* at 494-95.

17. *Id.* at 495.

18. See generally NATIONAL ASSOCIATION OF SOCIAL WORKERS, *Code of Ethics* (1999), available at <http://www.socialworkers.org/pubs/code/code.asp> (last visited Oct. 11, 2004) [hereinafter *NASW Code of Ethics*].

19. *Id.*

20. *Id.*

21. *Id.*

22. *Constructing a Normative Framework*, *supra* note 1, at 493.

normative framework for TJ, this core element may be the single most important feature.<sup>23</sup>

The *Code of Ethics* articulates a set of core values, which are “the foundation of social work’s unique purpose and perspective.”<sup>24</sup> These core values consist of the following: (a) service; (b) social justice; (c) dignity and worth of the person; (d) importance of human relationships; (e) integrity; and (f) competence.<sup>25</sup> Any clinical law teacher worth his (or her) salt would agree that these values are shared by those of us who educate law students, and, along with our students, serve clients in the legal clinic setting. These same values guide our practice as well as our teaching of law.

Indeed, the legal profession has placed greater focus on the teaching of core skills and values in law schools in recent years. In 1992, the American Bar Association Section of Legal Education and Admissions to the Bar published *Legal Education and Professional Development: An Educational Continuum*, commonly referred to as the MacCrate Report, named after the chair of the task force that developed it.<sup>26</sup> The MacCrate Report outlines fundamental professional skills and values, including the need to “promote justice, fairness, and morality.”<sup>27</sup> The Report also notes that clinics are uniquely situated within the law school curriculum to teach these fundamental skills and values.<sup>28</sup>

Other guiding ethical principles are described in the NASW *Code of Ethics*. These include commitment to clients, self-determination, informed consent, cultural competence and social diversity, awareness of conflicts of interest, and privacy and confidentiality.<sup>29</sup> In addition to outlining social workers’ ethical responsibilities to clients, colleagues, and to the social work profession, the Code also defines the social worker’s responsibilities to the broader society.

Social workers should promote the general welfare of society, from local to global levels, and the development of people, their communities, and their environments. Social workers should advocate for living conditions conducive to the fulfillment of basic human needs and should

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23. *Id.*

24. NASW *Code of Ethics*, *supra* note 18.

25. *Id.*

26. See generally ABA, *Selected Excerpts from the MacCrate Report*, available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (July 1992) (last visited Feb. 1, 2005) [hereinafter *MacCrate Report*].

27. *Id.*

28. *Id.*

29. NASW *Code of Ethics*, *supra* note 18.



promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.<sup>30</sup>

As stated earlier, the social justice mission has been an integral part of the history and motivation behind the establishment of legal clinics.<sup>31</sup> It is a critical component of what we try to teach students, and similar to other important values, we hope that this value will become an integral part of their ideas and ideals of legal practice. I often think of our work as trying to instill in students an aspirational model of legal practice, and teaching social justice is a central component of that model.

In addition to the list of values and principles in the *Code of Ethics*, there are a number of important elements that are used regularly in social work practice and supervision. These elements include global concepts such as client self-determination and empowerment.<sup>32</sup> They also include many concepts pertaining to the professional relationship with the client, which is expressly viewed as offering a model for the client's other relationships.<sup>33</sup> Examples of these concepts are empathy, boundaries, roles, transference and counter-transference, readiness for change (a.k.a. resistance), and the phases of the treatment relationship. Additionally, there are specific techniques, such as the use of genograms, active listening, limit-setting, reframing, and partialization.<sup>34</sup> In all instances, it is not the specific terminology that is important, but rather the ideas and practices connected with these elements.

Before offering illustrations of the use of these elements in clinical supervision within the legal clinic context, I will offer a more detailed explanation of the fundamental paradigm – systems theory. In describing this theory, I will focus specifically on family systems, because this aspect of the theory is most relevant to the subject matter of my clinical teaching and practice. After discussing this theory, I will provide specific examples incorporating many of the elements mentioned above as well as systems theory.

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30. *Id.*

31. See, e.g., Richard A. Boswell, *Theoretics of Practice: The Integration of Progressive Thought and Action: Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187, 1191-94 (1992).

32. NASW *Code of Ethics*, *supra* note 18.

33. See *supra* text accompanying note 11.

34. COMPTON & GALAWAY, *supra* note 11, at 458.

## FAMILY SYSTEMS THEORY

Family systems theory describes a body of thought and literature that focuses on family structure and functioning as a way of understanding individuals.<sup>35</sup> This approach incorporates a strengths-based, non-judgmental orientation, as well as an understanding of family dynamics and human development.<sup>36</sup> The family system, defined by bonds of intimacy, may include the extended family and/or other individuals who have no biological connections to each other.<sup>37</sup> According to family systems theory, the only way to understand a person fully is to look at that individual in the context of her family and to understand the family's interaction.<sup>38</sup> This theory provides a specific orientation<sup>39</sup> toward understanding a child's best interests. Since the child is part of the family system, the child's best interests are coextensive with the family's best interests when those interests are properly understood.<sup>40</sup>

Two important and unique concepts in family systems theory are mutual interaction and shared responsibility. Since the family is an interactive and dynamic system, everything that occurs, including an individual's behavior, is attributable in some way to the family as a whole. This concept also means that every family member is important to what happens and to improving the family members' functioning.

## FAMILY SYSTEMS CONCEPTS: ROLES AND BOUNDARIES

The conceptual framework of family systems theory describes a family's properties using roles and structural characteristics commonly found in families. One such structure is the "subsystem," which would include a "coalition." Coalitions consist of two or more family members, and may promote unity and harmony in a family, or may be divisive.<sup>41</sup> Coalitions may be destructive forces when they engage in "triangulation,"<sup>42</sup>

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35. Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1, 5 (1996) [hereinafter *A Family Systems Paradigm*].

36. *Id.* at 8.

37. *Id.* at 14.

38. *See id.* at 4-8 (discussing in detail the family systems theory).

39. Although it is a specific orientation, family systems theory is not monolithic. There are many schools and a vast literature in this area. Nevertheless, there are some general principles and common themes.

40. *A Family Systems Paradigm*, *supra* note 35, at 13.

41. JASON MONTGOMERY & WILLARD FEWER, *FAMILY SYSTEMS AND BEYOND* 107, 110 (1988).

42. Triangulation occurs when two members of a system are in conflict, and each tries to make an ally of another family member in an attempt to avoid true resolution of the conflict. *Id.*

or otherwise blur generational lines.<sup>43</sup>

Another set of structural characteristics relates to how families manage new information.<sup>44</sup> To be capable of effectively receiving new information, a family must have some degree of openness, but yet must still maintain its distinctness from its external environment.<sup>45</sup> Families that are too open lack cohesion, while families that are too closed become overly rigid.<sup>46</sup>

The way information enters and leaves a family system is through its "boundaries,"<sup>47</sup> which is another construct for understanding the family's relative openness or closedness. "Boundaries" also refers to communication within families. "Disengaged"<sup>48</sup> families have diffused boundaries, while "enmeshed"<sup>49</sup> families have difficulty differentiating their thoughts and feelings from each other. Such families will resist any efforts by individual members to separate or initiate change.<sup>50</sup>

Generally the degree of openness or closedness of a family system determines whether it will tend toward stability or change.<sup>51</sup> A relatively open and thoughtfully creative family can act in new ways that are completely independent from its beginnings.<sup>52</sup> Closed families, on the other hand, will tend toward repeated limited behaviors and patterns that were set when the system was created.<sup>53</sup> In healthier family systems, their end is not determined by their beginning.<sup>54</sup>

Family systems thinking focuses attention on understanding "what is," describing current functioning, as opposed to "why," describing past history and the need for insight.<sup>55</sup> The idea of focusing on the current functioning fits with notions of mutual interaction and shared responsibility because the helping professional can observe these qualities through the

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at 108.

43. *Id.* at 109.

44. *See id.* at 110-17.

45. *Id.* at 117.

46. RAPHAEL J. BECVAR & DOROTHY STROH BECVAR, *SYSTEMS THEORY AND FAMILY THERAPY: A PRIMER* 11 (1982).

47. *Id.*

48. MONTGOMERY & FEWER, *supra* note 41, at 29-30.

49. *Id.*

50. LYNN HOFFMAN, *FOUNDATION OF FAMILY THERAPY: A CONCEPTUAL FRAMEWORK FOR SYSTEMS CHANGE* 72 (1981).

51. *See* BECVAR & BECVAR, *supra* note 46, at 17.

52. MONTGOMERY & FEWER, *supra* note 41, at 145.

53. *Id.*

54. *See* MONTGOMERY & FEWER, *supra* note 41, at 145; *see also* BECVAR & BECVAR, *supra* note 46, at 15.

55. BECVAR & BECVAR, *supra* note 46, at 15.

interactions that take place in his/her presence. This concept is also consistent with a non-judgmental approach insofar as the need to understand why a particular behavior exists is often accompanied by attaching blame to a particular individual.

Moreover, a family systems approach emphasizes the identification of a family's strengths rather than its pathology.<sup>56</sup> Family systems theory operates with the philosophy that "people possess unused or underused competencies and resources that can be brought forth when constraints are removed."<sup>57</sup> Together with the emphasis on current functioning and the non-judgmental approach, the competency-based emphasis of the family systems model allows professionals to empower the family and to build a positive treatment atmosphere.<sup>58</sup>

### APPLICATIONS OF THEORY TO TEACHING AND PRACTICE

As stated earlier, I want to make the case for social work as a normative framework for practicing TJ through examples from my work as a clinical law instructor. I cannot emphasize enough that without my social work background, I believe my legal training would offer minimal guidance for practicing *Therapeutic Jurisprudence*.

Let me begin with family systems theory. This overarching theory, which is part of the core values of social work, informs so much of my work that it is hard to know where to begin. One place to start is that my students and I are appointed by the court to represent an individual. Initially, our approach is to view that individual in the context of his or her family. One of the first things I urge students to do when they make their first visit to a child client's home, for instance, is to find out who else lives in the home, and also to try to ascertain who else is part of that child's family. I instruct students early on (without belaboring the issue) in how to construct a genogram, and suggest that they try to construct a genogram of the family of the client.

To the extent possible within our role as lawyers,<sup>59</sup> I instruct the

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56. Rocco A. Cimmarusti, *Family Preservation Practice Based Upon a Multisystems Approach*, 71 CHILD WELFARE 241, 246 (1992).

57. *Id.*

58. *Id.*

59. It must be acknowledged that, at least in theory, there could be a conflict between the "classic" social work approach and the "classic" legal approach – between a "best interests" approach versus a "zealous representation" approach. By applying the normative framework drawn from social work, and by focusing on best practice, this potential conflict is virtually eliminated. Nevertheless, it must be kept in mind that there may be competing values, and it is important to be vigilant in remaining aware of potential conflicting norms and values.

students to place a value on the client's attachments to members of the family system, once defined. As a Guardian ad Litem, ("GAL")<sup>60</sup> we are in the unusual legal role of being able to investigate and to determine our own position, consistent with the best interests of the child.<sup>61</sup> In this role, we are perhaps closest to the core elements of social work and the role of the social worker.<sup>62</sup> This is also the posture in which the greatest amount of knowledge and experience drawn from my own social work background can be brought to influence my teaching and practice. As a GAL, I can help the students to appreciate the family systems considerations in making our assessment and in determining a legal position that is consistent with the child's (and family's) best interests.

#### THE ROLE OF THE GUARDIAN AD LITEM: FAMILY SYSTEMS ORIENTATION

One example would be a case in which the court appointed the legal clinic as GAL for a number of siblings, all of whom were in the custody of the state. As we began to look at the children's situations and the possibility of reunification with their parents, it became apparent that the key thing we could do to advocate on behalf of the *children* was to advocate for their *mother* to receive the services that would be necessary for reunification. An important family systems concept came into play when the student learned that one of the children was fearful of returning home because of the marital conflict in the home. It became apparent that this situation involved this child being triangulated, and perhaps the scapegoat in a situation of marital conflict.

This scenario was one in which several of the other core elements played an important role as well. In addition to the family systems theory, cultural competence played a central role. The students who went to visit the parents' home came back and were very dismayed by the living

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60. The GAL is an individual appointed by a court to represent the best interests of a child, generally in a proceeding in which there have been allegations of child maltreatment. The GAL may or may not be an attorney, depending upon the jurisdiction. *See generally* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2d ed. 2001) (thoroughly discussing the role of the GAL).

61. The role of the GAL has been heavily debated, and continues to give rise to a range of viewpoints, including those who believe it is inconsistent with the ethical obligations of lawyers to their clients. *See generally* Bruce A. Green & Bernadine Dorn, *Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1281 (1996); ABA, ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, (approved by ABA House of Delegates Feb. 5, 1996), available at <http://www.abanet.org/child/childrep.html> (last visited Feb. 1, 2005).

62. *See NASW Code of Ethics, supra* note 18.

conditions they witnessed. In the discussion that ensued, I spoke with them about the importance of respecting cultural difference in assessing children's best interests. The fact that the home did not meet their expectations based upon their own upbringing needed to be acknowledged, but that recognition should not interfere with their effort to discern whether the children's basic needs could be met in that home. Also, it was important for the evaluating student to give weight to the value of the children being able to live with their parents and siblings.

Client dignity and empowerment became very important in this case as well. The mother of the children in this family had a strong sense of dignity and was unwilling to pursue certain public benefits that might have been available to her that would seemingly have helped situate her in a better position to be able to care for her children. The students initially wanted to try to convince her to pursue such benefits. I discussed with them the importance of respecting her dignity and her decision-making ability. This idea also relates back to family systems thinking in terms of focusing on client strengths.

Similarly, it was important for the mother of our child clients to feel empowered to make the necessary changes to be reunified with her children. It was equally important for the students to understand that the mother needed to feel that she could make the important and appropriate decisions as a parent. Additionally the students had to be careful in their work with the children not to undermine, albeit unintentionally, the mother's ability to perform in the role of parent. By supporting their mother in her efforts, rather than stepping in themselves and taking on parental responsibilities, they were acting most effectively on behalf of the children.

#### ANNE AND MARTY:<sup>63</sup> ROLES AND BOUNDARIES

Another example focuses specifically on roles and boundaries. This case involved a child who grew up in a chaotic family. A family systems theorist would describe this family as having very "permeable" boundaries. What this means is family members are not properly differentiated from each other. In such families, roles between parents and children are often blurred. Children may also be exposed to inappropriate situations given their age and maturity. In this particular case, Marty, a twelve-year-old boy, was living with his mother and younger sister. His mother was addicted to alcohol and cocaine, and she often had male friends staying

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63. The names of the student and the client in this and all other examples presented here have been changed for privacy and confidentiality purposes.

with her and her children in their tiny apartment. The children were “parentified” in the sense that they had to take care of their mother as well as themselves. They were also exposed to sexual behavior in the home.

Eventually, both children were placed in settings outside the home. Marty began exhibiting inappropriate sexual behavior, for which he received long-term residential treatment. The treatment was largely successful, and Marty has been able to “step down” to a less restrictive group living situation; however, Marty continued to struggle with understanding appropriate boundaries on a personal and social level.

One of the students I assigned to work with Marty was a woman named Anne. During our regular supervision session she mentioned that Marty had touched her hair during a recent visit with him. He had also made a reference to Anne being his girlfriend. Anne was feeling awkward and embarrassed about this incident. She was unsure about how she had responded to Marty. She was also embarrassed and therefore reluctant to discuss this topic in our supervision session. I clarified that discussing this incident was indeed important and relevant to our supervision session as well as to her work with Marty. Further, by addressing this behavior in a constructive way, we could contribute in a positive way to Marty’s own effort to address his issues and to be able to move back into a more family-like setting.

We began our discussion by agreeing that the issue of boundaries is a key issue for Marty. We discussed the probability that the interaction with Anne is probably indicative of Marty’s behavior around other people, especially other women. Given that the issues involving boundaries in his family involved relationships with female individuals (his mother and sister), it is not surprising that Marty’s most pronounced issues would involve his relationships with women. We then discussed the importance of establishing appropriate boundaries with Marty in order for us to work effectively with Marty as his legal counsel. It was also important to help Marty to learn appropriate conduct, which in turn might contribute to him behaving more appropriately with others. Anne and I discussed the approach of firmly telling him that he may not touch her hair, and at the same time establishing that although she does like him, she is not and will not be his girlfriend. Anne had indeed responded in this manner. She emphasized to him that she needed to maintain a professional relationship with him in order to be able to help him as his attorney.

I also helped Anne to see that her experience with Marty acting out this issue with her was a positive development, as awkward as it made her

feel. The fact that he acted out this behavior with Anne demonstrated that she had established a significant level of trust and rapport with Marty. The quality of their relationship meant that she might be able to make a significant contribution to Marty's ability to learn appropriate social skills and how to have a professional relationship with another person.

My interaction with Anne is also an example of modeling. The nature, tone, and content of my conversation with her provided a model that she could translate into her relationship with Marty. The discussion I had with Anne about boundaries demonstrated a way in which she could talk with Marty about boundaries as well. The fact that Anne shared this uncomfortable experience and was able to talk through it with me demonstrated that she and I had established a similar level of trust and rapport to that which she had achieved with Marty. For this reason, her awkward experience became an effective therapeutic interaction.

#### TRANSFERENCE AND COUNTER-TRANSFERENCE

Another example of the use of principles drawn from theories in the mental health fields is the use of "transference" and "counter-transference." Transference relates to characteristics the client may unknowingly attribute to the helping professional which derive from other primary relationships in the client's life.<sup>64</sup> Counter-transference is the reaction of the professional to the client along similar lines as transference, merely in reverse.<sup>65</sup>

Returning to the example involving Marty, Anne and I ended up discussing the notion of counter-transference,<sup>66</sup> over the course of her involvement with Marty. When Marty tested boundaries by referring to her as his girlfriend and touching her hair, she found herself feeling frustrated and irritated with him. I discussed with her the fact that her reactions to

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64. See Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 262-63 (1999) (discussing transference and counter-transference in the clinical teaching context).

65. See *id.* at 263-65.

66. In discussing this issue with the student, the use of the term "counter-transference" is unimportant and may even be unnecessary. The important thing here is to be able to understand and apply the concept, which requires some understanding of the psychoanalytic theory from which it derives. The challenge of Therapeutic Jurisprudence, if it is not simply to become "synonymous with simply achieving intended or desirable outcomes" is for attorneys (particularly those who represent children) to educate themselves with respect to the mental health theories that may guide their actions. *Therapeutic Jurisprudence and Preventive Law*, *supra* note 12. Although it is a specific framework, family systems theory is not monolithic. There are many schools and a vast literature in this area. Nevertheless, there are some general principles and common themes. See *Id.* Note that the legal time frame used to be one year before one could file to terminate based on a failure to remedy the conditions that brought a child into care. That time frame is now 6 months under ASFA. See *Id.*



Marty were certainly valid and understandable. Professionals who work with people do have reactions to clients on a personal level. The goal is not to deny or dismiss those feelings, but instead to recognize one's reactions, and then work on separating those reactions from one's professional relationship with the client in order to be able to remain in a helpful professional role.

By discussing the concept of counter-transference with Anne, I helped to normalize her feelings, and assisted her in moving beyond her immediate reaction so that she could continue to be helpful to the client. This intervention on my part helped to promote a therapeutic process and outcome for both the student and the client. The student became more self-reflective in her practice because she was better equipped to understand the importance of identifying her personal reactions to clients, and thus not to allow those reactions to get in the way of her effective representation. The client benefited because the student grew less likely to allow her initial reaction to inhibit her effective representation of the client.

#### LOUISE: READINESS FOR CHANGE

One of the most universal struggles for professionals in a helping relationship, which from a TJ perspective would certainly include lawyers, is dealing with clients who seek assistance but then fail to follow through with the steps necessary to accept that help. Many lawyers, and particularly, law students, have difficulty knowing how to respond to this type of behavior by their clients. Yet, they have no construct with which to address it. The field of social work has an essential construct, which used to be referred to as resistance, and now is taught as the client's readiness for change. Clinical faculty may relate this phenomenon to their interactions with law students, as much, if not more than, with clients.

In this particular instance, the student, Tammy, was assigned to represent an adult client, named Louise, who came to the legal clinic seeking assistance with reunification with her children, both of whom were in out-of-home care. Tammy, a bright and energetic student, very quickly assessed Louise's situation and, along with Louise, identified the steps that would be necessary for her to take to succeed in her reunification efforts. Soon thereafter, Louise missed several appointments and then failed to return phone calls to her home. Tammy was distraught and was prepared to go to any length to try to bring Louise back to the clinic and to assist her in the plan they had developed.

It was at this point when I had to sit down with Tammy and discuss the concept of readiness for change. In social work, new workers are

taught to expect this and to welcome it as a typical part of the treatment process. Readiness for change, as a general matter, stems from healthy defense mechanisms we all have. Even though we may want help and even though we may recognize the shortcomings of our current situation, we are resistant to making the changes necessary to alter that situation in a fundamental way. Social workers are taught to respect this aspect of the client and to work with it. In Tammy's situation, I needed to help her to understand that this response on Louise's part was to be expected and was not a cause for panic. Even though Louise genuinely wanted to be reunified with her children, the steps that would be necessary would require significant lifestyle changes that she might not be ready to make at this time.

Accordingly, Tammy should not be chasing after Louise or be working harder herself than Louise was working on the reunification plan. The latter is a fairly typical response for law students in the legal clinic setting, particularly because they often have very few clients and, at the same time, they are very eager to do their best in what is often their first practice experience. Instead, while being empathic, Tammy needed to set appropriate limits with Louise. That means that she needed to be clear that she was available to help Louise, but that there was little she could do until Louise was more ready to accept that help.

Another element that is useful in this situation is reframing, which is a social work technique that looks at how a particular behavior might be understood in a broader context. For instance, it may be that by failing to follow through, Louise is beginning, whether consciously or unconsciously, to accept that she may not be capable of taking the necessary steps to be reunified with her children. Indeed, she may be beginning to grieve or to come to terms with the loss of her parental role. It is important that she be empowered to make that choice. At some point, this may be a thought to share with her; however, sharing this awareness needs to be done very carefully and with great sensitivity to the appropriate timing.

By addressing the client's readiness to change, the clinical supervisor can help normalize the experience for the law student and, in turn, for the client as well. By reframing the issues, the clinical supervisor may help the student and the client to gain greater insight into the client's motivations, and to be more accepting of the client's self-determination.

## CONCLUSION

These examples illustrate vividly the extent to which social work offers a useful normative framework for practicing TJ, particularly in the context of the legal clinic. The field of social work has evolved to incorporate core elements that provide a coherent and cohesive set of therapeutic guidelines for effective clinical supervision and practice. These elements can easily be applied to legal education and practice. More importantly, by drawing upon these well-established elements of therapeutic social work practice, we can make great strides toward improving the therapeutic outcomes of legal practice.