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Shifting the Lens: A Primer for Incorporating Social Work Theory and Practice to Improve Outcomes for Clients with Mental Health Issues and Law Students Who Represent Them

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Shifting the Lens: A Primer for Incorporating Social Work Theory and Practice to Improve Outcomes for Clients with Mental Health Issues and the Law Students who Represent Them

BY SUSAN MCGRAUGH,* CARRIE HAGAN**
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INTRODUCTION

This Essay is an effort to promote the inclusion of interdisciplinary practice in our work as attorneys and in our roles as clinical legal professors. As the legal community continues its renewed emphasis on skills training, law schools should look to other professions in order to produce more lasting solutions for our clients and for more satisfactory outcomes for our lawyers. In this Essay, the authors discuss their work incorporating social work theory and practice into clinical legal education when dealing with clients who have serious mental illness. With some studies reporting up to 64.2% of inmates in the United States having a diagnosed mental illness, it is becoming imperative that law students acquire the skills necessary to adequately represent them. Two pillars of social work practice, Strengths Theory and Systems Theory, are discussed with an emphasis on the role they play in working with this demographic of clients.

I. BACKGROUND AND OVERVIEW

A. *The First Meeting*

Shay,¹ a third year law student in the Criminal Defense Clinic,² met her first client, Matthew, in the courtroom. Matthew enters the courtroom in a belly chain, his hands cuffed together in front of him and locked to a black box that sits at his waist. He wears the red jumpsuit indicative of an offender who is a special risk to the other inmates and the guards at the jail. Matthew sits with his head far down, ignoring the judge and the efforts of the courtroom personnel to engage him in the process. The jail staff advised Shay that her client is paranoid and delusional and most

1. All names have been changed to protect confidentiality.

2. The St. Louis University School of Law Criminal Defense Clinic allows law students to represent clients charged with criminal offenses under attorney supervision.

likely suffering from schizophrenia. Matthew believes that he cannot be prosecuted because he is a prophet and therefore immune to the laws of man.

Shay's clinical professor has instructed her to introduce herself to the client in an effort to persuade him to accept legal services from the clinic. He is currently unrepresented and has spent weeks in jail on a minor offense because he has not engaged the legal representation necessary to get his bond lowered. Shay is overwhelmed by the situation and afraid of attempting to make contact with someone who is so obviously in psychological distress. No class in law school has instructed her how to engage a person with serious mental illness, much less how to represent a person whose competency is in issue. Given her skills alone, Shay, third year as a law student, might not be able to handle working with this client. But in this case, Shay is not alone; at her side is a mental health social worker, Emma, who specializes in providing services to persons with serious mental illness. Together they approach the potential client.

B. Legal Education

Traditionally, legal education consists of a three year program of required courses, bar exam elective courses, and perhaps a course or opportunity for experiential legal learning, such as a clinic or externship. With legal education under scrutiny because of mounting student debt and a perceived lack of financial payoff, legal institutions and the American Bar Association are searching for ways to make learning not only better for the students but more cost effective on the whole.³ As recently as May 2013, the American Association of Law Schools (AALS) Curriculum Committee sent out an email to all of its members for a self-reflective analysis of what law school professors are doing and where we must go from here given the overall state of legal education.⁴

3. See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 610–11 (2010).

4. The email was sent to all American Association of Law Schools (AALS) members by the Curriculum Committee of the AALS, on behalf of Todd D. Rakoff, Chair, May 13, 2013. Posting of Todd D. Rakoff, Chair, Amer-

C. Promotion of Interdisciplinary Education

This Essay is an effort to participate in the positive transformation of legal education by promoting the use of interdisciplinary education to provide a fuller law school experience. Specifically, the authors discuss the documented need for improved training in interpersonal relational skills for law students, an overview of two basic social work theories and techniques that can be used in a legal education setting, as well as some examples of how these theories work in application for general use.⁵ Because of the soaring rates of defendants and inmates with serious mental illness,⁶ this Essay focuses specifically on practices that enhance students' abilities to adequately work with these clients, clients that demand a skill set which often differs from those traditionally taught to law students. For the purposes of this Essay, the authors will discuss the incorporation of social work theories into clinical legal education via interdisciplinary partnerships. It will also examine ways in which, should a social worker or interdisciplinary partnership not be accessible, one can incorporate basic social work theories into an existing curriculum, giving students a basic competence in work-

ican Association of Law Schools (AALS), to members, AALS (May 13, 2013) (on file with authors).

5. This Essay is an expansion of a session conducted by the authors titled *Empowerment Through Application: Implementing and Assessing the Intersection of Social Work Theories and Legal Pedagogy in a Classroom and Clinic Setting* presented at the 2013 AALS Conference of Clinical Legal Education in San Juan, Puerto Rico in May 2013. Susan McGraugh, Carrie Hagan & Lauren Choate, *Empowerment Through Application: Implementing and Assessing the Intersection of Social Work Theories and Legal Pedagogy in a Classroom and Clinic Setting* (May 2013).

6. Michael Schwartz, *Rikers Island Struggles with a Surge in Violence and Mental Illness*, N.Y. TIMES, March 19, 2014, at A1, available at www.nytimes.com/2014/03/19/nyregion/rise-in-mental-illness-and-violence-at-vast-jail-on-rikers-island.html?r=0 (citing one such concrete example of violence and mental illness in prison populations). See also H. Richard Lamb & Linda E. Weinberger, *Persons With Severe Mental Illness in Jails and Prisons: A Review* 49 PSYCHIATRIC SERVS. (1998), available at <http://journals.psychiatryonline.org/article.aspx?articleid=81232> (presenting statistics about the numbers of persons with mental illness involved in various stages of the criminal justice system and recommending how this population should be handled).

ing with those who have mental illness.⁷ Although the idea of integrating social work concepts into the legal profession is by no means novel, we hope to take this discussion one step further, by focusing on clients with serious mental illness and creating a primer for those who acknowledge the benefits of social work theory but who might not be familiar with the literature or techniques. This paper is written for them, to provide some techniques, which are easily adaptable to and consistent with best practices in clinical teaching. If nothing else, we hope to demonstrate how social work theory has enhanced our legal practice and teaching methods to produce lasting results for these clients and a more beneficial experience for our students.

II. INTERDISCIPLINARY EDUCATION

Interdisciplinary (also known as transdisciplinary) education is defined as “not one discipline imposing its own values, knowledge, and practices on another discipline or deciding which discipline is the best to use in certain situations. Instead it involves coming up with solutions that incorporate multiple ways of thinking, and collaboratively working together to serve clients and the community in a way that is better than segregated services.”⁸ By combining pedagogies, resources and perspectives, these partnerships allow students to think more broadly and learn more than one way of performing their work. Interdisciplinary education is not a new concept, nor is it necessarily difficult to work into one’s current approach. However, it is not always very well understood or appreciated by those who have not had exposure to the practice. Fortunately, there is an abundance of very helpful material that can

7. The authors of this Essay work at two different institutions, The Indiana University Robert H. McKinney School of Law and St. Louis University School of Law. Two clinics were involved in initial interdisciplinary work, a criminal law clinic and a civil practice clinic. Both clinics were able to have an interdisciplinary partnership implemented initially due to temporary grant funding, the expiration of which presents challenges to the continuation of this work on both campuses.

8. Stephanie K. Boys, Carrie A. Hagan & Valerie Volland, *Lawyers are Counselors, Too: Social Workers can Train Lawyers to More Effectively Counsel Clients*, 12 ADVANCES SOC. WORK 241, 242 (Fall 2011).

assist the curious practitioner in learning the various iterations of interdisciplinary practice.⁹

Law students are told from their first day of classes that one element of the law school curriculum is to teach them to think like lawyers. However, in learning a new analysis and skill set focused primarily on black letter law and interpretation, students risk the loss of some of their humanity. For instance, instead of stressing the trust relationship needed with a client (and how to build that) to gather information, the focus is instead on what information one needs to gather in order to prove a case or accomplish the immediate legal tasks at hand. There frequently isn't much discussion in law school classes on how to ask about delicate subject matter nor what to do when a client has an emotional reaction to something in the case. As a result students at times can be stymied on what their response should be. They forget, or rather shelve, many of their interpersonal and relational skills in order to prioritize the legal tasks at hand. Re-incorporating interpersonal skills with the new analytical legal skill set can be challenging – where to start? How do we get them back? Enter the world of interdisciplinary education. By combining two sets of training, theories and experiences, students can become more comfortable within their own realm, and they can also learn transitional skills that enhance their performance both in their field and out.

Experience demonstrates that law students generally are struggling with the gap in interpersonal skills education. Not only do they feel unprepared to practice law, but they also feel unprepared to meet and deal with clients. Data from a needs assessment done in 2011 at the Indiana University Robert H. McKinney School of Law in Indianapolis, Indiana, showed that law students not only felt that their legal education did not prepare them to work

9. Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. U.J.L. & POL'Y 11, 23–25 (2003); Susan R. Jones, *Promoting Social and Economic Justice through Interdisciplinary Work in Transactional Law*, 14 WASH. U.J.L. & POL'Y 249, 249 (2004); Alexis Anderson, Lynn Barenberg & Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting*, 13 CLINICAL L. REV. 659, 659–718 (2007); Jacqueline St. Joan & Stacy Salomonsen-Sautel, *The Clinic as Laboratory: Lessons from the First Year of Conducting Social Research in an Interdisciplinary Domestic Violence Clinic*, 47 LOY. L. REV. 317, 317 (2001).

with clients, but that learning skills with social work roots would be beneficial in assisting them to do this.¹⁰ Students reported that not only did they feel social work would allow them to help clients beyond their legal problems, but also to learn how to interact with different types of people. One student in particular noted, “I think it would be helpful to have some training in how others think and how to get [clients’] trust.”¹¹ Not only did this student identify that legal education did not provide the training they felt they needed, they also understood that looking beyond legal education was not only acceptable but would be helpful in assisting them. Again, even this small observation rests on an inference that the basic legal education we provide does not prepare our students as well as it could to develop and manage interpersonal relationships, an area in which social work can be useful in filling the skills gap.

Combining legal and social work pedagogies is a natural merger. Social work and the practice of law share more in common than one might think after a brief look at the roles and expectations of each in the field. As lawyers, we meet with clients, and no matter what type of law we practice we work toward meeting the client’s goals and improving their circumstances through legal and non-legal measures. In doing so, we have external forces that affect our abilities to work effectively along the entire timeline of the lawyer-client relationship. In social work, the scenario is generally the same: they have clients no matter what field they work in, they also need to work toward the client’s goals and generally improving a situation.¹² They similarly have external factors that can affect the nature of the work being done and any progress made.

10. A needs assessment study was done of existing Civil Practice Clinic students in 2011 to not only show the gap in legal skills education but also to provide the foundation for obtaining a grant to make the clinic interdisciplinary. A grant was awarded and the clinic made interdisciplinary in the spring of 2012. This study was done by both Professor Carrie Hagan at the Indiana University Robert H. McKinney School of Law and Professor Stephanie Boys at the Indiana University School of Social Work. Carrie A. Hagan & Stephanie Boys, Study, *Needs Assessment of Civil Practice Clinic Students*, 2011 (on file with authors).

11. *Id.* (Surveys are on file with the authors). Another student, when asked the same question, stated that they felt social work skills would be helpful as “we’re going to work with people, we need to know how to do it well.” *Id.*

12. Boys, Hagan & Voland, *supra* note 8.

Should one still not see the connection or importance, it is important to remember that working with clients presents multiple challenges no matter what the context and that representation generally necessitates a challenge of establishing a bond of trust and helping someone who is operating under substantial stress.

However, the differences in the approach each respective profession takes towards their clients and their problems are meaningful. Social workers pursue social change, most often on behalf of vulnerable and oppressed individuals and groups of people.¹³ Social workers also strive to ensure all people have access to needed information, services, resources through equality of opportunity and meaningful participation in decision-making.¹⁴ Social workers achieve these goals by employing multiple theories that guide interventions utilized by practitioners.¹⁵ Lawyers fundamentally have these same goals and objectives, but go about achieving them in different ways. There is less of a focus on wraparound services in the legal world, and the needs of the client are most often framed only legally, rather than holistically.

Wraparound services (otherwise known as holistic services) generally means client services that address more than just the issue a client comes to a service provider for. Wraparound services aim to address a range of needs rather than a singular need by looking at the client's individual needs and developing a plan based on those client circumstances.¹⁶ In other words, wraparound services is not a one-size fits all. In the legal world a client may need help with a singular legal issue, but during the course of the relationship, might mention a small claims case, issues with homelessness, a denial of food stamp benefits, etc. Rather than ignoring those issues, as they might not directly pertain to the legal issue, a

13. Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U.J.L. & POL'Y 63, 65 (2003).

14. Brigid Coleman, *Lawyers Who are Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients*, 7 WASH. U.J.L. & POL'Y 131, 134-35 (2001).

15. LENA DOMINELLI, *INTRODUCING SOCIAL WORK* 10 (1st ed. 2009).

16. The National Wraparound Initiative, a group focused on providing guidance on wraparound services for providers of children, youth and families, *Spending Money in All the Wrong Places: Jail and Prisons*, NAT'L ALLIANCE ON MENTAL ILLNESS, <http://www.nwi.pdx.edu/wraparoundbasics.shtml> (last visited May 1, 2014).

wraparound service provider would explore each of those extra issues and determine appropriate sources of assistance to help the client address those as well as the legal issue.

Each discipline offers its own framework to predict or explain changes in behavior and circumstances of people.¹⁷ During schooling to become a social worker, students are taught theoretical and practical skills that provide strategies of intervention for achieving social and economic justice and for combating the cause and effect of institutionalized oppression for their specific clients.¹⁸ Similarly to the practice of social workers, lawyers work with specific clients and work towards goals of improvement through justice. The split in the professions stems from the methods by which lawyers and social workers meet and assist their clients. Social workers are taught to focus on the inherent dignity and worth of a person, while lawyers are often focused on the legal issue and the constraints it places on the situation.¹⁹ Lawyers are most inclined to immediately recognize a client's deficits, usually because those deficits are what bring them into contact with the law. Training and tools to recognize strengths as well as deficits is not generally a part of legal education.

One interesting observation about the differences in these two professions can be found in a recent survey published in the *Wall Street Journal*, which summarized a ranking by Career-Cast.com of the best and worst jobs from number one, one being the best job, to two hundred, number two hundred being the worst job.²⁰ Five criteria were used in the rankings: physical demands, work environment, income, stress, and hiring outlook. With all of our stereotypes of social work, the stress and low pay factored in, social workers are ranked forty-ninth. Lawyers fall much lower at one hundred and seventeenth. Where might an interdisciplinary

17. *Id.*

18. Aiken & Wizner, *supra* note 13, at 78.

19. CODE OF ETHIC OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, § 3.2 (1996).

20. *Best and Worst Jobs of 2013*, WALL STREET J., <http://online.wsj.com/news/articles/SB10001424127887324874204578439154095008558> (last visited May 1, 2014) (ranking 200 jobs from best to worst based on five criteria: physical demands, work environment, income, stress, and hiring outlook. The firm primarily used data from the Bureau of Labor Statistics and other government agencies).

lawyer fall in the rankings? The authors of this Essay propose that by using the interpersonal and analytical tools that social work gives us, the ranking of an interdisciplinary lawyer would at least rise well into the top one hundred, as they would not only be able to complete the legal tasks they were responsible for but could better connect and identify with clients, reducing stress on both of their parts.

There are significant hurdles for lawyers working with individual clients on an interpersonal level. This is partly due to the idea lawyers have about success, which may only be achieved by winning a case. Regardless of any effort on the lawyer's part, at times there may be little change in circumstance for the client. Additionally, lawyers often ignore both obvious and concealed emotions when meeting with a client, much to their frustration, which erects barriers between clients and lawyers. Working with clients who have a serious mental illness adds another layer of difficulty for students. More often than not, these clients come into contact with the criminal justice system because their symptoms are not being managed,²¹ and students must be able to work with clients in light of these behaviors.

A. *Revisiting the Meeting*

To illustrate how these professions work together, the authors return to the previous scenario involving Shay and Emma. Shay watches as Emma sits to the side of the client, careful not to invade his boundaries. Emma speaks to him in a calm and reassuring manner, and refers to him not by the name he is charged under, Matthew, but rather by the name he has chosen for himself, Abba. Emma engages Abba in a conversation about his well being in confinement, not mentioning his criminal charges. Abba responds to the worker, who acknowledges his perception of himself and his role in the courtroom. She affirms his belief that he is a prophet and does not label his behavior as crazy or aberrant as others have

21. The National Alliance on Mental Illness, *Spending Money in All the Wrong Places: Jails and Prisons*, NAMI, <http://www.nami.org/Template.cfm?Section=FactSheets&Template=/ContentManagement/ContentDisplay.cfm&ContentID=14593> (last visited May 1, 2014) (documenting the lack of treatment these individuals receive while incarcerated and offers various statistics on the percentages of mentally ill individuals in the criminal justice system).

done before. As they discuss his situation, Emma is able to discern that he has a caseworker at a community mental health services agency. Emma receives permission from Abba to reach out to his caseworker to discuss his situation.

Shay and Emma leave the courtroom to contact Matthew's caseworker. The caseworker informs them that Matthew is indeed a client at their agency, and that they provide him with services, including psychiatric services, housing and counseling. The caseworker agrees to come to the courtroom to speak with the judge about releasing the client and provides assurances to the court that Abba will return for his future court dates. The agency agrees to maintain contact with Abba and to encourage him to consider the use of medication to control his symptoms. Given these assurances, the judge releases Abba on his own recognizance.²² Shay is then able to stay on to assist Abba with his future legal needs, and Emma continues to provide support and services assessment. Through partnership and dual involvement, both Shay and Emma learn from each other and assist the client in more than just their limited individual capacity.

B. *Context and Theory*

1. Therapeutic Jurisprudence

The concept of integrating social work theory and skills into legal representation as a method to improve client outcomes is certainly not novel. The Therapeutic Jurisprudence (hereinafter referred to as TJ) movement, with its roots in the late 1980s, advocates for the inclusion of social science theory into legal representation. This movement focuses on the psychological impact of the law and its processes on the client who interacts with the judicial system.²³ The Therapeutic Jurisprudence model, widely attributed

22. This scenario is repeated weekly by the lawyers and the social workers at the Saint Louis University Criminal Defense Clinic. The clinic provides legal and social services to persons with serious mental illness who have become involved in the criminal justice system.

23. David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 *TOURO L. REV.* 17, 20 (2008).

to the works of David B. Wexler and Bruce J. Winnick,²⁴ advocates for expanding the role of the lawyer from a mere expert in legal matters into a therapeutic agent who can promote the well-being of the client. By explicitly considering the psychological needs of the client, and seeking holistic and preventive solutions to the client's legal problems, the TJ approach values the process of legal decision making as well as the outcome. It encourages lawyers to practice with an ethic of care.²⁵

The lawyer's role under the TJ model becomes one that necessarily draws on the teachings of other disciplines in order to craft effective and creative solutions to client problems. Winnick and Wexler advise that the competent lawyer incorporate teachings from the areas of psychology and social work, among others, for a fuller range of skills from which to craft long lasting solutions. Primary among the many advocacy skills promoted by Wexler and Winnick are those that lend themselves to more effective client counseling.²⁶

Although the TJ model can be applied broadly to a number of areas of legal practice, it is interesting to note that its genesis was in mental health law.²⁷ It has since been expanded and devel-

24. See Wexler, *supra* note 23; David B. Wexler, *An Orientation to Therapeutic Jurisprudence*, 20 NEW ENG. J. CRIM. & CIV. CONFINEMENT 259, 259 (1993-94) (providing a thoughtful discussion of the history and impact of the TJ movement in the United States).

25. The term "ethic of care" is one that defies an easy and consistent explanation. See Susan Daicoff, *Lawyer, Be Thyself: An Empirical Investigation of the Relationship between the Ethic of Care, the Feeling of Decisionmaking Preference, and Lawyer Wellbeing*, 16 VA. J. SOC. POL'Y & L. 87, 87 (2008-09) (providing a fuller discussion of this evasive concept).

26. For example, the authors suggest two important practices for the legal clinic teacher to incorporate into the clinical setting: the "psycholegal soft spot" and the rewinding exercise. The psycholegal soft spot refers to those areas of an attorney/client relationship or the legal process that are likely to induce a negative reaction from the client. The authors encourage law professors to work with the student to identify these potential points of contention and strategies for dealing with them. The rewinding exercise allows the student to consider the outcomes of their client counseling session and how to improve in future performances. See Bruce J. Winnick & David B. Wexler, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law Clinic*, 13 CLINICAL L. REV. 605, 605-32 (2006). *Id.* at 610-11.

27. Wexler, *supra* note 23, at 21. A seminal publication by Wexler in 1992 discussed the need for a new lens for new model of jurisprudence that

oped in the realm of criminal defense practice. In promoting the use of therapeutic jurisprudence in criminal matters, the Winnick and Wexler emphasize the dynamic role that client stresses play in the resolution of a criminal matter.²⁸ The criminal defendant brings a number of significant concerns to the attorney/client relationship. Not only is the client facing a loss of liberty and the host of civil sanctions accompanying a criminal conviction, he or she often suffers from poverty, lack of community, and personal support. Adding a mental illness into this pool of concerns often produces an attorney-client relationship with a host of potential sources of tension.

2. The Comprehensive Law Movement

Susan Daicoff crafted a similar platform from which to approach a more humanistic methodology of lawyering. The Comprehensive Law Movement, first defined by Daicoff in 2000 as “a movement towards law as a healing profession.”²⁹ According to Daicoff, the Comprehensive Law Movement is a collection of many modern legal innovations that have as their core two specific similarities: the recognition of law as a healing agent and the integration of extralegal factors into the process of lawyering and client representation.³⁰ The advances that Daicoff includes in this definition include not only the Therapeutic Jurisprudence model but also those movements that she describes as the “vectors” or

balanced the needs of the clients with the interests of justice. David B. Wexler, *Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence*, 16 *LAW & HUM. BEHAV.* 27, 27–38 (1992). The authors would be remiss not to include the contributions of Michael Perlin, who is quite probably the most prolific author of academic literature on mental health law and the Therapeutic Jurisprudence movement. *See, e.g.*, Michael L. Perlin, *Too Stubborn To Ever Be Governed By Enforced Insanity”: Some Therapeutic Jurisprudence Dilemmas in the Representation of Criminal Defendants in Incompetency and Insanity Cases*, 33 *INT’L J. L. & PSYCHIATRY* 475 (2010); Michael L. Perlin, Keri Gould & Deborah Dorfman, *Therapeutic Jurisprudence and the Civil Rights of Institutionalized Mentally Disabled Persons: Hopeless Oxymoron or Redemptive Strategy?*, 1 *PSYCHOL. PUB. POL’Y & L.* 80–119 (1995).

28. *See* Winnick & Wexler, *supra* note 26, at 610

29. Susan Daicoff, *Law as a Healing Profession: The Comprehensive Law Movement*, 6 *PEPP. DISP. RESOL. L.J.* 1, 1 (2006), available at <http://ssrn.com/abstract=875449>.

30. *Id.* at 3–4.

lenses of the Comprehensive Law Movement: preventive law, procedural justice, creative problem solving, holistic justice, collaborative law, transformative mediation, problem restorative justice, and problem solving courts.³¹

Daicoff gives special consideration to the plight of the law student in her article *Law as A Healing Profession: The Comprehensive Law Movement*.³² Daicoff decries the typical model of lawyering as taught in most law schools with its emphasis on the importance of individual rights, standards and legal rules.³³ This emphasis on normative, rather than personal, ideals moves the student away from an acknowledgment of the human aspects of client representation towards a focus strictly on the legal problem in isolation. This focus necessarily detracts from the important work law students will someday do as peacemakers and healers. She instead advocates, like Winnick and Wexler, for law schools to focus on the ethic of care owed by future lawyers to their future clients.³⁴ Daicoff advocates for the inclusion of creative problem solving skills in the law school curriculum, which necessarily include the integration of the social sciences research and theory.³⁵

3. Relationship-Centered Lawyering

Most recently, Susan Brooks made significant contributions to the TJ literature with her discussion of the role of social work theory and practice in the legal workplace.³⁶ Her model of Relationship-Centered Lawyering,³⁷ with its discussion of the applica-

31. *Id.*

32. *Id.*

33. *Id.* at 6.

34. *Id.* at 6 (citing CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 24–39 (Harvard Univ. Press 1993)).

35. *Id.* at 22–23.

36. SUSAN L. BROOKS & ROBERT G. MADDEN, RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE (Carolina Acad. Press 2010).

37. Neither Brooks nor these authors claim that Brooks originated the idea of introducing social work theory into the TJ movement. Rather, Brooks' work is highlighted along with that of frequent co-authors Robert G. Madden and David M. Boulding because it provides specific instruction for integrating social work theory and practice into the law clinic curriculum. *See also*

tion of social work skills for the more effective and long-lasting resolution of client problems, provides the legal practitioner with exciting new tools for practice. The crux of the successful resolution of client problems, according to Brooks, is the formation of a sincere, honest and mutually beneficial relationship between the lawyer and the client. This emphasis on creating a situation of trust and care between the participants in a working relationship that is at once both functional and genuine.

Brooks has written extensively on the topic of introducing social work skills into the law school curriculum for the betterment of our students.³⁸ She promotes the idea of integrating not only best practices in social work into the law school paradigm, but the theories behind effective social work practice.³⁹ Although noting that students cannot achieve the professional prowess of a mental health worker during the law school experience,⁴⁰ Brooks nonetheless encourages law professors to expose students to basic social work strategies and theories.⁴¹

Brooks' most significant contribution to the area of TJ is her model of Relationship-Centered Lawyering. This model, created with co-author Robert G. Madden, promotes the idea that lawyers can and should provide optimum, or at least enhanced, repre-

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, 487 (2002).

38. Susan L. Brooks, *Practicing (And Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 *ST. THOMAS L. REV.* 513, 513–30 (2005).

39. BROOKS & MADDEN, *supra* note 36, at 22, 26 (citing Robert G. Madden, *From Theory to Practice: A Family Systems Approach to the Law*, 30 *T. JEFFERSON L. REV.* 429, 431 (2008)).

40. According to Brooks and Madden, the use of family systems theory in client representation can lead to better long-term outcomes in certain situations. BROOKS & MADDEN, *supra* note 36. Lawyers who incorporate a family system perspective can achieve six competencies: understanding context, using the skills of collaboration, practicing in ways consistent with cultural competency, maintaining effective relationships, engaging in multidisciplinary practice and practicing with an ethic of care. *Id.* Likewise, Brooks and Madden cite the strengths perspective and the concomitant resilience theory as two other social work theories that can enhance a person's experience both delivering and receiving legal services. *Id.*

41. BROOKS & MADDEN, *supra* note 36.

sentation to clients through the integration of social science into legal practice and knowledge base.⁴² Brooks and Madden identify the three central elements of Relationship Centered Lawyering as “(1) substantive social science perspectives representing ‘contextualized’ approaches to human development; (2) process-oriented perspectives focusing on justice as well as effectiveness; and (3) affective and interpersonal perspectives including cultural competence and emotional intelligence.”⁴³ Referring to Susan Daicoff and the Comprehensive Law Movement, the authors endorse an approach to representation that goes beyond the mere resolution of the client’s legal problems but also seeks to incite a deeper, more lasting response in the person being represented. The lawyer in this scenario is seen as an agent of change, one who can impact the long-range success of the client by engaging them not only legally but systemically as well.⁴⁴

Brooks makes an especially good case for the incorporation of relational lawyering in her article written with David A. Boulding, *Trying Differently: A Relationship-Centered Approach to Representing Clients with Cognitive Challenges*. In that article, the authors advocate for the induction of social works practices into legal representation in order to achieve the best possible outcome for a client with cognitive limitations. Such clients, Brooks and Boulding argue, require an attorney to go beyond the normal goals of legal representation to ensure continued success for the client outside of the criminal justice system. They note the need to integrate both system and empowerment approaches⁴⁵ into the representation of the cognitively limited client in order to ensure that the client is able to disengage from the behaviors that resulted in entanglement with the criminal justice system.⁴⁶

42. *Id.*

43. David M. Boulding & Susan Brooks, *Trying Differently: A Relationship-Centered Approach to Representing Clients With Cognitive Challenges*, 33 INT’L J.L. & PSYCHIATRY, 448–62 (2010).

44. *Id.*

45. BROOKS & MADDEN, *supra* note 36.

46. Boulding & Brooks, *supra* note 43, at 71. Brooks and Boulding discuss the utilization of an “external brain” to assist the client in successfully navigating the criminal justice system. This external brain is described as:

a committee of good hearted, skilled, caring people who stand in as volunteers to supervise the individual with FA/NB who

Brooks' and Boulding's discussion of the importance of relationship centered interviewing is especially relevant to a discussion about representing persons with mental health issues in criminal and family courts. They promote the process of building a relationship with a client as the primary motivator and fact finding as a secondary consideration.⁴⁷ This approach, known in the social work milieu as "meeting the client where they are," emphasizes the need for persons with mental limitations to be understood in context. Instead of interrogating a client in order to elicit only those facts necessary for legal representation, Brooks and Boulding promote the idea of focusing on those factors that caused the client to offend in the first place.⁴⁸ This approach requires, among other things, that a lawyer more fully investigate a client's situation in the community, the presence or lack of a support system and any physical or mental health factors that impact a client's well-being. Only by seeking to understand the client's impression of his place in the world can a lawyer promote lasting solutions to a client's problems.

C. Introduction to Strengths Perspective

In social work, there are multiple theories that guide the interventions utilized by practitioners. Each offers its own framework to predict, explain, or change behavior and circumstances. Two prominent social work theories and approaches that have been identified by the authors of this article as fortifying the core competency of their law students are Strengths Perspective and Systems Theory. Ultimately, Strengths Perspective dominates social work pedagogy and discussion. Strengths Perspective approaches

is committing the stupid crimes. This committee stands in and *functionally* replaces the missing brain cells and behaviors. For lawyers, it means making sure that someone takes responsibility for getting clients with FA/NB to probation on time, monitoring their friends, helping them observe curfews, helping them shop, getting them to job interviews, and regularly checking in on them. It also means explaining all about FA/NB to employers and helping them implement structures for success in the workplace.

Id.

47. *Id.* at 49.

48. *Id.* at 53.

clients through the light of their “capacities, talents, competencies, possibilities, visions, values and hopes.”⁴⁹ The major focus of practice in the Strengths Perspective is the collaboration and partnership between social worker and client. Focusing on the strengths of the client and their situations shows the client that he or she is more powerful and in control of his or her situation than might appear at first glance. This perspective empowers the individual and gives them a stronger degree of participation in the legal and social process.

The purpose of the Strengths Perspective is not to ignore the deficits that clients bring to us, but to encourage the professional to make a concerted effort to identify the strengths and assets that clients also bring to the table. Once identified, client strengths can be built upon to assist in addressing problems. This perspective also acknowledges that clients have their own strengths and resiliencies that can be used to address issues they identify now, as well as in the future, when assistance might not be available.⁵⁰ By utilizing this approach, the deterministic rationale that because someone has experienced trauma, he or she cannot escape being a victim is removed from the equation. According to Saleeby, “Strength perspective denies that all people who face trauma and pain in their lives inevitably are wounded or incapacitated or become less than they might be.”⁵¹

The Strengths Perspective can be extremely useful in legal representation. Discovering and acknowledging a client’s strengths can be used in a legal scenario to the benefit of our clients. For example, in criminal defense setting, judges and prosecutors are more receptive to outcomes that benefit clients when they can see the strengths the client possesses and can be assured that those strengths are being enhanced. Letting the court know that “given

49. Dennis Saleeby, *The Strengths Perspective in Social Work Practice: Extensions and Cautions*, 41 J. SOC. WORK 296, 296–305 (1996).

50. Theresa J. Early & Linnea F. GlenMaye, *Valuing Families: Social Work Practice with Families from a Strengths Perspective*, 45 J. SOC. WORK 118 (2001); B. Bernard, Presentation at the Applications of Resilience Conference in Washington, D.C. (Dec. 2011) (presenting on the role of resilience in drug abuse, alcohol abuse and mental illness).

51. Dennis Saleeby, *Power in The People: Strengths and Hope*, 1 ADVANCES IN SOC. WORK 127, 127 (2000).

the difficulties they have, and the known resources available, people are often doing amazingly well—the best they can at the time”⁵² can give the court more reason to understand the defense’s argument for less stringent sentencing measures.

Likewise, implementation of the Strengths Perspective is useful in developing strong attorney-client relationships. Given how deeply the deficit/pathology knowledge base is ingrained in our way of thinking, the Strengths Perspective often involves quite a large paradigm shift for students and practitioners. It is easy, after a relatively short time in practice, to feel that we best understand a client’s issues and to replace the client’s narrative with one of our own making, one that better fits the expert/client scenario dominating law practice philosophy. In many interactions, we consider ourselves the experts in our client’s life. However, the Strengths Perspective reminds us that the client is the expert when it comes to understanding and appreciating his or her own life. While this is obviously not the case in matters of legal strategy or process, it is certainly true in determining the outcomes the client considers most desirable.

An important corollary to the Strengths Perspective is the notion of resiliency. In social work as well as law, practitioners consistently find themselves working with people that have faced seemingly insurmountable challenges with scarce resources and virtually no emotional support. Yet, particularly when utilizing strength-based models, we see these clients using creative solutions to get their needs met and persevering through situations that others with more obvious assets could not handle. This ability to persevere through extreme difficulty is known in the social work literature as resiliency.

Social work theory uses the concepts of “risk factors” and “protective factors” to better understand how this resiliency can be nurtured in clients. Little research has been conducted on resiliency theory due to the difficulty of measuring and defining the concept. There is consensus that resiliency can be understood as “successful functioning in the context of high risk,” however it is useful for lawyers and social workers to also view it as a client’s ability to function at all in the context of high risk, as the definition of “suc-

52. *Id.*

cessful functioning.”⁵³ The ability to navigate high-risk situations looks much different from the perceived definition of “successful functioning.”⁵⁴

Risk factors are considered correlates and causes of negative behaviors, attitudes, and conditions.⁵⁵ Examples of risk factors include poverty and absence of support systems. Protective factors are considered to be those that “predict future outcomes through their ability to moderate, mediate, or compensate for risk.”⁵⁶ These factors can either prevent future risk or help buffer the negative effects of current risk.

What can be most difficult about utilizing this framework is discovering the resiliencies within clients. Often, the resiliencies are hidden, because those characteristics that help a client to be successful in high-risk situations typically do not conform to the behaviors society expects from its members. For example, many clients with Borderline Personality disorder may show attachment issues and display manipulative behavior.⁵⁷ While neither is conducive to forming healthy relationships, they both can serve a resilient purpose. Manipulation may just be another tool to have their needs met, whether it is in terms of physical resources or emotional support. Low levels of attachment and connection to others can be a coping mechanism developed from years of trauma.

Implementing the Strengths Perspective into practice is also critical in dissolving the power differential that is often frustrating for clients working with lawyers. By meeting clients where they are, lawyers empower them to participate successfully in the justice system by being an expert on their own lives. The lawyer implementing the Strengths Perspective model will be able to understand the multitude of issues that the client may be facing outside the realm of the legal issues. The lawyers will treat the client holis-

53. Mark W. Fraser et al., *Risk, Protection, and Resilience: Toward a Conceptual Framework for Social Work Practice*, 23 SOC. WORK RES. 131, 131-43 (1999).

54. *Id.*

55. *Id.*

56. *Id.*

57. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed., text rev. 2000) [hereinafter DSM-IV-TR].

tically, and focus on solutions that serve each of the client's social, economic, and cultural needs in addition to legal needs.

D. Resources, Opportunities, Possibilities, Exceptions and Solutions

Another useful social work tool for helping students understand and appreciate a client's situation is the ROPES method. ROPES is an acronym for a practice that is used by social work practitioners to help them more easily identify a client's strengths. ROPES stands for Resources, Opportunities, Possibilities, Exceptions and Solutions. It acknowledges that the challenge for social workers, as well as lawyers, in using the strengths perspective is that there is often little understanding or acceptance of the client's situation. By utilizing the ROPES method, law students can uncover and utilize a client's strengths in their legal practice. The following chart is a tool for conducting a strengths assessment using ROPES:

Identifying Strengths: Use the ROPES⁵⁸

<u>R</u>esources:	<i>What resources are available to the client?</i> Personal Family Social environment Organizational Community
<u>O</u>ptions:	<i>What options do the clients have?</i> Present focus Emphasis on choice What can be accessed now? What is available and hasn't been tried or utilized?
<u>P</u>ossibilities:	<i>Although they may not possess it now, what is possible for the client?</i>

58. See Clay Graybeal, *Strengths-Based Social Work Assessment: Transforming the Dominant Paradigm*, 82 FAMILIES IN SOC'Y: J. CONTEMP. HUM. SERVS. 233, 233 (2011).

	Future focus
	Imagination
	Creativity
	Vision of the future
	What have you thought of trying but haven't tried yet?
<u>Exceptions:</u>	<i>What exceptions to the client's problems are there?</i> When is the problem not happening?
	When is part of the hypothetical future solution occurring?
	How have you survived, endured, thrived?
<u>Solutions:</u>	<i>How has the client solved the problem so far?</i>
	Focus on constructing solutions, not solving problems
	What's working now?
	What are your successes?
	What are you doing that you would like to continue doing?

The main benefit of ROPES is that it can be easily understood and applied to a variety of client situations. Students can use this fairly self-explanatory chart when interviewing clients. Note how it requires the student to discuss a client's perceived and actual strengths as well as the resources available to the client now and in the future. The client is asked to envision a future where their needs are being met and in doing so becomes an active partner in the problem solving process. This chart will assist the law student in conducting motivational interviewing, another tool of social work practice that is useful in creating positive client-lawyer interpersonal relationships.

E. *Application of Theories*

Let's go back to the situation with Shay. After getting to know Matthew, on the surface there appears to be hopelessness: he is homeless, does not have a full-time job, has been diagnosed with a mental illness and cannot afford his medicine, and is still facing charges for a crime that could either land him in jail or put him on probation with hefty court costs that he would be unable to pay. Rather than trapping ourselves in Matthew's deficits, when lawyers use a strengths-based perspective, lawyers and law students

find many personal assets upon which we can build a successful outcome. Matthew, although being homeless, has somehow managed to hold onto a part-time job for three years. This proves Matthew is capable of being responsible, reliable, hardworking, and a contributing member of the community. Matthew has also managed to stay safe during his six months of homelessness, a feat that is troublingly difficult to manage in a large urban area. Although his criminal charge is certainly a risk factor, it is worth noting that this is a first charge, indicating that when given the right supports, Matthew can independently take care of himself and operate safely in society. In using this perspective, Matthew's resiliency is highlighted, and his risk factors become strengths, all of which secure him different options in the long run, and allows for more creative assistance to be individually tailored to Matthew's individual needs.

As discussed previously, the low level of self-satisfaction among lawyers reinforces the need to move from a model where students feel obligated to fix clients and towards a model where students empower clients to fix themselves. Not only is it impossible to change the behavior of another person or to fix all the deficits lawyers perceive them to have, it also robs the client of his or her power to affect the change themselves and contributes to his or her feelings of powerlessness and hopelessness. By empowering the client to create his or her own solutions, lawyers transfer our power to them. This transfer of power does two things. It relieves the law student of the overwhelming burden of trying to fix another human being, with all the stress and frustration that necessarily accompanies such a commitment, while also acknowledging the potency of the client. This in turn empowers the client to become her own advocate and source of strength.

F. Introduction to Systems Theory

A second pillar of social work theory that has both clinical and legal implications is Systems Theory. Systems Theory understands the world to be a group of systems (such as family, religion, work, school, legal) in which all people operate and interact. These systems influence people and in turn, people influence the systems, creating a feedback loop that can have positive or negative consequences. Simply stated, the whole is greater than the sum of its parts. On the surface, individual systems may seem to have little

influence on a person's life. However, when one examines how all these influences are compounded upon each other, it's easy to understand the role each system plays.

The duty of the social worker is to organize the interactions between different parts of the system to facilitate positive outcomes for people. There are three levels of system groups: micro, mezzo, and macro. Micro systems are small systems in which most people operate, such as their biological system, psychological system, and family systems. Mezzo systems consist of larger group systems, such as someone's neighborhood, school, church, or workplace. Macro systems are large systems such as culture, laws, and government programs. A sample of what this looks like can be seen below:

SYSTEM LEVELS

Micro Systems

Mezzo Systems

Interpersonal Relationships

School

Family

Church

The

The Individual (health systems)

Workplace

The Individual (psychological systems)

Neighborhood

Macro Systems

Cultural Environment

Laws

Government Programs

Religion

The authors propose that the most effective way to implement these thinking tools is to integrate them into law students' legal training before they join the legal community as practicing attorneys. As lawyers, achievements might be recognized without a clearer idea of the range of positive impact, no matter how small, lawyers can have on client circumstances. As lawyers are not traditionally trained in incorporating theory-based interpersonal skills into representation, lawyers need to be able to think creatively as

how others implement this skill, and do it well. Lawyers also need to be able to recognize the positive impact that we can have on our clients' circumstances in order to find our work fulfilling.

Integrating System Theory into the law school curriculum will greatly improve a law student's problem-solving abilities. It is said that to a surgeon, all solutions point to surgery. So to a law student all presenting problems appear to be legal. They flock to the usual legal remedies for problem solving such as litigation, estoppel, or plea bargaining. The actual answer to the problem may, however, be more relational than legal. By failing to acknowledge the extrajudicial solutions available to legal clients, as well as the social science behind them, law schools deprive both the student and their future clients of the opportunity to achieve the best possible results. As educators, we owe our students the full range of experiential and theoretical education in order to provide them with a toolbox full of resources.

As discussed above, Systems Theory suggests that no legal client exists in a vacuum.⁵⁹ Rather, clients are part of a unique and dynamic system of interrelationships that create the client's reality and worldview. Because the system creates the world in which the client functions, successfully or unsuccessfully, to fully understand a client's situation the lawyer must understand the relational aspects of the client's reality. What may appear at first glance to be a legal problem may in fact be the result of a serious dysfunction in the client's relational sphere. For example, a client who has become entangled in the family justice system may appear to have a legal problem in that they have been accused of child neglect. Upon closer examination of the issue, however, the real problem may be an inability to access the financial means of supporting the child because of a breakdown in the family system at the mezzo level. Similarly, a criminal problem may be due to an inability to access the mental health system.

The primary tool for demonstrating systems theory in social work is the systems map. By creating a systems' map, the social worker plots out the various systems that affect, and are affected by the client. Some of the systems are intimate to the client, family relations, for instance. Other systems are larger, such as the Medicaid system or the client's religious affiliation. These systems in-

59. Saleeby, *supra* note 52.

teract not only with the client but also with each other. By creating and studying the map, law students will become aware of the web of micro, mezzo and macro relationships in which the client dwells. This exercise is particularly helpful when discussing the concept of holistic legal services. By utilizing the map, the students can begin to understand the various interrelated systems that the client must navigate in order to successfully solve their problems. Resolving only the legal problem is a valid yet unsatisfying solution; the client risks reentry into the judicial system because the root dysfunction remains unresolved. The student who creates a system map with the client can trace the source or sources of the dysfunction and work to resolve the issues underlying the legal problems.

Let's return again to the client Matthew. Systems Theory was used as a way to distinguish which systems Matthew was interacting with that could be helpful in facilitating his immediate release. The client did not immediately note any family members (micro system) that could provide him with stable housing. Matthew also did not seem to be able to access the medication he needed (macro system), did not have a job providing him with income (mezzo system) and was being confined by the state (macro system). To his advantage however, Matthew did have a caseworker at a local community mental health organization (mezzo system), who could connect him to government housing and medication programs (macro system).

By identifying the gaps in the systems that Matthew interacts within, the student lawyer can begin to map out a plan for action. Shay, the law student, seeks to identify systems that are positively interacting with Matthew, which can be optimized, and systems that are negatively impacting his circumstances and ways in which to address those systems. Emma now has a starting plan of action. She can begin to address housing, medication, and vocational rehabilitation needs.

By addressing these concerns, Emma is able to impact the systems that are causing Matthew's interaction with the criminal justice system, leading to better judicial outcomes for Matthew as their client and more long-term successes for him as someone struggling within systems that are working against him.

III. IMPLEMENTATION IN A LAW SCHOOL SETTING

While an obvious answer may be to integrate mental health training into the law school curriculum, this is not a solution likely to be implemented on a widespread level. In a time when law schools struggle to reconfigure their curriculum to meet both the demands of reduced enrollment and criticism from the private bar, it is naive to expect that law schools will add courses designed to help lawyers recognize and represent persons with mental health deficits. Additionally, there are generations of lawyers currently practicing criminal defense who have no training in mental health. The question becomes this: given these deficits, how do we improve the quality of representation of mentally ill and mentally disabled defendants within the current system?

One way to do this is by incorporating the social work training as outlined above into existing clinical law programs. This training furthers the authors' main premise that teaching law students basic principles of social work theory as well as ways in which to integrate the practices which flow from these principles will provide future lawyers with skills imperative to practice with mentally disabled clients.

A second option is the creation of continuing legal education seminars for practicing attorneys that brings awareness and training to address these issues for those that are already licensed. This avenue will not only allow for dissemination of these ideas on a much larger level, but it will impart knowledge to individuals that may not have been exposed to this sort of thinking before, and who may have already been working with mentally ill clients.

A third option is to partner with local agencies and non-profits that focus on these clients/issues, and create impact projects to address those issues in surrounding communities. Examples of impact projects might be collecting data on what services are available/unavailable and making recommendations on improvements; creating legal fact sheets about common scenarios facing these individuals and legal options/resources available to them; or developing resource sheets that can be made available to the local bar should attorneys come into contact with mentally ill clients and not know where to refer them. All of these impact projects can easily be accomplished through a law and social work interdisciplinary partnership, as both sets of individuals can contribute their pedagogical knowledge and skills in a combined effort.

A guide to implementation at the law school level might be as follows: during pre-semester orientation or beginning classes, training on mental illness (overview of common conditions; defining mental illness; examples of past clients; specific interviewing/counseling skills relative to these individuals; techniques grounded in theories from both disciplines on combating client behavior; etc.) should be incorporated or used as a main focus depending on the clients students will be working with. Past clients, issues, and resolution of difficult situations are a good place to start deriving this initial framework from.

Second, making ongoing reflection and discussion about the work that is going on and how issues are being dealt with encourages students to support each other as peers, as well as obtain feedback from supervisors about strategies going forward.

Third, having concrete office policies in place to assist with certain identifiable issues as they occur can help ease any confusion about what steps to take should an issue arise. One example might be if a client comes in heavily intoxicated, how should the student handle that situation and are there recommended steps that should be taken? Another might be if a client has any sort of psychotic episode while at the office, how should the student handle that situation, whom might they call for assistance, and are there any recommended steps that should be taken?

Fourth, when working with this series of clients, conversations about the definition and re-definition of what success means are important. Many times law students view success as engaging in litigation, oral argument, or negotiating a case. Sometimes these clients do not need to go that far to improve their situation, and success might just be connecting them with resources, taking small actions outside of court on their behalf, even just giving them someone to talk to. By reorienting our view of what success looks like, representation can be more meaningful for the client and the student, and existing mental or emotional issues don't have to stand in the way of what is perceived as a victory.

Last, feedback from the students should be obtained at the beginning and end of the semester to assess their knowledge and comfort level with these clients and issues at the beginning, as well as whether the training and guidance provided gave them enough resources to work with the clients throughout the semester. Other helpful questions might be to ask what training the students would recommend for the future, and what was/was not helpful. What to

ask, how to train, what to include in that training, and how to provide it all may depend on the context and clientele the students will have. Examples of how this framework operates are shown below in two specific clinical contexts, criminal and civil.

IV. CLIENT CHALLENGES IN THE CRIMINAL JUSTICE SYSTEM

Any lawyer who has practiced criminal law for even a short period of time will come into contact with a client who suffers from a mental health problem. There can be no argument that a criminal defense lawyer must possess, at minimum, a rudimentary knowledge of the symptoms and consequences of mental illness in a client. But effective representation goes beyond the ability to spot mental illness. It requires that a lawyer possess the interpersonal skills necessary to communicate with a client who has cognitive deficits or who actively suffers from a mental illness.

Persons with mental illness or cognitive deficits who become involved with the criminal justice system present a host of challenges to the criminal defense lawyer. Primary among these is the inability to interact in a meaningful way with the mentally impaired client. The genesis of this shortcoming is found in the law school curriculum. Traditionally, law schools have focused on legal doctrine and skills, leaving the instruction on mental health to those educators better acquainted with the science of the human mind.

Of course, there are those students who enter law school having completed an undergraduate degree in psychology or social work, but that number is low. The majority of lawyers for criminal defendants enter the criminal defense arena with no training on the special needs of mentally ill clients. Anecdotally, the authors of this article have observed that most lawyers lack the ability to recognize all but the most obvious symptoms of mental illness in a client. The specialized interviewing and counseling techniques that are proven to be most effective in advising the person with mental illness escape the grasp of the typical attorney. Even fewer attorneys possess the ability to access the supportive services and mental health treatment necessary to ensure a client's recovery.

The Saint Louis University School (SLU) of Law Criminal Defense Clinic represents those persons whose serious mental illness has caused them to interact with the criminal justice system. Students in the SLU Criminal Defense Clinic not only work in tan-

dem with social workers but receive instruction on social work theory and practice along with the typical lessons on legal practice. This instruction is done formally in the classroom as well as informally during the practice of representing clients during the semester. Using an interdisciplinary educational model, the clinic is co-taught by both a clinical law professor and a mental health social worker. Although the law professor must by necessity be the primary supervisor in this scenario, the MSW social worker interacts with both the law students and the clients in order to ensure the best possible outcome for both groups.

The SLU Criminal Defense Clinic students are taught to integrate both strengths and systems theories into their representational skill set. Students are taught to consider the client within the systems they inhabit: the family system, the judicial system and the community system, among others. For instance, students become familiar with the client's family and significant others during the course of representation. Students also meet with caseworkers from community agencies to get their input on a client's progress. By teaching students how to place a client's legal situation in a context that makes meaningful reference to the other parts of his or her life, law students can begin to see the interconnectedness and interplay of the factors that will lead to successful resolution of the legal case. This also allows for a discussion of future consequences and options for the client that is more easily comprehended than the typical limited discussion of legal issues and consequences. Rather, this analysis serves to mitigate the limited level of sophistication of most clients, who are often prevented from fully appreciating the legal consequences of their situation because of their limited cognitive abilities. By problem solving with the client, rather than for the client, the law student can truly achieve the client-centered representation that we expect them to model but sometimes fall short of teaching them to apply.

A. Motivational Interviewing

One social work practice that has proven to be especially effective in implementing a systems approach with clients is motivational interviewing. For example, the SLU Criminal Defense Clinic integrated instruction on a third theory, that being motivational interviewing, into the classroom component of the course. One session, two hours in length, is conducted by the MSW level

social worker employed by the Clinic as a mental health practitioner. During that session, the social worker makes the class aware of the basics of motivational interviewing and role plays an interview for the students to observe. Motivational interviewing allows law students to assist clients in discussing and realizing goals for their future. For example, a typical motivational interview with a client would begin with the student inquiring of the client where they would like to see themselves in the future, either short term or long term. Often, the answer is “in my own apartment” or “holding a job.” Certainly these are not “legal” goals one would associate with criminal defense representation. But in order for the client to become motivated to participate successfully in whatever tasks must be accomplished to resolve their criminal case, they must be able to see the utility in complying with the demands of the court or the probation officer. One might imagine that the goal of “not going to jail” would be motivation enough. However, in our experience with seriously mentally ill clients, the future repercussions of non-compliance are difficult for the client to comprehend. Instead, we focus on those goals that the client has identified as being important to them.

Once the student attorney has established the nature of the client’s goals, they then ask how, in the client’s mind, those goals can be achieved. Although the client is encouraged to create the steps necessary to achieve their goals, one important step in the process is always the resolution of the criminal matter. For example, the client who wishes to have a job must first resolve the criminal matter in a way that will not entail a jail sentence. The student will discuss with the client those steps that must be taken to get to a beneficial resolution of the charges. The client might need to finish community service hours or to attend meetings with his or her caseworker or probation officer in order to complete probation. Armed with the knowledge that the end result will be an opportunity for housing, our experience has been that the client willfully embraces those tasks, which will successfully resolve their criminal charges. Instead of avoiding a negative repercussion, the client reaches towards a positive goal. The student is not part of the system but a participant in the client’s success, a role that greatly enhances the attorney-client relationship as well as the possibility of success. This model also ensures that the representation is truly client centered for the client decides not only on the resolution of the case but the appropriate path to be taken to resolution.

B. Client Challenges in the Civil Court System

As outlined above, there are several challenges involved in working with clients in the criminal system, many of which are echoed in the civil system. Some differences arise out of the types of cases that are handled in the civil setting – notably family law, domestic violence, consumer, child support, environmental, etc. These cases not only contain different issues, but also affect a client differently than a criminal case (i.e. instead of facing imprisonment as in a criminal case, a client might lose parenting time with their child or be ordered to pay a higher amount of child support).

The students in the Indiana University Robert H. McKinney School of Law Civil Practice Clinic (CPC) also work with clients who present a host of mental, physical and emotional issues. CPC students work on family, environmental, guardianship, consumer, small claims, housing and child support cases, among others. One of the most common cases are civil protective orders, cases that by their very nature contain a lot of emotional content and disturbing information.⁶⁰ An interdisciplinary partnership at the CPC was formed in the Spring of 2012 due to emotional client challenges that law students and their supervising attorney were faced with. In the CPC partnership, the clinic operates on an interdisciplinary basis each spring, with both law and social work students enrolled and partnered on cases together. The class is also taught by both a law and social work professor, who model the partnerships they apply. As in the criminal clinic above, students are taught to integrate both strengths and systems theories into their representational skill set. These skills are taught via interactive lectures, role plays, and classes specifically developed by the

60. National Institute of Mental Health, *What is Post-traumatic Stress Disorder (PTSD)?*, NAT'L INST. HEALTH, <http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml> (last visited May 1, 2014) (providing an overview of causes and symptoms of PTSD). Given the amount of work with domestic violence survivors, one recurring issue is that of post-traumatic stress disorder. *Id.* PTSD causes survivors to avoid events that remind them of the negative experiences, be emotionally numb, and have memory issues, notably with the violent events. *Id.* These are some of the challenges in working with a client who has PTSD, not the least of which is that their avoidance and memory loss.

social work students for the benefit of their legal counterparts. Interdisciplinary case rounds also allow for both sets of students to break down client scenarios and issues using the different theoretical lenses.

Law students in the CPC initially struggled with the emotional component of a lot of their cases and would routinely vehemently state at the beginning of the semester that they “were not a hugger” or “weren’t there to be their client’s friend.” Rather than feeling comfortable with having to deal with human emotions, the law students were instead hiding behind their legal work so as not to have to confront the emotionally charged situations. Students were also unsettled when clients presented with mental illness, as oftentimes the mental illness would interfere with basic components of representation, such as the ability to remember conversations, clarity of communication, or comprehension. This reluctance and lack of professional training inhibited their abilities to connect with their clients on a different level, and to provide the best service that they were able.

One example of this is when a client of the CPC showed up to the office heavily intoxicated for an initial client interview. Rather than recognize the situation and postpone the interview, the law student instead proceeded with the meeting, even going to far as having the client sign all necessary forms for the representation to take place. After the meeting, the student then called the police on the client, giving them both the make and model of the car and the direction the client would be driving home. The law student did not see anything wrong with the actions they had taken, and instead were indignant that they postpone the interview.

The above scenario resulted not because of incompetence on the law student’s part, nor did it happen because training was not provided regarding client interviewing and counseling. The scenario resulted because a professional skill set was missing, one that needs to be re-incorporated into legal training. Law students know how to work with clients; they know how to identify the legal problems; they know how to research and write. What they do not know is how to incorporate alternative approaches into their legal work, approaches that make handling the non-legal peripheral emotional content smarter and easier in the long run. As discussed above, social work offers these alternate approaches, and the learning really is twofold – the law students learn a different framework

for their objectives, and the social workers learn more about the legal system's workings and motivations.

CONCLUSION

This Essay outlined the benefits of integrating social work theory and practice into the clinical law school curriculum. While it is helpful to discuss anecdotal evidence of the success resulting from the fusion of the two fields, it is important that we, as a profession, see ways in which to further research the outcomes for law students who are exposed to social science learning during their law school experience. Large-scale change in law school pedagogy will not come without empirically demonstrating that these new interpersonal skills result in better results for clients. Law professors must also attempt to discern what, if any, improvement in well-being on the part of lawyers and law students results from the introduction of social work theory and practice into the legal academy. Only if law practice and legal scholarship continue to expand on recent efforts to create a body of empirical research on legal systems can we truly assert that our efforts at integrating social work practices into legal representation and education are successful.

By familiarizing young attorneys with a skill set borrowed from the social sciences, law schools will create a generation of lawyers who can not only advocate for their clients but solve problems with them to achieve lasting change on a personal level, particularly for such a vulnerable population such as those with mental illness. At a time when the legal profession is challenged by a growing level of dissatisfaction amongst its practitioners, those lawyers who are able to implement practices that bring about lasting change will realize more success not only for their clients, but also for themselves.