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**THERAPEUTIC JURISPRUDENCE REVIEW:** Two Heads Are Better Than One: The Case-Based Rationale For Dual Disciplinary Teaching In Child Advocacy Clinics

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**LEXISNEXIS SUMMARY:**

... Increasingly, teaching a future lawyer in a child advocacy clinic without a social worker is like teaching a future horticulturist without live plants or a future architect without blueprints. ... The lawyer-author's experience in using these social work techniques and in writing *Taking Hold of the Elephant in Child Dependency and Neglect Cases* left her with the pervasive feeling that her students would benefit from first-hand exposure to a social work professional instead of second-hand transmission of social work principles and approaches offered by a lawyer who is not a social worker. ... The student attorneys handling Bonnie's case were exposed to all of these aspects of the traditional clinical legal education model and were able to mount a professional child dependency case based not only on sexual abuse, but

on child neglect as well. ...

**TEXT:**

**[\*631]**

Students trained under the Langdell system are like future horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else. They resemble prospective dog breeders who never see anything but stuffed dogs. n1

Increasingly, teaching a future lawyer in a child advocacy clinic without a social worker is like teaching a future horticulturist without live plants or a future architect without blueprints. n2 Much has been written in the international clinical literature about the justification for [\*632] interdisciplinary collaboration in legal clinics. n3 The lawyer-social worker partnership is a prime subject of discussion. n4 This article makes a case-based argument for a lawyer-social worker partnership in a child advocacy clinic by demonstrating the value of interdisciplinary collaboration that engages the social worker's expertise, practice principles and skills in a hypothetical case.

This article is a companion piece to Taking Hold of the Elephant in Child Dependency and Neglect Cases, an article written by the lawyer-author in which she describes the use of the social work techniques of ecosystems diagramming and genogram development to assist student attorneys in representing children in child dependency and neglect cases. n5 She credits the contributions of the social-work author in engaging her interest in these techniques. The lawyer-author's experience in using these [\*633] social work techniques and in writing Taking Hold of the Elephant in Child Dependency and Neglect Cases left her with the pervasive feeling that her students would benefit from first-hand exposure to a social work professional instead of second-hand transmission of social work principles and approaches offered by a lawyer who is not a social worker. It is from that perspective that the collaboration on this product arose.

Part I of this article will trace the traditional roots of legal education with its focus on theory and the case method, the first wave of legal education. It will describe the refinement of legal education in a second wave through the teaching of legal skills by way of clinical legal education, a transition that has emanated from the changing expectations of the legal profession regarding the performance of the roles and tasks of a lawyer. Part I will then place this discussion in the context of what some have characterized as the third wave of legal education, with its focus on, inter alia, interdisciplinary education, creative problem-solving and therapeutic jurisprudence. n6 In an effort to introduce the benefits of offering a child advocacy clinic jointly with a social worker, Part I will also describe parallel developments in social work education, which now features frequent instruction about the law and legal processes.

Part II will use a hypothetical child dependency and neglect case, "Bonnie's Case," to explore how the various waves of legal education might have approached this case and how the use of traditional methodologies prove to be incomplete. Part II will suggest that the infusion of social work principles and practices into a child advocacy clinic offers avenues for more sophisticated problem-solving in the third wave, especially when these principles and practices are viewed from a therapeutic jurisprudence lens. From the perspective provided by Bonnie's Case, the co-authors will discuss in Part III the case-based rationale for enrichment of the clinical curriculum through such interdisciplinary instruction, as well as the challenges of this approach. [\*634]

I. Background: Historical Roots, Present Landscape

A. The Legal Education Landscape

## 1. The First Wave of Legal Education

Traditional legal education in America began with an apprentice system in which an aspiring lawyer "'read law' in the office of a practicing lawyer." n7 Soon prospective lawyers were trained on a group basis through apprenticeship. Thus, the first law students in this country learned the law by daily observation of how courts operated. n8 Around 1830 legal education "progressed" to a college law school setting wherein textbooks and lectures replaced the law office or court laboratory, beginning the renowned divide between "theory" and "practice." n9 In these early years, legal education was characterized as "an undemanding, gentlemanly acculturation into the profession." n10 There were no academic requirements for admission, and the curriculum consisted of a series of elementary, ungraded courses in which a student could enter or exit at any point within an eighteen month cycle. n11

The traditional law school is said to have begun at Harvard Law School in the 1870s, and in the so-called first wave, legal training in the academy became the dominant form of legal education. n12 It followed the model of Christopher Columbus Langdell and others and featured the case method, n13 a system characterized as "library-law." n14 This model [\*635] emphasized teaching legal analysis and legal doctrine by the Socratic method and excluded the study of lawyering skills as well as the study of tools from other disciplines. n15

Although Jerome Frank made the case for a clinical law school as early as 1930, n16 legal education changed little from the traditional model for almost a hundred years. n17 Some law schools began to offer legal aid clinics, n18 but this feature of legal education did not become common until the 1950s. n19 It was viewed as one of several limited experiments to address the perceived deficiencies of the casebook method. n20 Some of the other new approaches included trial advocacy classes, legal research and writing programs, drafting courses, and simulation seminars. n21

[\*636]

## 2. The Second Wave of Legal Education

Fueled by student demand for relevance in legal education, the second wave of legal education began in earnest in the 1960s, solidifying and expanding the role of clinical legal education, which emphasized learning from experience. n22 The 1970s and 1980s were marked by advances in clinical methodology. n23 Prime subjects of scholarly discussion were: n24 what it meant for students to assume and perform the role of a lawyer, n25 how to identify and teach the elements of lawyering skills, n26 how [\*637] to develop and explain theories of lawyering n27 and how to incorporate experiential learning theory into the clinical curriculum. n28

Dubbed a transformation of legal education n29 and a revolution within American law schools, clinical legal education brought a host of new players into law school faculties, as clinicians migrated from legal services offices, civil rights programs, public defender services and other public interest endeavors. n30 These new faces also brought new themes to the legal academy such as practical applications of theory and new forms of knowledge based on law practice. n31

Despite the growth of clinical legal education, legal writing and other skills- based courses in the legal academy, practicing attorneys and judges still perceived a gap in the preparation of new lawyers. n32 They [\*638] observed that the law school model overemphasized theoretical learning and left insufficient time and resources to teach the skills and values that are fundamental to the profession. n33 These legal writers perceived that the gap between theory and practice continued to expand. n34

In 1989 the American Bar Association commissioned a task force, the Task Force on Law Schools and the Profession ("Task Force"), to study ways to bridge the gap between theory and practice. n35 The Task Force identified the fundamental skills and values that every lawyer should master before assuming the responsibility of handling a legal matter. n36 The Task Force prepared a compendium, or comprehensive statement, commonly called the "MacCrate Report" for its chairman, Robert MacCrate, of the skills and values desirable for practitioners. n37 Fundamental lawyering skills, according to the MacCrate Report, include the ability to solve problems, i.e., the ability to diagnose the problem, generate alternative solutions and strategies, develop a plan of action, [\*639] implement the plan, and respond to new information and new ideas. n38 They must include legal analysis and reasoning, including formulating legal theories and arguments. n39 Thorough and effective writing is another core skill. n40 Planning and implementing factual investigations, counseling clients and choosing effective methods of communication are also basic skills. n41 A practicing lawyer must also understand and be able to implement the skills and concepts required in conducting negotiations and in undertaking litigation. n42 Effective organization, management of legal work, and the successful resolution of ethical dilemmas round out the fundamental skills identified by the Task Force. n43

While the MacCrate Report increased professional demands on lawyers and law students, n44 it was not the only force that led the legal academy into the second wave, which adopted new methodologies in an effort to marry legal theory and practice. Subject areas tested on bar examinations have always had considerable influence on law school curricula. n45 By 1992, bar examiners in states such as Alaska, California and Colorado included a performance test as part of the bar examination in order to determine the taker's proficiency in actual practice skills. n46 The [\*640] examination might, for example, ask the applicant to write a memorandum answering particular questions from a given set of facts or to write a legal advice letter. n47 Now thirty-one states use the Multistate Performance Test to evaluate an applicant's use of lawyering skills in various practice settings. n48

### 3. The Third Wave of Legal Education

The MacCrate Report, published in 1992, professed to be the blueprint for survival of the legal profession in the twenty-first century. n49 But creative legal minds continually lift the bar ever higher. Rapid changes in the first decade of the twenty-first century have led legal education into its third wave. n50 Dramatic economic, social, cultural, political and geographical changes in a now global society have prompted an alteration of the very nature of legal practice. n51 In order to adapt to these developments, the law school of the twenty-first century must feature innovations such as the infusion of the entire legal curriculum with clinical teaching methods; the enhancement of the uses of technology, including web-based curricula; instruction in multi-cultural and cross-cultural lawyering skills; a global and transnational emphasis in many substantive and skills courses; and interdisciplinarity in substantive and clinical courses. n52

"This major cooperative project, dedicated to improving the preparation of new lawyers, is in the process of charting the best course by which law schools can shift from the traditional content-focused curriculum to an outcome-focused program of instruction and expand the educational tools for teaching and evaluating law students." n53 In addition, [\*641] Mr. MacCrate strives to advocate other third wave innovations, such as credit in the bar "admissions process for a successfully completed clinical experience in an accredited law school under faculty supervision and duly certified by that faculty." n54

The American Bar Association's Council of the Section of Legal Education and Admissions has positioned itself squarely within the third wave innovations in law education by recently adopting Standard 302 that "expands the types of instruction that a law school must require of its students." n55 In addition to litigation skills training, it requires "substantial instruction in other professional skills generally regarded as necessary for effective and responsible participation in the legal profession." n56 This Standard encompasses far more than trial and appellate advocacy; it

includes "alternative methods of dispute resolution, counseling, interviewing, negotiating, problem-solving, factual investigation, organization and management of legal work, and drafting." n57

Two aspects of third wave design that are particularly relevant to the dual disciplinary theme of this article are creative problem solving and therapeutic jurisprudence. The "creative problem solving" movement that has taken hold in legal education in the twenty-first century n58 is [\*642] characterized by the expansion and refinement of a repertoire of mechanics, techniques, tools and procedures for resolving legal problems more effectively, more reliably, and more humanely. n59 An example of this movement is Professor Linda Morton's visual model for creative problem solving that consists of six steps: identifying the problem, understanding the problem, posing solutions, choosing solutions, implementing them and conducting a final analysis. n60 Professor Alan Lerner advocates teaching law students to tap into the body's limbic system in order to successfully solve their clients' problems. n61

Embracing the creative problem solving movement, n62 therapeutic jurisprudence focuses "on the law's impact on the emotional life and psychological well-being of all participants in the legal system" and seeks to prevent conflict in legal relationships. n63 It "broaden[s] traditional [\*643] conceptions of the legal profession by adding an interdisciplinary, psychologically oriented paradigm that concerns itself with client needs and emotional well-being as well as rights." n64 It has been suggested that therapeutic jurisprudence is particularly useful as a paradigm in clinical legal education. n65 This approach enriches clinical teaching by improving teaching skills, meliorating clinical relationships, investigating ethical concerns and effects on lawyering roles, and invigorating reflection upon legal practice. n66 Among its nuanced applications is a developmental model of family law, applied to a child custody case, which challenges the lawyer to ask at each stage in the legal process: What can we do to prevent future problems and improve the therapeutic outcomes for the children and family involved? n67

Another feature of therapeutic jurisprudence is its emphasis on treating litigants with dignity, respect and fairness in legal proceedings as a means to give the clients voice and validation, to be able to tell their own story and to feel listened to in earnest. n68 Given its central tenet of the law [\*644] as a healing profession, it is not surprising that the therapeutic jurisprudential model has already been applied in the curriculum of child advocacy clinics which focus on ameliorating the effects of child abuse and neglect upon children and families. n69 Professor Carolyn Salisbury argues that students in clinics that serve abused children and other victims of violence who understand therapeutic jurisprudence can help clients avoid "further violence within the legal system" and contribute to the "process of rationalizing and civilizing the law and legal institutions." n70 Professor Bernard Perlmutter cites the model's efficacy when representing children in "bringing [new] insights from psychology and social work into [the] understanding of the role of counsel for children." n71 As the fields of creative problem solving and therapeutic jurisprudence are refined, they offer particularly rich opportunities to advance legal education in the third wave while at the same time providing better chances for client satisfaction with the legal system. n72

#### 4. The Social Work Education Landscape

Not only have law schools become infused with a focus on interdisciplinary education, other professional schools recognize that [\*645] instruction in interdisciplinary practice will prepare graduates to better serve their clients. n73 Within social work education there has been considerable attention given to the need to recognize that if social workers are to be effective, the impact of legal issues on client's lives and the professional's ability to practice in that arena must be taught. n74 The social work curriculum must implant knowledge about legal concepts and systems and the skills needed to practice in legal environments, how to influence the decisions of legal systems, and how to engage in policy development. n75 The infusion of legal content into the social work curriculum has been gradual with resistance coming, in part, from social workers themselves who are uncomfortable with the more aggressive style found in the legal profession and are reluctant to spend time learning legal terminology and procedures. n76

Today, however, social work education incorporates content areas that recognize the impact the legal system, legislation, and regulations have on the lives of clients. The roles and responsibilities of social workers as well as practice skills are examined. Overviews of legislation and policies related to the diverse areas in which social work is engaged, such as child welfare, homelessness, and public assistance, and how legislation is passed, are integral to many introductory social work textbooks. Introductory social work textbooks dedicate chapters to descriptions of the different host settings in which social workers practice and the different at-risk client groups with whom social workers are most likely to work. n77 Overviews of the legal issues related to these settings and different client groups are presented. Attention is paid to legal issues in greater depth in [\*646] textbooks for other courses, such as those pertaining to social policy, human behavior and the social environment and social work practice. n78

Some schools offer specific courses with titles like "Social Work and the Law," which focus on the intersection of law and social work. n79 These courses are taught by social workers, often with guest speakers from the legal profession, or are team taught by social work and law faculty. n80 Emphasis is placed on understanding legal issues in order to facilitate the development and implementation of appropriate intervention plans for clients and, to that end, foster effective collaboration between social workers and different players in the legal system n81 . These courses focus on the various roles played by social workers, lawyers, judges and others in the criminal and civil law systems. n82 Students learn that they might be called to testify, and they study the interconnection of legal issues and social work ethics, principles and values as well as the liabilities of the profession. n83

A relatively small number of generic social work textbooks are available that focus on information about the law and legal issues. n84 Some [\*647] books are narrow, such as Thomas O'Brien's and Theodore Stein's books on child welfare and the law and Madeleine Stoner's book on the civil rights of homeless persons. n85 At a minimum, these books expose social work students to the structure of the court system, the processes by which laws are passed and regulations developed, and legal procedures such as hearings. n86 Students examine the rights of the parties involved and the conditions under which social workers can or should appear in court. n87 They learn to prepare reports and documents for court review or for introduction into evidence at hearings. n88

Integration of legal information in social work education has evolved over a long period of time. n89 Several factors can be seen as prompting the integration of legal content into the social work curriculum. n90 In its infancy, the social work profession was not taken seriously by courts and the data provided by social workers was considered soft and given little recognition. n91 The developing profession of social work realized that it needed to attain a stronger presence and increased status if its recommendations and efforts were to be taken seriously in courts. n92 Recognition that social workers need to learn about aspects of the field of law is also rooted in a long-standing ecological approach to problem solving. n93 There was an early acknowledgment of the role of contextual and environmental factors on clients' lives. n94 Clients' lives are [\*648] encumbered with legal issues as diverse as those related to juvenile and adult criminal offenses, child abuse and neglect, immigration and welfare reform. Efforts to resolve problematic situations cannot be accomplished absent attention to the legal issues present.

As the social work profession expanded, it became central to the provision of diverse services such as public assistance and child welfare and became embedded in "host" settings where other professions are dominant, such as juvenile justice, hospitals and schools. In each setting, the role of the social worker ideally involved collaboration with other professionals as personified, for example, by interdisciplinary "staffings" which provide opportunities for professionals to share their knowledge in order to develop and monitor intervention strategies for clients. To this end, increasingly, social workers are expected to be knowledgeable about legal issues relevant to their host setting and how they impact social work practice. While social workers are not seen as assuming the role and responsibilities of lawyers, they are expected to become knowledgeable about legislation and legal procedures as well as administrative rules and regulations. n95

The effort to integrate legal knowledge into social work education was bolstered significantly during the decades of progressive reform in this country. Social worker-lawyer dialogue began in earnest in an effort to pass legislation and engage in social activism, while the development of legal services became a means to resolve issues related to worker safety, child labor, juvenile delinquency, and poverty, as well as to address the legal rights of poor people, women and minority groups. n96 In conjunction with this, social work education began to emphasize practice that sought to achieve social justice and equity and, thus, acknowledged the need to incorporate the study of legal issues as well as social policy development and implementation.

#### **[\*649]**

It has been the social worker-author's observation that the need to educate social work students about legal issues accelerated, as did the breath of the legal knowledge integrated into social work, with the onset of rules and regulations governing the profession, such as those concerning licensing, confidentiality and liability issues. n97 Recognition of the necessity to integrate various aspects of the field of law into social work education is evident in today's undergraduate and graduate social work curriculum and the continuing education required of social work practitioners.

### 5. Implications

The trajectory of legal education over the past 150 years, which has married "library-law" with the teaching of skills and values, has now moved to encompass analytical tools, techniques, concepts and devices derived from other professions. By the same token, social work education has progressed to include a study of legal concepts, systems and processes. In writing this article, the authors worried that these parallel advancements might foreshadow a blurring of the line between the lawyer and the social worker or an assumption of the roles of one professional by the other. But such a blending of roles is clearly not what the authors advocate. Their vision is more in line with what Professors Carolyn Copps Hartley and Carrie J. Petrucci recommend: an acknowledgment of the areas of common ground that lawyers and social workers share. n98 Such mutuality requires a respect for the expertise of the other professional and the imperative to work together collaboratively, according to the tenets of each profession, in order to better serve clients.

Occasionally, the tools, concepts and devices or practices of **[\*650]** another profession must be incorporated into the work of the lawyer, for example, when a lawyer uses the social work tool of non-directive interviewing. n99 Similarly a social worker might need to understand the rules of evidence in order to testify at a hearing as an expert witness. n100 Sometimes the lawyer needs to work side by side with an individual from another profession, for example, in developing expert testimony. n101

In working with children, especially, both lawyers and social workers must become generally familiar with the psychological dimensions of behavior and with theoretical approaches such as family systems theory and genogram development, which are described later in this article. n102 They must become cognizant of the "organizational context of client interaction[,] . . . formal and informal organizational structures, . . . lines of authority [and] . . . communication, and power." n103 The goal of each such transaction is not to become the other professional, but to use one's understanding about the other professional's role to better serve the client. Bonnie's Case, which follows, illustrates the importance of such professional interchange in one narrow area of legal practice- juvenile dependency law, but hopefully its lessons will advance other areas of interdisciplinary practice.

## II. Case-On-Point Illustrates Rationale For Dual Teaching In Child Advocacy Clinics

### A. Expectations/Norms Placed on Lawyers by Tennessee Supreme Court Rule 40

In terms of legal practice, the MacCrate Report, the advent of performance testing on bar examinations and the proliferation of challenges posed by the globalization of legal practice have applied considerable pressure on the legal academy to innovate. In the practice of [\*651] juvenile law, an additional factor motivates change. State courts have increasingly adopted detailed practice norms or guidelines for lawyers representing children. n104 These guidelines have supplemented state codes of professional responsibility and have become regulatory codes of professional conduct for children's lawyers. n105 The standard-setting trend has developed from the leadership supplied by the American Bar Association in promulgating in 1996 a set of model Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases. n106 Typical of such standards is Tennessee Supreme Court Rule 40: Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings. n107

Rule 40 first requires that Tennessee lawyers represent the child's best interests (unless a conflict of interest develops between best interests and expressed wishes) and lists a set of factors the attorney must explore in order to determine the child's "best interests." n108 These include:

(i) the child's basic physical needs, such as safety, shelter, food, clothing, and medical care; (ii) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement; (iii) the child's need for family affiliation; (iv) the child's social needs; (v) the child's educational needs; (vi) the child's vulnerability and dependence upon others; (vii) the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child; (viii) degree of risk; (ix) the child's need for stability of placement; (x) the child's age and developmental level . . . [and] sense of time; (xi) the general preference of a child to live with known people, to continue normal activities, and to avoid moving; (xii) whether relatives, friends, neighbors, or other people [\*652] known to the child are appropriate and available as placement resources; (xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers; (xiv) the importance of continuity in the child's life; (xv) the home, school and community record of the child; (xvi) the preference of the child; (xvii) [and] the willingness . . . of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings. n109

Rule 40 next defines the Tennessee lawyer's duties, which are considerable. In the area of independent case investigation, the lawyer must obtain necessary releases of information and discovery orders; review the court files of the child and the child's siblings; review all records of the child welfare agency; n110 review the child's and parents' "psychiatric, psychological, substance abuse, medical, school," n111 criminal and law enforcement and other records; n112 interview "the parent(s) and legal guardian(s) of the child;" n113 interview all other "individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses;" n114 review all documentary evidence, such as photographs, videos or audiotapes; and engage and consult with other professional experts when necessary. n115

The lawyer must also be a thorough client counselor, explaining the proceedings to the child, n116 consulting with the child at all critical junctures and during emergencies or significant events n117 and preparing the child to [\*653] testify, if necessary. n118 Further, the lawyer is charged with "assessing the needs of the child and the available resources within the family and community to meet the child's needs." n119 The location of resources available through "special education, health care and health insurance, and victim's compensation" is also a responsibility of the child's attorney. n120 Thus Rule 40 is quintessentially therapeutic jurisprudential in its approach.

Finally, the child's attorney must serve as a legal advocate, utilizing traditional legal skills. n121 The lawyer must file petitions, briefs, legal memoranda and motions and engage in formal and informal discovery and negotiations. n122 The attorney must make opening statements and closing arguments, call, examine and cross examine witnesses,



introduce evidence, n123 prepare and submit "proposed findings of fact and conclusions of law," n124 and participate in appellate proceedings when necessary. n125 In addition to traditional lawyer duties, the lawyer must also monitor the child's status after entry of court orders, attend all school and other administrative staffings and treatment meetings. n126 Finally, the attorney must assure that the child is receiving necessary social and other services and that appropriate contact with family members is being maintained. n127

## B. Case-On-Point: Bonnie's Case

This section will describe the hypothetical Bonnie's case n128 handled by the Child Advocacy Clinic at the University of Memphis in which [\*654] student attorneys, practicing under Rule 40, utilized the social work techniques of ecosystems diagramming and genogram development without the benefit of working with a social worker as their expert. The lawyer-author will begin by discussing how law students would typically be taught to represent Bonnie using: (1) the casebook method, (2) traditional clinical legal education methodologies, and (3) clinical education methodologies employing the devices of ecosystems diagramming and genogram development taught by a lawyer. She will emphasize the limitations of these approaches in the resolution of Bonnie's case. The social-work author will then discuss how she might have approached the case differently and what her profession has to offer a child advocacy clinic.

### 1. Nature of the Case, Setting, Procedural History.

Bonnie is a ten year old, African American girl who lives in a poor, drug- ridden, inner city neighborhood. The Child Advocacy Clinic received Bonnie's case through a juvenile court appointment as guardians ad litem. The only information received was a petition filed by the state child welfare agency through an attorney. The petition sought a restraining order and "no contact" order directed to a non- relative (Mother Marilyn's then boyfriend, Joe Snow), who had allegedly sexually abused her in her home.

### 2. Initial Action Taken By Student Attorneys

As is the Clinic's practice, the student attorneys began their Rule 40 investigation by examining the juvenile court legal file and social file. The legal file revealed that a Petition for Dependency and Neglect had not been filed.

The social file was consulted for some fertile background information: Bonnie had previously been adjudicated dependent and placed in the custody of her Maternal Grandmother, Betty, when she was three. Grandmother had requested that placement. Bonnie remains in her legal custody. Her Maternal Grandfather was deceased. The social file also revealed that three of Bonnie's older siblings, Barbara, now age eighteen, Gerald, now age twenty-two and Gavin, now age twenty-seven, have extensive delinquency records, including numerous charges of theft, [\*655] disorderly conduct and truancy. The girl, Barbara, had been raised by Betty and the boys had been raised by their father.

Armed with only the information above, the student attorneys prepared their Opening Memorandum to describe a plan of action for accomplishing Rule 40 duties. They identified numerous documents they needed such as the Child Investigative Center's forensic report of the sexual abuse incident; child welfare agency records, the child's school records; the Boyfriend's criminal records; and any criminal histories of the family members. Next they outlined the factual issues they would have to pursue: Is there evidence of sexual abuse? Is there evidence of child neglect? Is Grandmother Betty an adequate custodian? Did she have knowledge of the sexual incident taking place in the home? If Betty is not a suitable custodian is Mother Marilyn an adequate custodian? Did Marilyn have knowledge of the

allegation? Does she still have a relationship with the perpetrator? Do any of the adult children still live in the household? Are they available as custodians? Where is the child's father? Are there any alternative or better placements for the child? Does the child need any services? The student attorneys also studied all possible alternative solutions to protect the child: in-home services, removal and placement with another relative, placement in foster care, and eventual adoption by another family.

The student attorneys then outlined the legal issues: Had the Boyfriend, Joe Snow, been formally charged with the crime of sexual abuse of a minor? Has he been convicted of this crime? Is the child dependent or neglected under Tennessee law? Is the evidence clear and convincing? Since no dependency petition has been filed, were the guardians ad litem obligated to file such a petition? Did the facts demand that such a petition be filed? What solution was in the overall best interests of the child? Having outlined their fact/law analysis, the student attorneys then decided upon their next steps to secure the information they believed they needed and set out to implement their strategy.

As required by Rule 40, the student attorneys commenced their interviews of all individuals involved with the child, n129 starting with those [\*656] residing in the household. Recognizing that they had no experience in such investigation and acknowledging that they had been raised in families with quite different economic and cultural backgrounds than Bonnie's family, the student attorneys were careful to consult closely with their supervising attorney (this article's lawyer-author) and to seek out other experts. The student attorneys found a home environment that they characterized as "chaotic" and "disorganized." In addition to Grandmother Betty and Bonnie, they found that Barbara, her eight month old baby Julian, Marilyn, Helen (a sister of Marilyn), Helen's three young children, and a "play brother," n130 Jeff, age forty-five, also lived in the home. Various other relatives stayed there when they had no place else to go. The students attorneys heard allegations that family members often lived on the streets when they were "doing drugs."

The student attorneys described the home as a "revolving door." During the course of the interview, the individuals identified above each walked in and out of the home. The student attorneys asked about other family members and were told, "they pretty much all live here." In addition, other individuals appeared who did not seem to have a "place" in the family, causing much confusion to the student attorneys. The legal custodian, sixty-five year old Betty, was not home; she was reported to be in the hospital due to complications of diabetes. It was unclear if any adult was "in charge" of Bonnie. The house was neat, although sparsely furnished. Betty occupied the back bedroom. There was one other bedroom. A dining room contained a couch, as did the living room. Betty reported that Bonnie mostly slept with her or on the couch, while Barbara and her child occupied the second bedroom. The other family members apparently used the couches or the floor. No one in the family had a job. The source of family income was Betty's public benefits.

From the social file, the student attorneys confirmed their findings that Marilyn had four children: Barbara, Gavin, Gerald and Bonnie. Jason, [\*657] the father of Barbara, Gavin, and Gerald, was deceased, and Bonnie's father, Bob, was incarcerated. At the time of the alleged sexual abuse incident, Marilyn was also incarcerated. The story told to the arresting officer by Barbara was that Bonnie was at home with Marilyn's boyfriend and Grandmother Betty. During the night in question, Barbara came home in the early hours of the morning and witnessed Marilyn's Boyfriend sexually abusing Bonnie on the living room couch. Grandmother was asleep in the back room. The location of Barbara's baby was not known. Barbara called the police, informed Betty and then provided a statement to the responding officer from the county's Child Investigative Center, who immediately engaged the sexual assault team at the center, including a representative of the child welfare agency. This contact resulted in the filing of the Petition for a Restraining Order and a No Contact Order. When queried about this incident, Marilyn responded that she was in jail at the time and was told about the sexual abuse by her family, but she really did not know anything about the situation. She also expressed no concern about its effect on Bonnie. Neither Betty nor Marilyn presented much information about how Bonnie was doing in school or whether they helped her with her homework. Information about the educational backgrounds of siblings

Barbara, Gerald and Gavin was not provided.

The student attorneys left their initial interview/investigation session with serious concerns that a No Contact Order was not sufficient to protect the child, and they began to reflect upon the need for a Petition for Dependency and Neglect and their Rule 40 duty to file one. n131 In order to structure their decision-making, the supervising attorney asked the student attorneys to draw up a written list of concerns. In addition to the above facts relating to the sexual abuse and the "revolving door" policy at home, the student attorneys' list included the sleeping arrangements in the house (no one except Grandmother and Barbara had an assigned bed and others slept wherever they could); past and present drug use among family members (Barbara admitted she was on cocaine and Marilyn was in recovery); lack of hygiene among the children; lack of attention to Bonnie's education needs; Mother's defense of the perpetrator and seeming indifference to the effect of the abuse on Bonnie; the lack of financial income in the household aside from Grandmother's public [\*658] benefits and the financial support of the perpetrator.

The student attorneys next sought collateral support or documentation of their initial observations and reflections. Extensive interviews were conducted of school personnel serving Bonnie, including the principal, guidance counselor, classroom teacher, special education teacher and former kindergarten teacher. These interviews revealed that Bonnie had spent two years in kindergarten, was then socially promoted to first grade for one month and then again was socially promoted to second grade special education (resource) classes. She remained in special education resource classes in the third and fourth grades. Bonnie was having trouble reading and paying attention in class; she was often disruptive, particularly with boys. One teacher reported subtle sexual movements. Among descriptive phrases attached to the child were: "street girl persona," "rough and tough," "mean," "very sneaky and aware," "cusses plenty," "knows a lot about sex." One teacher described a street fight in which Bonnie was in the middle of twenty other children; another observed the child wandering the neighborhood streets alone during late night hours. School personnel revealed difficulty in getting any family member to help the child with homework, reporting that she either did not do homework or an adult filled in the answers on her papers. Attempts to arrange parent-teacher conferences were rebuffed. Teachers reported that routinely no one answered their phone calls to the home. One teacher reported that a family member told her the family taught Bonnie to fight and stick up for herself.

While Grandmother did attend a meeting when summoned by the guidance counselor to design Bonnie's Individualized Education Plan (IEP), n132 she did not appear to be aware of the significance of the IEP. Grandmother explained that the child's educational difficulties are the result of Bonnie's mother's cocaine use during pregnancy. School records confirmed Bonnie's poor attendance and grades, academic deficiencies, and inappropriate behavior.

[\*659]

The student attorneys also did a collateral investigation of the findings of the Child Investigative Center. n133 A joint interview was scheduled with the investigating police officer, forensic investigator, and the child welfare caseworker. Documents and reports of the forensic investigation revealed findings consistent with sexual abuse, n134 corroborating the sworn statement of Barbara, the eyewitness. The student attorneys also ascertained that Joe Snow had been successfully prosecuted.

The students sought to confirm their observations that the child was in substantial harm in the home for reasons other than the sexual abuse and shared their list of concerns with the Child Investigative Center Team. While the forensic investigator agreed that such factors rose to the level of child dependency, the child welfare caseworker said he found nothing unusual in the home. How could different eyes see such different things? The most likely explanation as to why the investigation did not go beyond the sexual abuse allegations is that the investigator was assigned to the Sexual Abuse Unit and was not asked to investigate neglect issues.

The student attorneys next conducted their legal research and analysis. They identified Tennessee's legal standard for an adjudication of a child as dependent and neglected. n135 They also ascertained that the standard of proof in an adjudicatory hearing in Tennessee is "clear and convincing evidence." n136 The student attorneys did not dwell on case law [\*660] that discussed the elements of sexual abuse in a dependency proceeding because there was no serious contest by any party on this issue. But to complete their fact/law analysis, the student attorneys located case law on the elements of neglect. They consulted a Tennessee appellate case upholding termination of parental rights, a result more drastic than the adjudication of dependency and neglect sought in Bonnie's case, with facts similar to those discovered in their investigation of Bonnie: overcrowded home, instability, a constant flow of adults in and out of the home, sexual abuse by the uncles, drug use in the home, risks to which the parents exposed their children, and an inability to recognize the children's special needs or to show any understanding of special action to meet the needs. n137 Armed with the legal research, the student attorneys decided that they had sufficient facts and law to justify their filing of a Petition for Dependency and Neglect.

The student attorneys next turned their attention to their litigation strategy and proof of the allegations in their petition. They believed that the evidence they had so far (school teachers, family interviews, criminal and forensic records) and their preliminary analysis of the family situation needed to be confirmed by the findings of other professionals. Thus they filed a Motion for Psychological Evaluations. The court granted these motions and ordered independent psychological evaluations by the Child and Parent Evaluation Center, which, of course, was not a consultant to or the expert of the guardians ad litem, but equally available to all parties.

Although these motions resulted in a four month continuance, the student attorneys' litigation strategy proved to be a wise choice. The expert psychological evaluations obtained from the Child and Parent Evaluation Center provided not only confirmation of the student attorneys' initial analysis regarding the facts constituting dependency and neglect but also helped to fill in the details of the family's circumstances in order to identify placement options and needed services.

[\*661]

### 3. Results of Psychological Evaluations

The psychological evaluations revealed that Bonnie was, indeed, living in an unstructured environment with a revolving door of different people living in the home from one day to another including the child's mother, Marilyn. Grandmother Betty, due to health problems, was not able to properly supervise Bonnie. Betty was of low average intellectual functioning. She was frail and weary, having assumed care for many of her grandchildren due to the drug addiction of their respective mothers. She herself raised ten children and describes a life of extreme poverty and domestic violence.

Mother Marilyn has an extensive criminal record, primarily for drug related charges and theft, but records confirm that she has been drug free for over five years. She also has significant health problems and is focused on taking care of herself. Marilyn has significantly below average language and reasoning skills, limited internal coping mechanisms and avoids taking responsibility for adversity. Both Grandmother and Mother are dismissive of Bonnie's sexual abuse and its effect upon her.

Bonnie's evaluations reveal a diagnosis of Post-Traumatic Stress Disorder and Disruptive Behavior Disorder. She is of average to low average intelligence and does not appear to have anyone at home who helps her with her school work. Bonnie initially displayed a tough, tomboyish demeanor similar to that of a "streetwise adolescent male." She later displayed more age and sex appropriate behavior, leading the evaluators to conclude that her initial presentation is a protective facade which Bonnie uses when she feels vulnerable.

The expert evaluations provided the student attorneys with two critical considerations that they had not yet identified: the child was extremely bonded to her grandmother and mother and no preventive or supportive services had been provided to the family. n138 The expert [\*662] evaluators recommended joint custody between Grandmother Betty and Mother Marilyn for six months while interventions were implemented, and if they failed to comply with the interventions and show changes in attitude and knowledge about the effects of sexual abuse on Bonnie, strong consideration would be given to removal of Bonnie from the home. The following services were recommended: 1) individual therapy focused on the child's sexual abuse, behavior problems and poor social interactions; 2) further education evaluation to rule out Attention Deficit Hyperactive Disorder; 3) an after school program; 4) directive counseling about the effects of sexual abuse on children for her mother and grandmother; 5) in-home parenting services; 6) medical and psychiatric treatment for her mother.

#### 4. Litigation Strategy

The student attorneys recognized that the recommendations came from an agency with no special duty to the child and no confidential relationship with the guardian ad litem, but these were the only professional recommendations they possessed. Thus, the student attorneys used these recommendations to develop a trial strategy that focused on joint custody for Betty and Marilyn with the provision of services for a limited period of time. They identified several forms of relief that would protect the child in addition to the recommendations of the professional experts. These included: a continued injunction against the perpetrator having any contact with the Bonnie or the residence; a restraining order against the mother having any male overnight guests until it was determined that she understands the psychological effects of child abuse; and continued monitoring by the guardians ad litem and the child welfare agency. The student attorney's extensive preparation forestalled the need for a trial in this case and resulted in the consent of the grandmother and mother to adjudication and their agreement to all of the conditions identified by the guardians ad litem in order to secure joint custody. The court entered an order consistent with the relief requested by the guardians ad litem.

[\*663]

#### 5. Sequel

Two months after the order was entered, a new set of student attorneys found that Betty and Marilyn were not complying with the order's provisions. Expert advice and consultation about the necessary next steps are needed, both in monitoring the case and determining necessary relief, a process in which the student attorneys are eager to engage a social worker working for the clinic.

#### C.How the Traditional Law School Curriculum Would Approach Bonnie's Case

The traditional juvenile law course would approach Bonnie's case through the casebook method, described in Part I. Facts of a precedential case would be compared to the facts of the case-at-bar, or, alternatively, broad analogies focusing on the significance of the material facts posed by the precedents and compared to the case- at-bar would be employed to ferret out the court's reasoning. n139

A typical juvenile law casebook would approach the issue of child maltreatment by dividing that topic into distinct forms of child maltreatment, with separate chapters or sections devoted to each type, e. g., physical abuse, neglect, sexual abuse, psychological maltreatment, and medical neglect. n140 Casebooks frequently teach students about sexual abuse of a child as a criminal act by addressing penal definitions of sexual abuse. n141 The text would refer to key sections of an illustrative case, such [\*664] as *Powe v. State*, n142 examining the statutory definition of "forcible

compulsion," and whether the child was either directly or impliedly forcibly raped. The principal of the case that the professor would choose to illustrate is that "forcible compulsion" is a concept that applies to the respective capacities of the child (younger, smaller, less psychologically and emotionally mature, less sophisticated, trusting of the adult) compared with the capacity of the adult (larger, more sophisticated, worldly, in a position of authority or control) to induce the child to submit to the wishes of the adult without physical force or violence. n143 Next, the professor would offer several challenging notes to test the margins of the application of the doctrine: whether the parental privilege to discipline is a defense to forcible compulsion or whether there should be a minimum age limit on the crime of rape. n144

In the traditional approach to teaching child maltreatment in the form of sexual abuse, Bonnie's case would constitute a hypothetical to test the law student's ability to predict, with a fair degree of confidence, whether the perpetrator of Bonnie's sexual abuse could be successfully prosecuted. n145 This hypothetical would be a poor device to teach about any civil juvenile dependency action based on the custodian's failure to protect the child from sexual abuse. It would not suffice to teach the interrelationship of child sexual abuse and the pervasive family neglect identified in Bonnie's case. *Powe v. State* is a poor illustration of the legal remedies available to help Bonnie recover from her trauma.

In approaching the teaching of child maltreatment in the form of family neglect, the typical juvenile casebook would analyze distinct parental duties, such as the duty to provide the child with subsistence, the duty to meet the child's individual needs or the duty to protect the child from abuse inflicted by a third party. n146 The casebook method would focus on the extent to which the failure to fulfill these duties "harms" the [\*665] child. n147 In order to ferret out broad legal principles, the law professor would first turn to an exemplary case, such as *In re D.K.W.*, n148 in which the child that was the subject of the civil charge of neglect was a special needs child suffering from congenital illness and requiring special care. The professor would tease out the broad principle established by *D.K.W.*, that a parent is held to a higher standard of care when a child has special needs; this standard not only encompasses the degree of care required to take the child to the doctor when his condition becomes critical or serious, but also requires the parent to provide the diet and hygiene necessary for the child's well-being at home. n149 The professor would then address, through a discussion of notes, the definition of minimum standards of parenting, gross parental failure or the characteristics of neglect as commonly discussed in professional literature. n150 It is unlikely that Bonnie's case would ever be used as a hypothetical in a class unit on neglect, since it was initially presented as a sexual abuse case. But if it had, the law professor would most likely focus the discussion of neglect on the facts relating to the child's needs for food and shelter, rather than about the long term effects of sexual abuse, the child's emotional needs in the face of sexual abuse, the child's special educational needs or the absence of parenting skills in her family.

While the case method serves to help the law student develop broad legal principles and to understand appellate reasoning in hindsight, it does little to help the future lawyer learn how to develop a case, i.e., to ascertain the facts of a case, deal with conflicting testimony, prepare a trial strategy, present persuasive evidence and argument to a court and reach a result that solves the client's problem. n151 Appellate court opinions look "over and beyond" the actual parties and do not teach students how to investigate the "rich details" of the lives of the litigants amid their social and historical context. n152 Unless guided by the supervising attorney, student attorneys most likely would not have spotted the pervasive neglect issues in [\*666] Bonnie's case. The casebook method does not prompt students to think globally in such a matter; to the contrary, it teaches them to think microscopically. The casebook method concentrates on the "science" of the law as a distinct discipline divorced from the "art" of lawyering, an art portrayed in the practice competencies outlined in the MacCrate Report. n153 The study of appellate opinions offers only a fractional insight into the subtle factors that lead to judicial decisions. Reliance upon appellate decisions provides a dangerously false sense of security in exercising the skills of law practice. n154

The student attorneys in Bonnie's case did resort to case law to decide whether to file a Petition for Dependency and to assist them to develop their case strategy, but legal research was only one of many devices upon which they relied, as discussed below. Their consultation of the Tennessee case most on point, *Farmer v. Department of Children's Services*, n155 was, at best, a minor part of their overall work.

#### D. How the Traditional Law Clinic Would Approach Bonnie's Case

For the vast majority of law students, clinical legal education is a "one-shot immersion in law practice" for approximately four to eight credit hours. n156 Early pioneers in clinical teaching methodology sought to define what students could learn in that time frame that would best prepare them for practice and the ongoing process of experiential learning. n157 Clinical legal educators sought to integrate theory and practice by tying the experiences in handling cases with structured intellectual inquiry about those experiences. n158

[\*667]

The traditional clinical education program would not study Bonnie's case as an appellate case, but rather as a problem situation that needed resolution by legal means. Clinical law students would act in the role of a lawyer, experientially engaging in the tasks lawyers perform, and critically reviewing their performance with a clinical teacher. n159 The student attorneys would work on developing principles of fact investigation and research based on the client's problem, not on abstract hypotheticals. n160 They would learn to identify options, make choices, and arrive at decisions that solve the client's problem. n161 Clinical methodology focuses much attention on helping the student develop the facts of a case and apply the facts to the law. n162 The clinical professor would foster this knowledge by presenting the student with various techniques of effective interviewing, offering various matrices for fact development and engaging in discussion about the attributes of persuasive story telling. n163 The clinical teacher might approach the requisite fact-law investigation by concentrating on the types of information typically available to lawyers and legal procedures to obtain the applicable information: (1) types of witnesses, such as friendly, neutral, adverse, lay or expert; (2) types of written information; and (3) tangible objects. The instructor would discuss ways of obtaining this information through legal processes (such as depositions, witness statements, written discovery) and techniques for effectively securing the information (such as T-funneling and time lining). n164 The clinical professor might lead the student through the steps of preparing a case for trial and the various techniques of direct and cross examination, document introduction and opening and closing arguments. n165 Each professor would then leave the student free to apply this knowledge to the client's problem, offering opportunities for reflection [\*668] about the choices the student made. n166

A critical focus in the traditional law school clinic has been the development of a case theory (sometimes called a client narrative or client story.) n167 Case theory has been defined in the clinical setting as an explanatory statement joining the case to the client's experience of the world. n168 Case theory functions as a lens shaping reality, in light of the law, to explain facts, relationships, and circumstances of the client and the parties in a way that can best achieve the client's goals. n169

Quintessentially, traditional clinical methodology focuses the student's consciousness on the discovery of the critical importance of clients and their stories and the use of these stories to effectively achieve client goals. n170 Professor Ann Shalleck describes the role of clients in clinical legal education as follows: "[T]he [clinical] model is based on a deeply [\*669] contextualized understanding of who clients are and why they are significant. Students no longer see clients as abstract people with predetermined traits, rather, they see clients as unique individuals with particular characteristics situated in the real world." n171

The student attorneys handling Bonnie's case were exposed to all of these aspects of the traditional clinical legal

education model and were able to mount a professional child dependency case based not only on sexual abuse, but on child neglect as well. The challenges for their supervising attorney (the lawyer-author), however, were multiple: helping the students look for facts in an area of the law with which they were largely unfamiliar and in which they had never practiced, stimulating an awareness of cross-cultural lawyering, n172 enabling them to know (and hear) the child-in-context, helping them decide whether to file a Petition for Dependency that was legally sufficient, determining the most effective [\*670] story lines at trial, and framing a request for relief. In other words, how would the lawyer-author, using traditional clinical legal education methodology, guide the students to reach the deeply contextualized understanding of the client that Professor Shalleck endorses? The traditional approach does not address these gaping holes in Bonnie's case for the lawyer-author.

#### E. How the Lawyer-Author Approached Bonnie's Case

In order to assist the student attorneys in developing a deeply contextualized understanding of Bonnie and her family and to fill the deep holes in fact investigation, case development, presentation and legal decision making, the lawyer-author introduced the techniques of ecosystem diagramming and genogram development (commonly used in social work and other healing professions), described in detail in Taking Hold of the Elephant in Child Dependency and Neglect Cases. n173 These were presented during the opening orientation for the Child Advocacy Clinic.

Ecosystems mapping relies on the "family systems theory" prototype pioneered by Professor Urie Bronfenbrenner, which examines the ecology of human development of children within families by examining the child's relationships, not only with family members, but with all other settings or systems in a child's life, including school, work, legal system, child welfare system, juvenile justice system, social services, medical services, child care, recreation, neighborhoods, peers and other key influences. n174 A primary principle of family systems theory is that its components interact and families share responsibility for influencing the child with all other settings or systems in the child's life. n175

A genogram is a family tree and portrays the family over time and space, identifying family members, illustrating patterns and events that may have recurring significance over time, and placing present family [\*671] issues in the context of evolutionary family patterns. n176 It can "suggest possible connections between family events, patterns of illnesses, shifts in family relationships, changes in family structure and other critical life changes." n177 "It illuminates, across generations, the infinitely complicated human system that has transmitted powerful commands, role assignments, events, and patterns of living and relating" to each other. n178

Initially in Bonnie's case, the student attorneys found the genogram to be the more useful tool. It helped them identify all of the various people who constituted Bonnie's "revolving door" family, place them in the context of their relationships to each other, and trace family generational patterns, including sexual abuse, drug abuse and multiple, unstable father figures, both biological and non-biological. This led them to the case theory for litigation purposes of disorganization of family and a family history of negative influences upon children. It also helped them evaluate the lack of placement options, as all of Bonnie's family lived in the same house and that there were no other more suitable homes with family members. The genogram also helped the student attorneys describe Bonnie's family to the child welfare agency workers, the independent evaluators and the court. It helped them decide whom to call as witnesses in order to paint a picture of the family for the court.

Initial interviews using the genogram technique quickly led the student attorneys to visualize the larger "ecosystem" in which Bonnie's family interacted. School and education system became a looming aspect of Bonnie's life. The student attorneys ascertained all the ways in which Bonnie was not doing well in school and the relationship to



her family's lack of sufficient involvement in her education. This evidence bolstered their case theory. They determined which witnesses to call and which documents needed to be introduced into evidence. The education system, including after school care and tutoring, was determined to be a possible strength for Bonnie and an important component of the relief requested from the court.

[\*672]

School led to the surrounding neighborhood as a factor in Bonnie's ecosystem: Bonnie was seen fighting in the neighborhood and wandering the streets alone at night. Not only did this factor become important in the facts alleged in the Petition for Dependency, it illustrated that constructive after school and evening care was an important element of the relief requested of the court. The lack of employment or employment prospects in Bonnie's family was a factor the student attorneys gleaned through thinking about her ecosystem. Another important aspect of the relief requested was multiple involvement of family members with the juvenile justice, criminal justice, law enforcement and child welfare systems. Ecosystem diagramming also revealed many gaps in Bonnie's family: few friends or peers were significant, wholesome recreational opportunities were lacking, medical and social services were not obtained to deal with the child's emotional needs due to the sexual abuse trauma.

Ecosystem mapping, as a supplement to the genogram, helped the student attorneys flesh out their storylines of family disorganization and consistent negative influences. It led to the availability of critical documentary evidence from criminal, law enforcement, juvenile justice and child welfare agencies. It produced testifying witnesses. And most critically, it helped determine what relief would be requested.

In summary, these two devices coming from the social work field helped the student attorneys know the child in context and develop and refine a contextualized understanding of the client that is essential to effective client advocacy. n179 As beneficial as these two devices proved, the lawyer- author was still left with a sense that there are many missing pieces in Bonnie's case. The child-client's presenting problems of neglect and the aftermath of sexual abuse are far from solved, her family is not engaged in improving parenting skills, and the child will certainly be back before the juvenile court at some point in her young life, perhaps facing placement in foster care. What could the student attorneys have done to be more successful problem-solvers? What could they have done in a therapeutic jurisprudential vein to prevent this family's further [\*673] enmeshment in the child welfare system and to be a healing force for Bonnie? Did they give sufficient voice to Bonnie in the legal process, or were they still reflecting their own voice? Perhaps these questions would have been better addressed if the expertise of a social worker was employed in the Child Advocacy Clinic.

#### F. How Social Worker-Author Working in a Child Advocacy Clinic Would Approach the Case

To a social worker the expectations of Rule 40 are striking in that they ask lawyers to incorporate significant aspects of principles, concerns and approaches core to the social work practice. The expectation that lawyers must assume responsibilities such as "assessing the needs of the child and the available resources within the family and community to meet the child's needs" and locating resources available through special education, health care, health insurance and victim's compensation raises questions about the type of training lawyers need to accomplish these duties and the network of professionals with whom lawyers can work collaboratively to complete the mandated tasks. n180

There are differences in the roles that social workers and lawyers play; each profession functioning as a mini-culture with a distinctive knowledge and value base, language, skills, institutions and legal obligations. n181 The question at hand is what aspects of social work practice can inform and enhance the education of law students. What skills and approaches might broaden their knowledge base in order to prepare them to fulfill expectations such as those

articulated in Rule 40?

In order to appreciate how a social worker would approach the case, an overview of the steps employed in social work practice and the reasons for the protocols is helpful. A social worker traverses a series of somewhat fluid stages: engagement, assessment, planning, [\*674] implementation, evaluation, termination, and follow up. n182 Each stage is framed by the social work practice principles of approaching clients from a strengths perspective, viewing clients as partners at each stage, seeking to promote client self-determination, fostering client empowerment and employing an ecological approach. n183

The engagement stage involves the initial interactions between the social worker and client during which the social worker obtains somewhat cursory initial information about the client, the problem being presented and the players involved. Emphasis is placed on building a relationship with the clients, which will enable the development of trust and comfort, facilitating a close examination of all dimensions of the problem. n184 The social worker's role and the function and services of the agency which employs the social worker are described.

Building on the engagement stage, the assessment stage features a comprehensive assessment of the client and the problems the client has identified, including a description of the formal and informal helping networks present in the client's life. A social history is taken, and a genogram and ecosystems diagram may be developed. Acknowledgment is given to the role of the client's cultural background, lifestyle and personal values in the client's life situation. Recognition is also given to the fact that what was initially identified as the problem may no longer be the focus of attention. Most problems are complex. What was initially presented or perceived to be the problem may be rephrased or reframed as light is shed on the complex dimensions of what the client originally articulated. Other more pressing problems may have surfaced and need to be addressed before the originally perceived problem can be impacted, i.e. the sexual abuse of Bonnie may have been the original presenting problem, but certainly is only a symptom of the family's overall functioning.

Assessment is followed by a planning stage. An intervention [\*675] strategy is developed and recorded; the problems to be addressed are delineated and the action steps to be undertaken by the social worker, client and others are identified. Short and long term goals are set. In effect, a contract is developed in which each party acknowledges their responsibilities and the expected outcomes. The plan is then implemented and monitored. The agreed-upon goals, objectives, intervention strategies and action steps are, however, dynamic. Ongoing evaluation is expected as the feasibility of the plan is continually reviewed and the situations in the client's life change. Once a determination has been made that the goals and objectives have been reached, or cannot be attained, termination and follow up occur. The termination process in cases in which goals and objectives have been achieved involves developing an agreed upon plan that considers what is needed if the problems resurface. If the problems have not been addressed fully, the client may be referred to and encouraged to work with other social workers or other professionals who may be more effective in resolving persistent problems.

In Bonnie's case, a social work instructor would raise many of the same issues and utilize many of the same tools employed by the law students. In social work, emphasis is placed on an ecological, multi-level approach to assessment and intervention. Clients are viewed as part of nested interdependent systems, and often benefit from support from both informal and formal networks. n185 Appropriately, the student attorneys in Bonnie's case recognized her as a member of an extended family system embedded in an ecology of systems. Bonnie and her family are impacted by, and impact, other systems such as housing, employment, health care, and education. The student attorneys also recognized the fact that Bonnie faced educational challenges, her mother had a history of substance abuse, her aunt had an active cocaine problem, her grandmother had chronic medical care needs and the family's income was minimal. The student attorneys noted that the family did not appear to be receiving assistance from other types of support services available in the

community. The processes involved developing an ecosystems diagram and a family genogram were instructive, helping to clarify some aspects of the systems involved and the various players in these systems.

[\*676]

The student attorneys faced challenges around issues commonly emphasized in social work education. Initially the student attorneys were confronted with the need to be objective and nonjudgmental about a family which significantly differed from their own. They had to decipher who the family members were, what questions to ask of the different members of the family, and what their relationship was to each other. They became aware of their naivete about the diversity of families and many of their own biases. Limited knowledge of diverse family systems and cultural differences threatened their ability to determine who were the members of Bonnie's extended family system and the significance of these persons to Bonnie, her mother and grandmother. n186

The student attorneys involved in Bonnie's case incorporated much of what is central to good social work practice, engaging consultants who offered valuable insights and recommendations. The case plan that was developed called for behavioral changes in Bonnie's immediate family-her mother and grandmother-as well as monitoring and further review of the family and family friends to insure Bonnie's safety, security and nurturing. Recognition was given to the close bonds between Bonnie and her mother and grandmother. Bonnie's mother and grandmother received counseling and education about what must be achieved and demonstrated to prevent Bonnie's removal from the household; this was integrated with educational support and recreational opportunities for Bonnie with other girls her age.

In social work, emphasis is placed on using a strengths-oriented approach while being client-empowering. n187 In Bonnie's case, the engagement of Bonnie's mother and grandmother as partners in the case planning process seems to have been minimal. This process is important if all parties are to assume responsibility and ownership for the activities [\*677] that are to ensue. How clear are the mother and grandmother about what is required to prevent the removal of Bonnie from the household? This is particularly challenging in cases such as Bonnie's where the adults involved have limited capacity. Social work students are instructed to "start where the client is." n188 How can the mother's and grandmother's involvement and capacity as partners with the child-client be maximized and enhanced given their limited cognitive abilities? Are the goals and content of the case plan that was developed too complex for the mother and grandmother? Is there a need to divide the case plan's expectations of them into a series of agreed-upon discrete, concrete and prescribed short-term tasks that they can master? The plan developed does not clearly acknowledge and bolster the strengths of family members. Were strengths- focused questions asked and a strengths-oriented approach central to the dialogues with the mother and grandmother? For example, little attention was paid to the fact that the mother had stopped her substance abuse and that she had been proactive about having Bonnie evaluated to prevent her from being promoted out of kindergarten. The assessment of Bonnie's mother indicated that she was labeled as being "lackadaisical" and perhaps indifferent to the impropriety and impact of the sexual contact on Bonnie. Ongoing counseling should clarify if this reflects the mother's limited intelligence, denial and/or passive resistance response to being investigated.

In addition, the plan did not fully address Bonnie's educational needs. Bonnie clearly had educational challenges, having been labeled as learning disabled and as one who interacts inappropriately with her peers. The intervention plan provided for tutoring and after school activities and an assessment to determine if Bonnie had ADHD. Several concerns are raised. One is that the after school activities proposed for Bonnie may not be sufficient to counteract the impact of her in-school experiences. Given that her school day involved predominately interacting with boys rather than a coed group of students, was any consideration given to sending Bonnie to a different school where she would be in a coed or predominately female classroom? Also of concern is the extent to which [\*678] ADHD may be diagnosed symptomatically. Bonnie's life was somewhat chaotic. Her family's ability to structure her academic and social interaction with peers was limited, at least at the time. Concerns were raised about an inappropriate diagnosis of ADHD,

given these circumstances. This concern was compounded by the fact that Bonnie's leaning disability diagnosis was vague. The basis for her class placement and for her IEP needed a close review. In addition, a review and ongoing monitoring of Bonnie's IEP was needed.

The plan did not fully explore and recognize the range of the mother's and grandmother's needs. Did family members have health insurance? Did the mother's health care needs call for case management attention? What role did the family's limited income play? Should and could family members work or become involved in training or other constructive activities in the community? What supports are present to insure Bonnie's health and well being when the grandmother is hospitalized? Recognizing the high rate of relapse among substance abusers, does the mother need to attend Narcotics Anonymous or receive other substance abuse-related support? To what extent could Bonnie's aunt be assisted? Who was caring for her child and what services were needed to enhance the role and positive impact of the aunt and baby cousin in Bonnie's life? Given the possibility that Bonnie could be removed from the household, had possible out-of-home placements been discussed with the mother and grandmother that would allow for regular, continuous, meaningful contact between Bonnie and her mother and grandmother? Has a serious assessment been made of what the emotional impact on Bonnie would be if she were removed? Inattention to any of these areas could result in the family's inability to create an environment in which Bonnie is safe and cared for or in a failure to promote the family's ability to continue in that vein, resulting in the removal of Bonnie from the home. Given the tight bonds that Bonnie has with her mother and grandmother, diligent efforts to avoid separation are called for.

Consideration of the approaches and premises central to social work practice as companions to those of legal practice may have led to a more successful outcome for Bonnie. Ongoing involvement of a social worker would have produced a clearer picture of Bonnie's family context as well as her service needs and those of her family members. Most [\*679] pressing is the need for ongoing monitoring to determine if Bonnie's family understands and is willing and able to engage in the behavioral changes that were determined to be essential if Bonnie is to remain in the home. Additional concerns are raised about follow up because there are lingering questions pertaining to the child welfare agency. The child welfare agency had admittedly not pursued the recognized needs of Bonnie and her family in the past, leaving open the question of whether the child welfare agency can be relied upon to provide needed attention at the future.

### III. Conclusion

As is increasingly the norm in the practice of juvenile law, court rules or standards of practice for lawyers representing children have required greater depth in training for lawyers entering the field of children's law. Tennessee's Rule 40 is a prime illustration of this trend. Not only does Rule 40 require greater legal practice sophistication among attorneys, it also requires lawyers to engage in interdisciplinary work by consulting with the necessary experts. n189 By its specific referral to concepts about the best interests of the child that come from the healing professions, such as social and mental health work, and by its requirements that the guardian ad litem utilize these concepts, Rule 40 incorporates a therapeutic jurisprudence paradigm. n190 Thus the association of student attorneys with a social worker in a legal clinic, especially in a child advocacy clinic, is a needed improvement if clinical methodology is to grow in a therapeutic jurisprudential mode in the third wave of clinical legal education.

Bonnie's case illustrates that there are distinct roles that a lawyer and social worker each might have played in bringing her case to a longer-lasting and effective resolution, roles that are suggested by Rule 40. n191 The student attorneys' role, of course, is, in the first instance, to develop the facts, apply them to the law, come up with a theory of the case and prepare the case for trial. In the second instance, the student attorneys' duty involves the development of appropriate forms of relief. A social worker [\*680] could have refined and deepened the fact investigation stage of the case through that profession's particular training in family engagement, assessment and identification of problem areas.

A social worker would have been invaluable in intensifying the relief requested by the student attorneys by drawing on a wide array of community resources, as well as on the family's own strengths. The social work profession has unique service planning and implementation skills that would have dramatically sharpened the student attorneys' successful completion of the Rule 40 duties to assess the needs of the child and the available resources within the family and community to meet the child's needs as well as to locate available resources through special education, health care, health insurance and victim's compensation.

A social worker on the team could have helped the student attorneys become more culturally competent about their child-client in context. The social worker would have encouraged the student attorneys to communicate more effectively across cultural and racial divides, helping them to develop skills in verbal and non-verbal communication as well as to understand their own cultural differences. n192 Ultimately, this approach would have given Bonnie a stronger, more accurate voice in the legal process.

Without a social worker on their team, the student attorneys focused exclusively on a litigation strategy. A social worker would have suggested, in the parlance of the lawyer, a negotiation or mediation strategy (in the vocabulary of the social worker, a family engagement and case planning methodology) at the problem solving stage. n193 Such methodology may have fostered greater investment of Bonnie's family members in providing a safe and nurturing home for her without the "stick" of a court order. The authors have experienced that the courtroom setting can be extremely intimidating to parties and does not necessarily foster long-term problem-solving. n194

**[\*681]**

It is in the fulfillment of the duty to monitor the case, however, that the greatest advantage of a team social worker arises. The social-work author has outlined a very detailed monitoring and follow up plan that includes greater involvement with Bonnie's educational setting and more attention to the family's economic and health care needs. In addition, a social worker would have followed up on the services actually ordered by the court in Bonnie's case. Such service monitoring and follow up uniquely distinguish the profession of social work from the practice of law. If legal issues arose in the monitoring and follow up stages, the social worker could have referred the case back to the student attorneys and could have worked with them to once again use available legal means to resolve the current presenting problems.

A team approach to the handling of Bonnie's case has distinct advantages for student attorneys. It makes their representation of their first client or case under Rule 40 less overwhelming and more manageable. It enables them to concentrate on developing singularly legal skills, while leaving social work to the social worker. It aids in developing the deeply contextualized understanding of the client that Professor Shalleck urges, n195 and the meaningful client voice that Professor Miller advocates. n196 For the client, the team approach is invaluable, in that it advances successful, strengths-based problem solving. n197

The authors acknowledge that there are many challenges to dual disciplinary collaboration of the kind described in this article. Such challenges are well- described in the clinical literature and are beyond the scope of this article. n198

**[\*682]**

Among the many solutions proposed to meet the challenges of dual disciplinary collaboration is the development of a shared commitment to the client. n199 As this article has illustrated, the therapeutic jurisprudence model, which borrows from different disciplines and sciences, and explores issues from a micro as well as a macro perspective, and which focuses on preventative problem solving for clients offers a unique opportunity to break down the barriers to interdisciplinary cooperation in child advocacy clinics. But as Professor Steinbrenner argues, the model also needs a

broader paradigm. She suggests that therapeutic jurisprudence must embrace family systems theory. The authors urge that, rather than focusing so heavily on drawing information from other disciplines, the therapeutic jurisprudence movement begin to explore the variety of ways that lawyers can work side by side with other professionals while serving the same client.

An approach to creative problem solving and therapeutic jurisprudence in child advocacy clinics through the lens of an individual child and her family, such as Bonnie, rather than through a global or [\*683] macrosystem lens, provides new motivation and incentive for lawyers and social workers to collaborate, overcome challenges and find solutions. The authors have certainly experienced renewed vigor in their efforts to collaborate through working on this article. These two professions, working side by side, would have made a distinct difference to the successful resolution of Bonnie's case. A lawyer-social worker team would have role modeled for student attorneys a refined third wave therapeutic jurisprudential practice methodology, capable of addressing twenty-first century legal and social needs of the client. For Bonnie, as well as for the student attorneys, two heads would have definitely been better than one.

### Legal Topics:

For related research and practice materials, see the following legal topics:  
 Education Law Administration & Operation Student Admissions Academic Requirements Education  
 Law Instruction General Overview Real Property Law Construction Law General Overview

### FOOTNOTES:

n1 Jerome Frank, Why Not a Clinical Lawyer-School?, *81 U. Pa. L. Rev.* 907, 912 (1933).

n2 Similarly, one commentator notes that we must "teach students what they are to do in courtrooms by putting them in courtrooms." Edward D. Ohlbaum, Basic Instinct: Case Theory and Courtroom Performance, *66 Temp. L. Rev.* 1, 3 (1993) (quoting Ronald L. Carlson, Competency and Professionalism in Modern Litigation: The Role of the Law Schools, *23 Ga. L. Rev.* 689, 697 (1989)).

n3 See, e.g., Kim Diana Connolly, Elucidating the Elephant: Interdisciplinary Law School Classes, *11 Wash. U. J.L. & Pol'y* 11, 23 (2003) (summarizing existing scholarship on interdisciplinary collaboration).

n4 See Suellyn Scarnecchia, An Interdisciplinary Seminar in Child Abuse and Neglect With a Focus on Child Protection Practice, *31 U. Mich. J.L. Reform* 33 (1997); Paula Galowitz, Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship, *67 Fordham L. Rev.* 2123 (1999); Marie Weil, Research on Issues in Collaboration Between Social Workers and Lawyers, *56 Soc. Serv. Rev.* 393 (1982); Anita Weinberg & Carol Harding, Interdisciplinary Teaching and Collaboration in Higher Education: A Concept Whose Time Has Come, *14 Wash. U. J.L. & Pol'y* 15 (2004); Jane Aiken & Stephen Wizner, Law as Social Work, *11 Wash. U. J.L. & Pol'y* 63 (2003); Barbara A. Babb, An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective, *72 Ind. L.J.* 775 (1997); Susan L. Brooks, A Family Systems Paradigm for Legal Decision Making Affecting Child Custody, *6 Cornell J.L. & Pub. Pol'y* 1 (1996); Susan L. Brooks, Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach, *5 Psychol. Pub. Pol'y & L.* 951 (1999); Jacqueline St. Joan, Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality, *7 Clinical L. Rev.* 403 (2001); Janet Weinstein, Coming of Age:

Recognizing the Importance of Interdisciplinary Education in Law Practice, *74 Wash. L. Rev.* 319 (1999); Brigid Coleman, Lawyers Who Are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients, *7 Wash. U. J.L. & Pol'y* 131 (2001); V. Pualani Enos & Lois H. Kanter, Who's Listening? Introducing Students to Client- Centered, Client-Empowering, and Multidisciplinary Problem- Solving in a Clinical Setting, *9 Clinical L. Rev.* 83 (2002).

n5 Christina A. Zawisza, Taking Hold of the Elephant in Child Dependency and Neglect Cases, *17 St. Thomas L. Rev.* 531 (2005).

n6 Margaret Martin Barry et al., Clinical Education for this Millennium: The Third Wave, *7 Clinical L. Rev.* 1 (2000).

n7 Frank, *supra* note 1, at 909.

n8 *Id.*

n9 *Id.*; see Maureen N. Armour & Mary Spector, Epilogue: Theory in the Basement, *51 SMU L. Rev.* 1555 (1998) (tracing the history of the dichotomy between theory and practice).

n10 Bruce A. Kimball, Students' Choices and Experience During the Transition to Competitive Academic Achievement at Harvard Law School, 1876-1882, *55 J. Legal Educ.* 163, 164 (2005) (citing Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s 3-34 (1983)).

n11 *Id. at* 164.

n12 *Id. at* 165; see also Jay M. Feinman, The Future History of Legal Education, *29 Rutgers L.J.* 475, 476 (1998); Bethany Rubin Henderson, Asking the Lost Question: What is the Purpose of Law School?, *53 J. Legal Educ.* 48, 50 (2003).

n13 Kimball, *supra* note 10, at 164; see also Mark Neal Aaronson, Thinking Like a Fox: Four Overlapping Domains of Good Lawyering, *9 Clinical L. Rev.* 1, 2 (2002); David Barnhizer, The University Ideal and Clinical Legal Education, *35 N.Y.L. Sch. L. Rev.* 87, 88 (1990) (discussing briefly the history of legal education); Barry et al., *supra* note 6.

n14 Frank, *supra* note 1, at 908.

n15 Feinman, *supra* note 12, at 476; see Andrew E. Taslitz, Exorcising Langdell's Ghost: Structuring a Criminal Procedure Casebook for How Lawyers Really Think, *43 Hastings L.J.* 143 (1991) (critiquing how the Langdellian method has been applied in the design of casebooks). It is interesting that Langdell rarely tried a case; his practice involved writing briefs or other pleadings for other lawyers who were his clients. Frank, *supra* note 1, at 908.

n16 Frank, *supra* note 1, at 917-18; see also W. Burlette Carter, Reconstructing Langdell, *32 Ga. L. Rev.* 1,

7 (1997) (illustrating Jerome Frank's criticism of Langdell's system of education).

n17 Feinman, *supra* note 12, at 477; Barnhizer, *supra* note 13, at 88; Carter, *supra* note 16, at 4-5.

n18 As early as the 1920s, John S. Bradway became a leading proponent of legal aid clinics in law schools in articles such as John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 *S. Cal. L. Rev.* 252 (1929), and John S. Bradway, *The Legal Aid Clinic as a Law School Course*, 3 *S. Cal. L. Rev.* 320 (1930).

n19 John S. Bradway, *The Second Mile for Legal Aid Clinics*, 1952 *Wash. U. L.Q.* 165; John S. Bradway et al., *Legal Clinics for Law Students-A Symposium*, 7 *J. Legal Educ.* 204 (1954).

n20 Barry et al., *supra* note 6, at 7-8. Barry and her colleagues submit that the casebook method overlooks attention to the full range of skills and values. *Id.* at 32-34. Frank argues that the method excludes a study of lawyer-client relations and the art of judge or jury persuasion. Frank, *supra* note 1, at 908. Aaronson posits that it also excludes role conceptualization, problem solving, decision making, and practical judgment skills. Aaronson, *supra* note 13, at 8-9.

n21 Barry et al., *supra* note 6, at 11.

n22 See George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 *J. Legal Educ.* 162 (1974); Roger S. Haydock, *Clinical Reflections: Looking Ahead Toward the Past*, 30 *Wm. Mitchell L. Rev.* 51 (2003). For an illustration of the vast expansion of clinical legal education since those early days, see Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 *Yale J. Int'l L.* 505, 523 (2003); James R. P. Ogloff et al., *More than "Learning to Think Like a Lawyer:" The Empirical Research on Legal Education*, 34 *Creighton L. Rev.* 73, 179-180 (2000); Johanna Bond, *The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 *Wm. Mitchell L. Rev.* 317, 318 (2001).

n23 See Arthur LaFrance, *Clinical Education: "To Turn Ideals into Effective Vision"*, 44 *S. Cal. L. Rev.* 624 (1971); Stephen Wizner & Dennis Curtis, *"Here's What We Do": Some Notes About Clinical Legal Education*, 29 *Clev. St. L. Rev.* 673 (1980); Marc Feldman, *On the Margins of Legal Education*, 13 *N.Y.U. Rev. L. & Soc. Change* 607 (1985); James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 *Wm. & Mary L. Rev.* 71, 93 (1996); Frank S. Bloch et al., *Filling in the 'Larger Puzzle': Clinical Scholarship in the Wake of the Lawyering Process*, 10 *Clinical L. Rev.* 221, 238 (2003).

n24 Barry et al., *supra* note 6, at 6-8. The development of legal clinics was aided by funding first from the Ford Foundation, then by Ford sponsorship of the Council on Legal Educations for Professional Responsibility, and later by the U.S. Department of Education's Title XI Law School Clinical Experience Program. *Id.* at 18-19.

n25 See Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 *Ariz. St. L.J.* 277; Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 *N.Y.U. Rev. L. & Soc. Change* 109 (1993); Bea Moulton, *Looking Back at the Lawyering Process*, 10 *Clinical L. Rev.* 33 (2003) (commenting on the process of writing a seminal lawyering process casebook). More recent articles continue the development of this theme. See Hurwitz, *supra* note 22; Susan R. Jones, *Promoting Social and Economic Justice Through*



Interdisciplinary Work in Transactional Law, *14 Wash. U. J.L. & Pol'y* 249 (2004); Michael Jordan, Law Teachers and the Educational Continuum, 5 S. Cal. Interdisc. L.J. 41 (1996); Paulette J. Williams, The Divorce Case: Supervisory Teaching and Learning in Clinical Legal Education, *21 St. Louis U. Pub. L. Rev.* 331 (2002).

n26 See Alfred Z. Reed, Training for the Public Profession of the Law (1921); Peter Toll Hoffman, Clinical Scholarship and Skills Training, *1 Clinical L. Rev.* 93, 104 (1994); Barry et al., supra note 6, at 16-18.

n27 See Grossman, supra note 22, at 162; Hoffman, supra note 25, at 93; Richard J. Wilson, Training for Justice: The Global Reach of Clinical Legal Education, *22 Penn St. Int'l L. Rev.* 421 (2004).

n28 See Kenneth Kreiling, Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision, *40 Md. L. Rev.* 284 (1981); Jane Aiken et al., The Learning Contract in Legal Education, *44 Md. L. Rev.* 1047, 1049 (1985); John L. Barkai, A New Model for Legal Communication: Sensory Experience and Representational Systems, *29 Clev. St. L. Rev.* 575 (1980); Anthony G. Amsterdam, Clinical Legal Education-A 21st Century Perspective, *34 J. Legal Educ.* 612 (1984); Frank S. Bloch, The Andragogical Basis of Clinical Legal Education, *35 Vand. L. Rev.* 321, 340-44 (1982).

n29 Id.

n30 Barnhizer, supra note 13, at 87-88.

n31 Id. at 89-90.

n32 See Jean R. Sternlight, Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications, *50 U. Miami L. Rev.* 707, 711 (1996) (noting that both the opponents and supporters of the law school model acknowledge that "highly theoretical 'law and' theories have no direct relevance to practicing attorneys"); Robert Stevens, American Legal Scholarship: Structural Constraints and Intellectual Conceptualism, *33 J. Legal Educ.* 442, 444-45 (1983) (recognizing that the gap between theory and practice is so significant that law school does not adequately prepare students for practice); Warren E. Burger, Some Further Reflections on the Problem of Adequacy of Trial Counsel, *49 Fordham L. Rev.* 1, 7 (1980) (suggesting that law schools adopt more apprentice type programs to better prepare law students for practicing as lawyers); Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, *91 Mich. L. Rev.* 34 (1992) (explaining that no one has much use for the esoteric scholarship generated by law professors).

n33 Sternlight, supra note 32; Stevens, supra note 32.

n34 American Bar Association, Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development-An Educational Continuum 5 (1992).

n35 Id.

n36 Id. at 7.

n37 *Id.* at 135-221. The MacCrate Report envisioned uses of the Statement of Fundamental Lawyering Skills and Professional Values in ways beyond impacting the law school curriculum. It intended to help in developing continuing legal education programs, in designing in-house training in law offices, and in self-evaluation and self-development by practicing lawyers. American Bar Association, *supra* note 34, at 127-30; see also Robert McCrate, Introduction: Teaching Lawyering Skills, 75 *Neb. L. Rev.* 643 (1996) (describing what laws schools are and should be doing to improve skills and values and to implement the Task Force's recommendations); Robert MacCrate, Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development, 10 *Clinical L. Rev.* 805 (2004) [hereinafter MacCrate, Building the Continuum] (reflecting on the development of the MacCrate Report and looking ahead to challenges faced ten years later in its implementation); Robert MacCrate, Educating a Changing Profession: From Clinic to Continuum, 64 *Tenn. L. Rev.* 1099 (1997) (recognizing that clinical legal education is now appropriately part of the educational continuum outlined in the MacCrate Report).

n38 American Bar Association, *supra* note 34, at 138- 40.

n39 *Id.*

n40 *Id.*

n41 *Id.*

n42 *Id.*

n43 *Id.* The MacCrate Report also outlined a series of fundamental professional values such as competency, justice and fairness, which are beyond the topic of this paper. *Id.* at 140- 41.

n44 Some argued for greater integration of the MacCrate Report principles throughout the law school curriculum. See Peter A. Joy, The MacCrate Report: Moving Toward Integrated Learning Experiences, 1 *Clinical L. Rev.* 401 (1994). But, the MacCrate Report has its share of critics. See Jonathan Rose, The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense, 44 *J. Legal Educ.* 548 (1994). And some lament its lack of greater impact in the decade since its adoption. See Russell Engler, The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow, 8 *Clinical L. Rev.* 109 (2001); J. Michael Norwood, Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education Into the Twenty-first Century, 30 *Wake Forest L. Rev.* 293 (1995).

n45 Kristin Booth Glen, Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession, 23 *Pace L. Rev.* 343, 372 (2003).

n46 American Bar Association, *supra* note 34, at 280- 82.

n47 *Id.* at 280-81.

n48 Sally Simpson, Students with "CLAS": An Alternative to Traditional Bar Examinations, 20 *Ga. St. U.*

*L. Rev.* 813, 823 (2004) (indicating that thirty-one states will use the performance exam as part of the bar in the year 2005).

n49 American Bar Association, *supra* note 34, at 120.

n50 Barry et al., *supra* note 6, at 50-71 (discussing the need for law schools and practice to adapt to the twenty-first century).

n51 *Id.*

n52 *Id.* at 49-71.

n53 MacCrate, *Building the Continuum*, *supra* note 37, at 821 (referring to the MacCrate Report and advocating clear and specific educational objectives that will enable law students to obtain the competencies required for their first professional jobs). *Id.*; see also Clinical Legal Education Association (CLEA), *Best Practices for Legal Education 5* (Dec. 15, 2005 Draft), <http://professionalism.law.sc.edu>. The CLEA draft suggests that law schools help students to develop the attributes of effective, responsible problem solvers, which include: intellectual, analytical and life-long learning skills; core knowledge and understanding of the law; a practical understanding of and commitment to the values, behaviors, attitudes and ethical requirements of a lawyer; and professional, personal management, and client relationship skills. *Id.* at 71-72.

n54 MacCrate, *Building the Continuum*, *supra* note 37, at 831.

n55 Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting The Challenge of the New ABA Standards*, 17 *St. Thomas L. Rev.* 429, 429-30 (2005) [hereinafter Winick, *Teaching Lawyering Skills*] (describing the requirements for A.B.A. standard 302, which was adopted on February 14, 2005).

n56 *Id.* at 429.

n57 *Id.*

n58 See generally Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 *Clinical L. Rev.* 445, 512-13 (2002); Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 *Clinical L. Rev.* 149, 154 (2004); Hurwitz, *supra* note 22, at 532 (advocating a clinical program that encourages creative problem solving for complex problems by effectively "integrat[ing] theory and practice").

n59 See Zawisza, *supra* note 5, at 538-39 (summarizing the creative problem solving literature, citing Thomas D. Barton, *Creative Problem Solving: Purpose, Meaning and Values*, 34 *Cal. W. L. Rev.* 273 (1998), and Thomas D. Barton, *Conceiving the Law as Creative Problem Solver*, 34 *Cal. W. L. Rev.* 267 (1998)).

n60 Linda D. Morton, *Teaching Creative Problem- Solving: A Paradigmatic Approach*, 34 *Cal. W. L. Rev.*

375, 382-83 (1998). The student attorneys handling Bonnie's Case, *infra* Part III, walked through these steps. See also Alan M. Lerner, Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver, 32 *Akron L. Rev.* 107, 112 (1999) (advocating instruction that trains students to "act creatively as transformative problem solvers, rather than solely as gladiators").

n61 2 See Alan W. Lerner, Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students to Make Ethical, Professionally Responsible Choices, 23 *Quinnipiac L. Rev.* 643, 661 (2004); Philip D. Gould & Patricia H. Murrell, Therapeutic Jurisprudence and Cognitive Complexity: An Overview, 29 *Fordham Urb. L.J.* 2117, 2131 (2002) (encouraging demonstrations, simulations, role playing, case studies, films or guest speakers that encourage cognitive complexity).

n62 See generally Gould & Murrell, *supra* note 61, at 2131.

n63 See Zawisza, *supra* note 5, at 539-40 (summarizing the therapeutic jurisprudence literature and its focus on psycholegal soft spots and opportunities and advance planning, citing Marc W. Patry et al., Better Legal Counseling Through Empirical Research: Identifying Psycholegal Soft Spots and Strategies, in *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* 69 (Dennis P. Stolle et al. eds., 2000), Bruce J. Winick, Therapeutic Jurisprudence and the Role of Counsel in Litigation, in *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* 309 (Dennis P. Stolle et al. eds., 2000) [hereinafter Winick, Role of Counsel in Litigation], David B. Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, in *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* 45 (Dennis P. Stolle et al. eds., 2000), Dennis P. Stolle et al., Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering, in *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* 5 (Dennis P. Stolle et al. eds., 2000), and Kevin H. Smith, Essay-Therapeutic Civil Disobedience: A Preliminary Exploration, 31 *U. Mem. L. Rev.* 99 (2000)).

n64 Winick, Role of Counsel in Litigation, *supra* note 63, at 432-33 (commenting that training students in therapeutic jurisprudence and the therapeutic/preventive law model it has created is an excellent way of implementing ABA Standard 302).

n65 See Keri K. Gould & Michael L. Perrin, "Johnny's in the Basement Mixing Up His Medicine": Therapeutic Jurisprudence and Clinical Teaching, 24 *Seattle U. L. Rev.* 339, 339-41 (2000).

n66 *Id.* at 355.

n67 See Stephen J. Anderer & David J. Glass, A Therapeutic Jurisprudence and Preventive Law Approach to Family Law, in *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* 207, 214 (Dennis P. Stolle et al. eds., 2000). Winick comments that a therapeutic jurisprudence approach minimizes the anti-therapeutic consequences of divorce litigation for both parties and their children. Winick, Role of Counsel in Litigation, *supra* note 63, at 466.

n68 See Winick, Role of Counsel in Litigation, *supra* note 63, at 320-23; Bernard Perlmutter & Carolyn Salisbury, "Please Let Me Be Heard": The Right of a Florida Foster Child to Due Process Prior to Being Committed to a Long-Term, Locked Psychiatric Institution, 25 *Nova L. Rev.* 725, 765-67 (2001); The Honorable

Juan Ramirez, Jr. & Amy D. Ronner, *Voiceless Billy Budd: Melville's Tribute to the Sixth Amendment*, 41 *Cal. W. L. Rev.* 103, 107-08 (2004) (arguing that right to counsel is an expression of a right to voice and validation).

n69 See Carolyn S. Salisbury, *From Violence and Victimization To Voice and Validation: Incorporating Therapeutic Jurisprudence in a Children's Law Clinic*, 17 *St. Thomas L. Rev.* 623, 624-25 (2005).

n70 *Id.* at 682.

n71 Bernard P. Perlmutter, *George's Story: Voice and Transformation Through The Teaching and Practice of Therapeutic Jurisprudence in a Law School Child Advocacy Clinic*, 17 *St. Thomas L. Rev.* 561, 621 (2005).

n72 Professor Winick lists nine symposia and one special series focusing on therapeutic jurisprudential themes, both nationally and internationally, and which cross areas such as nursing, criminal law, mental health, children. Winick, *Teaching Lawyering Skills*, *supra* note 54, at n.31. A tenth symposium issue, *Therapeutic Jurisprudence in Clinical Legal Education and Legal Skills Training*, appeared in the Spring 2005 issue of *St. Thomas Law Review*. Symposium, *Therapeutic Jurisprudence in Clinical Legal Education and Legal Skills Training*, 17 *St. Thomas L. Rev.* 403 (2005).

n73 See generally Ralph D. Fertig, *Social Work and the Law Syllabus*, <http://www.usc.edu/dept/socialwork/academic/documents/SampleSyllabi/6XXSocialWorkandLaw.pdf>.

n74 See generally St. Joan, *supra* note 4, at 425-28 (discussing questions social workers may have concerning legal issues); Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 *Clinical L. Rev.* 227, 260 (2000) (noting that extensive discussion is necessary to reconcile the lawyer's approach to a family and the social work view).

n75 Robert G. Madden, *Legal Content in Social Work Education: Preparing Students for Interprofessional Practice*, 20 *J. Teaching Soc. Work*, 3-17 (2000).

n76 Sandra Kopels & Nora S. Gustavsson, *Infusing Legal Issues into the Social Work Curriculum*, 32 *J. Teaching Soc. Work* 115-125 (1996).

n77 See, e.g., O. William Farley et al., *Introduction to Social work* (2005); Brenda L. Dubois et al., *Social Work: An Empowering Profession* (2005).

n78 See, e.g., Howard J. Karger & David Stoesz, *American Social Welfare Policy: A Pluralist Approach* (5th ed. 2005); Dianne M. DiNitto & Linda K. Cummins, *Social Welfare: Politics and Public Policy* (6th ed. 2005); Bruce S. Jansson, *Becoming An Effective Policy Advocate: From Policy and Practice to Social Justice* (4th ed. 2002); Elizabeth D. Hutchinson, *Dimensions of Human Behavior: Person and Environment* (2d ed. 2003); Karen K. Kirst-Ashman & Grafton H. Hull, Jr., *Generalist Practice with Organization & Communities* (3d ed. 2005).

n79 See Fertig, *supra* note 73.

n80 See generally Marjorie A. Silver, Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship, 6 *Clinical L. Rev.* 259, 310 (1999).

n81 See Martin Cirkiel, Social Work and the Law Syllabus, <http://www.utexas.edu/ssw/eclassroom/syllabi/cirkiel/fl2003sw360k.pdf>.

n82 See id.

n83 See Fertig, supra note 73.

n84 See, e.g., Raymond Albert, Law and Social Work Practice: A Legal Systems Approach (2d ed.2000); Rudolph Alexander, Understanding Legal Concepts that Influence Social Welfare Policy and Practice (2002); Andrea Saltzman & David M. Furman, Law in Social Work Practice (2d ed. 1999); Leila Obier Schroeder, Legal Environment of Social Work (1982); Theodore J. Stein, The Role of Law in Social Work Practice and Administration (2004); Madden, supra note 74.

n85 Thomas M. O'Brien, Child Welfare in the Legal Setting: A Critical and Interpretive Perspective (2004); Theodore J. Stein, Child Welfare and the Law (rev. ed. 1998); Madeleine R. Stoner, The Civil Rights of Homeless People: Law, Social Policy, and Social Work Practice (1995).

n86 See sources cited supra note 85.

n87 Id.

n88 Id.

n89 See Rose Voyvodic & Mary Medcalf, Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor, 14 *Wash. U. J.L. & Pol'y* 101, 115 (2004) (discussing the social justice roots of social work education).

n90 Id.

n91 Robert Madden, Legal Content in Social Work Education: Preparing Students for Interprofessional Practice, in Albert, supra note 84, at 333-35.

n92 Albert, supra note 84, at 333-34.

n93 Id. at 329-33.

n94 See generally June Axinn & Mark J. Stern, Social Welfare: A History of the American Response To Need (6th ed. 2004); Harry Specht & Mark E. Courtney, Unfaithful Angels: How Social Work Has Abandoned

Its Mission (1995); Walter I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America* (6th ed.1999). 95 Saltzman & Furman, *supra* note 84; Schroeder, *supra* note 84.

n95 6 Albert, *supra* note 84, at 329-33.

n96

n97 See, e.g., Robert G. Madden, *Essential Law for Social Workers* (2003).

n98 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, 140-41 (2004) (explaining that therapeutic jurisprudence crosses significant paths with the generalist social worker model). Susan Brooks also cites the importance of applying core social work elements as a normative framework for therapeutic jurisprudence. Susan L. Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, *17 St. Thomas L. Rev.* 513, 516-17 (2005).

n99 See Roger S. Haydock et al., *Lawyering: Practice and Planning* (1996).

n100 See Stein, *supra* note 85, at 133-50. See generally Stoner, *supra* note 85.

n101 Ann Halarambie, *The Child's Attorney: A Guide to Representing Children in Custody, Adoption, and Protection Cases* 57-60 (1993) (describing the need to prepare the child's therapist to testify).

n102 *Infra* Part II.E. See also Zawisza, *supra* note 5.

n103 Hartley & Petrucci, *supra* note 98, at 141.

n104 See Linda D. Elrod, *An Analysis of the Proposed Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases*, *64 Fordham L. Rev.* 1999 (1996).

n105 See *id.*

n106 American Bar Association, *Proposed Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, *29 Fam. L.Q.* 375 (1995).

n107 See Tenn. Sup. Ct. R. 40.

n108 *Id.* at R. 40(b)(2), (e)(3).

n109 *Id.* at R. 40(b)(2). R. 40(b)(i)-(xvii).

n110 Id. at R. 40(d)(1)(i)-(iii).

n111 Id. at R. 40(d)(1)(iv), (vii).

n112 Id. at R. 40(d)(1)(vii).

n113 Id. at R. 40(d)(1)(vi).

n114 Id. at R. 40(d)(1)(viii).

n115 Id. at R. 40(d)(1)(ix)-(x).

n116 Id. at R. 40(d)(2).

n117 Id. at R. 40(d)(3).

n118 Id. at R. 40(d)(6).

n119 Id. at R. 40(d)(4). The social worker-author would assert that assessment of the needs of the child and the available resources is a skill perhaps better handled by a social worker in consultation with the lawyer.

n120 Id. at R. 40(d)(5). The social-worker author would assert that the identification of resources is also a skill perhaps better handled by a social work.

n121 Id. at R. 40(d)(7).

n122 Id. at R. 40(d)(7)(i)-(iii), (vi).

n123 Id. at R. 40(d)(7)(iv)-(v).

n124 Id. at R. 40(d)(7)(vii).

n125 Id. at R. 40(d)(10).

n126 Id. at R. 40(d)(7)(x)-(xi).

n127 Id. at R. 40(d)(8)-(9). These duties are perhaps better accomplished by a social worker until such point as additional legal intervention is necessary.



n128 This is a composite of several actual cases, with facts changed to preserve privacy.

n129 Tenn. Sup. Ct. R. 40(d)(1)(vi), (viii).

n130 "Play brother" is a title used to identify a close friend who is not related by blood to anyone in the family, but who is considered as close as a blood relative. For a discussion of the development of "play families" in prisons as a survival mechanism for inmates see Barbara A. Owen, *In the Mix: Struggle and Survival in a Women's Prison* (1998).

n131 Tenn. Sup. Ct. R. 40(d)(7).

n132 An IEP is an individualized education program for children with disabilities prepared pursuant to the Individuals with Disabilities Education Act. *20 U.S.C. § 1415* (2005). It is a written statement describing goals, objectives and plans. *Id.*

n133 This is a "multidisciplinary team (representing prosecution, law enforcement, mental health, medical, child protective and social services professionals and the juvenile court) which jointly: (A) Assess victims of child abuse and their families; and (B) Determine the need for services." *Tenn. Code Ann. § 9-4-213(a)(4)* (2005).

n134 The medical examination records of the Sexual Assault Resource Center were also examined.

n135 See *Tenn. Code Ann. § 37-1-102(b)(12)(C)*, (F)- (G) (2005). Under these sections, the court may find that the child is under the "unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, . . . society or other organization or who is unlawfully kept out of school." *Id.* § 37-1-102(b)(12)(C) (2005). "Abuse" is defined as "when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker." *Tenn. Code Ann. § 37-1-102(b)(1)* (2005).

n136 *Nash-Putnam v. McCloud*, 921 S.W.2d 170 (Tenn. 1996); *Matter of M.D.*, 658 S.W.2d 112 (Tenn. Ct. App. 1983).

n137 *Farmer v. Dep't of Children Servs.*, No. 01A01- 9610- JV-00485, 1997 WL 803709 (Tenn. Ct. App. Dec. 30, 1997); see also *In re S.M.C.*, No. 01 A01-9807-JV-00358, 1999 WL 378742 (Tenn. Ct. App. June 11, 1999); *State Dep't of Children's Servs. v. Abigor*, No. M2000-03214-COA-R3-JV, 2002 WL 31528509 (Tenn. Ct. App. May 12, 2003).

n138 Due to the requirements of the Federal Adoption and Safe Families Act, *42 U.S.C.A. § 673(b)* (2003), the Tennessee child welfare agency is required to make reasonable efforts through the provision of services to prevent a child's removal from home and placement in foster care and to assist the parent or guardian to prove a suitable home for the child. *Tenn. Code Ann. § 37-2-402(10)(ii)* (2004).

n139 David S. Romantz & Kathleen Elliott Vinson, *Legal Analysis: The Fundamental Skills* 33 (1998).

n140 See, e.g., Robert D. Goldstein, *Child Abuse and Neglect Cases and Materials*, 99-205 (1999); Robert H. Mnookin & D. Kelly Weinberg, *Child, Family and State: Problems and Materials on Children and the Law* 223-74 (5th ed. 2005); Leslie J. Harris & Lee E. Teitelbaum, *Children, Parents and the Law* 733- 927 (2002); Samuel M. Davis, et al., *Children in the Legal System* 507-627 (3d ed. 2004); Douglas E. Abrams & Sarah H. Ramsey, *Children and the Law* 280-370, 544-620 (2d ed. 2003); J. Eric Smithburn, *Cases and Materials in Juvenile Law* 377-448 (2002).

n141 See Goldstein, *supra* note 140, at 145-48; Abrams & Ramsay, *supra* note 140, at 280-370.

n142 *Powe v. State*, 597 So. 2d 721 (Ala. 1991).

n143 Goldstein, *supra* note 140, at 148-52.

n144 *Id.* at 154.

n145 See generally Aaronson, *supra* note 13, at 12.

n146 See generally Francis Barry McCarthy & James G. Carr, *Juvenile Law and Its Processes* 189-264 (2d ed.1989).

n147 Goldstein, *supra* note 140, at 103-16.

n148 *In re D.K.W.*, 415 A.2d 69 (Pa. 1980).

n149 See Goldstein, *supra* note 140, at 106-09.

n150 *Id.* at 109-10.

n151 Aaronson, *supra* note 13, at 6-8.

n152 Thomas Ross, *Teaching Constitutional Law Stories*, 55 *J.L. Educ.* 126, 128-29 (2005).

n153 Taslitz, *supra* note 15, at 144-45 (discussing how the casebook method fails to integrate theory and practice in the way that best practicing lawyers do).

n154 Frank, *supra* note 1, at 910-11.

n155 *Farmer v. Dep't of Children Servs.*, No. 01 A01-JV- 00485, 1997 *Tenn. App. LEXIS* 938 (Tenn. Ct.

App. Dec. 30, 1997).

n156 Moulton, *supra* note 25, at 39.

n157 *Id.*

n158 Shalleck, *supra* note 25, at 110, 141 (describing the intensity of this practice-theory exploration in legal clinics). Group case analysis meetings were one technique recommended to allow students to identify a conceptual framework and test it in a group context by exploring the particular situations presented by their case.

n159 Barry et al., *supra* note 6, at 17-18; Shalleck, *supra* note 25, at 139.

n160 David F. Chavkin, *Clinical Legal Education: A Textbook for Law School Clinical Programs* 7-10 (2002); Haydock et al., *supra* note 99, at 57-60.

n161 Chavkin, *supra* note 160, at 117-28; Haydock et al., *supra* note 99, at 82-103.

n162 Chavkin, *supra* note 160, at 93-112.

n163 *Id.* at 59-78, 93-112.

n164 Haydock et al., *supra* note 99, at 230-45; David A. Binder et. al., *Deposition Questioning Strategies and Techniques* 8-46 (2001).

n165 See Thomas A. Mauet, *Trial Techniques* (6th ed. 1996).

n166 See Chavkin, *supra* note 160, at 22-24.

n167 Shalleck, *supra* note 25, at 139; Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 *Mich. L. Rev.* 485 (1994); Ohlbaum, *supra* note 2.

n168 Shalleck, *supra* note 25, at 139.

n169 See Miller, *supra* note 167, at 492-94 (defining "case theory" as the basic underlying idea that explains the legal theory and factual background and ties as much of the evidence as possible into a coherent and credible whole and explaining that "case theory" is incorporated in the pleadings, pretrial interviews and discovery, motions and trial presentation).

n170 Chavkin, *supra* note 160, at 50. The concept of client "voice" has been a common theme in the literature, as clinicians move into the third wave and attempt to meet Professor Miller's entreaty that client "voice" must be made meaningful through its actual use by lawyers in the work they do and in the way they

dialogue with clients. Miller, *supra* note 167, at 529. Professor Espinoza makes this same point in critiquing her clinic's handling of a divorce case involving abuse of a child in a mixed-race marriage. See Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 *Mich. L. Rev.* 901 *passim* (1997); see also Carolyn S. Salisbury, *From Violence to Voice and Validation: Incorporating Therapeutic Jurisprudence in Clinical Legal Education and Legal Skills Training*, 17 *St. Thomas L. Rev.* 623, 664-65 (2005); Evelyn Cruz, *Validation Through Other Means: How Immigration Clinics Can Give Immigrants a Voice When Bureaucracy Has Left Them Speechless*, 17 *St. Thomas L. Rev.* 811, 829-30 (2005); Enos & Kanter, *supra* note 4, at 83 *passim*; Barry et al., *supra* note 6, at 17-18; see Perlmutter & Salisbury, *supra* note 68, at 765; see also Ramirez & Ronner, *supra* note 68, at 140-41 (for (attempting to apply the concept of "voice" in a practical way to actual client's cases)).

n171 Chavkin, *supra* note 160, at 14 (quoting Ann Shalleck, *Constructions of the Client in Legal Education*, 45 *Stan. L. Rev.* 1731 (1993)).

n172 Cross-cultural lawyering, the ability of lawyers to represent clients of vastly different socioeconomic, ethnic, cultural, and racial backgrounds from themselves, has often been discussed in the clinical literature. See Jean Koh Peters, Chapter Six, *Five Habits of Cross-Cultural Lawyering*, in *Representing Children in Child Protective Proceedings* (2001); see also Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *Clinical L. Rev.* 33, 33-34 (2001) (describing the role of culture in decision making, communication, problem solving, and building rapport); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 *Cornell L. Rev.* 1298, 1337-38 (1992) (exploring the complexity of the task lawyers face in translating clients' stories into a legal framework); Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 *Fla. Coastal L. J.* 219 *passim* (2002) (advocating for empirical research to demonstrate the value of multicultural competence training in law schools); Ingrid Loreen, *Therapeutic Jurisprudence and the Law School Asylum Clinic*, 17 *St. Thomas L. Rev.* 835 *passim* (2005) (emphasizing the need for clinical students to understand the effects of trauma on their clients and for law school clinics to address issues of empathy, emotional intelligence, and cross-cultural communication skills). Social Work Professors Hartley and Petrucci call for the "infusion of cultural competency education throughout the legal curriculum, rather than as an "add-on" in clinically-oriented courses." Hartley & Petrucci, *supra* note 98, at 171. Defining cultural competence as a "set of congruent behaviors, attitudes and policies that come together in a system, agency or among professionals and enable that system, agency or those professionals to work effectively in cross-cultural situations." *Id.* (quoting Terry L. Cross et al., *Towards a Culturally Competent System of Care* 13 (1989)).

n173 Zawisza, *supra* note 5.

n174 See generally Urie Bronfenbrenner, *The Ecology of Human Development* (1979).

n175 See Zawisza, *supra* note 5, at 541-545; see also Claire B. Steinberger, *Persistence and Change in the Life of the Law: Can Therapeutic Jurisprudence Make A Difference?* 27 *Law & Psychol. Rev.* 55, 59-61 (2003).

n176 Zawisza, *supra* note 5, at 544.

n177 *Id.* at 544-45.

n178 Id. at 545.

n179 In fact, Professor Steinberger, a licensed psychologist and lawyer, criticizes the current status of the therapeutic jurisprudence model for its lack of a broader paradigm that includes a general "systems" perspective. Steinberger, *supra* note 175, at 71.

n180 This, in essence, is the generalist social work model. See Hartley & Petrucci, *supra* note 98, at 140.

n181 See Weinstein, *supra* note 4 at 329-30. For parallel discussions about culture in the legal literature, see also Madden, *supra* note 75; Bronfenbrenner, *supra* note 174.

n182 See generally Kirst-Ashman & Hull, *supra* note 78. This protocol is reminiscent of Professor Morton's paradigm for creative problem solving. See Morton, *supra* note 60, at 376-77.

n183 See generally Kirst-Ashman & Hull, *supra* note 78.

n184 Id. at 46-76.

n185 Steinberger, *supra* note 175, at 59-61.

n186 Such multicultural focus is embedded in social work training. Council on Social Work Education, Educational Policy and Accreditation Standards (2001), available at [http://www.cswe.org/accreditation/EPAS/EPAS\\_start.htm](http://www.cswe.org/accreditation/EPAS/EPAS_start.htm); see also Hartley & Petrucci, *supra* note 98, at 140.

n187 See, e.g., Farley, *supra* note 77; DuBois, *supra* note 77; Kirst-Ashman & Hull, *supra* note 78. These principles also guide standards of practice. See, e.g., NASW, Standards for Social Work Case Management, [http://www.naswdc.org/practice/standards/sw\\_case\\_mgmt.asp](http://www.naswdc.org/practice/standards/sw_case_mgmt.asp) (last visited Feb. 20, 2006).

n188 See generally Kirst-Ashman & Hull, *supra* note 78; Dean H. Hepworth et al., *Direct Social Work Practices: Theory and Skills* (2001).

n189 Id.

n190 See *id.*

n191 See *id.*

n192 See Hartley & Petrucci, *supra* note 98, at 179-80.

n193 This is similar to the preventive law approach to family law pioneered by Stephen J. Anderer & David J. Glass. See Anderer & Glass, *supra* note 67, at 224-34.

n194 This is a major thesis of the therapeutic jurisprudence literature. See supra note 63.

n195 Chavkin, supra note 160, at 14 (quoting Ann Shalleck, *Constructions of the Client in Legal Education*, 45 *Stan. L. Rev.* 1731 (1993)).

n196 Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 *Mich. L. Rev.* 485 (1994)

n197 See supra notes 58-59.

n198 Differing ethical rules and requirements of the two professions are often identified as challenges. See Enos & Kanter, supra note 4, at 88; St. Joan, supra note 4, at 444-60; Randy Retkin et al., *Attorneys and Social Workers Collaborating in HIV Care: Breaking New Ground*, 24 *Fordham Urb. L.J.* 547-548 (1997); Lisa Stanger, *Conflicts Between Attorneys and Social Workers Representing Children in Delinquency Proceedings*, 65 *Fordham L. Rev.* 1123, 1135-43 (1996). More specifically, the identified concerns are client confidentiality with regard to the mandatory reporting of child abuse, identifying who within the family the lawyer is representing, and the unauthorized practice of law. See Lois G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practice for People*, 7 *Clinical L. Rev.* 227, 240 (2000). The professions often disagree about the disclosure of client communications and information. Gerard F. Glynn, *Multidisciplinary Representation of Children: Conflicts Over Disclosure of Client Communications*, 27 *J. Marshall L. Rev.* 617, 629-38 (1994). The professions might have a different understanding of the concept of "best interests" of the child. See Stanger, supra, at 1144-48. Confusion over division of tasks is yet another stumbling block. See Coleman, supra note 4, at 150.

n199 Interdisciplinary cooperation between lawyers and social workers requires extraordinary patience, flexibility and sacrifice. Paul Johnson & Katharine Cahn, *Improving Child Welfare Practice Through Improvements in Attorney-Social Worker Relationships*, 54 *U. Pitt. L. Rev.* 229, 229-30 (1992). A shared commitment to the client helps professionals with different norms overcome the barriers to cooperation through such techniques as written protocols or waivers. See Trubek & Farnham, supra note 198, at 268; Retkin et. al., supra note 198, at 562-65. Another solution is to ask the social worker who chooses to work in a legal office to adopt a "pure advocate" model as a member of a legal team. See Stanger, supra note 198, at 1157-58. Yet another answer is to build a wall between the professions for certain tasks and a bridge for other duties. St. Joan, supra note 4, at 466-67.