

NEW DIRECTION IN LAWYERING: INTERVIEWING, COUNSELING, &
ATTORNEY/CLIENT RELATIONAL SKILLS
Syllabus & Course Outline
Fall, 2005

Required Casebooks:

Dennis P. Stolle, David B. Wexler & Bruce J. Winick, *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (Carolina Academic Press, 2000).

David A. Binder, Paul Bergman, Susan C. Price & Paul Tremblay, *Lawyers as Counselors: A Client-Centered Approach*, Second Ed. (West Group, 2004).

Fla. Sup. Ct. Comm'n on Professionalism & Fla. Bar Standing Comm. on Professionalism, *Ideals and Goals of Professionalism, Guidelines for Professional Conduct, Rules Regulating the Florida Bar* (2003).

Attendance:

The ABA and the Law School require regular student class attendance, preparation, and participation. Attendance will be taken, and any student missing more than six classes, unless excused, will not pass the course.

Class Participation:

New Directions in Lawyering is a hands-on, participatory and skills training course. All students are expected to fully participate in class discussions and interviewing, counseling and other in-class exercises. Indeed, student participation in these exercises will be graded and will constitute a portion of the final grade. In addition, students may receive a bump up of ½ grade for exceptional participation in class discussions.

Office Hours:

Prof. Winick (bwinick@law.miami.edu) and Prof. Perlmutter (bperlmutter@law.miami.edu) by appointment. To make an appointment with Prof. Winick, contact his assistant Eileen Russell (erussell@law.miami.edu) at 284-1362, Room G 477 (Law Library). To make an appointment with Prof. Perlmutter, contact his assistant Joanne Manees (jmanees@law.miami.edu) at 284-3123, Room F305 (Children & Youth Law Clinic).

I. IDENTIFYING PROFESSIONAL VALUES

In-class Exercise: The Memorial Service

*Excerpt from Mohandis K. Ghandi, *An Autobiography: The Story of My Experiments with The Truth* (Beacon Press ed. 1957).

*Steven Keeva, *Passionate Practitioner*, 86 A.B.A. J. 56 (June, 2000).

*Steven Keeva, *What Clients Want*, 87 A. B.A. J. 48 (June, 2001).

II. ALTERNATIVE VISIONS OF THE LAWYER'S ROLE

- *William Schma, Judging for the New Millennium, 37 COURT REVIEW 4 (Spring, 2000).
David B. Wexler, Therapeutic Jurisprudence and the Culture of Critique (PRACTICING TJ, Ch. 15).
- *David B. Wexler & Bruce J. Winick, Putting Therapeutic Jurisprudence to Work, 89 A.B.A. J .54-57 (May 2003).
- Susan Daicoff, The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement (PRACTICING TJ, Afterword).
- Client-Centered Lawyering (BINDER, et al., LAWYERS AS COUNSELORS, Ch. 1). Binder et al.

III. A THERAPEUTIC JURISPRUDENCE/PREVENTIVE LAW MODEL OF LAWYERING

- Edward A. Dauer, Foreword (PRACTICING TJ, p. xiii).
- Dennis P. Stolle, Introduction (PRACTICING TJ, p. xv).
- *Richard L. Halpert, More Than One Kind of Recovery 89 A.B.A. J. 58-59 (May 2003).
- *John V. McShane, The Need for Healing, 89 A.B.A. J. 59-56 (May 2003).
- *William G. Schma, A New Kind of Power, 89 A.B.A. J. 66-67 (May 2003).
- Dennis P. Stolle, David B. Wexler, Bruce J. Winick, & Edward A. Dauer, Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering (PRACTICING TJ, Ch. 1).
- *Bruce J. Winick, How I Learned to be a Preventive Lawyer, 20 PREVENTIVE LAW REPORTER 19 (Summer, 2001).
- *Bruce J. Winick, The Expanding Scope of Preventive Law, 3 FLA. COASTAL L. J. 189-204 (2002).
- Edward A. Dauer, Reflections on Therapeutic Jurisprudence, Creative Problem Solving, and Clinical Education in the Transactional Curriculum, 17 ST. THOMAS L. REV. ___
- Marc W. Patry, David B. Wexler, Dennis P. Stolle, & Alan J. Tomkins, Better Legal Counseling Through Empirical Research: Identifying Psycholegal Soft Spots and Strategies (PRACTICING TJ, Ch. 3).
- Bruce J. Winick, Redefining the Role of the Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic Jurisprudence/Preventive Law Model (PRACTICING TJ, Ch. 10, pp. 271-83).
- * Problem in Preventive Law: The Ferry boat
 - * Additional Exercise in Preventive Law: Preventing the Stink Bomb
 - * Applying the "Rewind" Technique: each student should choose a case they have read in a previous or concurrent law school class and prepare a 1-2 page analysis of what they would have done differently at the outset of the lawyer/client relationship to prevent the dispute that eventuated in the appellate decision they have chosen.

First psycholegal soft spot paper due (interview with client). See § IX below.

IV. THE THERAPEUTIC JURISPRUDENCE/PREVENTIVE LAW MODEL IN PRACTICE

A. Elder Law, review Practicing TJ at 10-8

Pam Belluck - Bitter Endings: When Families Disagree, *NEW YORK TIMES* (September 27, 2004), at A-1, col.1

B. Corporate and Business Planning Law, review Practicing TJ at 22-24 Guest Speaker:Steven Kozlowski—September 13

C. Criminal Practice

David B. Wexler, Relapse Prevention Planning Principles for Criminal Law Practice (*PRACTICING TJ*, Ch. 9).

Bruce J. Winick, Redefining the Role of the Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic Jurisprudence/Preventive Law Model (*PRACTICING TJ*, Ch. 10, pp. 245-54,263-71, 283-305). Video feat.John McShane, in class—September 20

D. Divorce and Child Custody

Kathryn Maxwell, Preventive Lawyering Strategies to Mitigate the Detrimental Effects of Clients' Divorces on Their Children (*Practicing TJ*, Ch. 6).

*Jane Gross, Amiable Unhitching, With a Prod *NEW YORK TIMES* (May 20, 2004), at F-1, col. 1.

Pauline H. Tesler, Collaborative Law: What It Is and Why Lawyers Need to Know About It (*PRACTICING TJ*, Ch. 7).

*Astrid Bergden, Dealing with the Resistant Criminal Client: A Psychologically-minded Strategy for More Effective Legal Counseling, 38 *CRIMINAL LAW BULLETIN* 225 (2002).

*Bruce J. Winick, Applying the Law Therapeutically in Domestic Violence Cases, 69 *UMKC LAW REVIEW* 33, 67-70 (1999).

*Martin L. Reisig, The Difficult Role of the Defense Lawyer in a Post-Adjudication Drug Treatment Court: Accommodating Therapeutic Jurisprudence and Due Process, 38 *CRIMINAL LAW BULLETIN* 216 (2002). **Guest Speaker:** Rosemarie Roth, Esq. & Cindy Zatzman, Esq. – September 22

E.. Counseling the HIV Positive Client

Dennis P. Stolle, Advance Directives, AIDS, and Mental Health: TJ Preventive Law for the HIV-Positive Client (*PRACTICING TJ*, Ch. 4). Guest Speaker:TBA—September 27

F. Representing Unmarried Domestic Partners

Jill S. Chanen, The Changing Face of Gay Legal Issues, 90 *A.B.A. J.* 47-51 (July, 2004)

Jennifer K. Robbennolt & Monica Kirkpatrick Johnson, Legal Planning for Unmarried Committed Partners: Empirical Lessons for a Preventive and Therapeutic Approach (*PRACTICING TJ*, Ch. 5). Guest Speaker:TBA— October 4

G. Civil Commitment Practice

*Bruce J. Winick, Therapeutic Jurisprudence and the Civil Commitment Hearing, 10 *JOURNAL OF CONTEMPORARY LEGAL ISSUES*, 37 (1999).

*Bruce J. Winick and Ginger Lerner-Wren, Do Juveniles Facing Civil Commitment Have a Right to Counsel? A Therapeutic Jurisprudence Brief, 71 *U. CINCINNATI L.REV.* 115 (2002).

*Additional amicus Briefs in In re Amendment to the Rules of Juvenile Procedure, Fla. R. Juv. P. 8.350, Case No. SC00-2044 (Florida Supreme Court). Guest Speaker:Carolyn Salisbury, Esq. –September 29

H. LITIGATION

Bruce J. Winick, Therapeutic Jurisprudence and the Role of Counsel in Litigation (*PRACTICING TJ*, Ch. 11).

Jordana Lewis & Jerry Adler, Forgive and Let Live, *Newsweek* 52 (September 27, 2004).

I. Immigration Practice

***Evelyn H. Cruz, Validation Through Other Means**(How Immigration Clinics Can Give

Immigrants a Voice When Bureaucracy Has Left Them Speechless)

811 St. Thomas L. Rev. 17 (2005) **Guest Speaker: JoNel Newman, Esq**

***Ingrid Loreen, Therapeutic Jurisprudence and the Law School Asylum Clinic**

835 St. Thomas L. Rev. 17 (2005) **Guest Speaker: Maria Jose Fletcher, Sabrina Salomon, Deborah Lee, Michelle Abarca.—October 6**

Second psycholegal soft spot paper due (interview with attorney). See § IX below. --
October 15

V. Attorney/Client Communications

*Meredith Levine, Tell the Doctor All Your Problems, but Keep It to Less Than a Minute **NEW YORK TIMES** (June 1, 2004) at F-6, col. 1.

Active Listening (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 3).

Forms of Questions (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 4).

Beginning Client Conferences (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 5).

Theory Development Questioning – Pursuing Helpful Evidence (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 7).

Concluding Client Conferences (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 11).

Bruce J. Winick, Client Denial and Resistance In The Advance Directive Context: Reflections On How Attorneys Can Identify and Deal with a Psycholegal Soft Spot (**PRACTICING TJ**, Ch. 12).

*Carol M. Davis, What is Empathy and Can Empathy be Taught? (manuscript).

*Marjorie A. Silver, Emotional Intelligence and Legal Education, 4 **PSYCHOLOGY, PUBLIC POLICY & LAW** 1173 (1999).

Marjorie A. Silver, Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship (**PRACTICING TJ**, Ch. 13).

Linda Mills, Affective Lawyering: The Emotional Dimensions of the Lawyer-Client Relation (**PRACTICING TJ**, Ch. 14). **Guest Speaker: Carol Davis Ph.D.—October 18**

VI. COUNSELING

Principles Underlying Effective Counseling (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 13).

Implementing an Effective Counseling Process (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 14).

Clarifying Clients' Objectives (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 15).

Identifying Alternatives (BINDER, et al., **LAWYERS AS COUNSELORS**, Ch. 16).

*Sue Bryant and Jean Koh Peters, Five Habits for Cross-Cultural Lawyering (manuscript).

VII. INTERVIEWING AND COUNSELING SIMULATED EXERCISES

Students will be assigned to interview clients played by other students. Problems will be distributed. Simulated interviewing and counseling sessions will be video-taped and critiqued.

VIII. CLIENT INTERVIEWING AND COUNSELING SESSION

Students will be assigned to interview a real client in a setting such as the Miami-Dade Juvenile Detention Center, under the supervision of Professors Perlmutter and Winick. After the interview students will prepare a detailed intake memorandum. Both the interview and the intake memorandum will be critiqued and graded by the Professors. Details to be announced.

IX. PSYCHOLEGAL SOFT SPOT PAPERS

Students will be required to submit two (2) psycholegal soft spot papers of approximately five (5) pages in length each, either in the form contained in the Appendix at pages 493-98 in PRACTICING TJ or in a paper that contains this information. Students will interview attorneys of their choosing and base their papers on psycholegal soft spots occurring within their practices. Students will also interview clients of their choosing and base their papers on the client's perspective on the attorney-client relationship focusing on psycholegal soft spots occurring in that relationship. Papers will contain the information set forth in the Appendix, including the student's recommendations on how these psycholegal soft spots discussed should be dealt with.