

**THE AFFECTIVE ASSISTANCE  
OF COUNSEL**



**THE AFFECTIVE ASSISTANCE  
OF COUNSEL**

**PRACTICING LAW  
AS A HEALING PROFESSION**

Marjorie A. Silver

CAROLINA ACADEMIC PRESS

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*To David with Love & Joy*



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# FOREWORD

“It was the best of times; it was the worst of times.” So Charles Dickens famously began his *Tale of Two Cities*, succinctly capturing his appraisal of the London and Paris, the England and France, of 1775. As I look at a much narrower canvas, the American legal profession midway through the first decade of this new century, in the light of the important collection that Marjorie Silver has evoked and edited, the Dickensian epigram seems newly apt.

The “worst” is an old tale, happily not to be recounted here. There is a now familiar litany of exhibits: The relevant citations usually begin with Anthony Kronman<sup>1</sup> and Mary Ann Glendon,<sup>2</sup> at the head of a lengthening catalogue of indictments attesting to serious failings in the professed norms as well as the actual practices of lawyers, with deleterious impacts on them, on their clients, and on the citizenry at large.

In the decade that began about 30 years ago, several powerful critiques appeared, which drew into serious question core premises of the traditional concept of advocacy. Richard Wasserstrom (1975) doubted the justification for the prevalent emphasis on attorney role-differentiation and professional domination of clients;<sup>3</sup> Warren Lehman (1979) described the unspoken presuppositions that lawyers and clients each bring to their conversations, which distort their understandings of one another’s intentions or priorities;<sup>4</sup> Leonard Riskin (1982), looking beyond the lawyer’s “standard philosophical map,” developed a justification for taking seriously the place of mediation in the practice and teaching of law;<sup>5</sup> Carrie Menkel-Meadow (1984) presented a “prob-

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1. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEAS OF THE LEGAL PROFESSION* (1995).

2. MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1996).

3. Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 *HUM. RTS.* 1 (1975).

4. Warren Lehman, *The Pursuit of a Client’s Interest*, 77 *MICH. L. REV.* 1078 (1979).

5. Leonard L. Riskin, *Mediation and Lawyers*, 43 *OHIO ST. L.J.* 29 (1982).

lem-solving” alternative to prevalent conceptions of the negotiation process;<sup>6</sup> earlier, Bill Simon (1978) had offered a comprehensive critique of the major versions of the “ideology of advocacy.”<sup>7</sup> The critique burgeoned, and, as if foreshadowing professional “buy-in” to at least some of it, the American Bar Association’s Kutak Commission (1977-1983) seemed for a time to be leading the organized Bar to rein in at least the more visibly problematic aspects of dominant approaches to the practice of law.<sup>8</sup>

It was not to be. The profession, evidencing some real suppleness, soberly incorporated some of the critique in casebooks and conference formats, while rejecting even modest attempts to change the rules. At the same time, it adapted quickly and powerfully year-by-year to changes in the economics and technology of what was coming to be thought of as the “production of legal services.” Emergent versions of practice only strengthened the disaffection of those who had seen merit in the earlier critique. Among many examples of these are ever-increasing sub-specialization, globalization of the law firm, multi-disciplinary practice (*de facto* if not *de jure*), transformation of the meaning of partnership, enhanced opportunities, and pressures for enormous profits: The result has been a deepening of the “commodification” of both practice and teaching, and of the lives of those engaged in them.

What, then, is the “best” news? To me, the essays that follow demonstrate that it is not necessary to change professional norms to make it possible for those who find them seriously deficient to mark out a different road. That 90s exhortation, “Just do it!” is actually feasible, and does not always entail stepping off alone into an uncharted wilderness. I will refer in general terms to only an illustrative sample of exciting developments that one or more of the essays that follow present:

- A “collaborative law” movement is not only a challenging idea, it is indeed a movement already in existence. It has undertaken, for example, to practice family law in a manner thought by its practitioners to be responsive to what clients really care about, as well as to the factors that led its members to want to practice family law in the first place. Instead of debating fruitlessly with their teachers, classmates, or colleagues who

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6. Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation*, 31 UCLAL. REV. 754 (1984).

7. William H. Simon, *The Ideology of Advocacy*, 1978 WIS. L. REV. 30.

8. ABA Special Comm. on Prof’l Standards, Robert J. Kutak, Chairman (1977-1983).

do not share their vision, they are meeting, talking, and forming practices with those who do.

- Similarly, lawyers and students who find the concept of “therapeutic jurisprudence” valid and relevant now have the resources, in the literature and among professional colleagues, to begin to learn the skills necessary to practice it. Responsive to its opportunities as well as its dangers, they can leave off debating whether the latter should choke off serious pursuit of the former.
- By seeking to develop attributes like attentiveness and awareness as a lawyering skill and not simply a way to “unwind” after a stressful day, lawyers are transcending the polarization of thinking and doing that is so powerful both in society at large and among the profession. Beginning to think that way brings specific guides and supportive communities into view, and one does not need to persuade multitudes in order to find and follow them.
- Another polarization that has been cracked open is that between benefiting the client (one’s only “proper” business) and benefiting oneself in a non-material (and therefore “self-indulgent”) way. Learning to listen becomes a major lawyering priority as a spiritual practice: It serves the client, for listening to clients *is* representing them, but it is a worthy activity in the life of the lawyer as well, for it legitimates and focuses the impulse to live a life of service to others.

These are only a few manifestations of the wide-ranging challenges described and developed below, which are being acted upon and implemented day-by-day, beneath the radar screen of most academic and professional disputation. You—student, practitioner, teacher—needn’t lead a parade to live your work life in ways that make sense to you. Others have come before, are coming along now, and are here as teachers/fellow-learners.

That, to me, is the message of this book. Is it “subversive,” as Marjorie Silver daringly proclaims in its opening line? Well, to me that depends on how you understand the word. I don’t expect the priorities and premises that animate these essays to become dominant in the profession, and the expectation that they might can be a route to burn-out and disillusionment. The deeper point, and perhaps the more relevant subversion, is that the “deviant” views needn’t take over, needn’t become normative. There is room for each of us to follow the path that makes sense to him or her. You are not alone. Others are walking along with you; indeed, many have been treading along already; there is much to learn, much to teach, many to support, and find support from. Like Emily Dickinson, the authors of this collection “dwell in

possibility.”<sup>9</sup> Join them, or some of them, if you decide you are or become of a mind to.

*Howard Lesnick  
Jefferson B. Fordham Professor of Law  
University of Pennsylvania Law School  
August 2006*

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9. Emily Dickinson, “I dwell in possibility” (Poem No. 657).

# PREFACE

Beware. This book is subversive. It is a counter-culture book. It aims to subvert the legal profession's prevailing gladiatorial paradigm. It is, to use Professor Leonard Riskin's phrase, something off "the lawyer's standard philosophical map."<sup>1</sup> It promises a vision of practicing law that is likely very different than what you learned in law school, or, for those of you who are currently law students, what you have been learning in most of your law school classes.

When I first conceived the idea for this book, my intent was to produce a comprehensive compendium of the knowledge, skills, and values necessary to practice law as a healing profession. I quickly realized, however, the absurdity of that ambition. That would require a whole library, not a single volume.<sup>2</sup>

Instead, I set out to solicit a diverse range of contributions from authors who had something meaningful to contribute to the body of literature aimed at lawyers who desire to practice law as a calling, who are interested in developing the competencies to practice law as a healthy, healing profession, one that the lawyer finds fulfilling and rewarding and that is beneficial and therapeutic for the client. When lawyers find ways to practice law that optimize their own and their clients' wellbeing, they can recapture the moral vision that originally attracted them to the law, and, in so doing, find joy and meaning in their practices.<sup>3</sup>

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1. See *infra* ch. 15: Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, at p. 447.

2. At last count, the bibliography of the website of the International Network on Therapeutic Jurisprudence listed twenty-nine books & monographs, twenty-two symposia, and 800 articles, all published over the past fifteen years. See International Network on Therapeutic Jurisprudence, *TJ Bibliography*, at <http://www.law.arizona.edu/depts/upr-intj/> (last visited June 29, 2006).

3. See generally Symposium, *Lawyering and its Discontents: Reclaiming Meaning in the Practice of Law*, 19 Touro L. Rev. 773 (2004) [hereinafter Touro Symposium]; STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).

There exists tremendous discontent among the practicing bar. Many lawyers have found themselves unhappy or unfulfilled in their practices. Compared to other professionals, lawyers suffer disproportionately from excessive stress, substance abuse, and other emotional difficulties. Many find themselves demoralized or disillusioned about the practice of law.

Here's the good news. Recent years have witnessed a spate of both new and renewed approaches to the practice of law. Disaffected by the adversarial model, many practitioners have engaged in a quiet revolution, a marriage of theory and practice designed to maximize the healing potential of the law. The intention for this book is to inspire law students and lawyers to pursue paths and practices that will be more beneficial for more clients, and more meaningful and rewarding for more lawyers. Hopefully each reader will find something in this book that enhances his or her well being in practice, so that all lawyers may realize the possibilities of careers well spent.

*Marjorie A. Silver*  
*August 2006*



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I have received tremendous support and sustenance from friends and family over the course of this project. First and foremost, I want to thank the nineteen extraordinary people who contributed chapters to this book, and Howard Lesnick, who wrote the Preface. Thank you all for saying “yes” when I invited you to be part of this book. Many editors complain about the difficulties they experience in trying to coordinate the efforts of multiple authors. I, instead, had minimal glitches and abundant joy working with all of you. Your commitment to this book’s mission was teamed with tremendous enthusiasm, energy, and responsiveness.

In particular, I want to single out David Wexler and Bruce Winick who, over the past eight or so years that I have known them, have been friends and mentors *extraordinaires*, and have opened numerous windows and doors for me. Jean Koh Peters has been my clinical muse and dear friend. Thanks, too, to Jonathan Cohen for his wise and helpful editorial suggestions on the Introduction.

My research assistant, Stephanie Adduci, has been almost inhumanly indefatigable in doing research, footnotes, and proofreading. This book would never have been done on time without her diligence, conscientiousness, commitment, and long hours into the night. Thanks, too, to the support of Marie Litwin and the other members of Touro Law Center’s faculty services team. Touro’s outstanding research librarians were there whenever I needed them. And thanks to our dean, Lawrence Rafal, who has supported me with his enthusiasm, a sabbatical, and multiple summer research grants.

Finally, I thank my wonderful family: my husband, Doug Block, for his almost uncanny ability to make everything read better; my daughter, Lucy Block, whose feel for metaphor enhanced my prose; my daughter-in-law Margaret Silver; and my son, Josh Silver, who gave Margaret the time and space to cast her excellent editorial eye and mind on my chapter in the weeks following the birth of their first child and my first grandchild, David Morgan Michael Silver, to whom this book is dedicated. Thank you all for your love and understanding.



# INTRODUCTION

*I came to realize that the best lawyers I have ever known, all had three main qualities.... They were highly competent, had unshakable integrity, and truly cared—about their families, their colleagues, their clients, and their community.... I've learned the hard way that caring about things is at least as important as being competent and ethical in life.<sup>1</sup>*

When we represent a client, we receive into our care a human being with an array of problems and possibilities, only some of which are likely to be legal. The traditional law school curriculum, however, does not prepare its graduates well for the day-to-day practice of law. It is even more deficient in preparing students for alternative visions of what it means to be a lawyer. The first year curriculum consists largely of analyzing appellate court decisions. When we law professors speak of teaching students to “think like lawyers,” what we generally mean is we want to cultivate the skills of advocacy and argument. We want them to master the ability to argue both sides of a “case,” so that they may develop the necessary competence to serve as hired guns for contentious clients. In large measure, we prepare students to be players in the adversary system game.<sup>2</sup>

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1. SUCCESS BRIEFS FOR LAWYERS: INSPIRATIONAL INSIGHTS ON HOW TO SUCCEED AT LAW AND LIFE 49 (Amiram Elwork & Mark R. Siwik eds., 2001) (quoting a law firm founding partner).

2. That it is viewed as a game by at least one judge is illustrated by an order out of the United States District Court in the Middle District of Florida in June of 2006. Judge Gregory Presnell issued a discovery order that read, as follows:

## ORDER

This matter comes before the Court on Plaintiff’s Motion to designate location of a Rule 30(b)(6) deposition.... Upon consideration of the Motion—the latest in a series of Gordian knots that the parties have been unable to untangle without enlisting the assistance of the federal courts—it is

**ORDERED** that said motion is DENIED. Instead, the Court will fashion a new form of alternative dispute resolution, to wit: at 4:00 P.M. on Friday, June 30, 2006, counsel shall convene at a neutral site agreeable to both parties. If counsel

Increasingly, though, law teachers—both clinical and classroom—inspired by approaches such as Therapeutic Jurisprudence, Creative Problem-Solving, and Humanizing Legal Education, are integrating into our teaching individual and systemic approaches that challenge the gladiator model of lawyering. New pedagogy is informing old courses, and new courses are evolving and taking their places in the curriculums of increasing numbers of law schools. This book bears the fruit of many of these efforts.

The contributors to this book come from widely diverse backgrounds. What they share are visions for more therapeutic, more beneficial, more helping, healing ways to practice law. This book is a resource for law professors, law students, and lawyers who share those visions.

### Some History<sup>3</sup>

Although the emerging interest in law as a healing profession is of relatively recent vintage, the seeds can be found decades ago. As early as 1955, Erwin Griswold, former dean of the Harvard Law School, called upon the bar and the legal academy to recognize the need for human relations training in law school. Dean Griswold urged lawyers to study social science literature on human relations, noting that the average lawyer spent far more time interacting with people than reading and arguing appellate cases.<sup>4</sup>

Dean Griswold's call inspired Professor Howard Sacks to offer an experimental human relations course at Northwestern Law School during the 1957-58 school year.<sup>5</sup> The course, entitled Professional Relations, was apparently the first course at any law school to apply human relations training to lawyers.<sup>6</sup>

cannot agree on a neutral site, they shall meet on the front steps of the Sam M. Gibbons U.S. Courthouse.... Each lawyer shall be entitled to be accompanied by one paralegal who shall act as an attendant and witness. At that time and location, counsel shall engage in one (1) game of "rock, paper, scissors." The winner of this engagement shall be entitled to select the location for the 30(b)(6) deposition to be held somewhere in Hillsborough County during the period July 11-12, 2006. If either party disputes the outcome of this engagement, an appeal may be filed and a hearing will be held at 8:30 A.M. on Friday, July 7, 2006 before the undersigned in Courtroom 3, George C. Young United States Courthouse ...

Case No. 6:05-cv-1430-Orl-31JGG (U.S. D. Ct. Middle D. Fla., June 6, 2006).

3. This history is drawn largely from Marjorie A. Silver, *Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259, 284-88 (1999).

4. *Id.* at 284.

5. Howard R. Sacks, *Human Relations Training for Students and Lawyers*, 11 J. LEGAL EDUC. 316, 317 (1959).

6. *Id.* at 321 n.13.

Professor Andrew Watson, a psychiatrist who later held a joint appointment at the University of Michigan law and medical schools, taught similar experimental courses.<sup>7</sup> In his endeavors to bridge the gap between psychiatry and the practice of law, over a twenty-year period Professor Watson published numerous articles and books for a legal audience.<sup>8</sup> His work explored the clinical application of psychotherapeutic insights to legal education and the practice of law. Watson urged legal educators to incorporate basic psychiatric principles into mainstream legal education.

In 1964, Harrop Freeman, a Cornell law professor, published the first coursebook devoted to the techniques and psychology of interviewing and counseling clients.<sup>9</sup> In a preface to the book, Dean Griswold praised the work for recognizing the importance of cultivating interpersonal skills for the effective practice of law. Dean Griswold wrote that by seeking to fill a void in legal education—a field devoted until then almost entirely to the Langdellian case method—Freeman’s contribution was “almost as much a pioneering book as was Dean Langdell’s *Cases on Contracts*.”<sup>10</sup>

Another important contributor to the field was Alan Stone, Professor of Law and Psychiatry at Harvard University.<sup>11</sup> In a 1971 law review article, Professor Stone lamented that sixteen years had passed since Dean Griswold had made his oft-cited declaration that legal education neglected human relations training. “In spite of Dean Griswold’s enthusiasm,” Professor Stone wrote, “law schools . . . have largely ignored the responsibility of teaching interviewing, counseling, negotiating, and other human relations skills, and Harrop Freeman’s work has not generated a new Langdellian dynasty.”<sup>12</sup>

7. Andrew S. Watson, *The Law and Behavioral Science Project at the University of Pennsylvania: A Psychiatrist on the Law Faculty*, 11 J. LEGAL EDUC. 73 (1958).

8. See *id.*; Andrew S. Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL EDUC. 1 (1963); Andrew S. Watson, *The Lawyer as Counselor*, 5 J. FAM. L. 7 (1965); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968); Andrew S. Watson, *Lawyers and Professionalism: A Further Psychiatric Perspective on Legal Education*, 8 U. MICH. J.L. REFORM 248, 265–78 (1975); ANDREW S. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* (1976); ANDREW S. WATSON, *PSYCHIATRY FOR LAWYERS* (rev. ed. 1978).

9. HARROP A. FREEMAN, *LEGAL INTERVIEWING AND COUNSELING* (1964).

10. *Id.* at ix–x.

11. Alan Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); ALAN STONE, *LAW, PSYCHIATRY, AND MORALITY: ESSAYS AND ANALYSIS* 199 (1984).

12. Stone, *Legal Education on the Couch*, *supra*, at 428. Professor Stone notes the limitation of the Freeman book’s case studies:

Cases like those collected by Professor Freeman do have some utility, but often

In the late seventies and early eighties, Professor James Elkins of the West Virginia University College of Law made several contributions to the literature advocating training in human relations.<sup>13</sup> In a 1983 law review article, Professor Elkins argued for the revitalization of a humanistic perspective in legal education.<sup>14</sup> He observed that the psychoanalytic approach, popular in the jurisprudence of the 1960s and early 1970s, had fallen into disfavor by the 1980s.<sup>15</sup>

## Law and Humanism

Interest in the development of human relations skills in law schools was closely aligned with the law and humanism movement that gained a core of proponents in the 1970s and early 1980s. While articles advocating for an approach that paid attention to the humanistic side of lawyering began appearing in the mid- to late- sixties,<sup>16</sup> it was in the late seventies and early eighties

they neither have the psychological depth nor the complexity that allows for rigorous analysis; nor do they involve the student personally in a way which permits the psychological elements to come to life and be comprehended at the level of emotionally significant learning.

*Id.* at 429.

13. James A Elkins, *A Counseling Model for Lawyering in Divorce Cases*, 53 NOTRE DAME LAW. 229 (1977); James A Elkins, *The Legal Persona: An Essay on the Professional Mask*, 64 VA. L. REV. 756 (1978); James A. Elkins, *A Humanistic Perspective in Legal Education*, 62 NEB. L. REV. 494 (1983).

14. Elkins, *A Humanistic Perspective in Legal Education*, *supra*.

15. Professor Elkins speculated that the loss of interest might have been due to a growing realization among academics that the psychoanalytic or humanistic perspectives were unlikely to engender substantial change in legal education. “[L]egal educators,” he wrote, moved to take up other concerns as they realized “conscious[ly] or unconscious[ly], that counseling was not going to be the catalytic agent for change....” *Id.* at 508 n.56.

16. Walter Gellhorn, “*Humanistic Perspective*”: A Critique, 32 J. LEGAL EDUC. 99, 99 (1982) (citing Charles A. Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402 (1965); Robert S. Redmont, *Humanistic Law Through Legal Education*, 1 CONN. L. REV. 207 (1968)). The Gellhorn article is interesting in and of itself. It is a rather venomous appraisal of the humanistic movement and the book, *Becoming a Lawyer*, see *infra* note 17. There is some history here. Somewhere in the bowels of my files, I discovered a photocopy of fascinating correspondence between Walter Gellhorn and Jack Himmelstein from the summer of 1978. Gellhorn politely but dismissively responds to a draft Himmelstein had apparently shared with him of Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978).

that the movement gained momentum. Perhaps it reached its apex in 1981, with the publication of *Becoming a Lawyer: A Humanistic Perspective on Legal Education and Professionalism*.<sup>17</sup>

For some, introducing humanism into the curriculum meant focusing on developing interpersonal skills;<sup>18</sup> for others, like the authors of *Becoming a Lawyer*, it was a call for a more value-focused legal education. This focus on values however, was coupled with renewed attention to the human element in the law: the *humanbeingness* of teachers, students and, most importantly, clients.<sup>19</sup> The book was an outgrowth of a federally-funded project based at Columbia Law School, the Project for the Study and Application of Humanistic Education in Law. The Project's mission was to address the perception that in the process of training law students to become lawyers, for the most part legal educators at best ignored and at worst dismissed attention to the core values that attracted many students to the study of law.<sup>20</sup> These values included the desire to "help people," to "make a difference," to seek justice, to have a positive impact on the world.<sup>21</sup> The intellectual indoctrination of law students distanced many from the ideals that provided a meaning for the work they wished to do,<sup>22</sup> thus threatening to separate lawyers from their own moral core.<sup>23</sup>

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17. ELIZABETH DVORKIN, JACK HIMMELSTEIN & HOWARD LESNICK, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM 2* (1981) [hereinafter DVORKIN ET AL.]. By 1983, Professor Elkins was already lamenting its decline. See *supra* note 14.

18. See, e.g., David M. Hunsaker, *Law, Humanism and Communication: Suggestions for Limited Curricular Reform*, 30 J. LEGAL EDUC. 417 (1979–80). Although this article, written by a professor of speech communication at the University of Virginia, acknowledged the "values" question, its primary focus was on the need for introducing interpersonal skill development into the law school curriculum.

19. DVORKIN ET AL., *supra* note 17, at 3.

20. *Id.* at 1–2.

21. For the past twenty years or more, towards the end of each semester in Professional Responsibility I survey students' hopes and concerns about practicing law. The most common response to the question of "What excites you most about the law?" has consistently remained responses about the possibility of "helping others."

22. See *infra* note 51 (discussing Viktor Frankl's school of logotherapy and man's search for meaning).

23. DVORKIN ET AL., *supra* note 17, at 2. When I entered the University of Pennsylvania Law School in 1970, it was at the height of the Civil Rights movement and the opposition to the Vietnam War. Many if not most of my classmates shared the vision that, armed with law degrees, we could be champions fighting for social justice and equality. Three years later, something had happened. Most of my classmates sought and found jobs at prestigious law firms. Only a few of us maintained the ideals that drew us to the law in the first

## Therapeutic Jurisprudence and the Comprehensive Law Movement

Some have speculated that the disillusionment fuel ed by the Vietnam War and Water gate may have dampened the efforts of reform ers to approach law and its probl ems inform ed by a humanistic perspective, thus precipitating the individualism and materialism that thrived in the 1980s.<sup>24</sup> Interest in a more humanistic approach to legal education and the practice of law may have waned, but it did not disappear. Professor Susan Daicoff has suggested that the increasing societal disillusionment with the materialistic, egocentrism of the 1980s may have paved the way for the burgeoning of developments in the last decade of the twentieth century and the beginning of the twenty-first, for what Professor Daicoff has named The Comprehensive Law Movement.<sup>25</sup>

### Therapeutic Jurisprudence

Probably the most influential of these developments has been Therapeutic Jurisprudence (TJ). Grounded in the notion that law and legal actors cause outcomes that may be either therapeutic or anti-therapeutic, TJ calls for attention to those effects and a conscious effort, consistent with legal rights and other important values, to promote legal consequences that enhance wellbeing, and minimize those that diminish it.<sup>26</sup> The subsequent “marriage” of TJ with the Preventive Law model<sup>27</sup> calls for, in Professor Bruce Winick’s words,

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place.

For studies demonstrating that wellbeing is nurtured far more by *intrinsic* rather than *extrinsic* rewards, see *infra* ch. 3: Susan Daicoff, *Lawyer Personality Traits and their Relationship to Various Approaches to Lawyering*, at pp. 92–93.

24. See Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 1, 47(2006).

25. See *infra* notes 36–41 and accompanying text.

26. See, e.g., 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, 7–8 (Dennis P. Stolle, David B. Wexler & Bruce J. Winick eds., 2000); International Network on Therapeutic Jurisprudence, at <http://www.lawarizona.edu/depts/upr-intj/> (official website of the International Network on Therapeutic Jurisprudence) (last visited July 28, 2006) [hereinafter TJ Website].

27. Preventive law, which focused on proactive counseling to avoid future legal problems, dates back to the 1950s. The father of the movement was Professor Louis Brown.



“lawyers who practice their profession with an ethic of care, enhanced interpersonal skills, a sensitivity to their clients’ emotional well being as well as their legal rights and interests, and a preventive law orientation that seeks to avoid legal problems.”<sup>28</sup>

TJ has had a profound impact over the past decade or so, not only on legal systems in the United States,<sup>29</sup> but on legal institutions around the world.<sup>30</sup> As the reader will learn, many of the contributors to this book are writing from, or are informed by, a TJ perspective.<sup>31</sup> The body of TJ-related scholarship con-

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Along with Professor Edward Dauer and others, Professor Brown founded the National Center for Preventive Law at the University of Denver. See California Western School of Law Nat’l Center for Preventive Law, *Louis M. Brown Program in Preventive Law*, at [http://www.preventivelawyer.org/main/default.asp?pid=brown\\_program.htm](http://www.preventivelawyer.org/main/default.asp?pid=brown_program.htm) (last visited July 25, 2006). In 1969, Professor Brown began the first ever interscholastic *counseling* competition. Hunsaker, *supra* note 21, at 422–23.

28. See *infra* ch. 11: Bruce J. Winick, *Overcoming Psychological Barriers to Settlement: Challenges for the TJ Lawyer*, at p. 342.

29. The growth of problem-solving courts is perhaps the most dramatic example here in the United States. See *infra* text accompanying note 52 (describing problem-solving courts). See generally JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS (Bruce J. Winick & David B. Wexler eds., 2003). Perhaps related to the successes of the interdisciplinary approach used in problem-solving courts, increasingly legal services offices are seeking to meet the “extra” legal needs of clients. One such example is a program of the New York-based Office of the Appellate Defender. *OAD Expands Social Work/Re-entry Program*, VII NEWS FROM THE OFFICE OF THE APPELLATE DEFENDER 1 (2006), available at <http://www.appellatedefender.org/May%202006.pdf> (last visited July 26, 2006). Another example is the Georgia Justice Project, [www.gjp.org](http://www.gjp.org). (last visited July 26, 2006). See *infra* ch. 16: Timothy Floyd, *Spirituality and Practicing Law as a Healing Profession: The Importance of Listening*, at pp. 482–83.

30. Judges from many different countries around the world are embracing TJ principles. The National Judicial Institute in Canada is drafting a handbook on how to incorporate TJ principles into generalist courts. In July 2004, Professor Wexler participated in a workshop for New Zealand judges to help them identify and use therapeutic interventions in general court work. See David B. Wexler, *Therapeutic Jurisprudence: It’s Not Just for Problem-Solving Courts and Calendars Anymore: International Developments*, at <http://www.ncsconline.org/WC/Publications/Trends/SpeProTherapTrends2004.html> (last visited Aug. 3, 2006). Last November, at their annual conference in Perth, the Western Australian Country Magistrates unanimously passed a resolution supporting the use of TJ in their courts and programs. See TJ Website, *supra* note 26, *Announcements*, June 3, 2005. See also Michael S. King, *Therapeutic Jurisprudence in the Commonwealth*, 16 COMMONWEALTH JUD. J. 19 (2006) (surveying use of TJ in the 53 independent states around the world that comprise the Commonwealth).

31. See, e.g., ch. 2: Susan Brooks, *Using Social Work Constructs in the Practice of Law*; ch. 11: Bruce J. Winick, *Overcoming Psychological Barriers to Settlement: Challenges for the TJ Lawyer*; Ch. 12: David B. Wexler, *The TJ Criminal Lawyer: Therapeutic Jurisprudence*

tinues to grow at an impressive rate,<sup>32</sup> and numerous international interdisciplinary conferences focused on TJ theory and practices are held every year around the globe.<sup>33</sup>

Other forces of wellbeing have been at work. Steven Keeva's 1999 book, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*, shared the stories of numerous attorneys who—often without the benefit of a theoretical framework like TJ—have forged a variety of pathways that allow them to practice law consistent with their values and belief systems, allowing them, in Keeva's words, to find joy and satisfaction in the legal life.<sup>34</sup> Around the same time, a group of law professors forged an on-line Humanizing Legal Education (HLE) community. Propelled by the energy and commitment of Professor Lawrence Krieger from Florida State University, HLE attracted increasing numbers of participants, around the country and beyond, determined to find ways to re-humanize the law school experience.<sup>35</sup>

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and *Criminal Law Practices*, Ch. 14: Kristin Henning, *Defining the Lawyer-Self: Using Therapeutic Jurisprudence to Define the Lawyer's Role and Build Alliances that Aid the Child Client*.

32. See Preface, *supra* note 3.

33. To date there have been three International Conferences on Therapeutic Jurisprudence: in Winchester, England in 1998, in Cincinnati, Ohio in 2001, and in Perth, Australia in 2006. Numerous TJ-related conferences have been held around the globe over the past several years. For example, the 20th annual meeting of the Australia and New Zealand Association of Law, Psychiatry and Psychology held in Auckland, New Zealand focused on Therapeutic Jurisprudence. Professor Winick chaired a panel on Therapeutic Jurisprudence at the European Association of Psychology and Law held in Lisbon Portugal in 2001, and a TJ session held at the International Association of Law and Mental Health in Amsterdam in 2002. See Bruce J. Winick, *Therapeutic Jurisprudence Defined*, at <http://www.brucewinick.com/TherapeuticJurisprudence.htm> (last visited Aug. 3, 2006). Therapeutic Jurisprudence played a significant role at the 2004 AALS Clinical Legal Education Conference, see The Association of American Law Schools Presents: A Conference on Clinical Legal Education, *Back to Basics, Back to the Future*, at <http://www.aals.org/clinical2004/program.html> (last visited Aug. 3, 2006); and was featured at The Greek Conference on Professional Responsibility in Crete in 2004. See The Greek Conference, at [www.greekconference.com.au](http://www.greekconference.com.au). See also Symposium: *Therapeutic Jurisprudence in Clinical Legal Education and Legal Skills Training*, 17 ST. THOMAS L. REV. 403 (2005).

34. Preface, KEEVA, *supra* note 3.

35. See Daicoff, *supra* note 24, at 49–50. In January 2006, this group organized an all day workshop at the annual meeting of the Association of American Law Schools, in Washington, D.C. entitled *A Search for Balance in the Whirlwind of Law School*.

## The Comprehensive Law Movement

Around 2000, Professor Susan Daicoff coined the term *The Comprehensive Law Movement* (CLM) to describe the confluence of related developments, or as she has called them, *vectors*<sup>36</sup>—of which Therapeutic Jurisprudence is one—that comprise this “movement.”<sup>37</sup> Professor Bruce Winick characterized these as

[M]embers of an extended family... [S]ome have red hair, some have brown hair and brown eyes, some have blue eyes[. B]ut when you put them all together for a group photo, a striking family resemblance is evident in each member. Yet, each member has his or her own distinctive features that are peculiar to that member only. The beauty of the movement is evident not only in the features that unify the[m] but also in their distinct and individual differences.<sup>38</sup>

These vectors, as described by Professor Daicoff, include the *lenses* of TJ, Preventive Law, Procedural Justice, Creative Problem-Solving, and Holistic Justice, as well as the *processes* of Collaborative Law, Transformative Mediation, Restorative Justice, and Problem-Solving Courts.<sup>39</sup> In her exploration of the similarities and the differences among these vectors, Professor Daicoff notes that all of them aim to “maximize the emotional, psychological, and relational wellbeing of the individuals and communities” involved,<sup>40</sup> and require attention to extra-legal factors.<sup>41</sup>

## The Contents

The eighteen chapters of this book will introduce the reader to a variety of skills, techniques, values, attitudes, and information, some essential and all

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36. “This term ‘vectors’ reflects the forward movement of the disciplines in the future and their convergence toward common goals.” *Id.* at 3.

37. For additional summaries of the vectors that comprise the Comprehensive Law Movement, see Susan Daicoff, *The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 465, 470–83 (Dennis P. Stolle, David B. Wexler & Bruce J. Winick eds., 2000); Susan Daicoff, *The Comprehensive Law Movement*, 19 Touro L. Rev. 825, 832–45 (2004).

38. Daicoff, *supra* note 24, at 5.

39. *Id.* at 16–38.

40. *Id.* at 5.

41. *Id.* at 9.

useful, to the *affective* practice of law.<sup>42</sup> In addition, you will find in these pages numerous resources to assist you further in this endeavor.

This book is divided into five parts. Part I, *Lawyering with Intra- and Interpersonal Competence* introduces the reader to important psychological and other social science principles that inform the human dimensions of the practice of law. The first chapter, *Emotional Competence and the Lawyer's Journey*, by this volume's editor, Professor Marjorie Silver, explains the concept of emotional competence and how it is relevant to lawyers' work. Professor Silver advocates for developing psychological-mindedness, and offers illustrations of psychological manifestations that create both obstacles and opportunities in the lawyer/client relationship. Chapter 1 also alerts the reader to the sorts of psychological and emotional dysfunction—stress, burnout, and vicarious trauma—to which the empathic lawyer has heightened vulnerability.

Chapter 2, *Using Social Work Constructs in the Practice of Law*, by clinical law professor and former social worker Susan Brooks, discusses several elements, techniques, and constructs familiar to social work and illustrates their utility for the therapeutically-inclined lawyer. These include helpful approaches to use with especially challenging clients, including those who fail to keep appointments, those who constantly call the attorney, and those whose lives are in turmoil. Professor Brooks also explores the centrality of family and community—however defined—in cultivating deep understanding of a client's needs and interests.

In chapter 3, *Lawyer Personality Traits and their Relationship to Various Approaches to Lawyering*, law professor Susan Daicoff, who holds a master's degree in clinical psychology, surveys the findings of empirical studies on lawyer

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42. "Affective" means "of or pertaining to emotions, mood, mental state, feeling, sensibility" Biology-Online.org, *Affective*, at <http://www.biology-online.org/dictionary/affective> (last visited Jan. 2, 2006). The earliest reference to *affective lawyering* of which I am aware appears in Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 606 (1994), in which Professor Menkel-Meadow critiques the MacCrate Report for ignoring the affective aspects of lawyering. Subsequently, others, most prominently, Professors Peter Margulies and Linda Mills have written about *affective lawyering* in the domestic violence context. See, e.g., Peter Margulies, *Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection, and Voice*, 63 GEO. WASH. L. REV. 1071, 1072–73 (1995); Linda G. Mills, *On the Other Side of Silence: Affective Lawyering for Intimate Abuse*, 81 CORNELL L. REV. 1225 (1996). See also Linda G. Mills, *Affective Lawyering: The Emotional Dimensions of the Lawyer-Client Relation*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 419 (Dennis P. Stolle, David B. Wexler, Bruce J. Winickeds., 2000).

personality types and traits, and discusses how these findings relate to lawyers' preferences and strengths. Professor Daicoff explores the *fit* between personality types and approaches to practicing law generally, and law as a healing profession in particular. With the caveat that the conclusions of such studies are generalizations to which there are always exceptions, this chapter may guide the reader in determining which type of law practice would fit best with her own interests and inclinations.

In the final chapter of Part I, chapter 4, *Making out the Ghost Behind the Words: Approaching Legal Text with Psychological Intelligence*, Professor Aderon François explores the significance and implications of reading legal text with psychological engagement. After discussing Howard Gardner's theories of multiple intelligences in general and as applied to lawyering in particular, Professor François illustrates how to use *psychological lawyering intelligence* to understand three very different written texts. All these texts, however, have one commonality: an automobile accident. The texts examined include portions of an important products liability case, *Henningsen v. Bloomfield Motors, Inc.*, F. Scott Fitzgerald's *The Great Gatsby*, and Bruce Springsteen's song, *Wreck on the Highway*.

In Part II, *Lawyering with Multicultural Competence*, four clinical law teachers and scholars focus on the unique challenges that arise in counseling clients from different cultures. Professors Paul Tremblay and Carwina Weng, in chapter 5, *Multicultural Lawyering: Heuristics and Biases*, draw from the rich social science literature on multicultural counseling. Their guidance will assist lawyers in recognizing cultural dissimilarities, developing sensitivity to how they may affect the counseling relationship, and making appropriate adjustments to accommodate differences in cultural orientations. The chapter cautions practitioners to approach cross-cultural interactions with *informed not-knowing* and *disciplined naïveté*, so as to be sensitive to both cultural variations as well as individual variations from cultural norms.

Chapter 6, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters, and other Mindful Approaches*, by Professors Susan Bryant and Jean Koh Peters, builds on the authors' earlier work on the Five Habits of Cross-cultural Lawyering.<sup>43</sup> Their chapter here zooms in on a particular and critical aspect of cross-cultural lawyering: communication. The authors illustrate how communication between lawyer and client with different cultural orientations can go awry, and offer specific opportunities and corrections available to the lawyer to get communication back on course. This

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43. See ch. 6 *infra* note 3.

chapter also explores in depth the special challenges of working with interpreters when lawyer and client speak different languages, and suggests six specific practices for avoiding miscommunication.

In Part III, *Lawyering and Civil Disputes*, five authors share their visions of less adversarial approaches to solving civil problems. Over the past thirty-five years or so, the alternative dispute resolution movement has increasingly gained momentum. Although it got the early attention of the courts due to the savings of time and money it afforded as compared to court litigation, recent years have witnessed increasing numbers of advocates who have promoted it for its potential in fostering harmony and healing, and receiving better results for clients.<sup>44</sup> These five authors are among those supporters.

Chapter 7, by Professor Harold Abramson, *Problem-Solving Advocacy in Mediations: A Model of Client Representation*, provides a framework as well as concrete advice to attorneys who represent clients in civil mediation, urging a problem-solving, rather than adversarial approach. The chapter reflects the methodology developed in Professor Abramson's award-winning book, *Mediation Representation—Advocating in a Problem-Solving Process*,<sup>45</sup> which filled a void of available guidance on problem-solving, geared not for the mediator, but rather for the lawyer representing a client in mediation. Approaching mediation as an extension of negotiation, Professor Abramson suggests strategies for realizing the enhanced value possible when disputants focus on *interests* rather than *positions*, as well as intelligently enlist the assistance of the mediator.

Chapter 8, *Collaborative Law: Practicing Without Armor, Practicing With Heart*, by renowned collaborative law practitioner and author Pauline Tesler, explains collaborative dispute resolution, an increasingly preferred alternative

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44. See, e.g., Daicoff, in *PRACTICING TJ*, *supra* note 37, at 467–68. “These other shifts include a decreased emphasis on individualism and individual rights and liberties and an increased emphasis on preserving relationships, connectedness, identity within a community or culture, and familial ties.” *Id.* at 468. Other examples include: ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* (1994); ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT* (1994); Carrie J. Menkel-Meadow, *The Many Ways of Mediation: The Transformation of Traditions, Ideologies, Paradigms and Practices*, in *MEDIATION: THEORY, POLICY AND PRACTICE* 111 (Carrie Menkel-Meadow ed., 2001) (reprinted in 11 *NEGOTIATION J.* 217 (1995)).

45. HAROLD ABRAMSON, *MEDIATION REPRESENTATION—ADVOCATING IN A PROBLEM-SOLVING PROCESS* (2004). This book was the recipient of the International Institute for Conflict Prevention and Resolution for Dispute Resolution (CPR) 2004 Book Award. See <http://www.cpradr.org>. (last visited July 28, 2006).

to contentious divorce litigation, taking hold not only throughout the United States, but in many other countries as well. Collaborative law involves a contractual arrangement among the lawyers and their clients that provides a structure designed to forge agreement between the parties, one that is constructive and healing, and that focuses on the best interests of the clients and their children. Collaborative practice has had transformative effects not only on the parties, but on the lawyers who engage in it as well; it is a “poster child” for the law as a healing profession movement.<sup>46</sup> Ms. Tesler describes the devastating emotional toll that traditional divorce litigation exacts on parties and counsel alike, the limitations of judicially-available relief, and explains how collaborative law offers the possibility of a far superior therapeutic resolution for divorcing couples.

In Chapter 9, *The Culture of Legal Denial*, Professor Jonathan Cohen, who has written wisely and well about the role of apology in legal disputes,<sup>47</sup> here explores the paradox that although we are taught as children that the right thing to do is to take responsibility for our wrongdoing, and to own up to our role in causing harm, lawyers are trained to advise their clients—in particular their clients who are defendants—just the opposite. Attorneys regularly caution clients *not* to take responsibility and to deny liability. Professor Cohen writes that not only does this generally escalate conflict, it likely also has a negative impact on the defendant clients—and perhaps the lawyer’s—wellbeing. The chapter examines the moral, psychological, relational, and economic risks of denial and, while recognizing the potential difficulty of having such discussions, suggests that ethical and zealous representation often requires attorneys to discuss such factors with their clients. Professor Cohen explains why attorneys should not only advise clients about their legal rights, but should also consider engaging clients with respect to their moral responsibilities.

In chapter 10, *Hurting Clients*, the inimitable Dean Emeritus and Professor Edward Dauer, one of the earliest proponents of Preventive Law,<sup>48</sup> explains how, although lawsuits are almost always about money, money is frequently *not* what many clients are seeking. This has been demonstrated empirically in the medical malpractice arena in studies from several countries, including the

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46. Collaborative problem-solving is being used in other fields as well. See, e.g., Barry E. Hill & Nicholas Targ, *Collaborative Problem-Solving: An Option for Preventing and Resolving Environmental Conflicts*, 36 ENVTL. L. REP. NEWS & ANALYSIS 10440–10455 (2006).

47. See, e.g., Jonathan R. Cohen, *Apology and Organizations: Exploring an Example from Medical Practice*, 27 FORDHAM URB. L.J. 1447 (2000); Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009 (1999).

48. See *supra* note 30 and accompanying text.

United States, that Professor Dauer discusses. However, trained to reduce all hurts to money, lawyers rarely consider that alternatives—perhaps an apology, or an explanation—may really be what the client needs or wants. Money is often a poor substitute for accountability, which, as explained by Professor Dauer, may encompass any or all of *sanction, restoration, correction, or communication*. Professor Dauer offers sound reasons for suggesting lawyers may better counsel their civil clients by exploring with them a range of alternatives, including but certainly not limited to, litigation. Further, to do this effectively and well, lawyers must retrain themselves to listen to—and for—their clients’ authentic needs and desires.

In chapter 11, *Overcoming Psychological Barriers to Settlement: Challenges for the TJ Lawyer*, Therapeutic Jurisprudence co-founder, Professor Bruce Winick, explores the lawyer’s opportunities for counseling clients on pursuing alternatives to litigation. Professor Winick starts from the premise that although litigation is rarely in the client’s best interest, the hurt and anger clients often experience complicate the client’s ability to appreciate why alternatives to litigation are likely to better meet her goals and interests, including her ability to achieve psychological healing and wellness. Through understanding a range of emotional and psychological responses, the TJ attorney who has enhanced interpersonal, interviewing, and counseling skills, coupled with some basic techniques from psychology, can assist the client in overcoming resistance to settlement and in successfully navigating some of life’s most difficult moments.

In Part IV, *Lawyering and the Criminal Justice System*, three writers explore what therapeutic lawyering has to offer those who represent clients accused of committing crimes. In chapter 12, *The TJ Criminal Lawyer: Therapeutic Jurisprudence and Criminal Law Practice*, Professor David Wexler, who partnered with Professor Winick in founding TJ, describes how defense lawyers might use therapeutic practices and approaches to promote better outcomes for their clients. By focusing on opportunities for treatment and services early on in the process and at various points thereafter, lawyers may be able to forge agreements with prosecutors and judges for interdisciplinary, rehabilitative alternatives to incarceration. Even when incarceration is ordered, the lawyer can work with the client to increase readiness for rehabilitation and toward eventual release and reentry.

In chapter 13, *A Public Defender in a Problem-Solving Court*, Executive Director of Brooklyn Defender Services, Lisa Schreibersdorf, a criminal defense lawyer with more than twenty years experience, shares her personal story. Early in her career, Ms. Schreibersdorf developed appreciation for the multiplicity of needs that her clients presented, as well as for the profound ways in



which the criminal justice system failed to meet those needs. The advent of specialized *problem-solving courts* in Brooklyn in the mid-nineties—interdisciplinary systems designed to address multiple needs and provide rehabilitation for defendants accused of crimes related to drug addiction or mental health problems<sup>49</sup>—offered Ms. Schreibersdorf and her clients authentic opportunities for healing and redemption. Ms. Schreibersdorf describes both the victories and the challenges of insuring vigorous client representation in a system that, while offering a pathway to health and rehabilitation, nonetheless requires defendants to waive their constitutional rights to trial.

Clinical Law Professor Kristin Henning, in chapter 14, *Defining the Lawyer-Self: Using Therapeutic Jurisprudence to Define the Lawyer's Role and Build Alliances that Aid the Child Client*, extends the application of therapeutic jurisprudence principles to representing clients in the juvenile justice system. Professor Henning focuses on forging a lawyer/client relationship that empowers the young client, gives her voice and validation, enhances positive outcomes, and promotes possibilities for lasting rehabilitation, all the while mindful of preserving the juvenile's legal rights. She explores as well the significance of family, community, and interdisciplinary partnerships in achieving rehabilitative goals, as well as the challenge of insuring client autonomy consistent with these alliances.

Part V focuses on *Lawyering with Mindfulness, Spirituality, and Religion*. While many lawyers pursue the practice of law as a healing profession for purely secular reasons, others are motivated to do so by virtue of their religious faith.<sup>50</sup> My experience in discussions with many caring, committed col-

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49. These are only two examples of the kinds of problem-solving courts that have evolved in recent years. See Center for Court Intervention, at <http://www.courtinnovation.org/index> (last visited July 28, 2006) (website for The Center for Court Innovation that has been instrumental in creating many of these courts).

50. See generally, e.g., Symposium, *Reconciling Lawyers' Professional Lives with their Faith*, 27 TEX. TECH L. REV. 911–1427 (1996). See also HEALING EMOTIONS: CONVERSATIONS WITH THE DALAI LAMA ON MINDFULNESS, EMOTIONS, AND HEALTH (Daniel Goleman ed., 1997). This interdisciplinary gathering of ten Western scholars—among them experts in the fields of psychology, physiology, behavioral medicine, and philosophy—met with the Dalai Lama in Dharamsala, India in 1991 to explore the relationship between health and emotions, including whether an ethical system of moral values could be grounded on something other than a religious belief system. *Id.* at 1, 4, 18. According to the Dalai Lama, this was necessitated by the reality that the majority of the world's peoples held no religious belief system. Was there an effective way to appeal to such persons that they had a moral obligation to address the systemic problems of poverty, illness and devastation throughout the world? *Id.* at 18. Daniel Goleman, whose work on emotional competence is discussed *infra* ch. 1: Marjorie A. Silver, *Emotional Competence and the Lawyer's*

leagues has convinced me that the subject of religion and spirituality is one that causes many lawyers discomfort. While I do not claim to understand all of the reasons for this, I believe it bears relationship to the deep ambivalence many lawyers share about the appropriate boundary between the personal and the public. Nothing is more personal than our religion, our belief system, or the fact that we subscribe to neither. For many of us, what churches we attend and what practices we employ to help us make sense out of the world and our place in it, are matters private and separate from what we do when we engage in our professional work.

For others, however, for those who experience their work as a *calling*, a *vocation*, they are integrally related. Integration of one's personal values with one's professional pursuits is arguably essential for practicing law as a healing profession. The absence of such integration contributes to a kind of moral disconnect that threatens lawyers' psychological and emotional wellbeing.<sup>51</sup> One may or may not participate in an organized religion or hold any spiritual belief system.<sup>52</sup> But unless one finds meaning in one's work other than as a source of income, it will likely be difficult to sustain one's interest, enthusiasm, and commitment over the decades of one's career.<sup>53</sup>

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*Journey*, at pp. 9–12, suggests that further research on the already documented connection between negative emotions and ill health may offer such a possibility. *Id.* at 5, 33–44.

51. See ch. 1, *supra* note 50, at pp. 42–44. The European psychiatrist and concentration camp survivor, Viktor Frankl, developed the school of psychotherapy known as logotherapy (also known as “The Third Viennese School of Therapy”). Its premise is that man's search for meaning is intrinsic to being human, and vitally important in the pursuit of happiness. VIKTOR E. FRANKL, *MAN'S SEARCH FOR MEANING* 120–21 (1984). One of several studies supporting his conclusion was a survey undertaken by Johns Hopkins of about 8,000 students from forty-eight colleges. When asked what they considered “very important” to them, 16 percent chose “making a lot of money” compared to 78 percent who selected “finding a purpose and meaning to my life.” *Id.* at 122.

52. One of my colleagues who falls into this category, a civil libertarian and human rights activist, has shared with me that he admires, sometimes even envies, those for whom doing good works is grounded in their religious belief system. He has tried meditation, see *infra* text at note 56, but has found it doesn't work for him.

53. Although my “google” search revealed a variety of definitions of spirituality, David Hall, former dean and professor of law at Northeastern Law School has a definition that resonates for me in his new book, *THE SPIRITUAL REVITALIZATION OF THE LEGAL PROFESSION: A SEARCH FOR SACRED RIVERS* (2005): “the intentional decision to search for a deeper meaning in life and to actualize in one's life the highest values that can be humanly obtained.” Rich Barlow, *Balancing Life and Practice: Getting Lawyers to Reset Moral Compass*, THE BOSTON GLOBE, April 2006, available at <http://www.lexisone.com/balancing/articles/b040006h.html> (last visited April 18, 2006).

In the chapters that follow, four authors share what they have discovered as sources for inspiration in their professional journeys. These chapters contain insights that many readers will likely find inspiring,<sup>54</sup> and practical advice that many will find useful in your journey to better serve your clients' needs and derive more satisfaction from your work. I invite any skeptical readers to approach these chapters with nonjudgmental curiosity to see what they might offer.

The first of these, chapter 15, *Awareness in Lawyering: A Primer on Paying Attention*, by Professor Leonard Riskin, describes contemplative practices that were developed and refined by Buddhists but are widely used in secular Western society.<sup>55</sup> He offers practical advice on how to better tune in to what your client needs to communicate, and on how to develop the capacity to be a better listener to your client, through being mentally and emotionally present. Professor Riskin, a renowned expert on both *mediation* and *mindfulness meditation*, describes the benefits of mindfulness and offers step-by-step guidance on how to cultivate this state of mind through meditation that enables the practitioner to develop nonjudgmental awareness and loving-kindness.<sup>56</sup>

In chapter 16, *Spirituality and Practicing Law as a Healing Profession: The Importance of Listening*, Professor Timothy Floyd explores different kinds of listening: listening to our lives, listening for opportunities for healing and reconciliation, and listening to clients and others in legal conflict. For Professor Floyd, practicing law as a healing profession requires the employment of spiritual practices. He suggests that Christianity, Judaism, and Islam are concerned with healing our brokenness, and suggests listening as a framework for both exploring our spirituality and for practicing law as a healing profession. This listening includes paying attention, seeing clearly, understanding deeply, and reaching out with empathy. Professor Floyd shares his own experiences of deep listening and spirituality in his death penalty representation work.

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54. The words “inspiring” and “spiritual” share common roots. Both come from the Latin word *spirare*, “to breathe.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1170, 2198–99 (1993).

55. Goleman, *supra* note 50, at 5. Professor Riskin has received inspiration from Jon Kabat-Zinn, whose Stress Reduction Clinic at the University of Massachusetts Medical Center in Worcester, Massachusetts, uses Mindfulness Meditation practice to enhance the well-being and improve the medical healthfulness of, among others, chronically ill patients and medical students. *Id.* at 113–43.

56. These concepts, too, have roots in Buddhist philosophy. *See, e.g., id.* at 19, 185, 191 (on loving-kindness, towards oneself as well as others) and 120–21, 184–85 (on nonjudgmental awareness). The Dalai Lama was taken aback to learn that low self-esteem was a pervasive problem in the West. “There is no such concept as self-loathing or self-deprecation . . . in Tibetan culture.” *Id.* at 184.

In chapter 17, *Sojourner to Sojourner*, Professor Calvin Pang invites us to accompany him on a journey to understand how spirituality informs his—and our—professional quest. For him, the spiritual is always a part of us, whether we acknowledge it, value it, or not. It is an inherent part of our being human. Professor Pang explores the challenge of maintaining awareness and being present to our spirituality, as we juggle the demands of law school and practice, and seek the extrinsic, material rewards that so often define success. He shares stories from Father Dan Edwards, a lawyer turned priest, whose faith enabled him to find redemption even in clients who had committed heinous crimes.

Chapter 18, *The Good Lawyer: Choosing to Believe in the Promise of Our Craft*, the last chapter of both this part and the book, is an inspirational essay from Professor Paula Franzese that encourages the reader to search for meaning in the face of the negativity and cynicism that pervade the legal profession. Sharing poignant stories—her own and those of others—Professor Franzese entreats us to use our knowledge and skills to bridge the gap between the world that is and the one that ought to be. She counsels us not to let the fact that we can not cure all of the world’s problems stop us from taking on those that we can—and we should not underestimate our abilities to effect small miracles in the world. “[T]here are countless clients and causes out there,” she writes, “some of them as yet nameless and unknown, waiting for us to make the difference that only we can make.”<sup>57</sup>

Whatever calls to us, let it be something that sustains us throughout our lives. For some of us, that will mean fighting for social, economic, or political justice. For others it will be championing the environment. For still others, it will be providing competent legal services at reasonable prices to the members of our communities. Whatever it is, let it be something that challenges us every day to be not only the best lawyers we can be; let it be something that allows us to be the best people we can be.

I invite the reader, in a spirit of generosity and optimism, to open up to the opportunities for wellbeing that this book offers you and your clients.

*Marjorie A. Silver*  
*August 2006*

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57. Ch. 18, *infra*, at p. 521.

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