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THE BIRTH OF A THERAPEUTIC COURTS EXTERNSHIP PROGRAM: HARD LABOR BUT WORTH THE EFFORT

GREGORY BAKER¹ & JENNIFER ZAWID²

I. INTRODUCTION

In this article, we focus on the use of externships to introduce law students to the concepts of Therapeutic Jurisprudence and problem solving courts (also referred to herein as therapeutic courts). We begin with an examination of the birth of William & Mary Law School's therapeutic courts practice externship, arguably the most comprehensive externship of its kind. Next, we will focus on an alternative model of a therapeutic court externship clinic, still in its infancy, at the University of Miami School of Law.

Our goals are both simple and lofty. We want as many law students as possible to be exposed to the field of Therapeutic Jurisprudence and the concept of therapeutic courts. We have seen first hand that the benefits of such exposure are tremendous. Thus, we hope that by sharing our "birth

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2. Assistant Clinical Professor of Law, University of Miami School of Law since 2003. B.A., University of Wisconsin-Madison 1991; J.D., University of Miami School of Law 1994. I would like to thank the following individuals: Assistant Clinical Professor Sarah Calli of the University of Miami School of Law for her support and friendship and for comments on earlier drafts; Carolina Garcia for her expert research assistance; Professor Laurence Rose of the University of Miami School of Law for his support and mentoring; and Professor Bruce Winick of the University of Miami School of Law, of course, for among many other things, inspiring me. I am also extremely grateful for the support and assistance I received from Broward County Public Defender Howard Finkelstein, Chief Assistant Public Defender Douglas Brawley, and the Honorable Gisele Pollock, all of whom truly represent the best in their fields. Their combined talents have helped countless individuals recover from the ravishing effects of addiction and mental illness.

stories” we will encourage other law schools to contemplate ways in which these paradigms can be incorporated into their own clinical curriculum. Finally, we hope to contribute to the growing scholarship about externship pedagogy by using our own experiences as text.

II. THERAPEUTIC JURISPRUDENCE AND CLINICAL EDUCATION

Those of us in the trenches know that Therapeutic Jurisprudence³ has the potential to revolutionize clinical teaching. Therapeutic Jurisprudence and clinical education have been described as a “natural ‘fit.’”⁴ Law school clinics and externships provide an “experiential setting that is a natural laboratory for applying therapeutic jurisprudence.”⁵ In considering the integration of Therapeutic Jurisprudence into clinical teaching, Professor Mary Berkheiser writes:

As a theory in search of application, therapeutic jurisprudence can derive much from clinical legal education. Clinicians also have a tradition of welcoming new viewpoints that can provide fresh insights into the educational and lawyering process. The perspective of therapeutic jurisprudence could enhance both individual client representation and law reform efforts. The questions that therapeutic jurisprudence poses would encourage exploration of clients’ needs in ways that could en-

3. Therapeutic Jurisprudence has been defined by its co-creator Bruce Winick as: [A]n interdisciplinary field of legal scholarship and approach to law reform that focuses attention upon law’s impact on the mental health and psychological functioning of those it affects. The scholarly agenda of therapeutic jurisprudence is to study the therapeutic and antitherapeutic consequences of law with the tools of the behavioral sciences, and its law reform agenda is to reshape law so as to minimize its antitherapeutic consequences and maximize its therapeutic potential when to do so is consistent with constitutional, justice, and other normative values served by law. The focus is not only on the therapeutic dimensions of substantive legal rules and legal procedures, but also on how such rules and procedures are applied by legal actors such as judges and attorneys.

Bruce J. Winick, *Therapeutic Jurisprudence and the Civil Commitment Hearing*, 10 J. CONTEMP. LEGAL ISSUES 37, 38 (1999) [hereinafter *Civil Commitment Hearing*]. Therapeutic Jurisprudence scholarship has exploded over the past decade. “Must reads” include BRUCE J. WINICK & DAVID B. WEXLER, *ESSAYS IN THERAPEUTIC JURISPRUDENCE* (Carolina Acad. Press 1991); BRUCE J. WINICK, *THERAPEUTIC JURISPRUDENCE APPLIED: ESSAYS ON MENTAL HEALTH LAW* (Carolina Acad. Press 1997); and BRUCE J. WINICK & DAVID B. WEXLER, *JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS* (Carolina Acad. Press 2003) [hereinafter *JUDGING*]. In addition, new Therapeutic Jurisprudence enthusiasts should familiarize themselves with the International Network of Therapeutic Jurisprudence’s website, www.therapeuticjurisprudence.org, which maintains an up-to-date bibliography and serves as a clearinghouse and resource center for reporting the developments of Therapeutic Jurisprudence.

4. Keri K. Gould & Michael L. Perlin, “*Johnny’s in the Basement/Mixing Up His Medicine*”: *Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE UNIV. L. REV. 339, 341 (2000).

5. Mary Berkheiser, *Frasier Meets CLEA: Therapeutic Jurisprudence and Law School Clinics*, 5 PSYCHOL. PUB. POL’Y & L. 1147, 1171 (1999).

hance their well being and that of student lawyers. In short, both therapeutic jurisprudence and clinical legal education could profit from integration.⁶

Additionally, critics contend that law schools are not doing enough to provide students with a “moral framework” for conceptualizing legal issues, a concept key to Therapeutic Jurisprudence.⁷ Instead students are taught to follow the “black letter law” and not to factor “emotion, imagination, or sentiments of affection and trust” into their analysis of legal problems.⁸ Therapeutic Jurisprudence, by contrast, values these intangibles and teaches lawyers to view their roles in a different light. Lawyers become counselors, and for our purposes, will be inclined to embrace programs “centered on treatment and recovery, as opposed to the rote application of the law.”⁹ Law students and attorneys with a “traditional legal education,” would have a much harder time making such a conceptual leap.

In sum, Therapeutic Jurisprudence has much to offer clinical teaching.¹⁰ By incorporating Therapeutic Jurisprudence principles in both the classroom and out of classroom components of clinic courses, law professors can give students new and important insights into some of the most difficult problems regularly raised in practice settings, including therapeutic courts.¹¹

III. THERAPEUTIC JURISPRUDENCE AND PROBLEM SOLVING COURTS

Problem solving courts, also called therapeutic courts, have become an important feature of the American court landscape.¹² “Developed in re-

6. *Id.* at 1155.

7. Paul G. Haskell, *Teaching Moral Analysis in Law School*, 66 NOTRE DAME L. REV. 1025 (1991); see also Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality”*, 4 CLINICAL L. REV. 1, 4 (1997), cited in Pamela L. Simmons, *Solving the Nations Drug Problem: Drug Courts*, 35 GONZ. L. REV. 237, 238 n.10 (1999-2000).

8. Simmons, *supra* note 7, at 261.

9. *Id.* at 262.

10. Professors Gould and Perlin, in their collaborative article on Therapeutic Jurisprudence and clinical teaching, suggest at least four applications for using Therapeutic Jurisprudence to enrich clinical teaching: “(1) to improve our teaching of skills, (2) to provide a better understanding of the dynamics of clinical relationship, (3) to investigate ethical concerns and the effect on lawyering roles, and (4) to invigorate the way we as teachers and students question accepted legal practices.” Gould & Perlin, *supra* note 4, at 355.

11. *Id.* at 341.

12. In recent years, there has been a tremendous amount of scholarship devoted to problem solving courts. In particular, in March 2003, the Fordham University Urban Law Journal published a symposium devoted to problem solving courts and Therapeutic Jurisprudence. A much anticipated symposium on mental health courts is also forthcoming: Symposium, *Mental Health Courts*, 11 PSYCHOL. PUB. POL’Y (Bruce J. Winick & Susan Stefan, guest eds.) (forthcoming

sponse to frustration by both the court system and the public to the large numbers of cases that seemed to be disposed of repeatedly but not resolved, problem solving courts offer the promise of a more meaningful resolution of court cases involving individuals with psychosocial problems as well as legal issues.”¹³ The dockets are used to address a variety of needs facing juveniles, adults, and families whose mental health or substance abuse problems contribute significantly to their legal problems. A common thread that runs through these specialized courts includes an individualized approach to justice with effective case management and a “closer collaboration with the service communities in their jurisdictions.”¹⁴ Additionally, the new problem solving courts are all characterized by active judicial involvement. “Not only is the judge a leading actor in the therapeutic drama, but also the courtroom itself becomes a stage for the acting out of many crucial scenes.”¹⁵

A close relationship exists between Therapeutic Jurisprudence and problem solving courts. Indeed, it is hard to imagine one without the other. Therapeutic Jurisprudence is one of the major “vectors” of a growing movement in the law towards a common goal of a more comprehensive, humane, and psychologically optimal way of handling legal matters.¹⁶ Problem solving courts are also one of these “vectors,” and thus, share many common aims with Therapeutic Jurisprudence.¹⁷ Problem solving courts often use principles of Therapeutic Jurisprudence to enhance their function.¹⁸ These principles include integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring and/or immediate response to behavior, multidisciplinary involvement, and

2005). For a comprehensive list of current citations to literature surrounding mental health courts, interested scholars should consult Bruce J. Winick, *Outpatient Commitment: A Therapeutic Jurisprudence Analysis*, 9 PSYCHOL. PUB. POL’Y & L. 107, 135-43 (2003) [hereinafter *Outpatient Commitment*]. Of course, any scholar with an interest in this field should also read JUDGING, *supra* note 3.

13. See Pamela M. Casey & David B. Rottman, *Overview of Problem-Solving Courts: Models and Trends*, in NAT’L CENTER FOR ST. CTS. (2003) [hereinafter *Models and Trends*].

14. *Id.*

15. Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 2003 FORDHAM. URB. L.J. 1055, 1060 (2003) [hereinafter *Problem Solving Courts*].

16. Susan Daicoff, *The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 466 (Dennis P. Stolle et al. eds., 2000).

17. See Pamela Casey & David B. Rottman, *Therapeutic Jurisprudence in the Courts*, 18 BEHAV. SCI. & L. 445, 454 (2000) (stating that “therapeutic jurisprudence principles are consistent with court performance goals.”); see generally David B. Rottman & Pamela Casey, *Therapeutic Jurisprudence and the Emergence of Problem Solving Courts*, in NAT’L INST. JUST. J. 12 (1999).

18. *Problem Solving Courts*, *supra* note 15, at 1064.

collaboration with community-based and governmental organizations.¹⁹

In sum, both Therapeutic Jurisprudence and problem solving courts see the law as an instrument for helping people, particularly those with a variety of psychological and emotional problems. A clinical program that exposes students to both vectors will place students at the forefront of these exciting movements and can ultimately help transform clinical education.²⁰

19. CONFERENCE OF STATE COURT ADM'RS, *COSCA Resolution 4: In Support of Problem-Solving Courts*, at <http://cosca.ncsc.dni.us/Resolutions/resolutionproblemsolvingcts.html> (last visited Mar. 15, 2002).

20. Efforts to incorporate discussion and analysis of problem solving courts into the clinical curriculum have been bolstered by the recent Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) whose resolutions specifically urge law schools to educate their students on these issues:

Resolution 22

In Support of Problem Solving Court Principles and Methods

WHEREAS, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) appointed a Joint Problem Solving Courts Committee to continue the work of the previous Task Force on Therapeutic Jurisprudence; and

WHEREAS, the Joint Problem Solving Courts Committee found that:

There is evidence of broad support for the principles and methods commonly used in problem solving courts, including, ongoing judicial leadership, integration of treatment services with judicial case processing, close monitoring of and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations;

These principles and methods have demonstrated great success in addressing certain complex social problems, such as recidivism, that are not effectively addressed by the traditional legal process; and

The application of these principles advance the trust and confidence of the public; and

WHEREAS, CCJ and COSCA adopted CCJ Resolution 22 and COSCA Resolution 4 on August 3, 2000 that agreed to:

1. Call these new courts and calendars "Problem Solving Courts," recognizing that courts have always been involved in attempting to resolve disputes and problems in society, but understanding that the collaborative nature of these new efforts deserves recognition.
2. Take steps, nationally and locally, to expand and better integrate the principles and methods of well-functioning drug courts into ongoing court operations.
3. Advance the careful study and evaluation of the principles and methods employed in problem solving courts and their application to other significant issues facing state courts.

4. Encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.
5. Support national and local education and training on the principles and methods employed in problem solving courts and on collaboration with other community and government agencies and organizations.
6. Advocate for the resources necessary to advance and apply the principles and methods of problem solving courts in the general court systems of the various states.
7. Establish a national agenda consistent with this resolution that includes the following actions:
 - a. Request that the CCJ/COSCA Government Affairs Committee work with the United States Department of Health and Human Services to direct treatment funds to the state courts.
 - b. Request that the National Center for State Courts initiate with other organizations and associations a collaborative process to develop principles and methods for other types of courts and calendars similar to the *10 Key Drug Court Components*, published by the Drug Courts Program Office, which define effective drug courts.
 - c. Encourage the National Center for State Courts Best Practices Institute to examine the principles and methods of these problem solving courts.
 - d. Convene a national conference or regional conferences to educate Conference members and other appropriate policy leaders on the issues raised by the growing problem solving court movement.

NOW, THEREFORE, BE IT RESOLVED that CCJ and COSCA reaffirm their commitment to these action items; and

BE IT FURTHER RESOLVED that CCJ and COSCA agree to develop a national agenda that includes the following actions:

- a. Encourage each state to develop and implement an individual state plan to expand the use of the principles and methods of problem solving courts into their courts;
- b. Support the development and delivery of national and local judicial and staff education curricula based on the principles and methods of problem solving courts;
- c. Encourage the attendance by judicial officers and staff at national and local courses based on the principles and methods of problem solving courts;
- d. Encourage the development in each state of at least one "demonstration" jurisdiction to serve as a laboratory in the use of problem solving court principles and methods within a traditional court setting;

IV. THE WILLIAM & MARY EXTERNSHIP: THE FIRST BORN²¹

William & Mary Law School celebrates its 225th anniversary this year. At the urging of Thomas Jefferson, William & Mary became the first academic institution in America to teach law in a university setting and the school has been a pioneer in legal education ever since. Thus, it is not surprising that in August 2003, William & Mary birthed the first therapeutic courts externship program in the country.²² The externship is part of the

e. Support the identification and promulgation of national best practices in the use of problem solving court principles and methods within a traditional court setting;

f. Request the National Center for State Courts' Problem Solving Court Community of Practice to seek funding to document best practices in "demonstration" jurisdictions and other jurisdictions and widely promulgate this information;

g. Request that the National Judicial College, the National Center for State Courts and the National Association of State Judicial Educators update their existing training curricula to include the principles and methods of problem solving courts;

h. *Ask CCJ and COSCA members to request of the law schools in their states that they, as appropriate, include the principles and methods of problem solving courts in their curricula;*

i. *Request that the Association of American Law Schools support expanded education by their members on the principles and methods of problem solving courts;*

j. *Request that Legal Education and Admission to the Bar Section of the American Bar Association support the efforts of CCJ and COSCA in pursuing the initiatives included in this Resolution; and*

k. Advocate for necessary financial resources for treatment and services that are integral to a successful problem solving court.

Adopted as proposed by the CCJ/COSCA Problem solving Courts Committee at the 56th Annual Meeting on July 29, 2004 (emphasis added). *Id.*

21. As will hopefully be apparent to the reader, although much of this paper has been written together, the authors write separately to describe their respective programs.

22. The program's conception can be traced to the thoughtful ideas, steadfast support and nurturing of several key people: James E. Moliterno, Director of William & Mary's Legal Skills and Clinical Programs; John Levy, Emeritus Professor; Patricia E. Roberts, Director, Externship Programs; and Donna L. Boone, Director of the Therapeutic Courts Program, all significantly contributed to the founding of the Externship. As the Therapeutic Jurisprudence Program gains traction at William & Mary Law School, the highest of praise is reserved for the law school's Dean, W. Taylor Reveley, III and Vice-Dean, Lynda L. Butler. Without their wisdom, foresight, and commitment to deliver creative and innovative programs to law students and the legal community, the program would not exist.

The desire to cultivate fresh ideas in legal education is as alive today at William & Mary as it was in the 18th century. The study and application of managing partners' Winick and Wexler's Therapeutic Jurisprudence has taken roots at a law school, where teaching students to be

law school's new and promising Program for Therapeutic Jurisprudence and Interdisciplinary Studies. The overall impetus for the externship program was a belief on the part of the law school's administration and Virginia Drug Court experts that problem solving courts were cutting edge, both in the academic community and in the profession. Thus, their objectives were to: (1) combine a cutting edge academic experience with research and scholarship opportunities; and (2) to provide a public service to the courts and to legal professionals in the field. The externship was designed to work in conjunction with the adult and juvenile drug treatment courts in Virginia.

THE COMMONWEALTH OF VIRGINIA DRUG COURT PROGRAM

Virginia's first drug treatment court was established for adults in September 1995 in Roanoke, Virginia. Since then, twenty-two (22) drug courts have become operational and fourteen (14) more are in the planning phase. Juvenile drug treatment courts make up ten (10) of the courts now operating in the Commonwealth, with four (4) additional juvenile courts in the planning stage.

Like most drug treatment courts, Virginia's drug treatment courts were a response to the recognition that processing nonviolent drug possession charges in the criminal courts and then sentencing the offender to prison did not succeed in changing the offender's addictive behavior.²³ Thus, Virginia's drug court programs all share three basic components: (1) strict and frequent probation supervision with random weekly drug tests,

skilled legal craftsmen includes the understanding that the law has a distinct human dimension that deserves careful study and reflection.

To date, the Externship has been funded through the generosity of private donors giving via the law school's foundation. The law school also continues to pursue federal and state grants and appropriations for the program, along with corporate and private sponsorship. In addition, in September 2004, the law school was gratified to learn the program would receive funds from the United States Department of Justice to develop curriculum and distance learning training modules for drug court judges.

23. *Problem Solving Courts*, *supra* note 18, at 1056; see Winick & Wexler, *supra* note 17 (manuscript at 2). More than 1,183 drug courts operate in all 50 states with an additional 414 courts in the planning stages. THE WHITE HOUSE OFFICE OF NATIONAL DRUG CONTROL STRATEGY, *National Drug Control Strategy Update 2004*, at http://www.whitehousedrugpolicy.gov/publications/policy/ndcs04/healing_amer.html (last visited Oct. 29, 2004). Ironically, however, while today every *state* has a drug court to address the needs of nonviolent offenders, there is not a single drug court in the *federal* system. In his recent New York Times editorial on this issue, *Rehab Justice*, Donald P. Lay states that "our federal justice system has a great deal to learn from our state court system" and advocates for the creation of federal drug courts. Donald P. Lay, *Rehab Justice*, N.Y. TIMES, Nov. 18, 2004, at A31. Hopefully Lay's commentary will encourage additional discussion and reflection on this pressing issue.

(2) intensive drug treatment and counseling, and (3) regular reporting to the court with immediate sanctions for relapse or program noncompliance.

According to the Virginia Department of Criminal Justice Services Statistics, 32% of all convicted felons are drug offenders, 50% of all convicted felons have evidence of prior drug abuse, and 31% are alcohol abusers. By anyone's standards, Virginia's drug courts have had a positive impact in both preventing crime and providing appropriate treatment for defendants with drug and alcohol problems. An examination of the agency's records reveal a 5.9% recidivism rate for drug treatment court offenders compared to a 50% felony recidivism rate for other Virginia drug offenders handled in traditional court programs such as probation and incarceration. Further, drug court costs an average of \$6,000 per year for an offender, while the Virginia Department of Corrections reports average incarceration costs range from \$22,000 to \$38,000 per offender per year.²⁴

OBJECTIVES

The objectives of the externship are multifold. First, the externship is the perfect vehicle to introduce students to the principles of Therapeutic Jurisprudence. Students are challenged by the instructor to think "outside the box" and view legal rules and legal processes through a different lens. Seeing a court respond to a significant societal problem, by utilizing Therapeutic Jurisprudence principles and a problem solving approach, opens wide the Therapeutic Jurisprudence lens and can give instant credibility to this innovative and creative way of thinking. The hope is that students will come away from the experience with the belief that Therapeutic Jurisprudence is worthy of further consideration in their future endeavors with people and the law.

At the same time, the externship attempts to stimulate thinking by students about the new and innovative strategies of therapeutic courts. Therapeutic courtrooms seem like "foreign countries" to most law students who, unfortunately, only have a traditional understanding of the criminal

24. For additional reading on the drug court movement, see, e.g., Pamela L. Simmons, *Solving the Nation's Drug Problem: Drug Courts Signal a Move Toward Therapeutic Jurisprudence*, 35 GONZ. L. REV. 237 (1999); LeRoy L. Kondo, *Advocacy of the Establishment of Mental Health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 28 AM. J. CRIM. L. 255 (2001); James R. Brown, *Drug Diversion Courts: Are They Needed and Will They Succeed in Breaking the Cycle of Drug-Related Crime*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 63 (1997); Cait Clarke & James Neuhard, "From Day One": *Who's in Control as Problem Solving and Client Centered Sentencing Take Center Stage?*, 29 N.Y.U. REV. L. & SOC. CHANGE 11 (2004).

justice system.²⁵ The externship is an attempt to bridge this gap by pointing out to students why such vast differences exist. For example, early in their legal training, students become familiar with the constitutional rights afforded to criminal defendants who have been accused of a crime. They are initially concerned when they learn that, in drug courts, defendants often sign these rights away as a prerequisite for participation in the drug court program.²⁶ While an argument inevitably breaks out over this controversial issue, students learn that the theory behind this requirement is to aid the client in the rehabilitative process by implementing greater court control over the offender.²⁷ Thus, while some aspects of the therapeutic courts are at odds with the traditional courts, there is a purpose behind these differences. In demonstrating these purposes, the externship is designed to address common fears and criticisms that many unfamiliar with Therapeutic Jurisprudence and the problem solving courts movement may have.

NUTS AND BOLTS

The William & Mary externship has two components. First, there is a classroom component, which consists of at least four classroom sessions. In many cases, the externship will be a student's first encounter with Therapeutic Jurisprudence. Thus, the first classroom session is devoted to exposing students to the basic principles of Therapeutic Jurisprudence and problem solving courts. William & Mary also use this class to introduce students to the mechanics of Virginia's drug treatment court program in which they will be participating. The second and third classroom sessions provide a forum for students to reflect on what they have seen and experienced while participating in the externship and to compare the practices employed by the different placements. Students find this particularly instructive, in that, by discussing the different approaches employed by the courts, they discover that certain techniques and strategies are more effective than others. As students discuss their placements, everything from philosophy to style is reflected upon. Much of the discussion centers on the

25. For example, while sentences in a traditional criminal court context are generally of a fixed nature and signal closure of the legal process; in therapeutic courts, the imposition of a sentence is not the primary goal and, to some, will seem wildly indeterminate. While traditional criminal courts are generally thought of as being populated solely by those with a legal background, therapeutic courts often introduce treatment providers and other non-legal actors into the proceedings. Finally, while criminal courts are generally thought of as having a retributive purpose, one purpose of therapeutic courts is clearly to be rehabilitative. Instead of an adversarial setting, therapeutic courts promote cooperation and alternative dispute mechanisms. *See Models and Trends, supra* note 13.

26. JAMES L. NOLAN, JR., *REINVENTING JUSTICE* 198-99 (Princeton Univ. Press 2001).

27. *Id.* at 154.

personal attention that externs see given to drug court participants and how this interaction is essential to the success of the process. Students are also required to maintain a journal, providing another opportunity for reflection and critique.

In the final session, students discuss how they plan on carrying the knowledge they have gained forward into their careers. What is always striking during this last session is how many students express a commitment to utilize Therapeutic Jurisprudence in their legal careers, even students not previously predisposed to Therapeutic Jurisprudence and like-minded legal endeavors.

The professor of the course also meets with students on a regular basis throughout the semester to discuss the externship. During these meetings, students are given an opportunity to discuss any problems or concerns and to reflect on their performance. Students also are required to meet periodically with their field instructor, who in most cases, as discussed below, is a drug court judge. As we know, supervisors in the field are vital to the success of all externships. Because of the unique nature of the therapeutic courts practice externship, dedicated field instructors play an invaluable role. Upon completion, field instructors are required to submit an evaluation of the extern's performance which is given substantial consideration in determining satisfactory completion.

In addition to a journal, students are required to write a final paper. Topics that must be addressed include: (1) whether the course objectives have been met; (2) an explanation of their basic understanding of Therapeutic Jurisprudence; (3) how this externship has enhanced their learning; (4) future uses of the principles learned; (5) any change in attitudes or philosophy as a result of the course; and (6) strengths and weaknesses of the program.

The classroom aspect, while helpful, is only part of the externship. It is the on-site learning in the trenches (the courts) where students see, feel, and learn about Therapeutic Jurisprudence and its application in the real world. Each student is assigned to work with a drug treatment court judge and act as "therapeutic court law clerks." Like all law clerks, they perform tasks at the request of the judge. For example, one judge recently had a student research a constitutional issue related to the waiver drug court clients sign upon entering the program. Another judge asked for a legal memorandum on drug testing.

While the judges act as the intern's "field supervisors," students also are required to meet with other members of the drug court team (the drug court treatment team is normally comprised of the judge, the prosecutor,

the defense counsel, the probation officer, the substance abuse counselor, and the drug court coordinator) to interview them and get their perspective on therapeutic courts. In addition, each student is required to spend some time shadowing the public defender or other defense counsel as they meet with drug court clients. This is done to further develop the students' advocacy and communication skills.

By setting up the externship in this fashion, students witness how *all* members of the drug court team work together to maximize therapeutic benefits. Rather than make the Therapeutic Jurisprudence courts an adversarial proceeding, each actor attempts to make the clients feel as if the court is a *partner* in their recovery. Students who have participated in the externship comment on how transformative it was to see this vastly different side of the judiciary.

Care is taken to ensure that students are able to witness how the drug team operates at every stage, from a client's entrance into the program to (hopefully) the client's successful completion of a rehabilitation plan. Students also get to see the bumps that often occur along the way. Most students remark that this comprehensive approach allows them to witness how the criminal justice system can be used in a way they never imagined.

Of course, students also see offenders who are unsuccessful in this effort and are then reassigned to traditional courts. While discouraging, these "failures" provide for some of the best learning opportunities of the externship. For example, when a client fails a drug test and is placed in detention, students who witness this sad turn of events often comment on how "emotional" the courtroom becomes and how much they empathize, not only with the client, but with the judge and prosecutor who have to put back on their "punitive cap." Students often walk away from these experiences shaken.

Perhaps the most important component of the externship, however, is the human interaction (crucial to Therapeutic Jurisprudence) between the students and the offenders in the drug treatment courts. This is encouraged in various ways. Careful observation of the drug court treatment docket is required as students follow the progress of selected offenders. Students participate in interviews with drug court clients as they go through the program and upon graduation to obtain their views on the process. Participation with court professionals as they work with offenders on many different fronts, such as employment and education considerations, is vital to student understanding and satisfaction.

In addition, students have opportunities to interact with clients outside the mahogany walls of a courthouse. For example, students can fulfill

some of their required hours by assisting in community outreach programs that are frequented by therapeutic court participants. In the past, students have worked at housing projects, community centers, homeless shelters, and a domestic violence “safe haven.”

One particularly creative student extern combined her enthusiasm and skill with the artistic talent of a drug court participant to design a “logo” for the drug court, to the delight of the judge and drug treatment court team. Other students assisted court participants, who reside in a housing project, to hold a rummage sale with its proceeds used for playground equipment. Yet another student worked as a mentor with a drug-abusing teenager in an effort to improve the offender’s education and disciplinary record.

This high level of client interaction is important to the pedagogical goals of the program for a number of reasons. First, it works to show the favorable outcomes of the therapeutic courts and thereby favorably distinguish them from the regular criminal and civil courts. With recidivism high in the normal criminal courts and the public generally skeptical of the judicial system, displaying the positive outcomes of therapeutic courts helps to promote a positive view of the Therapeutic Jurisprudence movement.

Second, such interaction helps to highlight the client-centered approach that is vital to Therapeutic Jurisprudence. Too often, the adversarial nature of the traditional court system puts a premium on winning for the sake of winning, and not for the sake of the client. Interaction ensures that a “real face” is placed onto a person generally known simply as “the client.” This shift in focus is beneficial not only in the therapeutic courts setting, but also for the future of the legal profession, producing better and more responsive advocates.

EVALUATION AND FUTURE PLANS

Early indicators of the externship program are very encouraging. In evaluating any course or program, however, one must always check to see if the pedagogical goals and objectives set forth for the program are being achieved.²⁸ From all indications, the goal of introducing Therapeutic Juris-

28. In the world of law school externships, we look to things such as the variety and challenge of the work; quality of the work environment; consideration of professionalism and ethical issues; and strengths and weaknesses of feedback and supervision, and the skills and values sought to be developed. These seem like reasonable components to assess any externship, not to mention that they represent a general summary of the required legal education standards promulgated by the American Bar Association for externship programs at American law schools. ABA, *American Bar Association Standard 305*, at www.abanet.org/legaled/standards/chapter3 (last vis-

prudence to law students through the use of drug treatment courts is being met and exceeded. When evaluating the externship, students generally conclude that the experience was a positive one that offered a unique focus on the practice of law. Students comment on how much they appreciated the opportunity to interact with judges and other members of the drug court team. In some cases, students write that such exposure has “a life changing” effect on them.

As their teacher, it is very rewarding to see how everything from their attitudes about the criminal justice system to their overall philosophy about the law and legal process is subject to new thinking. Even students who were generally predisposed to the more traditional brand of justice concluded that there was a place in legal education and the legal community for this approach. In almost all cases, students who complete the externship concede that Therapeutic Jurisprudence is worthy of further study and thought.

Looking at student logs and journals, one common theme is evident. Students regret not being exposed to Therapeutic Jurisprudence earlier in their legal education, which makes the case for such introduction most compelling. In addition, some students feel a sense of frustration, in that, upon conclusion of the externship, they lose contacts with team members and participants. Not knowing the final outcome for a drug court participant, with whom they worked closely, can be viewed as a process lacking closure. The course professor can offer suggestions as to how students might stay in contact with a team member or even participants to track progress. The mere fact that students come away from an externship with this kind of response is telling.

As with any new endeavor that inevitably involves change, however, the sculpting and delivery of the therapeutic courts externship at William & Mary Law School is a work in progress. In an effort to build upon the program’s successes, brainstorming continues on new initiatives. A clinic that devotes itself to the practice of law from a Therapeutic Jurisprudence standpoint is at the top of the list. Utilizing existing clinics, such as the Domestic Violence Clinic and Legal Aid Clinic to promote a better understanding of Therapeutic Jurisprudence for our students is also a logical expansion. An effort to promote other therapeutic courts or related programs in Virginia, such as mental health courts, teen tobacco courts, teen truancy courts, and others would provide additional learning opportunities for our students. Further, I believe that it is essential that Therapeutic Jurispru-

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dence be introduced to first year law students at least on a limited basis.

V. THE UNIVERSITY OF MIAMI THERAPEUTIC COURTS EXTERNSHIP: A SIBLING

Clinical Education has always played a seminal role at the University of Miami. The law school's Litigation Skills Program,²⁹ under the helm of Professor Laurence Rose, is a model for other programs nationwide and is widely lauded by both faculty and students. Up to 90% of the law school's students enroll in "Litigation Skills" in a given year and course evaluations indicate that many regard the program as their "best law school experience" or, at the very least, the "most practical."

Students who successfully complete Litigation Skills have the option of signing up for a six-credit externship the following semester.³⁰ Students are placed in up to forty (40) participating civil and criminal agencies and they practice under the supervision of agency attorneys. Despite the wide range of placements available, however, the majority of students each semester choose criminal placements because of the perception that such placements provide the most "trial experience."

As is the case in most large externship programs of this kind, there is a "classroom component" of the program that groups together students from all the different civil and criminal placements, including students from the prosecutor and defender's offices. The fact that students from "opposing sides" are housed together in the same class makes the class a fertile breeding ground for debate and reflection.

What has been so surprising, however, is that although my "criminal students" consistently report a very high level of satisfaction regarding the externship experience as a whole, they finish the externship feeling very disillusioned and discouraged about their role in the criminal justice system. In other words, while students in criminal placements almost without exception report in their journals and end-of-semester evaluations that they are "extremely satisfied" with their "skill development" and feel that they received much needed "practical training," it is much more rare for a student to report that they did "good work" or "public service." I was particu-

29. This comprehensive and rigorous trial training program offers students a unique opportunity to develop fundamental skills for trial practice. This is achieved through intensive classroom exercises and simulated courtroom exercises under adjunct faculty members who are experienced trial lawyers and judges.

30. The University requires that each student devote not less than 220 hours per semester, an average of sixteen (16) hours per week in the fall and spring semesters, or thirty-two (32) hours per week during the summer session, while working in the placement in which he or she is enrolled.

larly troubled by this reality because it is very important to my own pedagogical goals as a teacher to promote the social justice and public service instincts of my students.

Professor Mary Jo Eyster, in her article “Designing and Teaching the Large Externship Clinic,” also noted the importance of incorporating “justice and service goals” into the classroom component of a large externship clinic. Eyster’s observations over her many years of clinical teaching were that many students choose particular types of externships *precisely because* “they want to do good, to help people in need, or to promote a worthy cause.”³¹ Thus, she urges law schools to design externship opportunities for students whose justice and service goals are the “main force that drives them.”³² She posits that for these students, “there is little enough in the traditional curriculum to sustain them while they are in law school.”³³ “It is usually their passion that brings them to law school, and in the three or four years of law school they have limited opportunities to express that passion, or to discuss it with others.”³⁴ Thus, by offering a “forum for these students to explore the social justice concerns that they care about most deeply, the extern clinic may provide them with the energy and inspiration to continue to pursue their ultimate objectives.”³⁵ Moreover, Eyster notes that even students that do not identify serving the public or social justice concerns as their primary goals when they begin an externship, most are receptive to discussing these issues as they evolve from their externship experiences.³⁶

When searching for reasons why these justice and service goals were being perverted I discovered no easy or obvious answers. When probed, students did not point to the judges, their supervisors, their co-workers, or even their clients as the problem; it was simply that the criminal justice system as a whole was broken and there was nobody to fix it. One particular student’s journal entry summed it up for the others: “Working at the PD’s office was like working for FORD, it was assembly line justice, defendants come in, defendants come out . . .”

Equally troubling to me as a new clinical teacher was how jaded I saw some of my criminal students becoming *very early on* in their externship (perhaps mirroring what they were witnessing from the other professionals

31. Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347, 358 (1999).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

in the criminal justice system).³⁷

Desperate to find a way to expose my students to alternative models of justice and lawyering, and already a convert of Therapeutic Jurisprudence, it was natural to begin to slowly incorporate the concepts of Therapeutic Jurisprudence and problem solving courts into my curriculum. I was also extremely fortunate that Bruce Winick, the “co-guru” of the Therapeutic Jurisprudence movement and a member of the law school’s faculty, was extremely supportive of my work. Thus, I gradually began assigning readings on Therapeutic Jurisprudence and later, as discussed *infra*, on therapeutic courts. Students were asked to write about Therapeutic Jurisprudence in their journals and to reflect on the therapeutic and anti-therapeutic consequences of the choices they were making as legal externs. I designed classroom exercises in which students would analyze the Therapeutic Jurisprudence implications of various high profile cases.³⁸ In later semesters,

37. For example, at some point during the first few weeks of each semester it is my practice to devote at least one class to legal ethics. This semester, I used a particular hypothetical adopted from Lisa Lerman’s article, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 *FORDHAM L. REV.* 2295 (1999), to flesh out ethical issues surrounding supervisor misconduct:

I’m working at the prosecutor’s office, and mainly working for this one guy named “Steven Charney” (not his real name). Yesterday I went with him to court to see him try a case involving charges of possession of cocaine. It was a pretty straightforward felony case, except for one thing.

The arresting officer got on the stand and testified that when he searched the suspect, he found a large bag of white powder (which later turned out to be cocaine) in the suspect’s right jacket pocket. Well, of course the defendant was convicted, and that was that. Steve stayed in the courtroom to deal with another case, but I left to go back to the office to work on a memo I was writing. I stopped at the water fountain, and then noticed that the cop who had testified was chatting with another officer a few feet away. So I took a long drink and listened.

The arresting officer was boasting to his friend about how this poor slob was going away for years, for sure, and that it was about time, because everyone knew he was a dealer. He said: “Of course I didn’t really find anything when I searched him, but no one will ever know that now. It’s about time that guy got taken off the street.”

I felt like I had just stumbled onto the set of “Law and Order.” I couldn’t believe it. When Steve got back to the office, I went in to see him and told him what I had heard. He said: “Welcome to the real world. These things happen all the time. It’s just part of law enforcement.” I tried to argue with him, but he became incredibly patronizing, as if I was some sort of Polyanna.

Id. at 2299-2300. When discussing the journal, at least half the class believed that the intern satisfied his ethical obligations by informing his supervisor of the conversation he overheard. The fact that the supervisor was not planning to act on the information did not seem to trouble them. When pressed, they told me “that’s how things work” and “cops lie all the time.” When I continued to express outrage that an innocent man was going to jail, I was reminded by my “seasoned” students that “these things happen everyday and the judges all know about it.”

38. For example, one semester, I had students study the case of Omar Paisley, a 14-year-old

I invited attorneys who practiced in the local drug court and mental health court to make presentations to the class. Professor Bruce Winick also gave a particularly well-received presentation.

The reaction of my students was explosive. Once exposed to Therapeutic Jurisprudence, my students had a whole new perspective from which to view their clinical experience. They became increasingly reflective. One student wrote:

When I got this assignment, I thought I would just write a short response about Therapeutic Jurisprudence and the importance of it in general. But after thinking about it for a couple of days I started to examine the environment I was working in (the state criminal court system) to see what aspects of Therapeutic Jurisprudence were present, and if it seemed to be effective.

Another student, reflecting on her experience through Therapeutic Jurisprudence filters, stated:

Today, I experienced "restitution" for the second time, and while the first time was extremely boring, I have different views now that I've visited the proceedings again. That may be because of the fact that I just reread the article you handed out to us about Therapeutic Jurisprudence that really made me think.

Therapeutic Jurisprudence also empowered them. The following journal entry was typical:

I began thinking about the many possible aspects of Therapeutic Jurisprudence. So many people just yo-yo in and out of the system and I think that the fact that Therapeutic Jurisprudence attempts to go beyond and cure some of these issues that bring hope back into the system.

Finally, Therapeutic Jurisprudence provided the necessary tools for my students to engage in institutional critique. Some clinical education scholars contend that such institutional critique is actually the *primary function* of clinical placements.³⁹ Professors Stephen Wizner and Dennis

boy who died from a burst appendix while locked up in a youth facility in Miami-Dade County. The case commanded tremendous media attention after it became known that Omar suffered in excruciating pain for a number of days and the staff at the detention facility refused to provide any medical treatment. See Editorial, *Paisley Case is Sickening*, SUN-SENTINEL, Sept. 13, 2003, at 18A.

39. See Robert J. Condlin, "Tastes Great, Less Filling": *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986); see also Kenney Hegland, *Condlin's Critiques of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1986) (responding to Condlin's contentions). But see Erica M. Eisinger, *The Externship Class Requirement: An Idea Whose Time Has Passed*, 10 CLINICAL L. REV. 659 (2004) (arguing that the imposition of the externship seminar class as a vehicle to provide institutional critique is flawed as reflecting an anti-practitioner and anti-externship bias). Even though Eisinger questions the role of the extern-

Curtis describe a clinical classroom that effectively engages in institutional critique as “a laboratory in which students and faculty study, in depth, particular substantive areas of law . . . to develop a profound understanding of the legal theory, economic implications and social dynamics of a given segment of the legal system.”⁴⁰ I was pleased to say that I was beginning to create such a laboratory. One student wrote:

I thought about the whole Therapeutic Jurisprudence thing, and realized that my judge’s courtroom was no place for that. He seems to care more about locking people up for trivial things rather than Therapeutic Jurisprudence. My heart ached this week more than once.

As the semester progressed, more and more students recognized the value of Therapeutic Jurisprudence but were frustrated that traditional court models did not allow for implementation. The following journal entries were typical:

Last Friday, our judge had 108 cases scheduled for an hour time period. This makes it very difficult, if not impossible, to give any case the individualized attention necessary for Therapeutic Jurisprudence. (from a student at the public defender’s office).

I have recognized a need for Therapeutic Jurisprudence. Here an attorney fresh out of law school has a caseload of close to a hundred clients. With this, I can imagine that the clients leave the experience feeling insignificant. The lawyer spends little to no time healing . . . but this is not any one person’s fault. It is the system. (from a student at the prosecutor’s office).

Interestingly, Therapeutic Jurisprudence also made the students question *their own* complicity in a stressed out criminal justice system. A student wrote:

It is mind boggling to see the common case of a person that is arrested for DUI come into court stoned or drunk. I want to shake them and ask what’s going on but time doesn’t allow.

ship class in promoting institutional critique, however, she does acknowledge a “valuable role” for such critique in certain externship classes such as when the seminar class is structured to bring together students from opposite sides such as prospectors and defenders. “Often these students become socialized early in the workplace to demonize their opponents or to see issues simplistically, which diminishes their abilities to represent clients effectively or to work cooperatively to improve the system.” *Id.* at 668.

40. See Stephen Wizner & Dennis Curtis, “*Here’s What We Do*”: *Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 678-79 (1980); see also Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA L. REV. 95 (1987) (arguing that lawyers and law students who are committed to meeting their ethical obligations should constantly question whether the legal system and the lawyers who function within it are meeting the needs of the public in a fair and efficient manner and that “clinical experiences” should be structured to allow these questions to be raised explicitly by students and supervisors).

Late in the semester, I had students actually observe drug court and mental health court for an afternoon and reflect on the experience. The students were intrigued. Even though their experience in the traditional criminal justice system was limited, they instantly recognized the benefits of the alternative approach of the therapeutic courts. One student wrote:

Therapeutic courts are one of the best examples of where the legal system is not just giving a tranquilizer pill to stop the pain, but instead is reaching out and removing the problem.⁴¹

While I believe that these various exercises and assignments were useful, I felt that some students were not as fully engaged as they could have been, as evidenced by their lack of class participation. This was, in part, because there was a disconnect between the theory I was teaching and the practice they were engaged in while working in the traditional court system. Similarly, I was sensitive to the fact that the externship pedagogy at our law school provided great emphasis on *experiential* learning and I did not want to develop a curriculum that did not complement these goals.

Despite these issues, I was convinced that the benefits of Therapeutic Jurisprudence were too important not to teach and was still anxious to continue introducing my hardened students to alternative models of justice and lawyering. I realized, however, that to be true to the externship pedagogy I subscribed to, I had to design a program where students could actually practice Therapeutic Jurisprudence in therapeutic courts. It was with these concerns in mind that I decided to craft a therapeutic courts externship program at the University of Miami.

CURRENT PROPOSAL

The proposal for a therapeutic court externship program currently being contemplated at the University of Miami allows students to be placed in Broward County's misdemeanor and felony mental health courts under the supervision of the Broward County Public Defender's Office.

41. Professor Perlin wrote about a similar transformation he noted in his students when they were exposed to Therapeutic Jurisprudence's principles:

When students present on their placement experiences . . . they regularly apply [therapeutic jurisprudence] principles They assess the role and behavior of the lawyer with whom they are working, the opposite lawyer, the judge and, often, other court personnel. They focus on the critical moment of their case (perhaps a bench ruling on the admissibility of hearsay evidence . . . or an interaction with a hospital doctor about a patient's responsiveness to a certain medication), and apply [therapeutic jurisprudence] principles in deconstructing that moment.

Gould & Perlin, *supra* note 4, at 366.

The Broward County Mental Health Court⁴²

The Broward County Mental Health Division was established in 1997 as a special division of the Criminal Courts in Broward County (Fort Lauderdale), the first program in the country to separate mentally ill defendants from the criminal justice system and route them to treatment programs.⁴³ The court received national attention from the day it opened its doors and has been the model for other mental health courts as far away as Seattle.⁴⁴ Some of the goals of the courts are to create effective interactions between the criminal justice and mental health systems, ensure legal advocacy for the mentally ill defendants, and monitor the delivery and receipt of mental health services and treatments. The court has been a success by anyone's standards. Currently, the division operates two courts; one for misdemeanors and one for felonies.

Unlike the William & Mary model, the Miami students would be integrated into the law school's generic civil and criminal externship program. Obviously this model has the benefit of ease of implementation because the program is, in essence, already operational and does not require any additional resources in terms of staffing or funding.⁴⁵

Ultimately, however, none of these factors were the driving force be-

42. Publications about the Broward County Mental Health Court include: *Court Review*, 37 J. OF AM. JUDGES ASSOC., in NAT'L CENTER FOR ST. CTS (Winter 2001) and *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts*, U.S. DEPARTMENT OF JUSTICE (Apr. 2000).

43. The court was the "outgrowth of three converging perceptions." There was a perception in the community that was seeing the "criminalization of the mentally ill," where individuals were increasingly arrested for non-violent psychiatric acting-out. In the past, these individuals may have sought refuge in state psychiatric hospitals or other such programs. These resources have largely disappeared due to shrinking resources. There was also a law enforcement perception that it was easier and quicker to arrest and book individuals than to have them evaluated at a local crisis or mental health center. Finally, the overall lack of an adequate community-based health system of care led to a highly fragmented system that is difficult to access and navigate. *Mental Health Court Progress Report, 17th Judicial Circuit, Broward County, Florida*, (July 2000-June 2001). The Honorable Ginger Lerner-Wren, who presides over the court, has repeatedly described mental health courts as based on principles of Therapeutic Jurisprudence and, along with other members of the Court team, gives community presentations on issues of mental illness and Therapeutic Jurisprudence.

44. Primarily as a result of recent federal funding, there are now at least one hundred mental health courts in the country.

45. Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL L. REV. 413, 420-21 (1996) (discussing that field placement programs have historically provided a financially viable solution to the problem that staffing a sufficiently wide variety of doctrinal courses in response to the full range of student interests, is probably economically unfeasible. At their best, externship programs provide students an opportunity to "learn the substantive law and the application of lawyering in a particular area without law schools' having to create several different courses and specialized departments." *Id.* at 421.

hind my decision to structure the program this way. Rather, the decision was based on my belief that this model would impact the largest number of students. Therapeutic interns would be required to enroll and participate in the same weekly seminar as students in the traditional placements. The seminar would provide a space for students to open up their field experiences to discussion and analysis by the entire class, thus enabling all its members to learn from each other's perspectives. The seminar would be the "centerpiece" of the program and would be a "primary" site of learning along with student's work in the field.⁴⁶ Thus, I reasoned that mixing therapeutic court externs with traditional externs would allow the traditional extern students to learn about Therapeutic Jurisprudence and therapeutic courts *via osmosis*.⁴⁷

In addition, I believed that by housing traditional externs and therapeutic externs in the same classroom, the opportunities for institutional critique, discussed *supra*, would be greatly enhanced. Students in traditional placements would be forced to compare the services they were providing with these alternative models. By the same token, however, I expected students in traditional criminal placements to challenge and engage the therapeutic court externs and provide periodic reality checks.⁴⁸

In fashioning the seminar's curriculum, I plan to introduce the concept of Therapeutic Jurisprudence early on by using a combination of some

46. This program model mirrors the model in place at American University as described in Peter Jaszi et al., *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLINICAL L. REV. 403, 404 (1999) [hereinafter *Experience as Text*]. As discussed in *Experience as Text*, this model differs in perspective from other "ecological" learning models which emphasize the placement as the primary site of learning (see, e.g., Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994)), and differs from models that view the field supervisors as the students' primary teachers. See, e.g., Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989).

47. Professor Jaszi and others in *Experience as Text*, *supra* note 46, at 421, describe the give-and-take that takes place at these externship seminars as crucial to externship pedagogy. Jaszi gives the example of a student planning for a career in International Law (and doing a related field placement) being so intrigued by another student's description of his externship working with domestic violence victims that she considers a change in her own career focus or at least plan to investigate the new area further.

48. Also unlike the William & Mary model, Miami students will not be law clerks but will instead be acting as "defense lawyers" under the supervision of the Broward County public defender's office. I made this tactical decision in light of the fact that the therapeutic externs will be integrated with the generic extern class. Thus, I wanted *all* the students to share a common denominator. In addition, I felt that by allowing the students to work at the public defenders office it would give them more of a chance to hone their oral advocacy skills than if they were acting as law clerks. Finally, I believed that the supervision at the Broward County Public Defender's office was particularly effective, and I knew that the office could absorb a large number of students.

of the same lectures, simulations, class presentations, and writing assignments, discussed *supra*, that I used in the past.⁴⁹ I plan to continue to use Therapeutic Jurisprudence throughout the semester as a unifying theme to shape classroom discussion, and to give students new insights into the practice of law. I expect these discussions to take on an added dimension because students, actually practicing Therapeutic Jurisprudence in therapeutic courts, will have real life experiences to bring into the classroom to be used as the “text” for critical analysis.⁵⁰

Finally, I plan to use Therapeutic Jurisprudence to supplement the students’ skills training. It is here that I think Therapeutic Jurisprudence may have the greatest impact. Although all students in the externship will have had the benefit of taking our law school’s Litigation Skills course (a prerequisite) and were (hopefully) receiving additional training “on the job,” Therapeutic Jurisprudence has much to offer in skills education. Thus, I will design exercises to enhance student’s interviewing and counseling skills by perhaps having students conduct mock interviews and counseling sessions with “clients” using Therapeutic Jurisprudence as a framework. Alternatively, I plan to have students use Therapeutic Jurisprudence to deconstruct the real life client interactions they experience at

49. Although the externship seminar at the University of Miami is currently graded pass/fail, the University’s clinical committee is seeking to have the course graded in the near future. In the event that change takes place, I will likely assign more complex writing assignments, perhaps even a final paper. See, e.g., David B. Wexler, *Some Thoughts and Observations on the Teaching of Therapeutic Jurisprudence*, 35 REV. DER. P.R. 273 (1996). Professor Wexler assigned students in his Therapeutic Jurisprudence seminar to complete final papers applying the Therapeutic Jurisprudence lens to the legal area or issue of their choice. He noted that that these papers have been “richly diverse and inventive and can sometimes contribute to the literature and constitute part of the assigned reading in future semesters.”

50. While there does not appear to be any hard data on this issue, the “externship community” is small and discussions with our colleagues reveal that, as the number of specialty courts continue to increase, such integration is *already happening* at many law schools, although somewhat unconsciously. For example, at the University of Washington School of Law’s Children and Youth Advocacy Clinic, directed by Professor Lisa Kelly, students sometimes have the opportunity to practice in both dependency drug court and mental health court. While it is not the focus of the clinic, it does happen on occasion. In addition, Professor Kelly periodically invites members of the drug court team and/or mental health court team to come and speak with all of the clinic’s students about the operation of the courts and she encourages clinic students in traditional placements to at least visit the specialty courts to observe the proceedings. At Brooklyn Law School’s criminal practice clinic, under the direction of Professor Lisa Smith, each semester, approximately 4-5 students out of the 40 or so in the generic externship class act as externs for prosecutors or defense attorneys practicing exclusively in drug and mental health courts. In addition, students in the law school’s judicial clinic, on occasion, act as interns for the presiding drug and mental health court judges. Consequently, Professor Smith incorporates discussion of problem solving courts into her seminar and has found that such discussion has tremendous curricular value. It is our hope that this article provides additional inspiration and ideas for our colleagues who are already finding new and creative ways to teach this new crop of externship students.

work. I believe that these exercises will make students more focused and empathetic advocates.⁵¹

As a complement to the classroom seminar, I will meet with students individually throughout the semester. While in the past I have used these meetings to discuss students' personal learning objectives, career issue, and other issues that students were hesitant to raise in a large group, I will now make time during the course of these one-on-one meetings to engage students in discussions regarding the relevance of Therapeutic Jurisprudence to the students' work.⁵²

Other logical extensions to the program that I contemplate might include having students assigned as a "law clerk" to a therapeutic judge, similar to the William & Mary Model. I would also like to expand the program to Dade and Broward County's drug courts, Dade County's domestic violence court, and Broward County's future DUI court (currently under development).

VII. ALTERNATIVE MODELS

As discussed, in writing this article we hope that other clinical educators are encouraged to contemplate ways in which therapeutic externships could fit into their own clinical curriculum. The time is ripe for the development of these programs because, with new ABA requirements on the horizon mandating that *all* law students take clinical coursework, law schools across the country will be contemplating new ways expand and enhance their current clinical offerings.

Clinical educators have always rejected one-size fits all approach when designing clinical programs.⁵³ Similarly, there are many options other than those described herein for exposing students to Therapeutic Jurisprudence and therapeutic courts. The possible variations in design and

51. Many of these ideas stem from a curriculum developed by Bruce Winick in his groundbreaking class titled "New Directions in Lawyering: Interviewing, Counseling, and Attorney-Client Relational Skills."

52. Of course, one of the first question that must be considered in the creation of any clinical program is how can said program be evaluated. What are the criteria for "success?" While this question requires further study, preliminary questions will likely include: Do students who complete the program come away from the say with an enhanced understanding and appreciation of therapeutic practice? Are students who complete the program, as compared to students in traditional placements, more effective advocates? Is the classroom experience for all students enhanced by having students in therapeutic placements participate?

53. See, e.g., Eyster, *supra* note 31, at 358; Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLINICAL L. REV. 681 (2004); Linda F. Smith, *Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap*, 5 CLINICAL L. REV. 527 (1999).

content are extensive and similar objectives can be achieved through a variety of methods.

We are realists, however, and are cognizant of the fact that often institutional realities related to funding and faculty politics play as strong a role in dictating design choices, as do teaching objectives. Thus, we want to provide interested clinical educators with as many options as possible to get these programs off the ground.

One viable alternative not yet discussed is the more traditional “individual tutorial” model in which an individual student would take the initiative to obtain a placement in a therapeutic court and then canvass a faculty members to provide supervision for academic credit. Another version of this model involves a faculty-initiated placement wherein faculty members with preexisting relationships with particular courts would recruit students to extern in these settings.⁵⁴

Although individual tutorials vary dramatically based on the individual faculty member’s (and in some cases University’s) requirements, such programs have a lot of appeal for new Therapeutic Jurisprudence enthusiasts: the most obvious being flexibility and low cost. In addition, individual tutorials allow for tremendous interaction between (in most cases a full-time) faculty member and the student. Individual tutorials have the added benefit of giving the faculty member the opportunity to get some exposure to the “real world” in a very controlled way and keep their skills fresh without having to make the commitment to teach in a traditional clinical program. In addition, an individually supervised externship may be preferable when a student’s externship is in an area within the personal expertise of a particular faculty member who is not also a clinical education.

The most obvious problem with this model of course is that only a limited number of students could benefit. Most faculty members would probably not want to take on more than a couple students a semester. In most cases, only students predisposed to the idea of Therapeutic Jurisprudence or therapeutic courts would seek faculty sponsors out or, in the case of faculty initiated externships, be solicited to participate. Finally, there is the added concern that non-clinical faculty who are not schooled in clinical methodology may not take the initiative to engage “tutorial students” in reflective learning through such tools as journaling.⁵⁵

A variation of the individual tutorial model would combine an extern-

54. For further discussion of the efficacy of this model, see *Experience as Text*, *supra* note 46, at 403, 407, 416 n.17.

55. This model may also be less appealing in law schools that do not allow “independent study” to count towards core credits.

ship opportunity with a doctrinal classroom course⁵⁶ that, for our purposes, has relevance to the study of Therapeutic Jurisprudence. An obvious example would include a doctrinal course in mental health law. Under this model, a student would have the opportunity to earn credit hours for participating in an externship approved by a faculty member who teaches the related course.⁵⁷ This model shares many of the same practical benefits as the individual tutorial model discussed above. Additionally, it has the added benefit of giving students in the doctrinal class a context to assimilate otherwise abstract information. It gives them “real world” examples of issues addressed in the classroom. Clinicians who have studied this model, however, note that the danger of combining an externship with a substantive course is that, too often, insufficient attention is given to supervision. In addition, as discussed above in regards to the individual tutorial model, there is no guarantee that the teacher will be schooled in externship pedagogy.⁵⁸ Moreover, even if the teacher expresses an interest in focusing on reflective learning, there may simply not be enough time to do so while teaching the substantive course.

Despite these issues, we believe that this model has a lot of promise especially for schools that do not have a preexisting generic externship seminar in which to place students who express an interest in externing in therapeutic courts. However, more attention needs to be paid to the design of these programs in order to mitigate some of the recognized drawbacks.

Finally, therapeutic court externship programs are ripe for collaborative efforts with other fields of study such as social work, psychology, medicine, and criminal justice. Personally, we would love to see such cross-fertilization between, for example, law students and graduate students schooled in mental health. Mental health students would have unique in-

56. This model was the subject of a joint presentation by Avis Sanders (Director of the Externship Program at the Washington College of Law, American University) and Theresa Wolf (Director of the Externship Program and Professor of Law at the Indiana School of Law) at the 2003 Externship Conference, Learning from Practice, held at Catholic University. I want to thank Avis Sanders, in particular, for sharing all her materials with me and supporting my work.

57. In one variation of this model, the student would enroll in a substantive class in which all or some of the students participate in a related externship but where the focus of the class is entirely on conveying the substantive law, and there is little or no supervision of the externship by a faculty member. In another variation, supervision would be provided by the faculty member who has expertise in the practice area, i.e., the faculty member acts as both teacher and field supervisor.

58. In fact, Avis Sanders, when discussing the effectiveness of this model noted that this was perhaps the biggest danger that professors saw with combining externships with doctrinal courses - - that the conveying substantive law tended to take precedence over spending time on the reflection of the externship within the seminar. This problem was further exacerbated when externships were optional, with only a portion of the class participating.

sights into interviewing and counseling skills that would complement a law student's legal training. David Wexler listed additional advantages to a course enrolled in by both law students and graduate behavioral science students including: the richness of class discussion, the opportunities for observing each other in professionally related work environments (e.g., a law student working in juvenile court, a psychology student externing in a shelter for battered women), and the possibility of collaborating on class papers or projects.⁵⁹

While each academic discipline is understandably protective of its own turf, we view collaboration as a logical extension of the underlying foundation of the externships discussed, namely, the therapeutic, problem solving courts. In fact, David Wexler writes that such interdisciplinary teaching is crucial to law reform: "if therapeutic jurisprudence is to reach its objective of transcending academic lecture halls and influencing law reform and clinical practice, we must constantly chip away at existing professional provincialism, which often leads each profession to regard the other with suspiciousness and, on occasion, even antipathy."

Admittedly, the complexities involved in implementing interdisciplinary programs are formidable. However, as scholars and the legal community begin to recognize Therapeutic Jurisprudence as a brand name, cross-training in the related and varied disciplines will be inevitable.

VI. THERAPEUTIC EXTERNSHIPS PROVIDE VALUABLE SKILLS TRAINING

One of the issues that we confronted when talking with others about the design of a therapeutic courts externship program was whether or not it would be an appropriate and valuable educational opportunity for all clinical students. While we believe the answer to this question is a resounding YES, others have questioned whether such programs provide enough skills training. In other words, according to the conventional wisdom, students sign up for an externship precisely because they want to be in court arguing

59. David B. Wexler, *Some Thoughts and Observations on the Teaching of Therapeutic Jurisprudence*, 35 REV. DER. P.R. 273 (1996). Wexler writes that one of the most exciting teaching possibilities would be to offer a University wide graduate level course in Therapeutic Jurisprudence, open to law students, psych residents, and graduate students of psychology, social work, criminology, public health, nursing, and other behavioral science or health related fields. *Id.* at 286. He notes that the "only real downside to such an offering, is that given the "diversity of background, the class discussion may at times sink to the level of the lowest common denominator." *Id.* Such a problem could likely be prevented if the course is "jointly taught by, say, a law professor and professor of psychology." *Id.* For our purposes, a University-wide graduate level course in therapeutic courts would probably have as much or more appeal than a course in Therapeutic Jurisprudence because of the more immediate and obvious career implications of the later.

motions and, if they are lucky, conducting trials. The concern is that they will not get the same opportunities to hone these oral advocacy skills in therapeutic courts.⁶⁰

These are valid issues and must be addressed. Certainly, students considering such placements must be fully informed of the differences between a traditional courtroom and a therapeutic courtroom and what their roles would be in each. It is probably not enough to relegate the task of explaining these differences to the University's placement coordinator. Instead, students should be encouraged to flesh out these issues with a member of the clinical faculty before signing up for an externship in a therapeutic court. Similarly, clinical staff must recognize that not all students are cut out for this experience. While a background in mental health or medicine would be ideal, an open mind and compassion should be a prerequisite.

Ultimately, however, we strongly believe that while a student's experience in a therapeutic courtroom will certainly be *different* than the experience they would receive in a traditional courtroom, the experience will be of *at least* equal value.⁶¹ A therapeutic courts externship gives students an opportunity to test and fine-tune their advocacy skills while dealing with people in crisis. Instead of standing before a judge arguing the finer points of evidence, however, students will be encouraged to view their roles as advocates in a different way. For example, while so much emphasis in traditional skills training is placed on speaking, the emphasis in Therapeutic Jurisprudence is on listening. By placing a focus on listening, students are better able to understand the opinions and concerns of other team members and client.⁶² Since so much emphasis is placed on team meetings, advocacy skills are honed in this setting. Albeit different from

60. Of course, there are certainly going to be student who will prefer to go to court if the type of work they would be doing would be therapeutic rather than traditional. Thus, a therapeutic court's externship program may actually recruit some student who otherwise might opt completely out of a courtroom-orientated skills training program.

61. In addition, the students' roles in both settings should not be seen *in conflict*. Professor Winick writes that, "in addition to training attorneys in their legal responsibilities in the representation of clients . . . [potential] lawyers need more guidance on *reconciling the interest in protecting their clients' legal rights with that of promoting their clients' therapeutic needs*. The attorney-client relationship in this context needs to be reconceptualized in ways that augment its potential therapeutic effects." *Civil Commitment Hearing*, *supra* note 3, at 54 (emphasis added). Although Winick, in this instance, is referring specifically to the role of counsel in *civil commitment hearings*, his comments have a much broader application.

62. In fact, in many therapeutic courts, the client is encouraged and expected to speak directly to the judge as part of the healing process. This lawyer plays a less prominent role. See *Outpatient Commitment*, *supra* note 12, at 135-43. This may be a hard but necessary adjustment for the student who has been trained to believe that the lawyer is the "mouth piece" for the client.

courtroom arguments, students learn to espouse their views and recommendations in a manner that focuses on consensus building. In some cases students excitedly report in class or in their journals that their opinions became the catalyst for what was the recommendation of the entire team. Part of making these recommendations, of course, requires that students familiarize themselves with therapeutic services available to defendants. Students interning at Broward's mental health courts, for example, would be expected to develop a relationship with a range of different players in the county's mental health delivery system. Students actually conduct on-site visits to these provider programs so that they can advocate in regards to them in court. While a variety of opinions abound regarding a particular case, students learn to see themselves as part of a "helping process," where professionals from various disciplines work together to solve a client's problems. It is our belief that these skills are crucial to the lawyering process and have a place in any well-rounded clinical curriculum.

Moreover, contrary to popular belief, therapeutic externships would provide for opportunities to engage in traditional advocacy activities, albeit to a different extent. In the typical drug court externship, for example, a student working for a public defender's office would need to be familiar with all the possible defenses a client might have *before* they could advise that client whether to waive their right to assert those defenses in order to participate in drug court. This requires sophisticated interviewing and counseling skills on the part of the student. On a typical day, a drug court extern may also have the opportunity to argue before a judge that a client who tested positive for a controlled substance, or otherwise failed to satisfy a condition of his or her treatment plan, should be allowed to remain in the program, albeit with more intense treatment or frequent monitoring, i.e., make an argument that there are "mitigating factors."

In Broward's mental health court, for example, students would use their advocacy skills to argue for the "least restrictive placement" for their client. At the felony level, this may mean arguing to a judge that a defendant should not be committed to a state psychiatric hospital, and should, instead, receive outpatient therapy. Students would also have the opportunity to participate in contested competency hearings that require substantial fact investigation, direct examination of clients, experts and family members, and the cross-examination of expert witnesses (most often the psychiatrist). In fact, while it is rare for a student to have the opportunity to examine an expert witness in traditional criminal externships, expert testimony is common in mental health courts.

In some cases, students may even have the opportunity to participate

in “downward departure” hearings; arguing in essence, that a client’s mental illness justifies a downward departure from harsh sentencing guidelines. The outcomes of these proceedings can be dramatic. A defendant facing thirty years in jail could, with the right advocate, be given probation with appropriate treatment as an alternative. Involvement in this type of proceeding would be a tremendous learning opportunity for the clinical student.

On occasion, students in the Broward program would also have the opportunity to appear in *civil court* in Baker Act Litigation, i.e., a civil proceeding that could result in the involuntary hospitalization or involuntary mediation of a client.⁶³ Insofar as the Broward public defender’s office provides representation for indigent defendants in these matters, therapeutic interns could participate in these proceedings as well.

Finally, any criminal attorney who practices in the trenches knows that you are missing the boat if you are going to do criminal defense work for a living and you do not have training in mental health issues. Many criminal defendants are on psychotropic medications and/or have a diagnosed mental illness. Virtually every capital case requires extensive psychological testing. Thus, students who choose to practice in this area would be very well served to get mental health advocacy training and exposure early on. They will be more marketable and effective advocates. Indeed, administrators responsible for filling these positions remark on how difficult it is to find attorneys with a mental health background. In general, large offices such as the Broward County State Attorneys Office have specific attorneys (usually one or two) assigned to each of the county’s various drug and mental health courts. Administrators note how difficult it is to staff these positions because so few attorneys have the requisite background in mental health law.⁶⁴ The administrators that we spoke with have all been extremely encouraging about Miami’s Therapeutic Courts Externship proposal because, as well as recognizing the educational benefits, they have very real gaps in hiring that these programs could help ameliorate. For example, on average the Broward County Public Defender’s office has

63. For a discussion of the evolving therapeutic role of lawyers in civil commitment hearings see *Civil Commitment Hearing* *supra* note 3 at 37. Civil commitments are also extensively discussed in Professor Winick’s book, BRUCE J. WINICK, *CIVIL COMMITMENT: A THERAPEUTIC JURISPRUDENCE MODEL* (Carolina Acad. Press 2005).

64. Similarly, state bar associations are also beginning to recognize the brain drain in this area. In Florida, for example, a committee under the Florida Bar has recently been established to help educate members of the bar about the mental health and substance abuse issues that many of their clients face.

several hundred applicants for less than 20 spots each year.⁶⁵ Students who have a background in mental health would go a very long way in distinguishing themselves from the scores of other applicants.

Finally, a traditional criticism of externship programs in general, is that the quality of field supervision is often inconsistent.⁶⁶ By contrast, students in therapeutic court externships will have the benefit of working with lawyers and judges who are usually “hand picked” because of the breadth of their experience and superior advocacy skills. In addition, because of the “team concept” employed in most problem solving courts, students will have the benefit of working with high caliber professionals in other fields. Finally, while in traditional internship, many field supervisors may not be “sufficiently open to allow students to question freely the strategy and techniques utilized to provide results in a given cases,”⁶⁷ field supervisors in problem solving courts will likely be much more willing to allow students to engage in this type of institutional critique that helps make the externship experience such a valuable learning tool.

In sum, as long as participating students are willing to embrace the different philosophy of problem solving courts, a therapeutic court externship is an extremely valuable educational opportunity that represents a significant new direction for clinical education.

IX. CONCLUSION

We hope that our enthusiasm is contagious and that this article encourages other Therapeutic Jurisprudence enthusiasts to begin the process of crafting externship programs that give students the opportunity to practice Therapeutic Jurisprudence in therapeutic courts. With new ABA re-

65. Information provided by Broward County Public Defender Howard Finkelstein.

66. See, e.g., Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques For Training Supervisors And Students*, 10 CLINICAL L. REV. 611, 612 (2004). In their article on the topic, professors Blanco and Buhai state that monitoring effective and motivated supervision of off-campus law externs in a structured field placement program has traditionally been the “chimera” of law school curriculum. This is because, among other things, in an off-campus field placement, the primary concern of the supervising attorney must be the work of the agency or judicial chambers, while the concern for the education of the field extern must by nature be a secondary goal. See also Rose, *supra* note 40, at 104 (Professor Rose argues that law schools often “lack leverage” with site supervisors to guarantee that the supervision provided to students is adequate. Since most site supervisors are not compensated for their work with students, the incentives for them to supervise closely and evaluate carefully the work of their students are minimal. In addition, although a site supervisory might be a competent attorney, this does not guarantee that they are effective teachers). But see Eyster, *supra* note 31, at 389 (arguing that the fact that supervisor may have varying levels of lawyering skills, teaching abilities and supervising abilities actually facilitates the goal of self-directed learning).

67. Rose, *supra* note 40, at 104.

quirements on the horizon, we know that clinic directors are going to be looking for ways to enhance and expand their current menu of clinical offerings. We hope this article gives them food for thought. There is nothing like a baby's birth to focus our minds on the limitless hopes, dreams, and possibilities for the future. Along that future path, lots of dedicated nurturing will be required. Obstacles will abound, and the labor will often be difficult. However, the rewards shall be compelling. We can think of no better analogy in describing the past, present and future of therapeutic courts externship programs.