St. Thomas Law Review

Volume 17
Issue 3 *Spring 2005*

Article 16

2005

Validation through Other Means: How Immigration Clinics Can Give Immigrants a Voice When Bureaucracy Has Left Them Speechless

Evelyn H. Cruz
Yale Law School, Jerome N. Frank Legal Services Organization

VALIDATION THROUGH OTHER MEANS: HOW IMMIGRATION CLINICS CAN GIVE IMMIGRANTS A VOICE WHEN BUREAUCRACY HAS LEFT THEM SPEECHLESS

EVELYN H. CRUZ*

INTRODUCTION

In 1982, I immigrated to the United States with my father and my two younger siblings to reunite with my mother, who had immigrated a few years earlier. That experience changed my life in many ways. Not only was my new home very different from the one I left behind; the experience of being an immigrant shaped my existence as well. In the years that followed my journey, I struggled to understand the reasons why I was eligible to live legally in this country while others were not. It was a search to understand why I belonged.

I often find that many of the students who take my immigration courses are immigrants or the children of immigrants. When I ask my students why they took my class, they often answer that they were seeking to understand their own immigration journey. Seeking to understand important changes in our lives captivates us. It is when we understand the reasons, the process, and the results of events that we can feel validated and comfortable with the choices we make.

The importance of "understanding" is regularly overlooked in designing administrative processes, which are the backbone of due process delivery. Giving administrative participants, in this case immigrants, an opportunity to comprehend what the rules of the game are and how their particular claims are managed by the systems that control the agency is often not a priority because it is not constitutionally mandated.[1]

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* Robert M. Cover Clinical Teaching Fellow at Yale Law School's Jerome N. Frank Legal Services Organization, where she teaches in the immigration, landlord-tenant, and community lawyering clinics. She would like to thank Professors David B. Wexler, Bruce Winick, Jean Koh Peters and Marjorie Silver for all of their helpful comments. In addition, she is grateful to her husband, Darrel, and her research assistant Hillary Forden for all of their editing assistance.

1. The Supreme Court mandated that agencies balance:
   [F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and

Intangibles, such as validation, transparency, and participation, are ignored in the bureaucratic design. Yet, they are very important for individuals who have gone through the immigration process, which many regard as harrowing and Kafkaesque.

Individuals think of due process in term of fairness, "[f]or litigants and the public, fairness appears to consist of four principal elements: (1) neutrality; (2) respect; (3) participation; and (4) trustworthiness."[2] It also seems that,

> [t]he literature on the psychology of procedural justice, based on empirical work in a variety of litigation and arbitration contexts, shows that if people are treated with dignity and respect at hearings, given a sense of "voice," the ability to tell their story, and "validation," the feeling that what they have said has been taken seriously by the judge or hearing officer, and generally treated in ways that they consider to be fair, they will experience greater satisfaction and comply more willingly with the ultimate outcome of the proceedings, even if adverse to them.[3]

As discussed below, the current immigration process often fails to satisfy the aforementioned definition. Immigrants feel that they are denied access, they are not treated with respect, and that immigration procedures are not trustworthy. If the validation immigrants seek will not come from the administrative process, then it is left to immigrants' advocates to provide it. Otherwise, the result is like winning the battle but losing the war. Immigrants may receive the remedy they seek, but not the validation they need and desire.

To do this, immigration practitioners must seek to make the process as transparent as possible for their clients, and find their clients alternative sources of voice and validation. In other words, they must look at the immigration process through a therapeutic lens.[4] Therapeutic

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> administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319 (1976) (citations omitted). This analysis requires us to look at costs: The "costs" to agencies of providing procedures and the "costs" to individuals of not receiving a correct determination of their claim. The costs to the individual's well-being are not a factor in the analysis. As a result, agencies create procedures designed to help them become optimal decision-makers, not to become therapeutic decision-makers. *See id. See generally* Marshall v. Jerrico, Inc., 446 U.S. 238 (1980); Morrissey v. Brewer, 408 U.S. 471 (1972).

2. Roger K. Warren, *Public Trust and Procedural Justice*, 37 CT. REV. 12, 14 (2000), *excerpt reprinted in* JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 133 (Bruce J. Winick & David B. Wexler eds., Carolina Acad. Press 2003) [hereinafter JUDGING IN A THERAPEUTIC KEY].

3. JUDGING IN A THERAPEUTIC KEY, *supra* note 2, at 129.

4. *See generally* DAVID B. WEXLER, THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT (Carolina Acad. Press 1990); DAVID B. WEXLER & BRUCE J. WINICK,

Jurisprudence recognizes that the carrying out of legal processes (law) has inevitable consequences for the mental health and psychological functioning of those it affects:

> [T]herapeutic jurisprudence is a perspective that regards the law as a social force that produces behaviors and consequences. Sometimes these consequences fall within the realm of what we call therapeutic; other times anti-therapeutic consequences are produced. Therapeutic jurisprudence wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected.[5]

Furthermore, clinical programs can teach future immigration practitioners, or any student interested in working with vulnerable populations or in administrative bureaucracies, positive therapeutic methods to increase client satisfaction, comprehension, and acceptance, thereby preserving the client's voice and providing the client with validation. To do this, clinical program instructors teach students to engage, support, and empower the client using positive therapeutic options. Not surprisingly, many of the skills and techniques clinical programs currently use to train students in client-centered methodology serve therapeutic purposes:

> Therapeutic jurisprudence does not take the place of more traditional skills training methods, yet, it does give a different perspective, one that forces us as clinical teachers and students to confront issues we may recognize on a visceral level but do not cognitively acknowledge. Therapeutic jurisprudence helps raise provocative questions about roles, perceptions, and ethics, while promoting proactive lawyering.[6]

Nevertheless, we also need to restructure client-centered clinics to discuss the psychological impact that procedural systems and legal representation have on our clients. This awareness in turn helps students to understand the need to use positive therapeutic options, thereby advancing client-centered advocacy goals.

To better frame this discussion, I will first describe the immigration process and its anti-therapeutic effects on immigrants in some detail. I will then proceed to discuss the use of community presentations and contextual

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ESSAYS IN THERAPEUTIC JURISPRUDENCE (Carolina Acad. Press 1991) (among works in which David B. Wexler and Bruce J. Winick pioneered the idea of evaluating the psychological effects of the law).

5. David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125, 125 (2000).

6. Keri K. Gould & Michael L. Perlin, *"Johnny's in the Basement/Mixing Up His Medicine": Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE L. REV. 339, 365 (2000) [hereinafter Gould & Perlin].

representation practices to preserve a client's voice and validation in the immigration process. Throughout this article, and more specifically in my conclusion, I will examine how students who understand the need to address "psycho-legal soft spots"[7] naturally gravitate to client-centered representation, thereby becoming empathetic and competent practitioners.

IMMIGRATION BUREAUCRACY[8]

Four different executive branch agencies administer immigration laws: the Department of Labor, the Department of Justice, the Department of State, and, most recently, the Department of Homeland Security.[9] The Department of Homeland Security is in charge of the United States Citizenship and Immigration Services (USCIS),[10] which handles most administrative processes. The Department of Justice heads the Executive Office of Immigration Review (EOIR), which has two subsections. The immigration judges, who are part of the Department of Justice, decide whether to overturn a decision from the USCIS and whether to remove a non-citizen to his country of nationality.[11] An appeal of an immigration judge's decision may be made to the Board of Immigration Appeals (BIA), which is the second subsection of EOIR. The BIA generally conducts a review on the papers and rarely grants a hearing.[12]

Typically, aliens, including many asylum seekers, affirmatively apply for immigration benefits by submitting applications to the USCIS. If the affirmative application is denied, the alien is placed in removal proceedings.[13] Consequently, an asylum applicant, for instance, may be

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7. Bruce J. Winick, *Therapeutic Jurisprudence and the Role of Counsel in Litigation*, 37 CAL. W. L. REV. 105, 108 (2000) [hereinafter *Role of Counsel*] (explaining that psycho-legal soft spots may lead to "strongly negative emotional reactions that diminish the client's psychological wellbeing."). *See infra* note 37.

8. Some of this material is reproduced from my article entitled *Double the Injustice, Twice the Harm: The Impact of the Board of Immigration Appeals' Summary Affirmance Procedures*, 16 STAN. L. & POL'Y REV. 128 (forthcoming 2005).

9. *See generally* 8 U.S.C. §§ 1103-1104 (West Supp. 2004).

10. *See generally* 8 C.F.R. § 1.1 (2005). Previously, most immigration matters were handled by the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR), which were part of the U.S. Department of Justice. In 2003, the duties of the INS were transferred to the Department of Homeland Security (DHS). At DHS, the INS functions were split between the Bureau of Immigration and Customs Enforcements (BICE) and the Bureau of Citizenship and Immigration Services (BCIS). Both of these agencies were later renamed in 2003 as the Bureau of Immigration and Custom Enforcement (ICE) and the Bureau Citizenship and Immigration Services (USCIS) respectively. *Id.*

11. *See generally* 8 U.S.C.A. § 1229a (West Supp. 2004).

12. *See generally* 8 U.S.C.A. § 1252 (West Supp. 2004).

13. Generally speaking, individuals who have been arrested by immigration agents at the border or in the interior of the U.S. without lawful immigration status are also brought before an

able to present his case to an USCIS asylum officer and then to an immigration judge.[14] If the individual loses his case, he can appeal to the Board of Immigration Appeals. Thus, in many circumstances, an alien has the opportunity to present his claim to an adjudicating officer, an immigration judge, and the Board of Immigration Appeals.[15]

Despite these different levels of procedures in the processing of immigration cases, there is great discontentment with the process. I find that many immigrants believe that the procedures in place do not serve them well and that, in fact, they suspect a degree of incompetence in the immigration agencies, if not outright corruption. These fears are often reinforced by reported abuses by immigration service employees. At the USCIS level of adjudication for instance, there is a well-known backlog of applications,[16] constant complaints about examiners abusing their discretion, lost files,[17] and reported mistakes.

Although some of these problems are inherent in the bureaucratic

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immigration judge. Not everyone whose affirmative application is denied will be placed in removal proceedings. A person who applies for naturalization, for instance, will not be placed in removal simply because he or she was not eligible to naturalize. Additionally, not every person who is arrested by immigration agents has a right to a hearing before an immigration judge. Under "expedited removal" and "reinstatement or removal" certain individuals are denied access to an immigration judge and removed from the country. *See* CHARLES GORDON, STANLEY MAILMAN & STEPHEN YALE LOEHR, 8 IMMIGRATION LAW AND PROCEDURE § 104 (2004) (providing a detailed analysis of administrative immigration procedures) [hereinafter IMMIGRATION LAW AND PROCEDURE].

14. Lawful permanent residents who have been arrested and are facing removal are only allowed to present their cases to an immigration judge, not the USCIS. This means that an asylum seeker has more levels of review available to him than a lawful permanent resident does. Although one might think that LPRs would have more procedural protections given their status, this is not in fact the case. *See* IMMIGRATION LAW AND PROCEDURE, *supra* note 13.

15. *See generally* 8 U.S.C.A. § 1225 (West Supp. 2004). Some asylum seekers are not provided with this level of review. Individuals who are subject to expedited removal under INA § 235 must first establish to an asylum officer that they have a credible fear before being allowed to present an asylum claim. No BIA appeal exists for an individual who has been denied asylum through the expedited removal process. *Id.*

16. *See, e.g.*, Patrick J. McDonnell & Jonathan Peterson, *Skeptics Wary of Impending INS Split; Restructuring: Details are sketchy about how the two new bureaus would be organized*, L.A. TIMES, Apr. 29, 2002, at A11. In April 2002, when Congress was debating whether to split the Immigration and Naturalization Service (INS) into two separate organizations, there were an estimated five million pending applications and petitions before the INS. Although some of these applications were "dormant" cases, in which the individual's case could not be moved along until certain events occurred, nevertheless a certain amount of administrative monitoring was necessary. *Id.*

17. *See, e.g.*, Patrick J. McDonnell, *Paper Tear-Up Snafu Hits INS Facility*, L.A. TIMES, May 12, 2002, at 1. In 2002, it was discovered that the Laguna Niguel Service Center, which is charged with accepting and processing asylum application for several western states, had improperly shredded thousands of documents sent by individuals seeking immigration services. *Id.*

labyrinth through which even the simplest of immigration petitions must pass, even government officials admit that the immigration service "is notorious for having the most serious and pervasive management and misconduct problems of any segment of the Justice Department . . . ."[18] It is not uncommon for complaints and allegations of misconduct to simply not be taken seriously by supervisors.[19]

The message that's sent out by megaphone to the public is, we don't have any rights, any powers, to be dealt with seriously, and the INS[20] has such a history of poor management from top to bottom that it's difficult to create a culture of accountability where misconduct is dealt with swiftly and strongly.[21]

Not all problems relate to byzantine procedures. One individual has the power to withhold a grant of relief as a matter of discretion, even if the applicant meets all of the other requirements for most immigration remedies.[22] For instance, immigration officers not only look at the legal standard as to whether a marriage is legitimate,[23] and whether or not a person merits a waiver of a ground of inadmissibility,[24] but also make value judgments as to whether or not an individual merits an immigration benefit.[25] This power places immigrants at a disadvantage in attempting to pass through the immigration labyrinth. Applicants must balance carefully between advocating for their rights and not irritating the officer who has the power to deny the application. If the officer mistreats the applicant, the applicant may fear objecting or complaining. Reporter Tom Carver wrote in a recent Washington Post article, "[t]here will always be people willing

18. Denise Hamilton, *Immigration and Molestation Service: How the INS Mistreates Refugees*, NEW TIMES L.A., Mar. 14, 2002 (quoting Michael Bromwich, former Inspector General for the U.S. Department of Justice Department from 1994 to 1999) [hereinafter *Immigration and Molestation Service*].

19. I have personally encountered many INS/USCIS employees who are conscientious and do an excellent job, despite the obstacles they face in managing the insurmountable amount of applications processed by the service. Nevertheless, there are a sufficient number of dubious officers and judges that give credence to immigrants' fears that they may encounter a bad one.

20. *See generally* 8 C.F.R. § 1.1 (Congress disbanded the INS, and its administrative duties were transferred to the Bureau of Immigration and Custom Enforcement (ICE) and the Bureau Citizenship and Immigration Services (USCIS) in March 2003).

21. *Immigration and Molestation Service*, *supra* note 18.

22. Family petitions, cancellation of removal, and asylum, for instance, all require a showing meriting discretion. *See generally* 8 U.S.C.A. § 1154 (West Supp. 2004) (setting forth procedures for immigrant status); 8 U.S.C.A. § 1229b (West Supp. 2004) (regulating cancellation of removal); 8 U.S.C.A. § 1158 (West Supp. 2004) (regulating asylum).

23. *See generally* 8 U.S.C.A. § 1186a (West Supp. 2004).

24. *See generally* 8 U.S.C.A. § 1182 (West Supp. 2004).

25. *See, e.g.*, 8 U.S.C.A. § 1255a (West Supp. 2004) (regulating adjustment of status); 8 U.S.C.A. § 1446 (West Supp. 2004) (regulating naturalization).

to freeze in the pre-dawn chill outside a CIS office and be cold-shouldered by the bureaucrats inside . . . ."[26]

But not everyone keeps silent. Recently, several immigrants filed suit in Seattle, alleging abuse of discretion by immigration officers in denying naturalization applications for minor infractions. The plaintiffs were denied naturalization for minor infractions such as being fined $153 for collecting a few more oysters than the legal limit and "requiring perfect moral character [whereas] the law only requires good moral character."[27]

Immigration proceedings are considered civil in nature and therefore aliens are entitled to representation by an attorney only at their own expense.[28] These individuals were fortunate enough to find attorneys willing to assist them in filing suit. Most aliens are not so lucky.

Although immigrants are provided with a list of non-profit organizations that provide free legal services, many of the non-profits do not have sufficient resources to handle the number of requests for representation.[29] As a result, over 52% of all individuals applying for benefits and facing removal proceedings during 2003 lacked representation.[30] This figure has raised some alarms within the Executive Office of Immigration Review (EOIR), leading them to require that immigration judges take extra care and spend additional time explaining the legal process in order to ensure that such individuals understand the nature of the proceedings, as well as their rights and responsibilities.[31]

This does not always happen at the immigration court. There are concerns that immigration judges often behave more like prosecutors than adjudicators and "a lot of people would like to see the process [become]

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26. Tom Carver, *Green-Card Blues for America's Image*, WASH. POST, May 20, 2004, at A29.

27. Chris McGann, *One Mistake Robs a Man of Citizenship: Moral Character Standard Challenged in Class Action Suit*, THE SEATTLE POST-INTELLIGENCER, May 10, 2004, at A1.

28. 8 C.F.R. § 1003.16 (2004).

29. Although I am not aware of any study documenting the number of requests for representation that go unanswered, I worked at the Immigrant Legal Resource Center in California for over six years, assisting nonprofit organizations across the country with their immigration cases. The major organizations, including Catholic Charities, International Institute, and American Friends Service Committee (AFSC), all reported over the years an inability to represent all individuals who were eligible for their services, and most acutely with those who were in removal proceedings. In addition to nonprofit organizations, the other main source of free representation is pro bono projects set up through bar associations and the American Bar Association. Pro bono projects generally restrict their assistance to asylum seekers.

30. Office of Planning and Analysis, *U.S. Department of Justice Executive Office for Immigration Review FY 2003 Statistical Year Book* G-1 (April 2004). This figure is consistent with prior reported years.

31. *Id.*

more conducive to people who have survived trauma."[32] On occasion, immigration judges have crossed the line and treated immigrant respondents with disrespect.[33] Leading critics of the immigration courts have even gone as far as to call immigration judges "antagonistic, biased, and ignorant."[34] In addition, there are huge discrepancies in decision-making between judges, not just from district to district,[35] but from courtroom to courtroom. For example in Boston, the individual judges' rates range from 18 percent to 34 percent.[36] Whether an individual will win his case might, at times, depend not on the strength of his claim but on the location of his hearing.

Regardless of the political underpinnings of immigration policy, when we look solely at the immigration adjudication process, we can see that many of the reported immigrant experiences with the immigration process lacked the qualities individuals associate with fairness. The stories, legendary in the immigrant community, paint the immigration process as a system void of trust and respect. A system where immigrants are not judged by an impartial decision maker and where the rules are not always transparent. The multitude of documented problems with the adjudication of immigration cases has anti-therapeutic effects on immigrants. As we can see from the above narrative, immigrants are frustrated, confused, skeptical, disoriented, and fearful of the system. The immigration process is riddled with what Therapeutic Jurisprudence calls "psycholegal soft spots," strongly negative emotional reactions that diminish the individual's psychological well being.[37] Too many immigrants endure such marginalization by immigration judges or adjudicators that they are often left questioning whether they received a fair hearing, regardless of the accuracy of the decision.

Immigrants often face the immigration service alone, and just by

32. Monica Rhor, *In Search of Haven, She Finds Nightmare: A Means of Escape May Bar Her Asylum*, BOSTON GLOBE, Dec. 2, 2003, at B1.

33. In a recent incident reported in the Boston Globe, an immigration judge referred to himself as "Tarzan" apparently in reference to the fact that a woman who had been raped and tortured in her native Uganda and was seeking political asylum was named Jane. The Judge has been suspended pending investigation. Editorial, *A Caveman in Court*, BOSTON GLOBE, Aug. 7, 2003, at A18.

34. Board of Immigration Appeals; Procedural Reforms to Improve Case Management, 67 Fed. Reg. 54,878, 54,889 (Aug. 26, 2002) (to be codified at 8 C.F.R. § 3).

35. Office of Planning and Analysis, *U.S. Department of Justice Executive Office for Immigration Review FY 2003 Statistical Year Book* tbl. 8 app. K4 (April 2004).

36. Rhor, *supra* note 32, at B1.

37. *Role of Counsel, supra* note 7, at 108; Mark W. Patry, *Better Legal Counseling Through Empirical Resarch: Identifying Psycholegal Soft Spots and Strategies*, 34 CAL. W. L. REV. 439 (1998).

having representation, an individual will have a better emotional reaction. We all know the power the phrase "talk to my lawyer" seems to convey. Having a representative alone does little good to diminish psycholegal soft spots, however, if the individual still lacks an understanding of what the law is, does not partake in choices and process leading up to the resolution of the case, and has not been prepared for what may occur. When the representation insulates or isolates the client most of the psycholegal soft-spots will remain and the sense of power will be short lived. Good legal representation identifies, minimizes, or even eliminates, the impact of such trouble spots through client-centered, empowering, validating techniques.

Clinic students must honor the client's right to understand the law, to participate in the process, to have his story heard, understand the rationale of the decision, and understand the impact these rights have on the client's emotional well-being. This means that teaching the law and the procedures to the students is not enough. They must become aware of how actions affect the psycholegal soft-spots created by the immigration process and consider including into the litigation calculus positive therapeutic options that improve the well-being of immigrants. "[T]herapeutic jurisprudence is essentially a consequentialist approach to law .... Therapeutic jurisprudence focuses on a particular kind of consequence—the therapeutic—and calls for study of law's impact on health and mental health."[38] This task is accomplished by observing the shortcomings of the procedural process, researching the different representational techniques available and their therapeutic utility, and observing their applicability to the representation of immigrants. "The most useful research for facilitating the therapeutic application of existing law is that research which empirically tests the psychological or emotional side effects of several legal procedures available to effectuate the same client objective."[39] Although this kind of empirical data is ideal, analogous comparisons can be drawn between similar situations or from anecdotal evidence to test the therapeutic consequences of options.[40] It is through the latter that I develop

38. Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 PSYCHOL. PUB. POL'Y & L. 184, 190 (1997), *reprinted in* LAW IN A THERAPEUTIC KEY 645, 651 (David B. Wexler & Bruce J. Winick eds., Carolina Acad. Press 1996) [hereinafter LAW IN A THERAPEUTIC KEY].

39. Dennis P. Stolle, *Advance Directives, AIDS, and Mental Health: TJ Preventative Law for the HIS-Positive Client*, 4 PSYCHOL. PUB. POL'Y & L. 854, 858 (1998), *reprinted in* PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 88 (Dennis P. Stolle et al. eds., Carolina Acad. Press 2000) [hereinafter HELPING PROFESSION].

40. There is also an ethical and moral question raised in using empirical tests. Ethically speaking, we cannot purposefully expose our clients to an option that we know from a prior experience produces emotional turmoil, just to see if such turmoil is symptomatic of the option.

my methodology, which I now proceed to describe, recognizing that the search for representation tools that achieve legal goals in positive therapeutic fashion is never ending. I urge students and instructors to engage actively in discovering new therapeutic options to supplement or surpass the methods I describe. Hence, what follows is merely the start of the search.

TEACHING CONTEXTUALIZATION, SUPPORT & EMPOWERMENT

Sometimes I like to use fables or stories to get students to see a point. One of my favorites is the tale of the blind men and the elephant:

> *Six blind men lived in a town in India. One day an elephant came into town. The blind men did not know what an elephant looked like, but they could smell it and they could hear it. "What is this animal like?" They said. Each of them then touched a different part of the elephant.*
>
> *The first man touched the elephant's body. It felt hard, big, and wide. 'An elephant is like a wall' he said.*
>
> *The second man touched one of the elephant's tusks. It felt smooth, hard, and sharp. 'An elephant is like a spear' he said.*
>
> *The third man touched the elephant's trunk. It felt long, thin, and wiggly. 'An elephant is like a snake' he said.*
>
> *The fourth man touched one of the legs. It felt thick, and rough, and hard, and round. 'An elephant is like a tree' he said.*
>
> *The fifth man touched one of the elephant's ears. It felt thin and it moved. 'An elephant is like a fan' he said.*
>
> *The sixth man touched the elephant's tail. It felt long, thin, and strong. 'An elephant is like a rope' he said.*
>
> *The men argued. It's like a wall! No, it isn't. It's like a spear! No!*
>
> *A little girl heard them and said "each of you is right but you are all wrong. . .but I know what you are talking about."*[41]

The tale of the six blind men teaches us several lessons about conceptualizing. First, it demonstrates that unless you look at the whole, you do not have enough information to make a good evaluation. Each of the men reached the wrong conclusion because he had limited himself to only looking at the problem in one way. Similarly, students must learn to

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See, e.g., Bruce J. Winick, *Legal Limitations on Correctional Therapy and Research*, 65 MINN. L. REV. 331 (1981) (discussing limits on research with human subjects).

41. John Godfrey Saxe, *The Blind Men and the Elephant, available at* http://www.britishcouncil.org/languageassistant-primary-tips-six-blind-men-and-the-elephant.htm (last visited Feb. 26, 2005).

look at the client-student relationship as a complex interaction that traverses social, legal, and psychological issues. Second, the tale teaches us that looking at a part up close can lead us to appreciate the detail. Students who allow their clients to contribute their insights to the litigation effort find that they are able to create richer arguments. Finally, it teaches us that we must be open to more than one explanation. Each man gave us a wonderful vision of what he thought the elephant resembled and yet all of them walked away angry, frustrated, and unable to come to terms that the elephant could be more than one thing. Had the men listened to each other's definitions, they would have enriched their view of the different parts of the elephant. Other social science disciplines (anthropology, psychology, and sociology) may see details in cases that legal advocates cannot see. Students should be aware that including the richness of other disciplines into their advocacy efforts may yield greater results.

VOCABULARY EMPOWERMENT: CHARLAS[42]

> *Good community oriented lawyers, I believe, are humble, not paternalistic, identify and work with other allies in the community, respect the client's own talents and skills, work in partnership with the client, engage in substantial amounts of community education, consider an array of alternative approaches to legal problems, and get to know the community, much like a community anthropologist.*[43]

The first step toward avoiding the fate of the six blind men is providing a broad overview of the law in which the client can develop a general understanding and dispel misunderstandings. For efficiency reasons, I choose to do this through group workshops at community centers.[44] The workshop presentation, or "Charla" as I otherwise call it, is very general and covers a multitude of topics in about an hour. I provide a basic overview of the main programs under which individuals can immigrate to the United States, gain asylum, and the naturalization requirements. I talk about problems that can make a lawful permanent

42. The word "charla" is Spanish for chat. I often make presentations to Spanish speaking audiences. Since I am fluent in Spanish, this does not present a problem. On those occasions when I have made a presentation before a group of individuals whose language I do not speak, I have enlisted the assistance of a native speaker to translate.

43. Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1808 (1993).

44. The meetings serve multiple purposes: 1) They provide a service to the community that would otherwise not be available; 2) They are an opportunity for community organizations to inform community members of upcoming events or other community issues; and 3) they serve as an entry point for potential clients.

resident deportable and things that will not. I also talk about the civil rights of all immigrants and immigration myths.[45] I have been doing *Charlas* for many years[46] and have found them to be particularly helpful to vulnerable immigrant populations that lack knowledge and access to information. For example, battered immigrant women often are isolated by their abusers and unable to seek out information[47] that is essential in order to address the complexity of issues of their abusive situation. Cultural and familiar pressures weigh in the decision whether to disclose the abuse, rendering many women unwilling to discuss their situation publicly.[48] Since the workshops are free, held in the community, and allow participants to remain anonymous (no names, general topics), they are attractive to domestic violence survivors seeking information. Battered women can go to the presentations and learn about options that are available, without needing to publicly acknowledge abuse. The *Charlas* empower them with the necessary information to compare available solutions to their situation and the means to address the violence in their lives.[49]

Charla participants are offered short (five minutes) consultations with me or a student volunteer.[50] In the short consultation, we issue-spot, explain the potential options to the person, and provide a referral to the clinic, a private practitioner, or suggest the person do nothing since there is no present legal solution.

Individuals who receive a referral leave with a general framework of the immigration law in which to begin to develop ideas as to how their situation interrelates with the law. They can begin to search in their minds for what information is important for their case and offer it to us, giving them involvement in their case. Individuals who discover that they lack a

45. There are rampant misconceptions about immigration law. This is due in part to the seeming inconsistency between laws and the fact that some prohibited actions may contradict accepted cultural norms. For example, in many cultures it is accepted practice to marry a minor. However, in some states this exposes the adult individual to statutory rape charges, which in turn can lead to deportability for an aggravated felony.

46. I did not create the idea. I adopted it from my work at the Immigrant Legal Resource Center, *available at* http://www.ilrc.org (last visited Apr. 19, 2005).

47. Edna Erez & Carolyn Copps Hartley, *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*, 4(2) WESTERN CRIMINOLOGY REV. 155 (2002).

48. *Id.*

49. *Id.* at 161.

50. Prior to the *Charlas* students are provided with materials outlining the most common immigration remedies and deportation grounds. At the *Charlas* they use a questionnaire that captures most of the information necessary to identify individuals who have an available immigration remedy. After obtaining the information, the students and I quickly review the information and decide if there is a need for a follow-up. Because our time is limited, we err on the side of suggesting that the person make an appointment if we are not absolutely sure he has no remedy.

legal solution appear to receive comfort in knowing *why* there is no solution. They know what the law is, and they know that they do not have the attributes that the law demands. They also know that if they acquire the attributes, they can again make inquiry. Finally, they also are aware that the law changes, and therefore, they cannot assume that the law will always be the same.

The *Charlas* are pedagogically useful. On occasion, students have volunteered to give the *Charlas* themselves and write out scripts. Learning how to present complex legal information in a simple way is a very useful skill to acquire. The brief consultations are useful as well. I guess it is a little like the clinical answer to "speed-dating." The students are able to see a variety of case situations in a short amount of time, use their issue spotting skills, and find cases that may present interesting pedagogical questions for the clinical program. The students also find positive therapeutic benefits for themselves. Often times, they interview many individuals who lack an immigration remedy, yet finding one good case at the *Charla* seems to compensate for this disappointment. Finally, the students learn that they can be a valuable resource to the public, with little invested commitment, and may continue to participate in pro bono activities after graduation.

PUTTING PARTS TOGETHER . . . .

As I mentioned earlier, the *Charlas* are beneficial to immigrants because they begin to build the necessary vocabulary so they can express their intentions and empower themselves to voice their goals. However, *Charlas* are only a beginning. They start an exchange of information, where the client is generally educated about what the law is and how it functions so he can understand what information is necessary and collaborate in building the necessary steps of the case. The brief consultations that take place after the meetings provide clarification and guidance as to how to proceed. That is one reason why I call them "consultations" instead of interviews. They are a series of short exchanges designed to swiftly advance the goal of identifying the person's next step. Nonetheless, despite their limitations, they work.

Students interviewing perspective clients sometimes have difficulty seeing that the goals of the interview are different from the goals of a consultation. Let me illustrate:

A student came to me after interviewing a client who had been referred from the community meeting. The client wanted to apply to immigrate her children. I asked the student about their first meeting. The

student showed me the completed family petitions and said that since the client knew what she needed, there was nothing else that had to be done. When the client had indicated that she was a lawful permanent resident and had three kids in her home country, the student had proceeded to take out the corresponding immigration form and to ask her the questions necessary to complete the form. He had then given her a list of documents that she needed to gather and bring to their next meeting. The student inadvertently closed down the communication started by the community meeting. The client had come to the appointment with some vocabulary and information ready to start a relationship. Instead, her participation had been reduced to answering a series of questions, none of which were contextualized for her. She did not know why the form needed to be completed, why the documents needed to be brought, or what other information she could provide for which he did not ask. The children would have been granted the immigration visas, but the mother would not have had any understanding of how or why the visas were granted.

In a sense, the path on which we were headed was not one that would lead to improving on any of the anti-therapeutic effects created by the immigration process itself. We would be recreating the same sense of alienation and lack of control the client feels when confronting the immigration bureaucracy. To act therapeutically, the student needed to redirect his advocacy choices to involve the client. As Bruce Winick points out:

> It is particularly important for the lawyer to permit the client to play a meaningful role in the selection of the legal strategy to be pursued in the litigation. Frequently, the lawyer makes strategic determinations without consulting the client, leading the client to feel a loss of control over the lawsuit.[51]

Students should see the interview(s) in a more equitable fashion where both sides have something to contribute toward the common goal of resolving the legal problem. The interviews present an opportunity to create an oasis of humanity in an otherwise bureaucratic desert. The students work with the client to find ways to have the law serve the client's needs or to minimize the traumatic effects of the process.[52]

The statement by the client, "I want to immigrate my children," should only have signaled to the student that the client wanted information

51. *Role of Counsel*, *supra* note 7, at 118.

52. This discussion should not lead to the conclusion that consultations are undesirable. They are far too valuable to be abandoned. Instead, clinical instructors should teach students about the therapeutic goals of the *Charlas* as well as their counseling shortcomings so that they can avoid confusion.

regarding family immigration, not that she understood the full legal meaning of the phrase. After we discussed the differences and the student realized the need to reframe his interviewing skills in a more therapeutic fashion, the student met with the client a second time. He thanked the client for bringing all the documents and proceeded to explain the requirements for family petitions. He then asked her to tell him what she thought and what her goals were. The client told the student about her desire to bring her kids as soon as possible. She had recently been engaged to a U.S. citizen and was hoping to bring the children to live with them. In looking over the paper work, we had noticed that she had been a green card holder for twelve years, but we did not know about the U.S. citizen-fiancé. It was only by allowing her to narrate her story that we learned about it.[53] The student accuring the new information through the conversation realized that the client had two additional legal options. She could apply for citizenship and/or have the U.S. citizen husband petition the step-children.

The student explained the law, the procedures, permitted the client to think out loud through the possibilities answering questions and giving the client control to make the choices.[54] The student was engaging in what I call contextual interviewing.

In contextual interviewing, the student must take the law and allow the client to utilize it. The student must attentively listen to the client's story to see what facts and issues are of concern to the client, and then provide legal information on which the client can choose to act. It is a way to restore the power imbalances in the client-attorney relationship. It is an acknowledgement of the importance of the client's information in shaping the utility of the attorney's legal knowledge. When direct questioning of the client is necessary, the student can ask, but must provide the litigation and procedural context for the requested information. Sometimes, like in the above example, the discourse between client and student can lead to

53. The practice of allowing clients to tell their story instead of having them answer specific questions has been shown to be a powerful tool in interviewing clients and forging a client-centered approach to representation. *See* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); GERRY LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (Westview Press 1982); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); Jack Susman, *Resolving Hospital Conflicts: A Study on Therapeutic Jurisprudence, reprinted in* LAW IN A THERAPEUTIC KEY, *supra* note 38, at 914-918 (David B. Wexler & Bruce J. Winick eds., Carolina Acad. Press 1996) (discussing how patients felt validated when nurses allowed them to ramble).

54. *See, e.g.*, Robert Dinerstein, Stephen Ellmann, Isabelle Gunning & Ann Shalleck, *Legal Interviewing and Counseling: An Introduction*, 10 CLINICAL L. REV. 281 (2003).

additional options or alternative legal theories.[55] When this happens, the student provides a complete explanation of the new legal theory or option to the client. Consequently, the student and the client work together and develop the case in partnership. Although, lawyers possess the legal training necessary to litigate, it is the client's story that should dictate the strategy. By allowing the client's full participation in developing the strategy, the lawsuit tells the client's story.[56]

The example also illustrates how allowing the client the opportunity to engage in contextual interviewing can lead to uncovering other legal needs that the individual may have but has yet to disclose because she does not know how to identify the need. Sometimes, the needs may not be legal but socio-economic, the need for shelter or counseling for instance.[57] A dialogue, instead of a cross-examination, gives the client the security to seek out advice in these tangential areas.

The practice of contextual interviewing and engaging the law proactively allows the immigration client to assert some control over what often times seems an uncontrollable process. The client may not be able to change the amount of time it takes to receive an approval of the family petition, or guarantee that her application will not get lost. However, she will be able to understand the process, be satisfied that the shortest avenue available to her goal has been taken, and have a clear vision of the process. She will certainly be anxious about the continued separation from her children but will not have added anxiety of not knowing what is going on with her case.

Many studies have demonstrated that empowering and encouraging clients to participate in the decision-making process results in positive therapeutic effects.[58] My own experience has led me to concur. The divide between attorney or student and client lessens as the client's role increases in the representation. The client begins to see the student as an ally in

55. Students in the clinic are taught that if the client discloses new information that was not previously contemplated, they should: 1) Note it; 2) Tell the client that the new information may be useful so they want to look into it; 3) Discuss it with their supervising attorney and do research; 4) Report back to the client.

56. *Role of Counsel*, *supra* note 7, at 118.

57. The student does not have to assume the role of a social worker but can provide the client with community resource information in the same fashion as providing legal information. Clinics can keep a list of non-profit organizations that provide social services for client referrals.

58. *See, e.g.*, Deborah J. Chase & Peggy Fulton Hora, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, 37 CT. REV. 12 (2000); Alexander Greer, Mary O'Regan & Amy Traverso, *Therapeutic Jurisprudence and Patients' Perceptions of Procedural Due Process of Civil Commitment Hearings*, *reprinted in* LAW IN A THERAPEUTIC KEY, *supra* note 38, at 923.

resolving the issue and someone invested in the outcome, thereby reassuring the client that he is important and that his problem merits attention.

MR. SPOCK, WE HAVE DATA

Contextual interviewing does not exclude empathy. In fact, like empathy, it is crucial element of client-centered representation.

> Empathy . . . involves understanding the experiences, behaviors, and feelings of others as they experience them. It means that [lawyers] must, to the best of their abilities, put aside their own biases, prejudices, and points of view in order to understand as clearly as possible the point of view of their clients. It means entering into the experiences of clients in order to develop a feeling for their inner world and how they view both this inner world and the world of people and [events] around them.[59]

When an undocumented client has just finished telling the student about the horrific abuse she endured at the hands of U.S. citizen husband, the student cannot simply say, "Great, the law pertinent to you is called VAWA, which stands for Violence Against Women Act . . . ." That would be inappropriate to say the least.

Whether intentional or not, this lack of listening is a denial of personhood to the client, which can be as hurtful to clients as an adverse substantive decision on the merits. The prospect of facing such intersubjective oblivion has a chilling effect on people's willingness to seek legal assistance. Training students to acknowledge their client's status as persons, not just walking fact patterns, is a crucial task, particularly when dealing with clients who regularly are subjected to rudeness and indignity by the government bureaucracies that control so much of their lives.[60]

The contextual interview is a tool to provide the client an empowering means to connect their experience to a legal remedy. Obtaining a legal remedy may be the goal of representation, but it is not the only goal of a client. The individual also seeks validation, understanding, fairness, and justice. When the student disconnects himself from the client by using contextual interviews mechanically, he is failing to act therapeutically. For instance, many studies have shown that, affective lawyering, caring for the

59. Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 CLINICAL L. REV. 605, 608 (1999).

60. *Id.* at 621.

client's concerns and listening attentively to the client's plight, produces positive therapeutic effects on victims of domestic violence.[61]

Becoming empathetic or displaying empathy is not necessarily easy. It requires us to step outside our basic assumptions as to how life functions and see the world through a stranger's eyes. It demands that we acknowledge the influence of cultural and social differences.

To become good cross-cultural lawyers, students must first become aware of the significance of culture on themselves. Culture is like the air we breathe: it is largely invisible and yet we are dependent on it for our very being. Culture is the logic by which we give order to the world. Culture gives us our values, attitudes and norms of behavior. We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.[62]

Cultural and social awareness helps students be mindful of the alternative meanings of the client's behavior or statements and learn not to assume that their interpretation is the right one. Numerous scholars such as Peter Margulies, Bill Ong Hing, and Susan Bryant have written excellent articles on how students can learn to transverse these barriers and become empathetic.[63] Their ideas should be a component of any course that seeks to provide therapeutic representation. Acquiring cultural and social competence leads to better therapeutic lawyering since the student learns not to cloud the client's goals with his own perceptions. Hence, improving cross-cultural communication is crucial to therapeutic lawyering since students cannot effectively help the client gain a voice or validation if they misconstrue the client's goals and motivations.

Being empathetic and being aware of the emotional effects of our representation on occasion raises concerns that we are overstepping our

61. Linda Mills, *On the Other Side of Silence: Affective Lawyering for Intimate Abuse*, 81 CORNELL L. REV. 1225 (1996); Linda Mills, *Affective Lawyering: The Emotional Dimension of the Lawyer-Client Relationship, reprinted in* HELPING PROFESSION, *supra* note 39, at 419, 446 (Dennis P. Stolle et al. eds., 2000).

62. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 40 (2001).

63. *See, e.g.*, Margulies, *supra* note 59; Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Classes*, 45 STAN. L. REV. 1807 (1993); Bryant, *supra* note 62; Christine Zuni Cruz, *[On the] Road Back in, Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

boundaries and "playing psychologist." Displaying emotional sensitivity is a function of assessing the goals and needs of the clients and fermenting the relationship. "A sense that a lawyer lacks empathy may diminish client trust and confidence, with possibly negative effects on the attorney-client relationship and the ability to achieve positive client outcomes."[64]

VOICE IS DIFFICULT TO ATTAIN AND EVEN HARDER TO PRESERVE[65]

When we are preparing an affidavit, we generally begin with a narrative telling the story in whatever order it comes out. We write it all down. We then painstakingly go over every minute detail to see if it can lead to additional narration. We verbalize why we think some piece of information seems useful and we search for other similar occurrences. We organize the affidavit in "western" chronological story telling style. We repeatedly revise the affidavit to make sure that we got it right. We attempt to fit the law to the facts, not the facts to the law. In the affidavits we confront our preconceived notions (all roads are paved; electricity runs all day). We expose cultural difference (this culture chastises divorced women). Beyond affidavits, we obtain publications, articles, testimony to support our statements. We find and prepare witnesses by mooting interviews and hearings. The *we* in this endeavor are the client, the students, and I. The participation of the client in the preparation of the case is essential to the preservation of his voice.[66] Clients obtain validation in helping to shape, write and present their story to the court.[67]

Accepting to act collaboratively with a client in the development of the case is difficult at times. Sometimes parts of the client's story do not fit or appear unnecessary to the student's preconceived notions of the argument. Students that understand that justice to the client is more than a good decision, however, open their minds to finding the means to provide

64. Dennis P. Stolle, David B. Wexler, Bruce J. Winick & Edward A. Dauer, *Integrating Preventive Law and Therapudic Jursprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W.L. REV. 15 (1997).

65. Margulies, *supra* note 59.

66. The importance of the client's narrative has been explored in many theoretical frameworks. *See supra* text accomanying note 10.

67. Alex Hurder argues that the decision-making should not be solely at the discretion of the client. The student should negotiate with clients as to how to litigate the case instead of accepting the client's choices without reservation or assuming that litigation options are solely under the control of the attorney. This approach may be acceptable as long as the client feels that he is on equal footing with the student and that his goals and interests are not overshadowed, resulting in a loss of validation. Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 BUFF. L. REV. 71 (1996).

validation for the client.

For example, a client insisted that we include information in his asylum application about the assassination of a politician who was vaguely associated with his father. The students were reluctant to include the information because it seemed unnecessary and distracted from the client's otherwise strong claim for political asylum. The students, faced with the insistence by client to include the information about the politician, sought to understand why the client felt it necessary to include the information. They discovered that the client identified with the politician. The fact that a person with such power and similar views had been unable to avoid assassination had led the client to decide to flee his country. Armed with the client's emotional motives, the students researched ways to use the information.[68] The students' attentiveness to the client's emotional reaction led them to listen and find a way to address the issue to support the client's well-being.

Censoring the client's story to fit the case theory would have failed to accomplish the client's goal of validation. "People like the opportunity to participate in a process that affects them; they dislike being excluded from participating. This participatory or dignitary value of process produces litigant satisfaction and a greater degree of acceptance of and compliance with the ultimate decision reached."[69] It was imperative for the client that the students understand the client's emotional need to include the information in his narrative and attempt to respect the story in developing the theory of the case. The fact that the client was part of decision-making, implementation, and litigation strategy is powerful validation. Partaking in the writing of an affidavit produces positive therapeutic effects. Studies have shown that a person's well being is improved by not having to sensor thoughts and by putting down on paper her traumatic experience.[70] The

68. In this case, the students found a way to use the story to strengthen the client's claim of political opinion. Had the information been damaging to the client's claim, the students would have faced a different dilemma. They would have had to advise the client about the problems raised by the information, discussed ethical dilemmas of disclosing or concealing the information, and engaged the client in strategizing as to what should be done. *See, e.g.*, Miller, *supra* note 53, (discussing the need to pay attention to a client's voice, narrative, and power dynamics when developing case theory).

69. *Role of Counsel*, *supra* note 7, at 106.

70. *See, e.g.*, J. Kagan et al., *Biological Bases of Childhood Shyness*, 204 SCIENCE 167, 167-171 (1988) (discussing how holding back thoughts affects physical and mental health); J. M. Smyth, *Written Emotional Expression: Effect Sizes, Outcome Types, and Moderating Variables*, 66 J. CONSULTING & CLIN. PSYCHOL. 174-184 (1998) (discussing how writing about upsetting experiences improves our long term well-being), both *cited in* A.J. Stephani, *Therapeutic Jurisprudence and the Importance of Expression in the Law*, 3 FLA. COASTAL L.J. 113, 119 n.23 & n.25 (2002).

client not only had the ability to tell his story (voice) but also the feeling that what he had to say did not fall on deaf ears (validation).

Participation in case development and strategy helps clients to be less anxious because they understand what to expect. When they walk into their interview or court, they know enough about the law, the process, and their case to understand what is going on around them. Cognitive literature suggests that an individual's perception of control over a stressful situation increases as he becomes more informed.[71] "The unknown often inspires great fear and anxiety. Information enables us to adjust our expectations in a realistic way and to prepare emotionally to meet the challenges ahead."[72]

The participatory process also gives clients strength to protect their voice during proceedings. Clients need to be able to think clearly and speak cogently during the taking of their testimony. They need to be calm and collected, to focus their attention, and to retrieve items from memory.[73] Clients who understand the process and the relevance of the information they need to convey in their testimony are more relaxed and feel empowered to address the situation. This is important because, stress, and anxiety diminish the individual's ability to testify. "When an individual feels attacked, the portion of the brain known as the hypocampus takes over, producing a heightened sense of alertness that has been described as the "fight or fight" reaction, one that shuts off the executive functioning needed for testifying."[74]

Hence, when preparing the client to testify, it is important that students not only review the questions that will be asked but also contextualize the testimony for the client: explain why the questions are being asked, and why they are asked in such fashion.[75]

Finally, the fact that they have seen first hand how the students worked on the case, gives the client reassurances that their voices will not be ignored or misconstrued (at least by the students) and that someone is invested in them.[76] They are reassured that the students will articulate their

71. *See* SUSAN T. FISKE & SHELLEY E. TAYLOR, SOCIAL COGNITION (1984).

72. *Role of Counsel, supra* note 7, at 109-10.

73. *Id.* at 111.

74. *Id.* at 110.

75. The clients can then understand that each question is a prompt for specific information. By knowing why the question is asked, they can recall what their testimony is. Students must also tell clients about our legal oddities, such as the fact that leading questions are not allowed. Knowing that the student is limited in how she can ask questions helps clients understand that the student is not trying to confuse them, but rather is complying with legal norms.

76. *See generally* J. W. PENNEBAKER, OPENING UP: THE HEALING POWER OF CONFIDING IN OTHERS (1990).

story properly to the judge or adjudicator. Moreover, the presence of the students might prevent the bureaucratic actors from treating the client unjustly. The process may still be grueling, the outcome still unsatisfactory, but at least someone was listening that day.

GETTING DOWN TO RESULTS

At some point in the case, the client will ask whether he will win his case. If the person has a weak case, disguising the information in order to avoid negative emotional reactions does not serve the client's goals. Eventually, a client who does not know the weaknesses in his case will see them become known in the courtroom and will be unprepared to address them. Acting therapeutically does not mean that we shelter our clients from all negative emotional reactions at any cost. Rather, we must allow ourselves to listen to the client's views concerning his or her emotional well-being and attempt to find the options to achieve both a legally sound solution and an emotionally fair result. If the student is unable to obtain a positive result for a client, she and the client will both feel sadness and disappointment. No one likes to lose.[77] However, losing and not understanding why is worse.[78]

TO SERVE AND PROTECT?

At times, it seems easier to resort to paternalistic practices. It is easy to imagine the advocate role as the rescuer role, with the client as an unconscious victim in need. Sometimes, in an attempt to be empathetic, students assume that the client cannot contribute to the litigation effort, because they are young, traumatized, illiterate, overworked, or monolingual.[79] These students feel that explaining to the client the complexity of the case and the weaknesses to overcome may render the

77. Ian Freckelton, *Therapeutic Appellate Decision-Making in the Context of Disabled Litigants*, 24 SEATTLE U. L. REV. 313, 314 (2000) (stating that "only the most perverse of losing parties are happy when a decision goes against them.").

78. There is also evidence that individuals who feel that they received validation were treated with respect in a fair forum and are more likely to accept the decision and move on with their lives accordingly. *See generally* TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); Michele Cascardi, Alicia Hall & Norman G. Poythress, *Procedural Justice in the Context of Civil Commitment: An Analogue Study*, 18 BEHAV. SCI. & L. 731 (2000) (discussing the fact that patients who felt that they were given a voice in treatment decisions were more accepting and collaborative with the chosen therapy).

79. *See, e.g.*, V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 98 (2002) (pointing out the barriers created by paternalistic attitudes toward domestic violence survivors and the various motivations behind them).

clients anxious and otherwise unhappy. The attorney knows best.

This approach robs the individual client of their voice and of understanding. Clients want to understand.[80] I find immigrants or the children of immigrants sitting in my classes years after they immigrated asking how and why they were admitted into the United States. Immigrants come to the community meetings seeking to find out what the law is so they can better structure their plans. The fact that immigrants are in a generally disadvantaged class does not foreclose their ability to participate in their cases nor comprehend what is happening.[81] Focusing the discussion around the therapeutic effects of the litigation experience helps to ground what we are trying to accomplish in the clinic. TJ principles should be included in the classroom and out-of-classroom components of clinic courses.[82] By exposing students from the outset of the course to the frustration immigrants have with the system and interjecting therapeutic goals into the representation, the students can connect the reasons why paternalistic behaviors will not serve the client's goals. They can see that immigration procedures do not provide the clients with many choices, opportunities for expression, and empowerment and harm the client's emotional well-being. Similarly, they can see that paternalistic representation produces the same anti-therapeutic reactions as clients feel coerced, ignored, and deprived of choice.[83]

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80. *Cf.* There are individuals who may desire that the attorney alone control the litigation process and do not feel it necessary for their well-being to have detailed information and/or decision-making control. Since the goal of Therapeutic Jurisprudence is to choose a representation path that advances client's well-being, such representation parameters ought to be respected. *See* Bryant, *supra* note 62, at 74-75 (discussing how cultural upbringing may influence a client's comfort with attorney-client roles); Charles W. Lidz et al., INFORMED CONSENT: A STUDY OF DECISIONMAKING IN PSYCHIATRY 25 (1984), *cited in* Stephen Ellmann, *Clinical Education: Lawyers and Clients*, 34 UCLA L. REV. 717, 764 n.136 (1987) (discussing a study that found that only a third of patients wanted to receive information about the risks of angiography).

81. In fact, participatory due process can be made available to most individuals. *See* Bruce J. Winick, *Therapeutic Jurisprudence and the Civil Commitment Hearing*, 10 J. CONTEMP. LEGAL ISSUES 37, 39-40 (1999) (discussing mentally ill patients); Amended Amicus Brief Submitted by Professor Bruce Winick, University of Miami School of Law, Professor Kathy Cerminara, Nova Southeastern University School of Law, Judge Ronald Alvarez, Judge D. Bruce Levy, Judge John T. Parnham, Judge Ginger Lerner-Wren, and Dr. Edward Sczechowicz, *cited in* Supreme Court of Florida No. SC00-2044, Amendment to the Rules of Juvenile Procedure, FLA. R. JUV. P. 8.350 (October 25, 2001) (arguing that juveniles should be provided with counsel instead of guardian ad litem alone); Bruce J. Winick, *Reforming Incompetency to Stand Trial and Plead Guilty: A Restated Proposal and a Response to Professor Bonnie*, 85 J. OF CRIM. L. & CRIMINOLOGY 571 (1995) (not guilty due to insanity).

82. Gould & Perlin, *supra* note 6, at 342.

83. This does not mean that the student cannot suggest a course of action, but he must present it as an option not a command, making it clear that the decision to choose the course of

Seeing the therapeutic value of opting for client-centered approaches convinces most students, at least for the semester, to curb paternalistic attitudes. The question as to whether they will embrace the approach once they leave the clinic is difficult. I may at times desire to echo Gould and Perlin's statement about student's attitudes toward their methodology: "Some students appear born to it; some learn, absorb and eventually make these skills part of their 'lawyering unconsciousness,' some learn enough to spout the right words and express the right emotions (while internally having none of it); and others resist the entire enterprise."[84] But I more often find that approaching clinical teaching through a therapeutic lens seems more often than not to produce client-centered empathetic practitioners.

CONCLUSIONS

Many clinical educators choose to teach client-centered representation because they see it as respectful of the client's autonomy, dignity, and voice. To act in a non-paternalistic fashion, however, students must develop not only empathy and cultural awareness but also psychological awareness. We must consider the emotional consequences of legal procedures and representation techniques. They may not always be apparent but they are certainly present.[85]

In the immigration context, clinics should alert students to the psycholegal consequences of immigration proceedings. Consciousness of these emotional consequences will strengthen the students' appreciation of the need to embrace client-centered therapeutic representation. As Peter Margulies points out, "Too many poor people encounter disrespect, condescension, and indifference in the legal system. Having a lawyer who does not replicate those negative attitudes should be a central goal of clinical education."[86] This sensitivity to improving a client's emotional well-being will in turn result in greater client satisfaction as students seek to provide clients with opportunities for voice and representation in the bureaucratic process.

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action is up to the client.

84. Gould & Perlin, *supra* note 6, at 354.

85. *Role of Counsel*, *supra* note 7, at 187, 648.

86. Margulies, *supra* note 59, at 620.