
Teaching TJ: Therapeutic Jurisprudence for Law Students

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Why shouldn't law school introduce its students to modern, cutting edge theories, concepts, and practical skills? Teaching therapeutic jurisprudence (TJ) to law students accomplishes this goal by exposing students to innovative perspectives that demand rigorous application of one's knowledge and values in a creative problem-solving approach. TJ does not promote the practice of psychotherapy by untrained or unqualified personnel; rather it seeks to educate lawyers, judges, legal personnel, and law students to use the law in a manner helpful to individuals and society as a whole.

The concept and the term "therapeutic jurisprudence" was first used sometime around 1987-1989 by co-founders Professor David B. Wexler and Professor Bruce Winick, and it now consists of a substantial body of academic work with advocates and practitioners across the globe.¹ TJ is broadly defined as the study of the law as a "therapeutic agent."² It is more accurately defined as the extent to which legal rules, legal actors, and legal processes promote the physical and psychological well-being of the people they affect and involve.³ In the legal arena, TJ includes not only clients, victims, and their families but also legal actors, such as attorneys, paralegals, investigators, judges, and court personnel. With disarming candor, TJ acknowledges that, like it or not, the law, legal personnel, and legal procedures have cognizable mental and physical effects upon the individuals and groups involved in a legal matter.⁴ At its inception, Wexler and Winick found themselves frustrated with what they perceived to be the many antitherapeutic attributes of mental health commitment proceedings. For instance, they noted that after a slow and often difficult plan of therapy was implemented and moderate success achieved, the patient would be subjected to a court competency hearing and immediately

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1. See David B. Wexler, *International Network on Therapeutic Jurisprudence*, U. ARIZ., <http://www.law.arizona.edu/depts/upr-intj/> (last visited Feb. 14, 2015), archived at <http://perma.cc/NVD6-XR9L>; see also David B. Wexler, *Therapeutic Jurisprudence Across the Law School Curriculum: 2012*, 5 PHOENIX L. REV. 791 (2012).

2. See LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE xvii (David B. Wexler & Bruce J. Winick eds., 1996).

3. See *id.*

4. See *id.*

decompensate. Court delays and public hearings where the patient's friends and family were required to attend and confront the patient with examples of private and embarrassing details of the patient's mental illness illustrate the antitherapeutic effects of such procedures. What could be more antitherapeutic to the patient and the patient's family than the emotional trauma of forcing a loved one to describe (or listen to a description of) the behavior which led to a patient's commitment?⁵ Surely, they thought, there must be a better way.

We describe TJ as the ideal "lens" with which to critically evaluate programs, processes, statutes, rules, and the actors themselves that populate our legal system. According to Professors Wexler and Winick, TJ asks the ultimate question, "whether the law's antitherapeutic consequences can be reduced, and its therapeutic consequences enhanced, without subordinating due process and other justice values."⁶ TJ acknowledges that law is a social force with inevitable, though frequently unintended consequences, for the mental health and psychological functioning of those it affects. It proposes to study law and legal processes using the tools of social science research to evaluate and critique law and legal processes and practices. Based on these insights, TJ suggests education and reforms to "minimize anti-therapeutic consequences and to facilitate achievement of therapeutic ones."⁷

TJ and the application of the "TJ lens" is an integral part of a course entitled "Comprehensive Law" at the Arizona Summit Law School, located in Phoenix, Arizona. I have taught this course for six semesters. The course is based upon the text, outline, and syllabus created by Professor Susan Daicoff, now also a professor at the Arizona Summit.⁸ My course is a general overview course, where I introduce students to the many vectors of comprehensive law, including TJ.⁹ I would distinguish my Comprehensive Law course from the more in-depth TJ analysis in advanced TJ independent study courses and externships with TJ practicing attorneys. Though I emphasize practice skills in Comprehensive Law, such as active listening, empathy, and understanding the stages of grief, I can only identify and generally discuss other major psycho-legal issues (though they certainly deserve more attention). Our law school has recently added a course, entitled "Advanced Studies in Therapeutic Jurisprudence," which I taught with Professor David Wexler this past semester.

5. See Tom R. Tyler, *The Psychological Consequences of Judicial Proceedings: Implications for Civil Commitment Hearings*, 46 SMU L. REV. 433, 433-35 (1992).

6. See LAW IN A THERAPEUTIC KEY, *supra* note 2, at xvii.

7. Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach To Lawyering*, 34 CAL. W. L. REV. 15, 17-18 (1997).

8. See SUSAN SWAIM DAICOFF, COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION (2011); see also *Curriculum Vitae*, SUSAN DAICOFF, www.susandaicoff.com (last visited Feb. 14, 2015), archived at <http://perma.cc/9F9L-35NZ>.

9. The other "vectors" identified by Professor Daicoff that are closely related or intersect with TJ include: Collaborative Law, Restorative Justice, Procedural Justice, Transformative Mediation, Problem-Solving Courts, Preventative Law, Holistic Justice, and Creative Problem-Solving.

The Advanced TJ course concentrates more on academic research and applications of TJ to concepts, statutes, and rules than practical TJ skills.

In addition to Comprehensive Law, I also teach first-year research and writing courses and a criminal procedure course. I regularly integrate TJ skills and concepts into these courses to add interest. I include lectures that I call “Intro to TJ” and a lecture entitled “Psych 101 for Lawyers.” In these lectures that incorporate TJ, I focus on explaining the general yet practical applications of TJ and giving examples of skills such as active listening. TJ allows lawyers to infuse a set of values into their practice of law that may provide intrinsic rewards to the lawyer, such as personal happiness, increasing job satisfaction, avoiding burn-out, contributing to another person’s well-being, and more tangible rewards such as satisfied clients and enhanced reputation and credibility within the profession. Exposure to the ideas of TJ and the “TJ lens” is exciting and refreshing for law students, especially first-year students because of the contrast it presents to the case-study method. In applying TJ, we ask whether a court’s decision (or a legislature’s statute) is therapeutic or antitherapeutic. We encourage students to draw on their common sense and basic values, unlike other law classes where professors demand that students be impartial and unemotional.

The practice skills necessary for a lawyer interested in enhancing therapeutic outcomes for a client begins with understanding the importance of communication and striving to improve one’s own personal communication skills. Practicing law is never done in a vacuum—rather, we *must* communicate with others: supervisors, opposing lawyers, judges, and clients. The benefits of effective communication with clients, supervisors, opposing counsel, or judges are obvious: greater credibility, improved understanding of the opponent’s case, and increased ability to meet a judge’s expectations.

Active listening is one method of improving communication skills that can be very powerful. Active listening is listening, *plus* a brief verbal recital back to the speaker to demonstrate understanding. The first step is listening to another person—for instance, the details of an arrest or an accident—while indicating attentiveness and interest. Then, as soon as the speaker finishes, the listener recites back to the speaker the content of what was said by summarizing the facts.¹⁰ For example, the listener would say: “I understand you were arrested in a shopping mall, and it happened without any warning or wrongdoing on your part. You were never informed of the charges or your rights. You were never given an opportunity to explain that you had been out of state when the crime was committed.” Active listening is directed conversation to refine the meaning and details of the speaker’s original communication, with the goal of improving the listener’s understanding of what was said.¹¹

10. DAICOFF, *supra* note 8, at 64.

11. *See id.*

Active listening demonstrates that the listener has actually heard the content of what the speaker described. It clearly demonstrates to the speaker that he or she is effectively communicating and that the listener cares enough to pay attention. Additionally, it allows the speaker to correct any misstatements or misimpressions and to clarify matters not fully understood by the listener. Active listening demonstrates mutual respect and facilitates effective communication between a speaker and listener. In court, people are frequently surprised that an attorney or judge is actually listening. They appreciate active listening and often become more open, honest, and responsive to questions. People who use active listening regularly find that they are able to read and understand the overt—and sometimes the hidden—emotions of the speakers.¹² This is “advanced active listening.”

Lawyers and law students seek to be in front of new trends and styles. TJ “practice tips” and TJ best practice techniques are currently a “hot” topic among judges who serve in problem-solving courts—or have previously served in a problem-solving court. Problem-solving courts are frequently referred to as TJ courts because the goal is to address a specific issue or problem such as drugs (in Drug Courts), domestic violence (in Domestic Violence Courts), or mental health (in Mental Health Courts). Judges consider their best practices to be a part of their own personal style and, therefore, are somewhat protective of their courtroom bench techniques. Additionally, there are many judges who have previously served in a problem-solving court, but because of judicial rotations, now serve in a non-problem-solving court. Judges do not forget the creative and effective techniques that they develop in problem-solving courts; they continue to apply these creative and effective techniques in the non-problem-solving courts. Examples include using active listening with litigants and attorneys in general civil proceedings, criminal proceedings, or family court proceedings. The use of active listening by lawyers is as effective as its use by judges to enhance the level of communication in all types of cases in pretrial or settlement conferences.

Teaching TJ has been met with a warm reception from my students; law students crave modern approaches to the practice of law that encourage creativity. TJ is the ideal “lens” with which to critically evaluate programs, processes, statutes, rules, and the actors that populate our legal system. Students are especially receptive to the notion that the use of TJ may also be therapeutic to the lawyer, as it feels good to maximize therapeutic results!

12. *See id.*