

SUPPORTING ATTORNEYS' PERSONAL SKILLS

ARTICLE

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INTRODUCTION

EMOTIONAL COMPETENCE IS AN ESSENTIAL ELEMENT OF THE EFFECTIVE ATTORNEY'S skill set, and this is especially so for the lawyer who aims to practice law therapeutically. The therapeutically-inclined ("TJ") attor-

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ney requires well-developed intra- and interpersonal skills: an understanding of one's self and an ability to relate well to others. The TJ lawyer requires, too, an understanding of basic psychological principles and psychodynamic processes, as they inevitably influence and inform all human relationships; the lawyer-client relationship is no exception.

Training for clinical social workers, psychologists, psychiatrists and other mental health providers—those that I will here characterize as the *traditional* helping professionals¹— includes the study of psychology and interpersonal dynamics. Thus these practitioners are able to draw from this knowledge base in developing greater self-understanding and in service of their therapeutic relationship with their clients. Supervision is an essential element in these practitioners' formal education, and supports and guides this process.² Among their other functions, supervisors explore the interpersonal dynamics that arise in the clinical relationship between the supervisee and the client. They also help the supervisee understand how his own emotional and psychological make-up may affect those dynamics. Although the supervisee may often be aware of interpersonal obstacles and opportunities, just as often, he may not. Through exploration with a supportive, empathic, and insightful mentor, ideally, greater insight and thus, hopefully, enhanced clinical skill results.

The reasons why such knowledge and training are essential for those engaged in counseling and therapy in the traditional helping professions apply as well to lawyers as counselors of their clients. A lawyer who fails to appreciate the manifestation of countertransference³ in her relationship with a client, for example, may well fail to render competent representation.⁴ As attested to by

1 To be sure there are many other helping professions, among them, doctors, paramedics, nurses and, of course and most relevant for the purposes of this article, lawyers. It is from those in the mental health field, however, that there has been substantial experience in, and scholarship about, the support and supervision of practitioners' personal skills. Many of the same challenges and opportunities that the legal profession faces in this regard are faced by medical doctors as well. See, e.g., *Emotional Intelligence Training Could Lead to Better Doctor-Patient Relations*, Medscape (Sept. 2008), <http://www.medscape.com/viewarticle/580884?src=rss>.

2 See, e.g., Joyce Scaife, *Supervision in the Mental Health Professions: A Practitioner's Guide* xi (2001) ("Supervision, particularly as a component of initial training, and increasingly as a contributory element in continuing professional development, is deeply embedded in the cultures of the helping professions." (emphasis added)).

3 "Countertransference" refers generally to the professional's emotional responses to her client or patient. Marjorie A. Silver, *Love, Hate & Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259, 265 (1999) [hereinafter *Love & Hate*]. Some experts define countertransference more narrowly to encompass only the professional's reaction to the transference; others, more broadly to include the entire range of emotional responses that the professional has towards the client. *Id.* at 264-65. While one can find multiple definitions for the term "transference," it generally refers to the range of feelings and thoughts that a patient projects on to her therapist that have their origins in the patient's early relationships. *Id.* at 262-63. Freud, who originated the term, recognized that the phenomenon is not limited to the therapist/patient relationship. *Id.* at 263.

4 *Id.* at 270-77. For two hypothetical examples of countertransference in the lawyer/client relationship, see *id.* at 277-78.

other papers in this symposium,⁵ the TJ lawyer-healer endeavors to be especially attuned to the impact of psychodynamic processes and the importance of intra- and interpersonal competence so as to maximize the therapeutic effect of the services she offers her client.

As I and others have explored in earlier works, traditional legal education does little if anything to prepare lawyers for the emotional and psychological aspects of practice.⁶ This is a serious deficiency, and one that I have argued demands reform.⁷ Furthermore, except for the minority of students lucky or wise enough to take clinics, the pedagogical paradigm for legal education does not include the clinical supervision provided to practitioners of the traditional helping professions. Such supervision often occurs, if at all, only after the attorney has graduated, passed the bar, and begun to practice law.

For many mental health professionals, supervision of personal skills continues on into practice.⁸ Although lawyers in certain structured practice settings have supervisors responsible for their training and development, many others do not. Even for those who do, such supervision rarely includes the kind of personal support that the mental health professions provide. The challenges in providing similar support for lawyers can be daunting. Drawing upon the substantial social science literature on supervision and support in the traditional helping professions, this article will explore the various possible models for ongoing support of lawyers on issues such as self-awareness, interpersonal dynamics and stress management that arise in lawyers' relationships with their clients. For ease of reference, I refer to this as personal skills support (PSS).

This article will identify *who* ought to receive post-graduate PSS, *how* such PSS might be provided, what kind of *training* would be necessary for the providers, what the *scope* of subjects such PSS would encompass might be, and what some of the challenges would be in moving towards implementation of PSS for some or all lawyers. Before exploring these questions, however, I set forth three scenarios that depict situations in which, I assert, the subjects involved have

⁵ See Susan L. Brooks & Robert G. Madden, *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice*, 78 Rev. Jur. U.P.R. (2009); Joshua E. Perry, *Therapeutic Pedagogy: Thoughts on Holistic Professional Formation*, 78 Rev. Jur. U.P.R. (2009).

⁶ See, e.g., Silver, *Love & Hate*, *supra* note 3, at 280-81; Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 J. PSYCHOL. PUB. POL'Y & L. 1173 (1999) [hereinafter *EI/LE*]; Jean R. Sternlight & Jennifer K. Robbennolt, *Good Lawyers Should be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437, 437-38 (2008).

⁷ See generally, *EI/LE*.

⁸ It is important to clarify that *supervision* in this context is independent from any notion of *responsibility*. Although personal skills support (PSS) might be provided by one's organizational supervisor, it need not be. I use the term as it is used in the social sciences. A psychotherapist who *supervises* another practicing therapist does not control what the latter does *vis à vis* the patient/client in the way that a supervising lawyer may be legally and ethically responsible for another lawyer's actions. See, e.g., SCAIFE, *supra* note 2, at 8 (noting that generally mental health supervisors are not responsible for post-licensing supervisees' case work).

need of PSS, but with decidedly different degrees of self-awareness of such needs.

I. THE CLUELESS ATTORNEY

In the film *Kramer v. Kramer*,⁹ Howard Duff portrays John Shaughnessy, a matrimonial lawyer whom Dustin Hoffman, as Ted Kramer, has consulted in connection with his ex-wife's attempts to regain custody of their now seven years old son. The mother had abandoned husband and son fifteen months before, leaving the career-obsessed Ted, a successful art director, with the necessity of juggling work and home. Home wins, and Ted develops a deep emotional connection with his son that had theretofore been absent. His livelihood suffers, but he experiences the joys and angst that only a devoted parent can know. Consulting Shaughnessy about retaining custody, the following conversation ensues:

(Shaughnessy) . . . Well, first Mr. Kramer, there's no such thing as an open and shut case where custody is involved. I'm willing to bet that your ex-wife has already found a lawyer and he's advised her to move back to New York and establish residency. Now, the burden is on us to establish that your ex-wife is an unfit mother, and that means that I'll have to play rough, and if I play rough, you can bet they will, too. Can you take that, Mr. Kramer?

(Ted Kramer) Yes.

(S) And it's going to cost you \$15,000. That's if we win. If we go to appeal, it'll cost you more.

(TK) [Long pause. Nervous tapping of left hand on chair arm.] I understand.

(S) Now, how old is the child again?

(TK) My son is seven.

(S) Oh, that's tough.

(TK) Why?

(S) Well, in most cases involving a child that young, the court tends to side with the mother.

(TK) (Agitated) But she signed over custody . . .

(S) (Interrupting) I'm not saying we don't have a shot, but it won't be easy. [Pause] Mr. Kramer, do me a favor, will you? There's something I find very useful in matters like this. I sit down and I write out all the pros and cons on an issue. I actually write them down and look at them. I want you to do that, okay? And after that, if you're really certain you want to retain custody of your child, then we'll go in there and beat the pants off 'em. Okay?

9 KRAMER VS. KRAMER (Columbia 1979).

John Shaughnessey is clueless. He is oblivious to the emotional needs of his client.¹⁰ He is a legal automaton, perhaps brilliant in the traditional knowledge and skills of his profession, but totally lacking in the emotional competence necessary to comprehend, let alone be responsive to, the depth of his client's pain.¹¹ To him, Billy is a generic seven years old, his young age an impediment to victory. Duff is an example of an attorney who likely would never contemplate seeking out PSS, for he would not see it as relevant to the work of a lawyer.¹²

II. THE ATTORNEY WITH A QUESTION

At the *Law as a Healing Profession* Conference at Touro Law Center in November 2007, in a concurrent session on *Psychology, Social Work & the Practice of Law*, Lynn Barenberg, Lecturer in Law and Staff Social Worker, Boston College Legal Assistance Bureau, from Boston College Law School, told the following story:

I had a law student come to my office—a very bright student, a very good student—and he came to my office and he said “How many times does a client need to no-show before we close his case file?”

And I said, “Well, why don't you just take a minute and tell me about this case. What kind of case is it?”

“It's a social security disability case.”

¹⁰ Professor Andrew Schepard, who has written well and at length about *Kramer v. Kramer*, see *infra* note 11, disagrees with my assessment of Shaughnessey. Commenting on an earlier draft I sent him, he wrote:

I am not sure this is the only interpretation of what Sh[au]ghnessey did. The adversary system does, in fact, require him to play rough. I don't think he is oblivious to the emotional needs of his client so much as believes that his client will need to “toughen up” to survive in the adversary system to “win” custody.

Perhaps, but Shaughnessey is a fictional figure. I believe my impression is as valid as any other and, for illustrative purposes, my impression better serves my point.

¹¹ What ensues is a scorch-the-earth trial in which both attorneys use their gladiatorial skills to impugn the fitness of the other parent. For an excellent discussion of this film and how such adversarial approaches to custody disserve the family generally and the children in particular, see Andrew Schepard, *Kramer v. Kramer Revisited: A Comment on the Miller Commission Report and the Obligation of Divorce Lawyers for Parents to Discuss Alternative Dispute Resolution with Their Clients*, 27 PACE L. REV. 677 (2007). Without using the terminology, Professor Schepard's article advocates for a *therapeutic* approach to resolving custody disputes: “Shaughnessey's [sic] counseling session with Ted does not mention the word mediation (or parent education or family therapy). He does not mention the possibility of a negotiated settlement with Joanna, or the importance of involving Joanna in Billy's life. These omissions are directly contrary to Billy's best interests.” *Id.* at 681. Professor Schepard offers a rewrite of this counseling session, recommending that mediation be tried; it is easy to envision the TJ family law practitioner offering similar counseling. *Id.* at 684-85.

¹² I note here that my dear colleague, Professor (currently Associate Dean) Louise Harmon, is concerned that I may have jumped to a potentially unwarranted conclusion about Shaughnessey, based on limited evidence. My response is similar as my response to Professor Schepard, *supra* note 10.

"Do we know why the client didn't show up?"

"Well, no, but I've made three different appointments, and he just doesn't show."

And I said, "Well, what's the nature of his disability?"

"Well, uh, substances abuse." . . .

"And what is it we're trying to show in the disability case?"

"Well, that he can't function because of this."

"Well have you thought about maybe talking to him and finding out what's making it difficult for him to get in?"

And the student said, "I'm not going to do that."

And I said, "You're going to decide what you need to do in this case, but I'm curious. Why?"

And he said, "Look, my father was an alcoholic. The whole family for years was rallying around trying to make things work for him. It didn't work. We all got burnt out. It took too much of a toll. And I'm not going to repeat that. It's not healthy. I'll be enabling this guy, and I'm just not doing it."

And all I said to him was, "I really appreciate your making that connection. I don't need to know anything more about your personal situation unless you choose to share it with me. And you're going to decide what you do here. But I'm just going to ask you to do one thing. Just go back and think about whether you feel that your decision here in a professional context should be any different from your reaction were it a personal situation, and then decide what you're going to do." . . .

He made the connection conscious and, in fact, he came back to my office a few days later. . . . He said, "I thought about it, I gave him a call, and I was scheduling appointments at 9 A.M., and he's hung over, and he needed appointments later in the afternoon, and could I give him a call reminding him?"

And they ended up working together and [the client] ended up getting his benefits.¹³

This student had a question for which he sought supervision and guidance, but when he initially approached Lynn, he most certainly was unaware that his question raised issues about the psychodynamic process of *transference*.¹⁴ Through her careful, nonjudgmental questioning—and without the need to ever articulate the name of the psychodynamic process—Lynn was able to guide this lawyer-to-be to a clearness in his thinking that allowed him to be a better lawyer.

Consider the likely consequences for this clinic client had this conversation never ensued. Consider that a lawyer—a solo practitioner, perhaps—who has never learned about transference, might well have dropped this client without further thought.

¹³ Law as a Healing Profession CLE conference, Nov. 5, 2007, Touro Law Center, concurrent session on *Psychology, Social Work & the Practice of Law*.

¹⁴ See *supra* note 3.

III. THE LAWYER WHO SEEKS PSS

We come now to the TJ lawyer, the lawyer-healer.¹⁵ This lawyer was perhaps lucky enough to take a course with David Wexler, Bruce Winick, Susan Daicoff, or the increasing numbers of others in the legal academy who have infused their schools' curricula with courses introducing students to the literature of Therapeutic Jurisprudence and lawyering. This lawyer has, perhaps, read *Practicing Therapeutic Jurisprudence*,¹⁶ *Lawyer Know Thyself*,¹⁷ *The Affective Assistance of Counsel*,¹⁸ or any number of other similar books and articles that have appeared in the past decade or so. He knows that in order to be the best lawyer he can be, he must be aware of the potential impact of his own psyche and emotional make-up on his relationship with his client. He would have expressed empathy for Ted Kramer's heartbreaking problem. He would likely have suspected that his anger towards his alcoholic father was clouding his judgment about his alcoholic client.¹⁹

Suppose this lawyer finds himself in a law firm where none of his supervisors have had this education. Suppose this lawyer finds himself working under Ted Kramer's lawyer, John Shaughnessy. And suppose further that he finds himself feeling increasing irritation with a particular client, perhaps Ted Kramer, or perhaps an alcoholic social security disability client. He suspects something is going on involving transference or countertransference, or perhaps involving his own level of stress, but he's not at all clear what it is, or what to do about it. Currently, there is no institutionalized structure to which he can turn. If he is in therapy himself, that's certainly a possible venue. But it should not be the only place to seek assistance.

Now to the *Who, How, What* and *What About* of PSS.

A. For Whom?

PSS would be beneficial for all lawyers, no matter their area of law or institutional setting. Law is practiced, largely, through human relationships and these

¹⁵ I in no way mean to suggest that one must *consider* oneself to be a TJ lawyer/healer to qualify as one. Some of the greatest practitioners— Dallas trial lawyer John McShane and former California Superior Court Judge Peggy Hora, among them—were “believers” before they had ever heard of Therapeutic Jurisprudence.

¹⁶ PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 465 (Dennis P. Stolle, et al, eds. 2000) [hereinafter PRACTICING THERAPEUTIC JURISPRUDENCE].

¹⁷ SUSAN DAICOFF, LAWYER, KNOW THYSELF (2003).

¹⁸ THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (Marjorie A. Silver, ed. 2007) [hereinafter AFFECTIVE ASSISTANCE OF COUNSEL].

¹⁹ I think as well of the psychologist, Paul, in the recent HBO series *In Treatment*, who sought out the guidance of Gina, his former mentor and therapist, when he found himself experiencing persistent impatience with his patients. <http://www.criticsrant.com/archive/2008/02/01/IN-TREATMENT----Paul-and-Gina-Week-One.aspx> (last visited July 14, 2008).

relationships can be enhanced or inhibited by the quality of the participants' emotional competence. While I am not about to propose that it should be mandatory for all, I believe it is worth considering whether it ought to be mandatory for some lawyers: perhaps public defenders, legal service lawyers, and others in high stress, high volume situations whose client bases include many disadvantaged, often traumatized individuals. Perhaps, too, it should be mandatory in family practice, where, because of the nature of the problems likely to arise both for the attorneys and for their clients, the need for emotional competence and psychological-mindedness is especially acute.²⁰

Such supervision is mandatory in the training of most mental health professionals. Whether it continues on into practice is a function of several variables, including whether the professional works in an institutional setting, as well as the licensing requirements of the particular jurisdiction.²¹ While some professionals terminate supervision after training, or after they have achieved a certain level of experience, others voluntarily choose to continue to practice with supervision throughout their careers.²² "It can be argued that no one, however, (sic) skilled or experienced, can ever be entirely objective about the way they use themselves in relation to another person. A third person is essential to help the [professional] stand back from the relationship and then return to it in ways which are helpful to the client."²³ At a minimum, PSS ought to be an available option for all attorneys who wish to avail themselves of it.

B. By Whom—and How?

How would such support be provided? Must it be provided by mental health professionals, or could it be provided by appropriately trained attorneys? The answers would depend on a variety of factors, and would likely differ substantially depending on the nature of the practice, as well as on the goals and needs of the practitioner. Lawyers in private practice with the means to do so might re-

²⁰ See, e.g., SANFORD M. PORTNOY, *THE FAMILY LAWYERS' GUIDE TO BUILDING SUCCESSFUL CLIENT RELATIONSHIPS* (Section of Family Law, American Bar Association 2000).

²¹ See ALFRED KADUSHIN, DANIEL HARKNESS, *SUPERVISION IN SOCIAL WORK* 448-49 (4th ed. 2002) (noting range of requirements for years of mandatory supervision). "There are, however, few factual data available that would permit us to know how many social workers are supervised for how long and whether supervision is, in fact, 'interminable' for any sizable number of professionally trained workers." *Id.*

²² "We believe that if the value and experience of good supervision are realized at the beginning of one's professional career, then the 'habit' of receiving good supervision will become an integral part of the work life and the continuing development of the worker." PETER HAWKINS & ROBIN SHOHEET, *SUPERVISION IN THE HELPING PROFESSIONS: AN INDIVIDUAL, GROUP AND ORGANIZATIONAL APPROACH* 3 (3ed. 2006). See Paul D. Guest & Larry E. Beutler, *Impact of Psychotherapy Supervision on Therapist Orientation and Values*, 56 J. CONSULTING & CLIN. PSYCH. 653 (1988) (discussing the value of supervision and how it is utilized and valued differently by individuals at varying levels of experience).

²³ KADUSHIN, *supra* note 21, at 43 (quoting Parsloe & Stevenson 1978: 205).

tain the services of private “supervisors,”²⁴ much as some therapists in private practice do.²⁵ In certain instances, appropriately trained lawyers²⁶ might serve as PSS providers. An actual supervisor or mentor with well-developed personal skills may possess the necessary qualities to be an effective agent of PSS.²⁷ The ideal provider may well be one who possessed a J.D. in addition to clinical qualifications.²⁸

Others may form—and some already have formed—cooperative alliances with mental health professionals. For example, the Boston Law Collaborative is a multidisciplinary arrangement in which a law and dispute resolution firm shares space with a psychologist, financial planner, and workplace consultant. Although the primary responsibilities of all of the professionals relate to client care, the psychologist is available to help the lawyers process PSS issues that arise.²⁹ A renowned Dallas trial lawyer, John McShane, enlists the services of a mental health consultant on an as needed basis.³⁰

Increasingly, legal services organizations have in-house social workers on staff. Again, although their primary responsibilities are for patient care, they provide a ready opportunity for PSS.³¹

24 See *supra* note 8 (definition of “supervisor” and “supervision” in this context).

25 See David Berger & D.R. Freebury, *The Acquisition of Psychotherapy Skills: A Learning Model and Some Guidelines for Instructors*, in Symposium—Teaching Psychotherapy, 18 CAN. PSYCHIATR. ASSOC. J. 467 (1973) (describing benefits of individual supervision for psychotherapy residents).

26 See *infra* text accompanying notes 60-66 (discussing training).

27 See Gregory S. Gallopoulos, *How Holistic Mentoring Benefits Lawyers*, (July 9, 2008), <http://www.law.com/jsp/law/careercenter/CareerCenterArticleFriendly.jsp?id=1202422832599> (last visited Nov. 1, 2008) (discussing myriad ways in which an empathetic mentor can help a lawyer develop holistically, including emotionally). The mentor can help with the anxiety and stress that result from embracing a high-performance approach to the profession. Here the importance of the deep empathy that underlies the best mentoring relationships becomes apparent. Taking a compassionate but objective view, mentors must help their mentees to develop the emotional strength and intellectual resilience that allows for inner peace even absent circumstantial security.

28 See *infra* text accompanying notes 61-62 (discussing aspects of being a lawyer that a PSS provider would need to know).

29 Conversations between author and David Hoffman, Esq., founding partner of the Boston Law Collaborative. See <http://bostonlawcollaborative.com> (last visited Jun. 4, 2008).

30 Remarks of John McShane, *Law as a Healing Profession Conference*, *supra* note 13.

31 In three instances of which I am aware, however, lawyers rarely seek them out for such purposes. One is the Bronx Defenders Office, which has long prided itself in taking a holistic approach to client representation. Telephone conversation between Jenny Crawford, Director of Social Work Services, Bronx Defenders, and Cheryl Van Dyke, research assistant to author, February 20, 2008. Another involves the University of Chicago Legal Aid clinic. In May 2008, at the AALS Clinical Conference in Tucson, Arizona, I co-facilitated a concurrent session on clinical supervision and support of personal skills, along with Professor Susan Brooks, Associate Dean for Experiential Learning, Drexel University College of Law. Gary Palm, retired director of the Edwin F. Mandel Legal Aid *Clinic* at Chicago, came up after the session and said, “You know, we had a social worker on staff for many years, but it never dawned on me that I could use her for this kind of stuff!” The third example is Hofstra University Law School’s Center for Children, Families and the Law. In a recent conversa-

Group support would likely be more feasible for most lawyers, used increasingly by mental health professionals.³² Such groups might meet weekly, monthly, or even less frequently.³³ Other sources of PSS, perhaps less efficacious but nonetheless constructive, might be accomplished peer-to-peer,³⁴ through reflective journaling & feedback,³⁵ using observation tapes,³⁶ through self-

tion with its director, Andrew Shepard, he shared that he would be concerned about one-on-one advice given by the social workers and psychologists who participate in the Center. However, he also opined that much of what PSS would provide is raised during meetings and discussions among lawyers, law students, social work students and the other professionals about their cases. Each professional learns from the other, which is a principal value of joint educational programs. Telephone conversation between Andrew Shepard and the author, July 28, 2008.

³² Not infrequently, the use of such groups is driven by available resources. However, they offer benefits in sharing of experience not available in one-one-supervision. See, e.g., KADUSHIN & HARKNESS, *supra* note 21, at 391-403 (discussing advantages & disadvantages); HAWKINS & SHOHEET, *supra* note 22, at 152-62 (same). See also L. DIANNE BORDERS & LORI L. BROWN, THE NEW HANDBOOK OF COUNSELING SUPERVISION, ch. 4, *Group Supervision* (2005); Susan Bryant & Elliott S. Milstein, 14 CLIN. L. REV. 195 (2007) (discussing educational value of rounds as vehicle for group supervision in law clinics).

³³ A similar effort for judges has been in existence for more than a decade. Started by two Boston psychoanalysts, six women judges self-selected to participate (male judges were also invited, but declined). Originally the group met every four to six weeks. The group is now down to four judges and they meet three or four times a year for a potluck supper at one of the psychoanalyst's homes. Originally, the judges mainly talked mainly about their *isolation* and the difficulty of being a woman in an Irish Catholic old boy's network. The analysts gave the judges readings on transference, and helped them work through the negative projections that were often an issue. The judges shared stories with each other, mostly about sexist issues. Telephone conversation between Elissa Arons, M.D. and the author, April 9, 2007.

³⁴ See Allen K. Hess, *Training Models and the Nature of Psychotherapy Supervision*, 56 J. CONSULTING & CLIN. PSYCH. 15, 20-21 (1988) (describing model of collegial-peer supervision.); Paulette M. Gillig & Andrew Barr, *A Model for Multidisciplinary Peer Review and Supervision of Behavioral Health Clinicians*, 35 COMMUNITY MENTAL HEALTH J. 361 (1999) (describing success of inexpensive approach to peer review and supervision model that might be applied to other settings). See also Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship between "Academic" and "Ecological" Clinical Legal Education*, 3 CLIN. L. REV. 337, 350 (1997) (discussing benefits of lawyer-colleague learning relationships for enhancing interpersonal communication skills).

³⁵ For a discussion of the role of journaling in becoming a *reflective practitioner*, see J. P. OGILVY ET AL., LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS, ch. 11 (2007). Many of us who supervise students placed in externships find regular journaling to be an excellent vehicle for offering feedback on a wide range of issues.

³⁶ KADUSHIN & HARKNESS, *supra* note 21, at 435-41 (discussing benefits of taping and playback for supervision). "Seeing for ourselves (made possible by tapes) is perhaps the most insightful method of learning." *Id.* at 436. "Tape playback involves confrontation with self and by self—not, as so often is the case, confrontation by reflection from others." *Id.* at 437. It promotes self-learning, self-supervision, and independence, *id.*, and allows us, to a significant degree "to see ourselves as others see us." *Id.* at 438 (quoting Robert Burns). See also BORDERS & BROWN, *supra* note 32, ch. 8, *Technology in Supervision* (discussing live, video, on-line and cyber-supervision).

supervision techniques,³⁷ or through any other opportunity to carve out reflective space and time.³⁸

C. *About What?*

The range of possible topics for PSS exploration is extensive. Paramount is intra-personal (self-awareness) and interpersonal competence:³⁹

The aim is to develop a greater measure of self-awareness in the worker so that he or she can act in a deliberate, disciplined, consciously directed manner in the worker-client interaction so as to be optimally helpful to the client. The capacity to perceive one's behavior as objectively as possible and to have free access to one's own feelings without undue guilt, embarrassment, or discomfort is a necessary prerequisite (if not sufficient in itself) for the controlled subjectivity that the helping process demands.⁴⁰

PSS can help a lawyer to recognize and manage countertransference, projection, and other psychodynamic processes that, if not addressed, would likely inhibit her ability to best serve the legal needs of her client.⁴¹ The corollary to this is for the PSS provider to support the lawyer in understanding *clients'* psychodynamic challenges and to help the lawyer overcome what Therapeutic Jurisprudence/Preventive Law scholars and practitioners call *psycholegal soft spots*.⁴² A Trusts and Estates or Elder lawyer, for example, may need support in surmounting their clients' resistance to facing end of life planning.⁴³

It is critical, however, that the lawyer not confuse her role with that of a therapist. A supportive professional can help her define the appropriate boundaries of her role.⁴⁴ PSS may also assist the lawyer in recognizing when it might be

³⁷ "One aim of all supervision is to help practitioners develop a healthy internal supervisor which they can have access to while they are working." HAWKINS & SHOHET, *supra* note 22, at 42.

³⁸ See HAWKINS & SHOHET, *supra* note 22, at 25 (your support system may include "the walk to work, books you read, colleagues, meetings, friends, etc.").

³⁹ See, e.g., SCAIFE, *supra* note 2, at 30 (supervision explores "the influence of work on self" and "the influence of self on work.").

⁴⁰ KADUSHIN & HARKNESS, *supra* note 21, at 138.

⁴¹ See, e.g., SCAIFE, *supra* note 2, at 42-43 (discussing exploration of transference and countertransference in supervision); Silver, *Love & Hate*, *supra* note 3, at 276 (noting that unconscious emotional responses may impair lawyer's representation).

⁴² See, e.g., Marc W. Patry, et al., *Better Legal Counseling through Empirical Research: Identifying Psycholegal Soft Spots and Strategies*, 34 CAL. W. L. REV. 439 (1998).

⁴³ See Bruce J. Winick, *Client Denial and Resistance in the Advance Directive Context: Reflections on How Attorneys Can Identify and Deal With a Psycholegal Soft Spot*, 4 PSYCHOL. PUB. POL'Y & L. (1998), reprinted in PRACTICING THERAPEUTIC JURISPRUDENCE, Ch. 12, *supra* note 16.

⁴⁴ Nor is where the boundary lies always clear. Important boundary questions still need to be addressed for TJ lawyer/healers. Author's telephone conversation with Andrew Shepard, *supra* note 31.

advisable or necessary to suggest that the client might benefit from consulting a mental health professional. An understanding of and facility with psychodynamic processes is necessary to optimize the lawyer's ability to render the best legal services to her client, as in the above example. However, in some instances, the client may be incapable of making suitable legal decisions without first addressing his own psychodynamic or emotional conflicts.

PSS providers may need to assist lawyers in facing any personal barriers they may have to receiving effective support.⁴⁵ Doing so will require helping lawyers to understand their own *values* and *assumptions* and how they influence the helping relationship.⁴⁶ These values and assumptions will include, but not be limited to, the heuristics and biases—conscious and otherwise—they hold about differences in culture, race, gender and other defining characteristics about themselves and their clients.⁴⁷ Thus support with respect to cross-cultural competence may well be a component of PSS.⁴⁸

Lawyers, especially those in highly pressured environments, may need support in how they cope with stress and avoid burnout & vicarious trauma.⁴⁹ Fewer lawyers might leave public defender offices⁵⁰ or legal services offices⁵¹ in particular, or the profession generally,⁵² if they had PSS to help them prevent, recognize, or address the psychic toll that such work often extracts.

It is important to emphasize, however, that PSS is *not* intended as personal therapy. As with the traditional helping professions its goal is to support the

45 See HAWKINS & SHOHEIT, *supra* note 22, at 36-40 (discussing role of supervisor in helping supervisee overcome blocks to receiving supervision).

46 See SCAIFE, *supra* note 2, at 43-47 (discussing use of supervision to explore how supervisees' attitudes, beliefs and values impact helping relationship).

47 See, e.g., Paul R. Tremblay & Carwina Weng, *Multicultural Lawyering: Heuristics and Biases in AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 18, at ch. 6.

48 See HAWKINS & SHOHEIT, *supra* note 22, at ch. 8 (the name of the chapter is *Working with difference – transcultural supervision*).

49 *Standards for Social Work Practice in Child Protection* (2005) lists "management of work-related stress and assistance to staff in coping with their work-related stress" (p. 15) as one standard. *Id.* at 217. Research reveals that one of the two clusters of factors that come up most frequently in "effective supervision and leadership" is about "seeing that the people who do the job are comfortable, satisfied, and happy in their work and have a sense of psychological well-being." *Id.* at 217-18. See also KADUSHIN & HARKNESS, *supra* note 21, at 248-58 (discussing role of supervisor in helping supervisee manage and reduce stress).

50 See Susan Bandes, *Repression and Denial in Criminal Lawyering*, 9 BUFF. CRIM. L. REV. 339, 350-51, 378 (2006) (describing how psychic numbing & burnout caused her and others to no longer be able to effectively represent criminal defendants).

51 See, e.g., Kirsten Edwards, *Found! The Lost Lawyer*, 70 FORDHAM L. REV. 37, 73 (2001) ("The experience or fear of emotional burnout is . . . often the reason why lawyers leave or avoid public interest work. . .").

52 See, e.g., David M. Bateson & Tim Hart, *Combating Attorney Burnout*, 64-DEC BENCH & B. MINN. 22, 23 (2007) (noting that a burned out attorney may leave the practice of law altogether).

helper in her *work*.⁵³ However, PSS providers may be particularly suited to recognize when signs of anxiety, depression and other emotional and psychological disabilities suggest that the lawyer might profit from additional professional help. And while it is not intended as personal therapy, it may well be that it could accomplish some of the same goals.⁵⁴ There is every reason to expect that PSS will contribute to the attorney's overall wellbeing, as well as that of her client.

PSS might also be utilized to help the attorney improve her communication skills, such as interviewing and counseling,⁵⁵ including active, empathic listening.⁵⁶ While most Law schools offer courses in interviewing and counseling, such courses are rarely mandatory.⁵⁷ Even for students who have taken such courses, continuing support in the refinement of these skills would be of significant benefit. Reviewing tapes of actual client interviews would be an especially apt vehicle for work in this area.⁵⁸

Finally—although this list is hardly exhaustive—PSS might be an appropriate vehicle for exploring certain ethical issues that may arise in practice. For example, PSS may help insure that a TJ-inclined practitioner does not, unconsciously or otherwise, inappropriately push her client into a non-litigative approach to conflict resolution.⁵⁹

53 The supervisor's role is "to help the supervisee become a better worker—not necessarily a better person. . . . The concern is with changes in professional identity rather than changes in personal identity." *Id.* at 200. "The psychodynamics of both processes and the techniques employed are the same. The distinction lies primarily in purpose and focus, and role parameters of the relationship." KADUSHIN & HARKNESS, *supra* note 21, at 204.

54 "Whilst personal growth is not necessarily a primary goal of supervision, it is an instrumental goal that works in the service of making the supervisee a better practitioner (Bernard and Goodyear, 1992)." SCAIFE, *supra* note 2, at 36.

55 See, e.g., ELIZABETH HOLLOWAY, *CLINICAL SUPERVISION: A SYSTEMS APPROACH* 14-15 (1995) (discussing research finding listening, communicating, and counseling to be necessary competencies for effective helpers). See generally Sternlight & Robbenolt, *supra* note 6 (exploring psychological insights important to interviewing and counseling).

56 See, e.g., Timothy W. Floyd, *Spirituality and Practicing Law as a Healing Profession: the Importance of Listening* in *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 18, at ch. 16; Sternlight & Robbenolt, *supra* note 6, at 491-94 (discussing the psychology of careful listening); *id.* at 495-99 (discussing perspective-taking and empathy). The psychological concepts explored by Professors Sternlight & Robbenolt throughout this thoughtful, well-researched article are certainly other possible topics for PSS exploration.

57 There are (happily) some exceptions. See, for example, the CaseArc program at Case Western Reserve University School of Law, available at <http://law.case.edu/curriculum/content.asp?id=398> (last visited Oct. 28, 2008).

58 See *supra* note 36 (discussing taping as means of PSS).

59 Susan Daicoff identified this as one ethical concern relevant to the TJ lawyer:

My biggest concerns center on countertransference: So many attorneys are burned out on conflict, seek to avoid conflict and litigation, [are] tired of the adversarial role[,] that I am afraid they will unconsciously steer clients in the healing mode towards nonlitig-

IV. THE NEED FOR TRAINING

Given how alien many of the above subjects are to most lawyers, some training would be important before they could likely benefit from PSS. Lawyers would need to have had some basic orientation to intra- and interpersonal competence, including a grounding in transference, countertransference and other psychodynamic processes and issues that are likely to arise in practice.⁶⁰ In addition, providers who have no legal background⁶¹ will likely need some training about lawyers' personality types and the types of circumstances that lawyers commonly experience that produce psychodynamic issues and problems with interpersonal competence.⁶²

Ideally, lawyers would have been educated about personal skills in law school,⁶³ but for now, it is the minority who will have received any such education.⁶⁴ Continuing Legal Education (CLE) would also be an appropriate source of such training.⁶⁵ Unfortunately, to date, the number of such courses is limited. To compensate for any educational gap, providers might use PSS meetings for basic education about concepts such as transference, countertransference, and

ative solutions, due to their own discomfort with litigation. Or, they will steer clients towards a healing, growing approach, when the client really doesn't want to "grow" or "heal" but would rather stay somewhat dysfunctional, because the attorney enjoys seeing the client "grow" and "heal." The idea of making the lawyer happy with the client's outcome rather than really focusing on what the client wants, which is a danger if we operate as the People With All The Right Answers (and the Big Mouths) rather than the People With The Right Questions (and the Big Ears).

Email from Susan Daicoff to Edward Dauer, Thomas Barton, & author, 3/1/06.

Another example that raises ethical concerns arises among some collaborative lawyers in divorce or custody cases who view themselves as having loyalties to stakeholders—children, party's spouse—other than their clients. Author's conversation with Andrew Shepard, *see supra* note 10.

⁶⁰ *See generally, e.g.,* Marjorie A. Silver, *Emotional Competence and the Lawyer's Journey* (hereinafter *Emotional Competence*), ch. 1 in AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 18.

⁶¹ *See* Susan Daicoff, *Lawyer Personality Traits and their Relationship to Various Approaches to Lawyering*, ch. 3 in AFFECTIVE ASSISTANCE OF COUNSEL, *supra* note 18; DAICOFF, *supra* note 14.

⁶² *See supra* text accompanying note 28 (noting that lawyers who also have professional mental health degrees may be particularly suited to provide PSS). Many of the issues that will arise in PSS, however, are universal in nature. Lawyers are, after all, at bottom, human beings.

⁶³ *See supra* text accompanying notes 6-7.

⁶⁴ *See, e.g.,* *El/LE*, *supra* note 6; *Love & Hate*, *supra* note 3, at 305-11; Sternlight & Robbennolt, *supra* note 6, at 437-38.

⁶⁵ Increasing numbers of conferences are offering such training. For example, at the 2008 AALS Clinical Conference, *see supra* note *, several presentations addressed issues of transference and countertransference that arise in law clinics. Currently in the planning stages is a conference devoted to psycho-social issues and personal skills in lawyering and supervision to be held at the University of Indiana Law School at Bloomington in the fall of 2009. A concurrent session at the Touro Conference on *Law as a Healing Profession*, *supra* note 13, that I co-taught with Professors Susan Brooks & Lynn Barenberg is yet another example. At that same conference, psychologist Amiram Elwork and lawyer/psychologist Andrew Blatter offered a workshop on stress reduction for lawyers.

denial. Additionally, good lawyers know how to research and teach themselves what they need to know; many lawyers might be able to use these skills to compensate for what their education lacked with respect to personal skills. The body of literature about such topics specifically geared to lawyers continues to grow.⁶⁶

PSS providers, too, can access that same body of literature to learn how such issues commonly arise in the lawyer/client relationship.⁶⁷ Those who have such expertise might develop specialized training sessions on how to support lawyers' personal skills.

V. CHALLENGES AND OBSTACLES

With all that competes for an attorney's attention, time and other resources, certainly institutionalizing PSS will not be an easy task. There remains, nonetheless, cause for cautious optimism. Movements such as TJ have made substantial inroads over the past decade in transforming how many legal practitioners think about the relevance of psychological-mindedness and interpersonal skills to successful lawyering.⁶⁸

What are the challenges for implementing such support? Although there are undoubtedly others, those I perceive as most acute include scarcity of resources, resistance, isolation, quality control, and confidentiality. I address each below.

A. Scarce Resources

For most lawyers, perhaps their scarcest resource is *time*. In the triage of all the demands a lawyer faces in any given day, week or month, PSS is unlikely to naturally rise to the top of the To Do list. Those which are most pressing generally involve demands made by other stakeholders in the legal system, including clients, judges, and adversaries. Professional development often has to be externally imposed, whether mandated by CLE requirements or by an attorney's employer. Even for those lawyers who have PSS buy-in, finding the time to engage in it will require enormous proactivity. This could be mitigated, of course, were PSS to be recognized as qualifying for CLE as part of professional development. Law firms and other legal organizations, too, hopefully might begin to see PSS as a vital component of insuring that their lawyers render first rate legal services.

⁶⁶ See, e.g., notes 16-18.

⁶⁷ *Id.* See also, e.g., *Emotional Competence*, *supra*, note 60; Bruce J. Winick, *Overcoming Psychological Barriers to Settlement: Challenges for the TJ Lawyer*, ch. 11 in *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 18; Winick, *Client Denial*, *supra* note 43; John P. Bracken & Dan Berger, *The Emotionally Intelligent Attorney: The Law as a Helping Profession*, 24 *THE SUFFOLK LAWYER* 10 (October 2008).

⁶⁸ See, e.g., Susan Daicoff, *The Role of Therapeutic Jurisprudence in the Comprehensive Law Movement*, in *PRACTICING THERAPEUTIC JURISPRUDENCE*, *supra* note 16.

Monetary resources would also likely be a concern for many lawyers, especially small firm and solo practitioners, as well as legal services organizations. In such cases, one-on-one PSS on an ongoing basis is unlikely to be a feasible alternative. However, as noted above, group PSS is a viable alternative.⁶⁹ Bar associations might organize PSS groups and hire professional facilitators. Members of local psychological associations might be willing to provide their services *pro bono*,⁷⁰ or at reduced fees. And, as suggested earlier, organizations and firms that already employ or contract for the services of social workers and other mental health professionals might expand their responsibilities to include PSS for their attorneys.⁷¹

B. *Overcoming Stigma & Resistance*

Sometimes objections phrased in terms of resources might in actuality be surrogates for conscious or less-than-conscious personal resistance to the concept of PSS. It may be difficult to persuade many attorneys, especially those not already committed to the “examined life,”⁷² that PSS is *not* therapy. And therapy carries the stigma of emotional and mental problems—that there is something *wrong*.

Moreover, few lawyers perceive any need for PSS. Trained to view their professions as one in which psychological and emotional issues are obstacles to be overcome, most of them are not naturally receptive to the notion that by addressing such issues appropriately, they can actually improve their skills as attorneys. As mentioned above, although lawyers are increasingly employing the services of mental health professionals in family law and legal services, these professionals are largely there solely to support client services; lawyers rarely consult them, even when they are experiencing difficulties in relating to clients.⁷³ It is just not part of the profession’s culture.⁷⁴ If proponents can furnish evidence, preferably empirically and at a minimum anecdotally, that PSS *has* enhanced legal services for those who have tried it, then we proponents might hope to break down the anticipated resistance we will undoubtedly face.⁷⁵

69 See *supra* note 32-33 (discussing group PSS as viable alternative to individual PSS).

70 One example is the current pilot group in development at Touro Law Center. See *infra* text accompanying notes 79-80 (discussing pilot project).

71 See *supra* note 31 (suggesting that organizations and firms that already employ mental health professionals might use their services for PSS).

72 “The Unexamined Life is not worth living.”—Socrates in PLATO, APOLOGY, 38a, in THE OXFORD DICTIONARY OF QUOTATIONS 512 (3d ed. 1986).

73 See *supra* note 31.

74 See Silver, *Love & Hate*, *supra* note 3, at 278-82 (discussing lawyer resistance).

75 The project I describe *infra* notes 79-80, is one such attempt. Hopefully, others will conduct further studies and collect additional anecdotal evidence.

C. Isolation

It is well documented that the isolation solo and small firm practitioners experience leads to greater incidences of ethical violations.⁷⁶ Without an institutionalized support system, lawyers often don't know where to turn when faced with ethical dilemmas. Often, they may not realize that there is a dilemma at all. The need for PSS, I suggest, is similar. The isolation in which so many lawyers practice will likely be an additional obstacle in selling PSS.

In rural areas, there will be geographic obstacles as well. If group PSS is the only practical alternative for many, how feasible is it to expect that lawyers who are on opposite sides of the same courtrooms or bargaining tables will feel comfortable exploring their inner landscape with each other? Creative solutions, perhaps employing the internet and virtual groups, will be needed.

D. Quality Control

One must also be concerned about quality control. Bad PSS is likely worse than no PSS at all. In the absence of any specific certifications or licenses for those who will provide PSS, we need to find ways to insure that the services rendered by professionals meet at least minimally acceptable standards, and, ideally, best practices.

E. Confidentiality

Lawyers receiving PSS need to insure that they maintain their clients' confidences.⁷⁷ Although significant even in one-on-one PSS, this will be of particular concern in group PSS. Professionals *and* participating lawyers must be clear on what is and is not appropriate for discussion at such sessions.

However, concerns about confidentiality are often overblown in discussions of multi-disciplinary practice. With appropriate guidelines in place, confidentiality should not present overwhelming obstacles.⁷⁸

F. Touro's Experiment

These challenges have presented themselves up close and personal in the form of an effort to create a pilot program at Touro Law Center. During the

⁷⁶ See, e.g., Leslie Levin, *The Ethical Work of Solo and Small Firm Practitioners*, 41 HOUSTON L. REV. 309, 311 (2004).

⁷⁷ ABA MODEL RULES OF PROF. CONDUCT, RULE 1.6.

⁷⁸ For an excellent discussion of how one multi-disciplinary firm handles these and other concerns, see David A. Hoffman & Richard N. Wolman, *Multidisciplinary Practice: Three-Dimensional Client Service*, 14 MASS. PSYCH. ASSOC. Q. 14 (2004) (describing the multidisciplinary work of the Boston Law Collaborative).

2007-08 academic year, in consultation with Dr. Neil Grossman, a clinical psychologist and chair of the Family Law section of the Suffolk County Psychological Association (SCPA), and Thomas Maligno, Executive Director of Touro's innovative Public Advocacy Center (PAC),⁷⁹ I endeavored to form a pilot PSS group for lawyers and law students working in our PAC. We thought that the PAC potentially offered a wonderful opportunity to explore the efficacy of group support for attorneys. First, there is the physical concentration of the PAC offices at the Touro Law Center. Second, although the member organizations are a diverse group, there are many commonalities among the client populations they serve. The circumstances of the disadvantaged, often traumatized, client populations and the limitations on the organizations' resources, place tremendous stress on the organizations' personnel. We believed such a group would potentially be a welcome resource for those who participated and, in turn, that their participation could potentially enhance the ability of these organizations to serve the legal needs of their clients. Dr. Grossman and I met with PAC members at a regularly scheduled PAC meeting in December 2007. Based on the feedback we received at that meeting, it appeared (1) there was interest in our proposal and (2) the perceived needs and interests of the group were quite diverse. We proposed to begin with a "pilot for the pilot" that would be open to up to fifteen lawyers and law students working in PAC offices. The group would meet for two sessions, approximately a month apart, in spring 2008. After those sessions, the stakeholders would re-evaluate the project, in light of the experience with the first two sessions. Two SCPA psychologists generously and enthusiastically volunteered to co-facilitate the group.

Unfortunately, despite numerous email solicitations to PAC members, and despite broadening our outreach to include Nassau-Suffolk Law Services and Suffolk County Legal Aid housed outside of the PAC, not a single lawyer volunteered.⁸⁰ Discouraged but not dissuaded, we renewed our efforts in the fall of 2008. I met again at with PAC participants at a general meeting in September; one lawyer responded in the affirmative. We asked those who were not interested to give us anonymous feedback on a check-off form as to their reasons. The response to that request was rather limited, but the majority of those who did respond indicated that they had other outlets for processing the stresses of their work. We broadened the eligible pool to include Touro's clinic supervisors and students. This worked. I am pleased to report that the first pilot group met with seven lawyers and law students on October 27, 2008, and appeared both to the facilitator and myself to be a successful beginning. Stay tuned.

⁷⁹ Touro Law Center established The William Randolph Hearst Public Advocacy Center in 2007, offering free furnished offices to sixteen local non-profit public interest agencies. In exchange, each agency commits to providing Touro law students with hands-on skills training. See <http://www.tourolaw.edu/pac/index.asp> (last visited July 31, 2008).

⁸⁰ A few nonlawyers expressed interest in participating, but we concluded that the group should be limited to lawyers, law students and, perhaps, paralegals.

CONCLUSION

As increasing numbers of lawyers commit to becoming lawyer-healers, the need for effective support and supervision of their personal skills is expanding. The TJ bar will be called upon to find creative solutions to provide PSS in effective yet practical and cost-effective ways. The need for PSS, however, goes beyond those already committed to providing therapeutic assistance for their clients. The entire bar will benefit from the availability of services that will enable them to harness the emotional and psychological aspects of law practice so as to become better lawyers. This article suggests some of the parameters in providing PSS to lawyers. Hopefully this is the beginning of an ongoing interdisciplinary conversation on how to develop theoretical and practical models for providing PSS options and alternatives for all attorneys.