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### Collaborating for Transformation

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## COLLABORATING FOR TRANSFORMATION

MARJORIE A. SILVER\*

### INTRODUCTION

This essay is about teaching transformation: the when, the why, and the how I decided to do it. In particular, it is about a dedicated course I created several years ago, a hybrid seminar with an experiential component that introduces students to, and educates them about, alternative ways to practice law and achieve justice markedly different than those they are generally exposed to in the rest of the law school curriculum. And it is about how I have collaborated with practitioners and judges in achieving those goals.

I wanted to teach law because I loved law school, and was good at it. I loved the intellectual volleying and parrying, the gamesmanship of the law. Yet over time, what I have come to love about teaching has morphed into something quite different. My central concern is the well-being of my students, the lawyers they will become, and the clients they will represent. I endeavor in all the courses I teach to introduce students to proven ways to enhance their well-being, as law students and as lawyers.<sup>1</sup> It is my firm belief that one path towards this goal is through exposing students to the possibilities of being lawyers and judges who are committed to more healing, relational and compassionate approaches to resolving controversies and achieving justice.<sup>2</sup>

### BACKGROUND

About twenty years ago, my scholarly interests shifted from writing about procedural issues in civil rights enforcement to

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<sup>1</sup> See, e.g. Marjorie A. Silver, *Work and Well-being*, ch. 25, pp. 699-724, in *LEARNING FROM PRACTICE* 3d. ed. (Leah Wortham *et al.*, eds. 2016) [Hereinafter *LEARNING FROM PRACTICE*].

<sup>2</sup> After the publication of my first collection showcasing alternative approaches to practicing law, *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (Marjorie A. Silver, ed. 2007) [hereinafter *AFFECTIVE ASSISTANCE OF COUNSEL*], I was frequently asked, “Healing for whom? Lawyers or clients?” My unqualified response was “Yes!”

exploring the importance of emotional intelligence and psychological-mindedness for competent lawyering.<sup>3</sup> Those interests evolved into a devotion to humanizing legal education and the practice of law. This began in 1998 with my introduction to the school of thought known as Therapeutic Jurisprudence,<sup>4</sup> and continued as I discovered the movement alternatively known as Comprehensive Law,<sup>5</sup> Law as a Healing Profession,<sup>6</sup> and, more recently—and more satisfactorily, in my mind—Integrative Law.<sup>7</sup> This movement includes practices such as Collaborative Law,<sup>8</sup> Transformative Mediation,<sup>9</sup> Restorative Justice (“RJ”), and problem-solving treatment courts.<sup>10</sup> In the legal academy, it is furthered by the AALS Balance in Legal Education Section, of which I was a founding member in 2007.<sup>11</sup>

#### THERAPEUTIC JURISPRUDENCE

In 1998, I presented a paper on countertransference in the lawyer/client relationship at the First International Conference on Therapeutic Jurisprudence in Winchester, England.<sup>12</sup> I had little to no idea what Therapeutic Jurisprudence (“TJ”) was at that point, but a former colleague encouraged me to submit a proposal to discuss the research I had been doing for several years, telling me that the TJ folks loved American law professors, and especially women. So off I

<sup>3</sup> For a description of how that journey unfolded, see Marjorie A. Silver, *Healing Classrooms*, ch. 9, pp. 259-61 in *TRANSFORMING JUSTICE, LAWYERS, AND THE PRACTICE OF LAW* (Marjorie A. Silver, ed. 2017) [hereinafter *TRANSFORMING JUSTICE*.]

<sup>4</sup> See, e.g. *International Network on Therapeutic Jurisprudence*, TJ, <http://www.law.arizona.edu/depts/upr-intj/> (last visited Aug. 24, 2017).

<sup>5</sup> See, e.g., SUSAN SWAIM DAICOFF, *COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION* 33-36 (2011).

<sup>6</sup> See, e.g., *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 2.

<sup>7</sup> See, e.g. J. KIM WRIGHT, *LAWYERS AS PEACEMAKERS: PRACTICING HOLISTIC, PROBLEM-SOLVING LAW* (2010) [Hereinafter *LAWYERS AS PEACEMAKERS*]; Hollee Schwartz Temple, *Is the integrative law movement the next “uge ave” for the profession?*, ABA JOURNAL (Aug. 1, 2013), [http://www.abajournal.com/magazine/article/integrative\\_law\\_puts\\_passion\\_into\\_the\\_profession/](http://www.abajournal.com/magazine/article/integrative_law_puts_passion_into_the_profession/).

<sup>8</sup> See Stuart Webb, *Transforming Conflict Resolution*, in 167-171 *TRANSFORMING JUSTICE*; Pamela J.P. Donison, *Collaborative Practices*, in *TRANSFORMING JUSTICE*, 172-207.

<sup>9</sup> See, e.g., TRANSFORMATIVE MEDIATION INSTITUTE, *Transforming Communication, Transforming Conflict* <http://www.transformative-mediation.com/> (last visited Aug. 23, 2017).

<sup>10</sup> For a summary of these developments, see Introduction, *THE AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 2, at xxiv-xxvii; see also Susan Daicoff, *Law as a Healing Profession: The Comprehensive Law Movement*, 6 PEPP. DISP. RESOL. L.J. 1 (2006).

<sup>11</sup> Marjorie A. Silver, *Symposium Introduction: Humanism Goes to Law School*, 28 *TOURO L. REV.* 1141, 1144 (2012).

<sup>12</sup> *Countertransference in the Lawyer Client Relationship*, First International Conference on Therapeutic Jurisprudence, Winchester England, July 9, 1998.

went, making a family vacation out of it with my husband and young daughter.

I arrived at the conference in the middle of a presentation given by then California Superior Court Judge Peggy Hora, who told a story that I have repeated countless times over the decades since then to explain to others what TJ is about. Judge Hora recounted a case over which she had presided involving a challenge to a will. The deceased had left two potential heirs: a son and a daughter. The daughter had lived with and cared for her mother in her mother's home for the last several years of the mother's life. The daughter had no other home. The son, who brought the challenge to the will, lived with his own family in their own home.

The mother bequeathed her house—her only asset of any value—to her daughter. Thus, the challenge. Judge Hora heard the case, and ruled there had been no undue influence. However, before she dismissed the parties, the judge addressed the son:

“It's important that you know that just because your mother didn't leave you anything, doesn't mean that she didn't love you.”

The son burst into tears. It was apparent to the judge, and perhaps to everyone else in the courtroom, that his lawsuit was about, was precipitated by, the son's feeling unloved by his deceased mother.

Judge Hora went on to say that there were at least two earlier opportunities in which therapeutically-informed lawyers might have prevented this lawsuit and brought some comfort to the son. One was when he sought counsel to bring the undue influence challenge. That lawyer might have said something to the son very much like what Judge Hora said in the courtroom.

The other juncture was when the mother sought legal counsel to prepare her will. Let's assume, as the reader perhaps already has, that it was logical for the mother to leave her house to her otherwise homeless daughter. That lawyer might have suggested that the mother put some statement in her will about her love for her son, and the reasons for her testamentary decision.<sup>13</sup>

The theory underlying TJ is simple: law and its actors may have positive (therapeutic) effects on its stakeholders, or detrimental (anti-therapeutic) effects and, to the extent possible, consistent with other values such as constitutional rights, law and its actors should endeavor

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<sup>13</sup> See Symposium, *Law and Psychology: Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15 (1997) (discussing the integration of preventative law and therapeutic jurisprudence as a new breed of legal psychology whose focus should be in recognizing psycholegal soft spots, finding preventive legal strategies to address those psycholegal soft spots and evaluating the effectiveness of the strategies available).

to maximize the former and minimize the latter. TJ, distilled to its essence (as David Wexler, one of TJ's co-founders stated at the July 2017 inaugural meeting of the newly formulated International Society of Therapeutic Jurisprudence in Prague, Czech Republic) is about *enhancing well-being*.<sup>14</sup>

Since that 1998 conference, I have immersed myself in seeking more healing alternatives to resolving disputes and achieving justice. The co-founders of TJ, David Wexler and the late Bruce Winick, became my mentors and friends. They set me on a path that has enriched my life and my work in countless ways.<sup>15</sup>

#### TRANSFORMING CIVIL PROCEDURE AND OTHER COURSES

By the time I learned about TJ, I had been teaching Civil Procedure ("CP") for almost a quarter of a century. As my interests in the psychology of lawyering grew, I had become increasingly concerned with the ways in which litigation was the dominant focus of the first-year curriculum, at the expense of introducing students to the other essential work that lawyers do.<sup>16</sup> I have long been a firm believer that the best approaches to resolving most conflicts are those that empower the parties to make their own decisions and form their own agreements. For that reason, I lobbied and persuaded our faculty in 2006 to change the name of our first semester CP course to *Civil Dispute Resolution and Procedure* ("CDR&P"), and require that the course's content include a meaningful introduction to alternative methods of dispute resolution (ADR) such as negotiation, mediation and arbitration.

I subsequently decided to introduce my CDR&P students to collaborative law<sup>17</sup> and restorative practices as well, using readings,<sup>18</sup>

<sup>14</sup> See Constance Backhouse, *An Introduction to David Wexler, the Person Behind Therapeutic Jurisprudence*, 1 INT'L J. THER. JURIS. 1 (2016), [http://summitlawreview.org/TJ\\_1\\_1.pdf](http://summitlawreview.org/TJ_1_1.pdf); David B. Wexler, Essay, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17, 23-32 (1997), <http://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1288&context=lawreview>, (discussing the origins of Therapeutic Jurisprudence and its development); *Therapeutic Jurisprudence in the Mainstream*, <https://mainstreamtj.wordpress.com/what-is-tj/> (last visited Aug. 23, 2017) (explaining what is Therapeutic Jurisprudence and the mission of the International Society of Therapeutic Jurisprudence Society).

<sup>15</sup> That path included editing a collection of writings entitled *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION*, *supra* note 2.

<sup>16</sup> See *Healing Classrooms*, *supra* note 3, at 270-275.

<sup>17</sup> See Webb, Donison, *supra* note 8.

<sup>18</sup> See, e.g., J. KIM WRIGHT, *LAWYERS AS PEACEMAKERS: PRACTICING HOLISTIC, PROBLEM-SOLVING LAW* 27-42 (2010).

videos,<sup>19</sup> and simulation.<sup>20</sup> I also integrated some exposure to these alternative approaches to practicing law in the other courses I teach, including the Civil Externship seminar and Professional Responsibility.

#### THE PROJECT FOR INTEGRATING SPIRITUALITY, LAW, AND POLITICS

In February 2011, I was invited to participate in a weekend-long retreat in New York City with members of the Project for Integrating Spirituality, Law and Politics (PISLAP). I spent that weekend with an amazing group of people, each working in different ways to transform law, legal practices, and to advance justice. I met Stu Webb, the Minnesota progenitor of Collaborative Law, whose work in developing healthy, constructive approaches to resolving divorce disputes I had long admired.<sup>21</sup> Bruce Peterson, a problem-solving court judge in Minneapolis,<sup>22</sup> led us in a loving-kindness meditation.<sup>23</sup> Jonathan Scharrer<sup>24</sup> described his restorative justice practice in Wisconsin. Sylvia Clute<sup>25</sup> shared the work she was doing to introduce RJ practices into the Richmond, Virginia school system. Kim Wright<sup>26</sup> told of

<sup>19</sup> See, e.g., <http://www.youtube.com/watch?v=A1s6wKeGLQk>; <http://www.youtube.com/watch?v=LQaqrDnhzDw&NR=1>.

<sup>20</sup> The role play was based upon an incident described in WRIGHT, *supra* note 18, at 38, involving a small boy killed when he broke free from his mother's hand and raced into traffic, in the path of an oncoming vehicle that was unable to stop in time. I divided the class into teams of four or five students, with each playing one of the participants (facilitator, mother, driver, police officer called to the scene, etc.) in a Restorative Justice Circle. See, e.g., *About the Circle Process: What Do We Mean by "Circle"?*, LIVING JUSTICE PRESS, [http://www.livingjusticepress.org/index.asp?SEC=51F9C610-C097-446A-8C60-05E8B4599FE7&Type=B\\_BASIC](http://www.livingjusticepress.org/index.asp?SEC=51F9C610-C097-446A-8C60-05E8B4599FE7&Type=B_BASIC) (last visited Dec. 20, 2017). Each team was charged with attempting to resolve the conflict. I instructed students not to worry about how well they did, or whether they resolved the controversy, but to take the exercise seriously, to try to *become* the person they were playing and to pay attention to questions such as: What is your perspective? Your feelings? Your interests?

<sup>21</sup> See Webb, *supra* note 8.

<sup>22</sup> See Bruce Peterson, *Problem-solving Courts and the Evolution of the Court System*, in TRANSFORMING JUSTICE 398-402, *supra* note 3.

<sup>23</sup> See, e.g., *Loving-kindness Meditation*, GREATER GOOD IN ACTION: SCIENCE-BASED PRACTICES FOR A MEANINGFUL LIFE, [https://ggia.berkeley.edu/practice/loving\\_kindness\\_meditation](https://ggia.berkeley.edu/practice/loving_kindness_meditation) (last visited Dec. 20, 2017).

<sup>24</sup> See Fania Davis & Jonathan Scharrer, *Reimagining and Restoring Justice: Toward A Truth and Reconciliation Process to Transform Violence Against African-Americans in the United States* in TRANSFORMING JUSTICE 96-97, *supra* note 3.

<sup>25</sup> See *What if Law and Justice Fostered Transformation? How Can we Get There?* SYLVIA CLUTE, <http://www.sylviaclute.com/> (last visited Sept. 1, 2017).

<sup>26</sup> See, J. KIM WRIGHT, J.D. - INTEGRATIVE LAWYER, INNOVATOR, SYSTEMS CHANGE AGENT, <http://jkimwright.com/> (last visited Dec. 24, 2017) [hereinafter "INTEGRATIVE LAWYER"].

innovations she had discovered such as Conscious Contracting<sup>27</sup> and Sharing Law.<sup>28</sup> And several others, all working in different ways to find more healing, more relational, approaches to the administration of justice and the resolution of conflicts. I knew by Sunday morning of that weekend that these were people with whom I wanted to engage, and that my next major project would be a collection of writings by these changemakers. I also decided it was time to design a new course devoted to the kinds of law practices in which these visionaries were involved.<sup>29</sup> The book project took more than six years from conception to publication;<sup>30</sup> the latter came to fruition somewhat more quickly, yet not without its challenges. In the fall of 2013, the faculty approved my hybrid, experiential seminar, *New Paradigms in Law and Lawyering*. And in the spring of 2015, I was able to teach it for the first time.

#### NEW PARADIGMS IN LAW AND LAWYERING<sup>31</sup>

My ultimate goal in teaching such a course was to inspire a new generation of lawyers to join this exciting movement exemplified by the participants in PISLAP and other integrative law practitioners. It seemed only logical that the course should expose the students to the lawyers and judges who were part of this movement, beyond what they would learn from readings and classroom exercises.<sup>32</sup>

I designed the course to consist of a two-hour weekly seminar and approximately five hours per week in an integrative law setting. The seminar teaches the theory, values, skills, and knowledge integral to the Integrative Law Movement. Students learn about problem-solving courts,<sup>33</sup> restorative justice practices,<sup>34</sup> transformational medi-

<sup>27</sup> See *Conscious Contracting: Integrative Law for Transactional Lawyers*, INTEGRATIVE LAW INSTITUTE, (June 24, 2013), <https://integrativelawinstitute.org/2013/06/24/discovering-agreement-conscious-contracting-for-integrative-lawyers/>.

<sup>28</sup> See Janelle Orsi, *PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES*, (ABA Book Publishing, 2006).

<sup>29</sup> See *TRANSFORMING JUSTICE* *supra* note 3, at ix.

<sup>30</sup> See *TRANSFORMING JUSTICE*, *supra* note 3.

<sup>31</sup> Based on feedback from colleagues and students, and hoping to increase enrollment, I changed the name of the course in the registration materials for the fall of 2017 to *Transforming Justice and Lawyering*. However, the seminar was canceled for under enrollment. See *infra*, CHALLENGES.

<sup>32</sup> Readings have included *AFFECTIVE ASSISTANCE OF COUNSEL*, *supra* note 2, excerpts from *LAWYERS AS PEACEMAKERS*, *supra* note 7, and multiple online sources and videos.

<sup>33</sup> See Peterson, *supra* note 22.

<sup>34</sup> See, e.g., *Three Core Restorative Justice Practices*, LIVING JUSTICE PRESS, [http://www.livingjusticepress.org/index.asp?Type=B\\_BASIC&SEC=%7BFFEB7561-1006-44AD-AEFE-1A085196F8BD%7D](http://www.livingjusticepress.org/index.asp?Type=B_BASIC&SEC=%7BFFEB7561-1006-44AD-AEFE-1A085196F8BD%7D), (last visited Dec. 20, 2017).

ation,<sup>35</sup> collaborative practices,<sup>36</sup> conscious contracting,<sup>37</sup> and sharing law.<sup>38</sup> Frequent guests who practice in these areas join the seminar either in person or via online platforms.<sup>39</sup> Guests also discuss their personal journeys that led them to practice law in these alternative ways, the historical developments that led to this moment in time, and the skills needed to practice law compassionately and interact with clients and other stakeholders with kindness and curiosity.

In addition, each student would spend an average of four to five hours per week in an integrative law setting. These settings could include private collaborative or mediation law practices, problem-solving courts, restorative justice programs, or any other setting employing a non-adversarial, more relational, more healing approach to pursuing justice, resolving conflict, or planning legal relationships. Given the limited amount of time the students would spend in their placements, the amount of hands-on work they could do would necessarily be limited. I concluded, however, that even observation would be a sufficiently valuable learning opportunity.<sup>40</sup>

I met with each registered student individually to discuss, among other things, what kind of placement would be most compatible with their goals and interests. Although, I advised them that, subject to my approval, they were welcome to find their own placements, I willingly offered to help them. Most requested my assistance.

I set out to widen my network of practitioners within commuting distance of the Law Center.<sup>41</sup> Through the process of finding appropriate placements,<sup>42</sup> I vastly expanded my network of people and

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<sup>35</sup> See *Transforming Communication, Transforming Conflict*, TRANSFORMATIVE MEDIATION INSTITUTE, <http://www.transformative-mediation.com/> (last visited Sept 1, 2017).

<sup>36</sup> See *supra* note 8.

<sup>37</sup> See *supra* note 27.

<sup>38</sup> See *supra* note 28.

<sup>39</sup> See *infra* notes 50-53 and accompanying text.

<sup>40</sup> An essential component to any experiential course is *reflection*. See, e.g. LEARNING FROM PRACTICE, *supra* note 1 at 8-12. It was critical that the students not only *experience* integrative law in practice and hear from those who practiced it, it was essential that they reflect on what they were experiencing and learn from it. Thus, students were also required to write and submit weekly journals as well as share their experiences at their placements during seminar through weekly “rounds.”

<sup>41</sup> For all practical purposes, this included most of Long Island, Queens, Brooklyn, Manhattan, and lower Westchester County, the same geographic area in which we place externs.

<sup>42</sup> Examples of past placements have included drug and mental health problem-solving and diversionary courts; restorative justice programs; the Red Hook Community Justice Center, *Red Hook Community Justice Center*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org/project/red-hook-community-justice-center> (last visited Dec. 25, 2017); New York Lawyers for the Public Interest, *New York Lawyers for the Public Interest*, NYLPI, <http://www.nylpi.org> (last visited Dec. 25, 2017); and the New York Peace



organizations practicing in transformative ways. I contacted collaborative lawyers,<sup>43</sup> transformative mediators,<sup>44</sup> problem-solving judges,<sup>45</sup> and restorative justice programs.<sup>46</sup> Most were more than happy to have a student for the semester, although some questioned the utility of having a student for so few hours, and more than one collaborative lawyer decided against its feasibility. Some other lawyers, whose practices were a combination of traditional and collaborative work, were concerned that they wouldn't be able to provide sufficient opportunity for the students to fulfill their 56-70 hours over the course of the semester; I assured them that we could find creative ways to supplement whatever experiences they could offer.<sup>47</sup>

I discovered that collaborative divorce had not progressed as rapidly in New York—and especially not on Long island—as it had in many other pockets of the country and the world.<sup>48</sup> Yet I also discovered the Long Island Coalition of Collaborative Practitioners who met monthly at the Nassau County Bar Association, where they would debrief hypotheticals or actual cases. One of my students, who was interested in learning more about these practices, and I were invited to attend one of these meetings, and both of us learned a great deal about the principles and rules governing such practices, as well as the real-life challenges that sometimes obstruct the achievement of the processes' goals.

I reached out to the academic community as well, for guidance from others who had undertaken any similar hybrid courses. Ultimately, I concluded that I would have to design the course pretty much from scratch, as there were no similar models I could find.<sup>49</sup>

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Institute, *Mediation*, NEW YORK PEACE INSTITUTE; <http://nypeace.org/mediation-services/> (last visited Dec. 25, 2017).

<sup>43</sup> See *infra* note 51.

<sup>44</sup> See *supra* note 42.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> For example, the campus on which Touro Law Center is located in Central Islip is blessed with several problem-solving courts, so students could always find opportunities to observe proceedings in those courts to supplement their placement hours. See *Collaborative Court Programs*, TOURO COLLEGE, JACOB B. FUCHSBERG LAW CENTER, <https://www.tourolaw.edu/Academics/juris-doctor-collaborative-court-program>, (last visited Sept. 1, 2017); *Problem Solving Courts Overview*, NYCOURTS.GOV, NEW YORK STATE UNIFIED COURT SYSTEM, [https://www.nycourts.gov/COURTS/problem\\_solving/index.shtml](https://www.nycourts.gov/COURTS/problem_solving/index.shtml) (last visited Sept. 2, 2017).

<sup>48</sup> According to many with whom I have spoken, few practitioners are able to sustain a practice with collaborative alone, even when combined with mediation. I am optimistic that this problem will resolve itself as more and more lawyers and litigants come to understand collaborative's benefits.

<sup>49</sup> In constructing my syllabus, I borrowed a good deal from J. Kim Wright, see INTEGRATIVE LAWYER, *supra* note 26, likely the person who knows more about the

The first time I taught the course, I had little to no contact with the placement supervisors once the students began. I relied solely on student reports during “rounds” to share what they had done or observed at their placement that week. This was a mistake, as expectations for the students as well as the placement supervisors were insufficiently clarified or communicated. I corrected this the second time around with a three-way agreement which explained the course and the respective responsibilities of placement supervisor, student, and teacher.<sup>50</sup>

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Integrative Law Movement and its world-wide manifestations than any other human being. Kim had taught a similar course at the Charlotte Law School in the summer of 2012, *see id.*, *Teaching and Legal Education*, <http://jkimwright.com/teaching-and-legal-education/>, and graciously shared her syllabus with me. But the idea to incorporate an experiential component was my own.

<sup>50</sup> **TO:**

**FROM: Prof. Marjorie Silver**

**DATE:**

#### **MEMORANDUM OF UNDERSTANDING NEW PARADIGMS IN LAW AND LAWYERING**

Thank you for agreeing to host one of our students this semester. The purpose of this document is to explain the goals and parameters of the experiential component of *New Paradigms in Law and Lawyering*, and to insure that we are all in agreement about the nature and scope of the experience the student will have.

This course serves as an introduction to ways to practice law, resolve controversies and administer criminal justice outside of the traditional adversarial paradigms, in ways that aspire to enhance the well-being of participants and engender relational and healing outcomes in matters that might otherwise end up in acrimonious or punitive litigation. Students will have the opportunity to evaluate these alternatives and compare them to the traditional models to which they are exposed in most of their classes and in other practice settings.

This is not a traditional externship. It is limited in time and ambition. While it would be ideal for the student to actually participate in the professional work of your office, it is not a requirement of the course. Depending on the nature of the placement, students may have a largely observational experience. Whatever the experience, however, deep reflection is essential. By agreeing to host a student, you are agreeing to spend time discussing the student’s experiences in the placement, and answering questions to further the student’s learning objectives. We encourage you to explore issues of ethics, professional norms, skills, the demands and stresses of law practice generally, or in your particular setting, trends you see in law practice, and ways in which laws and legal institutions might be improved.

While any placement may entail some small amount of work that is strictly speaking non-legal, most of assignments, if any, must be legal work. Please only ask the student to perform general office duties, such as photocopying, message delivery, or routine filing, occasionally if at all, and only if they are an ordinary part of the responsibilities of other professional employees in the office.

Each student is required to spend between 56 and 70 hours in her placement. To the extent possible given the nature of your practice, you and

In addition to expanding my network in order to secure placements for the students, I wanted to and did bring in guests from the various sectors of the Integrative Law movement to educate the students about the available models for practicing law as a healing profession. A practitioner of Transformative Mediation conducted a mock demonstration of how the process worked with two students chosen, on the spot, to play the parties in an employment dispute. A collaborative lawyer and the family specialist with whom he partnered, explained their respective roles in the collaborative process.<sup>51</sup> A Touro Law alumnus with a PhD in psychology as well as his J.D., introduced the students to the program he had originated for youth charged with drug offenses, an alternative to formal adjudica-

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the student should agree in advance on specific day(s) and times that the student will be at the placement. Except in emergencies or other unforeseen circumstances, you and the student shall agree to give the other advance notice if changes to this schedule become necessary.

You may ask the student to do research, as long as the research in some way relates to the goals of this course. Students may use their Westlaw and LexisNexis accounts when completing work assignments when, as in this case, the student is receiving academic credit for the placement. Clients, however, cannot be billed for any research or other work the extern performs. Also, please be aware that the student cannot receive financial compensation for any work they do.

Students are expected to comport themselves in a professional manner at all times. However, law students may still be learning what it means to be a professional. Should there be any issues with respect to professionalism, including, but not limited to, inappropriate attire, behavior, missed deadlines, or lack of punctuality, we ask that you discuss the issue with the student. If that fails to resolve the concern, please don't hesitate to contact Professor Silver to discuss.

Should you have any questions or concerns about the contents of this Memorandum, or anything else about this course, please let me know. Otherwise please review this Memorandum with the student. I ask that both of you sign it and have the student return it to me before or at our next class.

Thank you so much for providing this opportunity to our student.

_____	Date: _____
Placement Supervisor	
_____	Date: _____
Student	

Sincerely,

\_\_\_\_\_  
 Marjorie A. Silver  
 (631) 761-7144  
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<sup>51</sup> See, *Find a Professional*, COLLABORATIVE DIVORCE RESOLUTIONS, <http://cdarli.com/find-a-professional/> (last visited Aug. 7, 2017).

tion or detention.<sup>52</sup> In this program, the youth are nonjudgmentally empowered to see the consequences of their offending behavior, and learn how to avoid placing themselves in circumstances that would lead to further transgressions. The program culminates in the drafting of an apology letter that each youth reads in open court. The student who externed in that program in the fall of 2015 was invited to run the program during the following semester!

The presiding judge in the local Integrated Domestic Violence Court shared with the students the history of the courts and the transformation now occurring with the increase in courts designed to address the underlying problems that cause people to become involved with the criminal justice system. The judge who presided over the local drug and mental health courts attended our end of semester celebration, and exemplified what it means to approach judging with open-hearted compassion.<sup>53</sup>

#### ANTIDOTE TO TRADITIONAL LEGAL EDUCATION

Students who are drawn to my course are often those who question whether what they are learning in the core curriculum is congruent with the future career they imagine for themselves. They may doubt their decision to enter the law at all. Often, they experience the first year of law school (and perhaps beyond) as having little or nothing in common with what they dreamed of when they dreamed of becoming lawyers. Most students indicate in their application essays that they want to become lawyers because they want to help people. A curriculum that focuses primarily on distilling arguments and holdings from appellate cases, removed from the personal stories of the people who were the parties, rarely if ever engages what brought them to the law in the first place. And while clinics generally provide opportunities for appreciating the humanity behind the practice of law, most clinics are still grounded on an adversarial model of representation.

<sup>52</sup> T.A.S.T.E., TASTE BROCHURE, <http://www.restorativesolution.com/wp-content/uploads/2012/06/TASTEBrochure-edit.pdf> (last visited Dec. 25, 2017).

<sup>53</sup> Other guests have included Carol Fisler, the director of the Brooklyn Mental Health Court at the Center for Court Innovation, *Carol Fisler*, CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org/> (last visited Dec. 25, 2017); Professor Susan Brooks on effective communication, see Susan Brooks & Inga N. Laurent, *Effective Communication and Professional Relationships*, ch. 5, pp. 83-109, in *LEARNING FROM PRACTICE*, *supra* note 1; J. Kim Wright, *supra* note 26, and Shoshanna Silverberg on Sharing Law and Conscious Contracting, see *Sharing Law & Conscious Contracting: Socially Conscious Contracts*, Apr. 2, 2015, in *CUTTING EDGE LAW: WHAT IF LAWYERS WERE PEACEMAKERS, PROBLEM-SOLVERS AND HEALERS OF CONFLICT*, <http://cuttingedgeTaw.com/blog/sharing-law-conscious-contracting-socially-conscious-contracts> (last visited Dec. 23, 2017).

Added to this, many if not most students soon find themselves experiencing heightened anxiety.<sup>54</sup> The workload seems overwhelming, and they begin to question their decisions to come to law school. Or they lose sight of why they came, as competition for grades, law review, and summer employment opportunities consumes their consciousness.<sup>55</sup>

My course offers them the choice to be different kinds of lawyers—lawyers who can enhance their clients’ well-being *and* their own; lawyers who can contribute to addressing the brokenness of justice-involved persons through appropriate resources and treatment, rather than incarceration. And they meet lawyers and judges who have enriched their own lives as well as those they represent, supervise, or serve through work that they love. Whether these students ultimately seek employment in these settings or not, they are able to experience that there are many ways to be a lawyer, and many ways to find joy and satisfaction in the practice of law.<sup>56</sup> By introducing them to a number of humanistic innovations in processes and settings designed to achieve justice and resolve disputes, they are better able to critically examine how well the adversarial system of justice and traditional law practice succeed, or fail to succeed, in enhancing the well-being of all stakeholders.

#### CHALLENGES

Nonetheless, I have faced obstacles in achieving my goals for the course. The biggest obstacle is enrollment. I have been scheduled to teach the seminar a total of five times (I think); it has been canceled for under-enrollment three of those times. Each time is a huge disappointment for me, and for at least some of the students who had registered.

I believe the explanation for under-enrollment in a course like mine is multifold. One, Touro, like most law schools, has experienced declining enrollment in recent years, so there are simply fewer students available to take electives. Two, our registration process operates on a bit of a free-market model; subject to demands for coverage

<sup>54</sup> Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-determination Theory*, 33 PERSONALITY SOC. PSYCHOL. BULL. 883, 894 (2007) [Hereinafter *Negative Effects*]; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. LAW 261, 274–75, 281 (2004) [Hereinafter *Undermining Effects*].

<sup>55</sup> Sheldon & Krieger, *Negative Effects*, *supra* note 54; Sheldon & Krieger, *Undermining Effects*, *supra* note 54, at 261 (2004).

<sup>56</sup> See STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).

of required courses, faculty may offer the electives they wish to teach. Students vote with their registrations; most semesters two or more electives are therefore canceled for under enrollment. Three, students face internal and external pressures to take bar-related courses; my seminar certainly doesn't fall into that category. And four—perhaps the most significant—is that among most of my colleagues, a course about transforming the legal system into a more humanistic enterprise is not the sort most are likely to recommend to the students they advise.

#### CONCLUSION

If we want more compassionate lawyers, we need to expose our students to compassionate lawyers and judges. If we don't expose our students to alternative ways to be lawyers and judges, then it is completely serendipitous whether they ever will learn that such options exist. If we want more lawyers to find "joy and satisfaction" in their careers, then we need to increase their options as to how to practice law in ways that comport with their deepest values. Practicing integrative law enhances the well-being of clients and lawyers, justice-involved individuals and judges, and the communities which they all comprise. Even if these students don't become integrative practitioners or problem-solving court judges, what they learn in this course may carry over into their "traditional" careers, and they may ultimately transform what we now mean by traditional practices of law and systems of justice.