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STEPPING OUTSIDE THE BOX: VIEWING YOUR CLIENT IN A WHOLE NEW LIGHT

MICHAEL L. PERLIN*

I. INTRODUCTION

I have been a professor for over sixteen years. For that entire time (and, indeed, for years before that)¹ legal education has been under attack for a variety of reasons, not the least of which is the allegation that it has led to the law becoming “divorced from society and life,” and to the sever[ing of the] connections between the study of law and American political, social, and economic policies.² Legal education has been criticized for ignoring students’ need for feedback,³ for class size,⁴ for “failing to teach students many

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1. See James Rowles, *Toward Balancing the Goals of Legal Education*, 31 J. LEGAL EDUC. 375, 394 (1981) (tracing student criticism of legal education to the 1930s); see also Timothy Floyd, *Legal Education and the Vision Thing*, 31 GA. L. REV. 853, 867 (1997) (arguing legal education has been criticized “for decades”). For an early critique of legal education in the United States, see ALFRED Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 416-20 (1921). Of course, legal education has been criticized since Blackstone’s time. See David Lemmings, *Blackstone and Law Reform by Education: Preparation for the Bar and Lawyerly Culture in Eighteenth-century England*, 16 LAW & HIST. REV. 211, 213 (1998) (“Blackstone himself admitted that the ‘usual entrance on the study of the law’ provided the student with ‘no public direction in what course to pursue his inquiries,’ and complained, ‘In this situation he is expected to sequester himself from the world, and by a tedious lonely process to extract the law from a mass of undigested learning.’”).

2. Paula Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Penology of Vincent Chin*, 1 MICH. J. RACE & L. 347, 403 (1996). For a sampling of the literature, see e.g., Gregory Crespi, *Comparing United States And New Zealand Legal Education: Are U.S. Law Schools Too Good?*, 30 VAND. J. TRANSNAT’L L. 31, 32, 32 n.1 (1997) (citing, inter alia, Symposium, *Legal Education*, 91 MICH. L. REV. 1921 (1993)); Symposium, *Civic and Legal Education*, 45 STAN. L. REV. 1525 (1993); Symposium, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 277 (1992); *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR [hereinafter MACCRATE REPORT].

3. See, e.g., B.A. Glessner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 646, 657-58 (1991).

4. See, e.g., Sarah E. Theimann, *Beyond Guinier: A Critique of Legal Pedagogy*, 24

of the practical lawyering skills they will need in practice,”⁵ and for “warping personalities, undermining ethical and social values, and fostering cynicism in students.”⁶ Law school has also been criticized for inducing and increasing psychological distress in law students.⁷ Research concludes that law students “are much more likely than the general population to experience emotional distress, depression, anxiety, addictions, and other related mental, physical and social problems.”⁸ A recent article presented this gloomy summary:

Students also report extreme self-punishing attitudes, obsessive self-doubt, apathy, withdrawal from normal activities, fear, apprehension, a sense of impending doom, and panic attacks. Some students report vivid, catastrophic images of, for example, losing control and running out of final examinations. Interpersonal relationships with family members or significant others often are strained, and relationships with other students are often characterized by enmity, hostility, and overt contempt.⁹

In response, observers have called for substantial changes in “core and elective curricula, legal writing programs, clinical and other ‘skills’ -training programs, instruction in values and ethics, admissions criteria, financial aid programs, faculty recruitment and evaluation policies, and other aspects of law school operation.”¹⁰

There is, I agree, much merit to many of these charges. Yet, little atten-

N.Y.U. REV. L. & SOC. CHANGE 17, 24-26 (1998).

5. James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 392 (1996-97).

6. Suzanne Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 593 (1996) (citing Ronald M. Pipkin, *Legal Education: The Consumer's Perspective*, AM. B. FOUND. RES. J., 1161, 1163 (Fall 1976)). See also James B. Taylor, *Law School Stress and the “Deformation Professionnelle,”* 27 J. LEGAL EDUC. 251, 251 (1975).

7. See Segerstrom, *supra* note 6, at 593-96 (citing Glesner, *supra* note 3, at 628; Taylor, *supra* note 6, at 253; Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 65 (1985); G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, AM. B. FOUND. RES. J., 225, 225-26 (Spring 1986); Faith Dickerson, *Psychological Counseling for Law Students: One Law School's Experience*, 37 J. LEGAL EDUC. 82, 82 (1987)). See also Ann Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 525-26 (1998) (citing studies that revealed that law students were “within normal psychological ranges when they started law school but became disproportionately dysfunctional soon thereafter, and experienced increasing dysfunction as they progressed through their legal education.”).

8. Lawrence Krieger, *What We're Not Telling Law Student—and Lawyers—that They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J. L. & HEALTH 1, 4 (1998-99).

9. Sengstrom, *supra* note 6, at 594-95 (citing Barry B. Boyer & Roger C. Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 264 (1974)).

10. MACCRATE REPORT, *supra* note 2, at 266. See Crespi, *supra* note 2, at 32 (footnotes omitted).

tion has been paid to another shortcoming of legal education that, in the long run, may be as serious as any of those that have been more frequently discussed: the academy's failure to think seriously about how the process of legal education leads students to make short-sighted, narrow, and even self-destructive assumptions about both the legal process and the act of lawyering.

Prior to becoming a professor, I spent thirteen years in public interest law, representing a variety of individuals¹¹ who fall—globally—into the *Carolene Products* footnote four category of “discrete and insular minorities. . . [upon whom prejudice acts] . . . to curtail the operation of those political processes ordinarily to be relied upon to protect minorities.”¹² For my first six years of teaching, I directed New York Law School’s Federal Litigation Clinic, and, in that role, supervised students who represented persons with physical and mental disabilities in Supplemental Security Income, Supplemental Security Disability Income, and special education cases.¹³ Since that time, I have biannually taught a course entitled Mental Disability Litigation Seminar and Workshop, through which students are assigned to a public agency or public interest law office and—under the aegis of a mentor-attorney—provide representation to persons with mental disabilities or to agencies that administer programs providing services to such persons.¹⁴ I also regularly supervise students in externship programs in a wide variety of public and private law settings.

In addition, of course, I teach “regular” law school courses: Civil Procedure, Criminal Law, Criminal Procedure: Adjudication, and three other mental disability law courses (Mental Health Law, Criminal Law and Procedure: The Mentally Disabled Defendant, and Seminar in Therapeutic Jurisprudence). In these courses, I use a variety of teaching methods,¹⁵ but the

11. I was for three years Deputy Public Defender in charge of the Mercer County (Trenton) NJ Office of the Public Defender, for eight, the Director of the Division of Mental Health Advocacy in the NJ Department of the Public Advocate, and for two Special Counsel to the Commissioner of the NJ Department of the Public Advocate.

12. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152-53 n.4 (1938). For a discussion on the impact this footnote had on the development of judicial activist protection of minorities (including mental disability law), see 1 MICHAEL L. PERLIN, *MENTAL DISABILITY LAW: CIVIL AND CRIMINAL* § 1-2.1, at 7-8 (2d ed. 1998), and Michael L. Perlin, *On “Sanism”*, 46 *SMU L. REV.* 373, 380-81 n.51 (1992).

13. For a sampling of cases, see, e.g., *Tirado v. Bowen*, 705 F. Supp. 179 (S.D.N.Y. 1989); *Alvarez v. Bowen*, 704 F. Supp. 49 (S.D.N.Y. 1989); *Baran v. Bowen*, 710 F. Supp. 53 (S.D.N.Y. 1989); *Mejia v. Bowen*, 1988 WL 125678 (S.D.N.Y. 1988); *Tirado v. Bowen*, 842 F.2d 595 (2d Cir. 1988).

14. See Keri K. Gould & Michael L. Perlin, “*Johnny’s in the Basement/Mixing Up His Medicine*”: *Therapeutic Jurisprudence and Clinical Teaching*, 23 *SEATTLE U. L. REV.* (forthcoming 2000) (manuscript at 5, on file with authors).

15. I use videotape simulations in Mental Health Law and in Criminal Law and Procedure: The Mentally Disabled Defendant that include counseling, trial and witness preparation vignettes. I regularly assign students to do oral trial and appellate arguments in both courses, and I also assign GERALD STERN, *THE BUFFALO CREEK DISASTER* (1976) to my Civil Procedure students, STEPHEN PHILLIPS, *NO HEROES, NO VILLIANS: THE STORY OF A MURDER TRIAL*

majority of the class time is still spent talking about cases¹⁶ in which I ask students lots of questions and they give me lots of answers, and, with that method, we both (hopefully) learn something more about the underlying material. I've come to a few conclusions about the teaching enterprise, and these conclusions are the focus of this article.

My thesis is as follows: We have, blindly, spent the past century locked into a method of legal education that may or may not have worked at Harvard in the 19th century, but which is increasingly irrelevant to the needs of lawyers and clients in 21st century America.

Our slavish adherence to the "case law method"—while doing a fine job in preparing a certain percentage of our students for becoming top-notch appellate litigators—fails miserably in most other ways.¹⁷ Additionally, of specific moment in light of California Western's focus on creative problem solving, I believe that the dominance of the case method as a *teaching* mode has a subtle, but corrosive, impact on the way our students practice when they graduate. It also affects the quality and range of legal services these future lawyers provide, and, not unimportantly, their level of satisfaction or dissatisfaction with the practice of law.

(1978) to my Criminal Procedure students, and PAUL ROBINSON, *WOULD YOU CONVICT?* (2000) to my Criminal Law students.

I now also teach an Internet-based distance learning course in Mental Disability Law under the auspices of New York Law School and Compass Knowledge, Inc. This is, to the best of my knowledge, the first online mental disability law course ever offered by an accredited law school. See *Juris Alliance, Mental Disability Law Certificate Program* (visited June, 2000) <<http://www.jurisalliance.com/mdl>>.

16. Not the Professor Kingsfield model of cinematic *Paper Chase* fame, of course. See Pamela Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53, 159-60 (1999):

I attempt to eliminate as much fear as possible. I try to remove from students the fear that I will be a professor in the likeness of Professor Kingsfield from the movie *The Paper Chase* or that I am a Socratic Monster, i.e., one of those 'professors who don't actually teach. They instill fear. Armed with students' names and seating charts, they have the class at their mercy, and they love it. They can sense fear. Never ask these teachers a question; they will make you answer it.' Unlike the expected Socratic professorial Monster, I like to think my approach to teaching is more student-friendly; it is not designed or implemented to instill fear or to intimidate.

17. For an important early criticism, see Jerome Frank, *What Constitutes a Good Legal Education?* 19 A.B.A. J. 723 (1933). For more contemporary criticisms, see, e.g., Myron Moskovitz, *Beyond the Case Method It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992); Russell Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 561-66 (1991). For a powerful critique of the pedagogical assumptions implicit in the Socratic method, see Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN L. REV. 1571, 1573-75 (1993). At least one critic has concluded that the Socratic method is *not* the only (and perhaps not the main) villain. See Segerstrom, *supra* note 6, at 596 ("However, law students experience a number of different stressors unrelated to the Socratic method (e.g., time pressure), and these other stressors may have more impact on law students than the Socratic method.").

The case method—which, among other things, denies that we all have right brains as well as left brains¹⁸—allows us to (indeed, forces us to) ignore much of what is most important about legal education.

- First, it allows us—indeed, *forces* us—to ignore everything about a case other than that which the appellate court chooses to share with us.
- It allows us—indeed, *forces* us—to ignore everything about the parties before the court that happened before the “critical moment” that led to the litigation or happened after the court’s judgment.
- It allows us—indeed, *forces* us—to ignore everything about other parties who may not have been part of the litigation but were of critical importance to the incident or event that *led* to the litigation.
- It allows us—indeed, *forces* us—to ignore everything about what impact the litigation actually had on the individuals who were subject to it.

And there’s more:¹⁹ the case method shows students how a collection of individual cases develops into a coherent body of law (allegedly), and how doctrines in criminal law, torts, or other first year courses emerge from the individual cases. Yet, the case method tells us nothing about the impact of the doctrine developed in case #1 on the *parties* in case #2, case #100, or case #n.

I expect that the reason why this is so is that much of the law continues to be based on the shaky house of cards that are called “neutral principles.”²⁰ As I will discuss, I believe that this adherence is a sham. After thirteen years as a “real lawyer”²¹—at every level of court from the Trenton Municipal

18. See, e.g., SALLY SPRINGER & GEORG DEUTSCH, *LEFT BRAIN, RIGHT BRAIN* 184-87, 190-92 (1993).

19. See also David Barnhizer, *Princes of Darkness and Angels of Light: The Soul of the American Lawyer*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 371, 471 (2000) (“Nothing in legal education prepares the prospective law graduate for the responsible use of power or the need for accountability.”).

20. Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959). I critique this assumption in, inter alia, Michael L. Perlin, “*Make Promises by the Hour*”: *Sex, Drugs, the ADA, and Psychiatric Hospitalization*, 46 DEPAUL L. REV. 947, 975-76 (1997):

This approach, of course, assumes a fact not in evidence: that judges and fact finders are able to approach cases analytically with the sort of ‘reasoned elaboration’ and ‘neutrality’ urged by Wechsler and his adherents. An examination of the development of mental disability law jurisprudence suggests that ‘neutral principles’ are simply not a factor in the case law in this area. Rather, the twin themes of ‘sanism’ and ‘pretextuality’ dominate the mental disability law landscape.

I discuss the meaning and significance of “sanism” and “pretextuality” in, inter alia, MICHAEL L. PERLIN, *THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL* (2000).

21. See Patrick Schiltz, *Legal Ethics in Decline: the Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 777 (1998)

Court to the United States Supreme Court—a few points are clear to me. Judges are not neutral. Jurors are not neutral. *None* of us is, truly, neutral. And our dogged insistence on retaining this doctrine of the case method as a major piece of legal education exposes the shallowness of much of our effort.

The case method presupposes that we are rational. It presupposes that lawyers are rational, that individual fact-finders are rational, that appellate judges are rational. At best, that's just plain silly;²² at worst, it exposes the pretextual basis of much of the legal system.²³

Finally, I want to offer an alternative approach—some creative problem solving, perhaps—to much of this. I want to focus on therapeutic jurisprudence as a tool to inform classroom teaching and classroom discourse, and as, perhaps, a redemptive tool to help legal education prepare for the next century. For it is only through a new approach to legal education that lawyers—the current law students—will “get” what they must “get” in order to be complete lawyers. It is only in that way that these lawyers will be able to see their clients in a new light, and not simply as examples of “slip and falls” or “dart outs” (choose the shorthand of the substantive legal area of your choice), but as individuals who require the individualized presentation of creative and individualized legal services.

My article will thus proceed in this way. Part II continues my critique of the case method. Part III discusses the connection between what we learn (and how we learn it) and what we subsequently do. I will then, in Part IV, briefly apply some Creative Problem Solving (CPS) ideas to the teaching enterprise, as a means of “stepping outside of the box.”²⁴ Finally, I will offer

(quoting Carrie J. Menkel-Meadow, *Can a Law Teacher Avoid Teaching Legal Ethics?*, 41 J. LEGAL EDUC. 3, 8 (1991)):

Over the next three years, the law student will spend literally hundreds of hours with her professors. Her professors will be the most important—perhaps the only—professional role models that she will have during this formative stage of her career. Her professors will influence her in the readings that they assign, in the hypotheticals that they invent, in the war stories that they tell, and in the comments that they make in class. In all these ways, we professors “convey notions of who we think the ‘real lawyers’ are.”

In my 25 years of presenting CLE programs and workshops to forensic psychologists and psychiatrists, there has been one constant: when I point out to my audience that I spent 13 years as a “real lawyer,” attendees begin to listen to me in a very different (and much more careful) way. The same thing frequently happens when I’m giving a job reference over the telephone.

22. See Perlin, *supra* note 12, at 374; see generally *THE PASSIONS OF LAW* (Susan Bandes ed., 1999) (asserting, through thirteen different essays, that emotions and passions—from disgust to a desire for revenge—pervade the law).

23. See generally PERLIN, *supra* note 20 (arguing throughout book that pretextuality, and its maddening grasp on the legal system, has controlled—and continues to control—modern mental disability law). I define ‘pretextuality’ *infra* at text accompanying notes 46-47.

24. On how legal thinking is often “boxed in” by old paradigms, see, e.g., David Kennedy, *When Renewal Repeats: Thinking Against the Box*, 32 N.Y.U. J. INT’L L. & POL. 335, 456-57 (2000); Michaela Moore, *Thinking Outside the Box: A Negotiated Settlement Agreee-*

some recommendations for the future.

II. CASE METHOD CRITIQUE

In 1870, Dean Langdell envisioned the case method as a scientific means of using appellate cases to distill legal principles in a way that emphasized—almost to the exclusion of all other modes of instruction—*reasoning* skills. He emphasized that a faculty experienced in practicing law was a sign of “law school poverty,”²⁵ and was clear as to his biases: “What qualifies a person . . . to teach law is not experience in the work of a lawyer’s office, not experience in dealing with men, not experience in the trial or argument of causes, not experience, in short, in using law, but experience in *learning law*.”²⁶

I acknowledge that the “Socratic Method” does an excellent job of teaching analytical skills and of enabling students to synthesize multiple concepts.²⁷ I believe, however, as a *method*, it falls short—seriously short—in other areas.²⁸

The Socratic Method has the potential to be aggressive, demeaning, emotionally destructive, authoritarian and brutal. It also wastes a lot of time. Beyond this—and perhaps just as importantly—it is simply unadaptable to do the job of preparing students for the practice of law in just about *every* other area *except for* case analysis (which it does well). The Method falls short in these areas:²⁹

- teaching *lawyering skills* (fact-investigation, planning, drafting, research, trial strategy and tactics, and advocacy);
- teaching *human relation skills* (interviewing, counseling, negotiating, communications, and emotional understanding in general);
- teaching the *ethical and social responsibilities of the profession*;

ment for the Remediation of the General Electric/Housatonic River Site Ensures Environmental Health and Economic Prosperity for Pittsfield, Massachusetts, 26 B.C. ENVTL. AFF. L. REV. 577, 616-17 (1999).

25. George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 164 (1974).

26. Christopher C. Langdell, *Harvard Celebration Speeches*, 3 L.Q.R. 123, 124 (1887); see also ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 38 (1983) (explaining that not only did Langdell feel that a case-driven teaching method must be insulated from practical experience, but also that any invasion of such experience into this method would “sully its purity”).

27. On whether the phrase “Socratic method” even describes the style of classroom teaching reflected in the case method, see Richard Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 729-30 (1989) (concluding that this method is *not* Socratic).

28. For a full analysis, see Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 118-22 (1999). On other alternative teaching methods, see, e.g., Steven Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1 (1996).

29. On how it falls short in teaching professional judgment, see Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

- teaching the *impact of other disciplines* (e.g., psychology, economics, technology) on the practice of law; and
- teaching an understanding of the law *as a social institution*.

As a result of this awareness, it became clear to many—including Judge Jerome Frank, Karl Llewellyn, and former Chief Justice Warren Burger³⁰—that law school training was going to have to be critically restructured to give students some sense of, in Llewellyn’s words, “the problem of turning legal or human knowledge into action.”³¹

Judge Frank’s 1933 indictment of the Langdellian³² method retains its vigor today:

The lawyer-client relation, the numerous non-rational factors involved in a trial, the face-to-face appeals to the emotions of juries, the elements that go to make up what is loosely known as the “atmosphere” of a case—everything that is undisclosed in upper-court opinions—was virtually unknown to (and was therefore all but meaningless) to Langdell. The greater part of the realities of the life of the average lawyer was unreal to him.³³

To Frank, students trained under the Langdell system are like horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else.³⁴ As he succinctly stated: “They resemble prospective dog breeders who never see anything but stuffed dogs.”³⁵

In “real life,” a practical lawyer has to be able to make reasonable decisions, often with little or no guidance from anyone else. She has to be able to depend on her own resources, and needs a vast number of practical skills at her command to utilize quickly and decisively on demand. Further, a lawyer must be able to interrelate her own values and emotions in appropriate ways: a person cannot completely sever one’s own personality from the context in which that person functions, but must be able to operate in this context as a practicing lawyer.

The case method forecloses almost totally the involvement of *emotions*, as it emphasizes an *abstract* and *intellectualized* approach, heavy on *verbali-*

30. See generally Frank, *supra* note 17; Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Karl Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651 (1935); Warren Burger, *Some Further Reflections on the Adequacy of Trial Counsel*, 49 FORDHAM L. REV. 1 (1980). On Chief Justice Burger’s perspectives, see Jon S. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1467-68 n.34 (1998); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View From the First Floor*, 28 AKRON L. REV. 463, 469-70 (1995).

31. Grossman, *supra* note 25, at 168 (citing Llewellyn, *supra* note 30, at 658).

32. This is the phrase that Professor Neumann prefers to “Socratic method.” See Friedland, *supra* note 28, at 1 n.2 (quoting Neumann, *supra* note 27, at 728).

33. JEROME FRANK, COURTS ON TRIAL, MYTH AND REALITY IN AMERICAN JUSTICE 225-26 (2d ed. 1963).

34. See *id.* at 227.

35. *Id.* Frank’s insights in this context are discussed in Maureen Laflin, *Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV. 1, 29 (1997-98).

zation and rationalization.³⁶ This avoidance of emotions provides no opportunity for the development of emotional strength to deal with stress and to deal with emotionally-significant situations.³⁷

All attorney-client relationships involve, to some degree, human interaction and emotional crises. The handling of these crises, for better or worse, affects the relationship between the parties, the information-gathering process, the development of trial strategies, and the case's outcome. These simply cannot be taught through the sole use of the case method. In short, while the case approach can teach cognitive skills expertly, the learning process is incomplete until the student can synthesize substantive concepts and methods into her actual performance in a real-life context.

I believe that there are at least five goals to which we, as legal educators, should strive:

1. to teach legal skills development;
2. to share legal and extra-legal system knowledge;
3. to promote professional responsibility growth;
4. to inspire self-knowledge; and
5. to increase human relations understanding.

I believe that sole reliance—or even a predominant reliance—on the case method dooms us to failure in most of these enterprises.

I start with the assumption that a tremendously important portion of a lawyer's work involves dealing with other people: listening to clients, developing a rapport with them, and educating and persuading judges, jurors, and adversaries (and, in some public interest law cases, the public at large). Two lawyers may be equally skillful in the substantive law, but the one who is more skillful in interpersonal interactions will frequently be the true "success."³⁸ Being able to deal with other people requires an understanding of psychological skills, and of how to meet the emotional and psychological needs of others (including the client, the opponent, judges, jurors), and, not unimportantly, the lawyer herself.³⁹

36. See, e.g., Marjorie Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 280 n.99 (1999), quoting Bernard L. Diamond, *Psychological Problems of Law Students*, in LOOKING AT LAW SCHOOL 69-70 (Stephen Gillers ed., 4th ed. 1997):

Certainly, if Anna Freud's principle of identification with the aggressor holds as true for the educational process as it does for the developmental process of the child, the Socratic method must provide the major source of the lawyer's notorious insensitivity to the fine points of human emotional relationships. The Socratic method is a marvelous device for the emphasis of the purely logical, abstract essence of the appellate case. The deductive precision of such Socratic dialogue can further the illusion, claimed by Langdell, that law is a true science.

37. See Gould & Perlin, *supra* note 14 (manuscript at 25, on file with authors).

38. By "success," I mean that she will be a better advocate and counselor, but I expect that she will also be more successful in the material sense of the word as well.

39. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997).

Developing these skills requires several capacities: the capacity to be *open to new experiences*; the capacity to be able to *adjust responses and anticipations on the basis of "new developments in an interaction"*;⁴⁰ and the capacity to be able to *understand one's own feelings and fears as a lawyer*.⁴¹ The best lawyer-counselors are those who recognize the elements of human interaction in counseling, who are open to their clients, who respond to the "whole person" of the client, and who help the client help herself. CPS speaks directly to this precise issue. All too often, law school selection, ethos, and training "trains out" these feelings and frequently suppresses humanistic qualities in lawyers.⁴² The use of CPS methods, on the other hand, will help nurture these skills and raise awareness of the use of a humanistic approach to both legal education and the attorney-client relationship.

When the case method is unpacked, it reveals itself to be based on two other assumptions that we rarely critique: as I've already suggested, the assumption of *neutral* principles, and the assumption of *rationality*. Neither of these assumptions comports with *anything* we have learned in the past century from cognitive, social, or behavioral psychology, yet we slavishly repeat these shibboleths and we convince our students that this is "the way it is."⁴³

My major area of scholarly interest is mental disability law. For the past several years, I've been writing mostly about what I call *sanism* and what I call *pretextuality*.⁴⁴ What do I mean by the terms "sanism" and "pretextuality"? Simply put, "sanism" is an irrational prejudice of the same quality and character of other irrational prejudices that cause (and are reflected in) prevailing social attitudes of racism, sexism, homophobia and ethnic bigotry. It infects both our jurisprudence and our lawyering practices. Sanism is largely invisible and largely socially acceptable. It is based predominantly upon stereotype, myth, superstition and de-individualization, and is sustained and perpetuated by our use of alleged "ordinary common sense" (OCS) and heu-

40. In football jargon, the ability to "call an audible."

41. I remember my shock when I was a boy and read that both the comedian Red Skelton and the hockey goalie Jacques Plante admitted to vomiting before every live performance/game.

42. See, e.g., Silver, *supra* note 36, at 288; James A. Elkins, *A Humanistic Perspective in Legal Education*, 62 NEB. L. REV. 494, 505-08 (1983); Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514, 546-47 (1978).

43. Cf. Michael L. Perlin, *Unpacking the Myths: The Symbolism Mythology of Insanity Defense Jurisprudence*, 40 CASE W. RES. L. REV. 599, 731 (1989-90) ("[U]ntil we acknowledge the staying power and the universality of these myths [about the insanity defense], we are doomed to a jurisprudence that will proceed on the same blind path that we have followed for the past two hundred fifty years: one developed out of consciousness.")

44. See PERLIN, *supra* note 20; Michael L. Perlin, "Half-Wracked Prejudice Leaped Forth": *Sanism, Pretextuality, and Why and How Mental Disability Law Developed As It Did*, 10 J. CONTEMP. LEG. ISS. 3 (1999); Michael L. Perlin, *Therapeutic Jurisprudence: Understanding the Sanist and Pretextual Bases of Mental Disability Law*, 20 N. ENG. J. ON CRIM. & CIV. CONFINEMENT 369 (1994).

ristic reasoning in an unconscious response to events both in everyday life and in the legal process.⁴⁵

“Pretextuality” means that courts accept (either implicitly or explicitly) testimonial dishonesty and engage similarly in dishonest (frequently meretricious) decision-making, specifically where witnesses, especially *expert* witnesses, show a “high propensity to purposely distort their testimony in order to achieve desired ends.”⁴⁶ This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, blase judging, and at times, perjurious and/or corrupt testifying.⁴⁷

I believe it is *impossible* for mental disability law students to even begin to come to grips with these issues using a solely case-based teaching methodology.⁴⁸

Professor Janeen Kerper’s provocative and excellent recent article on the shortcomings of the case method (looking mostly through the lens of the *Palsgraf* case) explains how CPS—premised on a collaborative enterprise—can better allow lawyers to provide more effective solutions to client problems, and to help clients avoid conflict in the first instance.⁴⁹

She notes perceptively that the case method—which teaches students to think like appellate judges⁵⁰—blunts the abilities of students to understand that “their available options are greater, and therefore their own thought processes can be much broader”⁵¹ if we use alternatives to a strictly case-based pedagogy. And I agree.

45. See Michael L. Perlin, *supra* note 12, at 374-75. See generally Michael L. Perlin, *The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone?* 8 J. L. & HEALTH 15 (1993-94) (arguing that even in the best cases, the problems presented by pretextual decision-making affect social and legal discourse concerning mentally ill individuals); Michael L. Perlin, *The Sanist Lives of Jurors in Death Penalty Cases: The Puzzling Role of “Mitigating” Mental Disability Evidence*, 8 NOTRE DAME J. L. ETHICS & PUB. POL. 239 (1994).

46. Charles Sevilla, *The Exclusionary Rule and Police Perjury*, 11 SAN DIEGO L. REV. 839, 840 (1974), cited in Michael L. Perlin, “*There’s No Success like Failure/and Failure’s No Success at All*”: *Exposing the Pretextuality of Kansas v. Hendricks*, 92 NW. U. L. REV. 1247, 1252 n.35 (1998).

47. See Perlin, *supra* note 46, at 1252. See also generally Michael L. Perlin, *Pretexts and Mental Disability Law: The Case of Competency*, 47 U. MIAMI L. REV. 625, 627-30 (1993); Michael L. Perlin, *Morality and Pretextuality, Psychiatry and Law: Of “Ordinary Common Sense,” Heuristic Reasoning, and Cognitive Dissonance*, 19 BULL. AM. ACAD. PSYCHIATRY & L. 131 (1991).

48. See generally Gould & Perlin, *supra* note 14 (advocating the integration of Therapeutic Jurisprudence into a clinical legal education).

This is interesting: when I discuss the basic inability of students to grasp issues using case-based teaching with colleagues and friends who teach immigration law, or elder law, or sex discrimination law, or bankruptcy law, they often say, “That’s *exactly* how it is in my field too.” I expect that this is an insight worthy of further exploration.

49. See Janeen Kerper, *Creative Problem Solving vs. the Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998).

50. See *id.* at 371.

51. *Id.*

In short, continued devotion to a solely (or disproportionately predominantly) case-method basis of legal education keeps us “in the box,” and inhibits us from expanding our array of options in a way that would benefit our students, our clients, and ourselves.

III. THE CONNECTION BETWEEN HOW WE LEARN AND WHAT WE DO

I think there’s even more to all of this than simply a critique of teaching styles. I say that because I am convinced that the *way* we teach shapes not only the way that our students *learn* the law, but also how they *practice* law. Furthermore, I am persuaded that this connection has far-reaching results in terms of the quality of law that is practiced, the way the rest of the world perceives us, and, not insignificantly, the level of satisfaction that lawyers have with their profession and, ultimately, with their lives.

Intuitively, we know that the way we learn *anything* has a major impact on the way we do what it is we learn. Think about the way your sports coach coached you or the way your music instructor shaped the lessons. Then think about how that translated—for better or worse—into the kind of basketball player or clarinetist you turned into. More to the point: think about how therapists are trained and how that training affects—perhaps *predetermines*—the way that therapy is practiced. Think about the difference between a therapist who learns primarily the different chemical properties of the major phenothiazine drugs, and the one who is taught about a variety of therapeutic interventions. Then, finally, think about how that affects what goes on in the therapeutic session.

I was struck, in Professor Kerper’s article, by her references to John Delaney’s 1983 book.⁵² Consider what Professor Delaney, who taught at NYU at the time he wrote this book, had to say by way of advice for first year law students:

To understand what you do in the first year of law school, it may help to know what you will not do.

You will *not* participate in lengthy class explorations of:

- justice and the requirements of a just society
- abstract philosophical and ethical questions
- economic and sociological theories
- social science research methods, reports and data
- political issues.⁵³

Perhaps these areas are not discussed in Professor Delaney’s classes, but they certainly are in mine. These subjects are explored not just in my Mental Health Law classes, but in my Civil Procedure classes, my Criminal Procedure classes, and my Criminal Law classes. For I believe that if we do *not*

52. *See id.* at 358.

53. *Id.* (quoting JOHN DELANEY, HOW TO BRIEF A CASE, AN INTRODUCTION TO LEGAL REASONING 1-2 (1983)).

discuss each of these broad themes, we are shortchanging our students as law students, as lawyers, and as societal decision-makers.

Professor Thomas Barton has articulated what he sees as the central theme of CPS:

Legal solutions traditionally are instrumental, relying on both power and truth to fashion rules that attempt to conform social environments to the purposes of a person or group. In part, the aim of creative problem solving is to make law a more sensitive and respectful shaper of the social, physical and relational environment. Further, however, creative problem solving seeks to give lawyers the understanding, skills, and attitudes needed to apply tools of persuasion and reconciliation where that may be more appropriate. 54

Just as CPS is a tool to make the law “a more sensitive and respectful shaper of the social, physical and relational environment,” so too can it be a tool to make legal *education* a more “sensitive and respectful shaper . . .” And, in this way, it will sensitize our students—and our colleagues—to the potential range of choices before us.

IV. APPLICATION OF CPS TO TEACHING

So, how can CPS be applied to the teaching enterprise? Again, Professor Kerper has articulated some of the basic thoughts in her essay, but I have a few additional ideas that I believe are totally complimentary to what she has already set out. I believe CPS allows us—perhaps, *forces* us—to look at what happened *before* the “critical moment” that—purportedly—led to the filing of the law suit, what happened *after* the suit was concluded, and to consider “players” not on the “playing field” at the moment of litigation.

We know from thirty years of writing and research about class actions and public interest law that many of the most important legal disputes in our society are polycentric. The “Al v. Barbara” traffic accident that is at the heart of the methodology of the Federal Rules of Civil Procedure⁵⁵ in no way reflects the complexity of much modern litigation.⁵⁶ I supplement the class action materials in my Civil Procedure course, in fact, with the case of *Mendoza v. United States*,⁵⁷ the Tucson school district desegregation case. I do this in order to show my class how multiple interests—pitting white parents against African-American parents against Mexican-American parents (and then, subsequently, pitting one group of Mexican-American parents, incensed because the school in *their* neighborhood were targeted for closure,

54. Thomas Barton, *Creative Problem Solving: Purpose, Meaning, and Values*, 34 CAL. W. L. REV. 273, 274 (1998).

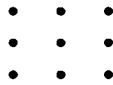
55. See, e.g., FED. R. CIV. P., Form 9.

56. See, e.g., Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, 1284, 1313-16 (1976) (discussing polycentricity of much public interest litigation).

57. 623 F.2d 1338 (9th Cir. 1980).

against *other* Mexican-American parents who were originally members of the same class)—navigate the shoals of complex litigation. But the issue is not *really* the question of the test to be used in determining when sub-classes are appropriate under Federal Rule 23; the issue is the extent to which legal solutions—appellate legal solutions alone—can really meaningfully solve the underlying social, political, cultural and psychic issues.

When I directed the Federal Litigation Clinic, I used to present my students with what is called the “nine dot problem”:⁵⁸ how many lines does it take to connect all the dots in this nine-dot puzzle?



Clearly, it takes some CPS strategies to solve this one. It always seemed to me that those students who could use their right brain and go out of the box (literally, and that is the real reason for the title of my article) eventually adapted better to the non-case-based methodologies used in the clinical setting.

One of the courses I teach is Therapeutic Jurisprudence (TJ).⁵⁹ Therapeutic jurisprudence studies the role of the law as a therapeutic agent, recognizing that substantive rules, legal procedures, and lawyers’ roles may have either therapeutic or anti-therapeutic consequences. In addition, TJ questions whether such rules, procedures and roles can or should be reshaped so as to enhance their therapeutic potential, while not subordinating due process principles. Therapeutic jurisprudence looks at a variety of mental disability

58. See EDWARD DE BONO, *LATERAL THINKING* 95-97 (1990). De Bono characterizes this as an “old problem.” *Id.* at 95. I first remember seeing it on placemats during my many hours drinking bad coffee at all-night diners in central New Jersey in the early-mid 1960’s. See also Brest & Krieger, *supra* note 29, at 538 (“Many people are unable to solve the puzzle because they unconsciously draw boundaries around the situation presented and thus limit the range of permissible solutions.”); *The Puzzle of Sparking Inspiration* (visited April 29, 2000) <<http://www.creativelivingmagazine.com/96wi/solving.html>>; University of Oklahoma, *Course Description of Creative Problem Solving, Human Relations 5072-225* (visited April 29, 2000) <<http://www.ou.edu/ap/syllabi/summer99/DR5072SH.HTM>>.

59. See generally THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT (David Wexler ed., 1990) (asserting that the study of law as a therapeutic agent can help shape the law and provoke insights in many fields of study besides the law, including public health, criminal justice, psychiatry, and philosophy); ESSAYS IN THERAPEUTIC JURISPRUDENCE (David Wexler & Bruce Winick eds. 1991); LAW IN A THERAPEUTIC KEY: RECENT DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (David Wexler & Bruce Winick eds. 1996); THERAPEUTIC JURISPRUDENCE APPLIED: ESSAYS ON MENTAL HEALTH LAW (Bruce Winick ed., 1998) (examining therapeutic jurisprudence’s goal of applying social science to study the effect of law on the physical and mental health of the people affected by the law); David Wexler, *Putting Mental Health Into Mental Health Law: Therapeutic Jurisprudence*, 16 LAW & HUM. BEHAV. 27 (1992); David Wexler, *Applying the Law Therapeutically*, 5 APP’L. & PREVEN. PSYCHOL. 179 (1996); David Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, 1 PSYCHOL., PUB. POL’Y & L. 220 (1995); 1 PERLIN, *supra* note 12, § 2D-3, at 534-41; *Bibliography of Therapeutic Jurisprudence*, 10 N.Y.L. SCH. J. HUM. RTS. 915 (1993).

law issues—and other legal issues—in an effort to both shed new light on past developments and to offer new insights for future developments.

In an article that I have co-authored with Professor Keri Gould—“*Johnny’s in the Basement/Mixing Up His Medicine*”: *Therapeutic Jurisprudence and Clinical Teaching*—we spent some time thinking about how TJ could be used in the clinical or workshop teaching areas.⁶⁰ We concluded that there were at least four ways in which TJ could enrich clinical teaching: “TJ informs our teaching of skills, gives us a better understanding of the dynamics of clinical relationships, investigates ethical concerns and the effect on lawyering roles, and invigorates the way we as teachers and students question accepted legal practice.”⁶¹ Each of these is, I think, relevant to the thesis of this article.

Of course, we must be cognizant of the differing abilities inherent in our classroom audiences. Students “‘get’ clinical skills at very different levels of understanding: some appear born to it; some learn, absorb and eventually make these skills a part of their ‘lawyering unconscious’; some learn enough to mechanically spout the right words and express the right emotions (while internally resisting); and some will have none of it.”⁶² Utilizing TJ can help us understand why this is, why some students seem to be “unable” to learn certain lawyering skills and why some may require different teaching approaches.⁶³ It can also be a powerful tool for understanding the complicated interpersonal dynamics inherent in clinical relationships: those of student-client, student-professor, student-student, student-significant other, and student-predecessor/student-successor.⁶⁴ Additionally, TJ can be of great value as we try to understand the impact of intra-psychic and interpersonal stress on the enterprise of legal learning.⁶⁵

Furthermore, TJ can be of tremendous worth in the way we weigh the multiple ethical issues we face in clinical education, issues that are inextricably intertwined with subissues of power, class, race, gender and difference.⁶⁶ It belabors the obvious to point out that the case method has no room for any of these. Therapeutic jurisprudence allows us—perhaps, it *forces* us—to take a hard look at the impact of these issues on students’ well-being in their role as clinical participants. I believe its “fit” with CPS has the potential to “jump start” any future inquiries in this area.⁶⁷

60. Gould & Perlin, *supra* note 14.

61. *Id.* (manuscript at 22, on file with authors).

62. *Id.*

63. *See id.* (manuscript at 23 & n.95, on file with authors).

64. *See id.* (manuscript at 23-24 & nn.96-97, on file with authors).

65. *See id.* (manuscript at 24, on file with authors). *See also* David Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, 1 PSYCHOL., PUB. POL’Y & L. 220, 228 (1995); David Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, 67 REV. JUR. U.P.R. 317, 332 (1998) (commenting on the relationship between TJ and lawyer stress).

66. *See* Gould & Perlin, *supra* note 14 (manuscript at 27, on file with authors).

67. On the relationship between TJ and CPS, see Thomas Barton, *Therapeutic Jurispru-*

In what I think is one of the most important law review pieces of the last several years, Professor Susan Daicoff ponders whether there is room for what she calls an “ethic of care” either in legal education or in law practice.⁶⁸ Her research tells us what some of us have intuitively assumed, and what talk show hosts on TV have had *no* doubt about for many years:⁶⁹ “That attorneys and persons choosing to attend law school have specific empirically-demonstrable personality characteristics, and that these characteristics are partially responsible for the current crisis in the legal profession.”⁷⁰ I think if Professor Daicoff’s work is re-read with one eye on the CPS literature, we can gain new insights into the relationship between lawyer dissatisfaction, client dissatisfaction, and the way we teach and learn in law school.⁷¹

Professor Ann Iijima has written recently about law school’s interference with students’ “maintenance and development of interconnections [and] their intra-connections—emotional, spiritual, and physical,” and how law school leads students to “suppress their feelings and come to care less about others.”⁷² She concludes that the law school environment “encourages emotional dysfunction in students even as it isolates them from the people and activities that are essential to the maintenance of a healthy emotional state.”⁷³ She focuses on the case method as a major culprit in all of this and offers a variety of prescriptive recommendations.⁷⁴ *Every* word Professor Iijima writes fits comfortably into the mode of CPS.

One of the basic principles of first-year Criminal Law is the concept of “willful blindness.” A defendant may be guilty of a crime if he “suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge.”⁷⁵ When I teach the principle to my class, I distribute a Herblock car-

dence, Preventive Law, and Creative Problem Solving: An Essay on Harnessing Emotion and Human Connection, 5 PSYCHOL., PUB. POL’Y & L. 921 (1999).

68. See Daicoff, *supra* note 39, at 1401-02.

On the “ethic of care,” see, e.g., Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1176 (1992); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What’s Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 620 (1994). I believe the phrase was first used in CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

69. See Michael L. Perlin, *A Law of Healing*, 68 U. CIN. L. REV. 407, 407 (2000) (“Talk show hosts in need of a quick laugh can always rely on a lawyer-bashing story.”).

70. Daicoff, *supra* note 39, at 1342.

71. See Perlin, *supra* note 69, at 410 (commenting on the crisis facing lawyers and their profession as discussed in Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems With Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 547 (1998)). Daicoff, to my mind, is one of the few academics who really has important and original thoughts about these questions.

72. Iijima, *supra* note 7, at 529.

73. *Id.* at 530.

74. See *id.* at 532-38.

75. *United States v. Jewell*, 532 F.2d 697, 700 n.7 (9th Cir. 1976) (quoting GLANVILLE WILLIAMS, *CRIMINAL LAW: THE GENERAL PART*, § 57 at 159 (2d ed. 1961)).

toon from the 1980's of Ronald Reagan. Reagan has his hands over his eyes, and while an advisor places in front of him the authorization for the arms-for-hostages deal to sign he says, "Let me guess—It's a proclamation for National Apple Pie Week?"⁷⁶ The students, by and large, get it, but I am not sure that "we" (the law school faculty) "get it" when the question before us is our continuing failure to think seriously about how the process of legal education leads our students into making assumptions (and misassumptions) about both the legal process and the act of lawyering. I believe that our collective willful blindness on this issue is toxic. It harms the teaching enterprise, the learning enterprise, and, ultimately, the way that law is practiced and clients represented. It is an issue that cries out for further attention.

Finally, I believe that the application of CPS methods in law school will help maximize the likelihood that students, when they actually practice law, will be able to adapt a more holistic role of lawyering,⁷⁷ and not see themselves as just part of an appellate case law mechanism. In his fascinating piece on law and architecture, Jamie Cooper talks about how holistic lawyering (along with TJ and other new approaches) all fit comfortably under the CPS umbrella.⁷⁸ I think his insights are absolutely right, and we need to take them very seriously as we continue with this enterprise.

V. CONCLUSION

In short, I think CPS is an extremely important tool, both for the practice of law and for the enterprise of teaching law. I believe that the methods we use in class have an impact *far* beyond whether our students can harmonize disparate holdings, shape legal appellate arguments, or "think like lawyers" (which really means, "think like we were taught to think when we were in law school being taught by professors who taught us how to think in the way they were taught to think when *they* were in law school, etc."). I also believe that the type and quality of law our students practice depends to a great extent on what we do in the classroom.

If CPS helps us to step outside the box and restructure the way we do that, then we truly will have taken major steps in the transformation of legal education, and that will have been a very good thing indeed.

76. MICHAEL L. PERLIN, SUPPLEMENTARY MATERIALS FOR CRIMINAL LAW (2000) (mimeographed).

77. See Perlin, *supra* note 69, at 418 (discussing holistic law). See also *id.* n.74 (citing William van Zyverden, *Holistic Lawyering: A Comprehensive Approach to Dispute Resolution*, 3 B.U. PUB. INT. L.J. 5, 5 (1993)).

78. See James Cooper, *Towards a New Architecture: Creative Problem Solving and the Evolution of Law*, 34 CAL. W. L. REV. 297, 314 (1998).

