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**THE USE OF A THERAPEUTIC JURISPRUDENCE APPROACH TO THE TEACHING  
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# THE USE OF A THERAPEUTIC JURISPRUDENCE APPROACH TO THE TEACHING AND LEARNING OF LAW TO A NEW GENERATION OF LAW STUDENTS IN SOUTH AFRICA

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There is a new generation of students, and we need to continue to expose them to the profession and make an effort to help them be more well-rounded – to help them think, to learn to be lawyers, to understand ethics, to work through the realities of having a professional role and having their own professional appreciation about what is important to them.<sup>1</sup>

## 1 Introduction

In rapidly changing social, economic and intellectual environments it is imperative that teaching and learning should transform themselves from being primarily concerned with the transmission of knowledge (*learning about*) to being primarily concerned with the practices of a knowledge domain (*learning to be*). Law lecturers are faced with a new generation of law students, many of whom may be the first in their families to enter university,<sup>2</sup> and one of the important challenges that we face, when educating law students, is how to enable these students to take their place in a very important profession. To meet this challenge it is necessary to instill skills that will be beneficial to the profession, future clients and the community as a whole. We are endeavouring to do so through embracing a therapeutic jurisprudence approach that focuses on the well-being of the student, the client and the community. The concept is explained on the website of the *International Network on Therapeutic Jurisprudence* as follows:<sup>3</sup>

[T]herapeutic jurisprudence concentrates on the law's impact on emotional life and psychological wellbeing. It is a perspective that regards the law (rules of law, legal

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<sup>1</sup> Judith Welch Wegner, one of the authors of *Educating Lawyers: Preparation for the Profession of Law*. See Chanen 2007 ABAJ 42 (quoting Judith Welch Wegner) cited in Cooney 2007-8 Ky L J 520.

<sup>2</sup> Van Zyl *Safenet Report*.

<sup>3</sup> Wexler 1999 www.law.arizona.edu.

procedures, and roles of legal actors) itself as a social force that often produces therapeutic or anti-therapeutic consequences. It does not suggest that therapeutic concerns are more important than other consequences or factors, but it does suggest that the law's role as a potential therapeutic agent should be recognised and systematically studied.

The integration of therapeutic jurisprudence throughout the law student's studies, starting at orientation and continuing through the final-year clinical experience, will enhance the outcomes for all of the parties involved. A therapeutic jurisprudence approach combined with teaching and learning methods that include the transformation from a primary concern with the transmission of knowledge to a primary concern with the practices of a knowledge domain will enhance the student's interpersonal skills and writing and reading skills.<sup>4</sup>

Teaching methods include role-play, the purpose of which is to transform knowledge so that it becomes more than a set of half assimilated facts, thereby equipping students with enquiring minds and creating a learning environment that supports collaboration and encourages students to act purposefully in a professional environment.

This article discusses the teaching of first-generation students and how to overcome the existing social, cultural, economic and linguistic barriers, using a therapeutic jurisprudence approach, while upholding guiding values, such as integrity and respect for diversity and human dignity. The constitutional imperative of access to justice for all underlines the importance for law teachers to incorporate therapeutic jurisprudence in their teaching methods from the first year until completion of the students' studies. The therapeutic outcomes achieved by teaching through a therapeutic lens would contribute to the national goal of improving access to justice in our country.

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<sup>4</sup> Cooney 2007-8 *Ky L J* 510.

## 2 Contextual factors

### 2.1 Student profile

Many students start their first year of study without any family support, as they live in rural areas far from the university. Data from 2011 indicates that 46.27% of students are first-generation students. A first-generation student at the University of Johannesburg (UJ) can be described as the first person in his/her family to enter higher education, or a student who has a sibling at university.<sup>5</sup> The average first-year student at UJ typically commutes, is a first-generation university entrant and was not a very diligent school pupil.<sup>6</sup> As Corrigan<sup>7</sup> states, these students carry their own unique brand of baggage in a country that emerged in 1994 from nearly 50 years of apartheid. Young black students living in a post-apartheid society try to meet the high expectations set for them. Many of their parents have sacrificed their own youth to ensure a brighter future for this generation. This student therefore carries a heavy burden as he/she is expected to surpass the previous generation in every way.<sup>8</sup>

A number of first-generation students are from rural areas and low-income households. These students and their families display a lack of familiarity with and knowledge of campus life, culture, norms and academic expectations.<sup>9</sup>

### 2.2 Millennials

Millennials (or the so-called generation Y) display unique characteristics – they are ambitious, demanding,<sup>10</sup> seldom follow instructions, are reluctant to use sources other than the internet,<sup>11</sup> and crave encouragement and continuous contact with their lecturers.<sup>12</sup> Unfortunately, these characteristics are not always ideally suited to the

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<sup>5</sup> Van Zyl *Safenet Report*.

<sup>6</sup> Van Zyl *Safenet Report*.

<sup>7</sup> Corrigan *Sunday Independent* 7.

<sup>8</sup> Corrigan *Sunday Independent* 7.

<sup>9</sup> Taylor Smith, Miller and Bermeo *Bridging the Gaps to Success*.

<sup>10</sup> Cooney 2007-8 *Ky L J* 506.

<sup>11</sup> Law students must consult a variety of primary sources, and this normally requires regular visits to the library.

<sup>12</sup> This generation has led a sheltered life and enjoys constant contact with their peers (Kasting 2006 *NJLJ* 265).

characteristics required of a law student to be successful at university. With their questioning minds and frequent outspokenness, generation Y has certainly required law teachers to rethink their teaching methods, and law teachers should strive to deliver a well-rounded student who meets the requirements of a very competitive legal profession. Typical requirements of the legal profession include skills such as the ability to think analytically, to be persuasive, to present an argument logically and the possession of excellent communication skills.

### **3 Developmental interventions**

#### **3.1 *The role of orientation for all university entrants***

As a result of the general unpreparedness of first-year students, the University of Johannesburg, and more specifically the law faculty, introduced an orientation programme for all first-year students, which programme takes place prior to the commencement of their first academic year. Although orientation plays an important role for all, it provides valuable assistance to first-generation students ill-prepared for the many challenges posed by tertiary education.

During compulsory first-year orientation, students are made familiar with the tertiary institution, student life and services offered. A university which offers one-on-one career advice, academic advising sessions and developmental interventions plays a vital role in enhancing academic success.<sup>13</sup>

Academic language is another factor that poses a threat to the success of the first-generation student. Concepts relating to the structure of the university (such as "dean", "professor") and other academic concepts such as plagiarism are often foreign concepts to first-year students. Students should therefore be encouraged to develop their language abilities in the academic environment. Learning support, already introduced during orientation and throughout the first year in the form of

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<sup>13</sup> Students who do not perform after the first six months are often referred to the Centre for Psychological Services and Career Development (PsyCaD) for assistance and evaluation.

additional skills workshops,<sup>14</sup> innovative teaching practices and continuous assessment practices, plays an important role in the development of these academic language skills.<sup>15</sup> Although it is important during the orientation process to introduce students to various academic and social skills, such as taking class notes, getting to know their fellow students, library orientation, the integration of different sources, and computer literacy, the development of skills should be ongoing and not limited to orientation. The orientation process as a social force has an important initial therapeutic outcome, as it focuses on the well-being of the student, thereby making it possible for the student to strive to reach his or her full potential.

### **3.2 *Learning communities and a student-awareness approach***

As many of these students do not have a prior link with the university, the establishment of learning communities involving them offers an important aid. Students can engage with other students in the classroom and with tutors (senior law students) and mentors (postgraduate students) to enjoy the benefit of being in an engaging and stimulating environment. Often social networking provides an important tool for supporting learning communities, as students can use electronic communication to pose their questions to a wider audience.

Activities such as mooting can promote learning communities. With this activity, students are divided into groups and have the opportunity to engage with their fellow students and tutors (senior students) in preparing for a final assessment. Tutors can share their knowledge and experiences through mooting, thereby facilitating the social integration of all students in the law faculty. Participants in previous mooting competitions often assist in the mooting preparation of first-year students by offering additional tutorials and other workshops. It is important for students to engage meaningfully and willingly with learning content as part of a broader supportive collaboration within the learning environment. They should also learn to act purposefully in such an environment. By developing and enhancing learning

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<sup>14</sup> Additional skills workshops include extended library orientation, how to prepare for tests and exams, how to use different sources, avoiding plagiarism, and the development of skills such as academic writing, oral advocacy, and legal writing.

<sup>15</sup> Haggis 2006 *Studies in Higher Education* 529.

communities, students are helped to overcome both the academic and the personal obstacles they may face at tertiary institutions.

A student-awareness focus is another important factor to consider when one teaches first-generation students. Studies indicate that a holistic approach by advisors, which includes a personal approach by academic staff and peers, produces positive results.<sup>16</sup> In the course of this approach first-year students are introduced to their lecturers, administration staff, tutors and second-year students during compulsory first-year orientation. The fact that there are large numbers of first-year students can present difficulties to student advisors and members of the faculty, but having an open-door policy on the part of first-year lecturers and tutors offers a solution.

The authors recommend that when large numbers of first-year students are being dealt with, the use of student representatives selected by the mass of the students provides a valuable link between lecturers, students and tutors. First-year students select five or six representatives to form a first-year committee, thereby also developing and enhancing their leadership skills. During regular meetings involving lecturers and tutors, problems are identified, social events are planned and community projects established. This contributes to a number of important outcomes such as the development of leadership skills, and it promotes the well-being of students in the community.

### **3.3 *The early identification of at-risk students***

The early identification of students at risk should be a priority with first-generation students and/or students who are ill-prepared for tertiary education. Continuous assessment provides the opportunity for early identification, and identified students are offered additional support before their first formal assessment. Applying continuous assessment and a variety of assessments as part of the evaluation practices for a law course ensures that the students are equipped to deal with the various challenges and difficulties they are likely to experience. It is very important for a law student not to perceive knowledge as merely a static product of information

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<sup>16</sup> Taylor Smith, Miller and Bermeo *Bridging the Gaps to Success*.

production and consumption, but as a process and an instrument of inquiry to solve problems.<sup>17</sup>

Learning communities and the early identification of students at risk as part of developmental interventions offer invaluable solutions to alleviate the difficulties encountered by first-generation students and students who are ill prepared for higher education.

#### 4 Diverse teaching methods and innovative design

At its core, education is about learning. Every educator, legal or otherwise, must at the same time be both a teacher and a student in the learning enterprise.<sup>18</sup>

Students are diverse in their learning styles. The factors that can influence a student's learning style include age, culture, levels of education and the ability to internalise information.<sup>19</sup> However, as lecturers are also diverse in their teaching style, students should be encouraged to adjust to a variety of learning styles.<sup>20</sup> An assumption that the learning needs of all students are similar may lead to higher failure rates in the first year.<sup>21</sup>

First-year law modules<sup>22</sup> could include the following innovations relating to the design and delivery of the curriculum and learning materials:

- (a) theory (i.e. weekly lectures and written academic assignments – *learning about*);
- (b) practical exposure (*learning to be*) (i.e. Court visits and guest lectures by members of the legal profession – students are taken to the Magistrates' Court, the High Court and the Constitutional Court.). Learning occurs in a variety of modalities and in or at many locations. Students learn about the

<sup>17</sup> See the University of Johannesburg's Teaching and Learning strategy.

<sup>18</sup> Kochan 2011 *Sw L Rev* 449.

<sup>19</sup> Boyle and Dunn 1998 *Alb L Rev* 214.

<sup>20</sup> Boyle and Dunn 1998 *Alb L Rev* 214.

<sup>21</sup> Boyle and Dunn 1998 *Alb L Rev* 214.

<sup>22</sup> In the law faculty of the University of Johannesburg the first-year module, Introduction to Legal Studies, includes these diverse learning methods.



court structure and interact with members of the profession, thereby seeing and experiencing the legal world they will one day enter.<sup>23</sup> This *learning to be* activity is complemented during the year by guest lecturers, judges and state advocates, addressing the students in class. All students attend a career exposition during the year, where different law firms and public sector employees take part in a career exhibition, advising and counselling students about career opportunities.

- (c) skills training (*learning to be*). This includes library orientation, computer training, participation in moot court activities and letter writing.

## 5 From *learning about* to *learning to be*

Generation Y actually prefers *learning to be* to *learning about*<sup>24</sup> and they are often motivated by solving real-life problems.<sup>25</sup> The learning strategy of the University of Johannesburg sees teaching and learning as shifting from a primary concern with the transmission of knowledge (*learning about*) to a primary concern with the practices of a knowledge domain (*learning to be*). As Amory, Gravett and Van der Westhuizen<sup>26</sup> remark, significant learning is learning that will enable students to act purposefully in future situations, whereas *learning about* entails the learning of subject theory, such as concepts and facts.

*Learning to be* promotes the application of theory to analysing real-life problem situations. To encourage *learning to be* from the first year, we provide students with real-life problem situations for both mooting and during formal assessments as well as various role-play exercises to support this principle. In supporting a meaningful, integrated approach to teaching, the development of these skills should be expanded on during each consecutive year of study, until final-year students are then exposed to practical experiences in the law clinic. Students often ask why they have to study this or how it will assist them in their careers one day. Through *learning to be*

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<sup>23</sup> Amory, Gravett and Van der Westhuizen 2008 ujdigispace.uj.ac.za.

<sup>24</sup> Cooney 2007-8 *Ky L J* 506.

<sup>25</sup> Lombardi *Educause Learning Initiative* 1.

<sup>26</sup> Amory, Gravett and Van der Westhuizen 2008 ujdigispace.uj.ac.za.

activities such as mooting, role-play<sup>27</sup> and court visits, students are able to connect these activities to the real-life tasks of a legal professional. Students soon discover that there are vast differences between *learning about* the law and *learning to be* a lawyer.

When faced with the set of facts provided for mooting, students have to face different realities. First they have to deal with a client (tutors can act as clients during role-play in class), and thereafter with their group partners. Finally, they have to face the presiding officer during the moot court proceedings. In this way they are introduced to developing interpersonal skills. Students are thus given the opportunity to see a connection between their own goals and the broader concerns of the discipline of law.

Although it is often difficult to promote *learning to be* in large classrooms, technology and an integrated tutor and mentor programme provide for innovative learning. As the facilitator during *learning to be* activities, the lecturer fulfills an important role. It is imperative to create a passion for the law among students and an awareness that they could one day change the world, be it on a large or a small scale.

### **5.1 Learning to be and teaching therapeutic jurisprudence**

*Learning to be* creates many opportunities to learn various jurisprudential skills, such as letter writing, and engaging in the proceedings of the moot court and the law clinic. It focuses primarily on the processes of law as well as the outcomes for the legal actors (the students) as well as those who are the subjects of the legal processes, namely the clients.<sup>28</sup> By teaching our students through the lens of therapeutic jurisprudence, we enhance the outcomes for all interested parties.

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<sup>27</sup> By using role-play as a teaching method, lecturers provide for kinesthetic learners, who remember better through experience than through being taught.

<sup>28</sup> Baker 2006 *Whittier L Rev* 2-3.

### 5.1.1 Letter writing: An important tool in teaching therapeutic jurisprudence

Although the generation Y student is an excellent communicator in terms of instant text messaging and e-mails, letter writing – one of the most important tools of a legal practitioner – proves more challenging.<sup>29</sup> Because students display poor writing and reading skills, the teaching and learning of this important communication skill often proves challenging to both law lecturers and students. As Phelps states:<sup>30</sup>

[L]anguage remains irrevocably central to the law and rather than lament our lot, it is surely wiser to roll up our sleeves and get about the task of teaching legal writing more effectively.

Teaching letter-writing skills to law students presents the lecturer with an opportunity to integrate valuable therapeutic jurisprudence principles in the teaching. A therapeutic jurisprudence approach concentrates on the law's impact on the emotional life and psychological well-being of all of the participants,<sup>31</sup> whereas the focus of the drafting of letters and other legal documents must primarily be on the emotional well-being of the client. It is important to introduce the purpose<sup>32</sup> and fundamentals of therapeutic jurisprudence as early as in the first academic year, as this cultivates an awareness of the importance of the client-lawyer relationship and contributes towards a latent culture promoting the psychological and physical well-being of the people involved.<sup>33</sup>

During their engagement in the integrated learning approach, first-year students receive a set of facts in preparation for a moot court. The set of facts poses a family and child law dispute, normally highlighting sensitive issues in the community (such as the alcoholism of a parent, or child or drug abuse) and alerting the students to the interdisciplinary nature of the different branches of the law. Students are required to argue on aspects involving matters concerning the best interest of the child in care (previously referred to as custody), an aspect of utmost importance considered by our courts. As part of their family law course, students become aware of the fact that

<sup>29</sup> Cooney 2007-8 *Ky L J* 508.

<sup>30</sup> Phelps 1986 *Sw L J* 1089.

<sup>31</sup> Wexler 1999 [www.law.arizona.edu](http://www.law.arizona.edu).

<sup>32</sup> To integrate the psychological and emotional well-being of the client into the practice of law (Cooney 2007-8 *Ky L J* 509).

<sup>33</sup> Baker and Zawid 2005 *St Thomas L Rev* 711.

parents, before seeking court intervention, must first attempt to agree on a parenting plan determining the exercising of their respective responsibilities and rights in respect of the child.<sup>34</sup> In preparing a parenting plan, parents must seek the assistance of a family advocate, social worker or psychologist, or mediation through a social worker or other suitably qualified person.<sup>35</sup> From their first year students must learn that therapeutic methods of problem solving are available, which will benefit the well-being of the child.

By addressing sensitive issues, students are made aware of their role in improving our legal profession and of the important characteristics that a lawyer should display, such as a sensitivity to the client's emotional state, being supportive, and establishing a relationship of trust with the client.<sup>36</sup> Students are then required to represent one interested party in respect of the care of a child. At the initial phase of preparation students are required to draft a letter to either the applicant or the respondent confirming their instructions.

Students are taught the importance of identifying their audience and writing in plain language. This skill is valuable as in eventual practice their client may come from any of the diverse population groups of South Africa. By creating this awareness we are enhancing the much-required analytical skills of our students. Once again, teaching these skills to generation Y requires innovative educational skills. We need to support their strengths by creating a teaching environment that will support, enhance and develop their unique attributes. The authors advocate that writing skills should be taught throughout all the years of the law degree (not just in the first year), and should form an integral part of their studies.<sup>37</sup>

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<sup>34</sup> Section 33(2) *Children's Act* 38 of 2005.

<sup>35</sup> Section 33(5) *Children's Act* 38 of 2005.

<sup>36</sup> Cooney 2007-8 *Ky L J* 510.

<sup>37</sup> Greenbaum 2004 *Stell L Rev* 10. Writing must be seen as a process to be analysed and reflected on.

### 5.1.2 Moot court

Wexler explains that from a therapeutic jurisprudence viewpoint, the law itself can be a potential therapeutic agent.<sup>38</sup> It is a perspective that regards the law (rules of law, legal procedures, and the roles of legal actors) itself as a social force that often produces therapeutic or anti-therapeutic consequences.<sup>39</sup> Mooting (as a legal procedure) can be regarded as a social force that may present a therapeutic opportunity. A number of therapeutic outcomes may be achieved through mooting.

Students are taught to critically analyse a case study (an inquiry to solve problems) and advise clients accordingly, both in formal assessments and by employing role-play. If they are provided with a set of facts relating to a real-life case (between 10 and 15 pages long), they may start developing the required skills such as the ability to engage in critical analysis.

Through mooting, students experience knowledge not as a static commodity exchanged in a process of production and consumption, but as a process of inquiry to solve problems. This they experience by preparing a case on behalf of a client and working in a team. Students apply the substantive and procedural law to real-life situations (*learning about* and then *learning to be*), thus acting out their future roles as litigators.

We can evaluate mooting as a therapeutic learning experience against a checklist provided by Herrington, Oliver and Reeves:<sup>40</sup>

- (a) Real-world relevance: During the mooting activity students are given a real-life problem, providing them with real-life tasks that lawyers encounter on a daily basis. To solve the problem, students are required to apply the knowledge they have gained through research.<sup>41</sup>
- (b) Ill-defined problems: The set of facts that students receive for moot court always involves a family law dispute regarding the care of a child. Students are required to represent one of the interested parties in respect of such

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<sup>38</sup> Wexler 1992 *Law and Human Behaviour* 32.

<sup>39</sup> Wexler 1999 [www.law.arizona.edu](http://www.law.arizona.edu).

<sup>40</sup> Herrington, Oliver and Reeves 2003 *Australian Journal of Educational Technology* 59-71.

<sup>41</sup> Killen *Teaching Strategies* 4.

care.<sup>42</sup> Students are encouraged to ensure the emotional and psychological well-being of the child, thereby guaranteeing a therapeutic outcome.<sup>43</sup> There is no definite solution to the problem and the presiding judge will make a decision based on the arguments submitted by the students.

- (c) The authentic activities they are required to perform comprise complex tasks to be investigated over a sustained period of time: The students spend between two and three months analysing, researching and eventually presenting on the set of facts provided for mootng. They start with writing a letter to the client confirming instructions, and work towards the final product of drafting and presenting the heads of argument in moot court.
- (d) Other activities provide the opportunity for the students to examine a task from different perspectives by using a variety of resources. The task requires students to examine the problem from a variety of theoretical and practical perspectives rather than implying that they must adopt a particular view in order to be successful. Students often have to research sensitive social issues such as alcoholism, autism, HIV/Aids and drug abuse, and this provides them with the opportunity to research across disciplines. They are able to discover and create new knowledge for themselves, which often results in the retaining of knowledge for a long time. A lawyer routinely has to research beyond the scope of the law. To succeed with this task, students need to use a variety of resources, primary and secondary, national, foreign and international. Research skills are thus promoted through extensive library orientation, supporting an integrated approach.
- (e) Students have the opportunity to collaborate with fellow students, students from other universities (this is applicable only to the students selected to participate during international moot court competitions), tutors, lecturers and legal professionals such as judges, advocates and attorneys.

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<sup>42</sup> Section 9 of the *Children's Act* 38 of 2005 states that in all matters concerning the care, protection and well-being of the child, the child's best interest is of paramount importance and must be applied (see s 28(2) of the *Constitution of the Republic of South Africa*, 1996). In *Minister of Welfare and Population Development v Fitzpatrick* 2000 3 SA 422 (CC) Judge Goldstone stated that the best interest principle has never been given exhaustive content, but it is necessary that the standard should be flexible, as individual circumstances will determine which factors secure the best interest of a particular child.

<sup>43</sup> Gould and Perlin 2000 *Seattle U L Rev* 353.

- (f) *Learning to be* or authentic learning allows students to reflect on their learning. Students are assessed by their fellow students and peers. Because their appearances in moot court are videotaped students have the opportunity to reflect on their learning. When students appear in court it is an open court and fellow students or members of the public can attend. As Hattie<sup>44</sup> highlighted, the most effective way of improving learning is for teachers to encourage students to self-report on their learning and to question whatever that they do not understand.
- (g) Students are assessed on a final product in court by a presiding officer in a real-life court scene. Students are dressed in robes and must comply with court formalities, procedures and etiquette. When delivering the complete product, students are required to integrate substantive and procedural law and display writing and oral advocacy skills. This approach encourages integrated assessments.
- (h) The student delivers a final product in the end by delivering arguments in court. Students may be interrupted by the presiding officers and must then be able to respond to questions persuasively and speedily, simultaneously adhering to court etiquette and formalities when addressing the court. By delivering oral arguments learners are able to communicate their knowledge to others, thereby demonstrating their understanding of the subject at hand.<sup>45</sup>
- (i) This *learning to be* exercise allows for a variety of outcomes, depending on the students' research and arguments.

During this process students realise what their personal and professional strengths and weaknesses are. The process furthermore provides them with the opportunity to develop strategies that will enhance their performance. Students experience the exercise of mooting in different ways. While some students are born with the ability to employ the necessary skills, other students may have to acquire the above-mentioned skills by studying and practising. A third group of students follows the correct procedure and applies the correct skills; however, they do not show a

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<sup>44</sup> Hattie *Visible Learning* 4.  
<sup>45</sup> Hattie *Visible Learning* 4.

preference for any in particular. A number of students may even resist the whole exercise.<sup>46</sup>

A work ethic<sup>47</sup> is created through mooting, and students often realise that law is not just about financial rewards, but the ultimate reward of contributing to the enhancement of society. The impact of a therapeutic jurisprudence approach on the development of the legal skills of law students<sup>48</sup> through their years of study proves to be beneficial to the clients encountered at the law clinic. It is at the law clinic that the students can apply the skills that they have acquired. The therapeutic jurisprudence practices that have been instilled in them will enable them to focus on the well-being of the client and the community as a whole.

## 6 Clinical legal education (law clinic)

Clinical legal education is another form of therapeutic jurisprudence, as it focuses on the client, the student and the community.<sup>49</sup> The aim of a legal clinic is to provide free legal services to the community and at the same time to give law students the opportunity to gain valuable experience under the supervision of a qualified legal professional. Clinical education provides students with opportunities to learn and apply substantive and procedural law, exposes them to the challenging realities of a legal practice and confronts them with issues of professional responsibility.<sup>50</sup>

The experience gained through this process prepares students for an entry level of competence in the legal profession.<sup>51</sup> Clinical legal education as seen through a therapeutic lens provides a number of important therapeutic outcomes:

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<sup>46</sup> Gould and Perlin 2000 *Seattle U L Rev* 355.

<sup>47</sup> Students are taught the importance of punctuality. They must arrive at court on time for their appearance and documents must be submitted within specific timeframes.

<sup>48</sup> Although the authors focus on the impact of a therapeutic jurisprudence approach on first-year law students, the ultimate impact can be measured only during clinical education in the final year.

<sup>49</sup> Gould and Perlin 2000 *Seattle U L Rev* 354.

<sup>50</sup> Kreiling 1981 *Md L Rev* 287.

<sup>51</sup> Cooney 2007-8 *Ky L J* 517.



- a) Students learn to interview clients effectively. The learning process entails the following:
- (aa) establishing an attorney-client working atmosphere;
  - (bb) eliciting a description of the client's problem;
  - (cc) eliciting the client's goals and expectations;
  - (dd) analysing the client's problem;
  - (ee) allowing the client to make an informed choice concerning the action to be taken; and
  - (ff) bringing the interview to a satisfactory conclusion.<sup>52</sup>

Students must be attentive to their client's needs,<sup>53</sup> express empathy, learn how to read body language and be able to communicate effectively and sensitively.<sup>54</sup>

According to Gould there are three tasks in counselling where students can apply therapeutic jurisprudence principles.<sup>55</sup> The first is to define and set goals for the counselling session. Students must consider the possible therapeutic and anti-therapeutic effects of their meeting and the desired outcome.<sup>56</sup> The second is to reflect on the legal and non-legal steps to be taken to ensure a therapeutic outcome. Students can formulate different legal strategies from which a client can make an informed decision as to the relevant legal issues.<sup>57</sup> Lastly, students must evaluate whether the steps needed to affect a therapeutic outcome were acceptable to the client and the student or whether alternative steps should have been taken.

- b) As the most disadvantaged in society normally obtain access to justice at law clinics, students learn to demonstrate sensitivity towards clients from a range of social, cultural, economic and linguistic backgrounds. As legal

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<sup>52</sup> McQuoid-Mason [date unknown] law.gsu.edu.

<sup>53</sup> Greenbaum 2004 *Stell L Rev* 13. Students must be taught to analyse the audience for whom they are writing to enable them to produce effective discourse.

<sup>54</sup> Australasian Therapeutic Jurisprudence Clearinghouse 2007 aija.org.au.

<sup>55</sup> Gould and Perlin 2000 *Seattle U L Rev* 361-362.

<sup>56</sup> Cooney 2005 *St Thomas L Rev* 419.

<sup>57</sup> Cooney 2005 *St Thomas L Rev* 419.

- professionals they will encounter clients from diverse backgrounds and must acquire the skill to communicate meaningfully and thereby address the needs of the client.
- c) Students now have the opportunity to apply and improve the interpersonal skills they obtained during their years of study, for example by interviewing clients. Interpersonal skills are enhanced, as students must demonstrate the capacity to work with fellow students, peers, legal professionals and the community. Acquiring this skill will in future assist in a therapeutic legal practice.<sup>58</sup>
  - d) Legal writing is an important component of clinical education. Since students are required to draft letters to clients during every year of their studies, they may apply the letter-writing skills now acquired. The skills obtained through previous mooted activities can prove very valuable to the clinical student when he or she drafts legal documents.
  - e) Students learn to approach problem-solving effectively through the real-life problems experienced by law clinic clients. After the initial interview, students are required to analyse the client's problem and undertake research regarding the applicable substantive and procedural law. The student must recommend a course of action to the supervisory legal professional. When an approach is decided upon, the student must execute the strategy to the satisfaction of the client.
  - f) Students are assigned a small case load of four files, and these clients remain with them for the duration of this internship, thereby ensuring the emotional well-being of the client through an 'ethic of care'.

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<sup>58</sup> Australasian Therapeutic Jurisprudence Clearinghouse 2007 [aija.org.au](http://aija.org.au).

- g) It is important that students reflect on their experience at the law clinic. Students must ask if the law or legal procedure that they applied has produced the greatest sense of well-being for the client.<sup>59</sup>
- h) Clinical legal education practised through a therapeutic jurisprudence lens places the focus on the client and the community. A vital therapeutic outcome for the broader South African society is achieved, namely to provide the community with access to justice.

## 7 Conclusion

In South Africa, law lecturers face many challenges in teaching law students and first-generation students. These challenges are exacerbated by the difficulties engendered by the student's diverse social, cultural, economic and linguistic backgrounds. Developmental interventions, such as the offering of orientation programmes, the establishment of learning communities among students, fostering a student awareness approach, and the early identification of at-risk students are important tools to alleviate the difficulties experienced by these students. Passionate teachers will produce passionate students and realise that they have the power to transform thoughts, policies and lives. Students should be reminded that law is not just about financial rewards, but about the ultimate reward of contributing to the betterment of society.

The legal profession expects us to produce a well-rounded student for entry into the profession. This necessitates a change in teaching methods to ensure that the student is at least competent when entering the legal profession. Therapeutic jurisprudence creates the opportunity for the lecturer not only to equip the student with the skills required by the profession but to implement teaching methods that will prove to be beneficial for all of the role-players involved. Skills that are honed from their first year, namely legal writing and oral advocacy skills, create the opportunity for the student to develop to their full potential. In order to support a meaningful, integrated teaching approach, the students' skills are developed during each year of study. This can prove beneficial to all role-players during clinical education, where

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<sup>59</sup> Wexler 1996 *Applied & Preventive Psychology* 179 cited in Gould and Perlin 2000 *Seattle U L Rev* 353.

the student has the opportunity to apply the acquired skills in real-life situations. The impact of a therapeutic jurisprudence on the development of legal skills can now be measured through the student's ability to focus on the well-being of the client and the community.

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**List of abbreviations**

ABAJ	American Bar Association Journal
Alb L Rev	Albany Law Review
Applied & Preventive Psychol	Applied and Preventive Psychology
Ky L J	Kentucky Law Journal
Md L Rev	Maryland Law Review
NJLJ	New Jersey Law Journal
Seattle U L Rev	Seattle University Law Review
St Thomas L Rev	St Thomas Law Review
Sw L J	Southwestern Law Journal
Sw L Rev	Southwestern Law Review
Stell L Rev	Stellenbosch Law Review
Whittier L Rev	Whittier Law Review