

Conference on the Future of Legal Education:  
Working Paper: Marsha B. Freeman

When looking at the future of legal education, one cannot ignore the reality that the public's perception of the legal system itself has been steadily eroding for a number of years. Law students become a part of this same legal system the day they begin their advanced education; they are reminded regularly of the duty to follow the Model Rules of Professional Responsibility as part of their training. In devising curriculum and training law students we must be ever mindful that they will receive not merely the substantive knowledge required to competently represent their clients, but just as importantly the mindset that they will take with them into practice: are they seeking to exemplify the idea of the brutal litigator with the win-at-any-cost mentality, or are they looking toward becoming part of the solution instead of the problem?

Simply put, lawyers (and law professors) must recognize that business as usual is no longer acceptable to the public. They are the ones we represent, and *they* have already recognized that the never-ending litigation methods are bleeding them financially and emotionally. This is especially, but by no means exclusively, true in the handling of family law cases. Divorce in particular is seen as an inexhaustible cycle of litigation, resulting in exorbitant costs and diminished relationships among family members. Parents fight or flaunt judicial orders re support and visitation, angered and defeated over the perception that they have been let down by a judicial system that purports to know what is best for them without the means of identifying it.

Other areas of law have recognized the benefits of applying the theories and methodologies of therapeutic jurisprudence and restorative justice to their proceedings. While family law has adopted the ideals of non-litigated settlements, it continues in large part to treat family matters as adversarial at best, and hostile at worst.

This failure on the part of lawyers and judges in family court matters to appropriately utilize social science resources in seeking resolution continues to damage parents and children alike. Society suffers when parents abandon their financial and emotional obligations to their children, and when the children rebel against their changed lives with higher drop-out rates, marriage, pregnancy and substance abuse. The continued reliance on court intervention itself fuels the emotional turmoil that permeates families of divorce, inhibiting the members from moving on in productive manners.

Family law is an area known by vast members of the public. Whether through their own family problems, those of friends or family, or simply through television and movies, one can barely get past childhood without an understanding of the issues inherent in family law litigation. My approach to teaching family law relies on moving beyond the traditional litigation model and even further ahead of the current uses of non-litigation methods of resolution of family law matters by incorporating the far more personalized inclusion of therapeutic jurisprudence as the standard in deciding family law cases, particularly dissolution. While alternative dispute resolution methods, including

mediation and collaborative/cooperative law, attempt to control the parties' conduct in the legal arena, therapeutic jurisprudence deals with the underlying, and far more complex, emotional issues that fuel the resentment and anger that permeate the divorce. Only by adopting a truly therapeutic, multidisciplinary approach to family law issues will we begin to deal with families as they are, rather than a court's perception of what they should be.

Family law is inevitably about more than the individual client. What a lawyer or court do with regard to the parties will by necessity affect, for better or worse, everyone around them, most importantly their children. I believe it is an ideal place to begin talking about the changes proposed in both the Family Law Education Reform (FLER) report and the Carnegie Report in adapting curriculums to prepare lawyers who are problem-solvers, committed to *helping* their clients and society. And helping in this context requires developing a new definition of legal representation, one that makes the lawyer part of the solution of finding a financially and emotionally suitable resolution, rather than a perpetuator of the perceived problem of continuing (and continuous) litigation, anger and bitterness.

I advocate teaching family law from a perspective which focuses on not only the legal resolution but on the overall ability of the families to move forward with their lives, unencumbered by the negatives of traditional litigation or even the current alternative dispute resolution methodologies. For this, I propose adopting a therapeutic jurisprudence model in teaching law students to understand the overall issues involved in family law representation and how to best effectuate positive solutions to them.

While therapeutic jurisprudence has been utilized as an ancillary part of a number of other alternative forms of legal practice, including mediation and collaborative law, it is itself a lynchpin of a changing force in legal process. Susan Daicoff cites Bruce Winick in finding that therapeutic jurisprudence, unlike other forms of ADR which continue to emphasize the legal solutions, revolves around the idea that any legal resolution must also maximize the emotional and psychological needs of the individuals involved. She refers to this culmination of both legal and non-legal resolution as a "comprehensive law movement" dedicated to promoting the emotional healing that the traditional legal approaches generally ignore.

While the Carnegie Report focuses on the ideal of the lawyer as a problem-solver, we must also consider the consequences of changing the system to reflect a different approach from the solely individual rights and obligations legal resolution. Changes in practice will likewise necessitate new views of appropriate ethics responsibilities on the part of the Bar and the Bench.

As a family law teacher and former practitioner, I wholeheartedly endorse the idea of moving from an individualized view of family law issues to a family-oriented, solution-based one. This will necessitate training future lawyers to understand the ramifications of their actions and the need to become an active part of the solution. This is in direct accord with the Carnegie Report's call for a new understanding of legal representation, and the consequent need to train new lawyers to act, and interact, in such a system. One of the ways I have sought to

accomplish this is by teaching a multidisciplinary class in collaborative lawyering, focusing on dissolution of marriage. My co-teachers in this course are a family court judge and a practicing psychologist specializing in children and families. Often, we are able to incorporate students from the Ph.D. and Master's degree programs in family counseling at the University as members of the class (they get credit in their own schools). This truly multidisciplinary approach not just from the teaching perspective but from the class members has proved invaluable to all the students in understanding the diversity of interests at play in the dissolution as well as the importance of dealing with them in a meaningful way to attain truly workable, long-term solutions.

The advantages of such changes are readily apparent to the students, who frequently begin the course with justified skepticism about whether such approaches will be feasible and/or workable. They quickly come to realize that working as a team among the parties and professionals to find a feasible solution allows for a far more satisfactory method of representation for all involved. In preparing law students to move into the legal world, it is also incumbent upon us as educators to recognize the harmful influence of the current systems on the Bench and the Bar as well. Lawyers are frequently cited as having some of the highest rates of job dissatisfaction. Judges likewise are frustrated not only by the conduct of the attorneys in cases but by their inability to effectively craft an overall solution to the parties problems. I believe the benefits of adopting a system of teaching family law which focuses on the ability to do just that will prove similarly beneficial to participating members of the public, the Bar and the Bench, and will truly advance the concepts and ideals of the Carnegie Report in preparing a new breed of lawyers.