That’s What Friends Are For: Mentors, LAP Lawyers, Therapeutic Jurisprudence, and Clients with Mental Illness

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The field of inquiry of Therapeutic Jurisprudence (TJ) developed at about the same time as Drug Treatment Courts (DTCs), but from different sources. TJ began in legal academia in 1987, with law and psychology scholarship that would have a hoped-for real world application. DTCs, by contrast, began in Dade County, Florida in 1989, and originated atheoretically by frustrated, practical, creative, intuitive judges eager to find an alternative to revolving door justice in the area of addicts and resulting criminality. The two developments were brought together in 1999, in a law review article by DTC judges Peggy Hora and William Schma, and the perspectives have been intimately connected ever since.

Because of this symbiotic relationship, DTCs apply many principles consistent with or indeed directly derived from TJ. But TJ principles, though comfortably employed in DTC and other similar “problem-solving” or “solution-focused” courts, are not “tied” to such courts, and I have repeatedly urged their general judicial application, especially in criminal cases. For example, one of the important sections of my edited book, Rehabilitating Lawyers: Principles of

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2 See references and resources in note 1, supra.


Therapeutic Jurisprudence for Criminal Law Practice,\textsuperscript{7} gathers actual techniques used by lawyers practicing TJ.\textsuperscript{8}

A number of these practices are what I have called “family-friendly”,\textsuperscript{9} meaning they draw on family, friends, and neighbors to facilitate a disposition requested by a client and his or her lawyer. In the book, for example, one illustration details how the law firm representing a defendant sought a “community” sanction (along the lines of probation) by submitting letters signed by neighbors that they would have no problem with such a disposition and that, in fact, they would be willing to report the defendant if he were not in compliance with the imposed conditions\textsuperscript{10}. Another example, by a lawyer representing young adult clients suffering from fetal alcohol spectrum disorder, explains how the lawyer gathers together a community support group to help insure the compliance of the client with imposed probation conditions.\textsuperscript{11} And in an example to be discussed in a bit more detail in a later section, Dallas attorney John McShane writes about how, at the behest of the family of a jailed family member with drug and alcohol problems, McShane conducted what he calls a “jailhouse intervention,” facilitating the incarcerated person’s release on a treatment bond from jail to a high-quality treatment center.\textsuperscript{12}

Nonetheless, despite their increasing use in general judicial contexts, TJ principles remain particularly popular in problem-solving or solution-focused courts. One such court is mental health court which, unlike the atheoretical origin of DTCs, arose explicitly as an application of TJ principles to persons with apparent mental health issues charged with the commission of rather minor offenses.\textsuperscript{13}

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\textsuperscript{7} Id.
\textsuperscript{8} Id. at 143-255. As will be discussed later, my hope is to open TJ practice and service opportunities to attorneys both in and out of the area of problem-solving courts.
\textsuperscript{10} Rehabilitating Lawyers, supra note 6, at 185 (contribution by Karine Langley).
\textsuperscript{11} Id. at 186 (contribution by David Boulding).
\textsuperscript{12} Id. at 193 (contribution by John McShane).
\textsuperscript{13} In the words of Judge Ginger Lerner-Wren: “The first (TJ) problem-solving court of its kind in the country, the primary goal of The Mental Health Court was diversion from the criminal justice system into community based care, whenever possible. Yet, the court needed a philosophical and pragmatic construct through which its goals, standard of practice and values could effectively be communicated and understood. TJ was adopted for that purpose.” Hon Ginger Lerner-Wren, Justice Speaks: Applying Therapeutic Jurisprudence (TJ) in a Court of General Jurisdiction, Guest Column, May 2008, \url{www.therapeuticjurisprudence.org} Note that the fact that mental health courts began as an application of TJ does not suggest that mental health courts were “derived” from a normative framework of TJ. See Lea Johnston, Theorizing Mental Health Courts, 89 Wash. Univ. L. Rev. (forthcoming), version available online at: \url{http://ssrn.com/abstract=1710882}. Simply stated, if, for whatever reason, the establishment of a mental health court appears to be a worthwhile idea, the use of TJ principles can aid in the effective functioning of such a court.
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TJ principles are now widely employed in DTCs, mental health courts, domestic violence courts, and, more recently, in the newly formed veterans’ courts. Veterans courts are interesting and important because they typically deal with the issues confronted by each of the previously mentioned courts: post-traumatic stress disorder (PTSD), a condition widely suffered by veterans, often leads to issues of drug and alcohol abuse, DWI, domestic violence, and similar legal problems.

As I hope will become clear later on, my discussion of TJ both in and out of special courts is designed to introduce the reader to TJ ideas and to their application generally; my goal, as will be seen, is to recruit additional lawyers to TJ practice opportunities and pro bono activities, whether in special courts or otherwise.

**Mentors**

Many of the problem-solving courts recruit mentors to help clients navigate their way through the court process. Indeed, having a veteran mentor seems an essential feature of the new Veterans Courts.

But other problem-solving courts—like DTCs and dependency drug courts (where the clients are not facing criminal charges but are threatened with losing their parental rights)—draw on 12 step and AA insights and practices and use as mentors persons who have themselves successfully navigated their way through and who have successfully graduated from such courts. Many DTCs, for example, have formed ‘alumni associations’ of former clients who wish to express their gratitude by volunteering to assist new clients. Some –like the court in Toronto—even employ a “peer support worker.” And dependency drug courts and family wellness courts have made excellent use of “mentor moms” and “mentor parents” who

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15 William H. McMichael, The Battle on the Home Front: Special Courts Turn to Vets to Help Other Vets, ABAJ, Nov. 2011, online at: http://www.abajournal.com/magazine/article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/

16 In fact, ACLU has objected to the special treatment accorded veterans, “as opposed to the population at large, facing legal charges relating to drugs, alcohol, mental health issues, and domestic violence. Id.

17 Id. Ethnic mentors are often important too. Thus, in New Zealand, where Maori are dramatically overrepresented in the criminal justice and parole system, proposals have emerged to have Maori elders orient Maori prisoners to the correctional system and to be involved in the parole or reentry planning of such inmates. Valmaine Toki, Are Parole Boards working? Or is it time for an [Indigenous] Reentry Court?, International Journal of Law, Crime and Justice (2011)(in press).


19 Thanks to Allen Korenstein, a lawyer with the Dependency Advocacy Center in San Jose, California, for providing information on that court’s mentor parent program and the valuable role that fathers have brought to the process.
orient and help new clients—many of them addicted single mothers threatened with the loss of their children—to live drug-free, to improve their parenting skills, and to reunite with their children.

These sorts of mentors have empathy with the new clients and have knowledge and experience to share with them. Their past histories likewise give them credibility with their clients; they can serve as excellent role models, can be a support system, can give practical and important advice, and can serve as a source of hope—a remarkably important therapeutic ingredient in successful recovery.20

**Lawyers in Recovery**

Client hope has also been boosted by hearing success stories of members of the legal profession who have themselves struggled with issues of alcoholism and drug use. For example, a recent *Chicago Tribune* piece tells the story of Elizabeth Johnson, now a Will County Assistant State’s Attorney, but, ten years earlier, herself a client in Will County’s drug court.21 According to the article,

> When the next group of Will County’s drug court participants graduate in March, Assistant State’s Attorney Elizabeth Johnson will be the one to tell them the charges against them have been dropped. For Johnson, it will be a special moment. The newly hired prosecutor will be able to tell the graduates that just over 10 years ago, she was one of them.22

And in the Philadelphia area, drug court graduates heard from—and gave a standing ovation to—John Duffy, a 76 year old criminal defense lawyer, 35 years sober, who received an award for his “tireless efforts to assist others with recovery.”23

There are moving and inspiring stories from judges as well. With considerable trepidation, Judge Michael J. Murphy wrote of his long-standing struggle with alcoholism.24 The trepidation came in part because “there is always the fear of a possible relapse,”25 and he could, after all, “remain anonymous and not be subject to the watchful eyes and the judgment of others.”26 But

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20 Michael D. Clark, A Change-Focused Approach for Judges, in Judging in a Therapeutic Key, supra note 14, at 137, 142-144.
21 Alicia Fabbre, From Drug Court Participant to Assistant State’s Attorney, Chicago Tribune, January 19, 2011.
22 Id.
25 Id.
26 Id.
he wrote—on a website for lawyers and then on a state Supreme Court website—in the hope that “those who read this who suffer from the disease of addiction will see themselves, and seek help.”

Similarly, the Hon. Sarah L. Krauss, a judge in New York City, wrote “My journey from alcoholism to sobriety, recovery and the bench,” recounting her life with alcohol from her teenage years—including being a mother at age 17—through her recovery efforts, her successful election to the New York bench, and –finally—her development of a “close, loving relationship with {her} daughter.”

LAP Programs

In their respective essays, both Judge Murphy and Judge Krauss underscored their involvement in Lawyer Assistance Programs (LAP), programs designed to “offer hope and help to the impaired attorney, law student, or judge.” Murphy noted that “all the help and hope is given in the strictest of confidence,” that “I had never heard of a breach of such confidence”, and that, through the program, “I have seen professions saved. I have seen families saved. I have seen lives saved.”

As a member on the national level of what is today known as the ABA Commission on Lawyer Assistance Programs (CoLap), Judge Krauss (currently the commission chair) encouraged lawyer readers of her essay “to address the problem of alcoholism and drug addiction among lawyers “and “to get involved in your local or state bar association lawyer’s assistance committee.”

A recent symposium issue of the North Carolina State Bar Journal is dedicated to the LAP program in that state. The symposium explains the functioning of the program and traces its history since the late 1970’s, when the Positive Action for Lawyers (PALS) Committee was formed. Among other functions, PALS provides confidential peer support to impaired lawyers through lawyer volunteers --typically themselves in recovery—who”support those suffering from similar conditions by sharing their own experiences and successes.”

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27 Id.
29 Id.
30 Murphy, supra note 24.
31 Id.
32 http://www.americanbar.org/groups/lawyer_assistance.html
34 North Carolina State Bar Journal, Fall 2010.
35 Barbara B. Weyher, Help is a Confidential Phone Call Away, id at 5. The California lawyer support group adds a dose of levity through its name: The Other Bar. See www.oherbar.org.
The principal purpose of LAP is, of course, for these volunteer LAP lawyers to counsel and to serve as role models for other lawyers needing support. But there is another incredibly valuable potential secondary function for LAP lawyers, especially as they begin to use the principles they have honed in recovery and, in 12 step language, to “practice these principles in all of {their} affairs”.36 Since law practice is obviously a major component of their “affairs”, LAP lawyers can begin expressly to introduce therapeutic jurisprudence into their practices and can seek to include in their client base some clients with alcohol and drug problems.

As detailed in one section of my edited book Rehabilitating Lawyers: Principles of Therapeutic Jurisprudence for Criminal Law Practice37, some attorneys –like John McShane of Dallas, Texas—are already doing just that. Earlier, I alluded to McHale’s “jailhouse intervention,”38 and to how McShane visited a jail inmate and offered to help secure the inmate’s transfer from jail to a treatment facility. Besides recounting the successful resolution of that situation—a favorable plea bargain and a client in recovery living a satisfying life—the anecdote included another crucially important aspect of McHale’s client counseling: McShane is himself a recovering addict, now many years clean and sober. Moreover, McShane shared with the defendant “how the attorney’s life was almost destroyed by alcohol and drugs, the availability of treatment for addiction, and the promise of a rich, full, and joyful life if recovery is embraced.”39

McShane’s story led me to write an essay for the journal Court Review, the official journal of the American Judges Association, entitled Lawyer-Assistance-Program Attorneys and the Practice of Therapeutic Jurisprudence,40 in which I noted that “LAP volunteer lawyers have a special strength and skill to offer” and that “that special strength and skill can also be of great assistance to a great many people caught up in the criminal justice and mental health systems.”41

There are obviously many ways in which the additional skills—and the enhanced credibility—of PALS can be used by those LAP lawyers in their client counseling and representation. Jailhouse interventions themselves may be particularly appropriate for LAP lawyer participation. Indeed, LAP programs routinely engage in interventions with lawyers,42 and, as John McShane has demonstrated, intervention skills can readily be transferred from a population of impaired lawyers to the context of jailed clients with drug and alcohol issues. In addition, LAP lawyers

36 www.aa.org
37 Supra note 6.
38 Text accompanying note 12 supra.
39 Rehabilitating Lawyers, supra note 6, at 200.
41 Id.
42 See Hawaii Supreme Court Rule 16(1)(b)(2)(discussing ‘intervention’ component of state LAP program).
might make arrangements to participate in some cases in the various problem-solving courts noted earlier. For a powerful example, consider how a lawyer (especially a woman lawyer)\textsuperscript{43} with the background of Judge Sarah Krauss—once a teenage alcoholic lawyer and today a prestigious member of the legal profession (in her case a judge) with a loving relationship with her daughter—could function as a client advocate (even as a pro bono ‘second chair’) in dependency drug court or family wellness court.

\textbf{A New Direction}

My earlier essay focused primarily on LAP lawyers who volunteer as PALS—lawyers in long term recovery from drug and alcohol issues—and their value to the practice of therapeutic jurisprudence with clients facing addiction issues. What I would like to address here is the role of LAP lawyers who, to use the North Carolina LAP terminology, are FRIENDS rather than PALS. In the North Carolina structure, PALS is focused on addiction, whereas FRIENDS “provides peer assistance in the areas of depression and mental health.”\textsuperscript{44} Because I find the separate categorization of substance abuse and mental health helpful in thinking about practice and \textit{pro bono} opportunities for LAP attorneys, I will continue to use the North Carolina terminology even if it is not in wide use nationally.

There are some encouraging signs that we may actually be entering an era where we might make a dent in the stigma associated with mental illness\textsuperscript{45}—or in “sanism”\textsuperscript{46}, as the damning stereotype is referred to by Professor Michael Perlin. The New York Times, for example, has recently run a number of touching pieces on persons suffering from—and coping admirably with—serious mental illness. In the words of the New York Times, it is “a series of profiles about

\textsuperscript{43} Judge Krauss made a special point to reach out to women lawyers—who she saw as often too terrified to seek help. See note 33, supra.

\textsuperscript{44} Weyher, supra note 5. Of course, there is often a connection between addiction and mental illness, as North Carolina noted when it decided to follow a \textit{unified} administrative structure to evaluate all lawyers seeking help: “Many individuals suffering from addiction also had symptoms of depression, and …often a person who identified as having a depression problem had, in the background, an unrecognized addiction issue.” Jerry Leonard & Don Carroll, The Lawyer Assistance Program Story, North Carolina State Bar Journal 8, 10 (Fall 2010). John McShane’s jailhouse intervention client suffered from addiction and depression, Rehabilitating Lawyers, supra note 6, at 194.. And John McShane himself, before seeking treatment for his alcohol addiction, was on the verge of committing suicide. See Steve Keeva, Passionate Practitioner, at: \url{http://www.law.arizona.edu/depts/upr-intj/pdf/Passionate_Practitioner.pdf}


people who are functioning normally despite severe mental illness and have chosen to speak out about their struggles.”47

Some of these pieces relate to accomplished professionals holding prestigious and influential positions, such as Keris Myrick, featured in a piece entitled *A High-Profile Executive Job as Defense Against Mental Ills*, who suffers from schizoaffective disorder (closely related to schizophrenia) and obsessive-compulsive disorder.48 Moreover, the series began with a profile highly relevant to our present purposes: Dr. Marsha Linehan, a psychology professor at the University of Washington, known worldwide for creating a highly respected treatment for helping severely suicidal people—and herself a person with borderline personality disorder.49 Linehan’s public disclosure came after a patient, noticing faded burns and cuts on the doctor’s arms, asked, “Are you one of us? Because if you were, it would give all of us so much hope.”50

To explode some of the myths, to help destigmatize mental illness, to show that people with mental illness can lead productive and fulfilling lives, and to give the all important ingredient of hope to people suffering from mental illness, these profiled people and others have begun to “come out,” with startling stories that, in turn, lead still others to share their own life ventures.

Highly meaningful revelations have recently sprung from the legal academy, most notably through the remarkable book by a first-rate legal scholar, Professor Elyn Saks of the University of Southern California School of Law. Saks’ *The Center Cannot Hold*51 recounts her life with schizophrenia, the most serious of the thought disorders. She details her fierce struggles with doctors, hospitals, medications, her deep valleys and severely psychotic episodes, and her academic and professional accomplishments as a Vanderbilt University valedictorian, a prestigious Oxford University fellowship holder, a Yale Law Journal member, and, now, the holder of an endowed professorship at the University of Southern California law school, where she is a mental health law institute director and a major force in mental health law scholarship and reform.

Saks’ revelation prompted an essay in the *Journal of Legal Education* by University of Louisville law professor James Jones, who wrote of his long-term battle with bipolar disorder, a serious mood disorder.52 And most recently, Touro law professor Marjorie Silver followed suit and

50 Id.
wrote her story of life with episodic depression. “Luckily,” writes Silver, “unlike that of Professor James Jones or Elyn Saks, my story is one of episodic, not chronic, mental illness.” Noting that she has suffered six episodes of major clinical depression over a three decade period, Silver is explicit about her purpose for writing:

I share my story here for several reasons. One is to join Professors Jones’ and Saks’ brave campaigns to help de-stigmatize, to normalize, mental illness generally, and among the legal academy in particular. Another is my supposition that there are more law professors who have suffered from clinical depression similar to what I have experienced than have coped with either schizophrenia or bipolar disorder. Finally, I hope to inspire others who have borne mental illness to use their own experiences, when feasible, to help their students, colleagues, and the practicing bar.

Silver’s supposition that more law professors—and likely more lawyers—have suffered from clinical depression than from schizophrenia or bipolar disorder seems borne out by the manner in which depression is underscored in, for example, the North Carolina LAP literature. Thus, FRIENDS “provides peer assistance in the area of depression and mental health,” and “depression and other mental illnesses” seems to be the customary way of describing mental health issues among the bar. Moreover, a major resource in the field is the website Lawyers with Depression.

In any case, Silver has shared her experience and insights in discussing pertinent mental health issues in her Professional Responsibility course, in counseling law students suffering serious anxiety or depression, and, more recently, in a LAP program involving both lawyers and law students. Silver’s role in LAP has included an effort to “broaden [the LAP program’s] efforts with respect to mental illness.”

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54 Id.
55 Id.
56 Weyher, supra note 5.
57 E.g., Mark Merritt, A Hard Look in the Mirror, North Carolina State Bar Journal 6,10 (Fall 2010); Leonard & Carroll, supra note 44, at 9 (“the mission of the Lawyer Assistance Program was expanded to include helping lawyers with depression and other mental health issues....”).
58 See www.lawyerswithdepression.com. As this important website reveals, the personal stories of mental illness have not come solely from the legal academy. Some courageous practicing lawyers—persons without the protective cloak of university tenure—have also gone public, contributing, I hope, to the destigmatization of mental health problems.
59 Silver, supra note 53.
60 Id.
In New York, as in North Carolina, LAP was formed originally to support lawyers in recovery from substance abuse. In New York, the program began to deal with drug and alcohol abuse and was later broadened to include mental health issues.

LAPs in New York apparently receive a large number of inquiries from lawyers suffering from depression as well as from those with problems of substance abuse. Yet, in Silver’s words, “the membership of many LAPs is composed primarily of those who are in recovery from the latter. When I attended the annual NYS Bar Association LAP retreat in 2008, I had the interesting experience of being a member of a distinct minority...among an overwhelming number of lawyers who had suffered from alcohol and other drug dependency, some of whom resented the expansion of the LAPs’ mission.”

This lag time regarding the inclusion of mental health issues—and the resentment of some about the expansion of the LAP mission—may well reflect the special stigma still attached to mental illness. But the increasing scope of the LAP mission now seems certain, and, especially in light of the revelations and the efforts of Saks, Jones, Silver, and others, we are likely to see many more lawyers and law students seeking support with mental health issues—and we are equally likely to see many more “Friends,” again to use the North Carolina language, volunteering to offer their experience and insights, as Silver is now doing.

Above and beyond sharing their stories with lawyers now in emotional crisis, these Friends may “give back” by bringing their knowledge and experience into their law practices. Even before going to law school, Saks gave back by volunteering in a mental hospital. And her decision to attend law school, instead of pursuing studies in philosophy, came when she “wondered if there were a role I could play in the lives of people who suffered in a way I understood so well.” In fact, during and after law school—before entering academia—Saks worked in a legal capacity with some hospitalized mental patients.

Silver is supportive of lawyers using their skills—and special knowledge and insights—in their practices: “I hope my students will have the courage not only to share their stories with me, but as they proceed on the journey that will become their legal careers, they will use their experiences to help clients who are suffering as well.”

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61 In North Carolina, the program was extended to mental illness in 1999, twenty years after its formation. See Leonard & Carroll, supra note 44, at 8,9.
62 Silver, supra note 53.
63 Id. See also Perlin, supra note 46, discussing the legal profession’s prejudice persons in their ranks with mental illness.
64 Saks, supra note 51, at kindle edition location 1654-61.
65 Id at kindle edition location 1602-9.
66 Id at kindle edition location 3010-17, 3017-23; 3139-47.
67 Silver, supra note 53.
Silver continues: “Whether an attorney should share personal details about herself with a client is a sensitive issue, dependent on the attorney, the client, and the circumstances. When done, however, for the benefit of the client, to improve the client’s therapeutic outcome, it constitutes good lawyering.”68

The disclosure issue has two components. First, the lawyer needs to assess whether he or she is sufficiently secure to disclose without suffering in professional prestige and opportunities—something not that worrisome, perhaps, for accomplished, tenured professors like Saks, Jones, and Silver. The other issue is whether, given the stigma of mental illness—even among persons with mental illness themselves—disclosure to the client may sometimes turn out to be harmful rather than helpful.

These matters and many related ones need to be considered carefully by LAP lawyers and others—and such considerations ought to be the subject of scholarship in the therapeutic jurisprudence field.69 For instance, in contrast to PALS (those in long-term recovery from substance abuse), do FRIENDS lack a clear counterpart to being “X years clean and sober?” Or does the contrast between substance abuse and mental illness break down when one considers the trepidation, expressed earlier by Judge Michael Murphy in the context of abstinence from alcohol, that “there is always the possibility of a relapse,” and that watchful eyes might always be in pursuit?70 And, in the context of mental illness, might lawyers profitably resort to Marjorie Silver’s words that although the “chances are high that I will experience one or more breakdowns during the remainder of my years,” it is nonetheless true that “the future is uncertain for all of us,” and that “all any of us has for sure is now.”71

As I noted in my previous essay in the context of substance abuse, “LAP lawyers in long-term recovery who.....feel comfortable talking about their personal histories...will immediately achieve an added credibility with courts and clients.”72 In the present essay, we must ask if that same statement would at the moment carry as much strength in the context of mental illness. If not, can a particular type of disclosure language be developed—maybe along the lines of Silver’s words above--to narrow the credibility gap between the two situations?

In any case, the following statement, again from the prior essay relating to substance abuse, would clearly apply with equal force in the area of mental health: “But lawyers who wish to

68Id.  See also Susan L. Brooks Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities, 13 Clinical L. Rev. 213 (2006)(discussions, among other matters, of boundary and limit-setting).
70 Murphy, supra note 24.
71 Silver, supra note 53.
72 Supra note 40.
keep such personal matters personal may still have much to add.”

Even without disclosure, in other words, lawyers who have battled mental illness will often better understand matters such as the experience of hospitalization and medications, may know much about treatment options and particular programs and treatment centers, may be particularly well equipped to have meaningful discussions with clients, with mental health professionals, and much, much more.

Legal Opportunities for FRIENDS

We need to think carefully about how and where FRIENDS may be most helpful. One clear area would be by representing respondents in civil commitment hearings, an area where representation is often dreadful, and where LAP lawyers could perform admirably, especially in counseling their clients and in keeping them fully informed of options and consequences. With meaningful representation, involuntary commitment can often be avoided and other acceptable treatment possibilities might be invoked. Even if a hearing takes place and results in an order of commitment, there is TJ literature on the importance of procedural justice in these proceedings and of the therapeutic as well as the due process benefit of providing it—something the lawyer can be attentive to even if the judge, without counsel’s intervention, might not be. And there is also value that comes to the attorney from participating in civil

73 Id.
74 Judge Bazelon wrote of the representative lawyers in such proceedings as “walking violations of the Sixth Amendment.” David L. Bazelon, The Defective Assistance of Counsel, 42 U. Cin. L. Rev. 1,2 (1973). And, except for a handful of jurisdictions, matters haven’t improved much in the nearly 40 years since Judge Bazelon wrote. See Michael L. Perlin, “I Might Need a Good Lawyer, Could be Your Funeral, My Trial”: Global Clinical Legal Education and the Right to Counsel in Civil Commitment Cases, 28 Wash. U. J. L. & Pol’y 241 (2011), version available online at http://ssrn.com/abstract=1090997 . There are, however, some stellar examples of representation in the mental health area, such as the Law Project for Psychiatric Rights (PsychRights), a public interest law firm, directed by Alaska attorney Jim Gottstein, devoted to opposing forced psychiatric drugging. Http://psychrights.org. LAP lawyers who have themselves experienced and objected to forced drugging (a major struggle of Elyn Saks) might wish to involve themselves in work along the lines of that engaged in by PsychRights.
76 If outcome is not much in doubt, judges may tend to cut corners, but this would be a mistake in terms of perceptions of fairness and even with later cooperation with doctors and the like.

Another role a TJ volunteer lawyer might play is analogous to the role played in the criminal justice sphere by Georgia Justice Project lawyers: to “defend people accused of crimes and, win or lose, stand with them while they rebuild their lives.” http://gjp.org/about I am indebted to Marjorie Silver for this insight, and believe it will likely be of particular interest to FRIENDS and clients with mental health issues. Indeed, armed with that insight, I was reminded of Saks’ long-term involvement with a client named Jefferson: “One of my favorite cases, involving someone I would end up working with on and off for six years, was Jefferson, a young man barely out of his teens. When we first met him, Jefferson had been on a back ward in a state mental hospital for many years....In addition to having been diagnosed as mentally ill, Jefferson was moderately mentally retarded. And therein lay the problem: Retardation is not equivalent to mental illness, and there seemed to be no current evidence that he was still mentally ill. And if he wasn’t, a state mental hospital was absolutely the last place he should have been living.”Saks, supra note 51, kindle edition location 3140-47-55. One important function a LAP FRIEND lawyer could perform when dealing with a client in a civil commitment or mental health court matter is discussing—and perhaps preparing—an advance directive instrumental relating to possible future psychiatric care. This function would be
commitment hearings: the skills and sensitivity one develops that is transferable to many other TJ-like practice settings—an excellent learning experience specifically noted by North Carolina deputy public defender Robert Ward, who branched out from that avenue to many others, including becoming a leading figure in drug treatment court representation.77

Participating in mental health court proceedings is another natural forum for LAP FRIENDS. Much of the legal work in that setting is actually conducted before court hearings in conversations between counsel and client about the decision to enter into the mental health court program, what it means, and what consequences would flow from choosing or declining program participation.78 Although courts are supposed to explain these choices to new candidates, the judges often do this in group settings, and many who enter mental health court turn out to believe that they were never given a clear explanation and choice.79 Since, as we have already seen,80 these clear and respectful communications have a therapeutic as well as a legal effect, counsel can play a highly important role here, and a role in which LAP FRIENDS should feel especially comfortable: speaking with persons in emotional crisis, explaining the actual functioning of the offered programs, making sure the prospective enrollee understands the costs and benefits of participation and non-participation.81

especially useful if the lawyer adheres to the Georgia Justice Project model mentioned above and is willing to work with the client even after hospitalization and release. Upon release, for example, the lawyer might ask the client if he or she wishes to prepare an advance directive instrument to be followed if serious psychological matters occur later on. See Bruce J. Winick, Foreword: Planning for the Future through Advance Directive Instruments, 4 Psychology, Public Policy, and Law 579 (1998). Surveys reveal that many persons support the use of advance directive instruments but, because of time and other logistical considerations, few of them actually prepare one. See J. Swanson et al, Psychiatric Advance Directives Among Public Mental Health Consumers in Five U.S. Cities: Prevalence, Demand, and Correlates, 34 J. American Acad. Of Psychiatry & Law 43 (2006). See generally William P. Spaulding, Therapeutic Jurisprudence: A View From the Trenches (this volume). LAP FRIENDS could function to lessen the above noted logistical problems.77 Rehabilitating Lawyers, supra note 6, at 207 (contribution of Robert Ward)("I began my work at the Public Defender’s Office by representing clients facing civil involuntary commitments and regular misdemeanors. Knowledge gained there later helped me with the more serious cases. I learned much from clients and the hospital staff, particularly how to identify the symptoms of common illnesses such as schizophrenia and bipolar disorder. I learned how to speak with them as I would any other client. Essentially, the key was to be aware of their condition and then work with them to develop an action plan").

78 “Although observations of mental health court reveal ‘there is little that reflects traditional ‘lawyering’ as the attorneys are relegated to relatively minor roles in the hearings,’ pre-selection legal advice and counseling are essential.” Rehabilitating Lawyers, supra note 6, at 26.

79 Id.

80 Supra, note 75.

In the analogous area of drug court enrollment, lawyer Martin Reisig explains the importance of taking pains to explain the program and of avoiding a rush to judgment on the part of the client. Such is especially the case because a number of clients in drug court fail to complete the program and are returned to court to await sentencing on a charge to which they have already pled guilty. Such clients often experience a “double whammy” and feel “sold out” by their hurried lawyers. See Rehabilitating Lawyers, supra note 6, at 156-162 (contribution by Marin Reisig).
The newly established veterans courts should be another rewarding source of professional work for these LAP lawyers—especially since so many clients of such courts are returning combat veterans with post-traumatic stress disorder (PTSD). These courts will often see cases where a veteran’s PTSD has led to drug and alcohol problems, to DWI charges, or to domestic violence or other assault charges. If the client is in treatment for PTSD, the lawyer can, with the client’s consent, help coordinate appointments with the client’s therapist—the kind of communication that a LAP FRIEND should find familiar and comfortable. Coordination is especially important because if a client is, for example, receiving a type of “exposure therapy,” the therapy itself may actually temporarily *heighten* the client’s stress and anxiety; thus, a court appointment or legal counseling session should surely not follow on the heels of such a therapy session. Coordination is also important because litigation clearly adds to the client’s stress—sometimes even pushing particularly troubled clients to suicide—and a LAP lawyer could perform an important service explaining to the therapist the legal situation of the client so that the therapist can take account of that in providing the necessary psychological services.

Capt. Evan Seamone, a military lawyer, has written a couple of excellent articles relating to therapeutic jurisprudence, legal counseling of veterans, and PTSD. In the course of his comprehensive exposition of the issues, he discusses some aspects of a lawyer’s role that overlaps substantially with what a psychologist might do professionally. For example, he provides a PTSD checklist designed by the military for rather simple and straightforward use, and suggests it can—and should—be used by lawyers when they suspect a veteran may have PTSD. Seamone convincingly likens the task to the commonly accepted practice of attorneys using a Competency Screening Test to assess a client’s mental capacity to stand trial.

But then Seamone suggests something not conventionally in the bailiwick of barristers: using simple, basic psychological techniques such as relaxation exercises to calm a client before a stressful interview and the like. Seamone examines the statutes on the lawful and unlawful practice of psychology, and concludes that the techniques and practices he notes do not constitute unlawful practice when performed by other professionals—lawyers are specifically...
mentioned in some of the statutes—90—in the course of their professional practices. Thus, instead of postponing to another date the interviewing or counseling of a stressed client, a lawyer might appropriately consider a relaxation exercise to be part and parcel of the lawyer’s professional task.

Seamone cautions lawyers who decide to engage in these simple psychological practices to explain clearly and carefully to the client that the lawyer is not a psychologist, and to secure the client’s consent. It is also important to underscore that the practices discussed here are indeed simple and find their way into standard and well-regarded “self-help” books.93

Of course, not all lawyers—LAP or otherwise—will be inclined to engage in these basic psychological techniques. But it may well be that a number of LAP FRIENDS will indeed be attracted to including this work in their practice. How, then, can the logistics be worked out to facilitate interested LAP FRIENDS engaging in these as well as the earlier mentioned practice areas?

Logistics and Concluding Remarks

In my earlier paper dealing with LAP principally in the area of PALS (substance abuse), I addressed certain basic issues. For instance, “representation in problem-solving courts is overwhelmingly engaged in by public defender offices,”94 thus in practice excluding other lawyers—LAP and others—from practicing in those courts. Special arrangements might be made with such public defender offices to designate a group of “special deputy public defenders” and thereby allow some volunteer lawyers—from LAP programs or, perhaps, from recent law school graduates eager to gain some experience practicing in settings particularly conducive to honing TJ skills.95 Similar efforts may be appropriate to widen the pool of talent handling civil commitment cases.96 The earlier essay concluded by stating that “the next step, therefore, is for interested persons and groups—including the courts and the bar—to brainstorm how these practice avenues may be opened to interested lawyers, and to provide

90 Id at 203.
91 Id.
92 Id at 243.
93 Id at 228,243. It might be a good practice for lawyers interested in this work to create a committee of psychologists to “vet” such self-help books. Indeed, one can imagine a respected psychologist or group of psychologists writing a book especially for lawyers to use with clients. By analogy, consider the excellent book by Martin Seligman, a former president of the American Psychological Association, entitled What You Can Change… and What You Can’t: The Complete Guide to Successful Self-Improvement (1994).
94 Supra note 40.
95 Id. Another model, a bit different from the special deputy public defender model, would be to consider whether interested attorneys could form part of the panels of lawyers ordinarily called upon when the public defender office has a conflict of interest. Such a model would also allow for appointed attorneys to receive a modest fee from public funds—a not insignificant matter in tough economic times.
96 Supra note 40.
training, materials, and overall encouragement to lawyers—LAP and otherwise—wishing to serve others in achieving a rich and full life.”

The opening up of these opportunities to volunteer lawyers generally, rather than to LAP lawyers exclusively, would serve an additional purpose: “if the volunteer lawyers are drawn not only from LAP programs but are broadly-based, confidentiality of LAP status may be preserved for those who wish to preserve it” — a matter that, as we have discussed earlier, may turn out to be even more important for FRIENDS than for PALS.

But this discussion brings us back to the earlier discussion of disclosure, and how the work of Saks, Jones, and Silver may encourage others in the legal profession to be willing to speak of their struggles and successes. While much good work by LAP FRIENDS can be accomplished by thinking through and implementing the reforms noted immediately above, still other rewarding and very helpful practice avenues can be opened to LAP FRIENDS who follow in the disclosure footsteps of the above legal academics.

Imagine, for example, that, instead of individual LAP lawyers volunteering to take cases in specific practice settings, there were committees of LAP volunteer lawyers that could be called upon by other lawyers—including public defenders or perhaps law school clinics—to associate in particular cases involving clients with substance abuse or mental health issues. Thus, a lawyer called upon by a family to represent a jailed family member with drug and alcohol issues might well contact the LAP program for a volunteer PAL who could be called upon to engage with the client in a “jailhouse intervention.” Likewise, an attorney working with a combat veteran charged with assault might request the involvement of a FRIEND to conduct a PTSD screening test, and, if PTSD seems a likely diagnosis, to refer the veteran for mental health treatment, to coordinate matters with the mental health professional, to explore the option of moving the case to veterans court, perhaps to engage the client in relaxation exercises before further counseling sessions with the principal lawyer, and so on.

Moreover, if a LAP lawyer is to serve as an independent attorney in an area outside his or her prior practice experience, the plunge into a TJ practice may seem appealing but intimidating. But if one has the opportunity to engage in a TJ practice in the capacity of a “second chair” or as a consultant with some special knowledge, skills, and credibility, the opportunity to “give back”

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97 Id.
98 Id.
by venturing into the TJ world may be much more palatable\textsuperscript{100}--and may then attract more and more of such lawyer volunteers.

The issues explored in this essay are by necessity given a very preliminary treatment. My hope is that interested LAP lawyers can consider these issues in more depth, and can discuss them with lawyers and judges involved in problem-solving courts, in civil commitment cases, and with the TJ community in general. Such cooperative exchanges are destined to result in improved service to clients and to new rewarding practice and pro bono opportunities for LAP lawyers and for their relatively new FRIENDS. Moreover, as interesting TJ literature suggests, engaging in this type of practice is likely to add professional satisfaction to the life of the lawyer.\textsuperscript{101} And as if that were not enough, a recent study suggests that “giving back” in an altruistic way may even, in and of itself, be good for one’s health, even increasing longevity.\textsuperscript{102}

\textsuperscript{100} This arrangement may also prove to be more palatable to the clients. Earlier, we mentioned that the stigma of mental illness may extend to persons who themselves have mental health problems—including clients facing civil commitment or proceedings in mental health court. But if a disclosing LAP lawyer is serving in an advisory or “second chair” capacity, an adverse reaction by the client would seem to be most unlikely. And this process itself may also serve gradually to lessen the stigma attached to mental illness.

\textsuperscript{101} E.g., Deborah Chase & Hon. Peggy Fulton Hora, The Best Seat in the House: The Court Assignment and Judicial Satisfaction, 47 Family Court Rev. 209 (2009), available online at: http://www.judgehora.com/FCH_Hora_Chase_03_2009.pdf