

## MOVING TOWARD A COMPETENCY-BASED MODEL FOR FOSTERING LAW STUDENTS' RELATIONAL SKILLS\*

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*Legal education has long been criticized for failing to provide adequate professional training to prepare graduates for legal practice realities. Many sources have lamented the lack of sufficient attention to the range of competencies necessary for law graduates to be effective practitioners and develop a positive professional identity, including those that are intra-personal, such as self-awareness, reflective practice, and self-care; those that are interpersonal, such as deep listening, empathy, and cross-cultural communication; and those that engage with the social/systemic dimension of lawyering, such as the role of our multiple and intersectional social identities, implicit bias, privilege, power, and structural racism. For this article, we refer to this entire set of competencies as relational competencies. One notable exception to this sustained critique of legal education has been the field of clinical legal education, including law school clinics and externships. Nevertheless, what is still lacking is a more systematic approach to clinical law students' supervision around the knowledge, skills, and values connected to relational competencies. In this article, we aim to begin a conversation about how we can move to a competency-based approach to supervision of law students in clinics and externships. We draw significant guidance from the field of psychology, where there is a well-established track record in using a competency-based approach to supervise trainees. By empha-*

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*sizing the importance of relational competencies in legal education, we can more effectively promote well-being among students, their current and future clients, and the legal profession's culture. Ultimately, we hope to invite a broader conversation about a more holistic approach to legal professionals' licensing and ongoing supervision.*

#### INTRODUCTION

Legal education has long been criticized for failing to provide adequate and appropriate professional training to prepare graduates for the realities of legal practice. Many sources have lamented the lack of sufficient attention to the range of competencies that have been identified as necessary for law graduates to be effective practitioners and develop a positive professional identity and sense of purpose.<sup>5</sup> We define competency as “habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and community being served.”<sup>6</sup> Relational competencies are a set of traits and skills, which we also think of as habits of mind and practices, including those that are *intra-personal*, such as self-awareness, reflective practice, and self-care; those that are *interpersonal*, such as deep listening, empathy, and cross-cultural communication; and those that engage with the *social/systemic* dimension of lawyering, such as appreciating the role of our multiple and intersectional social identities, implicit bias, privilege, power, and structural racism.

One notable exception to this sustained critique of legal education has been the field of clinical legal education, which we define broadly to include law school clinics and externships. Clinical legal educators have increasingly embraced their role in helping law students develop a positive professional identity by focusing on relational competencies through the process of supervision. We use the term “supervision” in its broadest sense, meaning we are including other

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<sup>5</sup> AMERICAN BAR ASSOCIATION, REPORT AND RECOMMENDATION OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (“THE CRAMPTON REPORT”) (1st ed. 1979) [hereinafter THE CRAMPTON REPORT]; AMERICAN BAR ASSOCIATION, REPORT AND RECOMMENDATION OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT]; Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOCIAL INQUIRY J. (2011); Deborah Jones Merritt & Logan Cornett, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, (Inst. For Advancement Am. Legal Sys., 2020), available at <https://iaals.du.edu/publications/building-better-bar> [hereinafter Merritt & Cornett].

<sup>6</sup> Ronald M. Epstein & Edward M. Hundert, *Defining and Assessing Professional Competence*, 287 J. AM. MED. ASS'N 226, 226 (2002).

well-established aspects of clinical pedagogy, such as case rounds, under that umbrella term.<sup>7</sup> An examination of clinical legal scholarship over the past four decades demonstrates an increased interest in supervising law students around issues beyond legal and factual analysis of legal matters or performance of technical skills.<sup>8</sup> What is still lacking nevertheless is a more systematic approach to the supervision of clinical law students around the knowledge, skills, and values connected to relational competencies.

To be clear, when we refer to a competency-based model we are speaking about a particular pedagogical approach that has been implemented in other areas of education and that we and others are advocating for implementing in legal education and training. In order to teach and assess our students using a competency-based approach, we must first identify the traits and skills we believe are needed to enter the legal profession, then work backward to figure out the benchmarks or incremental achievements students need to demonstrate along the way, and then work collaboratively to develop more intentional ways to support our students in meeting the benchmarks. This approach is consistent with backwards design,<sup>9</sup> increasingly used in law schools to comply with recent ABA requirements of institutional learning outcomes for all dimensions of lawyering, including relational competencies.

In this article, we begin a conversation about how we can move toward this vision of a relationally centered competency-based approach to the supervision of law students in clinics and externships. Two of us are law professors who have devoted much of our professional careers to advocating for more meaningful education of law students and lawyers around relational competencies. Our two other co-authors are students enrolled in a joint degree program in law and psychology.<sup>10</sup> Thanks to their expertise and lived experience, we are able to draw significant guidance from the field of psychology. Psychologists have a significant track record in using a competency-based

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<sup>7</sup> This usage of the term supervision is consistent with how it is used in the mental health context.

<sup>8</sup> See *infra* Section I.

<sup>9</sup> See generally, CARWINA WENG, DANIELLE R. COVER, MARGARET E. REUTER & CHRIS ROBERTS, *LEARNING LAW THROUGH EXPERIENCE & BY DESIGN* (2019) (providing a step-by-step guide for legal educators seeking to incorporate backwards design into their courses and programs).

<sup>10</sup> Drexel University's JD/PhD program offers two complete, accredited degrees in Law and Clinical Psychology. The goal of the program is to produce lawyer-psychologists well versed in "legally sophisticated social science research" able to impact mental health policy, forensic psychology, and aid the legal system. *JD/PhD in Law & Psychology*, DREXEL UNIVERSITY, <https://drexel.edu/coas/academics/graduate-programs/psychology/doctorate-juris-doctorate/> (last visited Jan. 14, 2021).

approach to supervise trainees to support their development of relational traits and skills.<sup>11</sup>

The article provides an opportunity to rethink supervision with the goal of encouraging a more meaningful and intentional progression of personal growth on the part of the student supervisee – for example, moving from the supervisor playing a more active role, to a phase of co-equal collaboration, to finally arriving at a stage in which the student is able to work without close supervision.<sup>12</sup> A competency-based approach to clinical legal supervision would have wide-ranging positive effects, including establishing a shared understanding around the identification and importance of relational competencies, developing greater consistency and quality control around supervision in clinics and externships, and expanding the usage and usefulness of learning outcomes to include more of a focus on positive professional identity formation. By moving to a competency-based approach to law student supervision, we can lay the groundwork for re-examining our licensing schemes, which themselves have been the subject of long-standing critiques. Further, by emphasizing the importance of relational competencies in legal education, we can more effectively promote well-being among our students, their current and future clients, and the culture of the legal profession.

This project took on even greater importance during the COVID-19 pandemic in 2020. The virus, which necessitated social isolation and created an atmosphere of uncertainty, presented tremendous challenges for law faculty, staff, and students on many levels. Alongside these stressors, there was a heightened awareness of the disparate impact of the virus on historically marginalized communities, especially communities of color. These concerns were compounded dramatically by the murders of George Floyd, Breonna Taylor, and numerous others at the hands of police officers, which led to a widespread outcry for reform at all levels of society to address systemic racism and white supremacy.

Layer on top of all these factors the need to postpone and then reshape bar exams across the country due to the pandemic, and the result is that legal educators found themselves facing new, previously unforeseen challenges. And, similar to all of life's challenges, this one has presented an opportunity to reassess legal education, professional training, and licensing schemes for attorneys. Amid the many calls for reform are revitalized challenges to the bar exam as an inaccurate and inappropriate measure of a law graduate's ability to practice law com-

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<sup>11</sup> See *infra* Section II.A.

<sup>12</sup> Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611 (2004).

petently and effectively.<sup>13</sup> Moreover, in the wake of pressures to address systemic racism, critiques of the inherent bias of standardized tests on which licensing rely have intensified.<sup>14</sup> By beginning this conversation of using a competency-based approach to relational competencies, we aim to open the door to a broader conversation about a more holistic approach to the licensing and ongoing supervision of legal professionals.

This article explores the current state of the literature on the development of relational competencies in legal education, with a particular focus on clinics and externships. It then proposes how clinical legal education could learn from the competency-based approach in the mental health professions. Part I describes the foundational building blocks of relational competencies and discusses important contributions drawn from the literature in areas including Therapeutic Jurisprudence, experiential learning and reflective practice, alternative dispute resolution, cross-cultural lawyering, trauma-informed practice, self-care, and mindfulness. Part II traces a series of developments that have paved the way for competency-based learning in legal education. Part III discusses the competency-based approach in the mental health professions, specifically psychology. Part IV then illustrates how the psychology framework could be applied to clinical legal education. Part V addresses potential challenges to implementing a competency-based approach in clinical legal education. The article concludes with modest recommendations and possible next steps for further exploration of these ideas to advance legal education.

## I. DEFINING RELATIONAL COMPETENCIES

As Brené Brown has said, “we are hardwired for connection.”<sup>15</sup> The truth is that every living being exists in a web of interconnection, so being relational is baked into our very existence. When we refer to relational competencies, we are contemplating three integrated and overlapping dimensions: *intra-personal*, meaning how we are with ourselves; *interpersonal*, meaning how we are in our interactions with others; and *systemic*, which is how we relate to the structural dimen-

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<sup>13</sup> Merritt & Cornett, *supra* note 5.

<sup>14</sup> See, e.g., Lauren Hutton-Work & Rae Guyse, *Requiring a Bar Exam in 2020 Perpetuates Systemic Inequalities in the Legal System*, THE APPEAL (Jul. 6, 2020), <https://theappeal.org/2020-bar-exalum-coronavirus-inequities-legal-system/> (July 6, 2020); Oday Yousif, Jr., *Commentary: The Bar Exam is Stained with Inequality and Racism. It needs to be Abolished*, THE SAN DIEGO UNION-TRIBUNE (Dec. 7, 2020 5:45 PM), <https://www.sandiegouniontribune.com/opinion/commentary/story/2020-12-07/abolishing-the-bar-exam-bias>.

<sup>15</sup> BRENE BROWN, DARE TO LEAD: BRAVE WORK. TOUGH CONVERSATIONS. WHOLE HEARTS. 25 (2018).

sions of our local and global communities, societies, and even the entire planet.<sup>16</sup>

More than fifty years ago, Andrew Watson, a psychiatrist and law professor, commented on the tendency among law students and lawyers to intellectualize most situations, including those that the average person—the reasonable person—would expect to have more emotional content.<sup>17</sup> This tendency is exacerbated by much of legal education, which generally pays insufficient attention to the traits and skills needed to relate in a meaningful way to clients and their concerns. Further, by focusing almost exclusively on the case method, law schools may well alienate students from the relationship-centered reality of everyday law practice.<sup>18</sup>

At the intra-personal level, these competencies include self-awareness, including awareness of feelings and emotions and the ability to engage in self-regulation and resilience enhancing behaviors, such as growth mindset.<sup>19</sup> The intra-personal level also includes the core competencies of reflective practice, self-care, and self-directedness. Interpersonal relational competencies include effective communication, which incorporates the qualities of empathy and compassion, the use of creative dialogue, and the ability to navigate cultural differences. The systemic dimension includes awareness of our complex social identities, biases, blind spots, power, and privilege. Importantly, it also includes appreciation for the role of historical and structural racism and oppression of marginalized communities. Additionally, there are competencies that transcend all three dimensions, such as mindful engagement<sup>20</sup> and trauma-informed practice.<sup>21</sup>

### A. Foundational Building Blocks

To gain a deeper appreciation of what we mean by relational competencies, one place to start is with the work of two of the authors of this article who are longtime clinical legal educators. Co-authors

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<sup>16</sup> See generally, Susan L. Brooks, *Mindful Engagement and Relational Lawyering*, 48 Sw. L. REV. 267 (2019) [hereinafter Brooks, *Mindful Engagement*].

<sup>17</sup> Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 J. PSYCHOL. PUB. POL'Y & L. 1173, 1192-93 (1999) [hereinafter Silver, *Emotional Intelligence*].

<sup>18</sup> *Id.*

<sup>19</sup> Brooks, *Mindful Engagement*, *supra* note 16, at 283-84.

<sup>20</sup> Mindful engagement is about cultivating habits of mind and practices that can inform a wholehearted approach to lawyering, which means bringing our emotional and bodily awareness as well as our analytical minds fully into our work. It contemplates the interconnection and integration of engagement with oneself, engagement with others interactively, and engagement with communities and larger social institutions and systems.

*Id.* at 269-70.

<sup>21</sup> See *infra* Section I.B.5.

Marjorie Silver and Susan Brooks have each written extensively about the need for all lawyers to be familiar with aspects of psychology and other mental health fields that intersect with legal education and the practice of law, including intra-personal, interpersonal, and systemic dimensions of the work of legal professionals. Silver's early work explored the need for psychological-mindedness among lawyers, and, accordingly, the need to include training on psychodynamic processes that occur and can affect the attorney-client relationship, such as transference and countertransference.<sup>22</sup> Silver then examined the importance of cultivating emotional intelligence as an essential component of a legal education aimed at preparing graduates for success in their professional lives.<sup>23</sup> A subsequent article demonstrated the relationship of emotional competence to multicultural lawyering and racism, foreshadowing the necessity of training law students to understand the potential impact of implicit biases and white privilege.<sup>24</sup> Several of Silver's other works explore the risks of stress, burnout, and vicarious trauma to the well-being of law students and lawyers, and the necessity of self-care to ensure competent lawyering.<sup>25</sup>

In her early work, Brooks picked up on these ideas and added others drawn from her background in clinical social work, such as focusing on the phases of "helping" relationships and specific related tasks, including client engagement and assessment in the beginning phase, resistance/readiness for change in the middle phase, and intentionality around endings or termination of the relationship.<sup>26</sup> Both authors also envisioned the opportunity to bring these understandings specifically into supervisory relationships in clinical legal education along with the expectation that the student will apply the learning that emerges from the supervisory relationship directly to their working relationships with clients and others.<sup>27</sup>

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<sup>22</sup> See generally Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship* 6 CLINICAL L. REV. 259 (1999) [hereinafter Silver, *Lawyer/Client Relationship*].

<sup>23</sup> See generally Silver, *Emotional Intelligence*, *supra* note 17.

<sup>24</sup> See generally Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219 (2002) [hereinafter Silver, *Multicultural Lawyering*].

<sup>25</sup> See Marjorie A. Silver, *Emotional Competence and the Lawyer's Journey*, in THE AFFECTIVE ASSISTANCE OF COUNSEL (Marjorie A. Silver ed., 2007) [hereinafter Silver, *Lawyer's Journey*]; Marjorie A. Silver, Sanford Portnoy, & Jean Koh Peters, *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship*, 19 TOURO L. REV. 847 (2003).

<sup>26</sup> Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, 13 CLINICAL L. REV. 213 (2006) [hereinafter Brooks, *TJ and Relationship Building*].

<sup>27</sup> See *id.*; Marjorie A. Silver, *Supporting Attorneys' Personal Skills*, 78 REVISTA JURIDICA ESCUELA DE DERECHO U. PUERTO RICO 147 (2009) [hereinafter Silver, *Per-*

A little later in the progression of her scholarship, Brooks (along with another colleague also credentialed in law and social work) distilled this set of knowledge, skills, and values into a conceptual framework they called Relationship-Centered Lawyering, which Brooks now refers to as Relational Lawyering.<sup>28</sup> The relational framework identifies three areas of competency all lawyers need to be effective: (1) substantive knowledge about the context for human development, such as ecological/systems theory; (2) process-oriented perspectives that promote procedural justice and fairness; and (3) affective, interpersonal, and cultural dimensions.<sup>29</sup> More recently, Brooks has translated the conceptual framework of relational lawyering into a teachable model.<sup>30</sup> As discussed later in this article,<sup>31</sup> we believe this model could potentially inform a competency-based approach to supervision. This relational lawyering model uses the three relational competency dimensions we have already identified: personal, interpersonal, and systemic.

Brooks has also articulated a set of core principles and practices that can inform a competency-based supervision model for clinical legal education purposes. First, legal education needs to cultivate the following qualities: kindness, curiosity, humility, and transparency.<sup>32</sup> Second, law students need to embrace the dignity of all human beings by demonstrating that everyone matters.<sup>33</sup> Third, being relational requires appreciating the importance of law students' own contexts as well as the contexts of others with whom they engage. Fourth, it requires seeing and focusing on their own and others' strengths.<sup>34</sup> Fifth,

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*sonal Skills*].

<sup>28</sup> See generally SUSAN L. BROOKS & ROBERT G. MADDEN, *RELATIONSHIP-CENTERED LAWYERING, SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE* (Brooks & Madden eds., 2010) [hereinafter *RELATIONSHIP-CENTERED LAWYERING*]; Susan L. Brooks & Robert G. Madden, *Epistemology and Ethics in Relationship-Centered Legal Education and Practice*, 56 N.Y.L. SCH. L. REV. 331 (2011).

<sup>29</sup> See *RELATIONSHIP-CENTERED LAWYERING* *supra* note 28; Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 212 (2012).

<sup>30</sup> Susan L. Brooks, *Using a Communication Perspective to Teach Relational Lawyering*, 15 NEV. L. J. 477 (2015); Susan L. Brooks, *Cultivating Students' Relational Skills*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 324 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wiles Kaas & Antoinette Sedillo Lopez eds., 2015); Susan L. Brooks, *Creating a Beloved Community by Teaching Relational Lawyering*, in *TRANSFORMING JUSTICE, LAWYERS AND THE PRACTICE OF LAW* (Marjorie A. Silver ed., 2017); Susan L. Brooks, *Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation*, 14 U. ST. THOMAS L. REV. 412 (2018)[hereinafter Brooks, *Fostering Wholehearted Lawyers*].

<sup>31</sup> See *infra* Section VI.

<sup>32</sup> Brooks, *Fostering Wholehearted Lawyers*, *supra* note 30, at 424-26.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



relational lawyering embraces what others have called an ethic of care.<sup>35</sup> An ethic of care requires viewing the law as a healing profession, serving others to promote their well-being, and acting out of a higher sense of purpose or meaning, such as a strong sense of spirituality and commitment to social justice.<sup>36</sup>

These core principles translate into a set of relational practices: ways of being and communicating with others and interacting with communities that Brooks has called heart-centered practices to emphasize that being relational requires re-orienting our work from being solely in our heads to drawing wisdom from and speaking from our hearts.<sup>37</sup> Heart-centered practices include habits of mind and tools for promoting self-awareness, creating supportive spaces for open and inclusive sharing and dialogue, and fostering empathy, compassion, and self-compassion.<sup>38</sup>

### B. Movements And Scholarship Supporting Relational Competencies

Brooks's and Silver's work builds on and complements the work of many esteemed colleagues who have lifted up the importance of these wide-ranging issues, which once might have been considered "extra-legal concerns" in both legal education and practice.<sup>39</sup> For purposes of this discussion, we have identified seven such perspectives, which draw both from within and outside of clinical legal scholarship

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<sup>35</sup> *Id.*, citing Carol Gilligan, *Ethics of Care*, available at: <https://ethicsofcare.org/carol-gilligan/> (2011) (citations omitted).

<sup>36</sup> *Id.*; Brooks, *Mindful Engagement*, *supra* note 16, at 267.

<sup>37</sup> Brooks, *Fostering Wholehearted Lawyers*, *supra* note 30; Susan L. Brooks, *Listening and Relational Lawyering*, in *HANDBOOK ON LISTENING* (Worthington & Bodie eds. 2020) [hereinafter, Brooks, *Listening and Relational Lawyering*].

<sup>38</sup> *Id.*

<sup>39</sup> These colleagues include ROBERT BASTRESS & JOSEPH HARBAUGH, *INTERVIEWING COUNSELING, AND NEGOTIATING* (1990); JEROME FRANK, *LAW AND THE MODERN MIND* (1930); HARROP FREEMAN, *LEGAL INTERVIEWING & COUNSELING* 50 (1964); ANDREW WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* (1976); JENNIFER K. ROBBENNOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS, UNDERSTANDING THE HUMAN FACTORS IN LITIGATION, NEGOTIATION, AND DECISION MAKING* (2d ed. 2021); TOM SHAFFER & JAMES ELKINS, *LEGAL INTERVIEWING AND COUNSELING* (2d ed. 1987); ALAN STONE, *LAW, PSYCHIATRY, AND MORALITY* 199 (1984); John Barkai & Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U. L. REV. 505 (1983); James Elkins, *A Humanistic Perspective in Legal Education*, 62 NEB. L. REV. 494, 505 n.45 (1983); Kristin B. Geerdy, *Clients, Empathy, and Compassion, Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEBRASKA L. REV. 1 (2008); Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills and the Importance of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225 (2004); Howard Sacks, *Human Relations Training for Students and Lawyers*, 11 J. LEGAL EDUC. 316,317 (1959); Mark and Barbara Pearlman Schoenfeld, *Interviewing and Counseling Clients in a Legal Setting*, 11 AKRON L. REV. 313 (1977).

and help make the case that relational competencies are essential for effective lawyering.<sup>40</sup> These perspectives are: Therapeutic Jurisprudence; Experiential Learning and Reflective Practice; Alternative Dispute Resolution; Trauma-Informed Practice; Self-Care and Well-Being; and Mindfulness and Other Contemplative Practices in Legal Education.

### 1. *Therapeutic Jurisprudence*

One body of scholarship is the field of Therapeutic Jurisprudence (TJ). David Wexler and Bruce Winick, who are considered its founders, along with others who associate themselves with this approach, have contributed significantly to our understanding of the psychosocial dynamics in client representation as well as the factors that can enhance or undermine client well-being.<sup>41</sup> As a theory of lawyering, TJ views legal actors as capable of having either a positive, healthy effect on interested parties, or a negative, unhealthy effect.<sup>42</sup> To the extent possible, consistent with other important considerations such as client autonomy and constitutional rights, the lawyer needs to seek to maximize the positive and minimize the negative.<sup>43</sup> As Winick has written, “[TJ] envisions lawyers who practice their profession with an ethic of care, enhanced interpersonal skills, [and] a sensitivity to their clients’ emotional wellbeing as well as their legal rights and interests.”<sup>44</sup> TJ provided a shared critical lens and a jumping off point for the exploration of psychosocial, emotional, and relational dimensions of supervision in the early work of both Brooks and Silver.<sup>45</sup>

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<sup>40</sup> See, e.g., Rob Durr & Debra Austin, *Emotion Regulation for Lawyers: A Mind is A Challenging Thing to Tame*, 16 WYO. L. REV. 387 (2016); Rosenberg, *supra* note 39; Barkai & Fine, *supra* note 39.

<sup>41</sup> See generally, David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 COOLEY L. REV. (2000); Bruce J. Winick, *Therapeutic Jurisprudence: Enhancing the Relationship between Law and Psychology*, 9 LAW & PSYCHOL.: CURRENT LEGAL ISSUES 30-48 (2006).

[T]herapeutic jurisprudence embodies a psychological approach to law - one that applies the insights and principles of psychology to the examination of legal rules and practices and to their improvement. It provides a new focus for law and psychology scholarship, identifying a variety of issues in need of theoretical and empirical examination. Law reform is an important theme of therapeutic jurisprudence, and scholars applying the approach have succeeded in offering an enormous range of proposals for legal change in a wide variety of legal contexts.

*Id.* at 31.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Bruce J. Winick, *Overcoming Psychological Barriers to Settlement: Challenges for the TJ Lawyer*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* 341, 342 (Marjorie A. Silver ed., 2007).

<sup>45</sup> See, e.g., Susan L. Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 ST.

## 2. *Experiential Learning And Reflective Practice*

Experiential learning theory and, relatedly, the literature on reflective practice, represent another important and highly influential set of approaches connected to relational competencies that have become well-integrated into clinical legal education and supervision.<sup>46</sup> This literature draws heavily on the work of prominent education theorists, notably John Dewey,<sup>47</sup> David Kolb,<sup>48</sup> and Donald Schon.<sup>49</sup> Schon's work on reflective practice highlights the idea of "reflection-in-action" as a skill emerging legal professionals need to develop in order to be effective and competent in their work.<sup>50</sup> A significant number of clinical legal scholars have adapted this work to the context of clinical supervision, including Margaret Martin Barry and Alex Scherr.<sup>51</sup> Reflective practice provides essential tools and habits that can help law students cultivate relational competencies. By reflecting on their experiences, and particularly on disorienting moments,<sup>52</sup> law

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THOMAS L. REV. 513 (2005); Brooks, *TJ and Relationship Building*, *supra* note 26; THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (Marjorie A. Silver ed. 2007); TRANSFORMING JUSTICE, LAWYERS AND THE PRACTICE OF LAW (Marjorie A. Silver ed. 2017); Marjorie A. Silver, *Lawyering and Its Discontents: Reclaiming Meaning in the Practice of Law*, 19 *TOURO L. REV.* (2015). Early on, TJ formed a close alliance with the Preventive Law movement. Bruce J. Winick, *Client Denial and Resistance in the Advance Directive Context: Reflections on How Attorneys Can Identify and Deal with a Psycholegal Soft Spot*, 4 *PSYCHOL. PUB. POL'Y & L.* 901 (1998).

Clients may be psychologically unable or unwilling to deal with their future death, illness, or incapacity. The anxiety that these issues produce in most people sets up psychological mechanisms for their avoidance. When an attorney raises the question of an advance directive instrument to deal with one of these troubling issues, he or she should not be surprised to encounter resistance or even denial.

*Id.* at 903.

<sup>46</sup> See, e.g., Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 *CLINICAL L. REV.* 317 (2014); Alex Scherr & Margaret Martin Barry, *Reflection and Writing Journals*, in *LEARNING FROM PRACTICE* 203 (Leah Wortham, Alexander Scherr, Susan L. Brooks, and Nancy M. Maurer eds., 3d ed. 2016); Jodi S. Balsam, Susan L. Brooks & Margaret Reuter, *Assessing Law Students as Reflective Practitioners*, 62 *N.Y. L. SCH. L. REV.* (2017-18); Rachel Spencer & Susan L. Brooks, *Reflecting on Reflection: A Dialogue Across the Hemispheres on Teaching and Assessing Reflective Practice in Clinical Legal Education*, 53 *L. TEACHER* 458 (2019).

<sup>47</sup> See generally JOHN DEWEY, *HOW WE THINK* (1910); JOHN DEWEY, *DEMOCRACY AND EDUCATION* (1916); JOHN DEWEY, *EXPERIENCE AND EDUCATION* (1938).

<sup>48</sup> See generally DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* (2d ed. 2014).

<sup>49</sup> See generally Donald A. Schön, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983); Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 *CLINICAL L. REV.* 231 (1996).

<sup>50</sup> *Id.*

<sup>51</sup> See Scherr & Barry, *supra* note 46.

<sup>52</sup> See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 *CLINICAL L. REV.* 37, 46 (1995) ("The learner's clinical experience of representing victims of injustice often includes a "disorienting moment" for the learner, in which her prior conceptions of social reality and justice

students can increase their self-awareness, become more mindful, and improve their self-care and their own well-being as well as that of their clients.<sup>53</sup> They can also increase their awareness of cross-cultural issues and become more trauma-informed, all of which will allow them to make more intentional choices that will support their development of more meaningful professional relationships, especially across differences, and improve their effectiveness as legal professionals.<sup>54</sup> Clinical legal educators can provide multiple opportunities for their students to engage in reflective practice both in the context of ongoing self-assessment and feedback that are part of the supervisory relationship in clinical legal education and also through the use of written reflection.

### 3. *Alternative Dispute Resolution*

Alternative dispute resolution (ADR) generally refers to non-adversarial ways of settling disputes outside of the courtroom. In recent years, law schools have expanded experiential courses and programs devoted to ADR, such as mediation and negotiation.<sup>55</sup> The expansion of these experiential courses has also increased the focus on teaching relational skills in legal education because most ADR approaches emphasize the importance of habits of mind and practices such as self-awareness, empathy, and deep listening.<sup>56</sup> For example, Gary Friedman, whose approach to ADR is being taught in some number of law schools, states that effective ADR practitioners, whom he calls “conflict professionals,” must cultivate the following abilities: becoming more present and aware; dealing with intense emotional reactions in a way that enables us to feel deep and authentic empathy for clients; connecting our inner experience to the conflict manifesting in the outer world; and deepening our motivation to handle conflict so we can continue to do the work without getting burned out or overwhelmed.<sup>57</sup> As described here, ADR actively encourages the cultivation of relational competencies at intra- and interpersonal as well as systemic levels. By consciously supervising our students around these habits of mind and practices, they begin to integrate and internalize the relational dimensions of the work, which will help them develop

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are unable to explain the clients’ situations, thus providing what adult learning theory holds is the beginning stage of real perspective transformation.”); Brooks, *Mindful Engagement*, *supra* note 16.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Brooks, *Listening and Relational Lawyering*, *supra* note 26.

<sup>56</sup> See *id.* at 364-65. Brooks, *Mindful Engagement*, *supra* note 16, at 287.

<sup>57</sup> See generally, GARY J. FRIEDMAN, *INSIDE OUT: HOW CONFLICT PROFESSIONALS CAN USE SELF-REFLECTION TO HELP THEIR CLIENTS* (2014).

into more effective and successful practitioners, regardless of whether they are mediating or negotiating in an ADR process or in some other context as legal professionals.

#### 4. *Cross-cultural Lawyering*

Another highly important and influential subject that has contributed significantly to our understandings of how to teach and supervise clinical law students around relational competencies is cross-cultural lawyering or cultural competence.<sup>58</sup> Today, the work in this area often focuses more pointedly on the systemic dimension, specifically the role that clinical legal education has in addressing systemic racism and white supremacy.<sup>59</sup> The seminal early work in this area, which focused more on the intra- and interpersonal dimensions, is Sue Bryant and Jean Koh Peters' *Five Habits of Cross-Cultural Lawyering*,<sup>60</sup> which continues to be widely taught and applied in the supervision context to law students in clinics and externships.<sup>61</sup> The *Five Habits* grounds its approach on the premise that all of us are cultural beings,

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<sup>58</sup> The term cultural competence continues to be used by the American Bar Association in its Standards for Legal Education. ABA SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Standard 302(d), Interpretation 302(I) (2020-2021). Many scholars, including legal scholars, have questioned the appropriateness of this term, preferring instead to use terms such as cultural responsiveness, cultural awareness, cultural sensibility, or, more recently, cultural humility, that reflect the idea that cross-cultural proficiency requires ongoing efforts, and indeed represents lifelong learning. See, e.g., L. Danielle Tully, *The Cultural [Re]Turn: The Case for Teaching Culturally Responsive Lawyering*, 26 STAN. J. C.R. & C.L. 201 (2020); Anastasia Boles, *Seeking Inclusion from the Inside Out: Toward a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209 (2017); Andrea Curcio, *Educating Culturally Sensible Lawyers: A Study of Student Attitudes About the Role Culture Plays in the Lawyering, Process*, 16 U. W. SYDNEY L. REV. 98 (2012); Antoinette Sedillo Lope, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J. L. & POL'Y 37 (2008).

<sup>59</sup> See, e.g., Patricia Barkaskas and Sarah Buhler, *Beyond Reconciliation: Decolonizing Clinical Legal Education*, 26 J. LAW & POL'Y 1 (2017); Eduardo C. Capulong, *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L. J. 3 (2021).

<sup>60</sup> Susan Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in RACE, CULTURE, PSYCHOLOGY, & LAW (Kimberly Holt Barrett & William H. George eds. 2005). See also Susan Bryant & Jean Koh Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Approaches*, in THE AFFECTIVE ASSISTANCE OF COUNSEL 183-228 (Marjorie A. Silver ed., 2007) [hereinafter Bryant & Peters, *Six Practices*]; Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) 7 WASH. U. J. L. & POL'Y 17 (2001) [hereinafter Bryant, *The Five Habits*].

<sup>61</sup> See NATHALIE MARTIN, *LAWYERING FROM THE INSIDE OUT: LEARNING PROFESSIONAL DEVELOPMENT THROUGH MINDFULNESS AND EMOTIONAL INTELLIGENCE* (2018); Appendix 6.1, *LEARNING FROM PRACTICE*, supra note 46, at 151-52; SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (2014); DEBORAH EPSTEIN, JANE H. AIKEN & WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* (2014).

and all communication is cross-cultural.<sup>62</sup> Bryant and Peters translated these habits into daily practices and tools for reflection. Habit Three, which is perhaps the best known and most frequently taught habit, is called “Parallel Universe Thinking.”<sup>63</sup> It requires the learner to seek “other possible explanations or meanings for clients’ words and actions.”<sup>64</sup> Developing a habit of parallel universe thinking encourages the essential relational practices of slowing down, pausing, and reflecting on what lawyers and law students have heard from a client (or any other person in an interaction) and to apply empathy to how they contextualize their understanding of the client and the client’s situation.

Bryant and Peters also describe three dynamics that influence the development of cross-cultural sensitivity: (i) non-judgment; (ii) isomorphic attribution; and (iii) daily practice and learnable skill.<sup>65</sup> Again, these dynamics help inform the intra- and interpersonal dimensions of lawyering in meaningful ways. Non-judgment centers on avoiding evaluation and judgment.<sup>66</sup> Isomorphic attribution occurs when the student aims to view a client’s conduct using the client’s own lens, rather than solely interpreting that conduct from the student’s perspective.<sup>67</sup> Avoiding isomorphic attribution requires deep and empathic listening, along with heightened self-awareness, including an appreciation of one’s own cultural biases.<sup>68</sup>

The appreciation of cultural biases forms one potential bridge between the interpersonal and systemic dimensions, which is a central focus of Bryant and Peters’ more recent work, as well as the work of an increasing number of our clinical colleagues.<sup>69</sup> As early as 1992, Clark Cunningham told a powerful *mea culpa* story of his blind spots

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<sup>62</sup> See, e.g., Bryant & Peters, *Six Practices*, *supra* note 60.

<sup>63</sup> *Id.*; Bryant, *The Five Habits*, *supra* note 60.

<sup>64</sup> Bryant & Peters, *Six Practices*, at 186.

<sup>65</sup> *Id.* at 186-87.

<sup>66</sup> See *id.*

<sup>67</sup> See *Id.*

<sup>68</sup> Brooks, *Listening and Relational Lawyering*, *supra* note 26, at 365 (applying Five Habits to understanding the development of listening pedagogy in clinical legal education). Another interesting perspective on the intra- and interpersonal dimensions of cross-cultural lawyering is presented by Alexis Anderson, Lynn Barenberg, and Carwina Weng, who built on the concept of isomorphic attribution in their interdisciplinary exploration of the potential pitfalls of what they call *sameness*. *Sameness* is the overidentification that clinic students often have with clients. Their article offers tools and examples of how they have addressed problems of assumptions based on *sameness* that have arisen in their clinical work. Carwina Weng, Lynn Barenberg, & Alexis Anderson, *Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 CLINICAL L. REV. 339 (2012) [hereinafter *Challenges of Sameness*].

<sup>69</sup> *Id.* at 342 n. 9-10. See also, Paul R. Tremblay & Carwina Weng, *Multicultural Lawyering: Heuristics and Biases*, in THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 143, 143-82 (Marjorie A. Silver ed., 2007); Bryant, *The Five Habits*, *supra* note 60.

in failing to understand an assault to the dignity of a criminal defense clinic client, a highly-educated Black man, charged with having run a red light.<sup>70</sup> Although the prosecution ultimately dismissed the ticket, the client was furious with the racially-insensitive white police officers, the prosecutor and judge, and even more so with Cunningham.<sup>71</sup> This experience was a pivotal moment for Cunningham and his students in developing an understanding of how systemic racism could be invisible to even the most well-meaning of social justice-oriented white lawyers. Since that time the exploration of the systemic dimension of relational lawyering has increasingly gained focus and attention among clinical legal educators.<sup>72</sup>

### 5. *Trauma-informed Practice*

Clinical scholarship has recently focused on the particular challenges in representing victims/survivors of various kinds of trauma. Trauma-informed practice is deeply connected to relational lawyering and provides a critically important lens for appreciating the intra- and interpersonal, and perhaps equally if not more importantly, the systemic dimensions of practicing law. The benefits of interdisciplinary trauma-informed teaching have been recognized on a longstanding basis among some clinical legal educators, including Joan Meier in her 1993 article exploring the literature on various psychological processes affecting victims of domestic violence and the resulting challenges domestic violence clinic students experience.<sup>73</sup> Her exploration details the benefits of the interdisciplinary collaboration Meier enjoyed in co-

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<sup>70</sup> Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992).

<sup>71</sup> As Silver noted in her lengthy discussion of Cunningham's article, the judge characterized it as an "attitude ticket." Likely "driving while black" was less commonly understood, at least among good intentioned white law professors, at the time of this incident. In fact, the students on the case had never even mentioned Johnson's race in their report. See Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219,221-229 (2002). Only much later did Cunningham recognize what that meant to Johnson. He wrote "What we viewed as criminal prosecution, and what Johnson viewed as a serious assault on his dignity, the troopers, the prosecutor, and the judge viewed as a [mere] ticket." *Id.* at 227.

<sup>72</sup> A more comprehensive discussion of this literature is well beyond the scope of this article, though we wish to highlight a few contributions that specifically address the interconnections between the systemic dimension and the intra- and interpersonal dimensions and offer specific tools and practices. See, e.g., Angela Harris, Margaretta Lin & Jeff Selbin, *From the Art of War to Being Peace: Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073, 2076 (2007); Thalia Gonzalez, *Root to Rise: Mindful Lawyering for Social Justice*, 41 N.Y.U. REV. L. & SOC. CHANGE 91 (2017); Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403 (2019).

<sup>73</sup> Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295 (1993).

teaching with a clinical psychologist who specialized in domestic violence cases. More recently, in 2016 Sarah Katz and Deeya Haldar added to this body of literature by providing a conceptual framework and tools for teaching clinic students about trauma-informed practice.<sup>74</sup> Their treatment of the subject draws from TJ and centers the relational dimension of the work with clients as key elements of what it means to engage in trauma-informed practice, and also highlights the need for active self-care in order to address the often-neglected issue of vicarious trauma that can take a serious toll on the work of law students and lawyers.

### 6. *Self-care And Well-being*

As mentioned above, recent discussions of trauma-informed lawyering include attending to the intra-personal as well as the interpersonal aspects of working with clients who have experienced trauma. These relational elements include self-awareness and self-care. Silver and others have written about the importance of self-care to competent lawyering.<sup>75</sup> While law schools generally do an adequate job of teaching substantive and procedural areas of the law and training students to “think like lawyers,” most law schools continue to do an inadequate job of preparing future lawyers to cope with stress and the psychic maladies they may experience in legal practice.<sup>76</sup> Ronald Tyler’s 2016 article describes the self-care curriculum he integrated into his criminal defense clinic at Stanford.<sup>77</sup> In a series of workshops,

<sup>74</sup> Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016).

<sup>75</sup> See, e.g., Marjorie A. Silver, *Emotional Competence and the Lawyers Journey in THE AFFECTIVE ASSISTANCE OF COUNSEL* 49 (2007). Although the ABA report emphasized that self-care is an essential component of well-being, Silver made the point years before. See also Austin & Durr, *supra* note 40. Some of the underlying emotional and psychological concerns may also fall under the description of “vicarious trauma.” See Katz & Haldar, *supra* note 74.

<sup>76</sup> Silver, Portnoy, & Peters, *supra* note 25, at 849. Additionally, students preparing to enter other helping professions, particularly social work, and psychology, are trained to anticipate psycho-social and psychodynamic processes, such as transference and counter-transference reactions, in their relationships with clients. Law students, however, are far less prepared for these psychosocial aspects of their profession. *Id.*

<sup>77</sup> Ronald Tyler, *The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1 (2016). See also, Christine E. Doucet, *Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self Care*, 23 J. L. & SOC. POL'Y 136 (2014). Tyler was inspired in part by the mindfulness-based stress reduction (MBSR) programs employed in medical education. MBSR and Buddhism-informed mindfulness in general was introduced to the West by Jon Kabat Zinn in 1969. See Christopher Shea, *A Brief History of Mindfulness in the USA and Its Impact on Our Lives*, PSYCHCENTRAL (Oct. 28, 2016), <https://psychcentral.com/lib/a-brief-history-of-mindfulness-in-the-usa-and-its-impact-on-our-lives#1>; Jon Kabat-Zinn, *An Outpatient Program in Behavioral Medicine for Chronic Pain Patients Based on the Practice of Mindfulness Meditation: Theoretical Considerations and*



Tyler introduced his students to the knowledge and strategies lawyers need for coping with the increased risks of stress, burnout, and vicarious trauma in representing clients generally, and justice-involved clients in particular.<sup>78</sup> The workshops provided his students with resilience tools, mindful reflection, community for sharing successes and struggles, and coping mechanisms for caring for themselves while caring for their clients.<sup>79</sup>

Further, since the dissemination of the ABA report: *The Path to Lawyer Well-Being*,<sup>80</sup> and increasingly since the March 2020 onslaught of the COVID-19 pandemic, the legal profession and law schools have been paying closer attention to the importance of maintaining well-being for lawyers and law students, especially in the face of seismic and systemic disruptors to our emotional equilibrium. These developments have spurred an outpouring of recent scholarship focusing on the competencies necessary to achieve and maintain emotional well-being.<sup>81</sup>

### 7. *Mindfulness And Other Contemplative Practices In Legal Education And Lawyering*

Similarly, and connected to some of the work discussed earlier, recent years have seen an explosion in the mainstreaming of the mindfulness movement, throughout our culture generally and within the legal profession in particular. Many law schools now teach courses on mindfulness and other contemplative practices.<sup>82</sup> A recent survey by

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*Preliminary Results*, 4 GEN. HOSP. PSYCHIATRY 33 (1982).

Tyler, *supra* note 77, at 17.

<sup>78</sup> *Id.*

<sup>79</sup> Tyler was inspired, in part, by mindfulness-based stress reduction (MBSR). MBSR and Buddhism-informed mindfulness in general were introduced to the West by Jon Kabat Zinn in 1969. See *A Brief History of Mindfulness in the USA and Its Impact on Our Lives*, PSYCHCENTRAL (Oct. 28, 2016), <https://psychcentral.com/lib/a-brief-history-of-mindfulness-in-the-usa-and-its-impact-on-our-lives#1>; See Jon Kabat-Zinn, *An Outpatient Program in Behavioral Medicine for Chronic Pain Patients Based on the Practice of Mindfulness Meditation: Theoretical Considerations and Preliminary Results*, 4 GEN. HOSP. PSYCHIATRY 33 (1982). Tyler, *supra* note 77 at 17.

<sup>80</sup> See *infra* notes 104-06 and accompanying text.

<sup>81</sup> See, e.g., Janet Thompson Jackson, *Wellness and Law: Reforming Legal Education to Support Student Wellness*, 65 HOWARD L.J. 1 (forthcoming); Jordana A. Confino, *Where are we on the Path to Law Student Well-Being?: Report on the ABA CoLAP Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650 (2019).

<sup>82</sup> Perhaps the first of these was CUNY law school's course on *Contemplative Practices*. See Jeanne Anselmo & Victor Goode, *Contemplative Practice for Social Justice Lawyering and Social Healing*, in TRANSFORMING JUSTICE, LAWYERS, AND THE PRACTICE OF LAW 337 (Marjorie Silver ed., 2017). Other early examples include Scott Rogers' Mindfulness courses at the University of Miami Law School, Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 218 Touro L. REV. 1189, 1196-200 (2012). Rogers and his colleague Jan Jacobowitz have also integrated mindfulness into their Professional Responsibility course. *Id.* at 1197. Descriptions of these and other

the ABA's Law Student Division of the Committee on Lawyer Assistance Programs found that 67% of the 103 responding law schools reported having courses or programs that teach mindfulness or some other form of meditation.<sup>83</sup> Scholarship, too, has burgeoned, including many law review articles,<sup>84</sup> books<sup>85</sup> and book chapters,<sup>86</sup> discussing the benefits of mindfulness and meditation for cultivating or improving the skills necessary to good lawyering. These range from improving concentration and attention to interrupting implicit bias.<sup>87</sup>

The work discussed and cited in this section is a small sampling of the personal, interpersonal, and systemic aspects of lawyering that can inform the formation of relational competencies that good lawyering requires.<sup>88</sup> As stated above, our aim is to build on and enhance this foundation by encouraging a more systematic and comprehensive approach to identifying and providing supervision around the development and ongoing practice of these and similar competencies.

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related courses can be found in Marjorie A. Silver, *Healing Classrooms*, in *TRANSFORMING JUSTICE, LAWYERS, AND THE PRACTICE OF LAW* 285-96 (Marjorie Silver ed., 2016). Rhonda Magee and her colleague Tim Iglesias teach *Contemplative Lawyering* at the University of San Francisco. See e.g., *Law 708: Contemplative Lawyering*, <https://www.usfca.edu/catalog/course/708-contemplative-lawyering> (last visited Oct. 30, 2021).

<sup>83</sup> Confino, *supra* note 81, at 671.

<sup>84</sup> Shailini Jandial George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness*, 53 *DUQUESNE L. REV.* 215 (2015); Brooks, *Mindful Engagement*, *supra* note 16.

<sup>85</sup> See, e.g., RHONDA V. MAGEE, *THE INNER WORK OF RACIAL JUSTICE: HEALING OURSELVES AND TRANSFORMING OUR COMMUNITIES THROUGH MINDFULNESS* (2019); MARTIN, *supra* note 61; SCOTT ROGERS, *MINDFULNESS AND PROFESSIONAL RESPONSIBILITY: A GUIDEBOOK FOR INTEGRATING MINDFULNESS INTO THE LEGAL CURRICULUM* (2012); SCOTT ROGERS, *MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL* (2009); KATHLEEN ELLIOT VINSON, SAMANTHA ELEXIS MOPPETT, & SHAILINI JANDIAL GEORGE, *MINDFUL LAWYERING: THE KEY TO CREATIVE PROBLEM SOLVING* (2018) [hereinafter, *MINDFUL LAWYERING*].

<sup>86</sup> See, e.g., Anselmo & Goode, *supra* note 82; Leonard L. Riskin, *Awareness in Lawyering: A Primer in Paying Attention*, in *THE AFFECTIVE ASSISTANCE OF COUNSEL* 447 (Marjorie A. Silver, ed. 2007).

<sup>87</sup> See *MINDFUL LAWYERING*, *supra* note 85. In addition to improving mental and physical well-being, benefits of mindfulness include increased improvement in attention, focus, concentration and memory, leading to enhanced academic achievement. Mindfulness reduces stress, anxiety, and other negative emotions. It can enhance creativity. And, along with enhancing empathy and compassion, a number of authors, including members of the legal academy, have written about how mindfulness practices can reduce racial and other biases. See generally, MAGEE, *supra* note 85; See also *supra* note 72 (identifying several law professors who have written about the connection between mindfulness practices and promoting social justice through connecting the intra- and interpersonal dimensions of lawyering with the systemic dimension).

<sup>88</sup> Many recent texts used in experiential legal education and supervision address personal and relational skills. See, e.g., *LEARNING FROM PRACTICE*, *supra* note 46; MARTIN, *supra* note 61; BRYANT, ET AL., *supra* note 61.

## II. FROM MACCRATE TO BUILDING A BETTER BAR

Alongside these contributions, the past few decades have been marked by the movement of legal education writ large toward adopting a competency-based orientation. This evolution has been spurred by several large-scale efforts to consider more broadly the core elements of competent and ethical legal practice.<sup>89</sup> Each of these initiatives has pointed toward identifying the knowledge, skills, and values law graduates need in order to become competent, effective, and successful legal professionals. The bodies that regulate legal education have taken note of these developments and now insist that law schools adopt competency-based learning outcomes and ensure that they are teaching to those outcomes.<sup>90</sup> In response, many, if not most, law schools are identifying and assessing their learning outcomes along these lines and reshaping their curricula accordingly. The following section details a number of the key initiatives that have paved the way for this shift toward a competency-based approach in legal education, and help to inform, and indeed lend strong support for, a focus on the importance of teaching and supervising law students around relational competencies in the context of clinical legal education.

Legal education has been slow to adopt a competency-based approach, especially compared with professional education in other disciplines such as medicine and business. For decades, legal practitioners and judges castigated legal education for its failure to prepare its graduates adequately for professional practice. In 1992, an American Bar Association (ABA) task force published the MacCrate Report, which made specific recommendations to law schools to provide more real-world opportunities to teach the knowledge, skills, and values necessary to graduate conscientious and ethical legal professionals.<sup>91</sup>

Fifteen years later, the Carnegie Foundation published its own report as a part of its wider investigation of professional education.<sup>92</sup> The Carnegie Report again pointed out a gap between legal education and practice and emphasized the need for law schools to teach skills and values, particularly those connected to what it called the “third apprenticeship,” which refers to fostering law students’ sense of pro-

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<sup>89</sup> See *supra* note 5.

<sup>90</sup> See *supra* note 57. The ABA standards also mandate that faculties “conduct [an] ongoing evaluation of the law school’s program of legal education, learning outcomes and assessment methods” and “use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.” ABA SECTION ON LEGAL EDUCATION AND ADMISSION TO THE BAR, ABA STANDARDS AND RULES FOR APPROVAL OF LAW SCHOOLS, Standard 315 (2021).

<sup>91</sup> MACCRATE REPORT, *supra* note 5.

<sup>92</sup> CARNEGIE REPORT, *supra* note 5.

professional identity and purpose.<sup>93</sup> Sullivan and his co-authors called for law schools to develop clear and consistent pedagogical approaches connected to professional identity formation.<sup>94</sup>

Surveys of legal employers provide additional support for claims that law schools need to devote more time and attention toward helping students cultivate professional competencies. For instance, Shultz and Zedeck identified twenty-six “lawyering effectiveness factors” most sought after by legal employers.<sup>95</sup> Relational traits and skills are explicit in some factors and are implicit in others. For example, conflict resolution includes the ability “to see the world through the eyes of others.”<sup>96</sup> Gerkman and Cornett reported similar findings in their survey of legal employers.<sup>97</sup> These employers were equally, if not more, concerned about hiring law graduates who possess character traits and abilities connected to strong interpersonal skills, such as effective listening, as they were about hiring lawyers with strong analytical and reasoning abilities.<sup>98</sup> The call to action that emerged from these and related studies has been answered with greater interest in and willingness to consider how law schools can shift to more of a competency-based approach as part of an effort to help students cultivate the knowledge, skills and values necessary for forming a professional identity.

Regulatory changes by the ABA, the accrediting body for all law schools, also have played a significant role in the shift toward a competency-based approach in legal education. In 2015, the ABA began requiring law schools to provide a minimum of six credits of experiential coursework for all law students (i.e., simulation-based courses and supervised practices courses, including legal clinics and field placements).<sup>99</sup> This change in standards has contributed to a dramatic expansion in experiential legal education, which in turn has brought greater attention to teaching relational traits and skills.

In 2017, the ABA enacted new standards requiring all law schools to identify and publish institutional learning outcomes, and then demonstrate that they are assessing those learning outcomes at forma-

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<sup>93</sup> See *id.* at 27-29.

<sup>94</sup> See *id.* at 103-04.

<sup>95</sup> Shultz & Zedeck, *supra* note 5, at 26-27.

<sup>96</sup> *Id.*

<sup>97</sup> Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, AccessLex Institute Research Paper No. 16-04 (2016), available at <https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient>.

<sup>98</sup> See *id.* at 5.

<sup>99</sup> ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS §303 (A) (3) (2020-21).

tive and summative levels within the law school curriculum.<sup>100</sup> The implementation of institutional learning outcomes represents a necessary first step in the direction of a broader shift toward competency-based professional training for lawyers. One of the important initiatives that seized on this development is the Holloran Center for Ethical and Professional Formation at the University of St. Thomas. The Holloran Center, which aims toward promoting efforts toward professional identity formation among law schools, has endeavored to support the teaching of competencies that relate to professional formation, such as reflective practice, cross-cultural skills, effective communication, self-directedness, active listening, and leadership.<sup>101</sup> Many of these areas align with relational lawyering. The Holloran Center has developed a website with curated materials that encourage legal educators, including clinical teachers, to incorporate teaching toward these competencies as well as supporting their ability to assess these competencies in law students.<sup>102</sup>

Yet another development that points in the direction of a competency-based approach and also greater focus on relational competencies is the heightened emphasis on attorney well-being and self-care, which has emerged largely in response to the high rates of depression, anxiety, substance abuse, and suicide of legal professionals.<sup>103</sup> As noted earlier, a 2016 ABA task force report shed light on the lack of well-being within the legal profession and offered a range of concrete recommendations.<sup>104</sup> The authors of the report proposed a multi-dimensional approach that considers a lawyer's social connectedness and emotional health as well as spirituality or sense of purpose, alongside physical and occupational health.<sup>105</sup> The orientation of the report toward promoting well-being rather than simply decreasing dysfunction and mental illness reflects the authors' emphasis on positive psychology. This influential work has led to increased efforts to educate lawyers and law students about the importance of focusing on compe-

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<sup>100</sup> *Id.* at §302.

<sup>101</sup> *Holloran Center*, UNIVERSITY OF ST. THOMAS, <https://www.stthomas.edu/hollorancenter/> (last visited Oct. 30, 2021).

<sup>102</sup> *Id.*

<sup>103</sup> See generally, Jerome M. Organ, David Jaffe & Katherine Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

<sup>104</sup> *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>; see also Anne M. Brafford, *Well-Being Toolkit for Lawyers and Legal Employers* (August 2018), available at [https://www.americanbar.org/content/dam/aba/administrative/lawyerassistance/lscolapwell-being\\_toolkit\\_for\\_lawyers\\_legal\\_employers.pdf](https://www.americanbar.org/content/dam/aba/administrative/lawyerassistance/lscolapwell-being_toolkit_for_lawyers_legal_employers.pdf)

<sup>105</sup> *Id.*

tencies, including relational traits and skills, that can help them sustain themselves in the practice and work more effectively with clients.<sup>106</sup>

*Building a Better Bar: The Twelve Building Blocks of Minimum Competence (BBB)*<sup>107</sup> is perhaps the most recent attempt to identify the attributes all law graduates need to possess, and what law schools need to do to better equip their graduates for practice. Unlike earlier studies that relied on surveys of new and seasoned attorneys, BBB conducted fifty focus groups.<sup>108</sup> The study identified twelve abilities that new lawyers need to possess,<sup>109</sup> three of which are closely aligned with relational competencies: the ability to (1) interact effectively with clients, (2) communicate as a lawyer and (3) cope with the stresses of legal practice.<sup>110</sup> The study's authors also drew five insights from its data. One that is highly relevant to this project is the observation that "[p]ractice-based assessments, such as ones based on clinical performance offer promising avenues for evaluating minimum competence."<sup>111</sup> The study includes ten recommendations to move towards evidence-based licensure requirements. Importantly for our purposes, the recommendations include requiring all law graduates to complete coursework that develops their ability to interact effectively with clients; negotiate, promote and protect the quality of justice; and, moreover, to complete closely supervised clinical or externship work.<sup>112</sup>

The final recommendation is the process by which the other nine recommendations would be implemented and evidence-based licensure achieved. It would create a working group made up of legal educators, judges, practitioners, law students, and clients to review the twelve building blocks and design an evidence-based licensing system that is valid, reliable, and fair to all candidates.<sup>113</sup>

This report and its recommendations offer further support for the relevance and timeliness of this project. It is nevertheless important to note that none of the efforts and studies thus far have focused on the full range of relational competencies. This gap in the literature is

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<sup>106</sup> As catalogued in Jordana Confino's excellent and comprehensive report, the ABA CoLAP Law School Assistance Committee conducted a comprehensive survey of offerings related to student well-being, based on reports from 103 ABA-approved and accredited law schools. Confino, *supra* note 81, at 652.

<sup>107</sup> Merritt & Cornett, *supra* note 5.

<sup>108</sup> Another distinctive aspect of this study is that a majority (forty-one) of these focus groups included new lawyers, and nine were made up of those who supervise new lawyers. *See id.* at. 14.

<sup>109</sup> *See id.*

<sup>110</sup> *Id.* at 40. Notably absent from the identified competencies are several we would identify as core relational competencies, such as Self-Awareness, and Cross-Cultural Lawyering. *See infra* Section II.B.

<sup>111</sup> Merritt & Cornett, *supra* note 5, at 62.

<sup>112</sup> *Id.* at 73-76.

<sup>113</sup> *Id.* at 76-77.

therefore an invitation to contribute to the legal field's understanding of the competencies law graduates need to be competent, successful, and fulfilled legal professionals. A more comprehensive understanding of relational competencies is needed to inform and re-shape law schools' institutional learning outcomes and the content and methods used to teach and assess those outcomes.

### III. THE COMPETENCY-BASED APPROACH IN MENTAL HEALTH

As noted at the outset, professional competencies contemplate the ability to demonstrate habitual use of knowledge, technical skills, clinical reasoning, communication, emotions, values, and reflection in daily practice in ways that are beneficial for the individual and community being served.<sup>114</sup> Further, the notion of competencies and their use in student supervision and professional development are not confined to any single discipline. Outside the legal field, competency-based models have been integrated into teacher education, human resource management, dentistry, medicine, nursing, and most other "helping" professions.<sup>115</sup>

While some scholars advocated for a competency model in psychology for decades,<sup>116</sup> the effort to move the field of psychology toward a competency-based model gained national traction about twenty years ago, in the early 2000s. In November 2002, the group that oversees the clinical internship process for psychology trainees (the Association of Psychology Postdoctoral and Internship Careers) co-sponsored a competencies conference to make concrete some of the theory supporting a competency-based approach to supervising the professional development of psychology students.<sup>117</sup> The first major accomplishment came in the form of the "competency cube," a three-dimensional model defining competencies that constituted foundational knowledge ("the building blocks of what psychologists do")<sup>118</sup> and functional competencies ("the knowledge, skills, and values nec-

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<sup>114</sup> Epstein & Hundert, *supra* note 6.

<sup>115</sup> Carol A. Falender & Edward P. Shafranske, *The Importance of Competency-based Clinical Supervision and Training in the Twenty-first Century: Why Bother?*, 42 J. CONTEMPORARY PSYCHOTHERAPY 129, 129 (2011) [hereinafter Falender & Shafranske, *Why Bother?*].

<sup>116</sup> For a review of the history leading to the competency movement, see *id.* at 130-32.

<sup>117</sup> *Id.* at 773-74.

<sup>118</sup> Functional competencies were: (a) reflective practice/self-assessment, (b) scientific knowledge and methods, (c) relationships, (d) ethical and legal standards/policies, (e) individual and cultural diversity, and (f) interdisciplinary systems. Emil Rodolfa, Russ Bent, Elena Eisman, Paul Nelson, Lyn Rehm, & Pierre Ritchie, *A Cube Model for Competency Development: Implications for Psychology Educators and Regulators*, 36 PROF. PSYCH.: RES. AND PRAC. 347, 350 (2005).

essary to perform the work of a psychologist”)<sup>119</sup> across three stages of professional development from graduate training to continuing education.<sup>120</sup>

Building on this initial framework, Nadya Fouad and colleagues presented *Competency Benchmarks: A Model for Understanding and Measuring Competence in Professional Psychology Across Training Levels (Benchmarks)* to provide discrete behavioral anchors to help define and assess trainees’ progress through a wide range of different competencies across three developmental stages,<sup>121</sup> specifically: (a) when they are first experiencing clinical work and learning these competencies (the “practicum” level); (b) during their last year of training, when they should be operating semi-autonomously (the “internship” level); and (c) when they are preparing to enter practice as autonomous clinicians.<sup>122</sup>

The *Benchmarks* provides a structured, thorough, and complex document outlining the proposed standards of clinical training to help educators guide students through their training, identify those who are falling behind, provide clear objectives, increase communication of those objectives, and standardize some of the expectations for clinical competencies across the various schools and training experiences.<sup>123</sup>

#### A. *Applying The Competency-Based Approach To Supervision In Psychology*

Defining a student’s readiness for practice in terms of discrete and measurable objectives has been analogized to creating learning objectives for coursework. Applied system-wide, or in this case, discipline-wide, competencies help to set both idiosyncratic and standard-

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<sup>119</sup> Foundational competencies included: (a) assessment/diagnosis/case conceptualization, (b) intervention, (c) consultation, (d) research and evaluation, (e) supervision and teaching, and (f) management and administration. Emil Rodolfa, Russ Bent, Elena Eisman, Paul Nelson, Lyn Rehm, & Pierre Ritchie, *A Cube Model for Competency Development: Implications for Psychology Educators and Regulators*, 36 PROF. PSYCH.: RES. AND PRAC. 347, 351 (2005). *Id.* at 351.

<sup>120</sup> *Id.* at 351-52.

<sup>121</sup> See generally *Competency Benchmarks: A Model for Understanding and Measuring Competence in Professional Psychology Across Training Levels*, 3 TRAINING AND EDUC. IN PROF. PSYCH. S5, S8 (2009) [hereinafter, *Competency Benchmarks*]. A complete list of the competency benchmarks can be found in Table 1. *Id.* at S9-S25.

<sup>122</sup> *Id.* at S5, S8.

<sup>123</sup> *Id.* at S8, S25. As a companion to the guidance offered by the *Benchmarks*, the “Competency Assessment Toolkit for Professional Psychology” (“*Toolkit*”) was also created to offer practitioners specific methods for assessing their student’s progress towards the behavioral anchors across the competency domains. See generally, Nadine J. Kalsow, Catherine L. Grus, Linda F. Campbell, Nadya A. Fouad, Robert L. Hatcher, & Emil R. Rodolfa, *Competency Assessment Toolkit for Professional Psychology*, 3 TRAINING AND EDUC. IN PROF. PSYCH. S27 (2009).



ized measures for progress and professional development across the emerging practitioner's career.<sup>124</sup> The basic expected progression represented by the benchmarks can be distilled into three somewhat distinct phases along a continuum: from understanding the competency conceptually and intellectually, to having a more practical understanding and being able to apply that understanding in real time on an occasional basis, to being able to demonstrate more habitual and even preventive/pro-active application of the competency in real time.

The competency benchmarks model in psychology can probably best be introduced through example. Below are two sections of the larger *Benchmarks* document that map onto specific relational competencies that we propose could easily be adapted for purposes of clinical legal education. By way of illustration, we provide the basic outlines used for psychology trainees in two areas of relational competencies: reflective practice and self-care.

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<sup>124</sup> Craig J. Gonsalvez & Fiona L. Calvert, *Competency-based Models of Supervision: Principles and Applications, Promises, and Challenges*, 49 AUSTRALIAN PSYCHOLOGIST 200, 202 (2014).

REFLECTIVE PRACTICE<sup>125</sup>

Readiness for Practicum	Readiness for Internship	Readiness for Entry to Practice
<p><b>Essential Component:</b> Basic mindfulness and self-awareness; basic reflective practice (reflection-on-action)</p>	<p><b>Essential Component:</b> Broadened self-awareness; self-monitoring; reflective practice (reflection-on-action); use of resources to enhance reflective practice; elements of reflection-in-action</p>	<p><b>Essential Component:</b> Reflective practice in context of (reflection-in-action), reflection acted upon, self-used as a therapeutic tool</p>
<p><b>Behavioral Anchor:</b> Displays:</p> <ul style="list-style-type: none"> <li>• Solution-focused skills,</li> <li>• Critical thinking</li> <li>• Organized reasoning</li> <li>• Intellectual curiosity and flexibility</li> </ul> <p>Demonstrates openness to:</p> <ul style="list-style-type: none"> <li>• Considering own personal context &amp; issues</li> <li>• Recognizing impact of self on others</li> <li>• Articulating attitudes, values, and beliefs toward diverse others</li> <li>• Self-identifying multiple individual and cultural identities</li> <li>• Systematically reviewing own professional performance with supervisors/teachers</li> </ul>	<p><b>Behavioral Anchor:</b></p> <ul style="list-style-type: none"> <li>• Articulates attitudes, values, and beliefs toward diverse others</li> <li>• Recognizes impact of self on others</li> <li>• Self-identifies multiple individual and cultural identities</li> <li>• Describes how others experience him/her and identifies roles one might play within a group</li> <li>• Responsively utilizes supervision to enhance reflectivity</li> <li>• Systematically and effectively reviews own professional performance via videotape or other technology with supervisors</li> <li>• Initial indicators of monitoring and adjusting professional performance in action as situation requires</li> </ul>	<p><b>Behavioral Anchor:</b></p> <ul style="list-style-type: none"> <li>• Demonstrates frequent congruence between own and others' assessment and seeks to resolve incongruities</li> <li>• Models self-care</li> <li>• Monitors and evaluates attitudes, values, and beliefs towards diverse others</li> <li>• Systematically and effectively monitors and adjusts professional performance in action as situation requires</li> <li>• Consistently recognizes and addresses own problems, minimizing interference with competent professional functioning</li> </ul>

In many ways, the reflective practice guidelines for psychology trainees as outlined above mirror the reflective practice abilities we would also expect law students to develop during their supervised

<sup>125</sup> *Competency Benchmarks*, *supra* note 121, at S10.

practice experiences. In both the psychology and clinical legal education contexts, professional development in this area requires increasing self-awareness, insight, and ability to act upon and address the attitudes and beliefs that the student surfaces through engaging in reflective practice.

Encouraging the development of these skills requires deliberate effort on the part of the student's supervisor. In the early stages, supervisors are more likely to model and invite self-reflection and self-awareness through what is referred to in the field of psychology as "Socratic questioning."<sup>126</sup> For example, when working with trainees whose demographic or cultural backgrounds differ dramatically from their clients, supervisors might ask the trainee to consider how those differences might play out in the client-provider relationship. What potential sources of trauma might be present and get activated? Do your questions possibly reflect microaggressions, and how might you avoid them? Does your client have practices or observances that you need to be aware of? What biases regarding your client might you be bringing into the room? In asking such difficult and likely uncomfortable questions, the supervisor is encouraging the development and integration of these essential traits and skills. As outlined above, the student demonstrates their progression through these competencies by beginning to ask themselves these same kinds of questions unprompted. Finally, they need to be able to demonstrate self-awareness in real time and address the issues as they present themselves, such as by making sure they are educating themselves continuously to become more culturally aware, taking ownership of their areas for growth, including blind spots, and requesting feedback from others for ongoing professional development.

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<sup>126</sup> Socratic questioning in psychology is quite similar to how this term at least is conceptualized in law and refers to asking a series of open-ended questions that encourage reflection. See Gavin I. Clark & Sarah J. Egan, *The Socratic Method in Cognitive Behavioural Therapy: A Narrative Review*, 39 COGNITIVE THERAPY & RES. 865 (2015).

SELF-CARE<sup>127</sup>

Readiness for Practicum	Readiness for Internship	Readiness for Entry to Practice
<p>Essential Component:</p> <p>Understanding the importance of self-care in effective practice; knowledge of self-care methods; attention to self-care</p>	<p>Essential Component:</p> <p>Monitoring of issues related to self-care with supervisor, understanding of the central role of self-care to effective practice</p>	<p>Essential Component:</p> <p>Self-monitoring of issues related to self-care and prompt interventions when disruptions occur</p>
<p>Behavioral Anchor:</p> <ul style="list-style-type: none"> <li>• Demonstrates basic awareness and attention to self-care</li> </ul>	<p>Behavioral Anchor:</p> <ul style="list-style-type: none"> <li>• Works with supervisor to monitor issues related to self-care</li> <li>• Takes action recommended by supervisor for self-care to ensure effective training</li> </ul>	<p>Behavioral Anchor:</p> <ul style="list-style-type: none"> <li>• Anticipates and self-identifies disruptions in functioning and intervenes at an early stage/with minimal support from supervisors</li> <li>• Models self-care</li> </ul>

In the area of self-care, psychology students in the readiness for practicum stage of development would likely have general knowledge of what this competency entails and would be aware of the different types of self-care methods. Students in this stage also would likely be aware of and able to identify when they are feeling high levels of stress and need to implement self-care to help restore themselves. Students in the readiness for internship stage would likely be able to articulate to their supervisor the need for self-care practices, although they might have greater difficulty identifying which specific form of self-care would be most appropriate or helpful for addressing a particular situation. Students in the readiness for entry to practice stage would likely be able to identify what specific self-care methods work for them and would also be able to predict circumstances that are most likely to lead to high stress levels and even burnout. Again, the difference among these developmental markers represents the continuum from understanding self-care conceptually to understanding self-care practically, and moving from taking a reactive approach toward a proactive approach.

A supervisor’s role in supporting the student in the transition

<sup>127</sup> *Competency Benchmarks*, *supra* note 121, at S11. Self-care is defined as attention to personal health and well-being to assure effective personal functioning. *Id.*

from first-time student-clinicians to those ready for practice includes encouraging the student to practice and experiment with different types of self-care to learn what works best for them. Additionally, in times of significant stress, such as final exams and large deadlines, the supervisor needs to encourage the student to take time for themselves, even if it means rescheduling meetings and sessions with clients. Supervisors also need to emphasize the link between being an effective clinician and taking care of oneself. Lastly, similar to the discussion of reflective practice, it is worth noting that while this example is taken directly from the supervision of psychology students, the competency benchmarks here are easily applicable to law students and the legal profession.

Focusing on these competencies as early as possible in a student's professional education is also critically important. In a study by Gonsalvez and colleagues, the researchers reported that the largest gains in competency occurred early in the training process—between the first and second clinical experiences—with fewer large jumps in competency attainment as the training progressed.<sup>128</sup> Other clinicians, researchers, and educators have also proposed deletions and additions to the original models since they were first introduced.<sup>129</sup> Competency-based models of supervision nevertheless have been used to overlay and bolster some of the already-existing models of supervision, and have been infused into cognitive-behavioral, psychodynamic, humanistic, family systems, developmental, and integrative perspectives.<sup>130</sup> Clinical supervisors can incorporate their own teaching philosophy and preferences into a competency-based approach by creating and sharing output-determined indicators of performance with the supervisee, offering opportunities for objective assessment of growth, using clear, criterion-based standards, providing plenty of opportunity for feedback, and recognizing that there are developmental

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<sup>128</sup> Craig J. Gonsalvez, Frank P. Deane, Russell Blackman, Michael Matthias, Roslyn Knight, Yasmina Nasstasia, Alice Shires, Kathryn Nicholson Perry, Christopher Allan, & Vida Bliokas, *The Hierarchical Clustering of Clinical Psychology Practicum Competencies: A Multisite Study of Supervisor Ratings*, 22 *CLINICAL PSYCH.: SCI. & PRAC.* 390, 400 (2015).

<sup>129</sup> For example, some researchers have suggested the creation of “super-clusters,” bringing the number of competencies from fifteen to four: (1) good professional attributes and conduct, (2) scientist-practitioner and professional management capabilities, (3) assessment and intervention skills, and (4) psychological testing skills. *Id.* at 397; see also Matthew C. Genuchi, Jaffrey A. Rings, Mistie D. Germek, & Jennifer A. Erickson Cornish, *Clinical Supervisors' Perceptions of the Clarity and Comprehensiveness of the Supervision Competencies Framework*, 9 *TRAINING AND EDUC. IN PROF. PSYCH.* 68, 70-72 (2015) (supervisor input into potential changes to the original model).

<sup>130</sup> Nadine J. Kaslow, Carol A. Falender, & Catherine L. Grus, *Valuing and Practicing Competency-Based Supervision: A Transformational Leadership Perspective*, 6 *TRAINING AND EDUCATION IN PROFESSIONAL PSYCHOL.* 47, 49 (2012) [hereinafter *Transformational Leadership Perspective*]; Gonsalvez & Calvert, *supra* note 124, at 202.

stages to professional formation and competency attainment.<sup>131</sup>

### B. Opportunities For Growth Within The Approach

As would be expected, the competency-based approach to supervision in psychology has been accompanied by some number of challenges and critiques. In a review of such critiques, Gonsalvez and Crowe summarize the concerns, which include: questions about whether the approach will restructure the supervisory role in a way that is too evaluative and sacrifices the traditionally facilitative nature of the relationship; the lack of empirical support for the approach generally and its assessment of student progress; the potential for bias in supervisor evaluations; and concerns about inviting a “third-party” regulator into the supervisory relationship, as regulatory agencies begin to adopt competencies as proxies for student achievement<sup>132</sup> Others have voiced concerns over the perceived rigidity of the competency benchmark structure. They worry the model is not sensitive enough to behavioral indicators of deficiencies that often signal larger issues in a student’s personal or professional life.<sup>133</sup> Finally, some practitioners and clinical supervisors find the current model too large and complicated for practical use in the field.<sup>134</sup>

Since the competency model and *Benchmarks* were first introduced, the original authors have responded to these critiques by encouraging revision and study of their framework through subsequent empirical and theoretical publications.<sup>135</sup> Acknowledging the bulki-

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<sup>131</sup> *Id.*; *Transformational Leadership Perspective*, *supra* note 130, at 48; Carol A. Falender & Edward P. Shafranske, *Competency-based Clinical Supervision: Status, Opportunities, Tensions, and the Future*, 52 AUSTRALIAN PSYCHOL. 86, 88 (2017).

<sup>132</sup> Craig J. Gonsalvez & Trevor P. Crowe, *Evaluation of Psychology Practitioner Competence in Clinical Supervision*, 68 AM. J. PSYCHOTHERAPY 177, 179-80 (2018); *see also* Gonsalvez & Calvert, *supra* note 124, at 205-06.

<sup>133</sup> Samantha D. Price, Jennifer L. Callahan, & Randall J. Cox, *Psychometric Investigation of Competency Benchmarks*, 11 TRAINING AND EDUCATION IN PROFESSIONAL PSYCHOLOGY 128, 136-37 (2017).

<sup>134</sup> *Id.* at 35; Robert L. Hatcher, Nadya A. Fouad, Catherine L. Grus, Linda F. Campbell, Stephen R. McCutcheon, & Kerry L. Leahy, *Competency Benchmarks: Practical Steps Toward a Culture of Competence*, 7 TRAINING AND EDUCATION IN PROFESSIONAL PSYCHOLOGY 84, 85 (2013) [hereinafter *Practical Steps*].

<sup>135</sup> Epstein & Hundert, *supra* note 6, at 775:

Models of formative and continuing education, supervision, and evaluation should be developed further and implemented to ensure competence throughout the career of the supervisor. Approaches and procedures should be established on the basis of sound theory and empirical investigation. A range of research procedures should be employed, including, for example, self-report, experimental, single subject repeated measures, qualitative, etc., to assess the multiple dimensions of the supervision process. Furthermore, such research should be conducted both within university and clinical-training settings so that the focus is on supervision as it occurs in everyday, real-world settings, and so keeps in mind the practical contingencies involved in the

ness of the original model and its intended purpose as a tool for education and training settings, the *Benchmarks* authors have also proposed a more streamlined model by sorting the original fifteen benchmarks into smaller clusters of the original foundational (professionalism, relational, and science) and functional (application, education, and systems) competencies.<sup>136</sup> Additionally, the authors have suggested the following steps for integrating these competencies into real world supervision: (1) choose clusters most consistent with the training goals and objectives of the setting; (2) choose the competencies and essential components within those clusters that are most relevant to the student; (3) choose or modify the associated behavioral anchors; and (4) decide on the standards the supervisor or site will use to assess each competency.<sup>137</sup>

To implement the competency-based model into practice effectively on a smaller scale, supervisors must be willing to invest the effort required at the beginning of each transition in order to identify the competencies they will track and develop with their students, create reasonable and objective learning outcomes to track student progress, develop methods for assessing such progress, and develop training and supervisory approaches to facilitate student growth in those domains.<sup>138</sup> By taking the time to set up and mentor students for success, the supervisor is delivering more meaningful professional training as well as modeling the necessary steps supervisees need so they can continue this process of self-assessment and growth throughout their careers, and eventually offer the same for their own future trainees.<sup>139</sup>

#### IV. APPLYING A COMPETENCY-BASED MODEL TO CLINICAL LEGAL EDUCATION

The evolution of the use of competency benchmarks and specific illustrations from the field of psychology offers a potential roadmap for clinical legal educators regarding the supervision of law students around relational competencies. Pursuing this effort in clinical legal education can build on the well-established foundations and movements within legal scholarship identified earlier, including TJ, reflective practice, cross-cultural lawyering, trauma-informed practice,

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actual practice of supervision.

See also Gonsalvez & Calvert, *supra* note 124, at 206 (“The promise is that sometime in the future, reliable milestones and valid criteria for their evaluation will be established to benchmark progress”).

<sup>136</sup> *Practical Steps*, *supra* note 134, at 85-86.

<sup>137</sup> *Id.* at 88.

<sup>138</sup> Falender & Shafranske, *Why Bother?*, *supra* note 115, at 134.

<sup>139</sup> *Id.*

wellbeing and self-care, and mindfulness.<sup>140</sup> It can also build on the research and institutional developments we have discussed, which have been heavily influenced by concerns of the practicing bar and judiciary that have spurred the effort toward greater preparedness of law graduates for real world professional practice.

In importing the benchmark approach from the field of psychology to the legal education context, we need to consider three distinct processes. The first process is one of *identifying the relational competencies* we believe all students need for legal practice. The second process is one of *mapping out the developmental increments and sequencing for each relational competency*. And the third process is one of *considering how to teach and assess these competencies at each developmental stage*, which includes the deliberate use of particular approaches and tools. We strongly believe that both stages one and three, identifying the relational competencies and developing teaching and assessment approaches and tools, will require consensus-building processes that will need to occur over a significant period of time and with a diverse array of interested individuals and groups. For that reason, the bulk of our remaining discussion focuses on the second stage, mapping out the developmental increments and sequencing, which we believe can borrow heavily from the field of psychology. By way of illustration, we will highlight two specific relational competencies, reflective practice and self-care, which have already been discussed as relational competencies recognized in the field of psychology. We are confident these two particular competencies would also end up being included among the relational competencies to be taught and assessed in legal education.

For example, the charts that were provided earlier regarding reflective practice and self-care, could be mapped onto the three years of a typical J.D. program. Of course, mapping the developmental sequencing from psychology onto legal education begs the question about the “Preparation for Internship” stage, what that training and education would look like, and where it would take place. Would it be a part of the first-year curriculum? Would there be an intensive orientation prior to the first supervised practice experience, whether a clinic or externship?

To illustrate the sequencing and expected developmental progression in the law school context, we can revisit the topics of reflective practice and self-care through examples of what the supervision of those competencies might look for law students at each developmental stage.

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<sup>140</sup> Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, CLINICAL L. REV. 335 (2009); Silver, *Personal Skills*, *supra* note 27.



### A. Reflective Practice

We have noted above the importance of reflection to good lawyering.<sup>141</sup> Looking inward to understand what we bring to our interactions with other people and situations is key to good lawyering as much as it is to good therapy.<sup>142</sup> At the *Law as a Healing Profession* Conference at Touro Law Center in November 2007,<sup>143</sup> Lynn Barenberg, then Lecturer in Law and Staff Social Worker, Boston College Legal Assistance Bureau, Boston College Law School, told the following story:

I had a law student come to my office—a very bright student, a very good student—and he came to my office and he said “How many times does a client need to no-show before we close his case file?”

And I said, “Well, why don’t you just take a minute and tell me about this case. What kind of case is it?”

“It’s a social security disability case.”

“Do we know why the client didn’t show up?”

“Well, no, but I’ve made three different appointments, and he just doesn’t show.”

And I said, “Well, what’s the nature of his disability?”

“Well, uh, substance abuse.” . . .

“And what is it we’re trying to show in the disability case?”

“Well, that he can’t function because of this.”

“Well have you thought about maybe talking to him and finding out what’s making it difficult for him to get in?”

And the student said, “I’m not going to do that.”

And I said, “You’re going to decide what you need to do in this case, but I’m curious. Why?”

And he said, “Look, my father was an alcoholic. The whole family for years was rallying around trying to make things work for him. It didn’t work. We all got burnt out. It took too much of a toll. And

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<sup>141</sup> See *supra* Section II.B.

<sup>142</sup> The following is excerpted from Silver, *Personal Skills*, *supra* note 27, at 151-52.

<sup>143</sup> See *id* (reproducing content of Concurrent Session on *Psychology, Social Work & Law*, Law as a Healing Profession Continuing Legal Education Conference, Touro Law Center (Nov. 5, 2007)).

I'm not going to repeat that. It's not healthy. I'll be enabling this guy, and I'm just not doing it."

And all I said to him was, "I really appreciate your making that connection. I don't need to know anything more about your personal situation unless you choose to share it with me. And you're going to decide what you do here. But I'm just going to ask you to do one thing. Just go back and think about whether you feel that your decision here in a professional context should be any different from your reaction were it a personal situation, and then decide what you're going to do." . . .

He made the connection conscious and, in fact, he came back to my office a few days later. . . . He said, "I thought about it, I gave him a call, and I was scheduling appointments at 9 A.M., and he's hung over, and he needed appointments later in the afternoon, and could I give him a call reminding him?"

And they ended up working together and [the client] ended up getting his benefits.<sup>144</sup>

This student had a question for which he sought supervision and guidance, although when he initially approached Barenberg, he was unaware that his question raised issues about his own reactions that might be understood through the psychological process known as "countertransference."<sup>145</sup> Through careful, kind and curious, nonjudgmental inquiry—what we have earlier referred to as Socratic questioning—and without the need to use the term "countertransference," Barenberg was able to guide this lawyer-to-be through a process of self-reflection that supported his efforts to work effectively with his client, and thus supported him to be more effective and successful in working with his client. Using her social work training, Barenberg helped the student surface the critically important information that the client's disability involved substance abuse and that the student's father also had been an alcoholic. The student realized that in not wanting to "enable" the client, as had happened in his own family with respect to his father, he had overlooked other more empathic explanations for the client's behaviors. Because of her professional social work training, Barenberg's Socratic questioning led the student first to be able to identify the connection with his family of origin, and then to be able to consider separately how to proceed in this professional context. The outcome would likely have been a lot less successful had Barenberg not thought to inquire gently about the reasons the student

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<sup>144</sup> *Id*

<sup>145</sup> For definitions and examples of countertransference, see Silver, *Lawyer/Client Relationship Love & Hate*, *supra* note 22, at 262-78.

and client had not been connecting effectively. It is worth noting that many clinicians may not have considered how the student's projected feelings, that is, his countertransference, might have inhibited the student from asking the client directly about the reasons he was missing appointments.

Through this process of reflection and with the support of a skilled supervisor, the student may learn that his initial explanation for any client's seemingly uncooperative behavior might not be accurate. To demonstrate that he has met the first stage in the continuum identified earlier, the conceptual understanding phase, he would become aware that lawyers commonly have emotional and feeling-based reactions to clients. He would then begin to notice when he might be having a reaction to the client or experiencing some other form of disorienting moment. To demonstrate that he has met the second phase, he would notice his reactions in real time. He could then employ Habit Three,<sup>146</sup> parallel universe thinking. Accordingly, he could consider alternative explanations for his client's behavior and recognize the possibility of different perspectives. As he moves toward the third and most advanced phase, he would demonstrate a willingness to work through negative reactions toward the client to help surface assumptions, judgments, and biases based on personal experiences (countertransference) or socially conditioned attitudes (*e.g.* negative associations with persons of certain races or other identities). He might ultimately reach the third benchmark, the point at which he checks his reactions more consistently—regardless of how they present themselves (Habit One)<sup>147</sup>—to ensure his representation is based on his intentional, client-centered professional choices.

### B. Self-care

One important aspect of self-care for lawyers, as for psychologists and social workers, is understanding and applying reasonable boundaries in their relationships with clients. Law students must learn to draw appropriate boundaries, as the absence of such boundaries may cause emotional depletion, diminished well-being, and even burnout. Representing clients who have experienced, or continue to experience, trauma in their own lives may well activate boundary issues for clinic students.

The following example is loosely based on a recent case from Touro Law Center's clinic.<sup>148</sup> The clinic represented a young person

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<sup>146</sup> Bryant, *The Five Habits*, *supra* note 60.

<sup>147</sup> *Id.*

<sup>148</sup> We thank Professor and Director of Clinical Education, Melina Healy, and our research assistant and social worker assigned to the Touro clinics, Thonysha Desire, for shar-

with severe physical and mental disabilities in an extremely complicated Individuals with Disabilities Education Act (IDEA) case.<sup>149</sup> By legal necessity, all communication was through the young person's mother (Mother).

The assigned students' immediate aim was to gather necessary information from Mother to prepare a request for an Impartial Hearing.<sup>150</sup> The students scheduled the telephone meeting for thirty minutes. From the moment the conversation began, it was clear that Mother was greatly distraught, and so the students gave her ample opportunity to expand on her story. After a while, the students realized that time was running out and they still had not been able to get more than a minimal amount of the information they needed. Mother rambled on and on about all her concerns, which were considerable, although they had no direct relevance to her son's special education case. And she kept repeating the same stories.

The students became anxious about their limited time, as they had a class starting shortly. They were not sure whether to keep going with the interview and be late for class, skip class altogether, or cut Mother off. They decided to keep going. The conversation went on for over an hour, and the students still did not have all the information they needed. Finally, the students ended the call, emotionally drained and anxious about having missed their class.

The students shared what transpired with their clinical faculty/supervisor, relating the problems they experienced, and asking what else they could or should have done. Earlier in the semester, assigned readings had covered boundary issues, as well as stress, burnout, and vicarious trauma. The supervisor's role then became to help move the student's conceptual understanding of the importance of self-care to a practical, if not visceral, one. To meet the first developmental phase, which in psychology is called "readiness for practicum," the student would need to be able to notice when they need to engage in self-care, in this case through boundary-setting. The supervisor could support this process of noticing by inquiring gently how the students were *feeling* as the call went on and on, as well as what they were thinking. The supervisor might help the students explore the effects of the choice they made, what the consequences might be if the same issue repeated itself in the future, and whether, ultimately, the students were serving their client's best interests, or their own. This might lead to a broader discussion of self-care, and the reasons it is essential to effective

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ing the story on which we based this example.

<sup>149</sup> Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et. seq.*

<sup>150</sup> Individuals with Disabilities Education Act, 20 U.S.C. § 1400, 1415(f) (defining impartial hearings).

lawyering.<sup>151</sup>

The intermediate phase (“readiness for internship”) goal would be for the students to consider what to do differently if a similar situation occurs, and to recognize when it might be happening again. In this particular case, the students might learn that they need to remind Mother of the purpose of the meeting, and how much time they have. They might also cultivate strategies to focus Mother on the information they need to gather and leave enough time at the end of the meeting to discuss next steps—which might include, if needed, a follow-up meeting. This approach would allow them to get to class on time, calmly, without being frazzled.

Law students need to learn to appreciate appropriate boundaries in order to maintain their own well-being. Only by taking care of themselves are they able to take care of their clients. To meet the third phase goal (“readiness for practice”) and be practice-ready, students need to become aware of what they require for self-care, and for those habits of mind and practices to become as habitual as possible. Ultimately, the goal would be for them to integrate an ethic of care into their professional identity for themselves as well as for their clients.

## V. POTENTIAL CHALLENGES AND OPPORTUNITIES

In undertaking the project of identifying a comprehensive set of relational competencies and teaching them to all law students, we are likely to encounter a variety of challenges. Here, we highlight some of those challenges and offer some positive responses and opportunities. We recognize that implementing these ideas is an ambitious agenda. As discussed previously, it took decades and many layers of discussion and review for the field of psychology to arrive at their comprehensive competency benchmarks model.<sup>152</sup> We fully expect that the legal field would need to create similar processes for gathering information and guidance from a wide array of interested individuals and groups. The project would be multi-layered, and it would take considerable time to reach a point of broad institutional consensus. Even then, shifting to a competency benchmark approach around relational skills in legal education would necessarily be a dynamic and iterative process, which would require testing out whatever competencies, tools, approaches, and sequencing are identified, assessing the effectiveness of what is

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<sup>151</sup> Readers undoubtedly can think of other ways that a supervisor might aid students in understanding the importance of setting appropriate boundaries with a client such as Mother, and why and how they ought to adhere to them, not only for their own sake, but for their client's. By structuring their phone call meetings and setting reasonable boundaries, students can model for their clients' effective strategies for achieving the clients' goals.

<sup>152</sup> See *supra* Section II.B.

being implemented, and making whatever adjustments are determined to be necessary over time.

This project would nevertheless be tremendously worthwhile, and would have significant value for legal education, which has undervalued and given insufficient attention to thinking through the relational competencies that attorneys need to be effective, let alone how to teach them to law students intentionally and systematically, and assess them with some level of accountability.

While our thinking has been deeply informed by the psychology benchmarks model discussed above, we recognize the vast differences between the first year of law school compared with the first year of a graduate program in psychology. Unlike psychology students, who have foundational courses in supervision, and are taught about and have multiple opportunities to practice relational skills from the outset of their professional education, many if not most law schools completely omit any education or training on relational skills in the first year. That being said, an increasing number of law schools are beginning to incorporate some attention to these competencies for 1Ls.<sup>153</sup> Moreover, newly approved revisions to the ABA standards will require law schools to incorporate professional identity and cross-cultural lawyering in their program of legal education.<sup>154</sup> Given that relational competencies are essential to law students' professional identity formation and their ability to work effectively across cultures, and that legal practice is relational at its core, we urge all law schools to require some teaching or training about relational competencies in the first year. At a minimum, law schools need to implement some form of meaningful orientation around relational skills before students participate in supervised practice experiences, as has become common in many clinical programs.

Of course, some members of the legal education community might question whether relational skills can truly be taught or fostered in law students, as well as whether they can truly be assessed. In response, we can look to the example of professional training and education in psychology and other mental health fields, which centers around the teaching of these competencies. Generations of mental health professionals who have received education and training in those fields can easily attest that it can be and is continuing to be done. And indeed, the key premise of this article is that we can adapt

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<sup>153</sup> Information about some of these programs is available through the Holloran Center website, available at: <https://www.stthomas.edu/hollorancenter/>.

<sup>154</sup> See Karen Sloan, *U.S. Law Students to Receive Anti-Bias Training after ABA Passes New Rule* (Feb. 14, 2022), [reuters.com/legal/legalindustry/us-law-students-receive-anti-bias-training-after-aba-passes-new-rule-2022-02-14/](https://www.reuters.com/legal/legalindustry/us-law-students-receive-anti-bias-training-after-aba-passes-new-rule-2022-02-14/).

many of their approaches without re-inventing the wheel.<sup>155</sup>

Additionally, even those who support moving to a competency-based approach to teaching relational skills might raise more practical issues around implementation and professional capacity. For instance, there might be concerns about whether it is realistic to expect all clinical faculty to have the professional skill set and time available to teach and supervise students around the full array of these competencies, and/or the costs of doing so, and what other learning goals of clinical legal education might be “sacrificed” if we place more focus on relational skills. We take seriously the capacity issue and the need to enhance the awareness of and ability among clinical faculty to teach and supervise students to foster relational competencies. A major goal of our work is to contribute to that capacity building. At the same time, we believe strongly that the concern about capacity presents an opportunity to revisit priorities and potentially shift more law school resources toward strengthening clinical legal education, possibly by including more access to mental health professionals. This investment could include hiring part- or full-time social workers or those with similar training to help staff a legal clinic,<sup>156</sup> or it could be more modest, such as creating arrangements for regular or even occasional consultation on an as-needed basis.

## VI. FUTURE DIRECTIONS

To begin with, the legal profession needs to come up with a comprehensive list of relational competencies we aim to teach and have our clinical students learn largely through clinical legal supervision. A jumping off point for this effort can be Brooks's work on relational lawyering, which, as described earlier, uses the three fields of transformation—personal, interpersonal, and systemic—as organizing categories.<sup>157</sup> Here is a visual depiction of the relational competencies

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<sup>155</sup> Another close parallel within professional training that has been studied is the field of medicine and medical education and training, which has developed a similar approach. See Neil Hamilton, *Professional-Identity/Professional-Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment from Medical Education?*, 14 U. ST. THOMAS L.J. 357 (2018).

<sup>156</sup> For example, Touro College Law Center and many other schools offer students the opportunity for employment through work-study. These awards provide students the opportunity for resumé building, as well as help offset student loan debt. Thonysha Desire has been serving as a social worker in the Touro clinics since 2019, as a work-study recipient. The ability to have a social worker on staff in the clinic provides a multidisciplinary approach to student training and managing client interactions. It is a creative solution that might well work at many schools. In addition, Touro Law currently offers a joint JD/MSW program with the State University of New York at Stony Brook, thereby addressing the relationships among legal doctrine, legal process, and social work.

<sup>157</sup> Brooks, *Mindful Engagement*, *supra* note 16; Brooks, *Fostering Wholehearted Lawyers*, *supra* note 30.

according to Brooks’s scheme. The first section of the chart identifies the relational competencies all law graduates need for legal practice. Competencies that are also specifically named in the psychology benchmarks scheme appear in boldface type. The second section identifies some of the different approaches and tools Brooks has used in her own teaching that we believe could be useful in supervising clinical law students to support their development of relational competencies.<sup>158</sup>

POTENTIAL RELATIONAL COMPETENCIES AND TEACHING APPROACHES/TOOLS<sup>159</sup>

Personal Field	Interpersonal Field	Systemic Field
<p>Competencies</p> <ul style="list-style-type: none"> <li>• <b>Professional Values and Attitudes</b></li> <li>• <b>Individual Diversity/ Multiple Identities</b></li> <li>• <b>Reflective Practice/ Self-Assessment/Self-Care</b></li> </ul>	<p>Competencies</p> <ul style="list-style-type: none"> <li>• <b>Relationships – Interpersonal/ Affective/Expressive</b></li> <li>• <b>Supervision [Communication/ Feedback]</b></li> </ul>	<p>Competencies</p> <ul style="list-style-type: none"> <li>• <b>Cultural Diversity</b></li> <li>• <b>Interdisciplinary Advocacy</b></li> <li>• Trauma-Informed Care</li> <li>• Mindful Engagement</li> </ul>
<p>Approaches/Tools</p> <ul style="list-style-type: none"> <li>• Character Strengths and Core Values</li> <li>• Mindset/Resilience</li> <li>• Self-Awareness/ Mindfulness</li> <li>• Emotional Intelligence</li> <li>• Reflective Practice</li> </ul>	<p>Approaches/Tools</p> <ul style="list-style-type: none"> <li>• Deep Listening</li> <li>• Storytelling</li> <li>• Communication/ Dialogue</li> <li>• Appreciative Inquiry</li> <li>• Empathy and [Self]-Compassion</li> <li>• Cross-cultural Engagement</li> </ul>	<p>Approaches/Tools</p> <ul style="list-style-type: none"> <li>• Social Identities/Race/ Bias/Privilege/Power</li> <li>• Access to Justice</li> <li>• Serving the Public Good</li> <li>• Transformative Approaches to Law and Lawyering</li> </ul>

Similar to the chart above, sub-areas of competency could be identified corresponding to each dimension, along similar lines to the categories Brooks has delineated. At the same time, we also recognize that all fields and sub-competencies of relational lawyering are integrated and somewhat overlapping with each other.

<sup>158</sup> We fully acknowledge that there could be other ways to parse out these competencies, approaches, and tools. For instance, emotional intelligence itself could be identified as a competency. Brooks has focused on using identifiers that are as broad as possible for what she calls competencies. The approaches and tools draw upon different disciplines and bodies of literature that address similar or overlapping areas of competency.

<sup>159</sup> Each of the benchmarks noted below map on to specific benchmarks proposed by Fouad and colleagues. See *Competency Benchmarks*, *supra* note 121.



Once we are able to reach consensus on a set of relational competencies for all law graduates, we would then move to the process of mapping out the sequencing for each relational competency for purposes of legal education. This process and the actual developmental map that emerges potentially could look nearly identical to the benchmarks used in the psychology training context for many if not most of the relational competencies the two fields share in common, such as we have illustrated in the examples and discussions on reflective practice and self-care.

#### CONCLUDING THOUGHTS

While we acknowledge the potential challenges, we believe that we are at a crossroads in many dimensions of our society today, and legal education is no exception. We face tremendous uncertainty as to the future of legal education as well as the profession. The present moment invites us to pause, to rethink and re-envision our goals and our pathways to practice. The many parallel development described in this article—the ABA learning outcomes initiative; and new push to incorporate requirements for all law schools to teach and support professional identity formation and cross cultural lawyering; the Mindfulness in Law movement; the ABA Task Force Report on Lawyer Wellbeing; the current demand for Anti-Racist Reforms at all levels of legal education and in the profession; the challenges to the current system of licensing exams—all cry out for serious and lasting reform.

Our strong view is that the direction we need to take is clear. We need to move to a competency-based model for professional training that focuses on the supervised practice experiences already provided by every law school in the country—that is, externships and clinics—with a heavy emphasis on teaching and assessing the relational competencies needed for effective lawyering. The good news there is that many of our clinical and experiential faculty already provide a considerable amount of supervision aligned with our approach. Law schools need additional resources to support these colleagues to take a more systematic and comprehensive approach to what we might call *relational supervision*. Potential vehicles to support that work already exist in the form of AALS-sponsored workshops and conferences, and initiatives such as the Holloran Center,<sup>160</sup> the Institute for Law Teaching and Learning,<sup>161</sup> and the Institute for the Advancement of the American Legal System (IAALS)<sup>162</sup> Additionally, organizations such

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<sup>160</sup> See *supra* note 101 and accompanying text.

<sup>161</sup> <http://lawteaching.org/>.

<sup>162</sup> <https://iaals.du.edu/>.

as the International Society for Therapeutic Jurisprudence (ISTJ);<sup>163</sup> the Project for Integrating Spirituality, Law, and Politics (PISLAP);<sup>164</sup> the Mindfulness in Law Society (MLS);<sup>165</sup> and YES<sup>166</sup> sponsor various publications and activities geared toward personal and professional enrichment of participants. These initiatives can support clinical faculty in gaining more tools and approaches for fostering law students' development of relational competencies.

Further, the field of psychology has paved the way by establishing its competency benchmarks model, which we offer for its inspiration as well as concrete ideas we can adapt and incorporate in creating our own model, both from the standpoint of an implementation process and an assessment scheme. We hope our work will spark a meaningful series of conversations about how we can move our system of education and our profession in a similar direction.

We also want to reaffirm what Silver recommended more than a decade ago, that all legal professionals need supervision as much if not more than law students. Ultimately, we need to think about how to build in a regular system of supervision of relational competencies into our profession if we ever hope to improve the well-being of legal practitioners and create a healthier legal culture that serves our clients and our profession more effectively and holistically.<sup>167</sup> If we can build the infrastructure for a competency-based approach to relational lawyering into legal education through supervised clinical practice, we can pave the way for a healthier and happier legal profession, and one that provides better care for the well-being of its clients.

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<sup>163</sup> <https://intljtj.com/>.

<sup>164</sup> <http://www.spiritlawpolitics.org/>.

<sup>165</sup> <https://www.mindfulnessinlawsociety.org/>.

<sup>166</sup> <https://www.yesworld.org/>.

<sup>167</sup> See Silver, *Personal Skills*, *supra* note 27.