

ALL'S WELL THAT ENDS WELL: THE IMPORTANCE OF FULL AND EFFECTIVE CLOSURE IN LAWYER- CLIENT RELATIONSHIPS

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This Article addresses a subject that has not received serious academic attention in law or in clinical scholarship: how lawyers should end their relationships with clients. As human beings, we intuitively understand the importance of endings in relationships, and lawyer-client relationships often impact both the lawyer and the client. Despite the amount of attention paid to other aspects of client interviewing and counseling, such as how to conduct an effective initial client interview, there is relatively little literature on how to achieve effective closure. This Article draws on research from the therapeutic professional field about how to effectively end professional relationships. Going beyond the minimal ethical considerations about how to end the lawyer-client business relationship, it derives a three-step model that can be used by practitioners and by clinical professors preparing their students for ending meetings with clients to help bring effective closure to the emotional and relational aspects of the representation.

I. THE BEGINNING: ENDINGS IN CONTEXT

As human beings, we intuitively understand the importance of endings in important human relationships.¹ Anyone who has ever

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¹ All of our lives, including our relationships, can be categorized according to Aristotle's conception of the tragic whole: as including a beginning, a middle, *and* an end. ARISTOTLE, POETICS 30 (Gerald F. Else trans., 1967). It is primarily at the end of a relationship that we recognize and reflect on the importance of the relationship. Partly this is because the relationship develops over time spent with someone. As Helen Harris Perelman puts it: "Relationship is not a prelude to helping. Never. It grows out of some interchange with the help seeker about some piece of his pressing problem, about what hurts him, bothers him, pushes him to need and ask." HELEN HARRIS PERELMAN, RELATIONSHIP:

moved away from family or friends, ended a friendship or a romantic relationship, or experienced death knows how emotional and impactful relationship endings can be. Many of us can think of influential relationships with teachers, mentors, or family friends whose course and ending were significant to us. While not always emotionally impactful, these endings can leave us with remorse, shame, or frustration or fill us with life-affirming feelings of joy, pride, or satisfaction. There are well-documented methods on how best to undergo endings (both those that are incredibly significant and those that are merely important) to make them positive and functional.² Yet, when we are confronted with an ending, most of us simply muddle our way through the emotions and logistics, picking up life lessons on the way and occasionally passing along advice to friends and family through informal conversations. In essence, we deal with endings instinctively and haphazardly, depending heavily on our life mentors.

Because lawyers often help clients through difficult moments in their lives, relationships with lawyers can be influential on clients' lives. The sheer emotion involved in some legal matters—divorces, lay-offs, accusations, planning one's death, actions affecting the ability to feed one's family, keep a roof over one's head, or maintain the life of a company—makes the lawyer-client relationship essential.³ Even with routine legal matters that affect the client and lawyer less emotionally, the relationship that develops between the attorney and client may be remembered long after the legal representation is over by clients and lawyers alike.⁴

Yet, lawyers attend to the ending of their relationships with clients in much the same way people generally end relationships: they do what feels natural and instinctual and what they have seen their colleagues and mentors do. Lawyers typically end a lawyer-client relationship by writing a closing letter that concentrates on the business

THE HEART OF HELPING PEOPLE 141 (1979).

² HENRY CLOUD, NECESSARY ENDINGS: THE EMPLOYEES, BUSINESSES AND RELATIONSHIP THAT ALL OF US HAVE TO GIVE UP IN ORDER TO MOVE FORWARD (2011); DAPHNE ROSE KINGMA, COMING APART: WHY RELATIONSHIPS END AND HOW TO LIVE THROUGH THE ENDING OF YOURS (2012); Lisa B. Deaderick, *How To: Break Up with a Friend*, DAILY PRESS (Newport News, VA), Aug. 5, 2007, at G1; Aimee Tjader, *A Clean Break*, STAR TRIBUNE (Minneapolis, MN), Jan. 14, 2012, at O1E; *How to End a Relationship*, THINK SIMPLE NOW, <http://thinksimplenow.com/relationship/how-to-end-a-relationship/> (last visited Jan. 8, 2013); Marcia Reynolds, *Wander Woman*, PSYCHOLOGY TODAY, <http://www.psychologytoday.com/blog/wander-woman/201207/end-your-relationship-dignity> (last visited Jan. 8, 2013).

³ The therapeutic jurisprudence movement has been arguing this point for twenty years now. David C. Yamada, *Therapeutic Jurisprudence and the Practice of Legal Scholarship*, 41 U. MEM. L. REV. 121, 124 (2010).

⁴ See, e.g., Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992).

and ethical side of the relationship, documenting that the relationship is over, clarifying that all fees and costs have been paid, and ensuring that property has been properly returned. Aside from an occasional business relations holiday card, lawyers do not typically take any proactive steps to achieve closure in their relationships with their clients.⁵

This instinctual approach to ending lawyer-client relationship warrants closer study and attention.⁶ Academically, the ending stage of the lawyer-client representation is passed over by almost all lawyering scholars except legal ethicists, who focus on the duties lawyers owe to clients at the end of their professional relationships and the grounds for terminating the relationships.⁷ Surprisingly, discussions of how to properly end a lawyer-client relationship are mostly absent from clinical scholarship.⁸ This stands in stark contrast to the emphasis placed in both clinical scholarship and teaching on the formation of the attorney-client relationship.⁹ If representation were like mountain

⁵ Some lawyers do become friends with their clients, especially after many years of representation. Lawyers also engage in social outings with clients either as a business gesture or because of a shared interest. Even if not friends, some lawyers engage in friend-like gestures toward their clients after the representation, such as sending them money while in prison. See Eric Cooperstein, *Be Careful Who Your Friends Are*, *LAWYERIST*, Sept. 17, 2008, available at <http://lawyerist.com/be-careful-who-your-friends-are/> (last visited Jan. 19, 2013) (discussing whether lawyers should become “friends” with their clients on Facebook and other social networking sites). This issue will be discussed more fully later. See *infra* notes 59-64 and accompanying text.

⁶ PERLMAN, *supra* note 1, at 3. Perlman says that the study of relationships is no less an “effort to lift what each of us knows in the heart (and the viscera) into the more accessible region somewhere above the eyebrows where consciousness and thought are assumed to dwell.” *Id.* at 23.

⁷ See e.g., LISA G. LERMAN & PHILLIP G. SCHRAG, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* 344-50 (2d ed., 2008); W. BRADLEY WENDEL, *PROFESSIONAL RESPONSIBILITY: EXAMPLES AND EXPLANATIONS* 27-30, 350-51 (2d ed. 2007).

⁸ Susan Brooks implores clinicians and students “to pay attention to the process of ending the relationship with the client,” and offers a few paragraphs as to why this is important in clinics that have frequent turnover of students. Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, 13 *CLINICAL L. REV.* 213, 223-24 (2006). Her short treatment of endings focuses mostly on the impact of the ending on the client population, who may have difficulty with endings generally due to issues of abandonment or rejection. However, her article does not offer a model for how we should end client relationships, nor on how endings relate to other lessons that we are trying to impart to our students. The specific ending situation of transfer has been the subject matter of one article. Naomi R. Cahn & Norman G. Schneider, *The Next Best Thing: Transferred Clients in a Legal Clinic*, 36 *CATH. U. L. REV.* 367 (1987).

⁹ The main lawyering texts focus in on stages of legal representation, primarily the interviewing and counseling stages, although some also address in more or less volume the issues of fact investigation, negotiation, and argument stages. See e.g., ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* (1990); GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: CLINICAL INSTRUCTION IN ADVOCACY* (1978); DAVID A. BINDER,

climbing, with the lawyer as a Sherpa guiding the client to the summit and back, an observer taking the vantage point of clinical scholarship would see the lawyer and client at the base of the mountain, see them climbing to the apex as the case culminates; the next thing she would see is the lawyer climbing another mountain with a new client. How the lawyer and client got down from the first mountain would be missing from her view.¹⁰

One of the principal explanations for such a perfunctory stance towards endings is a myopic focus by lawyers on fairly narrow conceptions of their roles as professionals, with a concomitant failure to focus equal attention to their role as humans.¹¹ More and more, though, through the work of the therapeutic jurisprudence, relationship-centered, holistic, humanistic, and clinical scholars, lawyers are attending to the interpersonal relationships between clients and lawyers.¹² While we historically have as a community anecdotally recognized the importance of interpersonal relations with clients to the lawyering enterprise,¹³ this acknowledgment has now become increasingly

PAUL BERGMAN, & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991); ROBERT F. COCHRAN, JOHN M. A. DiPIPPA, & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* (2d ed. 2006); STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE, & ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (2009). Within these discussions and separate from them, these texts contain segments that help students create, build and understand their lawyer-client relationships, including sections on communication skills, helping theories, psychological type, lawyering across difference, professionalism, control within the lawyer-client relationship, and moral dialogue.

¹⁰ An alternative is to analogize lawyering to flying, with great emphasis on the take-off and no focus on the landing: We understand how the co-pilots, the lawyer and the client, each with his or her respective but indispensable role, launched the plane up in the air and negotiated the flying of it, but have no idea how they got the plane down to the runway. This analogy is used by different scholars in the psychology field. See DENISE D. DAVIS, *TERMINATING THERAPY 1-2* (2008); Anthony Bass, "It Ain't Over Till It's Over:" *Infinite Conversations, Imperfect Endings, and the Elusive Nature of Termination*, in GOOD ENOUGH ENDINGS 277, 283 (Jill Salberg ed., 2010).

¹¹ Cahn & Schneider, *supra* note 8, at 378.

¹² One of the pedagogical goals of clinical programs includes the interpersonal aspects of lawyering. For instance, the Center for Applied Legal Studies at Georgetown University has interpersonal lawyering skills as an explicit goal of its program. *Objectives of the Clinic*, GEORGETOWN LAW, CENTER FOR APPLIED LEGAL STUDIES (Feb. 19, 2009), available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/CALS/educational-goals.cfm> (last visited Jan. 19, 2013). A primary purpose of the clinical model of education is to help advance new ways of working with clients. Ann Shalleck, *Constructions of the Client within Legal Education*, 45 STAN. L. REV. 1731, 1740 (1993).

¹³ Supreme Court Justice Abe Fortas commented that relationships of lawyers "with clients, witnesses, judges and jurors are at least as important as their mastering of the statutes in precedence." Abe Fortas, *The Legal Interview*, 15 PSYCHIATRY 91 (1952) (cited in ANDREW S. WATSON, *PSYCHIATRY FOR LAWYERS* 4(1968)).

mainstream.¹⁴ Effective interpersonal relationships with clients are recognized to be not only integral to effectuating clients' goals,¹⁵ but to enlarging a client base.¹⁶ Moreover, client-centered and collaborative lawyering philosophies demand that we create and sustain structures in our relationship with our clients that concentrate on what clients need from and can achieve through the representation.¹⁷ Further, the changes in the practice of law from adversarial, trial-centered advocacy to consensus-driven conflict resolution also place the client in a much more participatory and active role, which has naturally led to a change in the nature of the attorney-client relationship where the "affective" aspect of it is more pronounced.¹⁸

This Article explores the ingredients that bring effective "closure"¹⁹ to our endings with clients in the hope that by so doing, we can shed light on our relationships with clients as a whole, improve our communication processes, and better meet our professional goals.

¹⁴ See e.g., Rod Rehm, *Building and Maintaining a Good Attorney-Client Relationship*, WORKERS COMPENSATION WATCH, June 18, 2012, at <http://workerscompensationwatch.com/2012/06/building-maintaining-good-attorneyclient-relationship/> (last visited Jan. 19, 2013); Jenny Montgomery, *The Art of Listening*, THE IND. LAWYER, Feb. 1, 2012, at <http://www.theindianalawyer.com/the-art-of-listening/PARAMS/article/28037/>; Edward Poll, *Relationships Make Retaining Lawyers Worthwhile*, MO. LAWYERS WEEKLY, July 14, 2008, at <http://molawyersmedia.com/blog/2008/07/14/relationships-make-retaining-lawyers-worthwhile/>.

¹⁵ Marc W. Patry, David B. Wexler, Dennis P. Stolle, & Alan J. Tomkins, *Better Legal Counseling through Empirical Research: Identifying Psycholegal Soft Spots and Strategies*, in PRACTICING THERAPEUTIC JURISPRUDENCE 69 (Dennis P. Stolle, David B. Wexler, & Bruce J. Winick eds., 2000) (arguing that lawyers can improve their outcomes with clients by paying attention to "nonlegal" problems and the psychological consequences of their choices during representation).

¹⁶ The creation of a positive, cooperative atmosphere through attention to interpersonal dynamics can lead to a satisfied client base that grows. Martin J. Solomon, *Client Relations: Ethics and Economics*, 23 ARIZ. ST. L.J. 155 (1991). Moreover, research demonstrates that clients appreciate lawyers' relational skills more than their advocacy or results attained. See Stephen Feldman & Kent Wilson, *The Value of Interpersonal Skills in Lawyering*, 5 LAW & HUM. BEHAV. 311 (1981).

¹⁷ Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 376-77 (2006); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 437 (2000).

¹⁸ JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING PRACTICE 138 (2007) (the author attributes this change in the attorney client relationship also to the change in attitudes "toward professional autonomy and control as well as a general decline in professional deference").

¹⁹ Closure is a term that I borrow from the social workers, whom have begun to adopt it over the more draconian-sounding but more common term, "termination." JOSEPH WALSH, ENDINGS IN CLINICAL PRACTICE: EFFECTIVE CLOSURE IN DIVERSE SETTINGS 5 (2d ed. 2007). Termination, or closure, is broadly defined as "an ethically and clinically appropriate process by which a professional relationship is ended." DAVIS, *supra* note 10, at 21 (citing Jeffrey Younggren & Michael Gottlieb, *Termination and Abandonment: History, Risk, and Risk Management*, 39 PROF'L PSYCH.: RESEARCH AND PRACTICE 498 (2008)).

Achieving effective closure is of interest to all lawyers who work with clients, but of particular importance to clinicians, who teach students about the contours of the attorney-client relationship using cases in which the interpersonal issues are often intense.²⁰ Because clinic students will likely never practice again in the clinic, the ending of the relationship with their clinic clients is more final than in a practice setting where a client might return for service in the future. Since endings are arguably the most “important boundary” of the relationship,²¹ having to intentionally and reflectively confront the endings of their relationships with their clients can push students to further understand the challenges and opportunities available in constructing professional boundaries. In ending client relationships, clinical students encounter various concerns, including potential conflicting perceptions about when a case is considered ended, the nature of the relationship after the ending of the substantive legal matter, and how to emotionally and ethically achieve ending when the relationship took on qualities that appeared similar to a developing friendship.

Part II of this Article draws from the literature of the “therapeutic professional field,”²² by which I mean psychology and other related disciplines, and offers both general suggestions and a specific three-step process that clinical teachers can use to teach our students to improve their endings with clients in civil, individual representation lawyering context. While there may be much that criminal, multi-party and transactional attorneys can take from this Article, the generally different nature of the relationship the attorney begins and develops with clients in these arenas calls for a nuanced analysis of what is necessary at the close of these relationships that is beyond the capacity of this Article. In Part III, the Article concludes with suggestions for further research and scholarship that deal more specifically with endings in different contexts.

²⁰ This can be due to the nature of the cases and the particular population of clients. Brooks says clinics represent “traditionally underserved clients and communities” who often have experience with abandonment and other types of trauma that make transitions particularly difficult. Brooks, *supra* note 8, at 224.

²¹ DAVIS, *supra* note 10, at xi.

²² Kathryn MacCluskie and Elliott Ingersoll use this term to encompass psychiatrists, psychologists, counselors, social workers, therapists, substance abuse counselors and marriage and family therapists who are “mental health professionals trained to help people with problems that manifest behaviorally or psychologically and that may have roots in physical, psychological or spiritual dimensions.” KATHRYN C. MACCLUSKIE & R. ELLIOTT INGERSOLL, BECOMING A 21ST CENTURY AGENCY COUNSELOR: PERSONAL AND PROFESSIONAL EXPLORATIONS 3 (2001).

II. HOW LAWYERS CAN CREATE FULL AND EFFECTIVE CLOSURE

Keeping in mind the potential influence of changes in context,²³ this Part makes a variety of suggestions on how lawyers can achieve effective closure to meet their goals for the relationship with their clients. Relationships can end for a range of reasons, including the legal issue being resolved favorably or unfavorably, the case being transferred to another attorney in a planned and mutually agreeable way, withdrawal by an attorney in either mutually or unilaterally agreeable ways, departure of the attorney or client due to a geographic move, firm restructuring, sickness, or death. This Article concentrates on the relational aspects of the endings of attorney-client relationships in cases where the contemplated service has been fully executed and both attorneys and clients have prospectively foreseen and agreed to the ending.²⁴

Therapeutic professionals²⁵ have long recognized that the endings of relationships are fraught with complex interpersonal issues and have been developing strategies to create effective closure for clients.²⁶ As we begin to examine how we improve our endings with cli-

²³ Besides the substantive law involved in the case, the lawyering context can differ in many other ways that can potentially affect what is needed at the ending of the relationship. For example, lengthy relationships may call for different closure activities than shorter ones, as the regularity of client interaction impacts how active a client is in their case. See MACFARLANE, *supra* note 18, at 127. The actions appropriate at the ending may also depend on whether the attorney-client relationship takes place in a rural or small-town setting where the lawyer and client have relationships to each other in addition to their professional one, as opposed to an urban setting where the relationship is likely more one of otherwise strangers. DONALD D. LANDON, *COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE* 122 (1990). For a general conversation about how context affects the lawyer-client relationship, see ELLMAN ET AL., *supra* note 9.

²⁴ The psychological literature calls this “Prospective termination.” DAVIS, *supra* note 10, at 21-23. Davis describes five different types of termination: prospective (planned/agreed), flexible (unplanned/agreed), complex (sensitive, protracted, or volatile), oblique (cloudy, evasive, and unilaterally enacted by client), and unprofessional. *Id.* This Article focuses on the first type, although the other types would make for interesting areas of analogous legal study.

²⁵ I focus on therapeutic professionals who work with clients in settings in which the clients are receiving one-on-one therapy. I will not be focusing on group or family therapy, although there is literature about group therapy that can be useful to lawyers who work with groups of clients or entities. See, e.g., ANTHONY S. JOYCE, WILLIAM E. PIPER, JOHN S. OGDONICZUK, & ROBERT H. KLEIN, *TERMINATION IN PSYCHOTHERAPY* 52 (2007). To be sure, within this large field, there are also variations in modalities, training, and philosophy on how to conceptualize termination. There is also much consensus regarding therapeutic approach when it comes to endings. When necessary, I describe the particular modality that prescribes a certain approach. When silent, the approach is universal across approaches. Also, for brevity’s sake, I often refer to these professionals as “therapists” as this Article focuses on those therapeutic professionals who engage in one-on-one therapy.

²⁶ While termination was discussed as far back as Freud, there have been scant writings on this subject compared to the other aspects of the therapeutic relationship, most of the writing has been in the psychodynamic approach, and it has been fairly recent. See DAVIS,

ents and to define what endings should consist of—beyond the mainstream of what is commonly done and ethically required—it is natural to look to the therapeutic professional field for information.²⁷ Both lawyers and therapeutic professionals engage in helping professional relationships²⁸ with clients and often share common goals of service, education and empowerment of clients.

Yet, there are differences in the nature of the problems that lawyers and therapeutic professionals solve and the methods they utilize to solve them.²⁹ Therapeutic professionals generally develop more

supra note 10, at xi; Jill Salberg, *Historical Overview in GOOD ENOUGH ENDINGS*, *supra* note 10. The recent increase in the importance of termination has been attributed to the rise of the relational approach that emphasizes attachment, relatedness and empathy, as opposed to independence and autonomy. Salberg, *supra*, at xvi-xviii. Just as lawyers partially ascribe the greater emphasis on the attorney-client relationship to the ascent of feminism, the shift in psychoanalysis to a relational approach also is accredited to the feminist movement. LEWIS ARON, *A MEETING OF THE MINDS: MUTUALITY IN PSYCHOANALYSIS* 20-21 (1996).

²⁷ Legal scholars have long and extensively utilized the therapeutic professional literature to inform lawyering. *See generally*, BELLOW & MOULTON, *supra* note 9; Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching*, 11 CLINICAL L. REV. 413 (2005); Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, The Myers-Briggs Type Indicator and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169 (1990); Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y & L. 1173 (1999) ("Silver I") (arguing that good lawyering demands training in empathic and psychological skills); Marjorie A. Silver, *Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (1999) ("Silver II") (demonstrating how counter-transference manifests and some strategies to address it); Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Awareness*, BOSTON COLLEGE LAW SCHOOL FACULTY PAPERS, Paper 46, <http://lawdigitalcommons.bc.edu/lfsp/46/> (last visited Jan. 19, 2013). Indeed, the burgeoning field of therapeutic jurisprudence views law as a therapeutic agent and focuses in on the psychological aspects of the attorney-client relationship. Many articles work on marrying therapeutic jurisprudence and clinical teaching. *See, e.g.*, Mary Berkehiser, *Frasier Meets CLEA: Therapeutic Jurisprudence and Law School Clinics*, 5 PSYCHOL. PUB. POL'Y & L. 1147 (1999); Pearl Goldman & Leslie Larkin Cooney, *Beyond Core Skills and Values: Integrating Therapeutic Jurisprudence and Preventive Law into the Law School Curriculum*, 5 PSYCHOL. PUB. POL'Y & L. 1123 (1999); Keri K. Gould & Michael L. Perlin, "Johnny's in the Basement/Mixing Up His Medicine": *Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE U. L. REV. 339 (2000).

²⁸ PERLMAN, *supra* note 1, at 62-77. Perlman finds that professional relationships share five main components: (1) they are formed for a recognized and agreed; (2) they are timebound; (3) the professional relationship exists for the good of the client, and there is a general lack of reciprocity and mutuality in terms of interest and affect; (4), the relationship concerns the knowledge, expertise and judgment of the professional; and (5) they are controlled (by the helper and helpee; the helper controls herself and the ways and means of helping, the helpee controls what is shared). *Id.* Gerald Williams suggests six criteria that distinguish professionals from others: (1) Esoteric Knowledge; (2) Special authority; (3) Distinguishing Qualities such as "distinctive qualities of appearance, speech, demeanor, etiquette, office arrangements, feasting, drinking, and observance of taboos"; (4) Limited to Certain Times and Places; (5) Client Confidentiality and Safety; and (6) Stewardship. Gerald Williams, *Negotiation as a Healing Process*, 1996 J. DISP. RESOL. 1, 57-66.

²⁹ For a discussion on the differences between lawyering and therapy, see Stephen

emotionally charged relationships with their clients than lawyers do and the boundaries between the professional and the client can more often become blurred.³⁰ When legal clients end their relationships with their lawyers, they often feel relief from the stress of the legal issues. For therapeutic clients, on the other hand, ending the relationship with their therapists is often more difficult and may not be desired.³¹ As we apply lessons from the therapeutic professional field to the practice of law, it will be important to heed these differences.

In this Part, I offer both broad considerations and a specific model for approaching closing meetings with clients. First, we must attend to the emotions that are involved for both lawyers and clients when a relationship ends. Second, we can use the occasion of an ending to reflect on the lawyer-client relationship and representation as a whole, drawing lessons about role. Finally, we can intentionally plan for and thoughtfully execute closing meetings with our clients, which are designed not only to ethically terminate the lawyer-client relationship, but to bring closure to it.

To help frame this discussion, consider an example from a typical clinic case that presents the challenges inherent in a pedagogy and lawyering methodology that fails to spend the needed time and thought on the closing of client relationships. At the same time, this example exhibits the opportunities available for a greater consciousness that can be brought to the endings and how, in so doing, we can more deeply explore issues of role and the attorney-client relationship. I will later revisit this interaction to illustrate how clinicians could work with students to understand and achieve closure.

Anne³² is an eager law student in her late-twenties doing her first live client clinic in law school at a community based clinic. She has no other background working with clients as she was a computer engineer before entering law school. She is a third year student and does not have a job upon graduation. Her summer work has been dissatisfying and has left her confused about what she wants to be doing for her career.

On her first week at the clinic, Anne, a white, middle-class, heterosexual woman was assigned to Kevin's case. Kevin³³, a white, heterosex-

Ellmann, *Empathy and Approval*, 43 HASTINGS L.J. 991, 1012 (1992).

³⁰ This statement is not necessarily true for all lawyers, and lawyers in fields like family law, estate planning, refugee/political asylum and public interest work often have emotionally charged relationships with their clients. Ellmann, *supra* note 29, at 1012.

³¹ See, e.g., James T. Hilliard & Thomas G. Gutheil, *Breaking Up Is Hard To Do*, PSYCHIATRIC TIMES, June 2012, at 8.

³² Anne is a pseudonym of a student that I supervised while working as a clinical attorney in the HIV (now Health) Law Unit of East Bay Community Law Center in Berkeley, California, a community-based clinic of UC Berkeley School of Law.

³³ Kevin is also a pseudonym.

ual man, had been denied SSI benefits twice at the administrative level, despite having symptomatic HIV, severe back pain and major depression. He was referred to the clinic by his case manager at the local county health clinic. Anne's job was to represent him on his appeal to the Administrative Law Judge. We were ensured that Kevin's case will be heard before the end of the semester, and Anne was told she was responsible for everything from the initial interview through the hearing. She was thrilled at the prospect of having such responsibility.

From soon after the initial interview until the hearing scheduled three short months later, Anne worked closely with Kevin. To best present Kevin's mental health claim, she spent time counseling him about the need for mental health counseling and evaluation. She helped him connect with both a therapist and an evaluating psychologist, both of who Anne later obtained written statements from to support Kevin's claim. Kevin's mental health problems for many years contributed to alcohol use and Anne had talked to Kevin about his use, attempts and difficulties of being sober and his eventual total rehabilitation. Further, Anne delved into his HIV symptoms, going through a list of common symptoms that plague HIV infected individuals including severe fatigue, diarrhea, skin rashes and headaches.

In addition to inquiring about his physical and mental health conditions, Anne also needed to link his poor health to a significantly limited functioning capacity.³⁴ To find out information about his activities of daily living, concentration abilities and social functioning, she spoke to Kevin about his family and friends, and met with Kevin's brother, with whom Kevin lived, to get a statement of Kevin's functionality for the judge. Kevin admitted to her that he has few friends due to his recent move and his tendency to isolate himself at home. In contrast, Anne found Kevin calling her a lot. In these calls, he would tell her a lot of important and needed information for his case. He also was quite effusive with his gratitude for the time she has taken to help him. Anne appreciated this gratitude as it helped keep her motivated in her work on Kevin's behalf, although she is a bit embarrassed in receiving it.

After developing an extensive factual record of his medical issues and consequential functioning, Anne wrote a comprehensive letter-brief on Kevin's behalf and prepared Kevin and herself for the hearing. At the hearing, Kevin was advised that he had successfully been granted

³⁴ Under Social Security law, to prove that a claimant is disabled, one strategy is to demonstrate that he meets or equals a Listing-level impairment. 20 C.F.R. § 416.202 (2013) (qualify if disabled); 20 C.F.R. pt. 404, subpt. P, app. 1 §12.02 (2012) (section covering mood disorders). The Listing for depression calls for demonstrating that the claimant has at least four of particular depressive syndrome characterizations and at least two resultant functioning limitations. For lawyers and law students alike, it is an awkward but necessary task to ask about these problems without reifying them.

benefits. After the hearing, Anne, Kevin, and I all went out to lunch in celebration of the favorable decision. We were all quite animated and friendly. Back at the clinic the following week, Anne related to Kevin what he could expect as the next steps in the case and told him that her time at the Clinic was ending. In response, Kevin told her that he hoped that he and she could go out to lunch or otherwise spend time together. Anne brushed his comments aside and told Kevin she would call him later. When she and I later met, Anne relayed the conversation with Kevin back to me and shared with me that she did not quite know what to say to this offer and felt confused as to her role. "Am I allowed to be Kevin's friend?" she inquired, referring to her obligations under the ethical rules. "And even if it were allowed, is it a good idea to create such a friendship?" she further asked of me. She felt torn about her feelings; while she liked Kevin, she was not comfortable with continuing in a relationship with him now that his legal matter was over. Yet, she knew how desperately Kevin needed friendships. She felt awkward and somewhat guilty in discussing this with him since she had worked so hard to be client-centered in their relationship.

A. Paying Attention To Emotions

Endings of relationships often impact us emotionally. Hence, a foundational step in assuring an effective and complete closure between the lawyer and the client is to ensure that the emotional aspects of the ending are given sufficient attention. Both the lawyer's and the client's emotions should be considered.

1. Lawyers' Emotions

A review of the psychological literature reveals that therapists' emotional responses can be particularly acute at the end of the relationship related to both the end of the relationship, but also the end of the therapy, and these emotions can affect the termination process and the therapists' future work.³⁵ Likewise, lawyers have conscious and unconscious emotional responses to the end of their relationships with their clients and the legal matters.³⁶ These emotions may vary from frustration and anxiety to relief and satisfaction.

³⁵ These reactions are influenced by personal factors and ones relating to the therapeutic work and include: the practitioner's theory base, his or her ability to plan for the end, the practitioner's attachment needs, how the practitioner manages loss, the quality of the client's life, the quality of the practitioner's personal life, the practitioner's job satisfaction and the practitioner's confidence in clinical judgment. WALSH, *supra* note 19, at 201-15.

³⁶ As lawyers have emotional responses (sometimes termed "countertransference" when they become problematic or misguided) in their lawyer-client relationships, there is no reason that these would not exist at the end of the relationship. Silver II, *supra* note 27, at 261.

Lawyers should examine their emotions so that these emotions do not lead to issues in the representation.³⁷ When we do not attend to how we feel about a situation, particularly when our emotions are negative, the situation can become problematic and lead to unneeded stress. This stress can result in personal dysfunction³⁸ and may lead to discontent with the law as a career.³⁹ Moreover, when we do not pay attention to the interpersonal aspects of lawyering, our psychological well-being can also be negatively impacted.⁴⁰ This situation is particularly acute for new lawyers at the end of their cases, who, due to their lack of confidence in their lawyering, may have particularly intense emotional reactions.⁴¹

To attend to these emotions, lawyers need the discipline to examine both their easily accessible emotions at the end of their attorney-client relationships and the emotions that remain more hidden.⁴² By working to uncover and express their emotions to themselves, lawyers can better manage those feelings.⁴³ Clinical professors can also

³⁷ This is true throughout the relationship, and not just the end. See Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 U.M.K.C. L. REV. 965, 984 (2007); 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, 861 (2004). Moreover, by explicitly recognizing one's feelings, one is better able to connect to the client. Linda G. Mills, *Affective Lawyering: The Emotional Dimensions of the Lawyer-Client Relation*, in PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 15, 419, 435.

³⁸ Examples of this dysfunction include high rates of alcohol and substance use and clinical depression. Silver II, *supra* note 27, at 290.

³⁹ *Id.* at 282; Silver et al., *supra* note 37, at 855-56 (discussing feelings of helplessness in the legal profession).

⁴⁰ Silver I, *supra* note 27, at 1182.

⁴¹ Cahn and Schneider cite two reasons for the heightened countertransference of students. Cahn & Schneider, *supra* note 8, at 382, n.67. One is that beginning clinical students have a "special relationship with their first clients" that often results in over-identification with them and their problems leading to increased countertransference issues. The second is that students feel judged by the outcomes they are able to achieve for their clients. Therefore, difficult countertransference emotional reactions may be most likely when the case ends "unfavorably", i.e., it didn't achieve the legal result that the client wanted. See also, WALSH, *supra* note 19, at 211 (claiming that a practitioner's feelings toward an intervention with a client that ends negatively is linked to the practitioner's confidence).

⁴² Andrew Watson asserted long ago that lawyers must become aware of their own motivations and emotional reactions in order to achieve success and well-being. Andrew S. Watson, *The Lawyer as Counselor*, 5 J. FAM. LAW. 7, 9-12 (1965). See also ANDREW S. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* 11-26 (1976). Bellow and Moulton seized upon Watson's assertions as a call for lawyers' development of self-awareness. BELLOW & MOULTON, *supra* note 9, at 1079. Being self-aware of one's own emotions has been identified as important in the counseling context as well. Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLINICAL L. REV. 391, 416 (1998).

⁴³ Susan Daicoff, *Law as a Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1, 53-54 (2006). However, some studies have associated the "venting" of negative emotions to not be helpful at all. See, e.g., Steven P. Brown, Robert

use this process to help students take time to explore their emotions at the ending of their relationships with their clinic clients.⁴⁴

One method is to utilize self-analytical questions like those that therapists use.⁴⁵ For example: How am I feeling about this client and myself now that the legal matter is over? More specific sub-questions can also be formulated: Do I feel particularly gratified by my experience with this case and with this client? Has the client's success or lack of success taken on any particular meaning for me? What do I expect the client to do/say/feel when I speak to him about the ending? How will I feel/(re)act if she does/says/feels something differently? Do I want to have a continuing relationship with the client? Is there relief at the idea of terminating with this client? With ending this case? What have I learned about myself? My lawyering? People in general? My client in particular? While this process can seem awkward and time consuming in the abstract, in reality it only takes seconds to descend to this level of reflection and the time committed at the front end can save one from even more time consuming problems later.⁴⁶

2. *Clients' Emotions*

Paying attention to the clients' emotions at the ending of the case and the relationship is also critical.⁴⁷ We know from the therapeutic

A. Westbrook & Goutam Challagalla, *Good Cope, Bad Cope: Adaptive and Maladaptive Coping Strategies Following a Critical Negative Work Event*, 90 J. APPLIED PSYCH. 792, 798, 794 (2005).

⁴⁴ Due to therapists' need to work through the emotions that terminations bring up for them, they are advised to turn to therapy or other individuals for help with this. Evangelia Fragkiadaki & Susan M. Strauss, *Termination of Psychotherapy: The Journey of Ten Psychoanalytic and Psychodynamic Therapists*, in PSYCHOLOGY AND PSYCHOTHERAPY: THEORY, RESEARCH AND PRACTICE 25, available at http://openaccess.city.ac.uk/457/2/article_termination_therapy_17_june_2011.pdf (last visited Jan. 22, 2013).

⁴⁵ Therapists utilize self-examination to fully uncover their emotional reactions so as to mine them for information about the meaning of the particular client to the therapist and the ending generally, as well as to evaluate themselves professionally and to develop their own emotional intelligence. DAVIS, *supra* note 10, at 174. When termination occurs due to the therapist's own needs, as akin to students whose semester is over, self-awareness is seen as particularly imperative due to the multiple types of feelings that can co-exist. Howard Hess & Peg M. Hess, *Termination in Context*, in SOCIAL WORK PROCESSES 484, 490 (7th ed., Beulah Roberts Compton, Burt Galaway, & Barry Cournoyer eds., 2005).

⁴⁶ Some therapists have found that over time they become familiar with the emotions that come up for them in endings and are more able to manage them. Fragkiadaki & Strauss, *supra* note 44, at 22.

⁴⁷ Attending to and responding to client's emotional reactions has been recognized as important in all aspects of the attorney-client relationship. See, e.g., Smith, *supra* note 42, at 421. As Bellow and Moulton pointed out many years ago, "[I]t is difficult to conceive of any area of litigation which does not have the potential for producing anger, anxiety and great many other emotions in clients In addition, . . . a certain amount of emotion is generated by the lawyer-client interaction itself." BELLOW & MOULTON, *supra* note 9, at 1073.

relationship literature that the ending of an empathic, trusting relationship can cause a wide swath of emotions, the attributes of which depend on the temperament and experience of the individual and the type and quality of the relationship that is ending.⁴⁸ For example, the emotional responses of clients who have experienced abandonment or other trauma may be particularly intense.⁴⁹

Because the quality of the relationship between lawyers and clients is often less intense and personal than therapists' relationship with their clients, the amount of and the characteristics of the emotions from clients will generally be less robust. Notwithstanding this difference, the emotions of clients are important and can affect their ability to take in the information lawyers provide at the end, trust lawyers in the future, and have faith in the profession generally.⁵⁰ Lawyers should think about what emotions could be expected from clients generally and from their particular clients and should be prepared to respond to these feelings.⁵¹ If these emotions are expressed by their clients, lawyers should validate and reframe the emotions in consonance with their clients' needs.⁵²

⁴⁸ BEULAH ROBERTS COMPTON, BURT GALAWAY, & BARRY COURNOYER, SOCIAL WORK PROCESSES, *supra* note 47, at 319. (2005); AARON T. BECK, A. JOHN RUSH, BRIAN F. SHAW, & GARY EMERY, COGNITIVE THERAPY OF DEPRESSION 322 (1979); BARRY COURNOYER, SOCIAL WORK SKILLS HANDBOOK 391 (5th ed., 2008) ("The nature and intensity of the feelings clients experience as they conclude a relationship with you vary according to their personal characteristics, the duration of service, the issue and goals, the roles and functions you served, and the degree of progress."). Psychoanalysts argue that termination provokes numerous transference reactions including reactions to separation, reactions to dependence, reactions to sibling rivalry and reactions to parental rejection. FRANK AULD & MARVIN HYMAN, TERMINATION: WHEN AND HOW TO STOP THERAPY 212 (1991). Clients' emotional reactions may differ by the type of work provided by the therapist, whether it be individual counseling, educational interventions or resource mobilizations. Hess & Hess, *supra* note 45, at 486-88.

⁴⁹ Brooks, *supra* note 8, at 223.

⁵⁰ Clients have been recognized to have transference issues throughout the attorney-client relationship. *See e.g.*, Silver II, *supra* note 27, at 270-74.

⁵¹ Clients' emotions when ending therapy may include a sense of satisfaction, achievement, relief, gratitude, desertion, abandonment and betrayal. Kathy A. Garcia-Lawson and Robert C. Lane, *Thoughts on Termination: Practical Considerations*, 14 PSYCHOANALYTIC PSYCHOLOGY 239, 247 (1997); WALSH, *supra* note 19, at 166-67. These same emotions may be present at the end of a lawyer-client relationship.

⁵² Therapists encourage their clients to share their feelings about ending the relationship. They believe that recognizing and verbalizing the emotions involved in the ending of the relationship is the first step for clients in their psychological separation from the therapist and improved autonomy. COURNOYER, *supra* note 48, at 391. Once these feelings are shared, therapeutic professionals then work to normalize the clients' feelings. SCOTT STUART & MICHAEL ROBERTSON, INTERPERSONAL PSYCHOTHERAPY: A CLINICIAN'S GUIDE 118 (2003). They also try to reframe clients' emotions by working toward the clients recognizing their own competence in handling their own matters. *Id.*

B. Using Endings To Focus On Role And Relationship Issues

The ending of lawyer-client relationships can be a time when the boundaries between lawyers and clients become blurred and there is a need to set the terms for any future relationship. Having a strong sense of one's philosophy regarding one's appropriate role can be helpful for lawyers in navigating these boundary challenges. Role issues, in particular questions of appropriate lawyer-client boundaries and professional distance, are important pedagogical issues for clinical education, and the ending stage of a lawyer-client relationship creates an opportunity to spotlight them.

One way for clinicians to uncover these role issues is to use the occasion of the end of a case to ask students to describe the relationship with their client and delineate its attributes. For instance, when asked to describe her lawyer-client relationship, one of my students commented that "the relationship is light, even fun, at times but if I call her too early in the morning or she's in one of those moods, it can be testy." To deepen the inquiry, clinicians can ask how the relationship has changed over the course of the representation. Clinicians can explore how students would label or categorize the type or architecture of relationship that has been created with the client. For example, would the student define the relationship as purely "instrumental," meaning that its success can be measured by the achievement of a productive undertaking – both in terms of output and by the manner in which the lawyer and client worked together?⁵³ Alternatively, to the extent that feelings and needs have been shared and "solidarity" has been achieved, the supervisor can explore with the student whether the relationship has potentially transformed into an "expressive-emotional" type of relationship.⁵⁴ Emotional-expressive relationships are those "formed for the purpose of fulfilling itself, such as love, marriage, friendship."⁵⁵ While not formed for this purpose, the lawyer-client relationship could perhaps, by its end, have become a friendship or more.⁵⁶

⁵³ See *Toward Better Interpersonal Relationships*, in *INTERPERSONAL DYNAMICS* 495, 496-97 (Warren G. Bennis, David E. Berlew, Edgar H. Schein, & Fred I. Steele, eds. 1973). (categorizing four different types of relationships: (A) Emotional-Expressive; (B) Confirmatory; (C) Change-Influence and (D) Instrumental). See also BELLOW & MOULTON, *supra* note 9, at 992.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* The authors stress that the relationship types are not mutually exclusive. Some lawyers view their clients as friends. For example, Professor Charles Ogletree has written that, "My relationship with my clients approximated a true friendship." Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1272 (1993). Anecdotally, some clinical professors report that students now are "friending" their clients (and other parties involved in their cases) on Facebook and

Most states proscribe having sexual relationships with current clients⁵⁷ and disfavor business relationships.⁵⁸ However, the ethical rules governing lawyers are generally silent on the type of relationships we can have with clients, other than those that create a conflict of interest.⁵⁹ The rules leave unregulated the spectrum of non-sexual, non-business relationships that lawyers and clients could and do have, with both current and former clients. As such, lawyers potentially have a wide arm of discretion on how they shape their future relationships with clients.⁶⁰ This is distinct from the therapeutic professional field, where there are explicit rules restricting “dual” or “multiple” relationships.⁶¹

other social networking sites.

⁵⁷ MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (2012). This rule does allow for sexual relationships that existed previous to the formation of the lawyer-client relationship. All states except California have adopted the Model Rules. http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html. California Rules of Professional Conduct 3-120 restricts, but does not completely bar, sexual relationships, unless they are nonconsensual, exploitative, or “cause the member to perform legal services incompetently.” CAL. RULES OF PROF'L CONDUCT R. 3-120(B) (2013).

⁵⁸ MODEL RULES OF PROF'L CONDUCT R. 1.8(a) (2012); CAL. RULES OF PROF'L CONDUCT R. 3-300 (2013). See also MODEL CODE OF PROF'L RESPONSIBILITY DR 5-104, EC 5-3 to 5-7 (2012); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §126 (2000).

⁵⁹ MODEL RULES OF PROF'L CONDUCT R. 1.7(a)(2) (2012) (“except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer”); see also MODEL RULES OF PROF'L CONDUCT R. 1.8 (2012) (limiting attorney-client business transactions, gifts, literary and media rights); MODEL RULES OF PROF'L CONDUCT, R. 2.1 (2012) (an attorney should maintain independent professional judgment).

⁶⁰ This is an area that should be explored more in the scholarship and by the profession. My impression is that often social relationships are quite positive to the attorney-client relationship and some can move smoothly back-and-forth from social relationship to professional relationship. However, the closer the social relationship, the more problematic it can be on a lawyer-client relationship for some of the same reasons that a sexual relationship is worrisome. See MODEL RULE OF PROF'L CONDUCT 1.8(j) cmt. 17 (2012). The development of a social relationship could later impair the ability for that person to be the person's lawyer. Ethically, it is incumbent on lawyers who enter into social relationships with clients after a solely professional relationship to warn their clients of this possibility and take conscious steps to protect the client. See Glesner Fines & Madsen, *supra* note 37, at 996 (“ . . . it is the professional that is principally responsible for constructing the boundary structure.”) Doctors' ethical canons, in fact, state that doctors should avoid treating close friends wherever possible due to problems keeping the proper emotional distance. MEDICAL ETHICS DEPARTMENT, BRITISH MEDICAL ASSOCIATION, *Ethical Responsibilities in Treating Doctors Who Are Patients: Guidance from the BMA Medical Ethics Department*, 1 (2010), available at <http://bma.org.uk/practical-support-at-work/ethics/ethics-a-to-z>. Therapists, as mentioned previously, are also of this mind. DAVIS, *supra* note 10, at 113.

⁶¹ Social workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate, and culturally

As with other boundary questions, the existence of this discretion provides opportunities to explore clinical students' desires and values—and those of their clients—in the context of helping them consider possible decisions and actions.⁶² Students can examine their preconceptions and assumptions about the lawyer-client relationship and understand how they can create different relationships with different clients.⁶³ While some clinical supervisors may want to embrace a more prescriptive approach about particular boundary questions, such as suggesting that lawyers not befriend their former clients,⁶⁴ others may consider the ending as an opportunity for students to make reflective and analytical choices and live with the consequences in an autonomous way.

Endings also provide an opportunity for lawyers to reflect on the relationship and representation process as a whole.⁶⁵ Endings can be a time for lawyers to look back and contemplate the strategic decisions they made in a case, how these decisions shaped the ultimate outcome of their cases, and how their decisions impacted the overall client relationship. This review can be particularly helpful for law students and new lawyers. To this end, clinicians in supervision sessions or other pedagogical settings could prompt students to look back from the vantage point of the end of the relationship and reflect on how they might have handled the beginning or middle of the relationship differently. Clinicians could inquire whether, given what their students learn in their ending meetings with their clients, there is anything that they

sensitive boundaries. CODE OF ETHICS, NATL. ASSOC. OF SOCIAL WORKERS (“NASW”) §1.06(c) (1999) (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively). *See also* ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT, AMERICAN PSYCHOLOGICAL ASSOCIATION § 3.05 (2010) (“A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist’s objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.”)

⁶² Susan Bryant & Elliot S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 CLINICAL L. REV. 195, 225 (2007).

⁶³ *Id.* at 226. As Susan Bryant writes, “Professional distance is itself a cultural concept and its value is culturally definite. The appropriate professional distance is often contested. As teachers, we need to recognize and make conscious our own cultural assumptions about the value and limitations of distance.” Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, n.119 (2001).

⁶⁴ Friendship with clients has not been thoroughly explored in the scholarship beyond theoretical articles about the role of the lawyer as being akin to the role of a friend and about how the status of friends influences legal jurisprudence. *See*, Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L. J. 1060 (1976); Ethan J. Leib, *Friendship & the Law*, 54 UCLA L. REV. 631 (2007).

⁶⁵ Therapists also use the ending of the relationship and therapy to review their practice. Fragkiadaki & Strauss, *supra* note 44, at 23.

would change about the representation, such as how they introduce their role, communicate with clients or write their retainer.⁶⁶

C. Closure Meetings With Clients

Endings can be a rich stage at which to solidify both relational and other goals of our work with our clients. For therapeutic professionals, the approach by which the therapeutic relationship is terminated is important both to the result of the therapy and to the client's capability to adjust to life without his therapist.⁶⁷ Some even argue that the way a therapist ends a relationship with a patient is more important than the rapport-building of the earlier stages.⁶⁸ Due to the recency effect, what occurs in the termination will be what clients take with them from the therapy. For this reason and others, therapists are urged to give endings sufficient time and attention.⁶⁹

Similarly, it is important for lawyers to not give the ending short shrift. A face-to-face meeting is best as it is the most communicative form of interaction.⁷⁰ The therapeutic professional literature suggests that it may be helpful for clients to have some sort of "pre-discussion" of the end of the relationship previous to the final closure meeting.⁷¹ These prior discussions will help create a link between the relationship and the ending of it. These pre-discussions may be particularly helpful for those clients for whom the ending of the lawyer-client relationship

⁶⁶ I would hope that no student would come to this conclusion, but an ABA chat site lists a posting by a family law attorney who was obviously so frustrated with spending time on the emotional aspect of his clients' lives that he created a document called "Rules of Engagement" that he gave his clients as a precondition to representation. This document has a paragraph stating, "I am not your savior, boyfriend, Santa Clause [sic], protector, best friend, priest or rabbi. I am simply your lawyer. If you need therapy, please go to a therapist. If you need a friend, please call one. I am here to advise you as to the legalities of your particular case." *Dealing with Clients' Emotions*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/gpsolo/resources/solosez/popular_threads_2008/091508Thread2.html (last visited Jan. 23, 2013).

⁶⁷ BECK, ET AL., *supra* note 48, at 317 ("much of the benefit of cognitive therapy can be lost through inappropriate or inept closure . . . [when done well] patient is more likely to consolidate gains and to generalize strategies for handling future problems"); Garcia-Lawson & Lane, *supra* note 51; STUART & ROBERTSON, *supra* note 51, at 117.

⁶⁸ DAVIS, *supra* note 10, at viii.

⁶⁹ JOYCE, ET AL., *supra* note 25, at 39.

⁷⁰ Face-to-face communication allows for nonverbal communication, which has been shown to account for 55% of the expression. Albert Mehrabian & Susan R. Farris, *Inference of Attitudes from Nonverbal Communication in Two Channels*, 31 J. OF CONSULTING PSYCH. 248, 252 (1967).

⁷¹ Therapists prepare clients for endings as one of their strategies to deal with the emotional impact on clients and therapists alike. The time period in which to begin this preparation is determined by length and quality of the therapeutic relationship, in addition to the type of modality in which the therapist practices. MICHAEL YOUNG, *LEARNING THE ART OF HELPING* 273 (3d ed., 2004); MYRNA WEISSMAN, JOHN MARKOWITZ, & GERALD LERMAN, *COMPREHENSIVE GUIDE TO INTERPERSONAL PSYCHOTHERAPY* 117 (2000).

may be difficult emotionally.⁷²

It also may be interesting to explore, particularly for certain client populations such as youth and children, other activities that can bring closure to the relationship. Therapists often mark their endings in a special way.⁷³ Lawyers may want to create a ritual that marks the ending as if it were a rite of passage⁷⁴ or to give a symbolic gift to a client.⁷⁵ Commercial transactional attorneys already often mark a transaction's closing with a "deal toy," a customized object that displays the details of the business deal, which they present to clients and other individuals involved in the transaction.⁷⁶ Another easily achievable idea is to have a meal together, which is something attorneys and clients often do during and after trial, mediation or the close of a deal. The act of doing something that is decisively not on professional "turf" or professional in nature may help close the relationship by bringing the attorney and client into a more purely human relationship together, instead of remaining in a professional-client dyad.⁷⁷

D. Three-Stage Closure Process: Review, Look Forward, Goodbye

Once lawyers have set up ending meetings with their clients, they should prepare for these meeting by orienting themselves to the three main components of closure: (1) reviewing the work done on the case; (2) looking forward to future issues that the client may face; and (3) saying good bye to the client. These three steps are generally the

⁷² Brooks, *supra* note 8, at 224 (presenting an example of when a discussion regarding closure of the professional relationship proved constructive).

⁷³ For instance when a client has successfully accomplished a goal of which she is proud, a therapist may create a "graduation" ceremony for her. YOUNG, *supra* note 71; WALSH, *supra* note 19, at 216-228

⁷⁴ Brooks cites to the suggestion of marking the closing meeting by bringing food as a proposal she made to a student that the student went along with and found to be worthwhile. Brooks, *supra* note 8, at 224.

⁷⁵ For ideas about ending activities, See WALSH, *supra* note 19, at 216-228. Gifts from clients are a common subject of law organization policy often analyzed from ethical and fairness perspectives only. From a closure perspective, however, these policies may inhibit important closure needs of clients.

⁷⁶ Also known as a "tombstone," a "Lucite," or a "financial tombstone," these toys also serve as a marketing tool and can become status symbols. See *Deal Toy*, WIKIPEDIA, http://en.wikipedia.org/wiki/Deal_toy (last visited Jan. 17, 2013). See also, Iante Jeanne Dugan, *Another Wall Street Casualty: The Art of the 'Deal Toy'*, WALL STREET J. Feb. 11, 2009, at A1, available at <http://online.wsj.com/article/SB123431574025671015-search.html>.

⁷⁷ As one psychoanalyst explains after having a retirement party where he invited all his former patients, "My patients needed to disinvest me with the power. . . and to see me for what I was – a person like them . . . I needed to be diminished, made . . . ordinary in their eyes, so that they could move on . . . Reciprocally, I needed to forget their patient-hood. . . and to see them, like everyone else, as equals. ." Jeremy Holmes, *Termination in Psychoanalytic Psychotherapy: An Attachment Perspective*, in GOOD ENOUGH ENDINGS, *supra* note 10, at 75.

techniques for termination that therapists utilize with their clients, although they do not necessarily occur chronologically or as solitary phases.⁷⁸

1. *Reviewing The Work Done*

In this stage, lawyers should review with their clients what was accomplished through the representation. In addition, this discussion should include how these accomplishments were executed, how the clients assisted and participated, and how the attorneys carried out their services and could improve.

A discussion of what was accomplished helps bring a sense of completion that is an important goal of full and effective closure.⁷⁹ It also concretizes what was accomplished so that the client understands the bases for fees and can link together the steps that were taken within the representation. Most attorneys already follow these steps in closing letters. For example, an attorney who chooses to draft an ending letter to the client will write, “We represented you in your employer’s appeal of the Labor Commissioner’s decision awarding you money for overtime. We responded to discovery, defended your deposition and took two other depositions and were able to settle the case for \$10,000 without having to go to trial.”

In addition, it is important to point out at the ending what clients

⁷⁸ There is no one unitary model for therapists to end their work with their clients “[T]here is no single way to conceptualize the termination – this kind of uniformity myth would only be possible if there was a single method of psychotherapy available to practitioners and if all patients were similar in all essential respects.” JOYCE ET AL., *supra* note 25, at 39. For example, psychoanalysts have stated that “endings take many forms”; have noted that there is a “need for multiple scenarios for terminating treatment, [it’s] not a one size fits all approach”; and have compared the therapists’ job to that of the jazz musician riffing off the melody of others. Salberg, *supra* note 26, at xxii (citing I.Z. HOFFMAN, RITUAL AND SPONTANEITY IN THE PSYCHOANALYTIC PROCESS 245 (1998); Glen O. Gabbard, *What is a ‘Good Enough’ Termination?*, 57 J. OF THE AMER. PSYCHOANALYTIC ASSOC. 575 (2009)). Another therapist, writing from a different modality, agrees with this assessment and cites to research concluding that variations in termination are linked to three general factors: “(a) the nature of the therapy itself and the circumstances surrounding it; (b) the client’s conduct in relationship to the therapy and the provider; and (c) the multitude of therapist variables impacting the provider’s availability and competence.” DAVIS, *supra* note 10, at 27 (citing to Younggren & Gottlieb, *supra* note 19). A recent study, however, suggests that when these steps are followed, and enough time is given to the client and the therapist to prepare, termination is a positive and therapeutic experience; conversely, when these steps are not followed, termination can be a negative experience. Sarah Knox, Noah Adrians, Eric Everson, Shirley Hess, Clara Hill, & Rachel Crook-Lyon *Clients’ Perspectives on Therapy Termination*, PSYCHOTHERAPY RESEARCH, March 2011, at 154, 164.

⁷⁹ For therapists, one of the main goals of this step of the closure process is to create psychological order and a sense of productivity to the patient’s therapeutic process. DAVIS, *supra* note 10, at 101. Reviewing progress brings a completion to therapy. BECK ET AL., *supra* note 48, at 322.

did as collaborators within the representation.⁸⁰ The therapeutic relationship literature states that it is critical for clients to understand what they did that was positive, so that they can concretely replicate that behavior in the future.⁸¹ Moreover, this type of review enables clients to end with a positive feeling about the relationship so that they will willingly enter into similar relationships in the future when the need arises.⁸² These two rationales have analogs in legal relationships. There is a lot of learning in the legal dispute resolution process that can be helpful to clients in the future.⁸³ Emphasizing what clients did well – in a genuine and non-patronizing way – will empower clients to see themselves as agents in dispute resolution and not just passive recipients of legal services. Lawyers can underscore helpful parts of the relationship, such as being timely for meetings, finding witnesses, keeping receipts, etc. To the extent this conversation instills

⁸⁰ This is akin to praising a client who is progressing toward her goals, a recognized relationship building technique. COCHRAN ET AL., *supra* note 9, at 116 (“Praising . . . reinforces clients’ resolve and solidifies the lawyer-client relationship. Praise encourages the client to persist in a stressful course of action. Praise also shows that the lawyer views the client’s actions as worthwhile”) (citing IRVING JANIS, *SHORT-TERM COUNSELING* 108, 91-92 (1983)). It should be noted, however, that those who espouse a true client-centered approach may take issue with this praise as it amounts to a breach of the nonjudgmental imperative. See, Kruse, note 17, at 385-78 (summarizing the scholarly debate on the client-centered concept of lawyer-neutrality).

⁸¹ Therapists intentionally take a positive attitude in reviewing the client’s therapeutic work. Even when there have been traumatic events that have occurred within the timeframe when the patient has been in therapy or the therapy itself was challenging for the client, therapists believe it is critical to emphasize the good things that have happened within the therapeutic alliance and to give the client credit for what has occurred. Inasmuch as therapy is a stressful, emotionally draining process, this positive regard helps to imprint affirmative take-aways from the therapy that can be useful for the continuous psychic healing of clients. Marc Brammer, *And Now the End is Near*, *THERAPY TODAY*, July 2012, at 12.; YOUNG, *supra* note 71, at 273; COURNOYER, *supra* note 48, at 423. This can also help to equalize the relationship between client and therapist, which for some therapists is a goal for the ending stage. Rebecca Curtis, *Termination from a Psychoanalytic Perspective*, 12 *J. OF PSYCHOTHERAPY INTEGRATION* 350, 352 (2002); Les. S. Greenberg, *Termination of Experiential Therapy*, 12 *J. OF PSYCHOTHERAPY AND INTEGRATION* 358, 359 (2002).

⁸² Therapists believe that when clients understand that they have been able to be in a trusting relationship that has helped them grow and strengthen, they are more likely to come back to therapy in a positive way. In this way, this stage of termination has a professionalism component. While some clients may never return to see a therapist again, the odds are likely that similar or alternative psychic issues will return and the client will have the need to come back to therapy. Therapists, as such, want to ensure that the client will remember therapy fondly and thus be favorably disposed to re-entering it. JOYCE ET AL., *supra* note 25, at 54; DAVIS, *supra* note 10, at 66.

⁸³ To some extent, by pointing out how the client has transformed from one who was naïve about the legal process to now one who is armed with information and knowledge, the attorney-client relationship is also transformed into a change-influence type of relationship which is concerned with “the acquisition or modification of behavior or attitudes.” Bennis, *supra* note 53, at 501.

clients with a sense of self-pride, they will be more likely to recall fondly the legal process, despite the outcome of the legal matter.

This review is not a one-way street. Rather, it is a shared dialogue where clients also have the opportunity to review what occurred and how they felt about the steps taken.⁸⁴ Acknowledging the clients' comments and building on the clients' words are particularly good skills to utilize at this stage. As suggested by the therapeutic professional literature,⁸⁵ seeking clients' feedback on what they thought of their representation is an important part of the review of the representation and the relationship. By asking clients to help you become a better attorney, clients also see themselves as critical actors in the representation process whose meaningful participation is valued.⁸⁶ Once again, models of lawyering where clients are at the center of or are partners in the representation underscore the need and role for this kind of feedback.⁸⁷

Regardless of one's beliefs in the primacy of clients, obtaining clients' feedback can be enormously helpful for business relationships.

⁸⁴ The client-centered model of lawyering has long recognized candor as a "two-way process." BELLOW & MOULTON, *supra* note 9, at 1074. However, without a substantial amount of care and sensitivity, this type of communicating by the attorney can be destructive to the relationship. *Id.* Bellow and Moulton offer one formulation of ensuring sensitivity in communication through the use of a communication style labeled "feedback." *Id.* (citing DAVID JOHNSON, CONTEMPORARY SOCIAL PSYCHOLOGY 55-58 (1973)). This calls for feelings to be shared by the attorney. BELLOW & MOULTON, *supra* note 9, at 1074; *See also, infra* note 93.

⁸⁵ Curtis, *supra* note 81, at 352. This request for feedback has three primary purposes. First, feedback can be helpful for clients to identify behaviors that their therapists utilized with them so that they can assume them for their own potential use. Second, feedback provides an opportunity for clients to share their gratitude, which can be helpful for the client to give and the therapist to receive at the end of the therapist-client relationship. Third, it also is advantageous for the therapist's own professional growth and development to understand how one's work had value or missed the mark. COURNOYER, *supra* note 48, at 389.

⁸⁶ MACFARLANE, *supra* note 18, at 129. However, clients' involvement in the feedback process has historically been denigrated by some who believe clients do not have the abilities to evaluate lawyers. For example, in his critique of the traditional lawyering model, Wasserstrom interestingly states that because of expert knowledge and technical language of the profession, among other circumstances, the client

is in a poor position effectively to evaluate how well or badly the professional performs. In the professions, the professional does not look primarily to the client to evaluate the professional's work. . . This leads professionals to have a powerful motive to be far more concerned with the way they are viewed by their colleagues than with the way they are viewed by their clients. This means, too, that clients will necessarily lack the power to make effective evaluations and criticisms of the way the professional is responding to the client's needs.

Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1, 17 (1975);

⁸⁷ A few law firms have recently started to experiment with client evaluations. MACFARLANE, *supra* note 18, at 129.

Feedback from clients may lead lawyers to appreciate the need for changes in their practices that they might not otherwise see, due to the blind spots of their professional role.⁸⁸ It holds out the potential, not only to improve one's services, but to demonstrate to clients that the lawyer is client-driven. It also provides an outlet to deal with negative feedback in a constructive way. Of course, if lawyers solicit clients' feedback, lawyers should be ready to receive it in as non-defensive and accepting way as possible. This will include not undercutting any positive feedback nor minimizing or quickly explaining away of any negative feedback. Clients should feel acknowledged in their feedback first before any response is offered to it.

2. *Looking Forward*

The next principal stage in ending relationships with clients is looking ahead to issues that may be coming down the pipeline for them. Just as therapists prepare their clients for dealing with stressful issues that will come up post-termination,⁸⁹ lawyers should help clients deal with predictable legal and non-legal issues that come up after the representation is over. For example, in litigation contexts, clients might have to deal with the tax implications of receiving settlement money. In the transactional context, this step is of paramount importance as clients need to understand, for example, their future duties under a drafted contract or how they can and cannot sell stock that has been purchased.

The ending meeting can also be a time to educate clients on steps they can take to prevent similar legal issues in the future.⁹⁰ For exam-

⁸⁸ An outcome-based evaluation model that is in vogue in so many settings, including now the law school one, underscores the need to ask the client for feedback. Getting feedback helps a lawyer monitor quality of the performance, discontent and the impact of it. Scott L. Cummings & Deborah L. Rhode, *Doing Well by Doing Better*, 78 *FORDHAM L. REV.* 2357, 2406-08 (2010) (discussing the importance of soliciting evaluations for performance of pro bono work and tactics to elicit useful feedback). Moreover, feedback has long been recognized as being helpful to gain the self-awareness necessary to professional success and well-being. BELLOW & MOULTON, *supra* note 9, at 1080 (citing JOHNSON, *supra* note 84, at 51-52).

⁸⁹ This future oriented task for therapists is akin to building a bridge between the services provided and the client's future. Hess & Hess, *supra* note 45, at 486. For example, it is useful before ending therapy to help the client identify areas that need additional work and devise solutions for the client to apply after the relationship has concluded. COURNOYER, *supra* note 48, at 389. Moreover, therapists believe it is imperative to foreshadow for the clients the possibility of the future need for therapy or support. STUART & ROBERTSON, *supra* note 52, at 236. *See also* COMPTON, ET AL, *supra* note 48, at 324.

⁹⁰ This concept is a key Preventative Law construct. "Rather than merely dealing with people's problems and with the perhaps inevitable perception that they are part of those problems, lawyers should become problem-avoiders, counseling their clients in ways that can anticipate and prevent future difficulties." Dennis P. Stolle, David B. Wexler, Bruce J. Winick & Edward A. Dauer, *Integrating Preventive Law and Therapeutic Jurisprudence: A*

ple, in many eviction cases, evidence that repairs are necessary can be an important defense, but many clients fail to complain to their landlords in writing about the conditions in their homes in need of repair. The ending meeting can be a time to underscore for clients the actions they can take in the future to help resolve legal issues more smoothly; in this example, the legal advice would be that clients should write letters of complaint regarding necessary repairs. Even better, lawyers might create form letters that clients could easily fill out about the repairs. This type of education may help the lawyer perceive that their service is not just a band-aid to a situation that is inevitably going to occur again,⁹¹ but rather it is an opportunity for clients to learn about the legal process and their agency in it.

3. *Saying Goodbye*

The last component of closing the attorney-client relationship primarily focuses on the emotional and human-to-human relationship that was shared. Attorneys should express parting words to their clients that impress upon them that while the relationship is indeed over, it had meaning. This goodbye should be genuine—the statements and sentiments used should come from a place of humanity and not just be rote words and actions of lawyers in their professional role.⁹² To be genuine in one's goodbye, one has to be aware of and comfortable with one's own feelings and experience of the situation and to communicate those feelings and experiences, as appropriate.⁹³ The self-ana-

Law and Psychology Based Approach to Lawyering, 34 CAL. WESTERN L. REV. 15, 50 (1997).

⁹¹ Recurrent litigation is an issue on which those who work in the Preventative Law with a Therapeutic Justice perspective are focusing. See Bruce J. Winick, *The Expanding Scope of Preventive Law*, 3 FLA. COASTAL L.J. 189, 203 (2002). Providers often see a revolving door of clients with multiple evictions, benefits issues, or other claims related to their poverty and circumstances, what some call "recidivistic." To the extent lawyers prioritize a meaningful ending with both a thorough and honest review of the representation and an orientation to the client's predictable circumstances, this revolving door may have a chance to stop or slow down its revolution.

⁹² Genuineness is one of the three preconditions that Carl Rogers found to be fundamental to help a client grow. Rogerian, or person-centered therapy, was a precursor to the client-centered theory of lawyering. Lawyering scholars such as Bastress and Harbaugh opine that genuineness is one of the "helping" skills that lawyers need to effectively represent their clients. BASTRESS & HARBAUGH, *supra* note 9, at 126-28.

⁹³ Sharing of a lawyer's feelings has been recognized as potentially helpful in the counseling context as well. Smith, *supra* note 42, at 430-31. Genuine negative feelings may also be wisely shared if the attorney-client relationship is strong enough and the client is able to deal with the lawyer's feelings. Even if these preconditions are not met, one may consider sharing negative feelings anyways, because they may intrude in a harmful manner if they are not shared. See *also id.* at 422 ("The lawyer, though a professional, is emotionally involved in his work. He should step back and consider his own feelings. The lawyer should describe his feelings rather than act them out."). It also should be kept in mind that disclosure of one's own feelings can help with the process of closure of the relationship by

lytical questions proposed in Section A, above, can help lawyers access their emotions. Also, the lawyers' reflection about their clients' potential emotions can prepare lawyers to experience them effectively in ending meetings with their clients. When clients express these feelings, either verbally or through body language or other communication, lawyers should acknowledge them.

Beyond sharing a genuine farewell, this final stage of the closure process is an opportunity to attend to future legal and non-legal needs of the client. If the lawyer has an "open door" policy, the lawyer can let clients know that the lawyer is available for more legal help if they need it in the future. Not only is this good for business, the therapeutic literature on endings suggests that clients are often worried about their future need for help and the assurance of one's availability to at least be consulted if a new need arises can provide much-needed support.⁹⁴ Moreover, this stage is a good time to make any referrals to other legal or non-legal providers.⁹⁵

E. Putting It Into Practice: The Case Of Anne And Kevin

We can return now to the case of Anne and Kevin, where Anne was confused as to how to proceed with her client, Kevin, who desires to continue their relationship after the representation. Anne's confusion as to how to handle the situation arose from a lack of preparation and attention to creating closure to her relationship with Kevin. Instead of treating the ending of the relationship with intention, Anne went into that ending conversation blindly and without the necessary tools.⁹⁶ As a clinical supervisor, I should have ensured that Anne and

humanizing the professional and delimiting their status. See Kathleen A. Sullivan, *Self-Disclosure, Separation and Students: Intimacy in the Clinical Relationship*, 27 *IND. L. REV.* 115, 116 (1993) (addressing the professor-student relationship and citing to numerous psychological studies, including Norman R. Simonson, *The Impact on Therapist Disclosure on Patient Disclosure*, 23 *J. OF COUNSELING PSYCH.* 3, 3-6 (1976)). For this reason, some psychoanalysts disagree with sharing one's own feelings as they strongly believe that the nature of the therapeutic relationship should not change within the termination. AULD & HYMAN, *supra* note 48, at 211.

⁹⁴ WALSH, *supra* note 19, at 57.

⁹⁵ *Id.* at 54. Some legal services offices, such as the Health Law Unit at East Bay Community Law Center, have implemented the proactive tool of the legal needs assessment checklist to help clients identify what legal needs they have. This can be a useful tool in as much as lawyers can help clients find a resource to help with the identified legal needs. See, e.g., Heather H. Hall, Celeste Lofton-Bagert, & Jamie Griswold Scoggin, *Making the Case for Community Defense*, *CHAMPION*, August 2009, at 22, 24 (public defender was able to aid prisoner because of a legal needs checklist). Preventative Law scholars stress the use of a legal needs checklist as an important resource for lawyers to use for clients to help clients avoid legal problems. Stolle, et al., *supra* note 90, at 4 n.111.

⁹⁶ Moreover, it is clear in hindsight that Kevin was particularly the type of client for whom it could be predicted that emotional and role issues would surface at the ending of the lawyer-client relationship. He had few other personal attachments and was seeking

I had an in-depth planning conversation beforehand about the ending conversation she would have with Kevin. The very existence of this meeting would have underscored for her the importance of closing the relationship appropriately and purposefully. In the meeting, I could have discussed with Anne the different important components of a full and effective closure with clients. Specifically, I could have reviewed with her the three stages of the ending process and how these stages help the client and lawyer end the relationship. We could then have prepared for how she could have approached each of the stages with Kevin.

Some specific review questions for Anne might include: What are the highlights from the case that you want to review with Kevin? What are some ways that Kevin was helpful to the case that you want to point out? Are there any ways that he was damaging to the case that you can think of? If so, can you think of ways to approach him about these without creating defensiveness within him? What do you think of the idea of seeking feedback from Kevin about your services? How does that make you feel? What are the clients' next steps? Are there any referrals to other legal professionals or social service providers that he needs? What do you want to say about his ability to contact you or the clinic when legal questions or concerns arise? I could also have helped Anne to review and prepare for the emotional and role aspects of her relationship with Kevin.

I have included herein a somewhat-truncated sample dialogue to illustrate such a supervisor-student interaction in these matters.

Supervisor: So now that we've debriefed the hearing and the next steps that Kevin should expect, how are you feeling about the fact that you won't be working with Kevin any longer?

Anne: OK, I guess. It's a little weird that I know all this stuff about Kevin and we talked close to every day and now, poof, it's all over.

Supervisor: It sounds like you appreciate the change that is afoot and that you are feeling a bit strange about it ending given how much you got to know Kevin. Do you want it to be "all over"?

Anne: I mean we won his appeal and that's why we knew each other. I had a good time working on the case and he's a great guy. I'm so glad he was my client. I learned a lot. The case is over, so I guess we have no reason to be in touch.

help on a SSI legal claim for depression and other medical conditions in the course of which he disclosed quite a bit of personal information to his advocate Anne.

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Supervisor: What do you think Kevin is feeling about the case ending and you no longer working so closely with him?

Anne: I don't know. We haven't talked about that at all. Let's see. Well, I know he's very happy that we got him on benefits. And, he seems happy with all the work we did. I think when the judge just basically said we had won the case on the record, he was impressed. Beyond that, I don't know. (pauses) I guess, he's probably a bit feeling how I am: we spent all this time together and now – bam! – it's all over. For him, though this might hit him harder because he really doesn't have any friends and he has often told me how much he appreciates me. And his relationship with his brother seems pretty strained. I know his brother really wanted him to get on benefits so he'd have some cash to get out of his house.

Supervisor: Do you think any of these feelings will affect how this meeting with him will go where you tell him that you're finishing your semester up soon?

Anne: Well, he may not like it very much. He might seem more depressed. But, what can he expect? He knew I was a law student and that we were working on his legal case and that was that.

Supervisor: It may be that Kevin understands the social roles and resulting boundaries that lawyers and clients have, but it also sounds true that ending the relationship with you is going to potentially leave him a bit sad. It's also been my experience that some clients sometimes assume or desire a continuous relationship. Sometimes this results in clients wanting to be my friend or sometimes they want me to be their permanent lawyer. What would you think if Kevin acted in one of these ways?

Anne: I'm not sure. I'm OK helping him with his legal questions that he has for at least the next semester while I'm around town. I assume you all could help him if anything comes up later. He seems to have gotten along well with you. Would that be alright?

Supervisor: We could at least attempt to help him. Please tell him that we have an open door policy and he should call with any questions. How about the other piece, if he wants to be more of a friend?

Anne: I'm not really sure. . . Is that even ethical? And even if it was, how would that work? I know so much more about him than he does about me. Can attorneys really be friends with their clients?

Supervisor: It is good that you are thinking about what the rules of professional responsibility have to say because they do put some limits on our conduct as lawyers. I think you'll want to do some research before you make any final decisions here. I think you'll find that attorney conduct in regards to their client relations is, for the most part, pretty unregulated and there's a lot of space for attorneys and clients to construct a relationship based on their own desires. That said, there may be some genuine concerns about a lawyer being friends with their former clients. Can you think of any?

Anne: Well, we'd go from a pretty one-way relationship to more of a two-way one that might be shocking for both of us. And how about if as a friend I can't give him the same amount of time that I gave him when he was a client? Plus what happens if Kevin has legal needs that come up in the future? What would his expectations be?

Supervisor: These are all good concerns. And there are more: will the client ask for favors that are not consistent with the lawyer-client professional relationship, like money for personal expenses or a place to live? Also, will they call you about potential legal matters outside of business hours? I have found these all come up. On the flip side, however, what might be some reasons for you and him to create a friendship now that your legal relationship is waning? Or some reasons generally that lawyers may want to become friends with their clients?

Anne: We definitely share some interests. We might run into each other socially as we like the same kind of music. And lawyers may want to be friends for business reasons. You go to your friends for help and refer your friends to your friends. Some lawyers and clients probably start off as friends.

Supervisor: Yes, particularly in smaller communities. I think you've started on a good list of both the disadvantages and advantages that could come from creating a friendship with your former clients. It may be that some of your concerns can be alleviated through strict boundaries; at the same time, you might find the communication necessary to construct the boundaries too uncomfortable for you to pursue the changed relationship. This is something for you to think more about in terms of the lawyer that you want to be generally and your own feelings and needs around your relationship with Kevin. You also may want to get some advice from more experienced attorneys. So, contemplate this all more and let's talk tomorrow about how we might address these issues brought up today.

My intention in this sample supervision dialogue is to have Anne consider both her own and her client's emotions at the ending of the attorney-client relationship, to see how they are alike in ways and how they may differ depending on their particular circumstances, and to understand how these emotions may affect how they each conceive of the ending and therefore how the emotions may play into an ending meeting. In the dialogue, the supervisor attempts to bring out the role of the attorney, the different ways to imagine that role and particular questions that will be important as one does that imagining. These are all important issues not only to prepare Anne for her ending meeting with Kevin, but also to help her to concretize the multiple lessons that closure presents.

Some clinical supervisors may argue that the dialogue is misguided by opening up a "Pandora's box" of issues about role and professional distance without offering the student any guidance about the appropriateness of an attorney pursuing a friendship with a client or any guidelines about effective boundaries to have if one were to choose to do so. These supervisors may posit that while they normally see their role as generally non-directive, in areas such as inter-relational boundaries, they believe their expertise as long-term practitioners and inter-relational beings endows them with a perspective and a responsibility to share that perspective and experience with more novice and younger individuals. While I do not agree philosophically with this approach as the appropriate professional distance differs from attorney-to-attorney, I do think that the dialogue can be adjusted, most notably at the end, to allow for the supervisor's expert advice on this topic, while still introducing the important subject of closure.

While I chose to illustrate a supervision meeting, other settings could be utilized to teach about closure and other types of exercises as

well. For instance, one could teach this in the classroom setting and undergo specific reflection exercises and group conversations. Endings could be a topic of rounds, which may also serve to normalize the students' experience with endings as they share with one another. Endings can be conferred with importance and can include a review function by having students record their ending meeting with their clients, and, if they tape the initial meeting, compare the two. Finally, endings can be tied in with the student's final self-evaluation requirement as it is a time to review the semester as whole.

III. THE END OF THE ROAD: CONCLUDING THOUGHTS

The task of ending an article whose thesis is that endings can be fuller and more effective seems tricky at best. I will utilize my own rubric and follow the three stage process that I outlined in the last section.

A. *Looking Back*

A review of the psychological literature and a closer look at our own writing about the attorney-client relationship reveals that our scholarship, but more importantly our practice and our teaching, should focus more on closure of our relationships with our clients. I provide broad suggestions and a three-step framework for legal practitioners to breathe more consciousness into our closures with clients, informed by how therapeutic professionals conceptualize and carry out endings in their client relationships. By creating more effective closure with our clients, we also gain opportunities to improve our clients' sociolegal lives, our service to our clients, and what we know about ourselves and our role as lawyers.

B. *Looking Forward*

This conversation about closure in our relationships with our clients has just begun. There is much more to be said and a great deal further to be studied and learned. In the next few paragraphs I lay out some further ideas for future research.

Inasmuch as this Article represents a general introduction to this topic of closure in the attorney-client relationship, with a focus on civil individual representation cases in law school clinics, the scholarship now needs future articles that explore endings in different lawyering contexts. What is specifically necessary at the ending of an attorney-client relationship likely varies for attorneys who work in different practice areas or who work with different types or numbers of clients.

Another particular topic of closure would be an examination of the various types of endings of the attorney-client relationship. In this

article, I explored only the “prospective” style of ending, where the representation has come to an end and both the lawyer and the client agree to end the relationship. Yet, there are many other kinds of endings, including endings where attorneys withdraw, where clients fire attorneys, and various other unplanned endings due to sickness, death, and geographical or firm moves. Moreover, different clients may have particular closure issues that need to be further studied. Of particular interest for the communities that clinics often serve would be an article studying clients who drop out of service, which could shed light on some of the reasons for such attrition and what lawyers can do to engage with the issue.⁹⁷

Moreover, we have more to learn from other professionals on this issue, besides therapeutic professionals. Two professions that are potentially ripe for such interdisciplinary study are medicine and business.

Besides looking to the outside for more ideas, it would also be fruitful to focus within to study more deeply how lawyers already carry out their endings of their relationships and what clients need in regards to endings. For example, a sociological study that examines across practice areas and practice types how lawyers close their relationships and what those effects are actually on clients would be intriguing.⁹⁸ This work might help us explore such issues as whether endings differ by cultural groups or in other ways that may inform us on whether we need to tailor our endings to different populations.⁹⁹

⁹⁷ Social workers have documented that up to 50% of clients in the lowest economic levels leave therapy prematurely. This rate is associated to a number of factors, including, not surprisingly, “lesser attractiveness to the practitioner.” WALSH, *supra* note 19, at 11. The study of “premature” termination of therapy has recently been studied extensively by therapeutic professionals. See, e.g., Joshua K. Swift and Roger P. Greenberg, *Premature Discontinuation in Adult Psychotherapy: A Meta-Analysis*, 80 J. OF CONSULTING AND CLINICAL PSYCH. 547 (2012).

⁹⁸ This study would be in line with Austin Sarat, William Felstiner, Scott Barclay and other socio-legal scholars exploring the different perspectives from which lawyers and clients approach the legal system. See, e.g., Scott Barclay, *A New Aspect of Lawyer-Client Interactions: Lawyers Teaching Process-Focused Client to Think about Outcomes*, 11 CLINICAL L. REV. 1 (2004). Such a study would also be consonant with Clark Cunningham’s work on the importance of obtaining feedback from clients about their experience working with lawyers. See Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: An International Project Moving from Research to Reform*, 67 FORDHAM L. REV. 1959 (1999) (discussing how legal educators and social scientists can work together to evaluate the effectiveness of lawyer-client communication). This type of study has already been performed by therapeutic professionals, which has helped inform and further their scholarship. See, e.g., Salberg, *supra* note 26, at 14.

⁹⁹ For example, in the therapeutic professional literature, a recent article explored the effect of gender roles on the male experience in starting and terminating therapy. June Martin, *Starting and Ending Psychotherapy with Men*, in GENDER IN THE THERAPY HOUR: VOICES OF FEMALE CLINICIANS WORKING WITH MEN 19 (Holly Barlow Sweet ed., 2012).

As part of this study or as a topic for a further study would be the analog to what psychologists call the post-termination phase.¹⁰⁰ In other words, an interesting study would consider how both clients and lawyers carry around their former lawyer and client relationships with them into the future. For instance, we lawyers frequently express that we have learned from our clients, but what exactly do we learn, how does that learning take hold and how does it impact our lawyering?¹⁰¹ Given that many clinicians' have the goal of empowering their clients, this type of specificity would be helpful to articulate.

There are also a number of theoretical articles to be written. One that easily comes to mind is how narrative theory informs how lawyers conceptualize endings. After all, there is the story of the relationship and the tale of the representation. As one psychoanalyst has written, "Termination seems complete because it is the end of a story that we wove on the first day of our meeting with the patient, and saw through to its expectable conclusion."¹⁰²

Finally, I would be remiss to mention the most obvious of ideas for my own community of lawyers, the clinicians. The supervisory relationship between clinical faculty and law students has many parallels to the attorney-client relationship, although it also has critical dissimilarities. While we have not written about the stages of the development of our relationship with our students, as we have with our lawyer-client relationships, we have studied this relationship and understand its importance to our pedagogical goals.¹⁰³ We also utilize strategies, such as learning contracts, to ensure that students understand what they can expect from the clinical experience and their faculty supervisor. It would be interesting, therefore, to look at how we currently end our relationships with our students and whether there are ways that we can close these relationships more effectively to realize our goals for the relationship. In this inquiry, we can borrow strategies from other disciplines, such as therapeutic professionals and other educators.¹⁰⁴

¹⁰⁰ The phase has been viewed by many as "part and parcel of the therapeutic process." Garcia-Lawson & Lane, *supra* note 51, at 252.

¹⁰¹ Therapeutic professionals have written about this issue. See Bruce Reis, *Afterwardness and Termination*, in *GOOD ENOUGH ENDINGS*, *supra* note 10, at 214; Dodi Goldman, *Parting Ways*, in *GOOD ENOUGH ENDINGS*, *supra* note 10, at 241, 245. Jesse D. Geller & Norbert Freedman, *Representations of the Therapeutic Dialogue and the Post-Termination Phase of Psychotherapy*, in *ANOTHER KIND OF EVIDENCE: STUDIES ON INTERNALIZATION, ANNIHILATION ANXIETY AND PROGRESSIVE SYMBOLIZATION IN THE PSYCHOANALYTIC PROCESS* 55 (Norbert Freedman, Marvin Hurvich, & Rhonda Ward eds., 2011).

¹⁰² Reis, *supra* note 101, at 213.

¹⁰³ See, e.g., Sullivan, *supra* note 93, at 123.

¹⁰⁴ See, e.g., DAVIS, *supra* note 10, at 219-245 (addressing "supervisory termination" in the therapeutic professional context).

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C. Saying Goodbye

And with that, my fair reader, we have come to the end of the road. I bid you a fond (and genuine) farewell. We often write the articles that we wish existed when we had an urgent difficulty in our lawyering, our work with students or the law. My hope is that the road down from the mountain top is now a clearer, more delineated path for you to traverse in your own attorney-client relationships. I also trust that many of you will continue this conversation and we will meet again on the page and in the community. My door – both metaphorical and actual – is always open.

