

# **The Lawyer Meets the Therapist, the Minister, and the Psychiatrist: Law School Cross-Professional Collaborations**

**by Timothy W. Floyd\***

## I. INTRODUCTION

Lawyers in practice rarely encounter purely legal problems. Understanding the social, economic, political, and historical context is often crucial to resolving legal issues, and legal decisions are often dependent upon business, scientific, medical, psychological, and technological information. Most legal representation occurs within some field of enterprise or industry, and nearly all representation of clients involves complex emotional and interpersonal dynamics.

Early in my legal career, I realized the importance of knowing other fields and specialties in order to be an effective lawyer. My first practice experience was in commercial litigation, and our firm represented clients from a wide range of businesses. To represent the clients effectively, I needed to learn a great deal about the business or industry involved. I spent much of my time in discovery: reading volumes of client-generated documents, deposing the managers and technical specialists in the adversary company, and consulting with and deposing experts in a range of technical fields. These tasks dealt much more with facts than with law, and those facts were often in a specialized field of knowledge or industry. For one case, I learned a tremendous amount about truck tire retreads and the physics of rubber and heat. For another, I became

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knowledgeable about the manufacture and repair of surgical instruments, and for one particularly compelling case, I learned more than I ever could have imagined about the chemistry involved in the storage of chicken manure (yes, really).

From commercial litigation, I moved into criminal practice as a public defender. Before long, I was immersing myself in the complexities of ballistics, fingerprints, forensic pathology, and especially mental and emotional disorders. Since becoming a full-time law professor twenty-three years ago, I have represented several criminal defendants who faced a possible death penalty. At the sentencing phase, the ability to argue effectively the existence of mitigating circumstances almost invariably requires a thorough understanding of the defendant's psychosocial history, and such an understanding depends on knowing enough psychology and sociology to be able to consult meaningfully with social workers and mental health experts. Not surprisingly, as law practice has become more interdisciplinary, lawyers increasingly work in teams comprised of people from different specialties and professions.

Law schools and legal educators have increasingly recognized the importance of interdisciplinary teaching and research to the effective practice of law. Law faculties now regularly include a few professors with Ph.D.'s, and more and more legal scholarship is interdisciplinary, drawing upon academic disciplines such as economics, sociology, or philosophy.<sup>1</sup> Moreover, law schools now typically offer an array of interdisciplinary courses, such as Law and Economics, Law and Literature, and Legal History. Despite the increasing importance of interdisciplinary teaching and scholarship, law school interdisciplinary courses rarely include teachers and students from other professional

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1. In my own law teaching, I have been drawn to interdisciplinary courses. I have taught courses in law and literature, and my seminars in ethics require significant reading of moral philosophy and theology. In addition, much of my scholarship has focused on the application of theology to legal issues, especially professional responsibility. See, e.g., Timothy W. Floyd, *Realism, Responsibility, and the Good Lawyer: Niebuhrian Perspectives on Legal Ethics*, 67 NOTRE DAME L. REV. 587 (1992); Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 FORDHAM L. REV. 1405 (1998); Timothy W. Floyd, *Lawyers and Prophetic Justice*, 58 MERCER L. REV. 513 (2007); Timothy W. Floyd, "What's Going On?" *Christian Ethics and the Modern American Death Penalty*, 32 TEX. TECH L. REV. 931 (2001).

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schools.<sup>2</sup> The great majority of courses are taught to law students by full-time law teachers.<sup>3</sup>

In this Essay, I will discuss three cross-professional courses that I have taught over the past decade that include faculty, and in two of the courses, students from other professional schools.<sup>4</sup> The first was a Family Law Counseling clinical course at Texas Tech University, which I taught in collaboration with a faculty member from the University's Marriage and Family Therapy program. The other two courses are ones I have taught since coming to Mercer: Law, Theology, and Public Policy, taught with Dr. David Gushee, Distinguished University Professor of Christian Ethics and Director of Mercer's Center for Theology and Public Life; and Criminal Law and Psychiatry, taught with Dr. Richard Elliott, Professor of Psychiatry and Director of Medical Ethics at the Mercer University School of Medicine. The only one of the three in which law students did not work with students from another professional school is Criminal Law and Psychiatry.

I believe all three courses provided the law (as well as nonlaw) students with unusually rewarding experiences. In writing this Essay, I hope to encourage others to experiment with interdisciplinarity, not only in a course's subject matter, but also in the composition of the faculty who teach the course and the students who enroll in it.

## II. AN OVERVIEW OF THE EDUCATIONAL BENEFITS

My experience teaching cross-professional collaborative courses has persuaded me that they offer numerous benefits to law students. These benefits include:

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2. An exception is those law school clinics that take an interdisciplinary, holistic approach to serving clients. For example, in the Interdisciplinary Center for Counseling and Legal Services at St. Thomas University School of Law, students from law, social work, and professional psychology work collaboratively to solve client problems. *Interprofessional Center for Counseling & Legal Services*, UNIV. OF ST. THOMAS, <http://www.stthomas.edu/ipc/default.html> (last visited Jan. 19, 2012). For a good discussion of the benefits and the challenges of such clinical collaborations, see Alexis Anderson, Lynn Barenberg & Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting*, 13 *CLINICAL L. REV.* 659 (2007).

3. Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 *WASH. U. J.L. & POL'Y* 11, 39-43 (2003) (providing a thorough and excellent discussion of law school interdisciplinary courses).

4. In addition to teaching these three cross-professional courses, I have regularly invited colleagues from other disciplines into my law school classes as guest lecturers. For example, when I teach a course in legal interviewing and counseling, I often have a professor from the Department of Communication Studies give a lecture on nonverbal communication. In the three courses that are the focus of this essay, however, the collaboration between professional schools occurs from start to finish.

- The acquisition of basic knowledge about certain nonlegal technical and professional fields;
- The acquisition of new skills as a result of interaction with practitioners of other professions;
- An enhanced ability to explain law and legal processes to interested lay persons;
- A greater ability to interact effectively with practitioners of other professions;<sup>5</sup>
- A greater awareness of the limitations of their legal training;
- A better understanding of legal materials and legal reasoning by considering the perspective of a different profession and academic discipline;
- Enhanced collaboration skills;
- Improved employment prospects in an increasingly interdisciplinary legal marketplace;
- A greater ability to satisfy the increasing client desire for one-stop shopping.

Not every course can provide all these benefits to students. To plan an effective cross-professional course, it is crucial to have a clear idea of which benefits the course is intended to provide. Although the three cross-professional courses that I have taught offer many of the same benefits to students, the primary benefit offered by each is distinct. In the Family Counseling course, the primary benefit was for students to learn skills of communication, self-awareness, and relationship from working with marriage and family therapists. In the Law and Theology course, the primary benefit is for students to better understand legal materials and legal reasoning by considering the perspective of a different profession and academic discipline. In Criminal Law and Psychiatry, the primary benefit is for students to learn to work with an expert in another field.

### III. THE LAWYER MEETS THE THERAPIST

My first venture into cross-professional teaching came in 2001 at Texas Tech University through a collaboration with the University's Marriage and Family Therapy (MFT) program.<sup>6</sup> The Family Counseling

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5. See Suellyn Scarnecchia, *An Interdisciplinary Seminar in Child Abuse and Neglect with a Focus on Child Protection Practice*, 31 U. MICH. J.L. REFORM 33, 34 (1997).

6. Texas Tech University offers M.S. and Ph.D. programs in Marriage and Family Therapy. College of Human Services, *Department of Community, Family, and Addiction Services*, TEXAS TECH UNIVERSITY, <http://www.depts.ttu.edu/hs/mft/> (last visited Jan. 23, 2012).

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Clinic, a course I co-created and co-taught, focused on legal counseling in the marriage and family context. I decided to offer such a course because of my perception that although second- and third-year law students were fairly well prepared to identify and address specific legal issues of concern to their clients, they often felt ill-equipped to work with the more challenging communication and relationship issues presented in their work with clients.

I was eager to collaborate with the MFT program because I believed it would allow me to do a better job of teaching relationship and communication skills to law students. I had good personal and professional relationships with several faculty members of the MFT program, and I asked for their advice on ways to teach communication and relationship skills. I became convinced that because of their specialized training in human behavior, interpersonal dynamics, and systems theory, MFT's faculty could help law students develop their ability to relate to and communicate with their clients.<sup>7</sup>

Although lectures from MFT faculty to law students were valuable, the most beneficial aspect of the collaboration was the opportunity for law students to observe the actual practice of family therapy. As part of the MFT program, Texas Tech operated a Family Therapy Clinic, and all students in the program provided therapy to clients in the clinic. Faculty supervisors and other therapy students observed the sessions from behind a one-way mirror, and they were able to provide timely and constructive feedback to the student therapists. In addition, hidden behind the one-way mirror, the faculty and student observers could discuss the ongoing therapy session among themselves.

The Director of the Family Therapy Clinic generously gave our law students the opportunity to join the therapy students who were observing the sessions from behind the mirror. As part of my law school course, each student was required to attend a total of eight hours of sessions at the Family Therapy Clinic during the semester.<sup>8</sup> Students learned about marriage and family therapy through observation of those sessions as well as the follow-up sessions between the therapy doctoral students and their clinic supervisors.

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7. Marriage and Family Therapy takes a holistic approach to addressing problems experienced by individuals, couples, and families, and it draws heavily upon systems theory. Family therapists recognize the systems or networks of relationships that all persons inhabit, and they explore how patterns of interaction can either prolong or help resolve life's problems.

8. I also sat in on the therapy observation sessions and benefitted enormously from the experience.

The course provided students an invaluable opportunity to explore in depth a cross-disciplinary perspective on family problems, and they gained much insight into better ways to communicate and to build relationships of trust and rapport. The relationship problems that brought clients to the therapy clinic often led to divorce or child custody proceedings. The lawyers and the therapists were dealing with the same clients on similar issues, but as we discussed in the course, therapy and legal representation serve very different purposes and functions, and legal interviewing and counseling often proceed differently than does a therapy session.

Law students were struck by two aspects of the therapy process that ran counter to their own experiences in legal counseling. First, unlike lawyers, therapists tend to be nondirective with their clients. Law students are instinctive problem solvers, and many were frustrated that the therapists did not advise clients as to the best course of action. A fundamental purpose of therapy is for clients to form their own understanding of their problems and possible solutions; it runs counter to the therapy ethos for the therapist to tell a client what to do.

Second, therapists focus on self-awareness and self-care much more than lawyers tend to do. Often, the first question that the therapy instructor would ask a therapy student after a session was “how are you doing?” or “what are you feeling?” Law students wanted to proceed immediately to the client’s issues and to possible ways of solving them. In contrast, therapists emphasized the importance of a therapist’s being well aware of his or her own feelings, fears, and anxieties.

An unanticipated benefit of the course was that our students were often asked to explain the legal system and legal concepts to the therapy students. This was helpful to the therapy students (who otherwise received little instruction in law and legal processes), and it was also a valuable exercise for the law students. Learning to explain the substantive law and legal process to other professionals is a valuable skill for new lawyers to acquire.

Largely as a result of what they learned in the Family Therapy Clinic, students in the law school course reported increased confidence in client interviewing and counseling, and their communication skills plainly improved.<sup>9</sup> Moreover, the experience with the therapists provided new and creative perspectives on the legal system. Drawing upon our experience with the family therapists, we explored emerging nonadversarial approaches to family law practice, including collaborative divorce and therapeutic jurisprudence.

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9. It was also apparent that at least a few law students gained a good deal of self-awareness.

## IV. THE LAWYER MEETS THE MINISTER

My experience in the Family Law Counseling Clinic convinced me of the benefits to law students of cross-professional education, and that experience encouraged me to explore similar opportunities after relocating to Mercer in 2006. One of the distinctive features of Mercer University is its wide range of professional schools. In addition, it has an institutional culture that encourages interdisciplinary collaborations. It soon became apparent to me that Mercer is an ideal place in which to experiment further in interdisciplinary and cross-professional courses. At Mercer, I am now a co-teacher of two different cross-professional courses in which law students work with faculty and students from other professional schools.

In the Law, Theology, and Public Policy course that I team-teach with Dr. David Gushee of the McAfee School of Theology and Jack Sammons of the law school, law students participate jointly with theology.<sup>10</sup> The course arose out of several conversations I had with Dr. Gushee. Dr. Gushee and I had worked on several joint projects, including the National Conference on “Religious Faith, Torture, and our National Soul,” hosted by Mercer in 2008.<sup>11</sup> In our conversations, we noted that in the United States most important issues of public policy become legal issues and are contested in the courts. At the same time, for a sizable majority of Americans, issues of public policy are also deeply influenced by their religious faith and theological/ethical convictions.

The course explores issues at the intersection of law, faith, ethics, and public policy. Although the law students and the theology students have separate registration, overlapping but separate syllabi, and separate grading, they meet together for all of their classes in a single group.

Topics in the course include:

- Human Rights, including genocide, torture, and slavery/human trafficking;
- War and Peace, including just war theory, pacifism, and just peacemaking practices;
- Beginning of Life, including abortion, stem cell research, and surrogacy;

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10. The McAfee School of Theology offers the Master of Divinity, the three year post-graduate degree that is the standard professional degree for Protestant clergy.

11. Religious Faith, Torture, and Our National Soul, National Torture Summit at Mercer Univ. (Sept. 11-12, 2008).

- End of Life, including euthanasia, assisted suicide, and availability of health care;
- Marriage and Family, including divorce policy and same-sex marriage;
- Environment and Creation Care, including climate change;
- Economic Justice, including inequality of wealth, the role of markets, and income redistribution;
- Criminal Justice, including incarceration policy and capital punishment;
- Immigration, including care for the alien and stranger;
- Freedom of Expression, including religious freedom and freedom of conscience.

As the students soon realize, the disciplines of law and theology have much in common: both are text-dependent; both require careful and critical reading of primary authoritative texts; and both deal with primary (binding) and secondary (persuasive) authority. Accordingly, the course is predominantly comparative and calls for careful reading of texts from both law and theology. Readings include court decisions, statutes, treaties, and executive orders, as well as primary biblical texts and secondary works on theological ethics and public policy. All students read the same assigned materials. The law students assist the theology students in understanding legal materials that are unfamiliar to them, and the theology students do likewise with the theology materials. In the process, both groups not only learn more about the other discipline, but also gain a deeper understanding of their own discipline.

The students' discussion of abortion nicely illustrates the potential value of combining law and theology students in one class. The Constitution does not expressly mention a right of privacy, much less the right to choose an abortion, but of course the United States Supreme Court in *Roe v. Wade*<sup>12</sup> interpreted the Constitution to include such a right.<sup>13</sup> It was an interesting exercise for the law students to explain the Court's reasoning and the importance of stare decisis in *Planned Parenthood v. Casey*.<sup>14</sup> By the same token, it was an interesting exercise for the theology students to explain the relative paucity of reference to abortion in the Bible and the arguably strained reading of certain texts to refer to abortion.

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12. 410 U.S. 113 (1973).

13. *Id.* at 153-54.

14. 505 U.S. 833 (1992).

Both sets of students, but especially the theology students, found surprising the opinion of the United States District Court for the Northern District of California in *Perry v. Schwarzenegger*,<sup>15</sup> which held unconstitutional the prohibition of same-sex marriage contained in California's Proposition 8.<sup>16</sup> In particular, they were struck by how much the opinion appeared to turn on the strength of the evidence presented by each side. Although the case obviously raised important moral issues, the opinion was devoted almost entirely to analyzing carefully and exhaustively the actual evidence presented in court.

The course provides an excellent opportunity to explore the differing vocational and professional responsibilities of lawyers and ministers. The two professions have many obligations in common to those they serve, including obligations of confidentiality and loyalty. The lawyer's adversary ethic and the minister's pastoral role, however, are clearly distinct and sometimes entail widely differing responsibilities. For example, in our discussions of marriage and divorce, and of euthanasia and end-of-life issues, the law students tended to limit their focus to the client and the professional responsibilities that they owed to the client. The ministry students tended to have a broader focus: the well-being of the couples and families involved and the congregation as a whole. Both sets of students were capable of understanding each others' professional perspectives, but they gained a valuable understanding of how people in different professions often approach social problems from very different perspectives.

#### V. THE LAWYER MEETS THE PSYCHIATRIST

My other current cross-professional course is the Criminal Law and Psychiatry Seminar. This course, which is open only to law students, explores the intersection of the criminal justice system with mental health and brain science. I teach the course jointly with Dr. Richard Elliott of the Mercer University School of Medicine. Dr. Elliott is a forensic psychiatrist who has testified over a hundred times on a wide range of legal issues, including competence to stand trial, criminal responsibility (the insanity defense), mitigation of punishment, and the battered person defense.

Because the defendant's mental health is often an issue in criminal cases, anyone who practices criminal law needs to acquire some expertise in mental health and neuroscience issues. The course focuses on several ways in which those issues impact the criminal law. Dr. Elliott presents

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15. 704 F. Supp. 2d 921 (N.D. Cal. 2010).

16. *Id.* at 1003.

an overview of the relevant medical issues, including diagnoses, the nature of the clinical examination as performed for legal purposes, and the relationship of diagnoses to the relevant legal issues. As the course proceeds, students become quite adept at using the Diagnostic and Statistical Manual of Mental Disorders<sup>17</sup> and learn the diagnostic criteria for particular disorders such as schizophrenia and psychopathy.

The class reads the leading United States Supreme Court cases on issues such as competence, insanity, and involuntary commitment, and Dr. Elliott helps explain the medical and clinical issues involved in those cases. The class also explores in depth several case studies, including those of John Hinckley, Andrea Yates, and Ted Kaczinski. Again, Dr. Elliott's perspective and expertise on the medical issues are an invaluable resource for the students.

Students are required to write a seminar paper on a topic of their choosing. Most of the students are eager to research and write about issues of mental health and neuroscience, but few have any background or experience doing research in medical and scientific journals. Dr. Elliott is very good at acquainting them with those resources, and students gain confidence in their ability to explore nonlegal issues.

One of our primary educational goals in this course is teaching the students to work with experts. Dr. Elliott and I tell them about our experiences in lawyer/physician consultations, and we explain what is effective and what is not in working with consulting and testifying experts. We have found that the most effective method for teaching about relationships with experts is simulation and role play. We often simulate hearings or trials as a means of exploring the case studies in depth. In doing so, we commonly have Dr. Elliott play the role of a mental health expert, and we ask one or more students to prepare him, as a lawyer would, for his testimony.

Although the students do not become mental health experts, by the end of the course they learn how to work and communicate with an expert in the field. They also become reasonably familiar with a specialized vocabulary, acquire specialized research skills, and learn a fair amount about the conventions and customs of another profession. In essence, they learn about the other profession in the same way that practicing lawyers, especially litigators, regularly learn about other disciplines and professions.

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17. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, AM. PSYCHIATRIC ASS'N (4th ed. 2000).

## VI. CONCLUSION

I believe strongly in the value of courses like the ones described above. Concededly, any faculty member seeking to create such a cross-professional collaboration is apt to face a number of logistical and institutional hurdles. In my experience, however, a faculty member can overcome those hurdles if a couple of conditions are met. First, the university must be one that, like Mercer, supports and encourages interdisciplinary collaboration. Second, the faculty member must have colleagues elsewhere in the university who, like Drs. Elliott and Gushee, are sufficiently persuaded of the benefits of cross-professional collaborations to be willing to devote the time and energy needed to address the complications that almost invariably arise, and who are flexible and willing to take risks.