

# The Reimagined Lawyer



# The Reimagined Lawyer

Bruce J. Winick

*with contributions by*  
Sean Bettinger-Lopez

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# Introduction

*Sean Bettinger-Lopez*

## Swan Song: A Final Work from an Extraordinary Life

This book is the final work of Bruce J. Winick, a great lawyer, scholar, and humanitarian. Bruce possessed that rare combination of a warm heart and brilliant mind that brought him great success in achieving his life's passion: helping others. Bruce expresses that passion here by reimagining the role of the lawyer to challenge certain harmful values and practices of the modern legal profession. His vision expands the definition of a lawyer's work to include attention to non-legal issues, psychological and emotional context, and therapeutic goals and values. It seeks a more humane experience for those who make contact with the legal system; a muting of the law's great power to harm. If ever there was an example of a man who embodied the same values he espoused professionally, it was Bruce. In litigation, in scholarship, and in life, Bruce consistently championed those who were most vulnerable when pitted against the Goliath of the State.

Looking back at Bruce's career as an impact litigator, we see a man passionately defending those whose lives were at risk of being crushed in some way by a legal system that could be callous, insensitive, and blatantly unfair. In the 1970s, Bruce argued a landmark case that ended the death penalty in New York.<sup>1</sup> He represented hundreds of selective service registrants in the Vietnam War era and helped litigate groundbreaking selective service law cases.<sup>2</sup> He drafted and spearheaded a successful effort to pass the 1977 Dade County Human Rights Ordinance prohibiting discrimination based on sexual prefer-

ence.<sup>3</sup> And he successfully argued a case establishing the right of openly gay attorneys to practice law in Florida.<sup>4</sup>

In the 1970s, Bruce began what turned out to be an exceptionally prolific academic career. Yet, even while maintaining his regular duties as a law professor for the next four decades, he continued to participate in high profile impact advocacy. For example, Bruce championed the cause of Haitians fleeing an oppressive dictatorship by serving as co-counsel in a suit seeking to prevent forcible repatriation of Haitians intercepted at sea.<sup>5</sup> He championed the liberty interests of those facing involuntary civil commitment by contributing to amicus briefs before the U.S. Supreme Court,<sup>6</sup> and by successfully advocating for procedural protections for Florida youth in foster care.<sup>7</sup> He also participated in efforts to abolish the longstanding practice in Florida and other States of indiscriminately shackling youth in juvenile court proceedings.<sup>8</sup>

Bruce's career as an impact litigator was exceptional, and showed a man inspired by law's power to help others, even in the face of law's power to cause tremendous harm. It is no wonder, then, that as an academic in the 1980s he co-founded and developed a field of inquiry known as "therapeutic jurisprudence" (or "TJ," to some) to focus scholarship and law reform on the ways that law can impact mental health, for better or for worse.<sup>9</sup> Therapeutic jurisprudence has since become an international movement influencing the work of scholars, lawyers, and judges worldwide.<sup>10</sup> Literature from the field has been translated into several languages, and it continues to influence scholarship and legal reform efforts across the globe, especially in Australia, New Zealand, and Europe.<sup>11</sup> In addition to therapeutic jurisprudence, Bruce helped develop the burgeoning field of mental health law in the 1990s and 2000s by dealing comprehensively with subjects ranging from civil commitment to the right to refuse medical treatment.<sup>12</sup> Indeed, it was ultimately Bruce's scholarship, not his litigation feats, that brought him international recognition.<sup>13</sup>

When Bruce passed away in August of 2010, testimonials from around the world flooded into the University of Miami School of Law where he taught for 36 years.<sup>14</sup> The testimonials celebrated his generosity of spirit, concern for the welfare of others, and the impact he made on individual and collective lives. Bruce was an exceptionally kind and generous person, cherished both for his personal compassion and for his vigorous defense of humanistic values. Bruce was a rarity: someone who practiced what he preached. Perhaps the most remarkable thing about Bruce was his ability to achieve so much—professionally and personally—in spite of slowly losing his eyesight since the age of 32 to a rare genetic disorder called *retinitis pigmentosa*. He was legally blind while writ-

ing this book. Bruce overcame this formidable obstacle by utilizing cutting-edge technology<sup>15</sup> to read and write, by walking with his guide-dog, “Bruno” (remembered fondly by many), and by maintaining an attitude of optimism and gratitude. Many remembered Bruce as much for his courage and perseverance in the face of adversity—his own, or others’—as they did for his impressive professional accomplishments.

I experienced Bruce’s warmth and graciousness in late 2010 when I came to the University of Miami to do research in law and psychology and to help Bruce develop his Therapeutic Jurisprudence Center, which he had founded the year prior. My excitement was tempered by learning that Bruce had taken ill with an aggressive cancer, and that despite the experimental treatments he was pursuing to beat back the disease, the amount of time he had left to live was uncertain. Bruce and I had the opportunity to discuss a book he had been working on called *The Reimagined Lawyer* and what it meant to him. The draft contained six substantially completed chapters and notes indicating further contemplated chapters. He was writing it to summarize for lawyers and non-lawyers his career-long thinking about lawyering in a humane and therapeutic mode. In his final months, Bruce worked on this book at an astonishing pace; one that most healthy people would find impossible to sustain. When not dealing with medical treatment or his duties to family, friends, and colleagues, Bruce absorbed himself with writing the manuscript. He viewed this endeavor as his swan song, a final statement on a topic dear to his heart. All too aware that his time to complete the project could end abruptly, he said the writing of it flowed like never before.

The task of editing this manuscript and preparing it for publication fell to me. Fortunately, most of the editing was superficial. I can think of one or two occasions where I had to make educated guesses at Bruce’s intent, and even here getting it wrong would have minimal impact. I can therefore faithfully say that this is entirely the book Bruce wanted you to read, notwithstanding those revisions and inclusions he might have made had he more time with it. This introduction is my own. I am writing it with an awareness that not everyone reading this book will have been familiar with Bruce’s work. He wrote the book with a more colloquial feel than his usual academic writing because he wanted it to reach a wider audience. I have tried here to further that appeal by offering some background about the man behind the ideas, mentioning some of the criticism that his ideas provoked, and suggesting new questions not directly addressed in the book, all of which may catalyze further interest and engagement with the book’s mission. It would be a most fitting tribute to Bruce should this final work become a platform for further thinking, research, and engagement with his ideas.

## A Problem and Its Solution: A Brief Synopsis of *The Reimagined Lawyer*

Bruce's title, *The Reimagined Lawyer*, at once suggests a problem and a solution. The problem, discussed in chapter 1, is the legal profession, which has been indicted for fostering a culture of self-serving, aggressive, and unethical lawyers. The negative values cultivated and rewarded by the legal culture lead to anti-therapeutic behaviors and outcomes for all: clients, third-parties, and the lawyers themselves. The good news is that the solution to this malaise also lies with the legal culture and the ability of lawyers to rethink who they are, what they do, and why they do it. Lawyers can learn to practice law in ways that are psychologically helpful, rather than harmful, to others. Recapitulated in this single book are decades of Bruce's scholarship and thinking about lawyering in a therapeutic mode, including applications to more recent developments like the economic downturn of 2008 and corporate banking scandals. Written primarily for practicing lawyers and law students, this book was meant to inspire and guide those most at risk of losing themselves in the quicksand of the legal profession. Bruce wanted to point the way toward a meaningful, ethical, and fulfilling practice of law.

Chapter 1 begins with an exposition of lawyers' dissatisfaction with the profession and their personal lives. We learn how increasing workloads, substance abuse, depression, and other psychic distress, along with decreasing job security, moral accountability, and professionalism, has plagued the profession for decades. Lawyers untrained in healthy coping mechanisms turn to pathological ones to survive this bleary landscape, making things worse. This vicious cycle begins in law schools, where students traditionally have been indoctrinated into an adversarial view of lawyering. Extrinsic values like professional recognition and wealth prevail over intrinsic ones like helping clients solve problems. The Socratic method and analysis of appellate cases prevails over teaching actual lawyering skills. The formal logic of legal precedent is what matters—not extraneous details such as emotion, context, or justice. If lawyering skills are taught at all, they are usually litigation and trial skills, sending the message that first-class lawyering means being adept at legal combat. Skills in counseling, problem-solving, and prevention are accorded second-class status. By the end of the third year, law students have absorbed the role of gladiator, ready to do battle in a zero-sum game where the winner takes all, and the loser takes nothing.

This is not what many law students thought they were signing up for. Some may not have realized the impact that law school would have on the

personal values they held before entering law school. Chapter 1 lays out this incongruence between personal values and professional training and sets the stage for what follows. The remainder of the book explains how law students and lawyers can embrace an alternative model of lawyering to the one presented by law schools and the reigning legal culture. It is a model enabling lawyers to decrease their distress, increase their satisfaction, and become the kind of professionals they aspired to be when they first chose a career in the law.

Chapter 2 outlines the contours of this alternative model of lawyering and names it: the therapeutic jurisprudence/preventive law model of lawyering (or “TJ/preventive” model, hereinafter). Admittedly unwieldy, this label derives from the academic literature produced by Bruce and others seeking to integrate therapeutic jurisprudence with preventive law, another body of literature advocating the avoidance of litigation in most circumstances. The model is premised on the idea that lawyers are unavoidably therapeutic agents whose actions impact their clients’ psychological and emotional well-being. Once this insight is absorbed, it is hoped, lawyers will strive to avoid imposing psychologically damaging effects on their clients. They will consider clients’ emotional well-being when analyzing a solution to a client’s legal problem. They will promote not only their clients’ legal rights and economic interests, but also their clients’ best interests more broadly defined. The book offers normative prescriptions for ensuring that a lawyer’s therapeutic impact is a positive one. The prescriptions include everything from law office procedures and client interviewing and counseling approaches, to a call for lawyers to consider insights drawn from the behavioral sciences.

Chapters 1 and 2 present the problem and its solution. The remaining chapters (3 through 6) flesh out the TJ/preventive model in the context of various practice areas. These chapters progress through the life-cycle of an attorney/client relationship, starting with the initial client interview in chapter 3. In that chapter, we learn how to signal confidence, trust, and a new kind of attorney/client relationship to our clients. In chapter 4, preventive law concepts such as “legal check-ups” are introduced with examples from elder law, business planning, and the work of in-house counsel. Chapter 5 discusses settlement and alternatives to litigation such as negotiation, mediation, and collaborative law. Potential harms of litigation are explained and techniques to recognize and overcome clients’ psychological barriers to settlement are explored. Chapter 6 deepens the model in the context of criminal law. Lawyers are encouraged to recognize and deal with the emotional fallout of clients’ legal situations, to seize opportunities to address the root causes of clients’ legal problems, and to help set them on a course of rehabilitation.

## A Closer Look

What follows is a discussion of the general approaches and specific techniques presented in chapters 3–6, with commentary on how these suggestions might be, or have been, received. Therapeutic jurisprudence has been criticized as an intellectual paradigm lacking a clear identity,<sup>16</sup> and as a well-intentioned but misguided legal reform movement that seeks sweeping reforms in various contexts, especially court reform.<sup>17</sup> Although therapeutic jurisprudence has been applied to many areas,<sup>18</sup> this book is concerned with one of them: lawyering. Many of the lawyering proposals found in this book—which have appeared in Bruce’s earlier writings or the writings of other TJ or preventive law scholars—have received robust reactions and responses.<sup>19</sup> For example, the TJ-minded suggestion that criminal defense clients might consider apologizing for a crime, as a first step toward rehabilitation, for some appears to undermine the presumption of innocence.<sup>20</sup> Critics worry more generally that the adoption of TJ-inspired lawyering will lead lawyers to abandon due process protections altogether in the service of therapeutic ideals, thereby eviscerating the ideal of zealous client advocacy that has been a pillar of professional ethics.<sup>21</sup> Having a pre-set agenda of transforming clients who may or may not need transforming, or may not have the resources to succeed at it, for some suggests a paternalistic approach that may weaken the lawyer-client relationship.<sup>22</sup>

Such critiques must be reckoned with in any serious consideration of the approach outlined here. I offer, however, that the most fruitful way to read the book is not as a collection of narrow normative prescriptions that must be followed to transform the legal culture. Rather, it should be taken as a broad challenge to consider, discover, and refine the most effective techniques for fostering the kind of change envisioned by it. Whatever one might think of therapeutic jurisprudence generally or of the merits of specific lawyering proposals, there is a strain of truth in this narrative that even Bruce’s most ardent critics will recognize. Who, for example, will reject Bruce’s call to change the orientation of lawyering toward something more intentional, aware, and humane? Who would reject the idea that we should make it our business to be sensitive to the emotional impacts and unintended consequences law can have? Does it not behoove every lawyer to consider the way his or her practice might cause harm, and to imagine how that could be different? This book puts us in a mindset for asking just those kinds of questions. It points us toward discussions we should be having about fostering change in the legal culture—change many see as long overdue.<sup>23</sup>

## The Initial Client Interview

In chapter 3, Bruce describes the initial client interview as critical to laying the foundation for a relationship of trust and concern, itself a prerequisite for practicing in a TJ/preventive mode. He suggests a variety of office practices and behaviors, even down to the placement of office furniture and the attorney's body language, that are likely to facilitate such a relationship. Drawing lessons from the literature on "procedural justice," he suggests the importance of giving "validation" and "voice" to client narratives, and of treating clients with dignity and respect.<sup>24</sup> Simple techniques such as avoiding interruptions, asking open-ended questions, and active listening are some of the tools discussed. Making clients comfortable, showing empathy, and encouraging clients to open up are all part of the effort to establish rapport. A poorly conducted interview and failure to establish rapport risks not only client dissatisfaction, but also the potential loss of valuable information to the case, and a client less likely to comply with the attorney's advice. Many of these insights were drawn from medical literature surveying the effectiveness on outcomes of initial doctor/patient interactions.<sup>25</sup> Indeed, Bruce often turned to the medical profession for guidance on developing a therapeutic role for lawyers. While attention to "bedside manner" has been a part of medicine for millennia, only relatively recently has clinical training focused on such things as empathy, listening skills, or recognition of non-verbal cues.<sup>26</sup> As medical schools and even insurance companies come to recognize the importance of these skills, a cultural shift seems underway.<sup>27</sup> Law schools, then, might take a lesson from the arc of medical education and attempt to teach a "deskside" manner that may ultimately lead to better client outcomes.<sup>28</sup>

## Reaching Out: A Radical Step for Expanding the Traditional Lawyer's Role

Chapter 4 presents fine examples of what I believe to be the defining feature of the TJ/preventive model: the approach gives the lawyer permission to consider and further the non-legal interests of the client. For example, Bruce explains how an attorney initially presented with an estate planning issue winds up counseling his client about the client's vision problem noticed in the first office visit. Rather than ignoring a major issue in the client's overall well-being—one that may have implications for the legal issue at hand—the lawyer encourages the client to discuss the emotional and practical consequences of not dealing with the vision problem head on. Traditionally trained lawyers

would reflexively shrink from engaging a client on such a sensitive issue with attenuated relevance to the specific legal issue at hand. In another scenario, the lawyer talks to a client whose mother had Alzheimers about the risk of Alzheimers, even though the client does not present symptoms or a diagnosis of Alzheimers. These can be awkward or off-putting topics to be raised by an attorney. But raising the issues has the potential to generate life-changing discussions that people should be having with experienced, trusted, neutral advisers. Bruce is suggesting we stop closing off the possibility that attorneys should be a part of these broader conversations. Lawyers can do more good in the world if we allow them space within their professional role to practice the art of helping. That message is at the heart of this model. Perhaps with a proper foundation laid at the initial client interview, and the development of a relationship of trust and concern, such questions as “How is your vision?” or “Can we talk about Alzheimers?” would not seem strange or off-putting. In a world where law students were trained to ask open-ended questions, to listen with sensitivity, and to consider non-legal issues, such questions could not only be appropriate but life-altering for a client.

## Taking the Risk

Interesting questions arise in chapter 5 concerning the implications of representing oneself as a TJ/preventive lawyer. The book does not comment on whether adoption of the model is to be primarily internal—a subjective re-configuration of one’s values and approach to the world—or an external representation to the public that the lawyer is in fact working from the model. Are pioneering practitioners of this model going to hang a shingle that reads: “A TJ/preventive practice”? Or will they simply incorporate the values and approaches of the model into their practice without any explicit representations as to their guiding principles? Unless and until the model becomes mainstream, representing oneself as a TJ/preventive lawyer may carry certain professional risks. There may be perceptions, however erroneous, that TJ/preventive lawyers will not be as aggressive or zealous as traditional ones. There may be concerns that such lawyers will shrink from litigation, even where litigation might be the best option. In a legal marketplace that rewards power, pooled resources, and aggressive tactics, it will not always be easy to carve out a professional identity as a lawyer seeking peace, reconciliation, compromise, and psychological well-being.

Although Bruce does not address what TJ/preventive lawyers should write on their business cards, he does offer suggestions for winning over clients

already sitting in your office. Bruce was mindful of the misunderstandings that might occur between new clients and lawyers attempting to practice the model. The key to minimizing such misunderstandings, he suggests, is to focus on developing trust and confidence with the client. If trust and confidence are established at the outset, awkward or sensitive conversations become possible as the lawyer-client relationship develops. If my clients truly trust me, for example, I might be able to open a conversation about the merits of taking responsibility or even apologizing for harm done to an adversary. If they trust me, they are more likely to work with me to redirect the goals they had when they entered my office to ones more compatible with their long term well-being.

A final consideration is that the TJ/preventive model will certainly require more resources from the attorney in a world where attorney resources are increasingly stretched thin. Conscientiously training oneself to adopt this model will surely take additional time, energy, and money. Some lawyers will be better at it than others. Is it reasonable to ask every lawyer to be more than just a traditional lawyer, but a problem solver, peacemaker, social worker, and healer? Bruce would say lawyers are already asked to be all these things all the time—we just need to help them be better at it.

## Keeping the Model Client-Centered

An important check on the TJ/preventive approach—and one that Bruce wholeheartedly endorsed—is ensuring that the attorney/client dialogue remains “client-centered” at all times. The meaning of “client-centered” enjoys a rich literature and has been subject to various modifications and perspectives.<sup>29</sup> For Bruce, “client-centered” usually meant the lawyer diligently ensured that client decision-making remained at the forefront of the lawyer’s actions. His concern was to avoid the excesses of “paternalism” by respecting client “autonomy.”<sup>30</sup> Where there is disagreement about a potential course of action, lawyers might “persuade” so long as they do not “coerce” the client to adopt the attorney’s advice. Notably, this is a voluntary or self-imposed check on the aspiring TJ/preventive lawyer. It is fundamental to the model, but ultimately relies on the attorney’s diligence in exercising its constraints, as well as the attorney’s acumen in understanding the point at which persuasion becomes coercion.<sup>31</sup> With no standards or professional guidance (other than this book and related academic literature) to steer those who want to adopt this model, there is some risk these techniques could be misused or misunderstood. How can we be sure our actions and advice are in fact “client-centered” rather

than a projection of our own needs, desires, or beliefs? What if after extensive counseling in a TJ/preventive vein the client still wants to go to trial, or does not want to apologize? At what point exactly would the lawyer accept these as the true wishes of the client and proceed accordingly? Does the lawyer keep working to chip away at what is perceived as the client's intransigent "denial"? If so, will the client begin to feel manipulated or feel the lawyer is practicing unlicensed psychology? These are not easy questions. Nor are they reasons to eschew the model. In fact, these questions raise a plethora of issues that can be explored in law school courses and lawyer training programs that seek to incubate more mindful, ethical lawyers who are eager to engage in the project of figuring out what "client-centered" means to them.<sup>32</sup>

Many of Bruce's proposals here are not controversial and in fact compliment the more traditional models of lawyering. He recommends that lawyers be trained to develop skills such as "active listening," and to work to enhance their aptitude for "emotional intelligence" and "empathy."<sup>33</sup> He advises lawyers to follow the precepts of "procedural justice" by treating clients with "dignity and respect" and by finding opportunities to provide "voice" and "validation" for the client.<sup>34</sup> None of these techniques have been particularly objectionable, and in fact may be hallmarks of the most successful lawyers.<sup>35</sup>

Some of his other suggested techniques, however, seem to draw more deeply from the therapy manuals and might raise concerns about overstepping professional lines. Attempting to identify psychological defense mechanisms such as "denial" and "transference" in the client, for example, however useful this might be to understand what might underlie a client's intransigence, becomes problematic should the lawyer slip into the role of treating the denial or transference.<sup>36</sup> Even techniques such as "motivational interviewing," in which the lawyer uses questioning techniques to steer a client toward what the lawyer believes to be the best course of action, has the potential to slip into paternalism or to overstep disciplinary boundaries.<sup>37</sup>

One can also see where the suggestion that a lawyer should help the client find a catharsis might raise eyebrows. Should it be a lawyer's role to "help the client let go of anger or other negative emotions that otherwise would diminish the quality of his life"?<sup>38</sup> Bruce suggests that while lawyers should not take the place of psychologists or psychiatrists, they should also not ignore clients' emotional experience altogether. He suggests there is a middle ground—a rich space between playing therapist and simply acknowledging and responding in helpful ways to the emotional issues that attend the legal issues presented in a law office. Lawyers need to recognize this space and learn to navigate it with finesse.

## Criminal Justice: Therapeutic Alternatives and the Role of Prosecutors

In chapter 6, Bruce applies the TJ/preventive model to the practice of criminal law. This chapter primarily concerns itself with a particular type of lawyer—the criminal defense attorney—and a particular type of client—one suffering from a mental health or substance abuse issue. In this context, the work of the TJ/preventive criminal defense lawyer becomes one of steering appropriate clients into the various modes of rehabilitative sentencing and diversion that have sprung up in the last few decades. There is, for example, “deferred sentencing” in the federal system, which Bruce promotes as a singularly promising example. With this tool, defense attorneys seek deferment of their clients’ sentencing hearing to allow time for the client to obtain treatment and the possibility of a reduced sentence should treatment prove successful.<sup>39</sup> Then there are drug courts, mental health courts, and other “problem-solving courts” that favor treatment over incarceration. These are perhaps the most well-known, and controversial, of the new diversion options. Concerns over paternalism, coercion, and lack of due process have featured prominently in debates surrounding the problem solving courts.<sup>40</sup>

One need not embrace problem-solving courts as a panacea, however, to agree that criminal defense attorneys should be trained to tailor their clients’ individual needs to the most favorable and least harmful outcomes. Defense counsel might know of a particularly “good” drug court in the jurisdiction for which the aforementioned concerns are at a minimum, and feel more comfortable recommending this option to the client. Or perhaps, in consultation with the client and the client’s doctors, counsel may believe the drug or mental health issue is manageable and the evidence in the case portends a favorable outcome for the client, such that a recommendation for trial or traditional court process might be made. It is no small fact that for many clients, the prospect of receiving treatment instead of any amount of prison time can make a monumental difference to their outcome. Concerns over paternalism or coercion are legitimate, but perhaps no more so than under the status quo, where attorneys and judges wield tremendous power over their clients and cases. At least in theory, TJ/preventive lawyering will orient criminal defense attorneys toward an understanding of these and other potentially therapeutic opportunities. Attorneys already have a duty to explain the risks and potential outcomes of significant legal choices, such as a plea-bargain, to their clients.<sup>41</sup> A TJ/preventively-trained lawyer would be well-positioned to fulfill this duty and even exceed it by helping clients with

substance-abuse or mental health issues to understand and select the most appropriate course of action for their individual needs.

While primarily concerned with criminal defense lawyers, Bruce suggests prosecutors can also modify their practice along TJ/preventive lines. Using the context of domestic violence cases, he suggests that prosecutors can do more than simply prosecute batterers. He suggests they can actually help victims heal or break the cycle of violence by using key steps in the criminal process itself—arrest, deposition, trial, victim impact statement—to afford victims opportunities for catharsis, healing, and empowerment. By encouraging victims to “open up,” particularly in writing, prosecutors are seen as therapeutic agents who can help victims overcome patterns of isolation and secrecy, learned helplessness, and post-traumatic stress.<sup>42</sup> To those concerned about lawyers overstepping into the domain of therapists,<sup>43</sup> and to those acutely aware of the potential harms that often befall victims who seek help from the criminal justice system,<sup>44</sup> these suggestions may be greeted with alarm. Indeed, unlike with defense attorneys, it will be difficult if not impossible for prosecutors to maintain relationships of trust or loyalty with victims, particularly where prosecutors are inclined or mandated to override victims’ desires not to participate in a prosecution.<sup>45</sup>

In comparison, Bruce’s other suggestions for domestic violence prosecutors appear far more benign. Bruce exhorts prosecutors to listen, empathize, give voice and validation to victims, and attempt to work with them in a manner that causes the least psychological distress. With respect to the decision to prosecute a case, prosecutors should “always take account of the likely impact on the victim, including the children of the victim...”<sup>46</sup> As in the civil context, where we have seen the same maxims applied, these appear unobjectionable and perhaps even a salve to the tensions that exist between prosecutors and victims. Yet the approach to merely “take account” of victim impacts does little to resolve deep and confounding divides<sup>47</sup> about how prosecutors should best handle domestic violence cases. For some, the best hope for victims is to bring to bear the full weight of the criminal justice system upon batterers with mandatory interventions such as mandatory arrest, “no-drop” prosecution, and compelled victim testimony.<sup>48</sup> For others, mandatory interventions that displace victim prerogatives are far more harmful than helpful to victims and to the movement to combat domestic violence.<sup>49</sup> Attempting a sort of middle position, Bruce assumes prosecutors will not (and should not) cede prosecutorial discretion to victims; but he implores them to thoroughly consider and place high value on victim impacts as a factor in deciding whether and how to prosecute a case.<sup>50</sup>

Short of settling the matter in this context, Bruce suggests how a TJ/preventive mindset might look at a legal process and take fuller account of its

harmful impacts. Indeed, there is much that a prosecutor (even in a “no-drop” jurisdiction) can do to ameliorate the harmful impacts of the criminal process upon victims. Prosecutors, for example, can seek to bolster their cases with physical evidence, potentially obviating the need for victim testimony.<sup>51</sup> They can use the rules of evidence to admit statements from victims who do not wish to testify.<sup>52</sup> Or they can charge batterers with ancillary crimes that do not require victim participation to prove.<sup>53</sup> Thus, even in the complex, emotionally-charged arena of prosecuting domestic violence cases, Bruce shows there is a role to play for the TJ/preventive model. Perhaps a prosecutor trained to think like a TJ/preventive lawyer in law school might go on to champion victim-centered policies in their offices. Perhaps a victim dealing with such a prosecutor will get a little more consideration, a little more voice, even a little more control over the process.

## Omissions of Note

Bruce’s manuscript notes indicate that he wanted to follow the first six chapters with three additional ones: a chapter applying the TJ/preventive model to the famous end-of-life legal struggles of Terry Schiavo; a chapter explaining how the model could be taught in law schools; and a chapter exploring how the model could be applied in a litigation context. Bruce did not get the chance to write these chapters, but fortunately, he published articles on the first two subjects.<sup>54</sup> These articles can help the reader round out the understanding that Bruce wanted the reader to take away from the book.

The envisioned chapter on litigation does not have a corresponding article, and Bruce did not write much about the litigation process itself, presumably because the heart of the TJ/preventive approach was to avoid litigation in most circumstances. To the extent he did write about litigation, it was to suggest how litigators can encourage settlement and counsel clients dealing with the emotional landmines of litigation.<sup>55</sup> While one might wish that we had Bruce’s wisdom on the subject of how lawyers can prepare themselves to conduct litigation in accordance with therapeutic values in an adversarial world, the topic offers up new frontiers for TJ/preventive scholars and practitioners to explore. When settlement is not an option, how do we litigate in a way that is least damaging to our clients, adversaries, and third parties who may be effected by the litigation? How can we be successful, zealous advocates for our clients in litigation without compromising our clients’ or our own deeply held values of civility, professionalism, and fair play? Bruce would have cherished nothing more than to know that others would be exploring even once he was gone how to

make the TJ/preventive model a vehicle for lawyers in all areas of practice to find meaning in their professional and personal lives.

## Conclusion

This book is an important contribution to contemporary discussions about the changing role of law and lawyers in society.<sup>56</sup> These discussions have been heard for some time, but are especially salient since the economic downturn of 2008 and its profound impact on the legal profession.<sup>57</sup> We see both the forces of contraction and expansion at work—those calling for more narrowly-focused roles for law graduates<sup>58</sup> counterbalanced by those like Bruce seeking a broader role for lawyers in society. This book challenges us to seriously consider the full breadth and scope of what can be achieved in the attorney/client relationship. Here is a vision of professionals who can be more than mere technicians for our legal rights. It is a vision of lawyers bringing healing and harmony to the most serious conflicts that enter our lives.

Remarkably, there is no universally accepted theory of lawyering; no agreement on what “the” role of a lawyer is or should be.<sup>59</sup> Often a particular lawyer’s conception of what he or she is doing is driven by the context in which they practice.<sup>60</sup> A litigator might work from a “zealous advocate” model, in which duty to client is seen as paramount to all other considerations.<sup>61</sup> A transactional attorney might prefer a “business” model of practice, in which the attorney views him or herself as primarily running a business or providing a service for profit.<sup>62</sup> Public interest attorneys may view their work as primarily advancing social justice issues.<sup>63</sup> All of these and other models might intersect, conflict, or diverge from each other.<sup>64</sup> They might operate simultaneously, and not always harmoniously, in a single lawyer’s conception of the professional role he or she plays.<sup>65</sup> A role only recently gaining traction as part of this standard menu of options is one that embraces a conception of the lawyer as holistic helper, healer, and resource for those who seek to repair or avoid psychological or emotional damage. The TJ/preventive model maps easily onto the Venn diagram of these possible roles. Notwithstanding some of the natural tensions between the models, it is compatible with these and many other frameworks for lawyering.

Nor has Bruce been alone in calling for a cultural shift in the way law is seen and practiced. Over the past few decades or so, numerous alternative models to law practice have emerged to challenge the cultural status quo. Susan Daicoff describes several of these kindred lawyering models as “vectors” that converge,

diverge, and draw from each other, so much that we might consider them part of a movement she calls the “Comprehensive Law Movement.”<sup>66</sup> Others have grouped some of these vectors with several other lawyering trends under the rubric “Integrative Law Movement.”<sup>67</sup> This growing taxonomy of kindred lawyering models easily embraces “client-centered lawyering”<sup>68</sup> and “social justice lawyering”<sup>69</sup> models along with “law and emotion”<sup>70</sup> scholarship, the recent “trauma-informed practice”<sup>71</sup> movement, and arguably many others. Each of these models emphasizes particular skills or aptitudes, or focuses on particular problems or processes, but they generally share similar goals and point in the same direction.<sup>72</sup> They tend to share a willingness to consider non-legal factors along with an intention to find the most optimal human outcomes in any legal encounter.<sup>73</sup> They tend to embrace approaches that eschew adversarial processes in favor of more durable forms of conflict resolution.<sup>74</sup> All of these emergent models bespeak a desire for lasting change in the legal culture. Taken together they are themselves evidence that the desired cultural changes are already progressing apace, and making an impact.<sup>75</sup> Bruce’s unique contributions have found their place in this rich landscape of law reform, which he also helped to shape.

I have noted some areas where teaching or application of this model might be difficult, and where the model could benefit from further development. It is not a perfected model, but a vision seeking more minds, hearts, and hands to shape it. Whatever we decide to do with the ideas presented in this book, we still have choices to make. Will we do nothing—and thereby capitulate to cynical forces in the legal profession that harm its reputation and deny lawyers opportunities to express their best selves? Or will we encourage the next generation of lawyers to practice with an ethic of care,<sup>76</sup> and to help them develop the tools they will need to resist the pressures of a sometimes dehumanized and exploitative legal marketplace? This is what Bruce really wanted. It is why he worked so passionately, even through terminal illness, to write this book, and we should all be grateful for this parting gift.

## Notes

1. See *People v. Fitzpatrick*, 32 N.Y.2d 499, 300 N.E.2d 139, 346 N.Y.S.2d 793 *cert. denied*, 414 U.S. 1033 (1973); see also Edward J. Maggio, *Death by Statute: the Turbulent History of New York’s Death Penalty*, N.Y. St. B.J., February 2005, at 14.

2. See Affidavit of Expert Bruce Winick, *Cernuda v. Neufeld*, et al., 2007 WL 576073 (S.D.Fla.) (No. 05 Civ. 22728); see also *Foley v. Hershey*, 409 F.2d 827 (7th Cir. 1969); *United States v. Wayne*, 710 F.2d 1385 (9th Cir. 1983), *aff’d*, 470 U.S. 598 (1985).

3. See Affidavit of Expert Bruce Winick, *supra* note 2; See also Norm Kent, *Saluting One Life, Censuring the Next*, S. FLA. GAY NEWS (Sept. 1, 2010, 6:25pm), <http://southflorida.gaynews.com/Publisher-s-Editorial/saluting-one-life-censuring-the-next.html> (last visited Feb. 1, 2018) (noting impact of the Ordinance on sparking the Anita Bryant crusade, which in turn galvanized the gay rights movement nationwide).

4. See *In re Fla. Bd. of Bar Exam'r*, 358 So.2d 7 (Fla. 1978) (finding avowal of homosexual orientation did not of itself equate to lack of good moral character for bar admittance purposes); See also Kent, *supra*, note 3, noting the historical impact of the case.

5. See *Haitian Refugee Ctr., Inc. v. Baker*, 953 F.2d 1498 (11th Cir. 1992), *cert. denied* 502 U.S. 1122 (1992). He also contributed to briefs before the U.S. Supreme Court in support of Haitian immigrants in *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991), and *Comm'r, I.N.S. v. Jean*, 496 U.S. 154 (1990).

6. See, e.g., Brief for ACLU et al. as Amici Curiae Supporting Respondent, *Kansas v. Hendricks*, 521 U.S. 346 (1997) (No. 95-1649), 1996 WL 471020 (U.S.); see also *Kansas v. Hendricks*, 521 U.S. 346 (1997) (upholding Kansas' involuntary civil commitment statute).

7. See Amendment to the Rules of Juvenile Procedure, Fla. R. Juv. P. 8.350, 842 So. 2d 763 (Fla. 2003) (establishing right to pre-commitment hearing and counsel for foster youth facing involuntary commitment to locked psychiatric facilities).

8. See *In re Amendments to the Florida Rules of Juvenile Procedure*, 26 So.3d 552 (2009); see also Bernard P. Perlmutter, "Unchain the Children": *Gault, Therapeutic Jurisprudence, and Shackling*, 9 Barry L. Rev. 1, n.2, n.96, n.293 (2007) (describing affidavits, briefs, the Juvenile Shackling Voice Project, and other contributions Bruce made to the anti-shackling campaign).

9. See generally DAVID B. WEXLER & BRUCE J. WINICK, *ESSAYS IN THERAPEUTIC JURISPRUDENCE* (1991) (introducing the discipline); DAVID B. WEXLER & BRUCE J. WINICK, *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* (1996); and BRUCE J. WINICK, DAVID B. WEXLER, AND DENNIS P. STOLLE, *PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION* (2000).

10. See David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 *Touro L. Rev.* 17, 18 (2008); David B. Wexler, *Therapeutic Jurisprudence Across the Law School Curriculum: 2012*, 5 *PHOENIX L. REV.* 791, 792 (2012) (bibliography); and see INT'L SOC'Y THERAPEUTIC JURIS., <http://www.intltj.com/resources> (last visited Feb. 5, 2018), for a clearinghouse of resources exemplifying the international reach of TJ scholarship and law reform efforts.

11. See sources cited *supra* note 10.

12. See, e.g., BRUCE J. WINICK, *THE RIGHT TO REFUSE MENTAL HEALTH TREATMENT* (1997), BRUCE J. WINICK, *CIVIL COMMITMENT: A THERAPEUTIC JURISPRUDENCE MODEL* (2005), as well as Bruce's journal articles too numerous to list here.

13. Bruce received numerous awards recognizing his contribution, among other things, to the global study of law and mental health issues. For example, in 2009 Bruce was awarded the Philippe Pinel Award, the highest honor bestowed by the International Academy of Law and Mental Health. See David B. Wexler, *In Memoriam: Bruce J. Winick (September 1, 1944 to August 26, 2010)*, *INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY* 33, 279 (2010); See also Biography of Bruce J. Winick, UNIVERSITY OF MIAMI ETHICS PROGRAMS, <https://ethics.miami.edu/about/people/in-memoriam/bruce-j-winick/index.html> (last visited Feb. 7, 2018).

14. See News Release, *UM Law Professor Bruce J. Winick Passes Away*, UNIVERSITY OF MIAMI, [http://web.archive.org/web/20100901042759/http://www.miami.edu/index.php/news/releases/um\\_law\\_professor\\_bruce\\_j\\_winick\\_passes\\_away/](http://web.archive.org/web/20100901042759/http://www.miami.edu/index.php/news/releases/um_law_professor_bruce_j_winick_passes_away/); and see *In Memoriam: Bruce*

Winick, UNIVERSITY OF MIAMI SCHOOL OF LAW, [http://web.archive.org/web/20100909003528/http://www.law.miami.edu:80/facadmin/bwinick\\_memoriam.php](http://web.archive.org/web/20100909003528/http://www.law.miami.edu:80/facadmin/bwinick_memoriam.php)]; see also Obituary & Guest Book, *Bruce J. Winick*, THE MIAMI HERALD (Aug. 27, 2010–March 18, 2011), <http://www.legacy.com/obituaries/name/Bruce-Winick-obituary?pid=144966999&view=guestbook&page=3>.

15. Bruce explained the technological and spiritual resources he relied upon to surmount his vision obstacles in the following video: Cuttingedge.law, *Bruce Winick Part 6*, YouTube (Sept. 10, 2009), [https://www.youtube.com/watch?v=r73kE\\_tG-JM&list=PL322CED1065E4ECC3&index=6](https://www.youtube.com/watch?v=r73kE_tG-JM&list=PL322CED1065E4ECC3&index=6) (last visited Feb. 7, 2018).

16. Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas To Ponder*, 1 PSYCHOL. PUB. POL'Y & L. 193 (Winter, 1995).

17. Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L. J. 1587, 1612 (2012); Susan Stefan & Bruce J. Winick, *A Dialogue on Mental Health Courts*, 11 PSYCHOL. PUB. POL'Y & L. 507 (Dec. 2005); James L. Nolan, *Redefining Criminal Courts: Problem-Solving and the Meaning of Justice*, 40 AM. CRIM. L. REV. 1541 (Fall, 2003).

18. See sources cited *supra* note 10.

19. Mae C. Quinn, *An Rsvp to Professor Wexler's Warm Therapeutic Jurisprudence Invitation to the Criminal Defense Bar: Unable to Join You, Already (Somewhat Similarly) Engaged*, 48 B.C. L. REV. 539 (2007); Tamar M. Meekins, "Specialized Justice": *The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm*, 40 SUFFOLK U. L. REV. 1 (2006).

20. See Quinn, *supra* note 19, at 579 n.19.

21. See, e.g., Meekins, *supra* note 19, at 2–14, 33–51 (2006) and Quinn, *supra* note 19, at 547 n.45, 568 (2007). Quinn suggests the rehabilitative focus of TJ approaches may be fundamentally inconsistent with counsel's duties to be zealous and unbiased, to practice within one's area of expertise, and that it may interfere with client trust. *Id.* at 569–573, 577. *But see* Susan Daicoff, *Law As A Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1, 60 (2006), suggesting this and similar new lawyering approaches are fully compatible with existing professional responsibility codes.

22. See Quinn, *supra* note 19, at 577–586.

23. Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 796–818 (2012).

24. See, e.g., TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990); A. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988).

25. See, e.g., Howard B. Beckman & Richard M. Frankel, *The Effect of Physician Behavior on the Collection of Data*, 101 ANNALS INTERNAL MED. 692 (1984), <http://annals.org/aim/article-abstract/699136/effect-physician-behavior-collection-data> [doi:10.7326/0003-4819-101-5-692] (last visited Feb. 13, 2018); see also Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLINICAL L. REV. 321, 335 (1998).

26. See Barry D. Silverman, MD, *Physician behavior and bedside manners: the influence of William Osler and The Johns Hopkins School of Medicine*, 25 PROC. BAYL. U. MED. CTR. 58 (2012 Jan); Sandra G. Boodman, *How to Teach Doctors Empathy*, THE ATLANTIC, March 15, 2015, <https://www.theatlantic.com/health/archive/2015/03/how-to-teach-doctors-empathy/387784/> (last visited Feb. 13, 2018).

27. See Boodman, *supra* note 26.

28. See Gellhorn, *supra* note 25.

29. See Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006).

30. Of course, understanding what client “autonomy” is and then figuring out how to ensure its protection can itself be the subject of considerable complexity. “Autonomy,” for example, can be as narrow a concept as “letting the client make the decision” to as broad as “helping the client become the person they want to be.” See Kruse, *supra* note 29, at 413–427 (elucidating how various client-centered lawyering approaches may help or hinder the goal of respecting client autonomy).

31. High theorists of autonomy and lawyering scholars alike seem to have difficulty articulating the precise point at which various methods of persuasion become coercive. See Kruse, *supra* note 29, at 408.

32. See Kruse, *supra* note 29, as an example of scholarship that probes deeper into the kinds of questions that might be asked about the propriety and limits of particular kinds of counselor interventions.

33. See Susan S. Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 840–845, 857–859 (2012) (summarizing the relevance of these and other skills and aptitudes to effective lawyering).

34. *Id.* at 845–848.

35. *Id.* at 818–833, 873 (summarizing empirical studies that suggest as much).

36. In contrast, lawyers’ introspection into their own possible “countertransference” or their own positive or negative emotions toward clients, seems a useful tool for lawyers to manage appropriate attorney/client relationships. See Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (Fall, 1999).

37. See Quinn, *supra* note 19, at 582.

38. See chapter 6, Intro.

39. *But see* Quinn, *supra* note 19, at 583–585 (suggesting deferred sentencing may not be appropriate for poor and/or transient clients).

40. See sources cited *supra* note 17.

41. See Stephanos Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 CAL. L. REV. 1117, 1146–1148 (2011).

42. Bruce draws from the work of psychologist James Pennebaker in support of this suggestion. See JAMES W. PENNEBAKER, *OPENING UP: THE HEALING POWER OF CONFIDING IN OTHERS* (1990).

43. See sources cited *supra* notes 17 and 19.

44. See, e.g., Leigh Goodmark, *Law is the Answer? Do We Know That For Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7 (2004); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550 (1999).

45. See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996) (outlining the history and debate over ‘no-drop’ prosecution policies).

46. See chapter 6 (3).

47. See Goodmark, *supra* note 44, at 31.

48. See Hanna, *supra* note 45 (recognizing potential harm to victims from such policies, but arguing individual harms are outweighed by other interests and the need to send a strong message that domestic violence will not be tolerated).

49. See sources cited *supra* note 44.

50. See also Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33, 79 (2000) (discussing Bruce's idea of "presumptive arrest," which similarly stakes out a middle ground in the debate over mandatory arrest laws).

51. See Hanna, *supra* note 45, at 1898–1907.

52. See *id.* at 1904.

53. See *id.* at 1905.

54. Bruce J. Winick, *A Legal Autopsy of the Lawyering in Schiavo: A Therapeutic Jurisprudence/preventive Law Rewind Exercise*, 61 U. MIAMI L. REV. 595 (2007); and Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 ST. THOMAS L. REV. 429 (2005).

55. Bruce J. Winick, *Therapeutic Jurisprudence and the Role of Counsel in Litigation*, 37 CAL. W. L. REV. 105 (2000); Bruce J. Winick, *The Expanding Scope of Preventive Law*, 3 FLA. COASTAL L.J. 189, 190–195 (2002).

56. See, e.g., Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 796–818 (2012) (summarizing the changes); see also Alfred S. Konefsky & Barry Sullivan, *In This, the Winter of Our Discontent: Legal Practice, Legal Education, and the Culture of Distrust*, 62 BUFF. L. REV. 659 (2014).

57. See, e.g., Eli Wald, *Foreword: The Great Recession and the Legal Profession*, 78 FORDHAM L. REV. 2051 (2010); and Alfred S. Konefsky & Barry Sullivan, *supra* note 56 at 660–669.

58. See Konefsky & Sullivan, *supra* note 56, at 691–745.

59. Eli Wald, *Resizing the Rules of Professional Conduct*, 27 GEO. J. LEGAL ETHICS 227, 239 (2014); see also Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 303 (1995).

60. See Wald, *supra* note 59, at 228.

61. Margaret Chon, *Multidimensional Lawyering and Professional Responsibility*, 43 SYRACUSE L. REV. 1137, 1145 (1992) (citing Lord Brougham's classic articulation of the model); Katherine R. Kruse, *Lawyers Should Be Lawyers, but What Does That Mean?: A Response to Aiken & Wizner and Smith*, 14 WASH. U. J.L. & POL'Y 49, 64–71 (2004) (problematizing the model).

62. See Konefsky & Sullivan, *supra* note 56, at 663 n.10 and references therein.

63. See Kruse, *supra* note 61, at 64–67.

64. See Chon, *supra* note 61, at 1137; and see Atkinson, *supra* note 59, at 317.

65. See Chon, *supra* note 61, at 1137.

66. See Susan Daicoff, *Law As A Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1 (2006) (describing the primary "vectors" as (1) collaborative law, (2) creative problem solving, (3) holistic justice, (4) preventive law, (5) problem solving courts, (6) procedural justice, (7) restorative justice, (8) therapeutic jurisprudence, and (9) transformative mediation); see also Daicoff, *supra* note 56, at 804 n.22 and references therein.

67. See, e.g., Cutting Edge Law, *The Integrative Law Movement: An Introduction*, <http://>

cuttingedgelaw.com/page/integrative-law-movement-introduction) (last visited Feb. 15, 2018) (suggesting scores of new models that might be included under the umbrella term “Integrative Law Movement.”); *see also* Pauline H. Tesler, *Can This Relationship Be Saved? The Legal Profession and Families in Transition*, 55 FAM. CT. REV. 38, 47, n.58, n.62 (2017).

68. *See* Kruse, *supra* note 29, at 369–374.

69. *See* Kruse, *supra* note 61, at 51–55.

70. *See* Susan A. Bandes & Jeremy A. Blumenthal, *Emotion and the Law*, 8 ANN. REV. L. & SOC. SCI. 161 (2012); Kathryn Abrams & Hila Keren, *Who’s Afraid of Law and the Emotions?*, 94 MINN. L. REV. 1997 (2010).

71. *See* SAMHSA, U.S. Dept. of Health and Human Servs., *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach*, HHS Publication No.(SMA) 14-4884, at 6–7, Rockville, MD (2014), <https://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf> (last visited Feb. 15, 2018) (describing collaborative efforts at the federal, state, and local levels to implement trauma-informed approaches); *See also* Sarah Katz, Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363, 369–372 (2016); Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641 (2016).

72. *See* Daicoff, *Law As A Healing Profession*, *supra* note 66 at 1–10 (describing common purpose of the comprehensive law vectors).

73. *See id.*

74. *See* Tessler, *supra* note 67, at 42 n.27 (explaining why “conflict resolution” approaches, as opposed to mere “dispute resolution” ones, better serve the needs of divorcing couples).

75. The relatively recent push to include “trauma-informed” approaches to the work of government at every level is a telling example of such impact. *See* sources cited *supra* note 71.

76. *See* Stephen Ellmann, *The Ethic of Care As an Ethic for Lawyers*, 81 GEO. L.J. 2665 (1993).

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—Sean Bettinger-Lopez, Miami, 2018