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## Teaching Therapeutic Jurisprudence

David C. Yamada

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## TEACHING THERAPEUTIC JURISPRUDENCE

David C. Yamada\*

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## INTRODUCTION

Therapeutic jurisprudence (TJ) is a multidisciplinary school of theory and practice that examines how “substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or antitherapeutic consequences.”<sup>1</sup> It is a normative framework that favors outcomes of legal proceedings and work of legal institutions that advance human dignity and psychological well-being.<sup>2</sup> TJ’s original subject-matter bases were mental health and mental disability law, criminal law and justice, and problem-solving courts.<sup>3</sup> However, the field has expanded into many other areas of law and policy, such as family law, employment law, and health law.<sup>4</sup>

Since its founding in 1987 by American law professors David Wexler and Bruce Winick,<sup>5</sup> TJ has established a global presence in

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1. David B. Wexler & Bruce J. Winick, *Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research*, 45 U. MIAMI L. REV. 979, 981 (1991).
2. See Michael L. Perlin, “Have You Seen Dignity?”: *The Story of the Development of Therapeutic Jurisprudence*, 27 NEW ZEALAND UNIVS. L. REV. 1135, 1137 (2017) (discussing dignity as a central component of TJ); see also David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17, 20 (2008) (observing that TJ examines “the law’s impact on emotional life and psychological well-being”).
3. See Perlin, *supra* note 2, at 1137.
4. See generally, e.g., THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE (Nigel Stobbs et al. eds., 2019) (multi-contributor volume of works about various aspects of TJ research, methodology, and practice); *Therapeutic Jurisprudence: Today & Tomorrow*, 63 INT’L J.L. & PSYCHIATRY 1 (2019) (symposium collection of articles about various TJ-related topics); David C. Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, 75 U. MIAMI L. REV. (forthcoming 2021) (manuscript at Section II.A), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3777552&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3777552&download=yes) [https://perma.cc/E3JL-JKD9] (detailing areas of TJ expansion). The *University of Miami Law Review* article and this Article will be available on my Social Science Research Network page. See Archive of Scholarly Papers by David C. Yamada, SOC. SCI. RSCH. NETWORK, [https://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=506047](https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=506047) [https://perma.cc/6YEC-AJK4] (last visited Mar. 30, 2021).
5. See David B. Wexler, *Mental Health Law and the Seeds of Therapeutic Jurisprudence*, in THE ROOTS OF MODERN PSYCHOLOGY AND LAW: A NARRATIVE HISTORY 79 (Thomas Grisso & Stanley L. Brodsky eds., 2018) (stating that TJ’s birth

the realm of legal education, with law faculty from around the world deeply engaged in TJ-related work.<sup>6</sup> TJ-affiliated scholars have produced a significant body of work, including hundreds of articles in law reviews and interdisciplinary journals, numerous academic and professional books, and other intellectual contributions.<sup>7</sup> Furthermore, in 2017, after decades of operating as a loose network without a central affiliation point, several dozen law faculty, judges, lawyers, scholars, and practitioners from other disciplines gathered at an international law and mental health conference in Prague, Czech Republic, to launch the International Society for Therapeutic Jurisprudence (ISTJ)—a non-profit organization dedicated to public education about TJ.<sup>8</sup> As of October 2020, the ISTJ had approved chapters for France, Ibero-America, India, Ireland, Israel, Japan, Nepal, North America, Oceania, Puerto Rico, and the United Kingdom.<sup>9</sup>

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can be traced to a 1987 conference presentation given by Wexler); *see also* Amy T. Campbell & Kathy Cerminara, *Foreword: A Tribute to David Wexler Through a Forward-Looking Agenda for Therapeutic Jurisprudence Editorial*, 63 INT'L J.L. & PSYCHIATRY 1 (2019) (stating that David Wexler developed TJ in partnership with Bruce Winick).

6. For example, the current Board of Trustees and Global Advisory Committee of the International Society for Therapeutic Jurisprudence includes law faculty from Australia, Canada, France, India, Israel, Japan, New Zealand, the United Kingdom, and the United States.
7. *See TJ Bibliography*, INT'L SOC'Y FOR THERAPEUTIC JURIS., <https://intltj.com/bibliography/> [<https://perma.cc/X4HH-QZ6X>] (last visited Mar. 30, 2021). This collective body of work includes hundreds of law review and journal articles with TJ themes. *See id.* In addition to the TJ Bibliography, there are a variety of valuable resources available from other sources. *See, e.g.*, ABSTRACTS OF THE XXXVI<sup>TH</sup> INTERNATIONAL CONGRESS ON LAW AND MENTAL HEALTH (David N. Weisstub ed., 2019) (dedicated stream of panels devoted to TJ at the biennial International Congress on Law and Mental Health, hosted by the International Academy of Law and Mental Health); THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JUSTICE, *supra* note 4 (a multi-contributor volume on TJ methodology and practice); *see also, e.g.*, ISTJ BLOG, <https://mainstreamtj.wordpress.com/> [<https://perma.cc/D86G-7KDG>] (last visited Mar. 30, 2021) (blog with an international contributor base and readership).
8. *See* David Yamada, *Launched in Prague: The International Society for Therapeutic Jurisprudence*, MINDING THE WORKPLACE (July 14, 2017), <https://newworkplace.wordpress.com/2017/07/14/launched-in-prague-the-international-society-for-the-rapeutic-jurisprudence/> [<https://perma.cc/AT62-AR6B>] (describing the launch event for the ISTJ); *see* INT'L SOC'Y FOR THERAPEUTIC JURIS., <https://intltj.com> [<https://perma.cc/47XU-9MA4>] (last visited Mar. 30, 2021).
9. *See Chapters/Interest Groups*, INT'L SOC'Y FOR THERAPEUTIC JURIS., <https://www.intltj.com/chapters-interest-groups/> [<https://perma.cc/69JE-3T5H>] (last visited Mar. 30, 2021).

Notwithstanding these advances, TJ does not enjoy a mainstream presence in legal education.<sup>10</sup> Significantly, TJ lacks the type of elite American law school affiliation that, by comparison, elevated the stature and visibility of prominent legal theories during the last century, such as Legal Realism at Yale and Columbia,<sup>11</sup> Law and Economics at the University of Chicago,<sup>12</sup> and Critical Legal Studies at Harvard.<sup>13</sup> In addition, the leadership structure of the TJ community has yet to develop a comprehensive strategy for expanding awareness of the field in legal education.

Consequently, TJ's presence in law school curricula, including doctrinal courses, seminars, skills courses, and clinics, remains limited.<sup>14</sup> Although no official listing exists, Michael Perlin has informally canvassed professors within the TJ community to identify curricular offerings that emphasize or cover TJ.<sup>15</sup> Suffice it to say that, based on this survey, TJ's presence in law school classrooms and clinics is not exactly overwhelming.<sup>16</sup>

If TJ is to enjoy greater influence in the realms of legal practice and the making of law and policy, then it must expand its presence in the standard law school curriculum. Accordingly, this Article aspires to provide guidance and suggest resources towards that end. Part I of this Article considers the ways in which TJ can be introduced into

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10. This is the Author's opinion, grounded in a legal academic career of nearly thirty years and an increasing leadership role in the therapeutic jurisprudence community during the past ten years. Legal realism, law and economics, and various branches of Critical Legal Studies are among the major theoretical frameworks that I would include in this subjective assessment.
  11. See Michael Steven Green, *Legal Realism as Theory of Law*, 46 WM. & MARY L. REV. 1915, 1917 (2005) (observing that legal realism flourished at Yale and Columbia law schools during the 1920s and 1930s). See generally LAURA KALMAN, *LEGAL REALISM AT YALE, 1927–60* (2011).
  12. See Robin I. Mordfin & Marsha Ferziger Nagorsky, *Chicago and Law and Economics: A History*, U. CHI. L. SCH. (Oct. 11, 2011), <https://www.law.uchicago.edu/news/chicago-and-law-and-economics-history> [https://perma.cc/KG82-DBAV]; see Marsha Ferziger Nagorsky, *Law and Economics 2.0*, U. CHI. L. SCH. (Sept. 29, 2011), <https://www.law.uchicago.edu/news/law-and-economics-20> [https://perma.cc/4SAQ-9HEQ].
  13. See William E. Nelson, *The Importance of Scholarship to Law School Excellence*, 87 FORDHAM L. REV. 939, 952–53 (2018) (discussing the influence of critical legal studies at Harvard).
  14. See Yamada, *supra* note 4 (manuscript at 54).
  15. See generally Michael L. Perlin, "A Self-Ordained Professor's Tongue": *Therapeutic Jurisprudence in the Classroom*, INT'L. SOC'Y FOR THERAPEUTIC JURIS., OCCASIONAL PAPERS SER., no. 1, Oct. 24, 2020, at 1, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3704764](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3704764) [https://perma.cc/GQD9-5DSQ].
  16. See *id.* at 13–33 (reporting survey results).

law school courses.<sup>17</sup> This will include a detailed discussion of my initial design and teaching of a Law and Psychology Lab. This design is built around TJ principles and applications and was launched in the Spring of 2020 at Suffolk University Law School in Boston.<sup>18</sup> Part II of this Article is a bibliographical essay discussing resources that can be used as assigned and recommended reading in courses incorporating some TJ component.<sup>19</sup>

Before proceeding, let me acknowledge that legal educators who possess a baseline familiarity with therapeutic jurisprudence form the primary intended readership for this Article. Especially for those who are relatively new to TJ, my article titled *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, provides a thorough introduction to the field and can be regarded as a companion piece to this one.<sup>20</sup> That article also includes a deep well of citations for law teachers and students who seek additional content to supplement sources listed and discussed here.<sup>21</sup>

## I. INCORPORATING THERAPEUTIC JURISPRUDENCE INTO THE LAW SCHOOL CURRICULUM

### A. *Why TJ?*

Subject-matter coverage and credit hours in any professional degree program should be regarded as precious commodities, and legal education is no exception. The introduction of new ideas and content into the law school curriculum should be justified on the grounds that they benefit students by enhancing their education and eventual professional practices. Thus, in considering why TJ concepts and content merit inclusion in the law school curriculum, I start with TJ co-founder David Wexler's two-pronged framework for engaging in TJ inquiries: Therapeutic Design of the Law (Therapeutic Design) and Therapeutic Application of the Law (Therapeutic Application).<sup>22</sup> Therapeutic Design examines whether legal rules and procedures have therapeutic or anti-therapeutic properties, while Therapeutic Application examines whether legal actors are practicing and applying the law in a therapeutic or anti-

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17. See *infra* Part I.

18. See *infra* Section I.C.

19. See *infra* Part II.

20. See generally Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, *supra* note 4.

21. See generally *id.*

22. See David B. Wexler, *The DNA of Therapeutic Jurisprudence*, in *THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at 3, 6–7.

therapeutic manner.<sup>23</sup> This simple framework, which is quickly gaining currency within the TJ community, and serves as a conceptually convenient way of analyzing law, procedure, and the conduct of legal actors and institutions.<sup>24</sup>

In terms of Therapeutic Design, TJ provides law students with a useful lens for evaluating current laws, legal procedures, and legal institutions, with an eye toward prescribing and engaging in law reform activities.<sup>25</sup> Along with the critical considerations of due process, civil liberties, civil rights, and economic efficiency, Therapeutic Design suggests that we should also regard well-being, dignity, compassion, and psychological health as desirable outcomes in law and legal procedures.<sup>26</sup> These values, in turn, can inform how we analyze substantive areas of law and policy and weigh potential reforms. Accordingly, Therapeutic Design perspectives can enhance doctrinal courses, seminars, and possibly student articles for scholarly law journals.

In terms of Therapeutic Application, TJ offers insights and tools for legal practice that support the dignity and interests of clients and help lawyers derive greater satisfaction from their work.<sup>27</sup> It follows that Therapeutic Application perspectives are especially relevant in clinical and legal skills courses. In these courses, students may apply TJ principles to a full panoply of lawyering tasks, including client counseling and advising, preventive planning, negotiation and dispute resolution, and legal and policy advocacy.<sup>28</sup>

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23. *See id.* at 4–7 (explaining the evolution of the Therapeutic Design/Therapeutic Application model).

24. *See, e.g.,* Nigel Stobbs, Lorana Bartels & Michel Vols, *Therapeutic Jurisprudence—A Strong Community and Maturing Discipline*, in *THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at 15, 17 (discussing Therapeutic Design/Therapeutic Application model); Michel Vols, *Theory and Methodology of Therapeutic Jurisprudence*, in *THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at 59, 69–71 (discussing Therapeutic Design/Therapeutic Application model); Michael L. Perlin, “*Changing of the Guards*”: David Wexler, *Therapeutic Jurisprudence, and the Transformation of Legal Scholarship*, 63 *INT’L J.L. & PSYCHIATRY* 3, 6 (2019) (discussing Therapeutic Design/Therapeutic Application model).

25. *See* Yamada, *supra* note 4 (manuscript at 60).

26. *See id.* The bibliographical materials discussed in Part II, Sections A, C–D are relevant to this point.

27. *See generally id.* The bibliographical materials discussed in Section III.B are relevant to this point.

28. *See id.* The bibliographical materials discussed in Section II.A are relevant to this point.

In sum, TJ offers both theory that can enhance our understanding of the law and applications for effective practice.<sup>29</sup> It delivers tangible value to law students and thus merits an appropriate place in the law school curriculum.

*B. Incorporating TJ Content into Courses and Clinics*

This Section classifies and discusses the primary modes for introducing TJ into the law school curriculum, including standalone courses, single session modules, clinical and skills courses, a program of courses, and hybrid courses. As part of this Article, I devote an extended look to a new Law and Psychology Lab course that I am now offering at Suffolk University Law School in Boston, which emphasizes TJ applications to theory, doctrine, and practice.<sup>30</sup> Attentive readers will also note multiple citations to Michael Perlin's aforementioned new paper, "*A Self-Ordained Professor's Tongue*": *Therapeutic Jurisprudence in the Classroom*, which I strongly recommend as a complementary resource for those who wish to review, in considerably more granular detail, the myriad ways in which individual faculty have incorporated TJ into their classrooms and clinics.<sup>31</sup>

1. A Standalone Course in TJ<sup>32</sup>

TJ lends itself well to a standalone course format, either centering on TJ generally, or applying a TJ perspective to a doctrinal law topic. A general TJ course might cover: (1) an overall introduction to TJ's history and development; (2) TJ applications to specific areas of law, procedure, and legal institutions (i.e., Wexler's Therapeutic Design); (3) TJ applications to the practice of law (i.e., Wexler's Therapeutic Application); and (4) relevant interdisciplinary content from the

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29. See *infra* Section I.B.1–.5.

30. See *infra* Section I.C.

31. See generally Perlin, *supra* note 15, at 13–33 (reporting on Perlin's survey). In 2018, Perlin accessed TJ social media platforms to ask TJ-affiliated faculty how they are incorporating therapeutic jurisprudence in their courses. See *id.* He put the findings of this informal survey into a privately circulated memorandum, which he shared with a handful of faculty members associated with the International Society for the ISTJ. See *id.* During the process of writing this Article, I knew that I wished to reference his survey, so I suggested that he review and update it for purposes of turning it into the first number of an ISTJ Occasional Papers series that has been in the discussion stages for some time. See *id.* I am delighted that he opted to do so. See *id.* Using this Article and his paper, faculty who wish to consider ways to incorporate TJ into their courses will have plenty of information and advice.

32. For brief descriptions of standalone TJ courses, which are broadly described in this Section, see *id.* at 13–17.

social sciences. Although papers and projects are likely to be the primary forms of graded assignments, essay examinations could be administered as well.

A course applying TJ perspectives to a doctrinal area of law might cover: (1) an overall introduction to TJ; (2) TJ applications to that specific area of law (i.e., Wexler's Therapeutic Design); (3) TJ applications to the practice of that specific area of law (i.e., Wexler's Therapeutic Application); and (4) relevant interdisciplinary content from the social sciences. Here too, papers, projects, and essay examinations could comprise graded assignments. Materials to support such courses are especially abundant in TJ's original core areas of criminal law and justice, mental health and mental disability law, and problem-solving courts. Suggestions for readings are included below.<sup>33</sup>

## 2. Single Session Module or Short Series of Classes<sup>34</sup>

TJ may be taught as a single session module or as a short series of classes, comprising a component of a doctrinal, theoretical, or skills-related course. Obviously, the content of such sessions will be shaped by the overall subject matter of the specific course. They can include readings that introduce TJ to the students and focus on a topic directly related to the course. In addition, assigned and suggested readings can guide students who are working on course papers or projects.

In the absence of a groundswell movement to incorporate TJ into the law school curriculum at a mainstreamed level,<sup>35</sup> the individual module may be one of the most effective and practical ways to introduce this field to larger numbers of law students. David Wexler has advocated for this approach in his paper, *A Proposal for Basic and Brief TJ Education: Promoting Academic, Ethical, and Vocational Objectives*.<sup>36</sup> Wexler states that a "very brief introduction to TJ, then, should guide future lawyers on how to think about the law *and* its application, and this process is a clear merging of

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33. See *infra* Part II.

34. For brief descriptions of courses including significant TJ components, see Perlin, *supra* note 15, at 17–21, and for brief descriptions of courses containing TJ content or single-session TJ modules, see *id.* at 21–33.

35. See *supra* text accompanying notes 10–14.

36. David B. Wexler, *A Proposal for Basic and Brief TJ Education: Promoting Academic, Ethical, and Vocational Objectives* 3, 5, 8 (Ariz. Legal Stud. Discussion Paper, Paper No. 20-02, 2020), <https://ssrn.com/abstract=3523226> [<https://perma.cc/PL3-S3U8>].

vocationally useful material with an appreciation of the contributions of social science to the development of law and lawyering.”<sup>37</sup>

I can attest that a single session is sufficient to introduce basic TJ concepts and applications. I have included a one-session TJ component in my seminar covering public interest law, taught as a weekly two-hour offering to groups of approximately twelve to eighteen students. My purpose behind the single session is to illustrate how TJ principles and applications can advance the practice of law and the pursuit of law reform on behalf of the public interest. This introductory session has generated active class discussions and prompted some students to use TJ as a framing perspective in their required term projects.

### 3. Clinical and Skills Courses

Whether via a single session or ongoing series of discussions, TJ can be seamlessly introduced into all types of skills-related offerings. These include litigation and transactional clinics, externship programs, legal writing courses, policy courses, simulation courses in advocacy, client counseling, and dispute resolution.<sup>38</sup> TJ insights, especially those that fall under the umbrella of Wexler’s Therapeutic Application, can develop lawyering skills, inform self-reflective journal entries, contribute to research projects, and provide interesting fodder for class discussions.<sup>39</sup>

### 4. Program of Courses

Perhaps the “gold standard” is a program or deep series of courses with TJ content. The only known example of this is a now-terminated online program in mental disability law founded by Michael Perlin at the New York Law School.<sup>40</sup> This program featured thirteen courses spanning all areas of mental disability law, with an integral TJ component in each, taught by multiple faculty members.<sup>41</sup> When the program was still operational, Perlin wrote about it with great enthusiasm in an article for the *New York Law School Law Review*.<sup>42</sup> While replicating this model (or any

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37. *Id.* at 5.

38. *See generally* Perlin, *supra* note 15, at 13–33 (reporting on Perlin’s survey that lists various courses offered on the topic of TJ).

39. *See infra* Section II.B.

40. *See* Perlin, *supra* note 15, at 18.

41. *Id.* at 18–19.

42. *See* Michael L. Perlin, “Ain’t No Goin’ Back”: *Teaching Mental Disability Law Courses Online*, 51 N.Y. L. SCH. L. REV. 991, 992 (2006).

approximation) would be an ambitious undertaking, awareness of its former existence may inspire future initiatives.

### 5. Hybrid Approach

A hybrid approach to teaching TJ blends significant theoretical and doctrinal content and student work with practical applications.<sup>43</sup> I discuss my creation of such an offering immediately below.

#### *C. Hybrid Approach Blending Theory and Application: A Law and Psychology Lab with a TJ Framework*

In the Spring semester of 2020, I debuted a new course at Suffolk University Law School: the Law and Psychology Lab (LPL), which combined two major components: (1) a law and psychology seminar, containing significant TJ content; and (2) a workshop covering individual and group student projects.<sup>44</sup> The LPL was offered as a four-credit course, meeting twice a week for two-hour sessions, typically a Monday seminar class and a Wednesday workshop class.<sup>45</sup> The course was purposefully scheduled to start at 6:00 PM, to enable our evening division students to enroll.

My decision to create the LPL was based on my deepening conviction that a course blending a substantive introduction to TJ and completion of individual and group projects would be valuable to students and expose them to new ways of thinking about and applying the law. I decided to use the name “Law and Psychology Lab” mostly for marketing clarity, assuming that calling it the “Therapeutic Jurisprudence Lab” might require too much explanation and needlessly discourage enrollment.

In the following discussion, I describe and explain the basic features and components of the course, review the experience of teaching the LPL for the first time, and discuss my plans for its offering in the Spring of 2021.<sup>46</sup>

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43. *See infra* Section I.C.

44. *See* DAVID YAMADA, SUFFOLK UNIVERSITY LAW SCHOOL, LAW AND PSYCHOLOGY LAB, COURSE OVERVIEW 1 (Spring 2020), <https://perma.cc/KL8Z-EYQU>. I have not included the Spring 2021 course overview with this Article. However, those who would like to read the updated and revised overview may contact me at [dyamada@suffolk.edu](mailto:dyamada@suffolk.edu), with “Request LPL 2021 Syllabus” in the subject line.

45. *Id.* at 1–2.

46. *See infra* Sections I.C.1–4.

1. Major Course Features and Components<sup>47</sup>

Here were the main learning goals, as articulated in the course overview:

- a. “Gain an understanding of major issues concerning law and psychology”;
- b. “Gain an understanding of the field of therapeutic jurisprudence”;
- c. “Hone research and writing skills in an applied, interdisciplinary context”;
- d. “Develop projects independently and in a group setting, the results of which may be shared publicly”;
- e. “Develop perspectives on the law and legal profession that could enhance your career”; and
- f. “??? (What objectives would you like to add?)”<sup>48</sup>

The Monday seminar classes typically consisted of discussions about assigned readings, overview lectures, occasional guest speakers, and student presentations. The Wednesday workshop classes included planning sessions, meetings with group project partners, roundtable discussions about projects, and group presentations.

I opted to create an array of graded assignments that blended personal reflection, more traditional legal research and writing, and active participation in the course. These graded components included: A series of journal entries on specified and flexible topics, worth twenty-five percent of the final grade, covering the seminar component and readings; individual and group projects, worth fifty percent of the final grade, covering the workshop component; and class participation and presentations, worth twenty-five percent of the final grade, covering both the seminar and workshop components.<sup>49</sup> Individual projects were developed in consultation with the

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47. See YAMADA, *supra* note 44, at 1. This Section references my Spring 2020 LPL syllabus.

48. *Id.*

49. *Id.* at 2–3.

instructor. The group projects were developed in consultation with the instructor and outside groups and individuals.

Students also were required to complete a short online course in Psychological First Aid (PFA) offered by Johns Hopkins University through Coursera, a major provider of online courses.<sup>50</sup> I used the course to help foster a trauma-informed perspective in the students, especially when dealing with clients. Because this “course within a course” is an unusual assignment, I say more about it below.<sup>51</sup>

In addition to assigning various articles and online readings, I required three books for the course:

- a. *The Methodology and Practice of Therapeutic Jurisprudence* (2019).<sup>52</sup> This was intended to be the main textbook, providing an introduction to TJ theory and applications.
- b. Bessel A. van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (2014).<sup>53</sup> Because much of the pre-planned work in the course involved individuals who have experienced traumatic events, I wanted students to have an accessible but detailed treatment of psychological trauma by a leading expert.
- c. Bruce J. Winick, *The Reimagined Lawyer* (2019).<sup>54</sup> Bruce Winick’s final work, published posthumously, provides an excellent foundation for practicing law in a TJ mode.

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50. *Id.* at 2.

51. *See infra* Section I.C.2.

52. *See generally* THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE, *supra* note 4.

53. *See generally* BESSEL A. VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2015).

54. *See generally* BRUCE J. WINICK & SEAN BETTINGER-LOPEZ, *THE REIMAGINED LAWYER* (2019).

## 2. Psychological First Aid Course<sup>55</sup>

In designing the LPL, I sought concise but authoritative ways to introduce students to the concept of trauma-informed professional practice. Among other things, I discovered the Johns Hopkins University's Psychological First Aid course, taught by psychiatry and behavioral sciences Professor George Everly, Jr., a leading authority on PFA. The course takes about between eight and ten hours to complete and is free of charge.

Everly developed his PFA model to provide first responders who are not trained as counselors with knowledge and training to assist those who have experienced traumatic events—e.g., displacement due to wars, severe weather events, and other human-made and natural disasters.<sup>56</sup> He uses what he called the “RAPID model: Reflective listening, Assessment of needs, Prioritization, Intervention, and Disposition.”<sup>57</sup>

At no time does PFA call upon someone to render a clinical diagnosis.<sup>58</sup> Rather, PFA is designed to help non-clinical individuals facilitate emotional and practical support for those who have experienced traumatic events.<sup>59</sup> This may include, when necessary, referrals to professional mental health and medical care, as well as other tangible forms of assistance.<sup>60</sup> I saw the course as an ideal vehicle for helping students to understand when individuals might be experiencing trauma, while also gaining awareness of ethical considerations and boundaries when behaviors potentially associated with traumatic events arise in an attorney-client setting.

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55. This Section references the Johns Hopkins Psychological First Aid course. *Psychological First Aid*, JOHNS HOPKINS U., <https://www.coursera.org/learn/psychological-first-aid#about> [<https://perma.cc/E2WM-2UKG>] (last visited Mar. 30, 2021); see David Yamada, *Applying Psychological First Aid to Workplace Bullying and Mobbing*, MINDING THE WORKPLACE (Sept. 29, 2019), <https://newworkplace.wordpress.com/2019/09/29/applying-psychological-first-aid-to-workplace-bullying-and-mobbing/> [<https://perma.cc/2UAB-4L9X>] (summary adapted from a post on my professional blog).

56. See *Psychological First Aid Course*, *supra* note 55.

57. *Id.*

58. Yamada, *supra* note 55.

59. See *About PFA*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/treatments-and-practices/psychological-first-aid-and-skills-for-psychological-recovery/about-pfa> [<https://perma.cc/6QKU-DCKF>] (last visited Mar. 30, 2021).

60. See *id.*

### 3. Initial Course Offering (Spring 2020)

Most of the planning for the course was completed in the Fall of 2019, and efforts to publicize it through the law school's internal media began late in the fall term. The Deans gave me permission to limit enrollment, which would foster the creation of a cohort experience and allow me to work closely with the students. The promotional efforts succeeded, as eleven students enrolled, accompanied by a long wait list.

I am certain that many other faculty and students will be in agreement when I say this, but I divide the experience of the 2020 Spring semester into two distinctive chapters, namely, before and after the move to online teaching, prompted by the emerging coronavirus pandemic.<sup>61</sup> The first half of the semester, taught residually, was very successful. The students were very engaged in our class discussions and planning meetings. We had several guest speakers, both in person and via Zoom. Student projects were beginning to stir nicely. Personally, it was a very enjoyable, even renewing, teaching experience.

During spring break, however, my university announced that we would spend the rest of the term teaching online because of the looming public health crisis. Both our law school experiences and our lives overall would change suddenly and dramatically, when the Greater Boston area emerged as a COVID-19 hotspot as the rest of the semester unfolded.<sup>62</sup> Fortunately, our group had developed such a positive rapport before we went completely online, because that dynamic helped to save the course. We did our best to complete the semester in a fashion as close as possible to that of a residential course. However, class discussions were a bit more subdued, and the stressors of that time understandably affected students' morale.

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61. See generally *COVID-19 Higher Education Control Plan*, SUFFOLK UNIV., <https://www.suffolk.edu/-/media/suffolk/documents/student-life/health-and-wellness/coronavirus-health-advisory/campus-reopening-2020/20201120-suffolk-covid-19-higher-education-control-plan.pdf> [https://perma.cc/V289-JAN6] (Nov. 17, 2020) (demonstrating the volume of protocols and changes the University made to protect students and faculty).

62. See Marc Fortier et al., *Gov. Baker: Mass. Is Now a 'National Hot Spot' for Coronavirus Infections*, NBC BOS., <https://www.nbcboston.com/news/local/mass-gov-baker-to-update-public-on-coronavirus-response/2111887/> [https://perma.cc/5H4T-U82F] (Apr. 22, 2020, 11:41 PM).

Ultimately, the informal feedback and formal course evaluations from students were extremely helpful.<sup>63</sup> Even with this dramatic mid-semester change, students' responses to the course were very positive, with some saying it was one of their best experiences in law school. The main criticisms of the course were about the pacing and workload. The former was a valid point. Between my teaching the course for the first time and our switch to the online format, a lot of projects were finished very late in the term, and I should have managed the workflow more efficiently. The latter criticism was somewhat valid, although students were forewarned on multiple occasions that this would require considerably more work than a standard four-credit doctrinal course. Overall, I was very happy with the student feedback, which confirmed my beliefs that the general design of the course was sound.

More concretely, some of my observations on the work done in the course are as follows:

First, I was very pleased with students' individually designed projects. Most of the projects were in the forms of reports and briefing papers. They covered a range of interesting topics, such as media characterizations of sex trafficking, prohibition of "lunch shaming" practices, and the psychology of police investigations that elicit false confessions, to name a few. Each student discussed their project with the group on multiple occasions, culminating in individual presentations at the end of the semester.

Second, our group projects generally went well, but the second half challenges of working remotely, as well as an instructor who should have been more specific with instructions at times, did make some experiences more frustrating than necessary. We worked with outside organizations and individuals on projects concerning stigmatizing mental illness in litigation, bullying of elders in public housing, and psychological harassment and abuse within faith organizations. The group projects were in the forms of reports, papers, and evaluations, with a coaching or consulting purpose.

Third, I was delighted with the depth and breadth of many student journal entries. I was not sure what to expect when I included this as a graded part of the course. In fact, I wondered if students would see the journal entries as busy work and turn in perfunctory commentaries. However, I enjoyed reading many thoughtful, reflective entries that showed genuine engagement with the assigned

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63. The students were asked to complete journal entries evaluating their experiences in the course and anonymous evaluations via the law school's formal processes. The journal entries and a compilation of the course evaluations are on file with the author.

readings and our class discussions. Many students wrote entries relating the course materials and discussions to their own lives and professional interests.

Fourth, I was pleasantly surprised at the students' very positive responses to the PFA course, as reflected in both class discussion and in student journal entries. The PFA course exceeded my expectations in terms of encouraging students to think how to support clients who may have experienced traumatic situations.

Fifth, I was disappointed in the evening student enrollment numbers, despite extensive efforts to publicize the course with that group. However, my honesty about the workload may have scared off potential evening division enrollees, many of whom hold down demanding jobs during the day and also may have family responsibilities.

Finally, the required readings were a mixed success. For class discussion in the seminar component, assignments included selected chapters from the three required books, assorted articles, and online readings. At times, the readings prompted active class discussions; on other occasions, less so. Missing, I believe, was a standalone law review article that comprehensively canvassed the field of TJ, covering its history, development, and contemporary state of the art, in ways that could serve as an ongoing text. As explained below, I would put myself to work at fulfilling that need.

#### 4. Plans Going Forward

The Spring 2021 offering of the LPL was delivered online, due to the ongoing coronavirus pandemic. Based on student feedback and my own evaluation of the course, I retained the basic structure that I used the first time around, but with a fair number of tweaks and revisions, such as:

- a. Making greater use of the dual framing device of Wexler's Therapeutic Design and Therapeutic Application;
- b. Engaging in better timing of assignments and slightly modifying the overall student workload;
- c. Assessing how to provide the best possible learning experience, using the Zoom videoconferencing platform;
- d. Adopting an express thematic focus on trauma-informed lawyering for the group projects; and

- e. Encouraging students to engage in deeper research, using the wealth of materials generated by TJ scholars, judges, and practitioners.

As stated above, in terms of introducing basic TJ theory and applications to the students, my biggest frustration in the first offering of the LPL was the lack of a law review article that provided a thorough and up-to-date survey of the field. *The Methodology and Practice of Therapeutic Jurisprudence*,<sup>64</sup> a multi-contributor volume edited by my colleagues Nigel Stobbs, Lorana Bartels and Michel Vols, is a superb resource. However, its greatest value is to those who are somewhat grounded in TJ and ready to do more advanced work. I quickly understood that I needed an article-length treatment of TJ that included the following components: an introduction to the history and development of TJ; exploration of TJ's theoretical and doctrinal bases; identification of major critiques and reviews of TJ; a description of TJ's expanding subject-matter coverage; and an assessment of TJ's contemporary presence in legal education and the legal profession.

In fact, for many years, I had perceived the need for a full-length law review article that surveys and assesses TJ from a meta-level perspective. After making unsuccessful efforts to persuade several colleagues to write such an article, I finally took it upon myself to do so. The result, after more than two years of work, is *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*,<sup>65</sup> which I have characterized as a companion piece to this Article. It will be the primary introductory text for future offerings of the LPL.

## II. RESOURCES FOR TJ-RELATED COURSE PLANNING AND ASSIGNMENTS

Part II of this Article is provided for those who are planning a new course or supplementing an existing one with TJ content. The following annotated listings cover major resources that can be accessed to introduce TJ into law school curricular offerings of all types.<sup>66</sup> For additional materials, the ISTJ hosts a searchable online database of articles and books related to TJ.<sup>67</sup> In addition, my

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64. See generally THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE, *supra* note 4.

65. See Yamada, *supra* note 4.

66. See *infra* Part II.

67. *TJ Bibliography*, *supra* note 7.

aforementioned TJ survey article<sup>68</sup> provides many more bibliographic citations—organized by subject-matter—than I am able to discuss here.

A. *Introductions to TJ*

1. Histories and Short Overviews

The origins and early growth of TJ are discussed in TJ co-founder David Wexler's 2018 book chapter, *Mental Health Law and the Seeds of Therapeutic Jurisprudence*,<sup>69</sup> and in *An Introduction to David Wexler, the Person Behind Therapeutic Jurisprudence*, which contains an interview with and profile of Wexler conducted by legal historian Constance Backhouse.<sup>70</sup> In 2014, Wexler and Barbara Babb co-authored an entry on TJ in the *Encyclopedia of Criminology and Criminal Justice*, emphasizing the field's groundings in criminal law.<sup>71</sup> Michael Perlin's *Have You Seen Dignity? The Story of the Development of Therapeutic Jurisprudence* offers a brisk historical summary of TJ, punctuated with personal accounts of his significant involvement in this field.<sup>72</sup>

2. Comprehensive Surveys

Two resources discussed earlier provide comprehensive surveys of TJ. First, my article, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, offers a detailed examination of the history, development, and current state of the art of TJ, accompanied by extensive citations.<sup>73</sup> It is designed in part to serve as a primer for newcomers to the field, and thus, it is appropriate as either assigned or recommended reading in courses that include a TJ component.

Second, *The Methodology and Practice of Therapeutic Jurisprudence* is a multi-contributor volume that emphasizes TJ

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68. See generally Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, *supra* note 4.

69. See Wexler, *supra* note 5, at 79.

70. See Constance Backhouse, *An Introduction to David Wexler, the Person Behind Therapeutic Jurisprudence*, 1 INT'L J. THERAPEUTIC JURIS., 1, 7–9 (2016) (describing Wexler's work).

71. Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 5202, 5202–11 (Gerben Bruinsma & David Weisburd eds., 2014).

72. See Perlin, *supra* note 2, at 1135–36.

73. See generally Yamada, *supra* note 4.

theory, research methodologies, and practical applications.<sup>74</sup> Global in orientation, it includes authors from Australia, France, India, the Netherlands, New Zealand, South Africa, and the U.S.<sup>75</sup> Sixteen chapters cover topics such as TJ theory, research methodologies, criminal law and procedure, mental disability law, problem-solving courts and the judiciary, legislation and public policy applied to employment law, and compassion as an element of TJ.<sup>76</sup> It is an essential resource for those doing deeper TJ-related research, analysis, and commentary in a multidisciplinary context.

### 3. TJ Frameworks, Theory, Reviews, and Critiques

David Wexler discusses his aforementioned framework of Therapeutic Design and Therapeutic Application in *The DNA of Therapeutic Jurisprudence*.<sup>77</sup> The Therapeutic Design and Therapeutic Application models are becoming a core conceptualization within the field and merit inclusion in any basic introduction to TJ.<sup>78</sup> This model can also provide an ongoing conceptual framework for virtually any TJ-related course.

In addition, Amy Ronner's *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles* proposes that considerations of voice, validation, and voluntary participation should be applied in evaluating whether legal proceedings affirm the dignity of participating parties.<sup>79</sup> It is an especially appropriate article for clinical and skills courses and for discussions of the psychological dimensions of civil litigation, administrative law, and due process.

Deeper investigations of TJ's theoretical underpinnings should start with Bruce Winick's seminal work: *The Jurisprudence of Therapeutic Jurisprudence*.<sup>80</sup> There, Winick explains how TJ "proposes the exploration of ways in which, consistent with principles of justice and other constitutional values, the knowledge,

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74. See generally THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE, *supra* note 4.

75. See *id.* at xi–xv (containing biographies of all contributors).

76. See *id.* at vii–viii (table of contents).

77. See Wexler, *supra* note 22, at 3, 6.

78. See Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, *supra* note 4 (manuscript at 23–24).

79. Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*, 71 U. CIN. L. REV. 89, 94–95 (2002) (citations omitted).

80. Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 PSYCH. PUB. POL'Y & L. 184, 185 (1997).

theories, and insights of the mental health and related disciplines can help shape the development of the law.”<sup>81</sup> For many years, the TJ community rested on the foundations of this work, to the point where it appeared to be a somewhat under-theorized school of legal thought. Fortunately, a new generation of TJ scholars is bringing deeper theoretical inquiries to the field, as exemplified by these works that should prove to be especially useful to students doing interdisciplinary and empirical research:

- a. Nigel Stobbs opines that TJ needs to develop a stronger theoretical base, discusses TJ’s relationship with adversarial justice, and offers a model for conducting TJ research and analysis in *Therapeutic Jurisprudence as Theoretical and Applied Research*.<sup>82</sup>
- b. Michel Vols explores the nature of TJ-related legal research and methodology and proposes a four-step set of methodological guidelines for empirical and applied TJ research in *Theory and Methodology of Therapeutic Jurisprudence*.<sup>83</sup>
- c. Lorana Bartels and Anthony Hopkins assert that TJ is grounded in a psychology of compassion and discuss the implications for work within the field in *Paying Attention to the Person: Compassion, Equality, and Therapeutic Jurisprudence*.<sup>84</sup>
- d. Doron Shultziner and Itai Rabinovici examine ties between TJ, human dignity, and humiliation in *Human Dignity, Self-Worth, and Humiliation: A Comparative Legal-Psychological Approach*.<sup>85</sup>
- e. Anna Kawalek summarizes some of the weaknesses in TJ theorizing and proposes the first TJ-specific tool for conducting

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81. *Id.*

82. *See generally* Nigel Stobbs, *Therapeutic Jurisprudence as Theoretical and Applied Research*, in *THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at 29, 29–58.

83. *See generally* Vols, *supra* note 24, at 59–81.

84. *See generally* Anthony Hopkins & Lorana Bartels, *Paying Attention to the Person: Compassion, Equality, and Therapeutic Jurisprudence*, in *THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE*, *supra* note 4, at 107–28.

85. *See* Doron Shultziner & Itai Rabinovici, *Human Dignity, Self-Worth, and Humiliation: A Comparative Legal-Psychological Approach*, 18 *PSYCH. PUB. POL’Y & L.* 105, 105, 107–08, 111, 114 (2012).

empirical research in *A Tool for Measuring Therapeutic Jurisprudence Values During Empirical Research*.<sup>86</sup>

Reviews and critiques of TJ have tended to emphasize the field's original areas of criminal law and justice, mental health and mental disability law, and problem-solving courts.<sup>87</sup> Deeper examinations of TJ should include coverage of criticisms of the field, especially for students who are new to it and would thus benefit by weighing ongoing debates about its usefulness.<sup>88</sup> Two articles provide a strong foundation for understanding core criticisms of TJ:

First, Christopher Slobogin's *Therapeutic Jurisprudence: Five Dilemmas to Ponder*<sup>89</sup> has long been regarded as the leading "friendly" critique of TJ's core orientation and remains very relevant. Slobogin questions how TJ can distinguish itself from other legal theories in claiming to advance well-being, how TJ can define "therapeutic," how it can operate within the vagaries of the empirical research it claims to embrace, how it can favor subgroups for beneficial treatment under the law, and how it can be balanced against competing constitutional and policy priorities.<sup>90</sup>

Second, Ian Freckelton identifies, summarizes, and responds to common criticisms of TJ in *Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence*.<sup>91</sup> These negative reviews have alleged, *inter alia*, that TJ is too paternalistic,<sup>92</sup> conservative and homogeneous,<sup>93</sup> intrusive upon civil liberties,<sup>94</sup> and insular and self-referential.<sup>95</sup> Freckelton responds to each of these criticisms and asserts that many of them are based on a misunderstanding about TJ's essentially modest aspirations of providing a therapeutic perspective on the development of law and policy.<sup>96</sup>

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86. See Anna Kawalek, *A Tool for Measuring Therapeutic Jurisprudence Values During Empirical Research*, 71 INT'L J.L. & PSYCHIATRY 1, 1–3, 12–13 (2020).

87. E.g., Ian Freckelton, *Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence*, 30 T. JEFFERSON L. REV. 575, 575, 578–82 (2008).

88. See *infra* notes 89–108 and accompanying text.

89. Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 PSYCH. PUB. POL'Y & L. 193, 195 (1995).

90. *Id.* at 193.

91. See Freckelton, *supra* note 87, at 583–92 (summarizing and responding to common criticisms of TJ).

92. *Id.* at 585–86.

93. *Id.* at 587–88.

94. *Id.* at 589–90.

95. *Id.* at 590–91.

96. See *id.* at 583–91.

Among the criticisms of TJ canvassed by Freckelton, concerns over paternalism and civil liberties have been among the most frequently recurring ones.<sup>97</sup> Those who wish to explore these issues in greater detail may find two published dialogues useful:

The first occurred between David Wexler and criminal law professor Mae Quinn.<sup>98</sup> In *Therapeutic Jurisprudence and the Rehabilitative Role of the Criminal Defense Lawyer*, Wexler proposed a holistic type of criminal defense practice that focuses on a client's rehabilitative interests at all stages of criminal proceedings, and he invited lawyers, judges, and other criminal justice system stakeholders to join in a dialogue about this topic.<sup>99</sup> Criminal law professor Mae Quinn published a lengthy response to Wexler in *An RSVP to Professor Wexler's Warm Therapeutic Jurisprudence Invitation to the Criminal Defense Bar: Unable to Join You, Already (Somewhat Similarly) Engaged*, where she criticized Wexler's proposal on grounds that it was overly paternalistic towards clients and potentially undermined an attorney's duty to provide zealous advocacy.<sup>100</sup> To further the dialogue, the editors invited both authors to continue their exchange in that same issue of the journal, making for a unique published dialogue in the pages of a law review.<sup>101</sup>

The second exchange occurred between Bruce Winick and disability rights attorney Susan Stefan.<sup>102</sup> In *A Dialogue on Mental Health Courts*, Winick and Stefan engaged in an extended question-and-answer exchange about the merits of mental health courts.<sup>103</sup> Winick, coming from a TJ perspective, advocated for mental health courts as a pragmatic solution to addressing untreated mental illness and as a humane diversion from the criminal justice system.<sup>104</sup> Stefan strongly opposed mental health courts on grounds that they segregate low-income people with psychiatric disabilities from the

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97. See *id.* at 585–86, 589–90.

98. See generally David B. Wexler, *Therapeutic Jurisprudence and the Rehabilitative Role of the Criminal Defense Lawyer*, 17 ST. THOMAS L. REV. 743 (2005).

99. See *id.* at 745–47.

100. See 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, 539 (2007).

101. See *id.* at 592.

102. See generally Susan Stefan & Bruce J. Winick, *A Dialogue on Mental Health Courts*, 11 PSYCH. PUB. POL'Y & L. 507 (2005).

103. See generally *id.*

104. See *id.* at 510–11.

rest of the justice system and grant judges too much flexibility in shaping case resolutions.<sup>105</sup>

Finally, TJ has long recognized its many connections with several other related and overlapping conceptual frameworks and theories, including restorative justice, comprehensive law, and law and emotion.<sup>106</sup> Not infrequently, TJ scholars write in several of these modalities.<sup>107</sup> Although it is beyond the scope of this Article to explore this considerable literature, those who wish to learn more may access a wealth of possible sources.<sup>108</sup>

### B. *Legal Education, Legal Practice, and Lawyering Skills*

In the realm of law school teaching, the categories of clinical education, legal writing, and skills training have attracted the greatest attention from TJ-affiliated faculty. Individually and collectively, they create a practice-relevant scaffolding around Wexler's Therapeutic Application.<sup>109</sup>

TJ co-founder Bruce Winick's final book, *The Reimagined Lawyer* (published posthumously in 2019), is the most fully realized conceptualization we have of an integrated, applied theory of legal practice in a TJ mode.<sup>110</sup> It gathers together nearly a quarter-century of Winick's TJ-related work on fostering healthy attorney-client relationships, preventive lawyering and litigation avoidance, legal problem solving, and the lawyer's role as healer.<sup>111</sup> It is an accessible and relatively short work that can be used for course reading assignments.<sup>112</sup>

Articles that may be useful for faculty and students alike include the following:

#### 1. Clinical Teaching

- a. Bernard Perlmutter explains his use of TJ as a clinical professor in *George's Story: Voice and Transformation Through the*

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105. *See id.* at 511–13.

106. *See* Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, *supra* note 4 (manuscript at Section II.B).

107. *See id.*; *TJ Bibliography*, *supra* note 7.

108. *TJ Bibliography*, *supra* note 7.

109. *See infra* notes 113–31 and accompanying text.

110. *See generally* WINICK & BETTINGER-LOPEZ, *supra* note 54.

111. *See generally id.*

112. *See generally id.*

*Teaching and Practice of Therapeutic Jurisprudence in a Law School Child Advocacy Clinic.*<sup>113</sup>

- b. Susan Brooks brings together her training in law and social work in *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education.*<sup>114</sup>
- c. Amy Ronner joins her knowledge of literature and her teaching of an appellate litigation clinic in *The Learned-Helpless Lawyer: Clinical Legal Education and Therapeutic Jurisprudence as Antidotes to Bartleby Syndrome.*<sup>115</sup>

Scholars from outside of the TJ community have made invaluable contributions that can be included in clinical and skills courses incorporating TJ perspectives.<sup>116</sup> For example, a lot of relevant material can be found in the pages of the *Clinical Law Review*, a peer-reviewed journal hosted by New York University School of Law.<sup>117</sup> Among many useful pieces, Sarah Katz and Deeya Haldar's *The Pedagogy of Trauma-Informed Lawyering*,<sup>118</sup> stands out as especially compatible with a TJ-informed clinical focus.<sup>119</sup>

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- 113. See Bernard P. Perlmutter, *George's Story: Voice and Transformation Through the Teaching and Practice of Therapeutic Jurisprudence in a Law School Child Advocacy Clinic*, 17 ST. THOMAS L. REV. 561, 565–66 (2005) (describing how TJ is used in the Children & Youth Law Clinic).
  - 114. See Susan L. Brooks, *Practicing (and Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education*, 17 ST. THOMAS L. REV. 513, 515–17 (2005).
  - 115. See Amy D. Ronner, *The Learned-Helpless Lawyer: Clinical Legal Education and Therapeutic Jurisprudence as Antidotes to Bartleby Syndrome*, 24 TOURO L. REV. 601, 607–09 (2008).
  - 116. See *infra* text accompanying notes 117–19.
  - 117. See *A Journal of Lawyering and Legal Education*, NYU[LAW], <https://www.law.nyu.edu/journals/clinicallawreview> [<https://perma.cc/9YUW-BHT8>] (last visited Mar. 30, 2021) (containing material from scholars outside the TJ community).
  - 118. See generally Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016) (providing useful resource information for the teaching of TJ in clinical and skills courses).
  - 119. Other recent Clinical Law Review articles pertinent to TJ include: Danielle R. Cover, *Brain-Wise Lawyering for the Clinical Law Student*, 26 CLINICAL L. REV. 421 (2020); Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, 24 CLINICAL L. REV. 201 (2018); Ian Weinstein, *Learning and Lawyering Across Personality Types*, 21 CLINICAL L. REV. 427 (2015); Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317 (2014).

## 2. Legal Writing

All forms of legal writing are worthy focal points for TJ applications.<sup>120</sup> Here are three examples of articles that can inform discussions of legal writing, legal drafting, and legal scholarship:

- a. Shelley Kierstead applies TJ principles to legal writing in *Legal Writing, Therapeutic Jurisprudence, and Professionalism*.<sup>121</sup>
- b. David Wexler explains how TJ can inform revisions of legal forms to encourage healthier resolutions of legal disputes in *Therapeutic Jurisprudence, Legal Landscapes, and Form Reform: The Case of Diversion*.<sup>122</sup>
- c. I include a discussion of student legal scholarship and law journal work in *Therapeutic Jurisprudence and the Practice of Legal Scholarship*.<sup>123</sup>

## 3. Lawyering Skills Generally

Faculty and scholars have produced a considerable amount of literature on TJ and lawyering skills.<sup>124</sup> The following pieces comprise a sampling of resources that can stimulate and encourage rewarding discussions in clinical and simulation courses:

- a. Astrid Birgden draws upon her forensic psychology expertise to examine relationships with resistant criminal clients in *Dealing with the Resistant Criminal Client: A Psychologically-Minded Strategy for More Effective Legal Counseling*.<sup>125</sup>
- b. David Boulding and Susan Brooks offer insights on representing clients with cognitive challenges in *Trying Differently: A*

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120. See *infra* notes 121–23 and accompanying text.

121. See generally Shelley Kierstead, *Legal Writing, Therapeutic Jurisprudence, and Professionalism*, 3 SUFFOLK U. L. REV. ONLINE 29 (2014), [https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3470&context=scholarly\\_works](https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3470&context=scholarly_works) [<https://perma.cc/6U8E-LMJV>].

122. See generally David B. Wexler, *Therapeutic Jurisprudence, Legal Landscapes, and Form Reform: The Case of Diversion*, 10 FLA. COASTAL L. REV. 361 (2009).

123. See generally David C. Yamada, *Therapeutic Jurisprudence and the Practice of Legal Scholarship*, 41 U. MEMPHIS L. REV. 121 (2010).

124. See *supra* notes 5–9 and accompanying text.

125. See generally Astrid Birgden, *Dealing with the Resistant Criminal Client: A Psychologically-Minded Strategy for More Effective Legal Counseling*, 38 CRIM. L. BULL. 225 (2002).

*Relationship-Centered Approach to Representing Clients with Cognitive Challenges*.<sup>126</sup>

- c. Dale Dewhurst invokes TJ for lessons in understanding clients' best interests in *Understanding the Legal Client's Best Interests, Lessons from Therapeutic Jurisprudence and Comprehensive Justice*.<sup>127</sup>
- d. Marjorie Silver discusses the cultivation of emotional intelligence in legal education in *Emotional Intelligence and Legal Education*.<sup>128</sup>
- e. David Wexler discusses "psycholegal soft spots" that may promulgate or reduce parties' anxieties and anger in legal events in *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*.<sup>129</sup>
- f. I discuss TJ in the context of using research and analysis to inform public interest lawyering initiatives in *Intellectual Activism and the Practice of Public Interest Law*.<sup>130</sup>
- g. Carol Zeiner summons her in-house counsel experience to apply TJ perspectives to negotiation theory and practice in *Getting Deals Done: Enhancing Negotiation Theory and Practice through a Therapeutic Jurisprudence/Comprehensive Law Mindset*.<sup>131</sup>

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126. See generally David M. Boulding & Susan L. Brooks, *Trying Differently: A Relationship-Centered Approach to Representing Clients with Cognitive Challenges*, 33 INT'L J.L. & PSYCHIATRY 448 (2010).

127. See generally Dale Dewhurst, *Understanding the Legal Client's Best Interests: Lessons from Therapeutic Jurisprudence and Comprehensive Justice*, 6 PHOENIX L. REV. 963 (2013).

128. See generally Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCH. PUB. POL'Y & L. 1173 (1999).

129. See generally David B. Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, 67 REV. JURIDICA U. P.R. 317 (1998).

130. See generally David C. Yamada, *Intellectual Activism and the Practice of Public Interest Law*, 25 S. CAL. REV. L. & SOC. JUST. 127 (2016).

131. See generally Carol L. Zeiner, *Getting Deals Done: Enhancing Negotiation Theory and Practice through a Therapeutic Jurisprudence/Comprehensive Law Mindset*, 21 HARV. NEGOT. L. REV. 279 (2016).

C. *Doctrinal Coverage: Core TJ Subject-Matter*

A rich and abundant literature exists in TJ's foundational core areas of criminal law and justice, mental health and mental disability law, and problem-solving courts.<sup>132</sup>

1. Criminal Law and Justice, Mental Health and Mental Disability Law

For earlier "real time" assessments and evidence of TJ's development emphasizing these core areas, several pieces offer contemporaneous insights from pioneers in the field.<sup>133</sup> Reading them chronologically, faculty and students can trace the early historical development of TJ:

- a. David Wexler and Bruce Winick, *Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research*;<sup>134</sup>
- b. Michael Perlin's *A Law of Healing*<sup>135</sup> and "Half-Wracked Prejudice Leaped Forth": *Sanism, Pretextuality, and Why and How Mental Disability Law Developed as It Did*<sup>136</sup>;
- c. David Wexler, *Therapeutic Jurisprudence: An Overview*<sup>137</sup> and *Two Decades of Therapeutic Jurisprudence*<sup>138</sup>; and
- d. Robert Schopp, *Therapeutic Jurisprudence and Conflicts Among Values in Mental Health Law*.<sup>139</sup>

These earlier writings have been joined by a considerable next wave of scholarship building on these basic themes, including many pieces that can make for interesting class discussions or serve as

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132. See *supra* notes 69–72, 87–89, 98–108 and accompanying text; see *infra* notes 134–39, 141–51 and accompanying text.

133. See *infra* notes 134–39 and accompanying text.

134. See generally Wexler & Winick, *supra* note 1.

135. See generally Michael L. Perlin, *A Law of Healing*, 68 U. CIN. L. REV. 407 (2000).

136. See generally Michael L. Perlin, "Half-Wracked Prejudice Leaped Forth": *Sanism, Pretextuality, and Why and How Mental Disability Law Developed as It Did*, 10 J. CONTEMP. LEGAL ISSUES 3 (1999).

137. See generally David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125 (2000).

138. See generally Wexler, *supra* note 2.

139. See generally Robert F. Schopp, *Therapeutic Jurisprudence and Conflicts Among Values in Mental Health Law*, 11 BEHAV. SCI. & L. 31 (1993).

sources of ideas for student papers.<sup>140</sup> Here is a representative sampling of that work:

- a. Cynthia Adcock, a veteran capital defense lawyer, examines the anti-therapeutic consequences of administering the death penalty in the U.S. in *The Collateral Anti-Therapeutic Effects of the Death Penalty*.<sup>141</sup>
- b. Susan Daicoff discusses the interaction of TJ with considerations of apology, forgiveness, and reconciliation in *Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence*.<sup>142</sup>
- c. Hadar Dancig-Rosenberg and Tali Gal propose a framework for a theory of “criminal law multitasking,” which balances valid, though sometimes competing criminal justice policy priorities, including TJ, in *Criminal Law Multitasking*.<sup>143</sup>
- d. Shira Leiterdorf-Shkedy and Tali Gal challenge the common conception of criminal prosecutors as rational, emotionless actors in *The Sensitive Prosecutor: Emotional Experiences of Prosecutors in Managing Criminal Proceedings*.<sup>144</sup>
- e. Michael Perlin and Alison Lynch analyze interactions between police and mentally disabled individuals in “*Had to Be Held Down by Big Police*”: *A Therapeutic Jurisprudence Perspective on Interactions Between Police and Persons with Mental Disabilities*.<sup>145</sup>

The breadth and depth of TJ literature in these areas can yield interesting compare/contrast analyses. For example, although it is

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140. See *infra* notes 141–45 and accompanying text.

141. See generally Cynthia F. Adcock, *The Collateral Anti-Therapeutic Effects of the Death Penalty*, 11 FLA. COASTAL L. REV. 289 (2010).

142. See generally Susan Daicoff, *Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence*, 13 PEPP. DISP. RESOL. L.J. 131 (2013).

143. See generally Hadar Dancig-Rosenberg & Tali Gal, *Criminal Law Multitasking*, 18 LEWIS & CLARK L. REV. 893 (2014).

144. See generally Shira Leiterdorf-Shkedy & Tali Gal, *The Sensitive Prosecutor: Emotional Experiences of Prosecutors in Managing Criminal Proceedings*, 63 INT’L J.L. & PSYCHIATRY 8 (2019).

145. See generally Michael L. Perlin & Alison J. Lynch, “*Had to Be Held Down by Big Police*”: *A Therapeutic Jurisprudence Perspective on Interactions Between Police and Persons with Mental Disabilities*, 43 FORDHAM URB. L.J. 685 (2016).

safe to assume that members of the TJ community have a good understanding of abuses of power and status in society, TJ does not expressly rank the interests of one group of legal stakeholders over another.<sup>146</sup> This pluralistic approach can produce research and commentary on multiple parties with potentially conflicting legal interests.<sup>147</sup> To illustrate this dynamic, these four pieces could be assigned to investigate a thought-provoking discussion about contrasting TJ-informed perspectives on sex crimes and sex offenders:

- a. Hadar Dancig-Rosenberg, *Sexual Assault Victims: Empowerment or Re-Victimization? The Need for a Therapeutic Jurisprudence Model*,<sup>148</sup>
- b. Heather Cucolo and Michael Perlin, “Far From the Turbulent Space”: *Considering the Adequacy of Counsel in the Representation of Individuals Accused of Being Sexually Violent Predators*,<sup>149</sup>
- c. Christian Diesen and Eva Diesen, *Sex Crime Legislation: Proactive and Anti-Therapeutic Effects*,<sup>150</sup> and
- d. Astrid Birgden, *Serious Sex Offenders Monitoring Act 2005 (Vic): A Therapeutic Jurisprudence Analysis*.<sup>151</sup>

## 2. Problem-Solving Courts

In response to the connections between mental health challenges and criminal behavior, the TJ community has often turned to

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146. Cf. Slobogin, *supra* note 89, at 195, 208–10 (describing how practical and jurisprudential approaches in different areas of law that may be “therapeutic” could actually produce contradictory results for different parties).

147. See, e.g., Hadar Dancig-Rosenberg, *Sexual Assault Victims: Empowerment or Re-Victimization? The Need for a Therapeutic Jurisprudence Model*, in TRENDS AND ISSUES IN VICTIMOLOGY 150–52, 155–56, 158, 161–63 (Natti Ronel et al. eds., 2008); Heather Ellis Cucolo & Michael L. Perlin, “Far from the Turbulent Space”: *Considering the Adequacy of Counsel in the Representation of Individuals Accused of Being Sexually Violent Predators*, 18 U. PA. J.L. & SOC. CHANGE 125, 166–67 (2015).

148. See generally Dancig-Rosenberg, *supra* note 147.

149. See generally Cucolo & Perlin, *supra* note 147.

150. See generally Christian Diesen & Eva F. Diesen, *Sex Crime Legislation: Proactive and Anti-Therapeutic Effects*, 33 INT’L J.L. & PSYCHIATRY 329 (2010).

151. See generally Astrid Birgden, *Serious Sex Offenders Monitoring Act 2005 (Vic): A Therapeutic Jurisprudence Analysis*, 14 PSYCHIATRY PSYCH & L. 78 (2007).

problem-solving courts as part of the solution.<sup>152</sup> These courts help to facilitate alternatives to criminal sanctions (especially imprisonment), while incorporating additional goals of rehabilitation and reduction of recidivism.<sup>153</sup> Peggy Hora's article, *Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits*, provides an excellent overview of the types and objectives of these tribunals.<sup>154</sup> The types of tribunals include, "adult drug treatment courts, driving while impaired courts, juvenile drug courts, mental health courts, family dependency treatment courts, domestic violence courts, community courts, unified family courts, and tribal healing-to-wellness courts."<sup>155</sup>

Mental health courts are among the most common problem-solving courts, and Bruce Winick offers a foundational introduction in his article titled, *Therapeutic Jurisprudence and Problem Solving Courts*.<sup>156</sup> Winick defines a mental health court as, "a misdemeanor criminal court designed to deal with people arrested for minor offenses whose major problem is mental illness rather than criminality."<sup>157</sup> Mental health courts typically use voluntary treatment, social services assistance, and judicial monitoring to help divert parties from incarceration.<sup>158</sup> Judges play unique roles in these courts, using collaborative and interdisciplinary approaches to resolve matters pending before them.<sup>159</sup>

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152. See Peggy Fulton Hora, *Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits*, 2 CHAP. J. CRIM. JUST. 7, 21–22 (2011).

153. See *id.* at 10–16 (describing types and objectives of problem-solving courts); see also Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 30 FORDHAM URB. L.J. 1055, 1055–61 (2003) (describing common functions and judicial role of problem-solving courts).

154. See Hora, *supra* note 152, at 10–16.

155. *Id.* at 7–8 (footnotes omitted).

156. See Winick, *supra* note 153, at 1055–61.

157. *Id.* at 1059.

158. See *id.* at 1059–60.

159. See *id.* at 1060.

Among the core TJ subject matter areas, problem-solving courts have generated the largest body of ongoing scholarly commentary.<sup>160</sup> Here is a representative sampling of more recent work:

- a. Ursula Castellano provides an interdisciplinary introduction to problem-solving courts in *Problem-Solving Courts: Theory and Practice*.<sup>161</sup>
- b. Caroline Cooper discusses how resolutions of drug treatment court cases often implicate many other policy areas, including public housing, welfare benefits, the right to vote, financial aid for education, immigration status and other areas of civil rights in *Drug Courts—Just the Beginning: How To Get Other Areas of Public Policy in Sync?*<sup>162</sup>
- c. Michelle Edgely identifies factors that contribute toward the success of mental health courts in *Why Do Mental Health Courts Work? A Confluence of Treatment, Support & Adroit Judicial Supervision*.<sup>163</sup>
- d. Joseph Thomas Flies-Away and Carrie Garrow examine wellness courts for Native American societies in *Healing to Wellness Courts: Therapeutic Jurisprudence+*.<sup>164</sup>
- e. Michael King and Becky Batagol analyze the roles of judges in family violence courts in *Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts*.<sup>165</sup>
- f. Voula Marinos and Lisa Whittingham consider how to support parties with intellectual and developmental disabilities in problem-solving courts in *The Role of Therapeutic Jurisprudence to Support Persons with Intellectual and*

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160. See *supra* text accompanying notes 152–55.

161. See generally Ursula Castellano, *Problem-Solving Courts: Theory and Practice*, 5 SOCIO. COMPASS 957 (2011).

162. See generally Caroline S. Cooper, *Drug Courts—Just the Beginning: How to Get Other Areas of Public Policy in Sync?*, 1 INT'L J. THERAPEUTIC JURIS. 73 (2016).

163. See generally Michelle Edgely, *Why Do Mental Health Courts Work? A Confluence of Treatment, Support & Adroit Judicial Supervision*, 37 INT'L J.L. & PSYCHIATRY 572 (2014).

164. See generally Joseph Thomas Flies-Away & Carrie E. Garrow, *Healing to Wellness Courts: Therapeutic Jurisprudence+*, 2013 MICH. ST. L. REV. 403 (2013).

165. See generally Michael King & Becky Batagol, *Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts*, 33 INT'L J.L. PSYCHIATRY 406 (2010).

*Developmental Disabilities in the Courtroom: Reflections from Ontario, Canada.*<sup>166</sup>

- g. Katey Thom, Stella Black, and Rawiri Pene discuss how specialized courts in New Zealand are integrating Māori principles and practices in *Crafting a Culturally Competent Therapeutic Model in Drug Courts*.<sup>167</sup>

It may not be immediately evident where problem-solving courts fit into courses with TJ content. Clinics, offerings on dispute resolution, and courses surveying TJ may be the best matches for these materials. Because the subject-matter will be new to many students, the articles by Hora and Winick, though somewhat dated, may be useful as introductions.<sup>168</sup> The more specialized applications listed immediately above may then be assigned or suggested as appropriate.<sup>169</sup>

#### *D. Doctrinal Coverage: Expanding TJ Subject-Matter*

Since its founding, TJ has gradually expanded its subject-matter reach beyond the above-mentioned core areas.<sup>170</sup> Some of these analyses and commentaries may prompt discussions about potential law reforms, applying Wexler's Therapeutic Design.<sup>171</sup> Useful

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166. See generally Voula Marinos & Lisa Whittingham, *The Role of Therapeutic Jurisprudence to Support Persons with Intellectual and Developmental Disabilities in the Courtroom: Reflections from Ontario, Canada*, 63 INT'L J.L. & PSYCHIATRY 18 (2019).

167. See generally Katey Thom, Stella Black, & Rawiri Pene, *Crafting a Culturally Competent Therapeutic Model in Drug Courts: A Case Study of Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court in Aotearoa New Zealand*, INT'L J. THERAPEUTIC JURIS. 117 (2018).

168. See Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-first Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 725 (2008); see Winick, *supra* note 153, at 1055–56.

169. See *supra* notes 160–67 and accompanying text.

170. See Peter Johnsen & Elia Robertson, *Protecting, Restoring, Improving: Incorporating Therapeutic Jurisprudence and Restorative Justice Concepts into Civil Domestic Violence Cases*, 164 U. PA. L. REV. 1557, 1572 (2016).

171. See, e.g., *id.* at 1560 (“[T]his Essay advocates for an alternative approach to protection order proceedings that draws on two legal theories, therapeutic jurisprudence and restorative justice.”); Mark Glover, *The Solemn Moment: Expanding Therapeutic Jurisprudence Throughout Estate Planning*, 3 SUFFOLK U. L. REV. ONLINE 19, 21–22 (2015) (“I have worked to develop a therapeutic-jurisprudential framework of estate planning . . . and I have applied this framework to evaluate and suggest reforms of the law of will-execution.”).

overview articles and book chapters suitable for introducing a TJ perspective in doctrinal courses cover many areas of law and policy.<sup>172</sup>

### 1. Employment and Labor Law

Given the abundant body of multidisciplinary work documenting the benefits of psychologically healthy workplaces for both workers and organizations, employment and labor law presents an ideal opportunity to expand TJ's reach.<sup>173</sup> Two of my articles discuss the considerable relevance of TJ to a broad array of topics in the field: *Human Dignity and American Employment Law*<sup>174</sup> and *Employment Law as if People Mattered: Bringing Therapeutic Jurisprudence into the Workplace*.<sup>175</sup> Both articles emphasize the core value of dignity as a framing concept for labor and employment law and policy.<sup>176</sup> They would be especially useful for seminars on TJ or employment law.

### 2. Family Law

In *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, Barbara Babb articulated an interdisciplinary approach for family law that includes TJ elements and takes into account changing societal patterns in family relationships.<sup>177</sup> Among other things, greater awareness of “child maltreatment, juvenile delinquency, family violence, substance abuse, economics, and medical or mental health issues” has highlighted a need for a family law paradigm that

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172. See *infra* Sections II.D.1–9.

173. See generally, e.g., AM. PSYCH. ASS'N, TOTAL WORKER HEALTH (Heidi L. Hudson et al. eds., 2019); AM. PSYCHOL. ASS'N, THE PSYCHOLOGICALLY HEALTHY WORKPLACE: BUILDING A WIN-WIN ENVIRONMENT FOR ORGANIZATIONS AND EMPLOYEES (Matthew J. Grawitch & David W. Ballard eds., 2016); BULLYING AND HARASSMENT IN THE WORKPLACE: DEVELOPMENTS IN THEORY, RESEARCH, AND PRACTICE (Ståle Valvatne Einarsen et al. eds., 3d ed. 2020); COUNTERPRODUCTIVE WORK BEHAVIOR: INVESTIGATIONS OF ACTORS AND TARGETS (Suzy Fox & Paul E. Spector eds., 2005); RANDY HODSON, DIGNITY AT WORK (2003).

174. David C. Yamada, *Human Dignity and American Employment Law*, 43 U. RICH. L. REV. 523, 546–47 (2009).

175. David C. Yamada, *Employment Law as if People Mattered: Bringing Therapeutic Jurisprudence into the Workplace*, 11 FLA. COASTAL L. REV. 257, 257–58 (2010).

176. See Yamada, *supra* note 174, at 523–25; see Yamada, *supra* note 175, at 257–60.

177. See Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 776–77 (1997).

includes TJ.<sup>178</sup> Further support for infusing TJ insights into family law appears in Tali Gal and Dahlia Schilli-Jerichower's *Mainstreaming Therapeutic Jurisprudence in Family Law: The Israeli Child Protection Law as a Case Study*.<sup>179</sup>

In addition, collaborative law (a dispute resolution modality that involves parties voluntarily opting to seek a settlement rather than pursuing litigation)<sup>180</sup> is now informing TJ approaches for resolving family law disputes, especially divorce.<sup>181</sup> Two articles by Marsha Freeman explain the usefulness of this modality: *Collaborative Law: Recognizing the Need for a New Default Method of Family Law Resolution*,<sup>182</sup> and *Love Means Always Having to Say You're Sorry: Applying the Realities of Therapeutic Jurisprudence to Family Law*.<sup>183</sup> Both articles may be especially useful in family law clinical or externship programs that incorporate collaborative law practices.<sup>184</sup>

### 3. Health Law

Kathy Cerminara has recently proposed a framework for health law that focuses on the interests of patients (as opposed to health care providers and insurers) in *Therapeutic Jurisprudence's Future in Health Law: Bringing the Patient Back into the Picture*.<sup>185</sup> She applies social science research to understand how legal rules and processes impact patient care and well-being.<sup>186</sup> In addition, Nadav Davidovitch and Michal Alberstein bring together TJ and the field of

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178. *Id.* at 779–81, 808.

179. *See generally* Tali Gal & Dahlia Schilli-Jerichower, *Mainstreaming Therapeutic Jurisprudence in Family Law: The Israeli Child Protection Law as a Case Study*, 55 FAM. CT. REV. 177 (2017).

180. *See, e.g.*, Marsha B. Freeman, *Love Means Always Having to Say You're Sorry: Applying the Realities of Therapeutic Jurisprudence to Family Law*, 17 UCLA WOMEN'S L.J. 215, 222 (2008).

181. *See id.* at 223–24, 230.

182. Marsha B. Freeman, *Collaborative Law: Recognizing the Need for a New Default Method of Family Law Resolution*, 17 BARRY L. REV. 15, 18 (2011).

183. Freeman, *supra* note 180, at 229.

184. *See* Freeman, *supra* note 180, at 215; *see* Freeman, *supra* note 182, at 15; *see also, e.g.*, Jessica Brown, *Putting the Brakes on Conflict: Barry University Law Students and Nonlawyer Professionals Drive "Neutral" Divorce Clinic*, FLA. BAR J., May 2018, at 24, 24, 26 (describing how family law clinic uses collaborative law practices to better serve its clients in divorce cases).

185. *See generally* Kathy L. Cerminara, *Therapeutic Jurisprudence's Future in Health Law: Bringing the Patient Back into the Picture*, 63 INT'L J.L. & PSYCHIATRY 56 (2019).

186. *See id.* at 58.

public health in *Therapeutic Jurisprudence and Public Health: A Broad Perspective on Dialogue*.<sup>187</sup> Amy Campbell details a framework for health care policymaking in *Using Therapeutic Jurisprudence to Frame the Role of Emotion in Health Policymaking*.<sup>188</sup>

#### 4. Judicial Practice and Administration

Those seeking TJ insights on judicial practice and administration will find a considerable body of useful material.<sup>189</sup> These sources are appropriate for courses looking at actual and potential TJ applications to the operation and conduct of trial courts and other tribunals, for seminars in jurisprudence, or as research for student papers examining TJ and the courts:

In a conference address, *To Dream the Impossible Dream? Therapeutic Jurisprudence in Mainstream Courts*, Australian magistrate Pauline Spencer shares her aspirations for how TJ-infused practices can become the norm in mainstream courts.<sup>190</sup> Spencer and others contribute to an ongoing “Court Craft” series of articles published in the *Therapeutic Jurisprudence in the Mainstream* blog, hosted by the ISTJ, addressing individual and systemic approaches for advancing TJ practices in judicial settings.<sup>191</sup>

Procedural justice has emerged as an important concept concerning TJ and the judiciary.<sup>192</sup> Arie Freiberg defines procedural justice as “the ways in which decisions are made and their fairness,” adding that it helps to ensure the integrity of and confidence in our judicial systems in *Post-Adversarial and Post-Inquisitorial Justice: Transcending Traditional Penological Paradigms*.<sup>193</sup> In addition, the late Michael Jones, a retired Arizona state court judge, asserted that

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187. See Nadav Davidovitch & Michal Alberstein, *Therapeutic Jurisprudence and Public Health: A Broad Perspective on Dialogue*, 30 T. JEFFERSON L. REV. 507, 507–08 (2008).

188. See Amy T. Campbell, *Using Therapeutic Jurisprudence to Frame the Role of Emotion in Health Policymaking*, 5 PHOENIX L. REV. 675, 676 (2012).

189. See *infra* notes 190–97 and accompanying text.

190. Magistrate Pauline Spencer, Court of Victoria, *To Dream the Impossible Dream? Therapeutic Jurisprudence in Mainstream Courts*, Address at the International Conference on Law & Society (2012) (transcript available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2083370](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2083370) [<https://perma.cc/3RXJ-5RJC>]).

191. See *Judiciary Court Craft Series*, ISTJ BLOG: JUDICIARY CT. CRAFT SERIES, <https://mainstreamtj.com/category/judiciary-court-craft-series/> [<https://perma.cc/RP96-7YT7>] (last visited Mar. 30, 2021).

192. See *infra* notes 193–97 and accompanying text.

193. Arie Freiberg, *Post-Adversarial and Post-Inquisitorial Justice: Transcending Traditional Penological Paradigms*, 8 EUR. J. CRIMINOLOGY 82, 92 (2011).

exercising procedural fairness is an essential characteristic of judicial behavior in *Mainstreaming Therapeutic Jurisprudence into the Traditional Courts: Suggestions for Judges and Practitioners*.<sup>194</sup>

The contents of court rulings and opinions are also relevant to judicial practice in a TJ mode.<sup>195</sup> For example, Shelley Kierstead examines the therapeutic implications of judicial opinion writing in child protection cases, looking at whether decisions are written in a voice that respects the dignity of parties in the litigation in *Therapeutic Jurisprudence and Child Protection*.<sup>196</sup> Also, Amy Ronner and Bruce Winick criticize the practice of issuing *per curiam* decisions where an appellate court simply affirms the decision of the lower court without an opinion that reassures an appellant that its arguments were given serious consideration in *Silencing the Appellant's Voice: The Antitherapeutic Per Curiam Affirmance*.<sup>197</sup>

##### 5. Legislation and Policymaking

TJ is now taking closer looks at potential applications to legislative and public policy content and processes.<sup>198</sup> For example, I discuss two major dimensions of TJ and public policy in *On Anger, Shock, Fear, and Trauma: Therapeutic Jurisprudence as a Response to Dignity Denials in Public Policy*.<sup>199</sup> First, I examine how TJ can be used to discern the therapeutic or anti-therapeutic impacts of proposed and enacted legislation upon policy stakeholders.<sup>200</sup> Second, I discuss whether policymaking processes embody “legislative due process” by giving key stakeholders a genuine opportunity to be heard.<sup>201</sup> I also invoke TJ in somewhat more journalistic fashion to propose that well-being, dignity, and compassion should be among our desired policy outcomes when

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194. Michael D. Jones, *Mainstreaming Therapeutic Jurisprudence into the Traditional Courts: Suggestions for Judges and Practitioners*, 5 PHOENIX L. REV. 753, 757 (2012).

195. See *infra* notes 196–97 and accompanying text.

196. See generally Shelley Kierstead, *Therapeutic Jurisprudence and Child Protection*, 17 BARRY L. REV. 31 (2011).

197. See generally Amy D. Ronner & Bruce J. Winick, *Silencing the Appellant's Voice: The Antitherapeutic Per Curiam Affirmance*, 24 SEATTLE U. L. REV. 499 (2000).

198. See *infra* notes 199–202 and accompanying text.

199. See generally David C. Yamada, *On Anger, Shock, Fear, and Trauma: Therapeutic Jurisprudence as a Response to Dignity Denials in Public Policy*, 63 INT'L J.L. & PSYCHIATRY 35 (2019).

200. *Id.* at 35–36.

201. *Id.* at 38.

enacting legislation in *Should Public Policy Center on Societal Well-Being?*<sup>202</sup>

## 6. Military Law

The legal interests of those who have served in the military have become an important TJ focus, especially given the prevalence of mental health conditions experienced by active-duty personnel and veterans.<sup>203</sup> In a series of articles, Evan Seamone has applied TJ principles to examine how attorneys and our legal systems can support active members of the military and veterans, which are as follows:

- a. *Dismantling America's Largest Sleeper Cell: The Imperative to Treat, Rather than Merely Punish, Active Duty Offenders with PTSD Prior to Discharge from the Armed Forces;*<sup>204</sup>
- b. *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Post-Traumatic Stress Disorder;*<sup>205</sup> and
- c. *Attorneys as First-Responders: Recognizing the Destructive Nature of Posttraumatic Stress Disorder on the Combat Veteran's Legal Decision-Making Process.*<sup>206</sup>

## 7. Tort Law

Given underlying issues of psychological and physical harm, preventive practices, and civil litigation, TJ and tort law should go

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202. See generally David Yamada, *Should Public Policy Center on Societal Well-Being?*, AM. COMMENTATOR, no. 1, Oct. 2020, at 1 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3705679](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3705679) [<https://perma.cc/U2AB-DYBV>].

203. For example, TJ perspectives were prominent at a 2013 symposium on military service and PTSD held at Nova Southeastern University. See Kathy Cerminara & Olympia Duhart, *Wounds of War: Meeting the Needs of Active-Duty Military Personnel and Veterans with Post-Traumatic Stress Disorder*, 37 NOVA L. REV. 439 (2013).

204. See generally Evan R. Seamone, *Dismantling America's Largest Sleeper Cell: The Imperative to Treat, Rather than Merely Punish, Active Duty Offenders with PTSD Prior to Discharge from the Armed Forces*, 37 NOVA L. REV. 479 (2013).

205. See generally Evan R. Seamone, *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Post-Traumatic Stress Disorder*, 202 MIL. L. REV. 185 (2009).

206. See generally Evan R. Seamone, *Attorneys as First-Responders: Recognizing the Destructive Nature of Posttraumatic Stress Disorder on the Combat Veteran's Legal Decision-Making Process*, 202 MIL. L. REV. 144 (2009).

hand-in-hand.<sup>207</sup> The late Daniel Shuman created an early conceptual foundation for TJ and tort law in two articles: *Therapeutic Jurisprudence and Tort Law: A Limited Subjective Standard of Care*<sup>208</sup> and *Making the World a Better Place Through Tort Law?: Through the Therapeutic Looking Glass*.<sup>209</sup> More recently, Arno Akkermans has taken up the mantle, as exhibited in *Achieving Justice in Personal Injury Compensation: The Need to Address the Emotional Dimensions of Suffering a Wrong*<sup>210</sup> and *Reforming Personal Injury Claims Settlement: Paying More Attention to Emotional Dimension Promotes Victim Recovery*<sup>211</sup>. The addition of TJ to theoretical examinations of the purpose of tort law, especially when considered with other schools of legal thought such as law and economics and Critical Legal Studies, could make for stimulating class discussions and student paper topics.

#### 8. Trusts and Estates Law

Trusts and estates law, with its very human impacts and desired legal skillsets that include proficiency in client counseling, legal planning, and document drafting, offers strong connections to TJ.<sup>212</sup> Mark Glover has done important foundational work in this field through two articles that would be useful to students, *A Therapeutic Jurisprudential Framework of Estate Planning*<sup>213</sup> and *The Solemn Moment: Expanding Therapeutic Jurisprudence Throughout Estate Planning*<sup>214</sup>. Either article would be a useful reading for skills

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207. See *infra* notes 208–11 and accompanying text.

208. See generally Daniel W. Shuman, *Therapeutic Jurisprudence and Tort Law: A Limited Subjective Standard of Care*, 46 SMU L. REV. 409 (1992).

209. See generally Daniel W. Shuman, *Making the World a Better Place Through Tort Law: Through the Therapeutic Looking Glass*, 10 N.Y.L. SCH. J. HUM. RTS. 739 (1993).

210. See generally Arno Akkermans, *Achieving Justice in Personal Injury Compensation: The Need to Address the Emotional Dimensions of Suffering a Wrong*, in UNEXPECTED CONSEQUENCES OF COMPENSATION LAW 15, 15–37 (Prue Vines & Arno Akkermans eds., 2020).

211. See generally Arno J. Akkermans, *Reforming Personal Injury Claims Settlement: Paying More Attention to Emotional Dimension Promotes Victim Recovery* (Amsterdam Interdisc. Ctr. for L. & Health, Working Paper No. 2009/01, 2009), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1333214&http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1333214](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1333214&http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1333214) [<https://perma.cc/YDQ3-M6KV>].

212. See Mark Glover, *A Therapeutic Jurisprudential Framework of Estate Planning*, 35 SEATTLE U. L. REV. 427, 445–46, 450, 455 (2012).

213. *Id.*

214. See generally Glover, *supra* note 171.

courses in client counseling or doctrinal courses in trusts and estates law.<sup>215</sup>

#### 9. Additional Areas of Law and Policy

Other areas of law and policy relevant to TJ may lack relatively recent foundational treatments, but a considerable amount of useful material nonetheless exists that can be used for course reading or resources for student research. These subject-matter areas include, but are hardly limited to: civil litigation and dispute resolution, civil rights law, education law, elder law, environmental law, housing and landlord-tenant law, international human rights, legal ethics, and public interest law.<sup>216</sup>

#### CONCLUSION

TJ deserves a meaningful place in the law school curriculum. I hope that this Article will foster a conversation about how TJ can expand its presence in law school classrooms and clinics. Furthermore, I hope the resources recommended above will help to introduce students to TJ theory and practice. Ultimately, if this Article facilitates the introduction of TJ to new generations of law students in ways that enhance their professional lives and benefit their clients, then I will consider it a very worthwhile effort.

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215. See generally *id.*; see generally Glover, *supra* note 212.

216. Those seeking bibliographical resources in any of these listed areas should consult my article, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, discussed above. See Yamada, *Therapeutic Jurisprudence: Foundations, Expansion, and Assessment*, *supra* note 4 (manuscript at Section II.A).