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# **BREAKING THE CYCLE: THERAPEUTIC JURISPRUDENCE'S RESPONSE TO RE-VICTIMIZATION IN DOMESTIC VIOLENCE CASES**

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<b>INTRODUCTION</b>	<b>1</b>
<b>THERAPEUTIC JURISPRUDENCE</b>	<b>3</b>
<b>DOMESTIC VIOLENCE</b>	<b>4</b>
United States Department of Justice	4
<b>SPECIALIZED DOMESTIC VIOLENCE COURTS</b>	<b>7</b>
<b>RE-VICTIMIZATION</b>	<b>10</b>
Understanding the Dynamics of Trauma	11
Professional Identity Formation	13
Trauma-Informed Practices	14
Cross Cultural Competence	16
<b>NON-ADVERSARIAL APPROACHES</b>	<b>19</b>
<b>CONCLUSION</b>	<b>24</b>

## **INTRODUCTION**

Therapeutic Jurisprudence (TJ) seeks to examine and improve the impact of the legal system on the mental health and overall quality of life of those involved in legal processes.<sup>1</sup> It is an approach to the law that uses the tools of the behavioral

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<sup>1</sup> Wexler, David B. and Winick, Bruce J., Therapeutic Jurisprudence. Therapeutic Jurisprudence, in Principles of Addiction Medicine, 4th Edition, Available at SSRN: <https://ssrn.com/abstract=1101507>

sciences to assess the law's therapeutic effects and, when consistent with other important legal values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional wellbeing of the individuals affected.<sup>2</sup> The significance of this mission becomes particularly clear when we think about domestic violence (DV) as it involves dealing with complex and painful experiences that have a lasting impact on everyone involved. In such cases, people's lives are profoundly changed, and the pain they experience often goes much deeper than what we can see on the surface. TJ proposes that the law should promote therapeutic outcomes for the individual affected by it.<sup>3</sup> This is why we need to see TJ as a perspective that goes beyond the usual rules of law and focuses closely on people's experiences within the legal system. This article explores how law students and legal professionals can adopt TJ oriented practices that will be better suited for working with victims of trauma.

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<sup>2</sup> *See id.*

<sup>3</sup> Brooks, Susan L., Practicing (And Teaching) Therapeutic Jurisprudence: Importing Social Work Principles and Techniques into Clinical Legal Education (2005). *St. Thomas Law Review*, Vol. 17, 2005, Available at SSRN: <https://ssrn.com/abstract=3587936>

## THERAPEUTIC JURISPRUDENCE

TJ is a legal philosophy and interdisciplinary approach that focuses on the impact of the law and legal processes on the well-being of individuals involved.<sup>4</sup> It recognizes that the legal system has the potential to either enhance or diminish the psychological and emotional health of the people it affects. As stated by professor Wexler, "Basically, therapeutic jurisprudence is a perspective that regards the law as a social force that produces behaviors and consequences"<sup>5</sup>. The primary goal of TJ humanize the law and concern itself with the human, emotional, psychological side of law and the legal process.<sup>6</sup>

Therapeutic jurisprudence suggests that we think about these issues and see if they can be factored into our law-making, lawyering, or judging.<sup>7</sup> By integrating psychological and therapeutic principles into legal processes, the TJ approach can seek to minimize the risk of re-victimization during court proceedings, and aim to not only address the legal aspects of DV cases but also promote the emotional well-being and empowerment of survivors within the legal framework. The article "New

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<sup>4</sup> Wexler, David B., Therapeutic Jurisprudence and its Application to Criminal Justice Research and Development (November 10, 2010). Irish Probation Journal, Vol. 7, p. 94, 2010, Arizona Legal Studies Discussion Paper No. 10-20, Available at SSRN: <https://ssrn.com/abstract=1628804>

<sup>5</sup> See *id* p. 95

<sup>6</sup> Wexler, David B., Therapeutic Jurisprudence: An Overview. Thomas M. Cooley Law Review, Vol. 17, pp. 125-134, 2000, Available at SSRN: <https://ssrn.com/abstract=256658>

<sup>7</sup> See *id*.

Wine in New Bottles," underscores the pivotal importance of directing attention to the relationship between TJ practices and the legal framework, pointing to the adversarial system's excesses and concerns regarding the potentially harmful effects of conventional legal education that have fueled a growing interest in alternative approaches.<sup>8</sup> Given the prevalence of DV cases in the United States and Puerto Rico<sup>9</sup>, there needs to be a growing recognition of the need for a more compassionate and effective approach that not only seeks justice and rehabilitation but also actively works to prevent re-victimization and foster healing.

## **DOMESTIC VIOLENCE**

### **United States Department of Justice**

The United States Department of Justice defines DV as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.<sup>10</sup> Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within

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<sup>8</sup> Wexler, David B., New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence 'Code' of Proposed Criminal Processes and Practices (June 26, 2014). 7 Arizona Summit Law Review 463 (2014), Arizona Legal Studies Discussion Paper No. 12-16, Available at SSRN: <https://ssrn.com/abstract=2065454> or <http://dx.doi.org/10.2139/ssrn.2065454>

<sup>9</sup> Estadísticas sobre Violencia Doméstica. Estadísticas de Violencia Doméstica | Policía de Puerto Rico. (n.d.). <https://policia.pr.gov/estadisticas-de-violencia-domestica/> ; Domestic Violence Statistics. The Hotline. (2023, July 4). <https://www.thehotline.org/stakeholders/domestic-violence-statistics/>

<sup>10</sup> Department of Justice . (2023, October 4). Domestic violence. Office on Violence Against Women (OVW). <https://www.justice.gov/ovw/domestic-violence>

an intimate partner relationship.<sup>11</sup> This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, sex, or gender identity. DV affects people of all socioeconomic backgrounds and education levels and it can occur in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, dating, or share a child.<sup>12</sup> According to statistics by the CDC 1 in 4 women and 1 in 7 men will experience severe physical violence by an intimate partner in their lifetime.<sup>13</sup>

## ***2. Ley Núm. 54 de 15 de agosto de 1989: Ley para la Prevención e Intervención con la Violencia Doméstica***

In Puerto Rico, Law No. 54-1989 defines DV as constant pattern of behavior involving the use of physical force or psychological violence, intimidation, or persecution against their spouse, ex-spouse, a person with whom they cohabit or

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<sup>11</sup> *See id.*

<sup>12</sup> *See id.*

<sup>13</sup> Centers for Disease Control and Prevention. (2022, October 11). Fast facts: Preventing intimate partner violence |violence prevention|injury Center|CDC. Centers for Disease Control and Prevention. <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>

have cohabited, with whom they have or have had a consensual relationship, or a person with whom they have procreated children, regardless of sex, marital status, sexual orientation, gender identity, or migration status of any of the individuals involved in the relationship, with the intention to cause physical harm to oneself, property, or the person of another, or to cause serious emotional harm.<sup>14</sup>

The legal framework of Law No. 54-1989 addresses domestic violence comprehensively, encompassing the issuance of protection orders to safeguard victims from further harm. Criminalization of domestic violence is a key component, establishing legal consequences for perpetrators.<sup>15</sup> The legislation also incorporates essential support services for victims, such as counseling, shelters, and additional resources aimed at aiding individuals impacted by domestic violence. Furthermore, the law outlines specific procedures for law enforcement in handling domestic violence cases, encompassing arrest protocols and the systematic issuance of protection orders to ensure the well-being and safety of those affected by such incidents.<sup>16</sup> In 2022 the Puerto Rico Police reported 7,146 incidents of DV. Whilst in 2021, while the COVID-19 pandemic was still ongoing, the number was much higher at a staggering almost 8,000 reported incidents.<sup>17</sup>

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<sup>14</sup> Ley Núm. 54 de 15 de agosto 1989

<sup>15</sup> *See id*

<sup>16</sup> Ley Núm. 54 *supra*

<sup>17</sup> Estadísticas sobre Violencia Doméstica. Estadísticas de Violencia Doméstica | Policía de Puerto Rico. (2023, May 2). <https://policia.pr.gov/estadisticas-de-violencia-domestica/>

## **SPECIALIZED DOMESTIC VIOLENCE COURTS**

Considering the prevalence of gender-based violence in our society and recognizing that survivors of such abuse are in a vulnerable situation, the Judiciary established the Program for the Attention of Domestic Violence Cases. Among the specific initiatives implemented as part of this program are the Specialized Courts Project for Domestic Violence Cases, the Specialization of Services Project in Domestic Violence Cases, and the Specialized Courts Project for Gender-based Violence Cases. The Specialized Courts Project for Domestic Violence Cases seeks to improve judicial intervention by offering a secure and confidential environment for the benefit of all individuals.<sup>18</sup> This includes those seeking assistance under Law No. 54-1989, irrespective of their gender, marital status, sexual orientation, gender identity, or immigration status.

These specialized services allow for the resolution of legal disputes faced by the involved parties with a human-focused, yet efficient and effective approach.<sup>19</sup> Some entities collaborating with the Judicial Branch to achieve this include the Puerto Rico Police, the Department of Justice, the Department of Correction and Rehabilitation, the Department of the Family, municipalities, the Office of the

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<sup>18</sup> Programa para la Atención de Casos de Violencia Doméstica . Poder Judicial de Puerto Rico. (2023). <https://poderjudicial.pr/iniciativas-y-proyectos/programa-para-la-administracion-de-casos-de-violencia-domestica/>

<sup>19</sup> See *id.*



Women's Advocate, and organizations providing legal advocacy services or free legal advice and representation.

During my investigation into domestic violence in Puerto Rico, I reviewed an evaluation report that focused on specialized domestic violence courts and compared them to non-specialized courts. While most results were positive, some negative aspects highlighted shortcomings in the implementation of these courts. The report focuses on interviewing judicial officers, judges, attorneys, victims and advocates. When referring to the treatment perceived from judges, some victims reported feeling uncomfortable due to judge's comments, as in one instance, the judge expressed "that they were in a hurry to go to lunch" and in another instance a victim reported how, when the offender missed a court date, the judge told the victim that he would not be issuing a continuance to the protection order if the offender missed the next court date.<sup>20</sup>

In terms of police response, only 56% of interviewees indicated quick responses, in regions with specialized courts 40% reporting slower responses in comparison to 24% in regions without them.<sup>21</sup> Furthermore, specific incidents were cited where officers displayed inappropriate behavior, including laughing at

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<sup>20</sup> Oficina de Administración de Tribunales , Sanfeliz Ramos, C., González Mercado, J. M., Muñoz González, R., & Alonso Calderón, A. (M. Monell Vélez & L. Acevedo Morales, Eds.), Informe de Evaluación de las Salas Especializadas en Casos de Violencia Doméstica 57–408. Retrieved from <https://poderjudicial.pr/documentos/informes/informes-de-interes/Informe-Evaluacion-SEVD.pdf>.

<sup>21</sup> See *id.* p. 338

victims, adopting a mocking demeanor, and attempting to persuade the victim to drop charges.<sup>22</sup>

In evaluating criminal cases, only 29 out of 65 interviewees reported their cases being discussed with the Public Ministry as required by Law No. 54. Additionally, regions with other models received higher ratings (90%) for feeling supported by prosecutors throughout the process compared to regions with specialized courts (67%).<sup>23</sup>

It is important to note that my inquiry into these findings are not intended to criticize the project. On the contrary, they recognize the significant response to a pressing social issue, representing a materialization of TJ concepts. However, there is always room for improvement. As law students and future lawyers, we can complement holistic practices like these, by incorporating alternative approaches that contribute to our own professional identity formation.

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<sup>22</sup> See *id.* p. 342

<sup>23</sup> See *id.* p.487

## RE-VICTIMIZATION

Frequently, victims of crime report that enduring the criminal justice system is itself a type of victimization, a secondary or *re-victimization*.<sup>24</sup> When survivors perceive a lack of empathy or understanding from legal professionals, it can result in secondary victimization. This occurs when the response from the legal system mirrors the dynamics of the original abuse.<sup>25</sup> Conventional legal procedures often exacerbate trauma for survivors of violence through intrusive questioning, potentially intensifying stress due to the adversarial nature of courtrooms and the lack of comprehensive support services, hindering their healing and recovery. Factors that impact how victims experience the system include how they are treated during the process, and the amount of control and participatory access that they have. Victims of domestic violence often face the risk of re-victimization within traditional court proceedings, as these settings may inadvertently perpetuate their trauma.<sup>26</sup> One key factor contributing to re-victimization is the adversarial nature of these courts. The confrontational atmosphere, where the victim and the accused are pitted against each other, can be emotionally distressing for survivors.<sup>27</sup>

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<sup>24</sup> [Law.lclark.edu](https://law.lclark.edu). (2013, May 7). Preventing re-victimization. • National Crime Victim Law Institute • Lewis & Clark. <https://law.lclark.edu/live/news/21696-preventing-re-victimization>

<sup>25</sup> Freeman, M. D. A. (1980). Violence against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem? *British Journal of Law and Society*, 7(2), 215–241. <https://doi.org/10.2307/1409661>

<sup>26</sup> Katirai, N. (2020). Retraumatized in Court. *ARIZ. L. REV.*, 62(1), 84–86. <https://arizonalawreview.org/retraumatized-in-court/>

<sup>27</sup> Field, R., & Hyman, E. M. (2017). Non-adversarial approaches to domestic violence: Putting therapeutic jurisprudence theory into practice. *J. JUD. ADM.*, 26, 275.

Research has established the connection between DV victims empowering experiences in the court system and their satisfaction with the process, but not between these experiences and victim's broader wellbeing, a link suggested by the framework of therapeutic jurisprudence.<sup>28</sup> . To address this, many professionals are adopting a more compassionate approach known as "trauma-informed practice."<sup>29</sup> This involves lawyers prioritizing and understanding their clients past traumatic experiences, adjusting their legal strategies accordingly to avoid further harm.<sup>30</sup> Lawyers embracing trauma-informed practices not only acknowledge the deep impact of trauma but also actively work to create a more supportive and understanding legal environment. This shift helps prevent re-victimization and empowers lawyers to navigate delicate DV cases with empathy and effectiveness. The next subsections of this article point out how relationship-based lawyering can be a key component in nourishing trauma-informed legal professionals.

## **Understanding the Dynamics of Trauma**

Understanding the dynamics of trauma is crucial for legal professionals assisting victims of domestic violence. It is essential to recognize that trauma goes

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<sup>28</sup> Cattaneo, Lauren & Goodman, Lisa. (2009). Through the Lens of Therapeutic Jurisprudence The Relationship Between Empowerment in the Court System and Well-Being for Intimate Partner Violence Victims. *Journal of interpersonal violence*. 25. 481-502. [10.1177/0886260509334282](https://doi.org/10.1177/0886260509334282).

<sup>29</sup> Smyth, G., Johnstone, D., & Rogin, J. (2021). Trauma-informed lawyering in the student legal clinic setting: Increasing competence in trauma informed practice. *International Journal of Clinical Legal Education*, 28(1), 149–194. <https://doi.org/10.19164/ijcle.v28i1.1130>

<sup>30</sup> *See id*

beyond physical harm, encompassing emotional, psychological, and often enduring effects.<sup>31</sup> Legal practitioners must approach survivors with a trauma-informed perspective, acknowledging the potential impact of past and ongoing abuse on mental health and well-being. We must understand how the law operates in practical situations, how individuals interact with it, manage it, and react to it.<sup>32</sup> To achieve this, it is crucial to take an interdisciplinary approach, gaining insights from various fields to enhance our understanding of both the law and the world.<sup>33</sup>

Individuals who have experienced trauma often grapple with emotional and psychological consequences such as developing post-traumatic stress disorder (PTSD), feelings of anxiety, depression, and a heightened sense of vulnerability.<sup>34</sup> Creating a safe and supportive space in the legal setting should be a priority, fostering an environment where survivors feel heard and validated. Sensitivity to triggers, such as court proceedings or interactions with legal professionals, is crucial to avoid re-victimization.

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<sup>31</sup> Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Chapter 3, Understanding the Impact of Trauma. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK207191/>

<sup>32</sup> Winick, Bruce J. (2009) "Foreword: Therapeutic Jurisprudence Perspectives on Dealing with Victims of Crime," *Nova Law Review*: Vol. 33: Iss. 3, Article 3. Available at: <https://nsuworks.nova.edu/nlr/vol33/iss3/3>

<sup>33</sup> *See id.*

<sup>34</sup> Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Chapter 3, Understanding the Impact of Trauma. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK207191/>

## Professional Identity Formation

In legal education, the concept of "professional identity formation" has been recognized as a transformative journey toward a better and more holistic approach for both students and professionals.<sup>35</sup> In "A Taxonomy of Professional Identity Formation," Decosimo delineates three primary approaches—value, well-being, and competency—that provide a framework for the professional identity of legal practitioners and students.<sup>36</sup> This taxonomy emphasizes the complex nature of identity development within the legal sphere. Each of the three dominant approaches to professional identity formation responds to a distinct set of concerns about legal education or the legal profession and each seeks nothing more than to remake the legal profession.<sup>37</sup>

The traditional legal curriculum teaches students how to analytically think like a lawyer, but there is little evidence of traditional pedagogy dedicated to assisting students in developing a personal philosophy about the manner in which to practice law or in creating a professional identity.<sup>38</sup> Professional identity can be defined as a lawyer's personal integrity, values, decision-making process, and self-

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<sup>35</sup> Harmony Decosimo, A Taxonomy of Professional Identity Formation, 67 St. Louis U. L.J. (2022). Available at: <https://scholarship.law.slu.edu/lj/vol67/iss1/3>

<sup>36</sup> See *id.* p. 11

<sup>37</sup> See *id.* p. 37-38

<sup>38</sup> Jan L. Jacobowitz, Cultivating Professional Identity & Creating Community: A Tale of Two Innovations, 36 U. Ark. Little Rock L. Rev. 319 (2014). Available at: <https://lawrepository.uarl.edu/lawreview/vol36/iss3/3>

awareness.<sup>39</sup> It is “certain attitudes and habits of heart and mind that are thought critical to the practice and culture of the profession.”<sup>40</sup> In addition, “the cultivation of professionalism necessarily entails the nurturing of a sense of professional self-consciousness and constructive introspection, and an attitude of respect and responsibility towards others . . . .”<sup>41</sup> Ultimately, recognizing the importance of personal philosophy and professional identity in legal practice, it is evident that law schools should evolve to become the vessel for nurturing lawyers and legal professionals by cultivating analytical thinking but also instilling a holistic approach by incorporating TJ into their legal curriculums. Having established how the legal education institutions can path the way for relationship-based lawyering by improving law students experience, in the next subsections this article will elaborate how certain practices can assist legal professionals in working with DV victims.

## **Trauma-Informed Practices**

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<sup>39</sup> See *id* p.321

<sup>40</sup> See *id*. Jacobowitz 2014 Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117, 118 (2001). (Author citing other authors)

<sup>41</sup> Center for Substance Abuse Treatment (US). *Trauma-Informed Care in Behavioral Health Services*. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Chapter 3, Understanding the Impact of Trauma. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK207191/>

Legal professionals should be skilled in recognizing the complex interplay of trauma with legal processes, ensuring that their interventions contribute not only to justice but also to the survivor's healing journey. By incorporating trauma-informed practices, legal professionals can play a pivotal role in empowering survivors to navigate the legal system while promoting overall recovery and resilience. Individuals who have experienced trauma often grapple with emotional and psychological consequences such as developing post-traumatic stress disorder (PTSD), feelings of anxiety, depression, and a heightened sense of vulnerability.<sup>42</sup> Trauma-informed practices seek to address abuse and trauma and respond in a person-centered and supportive manner.<sup>43</sup>

Adopting a trauma-informed approach involves recognizing the prevalence and impact of trauma, integrating trauma-sensitive practices, and prioritizing the well-being of survivors throughout legal proceedings. TJ let's us understand that clients are people who possess the full range of human emotions that inevitably interrelate with the legal problems they are encountering and lets us look at the

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<sup>42</sup> Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Chapter 3, Understanding the Impact of Trauma. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK207191/>

<sup>43</sup> Nicole C. McKenna & Kristy Holtfreter (2021) Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness, *Journal of Aggression, Maltreatment & Trauma*, 30:4, 450-470, DOI: 10.1080/10926771.2020.1747128



client holistically.<sup>44</sup> On the other hand, trauma-informed practices are person centric, advocating for positive outcomes for the individual within the legal system. Thus the fundamental purposes of TJ and trauma-informed practices are similar: to recognize the importance of therapeutic (trauma-informed) interactions in promoting recovery and desistance from crime, while also avoiding anti-therapeutic outcomes caused by interactions with the judicial system.<sup>45</sup> By doing so, legal professionals can contribute to a more supportive and less re victimizing environment for survivors of domestic violence.

## **Cross Cultural Competence**

An efficient tool for trauma informed lawyering or relationship centered lawyering is cross cultural communication. Cross cultural communication refers to communication between people who differ in any of the following: working styles, age, nationality, ethnicity, race, gender, sexual orientation, and so on. Cross-cultural communication can also refer to the use of words, gestures, and body language to exchange, negotiate, and mediate cultural differences. While we typically think of cross-cultural communication habits as appropriate for working

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<sup>44</sup> Winick, Bruce J., Therapeutic Jurisprudence, Perspectives on Dealing with Victims of Crime (November 18, 2009). Nova Law Review, Vol. 33, pp. 536-544, 2009, University of Miami Legal Studies Research Paper No. 2009-37, Available at SSRN: <https://ssrn.com/abstract=1508504>

<sup>45</sup> See *id.*

with clients from other countries or those who speak other languages, these tools are also appropriate for working with any clients who may be marginalized by their experience of violence and the trauma of abuse.<sup>46</sup> Nega Katirai , associate clinical professor at the University of Arizona, is the first to suggest cross-cultural communication as an effective tool to avoid re-traumatization of survivors of DV.<sup>47</sup>

"The Five Habits: Building Cross-Cultural Competence in Lawyers" is an article written by Susan Bryant where she illustrates how herself and fellow law professor Jean Koh Peters developed five habits on building cross-cultural competence in lawyers.<sup>48</sup> They developed these habits over the course of a collaborative project while teaching in their respective law clinics.

1. The first habit is called “Degrees of Separation & Connection.” This habit is designed to encourage contemplation of the similarities and differences between oneself and one’s client, and to consider the effect of such similarities and differences on information gathering, assessing credibility, and other aspects of representation.<sup>49</sup>

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<sup>46</sup> Nega Katirai, *Retraumatized in Court*, 62 *Ariz. L. Rev.* 81 (2020). p. 111 Available at <https://arizonalawreview.org/retraumatized-in-court/>

<sup>47</sup> *See id.* p. 81

<sup>48</sup> Bryant, S., & Peters, J. K. (2001). Five habits for cross-cultural lawyering. *CUNY LAW REVIEW*, 8(33), 64–103. <https://doi.org/https://arizonalawreview.org/pdf/62-1/62arizlrev81.pdf>

<sup>49</sup> *See id.*

2. The second habit is called “The Three Rings,” and is designed to identify and analyze the possible effects of the similarities and differences between the client, the legal system, and the lawyer. This enhances the lawyers ability to assess the client’s legal claim, prepare a legal strategy, and prepare the client for litigation. This includes identifying both strong and weak points in the client’s case, including perception issues that may affect how credible the client appears in court, gaps between the client’s expectations and goals, and the likely outcome given the law.<sup>50</sup>
  
3. The third habit, called “Parallel Universes,” has lawyers go through the exercise of identifying multiple alternative interpretations of a client’s behavior whenever they are puzzled by a client’s decision-making. This exercise encourages the advocate to approach the client with compassion and understanding and then explore the topic in question using active listening skills.<sup>51</sup>
  
4. The fourth habit, "Pitfalls, Red Flags, & Remedies" involves paying attention to the process of communication itself, identifying trouble areas, and crafting solutions proactively.<sup>52</sup>

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<sup>50</sup> *See id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See id.*

5. The fifth habit is titled “The Camel’s Back,” and asks legal professionals to be aware of their own cultural biases and stereotypes. It also encourages students to make a practice of reflecting on the topics of biases and stereotypes on a regular basis with the goal of being aware of one’s own preconceptions, in part by practicing mindfulness.<sup>53</sup>

With the aspiration of an evolving legal landscape, it becomes increasingly evident that trauma-informed practices and cross cultural competence align seamlessly with the principles of TJ, particularly in the context of aiding survivors of DV. Transitioning from traditional adversarial models, the next subject delves into non-adversarial approaches, offering survivors alternatives to traditional court proceedings. In exploring these alternatives, the aim is to provide survivors with more empowering and supportive avenues that acknowledge the diverse ways in which justice can be sought, thus fostering a legal environment that is not only effective but also attuned to the unique needs and preferences of those who have experienced DV.

## **NON-ADVERSARIAL APPROACHES**

Adversarial processes have the potential to dehumanize people just as fighting usually does not create understanding and often causes more anguish and

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<sup>53</sup> *See id.*

suffering.<sup>54</sup> Argument is a form of fighting and does little to help hurt people cope with emotional pain.<sup>55</sup> The court system has substantial impact on those who become involved with it —whether he or she is a victim, offender, or witness—one that goes far beyond traditional notions of deterrence and behavior change. <sup>56</sup> As an alternative to, and in combination with, formal prosecution, the use of non-adversarial approaches to DV have the potential to deliver justice to victims and families in a comprehensive and healing manner. This could lay the foundation for a durable solution to changing violent behavior, and reduce the prospect of recidivism in a more humane and efficient matter.<sup>57</sup> When contemplating these methods it is necessary to incorporate a comprehensive screening protocol that excludes notorious reoffenders but identifies offenders who are both willing and capable of reform by understanding and acknowledging the psychological profile, attitudes and consistent characteristic of DV perpetrators.<sup>58</sup>

Group dynamics play a significant role in applying TJ oriented alternative conflict resolution methods. Group dynamics to create a collaborative and empowering atmosphere, promoting the well-being of domestic violence victims.

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<sup>54</sup> Walker, Lorenn & Hayashi, Leslie. (2009). Pono Kaulike: Reducing Violence with Restorative Justice and Solution - Focused Approaches. Federal Probation. 73.

<sup>55</sup> *See id.*

<sup>56</sup> Field, R., & Hyman, E. M. (2017). Non-adversarial approaches to domestic violence: Putting therapeutic jurisprudence theory into practice. J. JUD. ADM., 26, 275.

<sup>57</sup> *See id.*

<sup>58</sup> *See id.*

These interventions aim to enhance the emotional resilience of DV survivors by fostering a sense of community and understanding within legal processes.<sup>59</sup> Support groups, counseling sessions, and therapeutic interventions are integral components of TJ oriented alternatives to court proceedings and giving a slight introduction to these concepts may help us understand the dynamics of some non adversarial approaches which will be discussed subsequently.

### **Restorative justice**

Restorative Justice is a way of looking at crime that focuses on identifying and healing the harm a victim has endured while holding the offender accountable.<sup>60</sup> This type of practice focuses on the unique needs of the individuals affected by specific incidents of crime and invites them to participate in a personalized and/or private experience where they have the opportunity to consider what is necessary to help them heal.

#### 1. Circle Sentencing:

Circle sentencing is a practice originating from native populations.<sup>61</sup>

Circle sentencing is a holistic reintegrative strategy designed not only to address the criminal and delinquent behavior of offenders but also to consider the needs of victims, families, and communities. Within the “circle,” crime victims, offenders, family and friends of both, justice and

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<sup>59</sup> See *id.* p. 283

<sup>60</sup> Burkemper, B., & Balsam, N. (2007). Examining the use of restorative justice practices in domestic violence cases. *Saint Louis University Public Law Review*, 27(1), 121-[ii].

<sup>61</sup> Phillips, C. (2001). Circle Sentencing: A Victim Centered Process. *Crime Victims Report*, 5(1). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/circle-sentencing-victim-centered-process>

social service personnel, and interested community residents speak from the heart in a shared search for an understanding of the event. Together they identify the steps necessary, and give recommendations to assist in healing all affected parties and prevent future crimes.<sup>62</sup> Key factors in determining whether a case is appropriate for the circle process include the offender's character and personality, sincerity, and connection to the community; the victim's input; and the dedication of the offender and victim's support groups.<sup>63</sup>

## 2. Within Institutions:

Genuine reparation extends beyond merely punishing the wrongdoer. It necessitates the active involvement of all stakeholders—victims, offenders, the community, and criminal justice officials—in crafting plans to mend the repercussions of criminal acts.<sup>64</sup> Institutions can embody restorative justice by holding offenders accountable for their actions, fostering their personal healing and growth, supporting those who have themselves been crime victims, and providing services tailored to their needs. Additionally, promoting direct and indirect dialogue

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<sup>62</sup> Walker, Loren & Hayashi, Leslie. (2009). Pono Kaulike: Reducing Violence with Restorative Justice and Solution - Focused Approaches. Federal Probation. 73.

<sup>63</sup> *See id.*

<sup>64</sup> Henderson Hurley, M. (2009). Restorative Practices in Institutional Settings and at Release: Victim Wrap Around Programs . Federal Probation, 73(1). [https://www.uscourts.gov/sites/default/files/73\\_1\\_3\\_0.pdf](https://www.uscourts.gov/sites/default/files/73_1_3_0.pdf)

between victims and offenders and approaching issues of release and reintegration through a restorative justice lens further contribute to a comprehensive and transformative approach within institutions.<sup>65</sup>

3. Solution Focused Brief Therapy—Restorative Conferencing, Restorative Dialogue and Restorative Sessions:

These three facilitated restorative justice processes originated from the Pono Kaulike program in Hawai'i—a pioneering initiative designed for individuals pleading guilty to criminal offenses, those impacted by the crimes, and their supporters—.<sup>66</sup> *Restorative conferencing* involves non-adversarial, community-based strategies that bring together victims, offenders, and community members to address crime by holding offenders accountable and repairing harm inflicted on victims and communities.<sup>67</sup> *Restorative dialogues* facilitate open conversations between victims and offenders without the presence of supporters. In these dialogues, guided by mental health professionals and relevant judicial officials, participants delve into the root causes of the criminal act and its impact on the victim.<sup>68</sup> It is important to note that the safety

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<sup>65</sup> *See id.*

<sup>66</sup> <sup>66</sup> Walker, Lorenn & Hayashi, Leslie. (2009). Pono Kaulike: Reducing Violence with Restorative Justice and Solution - Focused Approaches. Federal Probation. 73.

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

<sup>68</sup> *See id.*



of all involved should be a priority and and rigorous screening measures adopted. Furthermore, *restorative sessions* cater to individual victims and offenders who meet separately with social service personnel. This setting allows them to discuss the ways in which the criminal act has affected their lives and collaboratively find solutions or remedies.<sup>69</sup> The comprehensive nature of these restorative justice processes underscores their potential to foster accountability, healing, and constructive resolutions within the criminal justice system.<sup>70</sup>

## CONCLUSION

The issue of re-victimization within legal settings for DV survivors underscores the urgent need for a transformative approach rooted in TJ.<sup>71</sup> As outlined throughout the body of this article, the legal system can inadvertently perpetuate trauma through insensitive procedures and inadequate understanding of the psychological impact of domestic violence. TJ offers a beacon of hope, urging legal professionals to shift from a purely adversarial approach to one that prioritizes the holistic wellbeing of survivors.<sup>72</sup> By integrating trauma-informed

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<sup>69</sup> *See id.*

<sup>70</sup> *See id.*

<sup>71</sup> Burkemper, B., & Balsam, N. (2007). Examining the use of restorative justice practices in domestic violence cases. *Saint Louis University Public Law Review*, 27(1), 121-[ii].

<sup>72</sup> Negar Katirai, *Retraumatized in Court*, 62 *Ariz. L. Rev.* 81 (2020). p. 111 Available at <https://arizonalawreview.org/retraumatized-in-court/>

practices, recognizing the nuances of power dynamics, and fostering a collaborative, empathetic legal environment, we can aim to break the cycle of re-victimization.<sup>73</sup> Legal settings should evolve into spaces that not only dispense justice but actively contribute to the healing of survivors, empowering them to reclaim agency over their lives. By incorporating an identity that values empathy, sensitivity, and a commitment to addressing the complex needs of survivors, legal professionals can contribute to a legal system that not only administers justice but also participates in the improvement and empowerment of those who have endured trauma. This paradigm shift is not only ethically imperative but essential for rebuilding trust in the legal system and, ultimately, facilitating the recovery and resilience of those affected by it.<sup>74</sup>

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<sup>73</sup> Nicole C. McKenna & Kristy Holtfreter (2021) Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness, *Journal of Aggression, Maltreatment & Trauma*, 30:4, 450-470, DOI: 10.1080/10926771.2020.1747128

<sup>74</sup> Harmony Decosimo, A Taxonomy of Professional Identity Formation, 67 *St. Louis U. L.J.* (2022). Available at: <https://scholarship.law.slu.edu/lj/vol67/iss1/3>