

Caring for Families in Court

An Essential Approach to Family Justice

Barbara A. Babb and Judith D. Moran

Excerpt

This is an excerpt of the referenced book comprised of **Chapter 2 - The Unified Family Court's Ecological and Therapeutic Capacities: A Crucial Interdisciplinary Paradigm**. This chapter focuses on the application of therapeutic jurisprudence and the ecology of human development to family law.

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2 The unified family court's ecological and therapeutic capacities

A crucial interdisciplinary paradigm

Introduction

We need court leaders who understand the importance of anticipating and managing change, so that the courts are prepared to confront the challenges that millions of ordinary people bring into our courthouses every single day These are people who are dealing with personal crises and [are] placing their hopes in the fairness and wisdom of judges and the legal system. And when we succeed in meeting these challenges, we send the message that our commitment as an institution is to serve the public in the best way possible and that our only agenda is to administer justice efficiently and effectively for the well-being of our citizens Court reform gives us credibility and strengthens our independence as a branch of government.¹

Court structure alone, including the unified family court model, is not a complete solution to the many problems surrounding the family justice system. Catherine Ross attributes the “lack of a jurisprudential framework”² in the development of family courts as a major contributor to the family justice system’s shortcomings. One of the authors of this book has advocated for decades about the application of an interdisciplinary approach to family law decision-making and to court reform in family law that provides this critical jurisprudential component and supplies added value to the court process.³

A research paradigm from the social sciences, known as the ecology of human development, provides a comprehensive analytical tool To address the special needs of families who present themselves to the court system, a

1 Jonathan Lippman, *William H. Rehnquist Award for Judicial Excellence Address*, 47 FAM. CT. REV. 199, 203 (2009).

2 Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 FAM. L.Q. 3, 6 (1998).

3 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 788 (1997); Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 507 (1998); Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES 65, 81 (Richard L. Wiener & Eve M. Brank eds., 2013).

concept from mental health law, known as therapeutic jurisprudence, assists the court in understanding how it intervenes in the lives of families. Application of these two perspectives provides an interdisciplinary ecological and therapeutic framework This interdisciplinary approach helps judges and other court system professionals consider the many influences on human behavior and family life, thereby empowering the system to offer more pragmatic and effective solutions to contemporary family legal issues.⁴

We now provide a comprehensive account of these two critical underpinnings for the family court's structure and function.

The ecology of human development

Given the complex nature of family law cases, the court process must encourage a comprehensive understanding of both the legal and the nonlegal issues facing the parties. The ecology of human development, a theoretical social science research paradigm developed by Urie Bronfenbrenner, provides a valuable framework to foster a holistic approach.⁵ "This social science model promotes an understanding of the interaction among individuals, institutions, and the social environment, thus helping to identify problems and to propose solutions."⁶ Clare Huntington lends support to the importance of this perspective:

[R]elationships do not exist in a vacuum. Neighborhoods matter. Raising a child in a community with safe streets, adequate playgrounds, and good schools means a parent's job is that much easier. Families matter. The relationships we grow up with as children influence our experience in school and the kinds of relationships we envision for ourselves as adults. And the workplace matters. Whether a job pays enough to support a family and whether an employer makes it possible to meet family responsibilities affect relationships at home. In all these ways, context matters.⁷

4 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 507 (1998).

5 See URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* (1979). See also MAKING HUMAN BEINGS HUMAN: BIOECOLOGICAL PERSPECTIVES ON HUMAN DEVELOPMENT (Urie Bronfenbrenner, ed., 2005).

6 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 788 (1997).

7 CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS*, at xi (2014); see also Shantel D. Crosby, Carl L. Algood, Brittany Sayles, & Jayne Cubbage, *An Ecological Examination of Factors that Impact Well-Being Among Developmentally Disabled Youth in the Juvenile Justice System*, 68 JUV. & FAM. CT. J. 5 (2017) (applying the ecological approach to understand youth in the juvenile justice system); see also Barbara Bennett Woodhouse, *Reframing the Debate about the Socialization of Children: An Environmentalist Paradigm*, U. CHI. LEGAL FORUM 85 (2004) (calling for an ecological approach to support child policy decisions); see also Barbara Bennett

The ecological approach encourages pursuing strategies to establish and to strengthen connections among all the competing influences on families' and children's lives, or their context, as a means to enhance their functioning. In order to account for these competing influences, Bronfenbrenner arranges and names the settings from smallest to largest. He envisions a person's life experiences "as a set of nested structures, each inside the next, like a set of Russian dolls."⁸

The "microsystem"⁹ is the most immediate context and the one individuals experience daily, such as the parent-child relationship, the husband-wife relationship, and the child-teacher relationship. The "mesosystem"¹⁰ is Bronfenbrenner's next level, describing the relationships between the microsystems, such as the degree of connection between a child's school and home setting, or between a child's home and church setting. "The central principle here is that the stronger and more complementary the links between settings, the more powerful the resulting mesosystem will be as an influence on the child's development."¹¹ The next system Bronfenbrenner describes is the "exosystem,"¹² or settings in which one does not participate but which, nevertheless, influence one's life, such as a parent's place of employment and its influence on the life of the child. The final system, or "macrosystem" refers to consistencies . . . that exist . . . at the level of the subculture or the culture as a whole, along with any belief systems or ideology underlying such consistencies."¹³

The macrosystem ideology or social policy creates various risks and opportunities for the individual. In defining macrosystem risk and opportunity,

macrosystem risk is any social pattern or societal event that impoverishes the ability and willingness of adults to care for children and children to learn from adults, while opportunity is the social pattern or event that encourages and supports parents and children.¹⁴

An example of macrosystem risk is a national economic policy that contributes to child and family poverty; an example of macrosystem opportunity is a national

Woodhouse, *Ecogenierism: An Environmentalist Approach to Protecting Endangered Children*, 12 VA. J. SOC. POLY & L. 409 (2005) (advocating reframing children's law by adopting an ecological paradigm); *see also* Clare Huntington, *Early Childhood Development and the Law*, 90 S. CAL. L. REV. 755 (2017) (advocating for the incorporation of research about early childhood development into the law).

8 URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* 3 (1979).

9 URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* 7, 22 (1979).

10 URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* 7-8, 25 (1979).

11 James Garbarino & Robert H. Abrahamowitz, *The Ecology of Human Development, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT* 11, 26 (James Garbarino et al. eds., 2d ed. 1992).

12 URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* 7-8, 25 (1979).

13 URIE BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT* 26 (1979).

14 James Garbarino & Robert H. Abrahamowitz, *The Ecology of Human Development, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT* 11, 28 (James Garbarino et al. eds., 2d ed. 1992).

policy that values families by giving economic incentives for families with young children.¹⁵

Bronfenbrenner also prescribes a life-course perspective when dealing with families' and children's lives, responding to the fact that situations and their effects on individuals may change over time.¹⁶ In addition to looking at families' and children's interactions from a holistic or ecological perspective, we also must examine their functioning over time and throughout the lives of the family members.

"The most important thing about this ecological perspective is that it reveals connections that might otherwise go unnoticed and helps us look beyond the immediate and the obvious to see where the most significant influences lie."¹⁷ "[T]he ecological perspective . . . offers a kind of map for steering a course of study and intervention."¹⁸ Bronfenbrenner argues that strengthening the interconnections between and among systems enhances individual and family development.¹⁹

Family justice system professionals can utilize the ecological approach to help identify the breadth and scope of factors affecting families' and children's lives. These professionals' crucial role is to assist with the identification of the various systems and to use the law's power to strengthen system interconnectedness, allowing

- 15 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 790 (1997); see also James Garbarino & Robert H. Abrahamowitz, *The Ecology of Human Development*, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT 11, 28 (James Garbarino et al. eds., 2d ed. 1992).
- 16 James Garbarino & Robert H. Abrahamowitz, *An Introduction*, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT 1, 9–10 (James Garbarino et al. eds., 2d ed. 1992); James Garbarino & Robert H. Abrahamowitz, *The Ecology of Human Development*, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT 11, 29–30 (James Garbarino et al. eds., 2d ed. 1992). The following illustrates the need for a life-course perspective: "Since most data are a cross-sectional snapshot of families, families are assumed to be static. A more realistic (though much more difficult) approach is to recognize and analyze the fluidity, change, and transitions as individuals live in a variety of family patterns. There are periods in the life cycle when an individual family may be one in which the father works and the mother stays home with the children. This stage is relatively short-lived when the total family life course is analyzed. There are periods, also, when women (and men) find themselves raising a family without a spouse present, but again, for many this is a transition period. None of these types or stages, however, should be viewed as the dominant or "ideal" family type. No one family type is superior to another or to be favored over others. Effective policies and services should be sensitive to the needs and stresses of certain types of families and recognize that some families are at greater risk (statistically) than others." ROBERT M. MARONEY, FAMILIES, SOCIAL SERVICES, AND SOCIAL POLICY: THE ISSUES OF SHARED RESPONSIBILITY 50 (1980); see generally EXAMINING LIVES IN CONTEXT: PERSPECTIVES ON THE ECOLOGY OF HUMAN DEVELOPMENT (Phyllis Moen et al. eds., 1995).
- 17 James Garbarino & Robert H. Abrahamowitz, *The Ecology of Human Development*, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT 11, 19 (James Garbarino et al. eds., 2d ed. 1992).
- 18 James Garbarino & Robert H. Abrahamowitz, *The Ecology of Human Development*, in CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT 11, 28 (James Garbarino et al. eds., 2d ed. 1992).
- 19 URIE BRONFENBRENNER, THE ECOLOGY OF HUMAN DEVELOPMENT 214 (1979).

the law to intervene more effectively in people's lives. "Courts must view neighborhoods, religious organizations, and other associations or institutions within which family members participate as having the potential to influence the family's legal matters."²⁰ The structure and function of the entire family justice system must aim to assist with the identification of the "family ecology"²¹ for each family, helping to reveal its interdependent nature. This ecological framework directs court professionals "to look beyond the individual litigants involved in any family law matter, to holistically examine the larger social environments in which participants live, and to fashion legal remedies that strengthen a family's supportive relationships."²²

Therapeutic jurisprudence

"Family law cases focus on some of the most intimate, emotional, and all-encompassing aspects of parties' personal lives."²³ Further, "families increasingly are appearing before the courts for assistance in making decisions and rendering judgments about every aspect of life from birth . . . through childhood . . . , adolescence . . . , adulthood . . . , and old age"²⁴ Based upon the law's power to reorder families' and children's lives, we owe families the duty of effective intervention regarding both legal and related nonlegal issues, as stated poignantly by Michael Town:

How deeply into the domestic realm can or should government go when it intervenes in the lives of families and children? Conversely, what is government's duty to families and children who are in legal and social distress? These political and philosophical questions still bedevil public officials in America today. Yet when society chooses to intervene, it must be done well and there must be accountability.²⁵

Clare Huntington agrees. "Rather than pretend that legal regulation of families is minimal, it is far more useful to reflect honestly and holistically on the role of law and reconsider what the law can do to help build strong, stable, positive relationships."²⁶ She goes on to say that

20 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 508 (1998).

21 MARY ANN GLENDON, *THE TRANSFORMATION OF FAMILY LAW: STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE* 308 (1989).

22 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 803 (1997).

23 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 471 (1998).

24 Marsha Kline Pruett, *Mental Notes: Reform as Metaphor and Reality*, 44 FAM. CT. REV. 571, 571 (2006).

25 MICHAEL A. TOWN, *THE UNIFIED FAMILY COURT: THERAPEUTIC JUSTICE FOR FAMILIES AND CHILDREN* 1 (Mar. 11, 1994) (transcript available in Chicago Bar Association Building).

26 CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS*, at xvii (2014).

[o]ur legal system is already deeply involved in every aspect of family life, from defining what a family is in the first place to subsidizing families through public education and deductions for dependents. The real question is not the magnitude of that involvement, but the ends it serves.²⁷

Therapeutic jurisprudence assists family law professionals to identify beneficial outcomes for parties. Therapeutic jurisprudence is a concept that has emerged from mental health law and now is applied internationally to broad areas of the law.²⁸

[M]ultitudes of international scholars and practitioners are engaged in the study and practice of therapeutic jurisprudence, as evidenced by postings on and membership in the International Network on Therapeutic Jurisprudence, a therapeutic jurisprudence listserv, a Facebook page, and several international conferences to date on the subject. Many law school course offerings worldwide focus on therapeutic jurisprudence One United States law school has created a family law and family justice system center, the University of Baltimore [Sayra and Neil Meyerhoff] Center for Families, Children and the Courts, whose work is grounded in therapeutic jurisprudence.²⁹

As one author of this book has promoted, it is particularly appropriate to employ therapeutic jurisprudence in family law cases, since its application requires the court to focus on outcomes that actually help families and children.³⁰

What, then, is therapeutic jurisprudence? David Wexler, one of the co-founders with the late Bruce Winick of the concept in the 1980s, defines it as follows:

27 Clare Huntington, *Help Families from Day 1*, N.Y. TIMES, Sept. 3, 2014, at A21.

28 See generally JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS (Bruce J. Winick & David B. Wexler eds., 2003); PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION (Dennis P. Stolle, David B. Wexler, & Bruce J. Winick, eds., 2000); LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (David B. Wexler & Bruce J. Winick eds., 1997); *The Jurisprudence of Therapeutic Jurisprudence*, in LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 645 (David B. Wexler & Bruce J. Winick eds., 1997); ESSAYS IN THERAPEUTIC JURISPRUDENCE (David B. Wexler & Bruce J. Winick eds., 1991); THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT (David B. Wexler & Bruce J. Winick eds., 1990); *International Network on Therapeutic Jurisprudence*, <https://law2.arizona.edu/depts/upr-intj/> (last visited Oct. 5, 2017); Pauline Spencer, *To Dream the Impossible Dream? Therapeutic Jurisprudence in Mainstream Courts*, 2012 INT'L CONFERENCE ON L. & SOC'Y (2012).

29 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 2 (Gerben Bruinsma & David Weisburd eds., 2014).

30 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 777–800 (1997); Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 509 (1998); see also Vicki Lens, *Against the Grain: Therapeutic Judging in a Traditional Family Court*, L. & SOC. INQUIRY 1, 15 (Summer 2015) (suggesting that judges in traditional family courts can employ therapeutic jurisprudence).

“Therapeutic jurisprudence is the study of the role of law as a therapeutic agent. It looks at the law as a social force that, like it or not, may produce therapeutic [helpful] or anti-therapeutic [harmful] consequences,” both intended and unintended.³¹ Therapeutic jurisprudence is a perspective or framework and a field of inquiry—“a lens through which to examine the effects of substantive laws, legal rules, legal procedures, and the behavior of legal actors, including judges, lawyers, court personnel, and service providers, on the psychological and emotional well-being of justice system participants”³² In addition to emphasizing the need to conduct empirical research about the effects of justice system outcomes on families’ and children’s lives, the use of therapeutic jurisprudence encourages that empirical findings from social and behavioral sciences drive reforms and practices that promote well-being.³³

Adopting a therapeutic jurisprudence, however, does not interfere with traditional justice notions.

[T]herapeutic consequences should not trump other considerations, such as due process, nor is the approach paternalistic or coercive, as it emphasizes the importance of self-determination and autonomy. Abiding by the notion of therapeutic jurisprudence, if all other judicial and legal issues are equal, the law ought to be restructured [or applied] to accomplish therapeutic outcomes. The difficulty arises when determining what normative values should take priority. Therapeutic jurisprudence does not answer this. It initiates the question and then sharpens and focuses the debate.³⁴

Therapeutic jurisprudence simply acknowledges that the law itself acts as a “therapist or healing agent. In the same manner as iatrogenic or harmful consequences exist in medicine, law has the potential to produce psychological harm”³⁵ The task of therapeutic jurisprudence is to ensure the maximization of therapeutic outcomes in each case, while still abiding by the rule of law and honoring justice system values. “Adopting a therapeutic . . . approach to legal problems does not mean that judges

31 David B. Wexler, *Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence*, in *ESSAYS IN THERAPEUTIC JURISPRUDENCE* 3, 8 (David B. Wexler & Bruce J. Winick eds., 1991).

32 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in *SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE* 1 (Gerben Bruinsma & David Weisburd eds., 2014).

33 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in *SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE* 1 (Gerben Bruinsma & David Weisburd eds., 2014).

34 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in *SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE* 3 (Gerben Bruinsma & David Weisburd eds., 2014) (footnotes omitted).

35 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in *SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE* 2 (Gerben Bruinsma & David Weisburd eds., 2014).

and lawyers function as therapists or social worker,”³⁶ however. “Instead, it requires that legal actors [judges, attorneys, court personnel] consciously consider the problems that may have precipitated the . . . behavior and how to effectively address those concerns.”³⁷ To accomplish this, “therapeutic jurisprudence encourages and invites interdisciplinary collaboration with other professionals who can better understand and assist the stakeholders in the legal system.”³⁸

Scholars and practitioners applying therapeutic jurisprudence often have combined it with other doctrines, many of which are important considerations in the practice of family law. For example, Peggy Hora, William Schma, and Jonathan Rosenthal have connected therapeutic jurisprudence to problem-solving courts, advocating that therapeutic jurisprudence forms the framework for those courts.³⁹ Dennis Stolle has paired therapeutic jurisprudence with preventive law, which advocates that lawyers try to identify and to address potential legal problems early.⁴⁰ Susan Daicoff has incorporated therapeutic jurisprudence as a key component of what she describes as comprehensive law.⁴¹ Another collaboration has occurred uniting therapeutic jurisprudence and procedural justice, or the focus on the legal proceedings and whether individuals have a “sense of feeling fairly treated, of being accorded respect, of being able to understand the proceedings, and of being heard during the legal process.”⁴² Procedural justice is a critical notion because “people who are satisfied with legal proceedings are more willing to comply with courts’ decisions and, in turn, have greater confidence in the justice system.”⁴³ In the family law and family justice system reform arena, one of this

36 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 3 (Gerben Bruinsma & David Weisburd eds., 2014).

37 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 3 (Gerben Bruinsma & David Weisburd eds., 2014).

38 Megan F. Chancy, *Postadjudicatory Juvenile Defense Attorneys: More Thoughts on Reimagining Juvenile Justice*, 42 CAP. U. L. REV. 491, 514–15 (2014).

39 Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439 (1999); see Deborah Chase & Peggy Fulton Hora, *The Best Seat in the House: The Court Assignment and Judicial Satisfaction*, 47 FAM. CT. REV. 209 (2009).

40 Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15 (1997).

41 Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPP. DISP. RESOL. L.J. 43 (2006).

42 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 4 (Gerben Bruinsma & David Weisburd eds., 2014); SUSAN GOLDBERG, NAT’L JUDICIAL INST., JUDGING FOR THE 21ST CENTURY: A PROBLEM-SOLVING APPROACH (2005).

43 Barbara A. Babb & David B. Wexler, *Therapeutic Jurisprudence*, in SPRINGER ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 5 (Gerben Bruinsma & David Weisburd eds., 2014); SUSAN GOLDBERG, NAT’L JUDICIAL INST., JUDGING FOR THE 21ST CENTURY: A PROBLEM-SOLVING APPROACH (2005).

book's authors has paired therapeutic jurisprudence with the ecology of human development, defined above.⁴⁴

In the family law context, applying therapeutic jurisprudence calls upon legal actors, including judges, attorneys, and court personnel, to focus on achieving outcomes that actually help or improve the lives of families and children involved in family legal proceedings.⁴⁵ Nonetheless, the individual's own viewpoint determines what constitutes a therapeutic outcome, which is something legal actors must identify and attempt to honor.⁴⁶ In turn, "attorneys and decision-makers must contemplate legal outcomes intended to produce more effective functioning on the part of families and children."⁴⁷ For example, in family law cases, where justice system participants are likely to have ongoing interaction, "family law should seek to preserve and repair emotional relationships, preparing the former family members for the contact that will almost certainly continue after the legal proceedings end," thereby requiring a prospective orientation from the court.⁴⁸ "In the field of family law, therapeutic jurisprudence should strive to protect families from present and future harms, to reduce emotional turmoil, to promote family harmony or preservation, and to provide individualized and efficient, effective justice."⁴⁹

Clare Huntington summarizes the law's responsibilities.

[F]amily law should concern itself more with the *manner* of [family] transition, paving the way for smoother relationships following the legal conflict. Throughout this process, family law should balance the possibility of repair with the necessity of keeping family members safe, remaining attentive to violence in the home [D]ispute-resolution family law should work

44 Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in *PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES* 65, 81 (Richard L. Wiener & Eve M. Brank eds., 2013); Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *IND. L.J.* 775 (1997); Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 *S. CAL. L. REV.* 469 (1998).

45 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *IND. L.J.* 775, 777–80 (1997); Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 *S. CAL. L. REV.* 469, 472–73 (1998).

46 Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 653 (David B. Wexler & Bruce J. Winick eds., 1997).

47 Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in *PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES* 65, 70 (Richard L. Wiener & Eve M. Brank eds., 2013); Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 655 (David B. Wexler & Bruce J. Winick eds., 1997).

48 CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* 109 (2014).

49 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *IND. L.J.* 775, 800 (1997).

toward three goals: restructuring families with an eye to the future, opening the door to repairing relationships, and keeping family members safe.⁵⁰

At the same time, however, “[t]herapeutic considerations are but one category of important considerations, as are autonomy, integrity of the fact-finding process, community safety, and more.”⁵¹

Adopting a therapeutic jurisprudence perspective in family law means that all professionals involved in the family justice system, including judges, attorneys, court personnel, special magistrates, mental health professionals, and mediators, among others, must understand and adhere to this orientation.⁵² Research has demonstrated that judges in unified family courts who adopt this approach have greater job satisfaction, which also positively impacts court staff, attorneys, and clients.⁵³ “Judicial satisfaction . . . relates not only to the individual judge but to the very quality of justice delivered in the courtroom.”⁵⁴ A therapeutic jurisprudence orientation, then, “has the potential to facilitate problem-solving and to positively enhance the quality of the parties’ daily lives, thereby rendering a more effective outcome for individuals and families.”⁵⁵

Putting the pieces together to improve family justice

How can these concepts—a unified family court, the ecology of human development, and therapeutic jurisprudence—contribute to the improvement of both family law decision-making and the operation of the family justice system itself?

The model unified family court described in Chapter 1 equips the justice system to approach the whole of the problems that bring families into court, including legal and related nonlegal issues. As discussed, “[a] unified family court is one that coordinates the work of independent forums and agencies, each of which has some limited role to resolve family legal matters.”⁵⁶ Empowering the court with

50 CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* 109–10 (2014).

51 David B. Wexler & Bruce J. Winick, *Patients, Professionals, and the Path of Therapeutic Jurisprudence: A Response to Petrila*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 707, 708 (David B. Wexler & Bruce J. Winick eds., 1997) (citation omitted); Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 714 (David B. Wexler & Bruce J. Winick eds., 1997).

52 See also Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in *PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES* 65, 70 (Richard L. Wiener & Eve M. Brank eds., 2013).

53 Deborah Chase & Peggy Fulton Hora, *The Best Seat in the House: The Court Assignment and Judicial Satisfaction*, 47 *FAM. CT. REV.* 209, 234 (2009).

54 Deborah Chase & Peggy Fulton Hora, *The Best Seat in the House: The Court Assignment and Judicial Satisfaction*, 47 *FAM. CT. REV.* 209, 234 (2009).

55 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *IND. L.J.* 775, 802 (1997).

56 Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in *PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES* 65, 74 (Richard L. Wiener & Eve M. Brank eds., 2013); see Roscoe Pound,

comprehensive subject-matter jurisdiction over all family law matters is key to enabling this holistic approach.

This archetypic unified family court, which considers a family's problems in a comprehensive and coordinated manner, should serve as a blueprint for . . . family law court reform. Adopting this model can promote dispute resolution outcomes which enable individuals and families to address more effectively their underlying family legal issues and to improve their functioning.⁵⁷

The ecology of human development serves as a roadmap to focus the attention of attorneys and judges on all of the systems within which families and children function in order to identify problems and to devise solutions. "Courts [and attorneys] must be guided to view schools, neighborhoods, places of employment, and other institutions within which family members participate as potential influences upon a family's legal matters."⁵⁸ Court structure and operation must permit it to account for the complex factors affecting children and families' lives.⁵⁹ A framework utilizing the ecology of human development assists all family justice system professionals to accomplish this task.

This structured consideration of the family's ecology by all court professionals facilitates problem-solving and enables family law decision-makers to understand more completely the comprehensive nature of the family's functioning. An ecological structure to guide family law court reform leads to the design of a court system that empowers decision-makers to apply the law in a manner that more effectively resolves the family's legal issues.⁶⁰

Therapeutic jurisprudence orients the court and all legal actors to craft resolutions to family legal and nonlegal issues that improve the well-being of the participants. Family courts function by intervening in families' and children's lives, so that "it is intrinsic to the family law decision-making process that 'intervention ought to aim to improve the participants' underlying behavior or situation.'"⁶¹ "Resolving family legal disputes with the aim of improving the lives of families and

The Place of the Family Court in the Judicial System, 5 NAT'L PROB. & PAROLE ASS'N J. 161 (1959).

57 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 478 (1998).

58 Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES 65, 73-74 (Richard L. Wiener & Eve M. Brank eds., 2013).

59 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 508 (1998).

60 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 509 (1998).

61 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 509 (1998).

children requires structuring the court system to enhance the system's potential to maximize the therapeutic consequences of court intervention."⁶² This orientation applies to judges and to court personnel, such as mental health professionals, involved in the family law decision-making process.

Adopting therapeutic jurisprudence as the goal of a model family law adjudicatory system requires careful consideration of the therapeutic implications resulting from all aspects of the court process. Envisioning therapeutic jurisprudence as the outcome, however, encourages the discovery of creative ways to effectively resolve family conflicts.⁶³

What accounts for therapeutic practices in the family justice system? One indicator is the mission statement of the family court itself. An excellent example of one such statement grounded in therapeutic jurisprudence is the mission statement intended to guide the operation of Maryland's family justice system:

The mission of Maryland's Family Divisions is to provide a fair and efficient forum to resolve family legal matters in a problem-solving manner, with the goal of improving the lives of families and children who appear before the court. To that end, the court shall make appropriate services available for families who need them. The court also shall provide an environment that supports judges, court staff, and attorneys so that they can respond effectively to the many legal and nonlegal issues of families in the justice system.⁶⁴

Maryland also has identified system values to guide the operation of its family courts. Many of these values promote therapeutic outcomes for families and children:

Preserving the rule of law; [s]tabilizing families in transition; [p]roviding forums for prompt conflict resolution; [p]romoting co-parenting relationships; [f]ostering parents as primary family decision-makers; [m]aximizing the use of alternative resolution methods and programs; [p]roviding safety and protection; [p]reserving family relationships where possible; [s]upporting linkages between resource needs and available resources on behalf of parents and their children;

(quoting Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 798 (1997)).

62 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 511 (1998).

63 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 512 (1998).

64 Barbara A. Babb & Jeffrey A. Kuhn, PERFORMANCE STANDARDS AND MEASURES FOR MARYLAND'S FAMILY DIVISIONS 6 (2002); Barbara A. Babb & Jeffrey A. Kuhn, *Maryland's Family Divisions Performance Standard 5.1: A Therapeutic, Holistic, Ecological Approach to Family Law Decision Making*, in JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 125-27 (Bruce J. Winick & David B. Wexler eds., 2003).

[i]ncreasing access to the family justice system; [u]sing judicial time efficiently by providing comprehensive information to judges and masters [magistrates] to assist them in making the most informed decisions possible; [d]eveloping a familiarity with each family; and [i]ncreasing cultural competency⁶⁵

Indeed, the adversarial process, as noted previously, too often is destructive for families and children. A therapeutic approach to family law cases “mandates that family cases be expedited to minimize the trauma of litigation and to ensure safety and support for all family members.”⁶⁶ Families must have the opportunity to make decisions for themselves by equipping them with educational programs, necessary services, and alternative dispute resolution techniques. Family courts have begun to realize “that because they function in many instances as a ‘trauma center,’ serving families in crisis, they are in a unique position to identify problems and connect those families with much needed services.”⁶⁷

Judges hearing family law cases have an opportunity to provide the families with a holistic understanding of their legal and related nonlegal issues and to fashion effective outcomes that improve families’ and children’s lives. This requires specialized training. “[J]udges assigned to . . . family courts must be informed about relevant social science literature, including child development and family dynamics, and about how that knowledge applies to family law decision-making.”⁶⁸

Not only must these judges fully understand the intricacies of the entire body of family law, but they also must possess an appreciation for and understanding of the social settings within which family members function, including any problems

65 Barbara A. Babb & Jeffrey A. Kuhn, PERFORMANCE STANDARDS AND MEASURES FOR MARYLAND’S FAMILY DIVISIONS 6 (2002).

66 Barbara A. Babb & Jeffrey A. Kuhn, PERFORMANCE STANDARDS AND MEASURES FOR MARYLAND’S FAMILY DIVISIONS 48 (2002); Barbara A. Babb & Jeffrey A. Kuhn, *Maryland’s Family Divisions Performance Standard 5.1: A Therapeutic, Holistic, Ecological Approach to Family Law Decision Making*, in JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 125 (Bruce J. Winick & David B. Wexler eds., 2003).

67 Barbara A. Babb & Jeffrey A. Kuhn, PERFORMANCE STANDARDS AND MEASURES FOR MARYLAND’S FAMILY DIVISIONS 48 (2002); Barbara A. Babb & Jeffrey A. Kuhn, *Maryland’s Family Divisions Performance Standard 5.1: A Therapeutic, Holistic, Ecological Approach to Family Law Decision Making*, in JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 125 (Bruce J. Winick & David B. Wexler eds., 2003).

68 Barbara A. Babb, *A Unified Family Court*, in JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 295 (Bruce J. Winick & David B. Wexler eds., 2003). Natalie A. Knowlton, *The Modern Family Court Judge: Knowledge, Qualities, and Skills for Success*, INST. FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (May 2015), http://iaals.du.edu/sites/default/files/documents/publications/the_modern_family_court_judge.pdf; Barbara A. Babb & Judith B. Moran, *Judicial Independence in Family Courts*, in JUSTICE IN JEOPARDY: REPORT OF THE AMERICAN BAR ASSOCIATION COMMISSION ON THE 21ST CENTURY JUDICIARY app. H at 13–14 (2003).

attendant to each of these settings, such as substance abuse and domestic violence.⁶⁹

Cindy Lederman emphasizes the background needed for effective family court judging.

Judges need to understand the characteristics of the people they are trying to help, including their risk factors, protective factors, and level of functioning. Judges need to understand the history of the families they see in order to understand how to help them. Judges need to know about their behavior, the traumas they have suffered, and especially their resilience.⁷⁰

Judges with this background have the knowledge required to promote family well-being. Because family court judges must be more than triers of fact, “[f]amily law decision-makers must embrace as a goal of family law jurisprudence the need to strengthen individuals and families and to enhance their functioning.”⁷¹ According to Lederman, “our goals must really be to change human behavior, to protect, and to heal. The goals are not traditional judicial functions, which, by comparison, are simple.”⁷²

When the justice system serves individuals and families well and improves their functioning, the entire society benefits.

A unified family court that comprehensively approaches the needs of families from an interdisciplinary [ecological and therapeutic] perspective and [that] is able to do so in a user-friendly way . . . [can] meet the current challenges of overburdened courts and families that desperately need their help.⁷³

69 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 514–15 (1998); see Sanford N. Katz & Jeffrey A. Kuhn, RECOMMENDATIONS FOR A MODEL FAMILY COURT 5–6 (1991); Barbara A. Babb & Judith D. Moran, *Substance Abuse, Families, and Unified Family Courts: The Creation of a Caring Justice System*, 3 J. HEALTH POLY & L. 1 (1999); Natalie A. Knowlton, *The Modern Family Court Judge: Knowledge, Qualities, and Skills for Success*, INSTIT. FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (May 2015) http://iaals.du.edu/sites/default/files/documents/publications/the_modern_family_court_judge.pdf.

70 Cindy Lederman, *Science in the Courtroom: Vital to Best Interests and Reasonable Efforts*, 61 JUV. & FAM. CT. J. 63, 65 (2010).

71 Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 808 (1997); Barbara A. Babb & Judith B. Moran, *Judicial Independence in Family Courts*, in JUSTICE IN JEOPARDY: REPORT OF THE AMERICAN BAR ASSOCIATION COMMISSION ON THE 21ST CENTURY JUDICIARY app. H at 13 (2003).

72 Cindy Lederman, *Science in the Courtroom: Vital to Best Interests and Reasonable Efforts*, 61 JUV. & FAM. CT. J. 63, 64 (2010).

73 Barbara A. Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach in* PROBLEM SOLVING COURTS: SOCIAL SCIENCE AND LEGAL PERSPECTIVES 65, 82 (Richard L. Wiener & Eve M. Brank eds., 2013).

Maryland's former Chief Judge Robert Bell has articulated the need for this approach.

[W]e have finally come to realize, that the effective resolution of legal disputes within a family requires a fundamental shift from the traditional adjudication focus to a more holistic, therapeutic model that attempts to improve the lives of families and children in substantive ways. To achieve this new paradigm, there must be a confluence of access to coordinated and comprehensive legal and social services, efficient case processing and management, and a more widely accessible court system.⁷⁴

The need for more components

During the past several decades, we have interacted with the family justice system in many capacities: as attorneys representing clients in court, as a family court administrator, as the director of a law school family justice center, as law professors teaching law students how to practice family law, as scholars writing about reform proposals, as advocates speaking about the need for change, and as consultants providing technical assistance to various jurisdictions about how to implement family court reform. Throughout all of this work, it has become clear, as noted on the first page of Chapter 1, that family courts function much like hospital emergency rooms because family courts deal with children and families in crisis. Thus, like the hospital emergency room, we must envision the family court as a “care center.” How can this happen? How can we create a caring family court?

By blending unified family courts, the ecology of human development, and therapeutic jurisprudence with an ethic of care and narrative practice, family court intervention has the potential to become an even more effective positive force in the lives of children and families. The court's problem-solving capabilities are enhanced, giving the court the capacity to do greater good. Creating the court as a care center becomes the essence of how the family justice system must operate and responds to the ultimate goal of family law as stated by Clare Huntington.

This approach to dispute-resolution family law—restructuring families with an eye to the future, preserving and repairing relationships, and keeping family members safe—creates a framework for understanding what the government should be doing in structural family law: proactively nurturing strong, stable, positive relationships to avoid these conflicts as much as possible.⁷⁵

This theoretical paradigm responds to the criticism of the state of affairs to date, that “reforms remain incomplete and at times actively challenged, in part because they lack an overarching framework.”⁷⁶ We supply this critical construct.

74 Robert M. Bell, *Administration of Justice*, 32 MD. B.J. 2, 4 (1999).

75 CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS*, at xiv (2014).

76 CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* 106 (2014).

Conclusion

Caring, in the words of Urie Bronfenbrenner, is “what makes human beings human.”⁷⁷ According to Bronfenbrenner, “[i]n order to develop, a child needs the enduring, irrational involvement of one or more adults in care and joint activity with the child Somebody has to be crazy about that kid.”⁷⁸ Judith Areen agrees with Bronfenbrenner: “Caring may well be understood as a virtue . . . indeed it may be the central virtue for sustaining human relationships.”⁷⁹ Family law in particular addresses and affects relationships and emotions. Because care is so fundamental to the human condition, it must be an explicit factor in family law theory, practice, and decision-making, as well as in family court structure and operation. An ethic of care perspective views family justice as accounting for the application of relevant law but also attending to the individual and unique circumstances of each family law case. Involvement in the family justice system has the potential to alter family relationships, parental access and decision-making, and economic resources, among other outcomes. The court’s immense power to change people’s lives “requires bringing an ethic of care to the law through the efforts of the attorneys, judges, and staff, just as doctors and nurses would in caring for a patient in a medical setting.”⁸⁰ Thus, an ethic of care must guide the behavior of legal actors and the operation of the family justice system as they together attempt to resolve families’ problems.

In order to operate from a caring perspective, family court participants, including attorneys, decision-makers, court personnel, and service providers, must rely on and utilize each family’s story as the foundation for fashioning an effective resolution to the legal and related nonlegal issues. Narrative theory and practice promote this enlightened view, as knowledge of each family’s distinctive facts and points of view become the context from which the family justice system demonstrates its capacity to care. The family justice system must incorporate active narrative practices.

The remainder of this book charts our new prescription for family justice system reform. Chapter 3 introduces the ethic of care. It defines the ethic of care as both a theory and a practice. It traces the history of the ethic of care, discusses how it provides an approach to law, and describes how it can promote effective justice. Chapter 4 elaborates on the elements of narrative practice. It amplifies how narrative can promote an ethic of care in the family justice system, resulting in a more therapeutic approach to family law practice and decision-making. Chapter 5 presents a vision for a family justice system that incorporates into the model presented thus far—the unified family court, the ecology of human development, and therapeutic jurisprudence—principles and practices

77 See generally MAKING HUMAN BEINGS HUMAN: BIOECOLOGICAL PERSPECTIVES ON HUMAN DEVELOPMENT (Urie Bronfenbrenner, ed. 2005) (an anthology of articles utilizing the ecology of human development as a research paradigm).

78 Urie Bronfenbrenner, *Who Needs Parent Education*, 74 *TCHR. COLL. REC.* 774 (1978).

79 Judith Areen, *A Need for Caring*, 86 *MICH. L. REV.* 1067, 1076 (1988) (reviewing Harlon L. Dalton & Scott Burris, *Aids and the Law: A Guide for the Public* (1987)).

80 Michael A. Town, *The Unified Family Court: Preventive, Therapeutic and Restorative Justice for America's Families*, *JUV. & FAM. JUST. TODAY* 14, 15 (Winter 2002).

from an ethic of care orientation and from a narrative perspective. Such an approach is essential to guide necessary and effective family justice system reform, intended to accommodate and to address the very unique challenges presented by the families appearing before the court. Chapter 6 highlights innovative, caring practices currently in place in family courts and suggestions for incorporating caring components into the family justice system.

We as a society owe it to families and children to continue to strive to redesign and to improve the functioning of the family justice system. Despite innovative out-of-court practices in family law matters, “[c]ourts are likely to remain the forum to which people turn for the resolution of their family legal matters.”⁸¹ Or, as one of the authors of this book has argued, “Family courts are here to stay, so let’s improve them.”⁸² Further justification for the viability of family courts stems from their critical functions:

[T]he core functions of the courts are protection, enforcement, and fact-finding. Those are functions no other entity can provide. Courts *must* continue to offer protection for victims, disputed fact-finding where necessary, and enforcement of orders. They *must* also receive adequate resources to perform these functions efficiently and fairly. If choices have to be made, use of the court’s time in family cases will be focused on the cases where the need for judicial intervention is the highest. Family court judges *must* have the opportunity for training and education about child development, family dynamics, and dispute resolution before they rotate in to a family court division. No amount of community involvement or service diversion will change the need for these basic services.⁸³

Perhaps the most significant reason for attending to the family justice system is, as Jack Weinstein has noted, “[i]n theory, if not always in practice, everyone is equal in the courts; mechanisms exist to help redress imbalances and protect against manifest injustice.”⁸⁴ Family justice system reform is a process that cannot wait. Our families and children already are in the family court emergency room in great numbers. They need and deserve effective treatment.

81 Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 527 (1998).

82 Barbara A. Babb, *Family Courts Are Here to Stay, So Let’s Improve Them*, 52 FAM. CT. REV. 642 (2014).

83 Rebecca L. Kourlis, et al., *IAALS’ Honoring Families Initiative: Courts and Communities Helping Families in Transition from Separation or Divorce*, 51 FAM. CT. REV. 351 (2013).

84 Jack B. Weinstein, *Some Benefits and Risks of Privatization of Justice Through ADR*, 11 OHIO ST. J. ON DISP. RESOL. 241, 246 (1996).