“WE DON’T TALK ABOUT BRUNO:” OF MENTAL HEALTH, HONESTY AND OPENNESS, AND THE LEGAL PROFESSION

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Professor Michael Perlin, who contributed an article to the 2022 University of Louisville Law Review Symposium on Mental Health and the Legal Profession held at the University of Louisville on February 26, 2022,¹ is famous for using Bob Dylan lyrics as titles for his insightful articles on mental health law² and therapeutic jurisprudence.³ As an homage to Professor Perlin, and with due apologies for stealing his trademark approach, I would like to use this foreword to talk briefly about Bruno.

Bruno, as readers with small children will know, is a character in Disney’s animated film “Encanto,”⁴ and the titular character of the breakout song of the pandemic winter of 2021–22.⁵ Bruno is one of three children of the film’s matriarch, each gifted with magical powers. Unlike his siblings, however, Bruno is absent from view for much of the film. Bruno’s ability to predict the future has turned out to be as much of a curse as a blessing. His gift has affected Bruno’s mental health and his standing in the family, as evidenced by the repeated chorus of the song that “We Don’t Talk About Bruno.” Bruno has withdrawn from his family into the walls of the Casita, and his family refuses to speak of him.

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⁴ ENCANTO (Walt Disney Studios 2022).
Reviewers and commentators have pointed out that Encanto is a non-traditional Disney animated film, in that it does not have a “villain.” Film critic Caroline Cao, writing for the website SlashFilm, points out that “[t]he real villain [of Encanto] is the family’s insecurities, their shame, and their inability to talk out their troubles. In denying these truths, the Madrigals shut out a loved one who was only trying to help.”

As with Bruno, the legal profession has too often dealt with mental health and wellness issues by pretending they do not exist, despite the fact that they remain in the walls of our law schools, law firms, and courthouses. Law instinctively resists change. We learn the value of precedent and stare decisis in the first days of law school, and this loyalty to “the way things are done” holds true for both legal doctrine and in our practices as lawyers and legal educators. We continue to cling to potentially toxic and traumatizing practices despite the admonition of Oliver Wendell Holmes that “most of the things we do, we do for no better reason than that our fathers have done them or our neighbors do them.” Many of the participants and attendees at this Symposium noted many of these behaviors, from the Socratic method of the first year law classroom, to the high-stakes all-or-nothing exam still common in law school classes, to the stigmatizing emphasis on mental health as a character and fitness issue in the bar admissions process.

The overarching theme of the articles in this Symposium Issue is that each describes ways in which the legal system is unintentionally toxic and traumatizing for those involved with it, whether as law students, lawyers, criminal defendants, or other participants in legal proceedings. Each of the articles contributed has a unique perspective on this issue; and taken together, they form an important resource for engaging in a dialogue about ways to improve the legal system for all actors within it.

This Symposium Issue first focuses on the ways in which legal education and the legal profession create, or at the least fail to adequately reckon with, mental distress and trauma among its members. First, in “‘It is Okay to Not Be Okay:’ The 2021 Survey of Law Student Well-Being,” Dean David Jaffe, Dr. Kate Bender, and Professor Jerome Organ describe the results of the 2021 follow-up survey to their groundbreaking 2014 Survey of Law Student Well-

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7 Id.
8 Oliver Wendell Holmes, Address to the Supreme Judicial Court of Maryland (Mar. 25, 1897).
Being. Jaffe, Bender, and Organ describe in detail changes in the survey instrument and responses from 2014–2021, with particular attention to questions regarding substance use, mental health concerns, and help-seeking behavior by law students. They then move on to discuss ways in which law schools can potentially ameliorate the negative consequences of professional education on students’ mental health, focusing on potential interventions by law school administrators, faculty and staff, and fellow students. Empirical work on the mental health of college, graduate, and professional students has been increasing over the last few years, and this contribution is a high-quality window into the lives of law students which should be a sobering, yet ultimately hopeful, addition to every law administrator’s and faculty member’s reading list.

From the effect of law school on student mental health, the Symposium materials move on to consider one potential intervention: improving the quality of education on substance use and mental health to the law school curriculum. Dean Janet Stearns proposes requiring law students to demonstrate that they have been educated in mental health and substance use issues by the inclusion of questions on this topic in the already-required Model Professional Responsibility Exam. She briefly reviews the existing educational mandates imposed on American law schools by the accreditation process of the American Bar Association (ABA). Noting that the ABA has recommended, though not yet required, education on substance use and mental health in the context of the required course in legal ethics and professionalism, she surveys the major legal ethics casebooks used in law schools for their treatment of this important issue. Unsurprisingly, she finds that few existing casebooks give more than nominal consideration to the issue, although she notes that newer books trend in the direction of more coverage. She also notes that some casebooks include additional materials in their accompanying Teachers’ Manuals for professors wishing to

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11 Jaffe et al., supra note 9, at 454–62.  
12 Id. at 463–69.  
13 Id. at 469–78.  
14 Id. at 485–94.  
16 Id. at 504.  
17 Id. at 501–03.  
18 Id. at 502.  
19 Id. at 506–11.
strengthen their coverage of this topic. 20 She then proceeds to discuss additional resources outside the traditional casebooks which would serve as the foundation of a two- to four-hour module on substance use and mental health within an existing course in legal ethics. 21 Although not purporting to be a comprehensive bibliography on this subject, the resources and practices described in Dean Stearns’ article will serve as an excellent starting place for legal ethics professors seeking to improve our students’ education in substance use and mental health issues, whether or not the law school accreditors decide to require examination on this important additional topic.

The second half of the articles in the Symposium Issue shift the focus of mental health and wellness from actors who are part of the system (law students and lawyers) to those who find themselves caught up in it. Attorneys Dorislee Gilbert and Dr. Emily Bonistall Postel describe ways in which the litigation system is often traumatizing for those seeking justice within it. 22 Acknowledging that the legal system is designed to seek the truth, Gilbert and Bonistall Postel argue that it nonetheless needlessly replicates existing trauma of victims (specifically victims of crime, although the authors suggest that their framing is equally applicable in other litigation contexts). 23 After describing ways in which the legal system is insensitive to the needs of victims, Gilbert and Bonistall Postel provide a set of recommendations to alleviate the trauma of crime victims participating in the criminal justice system—from managing the expectations of those involved in litigation, to giving survivors a sense of control in the legal process, to training for legal actors in understanding and empathizing with the trauma experienced by victims engaged in the legal system. 24 These recommendations will be useful both to lawyers working within the system as it currently exists, and for legislators, judges, and others seeking to reform the system so that it does not unintentionally perpetuate harm as it seeks to ascertain truth and impose legal consequences for civil or criminal wrongdoing.

Finally, the Symposium materials examine the question of how the legal system treats death row inmates with severe mental illness. In “Insanity is Smashing Up Against My Soul’: The Fifth Circuit and Competency to be Executed Cases After Panetti v. Quarterman,” 25 Professors Michael L. Perlin

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20 Id. at 510.
21 Id. at 511–17.
23 Id. at 529–33.
24 Id. at 533–45.
25 Michael L. Perlin & Talia Roitberg Harmon, “Insanity is Smashing Up Against My Soul’: The Fifth Circuit and Competency to be Executed Cases After Panetti v. Quarterman, 60 U. LOUISVILLE L.
and Dr. Talia Roitberg Harmon survey the last fourteen years of death penalty jurisprudence from the Fifth Circuit involving inmates who claim that they are not competent to be executed. As articulated by the Supreme Court, competence to be executed requires at a minimum that the defendant have a rational understanding of the reason for his execution. This article follows other scholarship by the authors describing the practices of the Fifth Circuit under the Supreme Court cases of *Atkins v. Virginia* (establishing limits on the applicability of the death penalty to individuals with developmental disabilities) and *Strickland v. Washington* (establishing the right of such individuals to effective assistance of counsel). In the words of the authors, their findings in this Symposium article were “even more astonishing than were our findings” in the previous articles. The authors describe a system which consistently privileges State expert testimony, undervalues the perspective of the condemned, and fails to take sufficient account of the legal standard for administration of the death penalty articulated by the Supreme Court. The authors close the article with a plea for a death penalty system more informed by principles of therapeutic jurisprudence, but they somewhat plaintively admit that the recent history of death penalty cases, especially in the Fifth Circuit, gives them little optimism of such progressive developments.

The theme of this Symposium’s articles is that issues of mental health and wellness do not resolve themselves without deliberate intervention, and that not talking about these systemic problems within the legal profession all but guarantees they will not improve, and will, if anything, get worse over time. To return to the introductory metaphor, in Encanto, the protagonist Mirabel is teaching the children who live in the Encanto village (and, of course, the audience) about the various members of the Madrigal family early in the film. When she mentions the name Bruno, the entire community reacts as a chorus, reminding her loudly that “We don’t talk about Bruno!” She continues, telling us that “they say he saw the future / one day he disappeared.” When the family’s magical Casita begins to show signs of damage, however, Mirabel realizes that she must find Bruno in order to fix

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29 Perlin & Harmon, supra note 25, at 561.
30 *Id.* at 579–98.
31 *Id.* at 597–606.
32 *Id.* at 606–07.
33 ENCANTO, supra note 4, at 6:00.
34 *Id.*
the damage. When we first see Bruno, he shows clear signs that his isolation—both self-imposed and enforced by the edict of silence within the community—has caused him mental distress. He shows signs of compulsive tics and superstitious behaviors, functioning as narrative stand-ins for the mental distress of isolation. 35 Ultimately, of course, the family realizes that they must “talk about Bruno” and re-integrate him into their family and into their community; and it is this re-integration that cures the Casita and restores the family’s magic. 36

The legal profession historically has not spoken of issues of mental health and wellness within the profession, as several Symposium presenters mentioned during the event, instead seeing such discussions as signs of weakness or unfitness. This attitude persists in the way our character and fitness process for bar admissions stigmatizes mental health and discourages (perhaps unintentionally) seeking mental health treatment among law students. We also tend not to discuss ways in which those subject to the legal system’s machinations and punishments are themselves harmed by the process. Professors Perlin and Harmon remind us that the “open secret [of] the astonishingly high percentage of individuals on death row with serious mental disabilities” is “not generally discussed in the press or, certainly, in political discourse . . . this is far beneath society’s radar.” 37 In the words of noted Kentucky author, professor, and scholar bell hooks, “honesty and openness is always the foundation of insightful dialogue,” 38 and this Symposium and the resulting papers are an excellent example of that. Perhaps the materials collected for this Symposium will go some way towards helping the legal profession to continue to talk about our “Brunos:” the ways in which the legal profession and legal system can improve its treatment of mental health and wellness issues for everyone within the legal system.

35 Id. at 56:00
36 Id. at 1:26:00.
37 Perlin & Harmon, supra note 25, at 557–58.