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Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship (Symposium: Lawyering and Its Discontents: Reclaiming Meaning in the Practice of Law)

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STRESS, BURNOUT, VICARIOUS TRAUMA, AND OTHER EMOTIONAL REALITIES IN THE LAWYER/CLIENT RELATIONSHIP

A panel discussion

Professor Marjorie A. Silver¹

Dr. Sanford Portnoy²

Professor Jean Koh Peters³

PROFESSOR SILVER: I want to explain briefly how I got involved in this work. I teach Civil Procedure and Professional Responsibility here at Touro Law Center. Years ago, in a Professional Responsibility class, we were discussing regulation of sexual relations between lawyers and clients. Those of you from

¹ Marjorie A. Silver is a Professor of Law at Touro Law Center whose publications include *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (1999).

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³ Jean Koh Peters is a Clinical Professor of Law at Yale Law School, and the author of *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* (LEXIS Law Publishing 2d ed. 2001).

New York know we have had a relevant rule for a few years now.⁴ Also, the ABA had issued a formal opinion on the same subject.⁵ More and more jurisdictions are beginning to regulate this area of the attorney-client relationship.⁶ We were talking about the problems that a sexual relationship could create in terms of fiduciary responsibilities and the conflict of interest that could arise, especially between the attorney's own interest and the client's interest. It came into my head and I said, what if an attorney develops a strong, amorous feeling toward a client but does not act on it? Would that be a problem in terms of fiduciary responsibility and conflicts of interest? The reaction of the class was swift and

⁴ N.Y. COMP. CODES R. & REGS. Tit. 22, § 1200.29-a (2002) provides in pertinent part:

A lawyer shall not (1) require or demand sexual relations with a client or third party incident to or as a condition of any professional representation; (2) employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or (3) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.

⁵ ABA Comm. on Prof'l Conduct, Formal Op. 92-364 (1992) (holding that a sexual relationship between lawyer and client may involve unfair exploitation of the lawyer's fiduciary position, and/or significantly impair a lawyer's ability to represent the client competently, and therefore may violate both the Model Rules of Professional Conduct and the Model Code of Professional Responsibility). See also MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (2002) which provides that "[a] lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."

⁶ See, e.g., CAL. RULES OF PROF'L CONDUCT 3-120; FLA. BAR RULE 4-8.4(i); MINN. RULES OF PROF'L CONDUCT 1.8(k); OR. CODE OF PROF'L RESPONSIBILITY DR 5-110.

strong. "Thought police!" "1984!"⁷ "You can't do anything about that!"

I began to realize or focus more on the fact that whereas those working in helping professions such as psychotherapists and social workers are trained to expect transference and countertransference reactions in their relations with their clients, lawyers are trained to assume that the only things relevant to their relationships with their clients are how well they know the law and how well they can read and apply it. I also thought that neither legal education nor the profession do anything in any way to counteract that in training lawyers to think they don't have to worry about those psychological issues and those emotional issues. That could not be farther from the truth.

So I began my journey into this field, first by looking at what we call countertransference in the lawyer/client relationship, which led to the article, *Love, Hate and Other Emotional Interference in a Lawyer/Client Relationship*.⁸ That, in turn, led to looking at the emotional competence and intelligence of lawyers more broadly and as creating possibilities for positive intervention. I wrote about how legal education does not prepare our lawyers for

⁷ See GEORGE ORWELL, 1984 (Signet Modern Classic 1996) (1949) (futuristic satire of political fiction and complete governmental control; the "thought police" would police citizens' thoughts).

⁸ Silver, *supra* note 1.

that and why I think it should.⁹ It was through that work that I discovered the work of two of the panelists today.

First, Dr. Sanford Portnoy has written a book, *The Family Lawyer's Guide to Building Successful Client Relationships*,¹⁰ in which he makes psychological concepts accessible to practitioners and explains to practitioners how they can use this knowledge in enhancing and improving their relationships with their clients, and hence improving outcomes for their clients. Dr. Portnoy has his practice in Massachusetts where he is a clinical therapist. He also founded Portnoy Associates where he assists lawyers in matrimonial areas with the kind of work that I referred to and he will talk more about.

In connection with an article on emotional competence and multicultural lawyering I discovered the work of Jean Koh Peters, *Representing Children in Child Protective Proceedings*.¹¹ In addition to reading the chapter on issues with representing clients from different cultures, I noticed another chapter on stress, burnout, and vicarious trauma, and I began to be fascinated with that work. I read it last summer while I was thinking about what September 11th has been about for so many attorneys and the relevance of this work, especially for attorneys who are representing victims or victims' families of September 11th. Jean

⁹ Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 J. PSYCHOL. PUB. POL'Y & L. 1173 (1999).

¹⁰ PORTNOY, *supra* note 2.

¹¹ PETERS, *supra* note 3.

Koh Peters is a clinical professor at Yale University whose work has been primarily in the field of child protection.

Those are the qualifications that brought these wonderful panelists here today. Their biographies are far more lengthy than previously mentioned. With that introduction, I am going to ask Dr. Portnoy to begin and Professor Peters to go second, after which I will pose questions to them.

DR. PORTNOY: Professor Silver asked each of us to just introduce ourselves to begin with, in terms of why we are on the panel, what our take is, and how we got there. I will share with you a bit of my personal history. About fifteen years ago, I was invited by a colleague to attend the meeting of an organization in Boston called the Divorce Center, which is a group of allied professionals that work in divorce; lawyers, mental health professionals and financial planners mostly.¹² The primary purpose of the organization is to present low cost public education about divorce. We do panels and seminars for about five dollars for people going through divorce itself; it is a very useful, valuable thing to do. The second function is to provide a chance for the professionals to commingle and network with one another.

So, I became involved with the organization, and one of the first things I noticed when I would go to the meetings and talk to lawyers was that they spent much of the time talking about what it

¹² See <http://www.divorcenter.org/about/index.htm> (last visited Feb. 24, 2004).

was like to work with their clients and how difficult that was. As I listened to them, it sounded like they were talking about the same work that I do, but with two differences: they weren't trained to do it and they had day jobs. It seemed to me that they were at a terrible disadvantage. That was where my interest in beginning to do research on lawyer/client relationships in the area of matrimonial law came from, and I began to study and write about it. That was the source of the book.

PROFESSOR PETERS: My name is Jean Koh Peters. I am a clinical teacher at Yale Law School. My two areas of expertise are representing refugees and children. I supervise students who represent refugees seeking asylum and children who are in foster care or at risk of being in foster care. I have been a clinical teacher since 1986 when I started at Columbia University where I taught a child advocacy clinic. Before that, I was a legal aid lawyer at the Juvenile Rights Division in Manhattan.

I would like to ask you a few questions about yourselves, and please don't feel that you have to answer. Perhaps I can get a sense of who you are. Would everyone who is a practitioner raise their hands? Thank you. Would everybody who feels like stress is an inseparable component of their daily life raise your hands please? Here are some other questions that might seem strange, but do your best. How many of you feel that compassion is a part of your daily work life? This next question is somewhat connected to the previous question. How many of you find yourselves

authentically caring for your clients and authentically worried about their situations? How many of you find yourselves thinking about your clients outside of work hours?

Now, let me introduce a word that I will be focusing on this session, trauma. There are two widely accepted definitions of trauma. One is that someone has been confronted with or experienced a potentially dangerous situation that could lead to a grievous loss and feels helplessness and powerlessness. That is sometimes called the objective definition, which talks about the objective standard requiring an experience where death or grievous harm was involved and a sense of helplessness. The second definition, called the subjective definition, is where people say that the event that was confronted was non-normative, and the person felt subjectively overwhelmed by it. This type of trauma does not require serious harm or risk of death. The subjective definition of trauma is the one I am using.

How many of you feel that you have worked with clients who have experienced trauma? How many of you feel you yourselves, either in your personal or professional capacity, have witnessed trauma or have been exposed to trauma? How many of you have ever watched CNN? I would say in our society right now, almost all of us have been exposed to trauma in some ways, especially since September 11th.

It is my hypothesis that everyone here has experienced what would be called vicarious trauma. Vicarious trauma is having been exposed to or confronted with trauma or having been in close

relationship with people who have been traumatized. I also believe that it looks like a distinct number of you have experienced what would be called “vicarious trauma” in your daily work with clients who have been traumatized. That has been the focal point of my research, and I can sum up the bottom line, which is that lawyers who engage empathically and with compassion with people who have experienced trauma are at risk of a version of what their traumatized clients experience: the negative effects of trauma.

To summarize, trauma disrupts and attacks the self. It disintegrates your sense of who you are, what you hold dear, and what you believe. In my own development as a teacher and a lawyer, I think my first stage was just to observe that this was happening in my students, my colleagues, and myself. Then, over the years I thought, at least I can give my students, my colleagues and myself permission to believe that this was true and to figure out how to help ourselves. However, I think the paradigm shift came for me in the writing that Professor Silver described when I realized it was not permission, it was a *duty* that we had, an ethical duty that we had to attend to the ways in which trauma and vicarious trauma disrupt ourselves and to repair that on a regular basis. Without that kind of careful, ongoing care of ourselves and of the things that give us meaning, we would eventually have nothing to give our clients and no resources through which to render service. So, that is where I am coming from today.

PROFESSOR SILVER: Stress is inevitable in everybody's life. Why is it of particular concern to lawyers?

DR. PORTNOY: I want to come at this question from less of a research point of view and more of a clinical point of view, and based on my own clinical experience treating lawyers over the past thirty-two years.

When lawyers come in, there is something about the state of stress and depression that I see in practicing attorneys that is very different from any other group. I have been aware of that for a very long time. There is something qualitatively different in the nature of lawyer depression versus other depressions. It is represented by what I would say are degrees of stuckness that I don't see elsewhere. It wasn't until yesterday morning when Lynn Cahalan mentioned learned helplessness that it hit me that what I had been looking at was learned helplessness in the real world because the sense of these folks as patients is that they are helpless about their situations. The response often given when we talk about what can be done to change the situation is that this is just the way it is. This is the way the business works and there is nothing I can do about it.

PROFESSOR SILVER: Given there are a lot of people that were not here yesterday, I encourage you to refer to any information specifically.

DR. PORTNOY: What I'm talking about is just a couple of responses from the audience yesterday in response to some things that were being said by panelists that I would categorize as "yes, but" responses; "it is just the way the business is." It is that kind of an attitude that I think represents the stuckness that I'm talking about and the sense of real helplessness, at least when I see them in the consulting room. I think that comes from several sources, one of them being the business pressures of lawyering, the bottom line orientation, the pressure for billable hours and that kind of thing. Another source is from the incivility in lawyering. Particularly, what I hear about all of the time when I go out and do conferences for lawyers on client relationship skills is people asking, "Can you tell us how to deal with lawyers who are worse than their clients?" I think that is a tremendous drain, that kind of constant pounding. Third, it is the experience of having to deal on a day-to-day basis with the expectations and demands of clients who are highly emotional and, much of the time, really out of line because they don't know how not to be.

PROFESSOR PETERS: For lawyers who are regularly through their client work exposed to trauma, there are overlaps between vicarious trauma management and stress management. Many of the things that people recovering from or trying to manage vicarious trauma are asked to do is to start with the very basic parts of your daily life; food, sleep, exercise, water, breathing. These are things that many helping professionals don't

attend to in themselves, as sensitive as they are to those needs in their clients.

The trauma research adds a paradigm shift: the stress that people working with traumatized clients experience is different from the stress of a person in a high volume commercial firm in that the trauma that their clients experience is to be considered contagious. Imagine that your client is standing in a river raging with current and has a boulder fall right in front of her, and the resulting splash and crash knocks her over. The boulder is trauma. You are standing some distance behind in the same river, and you experience the afterwave. It is smaller, it is nowhere near what your client experiences, but it is in the same shape and nature that your client experiences. Trauma will assail her sense of self and will, over time, assail yours as well. And so, it is more than just the stress of overwork; it is a disintegrating ray gun aimed at your sense of who you are, what you think the world is like, and where you find meaning in the world. For those of you who work compassionately with people who experience trauma, you are at risk of this particular occupational hazard. This may require more than stress management techniques, which I highly recommend, to confront the debilitating effects of vicarious trauma.

PROFESSOR SILVER: Professor Peters has referred to representing victims of trauma; that raises special issues. Are there particular kinds of practices, particular areas of practice that

increase the likelihood that lawyers are going to experience difficulty in functioning?

PROFESSOR PETERS: Anyone who engages empathically with clients who are struggling is at tremendous risk. You can see your empathy as a window of connection with your client, and being that open to your clients, you create a window in which the flow of pain will rush in your direction. We do not want to stop you from doing that. In fact, the only way to prevent vicarious trauma would be to shut down that compassion, which is the very last thing we would ask you to do.

We suggest that instead you do two things with the compassion and understanding of your client's situation that comes to you from this kind of work and this approach to your work. The first thing is to befriend that empathy and use it for your client's representation. If it means that by understanding your client's pain you can write a more effective affidavit or convey the kinds of difficulties your clients are having in a more compelling way to the judge, who you hope will eventually open that window of compassion as well, then that is the first thing you do with those insights, befriend them and utilize them in your representation.

You must also be on guard for the negative effects of that compassion and connection. The second set of recommendations is to attend to the damage that the connection will do to you, especially if you let the sense of their trauma and loss attack your own sense of what this world is like. I'm sure many of you have

heard people talking shop in the capital punishment context, or representing children, or human rights, and you will see that people that do that work become experts in the very thing they are fighting. Human rights people can tell you indigenous names and details of torture techniques used in specific countries. A person who has represented children for many years knows all of the kinds of child abuse, has names for them, categories for them, can tell you the clients who had them. Your repeated exposure makes you an expert in the world you are fighting against. Then, your hard work and the inability to create perspective in your life shrinks your viewscreen to encompass only those things. That is how the self becomes disrupted, because it would be normal to start thinking the whole world is torture, abuse, maltreatment. If we don't take time to restore the perspective that the world is also beauty and kindness among people and the constructive things that we are fighting for, that window of empathy will give you a view screen of only pain. So, I would say that anyone who empathically engages with their clients who are suffering is at special risk of this occupational hazard.

PROFESSOR SILVER: All of you have already spoken to a certain extent about how lawyers experiencing these problems might address them, but what practical advice would you give to the audience here about how they can fill in the gaps in their training and education to deal with the concerns that have been raised?

PROFESSOR PETERS: I have two sets of thoughts. The first starts with what you might be able to do for your clients who have been traumatized and are perhaps reliving or going more deeply into the trauma. For the clients, there is some research about what you would call avoiding retrauma.¹³ For instance, in a divorce representation or in a refugee representation, it often becomes important for the lawyer to prepare the client to tell the story of their pain, to tell the story of the torture they have experienced or the horrible custody problems they have had with their former spouse. Thus, the trauma becomes the centerpiece of the representation and you have to engage it as a critical mass of legal data and evidence.

To avoid or reduce retrauma, try to reverse the dynamics of the trauma in your work with your client. For instance, if your client is a refugee client who was raped and the rape is central to her claim, through the rape she experienced degradation, loss of dignity, loss of control, loss of power. The question is how the lawyer can help her to regain some control, regain some power, regain some dignity, reverse the degradation. It may be as simple as giving the client power to make some decisions in the representation. Tell her you are going to have to talk about this matter and you know how difficult it is. Ask her *when* she would like to talk about it. Or, when she decides she is ready to talk about it, offer breaks to give her the opportunity to decide how she

¹³ See generally PETERS, *supra* note 3.

tells you about it, and how long the sessions are. Treat her with respect during that process: listen deeply, use her own words back, try to authentically understand her story. There is a great deal of healing that can be done in those simple acts, most of which you already do for instinctive reasons. That is one way of not only avoiding retraumatizing the client, but in some ways helping them to re-experience the trauma in a circumstance that reverses those conditions. That is my main advice for you with your clients.

My second set of thoughts are some ideas for lawyers. With yourselves, those of you who may be experiencing vicarious traumatization need to understand trauma acts in two ways, and they are somewhat non-intuitive. One is to overwhelm you with feelings; being unable to talk, crying every time you hear about something awful. The other one, conversely, shuts you down. Think about the emergency medical technician or the ambulance driver who arrives at the scene of a crime or the scene of a horrible violent effect. You want the person to be shut down, you want their emotions to be unplugged. You don't want the emergency technician to see the body on the ground and start crying, overwhelmed with emotion. You don't want the technician to say, "Oh, my God, this poor person has children, what are they going to do?" You want that person to become clinical, to become efficient, to find the artery that is bleeding, to triage, to make the intervention that can be made in five minutes that might save a person's life.

The problem is when professionals like EMTs unplug the emotions for one purpose, which is very important, the question is when do you plug them back in later? I think what happens to people who work with traumatized people is that they remain unplugged for too long. They go home and feel nothing; they look at their own children and feel nothing; they don't feel happy; they don't feel sad, but they don't feel happy either. Attending to those kinds of oscillating emotions between overwhelming symptoms and numbness is one of the first tasks of a lawyer seeking to take care of himself so that he can later serve the client better.

PROFESSOR SILVER: Is there anybody in the audience listening to this and thinking, "they want us to be social workers and that is not what we are trained to be?" Please respond, for both the people who raised their hands and the people that think it but did not raise their hands.

DR. PORTNOY: Absolutely not. As I said earlier, you have a job to do. Professor Peters was making some wise remarks and addressing that question already about an attitude of engagement that you approach a case with, and that one of the first things you think about in dealing with the case is, "What kind of work alliance do I need to build with this person; how do I determine that; how do I manage that throughout the course of the case?" You cannot accomplish this by becoming your client's therapist, but rather by the adoption, first of all, of the recognition

that you need to do it, that it is an integral part of the work. We are talking here about the kinds of things lawyers can do that not only do not interfere with your need to apply the law and to lead the client through it, but actually do facilitate that.

Let me provide a few comments to demonstrate my point. There was a discussion yesterday in one of the plenaries about the importance of being good listeners as lawyers. There is a special technique for so doing. It is called active listening.¹⁴ Active listening is a position in which the lawyer, at least in the beginning of a case, is trying to learn about the client and what kind of work alliance you need to build. It enables you to sit back at arm's length and listen not only to what the client says, but to what is behind what the client says and what is behind what the client doesn't say. That enables you to sit back and ask yourself, "what are this person's real motivations here," not "what they are telling me," because they may not know either. "What are their expectations for us; how close or far are those from realities; do they match who I am as a lawyer?" That is the way you can listen.

Two of the basic functions, the most fundamental functions of lawyers, are to give advice and to inform. But, there are ways to do that to increase the probability that the client will take it in, namely things like not giving important advice or information when a client is most emotional. You bring them through conversation to a place of at least relative calm, and then you give

¹⁴ PORTNOY, *supra* note 2, at 15.

advice that you need to give, and you do it slowly, repeatedly, and very concretely.

How many people have decided on the seating arrangements in their offices based on what they want the client to take away? If you are using an open seating arrangement with a client and you want to bring your client closer and you are both comfortable with that, it is great. If you have a very different client, one who you know right away is the borderline client (because every lawyer thinks every difficult client is borderline), you sit behind your desk because your professional role provides structure, and structure is calming.

The same thing is true in that structure comes from how one prepares one's retainer letter and how clearly in that letter people talk, for instance, about when you are available to them and when you are not in a very clear, firm, realistic way, and the degree to which you actually stick to that. How many people's retainer letters talk about when during the course of representation clients become upset? It is interesting, in a psychotherapy agreement for a psychologist, part of what the APA suggests needs to be in that agreement is about the potential harms and benefits of psychotherapy.¹⁵ There might be something like that in a retainer letter, too. I know lawyers who do talk about that in their retainer letters. There are a lot of other things I can mention, but I'm not

¹⁵ The suggestion comes from Eric Harris, J.D., Ph.D., who is the risk management lawyer for the APA Insurance Trust. That is the arm of APA that offers malpractice insurance to its members.

talking about you being therapists; I'm really talking about a simple skill set.

PROFESSOR SILVER: You referred to the borderline client. What if the attorney's experience is that a client is in emotional distress the attorney is not equipped to deal with? Do you have any views on whether the attorney should be referring the client for professional help in that regard, or is that not the attorney's job?

DR. PORTNOY: The attorney has the standing to tell the client to get some support and some help to get through this situation. Otherwise, I think there is the risk of the client's cycle becoming worse and the client having the expectation that the lawyer should take on that kind of therapeutic work.

PROFESSOR SILVER: I interviewed lawyers who felt that was not their role.

DR. PORTNOY: Well, I know lawyers who won't do it because they are actually afraid to make the referral because if the referral does not go well, it will reverberate back onto them. There is a way to make a referral successfully as opposed to not.

PROFESSOR SILVER: Any practical advice about how to make a successful referral?

DR. PORTNOY: The way you make a successful referral of one of your clients to a mental health professional is, step number one, do it. Don't be afraid, approach it. Bring it up and say to the client, "Look, you are obviously very upset and in a great deal of stress." Normalize that and talk about how that is appropriate to the situation and how most of your other clients in a similar circumstance do seek professional help. You offer to make the referral to the therapist and you make the call yourself. The reason you make the call yourself is because once you have done that, you now have some investment and the client knows that you have done this, that some step has been taken. This makes it a little harder to resist. Once you have talked to the therapist, let the client know by a phone call or e-mail that you have made the call and the therapist is expecting to hear from them. Now you have a second contact and they know you have done that, they know there is a therapist out there. You do whatever you need to do. It works fairly well.

PROFESSOR PETERS: For those of you for whom your client's trauma or very difficult stressful lives are the centerpiece of your representation, a referral to a mental health evaluator may be critical for the development of your case. For example, to demonstrate that your client has trauma will certainly help his or her asylum case, or demonstrating your child client's trauma or psychiatric issues may be critical in helping the judge decide what

is in the best interest of the child. So, these interactions between lawyer and social worker and lawyer and mental health professional are not extracurricular things that lawyers are doing; they may be integral to you doing the best legal work.

PROFESSOR SILVER: I imagine there are concerns relating to attorney/client confidentiality which may inhibit lawyers from opening up about some problems they are having in the attorney/client relationship. Any responses to lawyers who may be concerned about that?

DR. PORTNOY: I think it may depend on what the role is. We are talking about different roles and situations for mental health input. Certainly there are cases where you are talking about mental health in a role of expert, and there may be reports that you produced that may be somewhat different than a routine mental health intervention just to help somebody get through a divorce. What I was talking about was making a one call referral just to get your client set up without having too much contact with the therapist necessarily.

PROFESSOR SILVER: I think traditionally lawyers have felt that in order to do their job right they have to keep a certain distance. You raise other concerns that if you go further that might invite charges of malpractice. There are definite boundaries to be drawn in terms of what is appropriate and what is not. I believe

that you don't cross that boundary in terms of you don't try and become a social worker for your client.

DR. PORTNOY: Let me pick up on what Professor Silver is saying. I think she is right on the mark with that. We are explicitly saying that that boundary should not be crossed; you should not take on that kind of role. Rather, my remarks were about some skills to be learned for conducting interviews in a different sort of way and some other aspects of practice that may make it go smoother. People have to do what is comfortable for them. There are going to be those lawyers who simply can't operate by keeping those things strictly separate, and that is fine. There are other lawyers who are clear about how they regard their representation and how they interpret the counselor in counselor at law. People need to find the way to integrate this stuff that is comfortable for them and matches their own personality.

Let me try to put this into some perspective. This is where I think we get into an attitude within the legal profession that says, "I better not." There are a lot of restrictions that lawyers put on themselves. I'm not quite sure what qualifications are needed to make a referral for psychotherapy for someone that is in emotional distress. For the typical therapist, the referrals come from primary care physicians. I don't know that they have any training in that field particularly. They also come from various kinds of other professions and from clergy. But a lot of referrals come from friends, relatives, sort of everyday people on the street. I do not

know what the expectation is of having qualifications to say to someone who is clearly in trouble, "Gee, I think you should get some help."

PROFESSOR SILVER: One issue is that we don't prepare lawyers for dealing with these issues. Changing the institutions of legal education is certainly one tool for approaching this. I wanted to ask the panelists whether there are any other institutional approaches, as opposed to individual approaches, that you are aware of or that are happening elsewhere.

DR. PORTNOY: As an example, I have been in touch with lawyers and judges in various parts of the country who are looking at issues of reform to enable these things to happen more quickly. Professor Weinstein in San Diego wrote an article in the Miami Law Review on what she feels is the fallacy of "the best interest of the child" in the law, saying whenever you have people in combat there can be no such thing.¹⁶ I know in the State of Florida there is an effort in family law that some of my colleagues and I support proposing some fairly sweeping reforms which may include mandatory training or mandatory courses in the law school

¹⁶ Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 88 (1997).

curriculum on the psychology of family law and on dealing with client relationships.¹⁷

Among other things, there is talk about assigning judges to family court in different ways so that rather than rotating judges to different courts, judges who have a demonstrated interest in wanting to be in family court particularly will be assigned. There is also discussion about requiring judges and family lawyers to take regular CLE training in just the things we are talking about here. Aspirationally they are talking about some fairly sweeping things, and it remains to be seen how well they can carry that out. They are not the only ones looking at some kind of reform.

I'm amazed at how much time has been spent on the question of whether or not it is okay to make a referral, which to me is an important detail, but only a detail. I believe it speaks to the general discomfort or lack of experience of the legal profession in reference to dealing with this side of what the clients bring to you, which you do each day whether you want to do it or not. There was a comment from the audience that said, "I keep this strictly separate so I can practice efficiently." But I will tell you how doubtful I am that if you do keep things that separate and you give your clients what you think are really sound pieces of advice, and you tell them what they have to do, and the clients because of their own emotional states, expectations, motivations, and needs go home having remembered something completely different than

¹⁷ See Sanford Portnoy, *Family Law: On the Brink of Reform?* MASS. LAWYERS AND POLICY, Mar. 17, 2003, at 31.

what you said, you are not practicing nearly as efficiently as you could be. I believe you have to find a place with regard to this. You are not going to do what is not comfortable; you do it the way you need to do it. But taking this on in this more holistic way is one of those things that really is a way for lawyers to help their clients in a way that also helps the lawyers themselves.

PROFESSOR PETERS: For those of you who believe that vicarious traumatization may be something that you have been experiencing and not known the name of before, I would like to suggest a particular spin on this most recent discussion. Try this: every time you think of what you might advise your client to do, I would also ask you to think about it for yourself. So, if you might advise your client to seek extra help and support because they are going through a tough time, I would ask you to consider whether you might like to do the same.

On another note, lawyers need to give themselves permission to take care of themselves, to not be super people with no needs. What the other helping professions have learned is that you must take your own needs seriously to continue to have anything to offer to your clients. As such, I would like to make three suggestions along those lines.

One, if you believe that vicarious traumatization may explain your situation, do some detective work. See what parts of your daily life are suffering. Start with the basic things. Are you

getting enough sleep or eating enough? Are you taking care of your body and your mind?

The second thing is to seek support and connection. Especially for those of you who are solo practitioners, the isolation of this very difficult work may be one of your biggest enemies. Developing the support of other people in your situation, of bar associations, or people you might meet at events like these, and making sure that your own personal community is a supportive, healthy one is a high priority for your clients. Your clients need you to do this for them and for you.

The third thing is your sense of meaning. Many of you started doing this work because you wanted to help people in trouble and because you believed you had something hopeful and constructive to offer. You must maintain that sense of hope and meaning in order to continue to have something to offer to your clients. I think much of this comes down to reaffirming the meaning of the most basic values that have brought you to this work in the first place and have given you the resources that you have to offer. Maintain those resources for your clients' sake and for your own sake, and please take to heart the meta-lesson of the conference here: this, too, is law. That is the biggest problem I have when I teach my students about vicarious traumatization; they say, "Are we still talking about law?" These concerns are, emphatically, law and critical to high quality representation and service. Compassionate lawyering for social justice requires care

and nurture of the lawyer, as well as the client, and this self-care is our ethical duty.

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