



2003

## September 11th: Pro Bono and Trauma

Marjorie A. Silver

*Touro Law Center*, [msilver@tourolaw.edu](mailto:msilver@tourolaw.edu)

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>



Part of the [Law and Psychology Commons](#), and the [Other Law Commons](#)

---

### Recommended Citation

7 *Contemporary Issues In Law* 64 (2003/2004).

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

---

# SEPTEMBER 11TH: *PRO BONO* AND TRAUMA

---

*Marjorie A. Silver\**

## **Introduction**

After the events of September 11th 2001, the Association of the Bar of the City of New York<sup>1</sup> mobilized a *pro bono* response unlike any other in history.<sup>2</sup> Thousands of lawyers sought and received training as facilitators. These facilitators operated as legal problem-solvers, lawyers who would serve as legal liaisons to individuals and families who lost loved ones and livelihoods in the terrorist attacks.<sup>3</sup> The services provided ran the gamut of the clients' legal needs. In addition to assisting in obtaining expedited death certificates, arranging for estate administration, and filing claims for death benefits, lawyer/facilitators, backed by expert mentors, helped clients with landlord/tenant, insurance, and family law issues. I was one of the thousands of lawyers<sup>4</sup> who, seeking to do something to make sense of this horrific tragedy, received that training.

It was striking that, included in the training, was a presentation by a social worker, Florri Burke, from Safe Horizons. Safe Horizons is one of the New York City social services agencies that mobilized to co-ordinate the relief effort. Ms Burke, a trauma expert, told the hundreds of lawyers present what they might anticipate when they met with their clients. She spoke of how the signs and symptoms of trauma might present themselves in their interviews. Not only did she address the experience of the client who has suffered the traumatic loss of a loved one, or who had witnessed the devastating destruction of the World Trade Center Towers, she spoke also to what that encounter might be like for the attorney. We, too, might experience those signs and symptoms, because they had all been affected by the traumatic events of September 11th.

---

\* Professor of Law, Touro Law Center. This article was the subject of a presentation the author gave on July 9, 2003 at the Second International Conference on Psychology and Law in Edinburgh, Scotland. I gratefully acknowledge all present who offered feedback at that presentation and, in particular, Bruce Winick and David Wexler. Work on this article was facilitated by a Touro Law Center faculty research grant, as well as the wonderful ongoing support of the Law Center's professional library staff. Special thanks to all of the attorneys and others who so generously shared their stories with me.

1 Hereinafter 'City Bar'.

2 'September 11: Moving Forward' [Sept 2002] 17 *44th Street Notes*, Association of the Bar of the City of New York 3.

3 Separate training was offered through the City Bar's Small Business Initiative. *Ibid.*

4 In all, the City Bar trained nearly 3,000 volunteer attorneys. Many more provided legal help through their own organizations and law firms. *Ibid.*

For some time now, I have been concerned with the need for lawyers, as counselors, to develop and practice emotional competence and psychological-mindedness. During the summer of 2002, a little under a year after the terrorist attacks, I came across some of the literature on the occupational hazards that caregivers face in working with trauma victims<sup>5</sup> and I decided to explore what relevance this literature might have for the attorneys doing September 11th *pro bono* work. I set out to interview as many of those attorneys as were willing to share with me their experiences.<sup>6</sup> To date, I have spoken with about half of the 30 attorneys who responded to my inquiry.

What follows is a brief discussion of direct and secondary trauma, how this trauma has affected the attorneys with whom the author has spoken, the healing that doing this work has afforded them, some of the difficulties they have encountered, and how well prepared they were to do this work. It is an understatement to say that the legal profession does not prepare its members well for the emotional thickets in which they may find themselves in practice. Lawyers are confused over the appropriateness of raising emotional and psychological issues with their clients, and they are generally ill-prepared to raise them. Lawyers, too, are often oblivious to their own emotional and psychological responses to their clients. In the representation of trauma victims, this obliviousness is hazardous to the attorney's health, and may well compromise the quality of the representation. As a profession, we can and should do more to help attorneys, for their own sake as well as that of their clients, to avoid or resolve the unwelcome and painful effects of counseling traumatized clients. Social Science literature offers suggestions of what might be added to basic and continuing legal education to prepare lawyers for doing this kind of work.

## Direct and indirect trauma

While the existence of post-traumatic stress disorder, ('PTSD') has been documented for centuries, it was only after the Vietnam War that the disorder was systematically studied.<sup>7</sup> PTSD is the most common diagnosis used to describe the symptoms experienced by persons who have survived traumatic events.<sup>8</sup> Those experiencing PTSD suffer unwelcome visions of the original traumatic events they experienced. Common symptoms include flashbacks, nightmares, panic attacks, inability to concentrate or find pleasure in life, and emotional numbness. A parent who witnesses the death of a child, a veteran who fought in Vietnam, an office worker who fled from the crumbling Twin Towers of the World Trade Center, have all been trauma victims and are all at risk for suffering PTSD symptomology.

5 In particular, the work of Jean Koh Peters provided me with a window into this field. See, *infra*, note 33.

6 For this, I am indebted to Laren Spirer, Practice Area Coordinator of [www.Probono.net](http://www.Probono.net) who posted my inquiry on the September 11th *pro bono* project listserve.

7 <http://www.ncptsd.org/faq.html>.

8 <http://www.trauma-pages.com/pg2.htm>. The term PTSD was introduced in DSM-III [APA 1980] 'as the latest in a series of terms to describe the harmful biopsychosocial effects of emotionally traumatic events.' C Figley, 'Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview' in *Compassion Fatigue: Coping With Secondary Traumatic Stress Disorder in Those Who Treat the Traumatized*, ed C Figley (1995) Brunner/Mazel, New York at 7.

But until relatively recently, there had been little overt acknowledgment of the emotional, physiological, cognitive and behavioural toll that frequently confronts caregivers who work with traumatized populations.<sup>9</sup> Over the last 10 years or so, a substantial body of work has emerged exploring what is alternatively labeled 'vicarious traumatization', 'secondary traumatic stress' ('STS'), or 'compassion fatigue'.<sup>10</sup> While the literature has primarily addressed the impact on trauma therapists, many of those writing about it have recognized that similar problems exist for other professionals and caregivers whose work brings them into contact with trauma survivors.<sup>11</sup> Those who bear witness to the stories of pain and anguish are in jeopardy of suffering symptoms that mirror the symptoms of those who experienced the trauma directly – thus the terminology 'secondary' or 'vicarious trauma'.<sup>12</sup> The effect is often cumulative; the more one is immersed in trauma work, the more likely one is to experience the negative effects of vicarious trauma.<sup>13</sup>

Most of the caregivers who worked with the September 11th victims and their families – social workers, therapists and lawyers – are both direct and secondary victims of that trauma. Through both direct witness, live television coverage, and the repeated televised replays of the terrorist attacks over the hours and days that followed, most of us in New York – perhaps the entire nation and much of the world – experienced the traumatic events of September 11th directly. The attorneys interviewed by the author occupy a spectrum of proximity to the trauma of September 11th and its aftermath. The question was not whether they had experienced trauma, but rather to what degree.

### Stories of trauma

Sarah Warren was supposed to begin work on 24 September 2001 as a first year associate at a prestigious downtown law firm. On the morning of 11 September when the first plane struck, Sarah was sitting by her window facing the World Trade Center Towers in the Battery Park Plaza apartment into which she had just recently moved. She was editing some law review articles, a responsibility left over from her former position as Editor-in-Chief of the law review at Cardozo Law School, from which she had graduated a few months before. Sarah fled her apartment and the city, leaving her cat behind. Although she ultimately rescued the cat two days later – an ordeal that took from 6 pm one evening until 4 am the next morning – she was unable to move back into her apartment for several weeks. I spoke with Sarah on 19 September 2002, shortly after the one-year anniversary:

9 *Ibid.*, at xiv.

10 *Secondary Traumatic Stress* 2nd edn, ed B Hudnall Stamm (1999) Sidran Press, Lutherville, Maryland at xix.

11 See, eg, L Pearlman, 'Self-Care for Trauma Therapists: Ameliorating Vicarious Traumatization' in B Hudnall Stamm, *supra*, note 10 at 51-52; M Dutton and F Rubinstein, 'Working with People with PTSD: Research Implications' in Figley, *supra*, note 8 at 83.

12 D Neumann and S Gamble, 'Issues in the Professional Development of Psychotherapists: Countertransference and Vicarious Traumatization in the New Trauma Therapist' [1995] 32 *Psychotherapy* 341, 343-44; Figley, *supra*, note 8 at 1.6

13 L Pearlman and K Saakvitne, 'Treating Therapists with Vicarious Traumatization and Secondary Traumatic Stress Disorders' in Figley, *supra*, note 8 at 51.

"Personally, I'm still traumatized. Especially, given the recent anniversary, I still find myself awakened with very vivid pictures of what happened. I saw the second plane fly right past my balcony and my window. As I was going up the esplanade I saw people jumping. So I guess I definitely have post-traumatic stress disorder. I still have trouble talking about it. ... I had eating difficulties, sleeping difficulty; I guess I really just never thought, as many people, that I would experience something like this. ... And I still feel, like, even now, as if I'm going to cry about it because it was just an awful – standing in the middle of the street and watching the Tower collapse. Such an important symbol in the world, collapsing before your very eyes."<sup>14</sup>

By mutual agreement, Sarah delayed starting at the firm until 1 October. Her first assignment was to take on September 11th *pro bono* work, in which the firm was already heavily involved.<sup>15</sup>

Although Sarah was the only one of the attorneys with whom the author spoke, who was rendered homeless by the attacks, some of the others were eyewitnesses to the events and devastation of September 11th and its aftermath. Several of them got down to Ground Zero in the hours and days that followed to help do rescue work, or anything else that was needed.

Michael Sprei, a fourth-year part-time evening law student at Touro Law Center worked as a paralegal in a prestigious midtown law firm. He also was a volunteer emergency medical technician for *Hatzolah* Volunteer Ambulance Corps, a citywide volunteer emergency rescue organization. Michael was at work at his firm for a 9 am meeting when he heard the news. Within minutes he was in his car speeding down to ground zero to join his fellow emergency care workers. He arrived in time to see victims leaping from the Towers. In the weeks and months following, he helped a friend, a Port Authority Police chaplain, sift through the debris for human remains. Michael suffered severe sleep problems and flashbacks for months and, at the time of the interview, over a year later, was still in counseling as a result of these experiences.<sup>16</sup>

Joseph Gargano, a sole practitioner, was in Queens Supreme Court when the first plane hit. He heard about it from a court officer in the elevator. After the second tower was hit, the court closed, and Joseph drove to his home in the Rockaways. Two days later he went down to Ground Zero as a volunteer, helping to move small debris, hand out water and face masks, pull hoses, and do anything else needed to help the recovery efforts. He witnessed the movement of bodies in bright orange body bags and the charred remains of a huge edifice that his own brother-in-law, a bricklayer, had helped build when Joseph was a child. He told me that it was this experience, rather than the events of September 11th itself, that he found most traumatizing.<sup>17</sup>

14 Author's interview with Sarah Warren, 19 September 2002.

15 *Ibid.*

16 Author's interview with Michael Sprei, 4 September 2002.

17 Author's telephone interview with Joseph Gargano, 22 August 2002.

Then another disaster struck. Joseph was at home in the Rockaways on 12 November when American Airlines flight #587 crashed, 12 blocks away from his home. He rushed to the scene to witness the burning plane and to spend that day, night and the next day thinking it had been another terrorist attack. On some other day, Joseph might have been there, walking his seven-year old son to school, passing by the spot where the crash occurred, at the moment the plane came down. The school was only a block and a half away. It was Veteran's day, however. No school.

For a week, Joseph could barely speak. Not until a memorial service a week later could he talk about what he had experienced and what he was feeling. It was the double impact of the two events that he found so overwhelming. Although his ability to function gradually improved, he suffered sleep difficulties and nightmares for weeks afterwards. He would hear planes overhead in the flight pattern from JFK airport and be seized by anxiety.<sup>18</sup>

### Healing and pro bono

With only one exception, all of the attorneys with whom I spoke, *volunteered* to render *pro bono* legal assistance to surviving families and victims of 9/11. Most said that the decision to volunteer was a direct response to their feelings of helplessness in the face of this disaster. Volunteering was a constructive means of processing their trauma.

Sarah was the only person I interviewed who had not volunteered for this work. She feared that the trauma she was still processing would render her incapable of providing competent counsel to her client, the widow of one of the firm's partner's closest friends. Sarah doubted whether she herself was sufficiently healed to speak to this woman. She feared falling apart. But she found, to the contrary, that the experience had a therapeutic effect, and had enabled her to cope with the direct trauma she had experienced.<sup>19</sup>

Several other of the attorneys with whom I spoke described similar healing experiences and had received tremendous gratification through their relationships with their *pro bono* clients.

For many lawyers like Susan Cartwright,<sup>20</sup> this was the first *pro bono* work they had ever done. Susan, who graduated from law school in 1998, was an associate at a large midtown intellectual property law firm. Susan volunteered with the City Bar's September 11th project out of her frustration of wanting, needing to do something. For her, the experience was an emotional roller coaster, yet it was clear from the discussion that it had also been a transformative one:

18 *Ibid.*

19 Warren interview, *supra*, note 14.

20 This is a pseudonym. The attorney in question preferred to remain anonymous. The other attorneys discussed have given permission for their real names to be used.

"[T]he emotional issues aside and the pain and the tragedy and all that aside, this has been a very good experience for me, on many levels. Knowing that I am able to really counsel. The firm has been supportive, but they sort of let me do this on my own. I would go around the office and seek advice from senior members of the firm on certain issues, but for the most part I've had to find my way, and that's a good experience for me too. And also, getting the feedback from other attorneys who are more senior than me when I talk to them and they would say, wow, I can't believe you even got this, or were able to accomplish that, that's amazing. Also, the six attorneys on this [case] are all much older than I am, have been practicing longer than I have, but would consistently defer to me when there's a situation, specifically dealing with the client because I have the closest relationship with the client. I also think that the client will be a part of my life, for the rest of my life. That we've become friends throughout this process and I regard him highly, and he regards me highly and this is a man who is 52 and I'm 32, so it's very interesting how that works out. It's been a positive experience, just as frustrating as hell, but a really positive experience."<sup>21</sup>

But the work also took its toll. Susan described to me the intense and emotionally demanding relationship she had developed with her client who had lost his same-sex, domestic partner in the collapse of the Towers. The partner had been their primary breadwinner, and the survivor was in tremendous distress – emotionally and financially. Susan reported that for some time she got so wrapped up in her client's life that she felt she could not separate herself from the work. She would get very frustrated when she hit roadblocks in getting benefits and services for her client. She would beat herself up, question her own competence, have to constantly remind herself that she was dealing with a bureaucracy, that there was only so much over which she had control. She said she would go home and cry a lot. Her health suffered – physically and emotionally.<sup>22</sup>

## **Boundaries, identities and stigma**

What Susan described was that, in addition to the emotional toll this work takes on the attorneys who do it, it was often difficult to separate themselves, and their own lives, from those of their clients. September 11th representation, especially as designed by the architects of the facilitator/problem-solver model, encourages, if not commands, a broader view of the lawyer's role than many attorneys traditionally embrace. While on one hand, this fosters a more *therapeutically* oriented approach, it also potentially exacerbates the boundary confusion that many attorneys experience in their relationships with clients.<sup>23</sup>

21 Author's interview with 'Susan Cartwright', 29 August 2002.

22 *Ibid.*

23 See L Murdoch, 'Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protective Strategies' [2000] 24 *Seattle Univ. L. Rev.* 483, 489:

"In order to decrease overidentification with a client, a professional must delicately balance neutrality and objectivity with involvement and concern. The professional must develop a detached style of interaction in order to prevent blurring of identity boundaries and maintain nonjudgmental objectivity."

Some of the attorneys with whom I spoke were uncomfortable discussing with their clients anything related to the client's emotional health. One attorney I asked said that he did not know whether his September 11th clients had received any professional treatment or counseling. He did say, however, that he always asked them whether they were aware of the availability of counseling – as recommended during the facilitator training. Yet he also admitted that he would *never* raise that issue with his 'paying' clients; he did not view it as an appropriate topic for discussion for the attorney to initiate. 'Most of us try to avoid even *noticing* trauma when clients come in', he added.<sup>24</sup>

First in law school and thereafter in practice, most lawyers are indoctrinated to deny the emotional content of their work with clients. There is fairly widespread indifference, if not aversion, to developing psychological-mindedness.<sup>25</sup> 'We are not social workers or therapists, and we don't have their training', is a common refrain. It is an uphill struggle to convince the profession that a willingness to confront clients' emotional difficulties does not turn lawyers into social workers. Paying attention to a client's emotional difficulties is an integral part of being a problem-solver. A lawyer can ease a grieving client's burden in finding needed support services, whether they be tax planning, investment strategies, or therapy. Yet most lawyers are far more likely to feel comfortable in offering advice with respect to financial matters than with personal matters such as counseling or psychotherapy.

One of the lawyers I interviewed, Saralyn Cohen, is the *pro bono* coordinator at a major New York law firm. She spoke about how essential it was to use a team approach, how critical for her to find appropriate service providers for her clients. Saralyn had developed an understanding for the need for these strategies *pre*-September 11th, in her *pro bono* work representing asylum seekers. She knew she had to find the social services person, the mental health professional, the physician, to augment and support what she was able to do for her clients with her legal skills.<sup>26</sup>

## Preparedness

There was virtually universal agreement among the attorneys with whom I spoke that *nothing* in their legal education prepared them for dealing with traumatized clients. Some of them, however, believed they were better prepared than others because of their prior work experiences. Michael Sprei had been an emergency medical worker for six years.<sup>27</sup> One of the attorneys had done a 400-hour externship on the psychiatric unit of a hospital, as a requirement for earning her masters in forensic psychology.<sup>28</sup> But most of the attorneys had neither had any relevant experience, nor

24 Author's interview with 'Anonymous', 5 September 2002.

25 Murdoch, *supra*, note 23 at 486. ('Psychological-mindedness refers to a state of heightened awareness of mental processes and develops as one learns to be aware of unconscious processes, motivations, and problems.' citing B Farber, 'Dysfunctional Aspects of the Psychotherapeutic Role' in *Stress and Burnout in the Human Service Professions* ed B Farber (1983) Pergamon Press, Oxford at 100.

26 Author's interview with Saralyn Cohen, 22 April 2003.

27 Sprei interview, *supra*, note 16.

28 Author's interview with Rachel Sims, 19 September 2002.



received any training that would prepare them for working with trauma victims, or empower them to recognize and discuss a client's needs for therapeutic interventions, or recognize how the work they were doing might affect *them* emotionally and psychologically.

A young attorney with whom I spoke had been experiencing major difficulties in concentration. She threw herself into her September 11th *pro bono* work, but neglected her firm's paying clients. She described feeling as if she was spinning out of control. Her psychiatrist treated her by prescribing medications. These did not work very well, and she continued to experience severe depression and sadness. In January 2003, she was attending a counseling session for the employees of one of the unions for which she was doing 9/11 representation. One of the counselors took her aside and said, 'You need to come see me'. It was only then that she began to understand the connection between the events of September 11th and what she had been experiencing.<sup>29</sup>

Nancy Arnow runs the Project Liberty Project of Safe Horizons, the social services organization mentioned earlier. As specialists in trauma and its effects, Project Liberty provided free mental health services to organizations coping with the aftermath of September 11th. Among these organizations were some of the law firms that had undertaken September 11th representation. A significant part of what they provided was basic information about what those who have experienced trauma either directly or secondarily might expect. Just knowing the normal reactions that trauma survivors experience was tremendously helpful in supporting the caregivers' coping mechanisms.<sup>30</sup>

Sarah Warren's firm, located within easy walking distance of ground zero, was one of the firms that provided counseling services to its employees in the wake of September 11th. The firm brought in a psychologist who had done other work for them. Attendance was mandatory for everyone at the firm. For Sarah Warren, the young associate who had witnessed the attacks, it was extremely helpful:

"[S]he ... confirmed for me that it was okay that I felt nervous, and it was okay that I felt uncomfortable, or that I might burst into tears at any moment ... [S]he said ... that would be okay, because these people know the magnitude of this awful, awful incident. . . So it just gave me more confidence. ... [A]lso that I could do it. I'm capable of this."<sup>31</sup>

## **Towards incorporating basic psychological training into basic legal education**

In the United States, whether an attorney through prior experience or training has had the opportunity to learn about trauma, or grieving, or to develop the necessary intra- and interpersonal skills, or psychological-mindedness to represent clients who are trauma victims – is virtually serendipitous.

<sup>29</sup> Author's telephone interview with 'Anonymous', 24 June 2003.

<sup>30</sup> Author's interview with Nancy Arnow, 16 May 2003.

<sup>31</sup> Warren interview, *supra*, note 14.

There is no need to invent the proverbial wheel. Over the past decade, trauma specialists from the social science disciplines have developed strategies and programmes for resolving secondary trauma, approaches that could easily be adapted to addressing the work that lawyers do.<sup>32</sup>

One lawyer who has done just that is Professor Jean Koh Peters of Yale Law School. Professor Peters had noticed over time that she and her clinic students often experienced emotional stumbling blocks in the course of representing children in child protective proceedings, children who were generally victims of trauma. In her book, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, Professor Peters discusses the relevance of the social science literature on vicarious trauma to the work of lawyers who represent traumatized children.<sup>33</sup> What she writes has significant implications for all attorneys who represent trauma victims, whether they be survivors of terrorist attacks, other acts of mass violence or oppression, or individual crises. Beyond describing for lawyers the 'phenomenon' of vicarious trauma, Professor Peters examines the self-care essential to counteracting the effects of working with trauma survivors. Informed by the work of psychotherapists Neumann and Gamble<sup>34</sup> Professor Peters persuasively argues that it is the lawyer's *ethical responsibility* to care for herself – be it through diet, exercise, music, meditation, spending time with loved ones and friends, psychotherapy, or all of the above. For if the caregiver does not meet her own emotional, psychological and physical needs, she will be in no position to care competently for her client. As Neumann and Gamble write, '[I]f therapists [substitute attorneys] do not care for themselves, they are at much greater risk of hurting their clients'.<sup>35</sup>

In his book, *Opening Up*, James Pennebaker describes numerous studies demonstrating that oral and written expression of thoughts and feelings about traumatic experiences has both preventive and therapeutic benefits for physical as well as mental wellbeing.<sup>36</sup> AJ Stephani has noted that this work may have important implications for the therapeutically-oriented lawyer.<sup>37</sup> Attorneys representing trauma victims might draw on this research as well. By expressing their own feelings about the traumatic events described by their clients, they may be able to prevent or ameliorate symptoms of secondary trauma. Within the constraints of attorney-client

32 See, eg, K Saakvitne and LA Pearlman, *Transforming the Pain: A Workbook on Vicarious Traumatization* (1996) WW Norton & Co, New York & London. See also, Murdoch, *supra*, note 23 at 484-85. ('By tapping the experience of those in social work, psychology, and psychiatry, lawyers can ensure the process is as painless as possible.')

33 See J Peters, Chapter 9: 'The Lawyer-as-Context II: Fulfilling the Ethical Duty to Address Occupational Hazards that Imperil Client Service: Stress, Burnout, Vicarious Traumatization' in *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* 2nd edn (2001) LexisNexis at 421-87.

34 See Neumann and Gamble, *supra*, note 12 at 345.

35 *Ibid.*

36 J Pennebaker, *Opening Up* (1997) Guilford Press, New York at 34, 86-88, 103.

37 AJ Stephani, 'Introduction – Symposium: Therapeutic Jurisprudence and the Importance of Expression in the Law' [2002] 3 Fla L Rev 118-21. 'Should not lawyers take the generalized findings of this research into account when, for example, advising a client whether to testify in court? Couldn't these findings be used to support a practice of having clients make a preliminary draft of emotionally-charged portions of their wills themselves? ... Might personal injury lawyers use this insight to encourage their clients to keep a weekly journal about their reflections about the accident or injury during the litigation process?' *Ibid* at 119.

confidentiality, lawyers might be encouraged to keep journals, or develop support groups with other lawyers undergoing similar experiences.<sup>38</sup>

Andrew Levin is a psychiatrist who has been studying vicarious trauma among attorneys working with victims of domestic violence and criminal defendants. In comparing their experiences to those of other caregivers, his preliminary conclusions suggest that attorneys demonstrated significantly higher levels of secondary traumatic stress.<sup>39</sup> Dr Levin has collaborated with the Pace Women's Justice Center to measure the development of secondary trauma in law students during a semester-long practicum of work with victims of domestic violence.

According to Dr Levin, *knowledge* is the first line of defence against suffering from vicarious trauma. If a student or attorney can recognize symptoms about which she has previously learned – whether they are her client's symptoms or her own – she will be far less likely to experience debilitating vicarious trauma. If one knows what to expect, one's reaction can be, 'Aha! I recognize that!' rather than, 'Oh my god, what do I do now?', or 'What did I do to cause the client to act that way?'. And if the lawyer has difficulty coping with those experiences, she will know where she can turn for help.<sup>40</sup>

It is essential that the emotional dimension of lawyering be emphasized *in the beginning* of the lawyer's education, and reinforced in the curriculum thereafter. Today, many law students earn a degree without ever having considered the emotional and psychological aspects of the lawyer-client relationship. Some may take clinics or other electives, and receive some introduction. But without a deliberate effort to counter the pervasive message of mainstream legal education that the rule of reason leaves no place for the emotional lives of either lawyer or client, thousands of young lawyers will continue to graduate who are completely unprepared for counseling human beings in distress.

## Conclusion: looking forward

This article has focused on one aspect of the psychological dimension of lawyering: processing one's own primary and secondary trauma so as to be able to render competent counsel to clients who are trauma survivors. Professor Murdoch has noted that lawyers who practice with a therapeutic orientation are likely at a higher risk to suffer vicarious trauma.<sup>41</sup> The more therapeutic in orientation a lawyer's approach to law practice, the more she will need to understand basic psychological principles. In addition to anticipating and developing strategies to prevent or control vicarious trauma, the lawyer needs to be able to identify and manage other hazards of

38 Some of the attorneys I interviewed told me that they were able to cope and keep on doing this work, because they had someone with whom they could share and receive empathy. Debra Steinberg and Saralyn Cohen, both married to Israeli men, shared with me that their husbands did not want to hear the details of their September 11th work. Debra and Saralyn were grateful that they had each other to talk to, and they talked long and often. Author's interviews with Debra Browning Steinberg, 31 October 2002 and Saralyn Cohen interview, *supra*, note 26.

39 A Levin and S Greisberg, 'Vicarious Trauma in Attorneys' 24 Pace L. Rev 254 [2003].

40 Author's interview with Andrew Levin, 10 June 2003.

41 See Murdoch, *supra*, note 23 at 493-94.

caregiving, such as overidentification,<sup>42</sup> balancing neutrality and involvement,<sup>43</sup> transference and countertransference.<sup>44</sup> Thus, as more and more lawyers begin to practice law as a healing profession with a Therapeutic Jurisprudence orientation, the greater the need for training in the knowledge, skills and values necessary to develop psychological-mindedness.

The need for such training is especially salient for lawyers working with particularly vulnerable client populations.<sup>45</sup> As with the September 11th *pro bono* representation, work that involves direct representation of people in distress – which is likely for the vast majority of *pro bono* and legal services clients – requires a more psychologically-oriented approach to lawyering. The new Greater Harlem Office of the New York Legal Aid Society's 'integrated services' promises to be a model for a more therapeutic and holistic approach to legal representation.<sup>46</sup> According to Daniel Greenberg, the society's president, the intention is that no matter what the reason a client seeks out representation, once in the door, the client would be offered an array of services including counseling.<sup>47</sup> Providing a greater array of legal and non-legal services for the client greatly enhances possibilities for therapeutic outcomes.

However, adding social workers to the mix alone is insufficient. Lawyers need to know enough about psychology to know when to refer clients for counseling or consult with social workers. They also need to be sufficiently psychologically self-reflective to recognize when the stresses of their work are interfering with their own ability to function effectively, and to know how to manage that stress.

Much good has emerged from the horror of 11 September 2001. An ethic of care pervaded our nation, the city of New York and the legal profession. Lawyers learned that they could begin to heal through service, and optimists hope that, because of those experiences, more lawyers will embrace *pro bono* work as an essential component of a meaningful life and practice.<sup>48</sup> Hopefully, too, the experience has helped the profession begin explicitly to acknowledge and embrace the emotional and psychological lives of its members and their clients. The time is long overdue for recognizing the urgency to prepare lawyers, as caregivers, for the emotional dimension of lawyering.

42 *Ibid* at 486-89.

43 *Ibid* at 489-91.

44 *Ibid* at 491-93; M Silver, 'Love, Hate and Other Emotional Interference in the Lawyer/Client Relationship' [1999] 6 Clin L Rev 259.

45 Silver, *ibid.*, at 299-300.

46 Tom Perrotta, 'Legal Aid Tests New Style of Advocacy in Harlem', *New York Law Journal*, 30 October 2003 at 1.

47 While perhaps greater in scope, the Harlem office will not be the first such project for Legal Aid. Its Mentally Ill, Chemically Addicted ('MICA') project has been operational for the past year and a half. It employs several attorneys who work collaboratively with social workers. *Ibid.* The Bronx Defenders employs a similarly holistic model. Author's interview with 'Anonymous,' 6 May 2003 and [www.bronxdefenders.org](http://www.bronxdefenders.org).

48 Perhaps it is a good sign that the June 2003 issue of the ABA journal contained an article about competition among top US law firms to outdo one another with their *pro bono* programmes. T Carter, 'Building a *Pro Bono* Base: Dedicating Resources Proves to Be Good for Firms and Clients' [2003] 89 ABA J 30.