

Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protective Strategies

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ABSTRACT

The integration of preventive law and therapeutic jurisprudence holds promise for enriching the careers of many practicing lawyers. However, the process of becoming more therapeutic in orientation also involves risk. This Article discusses four potential pitfalls: (1) the process of becoming psychologically-minded and its inherent hazards, including overidentification; (2) the difficulty of balancing neutrality and involvement; (3) the need to identify and manage transference and countertransference; and (4) the risk of secondary trauma. Protective strategies, drawn from the psychotherapeutic and burnout literature, are outlined. This Article stresses the need for lawyers to recognize potential hazards and draw on the experience of other therapeutic professionals as they adopt a more explicitly therapeutic framework, thereby avoiding the pitfalls in favor of the benefits.

I. INTRODUCTION

A recent article in *Law and Human Behavior* provides an excellent review of the research on psychological distress in law students.¹ This article adds to the growing collection of literature illustrating the fact that lawyers and law students suffer disproportionately high levels of depression, anxiety, substance abuse, and professional burnout.²

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1. Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55 (1999).

2. See, e.g., CARY CHERNISS, *BEYOND BURNOUT: HELPING TEACHERS, NURSES, THERAPISTS, AND LAWYERS RECOVER FROM STRESS AND DISILLUSIONMENT* (1995); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse*

The increase in such indicators of distress and dissatisfaction, together with a trend toward decreased professionalism and decline in public opinion, has led to the identification of the legal profession as a profession in crisis.³

A potential source of rejuvenation for practicing lawyers lies in the newly-conceived integration of preventive lawyering and therapeutic jurisprudence (TJ). The originators of therapeutic jurisprudence define it as "an interdisciplinary approach to law that builds on the basic insight that law is a social force that has inevitable (if unintended) consequences for the mental health and psychological functioning of those it affects."⁴ Although the term grew out of the mental health law arena, it is now recognized as an overarching perspective with application to many areas of law. Preventive lawyering, in comparison, is an approach to the practice of law that focuses on the prevention of litigation, with the aim of minimizing exposure to liability in the future rather than merely defending litigation when it occurs.⁵ The integration of these two approaches combines the practical, proactive techniques of preventive lawyering and the theoretical framework of TJ. By combining the two, lawyers may be able to practice with more sensitivity to the psychological issues involved in legal cases and recapture the counseling role vis-à-vis their clients that has been lost in the legal profession.⁶ The pioneers of the integration suggest that the combined approach may transform the practice of law "into an instrument for helping people," thereby "revitalizing the professional life of the lawyer by making law practice more enriched and fulfilling."⁷

The foregoing addresses a central concern I experienced as a lawyer in private practice; the legal profession, as presently structured, often impedes, rather than supports, a desire to help those in need. The integrative approach, which has the potential to substantially "humanize" lawyer-client relationships, holds great promise. How-

Among United States Attorneys, 13 INT. J. LAW & PSYCHIATRY 233 (1990); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997).

3. See Daicoff, *supra* note 2, at 1340.

4. See Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 35 CAL. W. L. REV. 15, 17 (1997). In this article, the pioneers of the integration discuss the background to its development and outline the approach in detail. For concrete examples of research and practice applications, see Marc W. Patry et al., *Better Legal Counseling Through Empirical Research: Identifying Psycholegal Soft Spots and Strategies*, 34 CAL. W. L. REV. 439 (1998); David B. Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, 67 REV. JUR. U.P.R. 317 (1998).

5. *Id.* at 16.

6. Wexler, *supra* note 4, at 50.

7. See *id.* at 51.

ever, to adopt this “new” approach,⁸ lawyers may wish to draw on the research and scholarship of professionals engaged in other therapeutic roles with clients. The process of becoming more therapeutic will be a learning experience for many lawyers and for the profession as a whole. By tapping the experience of those in social work, psychology, and psychiatry, lawyers can ensure the process is as painless as possible.⁹ In this Article, I will draw on my experience as a litigation lawyer in private practice, my current training in clinical psychology, and the psychotherapeutic literature to highlight pitfalls that may accompany the adoption of a therapeutic lawyering approach.¹⁰ I will then identify a number of protective strategies used by other therapeutic professionals to avoid these pitfalls.

II. HIGHLIGHTING THE HAZARDS

As lawyers undergo the process of adopting more therapeutic roles, they will learn to approach client relationships differently. They will focus not merely on the problem at hand, but also on the potential legal issues that may arise in the future and the emotional and psychological effects of contact with the legal system, present and future. Interviews with clients may be longer, more involved, and likely more personal as lawyers learn to view their clients in context. Receiving and understanding the full narrative of a client’s life requires emotional sensitivity and an appreciation of psychological factors not taught in law school. Understanding some basic concepts of therapy, such as overidentification, transference, and countertransference, may allow the therapeutic lawyer to understand the process in which he or she has become immersed. New challenges, such as remaining neutral and emotionally healthy while entwined in difficult client issues, will inevitably arise. However, with advance education and a mindful approach, therapeutic lawyers may avoid the potential hazards that can arise from this potentially rewarding style of practice.

8. I agree that many lawyers already use such approaches. See Stolle et al., *supra* note 4, at 17. When I refer to the “new” approach, I refer to the recent move to formalize the integration of preventive lawyering and therapeutic jurisprudence.

9. In making this suggestion, I agree with Winick that although lawyers are not clinicians, they can draw on clinicians’ experiences to assist them in legal practice without stepping outside the boundaries of their own competence. Bruce J. Winick, *Client Denial and Resistance in the Advance Directive Context: Reflections on How Attorneys Can Identify and Deal with a Psycholegal Soft Spot*, 4 PSYCH., PUB. POL’Y & L. (1990).

10. Unfortunately, the TJ field faces the difficulty of creating an appropriate, yet concise, label. For simplicity’s sake, I have chosen “therapeutic lawyering” to refer to the practice of law that utilizes the integrated framework of TJ and Preventive Lawyering.

A. Psychological-Mindedness and Overidentification

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.¹¹ This heightened state of awareness requires listening skills that extend beyond verbal communication to the ability to attend to the subtle internal aspects of another human being. Psychological-mindedness flourishes in those who are introspective, intuitive, and empathic.¹² As sensitivity to the emotional and psychological aspects of the lawyer-client interaction is fundamental to therapeutic lawyering,¹³ a measure of psychological-mindedness is, in my view, a prerequisite to the use of this approach in legal practice.

During the process of becoming a therapeutic service provider, social workers, psychologists, and psychiatrists learn to become more psychologically-minded. As they pay more attention to the psychological aspects of their clients, they achieve a greater level of empathy and an improved ability to deal with the problems others.¹⁴ However, Farber has identified several disadvantages of this process that bear consideration by those lawyers seeking to adopt a more therapeutic approach.¹⁵

First, a necessary extension of becoming more psychologically-minded is an increased tendency to be aware of one's own problems and conflicts. This can lead to overidentification, wherein the service provider experiences an exaggerated sense of similarity between self and client.¹⁶ As a result, objectivity may be decreased, and the effectiveness of the therapeutic interaction may be threatened.¹⁷ For example, in the absence of true agreement, the professional may assume concordance between his or her own wishes, preferences, or motivations and the client's. The service provider may be unconsciously motivated to direct a client to a particular course of action that is, in reality, inconsistent with the client's interests.

Second, during the process of becoming aware of psychological conflicts and issues, many burgeoning therapists also experience what

11. Barry A. Farber, *Dysfunctional Aspects of the Psychotherapeutic Role*, in *STRESS AND BURNOUT IN THE HUMAN SERVICE PROFESSIONS* 100 (Barry A. Farber ed., 1983).

12. Francis Dale, *Stress and the Personality of the Psychotherapist*, in *STRESS IN PSYCHOTHERAPISTS* 18-19 (Ved P. Varma ed., 1997).

13. Stolle et al., *supra* note 4, at 19.

14. Farber, *supra* note 11, at 100.

15. *See id.*

16. *Id.*

17. Harold P. Blum & Warren H. Goodman, *Countertransference*, in *PSYCHOANALYSIS: THE MAJOR CONCEPTS* 121 (Burness E. Moore & Bernard D. Fine eds., 1995) [hereinafter *PSYCHOANALYSIS: THE MAJOR CONCEPTS*].

has been (somewhat facetiously) labeled "Beginning Psychiatry Training Syndrome," wherein new trainees overidentify with clients and view themselves as more troubled than they are.¹⁸ As therapeutic service providers become more psychologically-minded, they may also find themselves increasingly over-involved in the lives of family and friends and prone to discovering "problems" where none exist. Conversely, the process of becoming psychologically-minded may enable these individuals to identify previously hidden conflicts in themselves or others. Uncovering another's emotional issues or one's own previously defended internal conflict may create an acute situation of stress for the therapeutic worker.¹⁹

Finally, gaining insight into mental processes can promote egocentricity.²⁰ In describing the frequency of "mid-life problems" in psychologists, Millon, Millon, and Antoni²¹ note that:

Insight is accompanied by attention focused on interior processes, and this internal focus invites the risk of narcissistic pre-occupations as well as reduced empathy and a pervasive difficulty in tuning into social matters. To complicate life further, this growing self-examination is likely to focus on shortcomings, and these, in turn, are likely to lead to an anxious egocentricity that, in turn, may further constrict one's problem-solving skills.²²

Despite the potential adverse effects of becoming psychologically-minded, it bears repeating that this process typically enhances empathy and increases one's ability to deal with client problems. For example, a psychologically-minded lawyer faced with a client having difficulty making decisions on how best to divide family assets after a divorce may sense that the client is defending against the dissolution of the family unit. The lawyer can explore this issue with the client and, if the lawyer's hunch is correct, he or she might refer the client to

18. Farber, *supra* note 11, at 100. Farber notes that this process also occurs in medical students. The learning of a new disorder frequently leads students to identify with its symptoms and believe that they suffer from the same ailment.

19. *Id.* at 102-06.

20. Theodore Millon et al., *Sources of Emotional and Mental Disorders Among Psychologists: A Career Development Perspective*, in PROFESSIONALS IN DISTRESS: ISSUES, SYNDROMES, AND SOLUTIONS IN PSYCHOLOGY 119 (Richard R. Kilburg et al. eds., 1986) [hereinafter PROFESSIONALS IN DISTRESS].

21. *Id.*

22. As previously stated, the process of becoming psychologically-minded typically results in increased empathy. Here, Millon, Millon, & Antoni refer to the possibility of reduced empathy resulting from over-involvement in one's own narcissistic needs. *Id.* In such a case, the process of becoming psychologically-minded has been disrupted by the person's own underlying conflicts.

an appropriate mental health professional for assistance in dealing with the end of the marriage. Psychological-mindedness also enables a therapeutic service provider to achieve a greater degree of relatedness with a client that will result in a more enriching and fulfilling professional life.²³ And, as stated above, psychological-mindedness is likely a necessary precursor to effective therapeutic lawyering.

Not all lawyers will find it equally easy to increase their psychological-mindedness. Although this ability can undoubtedly be learned,²⁴ it is a skill that comes more easily to some than others. In addition to introspection, intuitiveness, and empathy, other personal characteristics associated with excelling in therapeutic interactions include "sensitivity, [the] capacity to tolerate doubt, emotional flexibility and openness, [and the ability to be] nonjudgmental and impartial."²⁵ These traits are not characteristic of law students and lawyers. According to personality research, lawyers tend to be aggressive, competitive, extroverted, and achievement-oriented.²⁶ Although these latter traits serve lawyers well in litigation battles, they are less suited to emotionally-sensitive situations, such as the exploration of a client's fear of illness or death.

Some lawyers may not be comfortable with adopting a more personal role in their clients' lives. Exploring emotional and psychological issues with another human being is an intimate contact,²⁷ not typical in a legal practice. For those with little experience in exploring these issues, the therapeutic role may be somewhat anxiety-provoking and overwhelming.²⁸ This may be particularly true for people who are not comfortable with their own emotional and psychological issues.²⁹ Many lawyers are psychologically well-adjusted and self-aware. Unfortunately, however, research has shown that many lawyers are distressed by emotional and psychological problems, that substance abuse is problematic, and that relatively few lawyers utilize mental health services when needed.³⁰

23. Farber, *supra* note 11, at 114-15.

24. Although I focus in this Article on deliberately enhancing one's psychological-mindedness, this ability could also be learned through experience. Psychological-mindedness exists in lawyers who, although never introduced to the formal preventive law/TJ framework, approach their work from similar avenues.

25. Dale, *supra* note 12, at 18.

26. Daicoff, *supra* note 2, at 1390.

27. Dale, *supra* note 12, at 15.

28. Delia Cushway, *Stress in Trainee Psychotherapists*, in *STRESS IN PSYCHOTHERAPISTS* 25 (Ved P. Varma ed., 1997).

29. See Winick, *supra* note 9, for a discussion of client anxiety, a corollary to lawyer anxiety emerging in the lawyer-client interaction.

30. See generally *supra* note 2.

In sum, therapeutic lawyering will not likely be adopted to the same degree by all lawyers. The minority of lawyers who possess personality traits more characteristic of professions such as social work or medicine will likely embrace the therapeutic approach and find that it comes easily to them. For those lawyers, therapeutic lawyering may indeed provide the tonic to rejuvenate their careers.³¹ For lawyers wishing to refine, rather than revolutionize, their legal practices, the therapeutic lawyering principles may be adopted in varying degrees within existing approaches according to the particular lawyer's needs and personality.

B. *Balancing Neutrality and Involvement*

In order to decrease overidentification with a client, a professional must delicately balance neutrality and objectivity with involvement and concern.³² The professional must develop a detached style of interaction in order to prevent blurring of identity boundaries and maintain nonjudgmental objectivity. Neutrality in this sense is larger than Freud's notion of neutrality, encompassing it. He described neutrality as the state of not taking sides against any aspect of the client's personality.³³ However, if a detached and objective style of interaction is carried into one's personal life, problems can arise in intimate relationships with friends and family. Therapeutic professionals may also find it difficult to engage in supportive home relationships and/or exercise effective listening skills after listening to personal issues of their clients throughout the day.³⁴

As lawyers begin to establish more personal relationships with their clients, they may also find it harder to resist client demands. It is more difficult to end a meeting or telephone call when the material being discussed is intimate in nature or where a personal relationship has been established. Lawyers may find themselves working longer and longer hours in order to accommodate the additional contact,

31. This is fortunate, given that the professional burnout literature has identified idealistic, compassionate, and empathic individuals as those most at risk of suffering the deleterious effects of extended contact with people in difficulty. Of course, "burnout" is a multifaceted phenomenon. I do not intend to imply that these personality characteristics necessarily lead to the experience of burnout. For reviews of research on the factors involved in burnout see WILLIAM N. GROSCH & DAVID C. OLSEN, *WHEN HELPING STARTS TO HURT: A NEW LOOK AT BURNOUT AMONG PSYCHOTHERAPISTS* (1994); *PROFESSIONAL BURNOUT: RECENT DEVELOPMENTS IN THEORY AND RESEARCH* (Wilmar B. Schaufeli et al. eds., 1993); Farber, *supra* note 11.

32. Farber, *supra* note 11, at 101.

33. Sydney E. Pulver, *The Technique of Psychoanalysis Proper*, in *PSYCHOANALYSIS: THE MAJOR CONCEPTS*, *supra* note 17, at 14.

34. Farber, *supra* note 11, at 104.

placing themselves at increased risk for burnout. This will be especially problematic where the lawyer practices within a private firm, where he or she seeks to employ a therapeutic lawyering approach while striving to meet billing targets and engaging in nonbillable activities such as firm promotion and continuing legal education.

Social interaction with clients may also bear reconsideration. Although it is recognized that some extra-session contact is often inevitable and likely not harmful, planned social contact between psychotherapist and client is discouraged due to its possible antitherapeutic effects.³⁵ In my experience, however, lawyers frequently invite clients to lunch, dinner, sporting events, and social gatherings. As lawyers become more therapeutic in orientation, this practice may no longer be appropriate.

In addition, the thorny issue of fees may require reexamination. In the psychotherapeutic literature, the failure to confront payment of fees in a forthright, timely, and ongoing manner is recognized as a potential impediment to therapeutic interactions.³⁶ However, in my experience, despite the popular view of lawyers as greedy, many lawyers are chronically remiss in pursuing payment of fees as the file progresses. Rather, they discuss fees in a vague and embarrassed way at the beginning and allow large debts to accumulate before pursuing payment. The state of owing someone money, as well as the strain of making a large lump sum payment (particularly if it follows monetary payment to resolve a legal case) are counterproductive to the therapeutic relationship.

Although the therapeutic lawyer will be involved in personal aspects of the client's life, it is essential to remember that the relationship is a professional one. One feature separating professional from private relationships is the fact that the client is paying a fee for the service provided. The provision of the fee reminds both parties of the nature of the relationship and minimizes the risk of over-involvement. Additionally, it allows clients the opportunity to meet their end of the bargain in the lawyer-client relationship, thereby enhancing the power of the client in the relationship. This lowers the risk of clients being

35. Pulver, *supra* note 33, at 17.

36. See, e.g., *id.* Sigmund Freud eloquently described two of the problems arising from lack of forthrightness in fee arrangements: resentment on the part of the professional and transference reactions on the part of the client. On resentment, Freud wrote:

In my opinion it is more dignified and ethically less open to objection to acknowledge one's actual claims and needs rather than, as the practice is now among medical men, to act the part of the disinterested philanthropist, while that enviable situation is denied to one and one grumbles in secret, or animadvert loudly, over the lack of consideration or the miserliness shown by patients.

I. SIGMUND FREUD, COLLECTED PAPERS 352 (1948).

less forthright or more challenging of their lawyers because of a feeling of indebtedness for the "favor" of their service.

Another particular threat to neutrality is the possibility of romantic or sexual attraction between lawyer and client. Overinvolvement of this nature is a significant issue in psychotherapeutic research and literature, with potential ethical and legal consequences.³⁷ Without diminishing the personal responsibility of those professionals who engage in boundary violations of this type, the very nature of the therapeutic relationship and the resulting transference reactions contribute to the disruption of professional distance.³⁸ Lawyers should be aware of the concept of transference before embarking on the more personal client interactions inherent in adopting a more therapeutic approach.

C. *Transference and Countertransference*³⁹

Throughout life, people tend to reexperience feelings, desires, and attitudes generated in early situations with significant others.⁴⁰ Displacing these emotions, needs, and beliefs onto current situations is referred to as a "transference reaction."⁴¹ Transference is a central component of the therapeutic relationship.⁴² A client's reaction may appear irrational to the service provider; the client's feelings or atti-

37. According to Christa Peterson, *Common Problem Areas and Their Causes Resulting in Disciplinary Actions*, in LARRY J. BASS ET AL., *PROFESSIONAL CONDUCT AND DISCIPLINE IN PSYCHOLOGY* 83 (1996), actions based on dual relationships are the single most frequent cause for disciplinary and legal action against psychologists. Most of these relationships are sexual in nature. Fully 87% of psychologists in one study reported feeling sexually attracted to a client at some time. The actual incidence of sexual contact is uncertain as self-reports of such conduct are notoriously lower than third-party reports (such as reports from therapists that clients have disclosed sexual contact with a previous therapist).

38. According to Blum & Goodman, *supra* note 17, at 121, it is rumored that Freud's mentor Joseph Breuer originally transferred his client Anna O. to Freud after becoming distressed about his sexual attraction to her. It is now widely accepted that romantic and sexual attraction can arise from transference and countertransference reactions. Once professionals recognize the source of these emotions, it may be easier to avoid sexual or romantic contact and, thus, avoid ethical violations.

39. See also Winick, *supra* note 9, for a description of the concepts of transference and countertransference, with particular reference to issues of death and dying.

40. See generally, Leo Stone, *Transference*, in *PSYCHOANALYSIS: THE MAJOR CONCEPTS*, *supra* note 17, at 110. Typically, the transference reaction reflects early experiences with parents or other caregivers.

41. See *id.*

42. Therapeutic relationships foster transference through their similarity to parent-child relationships. They are, by necessity, unbalanced, with the professional occupying the position of the knowledgeable, competent party (i.e., the parent), and the client occupying the position of the one needing help (i.e., the child). In addition to this power imbalance, an imbalance in the amount of self-disclosure occurs, which is significant for the client but minimal for the professional.

tudes reflect early developmental experiences and are not reflective of the reality of the current situation.⁴³ The transference reaction may occur in positive or negative form.⁴⁴ With positive transference, the client feels unwarranted attachment, love, attraction, or admiration for the transference object. Negative transference, on the other hand, may express itself as anger, hostility, and devaluation.⁴⁵

Countertransference occurs when the feelings, desires, and attitudes of the therapeutic service provider are displaced back onto the client.⁴⁶ For example, a lawyer who has recently lost a parent may find it extremely difficult to discuss issues of death and illness with a client planning an estate matter. Conversely, countertransference reactions may involve a desire to protect or rescue the client.⁴⁷ These reactions represent a distortion of the reality of the therapeutic interaction and may impede therapeutic work.⁴⁸ If not detected and managed, countertransference may cause depression and distress in the service provider.⁴⁹ However, psychotherapeutic literature recognizes that if transference and countertransference reactions are identified, they can be used successfully within the professional-client relationship to enhance therapeutic interactions.⁵⁰ For example, a lawyer who feels a desire to rescue a client may examine that feeling to determine if it has affected the working relationship. Has the lawyer been diligent in collecting the fee owing, thereby empowering the client to a position of more equality in the relationship, or has the issue gone unmentioned for weeks, leading to uncomfortable silences at the end of the session when bills would normally be paid? The lawyer may also consider whether there is something about the client that brings about this reaction. If so, it is likely that similar dynamics exist between the client and other significant people in the client's life. Understanding that a client is normally surrounded by people who provide rescue from life's trials may help explain the client's approach to unexpected

43. *Id.* at 110.

44. *Id.* at 113.

45. *Id.* The terms "positive" and "negative" transference are discouraged by some authors, as they do not identify the usefulness of the transference. For example, anger can be used in the therapeutic relationship for positive purposes.

46. Blum & Goodman, *supra* note 17, at 121. The term has more recently been used to refer generally to all the therapist's thoughts and feelings towards the patient: Charles R. 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 10 (Charles R. Figley ed., 1995) [hereinafter COMPASSION FATIGUE].

47. *Id.*

48. *See generally* Blum & Goodman, *supra* note 17, at 126.

49. *Id.*

50. Janet Yassen, *Preventing Secondary Traumatic Stress Disorder*, in COMPASSION FATIGUE, *supra* note 46, at 178.

legal problems. Recognizing these dynamics assists the lawyer in dealing with a client in the manner most appropriate for that client (for example, by allowing such a client time to consult with others before asking him or her to make a decision).

D. Secondary Trauma

“Secondary trauma” refers to trauma resulting from vicarious exposure to highly emotional experiences.⁵¹ Professionals who work with victims of trauma, such as crime or accident, frequently hear repeated accounts of gruesome and painful events.⁵² Through this exposure, therapeutic workers may themselves become traumatized and suffer aftermath similar to that experienced by their clients, such as anxiety, depression, and helplessness.⁵³

Secondary trauma is a significant risk within certain human service professions such as social work, psychology, and crisis counseling. As Figley notes, “[t]here is a cost to caring.”⁵⁴ As lawyers adopt a more therapeutic lawyering approach, they will be exposed to more personal details of their clients’ lives. These details will not always be pleasant. Clients may relay accounts of sexual abuse, physical assault, alcoholism, illness, death, etc., often in highly emotionally-charged ways.⁵⁵ Hearing such accounts can be extremely upsetting or, in the worst cases, traumatizing for the professional. This may be particularly so after repeated exposure or where the particular trauma being discussed has personal significance to the listener.⁵⁶

51. Secondary trauma is also called “compassion fatigue” and “secondary traumatic stress disorder.” For an excellent review of compassion fatigue, see COMPASSION FATIGUE, *supra* note 46, at 1-46.

52. Figley, *supra* note 42, at 7, describes secondary traumatic stress as a “natural consequence” of learning about a traumatizing event experience by a significant other. He notes that the most effective therapists are also those most likely to experience secondary traumatic stress. *Id.* at 1. He attributes this increased vulnerability to the “enormous capacity for feeling and expressing empathy” characteristic of these individuals. *Id.* Again, we see empathy as a double-edged sword; secondary traumatic stress increases one’s capacity for being effective in the therapeutic interaction, but also places one at risk for the hazards that accompany occupying this intimate role.

53. Yassen, *supra* note 46, outlines sixty-eight possible effects of secondary traumatic stress under six categories (cognitive, emotional, behavioral, spiritual, interpersonal, and physical). Figley, *supra* note 46, at 12, notes that although secondary traumatic stress is similar to burnout, the concepts are distinct. Burnout is generally recognized to be a gradual process, whereas the onset of secondary traumatic stress can be quite sudden. *Id.* Additionally, he argues that some symptoms (such as a sense of helplessness) are nonoverlapping, and secondary traumatic stress disorder has a faster rate of recovery. *Id.*

54. Figley, *supra* note 46, at 1.

55. One client of mine actually vomited while recounting to me the sexual abuse of her son by her husband.

56. Randal D. Beaton & Shirley A. Murphy, *Working with People in Crisis: Research*

Secondary trauma not only exacts a significant toll on the therapeutic service provider, it may interfere with the provider's ability to assist the client. In this way it is similar to countertransference, discussed above. However, Figley argues that the two processes have origins in different places. Countertransference arises from the feelings and attitudes of the therapist derived from early experience, whereas secondary trauma is the "natural by-product of caring for traumatized people."⁵⁷ Yet, in practice, the two are related. For example, the same behavior of a client may evoke both countertransference and a secondary stress reaction. Furthermore, strategies used to combat one hazard will likely be effective in reducing the other. In the following discussion of protective strategies, the reader is encouraged to view the suggestions not as recommendations of specific techniques, but as concrete examples chosen to illustrate general principles.

III. PROTECTIVE STRATEGIES FOR THERAPEUTIC LAWYERS

The following strategies are gleaned from the psychotherapeutic and burnout literature. They represent a small sample of the many interventions identified to assist therapeutic service providers with the emotional and psychological burden of their work. As a comprehensive review of protective strategies is beyond the scope of this Article, I have chosen a number of strategies that struck me as relatively easy to adopt by lawyers guiding their legal practice in a more therapeutic direction.⁵⁸

(1) Strive to become more psychologically-minded. Unassisted personal growth, through such activities as self-exploration, meditation, spiritual or religious affiliation, and self-education, may help to increase one's ability to attune to emotional and psychological issues. However, as discussed above, several dangers are inherent in becoming immersed in unconscious mental processes, such as overidentification, a tendency to overpathologize, the uncovering of previously defended conflicts, and the development of a detached interpersonal style. Professional training, peer or professional consultation, and personal therapy can assist lawyers to avoid these dangers while embracing the increased empathy and human relatedness that also occurs as one increases psychological-mindedness.

Implications, in COMPASSION FATIGUE, *supra* note 46, at 51.

57. Figley, *supra* note 46, at 11.

58. For detailed discussion of protective strategies, see, e.g., Farber, *supra* note 11; GROSCH & OLSEN et al., *supra* note 31; PROFESSIONALS IN DISTRESS, *supra* note 20; and STRESS & PSYCHOTHERAPISTS, *supra* note 12.

(2) Become familiar with transference reactions. The intense, seemingly irrational emotional reaction a client may have towards you must be recognized as resulting from projective identification of the client's own conflicts and issues. Guard against taking these reactions too personally or acting on the emotions in inappropriate ways (such as engaging in sexual contact with a client).

(3) Learn to manage countertransference. Figley outlines five characteristics that assist therapists to achieve this goal: anxiety management, conceptualization of skills, empathic ability, self-insight, and self-integration.⁵⁹ Professional help and consultation with supervisors and/or colleagues may be helpful or necessary to develop the skills required to effectively manage countertransference reactions.

(4) Be conscious of professional boundaries. Therapeutic relationships require an even higher vigilance to the avoidance of dual relationships than other professional working relationships. Issues such as socializing with clients and being forthright in fee arrangements should be given greater consideration.

(5) Adopt active cognitive and behavioral coping strategies. The most frequently cited coping method used by training psychotherapists is talking to co-workers, friends, and family.⁶⁰ However, this strategy may work less well in competitive settings, where workers frequently do not wish to expose vulnerabilities to colleagues for fear it will be perceived as weakness and pose a threat to job security.⁶¹ Such consultation further creates issues of confidentiality. This is an even greater concern for lawyers than for other professionals, given the very stringent requirements of attorney-client privilege. Avoidance coping methods, such as taking time off, may be helpful in the short-term; however, if used consistently and combined with denial, these coping strategies are unlikely to succeed in preventing psychological distress over the long-term. Other avoidance coping methods, such as use of drugs or alcohol, are likely to lead to greater distress.⁶²

(6) Actively manage your caseload. Possible techniques include scheduling difficult clients on different days, limiting the number of emotionally-charged clients carried at any one time, and interspersing cases requiring extensive emotional involvement with less emotionally-demanding cases.

(7) Place limits on the therapeutic interaction. Psychotherapists frequently schedule sessions for set time periods (e.g., fifty or sixty

59. Farber, *supra* note 11, at 10.

60. Cushway, *supra* note 28. Other active coping strategies listed by Cushway include engaging in sporting, social, or leisure activities, active problem-solving, and planning.

61. *Id.* at 36.

62. *Id.* at 38.

minutes) on successive dates (e.g., same day each week), while limiting extra-session contact (e.g., phone calls). This process allows the therapeutic interaction to be contained within a structured framework.⁶³

(8) Create an explicit plan to prevent secondary traumatic stress. Beaton and Murphy provide an easy-to-follow eight-step guide to assist in developing and maintaining a personal prevention plan.⁶⁴ They provide over thirty concrete examples of strategies that can be incorporated into a prevention plan.⁶⁵ Examples range from basic advice, such as evaluating one's eating and sleeping habits, to less obvious suggestions as periodically seeking out new friendships with colleagues in similar fields to replenish one's enthusiasm in the profession.⁶⁶ Many of the suggestions made by Beaton and Murphy are also likely to be effective in preventing or minimizing professional burnout.

(9) Seek professional help as needed. Professional burnout is a gradual process, during which interventions can be applied at many stages. Professional help may include seminars and workshops on managing stress and/or therapeutic work, personal therapy, and seeking the assistance of others in your field.

(10) Practice self-care. As described above, engaging in therapeutic work can be very rewarding; however, it can also deplete one's personal resources. Therapeutic service providers must maintain an appropriate balance between work and personal life, engage in leisure activities, and create a strong social support network. Otherwise, their risk of falling into one of the pitfalls outlined above may be increased. As a result, they may sacrifice their own psychological wellness, as well as their ability to contribute to their clients'.

IV. CONCLUSION

The integration of preventive lawyering and therapeutic jurisprudence has much to offer lawyers seeking a more humane practice of law. Getting to know clients on more personal levels and assisting them with more meaningful problems in their lives will undoubtedly result in many lawyers finding the work more satisfying and fulfilling. In outlining some of the psychological pitfalls inherent in adopting a more therapeutic approach to lawyering, I do not wish to dissuade anyone from guiding his or her work in more therapeutic directions.

63. This differs from legal practice, in which clients contact lawyers on an "as needed" or "as available" basis. Frequent telephone calls and unstructured, lengthy meetings may be very stressful for both client and lawyer.

64. Beaton & Murphy, *supra* note 56, at 205.

65. *Id.*

66. *Id.*

Rather, it is my hope that, by being aware of the hazards and protective strategies, lawyers will be able to integrate therapeutic principles into legal practice with minimal negative consequences, leaving them free to embrace the positive. I believe such a cautious approach is not only consistent with the principles of TJ, but mandated by it.⁶⁷

67. In fact, becoming sensitive to the psychological processes involved may be the most fundamental application of TJ preventive lawyering.