

Impact of litigation on the psychotherapy of posttraumatic stress disorder

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This letter will report on observations from a private practice setting protracted treatment of numerous cases of posttraumatic stress disorder (PTSD) resulting from both civilian and combat traumatic stressors. Issues related to the impact of litigation on the psychotherapeutic process will also be discussed and the development of a framework for managing reactions to current disruptions as an avenue to integration and enhanced coping.

The interplay between the legal system and psychotherapy often creates a less than therapeutic hybrid for all concerned: psychotherapists can feel victimized, lawyers frustrated, and patients betrayed and abandoned. It has been noted that in the area of mental health law, where the intersection of two professions is more clearly defined, less than satisfactory clarity has been achieved, in less than significant areas of concern, all of which lacks an adequate empirical basis.

Speaking to my colleagues in Europe about the topic of litigation and psychotherapy is a bit like speaking an unintelligible language because the litigation epidemic that is raging in the United States has not struck Europe. Part of the reason for this may be the large concentration of attorneys in the United States.

Attorney Jan Schlichtmann, the plaintiff attorney in the recent book and movie, *A Civil Action*¹ recently gave a television interview in which he talked about his experiences representing the Woburn, Massachusetts families suing two major corporations, claiming the corporations had poisoned the city water supply by carelessly dumping industrial waste. The Woburn damages included children who died of leukemia, and severe and chronic health problems developed by many others. Schlichtmann proposed we as a society must commit to creating a more humane legal system, one based on truth, cooperation, and responsibility, instead of the current model in the United States where attorneys set out each day to destroy the people on the other side of the law suit. Schlichtmann felt such a psychologically violent orientation to practicing law is unhealthy for lawyers and is certainly not healthy for the parties of litigation.

In this highly litigious environment, the construct of

(PTSD) fits neatly into the litigation framework of cause and effect, victim and victimizer, injured and tortfeasor. Psychotherapy patients who have been injured as the result of workplace violence, being raped or assaulted, or injured in an accident of some sort are likely to be exposed in some fashion to Schlichtmann's adversarial American legal system. Informed psychotherapists, however, are in a position to prevent or minimize secondary injuries to which the legal system places their patients at risk. In my experience, secondary injuries create more symptomatic distress and disability than the impact of the initial traumatic event. Psycho-education and support are the primary tools for preventing or mitigating the impact of litigation-based secondary injuries, and predominates the psychotherapeutic process from beginning until end.

The environment of litigation can potentially cause great obstacles to the healing process of psychotherapy. The most damaging factors are the indiscriminant and prejudicial assaults on the patient's credibility, and the dishonoring of their suffering by their adversaries in the legal battle. The dishonoring of wounds is particularly damaging since it is in their honoring that much healing is possible, and serves as an essential ingredient to recovery from the debilitating effects of traumatic stress.

As a result of my work involving posttraumatic psychotherapy, and worker's compensation evaluations, I began to receive a large number of referrals of individuals for treatment and evaluation who had suffered various kinds of severe traumatic events, such as gun shot wounds, sexual assaults, domestic violence, torture victims, employment harassment cases, as well as individuals suffering PTSD related to war trauma. Not surprising, these individuals were typically involved in some type of litigation related to their injuries. The following observations are based on treating over fifty such litigant psychotherapy cases over the past eight years.

It is my general impression that psychotherapy patients who are also litigants are typically high-achieving individuals with exceptionally high standards of self-performance, need for justice and belief in democratic ideals, constitutional protections and individual rights. The litigant patients I have treated have characteristically been the cream of the crop - individuals who display a high degree of moral courage and outrage at what they have experienced as unjust and wrong, and who are perfectionistic. Additionally, the following effects, dynamics, features and reactions have been observed:

1. A general diminishment of the stress adaptation response, à la Hans Selye,² in which the body starts to fall apart and becomes depleted in various ways from the effects of prolonged stress. There is a general wearing down of coping ability and stress resistance, and the

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- development of physical and psychological exhaustion.
2. Fears of abandonment by the therapist.
 3. A gradual alienation from social supports.
 4. Development of a chronic reactive depressive response to myriad losses.
 5. Fear of the defense attorney's efforts to discredit them and in the general spirit of 'everything can and will be used against you'.
 6. An intensification of dependency issues on the therapist who is seen as the only one who understands what they are going through.
 7. A progressively intensifying fear of financial ruin with progressive actual losses to a previously enjoyed life style.
 8. Anger and rage reactions to being blamed as the victim. A typical defense council's strategy is to accuse the litigant of having brought the injurious situation on him or herself. Such experiences serve to underscore the litigants sense of having lost control, and feeling adrift in a sea of hostile forces bent on their destruction.
 9. Fears of the stigmatizing effects on their futures for having openly admitted a psychological condition which they attribute to factors of their employment. Fears of never being employed again and of losing all career opportunities.
 10. The impact of seeing personal resources dissolve as the litigation process wears them down. 'Crushed beneath the wheel' is often an apt metaphor for what litigants experience as the weight of the legal system pours down upon them.
 11. Reactions to lack of legal resources, as few competent attorneys are available to litigants in such situations. United States Attorney General Janet Reno once stated she believed at least 80 percent of attorneys harmed their clients. The number of competent attorneys is usually quite limited to litigants and once they are with an attorney, and have paid large, usually nonrefundable retainers, they feel forced to stay with the attorney even though they feel the attorney is doing a poor job of representing them.
 12. Reactions to the insensitivity of family members and friends who are contemptuous of anyone who sues what ever the reason.
 13. Reactions to having their credibility attacked and being accused of faking illness.

It is difficult for people who have not directly experienced social injustice to understand the kinds of issues and emotional stress litigant patients experience. To illustrate one such situation from a historical perspective, imagine an African American in the South during the early part of this century observing the lynching of a friend or relative by the KKK, and realizing there is little or no hope of gaining assistance from the larger, dominate society which supports racist polices. Or imagine reactions of federal employees at the Environmental Protection Agency as they become progressively impaired from sick building syndrome, and encountered an administrative response of 'it is all in your head' as was recently revealed by a news program's investigative report. Or imagine a rape victim who at trial is made out to be the guilty one because she

got on an elevator alone with a strange man, or because she wore a short dress.

In contrast to the above secondary injury situations, imagine an ideal world where the actions of the legal system intentionally strives for a healing impact. For example, a traumatized and disabled worker encounters a workers' compensation claims examiner who is educated to be knowledgeable about psychological issues, and sensitive to vulnerability to stress and victim needs. The claims examiner and his or her supporting bureaucracy is fully committed to providing fast financial and psychological services funding for the injured worker, knowing both the human and financial savings such proactive intervention will reap. Or imagine in the perfect world, political asylum judges and prosecutors who are educated about PTSD and the effects of torture, and are sensitive in how they question the applicants, and the requirements imposed on them.

I hope these observations serve as a forewarning to our European brothers and sisters since the litigation epidemic has not yet struck them, and perhaps never will. But regardless, mental health and legal professionals in Europe have the opportunity to learn from the mistakes of our adversarial legal system in the United States. Europeans still have a chance to do it right with respect to the legal process as it involves psychological injuries. There is still the opportunity to create a cooperative environment between litigant and defendants so as to preserve the healing effects of psychotherapy and maximize the recovery of patients with PTSD, thereby minimizing the human and economic costs to society.

Psychotherapists of litigant psychotherapy patients must remain psychoeducative and supportive through the treatment process if they are to minimize secondary injuries to the patient caused by the legal system. The therapist is challenged to assist the patient overcome the effects of a double stigma, the stigma of suffering a psychological condition, and the stigma of being a litigant. The therapist is also challenged to overcome the stigma to him or herself as being a professional who treats psychotherapy patients who are also litigants. Besides being a competent clinician, the therapist must also be informed about the legal process so as to adequately support the patient and respond appropriately to impingements on the therapy process by the legal system. Psychotherapists must strive to maintain an emotionally neutral stance while attempting to educate lawyers, and judges about the psychotherapy process, and to advocate for a cooperative versus adversarial approach. Ideally both psychotherapists and lawyers are working for the same end, i.e., truth and justice. In the end society must decide if it values a non-traumatizing world, and if we its members are willing to insure it.

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Literature

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