

## Telling Client Stories

Christian Legal Society National Conference Workshop Presentation

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### Workshop Description

Narrative theory, the types of “storytelling” we encounter as attorneys, the ethical implications of telling a client’s story, and trauma narratives all lead into a discussion of our role as legal professionals in telling the stories of domestic violence survivors. Most obviously, perhaps, in the writing and submission of family offense petitions, but also when working on other legal matters involving survivors. As we strive to advocate for our clients, it is critical that we consider how to best balance telling a client’s story well, within ethical boundaries, while working with the trauma narrative given and ultimately achieving the best possible outcome for the client.

### Introduction

- Stories help us to “make sense of life,” providing meaning and giving a structure and construction to chaotic events.<sup>1</sup> In the context of trauma, stories help us to reconstruct, find meaning, and heal.<sup>2</sup> The stories of domestic violence victims present an ideal background against which to discuss the role and importance of narrative in the law. The assertion that “stories lie at the very heart of law”<sup>3</sup> is particularly evident in cases involving domestic violence, where the stories of individuals and families converge with the stories created by the law, and narrative becomes increasingly important in the continuing story of a family after an encounter with the law.
- Yet, telling another’s story with accuracy and compassion is difficult. Conveying what is most important to that person in the story, relating emotions, and working through details is even more difficult when the client is a domestic violence victim. Trauma impacts the ability of a client to tell the story, resulting in disjointed stories. The telling of the story has potential impacts on a client.
- As attorneys, we need to be aware of these impacts and our role in telling a client’s story in an area that has such high stakes for a client’s life.

### Roadmap

- Brief discussion of background on domestic violence, narrative theory, storytelling as lawyers, ethical implications of telling a story
- Focus on trauma narratives and how all this applies to telling the stories of domestic violence victims

### Domestic Violence

- Definition: “Willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior,” done as part of a “systematic pattern of power and control” by one individual against another.<sup>4</sup>
- 10 million people each year are abused by an intimate partner. This includes 1 in 4 women and 1 in 9 men who experience severe intimate partner physical violence, intimate partner contact

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<sup>1</sup> Jonathan K. VanPatten, *Storytelling for Lawyers*, 57 S.D.L. REV. 239, 240 (2012).

<sup>2</sup> Shulamit Almog, *Healing Stories in Law and Literature*, in TRAUMA AND MEMORY: READING, HEALING, AND MAKING LAW 289 (Nadav Davidovich & Michal Alberstein eds., 2008).

<sup>3</sup> Stephen Paskey, *The Law is Made of Stories: Erasing the False Dichotomy Between Stories and Legal Rules*, 11 Legal Comm. & Rhetoric: JALWD 51, 82 (2014) [hereinafter Paskey, *Law is Made of Stories*].

<sup>4</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE IN NEW YORK (2020), [https://assets.speakcdn.com/assets/2497/ncadv\\_new\\_york\\_fact\\_sheet\\_2020.pdf](https://assets.speakcdn.com/assets/2497/ncadv_new_york_fact_sheet_2020.pdf) [hereinafter DV in New York]; see also CDC, Preventing Intimate Partner Violence (Oct 9, 2020), [https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet\\_2020\\_508.pdf](https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet_2020_508.pdf) (defining intimate partner violence as “physical violence, sexual violence, stalking, or psychological harm by a current or former partner or spouse.”).

sexual violence, and/or intimate partner stalking, while 1 in 3 women and 1 in 4 men have experienced any level of physical abuse by an intimate partner.<sup>5</sup>

- Duluth Power and Control Wheel provides a visual representation of the tactics used by an abusive partner to keep a victim in a relationship.<sup>6</sup> The inner portion of the wheel represents the threats, intimidation, and coercion continually and often subtly used by an abuser to instill fear. The physical and sexual violence on the rim of the wheel reinforces the tactics within the wheel.<sup>7</sup>



- Not all domestic violence involves physical abuse. An abuser’s goal of gaining power and control over a victim is achieved through a pattern of coercive control. The coercive control model shifts the emphasis from the effect of the abuser’s violent acts on a victim to the pattern of coercion and control executed by the abuser.<sup>8</sup> Coercion involves the “use of force or threats to compel or dispel a particular response.”<sup>9</sup> Control tactics are used to “compel obedience indirectly by depriving victims of vital resources and support systems, exploiting them, dictating preferred choices, and micromanaging their behavior by establishing ‘rules’ for everyday living.”<sup>10</sup> Coercive control is the most common and most devastating form of abuse, and is an extremely strong indicator of the risk of fatality in an abusive relationship.<sup>11</sup> the impact of coercive control on a victim has significant implications for a victim’s involvement in the legal system, her ability to tell her story, and her recovery from abuse.
- **Statutory Definitions:** The definition of intimate partner violence or domestic violence varies in the law based on context. A criminal proceeding may have a different definition from one

<sup>5</sup> NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE (2020), <https://safe.menlosecurity.com/doc/docview/viewer/docN8A454768AF2Cab72958a017383942521819065c50787af4cf05b9d7b9ad97dde0e6310e4f11d>.

<sup>6</sup> *Understanding the Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROGRAMS, <https://www.theduluthmodel.org/wheels/faqs-about-the-wheels/> (last visited Dec. 15, 2021) [hereinafter DAIP].

<sup>7</sup> *Power and Control*, NATIONAL DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/identify-abuse/power-and-control/> (last visited Dec. 15, 2021).

<sup>8</sup> Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALBANY L. REV. 973 (1995).

<sup>9</sup> Evan Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, 12 J. POLICE CRISIS NEGOT. 199, 207 (2012).

<sup>10</sup> *Id.* at 210.

<sup>11</sup> *Id.* at 212; see also Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, NAT’L INST. JUST. J., Nov. 2003, at 14, 17 [hereinafter Campbell et al., *Assessing Risk Factors*].

applicable to a custody, divorce, child abuse, or family offense case, for example. Each state has its own definition and applicable laws.<sup>12</sup>

- Generally speaking, most statutory definitions involve the elements of the relationship between the perpetrator and the victim, and the act itself as the parameters of “domestic violence,” or a “family offense”
- **Orders of Protection:** The point where a victim leaves her abuser has been shown to be the most dangerous period of time for a victim. Up to 75 percent of femicide victims and 85 percent of women who experienced severe but nonfatal violence left or tried to leave their abuser in the past year.<sup>13</sup> Civil orders of protection, particularly in cases where criminal prosecution is not pending, fill the gap in protecting a victim when she chooses to leave.<sup>14</sup>
  - Regardless of differences in the legal standards from state to state, the process in all states requires the victim to tell her story in various forms when petitioning the court for a domestic violence order of protection. In New York, for example, a proceeding is originated by filing a petition in Family Court containing an allegation that the respondent committed an act in violation of one of the enumerated family offenses. Once filed, a petitioner would be heard before a Family Court judge and may be issued a temporary order of protection ex parte, either as an individual proceeding or in conjunction with a petition for custody, support, child abuse or neglect, or other actions. Issuance of a final order of protection by the court requires the petitioner to show by a “fair preponderance of the evidence” that the respondent committed one of the listed family offenses.<sup>15</sup>
  - Throughout this process, a client will likely tell her story numerous times in the course of filing a petition: to an advocate, an attorney, the initial Judge in an ex parte proceeding, perhaps a new attorney, and in a fact-finding hearing. She may have also told her story to a police officer, medical professional, or others.

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<sup>12</sup> For example, in New York, a “victim of domestic violence” is defined in the Social Services Law as an individual over the age of sixteen who is a “victim of an act which would constitute a violation of the penal law,” where the act resulted in “actual physical or emotional injury or . . . a substantial risk of physical or emotional harm” and the act was committed by a family or household member. N.Y. SOC. SERV. LAW § 459-A(1). Additional definitions are found in the Family Court Act, Domestic Relations Law, Executive Law, and Penal Law, depending on the context of the case. Under New York’s Family Court Act definition, which directly governs how a victim petitions for an order of protection, a “family offense” occurs when an act falling within the enumerated provisions of the penal law happens between spouses, former spouses, parent and child, persons who have a child in common, persons in an intimate relationship, or members of the same family or household. N.Y. FAM. CT. ACT § 812(1)(a)-(e). An “intimate relationship” does not require a relationship that is sexual in nature, but is based on a consideration of the nature and type of relationship, frequency of interaction, and duration. N.Y. FAM. CT. ACT § 812(e). The penal law provisions include harassment, sexual misconduct, menacing, strangulation, assault, and identity theft, among others. N.Y. PEN. §§ 135.60, 135.61.

<sup>13</sup> Carolyn Rebecca Block, *How Can Practitioners Help an Abused Woman Lower her Risk of Death?*, NAT’L INST. JUST. J., no. 250, 2003, at 6.; see also Campbell et al., *Assessing Risk Factors*, at 14; Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 7, 1089 (2003).

<sup>14</sup> See, e.g., Tamara Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 11–13 (2007); Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B. C. THIRD WORLD L.J. 159 (2003).

<sup>15</sup> FAM. CT. ACT §§ 812–847; see generally N.Y. CourtHelp, *Basic Steps in a Family Offense Petition Case* (Aug. 13, 2019), [https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet\\_2020\\_508.pdf](https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet_2020_508.pdf) (outlining the steps for a family offense petition and explaining the ex parte initial appearance). An ex parte appearance means that the opposing party is not present in court. *Ex parte*, Black’s Law Dictionary (11th ed. 2019).

- An attorney’s role is to craft a petition that meets legal expectations speaks to the judge responsible for hearing family offenses that day in order to obtain the attorney’s ultimate goal for the client: a protection order.<sup>16</sup>

### Narrative Theory

- Definitions help to frame the discussion of the intersection between narrative theory and the telling client stories in the petition of civil orders of protection
- Four main definitions: narrative, story, narrative discourse, and stock story
  - Narrative: representation of events, someone communicating a story to someone else on some occasion for some purpose
    - Story: The “what,” “a set of logically and chronologically related events caused or experienced by a character,” or “something that happened to someone or something, with results or consequences significant to a storyteller’s purpose.”<sup>17</sup>
      - The story doesn’t change.
    - Narrative Discourse: The “how,” the “manner in which a story is presented,” including medium, elements of the story, order of the elements, detail and language used in telling the story.<sup>18</sup>
      - Narrative discourse does change.
  - Stock Story: A “recurring story template,” or a model for similar stories following the same structure or framework, but with “differing events, entities, and details.”<sup>19</sup>

### Storytelling as Lawyers

- Ever legal case, in essence, starts and ends with a story. Narrative and law, therefore, are “mutually inherent.”<sup>20</sup>
- Three “types” of storytelling in the legal community – this discussion falls within the second two. All three focus on the use of storytelling as a means of persuasion, whether to persuade society, persuade a trier of fact, or persuade students or other scholars.<sup>21</sup>
  - Role of narrative as universal preconstruction underlying the rules of law
    - This is the “foundational role of narrative,” providing commonly shared narratives and cultural frames that produce legal principles and laws.<sup>22</sup>

<sup>16</sup> Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 9 (2009).

<sup>17</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 63, 67. The description given in another article, where story is comprised of three elements—character, goal, and obstacles—evidences the varying definitions and approaches to the concept of a “story.” *See, e.g.*, Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ASS’N LEGAL WRITING DIRS. 63, 65 (2010) (citing KENDALL HAVEN, STORY PROOF: THE SCIENCE BEHIND THE STARTLING POWER OF STORY 4 (Lib. Unlimited 2007)). A similar, but slightly different construct by Miller posits that “a story is an account of a happening, while a narrative denotes a broader theme of meaning. . . . put another way, stories add up to narrative.” Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 1–2 (2000) [hereinafter Miller, *Telling Stories*].

<sup>18</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 63, 67; *see also* Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 480 (2016) [hereinafter Paskey, *Telling Stories*].

<sup>19</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 70; *see also* Linda Edwards, *Speaking of Stories and Law*, 13 LEGAL COMM & RHETORIC: JALWD 157, 168, 169 (2016).

<sup>20</sup> J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 53, 53 (2008); Stephen Paskey, *Reframing Law’s Domain: Narrative, Rhetoric, and the Forms of Legal Rules*, 29 Narrative 178, 180 (2021) [hereinafter Paskey, *Reframing*].

<sup>21</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 55; *see also* Edwards, *supra* note 19, at 158.

<sup>22</sup> Edwards, *supra* note 19, at 160–61.

- Can be seen in the use of victim stories to grab attention and raise awareness in advocating for change
  - Role of narrative in legal discourse
    - Stories are tools for persuasion, part of a lawyer’s theory of a case.<sup>23</sup> Stories “create order out of chaos,” and therefore are a logical way to make sense of a case and present it in a way to obtain a favorable outcome.<sup>24</sup>
  - Role of narrative in the lawyering task of persuasion
    - Similar to storytelling in trial practice, but focuses on the persuasion aspect of telling stories, and the ethical and practical limits of telling stories. This is more focused on *how* lawyers craft and present client stories.<sup>25</sup> This also covers the use of “applied legal story-telling,” where stories are a part of classroom or scholarly articles as a means to make a point or illustrate a lesson.<sup>26</sup>
- Governing rules, narratives, and stock stories in the law
  - Legal reasoning is essentially the task of comparing stories. Lawyers, when telling a story, are bound by evidence. Each side of a case, however, will generally tell two very different “stories” through choices of discourse. Lawyers choose what evidence or witnesses to use, how to present information, and what ending a story will have based on the audience and purpose. Even for the same lawyer, one story may be presented in numerous ways over the life of a case.<sup>27</sup>
  - Governing rules can be seen as “stock stories” that provide a framework within which an attorney tells a story. Legal rules have the underlying structure of a stock story, grounded in narrative.<sup>28</sup> Governing rules “demand” stories.<sup>29</sup>
    - Basic elements of the stock story and the facts of the case remain the same for both sides of a case, but the stories told can differ widely.
      - This is the difference between narrative discourse (how you tell the story) and story (the who, what, where, when, why of the story).
    - Rules come in different types.
      - Conjunctive rules provide elements that must be proven, making it easier to see the stock story and tell one that fits.<sup>30</sup>
        - Example: penal code provisions for the family offenses
      - Aggregative/Balancing rules do not provide a clear story, but instead present a “legal standard,” or narrative point a party should try to make through their story. This makes it harder to see the stock story in the law.<sup>31</sup>

<sup>23</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 54, 56; *see also* Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 487 (1994) (discussing the “critical role that case theory can play in linking client stories to the narratives that lawyers tell on behalf of clients”).

<sup>24</sup> Keith A. Belzer, *Storytelling in the Courtroom 3*, <http://www.idacdl.org/uploads/MeetingMaterials/Storytelling%20in%20the%20Courtroom.pdf>.

<sup>25</sup> Edwards, *supra* note 19, at 165-66.

<sup>26</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 56. The practice of including client stories in legal scholarship has been particularly prevalent in the clinical setting, where it is now “more common than not” for articles to include client stories. Miller, *Telling Stories*, *supra* note 17, at 10. The clinic methodology of experience and reflection lends itself to telling stories about clients, and academics are exposed to numerous clients and their in-depth, discussed and dissected stories for later use. *Id.* at 11. The stories told can be entirely real, entirely fictional, or somewhere in the middle—composite stories created by merging “real” clients into one. *Id.* at 13–14.

<sup>27</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 64.

<sup>28</sup> Paskey, *Reframing*, *supra* note 20, at 182; Edwards, *supra* note 19, at 170.

<sup>29</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 52, 75.

<sup>30</sup> Edwards, *supra* note 19, at 170.

<sup>31</sup> Edwards, *supra* note 19, at 173–75.

- Example: custody factors
  - Cultural norms can also be seen as “stock stories”
    - What a judge expects to hear based on the “normal” victim, for example
- Lawyer’s task, and where we need to focus, is to shape a client’s story into a coherent narrative discourse that fits the stock story framework provided.
  - But, this can be tricky, given the ethical implications of telling a client’s story and the difficulty of trauma narratives.
  - Aim is to see the stock story and the story available to tell and match the two in a way that “furthers the client’s goals, refutes competing stories, and, when possible, preserves the client’s sense of identity and well-being.”<sup>32</sup>

### **Ethical Implications of Telling a Story**

- Fundamental question: Who can tell stories about what to whom?<sup>33</sup>
  - Ownership & Authority: when an attorney is “given” a story to tell, how does this change the ownership?
    - The person who experienced something always has the right to tell their own story, as experiences as one of the things we “truly own.”<sup>34</sup> Yet, a victim may not be the person best positioned to know what her experiences are (simply because she doesn’t remember, wasn’t conscious, etc.) or may not be the best positioned to know how to tell those experiences to a particular audience (ie. a court).
    - As someone authorized to speak for another, we inherently bring our own experience and knowledge as a context that shapes the story.
- As attorneys, it is necessary to balance the demands of the legal system with the needs of a client – which are often in conflict. Telling another’s story as a lawyer may be beneficial, but also has the potential to deprive the individual of the benefit of speaking for herself as a way to heal from the trauma, and the continued retelling of a story has the potential to retraumatize a victim.
- Another concern is whether, in telling the story, we are defining an individual or creating a sense that the story represents who they are.
  - In shaping a story to tell to the court that meets the “requirements” of domestic violence, are we then creating a definition of someone as helpless, victimized, abused, and traumatized? Or can we tell the story in a way that shows her strength and ability to survive, protect, and overcome?
- Ethical rules
  - Critical to hold to the truth in providing the facts of the story, balanced with narrative discourse (how the story is told).
    - The story must fall in line with a client’s “honestly held beliefs,” even as the lawyer attempts to create a story that is “compelling, coherent, and consistent with [the] audience’s expectations.”<sup>35</sup>
    - Balance the desire for a story to invoke emotion and persuade a trier of fact through a powerful narrative with the requirement to create a legal argument that establishes the elements of a cause of action.<sup>36</sup>

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<sup>32</sup> Paskey, *Telling Stories*, *supra* note 18, at 481–82.

<sup>33</sup> Amy Shuman, *Exploring Narrative Interaction in Multiple Contexts*, in VARIETIES OF NARRATIVE ANALYSIS, 125, 129 (James A. Holstein & Jaber F. Gubrium eds., 2012) [hereinafter Shuman, *Exploring Narrative*].

at 129.

<sup>34</sup> *Id.*

<sup>35</sup> Johansen, *supra* note 17, at 84.

<sup>36</sup> Johansen, *supra* note 17, at 85, 86 (“Legal stories, no matter how emotionally powerful on their own, must connect to logical legal argument.”); *see also* Steven J. Johansen, *This is Not the Whole Truth: The Ethics of Telling Stories to Clients*, 38 ARIZ. ST. L.J. 961, 962 (2006) (“[W]hen used properly, stories can enhance, rather than conflict with, analytical reasoning.”).

- ABA Model Rules of Professional Conduct
  - Rule 3.4(b): “A lawyer shall not . . . falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law”<sup>37</sup>
    - Relevant to telling a client’s story in that a lawyer needs to be careful regarding telling a client the applicable law and the elements, or a lawyer’s “desired facts,” so that he does not inherently shape the story the client will relate, whether consciously or subconsciously, in the client’s “perception and recollection.”<sup>38</sup>
  - Rule 3.3: (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (3) offer evidence that the lawyer knows to be false.<sup>39</sup>
    - Rule 3.3(d): In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.<sup>40</sup>
    - Relevant when crafting a petition and choosing the language used as part of the narrative discourse.<sup>41</sup> The first hearing in a domestic violence order of protection petition is often an ex parte proceeding, requiring an attorney to present facts adverse to the client if material to the judge’s decision.
    - Rule 3.3, Comment [2]: A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force . . . qualified by the advocate’s duty of candor to the tribunal.<sup>42</sup>
  - Rule 1.2(a): A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.<sup>43</sup>
    - Rule 1.4(a)(2): A lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.<sup>44</sup>
    - What implications do these two rules have for crafting the narrative discourse of a client’s story?
  - Rule 1.14(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.<sup>45</sup>
    - Is a victim of domestic violence, with significant mental health challenges resulting from years of abuse, C-PTSD, TBI, or other diagnosed and undiagnosed concerns a client of “diminished capacity”?

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<sup>37</sup> MODEL RULES OF PRO. CONDUCT r. 3.4(b) (AM. BAR ASS’N 2024); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 116, 120 (AM. L. INST. 2000).

<sup>38</sup> John Gaal & Louis P. DiLorenzo, *Ten Degrees of Separation: How to Avoid Crossing the Line on Witness Preparation*, 90 N.Y.St. B.J. 26, 27 (Feb. 2018).

<sup>39</sup> MODEL RULES OF PRO. CONDUCT r. 3.3 (AM. BAR ASS’N 1983).

<sup>40</sup> MODEL RULES OF PRO. CONDUCT r. 3.3 (AM. BAR ASS’N 1983).

<sup>41</sup> Gaal & DiLorenzo, *supra* note 38, at 27.

<sup>42</sup> MODEL RULES OF PRO. CONDUCT r. 3.3 cmt [3] (AM. BAR ASS’N 1983).

<sup>43</sup> MODEL RULES OF PRO. CONDUCT r. 1.2(a) (AM. BAR ASS’N 1983).

<sup>44</sup> MODEL RULES OF PRO. CONDUCT r. 1.4(a)(2) (AM. BAR ASS’N 1983).

<sup>45</sup> MODEL RULES OF PRO. CONDUCT r. 1.14(b) (AM. BAR ASS’N 1983).

## Trauma Narratives

- Trauma: an “affliction of the powerless,” where the victim is “rendered helpless by overwhelming force.”<sup>46</sup>
  - o APA definition: “An emotional response to a terrible event like an accident, rape, or natural disaster.” Psychological trauma is characterized by threats to life, close personal encounters with violence or death, and a loss of control.<sup>47</sup>
  - o Psychological split or rupture and blow to self<sup>48</sup>
- PTSD: Because trauma overwhelms the normal human response to danger, ordinary responses persist in an “altered and exaggerated state long after the actual danger is over.”<sup>49</sup>
  - o Hyperarousal: persistent expectation of danger – constant state of arousal, anxiety, intense reactions to “triggers” or stimuli, startle response<sup>50</sup>
  - o Intrusion: indelible imprint of the traumatic moment – reliving symptoms – flashbacks, traumatic nightmares, causing extreme emotional distress (so victims often try to avoid); memories are often “frozen and wordless” – vivid sensations and images, but may not have narrative and context<sup>51</sup>
  - o Constriction: numbing response of surrender; escaping by altering state of consciousness – detachment and disconnection, indifference, distorted perceptions, loss of sense of reality as a way to protect against the pain; can be induced by drugs or alcohol<sup>52</sup>
- Complex trauma of domestic violence: the “tyranny of private life,” being in a constant state of fear, subject to despotic control over every aspect of life, and basically traumatized over and over again<sup>53</sup>
  - o Results in a more extreme form of PTSD - C-PTSD – in addition to typical PTSD symptoms, the symptoms last longer and reach a different level, and come with profound alterations in a victim’s identity, causing additional psychological impacts long after liberation.<sup>54</sup>
  - o Neurological trauma from TBI – strangulation or blunt-force trauma causes TBI, but the result is similar symptoms to PTSD – impact on memory, behavior, recall, confusion<sup>55</sup>
- Trauma evokes stories as a way to make sense of what happened and restore a sense of self.<sup>56</sup>
  - o As part of recovery, victims need to “tell what happened in a certain way and in a certain time.” The testimonial method of therapy is an example. The trauma narrative gains meaning as a survivor works through the story over time.<sup>57</sup>

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<sup>46</sup> JUDITH HERMAN, *TRAUMA & RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* 33 (1992) (ebook) [hereinafter HERMAN, *TRAUMA & RECOVERY*].

<sup>47</sup> *Trauma*, APA Psychology Topics,

<https://www.apa.org/topics/trauma#:~:text=Trauma%20is%20an%20emotional%20response,symptoms%20like%20headaches%20or%20nausea> (last visited Dec. 23, 2021).

<sup>48</sup> Telling Stories, *supra* note 18, at 484 (quoting SHOSHANA FELMAN, *THE JURIDICAL UNCONSCIOUS* 171 (2012)).

<sup>49</sup> HERMAN, *TRAUMA & RECOVERY*, *supra* note 46, at 34.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 36.

<sup>52</sup> *Id.* at 39.

<sup>53</sup> *Id.* at 28.

<sup>54</sup> *Id.* at 70–71, 74–75.

<sup>55</sup> Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 407 (2019). It is important to note, here or elsewhere, that a victim will often refer to strangulation as being “choked,” when in fact, the words have two different meanings under the law. This is a simple example of a way that a victim’s telling of her story may not meet the legal “stock story” required, despite the underlying content being sufficient.

<sup>56</sup> Almog, *supra* note 2, at 290–93.

<sup>57</sup> Janie Van Dijk et al., *Testimony Therapy: Treatment Method for Traumatized Victims of Organized Violence*, 57 AM. J. PSYCHOTHERAPY 361, 368–69; HERMAN, *TRAUMA & RECOVERY*, *supra* note 46, at 182.



- But, those stories may not always be presented as we expect them to be
  - o Lack of memory; repetitious, stereotyped and emotionless depending on stage of recovery<sup>58</sup>
  - o What a victim remembers and wants to talk about – what impacted her the most – is often not what’s relevant or important to us as an attorney.
    - We may be looking for the physical acts to fit the penal code, while she may focus on the psychological games played by an abuser.
  - o May be disjointed and non-chronological
- Trauma-informed lawyering considers all of this when working with clients and adjusts based on an individual client’s experience.

### **Telling Domestic Violence Victim Stories**

All of that discussion about narrative, ethics, and trauma relates to our role in telling the stories of domestic violence survivors. Perhaps most obviously in the writing and submission of family offense petitions, but also when working on custody, support, and divorce cases.

Key Considerations:

- In the process of a petition, how many times does a victim tell her story?
  - o Police, medical, advocate, attorney, petition, multiple times at court
  - o Attorneys then take the client’s version and clean it up and present it in a way to meet the framework of the stock stories provided to increase chances of success in court
    - This raises considerations of the impact on victim and later credibility concerns.
  - o Often, an initial petition is written as a client is leaving her abuser. At this point, the trauma may not yet be over or may have just ended, and her ability to tell her story at all will be severely impacted. What she needs to tell at that point versus what we need her to tell can be extremely different.
  - o It is necessary to be trauma-informed with clients in order to avoid, as much as possible, retraumatization due to the repeated telling of their story, perhaps before they are fully prepared to do so.<sup>59</sup>
    - Described as the “obligation to tell” the details of her story, despite a “reluctance to relive the horrors.”<sup>60</sup>
- Importance of the narrative
  - o Lack of corroborating evidence makes the story even more important. Often, documentation doesn’t exist, especially if a victim has not previously reported abuse or sought medical treatment. A victim in the midst of a controlling domestic violence situation likely did not document the abuse on her own.<sup>61</sup>

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<sup>58</sup> HERMAN, TRAUMA & RECOVERY, *supra* note 46, at 131–33.

<sup>59</sup> Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363 (2016).

<sup>60</sup> Amy Shuman, *Story Ownership and Entitlement*, in THE HANDBOOK OF NARRATIVE ANALYSIS 41, 52 (Anna De Fina & Alexandra Georgakopoulou eds., 2015); *see also* Paskey, *Telling Stories*, *supra* note 18, at 482 (“In the context of legal practice, storytelling is not optional, nor is it merely a rhetorical tactic or persuasive technique; it is, quite literally, required by the nature of legal rules.”).

<sup>61</sup> Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 Fam. Ct. Rev. 112, 113 (2016); Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 Colorado Lawyer 19 (October 1999). Rarely, a victim will have texts, photos, or other evidence to provide. Even these, however, only show a partial story and will not completely corroborate a victim’s claims of abuse. Susan Still’s story represents a notable exception to this trend, as her supervisor in her job kept track of the days when she came to work with bruises. *Susan Still Shows Courage: Nationally Aired Humiliation Can Help in Fight Against Abuse*, The Buffalo News (May 14, 2007), [https://buffalonews.com/news/susan-still-shows-courage-nationally-aired-humiliation-can-help-in-fight-against-abuse/article\\_e4e658fe-7f4c-5855-b219-2c077904b782.html](https://buffalonews.com/news/susan-still-shows-courage-nationally-aired-humiliation-can-help-in-fight-against-abuse/article_e4e658fe-7f4c-5855-b219-2c077904b782.html). This record provided critical evidence in a criminal case in 2004 that resulted in Erie County prosecutor (and later Family

- Attorney's goals v. client goals
  - o Attorney: Provide a narrative to the court that leads to the granting of relief requested, whether an order of protection, custody, or support.
  - o Client: Tell her story, which may include wanting to talk about things that are not legally relevant. These include events, details that help her to tell her story and validate her experience, but conflict with the legal system's requirements or simply don't add to her case.
    - Or, a client may not want to tell all or part of her story at all, but simply want relief.
- "Effective" stories fit within the stock story created by governing rules & cultural norms – but a domestic violence victim's individual story often doesn't fit neatly in the stock story. This can create cognitive dissonance for a judge or attorney and has the potential to negatively impact a client's case if her situation does not match the stock story. This disconnect can be with regards to:
  - o Governing rules: what the client tells versus what the law demands
  - o Cultural norms: what the client tells and how she presents versus what the expectation is in the cultural stock story
    - Typical victims as opposed to non-typical victims, who may be women who fight back, demonstrate strength, do not want to leave, or experienced abuse that doesn't fit in the judge's idea of a normal victim.<sup>62</sup>
- Client credibility
  - o Trauma narratives are often comprised of inconsistent stories, lack of memory, and testimony that is "fragmented, repetitious, emotionless, and nonchronological."<sup>63</sup>
    - How we phrase a petition and re-frame a client's story can impact this as well. It can be difficult to balance what the court wants to see (chronological, detailed, meets elements of the penal code) with the client's story.
      - Has the potential to cause problems later if there are inconsistencies in the story told in the petition and the story told by the client in a trial. Expert DV witnesses can help to mitigate these inconsistencies, but they may still impact a judge's perception.
      - A normal witness's story will change over time; trauma victim narratives even more so as they recover from their experience, gaining time, perspective, knowledge, and distance, and work through the effects of trauma. In fact, their story *should* change.<sup>64</sup>
- Impact of telling the story on the client herself.

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Court Judge) Lisa Bloch Rodwin achieving the longest sentence for domestic violence not involving homicide. Still's abuser was sentenced to thirty-six years in prison. *Still a Survivor—The Susan Still Story*, ELITE SPEAKERS BUREAU (July 30, 2018), <https://www.elitespeakersinternational.com/post/2018/07/30/still-a-survivor-the-susan-still-story>.

<sup>62</sup> See, e.g., Noelle M. St. Vil et al., "I Thought It Was Normal": Perspectives of Black Nursing Students From High-Risk IPV Communities on Causes and Solutions to IPV in the Black Community, *J. INTERPERSONAL VIOLENCE* 4 (2021) <https://doi.org/10.1177/0886260521997939> (discussing challenges of IPV in black communities, including identifying that "black female victims of IPV are more likely to be arrested along with their abusers . . . black women are often denied services for failing to behave like the stereotypical IPV victim (e.g., meek, scared, weeping)"); Noelle M. St Vil et al., *A Qualitative Study of Survival Strategies Used by Low-Income Black Women Who Experience Intimate Partner Violence*, 62 *SOCIAL WORK* (2017) ("Because black women are often stereotyped as 'angry,' they do not fit into a mainstream image of the passive, weak, and fearful victim.").

<sup>63</sup> Paskey, *Law is Made of Stories*, *supra* note 3, at 65.

<sup>64</sup> Kim Lane Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 *N.Y.L. SCH. L. REV.* 123, 168 (1998) ("different versions of events may be related by the *same* person who sees what once happened in a new light that only switches on when some time has elapsed.").

- Although part of the recovery process may be telling her story, the point at which a victim is telling her story in the context of an order of protection is usually early in the process of escape from an abusive relationship, and may be more detrimental than beneficial.<sup>65</sup>
  - DV counselors can help to support victims through the court process and mitigate the effects of the forced telling.
  - Courts are not intended to be a “therapeutic environment,” and the goals of the adjudication process differs from therapy.<sup>66</sup>
- Denying a survivor the ability to tell her story may prevent healing, exacerbate her own doubts about her credibility and experience, undermine her autonomy, and replace her own decision-making capability and experience with what a professional thinks should be best for her.<sup>67</sup> Lawyers play a key role in the way the narrative of a victim’s story can positively or negatively impact the victim. Even staying true to a client’s story, an attorney still makes choices about the voice, words, tone, and inflection for the narrative that is ultimately heard by the court.<sup>68</sup> If an attorney silences a client’s voice as a result of those choices, his role can result in extensive harm to a victim as a result of requiring client obedience to the lawyer’s translation of her story and taking power from the client.<sup>69</sup> In doing so, an attorney is actually replicating the power and control that a victim experienced at the hands of her abuser, further traumatizing the client.<sup>70</sup>
- Changes the dynamic between the victim and the abuser once she reaches out to others – most dangerous time is when a victim tries to leave her abuser, but if a petition is not granted, she may not have the protection she needs.

## Conclusion

The law demands stories. For domestic violence victims, the stories demanded by the law are often fragmented and incohesive, characterized by the hallmarks of trauma narratives. To obtain desperately needed protection from abusers, victims are forced to craft narratives that fit the stock stories provided in both the governing rules and cultural norms of domestic violence. Failure to do so means a failure to obtain an order of protection. Recognizing the role of narrative in petitions for orders of protection is critical to a lawyer’s ability to effectively represent a client and successfully be granted an order, starting a victim on her way to becoming a survivor.

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<sup>65</sup> See, e.g., HILARY ABRAHAMS, SUPPORTING WOMEN AFTER DOMESTIC VIOLENCE: LOSS, TRAUMA, AND RECOVERY (2007).

<sup>66</sup> Paskey, *Telling Stories*, *supra* note 18, at 483.

<sup>67</sup> Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 Yale J.L. & Feminism 75, 114 (2008).

<sup>68</sup> *Id.* at 121.

<sup>69</sup> *Id.*

<sup>70</sup> Natalie Nanasi, *Domestic Violence Asylum and the Perpetuation of the Victimization Narrative*, 78 OHIO ST. L.J. 733, 756, 760 (2017).