THE NARRATIVE EDGE: A GUIDE FOR SOCIAL WORKER EXPERT WITNESSES

RONALD K. BULLIS

Council on Social Work Education
Alexandria, Virginia

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Council on Social Work Education, Inc.
1701 Duke Street, Suite 200
Alexandria, VA 22314-3457
www.cswe.org

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INTRODUCTION

A DAY OF COURT: TESTIMONY AS THEATER

There's no better way of exercising the imagination than the practice of law. No poet ever interpreted nature as freely as a lawyer interprets truth.

Jean Giradoux (French dramatist), *Tiger at the Gate*

I didn't feel scared, at least not at first. After all, I was accustomed to court proceedings and courtroom settings. I had just graduated with a PhD in clinical social work after having already graduated from law school some years prior. By that time I had written three books on the law, ethics, and counseling and published several papers in academic journals. I had my own private practice in psychotherapy and wanted to combine my legal skills with clinical practice.

So here I was, sitting outside the courtroom waiting to be called to testify as an expert witness. It wasn't a famous case. The case was a civil trial of sexual misconduct, and it probably wouldn't last the day. Only a few others were sitting or standing around the waiting room. They were probably all witnesses. The parties to this case, their attorneys, families, and friends were already inside the courtroom. Only the witnesses, who cannot hear any of the previous testimony, were prohibited from entering the courtroom. I didn't know who might be another witness or who was just hanging around. The others might be witnesses for the opposing party. None of us wanted to catch each other's eye. Law cases can be intensely personal and emotional events. Even though they take place inside a stately government building and lawyers act very professionally and seem dispassionate, law cases are always about people. One person is accusing another of wrong-doing. It's a disagreement so deep they go to the trouble and expense of resolving it publicly.

It was snowing outside, but it was chilly inside as well. Maybe I shivered. I waited and would wait until I was called. I tried to follow my own advice, advice I had given to my clients a thousand times.

"Sit," I would tell them at the beginning of a session, "just sit."

So I sat. Propping up against the seat and the wall, I placed my hands across my lap, closed my eyes, and placed my feet flat on the floor. "Now breathe," I told them, "from your diaphragm, breathe slowly and deeply."

I breathed in from my nose and out through my mouth. It may have worked for a while. But it was cold. I was cold. I shivered. The enormity of court cases and the responsibilities

of expert testimony yield very personal consequences. I knew that juries and judges often look to therapeutic experts to help them understand certain psychological, mental health, and counseling concepts; personalities; diagnoses; and interpersonal or social dynamics. I knew that juries respond to the messages of the experts and to how the experts convey their messages. Jurors assess both personal and professional qualities in judging the credibility of an expert.

I also knew that my credentials and my opinions would be vigorously challenged by the opposing counsel. This cross-examination would be no academic debate. Cross-examination is specifically designed to undermine credibility in front of the judge and the jury. They want to see no arrogance and no bias. They don't want to hear from a "hired gun."

Finally, the bailiff called me to the witness stand. I vowed to "tell the truth, the whole truth, and nothing but the truth." The plaintiff's lawyer questioned me first. As "my" attorney, she asked me about my credentials, my training, my experience, and my writing. Then we got down to the particular case at hand. She asked me to describe my interviews with the plaintiff and any reports I had made to evaluate the plaintiff. Then she asked me to review my assessments and evaluations.

When the plaintiff's lawyer spoke, I looked at her. When I answered, I spoke to the jury. After all, I was really addressing them; they were the decision-makers. I was assisting them in rendering their ultimate verdict of "liable" or "not liable." So I turned to my right and addressed the jurors. I tried to speak in a clear, firm, and calm voice. As an expert, I was not speaking about what I had personally witnessed about this case. I was not a "fact" witness. I was one step removed. I was giving circumstantial evidence, which I had derived from my data collection and evaluation.

In the drama of the courtroom, the tension rose. I testified not to the facts, but to what the facts meant. It is tempting to think that eyewitnesses hold the keys to the trial. Many times they do not. What is seen is only the outer layer of the onion. Mental health experts can peel back the layers of the onion to get at the facts at a deeper level. Experts can testify to the *meaning* of evidence. As Chapters 2 and 3 show, how jurors understand the meaning of evidence is crucial to their memories of the evidence and the importance they attach to it. Narratives are the masters of meaning.

Although the metaphor of testimony as theater might seem odd—even insulting to the law to some—this metaphor heightens the importance of testimony. Theater is a vehicle to examine life with great depth and clarity. Plays such as *Hamlet* and *Macbeth* or the Greek plays *Oedipus*, *Antigone*, or *The Bacchae* represent profound insights about human behavior and motivations that reap rewards for the psychoanalyst, art critic, and discerning seeker even today. In fact, these plays were forms of early psychoanalysis. Testimony, too, uncovers the forces that drive human behavior, for good or for ill. Therefore, contemporary testimony conforms to the structures and the elements of traditional narrative forms. It always has.

Suspense Increases With Cross-Examination

The trial continued as "direct examination" concluded. That was the easy part. Soon it was time for "cross." The first thing the opposing attorney did was to move to dismiss me as an expert witness. That means he made a motion to the judge to remove me because I was not qualified as an expert. He reviewed my credentials all over again, emphasizing perceived gaps in my training and experience. He hit hard the fact that this was my first experience as an

expert. He also had me answer only "yes" or "no" to a series of credentialing questions. One I remember was, "Are you admitted to practice in local hospitals?" I answered, "No."

The full answer, of course, is that no licensed professional counselor is "admitted" to practice in hospitals in the same way as physicians are. This style of question can be used to undermine credibility. In retrospect, there were other, less misrepresentative ways, to answer the same question. In any event, the judge overruled his motion to dismiss me as an expert, and I continued to answer his questions. I tried not to take it personally. The attorney was just doing his job. My job was to keep cool and calmly, clearly answer his questions even though they were designed to undercut my credibility.

The opposing attorney also asked me how much I charged to be an expert. I told him. Then he asked if I was surprised that I made less per hour than their expert. I felt like saying, "Good for him." But I didn't. I just said, "No."

That question, too, was meant to unnerve me. My job was to tell the truth in a way that answered legally significant questions in a way that was clear, competent, and compelling to jurors. Another challenging question was about my professional competence in evaluating psychological tests. The cross-examination posed several questions about my training in evaluating such tests. I had little and said so; "that's why I paid a trained psychologist to conduct the evaluations for me," I answered.

The judge startled everyone by leaning over the bench and saying, "Thank you for your frankness," and I thanked him in return. The judge, I am sure, was only thanking me for not wasting the court's time by trying to fabricate some puffed-up answer on how I might somehow be qualified to evaluate tests. Instead, I cut to the chase. In an overcrowded court schedule, judges appreciate crisp, clear answers. On the other hand, sometimes experts go a long time before hearing a "thank you" from a judge in open court.

Not only was the defendant on trial for the truth that day. So was I. I was on trial and would be vigorously cross-examined.

The Expert as Author

I was a witness, but a screenwriter and playwright as well. My testimony, like most testimony, was both factual and dramatic. It was a forensic narrative, a narrative conforming to the needs of universal storytelling elements and the needs of contemporary law. My testimony was a tiny drama and, as in any dramatic tale, the opposing attorney set up a conflict. If the opposing attorney cannot dismiss the expert, he or she tries to devalue the testimony. It is a little drama played out for the judge and the jury.

Maybe the opposing lawyer thought I would try to deny or conceal the fact that I am not certified to interpret certain tests. Then he or she would reveal that fact to the jury. Or maybe the lawyer wanted to devalue me by revealing my professional limitation in this regard. Of course, the attorney could have simply asked that question directly. But where is the suspense in that? I deflated the opposing lawyer's chance to reveal a dramatic and damaging truth. I reversed the dramatic action by making my own revelation.

Why did the judge go out of his way to thank me? Not for telling the truth. I am sure the judge expects all testimony to be truthful. This author also assumes that all testimony is truthful. But the judge was grateful for my cogency, clarity, and candor. A trial is a huge burden of time and money on the presiding jurisdiction, judges, bailiffs, court administrators, clerks, and, most of all, jurors. Everyone else gets paid at their usual fee, except for jurors.

They are taken from jobs, homes, and families and placed into an alien environment to fulfill their civic duty for a small honorarium. However, it is a crime for a juror not to appear when required. So the judge wants the trial to be over as soon as practicable. Testimony that is redundant, irrelevant, or long-winded is scorned by the jury and the judge. I helped the judge move the testimony along and not get caught up in a cat-and-mouse tangle about my qualifications.

My response had one more important advantage. It was dramatic. I didn't plan it that way. My goal was just to tell the truth, not to curry favor with the judge. Sometimes the truth told at the right time and in the right way heightens its effect. Telling the truth at the right time and in the right way is the most compelling, comprehensive, and clear kind of testimony. Simplicity and honesty create their own drama.

Testimony as Narrative, Narrative as Testimony

The *Narrative Edge* is not about imposing some arbitrary academic structure on testimony. Testimony is, and always has been, a story. Even in the 399 BCE trial of Socrates, the master himself used story, metaphor, and simile to speak to the jury of 501 Athenian jurors called *dikasts*. Narratives do not impose themselves on testimony. Testimony imposes itself on narratives.

Juries hear all testimony as parts of a story. They use trial testimony to make their own coherent, comprehensive, and convincing narrative. Juries have a neurological need for narrative. Humans are "hardwired" for stories and use narratives to organize facts into a meaningful whole and use stories to make decisions (Hsu, 2008). An expert not only presents facts, but also helps the jury interpret those facts. By law, that is the sole reason the judge allows experts to testify. The jury expects the expert to frame facts into a forensic narrative that is clear and compelling. The truth is always compelling.

A forensic narrative is not flowery oratory. It is devoid of dramatic license, puffery, or studied self-conceit. It is not a forensic soap opera. An excellent example of forensic narrative was a scene in the 1998 movie *A Civil Action*. In one scene cocky civil lawyer Jan Schlictmann cross-examines the owner of an allegedly polluting company, watched by opposing corporate lawyer, Jerome Facher, who is defending the alleged polluter.

A preceding scene shows Facher teaching a class on trial litigation at Harvard. He tells his students that one of the worst things a lawyer can do in cross-examination is to ask a question to which he or she does not already know the answer. Cut to the polluter's cross-examination by Schlictmann.

The alleged polluter denies that he ever polluted his property or the nearby river. He says that he would never do such a thing. Schlictmann then asks why he would never do such a thing. The camera pans the faces of the lawyer's partners, who are visibly dismayed. There is a pregnant pause. The tension increases. This is the heart of the defendant's case.

The defendant repeats the lawyer's question (to heighten the dramatic tension even more). After another pause, the defendant says that the land had been in his family for generations and that, to him, the land is sacred.

The camera pans to Schlictmann's partners. Their heads are hung down and shaking. Facher allows himself a very tiny smile, and everyone in the courtroom knows that Schlictmann blew it.

As in the foregoing movie drama, much of a courtroom trial conforms to any narrative.

There is a mystery to be solved. There is suspense along the way as, bit by bit, the truths are revealed. Ultimately, in the supreme climactic moment, the jury reveals all. And the gallery reacts with cries, shouts, whispers, and sometimes sobs. Courtroom dramas are made-to-order for cinema, books, plays, and TV. Few screenwriters could do as well.

This is not the first time anyone has likened courts to the stage or the theater; it is a well-worn analogy. In fact, as I was editing this manuscript in a restaurant, a lawyer sitting nearby saw my manuscript and asked me about it. He read the title of the introduction, "A Day of Court: Testimony as Theater" and exclaimed, "Darned right, trials are stages." He went further and said that emotions play just as much a role as facts in a trial. I don't know about that, but we get his point. Without the element of drama, jurors tend not to remember or hold the data in a case in high importance.

This introduction began with a description of a personal court experience. We can see how it followed a narrative pattern of conflict, rising tension, and resolution. After my testimony was over, I was drained. It was an anticlimax. The adrenaline was gushing, and when the defense was through with my cross-examination, I paused to see if my attorney wanted to ask me any further questions on "redirect." She did not, and the judge excused me.

I nodded slightly toward the jury to acknowledge them. I looked straight ahead as I walked out the door. I acknowledged neither my attorney nor her client, the plaintiff. I was not on their team. I could have stayed and listened to the rest of the testimony, but did not. I wanted to preserve my professional distance and objectivity.

So I drove home. It had stopped snowing, but I was still freezing. I vowed that I would try to make the expert testimony experience easier for others. I wanted other counselors and social workers to be prepared to testify as experts. Justice deserves it, the law deserves it, and so do our clients. I knew I would testify as an expert again. Maybe I would write a book for social scientists and social workers. Someday, maybe.

For Whom Is This Book Written?

This book is written expressly for social workers, but it has wide application for social scientists and mental health clinicians. The law of expert testimony holds these professionals with the same standards. Besides the legal similarities, ethical standards are similar as well. Although professions and professional associations are different, basic ethical principles for social science remain the same.

Although this book focuses on illustrations and examples from social work, it uses case examples from a wide variety of social science professions. Additionally, the cultural and legal issues now being debated among legal professionals consider social science as a whole, not just within individual professions. Therefore, the issues, narrative information, narrative applications, and demeanor evidence apply equally to demeanor evidence of all social science experts.

This book is designed for the new expert as well as the experienced expert. The field of expert testimony is expanding in all the social sciences. Even if a social worker or a therapist is not now considering expert testimony, he or she may do so in the near future. Even if a social worker or therapist has a consistent practice of expert testimony, this book offers new skills and new approaches to that practice. Narrative approaches and elements offer new testimony strategies and tactics even for the seasoned expert.

Social Workers as Expert Witnesses

There are two reasons that this book is timely. First, social workers and mental health counselors are thoroughly involved in forensic processes, and it is likely this trend will grow as mental health experts are increasingly asked to testify. Second, there is currently a "perfect storm" brewing that draws the ferocious winds from neuroscience, narrative theory, the literature-and-law movement, and popular culture such as television's *CSI* and *Law & Order* series, which combine strengths to produce powerful forces within courts and legal practices. This perfect storm is described in Chapter 3. For now, a few pages will suffice to outline how social work practice has evolved a branch of social work into expert witness practice.

The *NASW News* has recently reported on the wide and widening use of the social worker expert witness. This one-page article (Pace, 2011) outlines a history that has been long in the making but is a natural outgrowth of social work goals and practices. Not only are social workers trained in and experienced at listening to their clients' stories, they are also well-positioned for narrating expert testimony. After all, social workers are trained to listen for who the client is, what his or her needs are, when those need should be met, where the client came from (physically, cognitively, emotionally, and even spiritually), and why he or she is at a particular point in life. Listening to stories is an indispensable diagnostic and intervention tool and the *raison d'être* of social work practice. Without good listening skills, no client can be heard.

Expert testimony followed the traditional track of traditional social work practice. In an early article, Gothard (1989) highlights the general concept of expert witnesses and the qualifications necessary to testify as an expert. These were the days before Congress and the Supreme Court revised the law surrounding the admissibility of expert witnesses to more clearly delineate the role and function of experts (see the discussion on Federal Rule of Evidence § 702 later in Chapter 1). Early cases cited social workers as experts in child custody, the termination of parental rights, and child abuse. An article that same year (Schultz, 1989) focuses on social work experts in suspected child abuse. Three years later, Mason (1992) also notes social work experts specifically in child abuse cases. However, only 2 years later, Sarnoff (2004) published an article addressing pertinent and persistent ethical issues common to social work experts, including testifying as an expert in one's own client's case, determining exactly who one's client is, and responding to a subpoena.

Social workers are no strangers to the court system and have not been for decades. An early example is an adoption case in which a social worker's testimony was at issue on appeal. The trial court took the social worker's testimony, and the adoption took place without the natural father's consent. The father appealed. In upholding the trial decision, the appellate court ruled that the social worker's testimony was properly admitted because it did not admit an otherwise inadmissible report and the social worker's credentials were consistent with being an expert. The appellate court confirmed the court's finding that the adoption was in the best interest of the child (*In the matter of the Adoption of Stephen Anthony Lockmondy*, 1976). Then in *People v. Gans* (1983) the New York Supreme Court (its trial court) discussed the role of social work experts determining the competence to stand trial.

From these early beginnings social work expert witnesses now are engaged in all areas of social science testimony, including that of forensic interviewing of allegedly abused children (Goodman & Melinder, 2007). Researchers now recognize the growing admissibility of

clinical social workers in such areas as competency to stand trial (Siegel, 2008).

At this point, it is helpful to note that expert witnesses have no right to testify. It is a privilege. They only do so if the trial judge allows it—and trial judges have broad discretion to deny or allow that privilege. Therefore, any allowance for a social worker to testify means a high regard for the social work profession and for the individual social worker's training and experience, both in general and specifically in the precise issue on which the social worker testifies. The law surrounding expert testimony qualifications will be discussed in the next section.

A recent example of social work expert testimony is *In re Chambless* (2008), in which the Supreme Court of Texas vacated (annulled) a lower court ruling that had originally given temporary visitation rights to grandparents. The Texas Supreme Court allowed a hearing so that the mother could make a case against such visitation. The trial court had used a court-appointed social worker's report as part of the trial decision to grant visitation to the grandparents. Even though the Supreme Court later vacated its decision, the fact that the trial court itself appointed the social worker to make the report on which it relied speaks to the value of forensic social work.

A set of cases, all from South Dakota, illustrates both the expansion and limitation of expert testimony in specific issues. In *State v. Floody* (1992) the Supreme Court of South Dakota affirmed a lower court decision to allow a social worker's interviewing techniques in a criminal case for the rape of a minor. This is a case of direct testimony, not expert witnessing; however, the professional manner in which the interview was conducted helped the court overcome an objection to the social worker's testimony on the grounds of hearsay. This case brings up another point. The defense also asserted that, because the social worker initiated the term "pinkie" (to note a finger of penetration) to the child, the testimony was not reliable. The court dismissed that objection, finding that the social worker had introduced the word to the child for the sake of clarity, not for prejudicial purposes. The *Floody* decision was noted with approval by legal scholars, who applauded the state's use of experts to educate courts and jurors on child sexual abuse syndrome (Palmer-Percy, 1993).

In another case (*In the matter of J. L. H.*, 1982) the Supreme Court of South Dakota allowed a social worker to testify as an expert in a case to terminate parental rights under the Indian Child Welfare Act. Her education qualifications were at issue because although she had 11 years' experience in the specific field, she had earned only a BS in social work with about 15 hours of psychology and sociology coursework. The court allowed her to testify anyway. The Supreme Court in South Dakota (reviewing the case just noted but styling now under a different name) allowed the testimony of the social worker forensic interviewer as an expert witness (*State v. McKinney*, 2005). The social worker interviewed J. L. H. and also testified as an expert witness regarding his developmental capacity to make statements used by the prosecution. The defense objected to the social worker's testimony, asserting that the court had broad discretion in allowing or disallowing expert testimony as long as the expert met certain criteria and the testimony was helpful to the jury.

Besides expanding social workers' role in testimony, the South Dakota cases also set limits on all experts. All courts honor the respective roles of experts and what the law calls the triers of fact, meaning either judges or jurors. Witnesses, both experts and direct, state their versions of the facts. However, it is the jury who decides what the law calls the ultimate facts or ultimate conclusion.

A social worker expert testified in *State v. Logue* (1985), a case of sexual abuse, that

the child learned his sexual knowledge specifically and directly from the defendant. After testifying about the interview with the child, the social worker testified about her conclusions this way:

> Q: Based on his [the child's] answers to those questions, what were your conclusions as to where he had acquired his sexual knowledge?
>
> A: That particular knowledge, I believe he gained, through the experience with Steve.

The court found that such a conclusion should only be reached by the jury (*State v. Logue*, 1985).

State v. Raymond (1995) applied customary limits to expert witnesses in opining on the veracity of the alleged victim. Even though the prosecutor in this case told the judge he would not solicit expert testimony from a social worker as to whether the alleged sexually abused child was telling the truth, he did so anyway. In testimony the social worker gave her opinion and why. On appeal, the state Supreme Court then reversed the conviction and remanded it for a new trial.

This case shows how the testimonial role of social workers and social scientists is expanding, but that they are also subject to the same rules as any other type of expert. We know now that experts cannot testify at the sole request of the parties themselves. Sometimes parties can request experts, and sometimes statutory or case law prohibits it. Such was the case when a client sued a mental health counselor for "perverted" treatment (*Roebuck v. Smith*, 1992, p. 1). The defendant's counselor claimed that it was a case of professional negligence (otherwise known as malpractice), and under Georgia law malpractice claims require an expert witness to explain the prevailing standard of care for professional services and conduct. This standard of care is not always obvious to a lay jury. The defendant counselor claimed that an expert affidavit was not filed with the court in a timely manner and that the case should be dismissed.

The Supreme Court of Georgia disagreed (*Roebuck v. Smith*, 1992), saying that in this case no expert was needed. That court ruled that the case was not a malpractice action at all, but a case in which a layperson jury could render a decision without requiring expert testimony. The defendant's appeal was denied, and the U.S. Supreme Court also declined to hear the appeal.

With this outline of how social workers have helped the courts as expert witness, we are in a better position to ask pertinent questions arising from that practice. How can social workers prepare better for testimony? How can testimony be communicated to juries and judges more effectively and efficiently? How do juries determine their verdicts? How do juries use expert testimony to determine verdicts? What are the properties of narrative testimony? How does narrative testimony so effectively communicate to jurors? What specific skills does it take to testify using narrative approaches? The following section describes the path this book will take to address these and other issues.

The Primary Model for Forensic Testimony Using Narrative Approaches

The model used to answer the above questions is outlined in the following paragraphs. This model serves as the pattern for expert testimony in narrative form and as a format for the topics in this book. It also summarizes the essential skill set this book is designed to teach.

Identify the Issues to Emphasize in Testimony
This is up to the expert, with help from the retaining attorney. This book examines some of the topics on which social scientists and social workers have testified and finds that the list has expanded in the past 20 years and will most likely continue to do so.

Define the Most Appropriate Narrative Approaches to the Salient Features of Testimony
Using traditional narrative structure, experts can begin to outline the form and substance of a narrative strategy based on the particular facts of the case and the issues they wish to highlight in testimony. Additionally, experts list and accumulate a hoard of narrative elements such as archetypes, metaphors, similes, and myths (discussed in detail in Chapter 5) into their narratives to help them connect with jurors. This book outlines narrative structure and offers several narrative elements and accompanying illustrations.

Research insists that narrative elements and structures are potent ways to communicate with jurors and judges. This book reviews and applies this research to help the expert define the most powerful narrative approaches for the most powerful testimony.

Apply the Narrative Approaches to the Issues to Emphasize in Testimony
Once the expert identifies and accumulates a cache of possible narrative approaches, he or she can then choose those most effective in explaining relevant research and social science theory as related to a particular case and case issues.

Deliver the Testimony With Effective Forensic Demeanor
Applying appropriate structure and elements to testimony is only half the persuasive strength of the narrative approach. The other half is the knowledge and proper application of demeanor evidence. Chapter 6 devotes itself to investigating the research on and application of demeanor evidence.

Students of the law will note that this skill set bears a resemblance to the famous IRAC (issue identification, rule identification, application of law to facts, and conclusion) pattern used to analyze legal issues. The narrative approach skill set could be abbreviated as the IDAD (identify issues, define narrative approaches, apply narrative approaches, and deliver testimony) rule. IRAC skills for lawyers are similar to IDAD skills for expert witnesses. Both tell a story, although they are different kinds of stories. The experts, as witnesses, tell forensic narratives. IDAD skills are based on rational and logical legal reasoning, but they also include narrative reasoning. Narrative structures and approaches are explained, described, and illustrated in Chapters 1, 2, and 3.

This book also notes the limitation of a purely rational analysis of law. After all, human behavior both in society and in law courts is anything but totally rational. As this book makes clear, legal decisions by judges and jurors are based on a narrative approach, a relational and organic approach, not a rational approach. Therefore, although the venerable IRAC pattern has merit, here it is highly modified and transformed into a narrative pattern of analysis and application. The purposes of this book reflect the narrative approach.

The Narrative Application Model of Expert Testimony

This book has five specific purposes. Each purpose flows from the one previous to it. The first purpose is to provide social workers with a format with which to frame their expert testimony. This format, called the narrative application model, is shown in Figure 2.

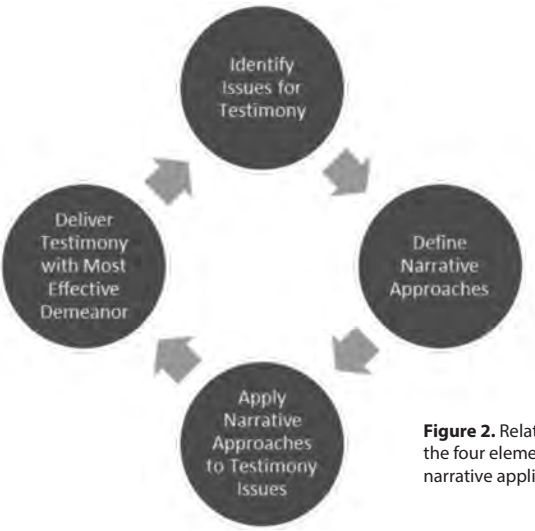

Figure 2. Relationship among the four elements of the narrative application model

Figure 2 shows the relationship between the four elements of the model and indicates that this is a dynamic process. The lawyers, with the help of experts, need to identify issues for those who testify. In this book *issues* refers not only to legal reasoning and the elements of a crime or of liability but also to matters of persuasion. Every legal case is a dispute about legally justifiable issues. If that were not so, the cases would be unlikely to reach the trial stage where an expert will be used. A very strong current underlying any legal case is how well the different sides fashion a narrative that is clear, complete, and compelling.

Both persuasive and strictly legal issues work to create the lawyer's theory of the case. Next, the expert and lawyer will need to define which narrative approaches will best communicate those issues to the judge or the jury. This is the narrative strategy—the overall plan of testimony. Under questioning from the lawyer, the expert will apply the narrative strategy to specific facts, theories, and conclusions for the judge or jury. That testimony, as this book makes clear, consists of what the expert says and how he or she says it. The expert's demeanor speaks just as loudly as his or her voice. That demeanor, expressed by a calm, humble, but authoritative tone, reinforces the professionalism of the expert's testimony. Indeed, effective demeanor is a strong factor in making the case narrative scientifically legitimate and legally persuasive.

Therefore, a mutual relationship exists among these components. When testimonial issues change, so will effective narrative approaches. When narrative approaches change, so will effective demeanor styles and tone. In fact, this book emphasizes that any narrative approach should be informed and influenced by its audience. In the case of testimony, that audience is both a judge and a jury because the ultimate trier of fact is either the judge or the jury. Therefore, these four components will always be executed with a keen sense of how the triers of fact will hear and understand the testimony.

As stated earlier, the point of this book is not what an expert should testify or which tests to use in assessing suicide ideation or dangerousness, for example. It is not designed to teach social workers how to recognize childhood sexual abuse or to diagnose traumatic brain injury. The content of the expert's testimony is left to his or her own professional judgment.

This is a guidebook on the formation and the structure of that testimony, especially aided by narrative applications.

The second purpose of the book is to demonstrate how narratives provide usable, effective, and evidence-based frameworks for expert testimony. This goal applies to social science testimony as well as to social work testimony.

The book's third purpose is to describe and illustrate why the mechanisms and characteristics of forensic narratives are so demonstrably persuasive. Neuroscience and persuasion science add much to this discussion.

The fourth purpose is to describe how to apply narrative structures and elements to literally any kind of expert testimony. Once upon a time, it was a novelty for social workers and other mental health professionals to testify as experts. Expert witnessing was an emerging practice around the 1970s and 1980s. In the 1990s courts increasingly permitted social workers to testify on an increasing number of issues. This increase in acceptance of social workers as experts came at the same time there was a general trend among courts and legislatures to guard against "junk science." Therefore, while courts were scrutinizing expert testimony, social workers were legitimizing forensic categories such as battered women's syndrome in expert testimony.

This book's fifth purpose is to provide experts and the social work profession with a rubric for discussing the ethics of expert testimony. Now that expert testimony is a legitimized practice area of at least partial practice for many social workers, specific knowledge and training in the law and ethics of expert testimony is a necessity for the courts, social workers themselves, and those for whom they work.

The Structure of This Book

This Introduction paints a picture of forensic narratives in social science expert testimony. It describes a day of court testimony by the author, demonstrating how his inadvertent narrative at trial produced useful results. This analysis sets the theme for the remainder of the book. Trial testimony tells a story. It is either a disjointed, unstructured story that holds no meaning or memory for the jury, or it is a cogent and structured story that aids the jury in developing the narrative that best fits their reasoning in the case. Structuring such a useful story—a forensic narrative—takes time, training, and skill.

A Brief Introduction to Each Chapter

Chapter 1 clarifies mistaken or misleading information and assumptions about expert witnesses and expert witnessing. It presents nine "deadly assumptions" about expert testimony that are worth exploring and exploding even for the seasoned expert or a therapeutic expert with legal training. The chapter discusses how recently and narrowly social worker expert testimony has been allowed, reiterates that testifying is a privilege rather than a right, makes clear that social workers cannot testify to all issues at trial, and emphasizes how different counseling and forensic communication can be.

This chapter also describes the primary model for forensic testimony using narrative approaches. This model is the method by which experts can translate narrative structures and elements into applicable expert testimony and is the rationale for the rest of the chapters.

Chapter 1 also makes clear what this book is not about: the specific content of an expert's testimony on the stand. Each case an expert discusses is extremely fact dependent, and the precise opinion and conclusions are drawn by the expert. This book does not and cannot

substitute for the analysis and opinion that is the ultimate expert product. However, it does provide experts with an empirically based framework for engineering testimony strategy and tactics.

Chapter 2 explores current research into the role and value of narratives in court decisions in general and in expert testimony in particular. This recognition of the value of forensic narratives embodies research into how people, including judges and jurors, make decisions. As science is discovering, the decision-making process flows from the form and function of narratives. This "narrative logic" involves the story of a search and the language of a journey. Among other things, this approach recognizes that there is no unassailable or indisputable truth in law cases, but rather that there are different versions of the truth at stake in a trial. Research indicates that jurors find the most compelling truth in and through narratives.

Judges and juries have known this for decades and have prepared trial tactics and decisions accordingly. While trial strategies and tactics are the lawyer's decision, an expert who applies a narrative approach to his or her testimony is an invaluable asset.

As this chapter will make clear, narratives are not merely a vehicle for carrying the truth. On the contrary, truth is discovered, prioritized, organized, and articulated through narratives. In a very real way, evidence does not make narratives. Narratives make evidence. Narratives make evidence "come alive" to jurors and present evidence in cognitively compelling ways.

This chapter also describes, analyzes, and illustrates narrative structures and elements and then adopts these structures into a forensic narrative. Chapter 2 also outlines and describes the process of expert testimony from deposition to cross-examination, including examples from one of the most important civil rights cases of the last century. Chapter 3 discusses why now is the time and narrative approaches are the right methodology for expert testimony.

Chapter 3 explains how five current cultural and scientific forces now conspire to make this the perfect time for using narrative approaches to expert testimony. These forces are (1) the 2009 Supreme Court decision in *Melendez-Diaz v. Massachusetts* and its progeny, (2) new discoveries in neuroscience, (3) the CSI effect, (4) the law-and-literature movement in U.S. jurisprudence, and (5) narrative theory and practice. The *Melendez-Diaz* case, requiring forensic scientists to be available for cross-examination, led to a higher standard of expert testimony than was demanded before the case. New discoveries in neuroscience have shown that everyone, including and especially juries, are hard-wired to create narratives to make decisions. The law-and-literature movement is now well-established, and narrative approaches are well-documented as an effective testimony strategy and tactic. This chapter also analyzes these forces from recent research and applies that research to expert witnessing. Each of these elements offers important insights and opportunities for the social science expert witness. Taken together, they create a "perfect storm," which contemporary expert witnesses ignore only to their detriment.

Chapter 4 analyzes and illustrates several elements that make narrative approaches credible, complete, cogent, and compelling. Credibility is the master key to effective testimony and coherence is the key to credibility. This chapter discusses the components of narrative coherence (consistency, completeness, and plausibility) and illustrates significant factors in narrative expert testimony persuasiveness, including the inclusivity of narrative approaches and the importance of creative thinking and the imagination.

Chapter 5 describes current research into the importance of images, metaphors, similes, myths, and archetypes and demonstrates the many guises and disguises of archetypes across

all cultures. This chapter also uses actual testimony to illustrate the adaptation of archetypes, metaphors, and images, showing how these elements might have been integrated into or refined in existing testimony. This case-study approach encourages the reader to apply images, similes, and metaphors to his or her own expertise in testimony.

Chapter 6 explains how to establish demeanor credibility or forensic rapport through narrative approaches. Every social worker and therapist wants to cultivate therapeutic rapport with clients. Chapter 6 focuses on body language and how experts speak, sit, stand, and dress along with other courtroom demeanors. The chapter also discusses the function, form, and style of writing reports and evaluations; answering questions on the witness stand and at depositions; courtroom attire and demeanor; and developing and executing presentations, including constructing and using charts and graphs. Although most counselors, therapists, and social workers use educational technologies such as computerized slides and write case reports and agency summaries, the oral and written work for court is a new role that requires different methods.

Chapter 7 uses further specific case studies from trial transcripts to focus on priming, foreshadowing, tuning the ear, chaining, reverse priming and foreshadowing, simile, and metaphor as applied to a variety of expert witness issues. This chapter uses trial transcripts from the Chicago 7 trial, the McMartin Preschool trial, and the John Hinckley trials to illustrate its points.

Chapter 8 discusses the particular ethics of mental health expert witnessing. These issues pertain especially to using forensic narratives. Ethics is the single error that can most undermine the whole of an expert's testimony. Ethics, in this book, is not seen as a separate consideration, but as an integral part of the expert testimony process. This chapter offers an acronym as a memory tool for ethical conduct and illustrates these ethical principles with case law examples.

Chapter 9 is a call for continued education for experts, specifically in the area of testimony expertise. This chapter offers suggestions, resources, and exercises on keeping current on narrative skills in expert testimony. Chapter 9 offers exercises on the disciplined reading and viewing of film, creative nonfiction, novels, and poems. The crux of this chapter is a model exercise that helps keep the expert attuned to narrative approaches to testimony. This model exercise uses fiction, narrative nonfiction, and film to apply the lessons of this book to an almost unlimited number of specific situations. This model can be used over and over again and with increased efficiency and effectiveness.

The book includes two appendices: (1) a glossary of narrative and legal terms and (2) an inventory of expert testimony statutes for all 50 states, plus Puerto Rico. The latter appendix also discusses important legal features of expert testimony.

An Epilogue to a Day of Court

This Introduction began with a true story of being an expert witness. There is usually an ending to law cases, and this one was no exception. The day after my testimony, the lawyer with whom I worked on the case called me up to give me the jury's verdict. The jury found for the plaintiff, so "my" attorney won. The plaintiff was vindicated. The law did all it could do; the plaintiff would be paid for her damage and hopefully could start to heal.

Someone, whom I believed was wronged, won in court, and I was happy for her. The defendant, I hoped, would never harm another. Justice, I believe, won as well. Still, a law case is draining on everyone, including the expert.

The law, society, and the parties to a case deserve more than just a battle of the experts. Everyone involved deserves a shot at the truth. No matter which side experts testify for, the law deserves competent, clear, compelling, and ethical testimony. Out of all this forensic data, the jury deserves an honest shot at reaching a true verdict. The aim of this book is to give experts the tools to help the jury do that imperative work.