

## Healing Stories in Law and Literature

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*My conscience hath a thousand several tongues,  
And every tongue brings in a several tale  
And every tale condemns me for a villain  
Perjury, perjury, in the high'st degree!  
Murder, Stern Murder, in the dir'st degree,  
All several sins, all used in each degree,  
Throng to the bar, crying all, 'Guilty, Guilty'!*  
Richard III (act 5, scene 5)<sup>1</sup>

*If thou didst ever hold me in thy heart  
Absent the from felicity awhile,  
And in this harsh world draw thy breath in pain,  
To tell my story. . .* Hamlet (act 5, scene 2)<sup>2</sup>

### Introduction

King Richard III is one of Shakespeare's most infamous villains. He plots, lies, and kills his closest kindred, boasting that he "can smile, and murder whiles I smile," "and set the murderous Machiavel to school."<sup>3</sup> But this ruthless villain is utterly unnerved by nothing more than imagining the untold tales of his victims. The victims perished without telling the stories of their ordeals, but Richard senses that these silenced stories are imperishable and will find a way to reach an audience. The victims' imagined or constructed tales embark upon a condemning attack on Richard's otherwise unreachable conscience, paving the way for his demise.

Hamlet is another Shakespearean character who is occupied with contemplations about stories upon his death. During his last moments, he repeats three times the same request. He asks Horatio to tell—he asks him to tell the unsatisfied; to tell Fortinbras; to tell the world the story of his torment, the tale of his traumatized last weeks. "Report me and my cause

aright to the unsatisfied,"<sup>4</sup> he pleads, entrusting his friend with the task of telling. It is the belief that his story will be told by Horatio that alleviates some of Hamlet's pain.

Richard and Hamlet perceive the power of stories from different standings. For Richard, stories of victims are destructive. Stories are weapons pointed against him. For Hamlet, the power of the story is restorative and recuperative. It is the story that will clarify his "cause" and explain his choices and actions. Richard is painfully aware of the uncontrollable multiplicity of potential stories, of a thousand several tongues, that bring in each several tales, whereas Hamlet strives for a single authoritative tale that will faithfully represent his cause after he is gone, and he believes such story is obtainable. In spite of these differences, Shakespeare endowed both characters with strong intuition regarding the links between narrative and trauma, an intuition backed by human experience and by multidisciplinary research.

Traumas evoke stories. Those stories carry the potential to influence individuals and societies and to transform reality. They can reveal hidden facts, heal victims, and initiate retribution. Stories can also promote political and institutional goals, which sometimes pay no heed to or even contradict the interests of the victims. This segment deals with one possible conflict related to trauma-derived narratives, a conflict that is often revealed when such narratives are imported into the legal domain.

It is first necessary to refer to the distinctive characterizations of "literature of trauma." Narrative is an essential tool that trauma victims apply in order to restore their senses of self and to come to terms with reality. However, precisely because it is the sense of self that is injured, victims of trauma must face exceptional challenges to produce coherent narratives. The following will describe these challenges and the particular poetics used by trauma victims in order to address them. Next, the narratives formed by trauma victims will be placed alongside narratives that are perceived as relevant or acceptable in the legal domain, and, using several examples, the ensuing conflicts will be outlined. This segment concludes by advocating heightened awareness to the idiosyncratic poetics of the literature of trauma as an essential means that should be employed to better incorporate the stories of the victims within the practices of law.

### Literature of Trauma<sup>5</sup>

The term *trauma* (derived from the Greek term *traumatizo*, meaning "to wound"), was used originally to denote a sudden physical blow or injury. It

later acquired a much broader range of meanings that were employed in many ways and in many disciplines, along with various popular uses.<sup>6</sup> This breadth of definition, which is reflected also in this volume, is beyond the scope of this discussion.<sup>7</sup> This chapter will assume the following definition, articulated by Shoshana Felman:

The word trauma means wound. . . . The original use of the term derives from medicine; it has later been borrowed by psychoanalysis and by psychiatry to designate a blow to the self (and to the tissues of the mind), a shock that creates a psychological split or rupture, an emotional injury.<sup>8</sup>

Examples of traumatic experiences that typically cause such injuries include exposure to terrorism, wars, and sexual or physical abuse.

The disconnection from the sense of self and from a valid perception of reality that is experienced by many trauma victims is evocatively described by the American sociologist Kai T. Erikson in this way, "Something alien breaks in on you, smashing through whatever barriers your mind has set up as a line of defense."<sup>9</sup> One of the primary intuitive tools used to restore that smashed line of defense is the narrative. Victims tell stories to themselves and to others to reconstruct their chaotic existences, to understand what happened and how to go on with their lives, and to heal. The use of stories under such circumstances is anticipated. Our social existence is organized around narratives.<sup>10</sup> Narrative structures create meaning and organize different segments of existence. Each narrative creates a distinct fragment of graspable "reality." As Jonathan Culler elaborates:

Stories, the argument goes, are the main way we make sense of things, whether in thinking of our lives as progression leading somewhere or in telling ourselves what is happening in the world. . . . It [life] follows not a scientific logic of cause and effect but the logic of a story, where to understand is to conceive how one thing leads to another, how something might have come about.<sup>11</sup>

Narratives are employed not only in order to grasp "what is happening in the world." They are also a mechanism for creating and defining identity. It is commonly accepted that a sense of self is constructed by the stories one tells and hears. Stories are keys to knowledge of the world and knowledge of ourselves, and they are particularly called for when the sense of self and sense of reality are shaken.<sup>12</sup>

The important links between narrative and trauma have been extensively acknowledged and have gained wide scholarly attention, mainly from psychological and therapeutic perspectives.<sup>13</sup> The perspective pursued here is law and literature oriented. Literary terms and vocabulary are used to illu-

minate the interrelationships between law, trauma, and narrative. Trauma narratives are "rhetorical forms that emerge from the effort to anneal or bridge sundered parts of the self."<sup>14</sup> What distinguishes these rhetorical forms from other forms? What devices make the stories told by trauma victims work? In other words, what singles out trauma narratives from a poetic vantage point?

It is useful to first briefly look into the use of the term *poetics*. In its primary denotation, poetics is the system of aesthetic principles that determine the nature of any literary form.<sup>15</sup> The word is derived from the Greek *poietes*, which means "maker" or "poet."<sup>16</sup> At present, poetics refers to how connotations are produced and why they are accepted as meaningful in any particular field, not necessarily within the literary domain. Hence, contemporary works deal with "poetics of belief,"<sup>17</sup> "poetics of colonization,"<sup>18</sup> "poetics of gender,"<sup>19</sup> "poetics of postmodernism,"<sup>20</sup> and "poetics of the new history."<sup>21</sup> In all of these various contexts, the term *poetics* is imported from its homeland in the realm of aesthetics and applied in attempts to formulate and convey a system of interrelated rules that underlie the regularity of a phenomenon, together with efforts to reveal how those rules create representations that "work" or govern the construction of meaning within a certain area.

The linguistic use of the term refers also to attempts to comprehend and describe how such principles operate. Thus, the poetics of narrative involve an attempt to define and distinguish the components of the narrative and analyze the ways in which particular narratives achieve their effects,<sup>22</sup> whereas the poetics of a specific genre of narrative (the detective genre, for example) consist of defining the main features of that genre and elaborating upon the criteria by which that genre might best be understood and analyzed.<sup>23</sup> This section attempts to identify and delineate some common features that characterize what might be called the poetics of literature of trauma.

Kali' Tal offers the following definition of "literature of trauma":

Literature of trauma is defined by the identity of its author. Literature of trauma holds at its center the reconstruction and recuperation of the traumatic experience, but it is also actively engaged in an ongoing dialogue with the writing and representations of nontraumatized authors.<sup>24</sup>

Literature of trauma is a genre defined first by the identity of its creators and then by its purpose. Literature of trauma is employed exclusively by trauma victims and focuses on two complementing objectives. The first is

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reconstructing the traumatic experience in order to overcome it or to heal. The other is the creation of dialogue with others—other victims and other people who “were not there.” This dialogue is an essential step in the process of healing. Tal explains how the two objectives are reflected in trauma stories:

Literature of trauma is written from the need to tell and retell the story of the traumatic experience, to make it “real” both to the victim and to the community. Such writing serves as both validation and cathartic vehicle for the traumatized author.<sup>25</sup>

The need to tell the trauma is thus not merely to reveal the facts, or even to reveal the victim’s pain. Even if victims believe they accurately remember the traumatic events, and even if it is possible to externalize these memories and make them accessible to other people, it will not suffice for many trauma victims, because it will deny them the ability to choose what to tell, in what order, what to emphasize, what to omit, and what to hide.

What trauma victims seem to need is to tell what happened in *a certain way* and in *a certain time*. Fulfilling this need requires the use of specific poetics that fit the idiosyncratic specifications of the literature of trauma. If the urge of trauma victims to tell their stories in a specific way and in a specific time is denied, the result might be fractional, limited, incomplete, or unauthentic stories that fail to adequately convey the traumatic experience. Such failure, which might be damaging to the victims as well as to their communities, sometimes occurs in legal contexts, where trauma victims are required to tell their stories according to the poetics of law and not according to the poetics of the literature of trauma. This can be illustrated by describing, in the following, three examples of encounters between the narrative requirements of law and the narrative needs of trauma victims.

### Fractured, Revised, and Delayed Stories in Legal Domain

The Holocaust serves as a paradigm case that demonstrates many of the almost unconquerable difficulties that arise when attempts are made to translate certain traumas into narrative representations. Owing to these difficulties, stories told by Holocaust survivors are often fragmented or disrupted. This does not mean that the fragmented narratives are meaningless or powerless. On the contrary, sometimes the power of the story is derived not only from what it says but also from the gaps that can be found in it. Awareness of the purposes that energize the story or obstruct it from being told in full might prove valuable.

Survivors have many reasons to tell their stories: to retain and sustain sense of self and self-esteem, to regain some emotional peace, to take some control of the past, to share it with others, to reach closure. Some of these goals may be conflicting; their harmonization is a complex task. It is carried out through the mostly spontaneous use of appropriate individual poetics that create balance between the conflicting goals, often between the urge to tell and the need to conceal.

Frequently Holocaust survivors feel that some memories and some facts are too painful to externalize. The goal of the stories they tell is to obscure these memories and facts and to shape a story that will include only the manageable fragments of the past. Aharon Appelfeld, author and Holocaust survivor, writes about this common practice among Holocaust survivors: "while the survivor recounts and reveals, at the very same time he also conceals."<sup>26</sup> Narrating the trauma, suggests Appelfeld, might be "first of all a search for relief."<sup>27</sup> Relief can sometimes be achieved by telling certain things and hiding others, retaining the option of revealing these later. Sometimes silence in regard to certain segments of the past is the preferred option even when facing adamant demands (including legal demands) to speak.

Eichmann's trial in Jerusalem provides a striking example of the conflict between the intense need of the victim to disrupt the story at a certain point, and the opposing demand of the law to extract from that victim, in a certain time and place, what is perceived from legal perspective as the entire relevant story.<sup>28</sup> One of the trial's most memorable scenes was the testimony of Yehiel Dinoor, also known under the pseudonym K-Zetnick. Dinoor, a survivor who published several books about the Holocaust, was called to testify because he met Eichmann in Auschwitz, but he collapsed in court after a few sentences, before narrating the encounter. Years after the trial, Dinoor wrote about the incident. He described his ineffective efforts to convince the prosecutor to release him from the testimony. The prosecutor found it hard to believe that the author of so many books could not make clear to the court what Auschwitz was and did not give up on the testimony. Dinoor tells what followed:

The prosecutor was not convinced, and I appeared at the Eichmann trial. Then came the judges' first question about Auschwitz and no sooner did I squeeze out a few miserable sentences than I dropped to the floor<sup>29</sup>

Shoshana Felman, who has deftly analyzed the event, perceived it as a violent encounter between law and art that can shed light on the meaning of trauma.<sup>30</sup> She explains:

Inside the trial, in the drama of the missed encounter between K-Zetnik and the legal actors (judge and prosecutor) there is a unique confrontation between literature and law as two vocabularies of remembrance. The clash between these two dimensions and these two vocabularies brings about a breakdown of the legal framework through the physical collapse of the witness.<sup>31</sup>

Dinoor's interrupted narrative, Felman has forcefully argued, should gain meaning in the legal domain, as has actually happened, though inadvertently. The judges wrote, "perhaps it is symbolic that even the author who himself went through the hell named Auschwitz, could not stand the ordeal in the witness box and collapsed,"<sup>32</sup> thus acknowledging that the fragmented, disrupted narrative of the trauma victim produced a "profoundly meaningful and not senseless moment of the trial."<sup>33</sup>

Dinoor's agonizing day in court gained much attention, but his case was by no means singular. The phenomenon of Holocaust survivors who were unable to narrate the painful past or were able to produce only fragmented, disrupted narratives is well known. An impressive literary attempt to describe the type of fractured stories told by survivors and the impact of such stories on their children can be found in David Grossman's celebrated work "*See Under: Love*."<sup>34</sup> However, incoherent or fractured stories were often overlooked or met with indifference. Finely tuned sensitivity to the particularity of the literature of trauma may promote the attention and response such stories deserve.

The next phenomenon is "shifting stories"<sup>35</sup> or revised stories of people, mostly women, who have been sexually abused, and who appear to change their accounts about the abuse over time, and as a result are likely to be discredited as unreliable, particularly in legal circumstances. The revisions of the abuse stories are often preceded by silences, delays, and hesitations. As Kim Lane Scheppele maintains:

Abused women frequently have exactly this response: they repress what happened; they cannot speak; they hesitate, waver and procrastinate; they hope the abuse will go away; they cover up for their abusers . . . such actions produce delayed or altered stories over time, which are then disbelieved for the very reason that they have been revised.<sup>36</sup>

A typical situation involves the use of statements made at an early point in order to undermine the story offered by the same person at a later time. As Ewick and Silbey put it:

The presumption is that any discrepancy between the recorded account of the past and the oral account invalidates the veracity of the witness. The possibility of

someone amending or upgrading their memory, changing their mind as they try to remember what happened is discounted.<sup>37</sup>

The writers provide an example from research conducted on a gang rape trial, where such strategy was used by the defense attorney in an attempt to discredit the victim.<sup>38</sup>

However, a poetic perspective that focuses upon the purposes prompting each version may provide an alternative explanation. When women first try to relate the traumatic event, they often provide narratives that are aimed toward normality or toward making things look ordinary again. They tend to minimize the abuse, understate the brutality of the attacks, and offer "softened," subdued, or even much distorted versions of the painful events.<sup>39</sup> Later, sometimes through therapy or after some temporal distance during which a minimal level of emotional strength is regained, women revise their stories. Actually, one sign of recovery from the abuse is the revision of the original story.<sup>40</sup>

The purpose of the revised story is different from the purpose of the prior version. If the initial story was derived from an instinct to survive emotionally, then the later story is derived from the need to make sense of what happened and to put blame where it belongs. The latter need might be to describe the facts in their full, horrible detail, even if the first instinct was to conceal some of those facts. The different needs result in different stories. Ironically, the revision or reconstruction of the original story, which is a sign of recovery and of the rehabilitated ability to produce a coherent, fuller narrative, is often perceived in courts or in legal circumstances as an unreliable version. The later stories are rarely believed. They lose social authority and legal power.

Although it is recognized that not all revised or modified stories told by victims of sexual abuse (or by victims of other traumas) should be automatically believed or given preference over previous versions, to use Scheppele's term, better *strategies of belief*<sup>41</sup> could be developed. Consideration of some aspects of the multifaceted and specified poetics that are activated when literature of trauma is constructed is an important step in paving the way toward better evaluation of the validity of revised or shifting stories produced by trauma.

The last example is of postponed stories; stories that are being told not in temporal proximity to the traumatic event and not when they are called for by external circumstances, but when the narrator feels it is the right time for him or her to tell the story of the trauma. Again, difficulties may arise when law demands a story at a certain point of time. A revealing example can be



found in the aftermath of the terrorist attacks at the World Trade Center on September 11, 2001.

Soon after the attack, the Air Transportation Safety and System Stabilization Act (the Act) was passed.<sup>42</sup> The Act, which was unprecedented in the American legal system, created the September 11th Victim Compensation Fund of 2001 (the Fund). The purpose of the Fund was to compensate people who had been physically injured and personal representatives of those killed.<sup>43</sup> The Act required that all claims with the Fund should be filed by December 22, 2003.<sup>44</sup> Though serious efforts to get all the claimants to file by the deadline proved mostly successful, government officials (including the Special Master to the Fund) and survivors' groups now recognize that, for many families, grief was an obstacle to the filing.<sup>45</sup> In an article assessing the Fund operation through the lens of the grief and trauma of the victims, Elizabeth M. Schneider surveys various statements from family members. As some statements reveal, very close to the deadline, many were still too traumatized, grieving, and paralyzed to come out with a coherent account necessary to initiate the proceedings. One of the victims said, "they ask for a victim impact statement . . . I try to write something and I just can't."<sup>46</sup> "For many, this is the most difficult part, and the words will not come out," writes Schneider.<sup>47</sup>

This blockage of "words not coming out" is a familiar repercussion of trauma. Domestic violence, sexual abuse, and exposure to torture may involve difficulties in translating the traumatic event into narratives, affirmed facts, or "statement." The individuals harmed might be too far from healing to be able to shape even the most basic narrative, which is essential to initiate the machinery of legal proceedings. In spite of calls to lengthen the deadline for filing with the Fund by one year, Congress did not extend it.<sup>48</sup> As Schneider concludes:

Experience with the . . . Fund of 2001 reveals that grief and trauma are critical issues that should be recognized in our assessment of civil litigation and claims resolution processes. Failure to recognize the severity of survivors' grief and trauma and their moral and human needs limited the effectiveness of the Fund in a number of ways. Affirmative recognition of the grief and trauma that survivors experience can help us to think differently about claim resolution processes and litigation and make these processes more meaningful.<sup>49</sup>

Again, acknowledging and taking into consideration particular poetical mechanisms of trauma literature and the meaning of storytelling to an individual after a traumatic event may help to achieve these ends.

Literature of trauma is created by victims in the time and space chosen by them to suit their particular needs during the most painful periods in their lives. There is an obvious conflict between the narrative demands of institutionalized law and those of the victims. Prosecutors, government officials, courts, and the like aim to retrieve certain limited facts, according to a specific grid and time frame, in order to carry out their duties and reach "formal" closure as soon and as efficiently as possible. For the victims, on the other hand, the notion of closure is much more complex. The forum choice and the strict temporal deadline dictated by the Fund were, perhaps, helpful for some victims but had a paralyzing and distressing impact on others. It is perhaps necessary to realize that constituting and shaping a traumatic narrative is a process that puts the victim in the center and places institutional efficiency in a secondary role. Such insights could prove useful in shaping the legal frameworks designed to address traumatic events. As the experience with the September 11th Fund demonstrates, if more time, more personal space, and wider spans of attentiveness to traumatic narratives had been allocated, the healing capacity of law could have been significantly enhanced.

#### Between Trauma Literature and Legal Demands

It is now helpful to delineate some of the common characterizations that distinguish literature of trauma from other forms of narratives. Peter Brooks presents the idea that the object of the narrative is to "wrest beginnings and ends from the uninterrupted flow of middles, from temporality itself."<sup>50</sup> Narrative creates a structure that usually strives toward meaningful closure or an ending that makes sense.<sup>51</sup> This is even more emphasized when dealing with legal narratives, stories that are allowed to serve as legal grounds. Law demands orderly, "closed" stories, and it has a valid reason for this demand. Unlike other stories, the power of legal stories is normative. The narrative in judgments, for instance, does not interpret reality or contemplate upon reality; rather, it *declares* that a particular occurrence is reality. To do so, the judgment transforms the narratives of litigants or witnesses into authoritative, final articulations that bring about normative results. To achieve its aims and function appropriately, law endeavors to produce and present narratives that are characterized by coherent structure and are easily connectable to a specific time and place.<sup>52</sup>

Literature of trauma is indifferent to such aims. It is created first and foremost to serve its narrators, the trauma victims. Narratives of victims

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do not aim to achieve coherent construct or definite closure. As has been elaborated, these narratives are often fragmented, aversively partial or vague. Sometimes they evolve, and victims revise their narratives gradually, suspending the final closure until the right time comes. Because the two types of stories—the stories law seeks and the stories trauma victims want to tell—serve different purposes, they are constructed according to different principles. Their poetics, the set of rules that determines their meaning, are different.

The poetics of legal stories derives largely from legal procedure and rules of evidence. These demand the inclusion of only facts that the legal system needs in order to function properly, and they insist that all such facts are included. Thus, the hiding of certain facts or postponement of their revelation is not to be tolerated. This results in coherent stories that are usually focused on the actions of aggressors rather than on the emotions of victims. Such stories are typically linear and centered on causality. They are also focused on the past and do not relate in a meaningful way to future prospects. They cannot be changed or modified. They are closed stories, set within a carefully defined and limited spatial and temporal framework.

The poetics of trauma literature are different. The purpose that motivates them is the alleviation of pain felt by trauma victims. Consequently, the narratives produced differ according to the needs of each victim. Some stories are basically accurate elaborations of the traumatic event as remembered by the victims. Other stories avoid explicit allusion to the traumatic event. Some narratives reflect protest and claim for retribution, whereas others face the future, focusing on overcoming the trauma and on hope. Nonetheless, at the core of most stories are the victims. These narratives are centered upon the victims' memories, feelings, demands, and hopes. Because each victim is different, each story is unique. Moreover, trauma narratives are often volatile. They do not emphasize causality; they might veil certain things and in a later version expose them. They are not necessarily linear, and are often associative.

In the previous section, some of the diversity of such stories was elaborated upon: the fractured stories of Holocaust survivors, the revised stories of abuse and sexual violence victims, the difficulties September 11th victims had coming up with even a basic story with the trauma still so prevalent in their lives. In all of these cases, that expectation that trauma victims shape their stories not according to their needs but according to the strict demands of legal poetics might prove problematic to both parties, the legal institutions as well as the victims. This is not to say that the interjection of trauma

victims into legal proceedings is objectionable. On the contrary, legal proceedings might be an important part of the healing process. Establishing formal accountability and helping, by narrating the past, to bring about that accountability can serve as an empowering, healing process for many trauma victims.<sup>53</sup> In this sense, the trauma stories victims tell in court may complement extralegal trauma literature in supporting and promoting the healing process. Yet, as shown through these examples, there is often an inherent conflict between trauma-related stories constructed within the legal domain to suit legal needs and trauma-related stories produced in an extralegal environment.

To summarize the conflict again, there are, on one hand, trauma victims and survivors wishing to narrate their experiences in their own terms, according to their individual needs and choices. On the other hand, legal narratives are produced according to particular specifications, because otherwise they could not efficiently serve legal purposes. Both types of narrative are essential. Trauma literature is an indispensable tool of healing and empowerment, whereas recounting trauma within legal contexts is imperative to establish guilt and punishment when owed and may also promote the healing processes of victims. One may ask, however, how the two sorts of narratives can be optimally entwined. How can they interweave in a constructive way?

To begin with, the parallel existence of the two narrative routes and the frequent impossibility to fully reconcile them should be acknowledged and accepted. Both sorts of traumatic narratives should be given their own places; they should not annul one another or contend, but rather be allowed space to function alongside each other. It is a matter of adjusting societal expectations. Legal proceedings cannot be expected to offer a platform that endows voice, visibility, or full validity to the complete scope of the traumatic experience. Legal stories must retain their characteristic of specificity in order to retain their authority and capacity to sustain legal decisions. At the same time, trauma victims often cannot reveal their whole traumatic experience during a trial because they are restricted by legal procedure. The importance and societal relevance of other narrative platforms should be recognized. In theoretical terms, the mutual flow of the two channels, the legal course and that offered by the trauma of literature, brings to mind the paradigm of literature alongside law.<sup>54</sup> This paradigm, which is highly relevant to traumatic stories when and wherever they are being told, acknowledges the inability to reach full settlement and harmony between different needs that leads to different stories, and thus accepts the possible validity of several contradicting stories.

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In practical terms, the idiosyncratic nature of the traumatic experience and its distinctive influence upon ordinary storytelling practices should be accepted. Perhaps the conventions of truth finding and some principles of the rules of evidence should be reconsidered in light of accumulating experience, and later stories of trauma victims should not lose credibility simply because they offer new accounts that contradict former narratives.<sup>55</sup> Perhaps the law should entitle trauma victims to more generous deadlines for claims that are sometimes required in the aftermath of trauma and allow claimants to structure their own narratives and arguments during legal proceedings.<sup>56</sup> Surely several other innovative means may develop. However, be the practical manifestations of this sort or another, it is apparent that a more sensitive and more insightful evaluation of trauma victims' narratives in courts will benefit not only the victims but society at large.

### Conclusion

*Each time I told my story, I lost a bit, the smallest drop of pain.*  
Alice Sebold<sup>57</sup>

This quote is from Alice Sebold's moving novel *Lovely Bones*, where heaven is depicted as a place of redeeming narration. The dead tell and retell their life stories and the stories of their deaths, and these narrations have the power to ease the pain of even a violent, totally senseless death. Narratives are indeed powerful tools. They shape the consciousness, our imagination, and the way we see and comprehend reality. We use narratives to convince, to influence, to gain sympathy, or to achieve any purpose desired. We use stories to heal ourselves and others.

Awareness of the different poetics required by different narratives could be employed as a means of reconciliation between conflicting or incompatible stories produced by trauma victims. The development of an understanding of how trauma stories are constructed by victims is an important step in the process of making the legal system a better tool for addressing trauma, healing trauma victims, and achieving shared public attentiveness to the full range of stories brought about by trauma.

### Notes

1. William Shakespeare, *Richard III*, in *William Shakespeare: The Complete Works*, ed. Stanley Wells and Gary Taylor (Oxford: Clarendon Press, 1988), 183.
2. Shakespeare, *Hamlet*, in *William Shakespeare*, 653.

3. As Richard states in his soliloquy in the third part of *Henri VI*. Shakespeares, *Henri VI*, in *William Shakespeare*, 91.
4. Shakespeare, *Hamlet*, in *William Shakespeare*, 653.
5. The term is coined by Kali Tal. See Kali Tal, *Words of Hurt: Reading the Literatures of Trauma* (Cambridge: Cambridge University Press, 1996).
6. Kim Lacy Rogers, Selma Leydesdorff, and Graham Dawson, eds., *Trauma and Life Stories: International Perspectives* (London: Routledge, 1999), 2.
7. For a bibliography of works attempting to define trauma and describe the notion of trauma and its specific contexts, see: Shoshana Felman, *The Juridical Unconscious* (Cambridge, MA: Harvard University Press, 2002), 172–173.
8. *Ibid.*, 171.
9. Kai T. Erikson, *A New Species of Trouble: Explorations in Disaster, Trauma, and Community* (New York: W. W. Norton & Company, 1994).
10. The definition of narrative, its substance, its functioning, and its relationship to plot are issues that have been extensively researched. See, for example, Shlomith Rimmon-Kenan, *Narrative Fiction: Contemporary Poetics*, 2nd ed. (London: Routledge, 2003); Peter Brooks, *Reading for the Plot: Design and Intention in Narrative* (New York: Alfred A. Knopf, 1984); Jonathan Culler, *Literary Theory: A Very Short Introduction* (Oxford: Oxford University Press, 1997), 83–94.
11. Culler, *Literary Theory*, 83–84.
12. On the therapeutic value of constructing narrative, see Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (New York: Routledge, 1992). For exploration of the relationship between narratives and reconstructing identity of trauma victims, see Nicola King, *Memory, Narrative, Identity: Remembering the Self* (Edinburgh: Edinburgh University Press, 2000).
13. For discussion of links between narrative and trauma, see Cathy Caruth, *Unclaimed Experience: Trauma, Narrative and History* (Baltimore: Johns Hopkins University Press, 1996); Dominick LaCapra, *Writing History, Writing Trauma* (Baltimore: Johns Hopkins University Press, 2000); Rogers, Leydesdorff, and Dawson, eds., *Trauma and Life Stories*; King, *Memory, Narrative, Identity*; Tal, *Worlds of Hurt*; Paul Antze and Michael Lambek, eds., *Tense Past: Cultural Essays in Trauma and Memory* (New York: Routledge, 1996); Felman, *The Juridical Unconscious*.
14. Laurence J. Kirmayer, "Landscapes of Memory: Trauma, Narrative, and Dissociation," in *Tense Past* (see note 13), 191.
15. See C. Hugh Holman and William Harmon, *A Handbook to Literature* (Upper Saddle River, N.J.: Prentice Hall, 1996), 364.
16. See David Macey, *The Penguin Dictionary of Critical Theory* (London: Penguin, 2000), 300. The earliest theory of poetics is to be found in Aristotle's *Poetics*, written sometime in the middle of the fourth century BC. The *Poetics* is the first known full-scale effort to systematize the mechanisms by which literary texts produce certain effects, such as pleasure, amazement, amusement, or belief. Aristotle, *Poetica*, in S. H. Butcher, *Aristotle's Theory of Poetry and Fine Art*, trans. S. H. Butcher (New York: Dover, 1951). The *Poetics* entailed an entire field of scholarship that significantly exceeded Aristotle's initial objective, and over the ages, the term has come to be much more widely applied.
17. See Nathan A. Scott, *The Poetics of Belief: Studies in Coleridge, Arnold, Pater*,

*Santayana, Stevens, and Heidegger* (Chapel Hill: University of North Carolina Press, 1985).

18. See Carol Dougherty, *The Poetics of Colonization: from City to Text in Archaic Greece* (New York: Oxford University Press, 1993).

19. See Nancy K. Miller, ed., *The Poetics of Gender* (New York: Columbia University Press, 1986).

20. See Linda Hutcheon, *A Poetics of Postmodernism: History, Theory, Fiction* (New York: Routledge, 1988).

21. See Philippe Carrard, *Poetics of the New History: French Historical Discourse from Braudel to Chartier* (Baltimore: Johns Hopkins University Press, 1992).

22. See, for example, Culler, *Literary Theory*, 84.

23. See Martin Gray, *A Dictionary of Literary Terms* (Harlow, Essex: Longman, 1994), 225.

24. Tal, *Worlds of Hurt*, 17.

25. Tal, *Worlds of Hurts*, 21. It should be noted that Tal refers to "authors" who "write" their story. I believe, however, that the characterizations she describes are apparent in any other rhetorical vehicle a trauma victim may employ, including orally narrated stories, in any formal or informal manner. The oral narratives carry the similar traits and derive from similar poetics as the written ones.

26. Aharon Appelfeld, "After the Holocaust" in *Writing and the Holocaust*, Berl Lang, ed. (New York: Holmes & Meier, 1988), 84.

27. *Ibid.*

28. Criminal Case 40/61 (Jerusalem), *Attorney General v. Eichmann* 36 I. L. R. S. (Dist. Ct. 1961), quoted in Felman, *The Juridical Unconscious*, 136.

29. K-Tzetznik 135633, *Shivitti: a Vision*, trans. Eliyah Nike De-Nur and Lisa Herman (San Francisco: Harper & Row, 1989), 32.

30. Felman, *The Juridical Unconscious*, 165.

31. *Ibid.*, 165.

32. Criminal Case 40/61 (Jerusalem), *Attorney General v. Eichmann* (1961), quoted in Felman, *The Juridical Unconscious*, 155.

33. Felman, *The Juridical Unconscious*, 156. Felman analyzes an opposite standing, that is reflected in Hannah Arendt's ironic description of the event in her book *Eichman in Jerusalem*. Arendt, Felman argues, represents in her stance toward the collapse the limits of the law when encountering the manifestations of trauma in court. Felman, *The Juridical Unconscious*, 156-157.

34. David Grossman, *See Under: Love*, trans. Betsy Rosenberg (London: Cape, 1990).

35. A term offered by Kim Lane Scheppele. See 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, 141 (1992).

36. *Ibid.*, at 126-127.

37. Patricia Ewick & Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: Chicago University Press, 1998), 105.

38. *Ibid.*

39. Scheppele, *Just the Facts, Ma'am* 37 (1992), at 138-139.

40. *Ibid.*, 140; Judith Lewis Herman, *Trauma and Recovery* 179-180 (1992).

41. Scheppele, *Just the Facts, Ma'am* 37 (1992), at 172.
42. Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 115 Stat. 230 (2001).
43. Title IV of the Act creates the September 11th Victim Compensation Fund of 2001, Pub. L. No. 107-42, 401-409, 115 Stat. 230, 237-41 (2001). See September 11th Victim Compensation Fund of 2001, 66 Fed. Reg. 66, 274.
44. September 11th Victim Compensation Fund of 2001, 67 Fed. Reg. at 11, 235.
45. Elizabeth M. Schneider, *Grief, Procedure, and Justice: The September 11th Victim Compensation Fund*, 53 *DePaul L. Rev.* 457, 465 (2003).
46. *Ibid.*, 479.
47. *Ibid.*
48. For a description of the usage to extend the deadline and its failure, see *ibid.*, 482-484.
49. *Ibid.*, 499-500.
50. Brooks, *Reading for the Plot*, 140.
51. See Frank Kermode, *The Sense of an Ending: Studies in The Theory of Fiction* (Oxford: Oxford University Press, 2000), 3-4.
52. On the nature of legal narratives, see Shulamit Almog, *From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative and Law*, 13 *Fordham Intell Prop, Media & Ent. L. J.* 1 (2002).
53. As Felman and Laub note: "Testimony is the narrative's address to hearing; for only when the survivor knows he is being heard, will he stop to hear—and listen to himself." Felman and Laub, *Testimony*, 71. See also Judith Lewis Herman, *Trauma and Recovery* (New York: Basic Books, 1992), 181; Tom R. Tyler & Hulda Thorisdottir, *A Psychological Perspective on Compensation for Harm: Examining the September 11th Victim Compensation Fund*, 53 *DePaul L. Rev.* 355 (2003).
54. For an elaboration of the paradigm of literature alongside law, see Shulamit Almog, *Literature Alongside Law as a Contemporary Paradigm*, 13 *Cultural Dynamics J.* 53 (2001); Shulamit Almog, "One Young and the Other Old": *Halakhah and Aggadah as Law and Story*, 18 *Can. J. L. & Soc.* 27 (2003).
55. As suggested by Kim Lane Scheppele, *The Ground-Zero Theory of Evidence*, 49 *Hastings L. J.* 321, 334 (1998).
56. As suggested by Schneider, *Grief, Procedure, and Justice*.
57. Alice Sebold, *The Lovely Bones: a Novel*, (Boston: Little, Brown, 2002), 186.