

Custody Lawyer/ Mediator/ Evaluator as Storyteller:

Shaping Narratives to
Help Decisionmakers
Craft Individualized
Parenting Plans

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“War stories is the phrase used by academic lawyers to disparage the ways practicing lawyers talk about their experiences. Still, much of what matters about law eludes most academic writings. Perhaps, as a consequence, legal scholarship is awash in new methodologies designed to illuminate how law shapes and is shaped by its enforcers, interpreters, and those it regulates.

“The approach that particularly interests us in these new inquiries is best described as participant-narrative. Celebrating storytelling, books by lawyers and law review articles for more than a decade have featured autobiographical accounts by lawyers, law professors, and law students; tales of fiction, fantasy, or allegory; retelling of strategies and tactics in famous cases; and reflections on the role of storytelling in conventional law practice. But despite this flowering of such narratives, stories of the actual experiences of clients and lawyers in concrete legal contexts remain few and far between. ...[W]e believe that only such stories can convey how law is used and experienced by people enmeshed in its workings ...”

Gary Bellow and Martha Minow, *Law Stories*
(University of Michigan Press, 1996)

“Telling stories and listening to stories are the activities that most distinguish our species ... Storytelling is in the genes. It follows, therefore, that the most effective structure for any argument will always be story.”

Gerry Spence

How to Argue and Win Every Time

(St. Martin's Griffin, 1996)

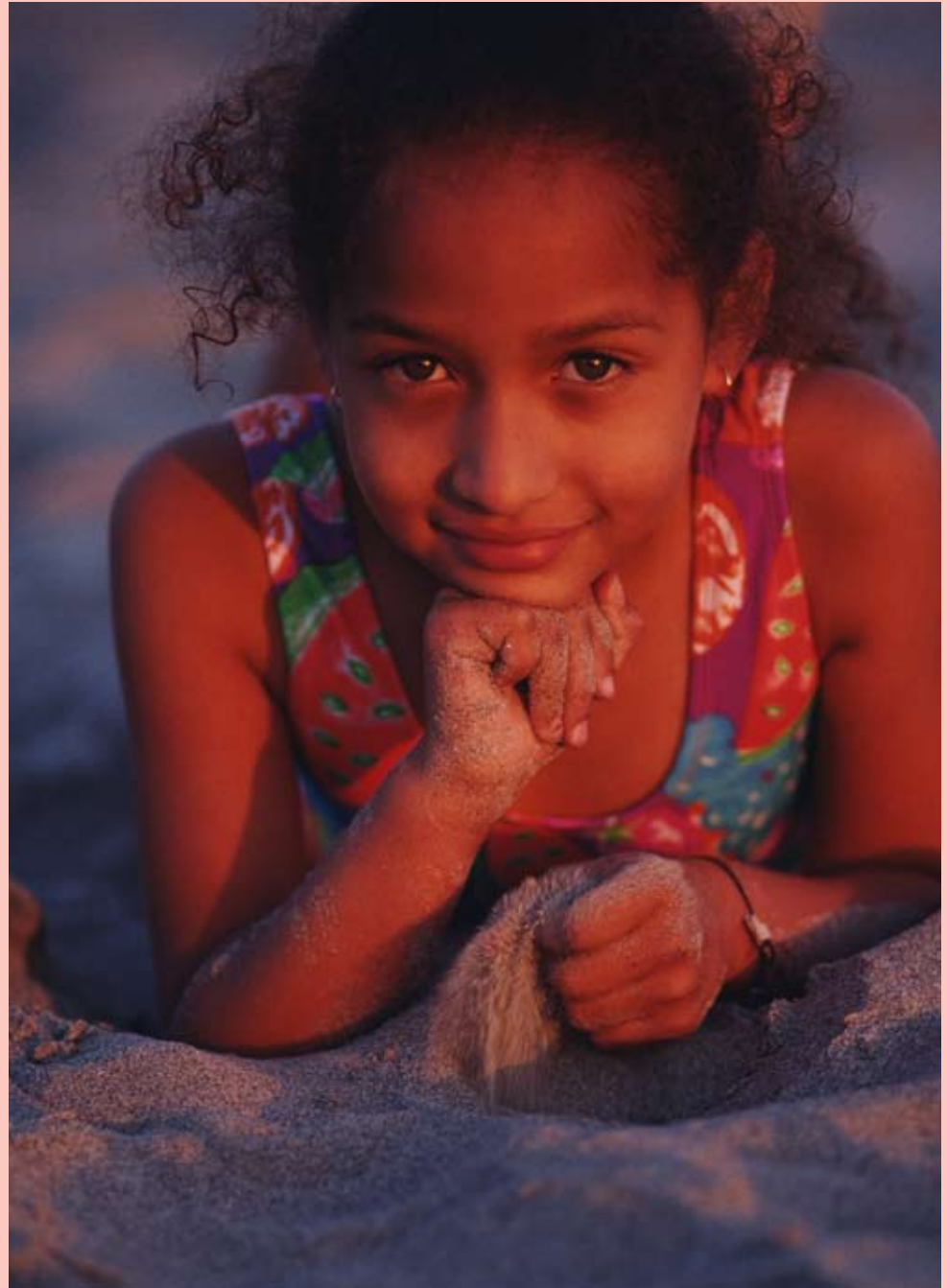
“It's not what you say, it's what people hear.”

Frank Lutz

*Words That Work: It's Not What You Say,
It's What People Hear*

(Hyperion Books, 2007)

My Story:
“The Best
Interests
of
the
Child...”



“The account is of major psychological importance to the separated, not only because it settles the issue of who was responsible for what, but also because it imposes on the confused marital events that preceded the separation a plot structure... and so organizes the events into a conceptually manageable unity.”

Robert S. Weiss
Marital Separation
(Basic Books, 1975)

“...[T]he extremely negative views parents have of one another are exaggerated and emanate from one spouse’s humiliation at the rejection inherent in the divorce itself. The couple’s enmeshment derives from their inability to separate and realistically grieve the loss of the marriage relationship. Traumatic separations, by which a divorcing partner’s sense of trust and shared reality has been precipitously betrayed and shattered, have resulted in negatively revised views of one another that are often unwittingly confirmed by others within their split social world of new partners, kin and even professionals. [FN] Unable to settle their disputes with one another, these vulnerable people are then forced to enter the traditional legal system, which greatly increases their anxiety and defensiveness, and further undermines their parental competence. In the spirit of an adversarial culture, divorcing couples seek vindication through litigation by polarizing their respective positions and blaming the other parent.”

Janet R. Johnston, Building Multidisciplinary Professional Partnerships with the Court on Behalf of High-Conflict Divorcing Families and Their Children: Who Needs What Kind of Help?

“When people have truly uncoupled – established a life confirming their independent identity – they will again be free to see both the positive and negative qualities of the former partner and the relationship. Negative definitions are essential to transition, but they are often temporary. When people achieve a valid self identity, they no longer have to work at dissociating by focusing on negative attributes and displaying discontent. They are then able to reconstruct the history of the relationship to again include the good memories of time shared.”

Diane Vaughn

Uncoupling: Turning Points in Intimate Relationships

(Oxford University Press, 1986)

“I’ve been married three times –
and each time I married the right person.”

Margaret Mead

Legal Custody:

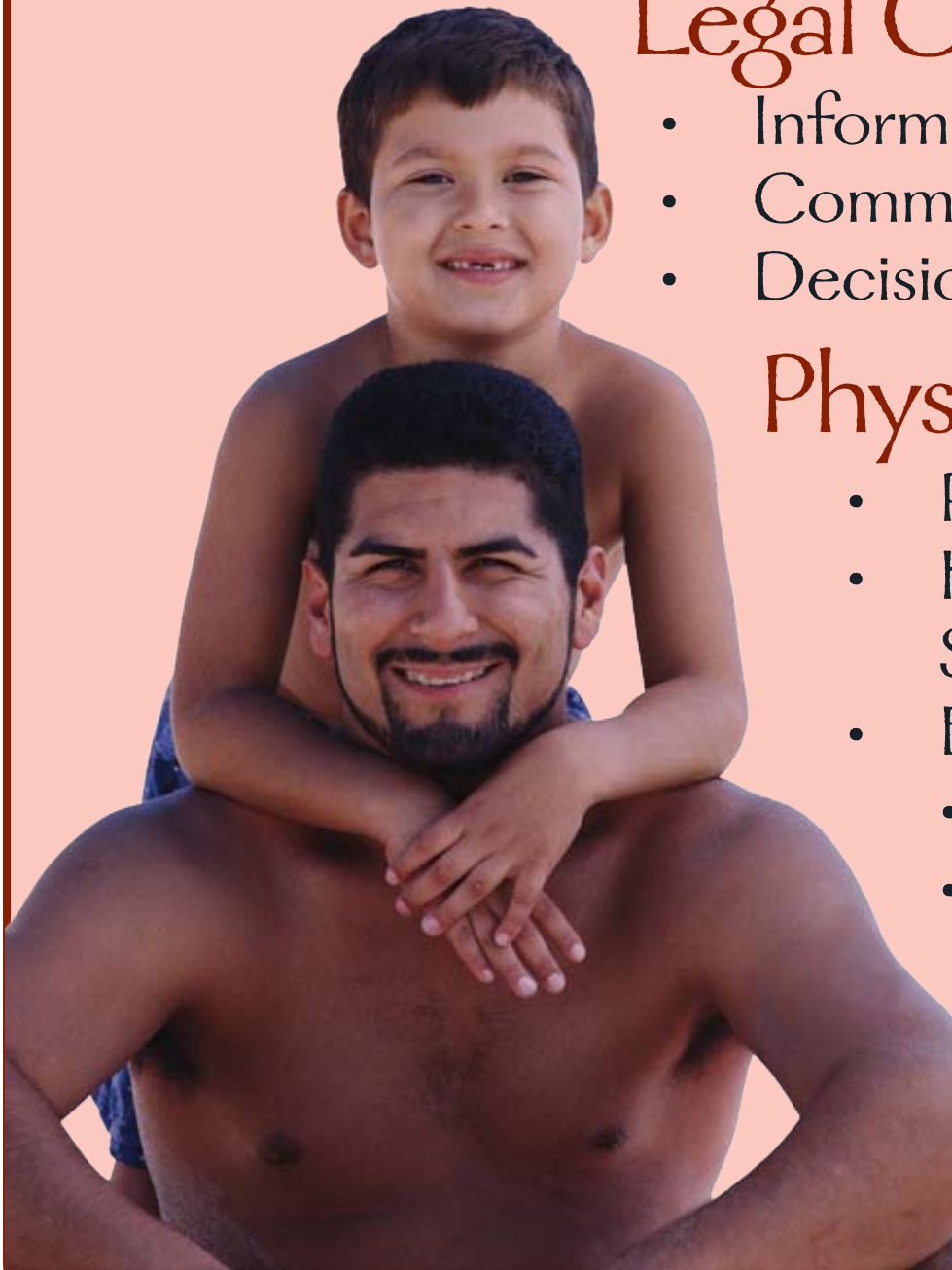
- Information Exchange
- Communication & Civility
- Decisionmaking Authority

Physical Custody:

- Residential Schedule
- Holidays, Vacations and Special Days
- Exchanges/Logistics
 - Parent-child Contact
 - Transportation

Other:

- Supportive Services
- Review
- Sunset Provisions





Parents' Stories Built Around Kids' Needs:

- Safety & Sustenance
- Empathic Attunement
- Realistic Expectations
- Emotional Intelligence/
Social Skills
- Moral Intelligence
- Intellectual Development
- Nurturing
- Developing Autonomy,
Independence & Mastery
- Availability
- Working with Other Parent
- Working with Others in the
Child's Life



“In deciding custody arrangements for a well-functioning 9-year-old boy with two loved and adequate parents who provide overlapping and unique contributions to the child’s development, the decision maker may weigh the need for continuity in the child’s relationship with both parents quite heavily and therefore consider a variety of shared parent arrangements. In contrast, with an angry and depressed 9-year-old boy with one adequate parent and one emotionally abusive parent, the decision maker will be more likely to weigh the child’s need for relief from the corrosive effects of that abusive parent and recommend a parenting plan that limits the child’s contact with that parent.”

Joan B. Kelly

“The Hmong have a phrase, *hais cuaj txub kaum txub*, which means ‘to speak of all kinds of things.’ It is often used at the beginning of an oral narrative as a way of reminding the listeners that the world is full of things that may not seem to be connected but actually are; that no event occurs in isolation; that you can miss a lot by sticking to the point; and that the storyteller is likely to be rather longwinded.”

Anne Fadiman, *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures*

Cultures (Farrar, Straus and Giroux, 1997)

Narrative Mediation

Decoupling the Problem
from the People ...

“...[E]very decision maker’s story begins before all the facts are in the record, and usually long before. (This is even more true of judges and mediators due to their early exposure to written references to the case story, and greater experience with the process.) The story each decision maker constructs controls the sorting of facts by significance within that story; it determines how much each fact will be emphasized, and even which facts have more perceived use within the story constructed.”

Eric Oliver

Facts Can't Speak for Themselves: Reveal the Stories That Give Facts Their Meaning

(NITA, 2005)



SUCCESS

Simple

Unexpected

Concrete

Credible

Emotional

Stories

Stick



“The Curse of Knowledge is the arch-villain in our book. The Curse of Knowledge happens because when we know something, it becomes hard for us to imagine not knowing it. As a result we become lousy communicators.”

Dan Heath



SIMPLE

Core + Compact

UNEXPECTED

Surprise + Interest





CONCRETE

What did you see with your eyes?

What did you hear with your ears?





CREDIBLE

What makes
people believe?

Honesty

Trustworthiness

The Power of
the Particular

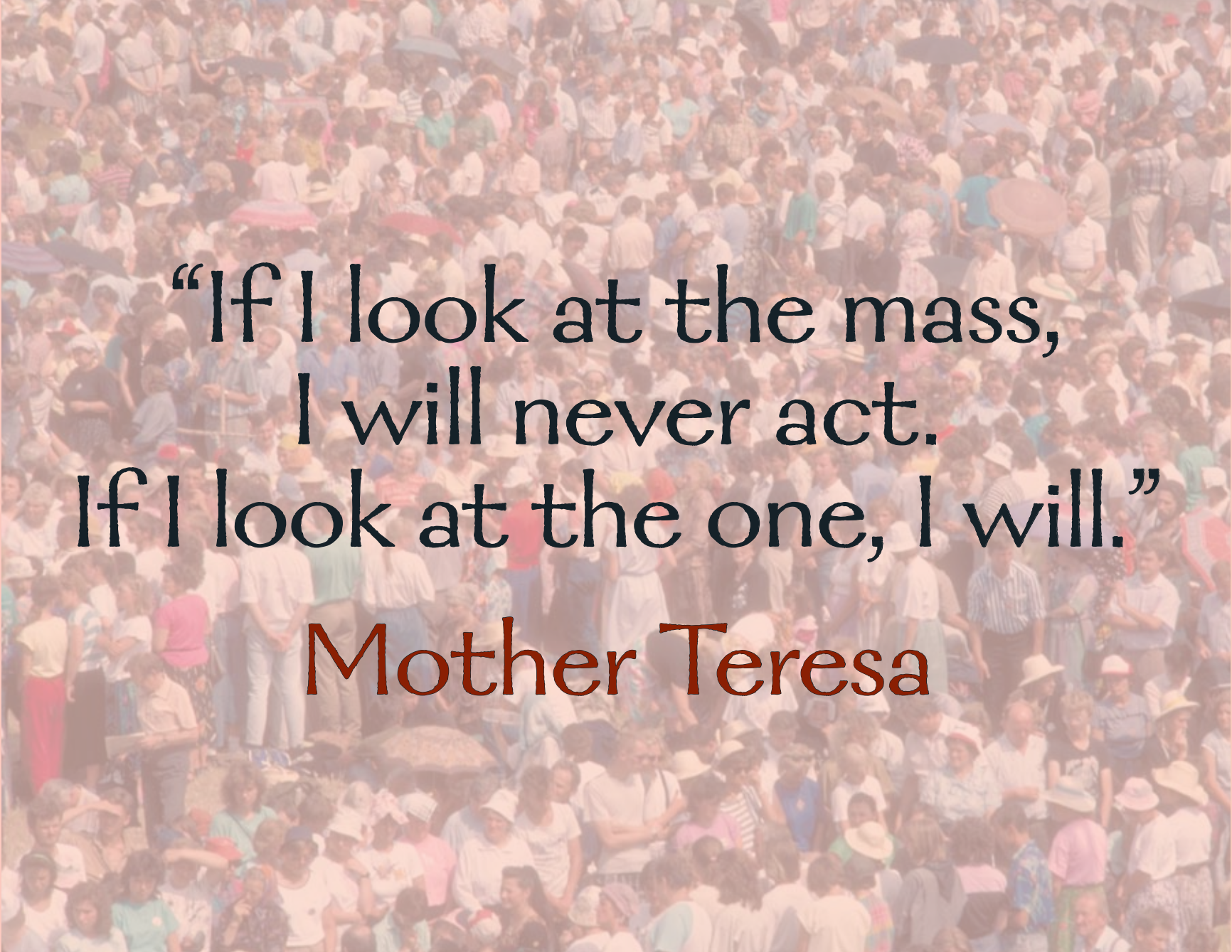


EMOTIONAL

Persuading Judges

- Appeal to justice and common sense.
- Reason is paramount with judges and that overt appeal to their emotions is resented.
- Assume a position of respectful intellectual equality with the bench.
- Restrain your emotions, and don't accuse.
- Control the semantic playing field.
- Close powerfully – and say explicitly what you think the Court should do.

Justice Antonin Scalia & Bryan A. Garner



“If I look at the mass,
I will never act.
If I look at the one, I will.”

Mother Teresa

Bases for an Emotional Connection



Associations

Self Interest

Identity

Why?

Why?

Why?



STORIES

“A story is powerful because it provides the context that is missing from abstract prose.”

Chip & Dan Heath



Tell us what you think...

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Download materials at
www.custodymatters.com